

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

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Evolutionary Network Development )  
Service Changes, 2006 )

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Docket No. N2006-1

**MOTION OF AMERICAN POSTAL WORKERS UNION, AFL-CIO, TO COMPEL  
UNITED STATES POSTAL SERVICE TO ANSWER INTERROGATORIES  
APWU/USPS-T1-9 AND APWU/USPS-T2-1(a,f,g,h), 3(b), 6(k), and 8  
(February 28, 2006)**

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(February 28, 2006)**

The American Postal Workers Union, AFL-CIO (APWU), hereby respectfully moves the Postal Rate Commission to enter an order compelling the United States Postal Service (USPS) to answer certain interrogatories propounded by the APWU to which the USPS has interposed objections.

**I. STATEMENT OF THE CASE**

**A. The Commission Must Weigh Public Policy Considerations Under the Postal Reorganization Act**

The purpose of this procedure is to permit the Commission to advise the Postal Service whether its strategy for changing its mail processing network comports with the policies of the Postal Reorganization Act. Under Section 3661, 39 U.S.C. § 3661 (c):

The Commission shall not issue its opinion...until an opportunity for hearing on the record under sections 556 and 557 of title 5 has been accorded... . The opinion shall be in writing and shall include a certification by each Commissioner agreeing with the opinion that in his [or her] judgment the opinion **conforms to the policies established under this title.**

[Emphasis added here.]

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<sup>1</sup>Interrogatories of American Postal Workers Union, AFL-CIO to USPS Witness Shah (APWU/USPS T1-1-9) is attached hereto as Attachment 1; Interrogatories of American Postal Workers Union, AFL-CIO to USPS Witness Williams (APWU/USPS T2-1-12) is attached hereto as Attachment 2.

The Postal Service Request in this case is stated entirely in terms of the efficiencies to be achieved by network realignment. It ignores the policies expressed in Sections 101 and 403 of the Postal Reorganization Act of 1970, 39 U.S.C. §§ 101, 403, including the requirements that

... The Postal Service shall have as its basic function the obligation to provide postal services to bind the Nation together through the personal, educational, literary, and business correspondence of the people. It shall provide prompt, reliable, and efficient services to all communities. ...

39 U.S.C. § 101(a); and

The Postal Service shall provide a maximum degree of effective and regular services to rural areas, communities, and small towns where post offices are not self-sustaining. ...

39 U.S.C. § 101(b).

As we show below, the Commission will not be able to determine whether END “conforms to the policies” of the Postal Reorganization Act unless the Commission receives the information sought in the disputed interrogatories.

**B. The Postal Service’s Request and Objections To Interrogatories Ignore the Important Policy Consideration of Service Impact, and Disregard the Applicable Legal Criteria**

The Postal Service’s objections to APWU’s interrogatories suffer from the same infirmities as its Request for an Advisory Opinion: they are summarily stated and ignore the legal criteria that must guide the Commission’s decision.

The Postal Service’s Request is stated only in terms of the financial savings or efficiency the Postal Service is seeking. It ignores, or merely gives broadly stated assurances unsupported by factual analysis regarding, the impact of the END program on postal services. Thus, the Postal Service states:

The Postal Service is not proposing to change the current service standard day ranges for any mail class. Nor is the Postal Service proposing to apply different service standards within any subclass to mail pieces based upon differences in physical characteristics.

Request at 2, n. 2.

Left unstated, and unknowable based on the information provided with the Request, is whether there will be a pattern of service changes affecting a particular type of mail or a particular type of community. It is entirely possible, for example, that the overwhelming majority of negative service changes will affect rural areas and small towns, or that the overwhelming majority of negative changes will impact collection mail, thus degrading service for individuals and small businesses. Furthermore, even the scant evidence submitted to support the Request shows that mail pickup and dropoff times will be made earlier to provide additional transportation time. Any of these outcomes would raise significant policy issues that should be addressed by the Commission under Section 3661 before it provides advice to the Postal Service on END. Yet, the Postal Service not only fails in its submissions to address the balance to be struck between competing policies of efficiency and service, it objects to interrogatories that would reveal the service changes that must be considered in this proceeding.

