

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Evolutionary Network Development
Service Changes

Docket No. N2006-1

PRESIDING OFFICER'S RULING ON
DAVID B. POPKIN MOTION TO COMPEL
RESPONSES TO INTERROGATORIES
DBP/USPS-85(b), 87 AND 88

(Issued July 7, 2006)

This ruling concerns a motion¹ filed by David B. Popkin on May 31, 2006, which seeks to compel the Postal Service to respond to his interrogatories DBP/USPS-85(b), 87 and 88. The Postal Service objected to each of these on May 18, 2006.² However, in a Reply filed on June 7, the Postal Service withdrew its objection with respect to DBP/USPS-85(b), and stated that it will provide the requested listing.³ Therefore, the motion is moot with respect to this interrogatory, and will be dismissed on this ground. I address the two remaining interrogatories below.

DBP/USPS-87. Referring to the Postal Service's compelled response to DBP/USPS-6, which divulged detailed service performance information for a single Processing and Distribution Center in Northern New Jersey, this interrogatory seeks the Service's "best estimate of the percentage of processing facilities that do not provide

¹ David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-85(b), 87 and 88, May 31, 2006 (Motion to Compel).

² Objections of the United States Postal Service to David Popkin Interrogatories DBP/USPS-85(b), 87 and 88, May 18, 2006 (Objections).

³ United States Postal Service Reply in Opposition to David Popkin Motion to Compel Responses to Interrogatories (DBP/USPS-85(b), 87 and 88), June 7, 2006, at 2 (Reply).

overnight First-Class Mail service standards to all of the SCF or 3-digit ZIP Code destinations that have a transit time of three hours or less dock-to-dock and receive 1.5% or more of the originating volume of the facility.” The Postal Service objects on the grounds that the requested data are irrelevant to issues in this proceeding, and that undertaking the systemwide analysis required to generate the data would impose an undue burden.⁴

In his motion, Mr. Popkin states that the purpose of the interrogatory is to evaluate the service standards displayed in the testimony of Postal Service witness Shah, and argues his inquiry legitimately follows up on the response to DBP/USPS-6 to determine the extent to which other processing facilities either meet or do not meet the criteria in the Shah testimony. Citing the Service’s response to his interrogatory DBP/USPS-73, Mr. Popkin states that he is now attempting to determine the percentage of compliance with the three-hour drive time/1.5% of mail volume criterion as the dividing line between overnight and 2-day delivery standards. Rather than asking the Service to evaluate every postal facility for compliance, Mr. Popkin says he is willing to accept the Service’s “best estimate” of its compliance with the stated criteria.⁵

In its reply, the Postal Service asserts that Mr. Popkin’s argument contains two fatal flaws. First, the Service argues, the criterion he cites is a discretionary standard derived from the record in Docket No. N89-1, not a mandatory standard applicable in the postal system today. Second, the Service asserts that the inquiry is unrelated to its request in this case, the purpose of which is to seek the Commission’s opinion on the potential impact of END-related consolidations on postal services, not to determine the appropriateness of the current service standard definitions summarized by witness Shah. The Service also argues that it cannot formulate a response without researching and analyzing the characteristics of approximately 450 SCFs.⁶

⁴ Objections at 2-3.

⁵ Motion to Compel at 2-3.

⁶ Reply at 2-4.

DBP/USPS-88. This interrogatory follows up on DBP/USPS-87, asking the Service to explain any level of compliance with the referenced 3-hour drive time/1.5% mail volume dividing line that is less than that reported for the different service standards in the response to DBP/USPS-73. The Postal Service objects to the interrogatory as “indecipherable,” and on the ground that it apparently requests an analysis that would be unduly burdensome to perform.⁷

In his motion, Mr. Popkin explains that the question seeks any reason why the Postal Service may not be observing the 3-hour drive time/1.5% mail volume criterion for the overnight vs. 2-day delivery distinction to the same extent that it observes the 12-hour drive time standard for 2-day vs. 3-day delivery. He asserts that this inquiry is reasonably calculated to lead to the discovery of admissible evidence.⁸

The Postal Service responds that the interrogatory is premised on a fundamental failure to distinguish between that which is mandatory and that which is discretionary in the overnight First-Class Mail service standard definition. According to the Service, the onerous burden of attempting to quantify compliance with the discretionary standard would be unjustified, and “would add not one iota of information to the record ... relevant to whether the service changes that could result from Evolutionary Network Development would conform to the policies of the Act.”⁹

Disposition. In an earlier ruling that granted, in part, Mr. Popkin’s motion to compel a response to his interrogatory DBP/USPS-6, I found that “it is reasonable for participants to pursue discovery that directs appropriately focused inquiries into actual performance achieved under the current [service] standards, as a baseline for comparison with potential service changes that may result.”¹⁰ However, DBP/USPS-87 and 88 do not fall within these bounds. As the Postal Service argues, and its response

⁷ Objections at 3.

⁸ Motion to Compel at 3-4.

⁹ Reply at 4-6.

¹⁰ Presiding Officer’s Ruling No. N2006-1/5, March 31, 2006, at 3-4.

to DBP/USPS-69 documents,¹¹ the 3-hour drive time/1.5% mail volume benchmark is a discretionary guide to be consulted, not an established standard to be observed. Even if the effort were made to establish the extent to which this discretionary guidance is borne out in actual performance now, there would be no apparent basis for comparing these results with discretionary choices that might be made when the Postal Service implements its END program. Therefore, these questions are not likely to lead to the production of admissible evidence, and I shall deny the motion as to these two interrogatories.

RULING

The David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-85(b), 87 and 88, filed May 31, 2006, is dismissed as moot with respect to DBP/USPS-85(b); and denied as to DBP/USPS-87 and 88.

Dawn A. Tisdale
Presiding Officer

¹¹ Responses of the United States Postal Service to Interrogatories of David Popkin (DBP/USPS-16 and 62-70), April 10, 2006.