

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

POSTAL RATE AND FEE CHANGES

Docket No. R2006-1

REPLY OF UNITED STATES POSTAL SERVICE
TO MOTION OF DAVID POPKIN TO COMPEL RESPONSES
TO INTERROGATORIES DBP/USPS-389-398, 416
(August 23, 2006)

The United States Postal Service hereby replies to Mr. Popkin's motion to compel responses to interrogatories DBP/USPS-389-398, 416 (Motion).¹ The interrogatories were filed on July 24, 2006, while the Postal Service Objection was timely filed on August 3, 2006 (Objection).²

The Postal Service Objection was detailed and lengthy, setting forth various grounds for each of the questions; accordingly, the arguments therein are incorporated here by reference. Since both the Motion and the Objection set forth the full text of each interrogatory, they are repeated again only to the extent required by the argument. Mr. Popkin's Motion responds to only some of the bases for objection. The Postal Service hereby responds to the various points raised, while requesting that the Motion be denied in its entirety.

Interrogatory DBP/USPS-389, purporting to follow upon the response to DBP/USPS-182, was objected to on the grounds of materiality, relevance, that it is argumentative, and that it does not constitute proper follow-up. Both questions nominally address the tie between EXFC and employee compensation. Interrogatory DBP/USPS-182 sought confirmation that there can be a tie between EXFC and compensation (which the Postal Service response confirmed), and then asked whether EXFC caused 1) collection box scans (part (b)), 2) a second collection if the first was missed or early (part (c) (although the language of the question is somewhat ambiguous), and 3) special attention to missent mail.³ The Postal Service response stated that the whether EXFC actually caused (1) through (3) was "not clear."

¹ *David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-388 Through 398 and 416* (August 16, 2006).

² *Objection Of The United States Postal Service To Interrogatories Of David B. Popkin (DBP/USPS-373, 383-86, 388-398, 416)* (August 3, 2006).

³ This third item is from part (c), although the double level of causation embedded in this part also raises semantic issues.

Mr. Popkin, dissatisfied with the response to DBP/USPS-182, now inquires in DBP/USPS-389 whether the procedures in the DBP/USPS-182 question (ambiguously described though they were) were instituted after the EXFC program started. The Motion accurately concedes that interrogatory DBP/USPS-389 could have been asked without seeing the response to DBP/USPS 182 and otherwise states, "I am not attempting to argue with the previous response, I would just like to receive a response that responds to the question that I have posed." Any participant in this docket would likely concede that figuring out what Mr. Popkin means by his questions is not always straightforward; that plus the fact that chains of causation are rarely as simple as proposed in DBP/USPS-182 makes provision of further responses problematic. In any event, since Mr. Popkin has already received a full response, so his request for another is correctly characterized as argumentative. A response to DPB/USPS-389 will not materially aid the Commission in generating an Opinion and Recommended Decision in this docket. The Postal Service accordingly asks that the Motion be denied.

The Postal Service Objection grouped interrogatories DBP/USPS-390 and 391 together (respectively following upon interrogatories DBP/USPS-183 and 184) because each requests speculation about the state of mind of postal officials regarding a causal nexus between the existence of EXFC and an operational decision (removal of a collection box, and change in collection time on a collection box, respectively). The Postal Service responses to 183 and 184 denied that removal of collection boxes changes EXFC scores.⁴ These questions are not follow-up to the previous responses since, as the Motion concedes, they simply restate previous questions – ones that were answered. The facts that the current interrogatories also will not lead to the discovery of additional admissible evidence, call for speculation, and essentially argue with the previous responses further indicate that the Motion should be denied.

The Postal Service Objection grouped interrogatories DBP/USPS-392-394 together since each question requests information that previous responses have indicated appears in one of the Attachments to the TTMS Statement of Work; the instant interrogatories attach the referenced language and ask the Postal Service to specify which (apparently) letters and words provide the answers Mr. Popkin seeks. The Postal Service objected on grounds that these questions are "cumulative, argumentative, immaterial, irrelevant, and improper follow-up."⁵

⁴ The responses to DBP/USPS183-84 could be criticized for responding too directly to the exact question asked; however that does not change the fact that the responses also deny that removal of a collection box, or the advancing of one box's collection time, changes EXFC scores. DPB/USPS-390-391 pose the same questions in alternative terms.

