

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

**Evolutionary Network Development
Service Changes, 2006**

Docket No. N2006-1

**OPPOSITION OF AMERICAN POSTAL WORKERS UNION, AFL-CIO, TO
UNITED STATES POSTAL SERVICE MOTION TO ADOPT
PROCEDURAL SCHEDULE AND SPECIAL RULES OF PRACTICE
AND APWU REQUEST FOR ALTERNATIVE SCHEDULE INCLUDING HEARING
(MARCH 17, 2006)**

In accordance with the Commission's February 24, 2006, Order, the American Postal Workers Union, AFL-CIO (APWU), hereby respectfully objects to the Motion of the United States Postal Service seeking adoption of a proposed procedural schedule and special rules of practice.

The APWU hereby also requests that the Commission schedule a hearing on this matter.

As explained below, the Postal Service's requested timetable is inconsistent with past practice of the Commission and unrealistic in terms of the complexities of the issues. The pending discovery disputes between the Postal Service and interveners focus primarily on the failure of the Postal Service to acknowledge and account for the fact that implementation of END will result in a diminution of service to some segments of the mailing community. Those discovery disputes are reasonably complex. Once they are resolved, the Commission will have to begin to consider the implications of the service standard changes that will thus be revealed. It seems likely that additional rounds of discovery will be necessary at that point.

In addition, further examination of the materials the Postal Service has already submitted indicates that the Postal Service is overstating the savings that may potentially be obtained through its END/AMP process. As we explain further below, in some instances, the losing facilities may be more productive and more efficient than the gaining facilities. The Postal Service projections of “savings” from the expensive moves contemplated by their AMPs depend on as-yet unrealized improvements in productivity that (a) may never be realized, and (b) might be realized regardless of the AMP-driven changes. Given that the initial Postal Service submission in this case was based on considerations of cost savings, to the virtual exclusion of consideration of service decrements, the possible inaccuracy of the estimated cost savings is an issue of undeniable importance to the work of the Commission. The Postal Service’s submission 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 postal offices are not self-sustaining. ...

39 U.S.C. § 101(b). Therefore, while consideration of cost savings is important and necessary, it is not the only factor that the Commission must evaluate in determining whether the END process conforms to the Postal Reorganization Act.

Comparison to Earlier Cases

The schedule the Postal Service has proposed in this case would be a dramatic departure from schedules kept by the Commission in earlier cases filed under Section 3661 of the Act. Yet the Postal Service has done nothing to explain why this case should be given abbreviated treatment in comparison to the usual practice, other than to say that the Postal Service intends to implement its END plan no later than May 15, 2006. The merit of using the Postal Service's preferred implementation timetable as a basis for setting the Commission's schedule for this proceeding should be evaluated in light of the fact that the Postal Service has been developing its END strategy since 2001.

The timetable for submission of the END plan to the Commission, and a sufficient period for its consideration by the Commission, should have been a factor in the Postal Service's planning of END. Even a cursory examination of the timetables followed in earlier similar cases reveals that the Postal Service's suggested timetable is not reasonable. For example:

1. **Docket N75-1 RE: RAP (ONE YEAR)**

General Timeline:

- The USPS filed its Request for an Advisory Opinion on **April 11, 1975**
- Notice of Request filed by the PRC on **April 16, 1975**
- Petitions to Intervene were due on **April 30, 1975**
- PRC Advisory Opinion issued on **April 22, 1976**

Parties: 4

Discovery: (The precise time allowed for discovery is unknown)

- First Interrogatory Request was filed **May 15, 1975**
 - OCA to USPS regarding USPS's direct case
- Last Interrogatory Request was filed **September 23, 1975**
 - USPS to OCA regarding USPS's cross examination

- USPS's last answer to interrogatories and request for documents was filed on **August 22, 1975**
- OCA's last answer to USPS's interrogatories was filed on **October 6, 1975**

Briefs:

- Original Post Hearing Briefs were due on **November 14, 1975**
- Reply brief were due on **December 4, 1975**

2. **Docket N86-1 and MC86-3, COD Service (ONE YEAR)**

General Timeline:

- The USPS filed its Request for an Advisory Opinion on **February 12, 1986**
- Notice of Request was filed by the PRC on **February 20, 1986**
- Petitions to Intervene were due on **March 6, 1986**
- PRC Advisory Opinion issued on **February 6, 1987**

Parties: 7

Discovery:

- Deadline for discovery on USPS's direct case extended to **July 25, 1986** (originally July 11, 1986)
- Hearing on USPS's direct case was held on **August 5, 1986**
- **September 17, 1986** - Close of first round of discovery
- **October 3, 1986** – Close of second round of discovery
- Common record was closed on **October 31, 1986**

Briefs:

- Initial briefs were due by **November 24, 1986**
- Reply briefs were due by **December 16, 1986**