With regard to the 10 AMP proposals submitted with the Request, the Postal Service states, somewhat ambiguously, that there are “no service standard downgrades, however, a total of 39 First-Class Mail three-digit ZIP Code origin-destination pairs upgraded to overnight.” Williams Testimony, USPS-T-2, at 10.<sup>2</sup> To this we can only

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<sup>2</sup>This seems to imply that no mail was changed from one service standard to a different, worse, service standard, but it does not say that. It may be that, while “no service standard downgrade” occurred, mail changed from one service standard to another, for

respond that it seems unlikely that 10 randomly selected AMP studies would all result in only positive changes. The Request acknowledges that the 10 AMP studies reported are not “typical or representative of AMP proposals or results that are expected...when the process is rolled out nationwide.”

We observe that the 10 AMP studies submitted all concern the transfer of outgoing mail processing operations to another facility or facilities within driving distance. Unstated is the fact that the END process described in Mr. Shah’s testimony (USPS-T-1) extends far more broadly and in depth than a re-examination of the type of small outgoing mail processing operations submitted for examination by the Commission in this case. Yet it appears that the Postal Service is seeking Commission approval of its nationwide and network-wide END strategy based upon only these few unrepresentative examples of how it might work.

**C. The Disputed Interrogatories are Relevant to Whether END Conforms to the Policies of the PRA**

Our disputed interrogatories seek a factual basis for determining the impact of the END strategy on postal services. Without that factual basis, no weighing of policy considerations will be possible. The Postal Service is asking the Commission to applaud its efforts to improve efficiency without considering the impact of the END program on service – in effect asking the Commission to clap with one hand. It cannot be done.

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example from one-day to two-day service. The standard did not change, but the mail did. This reading of the Request would be consistent with the statement (Request at 2, n. 2) that the USPS is “not proposing any change in the current service standard day ranges for any mail class.”

Because relevance is a basic consideration in this Motion to Compel, we first briefly discuss the policies that will be weighed by the Commission in its opinion on the Postal Service's Request. We observe that the Request addresses the need for postal services to be "prompt, economical, and efficient." See, e.g., Request at 4. Wholly missing from the Request, and from the supporting testimony, is consideration of the requirements that the Postal Service "bind the Nation together; render postal services to all communities; provide a maximum degree of service to rural areas, communities, and small towns; [and provide that] effective postal service be insured to residents of both urban and rural communities." 39 U.S.C. § 101(a), (b).

The one-sidedness of the Postal Service presentation is epitomized by its reference (Request at 4) to its responsibility under Section 403(b) of the Act to effect "reasonable economies." The actual duty stated by that provision is multi-faceted, not one-sided:

(b) It shall be the responsibility of the Postal Service –

\* \* \* \*

(3) to establish and maintain postal facilities of such character and in such locations, that **postal patrons throughout the Nation will, consistent with reasonable economies of postal operations, have ready access to essential postal services.**

39 U.S.C. § 403(b)(3). [Emphases added here.] Thus, the basic duty stated by 403(b)(3) is the duty to ensure that postal patrons throughout the Nation have ready access to essential postal services. That duty must be performed in a manner and to a degree consistent with reasonable economies of postal operations.

Yet, unstated in the Postal Service's Request, and only partially revealed by the supporting documentation, is the fact that "ready access" to postal services will be

degraded even by the 10 AMPs already submitted in this case. In the documentation concerning 4 of the 10 AMPs submitted with USPS Request, as Library Reference N2006-1/5, it is revealed that collection times and dropoff times must be made earlier to provide time for additional, sometimes round-trip, transportation to the gaining mail processing facility, in order to permit delivery within service standards. For example, the Executive summary for the Olympia, WA, and Tacoma, WA, pairing, states:

Adjustments to current receipt and clearance times of State agency mail would be necessary in order to provide the Tacoma P&DC the mail flow necessary **to give them a chance of operational success**. Express Mail, collection box pick up times, and Associate Office retail hours will need to be pushed back in many 985 units to account for the additional transportation time required to process volumes in Tacoma.

\* \* \* \*

...There are no service impacts anticipated. **Early collection box cut off times in Olympia and earlier entry times for the State of Olympia are key** to the success of the AMP package as well as the impact on service.

Lib. Ref. N2006-1/5, at 000024, 000025 [Emphases added here]. The same or similar effects are noted for the Waterbury, Ct and Southern Connecticut pairing (id., at 000047); the Bridgeport, CT and Stamford, Ct pairing (id., at 000064); and the Bakersfield, CA, and Mojave pairing (id., at 000177)(some collection boxes distant to the plant will require an earlier pick-up time).

