

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 INTERROGATORY DBP/USPS-134  
(July 31, 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 Interrogatory DBP/USPS-134, filed on July 24, 2006. For the reasons presented herein, the Postal Service respectfully requests that Mr. Popkin's motion be denied.

The interrogatory at issue reads as follows:

**DBP/USPS-134.** Please confirm, or explain if you are unable to confirm, that transportation already exists that would allow for the reliable delivery of Post Office-to-Post Office Express Mail to all postal facilities that are currently in the overnight delivery area for First-Class Mail.

The Postal Service objected to this interrogatory on the grounds of relevance, stating that its topic—why the availability of PO-PO Express Mail service is not concomitant with the overnight delivery of First-Class Mail—is irrelevant to this proceeding. In his Motion to Compel, Mr. Popkin argues that this interrogatory is relevant because it relates to the “value of service” of PO-PO Express Mail, within the meaning of 39 U.S.C. § 3622(b)(2). This argument is unavailing, as it is contrary to the meaning of the § 3622(b)(2) “value of service” criterion as well as to Commission precedent.

Mr. Popkin’s attempt to justify this interrogatory on the basis that it relates to the “value of service” of PO-PO Express Mail within the meaning of § 3622(b)(2) ignores the plain language of that pricing criterion. As § 3622(b)(2) indicates, the “value of service” of a postal service that is relevant to this proceeding is the “value of service *actually provided* each class or type of mail service....”<sup>1</sup> Therefore, the application of this factor in a rate case requires that current service levels be taken as a given, with a determination by the Commission as to whether the given relative service levels suggest higher or lower recommended rates for particular subclasses or services. As such, what is relevant to “the value of service” of a type of mail service are questions that seek, at a level of detail appropriate to the fact that this is a proceeding that establishes rates at a nationwide level,<sup>2</sup> details as to the *actual* level of service provided to that service.

Mr. Popkin’s Motion demonstrates how this interrogatory is irrelevant to the actual level of service provided by PO-PO Express Mail. He argues that the Postal Service should be compelled to answer this interrogatory because he is “attempting to show...that the transportation already exists that would allow this service to be extended nationwide to all the areas where existing transportation

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<sup>1</sup> Emphasis added.

<sup>2</sup> While as a general matter the actual level of service provided to a type of mail service is relevant to this proceeding, Presiding Officer’s Rulings clearly establish that there is a limit to which the operational details of a service are relevant. 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).

is available,” which would “improve the value of service of [PO-PO] Express Mail.” This stated purpose has, however, no relation to the *actual* level of service provided by PO-PO Express Mail, but instead to some level of service that Mr. Popkin apparently feels should be provided. As such, this interrogatory cannot be justified as relating to the “value of service” of PO-PO Express Mail, within the meaning of § 3622(b)(2).

In addition, Commission precedent establishes that this interrogatory is irrelevant to an omnibus rate proceeding. In Docket No. R2005-1, Mr. Popkin submitted an interrogatory that was substantively analogous to this interrogatory, inquiring as to “why [PO-PO] Express Mail may not be sent to other offices where there is already existing transportation...available[,] such as those offices that are within the overnight First-Class Mail service areas.”<sup>3</sup> In response to a relevance objection by the Postal Service, Mr. Popkin argued that the interrogatory was relevant because he was “attempting to determine why the Postal Service does not provide [PO-PO Express Mail] service within the overnight First-Class Mail service areas where the ability to meet the [10 AM service guarantee] would already exist,” and that “the availability of [PO-PO] Express Mail to all areas which have overnight First-Class Mail service standards is relevant to [its] value of service.”<sup>4</sup> The Presiding Officer, after examining the information already provided in that docket by the Postal Service concerning the level of service provided by PO-PO Express Mail, disagreed with Mr. Popkin, and denied his

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<sup>3</sup> See Docket No. R2005-1, DBP/USPS-306.

<sup>4</sup> See Docket No. R2005-1, David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-306, 307, and 310 (September 6, 2005), at 1-2.

Motion to Compel.<sup>5</sup>

Specifically, the Presiding Officer noted that the Postal Service had already provided a list of the available destinations for PO-PO Express Mail in that docket, and had already discussed the factors that could lead to inclusion on that list.<sup>6</sup> He then held that “further elaboration “ on that information would “yield little if any incremental understanding of the overall value of service actually provided Express Mail.”<sup>7</sup> Similarly, in this docket the Postal Service has provided a list of the available destinations for PO-PO Express Mail,<sup>8</sup> and has discussed the factors that could lead to inclusion on that list,<sup>9</sup> in addition to responding to numerous other interrogatories concerning PO-PO Express Mail.<sup>10</sup> As in Docket No. R2005-1, further elaboration along the lines inquired about by Mr. Popkin here simply is not relevant to this proceeding.

Overall, the purpose of discovery in this proceeding is to inquire into information that has some material relevance to the ultimate recommendation by the Commission of rates, including the PO-PO Express Mail rates. Though Mr. Popkin may wish to argue that the Commission should recommend different rates than those proposed by the Postal Service because of some deficiencies that he perceives in the actual level of service provided to PO-PO Express Mail,

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<sup>5</sup> See Docket No. R2005-1, POR No. R2005-1/83, at 1-2.

<sup>6</sup> *Id.* at 2.

<sup>7</sup> *Id.*

<sup>8</sup> See Docket No. R2006-1, Response of the Postal Service to DBP/USPS-138.

<sup>9</sup> See Docket No. R2006-1, Response of the Postal Service to DBP/USPS-135.

<sup>10</sup> See Docket No. R2006-1, Responses of the Postal Service to DBP/USPS-99, DBP/USPS-125, DBP/USPS-126, DBP/USPS-127, DBP/USPS-128, DBP/USPS-129, DBP/USPS-130, DBP/USPS-131, DBP/USPS-133, DBP/USPS-136, and DBP/USPS-137.

any response to this interrogatory would not aid him in doing so. Instead, this interrogatory has no relation of the actual level of service provided to PO-PO Express Mail; in addition, it is also inconsistent with Commission precedent as to the proper scope of discovery into PO-PO Express Mail.

Therefore, the Postal Service requests that the Presiding Officer deny Mr. Popkin's motion to compel.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.  
Chief Counsel, Ratemaking

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Keith Weidner

475 L'Enfant Plaza West, S.W.  
Washington, D.C. 20260-1137  
(202) 268-6252, Fax -3084