⁵ Objection at 9.

The Motion argues simply that the requested information is relevant to the value of service of First-Class Mail. The Motion entirely fails to recognize that Mr. Popkin has already been provided the answers to his questions. Moreover, those answers are in standard American English, a language that is native to Mr. Popkin; as such, he can read what has been provided, and then choose to make an argument, file testimony, or take various other courses of action. But asking, evidently, for a linguistic or semantic analysis of contract language is not warranted. Should he care to argue that somehow the value of First-Class Mail is undercut by the paucity of procedures, he is perfectly free to do so. The Postal Service does not possess additional information responsive to the request, and does not see Mr. Popkin's questions as constituting a sufficient justification for micro-managing the affairs of a contractor who has performed its obligations under the contract quite sufficiently. The Postal Service submits that any compulsion here should require the proponent to read Postal Service responses or his own questions. "[L]ibrary Reference USPS-LR-L-134 already provides expansive explanation of the EXFC and PETE process, which a party can use to understand the issues involved."⁶ The Motion should accordingly be denied.

As explained in detail in the Objection, at 9-10, interrogatory DBP/USPS-395 points to the response to DBP/USPS-190, which points to the response to DBP/USPS-69, which entails Mr. Popkin's apparently preferred method of counting days to delivery. Interrogatory DBP/USPS-397 also points ultimately to DBP/USPS-69, albeit via DBP/USPS-192 rather than DBP/USPS-190. The explanation of that method in the body of DBP/USPS-69 being somewhat shy of a model of clarity, the careful Postal Service response consisted of, "While the Postal Service has not explored these postulated options, it is probably safe to confirm that they may be possible." Paradoxically, interrogatory DBP/USPS-190 then asked whether the Postal Service had ever used Mr. Popkin's postulated method. Since the Postal Service had previously answered that the method had not been explored, and it is impossible to imagine that the Postal Service would change its counting method without first understanding how an alternative works, the response to DBP/USPS-190 simply pointed to the response to DBP/USPS-69 to say that it had not studied Mr. Popkin's proposed method of counting.

Never letting go of the bone, while confusing what has been written where, in interrogatory DBP/USPS-395 Mr. Popkin points to the response to DBP/USPS-190 while quoting the response provided to DBP/USPS-69 and claiming that it is the response to DBP/USPS-190, and inquires why that response was not a full confirmation. As such, the interrogatory clearly is not a follow-up to DBP/USPS-190, but a follow-up to DBP/USPS-69. In

⁶ Presiding Officer's Ruling R2006-1/43, at 5, quoting and citing Presiding Officer's Ruling R2006-1/14.

addition to constituting improper follow up, DBP/USPS-395 has already been answered by the response to DBP/USPS-69, and by the response to DBP/USPS-190: the Postal Service would be remiss in flatly confirming that which has not been studied. Also, the Postal Service is no better equipped to respond affirmatively to DBP/USPS-397, given its inability to evaluate Mr. Popkin's postulated alternative method of counting days embodied in interrogatory DBP/USPS-69. The Motion to compel a Postal Service response to DBP/USPS-395 and 397 should be denied as the questions are improper follow up, argumentative, immaterial, irrelevant, even illogical, and because it has already been answered, cumulative.

Interrogatory DBP/USPS-396 is the most recent in a series of questions that started with DBP/USPS-70. That interrogatory inquires about measurement of service performance in unconstrained terms that the Postal Service has never used. Interrogatory DBP/USPS-70 apparently postulates counting service performance without reference to mail class or service performance standard. If that was not Mr. Popkin's intention, then the interrogatory is fatally vague. Interpreted as Mr. Popkin seems to suggest in later interrogatories, rather than asking about a different method of counting days, it is asking for slices of service performance data, still not limited to any class, subclass, mail category or special service. Interpreted as asking for service performance data from an unknown source and sliced to exclude certain days of entry, the question could not possibly elicit any information that is informative as to classifications, rates, fees, service performance data quality, or anything else material or relevant to issues in this docket.

