

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 RESPONSES TO INTERROGATORIES  
DBP/USPS-183-184, 187-188, 190, 192(d)-(h) and (l), 195-197, AND 199  
(July 19, 2005)

In accordance with Rule 26(d) of the Commission's Rules of Practice and Procedure, the United States Postal Service hereby responds in opposition to the David B. Popkin Motion to Compel Responses to Interrogatories DBP/USPS-183-184, 187-188, 190, 192(d)-(h) and (l), 195-197, and 199. The interrogatories will be considered in turn.

**DBP/USPS-183**

The Postal Service objected to this interrogatory on the grounds of relevance. Parts (a)-(c) and (g)-(h) ask a series of highly specific questions relating to the delivery of Express Mail between particular ZIP code pairs on particular days, while parts (d)-(f) ask a series of questions concerning how that information is displayed on the Express Mail Services Commitments feature on USPS.com. In his motion to compel, Mr. Popkin argues that parts (a)-(c) are relevant to the value of service of Express Mail based on arguments presented by Douglas F. Carlson in a motion to compel concerning other interrogatories,<sup>1</sup> while parts (g)-(h) are relevant because they "relate to inconsistencies

---

<sup>1</sup> See Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Interrogatories DFC/USPS-90-97, or, in the Alternative, to Respond to

that exist in the claimed level of service.”<sup>2</sup> He also argues that parts (d)-(f) are relevant to this proceeding because, in his view, any information pertaining to Express Mail on USPS.com relates to the “value of service” of Express Mail within the meaning of 39 U.S.C. § 3622(b)(2); in addition, he asserts that the requested information will help him argue on brief that the Commission should issue a report requesting that the Postal Service correct some undefined inaccuracies on that website.

As an initial matter, Mr. Popkin’s attempt to justify asking for data for particular ZIP Code pairs on the grounds that “if [he] asks a question in a generic manner, then [he does not] receive a responsive answer” is completely baseless. Mr. Popkin fails to identify any interrogatory to which he alleges that the Postal Service was not responsive. This completely unsupported argument is nothing more than a transparent attempt to evade repeated statements by Presiding Officers that questions that seek minute details about Express Mail are irrelevant to omnibus rate proceedings.<sup>3</sup> Questions dealing with Express Mail service between two individual ZIP Codes on two particular days clearly seek overly specific information that has no bearing on the Commission’s consideration of Express Mail rates.

In addition, Mr. Popkin argues that these questions are relevant based on arguments made in Mr. Carlson’s motion to compel of July 11, 2005. In that motion,

---

DFC/USPS-58, or, in the Alternative, to Respond to DFC/USPS-76 (July 11, 2005).

<sup>2</sup> The vagueness of this assertion makes a meaningful response by the Postal Service impossible.

<sup>3</sup> See, e.g., Presiding Officer’s Ruling No. R2000-1/56 at 2, 11 (noting that the Postal Service need not respond to interrogatories that seek “highly specific” details about Express Mail); Presiding Officer’s Ruling 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).

which dealt with interrogatories that inquired about Express Mail Next Day service on Saturdays and Mondays from particular ZIP Codes, Mr. Carlson argued that “data revealing fluctuations in the level of Express Mail service throughout the week are relevant to the value of Express Mail service.”<sup>4</sup> Mr. Popkin apparently believes his own questions are relevant for the same reason.

The arguments presented by Mr. Carlson in his July 11, 2005 motion were substantively identical to ones that he presented in an earlier motion to compel concerning interrogatory DFC/USPS-67,<sup>5</sup> which was denied by the Presiding Officer.<sup>6</sup> In that earlier motion to compel, Mr. Carlson also argued that “data revealing fluctuations in the level of Express Mail service throughout the week are relevant to the value of Express Mail service” in seeking to compel the Postal Service to provide delivery guarantee data broken out by day of the week.<sup>7</sup> The Presiding Officer denied the motion to compel, noting that such daily data was not relevant to the overall value of service, and that “[a]ctual Express Mail speed of delivery and fulfillment of delivery guarantees are better measures of value of service.”<sup>8</sup>

The Postal Service submits that if Mr. Carlson’s argument concerning the relationship of daily fluctuations in Express Mail service to the “value of service” of Express Mail was unsuccessful with respect to DFC/USPS-67, it should certainly be unsuccessful with respect to Mr. Popkin’s questions. At the very least, Mr. Carlson’s

---

<sup>4</sup> See Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Interrogatories DFC/USPS-90-97, at 3, 7.

<sup>5</sup> See Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Interrogatory DFC/USPS-67 (June 27, 2005).

<sup>6</sup> See Presiding Officer’s Ruling No. R2005-1/50 (July 12, 2005).

<sup>7</sup> See Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Interrogatory DFC/USPS-67, at 4.

