

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Postal Rate and Fee Changes

Docket No. R2006-1

PRESIDING OFFICER'S RULING
CONCERNING MOTIONS TO COMPEL RESPONSES TO INTERROGATORIES
DBP/USPS-45a, 46a, 47a, 48b, 52, 53, 59, 68, 83, 91, 94, 103 AND 104

(Issued July 20, 2006)

David B. Popkin has filed three motions to compel responses to a series of interrogatories: DBP/USPS-45a, 46a, 47a, 48b, 52, 53, 59, 68, 83, 91, 94, 103 and 104.¹ The rulings on the individual interrogatories are provided below.

DBP/USPS-45a, 46a, 47a, 48b, 52, 53, 68, and 83. These interrogatories seek information on the EXFC and PETE programs. The Postal Service responded to each interrogatory on June 19, 2006 by stating: "The requested information is being researched for use in a supplemental response."² Because there is no indication when the responses will be forthcoming, and no objection to the motion to compel has been filed, the motion to compel with respect to DBP/USPS-45a, 46a, 47a, 48b, 52, 53, 68

¹ David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-91 and 94, July 3, 2006; David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-45 subpart a, 46 subpart a, 47 subpart a, 48 subpart b, 52, 53, 59 subparts a through c and e through k, 68, 83, 103, and 104, July 5, 2006; David B. Popkin Motion to Compel Response to Interrogatory DBP/USPS-59 subpart d, filed July 5, 2006. The interrogatories were originally filed as parts of: Interrogatories of David B. Popkin to the United States Postal Service [DBP/USPS-43-85], June 5, 2006; Interrogatories of David B. Popkin to the United States Postal Service [DBP/USPS-88-95], June 8, 2006; and Interrogatories of David B. Popkin to the United States Postal Service [DBP/USPS-99-104], June 14, 2006.

² In response to DBP/USPS-83, the Postal Service states that PETE no longer exists. In many instances, this may be a sufficient response to portions of interrogatories that refer to PETE.

and 83 is granted. Responses (or a status report on the progress towards filing responses) shall be filed by July 28, 2006.

DBP/USPS-59. This multipart interrogatory explores issues related to the EXFC, PETE and Express Mail programs. Mr. Popkin asserts that the interrogatory was filed to determine whether all Performance Clusters are evaluated equally in the EXFC program.

DBP/USPS-59

- [a] Please advise why presorted First-Class Mail is not measured by the EXFC program.
- [b] Please advise and provide the reasons for all other categories of First-Class Mail that are not measured by the EXFC program.
- [c] Please provide a breakdown of the total number of EXFC reporters utilized for the most recent available time for each of the following address categories:
 - [1] Residential City Delivery customer
 - [2] Business City Delivery customer
 - [3] Post Office Box customer
 - [4] General Delivery customer
 - [5] Rural Delivery customer
 - [6] Highway Contract Delivery customer
 - [7] Other [please specify]
- [d] For the ZIP Codes that are included in each of the performance clusters that are part of the EXFC program, please provide the total number of delivery points in each of the seven categories shown in subpart c.
- [e] Please provide a similar breakdown showing the number of mailpieces received by EXFC reporters during a reporting period in each of the seven categories shown in subpart c.
- [f] Same as subpart d except provide the total number of mailpieces received by all addressees in each of the seven categories shown in subpart c.
- [g] Please provide the level of confidence the data represents with the use of the number of reporters as shown in subpart c are utilized to measure the data for all of the potential addresses as shown in subpart d and the number of mailpieces shown in subpart e are utilized to measure the total mail volume shown in subpart f. Does the level of confidence change when the individual Performance Cluster data is evaluated? If so, please discuss and explain.
- [h] Please provide similar information for the PETE program and the Express Mail program.

- [i] Are the number of reporters utilized based on the number of potential addresses in an area or are the number of mailpieces tested based on the total number of mailpieces in the area or both? Please discuss the reasons.
- [j] Please discuss the relative percentages of subpart c compared to subpart d and subpart e compared to subpart f as they are spread across the eighty-some Performance Clusters that are in the program. In other words, provide data that shows that all involved Performance Clusters are evaluated equally.
- [k] Please discuss and explain any other criteria that are evaluated to ensure equal treatment between Performance Clusters, such as, whether the Performance Cluster does or does not make collections that comply with the Postal Operations Manual.

The Postal Service objects to subpart d of this interrogatory on the grounds of relevance, materiality, and undue burden. It estimates it may take as much as several weeks of work to formulate a response.³ The objection notes the interwoven nature of the subparts and indicates that a response to subpart f may not even appear possible. It further notes that responses to other subparts were not provided because nuances in the questions went further than initially recognized.

Although the Postal Service technically only objected to subpart d, the objection is broad enough that it will be considered an objection to the entire interrogatory. Mr. Popkin's motion does not indicate any reason why a response to this interrogatory should be compelled that would justify requiring the Postal Service exerting several weeks of effort to formulate a response. Much information has been provided on the EXFC program in previous interrogatory responses. The level of detail required by this interrogatory does not appear to add significantly to the understanding of EXFC as it relates to this rate case. The motion to compel a response to DBP/USPS-59 is denied.

DBP/USPS-91. This interrogatory explores the establishment of collection box collection times as represented in the Postal Operations Manual (POM). Mr. Popkin argues that this is relevant to the value of service of First-Class Mail and Priority Mail.

