

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 INTERROGATORIES
DBP/USPS-381 AND 413 THROUGH 414

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

August 15, 2006

Respectfully submitted,

R20061MTC17A381414

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On July 24, 2006, I submitted Interrogatories DBP/USPS-381 and 413 through 414. On August 3, 2006, the Postal Service filed an objection to these interrogatories.

The interrogatories read as follows:

DBP/USPS-381 Please refer to your response to Interrogatory DBP/USPS-166 subpart a. The response that was provided did not address whether there are any restrictions that exist for setting various cut-off times, such as, must the cut-off time for 2-day Express Mail be no earlier than 5 PM. Please reanswer the original Interrogatory and provide the rationale for your response.

DBP/USPS-413 Please refer to your response to Interrogatory DBP/USPS-206. Please have the expert on Express Mail advise any reason[s] that he/she is aware of that would allow for one not to consider that the average price per Express Mail article would be the same for those articles that are delivered on time as compared to those that are not delivered on time.

DBP/USPS-414 Please refer to your response to Interrogatory DBP/USPS-207. Please have the expert on Express Mail advise any reason[s] that he/she is aware of that would allow for one not to consider that the average price per Express Mail article would be the same for those articles that are not delivered on time and for which a claim for postage refund was filed as compared to those that a claim for postage refund was not filed for.

The Postal Service bases their objection on only three words, "grounds of relevance."

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. By just stating that the requested responses are irrelevant 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.

Interrogatory DBP/USPS-381 is attempting to follow-up on what appears to be an incorrect response that was received to Interrogatory DBP/USPS-166 as follows:

DBP/USPS-166.

[a] Please discuss and explain any restrictions or criteria considered with respect to the setting of a cut-off time at a specific acceptance point. Please distinguish between overnight vs. non-overnight guarantees and the relationship of the cut-off time to the retail window service hours or day of the week.

[b] If an office is permitted to establish a cut-off time prior to the opening of the retail service window hours - such as a cut-off at 7 AM and the window doesn't open until 8 AM, how can a mailer deposit Express Mail that day?

RESPONSE:

(a) The cutoff times at individual acceptance units are set by officials in the field, and are generally designed to connect with a planned set of dispatches necessary to meet the delivery guarantee.

(b) A mailer can deposit Express Mail whenever an office is open.

I believe that there is a requirement that the cut-off time for Second Day Express Mail Service must be set at 5 PM or later as noted in DMM Section 113.4.3.3.

4.3.3 Acceptance Times

Express Mail Second Day Service shipments must be presented by 5 p.m., or such later time authorized by the postmaster. For Second Day Service, the USPS refunds postage for an item not available for customer pickup or for which delivery was not attempted, subject to the standards for this service, unless the item was:

- a. Delayed by strike or work stoppage.
- b. Made available for claim, or delivery was attempted within the times specified by the standards for this service, and then the item was delayed because forwarding or return service was provided.

The response that the Postal Service gave to Interrogatory DBP/USPS-166 did not make reference to this apparent requirement even though the Interrogatory was designed to solicit that response along with other criteria.

Proponents of discovery requests should be able to expect that they will receive full and correct responses to their Interrogatories.

The apparently incorrect response that was made to Interrogatory DBP/USPS-166 should not be allowed to stand in the record and the Postal Service should be required to make the appropriate correction and that would make that relevant to this Docket.

Interrogatories DBP/USPS-413 and 414 are attempting to follow-up on the incomplete responses that were made to the original Interrogatories DBP/USPS-206 and 207.

DBP/USPS-206. Please refer to your response to Interrogatory DBP/USPS-26. Please confirm, or explain if you are unable to confirm, that there is no reason to believe that the average price per Express Mail article would be the same for those articles that are delivered on time as compared to those that are not delivered on time.

RESPONSE:

The Postal Service has not studied this issue, and therefore has no basis upon which to confirm or not confirm this supposition.

DBP/USPS-207. Please refer to your response to Interrogatory DBP/USPS-26. Please confirm, or explain if you are unable to confirm, that there is no reason to believe that the average price per Express Mail article would be the same for those articles that are not delivered on time and for which a claim for postage refund was filed as compared to those that for which a claim for postage refund was not filed.

RESPONSE:

The Postal Service has not studied this issue, and therefore has no basis upon which to confirm or not confirm this supposition.

Since the Postal Service is the party that has all of the information on Express Mail statistics, the fact that they have not studied a particular condition should not allow them to avoid providing the response to the original Interrogatories. However, I was aware of the potential burden that might occur if the Postal Service were to conduct the necessary study to provide the desired information. On that basis, I decided that it would be appropriate to have the expert on Express Mail advise any reason[s] that he/she is aware of that would allow for the assumptions that I wanted to make to evaluate the extent of Express Mail refunds.

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.

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 15, 2006
