

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

POSTAL RATE AND FEE CHANGES, 2006

Docket No. R2006-1

REPLY OF THE UNITED STATES POSTAL SERVICE
TO MOTION OF DAVID POPKIN SEEKING TO COMPEL RESPONSES
TO INTERROGATORIES DBP/USPS-253 AND 254
(August 9, 2006)

The United States Postal Service hereby replies to the August 2, 2006, motion of David Popkin seeking to compel responses to the following interrogatories: DBP/USPS-253 and 254. These questions seek to resuscitate a discovery dispute resolved in Docket No. N2006-1, by simply re-numbering interrogatories from that Docket and cramming them into the instant docket. The questions seek no information relevant to First-Class Mail costing or pricing. Accordingly, for the reasons explained below, the motion to compel should be denied.

DBP/USPS-253 reads:

Please provide your best estimate of the percentage of processing facilities that provide 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.

DBP/USPS-254 reads:

- [a] Please discuss why the "line" between First-Class Mail overnight and 2-day service is not complied with to the same extent as the "line" between 2-day and 3-day service standards is complied with.
- [b] Please discuss any plans to improve the level of compliance for the overnight/2-day line.

As explained in the Postal Service's May 18, 2006, Docket No. N2006-1 objection to DBP/USPS-87, Docket No. R2006-1 interrogatory DBP/USPS-253 seeks to determine

what the current overnight First-Class Mail service standards might be if, in 1990-91, when implementing the first phase of service standard changes reviewed in Docket No. N89-1, the Postal Service had treated certain discretionary criteria in the newly established service standard definition as mandatory.¹

Mr. Popkin's curiosity on this issue was indulged on a small scale for one origin SCF by the Postal Service's April 14, 2006, compelled response to Docket No. N2006-1 interrogatory DBP/USPS-6(a,b&e). To reiterate the Postal Service's May 18, 2006, Docket No. N2006-1 objection to interrogatory DBP/USPS-87, production of the response to DBP/USPS-6(a,b&e) required three hours of research and analysis. Nothing has changed since then. For purposes of Docket No. R2006-1 interrogatory DBP/USPS-253, there is no way of providing any reliable or authoritative nationwide estimate of the percentage of 3-digit ZIP Code pairs that meet the discretionary criteria in the overnight service definition without repeating the same 3-hour undertaking that produced the compelled responses to Docket No. N2006-1 interrogatory DBP/USPS-6(a, b & e) -- for each of approximately 450 SCFs. This would be an unconscionable burden to impose for the production of information that would have no material bearing on any Docket No. R2006-1 postal ratemaking issues.

As was the case with Docket No. N2006-1 interrogatory DBP/USPS-88, Docket No. R2006-1 interrogatory DBP/USPS-254 seeks a comparison between: (a) the Postal Service's Docket No. N2006-1 interrogatory DBP/USPS-73(e&f) guesstimate of the proportion of First-Class Mail 3-digit ZIP Code origin-destination pairs with 3-day service

¹ For an explanation of the distinction between the mandatory criteria and the discretionary criteria in the definition of the First-Class Mail overnight service standard definition, the Commission's attention is again invited to the Postal Service's April 10, 2006, response to Docket No. N2006-1 interrogatory DBP/USPS-69.

standards that, based upon applicable 2-day definitional criteria and taking into account exceptions granted and database errors, should otherwise have 2-day service standards; and (b) a guesstimated percentage of First-Class Mail 3-digit ZIP Code origin-destination pairs with 2-day service standards that could have overnight service standards, based upon a hypothetical application of non-binding criteria in the overnight zone definition, discussed above in reference to DBP/USPS-253 (and Docket No. N2006-1 interrogatory 87). Then, DBP/USPS-254 requests that the Postal Service explain why it does not minimize its non-compliance with these non-binding criteria and discuss plans to improve compliance.

The only way that the Postal Service could, with any authority, determine whether the percentage of origin-destination pairs responsive to DBP/USPS-254 is “very low,” within the meaning of its response to Docket No. N2006-1 interrogatory DBP/USPS-73(e&f), would be to undertake the exhaustive analysis requested by DBP/USPS-253 (and Docket No. N2006-1 interrogatory 87). Again, the Postal Service should not be saddled with so onerous a burden, for the sole purpose of producing a comparison that is premised upon a fundamental failure or unwillingness on Mr. Popkin’s part to distinguish that which is mandatory from that which discretionary in the overnight First-Class Mail service standard definition.

In his motion to compel a response to DBP/USPS-253 in the instant docket, Mr. Popkin argues that:

the Postal Service indicated in response to Interrogatory DBP/USPS-6 in Docket N2006-1 an indication that there was a significant lack of following the overnight delivery standards for mail originating at the NNJ Metro P&DC. The next step to evaluate what level of meeting the guidelines exists throughout the country. My Interrogatory DBP/USPS-253 was my effort to obtain an indication of what existed throughout the country and yet limit the burden of the Postal Service in

providing the data. Obviously asking for similar data from all of the other processing facilities would probably have resulted in an objection of undue burden.

Popkin Motion To Compel at 2-3 (July 2, 2006). At page 3, he argues that:

Interrogatory DBP/USPS-254 assumes that there will be less compliance between the overnight and 2-day line than there is between the 2-day and 3-day line and attempts to obtain an explanation for this difference and any plans to improve the level in the future. These interrogatories are attempting to determine the degree to which the Postal Service complies with their own guidelines for the delivery standards of First-Class Mail. The extent to which they improve that level of compliance will affect the costs for First-Class Mail and the rates and value of service of that service. Postal ratemaking extends to the compliance with the guidelines for service and the actual service level that is provided.

These arguments are premised on Mr. Popkin failure to grasp or willful disregard for Presiding Officer's Ruling No. N2006-1/21 (July 7, 2006). Contrary to Mr. Popkin's characterization, the response to Docket No. N2006-1 interrogatory DBP/USPS-6 reveals no lack of compliance with any mandatory requirement. As the Commission observed at pages 3-4 in Ruling No. N2006-1/21, the 3-hour drive time/1.5% mail volume benchmark is a discretionary guide to be consulted, not an established standard to be observed. And the Commission emphasized in that Ruling:

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.

Presiding Officer's Ruling No. N2006-1/21 at 4. The same is true with regard to the ratemaking issues raised by the request in Docket No. R2006-1. Information regarding "compliance" with criteria that are merely discretionary sheds no light on the value of service for First-Class Mail. Information that would permit one to compare whether deviations from non-binding service standard criteria are "very low" also sheds no light

on the value of service for First-Class Mail. When the utter absence of value that the information requested by DBP/USPS-253 and 254 would bring to Docket No. NR2006-1 is weighed against the burden that would be required to produce it, it is clear that the Postal Service should -- again -- not be required to produce the requested information.

DBP/USPS-253 and 254 do not request the production of admissible evidence relevant to any issue in the current rate case. Accordingly, the Docket No. R2006-1 motion to compel responses to these Docket No. N2006-1 interrogatories should be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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