For the other six AMPs this information is simply not provided; but there can be little or no doubt that such changes have been necessary in every case to maintain “service standards.” Thus, the Request avers that service standards will not be changed, but ignores the fact that “ready access” to the service – an express requirement of Section 403(b)(3) of the Act – will be degraded in virtually every case.

By ignoring the policies of the Act that countervail its need to become more cost efficient, the Postal Service has left the Commission with no basis for decision. The Postal Service states in its Objections (Objection to APWU/USPS-T1-9, at 2) that:

The Postal Service concedes that **an understanding of process** by which it intends to realign its network and to implement service changes is fundamental to the Commission's role under § 3661. [Emphasis added here.]

Thus, the submission eschews substance for process.

The Postal Service has argued that our Interrogatories are not "relevant" without discussing relevance to the policies of the Act; and has argued that the Commission's need for the information requested is outweighed by considerations of privilege and business sensitivity without specifying what privilege it seeks to invoke or explaining any business sensitivity that may exist. In response, we first observe that the Postal Service's objections are legally insufficient on their face and must be denied for that reason alone.

In addition, this Motion to Compel addresses the critical question not addressed by the Postal Service objections: why is the information sought necessary to ensure that the Commission will be able to evaluate END against the policies of the Act? As we show below, the information sought is necessary for the Commission to make a judgment about how the changes that are to be wrought by END will affect postal services. It is that judgment the Commission must weigh against the need for efficiency, to determine whether END is consistent with the policies of the Act.

#### **D. END Transparency is Required by the PRA**

In addressing this Motion to Compel responses to our Interrogatories, the Commission should be mindful of the fact that other responsible agencies have called for

transparency in the Postal Service's network realignment plans. In 2004, when the Senate Committee considering postal reform legislation issued its report, the Committee stated:

[I]t is vitally important that the Postal Service go about its facilities realignment in the most transparent manner possible... .

S. Rep. No. 108-318, at 25.

In its April 8, 2004 Report on Postal Service plans to re-design its mail processing network, the Government Accountability Office (GAO) observed that “[t]he Postal Service has stated that it is reluctant to publicly disclose information on its realignment strategy... .” GAO-05-261, at 58. The GAO, however, came down strongly on the side of transparency, repeatedly pointing out that the Postal Service network realignment strategy “lacks sufficient transparency and accountability, excludes stakeholders input, and lacks performance measures for results.” *Id.*, at Highlights, 4, 53, 56-57. The Report concludes:

We believe that without clarity, criteria, and accountability in its realignment strategy, the Service risks falling short of achieving the major productivity gains that will be needed to offset rising costs **and maintain high-quality, universal service at affordable rates.**

*Id.*, at 61 [Emphasis added here]

**E. END Must Be Viewed as a Continuation of the Network Integration and Alignment Program Begun in 2001**

The Postal Service has presented its Request as though END has only now been born, fully formed, after a gestation period of unstated length. The reality is far less mysterious. In its Strategic Transformation Plan 2006-2010 (published September 2005), USPS stated (at 35):

Efforts to create a flexible network to increase productivity and effectiveness – formerly called Network Integration and Alignment – will continue as an evolutionary process. Now more accurately called Evolutionary Network

Development, this effort encompasses opportunities to improve both distribution and transportation.

Similarly, in its 2004 Annual Report, in a statement that could only have been referring to the 2002 Transformation Plan, given that the 2006 Plan was as yet unpublished, the USPS stated (at 28):

The END initiative is one of the core sub-strategies in our Transformation Plan. It is an investment in developing a network optimization infrastructure that will enable us to keep our mail processing and transportation networks efficient and our systems affordable.

Further background on the Network Integration and Alignment Plan (NIA) that evolved into END is provided by the Government Accountability Office Report GA0-05-261, "The Service's Strategy for Realigning Its Mail Processing Infrastructure Lacks Clarity, Criteria, and Accountability," (April 8, 2004). The GAO found that:

**... in November 2001, the Service began developing** a modeling tool designed to identify the least-cost network, given current service standards, under several network scenarios. According to the Service, the model will "help the Service determine which plants remain viable and necessary within the future infrastructure, and what distribution and transportation roles [would] be performed by plants that remain as parts of an optimal, fully integrated network." According to the Service's Transformation Plan, a plan to implement the results of this modeling tool was **to be completed by December 2002**. By November 2003, the Service had collected detailed and operational and volume data and had developed data-based models. **In January 2004, the Service reported that the models were being tested and validated.** Since then, there has been little public information on the results of these models or the service's implementation plans.

