

PRESIDING OFFICER'S
RULING NO. R2005-1/43

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

Postal Rate and Fee Changes

Docket No. R2005-1

PRESIDING OFFICER'S RULING
CONCERNING DAVID B. POPKIN MOTION TO COMPEL
RESPONSE TO INTERROGATORIES DBP/USPS-
88, 90, 103, 129, 145, AND 147

(Issued July 8, 2005)

This ruling considers a motion filed by limited participator David B. Popkin to compel the United States Postal Service to provide reasonable responses to six interrogatories (or parts thereof) that he had directed to the Postal Service.¹ The Postal Service objected to providing responses to these interrogatories on numerous grounds.² The Postal Service filed its initial opposition to Mr. Popkin's motion on June 27, 2005³ and then addressed the remaining issues in separate pleadings filed on June 30, 2005⁴ and July 1, 2005.⁵ Each interrogatory is considered in turn.

¹ David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-88, 90, 103, 129, 145, and 147, June 19, 2005 (Motion to Compel).

² Objection of the United States Postal Service to Interrogatory of David B. Popkin (DBP/USPS-88), June 6, 2005; Objection of the United States Postal Service to Interrogatory of David B. Popkin (DBP/USPS-90), June 8, 2005; Objection of the United States Postal Service to David B. Popkin Request for Production (DBP/USPS-103(b)-(d)), June 10, 2005; Partial Objection of the United States Postal Service to Interrogatories of David Popkin [DBP/USPS-129(a-b)], June 16, 2005; Partial Objection of the United States Postal Service to Interrogatory of David B. Popkin (DBP/USPS-145), June 17, 2005; Objection of the United States Postal Service to Interrogatory of David B. Popkin (DBPUSPS-147), June 17, 2005.

³ Opposition of the United States Postal Service to David B. Popkin Motion to Compel Responses to Interrogatories DBP/USPS-103(b)-(d) and 145, June 27, 2005. On the same day, the Postal Service filed a Motion of the United States Postal Service for Permission to File Three Days Late Its Response to

DBP/USPS-88. This interrogatory is seeking information on post offices that provide less than maximum Express Mail services. Interrogatory DBP/USPS-88 states:

Please refer to your response to DBP/USPS-49 subpart h. Please provide a similar listing to the response provided in Docket R2001-1 Interrogatory DBP/USPS-65 subpart d. Please provide a listing and details of all post offices that do not send or receive shipments of Express Mail on all days of the week Monday through Saturday except for holidays. Are shipments made on some or all of the legal holidays? If so, please provide the details.

The Postal Service objects to this interrogatory on the grounds that it is unduly burdensome since it would “require hundreds and hundreds of work hours” and that the issues it raises are only attenuatedly relevant to the case. The Service notes that its answer would not differ in any meaningful way from the one provided in Docket R2001-1, and that it has already indicated the extent to which the specific data provided in R2001-1 remains accurate.⁶ Mr. Popkin argues that these details are relevant to the value of service and that the Postal Service needs to determine this information to provide proper information to the mailing public.

the David B. Popkin Motion to Compel Responses to DBP/USPS-88, 90, 129(a)-(b), and 147. The Postal Service also filed two additional motions seeking late acceptance: a Motion of the United States Postal Service for Late Acceptance of Reply to Motion to Compel A Response to DBP/USPS-139(a) and (b) [sic], July 1, 2005; and a Motion for Late Acceptance of the Response of the United States Postal Service to Interrogatory of David B. Popkin (DBP/USPS-147), July 1, 2005. These three motions seeking permission for late filing are unopposed, the delay does not appear unreasonable under the circumstances and there appears to be no prejudice to any participant from granting these requests. Accordingly, these Postal Service’s motions seeking permission for late filing are granted.

⁴ Opposition of the United States Postal Service to David B. Popkin Motion to Compel Responses to Interrogatories DBP/USPS-88 and 90, June 30, 2005.

