

BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

POSTAL RATE AND FEE CHANGES

Docket No. R2006-1

OPPOSITION OF THE UNITED STATES POSTAL SERVICE TO  
DAVID B. POPKIN MOTION TO COMPEL RESPONSES TO  
INTERROGATORIES 110 THROUGH 113, and 115 THROUGH 120  
(July 31, 2006)

The United States Postal Service hereby opposes the motion of David B. Popkin to compel responses to interrogatories to DBP/USPS-110-113 and 115-120, filed on July 24, 2006. Mr. Popkin filed interrogatories DBP/USPS-110-113 on June 27, 2006, and the Postal Service filed objections to them on July 10, 2006. Mr. Popkin filed interrogatories DBP/USPS-115-120 on June 28, 2006, and the Postal Service objected to them on July 10, 2006.

**DBP/USPS-110-113**

The Postal Service objected to these four interrogatories on the bases of relevance, materiality, and redundancy. They all followed up on DBP/USPS-85, which was asked and partially answered as follows:

**DBP/USPS-85.** Please advise the compensation, if any, that is provided to droppers, reporters, and return address panel members in both the EXFC and PETE programs.

**RESPONSE:**

A partial objection to this interrogatory has been filed. Those who provide these professional services are compensated for their time.

DBP/USPS-110-13 requested employment information about the droppers, reporters, and return address panel members, all of whom do not work for the Postal Service, but for an independent contractor:

**DBP/USPS-110**

[a] Please refer to your response to Interrogatory DBP/USPS-85. Please confirm, or explain if you are unable to confirm, that you are considering the services that are provided by droppers, reporters, and return address panel members in both the EXFC and PETE programs to be professional services.

[b] Please define the term professional services as used in the original response.

**DBP/USPS-111**

[a] Please refer to your response to Interrogatory DBP/USPS-85. Please advise if any or all of the droppers, and/or reporters, and/or return address panel members are employees of the EXFC/PETE Contractor.

[b] If so, are they paid compensation at or above the minimum wage?

**DBP/USPS-112**

[a] Please refer to your response to Interrogatory DBP/USPS-85. Please advise if any or all of the droppers, and/or reporters, and/or return address panel members are independent contractors of the EXFC/PETE Contractor.

[b] If so, are they paid compensation at or above the minimum wage?

**DBP/USPS-113**

[a] Please refer to your response to Interrogatory DBP/USPS-85. Please advise if any or all of the droppers, and/or reporters, and/or return address panel members are volunteers of the EXFC/PETE Contractor.

[b] If so, are they paid a cash compensation at or above the minimum wage?

[c] If so, are they paid a cash compensation less than the minimum wage?

[d] If so, are they paid a token non-cash compensation?

[e] If so, are they not provided any compensation?

The questions all request information about the relationship between a contractor and its own employees. None of this information is relevant or material to the ratemaking process. Moreover, to the extent that any relevant information is being sought by these interrogatory, the question has been asked and answered by the Postal Service in its response to DBP/USPS-85.

In his motion to compel, Mr. Popkin posits that his interrogatories "are attempting to determine the reliability of EXFC data." Motion to Compel at 3. He presents no

reason, however, to conclude that the status of the droppers, reporters, and return address panel members as employees, independent contractors, or volunteers (who perplexingly might still be paid a cash compensation) is relevant to the reliability of EXFC data.

**DBP/USPS-115-118**

These four interrogatories asked for numerical information about how many people are employed by the independent contractor:

**DBP/USPS-115** Please advise the number of droppers that are being utilized in the First-Class Mail EXFC Program.

**DBP/USPS-116** Please advise the number of droppers that are being utilized in the Priority Mail PETE Program.

**DBP/USPS-117** Please advise the number of return address panel members that are being utilized in the First-Class Mail EXFC Program.

**DBP/USPS-118** Please advise the number of return address panel members that are being utilized in the Priority Mail PETE Program.

This information about the contractor's employees is irrelevant and immaterial to the ratemaking process, as well as unnecessary for an understanding of how EXFC and PETE operate.

Mr. Popkin claims that "[t]he number of droppers and return address panel members when evaluated with the volume of activity in the EXFC and PETE programs will provide an indication of the reliability of the data," Motion to Compel at 3. He has not, however, provided a basis to draw any connection between the two. Moreover, while Mr. Popkin correctly points out that the Postal Service failed to object to a similar interrogatory about reporters, Motion to Compel at 3, citing Response to DBP/USPS-52, the Postal Service respectfully submits that a failure

to object to one interrogatory should not bar a participant from challenging a future interrogatory, lest too great an incentive be placed on a party to file objections early in the ratemaking process.

**DBP/USPS-119-120**

These two questions asked for information that is proprietary and commercially sensitive, in addition to being irrelevant and immaterial:

**DBP/USPS-119**

[a] Does the EXFC and/or PETE Programs provide written instructions to the members of the return address panel?

[b] If not, please explain how they are trained.

[c] If so, please provide copies.

**DBP/USPS-120** Please refer to the reporter and dropper EXFC and PETE instructions that are referenced in Interrogatories DBP/USPS-62, 65, 79, and 80 and to any instructions that exist in response to Interrogatory DBP/USPS-119.

[a] Please confirm, or explain if you are unable to confirm, that these instructions are provided to each and every member of the group to which they apply [i.e. the EXFC Dropper instructions are provided to the EXFC Droppers, etc.]

[b] Please advise the number of pages and the size of page for each of the instruction "manuals".

[c] Please advise how each of the instruction "manuals" have been marked confidential in accordance with 18 U.S.C. § 1905.

[d] Please provide the specific wording that is used to provide the droppers/reporters/return address panel members of their obligations under 18 U.S.C. § 1905.

In Presiding Officer's Ruling No. R2006-1/14, the Presiding Officer denied a motion by Mr. Popkin to compel responses to DBP/USPS-62, 65, 79 and 80, which requested copies of the instructions given to droppers and reporters for the EXFC and PETE measurement systems. The Presiding Officer concluded that there was "no explanation of how this material is necessary for an understanding of any aspect of the Postal Service's direct case, or how it might be reasonably calculated to lead to admissible

evidence." Id. at 2. He further noted that USPS-LR-L-134 "already provides expansive explanation of the EXFC and PETE process, which a party can use to understand the issues involved." Id.

The same reasoning applies to these questions. Moreover, the instructions at issue were developed by a contractor and are considered proprietary by both the Postal Service and the contractor. They are marked confidential in accordance with 18 U.S.C. § 1905. The Postal Service does not release this information internally to prevent manipulation of the system. The Postal Service does not release this type of information externally because public disclosure would risk duplication of the contractor's process by its competitors.

For the reasons discussed above, the Postal Service opposes Mr. Popkin's motion to compel responses to interrogatories DBP/USPS-110-113 and DBP/USPS-115-120.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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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.

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