[Emphases added here.]

Thus, as discussed further below, Interrogatories directed to periods prior to the present Request or concerning AMPs processed in 2002 or later are highly relevant to the Commission's consideration of END.

## II. ARGUMENT

### A. APWU/USPS-T2-1(a,f,g,h) Is Relevant and USPS Has Not Asserted Any Countervailing Privilege

#### 1. Relevance

- (a) Please provide a complete list of these approximately “two dozen” AMP studies that were underway. Please provide the date of initiation and the person requesting each AMP. Were any of these projects initiated because of the Postal Service’s ongoing network redesign efforts? Were any of these projects initiated based on the END models?

The Postal Service Objections state that the USPS objects to answering two parts of this interrogatory on the ground of relevance: the date the project began and the identity of the person initiating the AMP study. In fact, the date the studies were initiated and the identity of the person who initiated them are highly relevant to the development of END and to the relationship between these 24 studies and the 10 studies the Postal Service chose to submit to the Commission with its Request . We cannot be sure what this information will reveal until we receive it. On the other hand, the information is readily available to the Postal Service and its revelation would not be prejudicial in any way. The fact that the Postal Service<sup>3</sup> has taken the trouble to interpose objections to revealing such information bespeaks a desire not to reveal the full genesis of its Request.

We also observe that, although the Postal Service has stated no basis for objection to the other parts of T2-1(a), witness Williams has not provided an answer to the remaining parts of (a).<sup>3</sup>

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<sup>3</sup> The other answers provided in response to T2-1 are also either completely non-responsive or only partially responsive. Because no objections were filed by USPS, we will be filing followup interrogatories on those questions rather than a motion to compel answers. (Response of United States Postal Service Witness Williams to APWU Interrogatories APWU/USPS-T2-1(B-E), 2, 3(A), 4, 5 6(a-d), 7, 9-12 is attached hereto as

(f,g,h)

- (f) List all AMP studies begun since December 31, 2001.
- (g) For all AMP studies completed since December 31, 2001, that are not among the 10 studies included in your submission to the Commission in N 2006-1,
- present a report in which the locations and other identifying information are redacted to protect the Postal Service's "competitive interests."
  - With all identifying information redacted, the report will identify locations only by assigned letters (A, B, C, etc.).
  - Within each AMP study, ZIP codes must be replaced using a single number for each ZIP code (thus, an AMP report with 24 ZIP codes would have ZIP codes numbered 1, 2, 3 etc. through 24).
- (h) For every report produced in response to interrogatory g above, include all the data redacted from the 10 AMP reports included in your submission to the Commission in N 2006-1, including without limitation
- each facility's total mail volume
  - each facility's total mail volume disaggregated on mail-class specific and service-specific bases
  - on Worksheet 4 facility-specific data reflecting estimated operation-specific originating and/or destinating mail volumes and processing costs, made specific for one class or service where appropriate
  - on Worksheet 7 mail class-specific origin-destination volume data reflecting the volume per class that originates or destinate at a single facility, or travels from one specific 3-digit ZIP Code area to another specific 3-digit ZIP Code area.

These inquiries are highly relevant to the issues in this proceeding. As explained above, the development of END began in 2001. The Postal Service has acknowledged elsewhere that END is NIA by another name – essentially the same process but effectuated at a more deliberate pace. If the Postal Service now wishes to recant those statements and deny that evolution, the information sought by this interrogatory would nevertheless be highly relevant. If, as seems clear, all or nearly all studies performed since

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Attachment 3.)

2001 have been subjected to review under NIA or END, the results and effects of those studies remain relevant.

The Commission is presented with the alternatives of accepting presentation of only the 10 AMP studies selected by the USPS for presentation, with substantial data redacted, or reviewing data from other AMP studies performed since 2001 to see what they reveal about the impact of this process on postal service and costs. The use of older AMP reports help in assessing the types of *actual* changes that take place as opposed to changes that are merely estimated from the model. Even accepting *arguendo* that the processes were different, the contrast between those processes and their results, if there is a difference, would be relevant to the Commission's review of END.

## **2. Privilege**

(h)

The Postal Service's Objection to Interrogatory APWU/USPS T2-1(h) fails to conform to the requirements of rule 26(c) and the public interest in disclosure far outweighs any speculative harm to the Postal Service. Therefore, the Postal Service's claim of privilege must be rejected.

