

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

UNITED STATES POSTAL SERVICE REPLY IN OPPOSITION TO
DAVID POPKIN MOTION TO COMPEL A RESPONSE
TO INTERROGATORY DBP/USPS-305
(September 13, 2005)

The United States Postal Service hereby files its reply in opposition to the September 6, 2005, motion of David Popkin seeking to compel a response to interrogatory DBP/USPS-305. Mr. Popkin's motion raises the issue of whether the Postal Service should be required to disclose information pertaining to test mail pieces utilized in its External First-Class Mail (EXFC) service performance measurement system when the information is not relevant or material to postal ratemaking and is beyond the level of detail required by a pertinent Presiding Officer's Ruling. For the reasons stated below, the motion should be denied.

The Requested Information Is Not Relevant

Based upon the Postal Service's June 15, 2005, response to DBP/USPS-8(g), its August 3, 2005, response to DBP/USPS-281, its July 18, 2005, compelled response to DBP/USPS-129, and information informally provided thereafter, Mr. Popkin filed interrogatory DBP/USPS-305. The interrogatory contains a table reflecting a matrix of characteristics of the test mailpieces dropped into the mailstream by IBM Consulting's anonymous EXFC senders to its anonymous EXFC recipients. Among other things, the

matrix reveals: there are 14 different letter envelopes reflecting eight different sizes; two flat envelopes of the same size; three cards reflecting three different sizes; all of the letters and flats either weigh one ounce or two ounces; of the two cards, two are mailed at the card rate and the other is mailed at the one-ounce letter rate; six of the overall 19 pieces types are addressed by hand, the rest by machine. Overnight, 2-day and 3-day EXFC scores are reported for each of the 19 mailpiece types.

Interrogatory DBP/USPS-305 observes that three of the test mail pieces, “F, K, and R appear to be the same.” A quick glance at the table in the question confirms that the three mail pieces have the same letter envelope height and length, and that the addresses are all machine-printed and include a 9-digit ZIP Code. The interrogatory asks the Postal Service to “advise the differences or distinctions between these three categories.”

At page 3 of his motion to compel, Mr. Popkin characterizes DBP/USPS-305 as “part of a whole series of interrogatories that are related to evaluating the EXFC program and the performance of each of the different categories of mail pieces that are utilized in the program.” Further, at page 10, the motion asserts that

there are three categories of mailpieces that have the same characteristics, namely Categories F, K and R. Even if one of these was a 1-ounce piece and the other was a 2-ounce piece with all the characteristics the same, that would not account for three categories to all have the same characteristics other than possibly different weights.”

Later on that same page, apparently in reference to the chain of interrogatories culminating in DBP/USPS-305, the motion asserts that “[t]he Postal Service should not be allowed to provide all of these responses and then not be compelled to clarify a potential error or inconsistency.”

The Postal Service assumes that it is not alone in its inability to identify the “potential error or inconsistency” referred to in the motion. It is not apparent from Mr. Popkin’s motion, from DBP/USPS-305, or any other interrogatory or response referenced above. In any event, the motion also fails to articulate the existence of any link between (a) the apparently boundless evaluation of EXFC that Mr. Popkin endeavors to perform on the basis of information he hopes to extract through DBP/USPS-305 and (b) any ratemaking or mail classification issue in this proceeding.

The Postal Service readily concedes that the overall quality of service performance for a particular mail class such as First-Class Mail, and comparisons between subclasses (e.g., First-Class Mail letters and sealed parcels vs. cards), as measured by EXFC, are relevant to the Commission’s review of “value of service” considerations under § 3622(b)(2). But, there is no relevance to postal ratemaking in information that is not related to existing or proposed subclass distinctions among different mail piece types currently within the same subclass (e.g., letters vs. flats, or one-ounce letters vs. two ounce letters). Presumably, though it is not clear, Mr. Popkin may be curious about differences in EXFC scores for identically sized EXFC test letter mailpieces F, K, R. This may be the reason why he cannot resist asking for more and more information about these mail pieces, more than is already reflected in the table in interrogatory DBP/USPS-305. Still, it is immaterial to the Commission’s § 3622(b)(2) analysis in this proceeding which, if any, of those pieces is one ounces or two ounces in weight, or what other non-rate or classification related characteristics may distinguish them. There are no Postal Service or intervenor proposals for classification distinctions based upon whether First-Class Mail letters weigh one of two ounces. There are no

rate or classification proposals under consideration on the basis of some other physical characteristics that may distinguish test pieces F, K and R (e.g., grade or color of envelope paper, font or color of ink of the printed address). Accordingly, there is no justification for permitting a line of inquiry seeking information about EXFC mail pieces F, K and R beyond that which has already been provided.