³ Objection of United States Postal Service to Interrogatory of David B. Popkin (DBP/USPS-59(d)), June 20, 2006.

- DBP/USPS-91** Section 313.1b of the Postal Operations Manual [POM] states, “Arrange schedules consistent with requirements of the local community and timely handling of mail at the processing point.” Sections 321 through 326 provide detailed requirements for collection boxes. For example, Section 322.231 requires Time Decal Boxes to have two collections Monday through Friday with the last collection at 5 PM or later.
- [a] May a local post office provide a condition [such as a 4 PM last weekday collection in front of the post office] where compliance of the detailed requirements covered in Sections 321 through 326 is not met by stating that the condition is necessary to meet the general requirements of Section 313.1b?
 - [b] If so, please discuss the reasons for this action.
 - [c] Please confirm, or explain if you are unable to confirm, that the requirements of Part 3 of the POM are mandatory at all city delivery offices as noted in Section 311.
 - [d] Please advise any sections of Part 3 of the POM that are not 100% mandatory due to changes in policy such as Section 322.233 which relates to Sunday collections.
 - [e] When will Part 3 of the POM be updated to cover any items covered in response to subpart d?

The Postal Service objects to this interrogatory arguing that it lacks relevance and materiality in the context of the omnibus rate proceeding.⁴ Conceding that actual service levels may constitute a relevant issue, the Postal Service asserts that compliance with the POM does not. The Postal Service further attempts to distinguish that “what” the actual level of service is may be relevant; however, “why” collection service happens to be at that level is not relevant. It notes that the POM is an internal postal document, thus the interrelationship between various provisions of the POM, or whether it has been updated, are extraneous to the relative value of service issues that might have an effect of recommended rates.⁵

The collection box policy descriptions provided in the POM are relevant to the instant proceeding as far as they are an indication of actual Postal Service policy. This

⁴ Objection of the United States Postal Service to Interrogatories of David B. Popkin (DBP/USPS-91, 94), June 19, 2006, at 1-2 (Objection).

⁵ Reply in Opposition of the United States Postal Service to the Motion to Compel of David B. Popkin (DBP/USPS-91, 94), July 10, 2006, at 1-2 (Reply).

could be relevant to the value of service related to the collection of mail. Subparts a through d are reasonably calculated to furthering an understanding of the Postal Service's collection box policy. If the POM does not represent actual policy, the Postal Service should explain what the current policy is. The motion to compel is granted with respect to subparts a through d.

The Commission previously recommended that the Postal Service revise the collection box sections of the POM for consistency and to represent current policy. See Commission Report Complaint on Sunday and Holiday Collections, Docket No. C2001-1, issued November 5, 2002. Updating the POM at that time might have obviated this entire interrogatory. However, the POM is not a document that the public would normally rely upon, and whether or not it is up to date or is being complied with is not relevant to the instant proceeding (other than as an indication of actual Postal Service policy). The Postal Service has the discretion to update its internal documents that are not primarily intended for the general public as it chooses. The Postal Service is not required to provide a response to subpart e.

DBP/USPS-94. This interrogatory seeks information concerning the *Disney* and *Garden Bouquet* stamped stationary. Mr. Popkin asserts that the interrogatory seeks valid cost data, and a response is required to ensue that there is no cross-subsidization.

DBP/USPS-94 With respect to the stamped letter sheets [Disney and Garden Bouquet] that are the subject of Docket C2004-3,
[a] Please advise the number of each of the two items that were printed.
[b] Please advise the cost for each of the two items. Please describe in detail how the cost was calculated and the items that are included in the cost data and their source.

The Postal Service contends that the issues addressed by this interrogatory are not relevant to this docket because the information sought is not related to the rates, fees, and classifications proposed by the Postal Service.⁶ In addition, the issue of whether the items mentioned are subject to the Commission's jurisdiction is pending in Docket No. C2004-3. If the Commission asserts jurisdiction in Docket No. C2004-3, the

⁶ Objection at 2; Reply at 3-4.

Postal Service acknowledges that the information could be relevant in a subsequent proceeding.

The Commission currently is considering the unique issues related to the *Disney* and *Garden Bouquet* stamped stationary in Docket No. C2004-3. Issues related to this particular stamped stationary are more appropriately addressed in that forum. The motion to compel with respect to DBP/USPS-94 is denied.

DBP/USPS-103 and 104. These interrogatories seek information on the processing of change-of-address orders. The interrogatories were filed on June 14, 2006, with responses due on June 28, 2006. The Postal Service has not filed timely responses nor objected to either interrogatory. The motion to compel with respect to DBP/USPS-103 and 104 is granted. Responses shall be filed by July 28, 2006.

RULING

1. The David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-45 subpart a, 46 subpart a, 47 subpart a, 48 subpart b, 52, 53, 59 subparts a through c and e through k, 68, 83, 103, and 104, filed July 5, 2006, is granted with respect to 45a, 46a, 47a, 48b, 52, 53, 68, 83, 103 and 104, and denied with respect to 59(a-c) and (e-k). Responses shall be provided by July 28, 2006.
2. The David B. Popkin Motion to Compel Response to Interrogatory DBP/USPS-59 subpart d, filed July 5, 2006, is denied.
3. The David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-91 and 94, filed July 3, 2006, is granted with respect to DBP/USPS-91(a-d) and denied with respect to DBP/USPS-91(e) and 94. Responses shall be provided by July 28, 2006.

George Omas
Presiding Officer