

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

POSTAL RATE AND FEE CHANGES, 2006

Docket No. R2006-1

OPPOSITION OF THE UNITED STATES POSTAL SERVICE
TO DAVID B. POPKIN MOTION TO COMPEL RESPONSE
TO INTERROGATORIES DBP/USPS-451 THROUGH 453
(September 5, 2006)

In accordance with Rule 26(d) of the Commission's Rules of Practice and Procedure, the United States Postal Service hereby responds in opposition to the David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-451 through 453, filed on August 28, 2006. For the reasons presented herein, the Postal Service respectfully requests that Mr. Popkin's Motion be denied. The interrogatories in question read as follows:

DBP/USPS-451. Please refer to your response to Interrogatory DBP/USPS-279 subparts b through e.

[a] Please confirm, or explain if you are unable to confirm, that the last sentence of your response means that if a given post office on the west coast has two separate cut-off times, namely, 2 PM for coverage to most of the 50 states and 5 PM for areas on the west coast only, that it will be permissible to have an Express Mail collection box with a single collection time of 4 PM which will arrive back at the post office too late for a guarantee to the 50 state area but in time for a guarantee to the west coast only [the 5 PM cut-off guarantee].

[b] If subpart a above is confirmed, please confirm, or explain if you are unable to confirm, that Express Mail destined for the east coast will be delayed a day if deposited in the collection box.

[c] Please explain why this scenario is an acceptable one, in other words, why isn't an earlier collection mandated to allow for processing to the area covered by the 2 PM cut-off time?

DBP/USPS-452. Please refer to your response to Interrogatory DBP/USPS-279 subparts b through e.

[a] Please explain the apparent conflict between your response to the original Interrogatory which states that Express Mail receives a service commitment

based on the deposit date and DMM Section 116.1.1.b which states that Express Mail deposited in an Express Mail collection box will have a time and date of mailing of the time that the mail was brought to the Express Mail acceptance unit.

[b] Please confirm, or explain if you are unable to confirm, that DMM Section 116.1.1.b states, in effect, that the Postal Service will not accept any responsibility for Express Mail deposited in an Express Mail collection box, handed to delivery and collection employees during their normal delivery and collection duties, or picked up by USPS pickup service until the mail actually is brought back to the Express Mail acceptance unit and that in some large cities the mail may not arrive there until well into the evening and miss the dispatches of value. Furthermore, any delays or errors between the time the mail is or is supposed to be collected and the time it is actually turned over to the Express Mail acceptance unit are at the risk of the mailer.

[c] Please explain the rationale for DMM Section 116,1,1,b with respect mail deposited in an Express Mail collection box.

[d] Please explain the rationale for DMM Section 116,1,1,b with respect mail that is handed to delivery and collection employees during their normal delivery and collection duties.

[e] Please explain the rationale for DMM Section 116,1,1,b with respect mail that is picked up or is scheduled to be picked up [a missed or delayed appointment] by USPS pickup service.

DBP/USPS-453. Please refer to your response to Interrogatory DBP/USPS-279 subpart f. Your response stated that the retail computers will allow the acceptance associate to roll back the mailpiece's acceptance time to the collection box tap time.

[a] Is this a requirement rather than an option to do so?

[b] If not, why not?

[c] Is a similar roll back appropriate for Express Mail deposited at a retail service window a minute or two after the cut-off time by a customer that was waiting on line and/or a delay by the retail window clerk in processing the mailpiece?

[d] If not, why not?

The Postal Service objected to all of these interrogatories on the grounds of relevance, and to interrogatory DBP/USPS-452 on the additional grounds of improper follow-up.¹ With respect to the first, and most fundamental, basis for objecting to these interrogatories, it is important to remember that the purpose of this proceeding is to recommend the aggregate, nationwide *rates* for Express Mail based on the pricing criteria of the Act. As such, there is a limit to which the

¹ See Postal Service Objection at 2-3.

operational details of Express Mail (or any other class of mail) are appropriate for exploration in discovery in this proceeding, as Presiding Officers have consistently noted in past omnibus cases,² and which the Presiding Officer has noted in this case.³ Mr. Popkin mischaracterizes the Postal Service's Objection when he asserts that the Postal Service's relevance objection is predicated on a belief that "just because these Interrogatories relate to operational details they are automatically immaterial to this proceeding."⁴ The Postal Service is, of course, not arguing that operational details are *never* relevant to a rate case; instead, it is simply arguing that there is a limit to which such details are relevant, which as noted above is clearly established by Commission precedent, and that the interrogatories at issue here fall beyond that limit.