The Requested Information Is Beyond That Required By Ruling No. 2005-1/43

In response to pleadings contesting interrogatory DBP/USPS-129, the Presiding Officer issued Ruling No. R2005-1/43 (July 8, 2005). That Ruling rejected Mr. Popkin's request for mail piece samples. In acknowledging the Postal Service's willingness to provide broad descriptions of the mail pieces used in EXFC, the Presiding Officer directed the Postal Service to provide size and weight information on EXFC test pieces and emphasized that no more information was necessary to respond to the interrogatory. See Ruling No. R2005-1/43 at 6 (July 8, 2005). The Postal Service complied by filing (on July 18, 2005) a response to DBP/USPS-129, revealing the full range of heights and lengths of all cards, letters and flat sizes employed in EXFC and indicated that all letters or flats were of a weight that required the payment of postage for either one of two ounces.

Seeking still further information than was provided in that compelled response, Mr. Popkin contacted postal counsel. The Postal Service informed Mr. Popkin that it considered itself to be in compliance with Ruling No. R2005-1/43. After several exchanges of views on the matter, Mr. Popkin indicated that he was primarily interested in the specific lengths and heights for each mail piece, and that he did not need to know

which pieces were one ounce or two ounces.¹

Without conceding that it was compelled by Ruling No. R2005-1/43 to provide the length/height data for each specific test piece or that such data were relevant, the Postal Service offered to informally provide those data to Mr. Popkin, subject to his agreeing to forego pursuit of the weight data that he conceded he was merely curious about. When asked by Mr. Popkin why it was offering one, but not the other, the Postal Service explained that, in contrast to the weight data, the height/length data were readily obtainable and could be provided in short order. Mr. Popkin accepted the Postal Service's offer and the piece-specific height/weight data were transmitted to him. The Postal Service's reward was to receive interrogatory DBP/USPS-305.

The Postal Service considers that it has complied with Ruling No. R2005-1/43. Insofar as DBP/USPS-305 seeks mailpiece characteristic information not required to be provided by the very general directive of Ruling No. R2005-1/43, it is an improper follow-up question that seeks information beyond that required by the Presiding Officer. The Postal Service regards Ruling No. 43 as a welcome effort to proscribe a quest for information that may be related to a postal service, but that lacks the necessary relevance and nexus to postal ratemaking. DBP/USPS-305 may indeed follow-up on the compelled response to DBP/USPS-129. However, by seeking information beyond that required to be provided by Ruling No. R2005-1/43, it is improper.

¹ Confessing that he was -- to use his words -- "just curious" to know which pieces were one-ounce or two.

Mr. Popkin Cannot Have It Both Ways

To the extent that DBP/USPS-305 is a back-door attempt to circumvent Ruling No. R2005-1/43 or Mr. Popkin's agreement to forego piece-specific weight data for EXFC test pieces, it should be rejected on that basis alone. In compliance with Ruling No. 43, Mr. Popkin has been informed that EXFC test pieces weigh either one or two ounces. Mr. Popkin has conceded that there is no issue to be resolved in this proceeding to which it is relevant whether a specific EXFC letter-size test piece weighs one ounce or two. He has conceded that further piece-specific information about weight is not necessary to this litigation and that his interest in such data was driven merely by curiosity.

Resolution of Commission proceedings could not be achieved without the parties working in good faith, informally and formally, to resolve contested procedural and substantive issues. Once parties have reached an agreement on a contested procedural issue, the Commission should not, in the absence of a showing of bad faith or breach of that agreement, step in to release those parties from it. Mr. Popkin does not and cannot allege either a breach or bad faith on the part of the Postal Service.

Under the circumstances, the Postal Service regards DBP/USPS-305 to constitute an impermissible follow-up question. It seeks information beyond the scope of Presiding Officer's Ruling No. R2005-1/43 and reflects a quest for EXFC data that extends well beyond the scope of matters material and relevant to any rate or classification issue in this proceeding. The Postal Service objects to indulging Mr. Popkin's curiosity about matters unrelated to postal ratemaking in the context of this litigation.

For the foregoing reasons, his motion seeking to compel a response to DBP/USPS-305 should be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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