

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

POSTAL RATE AND FEE CHANGES
PURSUANT TO PUBLIC LAW 108-18

Docket No. R2005-1

OPPOSITION OF THE UNITED STATES POSTAL SERVICE
TO DAVID B. POPKIN MOTION TO COMPEL RESPONSE
TO INTERROGATORY DBP/USPS-49(h)
(May 24, 2005)

In accordance with Rule 26(d) of the Commission's Rules of Practice and Procedure, the United States Postal Service hereby files its answer to the David B. Popkin Motion to Compel Response to Interrogatory DBP/USPS-49(h), filed by David B. Popkin on May 17, 2005.¹ The Postal Service filed an objection to this interrogatory on May 12, 2005, and a response on May 16, 2005. For the reasons presented herein, the Postal Service respectfully opposes Mr. Popkin's motion to compel.

The interrogatory reads as follows:

DBP/USPS-49. (h) Please provide a complete listing of all possible scenarios where delivery will be made on the third calendar day after mailing. This listing can be made by generic descriptions (such as articles mailed on a Saturday prior to a Monday holiday and sent to an address that is not on the Sunday/holiday list will receive delivery on Tuesday) or it can be made in reference to specific offices (such as Hyder AK 99923 has incoming mail only on Monday and Thursday).²

The Postal Service objected to the scope of this interrogatory, specifically its requirement that the Postal Service provide a listing of "all possible scenarios" in which Express Mail may be scheduled for delivery on the third calendar day after mailing. The Postal Service noted that such a listing of "all possible scenarios" seeks a level of detail that is immaterial to any consideration that the Commission may make in this

¹ Mr. Popkin also in his Motion moved to compel responses to DBP/USPS-41, 46, and 49(a)-(g), (i)-(j). The responses to interrogatories 41 and 46 are forthcoming. Because the Postal Service filed a response to 49(a)-(g), (i)-(j) on May 20, 2005, the motion with respect to those parts of interrogatory 49 is moot.

² Emphasis in Original.

proceeding of Express Mail and its value of service. At the same time, consistent with its objection and the proper scope of discovery into the details of Express Mail service in omnibus rate cases, the Postal Service stated that it would provide Mr. Popkin with a response to interrogatory 49(h). That response, filed several days after the objection, provides information, in general terms, as to when Express Mail may be scheduled for delivery on the third calendar day after mailing.³

Mr. Popkin, in his Motion to Compel, appears to have missed the fundamental point of the Postal Service's objection, which was to the scope of interrogatory 49(h) rather than necessarily to the relevance of its basic subject matter. In other words, the Postal Service's objection was not prompted by this interrogatory's general subject matter—specifically, when Express Mail may be scheduled for delivery on the third calendar day after mailing—but by its scope, which is overbroad in asking the Postal Service to provide a listing of “all possible scenarios” (based on specific days of the week or specific offices) in which such scheduled delivery could occur. Indeed, the fact that the Postal Service filed a response to this interrogatory, as well as to the other parts of interrogatory DBP/USPS-49 (which asked more specific questions concerning Express Mail delivery),⁴ reflects this fundamental position.

In sum, a listing of “all possible scenarios” in which delivery of Express Mail may be scheduled on the third calendar day after mailing would require the Postal Service to provide an immaterial level of detail concerning Express Mail service.⁵ Any such listing

³ For convenience, that response is attached at the end of this pleading.

⁴ The other subparts of interrogatory DBP/USPS-49 asked various questions about the delivery of Express Mail on the “next calendar day” and the “second calendar day” after mailing. None required the Postal Service to provide a listing of “all possible scenarios” in which delivery on those calendar days could occur.

⁵ On a related note, Mr. Popkin's apparent argument concerning the proper test of relevance for Express Mail interrogatories based on Presiding Officer's Ruling No. R97-1/53 seeks too much. While the Presiding Officer did state in that Ruling that “The details of Express Mail service are relevant to its value of service,” he subsequently qualified that statement—as the use of the word “However” clearly demonstrates—by saying that “However...generally the operational details of a service are beyond the scope of material issues in a rate proceeding.” Indeed, if the applicable test for relevance that Mr. Popkin seems to be advancing was simply whether an interrogatory

of “all possible scenarios” would necessarily require a response that deals with a wide variety of possibilities, no matter how remote, based on variables such as the specific day of the week that the piece is entered, the availability of Next Day Service, the origin and destination, and the availability of Sunday/holiday delivery. Mr. Popkin does not explain why he needs a response that lists specific days and/or destinations in order to make any argument concerning how third calendar day delivery affects the value of service of Express Mail.⁶ Instead, the response that the Postal Service has filed to this interrogatory, which states in more general terms those instances in which delivery could be scheduled on the third calendar day after mailing, is more than sufficient in light of Mr. Popkin’s stated purpose in submitting this interrogatory.⁷

