

Before The
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

EVOLUTIONARY NETWORK DEVELOPMENT)
SERVICE CHANGES, 2006)

Docket No. N2006-1

OFFICE OF THE CONSUMER ADVOCATE
MOTION TO COMPEL RESPONSE TO INTERROGATORY OCA/USPS-34(b)
(July 5, 2006)

Pursuant to Rules 21, 26(d) and 27(d) of the Rules of Practice of the Postal Rate Commission, the Office of the Consumer Advocate (“OCA”) hereby moves to compel Postal Service response to interrogatory OCA/USPS-34(attached).¹ The Postal Service has filed late objections on grounds the information is “privileged, commercially sensitive, and proprietary” and that its relevance is so tenuous that public disclosure is outweighed by proprietary interests.²

OCA’s interrogatory was filed on April 5, 2006. The Postal Service has indicated repeatedly that responses to these interrogatories would be forthcoming. A status report to the Presiding Officer on May 25 stated responses

¹ See attachment. Interrogatories OCA/USPS-34(a),(c-e) were answered June 16, 2006.

² “United States Postal Service Objections to Office of the Consumer Advocate Interrogatories (OCA/USPS-34(b),” June 23, 2006. (hereinafter “Objections.”) A motion for late acceptance of its objections was filed concurrently, “Motion of the United States Postal Service for Late Acceptance of its Objections to Office of the Consumer Advocate Interrogatory OCA/USPS-34(b).”

would be filed no later than June 5.³ The objections filed on June 23 are the first written indication an answer would not be forthcoming and for the first time expresses the grounds for failing to file a response.

Interrogatory OCA/USPS-34(b) asks for basic information about the “mathematical equations that describe the linear cost functions for each type of processing operation, operation size and shape type (e.g., the slope and the intercept values for each cost function.)”

This information is relevant and necessary for the Commission and the parties to gain a basic understanding of the linear cost functions. A response to this interrogatory is needed to make an informed judgment about the technical adequacy of this aspect of the END modeling process.

The objections raised by the Postal Service are without merit. A portion of the objections are similar to objections filed by the Postal Service to OCA/USPS-21(a-c) and the Postal Service has incorporated by reference its objections in response to those interrogatories.⁴ This motion will respond first to the objections incorporated by reference in the Postal Service’s pleading, essentially reiterating the arguments filed in the OCA’s motion to compel responses to interrogatory OCA/USPS-21(a-c), followed by response to the additional objections the Postal Service raises to this interrogatory.

³ “Notice of the United States Postal Service Regarding the Status of Outstanding Discovery Responses,” May 25, 2006.

⁴ Objections at 2.

In support of its objection, the Postal Service claims the END optimization model is used to analyze the feasibility of alternative Regional Distribution Center (RDC) -based networks and that the mathematical aspects “play no role in the process by which the Postal Service determines which service changes to consider or implement.”⁵ The objection concludes “any link between the END optimization model...and service changes at issue...is very tenuous, at best...”⁶

The Postal Service’s argument is obviously at odds not only with the genesis of this proceeding but also at odds with the testimony of the Postal Service’s own witnesses, not to mention the numerous interrogatory responses and the discussions at the technical conference where all participants focused primarily on the END model’s mathematical basis.⁷

The Proposal in this case specifically revolves around the link between the application of the END optimization model and the AMP process to determine appropriate operational consolidations that will change service nationwide. Not only the Request, but also the testimony of both Postal Service witnesses Shah and Williams, clearly link the END model with the changes being proposed that will impact service on a nationwide basis. The Request summarizes witness Shah’s testimony, stating that it “describes one of the analytical tools used in the feasibility studies that will determine the basic features of the future mail

⁵ Objections at 2.

⁶ *Id.* at 3.

⁷ USPS-LR-N2006-1/9, ‘Evolutionary Network Development Technical Conference Presentation Slides,’ April 28, 2006.

processing network.”⁸ Witness Shah’s testimony describes at length the END modeling process. It discusses the use of the END model for computer simulations, the criteria in evaluating realignment, the types of END models- optimization and simulation, the manner of updating the END model and the initial objective of the END strategy. (Shah testimony, USPS-T-1 at 7-12.)

Witness Williams even states that in the summer of 2005, “The initiation of a merger of the END model and the AMP process was thus underway.”⁹

Therefore, to now describe the END model as unlinked to the changes in nationwide service that will result from the Postal Service’s consolidation strategy is contrary to the obvious links expressed in the filings and subsequent portions of the record being compiled. The mathematical END model clearly has relevance to the consolidations that will be ordered by Postal Service management.

The purpose of OCA’s interrogatory is to permit review of the technical adequacy of the model. We fully understand the model does not make the ultimate decisions about consolidation; that is left for management after the further application of the AMP process. Although the AMP process does bring to light local problems, as we understand it, the optimization process looks initially for the optimal network as a whole. The END model points the way for Postal Service management to move ahead along the path of consolidation and impacts management’s primary decisions as to where to look for potential opportunities for consolidations. The END process and its mathematical formulas are the

⁸ Request at 3.

