

UNITED STATES OF AMERICA  
POSTAL RATE COMMISSION  
WASHINGTON, DC 20268 -0001

Postal Rate and Fee Changes

Docket No. R2006-1

PRESIDING OFFICER'S RULING  
CONCERNING MOTIONS TO COMPEL RESPONSES TO  
INTERROGATORIES DBP/USPS-110-113, 115-122, 124, 167, 217-237 AND 288

(Issued August 14, 2006)

*DBP/USPS-110 through 113 and 115 through 120.* On July 24, 2006, David B. Popkin filed a motion to compel responses to interrogatories DBP/USPS-110 through 113 and 115 through 120.<sup>1</sup> The interrogatories request information on the EXFC and PETE measurement systems. The Postal Service filed objections to responding to these interrogatories on July 10, 2006, and filed a response to the motion to compel on July 31, 2006.<sup>2</sup>

The interrogatories and argument follow:

**DBP/USPS-110**

[a] Please refer to your response to Interrogatory DBP/USPS-85. Please confirm, or explain if you are unable to confirm, that you are considering the services that are provided by droppers, reporters, and return address panel members in both the EXFC and PETE programs to be professional services.

---

<sup>1</sup> David B. Popkin Motion to Compel Responses to Interrogatories DBP/USPS-110 through 113 and 115 through 120, July 24, 2006. The interrogatories were filed in: Interrogatories of David B. Popkin to the United States Postal Service [DBP/USPS-110-114], June 27, 2006, and Interrogatories of David B. Popkin to the United States Postal Service [DBP/USPS-115-124], June 28, 2006.

<sup>2</sup> Objections of the United States Postal Service to Interrogatories of David B. Popkin (DBP/USPS-110-113 and 115-120), July 10, 2006; Opposition of the United States Postal Service to David B. Popkin Motion to Compel Responses to Interrogatories 110 through 113, and 115 through 120, July 31, 2006 (Objections to DBP/USPS-110-113 and 115-120).

[b] Please define the term professional services as used in the original response.

**DBP/USPS-111**

[a] Please refer to your response to Interrogatory DBP/USPS-85. Please advise if any or all of the droppers, and/or reporters, and/or return address panel members are employees of the EXFC/PETE Contractor.

[b] If so, are they paid compensation at or above the minimum wage?

**DBP/USPS-112**

[a] Please refer to your response to Interrogatory DBP/USPS-85. Please advise if any or all of the droppers, and/or reporters, and/or return address panel members are independent contractors of the EXFC/PETE Contractor.

[b] If so, are they paid compensation at or above the minimum wage?

**DBP/USPS-113**

[a] Please refer to your response to Interrogatory DBP/USPS-85. Please advise if any or all of the droppers, and/or reporters, and/or return address panel members are volunteers of the EXFC/PETE Contractor.

[b] If so, are they paid a cash compensation at or above the minimum wage?

[c] If so, are they paid a cash compensation less than the minimum wage?

[d] If so, are they paid a token non-cash compensation?

[e] If so, are they not provided any compensation?

Mr. Popkin states that DBP/USPS-110 through 113 seek to clarify the meaning of the term “professional services” as used in the Postal Service’s response to DBP/USPS-85. He contends that the interrogatories are relevant since they are attempting to determine the reliability of EXFC data, which relates to the value of First-Class Mail service.

The Postal Service objects on the grounds of relevance, materiality, and redundancy. It contends that the interrogatories are not relevant to the ratemaking process, they seek information about the relationship between an independent contractor and its own employees, and the question has been asked and answered by the response to DBP/USPS-85.

**DBP/USPS-115**

Please advise the number of droppers that are being utilized in the First-Class Mail EXFC Program.

**DBP/USPS-116**

Please advise the number of droppers that are being utilized in the Priority Mail PETE Program.

**DBP/USPS-117**

Please advise the number of return address panel members that are being utilized in the First-Class Mail EXFC Program.

**DBP/USPS-118**

Please advise the number of return address panel members that are being utilized in the Priority Mail PETE Program.

Mr. Popkin states that DBP/USPS-115 through 118 seek to determine the number of droppers and return address panel members utilized in the EXFC and PETE programs. He argues that this information, when evaluated with the volume of activity in the EXFC and PETE programs, will provide an indication of the reliability of the data. He notes that the Postal Service already disclosed the number of reporters in responses to previous interrogatories.

The Postal Service contends that the information about the contractor's employees is irrelevant and immaterial to the ratemaking process, as well as unnecessary for an understanding of EXFC and PETE. Furthermore, Mr. Popkin has not provided a basis to draw any connection between the number of droppers and return panel members and the reliability of the data.

**DBP/USPS-119**

- [a] Does the EXFC and/or PETE Programs provide written instructions to the members of the return address panel?
- [b] If not, please explain how they are trained.
- [c] If so, please provide copies.

**DBP/USPS-120**

Please refer to the reporter and dropper EXFC and PETE instructions that are referenced in Interrogatories DBP/USPS-62, 65, 79, and 80 and to any instructions that exist in response to Interrogatory DBP/USPS-119.

- [a] Please confirm, or explain if you are unable to confirm, that these instructions are provided to each and every member of the group to which they apply [i.e. the EXFC Dropper instructions are provided to the EXFC Droppers, etc.]
- [b] Please advise the number of pages and the size of page for each of the instruction “manuals”.
- [c] Please advise how each of the instruction “manuals” have been marked confidential in accordance with 18 U.S.C. § 1905.
- [d] Please provide the specific wording that is used to provide the droppers/reporters/return address panel members of their obligations under 18 U.S.C. § 1905.

