

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-283(b)-(f), 300-302
(August 22, 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-283(b)-(f) and 300-302, submitted on August 15, 2005. The interrogatories will be considered in turn.

DBP/USPS-283(b)-(f)

The Postal Service objected to parts (b) through (f) of this interrogatory on the grounds of improper follow-up and relevance. These questions ask for the CAG classification and the EAS/PCES level of the 10 offices used to provide the Postal Service's response to DFC/USPS-76. In his motion to compel, Mr. Popkin argues that an "inquiry into the types of post offices" that were used to provide that response is "obviously relevant," and therefore that these questions constitute appropriate follow-up. However, simply because a question constitutes an "inquiry" into a previous interrogatory response does not mean that it is inherently unobjectionable; instead, the purported follow-up interrogatory must be examined to see if it clarifies or adds to the understanding of the previous response in a way that is relevant to postal ratemaking.¹

¹ Rule 26(a) allows for interrogatories "reasonably calculated to lead to the discovery of

As an initial matter, Mr. Popkin does not explain how this information would materially aid him in advancing any argument that he wishes to make concerning the Postal Service's response to DFC/USPS-76. As Mr. Popkin astutely notes, the sample consists of offices in mid-size to large cities, with no "small rural" offices. To make this general observation about the sample, however, Mr. Popkin does not need the exact CAG classification for each of these offices, or the exact EAS level that applies to their managerial employees (along with the corresponding generalized discussion of those two categories). In addition, and more fundamentally, Mr. Popkin completely fails to articulate why a more detailed consideration of the size of the offices used in the Postal Service's response to DFC/USPS-76, through the use of the information sought here, is at all relevant to this issues presented in this proceeding.

The relevance of this interrogatory must be judged according to whether it materially bears on the "overall value of Express Mail service." This interrogatory is a follow-up to DFC/USPS-76, whose avowed purpose was "to provide significant insight into the difference between Express Mail service on weekdays and Saturdays,"² a purpose which Mr. Popkin also discusses in his motion to compel.³ Presiding Officer's Rulings have consistently noted that the relevance of questions like DFC/USPS-76, which ask for Express Mail data disaggregated to the level of days of the week, is

admissible evidence," and that are "relevant to the subject matter" of the proceeding. Thus, follow-up discovery in an omnibus rate proceeding under Rule 26(a) is not proper simply because it seeks to "clarify or elaborate on the answer to an earlier discovery request"; the information it seeks must also be relevant to postal ratemaking.

² 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 Interrogatory DFC/USPS-58, or, in the Alternative, to Respond to Interrogatory DFC/USPS-76 (July 11, 2005), at 5.

³ See Motion to Compel at 2 (noting that this information relates to "the extent of reduction of [Express Mail] service on weekends").

attenuated when such data does not bear on the “overall value of Express Mail service.”⁴ In his motion, Mr. Popkin makes absolutely no attempt to demonstrate how the detailed CAG and EAS data requested here, if used in conjunction with the Postal Service’s response to DFC/USPS-76, bears on the overall value of Express Mail service.

Overall, the highly detailed data sought here would not in any way materially clarify or add to the understanding of the Express Mail data provided in the response to DFC/USPS-76 in a way that is relevant to postal ratemaking, and would thus not in any way aid the Commission in its determination of the issues presented in this proceeding. This interrogatory thus does not constitute proper, relevant follow-up within the meaning of Rule 26(a).

DBP/USPS-300-301

The Postal Service objected to these interrogatories based on relevance and burden, pointing out that they seek highly detailed information concerning an infinitesimal number of Express Mail flat-rate envelopes (these questions focus primarily on the fact that two flat-rate envelopes were recorded as being 70 pounds in FY 2004). In his motion to compel, Mr. Popkin argues that engaging in a detailed discussion of this singularly rare occurrence is necessary so that he can “determine the validity of the data

⁴ See Presiding Officer’s Ruling No. R2001-1/28 (stating that Express Mail data broken out by day of the week only makes a “slight” contribution to the evidentiary record when “any daily variations that it might show would not necessarily bear on the overall value of Express Mail service”). In a recent Ruling, the Presiding Officer held that an interrogatory that sought to determine how the availability of Express Mail delivery guarantees fluctuate based on the day of the week was irrelevant, partly on the grounds that it did not bear materially on the overall value of Express Mail service. See Presiding Officer’s Ruling No. R2005-1/50, at 5.

which has been provided by the Postal Service."⁵

Mr. Popkin does not, and indeed cannot, rebut the Postal Service's fundamental point that these interrogatories are aimed at only a miniscule portion of the data presented in the Postal Service's response to DFC/USPS-85. Whatever the reason why two Express Mail flat-rate envelopes were recorded as being 70 pounds (whether there was some sort of data entry error or whether the pieces actually weighed that amount), focusing on this aspect of the data does not provide any basis upon which to challenge the overall quality of the data, nor does it justify requiring the Postal Service to engage in an experiment in which heavy metals are stuffed in envelopes to see what fits in them. Overall, engaging in a detailed discussion about this insignificant topic is utterly irrelevant to ratemaking.

DBP/USPS-302

The Postal Service objected to this interrogatory on the grounds of relevance, noting that it sought detailed data that goes beyond the proper scope of discovery in an omnibus rate proceeding.⁶ In his motion, Mr. Popkin makes no meaningful attempt to show that this 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. Instead, his motion to compel amounts to nothing more than rote recitation that

⁵ See Motion at 3. Mr. Popkin states that he is "attempting to . . . determine why certain data entries that were provided by the Postal Service fall into categories that either could not exist or are extremely unlikely to exist."

⁶ 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).

the details sought here are relevant to the “value of service” of Express Mail, within the meaning of 39 U.S.C. § 3622(b)(2).

The level of detail sought in this interrogatory clearly lacks any material connection to ratemaking. While Mr. Popkin argues that this interrogatory “attempts to determine how the guaranteed delivery standards for Post Office-to-Post Office (A Label) Express Mail may be determined,” it is not apparent how this interrogatory bears in any way on that topic. Instead, this interrogatory clearly is seeking information concerning how Express Mail delivery standards “appear” in various sources used to communicate with the public. As such, this interrogatory amounts to nothing more than yet another attempt by Mr. Popkin to delve into minutiae concerning the means by which Express Mail information is communicated to the public. As with previous interrogatories from Mr. Popkin dealing with this general topic, the level of detail sought here simply has no bearing on postal ratemaking.⁷

Therefore, the Postal Service requests that Mr. Popkin’s motion be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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⁷ In Presiding Officer’s Ruling No. R2005-1/68, at 3 and 5, the Presiding Officer denied a motion to compel from Mr. Popkin with respect to certain interrogatories which sought highly detailed information concerning the provision of Express Mail information to the public through USPS.com and other sources.