

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-167
(August 7, 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-167, filed on July 25, 2006.¹ 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-167. Please advise all instances that exist, either due to the distances involved and/or the failure to provide the necessary transportation, that will keep the Postal Service from meeting 365-days a year the guaranteed delivery dates that are enumerated in the responses to Interrogatories DBP/USPS-31 and 161 through 165. This does not include articles that are missent or are subject to a delay of an established and scheduled transportation service.

This interrogatory seeks information as to "all instances" in which Express Mail service guarantees may not be achieved due to the fact that the Express Mail is sent to a remote post office, such as those offices that do not receive Express Mail delivery six-days-per-week. The Postal Service objected to this interrogatory on the grounds of relevance, improper scope, and undue burden.

¹ A motion for late acceptance of this Opposition is also being filed today.

The Postal Service noted that the detailed operational information sought in this interrogatory about such an extremely small number of offices is not materially relevant to this proceeding, and that the minimal (if any) contribution to the record that a response might make would clearly be outweighed by the substantial burden that would be required to provide a response.

In his Motion to Compel, Mr. Popkin argues that the subject matter of this interrogatory is relevant because “it goes to the very heart of the value of service of Express Mail” within the meaning of § 3622(b)(2).² Elaborating on that point, Mr. Popkin argues that mailers “are interested in knowing with some level of certainty when to expect [that] their Express Mail will be delivered.”³ He also challenges the Postal Service’s burden estimate, alleging that this information should be “fairly easy” to get from the field.⁴

At the outset, it is important to remember the fundamental purpose of this proceeding, which is to recommend the *rates* for Express Mail on a *nationwide* basis. As such, the relevance of interrogatories that inquire into the operational specifics of Express Mail service is predicated on the level of detail that they seek: as Presiding Officers have consistently noted in past omnibus cases, the Postal Service need only to respond to interrogatories that seek “general information” about Express Mail,⁵ which bears materially on the “overall value of service” of Express Mail.⁶ Therefore, there is a “rule of reason [which] limits the

² See Popkin Motion at 1-2.

³ *Id.* at 2.

⁴ *Id.* at 3.

⁵ See POR No. R97-1/53 at 5.

⁶ See POR No. R2001-1/28 at 5.

extent to which [the] operational details [of Express Mail service] are appropriate for exploration in discovery.”⁷

The interrogatory at issue here clearly falls outside the proper scope of discovery into Express Mail service in this proceeding. As Mr. Popkin cannot deny, this interrogatory inquires into Express Mail service to an extremely small number of offices located in remote, sparsely populated areas of the country (primarily in Alaska), and thus concerns an atypical, and very small, amount of Express Mail volume. The detailed information that Mr. Popkin seeks about such a tiny and non-representative subset of Express Mail goes well beyond the type of general service information that is relevant to this proceeding, and has no relation to the “overall value of service” of Express Mail. Instead, by seeking an exhaustive response of “all instances” in which the guarantee for an Express Mail piece may not be met due to the remoteness of the destination office (which would presumably require a response based on specific offices and specific days of the week), Mr. Popkin is seeking excessive and immaterial operational detail concerning Express Mail service.

Commission precedent supports a conclusion that this interrogatory is irrelevant and of improper scope. In Docket No. R2005-1, the Presiding Officer denied a Motion to Compel by Mr. Popkin that argued that a complete and up-to-

⁷ See POR No. R2005-1/19 at 3. See also 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 seek “highly specific” details about Express Mail); POR No. R97-1/53 at 5 (stating that “generally the operational details of a service are beyond the scope of material issues in a rate proceeding”).

date listing of offices without six-day-a-week delivery of Express Mail, as requested by interrogatory DBP/USPS-88 in that Docket, was necessary in order to evaluate the value of Express Mail service.⁸ The Presiding Officer stated that “the relevance of [such] updated information in this rate case is questionable at best since both parties agree that it affects an extremely small number of offices.”⁹ The Presiding Officer ultimately held that a response to that interrogatory would make only a marginal contribution to the record, which was outweighed by the substantial burden that responding would place on the Postal Service.¹⁰

Responding to this interrogatory would be equally as burdensome as responding to interrogatory DBP/USPS-88 in Docket No. R2005-1, and Mr. Popkin’s attempt to cast doubt on the burden that would be required is based on

⁸ See POR No. R2005-1/43 at 2-3.

⁹ *Id.* at 3.

¹⁰ *Id.* Similarly, in Docket No. R2000-1, the Presiding Officer denied a Motion to Compel from Mr. Popkin that made identical arguments as are contained in this Motion to Compel. See POR No. R2000-1/56 at 10-11 (denying Mr. Popkin’s Motion to Compel Responses to DBP/USPS Interrogatories DBP/USPS-19-23, 24 (a-c, e), 25, 26(c-e), 28-36, and 98(b-e), which argued, at 3-4, that responses to interrogatories DBP/USPS-28-36 were necessary “to show that the Postal Service is making claims of guaranteed delivery of Express Mail in instances where it is physically impossible to meet that commitment.”); POR No. R2000-1/74 at 2 (stating that POR No. 56 in that docket “made it abundantly clear that the Postal Service need not provide the detailed information requested in DBP/USPS-28-36”).