⁵ Opposition and Reply of the United States Postal Service to Motion to Compel A Response to DBP/USPS-139(a) and (b)[sic], July 1, 2005; Response of the United States Postal Service to Interrogatory of David B. Popkin (DBP/USPS-147), July 1, 2005.

⁶ See Response of the United States Postal Service to Interrogatories of David B. Popkin DBP/USPS-127-143, June 20, 2005.

P. O. Ruling R2005-1/19 notes that “a rule of reason limits the extent to which operational details are appropriate for exploration in discovery.” With respect to this interrogatory, the Service has already provided much of the information requested by Mr. Popkin, albeit not fully updated. The relevance of this updated information in this rate case is questionable at best since both parties agree that it affects an extremely small number of offices. To the extent that Mr. Popkin wishes to argue that the Service is not providing “proper information” concerning Express Mail service, and that the Commission should take some adverse action with respect to its recommended rates, Mr. Popkin may do so at the appropriate posture in this case, and an updated answer to DBP/USPS-88 is only marginally material to such an argument. Accordingly, since full compliance with Mr. Popkin’s request would require substantial Postal Service resources with only minor improvements in the data, the motion to compel a more updated answer to interrogatory DBP/USPS-88 is denied.

DBP/USPS-90. This interrogatory is seeking information on registered mail training materials. Interrogatory DBP/USPS-90 states:

The USPSNEWSLINK for today, May 27, 2005, indicates that there is a new course for Registered Mail training - course number 31500-00. Please file a copy of *all* course material for this course as well as any other training material for handling/processing Registered Mail as a Library Reference in this Docket and furnish me with a copy of the same material. (Emphasis in original.)

The Postal Service objects to this interrogatory on the grounds that revealing registered mail procedures such as those contained in the training materials would compromise the security of registered mail. The Service contends that even the release of such information under protective conditions is inappropriate since any risk that these procedures would be compromised severely threatens the security of registered mail. Mr. Popkin argues that given the 70% increase in proposed registered mail fees, he is trying to evaluate all areas of the registered mail service, and that protective conditions and redactions should suffice to adequately protect the security of this information.

The procedures underlying the security of registered mail are closely guarded by the Postal Service as is evidenced by the fact that it restricts internal distribution of the training materials at issue here to only Postal Service employees and contractors who are involved in the processing of registered mail. Given the tight internal security procedures and the fact that Mr. Popkin did not articulate a basis for believing that such information is reasonably calculated to lead to the discovery of admissible evidence, the motion to compel a response to interrogatory DBP/USPS-90 is denied.

DBP/USPS-103. This interrogatory is seeking information on guidelines or directives from the Express Mail Change Control Board (EMCCB). Interrogatory DBP/USPS-103 states:

Please refer to your response to DBP/USPS-49 subparts e and f. [a] Please provide a listing of the “many factors” and “local area considerations” that are taken into account in determining whether to provide Sunday/holiday delivery or not. [b] Please provide copies of any directives, guidelines, etc. of the Headquarters EMCCB as they relate to providing or not providing service on Sunday/holiday. [c] Please provide copies of any directives, guidelines, etc. of the Headquarters EMCCB as they relate to providing or not providing regular overnight service [d] Please provide copies of any directives, guidelines, etc. of the Headquarters EMCCB as they relate to providing service by 12 noon vs. 3 PM at an office.

The Postal Service objects to parts [b], [c], and [d] of this interrogatory on the grounds of relevance and commercial sensitivity. The Service notes that EMCCB only evaluates requests from the field to change aspects of the Express Mail network on a case-by-case basis at the local level and does not issue broad statements, directives, or guidelines. Thus, the Postal Service argues, due to the highly specific operational matters that are contained in these EMCCB evaluations, these documents are commercially sensitive and irrelevant to this proceeding.

