

BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON DC 20268-0001

Postal Rate Commission  
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Postal Rate and Fee Changes, 2006]

DOCKET NO. R2006-1

DAVID B. POPKIN MOTION TO COMPEL RESPONSE TO INTERROGATORY  
DBP/USPS-268

I move to compel response to the interrogatory submitted to the United States Postal Service that has been objected to by them.

August 7, 2006

Respectfully submitted,

R20061MTC15A268

DAVID B. POPKIN, POST OFFICE BOX 528, ENGLEWOOD, NJ 07631-0528

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On July 12, 2006, I submitted Interrogatory DBP/USPS-280. On July 24, 2006, the Postal Service filed an objection to this interrogatory.

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The interrogatory reads as follows:

DBP/USPS-268 Please furnish the most recent First-Class Mail EXFC results for a minimum of four quarterly reports. The left side of the charts should show the Nation followed by each of the 80-some EXFC reporting areas and along the top of the chart showing Percent on Time / Margin of Error / Average Days to Deliver / Margin of Error for the following four categories: Overnight Mail / Two-Day Mail / Three-Day Mail / Nation. Please show all entries to two decimal places.

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Rule 26[c] of the Commission's Rules of Practice states:

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an interrogatory, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort that would be required to answer the interrogatory, providing estimates of cost and work hours required, to the extent possible. An interrogatory otherwise proper is not necessarily objectionable because an answer would involve an opinion or contention that relates to fact or

the application of law to fact, but the Commission or presiding officer may order that such an interrogatory need not be answered until a prehearing conference or other later time. Objections shall be filed with the Commission in conformance with §§ 3001.9 through 3001.12 within 10 days of the filing of the interrogatories.

This Rule states that the objection shall be clearly and fully stated. This objection has not been fully made. It does admit that the requested data at the EXFC system-wide level are relevant to the issue of the value of service for First-Class Mail as a whole, within the meaning of 39 U.S.C. § 3622(b), the requested data are irrelevant to the issues presented in this omnibus rate and classification proceeding.

By just stating that the requested data are irrelevant to the issues presented in this omnibus rate and classification proceeding does not provide any support to their assertion. The Postal Service has not made a prima facie case. To be able to file a meaningful Motion to Compel, I would need to know the specific issues they are basing their claim on. Since I am only afforded "one bite at the apple" and the Postal Service has the "last bite", it is only appropriate, and is borne out by the Commission's Rules of Practice that their Objection be fully made so I can address each of their specific concerns.

Furthermore, the Postal Service has made a request for reconsideration of Presiding Officer's Ruling No. R2005-1/10 [May 16, 2005]. They have not provided any support to the request other than stating that the Presiding Office reconsider that ruling in light of the evidence and record in the instant proceeding. They have not stated what evidence should be considered. They have not stated what part of the record should be considered. As noted above, it is only appropriate, and is borne out by the Commission's Rules of Practice that their request for reconsideration be fully made so I can address each of their specific concerns.

The significant part of the Presiding Officer's Ruling No. R2005-1/10 [May 16, 2005] is as follows:

In DBP/USPS-5, Mr. Popkin requests EXFC data disaggregated by performance cluster.

Please provide a listing of the EXFC results for the past four quarters showing the following categories: [a] Performance Center name [b] ZIP Codes [c] Overnight Percent on Time, [d] Overnight Percent on Time Margin of Error [e] Overnight Average Days to Deliver [f] Overnight Average Days to Deliver Margin of Error [g] 2-Day Percent on Time, [h] 2-Day Percent on Time Margin of Error [i] 2-Day Average Days to Deliver [j] 2-Day Average Days to Deliver Margin of Error [k] 3-Day Percent on Time, [l] 3-Day Percent on Time Margin of Error [m] 3-Day Average

Days to Deliver [n] 3-Day Average Days to Deliver Margin of Error [o] Nation Percent on Time, [p] Nation Percent on Time Margin of Error [q] Nation Average Days to Deliver [r] Nation Average Days to Deliver Margin of Error.

Mr. Popkin asserts that the national aggregate EXFC data are determined by combining all of the data for the various performance clusters. He would like the performance cluster data "to evaluate the source data for the national data and be able to determine the spread that might exist in the data as well as other criteria." Motion at 2.

The Postal Service contends that the national aggregate EXFC data are the proper focus of examination in an omnibus rate case; however, the estimates for each of the 90 performance clusters have no bearing on the issue of the rates for First-Class Mail on a national basis. Objection at 3; Reply at 3-4.

The Motion in regard to DBP/USPS-5 is granted. Provision of the national data alone would be clearly insufficient if large variations exist in the underlying performance cluster data. This data is relevant to the (b)(2) requirement applicable to the value of First-Class Mail service. Large variations in performance could be indicative of a lower value of service, even if the average performance demonstrates an acceptable level of service. Without the underlying data, this determination cannot be made.

An evaluation of the Postal Service's compelled response to Interrogatory DBP/USPS-5 in Docket R2005-1 filed on June 22, 2005 shows the following data for Quarter 3 FY 2004:

Overnight Mail / Nation 95.61% on time =

The individual Performance Clusters in the 48 states varied between 93.88% and 97.61% on time not including the Caribbean which was only 90.84% on time.

Two-day mail / Nation 91.99% on time =

The individual Performance Clusters in the 48 states varied between 86.94% and 95.79% on time.

Three-day mail / Nation 90.97% on time =

The individual Performance Clusters in the 48 states varied between 84.95% and 95.63% on time not including the Caribbean which was only 64.96% on time and Alaska which was only 78.42% on time.

As can be seen, overnight data varies by +2.00% and -1.73% or -4.77% if Caribbean is included. Two-day mail varies by +3.80% and -5.05%. Three-day mail varies by +4.66% and -6.02% or -26.01% if Caribbean is included.

As the Ruling pointed out, there was a considerable variation between Performance Clusters and the need to evaluate them was entirely appropriate.

My original Motion to Compel the response to Interrogatory DBP/USPS-5 in Docket R2005-1 was filed on May 2, 2005. The pertinent part of that filing was as follows and is incorporated in this filing:

DBP/USPS-5 The Postal Service objected to answering this interrogatory on two grounds. In the seven lines of their objection, I only see one ground for an objection, namely, they claim that national aggregate EXFC data are the proper focus. However, the national aggregate data figures are determined by combining all of the data for the various Performance Clusters. As such, I should have the right to evaluate the source data for the national data and be able to determine the spread that might exist in the data as well as other criteria.

The format that I have requested in my interrogatory is the specific breakdown and format as has been utilized by the Postal Service for many years. This data is reasonably calculated to lead to the discovery of admissible evidence as it relates to the value of service of First-Class Mail.

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For the reasons stated, I move to compel response to the referenced interrogatory since it is reasonably calculated to lead to the discovery of admissible evidence.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the rules of practice.

David B. Popkin      August 7, 2006

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