Regardless of how interrogatory DBP/USPS-396 is understood, the question continues Mr. Popkin's foray into another postulated method for counting service performance that aggregates across all classes, subclasses, rate categories, and perhaps special services of mail. Mr. Popkin remains free, of course, to propose via testimony his new proposed method. As explained in the Objection (at 10-12), DBP/USPS-396 actually follows upon DBP/USPS-70 despite purporting to follow upon DBP/USPS-191. But in the context of this docket, the question is cumulative, immaterial, irrelevant, argumentative, improper follow up, and irretrievably vague for failing to state an answerable question. The Motion should accordingly be denied.

Interrogatory DBP/USPS-398 points to the response to interrogatory DBP/USPS-193, which refers to the response to DBP/USPS-76, which inquires into the EXFC contractor's access to the CPMS database as a source for random selection of collection boxes. The later interrogatories inquire further (in questions that are technologically unsound) about this random selection. Part (a) of DBP/USPS-193 again asks how collection boxes are selected, which as the response to DBP/USPS-76 has indicated, is randomly. Parts (b) and (c) inquire (at least as

understood by the Postal Service) whether data are downloaded, then selected, or whether the CPMS database itself makes the random selection. The response indicates that the contractor downloads the data and then makes a random selection.

Interrogatory DBP/USPS-398 (after correcting the page reference in the response to DBP/USPS-193, as acknowledged in the Objection at 13) proceeds to insist that part (b) of DBP/USPS-193 was not answered while demanding another answer, and then in part (c) inquires further whether the contractor “select[s] boxes remotely in a manual method or do they have a computer program to effect the random selection” and in part (d) request additional discussion of the response to part (c). The Postal Service has no idea what Mr. Popkin means by “remotely in a manual method”; however, such an understanding is not necessary to understand the basic point that the selection is random. Commission proceedings have involved random selections of my types, and using various sources over many cases. Exactly what method is used can not add materially to information that enables the Commission to generate its Opinion and Recommended Opinion. The Postal Service submits that Mr. Popkin has received answers to all of his questions, to the extent that he is entitled to them, and has nothing to add to its previous responses. The question embodied in Interrogatory DBP/USPS-398 are argumentative, cumulative, irrelevant, immaterial, and does not constitute proper follow-up. Indeed, this interrogatory amounts to an abuse of the discovery process, illustrating why perhaps special rules should apply to limit his discovery in future dockets. In any event, his Motion should be denied.

Interrogatory DBP/USPS-416 points to the response to DBP/USPS-181, in which the Postal Service indicates that, yes, EXFC has been constructive in improving First-Class Mail performance; the response supports this understanding by pointing out that overnight performance has increased from 84 percent on the inception of EXFC in 1992 to 95 percent today. Part (b) of DBP/USPS-181 then asked, “If not, why not? If so, please discuss and explain the specific methods that have been utilized to improve First-Class Mail performance?” Since, at some level, part of every postal employee’s job is improving service, the response began by noting the exceptional breadth of the question, and then explained how feedback on performance is instructive on where performance needs more attention. In interrogatory, Mr. Popkin indicates that he wants more information on “the various procedures that have been implemented” to improve scores, and lists a few that he considers to be of the proper type. This preposterous question somehow manages to assume that none of the information in this or previous dockets has ever been made available to him, and that the Postal Service should start over again to explain matters to Mr. Popkin’s personal satisfaction. The Postal Service demurs.

Despite all appearances, the Postal Service is quite aware that Mr. Popkin does not exist in a vacuum, bereft of contact with and access to the many volumes of material that he could readily avail himself of. Mr. Popkin asked in DBP/USPS-181 a broad question and was given a broad response. That he would now prefer more specific responses does not make interrogatory DBP/USPS-416 proper follow-up. The Postal Service also maintains its objection on the grounds that interrogatory DBP/USPS-416 is argumentative, cumulative, irrelevant, immaterial, unlikely to lead to the discovery of additional admissible evidence, and improper follow-up. As such, the Motion should be denied in its entirety.

WHEREFORE, the United States Postal Service asks that the Motion to compel responses to interrogatories DBP/USPS-389-398, 416 be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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