In addition, in Docket No. R2000-1, the Presiding Officer denied a Motion to Compel from Mr. Popkin with respect to an interrogatory that inquired into customer expectations concerning delivery to remote areas. See POR No. R2000-1/74, at 4. The Presiding Officer noted that even if one accepted Mr. Popkin’s contention that a number of customers will be misled and thus upset by the promise of guaranteed delivery in situations where the guarantee is not achievable due to the remoteness of an office, that still did not make “customers’ expectations relevant in a ratemaking context.” *Id.*

fallacious reasoning. First, despite Mr. Popkin's apparent belief to the contrary, it would not be a simple matter to get this information from the field.¹¹ A list of offices that do not receive Express Mail delivery six-days-per-week is not maintained by the Postal Service in the normal course of business, and providing an updated list would require a *manual* review of Postal Service data systems by logistical experts in the field. The Postal Service would therefore have to dedicate field resources for likely hundreds of hours in order to ensure that it provides a comprehensively updated list.

Similarly, Mr. Popkin's attempt to argue, at page 4 of his Motion, that the burden of providing a response to this interrogatory should be "considerably less" than the burden required to provide the Express Mail Sunday/holiday street and PO Box delivery lists completely ignores the fact that those lists are maintained by the Postal Service in the normal course of business, whereas a listing of offices without six-day-a-week delivery of Express Mail is not. Thus, the mere fact that those lists are larger than a list of offices without six-day-a-week delivery of Express Mail says nothing about the burden that would be required to compile the latter. The Sunday/holiday lists are centrally managed by Headquarters through the Express Mail Change Control Board (EMCCB) process,¹² and as

¹¹ Mr. Popkin's assertion that this information should be easily obtainable from the field echoes an argument that he made in Docket No. R2005-1. See David B. Popkin Motion to Compel Response to Interrogatories 88, 90, 103, 129, 145, and 147, at 2-3 (arguing that "this information should be available at the area offices for their own areas and therefore easily obtainable"). The Presiding Officer did not find this argument convincing. See POR No. R2005-1/43 at 3 (noting that "full compliance with Mr. Popkin's request would require substantial Postal Service resources").

¹² For a description of the EMCCB, see Docket No. R2005-1, Response of the

such any changes to those lists must be approved by the EMCCB. The lists were also provided in the format in which they are maintained, meaning there was no burden involved with providing them in response to interrogatories DBP/USPS-28 and 160. In this case, however, a listing of offices without six-day-a-week delivery of Express Mail is not centrally managed by Headquarters, and could only be provided following a special, manual review of Postal Service data systems on the part of field personnel. The Postal Service reaffirms the burden estimate it provided in its Objection to this interrogatory.

In the end, the manner in which this issue was addressed in Docket No. R2005-1 provides a sound basis for resolving this discovery dispute. In that Docket, as has been noted above, Mr. Popkin submitted a substantively similar interrogatory to the one at issue here, requesting a listing of all post offices nationwide that do not have Express Mail delivery six-days-per-week.¹³ The Postal Service responded by stating that any such listing would be “substantially identical in both size and scope” to the listing of those offices provided in Docket No. R2001-1.¹⁴ The Postal Service also responded to a follow-up interrogatory from Mr. Popkin indicating the extent to which the specific data provided in Docket No. R2001-1 list was still valid.¹⁵

Postal Service to OCA/USPS-12(c).

¹³ See Docket No. R2005-1, DBP/USPS-88.

¹⁴ See Docket No. R2005-1, Response of the Postal Service to DBP/USPS-88 (citing the response of the Postal Service to DBP/USPS-65(d) in Docket No. R2001-1). As also noted above, *supra* at 3-4, the Presiding Officer denied a subsequent motion by Mr. Popkin to compel a full update of the Docket No. R2001-1 list. See POR No. R2005-1/43, at 2-3.

¹⁵ See Docket No. R2005-1, Response of the Postal Service to DBP/USPS-127 (as revised September 7, 2005).

In this Docket, the Postal Service is prepared to state that a complete and up-to-date response to this interrogatory would be substantially identical to the information provided in Docket No. R2005-1 (and, by extension, Docket No. R2001-1). As such, the Postal Service will file a response to this interrogatory citing those interrogatory responses in Docket No. R2005-1 dealing with this issue (specifically, the responses of the Postal Service to interrogatories DBP/USPS-88 and DBP/USPS-127 in that Docket). Based on the fundamental principle that a “rule of reason” limits the extent to which the operational details of Express Mail are relevant to an omnibus rate case, the information provided in Docket No. R2005-1 is clearly sufficient for purposes of this proceeding.¹⁶ The Postal Service should not be required to devote the substantial resources that would be required to comprehensively answer this interrogatory, a burden that Mr. Popkin cannot and has not refuted, when such an effort would at the most discover only minor differences from the information provided in Docket Nos. R2005-1 and R2001-1.

Overall, while Mr. Popkin may be interested in the issue of Express Mail delivery to remote post offices,¹⁷ this is not the proceeding in which to engage in an extensive exploration of that issue. This proceeding is directed towards establishing the rates for Express Mail on an aggregate, nationwide basis, and

¹⁶ In particular, to the extent that Mr. Popkin wishes to argue that the “value of service” of Express Mail within the meaning of § 3622(b)(2) is materially affected by the fact that there are a handful of offices that do not receive Express Mail delivery six-days-a-week, he would have more than enough information in which to do so. Because of this, the Postal Service should not be required to devote the substantial resources that would be required to provide a complete and up-to-date list.

¹⁷ See Popkin Motion at 2.

detailed information about such a miniscule and highly unrepresentative portion of Express Mail simply has no material relevance to the actual or relative value of service of Express Mail within the meaning of § 3622(b)(2). The minimal (if any) contribution to the record that a complete and updated response to this interrogatory would have is also clearly outweighed by the substantial burden that would be required to respond. Because of this, and because the Postal Service's response to DBP/USPS-167 will provide Mr. Popkin with more than enough information about this issue at a level of detail appropriate to this proceeding, the Postal Service respectfully requests that the Presiding Officer deny Mr. Popkin's motion to compel.

Respectfully submitted,

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