The Postal Service objects to the disclosure of the mail class-specific volume information requested in Interrogatory APWU/USPS-T2-1(h), claiming that this information is "privileged because of its commercially sensitive and proprietary nature."<sup>4</sup> This objection does not satisfy the requirements of Rule 26(c) and must be rejected. 39 C.F.R. § 3001.26(c).

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<sup>4</sup> Objection to APWU/USPS-T2-1(h) at 3

Rule 26(c) requires the Postal Service to state the bases for its objection “clearly and fully” and mandates that “a participant claiming privilege ... identify the specific evidentiary privilege asserted and state the reasons for its applicability.” The Postal Service’s objection merely states that the mail class-specific volume information is “privileged because of its commercially sensitive and proprietary nature.”<sup>5</sup> This objection asserts privilege but does not identify the privilege or state the reasons for its applicability. Therefore, the Postal Service’s objection to Interrogatory APWU/USPS-TS-1(h) must be overruled because it fails to conform to the basic requirements of Rule 26(c).

Furthermore, if the Postal Service responds to this Motion by identifying a privilege and stating a basis for it, the Postal Service must still assume a heavy burden to overcome the public interest in disclosure. “[E]videntiary privileges are exceptions to the general rule that proceedings must be conducted in public view.”<sup>6</sup> With specific regard to the trade secret privilege, for example, the Commission has stated that “disclosure rather than protection is the rule because of the overriding interest requiring that each party be empowered to obtain all evidence needed to prove his case.”<sup>7</sup> Due to the strong public policy favoring disclosure, the party asserting an evidentiary privilege has the burden of

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<sup>5</sup> *Id.*

<sup>6</sup>Order No. 1283, January 28, 2000 at 3, quoting Docket No. R87-1, P.O. Ruling No. R97-1/62, November 17, 1997 at 8.

<sup>7</sup>Order No. 1025, August 17, 1994 at 13 (footnotes omitted).

establishing the applicability of the privilege.<sup>8</sup> The Postal Service has failed to meet this burden; therefore, the Postal Service's objection must be overruled.

A claim of trade secret privilege must be "supported by precise and certain reasons for non-disclosure, applied with particularity to the records in question"<sup>9</sup> showing that "disclosure is likely to cause substantial harm of a specific kind."<sup>10</sup> The Postal Service's claim of privilege contains no such support. Instead, it merely asserts that if the information were to be publicly disclosed, it "could be used by competitors involved in the business of transmitting and delivering otherwise mailable matter to gain a valuable and unfair competitive advantage, to the economic detriment of the Postal Service and its employees."<sup>11</sup> This blanket assertion is speculative at best. The Postal Service named no specific competitors. It did not identify how this information could be used by competitors to its detriment, nor did the Postal Service provide evidence that the alleged economic harm would be substantial. The Commission has recognized that the trade secret privilege "is not available where the harm is speculative or conclusory."<sup>12</sup> The Postal Service may not be afforded the protection of the trade secret privilege since it provided only broad, speculative and conclusory assertions of harm with no evidentiary support.

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<sup>8</sup> Order No. 1025 at 14; see also *Heathman v. United States District Ct. for Cent. Dist. Of Cal.*, 503 F.2d 1032, 1033 (9<sup>th</sup> Cir. 1974).

<sup>9</sup> Order No. 1025 at 14, quoting *Black v. Sheraton Corp.*, 371 F.Supp. 97 (D.D.C. 1974).

<sup>10</sup> Order No. 1025 at 18.

<sup>11</sup> Objection to APWU/USPS-T2-1(h) at 3

<sup>12</sup> *Id.*

In addition, the trade secret privilege is a qualified privilege.<sup>13</sup> As such, in determining whether, and on what terms protection will be afforded, the Commission must balance “the harm of disclosure against the party’s need to prove his case and the public interest in just and accurate adjudication of disputes.”<sup>14</sup> The Postal Service failed to provide *any* evidence of harm let alone evidence of a harm substantial enough to outweigh the considerable public interest in disclosure.

In seeking an advisory opinion for the Commission, the Postal Service acknowledges that implementation of the END process “will generally affect service on a nationwide or substantially nationwide basis.” 39 U.S.C. § 3661(b). However, the Postal Service’s Request for an Advisory Opinion and accompanying materials does not properly address all of the effects of END. Specifically, the Postal Service failed to disclose whether there will be a pattern of service changes affecting particular communities or particular types of mail.