As Mr. Popkin notes in his Motion, these interrogatories all purport to follow-up on the response to DBP/USPS-279, in which the Postal Service provided general information concerning the collection and acceptance of

² See, e.g., POR No. R2005-1/19 at 3 (stating that "a rule of reason limits the extent to which operational details are appropriate for exploration in discovery"); POR No. R2001-1/32 at 4 (stating that the Postal Service is not required to delve into "operational minutiae" concerning a service); POR No. R2000-1/56 at 2, 11 (noting that the Postal Service need not respond to interrogatories that sought "highly specific" details about Express Mail); POR No. R97-1/53 at 2, 5 (stating that generally the operational details of Express Mail service are not relevant to § 3622(b)(2)--the "value of service" pricing criterion--in particular and rate proceedings in general).

³ See POR No. R2006-1/55 at 2, 8. In that Ruling, the Presiding Officer denied a Motion to Compel from Mr. Popkin with respect to a follow-up interrogatory that sought further operational details concerning Express Mail cut-off times. The Presiding Officer noted that the level of detail concerning those cut-off times already provided for the record was "an appropriate level of detail for this rate case," and that "Mr Popkin has not persuasively argued why the Postal Service should be required to provide more detail." *Id.*

⁴ See Popkin Motion at 3.

Express Mail deposited in Express Mail collection boxes. That response provides, for purposes of this proceeding, more than sufficient operational information to Mr. Popkin concerning the acceptance of such mail, and the further details sought in these interrogatories simply have no material relevance to the inter-subclass evaluation of the pricing criteria of the Act, including the “value of service” of Express Mail within the meaning of § 3622(b)(2).

In particular, Mr. Popkin does not, and cannot, explain how the operational details concerning Express Mail collection boxes on the west coast sought in DBP/USPS-451 has any bearing on this proceeding.⁵ In addition, with respect to DBP/USPS-453, the information provided on the record is clear and sufficient for purposes of this proceeding, and Mr. Popkin does not explain how the intricacies of the Postal Service’s retail computer acceptance practices vis-à-vis Express Mail deposited in collection boxes (or for Express Mail deposited just after the cut-off time at a retail window) is at all relevant to the recommendation of Express Mail rates in this proceeding.

With respect to DBP/USPS-452, Mr. Popkin argues that a response is necessary to resolve an “apparent inconsistency” between the DMM section cited therein and the Postal Service’s response to DBP/USPS-279, part (f).⁶ This argument is, of course, inconsistent with the very language of the interrogatory

⁵ This interrogatory runs afoul both of the POR No. R2005-1/19 “rule of reason” limiting the relevance of Express Mail operational questions in rate cases and of the fact that § 3622(b)(2) relates to the “overall value of service” of Express Mail (rather than to service in, for example, one geographic area). See, e.g., POR No. R2006-1/55 at 4 (quoting POR No. R2005-1/83 at 2); POR No. R2001-1/28, at 5.

⁶ See Popkin Motion at 3-4.

itself, which by its terms is a follow-up to the Postal Service's response to parts (b) through (e) of DBP/USPS-279 rather than part (f). Regardless of which part of DBP/USPS-279 this interrogatory is actually following-up on, however, it remains fundamentally irrelevant to this proceeding. The information provided on the record in the Postal Service's response to DBP/USPS-279 is accurate, and the cited DMM section (whose relevance to this proceeding is tangential at best) speaks for itself. To the extent that Mr. Popkin wishes to argue on brief that the two are "inconsistent," and that this "inconsistency" should somehow affect the Commission's recommendation of Express Mail rates, he has more than enough information in which to do so.

The Postal Service also objected to DBP/USPS-452 on the grounds of timeliness. This objection was predicated to a large extent on the terms of Mr. Popkin's interrogatory, which indicates that it is a follow-up to DBP/USPS-279, parts (b) through (e). As noted above, however, Mr. Popkin has now re-characterized this interrogatory as in fact a follow-up to DBP/USPS-279, part (f).⁷ With this in mind, the Postal Service withdraws its timeliness objection with respect to all but parts (d) and (e) of DBP/USPS-452. Those questions deal with the deposit of Express Mail that is given to a letter carrier, either through a scheduled pick-up or during the carrier's normal delivery activities. This does not in any way constitute proper follow-up to DBP/USPS-279, which instead dealt

⁷ While this re-characterization is potentially objectionable in its own right, in the interest of reducing controversy the Postal Service will not make it an issue of contention.

with the deposit of Express Mail placed in a collection box. Parts (d) and (e), therefore, represent a new, and therefore untimely, line of inquiry.

Overall, Mr. Popkin fails to demonstrate that responses to these interrogatories would provide information that is relevant and material to this proceeding. In addition, he fails to demonstrate that parts (d) and (e) of DBP/USPS-452 constitute proper follow-up. Therefore, the Postal Service requests that the Presiding Officer deny Mr. Popkin's Motion to Compel in its entirety.

Respectfully submitted,

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