

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

Retail Access Optimization Initiative

Docket No. N2011-1

PRESIDING OFFICER'S RULING ON APWU
MOTION TO COMPEL

(Issued September 14, 2011)

On August 29, 2011, the American Postal Workers Union, AFL-CIO (APWU) filed a motion to compel the Postal Service's response to two interrogatories.¹

Interrogatory APWU/USPS-T1-1(d) and (e) request information from the Postal Service concerning library reference USPS-LR-N2011-1/2 which is the list of the retail stations, branches, and post offices under consideration in this docket. Specifically, subpart (d) of the interrogatory seeks the facility type (post office, station, branch, contract postal unit, etc.) and hours of operation for the five nearest postal retail facilities of each facility listed. *Id.* at 1. Subpart (e) of the interrogatory seeks the driving distance between each facility listed in library reference USPS-LR-N2011-1/2 and its five closest alternate postal retail locations. *Id.*

Interrogatory APWU/USPS-T1-2 seeks data concerning the universe of postal facilities not selected for review in the Retail Access Optimization Initiative (RAOI). Specifically, the interrogatory seeks the hours of operation, finance number (and, if applicable, main finance office number), the street address, and the revenue and expenses of each facility. *Id.* at 6.

¹ American Postal Workers Union, AFL-CIO, Motion to Compel USPS to Respond to Interrogatories APWU/USPS-T1-1(d & e) and T1-2, August 29, 2011 (Motion).

On September 6, 2011, the Postal Service filed its response to the Motion.² The Postal Service objects to both interrogatories “because the interrogatories are overly broad, unduly burdensome, and not relevant to this proceeding.” *Id.* at 1.

Commission rules permit parties to propound discovery that is reasonably calculated to lead to admissible evidence. See rules 3001.25 and 26. The Commission also encourages parties to engage in informal discovery, including limiting motions practice by clarifying questions to avoid requests considered overly broad or burdensome. Consistent with Federal Rule of Civil Procedure 26(b), the Commission will consider the weight of the burden of the proposed discovery against the likely benefit. Fed. R. Civ. P. 26(b)(2).

APWU/USPS-T1-1(d) and (e). APWU contends that the Postal Service’s relevance and burden arguments are without merit. Motion at 1-2. In terms of relevance, APWU states that because the Postal Service is required by law to provide access to services that meet the needs of the public, the type and location of alternate retail access points for all facilities should be examined. *Id.* at 3. APWU believes that identifying these points would allow an analysis of whether there is a discriminatory impact to the RAOI’s screening criteria. *Id.* In addressing burden, the APWU states that due to the public’s need for alternate access, the burden is justified. *Id.* at 4. However, APWU states that it is willing to limit the scope of APWU/USPS-T1-1 to make it less burdensome, and only requests the type, hours of operation, and driving distance of the two closest facilities to the post offices under consideration. It still requests the type, hours of operation, and directions to the five closest facilities to the remaining stations, branches, and retail annexes. *Id.* at 5.

The Postal Service responds that APWU/USPS-T1-1 seeks information that was not part of the screening criteria and is irrelevant because the closest alternate retail access facilities were only part of the review for certain stations, branches, and retail

² Response of the United States Postal Service in Opposition to American Postal Workers Union, AFL-CIO, Motion to Compel USPS to Respond to Interrogatories APWU/USPS-T1-1(d & e) and T1-2, September 6, 2011 (Response).

annexes. Response at 2. The Postal Service contends that the location of adequate alternate access channels is not relevant to the initial screening. Its relevance is limited to the actual discontinuance study, which takes into account the individual facts and circumstances of the facilities under review. *Id.* at 2-3. According to the Postal Service, requiring it to complete the analysis required for a discontinuance review in this preliminary screening stage would impose an undue burden. *Id.* at 3-4. The Postal Service also contends that the information is available on the Postal Service's website and that APWU should bear the burden of determining alternate access availability, rather than attempting to shift that burden to the Postal Service. *Id.* at 5.

Analysis of APWU/USPS-T1-1(d) and (e). The Commission must review the Postal Service's proposal to determine if it is consistent with policies of title 39. See 39 U.S.C. 3661. This review necessarily entails consideration of the process, from conception and development through implementation, and whether the process comports with the policies of title 39. Parties' review of the relevant information and legal arguments based on that information assist the Commission in its duties.

