

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

Postal Rate and Fee Changes

Docket No. R2006-1

PRESIDING OFFICER'S RULING  
DENYING WITHOUT PREJUDICE MOTION TO COMPEL  
RESPONSES TO INTERROGATORIES DBP/USPS-573-598

(Issued October 19, 2006)

On September 21, 2006, David B. Popkin filed a motion to compel responses to interrogatories DBP/USPS-573 through 598.<sup>1</sup> The Postal Service objects to providing responses to these interrogatories arguing that they are inappropriate follow-up, cumulative, lack relevance, and are not material.<sup>2</sup>

*Previously Asked and Answered Questions.* Interrogatories DBP/USPS-573, 574, 575(a), 576, 577(a), 578, and 581-585 share the following form:

Please refer to your response to Interrogatory **[Referenced Interrogatory]**. Since the Postal Service is just beginning the process of examining how to implement the changes necessary to effectuate its plans reflected in revised footnote 2 of USPS-T-38. Please respond to the original Interrogatory and advise the present status of the plans and please provide updates to the plans until either the final plans have been arrived at or the record in this Docket has been closed.

The referenced interrogatories, in order, are DBP/USPS-476; DFC/USPS-T38-15-18, and 66; DBP/USPS-484-487, and 419. Very similar to the above, interrogatories DBP/USPS-586-598 share the following form:

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<sup>1</sup> David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-573 through 598, September 21, 2006.

<sup>2</sup> Objection of the United States Postal Service to Interrogatories DBP/USPS-573-598, September 8, 2006.

Please refer to your response to Interrogatory **[Referenced Interrogatory]**. Since the Postal Service is just beginning the process of examining how to implement the changes necessary to effectuate its plans reflected in revised footnote 2 of USPS-T-38, I would appreciate receiving a response to the original Interrogatory that was asked and not make an assumption that the revised footnote 2 filed on August 10, 2006 will moot the need for a response to the Interrogatory. Please respond to the original Interrogatory and advise the present status of the plans and please provide updates to the plans until either the final plans have been arrived at or the record in this Docket has been closed.

The referenced interrogatories, in order, are DBP/USPS-420-426, 428, 429, and 431-434.

In essence, these interrogatories ask the Postal Service to revisit previously asked and answered interrogatories. The new, renumbered interrogatories represent a problematic use of the interrogatory process. By Commission rule, participants are under an obligation to supplement (or replace) interrogatory responses, if necessary, up until the date the answer could have been accepted into evidence as written cross-examination. Rule 26(f). The Postal Service is under a further obligation where a participant needs to obtain information available only from the Postal Service (Rule 25(a)), or where witness or institutional responses are filed and designated late in the proceeding.

Re-asking interrogatories in this manner will lead to a confusing and cumbersome record. The new, renumbered interrogatories do not stand on their own. A reader is forced to trace back through sometimes multiple interrogatories to arrive at the question asked. In most cases, all interrogatories in the series will have to be designated into the record in order to understand the intent of the question. Given that the Postal Service has provided responses to all lead-in interrogatories, providing a new response under a new interrogatory number and designating it into the record will place multiple answers to the same question in the record. Striking the lead-in response becomes cumbersome and confusing since the lead-in question must remain on the record in order to understand the follow-up question.

Mr. Popkin's motion could be interpreted as a request to require the Postal Service to update the original referenced interrogatories. It also could seek to focus attention on whether the original referenced interrogatory requested information on the service as it is provided today or on the service as it is proposed. This ambiguity makes it difficult to evaluate whether a response might provide material information on issues before the Commission.

Several Postal Service responses indicate that it is "just beginning the process of how to implement," or "specific procedures have not yet been developed." If currently accurate, such answers are sufficient. Such information need not be constantly repeated, and a status report on plans still under consideration or a description of plans in nascent form will not add to the record and need not be provided.