Mr. Popkin's interrogatory seems to be only requesting guidelines and directives from Headquarters, not evaluations of individual office's local requests.⁷ Thus, it appears that Mr. Popkin is not seeking sensitive EMCCB evaluations of requests from the field. Accordingly, the Postal Service need not provide evaluations from the EMCCB to answer this interrogatory. If such guidelines and directives from Headquarters do not exist, as the Postal Service's objection suggests, the Service should so state in its interrogatory response.

To the extent that guidelines and directives issued from Headquarters exist on this topic, the Postal Service does not appear to object to providing these documents. According to the extent that guidelines and directives issued from Headquarters exist on this topic, they should be provided. However, in lieu of providing guidelines and directives issued from Headquarters, if such documents do in fact exist, the Postal Service may clarify its objection within three business days and state the reasons that these Headquarters guidelines and directives should not be provided.

DBP/USPS-129(a) and (b). This interrogatory is seeking information on the size and weight of the envelopes used in generating data related to the Postal Service's EXFC service performance measurement system. Interrogatory DBP/USPS-129(a) and (b) states:

Please refer to your response to DBP/USPS-8 subpart g. [a] Since there appears to be a significant difference in the percent on time for the 19 different categories of mailpieces, please provide the details and specifics of each of the 19 categories of mailpieces [A through S], such as dimensions, weight, method of addressing, etc. [b] Since the CDLTR mailpiece category C seems to have an on time record of a letter and significantly better than a card, please provide a sample of this type of mailpiece. [c] Please provide a tabulation of the EXFC scores by letter, card, and flat shapes for overnight, 2-day, and 3-day mail for each quarter of the past three years.

⁷ Motion to Compel at 4.

The Service objects on the ground that providing such information would compromise the integrity of the EXFC system. In response, and apparently in the spirit of compromise, Mr. Popkin withdraws his request for actual samples of the test envelopes used in the process, and narrowly tailors his request to only the size and weight of the test envelopes.⁸ Mr. Popkin contends that disclosing the size and weight will not compromise the integrity of the test system because of the millions of pieces of mail sent out every day which mirror those characteristics. Mr. Popkin further contends that he requires this information in order to determine if there is a relationship between the size and weight of the test mail and how the Service measures its level of service through the EXFC process.

The Service concedes that on-time performance is one of the variables taken into consideration when assessing the “value of service” for a mail class within the meaning of 39 U.S.C. § 3622(b)(2). Because the EXFC system measures the on time performance of the Postal Service’s operations, then data related to the EXFC system which allows interveners to question its reliability may be relevant or lead to relevant information in this proceeding. Further, the Service did not take issue with Mr. Popkin’s contention that “[t]here are millions of pieces of 1-, 2-, and 3- ounce letters and different size envelopes sent every day,”⁹ and indeed stated that it would be “willing to provide broad descriptions of the mail pieces used in EXFC testing.”¹⁰ Accordingly, the Service is to provide the size and weight information on the EXFC envelopes to Mr. Popkin, but no more information is necessary to fully respond to this narrowly tailored interrogatory.

DBP/USPS-145. This interrogatory is seeking information relating to the delivery details of several different types of mail. Interrogatory DBP/USPS-145 states:

⁸ Ibid.

⁹ Id. at 5.

¹⁰ Partial Objection of the United States Postal Service to Interrogatories of David Popkin [DBP/USPS-129(a-b)] at 1.

DBP/USPS-145 Please describe *in detail* the steps and processes that are involved in the delivery of the following types of mail from the time that it arrives at the delivery post office until the article has been delivered and all of the actions associated with the delivery are completed:

- [1] A mailpiece sent Certified Mail
- [2] A mailpiece sent Certified Mail with an Electronic Return Receipt
- [3] A mailpiece sent Certified Mail with a hardcopy Return Receipt [PS Form 3811]
- [4] A mailpiece with Delivery Confirmation sent to each of the following addresses:
 - [a] A single mailpiece sent to a typical residential address in Englewood NJ or a similar sized post office.
 - [b] Mail sent to Internal Revenue Service, Andover MA 05501.
 - [c] Mail sent to Internal Revenue Service, Philadelphia PA 19255
 - [d] Mail sent to Internal Revenue Service, Memphis TN 37501.
 - [e] Mail sent to Internal Revenue Service, Atlanta GA 39901
 - [f] Mail sent to Internal Revenue Service, Kansas City MO 64999
 - [g] Mail sent to Internal Revenue Service, Austin TX 73301
 - [h] Mail sent to Internal Revenue Service, Fresno CA 93888
 - [i] Mail sent to government agencies in Washington DC ZIP Codes 202-205.

