

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

EVOLUTIONARY NETWORK DEVELOPMENT
SERVICE CHANGES, 2006

Docket No. N2006-1

UNITED STATES POSTAL SERVICE REPLY IN OPPOSITION TO DAVID POPKIN
MOTION TO COMPEL A RESPONSE TO INTERROGATORY DBP/USPS-30
(March 16, 2006)

The United States Postal Service hereby files its opposition to the March 7, 2006, motion of David Popkin seeking to compel a response to interrogatory DBP/USPS-30.

This interrogatory requests that the Postal Service provide a year's worth of any reports which show the actual delivery time for Standard Mail, Periodicals, and/or Package Services mail destined to, from, or within Alaska, Hawaii, or other offshore destinations. The Postal Service filed its objection on March 1, 2006, on the grounds that the interrogatory sought information that was irrelevant and privileged. As explained below, the motion to compel should be denied.

The Requested Data Are Irrelevant

The request in this docket seeks an advisory opinion from the Postal Rate Commission on the question of whether it would conform to the policies of the Postal Reorganization Act for the Postal Service to make operational changes in pursuit of its Evolutionary Network Development strategy that could have the potentially nationwide consequence of affecting the manner in which currently service standard definitions apply to 3-digit ZIP Code pairs for certain mail classes.

As indicated in the Postal Service's February 22, 2006, response to interrogatory DBP/USPS-11, for Standard Mail, there are no service standards applicable to the most remote 3-digit ZIP Code areas in the postal system, which are located in Alaska, Hawaii, and other offshore destinations. Otherwise, there are service standards for mail originating and/or destinating to these remote ZIP Code areas for First-Class Mail, Periodicals, and Package Services. The geographic scope of applicable service standards is a matter relevant to the request in this proceeding. Accordingly, the Postal Service was responsive to DBP/USPS-11.

Using several different data collection systems, the Postal Service, to varying degrees, systematically collects service performance and/or time-in-transit data for Express Mail, Priority Mail, First-Class Mail and Package Services, but not for Periodicals and Standard Mail. There are approximately 850,000 3-digit ZIP Code pairs from which such data may be drawn. In interrogatory DBP/USPS-30, Mr. Popkin focuses on a miniscule number of the most geographically remote ZIP Codes in the postal system and inquiries about the on-time service performance scores for Periodicals, Standard Mail and Package Services. Such data may be interesting to Mr. Popkin. However, none of its is relevant to or has any material bearing on the question of whether it would conform to the policies of the Postal Reorganization Act for the Postal Service, on what could be a substantially nationwide basis, to implement changes in the application of current service standards as a consequence of a systemwide program of mail processing and transportation consolidation.

In his March 7, 2006, motion to compel, Mr. Popkin offers no explanation of how the requested information is related to any material issue in this docket. Instead, at

pages 4, he expresses a reaction to the long-established fact, confirmed in response to interrogatory DBP/USPS-11, that the Postal Service has service standards for Periodicals and Standard Mail to the above-referenced remote ZIP Codes destinations, but no similar service standards for Package Services. He then references the fact that, in lieu of non-existent service standard information for Package Services mail destined for Alaska from New Jersey, for example, the Postal Service offers estimated transit times for Automated Postal Center users.¹ From there he leaps to the accusation that the Postal Service has provided “false and misleading information as it relates to Periodicals and Standard Mail sent to, from, or within Alaska, Hawaii, and offshore destinations.” Popkin Motion at 4-5.

Not stopping there, Mr. Popkin continues by declaring that:

If the Postal Service provides these service standards and appears to imply that it is never achieved, they should remove that testimony from their case. Otherwise, they should provide the response to indicate that there is some validity to these service standards.

Id. at 5. It is unclear to the Postal Service exactly which information provided in response to DBP/USPS-11 or elsewhere is alleged to be false and/or misleading. As acknowledged by its response to DBP/USPS-11, the Postal Service has service standards for Periodicals and Standard Mail that apply to the remote locations identified by Mr. Popkin, but no such service standards for Package Services.

¹ The Postal Service confirms, for example, that when prompted, a postal lobby APC will give an estimate of 35 days for delivery of Package Services mail from the 3-digit ZIP Code area 202 to the 969 3-digit ZIP Code area, representing the outer range of the postal retail window POS terminal indication that “3 - 5 weeks” should be allowed for such delivery. Consistent with this information, users of the Postage Rate Calculator function at www.usps.com are informed that the Postal Service is “Unable to determine” the speed with which packages with the same origin-destination pattern can be expected to arrive.