Mr. Popkin may review the record on specific topics that are the subjects of his follow-up questions. If he has cause to believe Postal Service responses to specific questions are inaccurate or inappropriate, he may pose focused, follow-up questions so long as the questions explain why previous answers are deemed unclear or likely to be inaccurate. In preparing such questions, Mr. Popkin should pay particular attention to avoiding a focus on minutiae unlikely to assist the Commission to evaluate proposed rate and classification changes.<sup>3</sup>

*New Questions.* Interrogatory DBP/USPS-575(b) poses a new question seeking operational details concerning the application of a postage validation imprinter (PVI) strip.

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<sup>3</sup> Mr. Popkin's right to participate in the consideration of the Postal Service Request in this docket is not challenged. Nonetheless, he, as all participants, has the obligation to facilitate rather than obstruct the process. Mr. Popkin is not the only participant hampered by the Postal Service practice of proposing changes first, and then attempting to develop equitable, practicable implementation regulations. However, repetitious discovery requests do not clarify or contribute to the record. Mr. Popkin has already submitted more than 300 "follow-up" questions, far more than all other participants combined. Rate proceedings exist for the purpose of developing postage rates that balance statutory policies. Participation is provided to further this purpose, not to permit extensive inquiry into tangential topics such as service measurement at remote, low-volume facilities.

**DBP/USPS-575**

Please refer to your response to Interrogatory DFC/USPS-T38-16.

[b] Please confirm, or explain if you are unable to confirm, that once a customer who is aware that his/her single-piece/non-presort Bound Printed Matter mailpiece will require, for example, \$3.67 in postage is to just issue a PVI strip and take the mailpiece as opposed to obtaining 3-\$1 stamps, 1-50¢ stamp, 1-10¢ stamp, 1-5¢ stamp, and 1-2¢ stamp, and then waiting while the customer affixed the stamps, and then canceling the stamps, and then affixing a “00” PVI strip to cover the aviation security requirement.

The response to referenced interrogatory DFC/USPS-T38-16 indicates that “specific procedures applicable to various scenarios that might be envisioned have not yet been developed.” Thus, no new information will be gained through this interrogatory.

Interrogatory DBP/USPS-577(b and c) follow-up on referenced interrogatory DFC/USPS-T38-18.

**DBP/USPS-577**

Please refer to your response to Interrogatory DFC/USPS-T38-18.

[b] Please advise whether the ‘further consideration’ refers to action that will be taken in this Docket or in some future, yet to be filed, Docket.

[c] Please confirm, or explain if you are unable to confirm, that even if Bound Printed Matter is considered as a ‘commercial offering’, there will still be a number of instances which will still require the services of the retail window.

The response to referenced interrogatory DFC/USPS-T38-18 clearly describes the Postal Service’s goal with respect to Bound Printed Matter. Further consideration may always be given to accomplishing goals. Responding to this interrogatory will not add materially to the record.

The motion to compel a response to interrogatory DBP/USPS-579 is in effect an untimely motion to compel a response to interrogatory DFC/USPS-68.

**DBP/USPS-579**

Please refer to your response to Interrogatory DFC/USPS-68. Please provide the requested information. It is up to the proponent of the Interrogatory to determine whether or not to present the ‘popularity contest’ argument once the data has been received.

Interrogatory DBP/USPS-580 attempts to follow-up to referenced interrogatory DBP/USPS-483.

**DBP/USPS-580**

Please refer to your response to Interrogatory DBP/USPS-483. Please advise the significance and consequences to the mailer by the condition that you refer to as 'the service will not be offered at retail window.'

The question as posed is so broad as to make a responsive answer highly problematic. The record in this case now contains a significant number of answers to questions concerning single-piece Bound Printed Matter, many of them posed by Mr. Popkin. A Postal Service witness sponsoring the proposal in this area was available for oral questioning. If the response to DBP/USPS-483 gives rise to a more specific question not previously addressed through discovery, and not reasonably a topic for cross-examination, Mr. Popkin may submit that question.

**RULING**

The David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-573 through 598, filed September 21, 2006, is denied without prejudice, as described in the body of this ruling.

George Omas  
Presiding Officer