If different steps and processes are utilized with the IRS depending on whether it is during the tax season as opposed to not during the tax season or for any other reason, please describe all steps and processes and the condition under which they are utilized.

If different steps and processes are utilized with the Washington DC post office depending on the size or type of agency or for any other reason, please describe all steps and processes and the condition under which they are utilized.

Please indicate in each of your detailed explanations the point at which the control of the mailpiece is transferred from the Postal Service to the addressee. (Emphasis in original).

The Postal Service provides a partial response to this interrogatory¹¹ and objects to the remainder of it on the grounds of burden, relevance, and materiality. The Service submits that answering the full interrogatory will take at least 90 hours. The Postal Service instead provides a 2½ page detailed description related to Mr. Popkin's request based on the process at some IRS facilities. The Service believes that this will address Mr. Popkin's concern about whether the Postal Service ever delivers certified mail to the IRS prior to obtaining the signed return receipt from the IRS. Mr. Popkin argues that the information he seeks is relevant to determining the level and value of service received. Mr. Popkin does not address how the Service's partial response fails to meet his needs and concerns since the Service's response to interrogatory DBP/USPS-145 was filed after the motion to compel was filed.

Given that the Postal Service filed its partial response to interrogatory DBP/USPS-145 after Mr. Popkin filed his motion to compel, there is a real possibility that the Service's response adequately addresses his concerns with respect to this interrogatory. If Mr. Popkin is not satisfied with the Service's response, he may file a supplemental motion which addresses the inadequacy of the Service's response. Accordingly, the motion to compel a response to Interrogatory DBP/USPS-145 is denied without prejudice to Mr. Popkin's right to file a supplemental motion.

DBP/USPS-147. This interrogatory is seeking information relating to Express Mail collection on a Sunday. After initially objecting to this interrogatory, the Postal Service filed a response on July 1, 2005.¹²

Given that the Postal Service ultimately filed a response to this interrogatory prior to this ruling, Mr. Popkin's motion to compel a response to this interrogatory is rendered moot.

¹¹ Responses of United States Postal Service to Interrogatories of David B. Popkin (DBP/USPS-144-146, 148), at 2, June 21, 2005.

¹² Response of the United States Postal Service to Interrogatory of David B. Popkin (DBP/USPS-147), at 3-6.

RULING

1. The David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-88, 90, 103, 129, 145, 147, June 19, 2005, in regard to:
 - (a) DBP/USPS-88 is denied,
 - (b) DBP/USPS-90 is denied,
 - (c) DBP/USPS-103 is denied in part and granted in part consistent with the body of this ruling,
 - (d) DBP/USPS-129(a) and (b) is granted consistent with the body of this ruling,
 - (e) DBP/USPS-145 is denied without prejudice to Mr. Popkin's right to file a supplemental motion, and
 - (f) DBP/USPS-147 is denied as moot.
2. The Motion of the United States Postal Service for Permission to File Three Days Late Its Response to the David B. Popkin Motion to Compel Responses to DBP/USPS-88, 90, 129(a)-(b), and 147, June 27, 2005, is granted.
3. The Motion of the United States Postal Service for Late Acceptance of Reply to Motion to Compel A Response to DBP/USPS-139(a) and (b)[sic], July 1, 2005, is granted.
4. The Motion for Late Acceptance of the Response of the United States Postal Service to Interrogatory of David B. Popkin (DBP/USPS-147), July 1, 2005, is granted.

George Omas
Presiding Officer