<sup>8</sup> See Presiding Officer’s Ruling No. R2005-1/50 at 4.

interrogatory 67 sought nationwide data about delivery guarantees based on the day of the week; Mr. Popkin, however, is only seeking delivery guarantee data for two ZIP Code pairs, localized data whose relevance to this proceeding is considerably more attenuated than that of nationwide data.

Mr. Popkin's arguments as to why his questions concerning the Express Mail Service Commitments website are relevant are equally without merit. First, Mr. Popkin argues that the "value of service of Express Mail is directed related to the ability of mailers to obtain correct and appropriate information from the USPS website." In Mr. Popkin's conception of the statutory term "value of service," of course, anything having to do with Express Mail is relevant to "value of service,"<sup>9</sup> and he seeks to justify nearly every interrogatory on those grounds. However, he cannot, and indeed does not even try in any meaningful way, to state how the manner in which Express Mail service between, for example, ZIP Code 07631 to ZIP Code 10470 on a Saturday is displayed on USPS.com bears any reasonable relationship to Express Mail rates.

Indeed, Mr. Popkin reveals the real reason for these questions in his last paragraph, wherein he states that he intends to argue on brief that the Commission should issue a report requesting that the Postal Service correct some undefined inaccuracies in the Express Mail information presented on USPS.com. However, Mr. Popkin fails to acknowledge the fact that such a remedy is not available to him in this proceeding. The purpose of this proceeding is for the Commission to issue, pursuant to 39 U.S.C. § 3622, a recommended decision concerning changes in the rates and fees for postal services, not to issue a report dealing with USPS.com or any other aspect of

---

<sup>9</sup> See, e.g., David B. Popkin Motion to Compel Responses to Interrogatories 41, 46, and 49, at 2.

the Postal Service.<sup>10</sup> Questions, like these, whose avowed purpose is to support an argument on brief that the Commission should provide a remedy which is beyond its authority in this proceeding are clearly irrelevant.

#### **DBP/USPS-184**

The Postal Service objected to this interrogatory, which asks detailed questions about collection boxes and collection box database administration, on the grounds of relevance. Mr. Popkin's brief motion to compel fails to articulate any basis for concluding that the requested information is relevant to the issues in this proceeding. His attempt to link these detailed questions about the time it takes for collection box changes to appear in various databases, and how collection box databases at the district and national level interrelate, to the "value of service" of Express Mail, within the meaning of § 3622(b)(2), is especially strained.

#### **DBP/USPS-187-188**

Both of these interrogatories ask a series of highly specific operational questions concerning the acceptance and dispatch of Express Mail at both post offices and collection boxes. The Postal Service objected to both on the grounds of relevance, based on the numerous Presiding Officer's Rulings concerning the proper scope of discovery into Express Mail operations.<sup>11</sup> In attempting to justify the level of Express Mail detail sought here, Mr. Popkin asserts that if he asked a "generic question[ ]," he

---

<sup>10</sup> To the extent that Mr. Popkin wishes the Commission issue such a report, he is free to pursue a complaint case under 39 U.S.C. § 3662.

<sup>11</sup> See, e.g., Presiding Officer's Ruling No. R2005-1/19 (noting that "a rule of reason limits the extent to which [Express Mail] operational details are appropriate for discovery"); Presiding Officer's Ruling No. R2000-1/56 at 2, 11 (noting that the Postal Service need not respond to interrogatories that seek "highly specific" details about Express Mail).

would “not receive responses to the specific concerns that [he has].” The proper test for the relevance of an interrogatory in this proceeding, however, is not whether it is related to some concern that Mr. Popkin has about some particular aspect of Postal Service operations,<sup>12</sup> but whether an interrogatory is likely to lead to evidence that bears on the Commission’s consideration of changes in rates and fees for postal services based on the statutory criteria. Judged on this proper standard, these questions clearly seek a level of operational detail concerning Express Mail that bears no material nexus to Express Mail ratemaking.

The other grounds that Mr. Popkin cites for the relevance of these interrogatories are equally unavailing. First, the Postal Service fails to see how the July 11, 2005 Carlson motion to compel cited by Mr. Popkin bears any relationship to these interrogatories, since that motion stands for the proposition that “the variance in the level of Express Mail service provided as the weekend approaches is relevant to the value of Express Mail,” an issue that these interrogatories do not address. Second, Mr. Popkin asserts that these questions are relevant because he intends to argue on brief that the Commission should issue a report requesting that the Postal Service provide “correct and appropriate information with respect to Express Mail.” As also noted by the Postal Service above in its discussion of interrogatory 183 at pages 4-5, however, such a remedy is not available to him in this proceeding, which makes this a meaningless ground for asserting that these interrogatories are relevant.

