

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

EVOLUTIONARY NETWORK DEVELOPMENT
SERVICE CHANGES, 2006

Docket No. N2006-1

UNITED STATES POSTAL SERVICE OBJECTIONS TO
OFFICE OF THE CONSUMER ADVOCATE INTERROGATORY
OCA/USPS-34(b)
(June 23, 2006)

The United States Postal Service hereby submits its objections to the following interrogatory of the Office of the Consumer Advocate, filed on May 8, 2006:
OCA/USPS-34(b).

The Postal Service objects to this interrogatory on two grounds: (1) the information they seek is privileged, commercially sensitive and proprietary in nature; and (2) any relevance that this information may have to the potential service changes at the heart of this proceeding is so tenuous and so greatly outweighed by the proprietary interests involved as to justify that that the requested data not be publicly disclosed.

Referencing page 41 of USPS Library Reference N2006-1/9, OCA/USPS-34(b) requests that the Postal Service provide the mathematical equations that describe the linear cost functions used in the END optimization model to estimate workhours as a function of pieces handles for variously-sized operations. As explained below, the Postal Service considers the mathematical equations and formulas in the model to be privileged, commercially-sensitive information that should not be publicly disclosed.

The Postal Service objects to this interrogatory on the same relevance and similar privilege grounds as are expressed in its objections to OCA/USPS-21(a-c) filed separately today. Accordingly, those objections are incorporated herein by reference.

As is the case with LogicTools software discussed in the objections to OCA//USPS-T1-21(a-c), the postal-generated algorithms, equations and formulas have only a very tenuous connection to the decisions that will ultimately locate Regional Distribution Centers and that will consolidate specific postal operations and change postal services as part of the AMP review process.

It is noteworthy that, under FOIA subsection 552(b)(3), the Postal Service is authorized to apply 39 U.S.C. § 410(c)(2) to exempt from mandatory public disclosure “information of a commercial nature, including trade secrets, . . . which under good business practice would not be publicly disclosed.” The END models have significant commercial value to the Postal Service. The Postal Service has applied for a patent to protect its commercial interests in the equations, formulas and other proprietary elements of the optimization model that it has developed. Assuming successful prosecution of its patent application, the Postal Service intends to pursue potential opportunities to offer logistics management consulting services to foreign postal administrations based upon its optimization model. The disclosure requested by OCA/USPS-34(b) would significantly undermine the Postal Service’s ability to offer consulting services that it could provide on the basis of the model, undercutting the Postal Service’s opportunity to recoup its investment in the model’s development. Accordingly, public disclosure of the postal-generated elements of the model would be

contrary to good business practice.

It is well-settled that materials relating to a patent application are generally considered confidential. For example, 35 U.S.C. § 122 expressly provides that patent applications shall be kept confidential unless disclosure is authorized by the applicant. The Federal courts have consistently followed this principle, and have uniformly recognized that a heightened relevance standard must be applied in determining whether to compel the disclosure of patent applications and materials related thereto. See *In re Columbia Univ. Patent Litig.*, 330 F. Supp. 2d 18, 20 (D. Mass. 2004); *Fischer Imaging Corp. v. Lorad Corp.*, 148 F.R.D. 273, 274 (D. Colo. 1993). The Postal Service submits that such a standard should accordingly be applied to the materials sought by OCA/USPS-34(b).

In applying the heightened relevance standard, courts have employed a balancing test, weighing the requesting party's interest in the materials against the objector's legitimate interest in secrecy. See *Davco Manufacturing Corp. v. Peninsular Diesel, Inc.*, 128 F.R.D. 91, 93 (N.D. Ohio 1989); *Ideal Toy Corp. v. Tyco Industries, Inc.*, 478 F. Supp. 1191, 1192-93 (D. Del. 1979); *Cleo Wrap Corp. v. Elsner Engineering Works, Inc.*, 59 F.R.D. 386, 388 (M.D. Pa. 1972). Taking into consideration the very attenuated relationship between the service changes at issue in this docket and the information requested by OCA/USPS-34(b), it is clear that the commercially-sensitive nature of the postal-generated END optimization model equations far outweighs the OCA's interest in their public disclosure.

There is an additional complication. Because of the compatibility of their design

for use in conjunction with the aforementioned LogicTools software, the Postal Service is concerned that public disclosure of the requested linearization equations would indirectly permit one to deduce some of the material proprietary characteristics and contents of the LogicTools software. Accordingly, the Postal Service considers that public disclosure of the information requested in OCA/USPS-34(b) also would undermine the interests sought to be protected by the objections to OCA/USPS-21(a-c). The Postal Service is authorized to state that this view is shared by LogicTools.

The commercial sensitivity of the requested details of the END optimization model significantly outweighs any relevance of that information to the service changes that could result from postal management's selection of Regional Distribution Center locations or from management's determinations to consolidate specific operations through the AMP review process. Accordingly, the Postal Service objects to these interrogatories.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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