However, there is no basis for Mr. Popkin's assertion that the Postal Service has made any representation, express or implied, regarding the degree to which the aforementioned Periodicals or Standard Mail service standards are achieved for any specific ZIP Codes. It has no means with which to do so. Similarly, the Postal Service has made no representations regarding service standard achievement for the remote ZIP Codes for which it has no Package Services service standards.² All that the APC attempts to do is to provide rough guidance, based on the relative remoteness of origins to destinations, and the infrequency of available surface transportation, that service to and from the most remote 3-digit ZIP Code can be expected to range as long as five weeks. If Mr. Popkin is arguing that the Postal Service should be required now to provide an explanation for APC Package Services estimated delivery times for mail to or from the aforementioned remote ZIP Codes, when no service standards apply, then he need only ask the Postal Service to either confirm or further explain the not-so-long-ago Docket No. R2005-1 response to DBP/USPS-38 (May 5, 2005).

The Requested Data Are Privileged

Responsive transit time data for the relatively miniscule Package Services volumes traveling between the remote ZIP Code pairs identified in DBP/USPS-30 can be generated by the Postal Service's Origin-Destination Information System. It is also possible that the Postal Service's Product Tracking System may contain scan data for an infinitesimally small volume of Package Services mail traveling between these remote ZIP Codes areas for which Delivery Confirmation may have been purchased.

² As for the *validity* of service standards, it is not clear what Mr. Popkin means. The Postal Service can only respond that, except where erroneous, all published service standards are *validly* what they are – irrespective of whether the Postal Service has developed the means with which to measure service standard achievement or what any service standard achievement scores may be.

Putting aside the concerns about the probative value of data that are presumed to reflect exceedingly thin sample sizes, the Postal Service considers disaggregated point-to-point (3-digit ZIP Code to 3-digit ZIP Code) transit data to be commercially sensitive and privileged. In his motion March 7th motion to compel, Mr. Popkin does not address the privilege claim articulated in the Postal Service's March 1st objection. Nevertheless, for purposes of this opposition, the Postal Service considers it prudent to presume an expectation by Mr. Popkin that the requested disaggregated point-to-point ODIS and/or PTS data would be provided without protective conditions designed to respect the Postal Service's proprietary, commercial and competitive interest in not having the data accessible to its competitors.

Disaggregated Package Services ODIS and PTS point-to-point time-in-transit data can be used by postal management in diagnosing Package Services processing, transportation and other logistical operations among the approximately 850,000 3-digit ZIP Code area pairs. However, it has been the long-standing policy of the Postal Service to not publicly disclose such point-to-point data because of its commercial value and the harm to the Postal Service's competitive interests that could result from such disclosure.

Generally speaking, the Packages Services portion of the mail stream is subject to unprotected competition from private delivery firms. Public disclosure of such point-to-point information would harm the commercial interests of the Postal Service by providing its competitors with valuable information regarding the relative degree to which various origin-destination pair markets or lines of traffic are susceptible to penetration by the providers of various delivery services that compete to transmit matter presently mailed via Package Services. These data would be valuable to a postal competitor seeking to determine where to focus its capital investment, marketing resources, and pricing strategies in order to maximize the return or minimize the loss on any such expenditures and efforts. It is knowledge of the wider marketplace -- and, in

particular, the more specific aspects of a competitor's business -- that enhances a firm's ability to compete more effectively and advantageously.

By operation of 39 U.S.C. § 410(c)(2), Congress has extended special protection to the commercial interests of the Postal Service by exempting from public disclosure "information of a commercial nature . . . which under good business practice would not be publicly disclosed." Thus, the same Congress that established the Postal Service's various public service obligations also extended a strong measure of protection to the Postal Service's commercial interests, on par with that enjoyed by its private sector competitors, none of which is known to routinely publicly disclose the service performance or transit times of shipments they carry between various origin-destination pairs.

Section 410(c)(2) should be read in harmony with the Commission's Rules of Practice and Procedure. In particular, Rule 27(c) allows for all parties subject to discovery requests, including the Postal Service, to assert evidentiary privileges. And Rule 27(e) enables the Commission to respect those privileges through the issuance of orders accompanied by appropriate protective conditions.³

In conclusion, the Postal Service considers the ODIS and PTS transit data within the scope of this interrogatory to be irrelevant to the issues raised by its request in this case. The data have no bearing on the question of whether it would conform to the policies of the Postal Reorganization Act for the Postal Service to implement changes in existing service standards that currently apply to various 3-digit ZIP Code pairs as a consequence of the operational changes described by witness Shah (USPS-T-1) and

³ In this regard, the Postal Service's response to DBP/USPS-30 is consistent with its approach to Congressional and General Accounting Office requests for First-Class Mail ODIS volume and time-in-transit point-to-point data. The Postal Service has consistently responded to such requests, subject to the explicit understanding that the data would not be publicly disclosed for the reasons expressed in this pleading.

through the process described by witness Williams (USPS-T-2). For these reasons, the motion to compel should be denied. Should the Commission rule otherwise, the Postal Service requests that such a ruling respect the commercial sensitivity of the data involved and establish protective conditions designed to protect responsive data from being accessed by postal competitors.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking

Michael T. Tidwell

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-2998, Fax -5402
michael.t.tidwell@usps.gov
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