4. **Docket N89-1 RE: First Class Delivery Standards (10 MONTHS)**

General Timeline:

- The USPS filed its Request for an Advisory Opinion on **September 29, 1989**
- Notice of Request was filed by the PRC on **October 3, 1989**
- Petitions to Intervene were due on **October 23, 1989**
- PRC Advisory Opinion issued on **July 25, 1990**

Parties: 28

Discovery:

- **November 17, 1989** -Deadline for filing discovery on the USPS's Direct Case

- Answers to Interrogatories due **December 1, 1989**
- **February 9, 1990** – Deadline for filing discovery on Interventors' Direct Cases
- Answers to Interrogatories due **February 28, 1990**

Briefs:

- Initial briefs were due by **April 24, 1990**
- Reply briefs were due by **May 8, 1990**

Based on this past experience, the presumptive timetable for this proceeding should span approximately one year.

We respectfully suggest that the Commission need not feel compelled to base its timetable in this case on the Postal Service's preferred timetable for implementation of END. The Commission may wish to observe that the Postal Service first promised to disclose its Network Integration and Alignment (NIA) strategy no later than December 2002.¹ That strategy was delayed and slowed down because the Postal Service decided to use a more "evolutionary" approach to network realignment; thus, NIA was re-named END. Yet, the Postal Service now wants the Commission to use an expedited procedure to perform its statutory duty to review the END program before it is implemented.

We think it is telling that the Postal Service has failed to conform to its own proposed special procedural timeline. The Postal Service has exceeded its proposed deadline in responding to the interrogatories propounded by the APWU, David Popkin and the OCA; the only parties to file interrogatories to date. Specifically, the Postal Service has not responded to any of the OCA's requested interrogatories, the first of which were filed 14 days ago on Friday, March 3, 2006. The Postal Service has also failed to meet its proposed deadline for filing replies to motions. In fact, on March 16,

¹ Source – Library Reference N2006-1/7 pg. 36

2006, the Postal Service filed a Motion for Late Acceptance of Reply in Opposition to David Popkin Motion to Compel a Response to Interrogatory DBP/USPS-30. The Postal Service's reply exceeded even the standard 7 day deadline by two days. This performance by the Postal Service indicates that the other parties,² and the Commission, will need the usual amount of time in this case.

Furthermore, the Postal Service has made no argument that an early decision in this matter is urgent. The Postal Service has acknowledged that END implementation will span a long period of time. The initial 10 projects the Postal Service would like to implement in the near future would save the Postal Service \$12.7 million per year, in the aggregate. It is not evident from the current record that it is critical that these projects be implemented on May 15, 2006. More important is that the Commission fulfills its statutory obligation to provide a hearing on this matter and establish a record that will permit the individual Commissioners to provide certifications that the END program conforms to the policies of the Postal Reorganization Act. 39 U.S.C. § 3661(c).

Pending Discovery Disputes

Two APWU Motions to Compel Responses to Interrogatories dated February 28, 2006, are pending before the Commission. The Postal Service filed its oppositions to those motions on March 7, 2006. The exchanges between the APWU and the Postal Service on these interrogatories show that the parties, and the Commission, will need a substantial amount of time to resolve the issues in this case.

A central point made by the APWU Motions to Compel interrogatory answers in this case is that the Postal Service submissions to date have served to obscure rather

² As of March 17, 2006, 21 intervening parties have yet to file interrogatories.

than illuminate the service changes that must be weighed against the alleged financial benefits of END. By its Reply to the APWU Motion to Compel in APWU/USPS-T2-1, the Postal Service has managed to transport the obscure into the metaphysical. The Postal Service argues (Reply to APWU/USPS-T2-1, at 2):

With the END model developed, the Postal Service decided in 2005 to test it[s] ability to manage a centralized and accelerated AMP review process, by directing that 10 of these 24 local AMP proposals be placed back on the front burner, reviewed and, if approved, implemented. [Citation omitted.] During 2005, the Postal Service initiated development of its plan for a national roll-out of a centrally directed and accelerated application of the AMP review process to its entire network. That plan is the subject of this proceeding. [Emphasis added here.]

Thus, we are now advised that the matter before the Commission is not review of END itself, but review of the plan to roll out END on a nationwide basis.

This muddle would be amusing if were not so serious. As we have argued in our motions to compel, the Postal Service is trying to skirt or ignore the fact that END is nothing more than a slower version of NIA that was promised for delivery in December 2002. This denial of the continuity of the two programs is a primary basis of the Postal Service's resistance to permitting the Commission to consider events that preceded the "roll-out" in 2005.