Mr. Popkin states that DBP/USPS-119 and 120 are attempting to learn how EXFC and PETE field personnel are trained. He further contends that whether or not these individuals are provided with written instructions is not proprietary or commercially sensitive.

The Postal Service objects to providing responses to these interrogatories because the material was developed by a contractor, and is considered proprietary by both the Postal Service and the contractor. The Postal Service asserts that it does not release this information internally to prevent manipulation of the system, or externally to prevent duplication of the contractor’s process by competitors. The Postal Service asks the Presiding Officer to apply the same logic as in Presiding Officer’s Ruling No. R2006-1/14, where the Presiding Officer denied a motion to compel responses requesting copies of instructions given to droppers and reporters for the EXFC and PETE systems.<sup>3</sup>

The motion to compel responses to interrogatories DBP/USPS-110 through 113 and 115 through 120 is denied. In general, the logic from Presiding Officer’s Ruling No. R2006-1/14 is applicable:

The Commission generally allows discovery that is reasonably calculated to lead to admissible evidence during a noticed proceeding. Rule 25(a). In this instance, there is no explanation of how this material is necessary for an understanding of any aspect of the Postal Service’s direct case, or how it might be reasonably calculated to lead to admissible evidence.

---

<sup>3</sup> Objections to DBP/USPS-110-113 and 115-120 at 4.

Upon review, library reference USPS-LR-L-134 already provides expansive explanation of the EXFC and PETE process, which a party can use to understand the issues involved.

P.O. Ruling R2006-1/14 at 2.

Given the Postal Service's explanation of the EXFC and PETE process already provided in library reference USPS-LR-L-134, the interrogatories seek information that appear tangential to the issues of this docket. Without a persuasive argument to the contrary, the motion to compel is not granted.

*DBP/USPS-121, 122, 124, and 217 through 237.* On July 24, 2006, Mr. Popkin filed a motion to compel responses to interrogatories DBP/USPS-121, 122, 124, and 217 through 237.<sup>4</sup> The Postal Service filed responses to interrogatories DBP/USPS-121, 122, and 124 on July 31, 2006.<sup>5</sup> The Postal Service filed responses to interrogatories DBP/USPS-217 through 237 on July 27, 2006.<sup>6</sup> Thus, the motion to compel is moot.

*DBP/USPS-167.* On July 25, 2006, Mr. Popkin filed a motion to compel a response to interrogatory DBP/USPS-167.<sup>7</sup> The Postal Service filed a response to DBP/USPS-167 on August 8, 2006.<sup>8</sup> Thus, the motion to compel is moot.

*DBP/USPS-288.* On August 9, 2006, Mr. Popkin filed a motion to compel a response to interrogatory DBP/USPS-288.<sup>9</sup> Interrogatory DBP/USPS-288 seeks information concerning Premium Forwarding Service. Premium Forwarding Service is an experimental classification that expires on August 7, 2007. Mr. Popkin contends that

---

<sup>4</sup> David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS 121, 122, 124 and 217 through 237, July 24, 2006.

<sup>5</sup> Responses of the United States Postal Service to Interrogatories of David B. Popkin (DBP/USPS-121, 122, 124), July 31, 2006.

<sup>6</sup> Responses of the United States Postal Service to Interrogatories of David B. Popkin (DBP/USPS-217-237), July 27, 2006.

<sup>7</sup> David B. Popkin Motion to Compel Response to Interrogatory DBP/USPS-167, July 25, 2006.

<sup>8</sup> Response of the United States Postal Service to Interrogatory of David B. Popkin (DBP/USPS-167), August 8, 2006.

<sup>9</sup> David B. Popkin Motion to Compel Response to Interrogatory DBP/USPS-288, August 9, 2006.

even though the Postal Service proposes no fee changes in Docket No. R2006-1, he is free to propose that the proposed rates either be reduced or increased.

The Postal Service objects to this interrogatory arguing that Premium Forwarding Service is not part of the rate case and thus cannot be relevant. Furthermore, the interrogatory is redundant in that it seeks information that appears in the experiments data collection reports.<sup>10</sup>

In general, the Commission will not disturb the rates or classification of a limited scope, limited duration experimental classification within the context of an omnibus rate case, unless good cause is shown. However, this does not foreclose recommendations concerning Premium Forwarding Service in this omnibus rate case. It merely recognizes that an omnibus rate case is not the most appropriate forum for discussing an experiment. While costs and revenues from this service may have some relevance in this rate case, Premium Forwarding Service was in effect for less than two months in the base year and is not authorized to exist in the test year. The interrogatory will not obtain material information about the base year or the test year. Mr. Popkin will have an opportunity within a year to fully explore Premium Forwarding Service if and when the Postal Service offers a proposal for a permanent classification. The motion to compel is denied.

---

<sup>10</sup> Objection of the United States Postal Service to David B. Popkin Interrogatory to the United States Postal Service (DPB/USPS-288), July 27, 2008.

RULING

1. The David B. Popkin Motion to Compel Responses to Interrogatories DBP/USPS-110 through 113 and 115 through 120, filed July 24, 2006, is denied.
2. The David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-121, 122, 124, and 217 through 237, filed July 24, 2006, is moot.
3. The David B. Popkin Motion to Compel Response to Interrogatory DBP/USPS-167, filed July 25, 2006, is moot.
4. The David B. Popkin Motion to Compel Response to Interrogatory DBP/USPS-288, filed August 9, 2006, is denied.

George Omas  
Presiding Officer