The public’s interest regarding a change of service is undeniably great. Likewise, the public has a substantial interest in the information used by the Postal Service in determining what Network changes will be implemented and which facilities will be consolidated. Certainly the type and volume of mail processed at each facility impacts these decisions. Full disclosure of the type and volume of mail that may be affected is vital to a complete understanding of the END process. This understanding, in turn, is necessary

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<sup>13</sup> *Id.*

<sup>14</sup> *Machin v. Zuckert*, 416 F.2d 336 (D.C. Cir. 1963): Note, *Discovery of Government Documents and the Official Information Privilege*, 76 Columbia L. Rev. 142, 143-144 (1976).

to determine whether END “conforms to the policies established” in the Postal Reorganization Act. 39 U.S.C. § 3661(c). Therefore, the public interest in this information is considerable and its disclosure warranted.

The Postal Service has failed to properly allege any privilege to prevent the disclosure of the information requested in Interrogatory APWU/USPS-T2-1(h). The Postal Service’s claim of privilege is unsupported as the Postal Service did not provide any evidence of substantial harm. Moreover, the public interest in disclosure far outweighs any speculative harm to the Postal Service. Therefore, this objection must be overruled and the Postal Service should be compelled to provide the information requested in APWU/USPS-T2-1(h).

**B. Information Sought By T2-3(b) is Relevant and Readily Available**

- (b) Please provide a timeline for each of the 10 projects or decisions included in your submission in N 2006-1, showing the amount of time taken for each stage or phase of the project or decision; state at which stage of implementation each project is at this time; and state when, between now and June 30 2006 each project is expected to be fully implemented.

It is difficult to understand the Postal Service’s objection to providing a time line for each of the AMPs it has presented with its Request. In its own words:

The Postal Service concedes that an understanding of process by which it intends to realign its network and to implement service changes is fundamental to the Commission’s role under § 3661.

Objections of USPS to Interrogatory APWU/USPS-T1-9, at 2.

The time line for each of the 10 AMPs submitted to the Commission in this proceeding is a fundamental part of the process the Commission must examine. The stages or milestones reported will inform the Commission about the process and guide

further inquiries. Given that this information is readily available and that its relevance is indisputable, the Postal Service should be directed to disclose it.

**C. The Postal Service's Objection to APWU/USPS-T2-6(k) Does Not Conform to Requirements of Rule 26(c) and Must Be Rejected**

(k) Why are the First Class mail statistics on Worksheet 7 being redacted?

The Postal Service's objection to Interrogatory APWU/USPS-T2-6(k) is insufficient under the requirements of Rule 26(c). The objection must be overruled, and the Postal Service must be compelled to produce the requested information. Rule 26(c) states "[i]n the interest of expedition, the bases for objection shall be clearly and fully stated." The Postal Service objected to the request for an explanation for the redactions made to Worksheet 7 contained in USPS Library Reference N006-1/5 on the grounds that "it requests the statement of a legal conclusion beyond that provided in the preface page of the Library Reference."<sup>15</sup> This objection fails to conform to the basic requirements of Rule 26(c). The objection is incoherent and the APWU cannot adequately respond to such an insufficient and unclear objection. Not only is the objection impossible to decipher, the last sentence of the objection directs the APWU's attention to the Postal Service's objection in DBP/USPS-T2-6(k). Inspection of the Docket produced no such objection and the APWU cannot speculate as to the correct reference. Thus, the objection should be overruled.

To the extent that the Postal Service is claiming that Interrogatory APWU/USPS-T2-6(k) requires it to state a legal conclusion, Rule 26(c) provides that "[a]n interrogatory otherwise proper is not necessarily objectionable because an answer would involve an

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<sup>15</sup> Objection to APWU/USPS-T2-6(k) at 4.

opinion or contention that relates to fact or the application of law to fact.” The Postal Service did not allege, nor could it, that an explanation for the redactions is not relevant to the current proceedings. Accordingly, the interrogatory is proper and the Postal Service should be compelled to promptly provide a full explanation for the redactions made to Worksheet 7.

**D. Information Sought By T2-8 is Relevant and Readily Available**

- (8) The Communications Plan in Library Reference N2006-1/4 refers to internal and external support kits for the communication of these plans. Please provide the internal and external support kits that have been developed for one of the 10 test AMP proposals that are detailed in N2006-1/5.