⁹ Williams USPS-T-2 at 9, lines 10-11.

engine that starts the management along the path of consolidation. If the input and output from that process do not provide appropriate network guidance, for whatever reason, the path mapped by the END process may be filled with pitfalls as a result of faulty verification and validation of the inputs or a misreading of the outputs. The adverse consequences may be recognized only after several consolidations have been completed. We believe it is essential that this record contain the information requested by OCA, for review by OCA, the parties and the Commission. The responsibility delegated to the Commission by §3661, to hold hearings under §§556 and 557 of title 5, is to insure that all aspects of the Postal Service's process are open for review and that a full record is compiled to support an advisory opinion.

In addition to the Postal Service's argument the material requested is of limited relevance, the Postal Service also objects to public disclosure of this material. It says the END model employs various algorithms, equations and formulas, many of which are contained in software obtained by the Postal Service from LogicTools, Inc.¹⁰

However, this interrogatory does not seek the equations, algorithms, and formulas found in the LogicTools, Inc. software. It seeks a mathematical specification of the optimization problem that the LogicTools, Inc. software is used to solve. There should be nothing proprietary about the specification of the model, and any number of public and private software packages could be used to find the solution to this optimization problem. If, in fact, the Postal Service is claiming that LogicTools, Inc. actually developed the model specifications for the

¹⁰ Objections at 3.

Postal Service as well as the solution, that by itself is not fair game for the model being declared proprietary.

If, indeed, proprietary material from LogicTools, Inc. is being requested, in reality the interrogatory is asking only for information that should be in the public domain. The Postal Service is asked to provide the slope and intercept values for each cost function for each type of processing operation. Cost functions for processing operations are routinely calculated by the Postal Service and included in rate cases as part of the cost attribution determination.

The Postal Service argues the formulas have commercial value and that it has applied for a patent to protect its commercial interests in the equations and formulas and other proprietary elements of the optimization model. The Postal Service cites to several cases suggesting they support nondisclosure of this information.¹¹ Reference to those cases indicates the facts of this case clearly compel disclosure of the information requested.

Two of the primary factors, discussed in the cases, weighing in favor of nondisclosure are the fact that the parties are competitors—not present in this case—and whether sufficient information can be gained from other sources—also is not applicable here.¹² On the other hand, the Postal Service recognizes the cases it cites specifically permit disclosure of patent application materials when the requesting party's interest outweighs the interest of secrecy. The

¹¹ The Postal Service cites, *inter alia*, *Fischer Imaging Corp. v. Lorad Corp.*, 148 F.R.D. 273, 274 (D. Colo. 1993) as standing for the proposition that a heightened relevance standard must be applied to compel disclosure of patent application materials.

¹² *Id.* at 274.

Postal Service's argument fails to note the most significant statement in the *Fischer* case which specifically recognizes the balance is tipped in favor of disclosure when there is a demonstration that the material requested has "direct relevancy."¹³ The direct relevancy of the mathematical information requested in this interrogatory already has been demonstrated, above. The interests of the Commission in gaining an understanding of the END model easily demonstrates the direct relevancy of this material.

Finally, protective conditions are an alternative to a full public response to this interrogatory. Even if the material is commercially sensitive, in exceptional circumstances material will be required to be provided, especially where the matters involved are essential to a determination of the issues before the Commission.¹⁴ In such a case, special consideration could be given to providing the information under protective conditions. As noted above, the information is essential for the Commission to provide an appropriate advisory opinion in this case. Without the opportunity to fully understand the fundamental inputs and formulas used by the Postal Service in the END model, and the opportunity to point out shortcomings in the mathematical materials, the advantages of an advisory opinion will be significantly reduced and the opportunity for improving upon the network recommended by the END process will be diminished.

¹³ "A demonstration of direct relevancy will tip the scale in favor of disclosure." (citation omitted.) at 274. It is also noteworthy that in the *Fischer* case, the deponent had already cooperated by providing information relating to the patent application such as "confidential computer programs." *Ibid.*

¹⁴ See POR R2000-1/102 at 1-4, July 31, 2000; POR R97-1/104 at 3, February 27, 1998.

Wherefore, for the reasons set forth above, OCA respectfully requests that the Presiding Officer direct the Postal Service to provide response to OCA/USPS-34(b).

Respectfully submitted,

April E. Boston
Office of the Commission

Kenneth E. Richardson
Attorney

901 New York Ave., N.W.
Suite 200
Washington, D.C. 20268-0001
(202) 789-6833; Fax (202) 789-6891
e-mail: richardsonke@prc.gov.

Attachment to OCA Motion to Compel Responses to
Interrogatories OCA/USPS-34(b)

OCA/USPS-34. Please refer to the slide numbered 41 in USPS-LR-N2006-1/9, Evolutionary Network Development Technical Conference Presentation Slides. This slide, labeled "Using Size to Capture Non-Linearity," shows both nonlinear and linear forms of the cost functions used to estimate workhours as a function of pieces handled for large, medium, and small operations.

* * * * *

- b. Please provide the mathematical equations that describe the linear cost functions for each type of processing operation, operation size and shape type (e.g., the slope and intercept values for each cost function).