---

<sup>12</sup> See, e.g., Presiding Officer’s Ruling No. R2000-1/56, at 5 (noting that “matters of purely personal interest or concerning purely local conditions are often not relevant in an omnibus proceeding, and are therefore objectionable on that basis”).

### **DBP/USPS-190**

The Postal Service objected to this interrogatory on the grounds of relevance and improper follow-up. Mr. Popkin's motion to compel consists of one sentence asserting, in essence, that his purpose for following up on a response to an interrogatory posed by Mr. Carlson does not have to match the reason Mr. Carlson asked the question initially. It is unnecessary to address the merit of Mr. Popkin's totally abstract assertion. The Postal Service's objection specifically challenged the relevance of his question. His motion to compel makes no effort to explain the relevance of his specific question. That deficiency alone provides ample basis to deny his motion to compel, although the Postal Service's objection identifies other equally valid reasons.

### **DBP/USPS-192(d)-(h), (l), 195-197**

All of these interrogatories purport to follow-up on a response that the Postal Service provided to DFC/USPS-76. However, that response has been revised in such a way that completely undercuts Mr. Popkin's rationale for why they are relevant.<sup>13</sup> The Postal Service originally responded to DFC/USPS-76 by providing Express Mail information for a single 5-digit ZIP Code: 10001. The Postal Service has subsequently revised that response, by providing Express Mail data based on a sample of 10 originating ZIP Codes, none of which are 10001.<sup>14</sup> As such, ZIP Code 10001-specific information is no longer on the record.

Mr. Popkin has justified the relevance of each of these interrogatories, which seek highly detailed localized data concerning ZIP Code 10001 and adjacent ZIP

---

<sup>13</sup> Interrogatory 197, meanwhile, asks for a detailed breakdown of data that are no longer on the record.

<sup>14</sup> See Revised Response of the United States Postal Service to Interrogatory DFC/USPS-76 (July 18, 2005).

Codes, on the grounds that they are necessary to evaluate the Postal Service's provision of data for ZIP Code 10001.<sup>15</sup> Now that such ZIP Code 10001-specific information is no longer on the record, however, there is no longer any reason (if such a reason ever existed) to provide the extensive localized Express Mail information requested in these interrogatories about that ZIP Code, or ZIP Codes close to it. In other words, even if an argument could have been made at one time that these interrogatories had some degree of relevance to this proceeding (based on the Postal Service's original response to DFC/USPS-76), changed circumstances have rendered them completely irrelevant.<sup>16</sup> Providing the extensive localized Express Mail information requested in these interrogatories now would be no different than providing such localized information about any other individual 5-digit ZIP Code in the country.<sup>17</sup>

### **DBP/USPS-199**

With this interrogatory, Mr. Popkin is essentially asking the Postal Service to provide a response that is purely speculative, and is thus completely irrelevant. In its response to interrogatory DBP/USPS-109, the Postal Service indicated that it does not

---

<sup>15</sup> The one exception that the Postal Service can identify is with respect to part (l) of interrogatory 192, in which Mr. Popkin also argues that a response is needed so that he can "determine which ZIP Code applies to which postal facilities under the jurisdiction of the New York NY Post Office." The manner in which ZIP Codes are managed in a single Post Office are, however, clearly irrelevant to this proceeding.

<sup>16</sup> With 10001-specific information no longer on the record, any argument that these interrogatories are relevant quickly evaporates. For example, parts (d)-(h) of interrogatory 192 now amount to nothing more than a series of general questions concerning New York City, without any connection to postal ratemaking. Interrogatory 195 and 196 now amount to nothing more than a request for localized data without any more relevance to this proceeding than other localized data for any other ZIP Code.

<sup>17</sup> Mr. Popkin does not attempt to refute the Postal Service's assertions in its objection concerning the general irrelevance of Express Mail data at the individual 5-digit ZIP Code level, instead repeatedly asserting that the localized information sought here is relevant because of the Postal Service's decision to respond to DFC/USPS-76 by providing data for an individual 5-digit ZIP Code (10001).

have any data as to the percentage of Next Day Express Mail delivered on a Sunday/holiday that is transported by FedEx, commercial airlines, and surface transportation. In his motion to compel, Mr. Popkin argues that not having such data “is no reason not to provide a best estimate.” Mr. Popkin is thus essentially asking the Postal Service to guess. While the Postal Service may to a certain extent be able to make a somewhat informed guess, it would still be a guess, and would thus lack any proper foundation. This interrogatory is therefore not designed to lead to any admissible, relevant evidence.

Therefore, the Postal Service respectfully requests that the Presiding Officer deny Mr. Popkin’s motion to compel.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.  
Chief Counsel, Ratemaking

---

Keith Weidner

475 L'Enfant Plaza West, S.W.  
Washington, D.C. 20260-1137  
(202) 268-6252, Fax -3084