In addition, despite any assertions that he may make to the contrary in his Motion, Mr. Popkin cannot point to any previous interrogatory in which he sought, and received, a listing of “all possible scenarios,” based on specific days of the week and/or specific offices, in which Express Mail could be scheduled for delivery on a particular day after mailing. None of the interrogatories that he cites in his Motion required the

seeks “details of Express Mail service,” then in practical effect no Express Mail interrogatory would be objectionable on relevance grounds. As numerous Rulings since POR No. R97-1/53 have indicated, however, relevance is predicated not simply on whether an interrogatory seeks “details” about Express Mail service, but on the level of detail sought. See, e.g., POR No. R2000-1/56 at 2, 11 (noting that the Postal Service need not respond to interrogatories that sought “highly specific” details about Express Mail); POR No. R2001-1/32 at 4 (stating that simply because the subject matter of an interrogatory may as a general matter be relevant does not mean that the Postal Service is required to delve into “operational minutiae” concerning that topic). Here, the Postal Service has argued that the level of detail sought by interrogatory 49(h) is overbroad.

⁶ For example, Mr. Popkin does not explain why requiring the Postal Service to provide a response that states “Express Mail sent on a Monday to a destination in which Next Day Service is not available when there is a Wednesday holiday and holiday delivery is not available would be delivered on a Thursday,” and so on and so forth, is necessary. Instead, the Postal Service has provided a response that states the same thing but in general terms, without delving into the unnecessary minutiae.

⁷ See Popkin Motion at 2 (stating that the purpose of this interrogatory is to inquire into the “service level for the delivery of Express Mail”). Indeed, Mr. Popkin has already submitted follow-up interrogatories to the Postal Service’s response. See Interrogatories DBP/USPS-87-88.

Postal Service to provide such an exhaustive list of possible delivery scenarios. Mr. Popkin is thus incorrect when he states that the information sought in this interrogatory is “identical” to that which was answered in previous rate cases. To be sure, the Postal Service has provided answers concerning the delivery of Express Mail in past cases, and has done so in this case; what it has not done, however, is provide a listing of “all possible scenarios” concerning the delivery of Express Mail on a particular day after mailing.

Overall, Mr. Popkin cannot refute, and indeed does not even squarely address, the Postal Service’s fundamental argument that providing a listing of “all possible scenarios” in which delivery of Express Mail could be scheduled on the third calendar day after mailing is overbroad for purposes of this proceeding. Instead, what is relevant, as the Presiding Officer has noted in past rate cases, is “general information” concerning Express Mail service, including the delivery of Express Mail. In this case, the Postal Service has provided, in the response that it filed to interrogatory 49(h), “general information” concerning when Express Mail may be scheduled for delivery on the third calendar day after mailing. Any further response to this interrogatory whereby the Postal Service is compelled to provide a list of “all possible scenarios” in which such delivery could occur is completely unnecessary and immaterial. The Presiding Officer should therefore find that the Postal Service has been sufficiently responsive to interrogatory 49(h), and thereby deny Mr. Popkin’s motion to compel.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO INTERROGATORY OF DAVID B. POPKIN

DBP/USPS-49.

(h) Please provide a complete listing of all possible scenarios where delivery will be made on the third calendar day after mailing. This listing can be made by generic descriptions (such as articles mailed on a Saturday prior to a Monday holiday and sent to an address that is not on the Sunday/holiday list will receive delivery on Tuesday) or it can be made by reference to specific offices (such as Hyder AK 99923 has incoming mail only on Monday and Thursday).

RESPONSE:

(h) Delivery of Express Mail may be scheduled on the third calendar day after mailing when Next Day delivery is not available, and, in the case of an article sent to a street address, the second calendar day after entry is a Sunday or holiday and Sunday/holiday street delivery is not available to the destination address, or, in the case of an article sent to a post office box, the second calendar day after entry is a day in which the destination post office is closed or closes prior to the delivery time on that day. Express Mail may also be scheduled on the third calendar day after entry when the article is sent to a destination in which Next Day delivery is never available, and it is entered after the cut-off time. In addition, delivery of Express Mail may be scheduled after the second calendar day when the article is destined to a remote post office that does not receive daily delivery of Express Mail.