As part of that consideration, it is relevant and useful to consider the alternate access availability for post offices that were flagged by the RAOI screening criteria. Information in the Postal Service's custody that sheds light on not only the narrowly constructed screening criteria of the RAOI, but also factors that will be relevant in the large-scale application of the recently published P.O. 101 Handbook, is relevant to this docket.

The Postal Service has readily available a database used to operate the website <http://usps.whitepages.com>. The Postal Service does not have driving distances between alternate facilities at its disposal. The driving distance between the facility being considered for possible closure and its closest alternate retail facilities is quite relevant. However, the Commission notes that the Postal Service's burden to compile

driving distances, even for a modest subset of facilities under consideration, has been significant.³

For the large number of facilities in library reference USPS-LR-N2011-1/2, it is not appropriate to shift the burden of analyzing and manipulating the data from the parties requesting that data to the Postal Service. It is appropriate, however, to provide parties with data that allow robust analysis of the RAOI, from conception to implementation. In recognition of this burden, the Commission will not compel the Postal Service to provide driving distances to alternate access facilities for the facilities under consideration in the RAOI. However, as a substitute for the information requested in APWU/USPS-T1-1(d) and (e), the Commission will require the Postal Service to file a library reference containing the database underlying the <http://usps.whitepages.com> website. Based on the information available on the website, this database appears to include facility type, business hours, and distance from alternate locations.

APWU and other parties can use the information in this database to develop driving distances by undertaking the data manipulation or licensing software to create driving distance data. APWU may supplement its direct evidence with testimony developed from these data through September 20, 2011.

APWU/USPS-T1-2. APWU contends that the Postal Service's relevance and burden arguments for this interrogatory are also without merit. Motion at 6. Addressing the relevance arguments, APWU states that the Commission's review of the RAOI should not be limited to the facilities selected by the Postal Service for discontinuance review. *Id.* at 7. APWU believes that a comparison of the facilities selected for discontinuance review to those that were not selected will shed light on whether the RAOI is unduly or unreasonably discriminatory, or if it evidences an undue preference for a certain category of mailer. *Id.* As to burden, APWU contends that it is outweighed

³ See United States Postal Service Notice of Filing Library References USPS-LR-N2011-1/12 and USPS-LR-N2011-1/NP7, September 7, 2011, filed 36 days after requested in Presiding Officer's Information Request No. 1, issued August 2, 2011.

by the significant relevance, and should be minimal because the Postal Service maintains finance numbers, revenue and expenses, and street addresses in the regular course of its business. *Id.*

The Postal Service responds that the interrogatory seeks “massive details pertinent to facilities that are not part of RAOI.” Response at 6. The Postal Service states that the information would only be relevant if it were planning on closing all of the facilities the RAOI selected for further screening. *Id.* The Postal Service contends that the scope of the Commission’s review is defined by the scope of the RAOI, not a review of whether other facilities should have been included in the RAOI. *Id.* The Postal Service states that if it were to respond, the response would not be relevant to this docket because it would only contain information about facilities that were not reviewed or analyzed in the course of the RAOI. *Id.* at 7.

Analysis of APWU/USPS-T1-2. APWU/USPS-T1-2 seeks information that may provide insight as to the types of facilities the RAOI screening criteria did not flag for further review. However, this information is only tangentially relevant to the review of the RAOI. The review of the proposal necessarily entails the review of the facilities subject to the proposal and details relevant to those facilities (including alternate access available near those facilities).

The burden that would be imposed by this interrogatory is substantial given that, for many station and branch facilities, the Postal Service does not have revenue and expenses broken down by facility. A significant amount of resources were devoted to matching revenue, expenses, and addresses to the finance numbers in the Commission’s review of a similar initiative in Docket No. N2009-1.

The tangential relevance of the information APWU seeks in this interrogatory does not outweigh the significant burden that production of the information would place on the Postal Service. Therefore, the Motion as to APWU/USPS-T1-2, is denied.

RULING

1. The American Postal Workers Union, AFL-CIO, Motion to Compel USPS to Respond to Interrogatories APWU/USPS-T1-1(d & e) and T1-2, filed August 29, 2011, is granted in part, consistent with the body of this Ruling.
2. The Postal Service shall provide the underlying database used at *http://usps.whitepages.com* in a library reference by September 16, 2011.
3. The American Postal Workers Union, AFL-CIO, may supplement its direct testimony with arguments developed from the database materials subject of this Ruling through September 20, 2011.

Ruth Y. Goldway
Presiding Officer