The Postal Service has acknowledged that communications are an important part of the END process. The Commission is responsible for reviewing the END process. This important part of the process is a necessary part of the Commission’s review; it is readily available; and the Postal Service has asserted no prejudice or privilege that might excuse its obligation to produce relevant information. This objection must be denied.

**E. Interrogatory APWU/USPS-T1-9(a, b,c,d,f) is Relevant and the Postal Service Has Not Properly Asserted Any Countervailing Privilege.**

**1. Relevance**

The Postal Service’s objection to Interrogatory APWU/USPS-T1-9 should be overruled because the information sought in T1-9(a,b,c,d,f) is relevant to a complete understanding of the END process and its potential impact. In its objection, the Postal Service “concedes that an understanding of process by which it intends to realign its network and to implement service changes is fundamental to the Commission’s role under

§ 3661.” (Objection to Interrogatory APWU/USPS-T1-9 at 2). However, the Postal Service’s submission is inadequate to explain how the END process will operate.

Interrogatory APWU/USPS-T1-9 requests that the Postal Service specify the size, the number of floors, the types of mail processing operations, the number and type of mail processing equipment used and the average volume of mail processed by type of mail for the most recent 12 month period at each facility listed in response to Interrogatory DBP/USPS-14. This information is used by the Postal Service in determining which facilities will be consolidated and what role facilities will have in the new Network. For example, multi-floor facilities are inherently inefficient and thus many are unlikely to survive consolidation. Also, the size of some facilities, like that of the Boston PD&C, is such that the Postal Service cannot efficiently eliminate them and instead will turn them into multi-use facilities. Likewise, the type and amount of equipment present at each facility provides an insight into a facility’s ability to handle various types of mail. Disclosure of this information will provide the Commission with a clearer picture of the current network and therefore enable it to better understand the process and criteria by which the Postal Service intends to realign its network.

In asserting that the facility specific information requested is irrelevant, the Postal Service contends that the 10 AMP studies contained in USPS Library Reference N2006-1/5 provide the requisite information needed for the Commission fulfill its role under 39 U.S.C. § 3661. However, David Williams’ testimony states

[t]he Postal Service does not regard these 10 AMP proposals or their results to be typical or representative of AMP proposals or results that are expected to be reviewed and implemented when the process is rolled out nationwide.

Direct Testimony of David E. Williams, USPS-T-2 at 10. Thus, the Postal Service would have the Commission base its advisory opinion on information that is not representative of the process or results expected when the END program is “rolled out nationwide.”

Mr. Shah’s testimony includes, in figures 1 and 3, schematics of how the postal network is presently aligned and how the Postal Service seeks to align it. A schematic diagram cannot adequately inform the Commission of the actual makeup of the postal network. The Commission’s role is to assess the plan for a transition from a real network that provides real and important services to the American public to a new and different network that will likely be more efficient but that will provide somewhat different and, in some cases, lesser service to certain segments of the public. It would be a disservice for the Commission to permit the Postal Service to present its plan only in terms of abstractions. It is the reality of postal services that must be considered in weighing efficiency against service. To that end, the Commission should begin with an appreciation of the actual size and complexity of the present network. Therefore, this information is relevant and must be provided.

## **2. Privilege**

The Postal Service’s claim of privilege asserted in its objection to APWU/USPS-T1-9 must be rejected because it does not meet the requirements of Rule 26(c) and the public interest in disclosure outweighs any speculative harm to the Postal Service.

The Postal Service’s objection to Interrogatory APWU/USPS-T1-9 claiming privilege is verbatim its argument objecting to Interrogatory APWU/USPS-T2-1(h).<sup>16</sup> Accordingly,

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<sup>16</sup> See Objection to Interrogatory APWU/USPS-T2-1(h) at 3.

it suffers from the same procedural defects. The Postal Service's objection to Interrogatory APWU/USPS-T1-9 fails to conform to the requirements of Rule 26(c) and must be overruled. See supra at 12-13. In addition, the public interest in disclosure is substantial and greatly outweighs any potential and purely speculative harm to the Postal Service. See supra at 13-16. Therefore, the Postal Service's claim of privilege must be rejected.

The information requested is relevant, readily available and not privileged. Thus, the Postal Service must be compelled to disclose the information requested in APWU/USPS-T1-9.

### **III. CONCLUSION**

For the foregoing reasons, this Motion to Compel Responses to Interrogatories must be granted and the Postal Service must be ordered to respond to the disputed interrogatories.

Respectfully submitted,

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