

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 SUPPLEMENTAL RESPONSES TO  
INTERROGATORIES DBP/USPS-5 AND 83  
(September 13, 2005)

The United States Postal Service hereby responds to the September 6, 2005, motion of David Popkin seeking to compel supplemental answers to the following interrogatories: DBP/USPS-5 and DBP/USPS-83. Mr. Popkin claims that Rule 26(f) of the Commission's Rules of Practice and Procedure obliges the Postal Service to supplement its previously filed answers. In pertinent part, Rule 26(f) of the Commission's Rules of Practice and Procedure mandates that a

participant who has answered interrogatories is under the duty to seasonably amend a prior answer if he/she obtains information upon the basis of which he/she knows that the answer was incorrect when made or is no longer true. Participants shall serve supplemental answers to update or to correct responses whenever necessary, up until the date the answer could have been accepted into evidence as written cross-examination.

For the reasons explained below, the rule is inapplicable in each instance and the motion should be denied. Each interrogatory will be considered in turn.

DBP/USPS-5

Filed on April 8, 2005, interrogatory DBP/USPS-5 requested that the Postal Service provide "a listing of the EXFC results for past four quarters." Responsive data for Quarters 3 and 4 of FY 2004 and Quarters 1 and 2 of FY 2005 were filed on June 9,

2005.<sup>1</sup> At page 1 of his motion, Mr. Popkin asserts that, since EXFC data for Quarter 3 of FY 2005 were released on August 2, 2005, the Postal Service should be required to update the response to DBP/USPS-5 to the past four quarters as of August 2, 2005.

In support of this claim, Mr. Popkin cites Rule 26(f). However, the rule is inapplicable. Mr. Popkin requested and received EXFC data for the four quarters preceding the date of his interrogatory, as specified by the interrogatory. Parties who request data for a narrowly-defined time frame of *their* choosing are presumed to be requesting data only for that time frame. Mr. Popkin's request encompassed Quarters 3 and 4 of FY 2004 and Quarters 1 and 2 of FY 2005. The Postal Service provided those data, as requested.

Of his own volition, Mr. Popkin did not ask for "data from all FY 2005 quarters." Nor did DBP/USPS-5 request the provision of data from future FY 2005 quarters upon availability during the pendency of Docket No. R2005-1. Such requests could have imposed upon the Postal Service an obligation to supplement what it filed on June 9<sup>th</sup> with additional data as they become available. Instead, Mr. Popkin's request was strictly retrospective in scope.

The Postal Service is aware of no need to correct any errors in the data provided in response to DBP/USPS-5. Nor is it aware of a need to revise that answer because of any of the information for those four quarters was incomplete at the time that it was filed or has been made obsolete in any way since. The Postal Service responded completely to DBP/USPS-5 and stands by its answer. Moreover, even, assuming *arguendo*, that the Postal Service had some duty to supplement its answer with new

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<sup>1</sup> A revised response was filed on June 22, 2005 to correct an apparent defect in the electronic spreadsheets filed on June 9<sup>th</sup>.

information for subsequent fiscal quarters, that obligation ended with the July 8, 2005, deadline for designation of institutional interrogatory responses into the evidentiary record established by Presiding Officer's Ruling No. R2005-1/27 (June 20, 2005). Accordingly, the Postal Service has no present obligation under Rule 26(f) to provide additional EXFC data for fiscal quarters either before or after the time frame identified in the question.

On April 8<sup>th</sup>, Mr. Popkin had a full opportunity to ask a more expansive question than DBP/USPS-5. To the extent that his belated request for FY 2005 Quarter 3 EXFC data is an attempt to explore the issue of First-Class Mail § 3622(b)(2) value of service, a matter within the scope of the testimony of witness Robinson (USPS-T-27), Mr. Popkin was obliged by the procedural schedule to propound interrogatories seeking information beyond that requested in DBP/USPS-5 no later than the June 10, 2005, date established by Presiding Officer's Ruling No. R2005-1/11 (May 19, 2005).<sup>2</sup> In addition, as the subjects of First-Class Mail service performance and value of service are not within the scope of the testimony filed by Valpak's witnesses, Mr. Popkin would have faced a challenge, had he submitted an interrogatory for new EXFC data in an effort to beat the August 23, 2005 deadline for discovery against the Postal Service.

Having missed all applicable deadlines for new discovery against the Postal Service, Mr. Popkin should not now be permitted to escape the consequences by a misapplication of Rule 26(f).

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<sup>2</sup> See, Presiding Officer's Ruling No. R2005-1/48 (July 8, 2005).

DBP/USPS-83

Filed on May 15, 2005, interrogatory DBP/USPS-83 queried the Postal Service as to its use of its discretionary authority under DMCS section 183.51(g) to deny refunds for late-delivered Express Mail if the delay was caused by “breakdowns of a substantial portion of the USPS transportation network resulting from events or factors outside the control of the Postal Service.” The Postal Service filed its response on June 3, wherein it indicated that it had never used this discretionary authority to deny an Express Mail refund. Mr. Popkin claims that this response should be supplemented under Rule 26(f) for two reasons: 1) because he claims that the Postal Service has used this authority to make refunds unavailable for late-delivered Express Mail delayed by Hurricane Katrina; and 2) because this authority was “invoked during the Christmas 2004 season in the Midwest part of the country and was then overruled by Mr. Donahoe.”

With regard to the first issue, Mr. Popkin is simply incorrect in claiming that the Postal Service has used DMCS section 182.51(g) to make refunds unavailable for Express Mail delayed by Hurricane Katrina. While the Postal Service did make refunds unavailable for late-delivered Express Mail to certain ZIP Codes affected by the storm, it did so pursuant to DMCS section 182.51(h), which allows the Postal Service to make refunds unavailable for Express Mail delayed by “acts of God,” not DMCS section 182.51(g). Since DBP/USPS-83 asks only about DMCS section 182.51(g), however, Rule 26(f) cannot in any way be read as requiring the Postal Service to update its answer to that interrogatory due to its actions in response to the hurricane.

With regard to the second issue, Mr. Popkin's motion reveals a misunderstanding of the nature of the Postal Service's authority under DMCS section 182.51(g). That provision is implemented by DMM section 114.3.1(b), which makes clear that a necessary prerequisite for the use of this authority is approval by Headquarters.<sup>3</sup> As such, the Postal Service's authority under this provision is only "invoked" when the use of the provision is authorized by Headquarters. With respect to the Christmas 2004 season, Headquarters did not authorize the use of DMCS section 182.51(g) or any other provision to make refunds unavailable for late-delivered Express Mail.

Overall, even if Rule 26(f) could be read as still requiring the Postal Service to supplement its response to DBP/USPS-83 at this point, Mr. Popkin has not identified any basis which would call into question the continued accuracy of that response, or require any sort of update to that response.

For the foregoing reasons, Mr. Popkin's belated attempts to initiate new lines of discovery should be denied.

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<sup>3</sup> DMM section 114.3.1 states:

Postage refunds may not be available...if the delay of the item was caused by any of the following reasons:

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(b) *As authorized by USPS Headquarters*, when the delay was caused by...breakdown of a substantial portion of the USPS transportation network resulting from events or factors outside the control of the USPS. (Emphasis added).

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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