Thus, the Postal Service resists providing a list of AMP studies begun since the end of 2001 in part as follows:

By definition, such a list would exclude any post-2001/non-N2006-1 AMP decisions not part of the current centrally directed and accelerated program for operational review that has the potential to produce service changes **on a cumulative basis** sufficient to trigger the request in this proceeding. Accordingly, such studies are – by definition – irrelevant to this docket and would pertain to isolated, localized network changes and any service changes that may have resulted. [USPS Reply, supra, at 5; emphases added here.]

Again, this response obscures rather than illuminates the matters in dispute. The “definition” relied on is nowhere stated; we do not know what this means. We have inferred that “definition” refers to the Postal Service phrase “any decisions that were not made as a part of “the current centrally directed and accelerated program.” If that is what is meant, the assertion is arguable but irrelevant.³ END began in 2001 as NIA and is ongoing. Every AMP since 2001 has been affected by the NIA/END process -- unless, of course, the Postal Service really means it when it states that the Commission is not being asked to evaluate END but only the “plan for a national rollout” of END.⁴ Even limiting the Commission’s advice to “a plan for national roll out,” an historical examination especially of recent AMPs should aid the Commission in its evaluation.

This matter would be complex enough without obfuscation. Given that the Postal Service is going to have to be compelled by the Commission to be forthcoming with facts it is presently seeking to deny or obscure, the Commission may wish to build more than the ordinary amount of time into the schedule in this matter.

³ Even if there are such AMPs, the Commission is entitled to examine their results by way of comparison to END results. This would be a good way to determine what END has changed.

⁴ Furthermore, this Postal Service response may signal a Postal Service intention to raise a major legal issue related to the scope of its duty to submit this matter to the Commission. The phrase “on a cumulative basis sufficient to trigger the request in this proceeding” does not appear in Section 3661 of the Act. The statutory standard is whether the change will “generally affect service on a nationwide or substantially nationwide basis.” 39 U.S.C. § 3661(b). There is no question from what we have already seen that END will generally affect service on a nationwide or substantially nationwide basis. Perhaps the reference to “cumulative basis” means that the Commission will be asked to subtract benefits to large mailers due to END from the adverse impacts on individuals and small mailers to determine whether the impact is cumulatively significant.

Substantial Additional Discovery Is Necessary

In addition to the objections the Postal Service has expressed in its objections to APWU interrogatories and in its Opposition to our Motions to Compel, the Postal Service has provided only grudging and partial answers to most of our other interrogatories. As a result, the APWU will be required to, and soon will, file follow-up and clarifying interrogatories on questions that the Postal Service has acknowledged, by answering, that it has a duty to answer.

These pending discovery disputes hinge in large part on the Postal Service's reluctance to reveal the fact that END will have negative service impacts. But it is now becoming clear, after further study of the materials thus far submitted by the Postal Service, that substantial discovery will be necessary on the issue of cost savings.

The Postal Service (a) uses hypothetical productivity rather than actual productivity data to determine whether an AMP change will result in cost savings; (b) uses average weekly volumes rather than actual daily volumes to determine whether the AMP transfer will be efficient; and (c) fails to reveal to the Commission and the other parties whether actual productivity is better or worse at the gaining facility than at the losing facility. All these matters, and no doubt others, will require discovery and consideration by the Commission.

We observe that the Postal Service has, in several of the AMP studies submitted to the Commission, used something it calls "Breakthrough Productivity Initiative" to measure the results of its AMP. An example is provided by the Olympia/Tacoma AMP. See USPS LR 1/5, page 000040. As note 2 of the AMP report reveals, the "Western Area" changed the productivity assumption from the actual productivity of 199 to the BPI

of 456. Id. Use of the BPI, a hypothetical productivity, in this manner is totally incorrect. Not only does it use a productivity goal that may never be reached in place of reality, this use of BPI could result in a completely false positive outcome on the AMP study. The Olympia positive outcome on the Olympia/Tacoma pairing is thus apparently based not solely on the positive change that may be caused by the transfer of work, it is based on the productivity increase due to BPI – an outcome that would be expected without the transfer of work. The same problem is revealed in the paperwork on the Marysville/Sacramento pairing. USPS LR 1/5, page 000168. We do not know, because the footnotes have not been provided for all the studies, whether all the studies are thus afflicted; but we will proffer interrogatories on this subject.

The limited footnotes available to us also reveal that the Postal Service is using average weekly volumes in its AMP studies. The use of average volumes masks a very substantial problem of under-capacity. Daily volumes vary substantially (how much will be the subject of further discovery). The use of average weekly volumes may mask the fact that, on peak days, the gaining facilities may not be able to handle the volumes without using overtime or manual processing to meet service standards; or service standards may not be met on heavy volume days.

An example of this problem is provided by the Olympia/Tacoma pairing. Thus, note 2 to the AMP report states, in part (at 000040):

...the THP of 599,352 did not reflect the actual volume that would be processed in 060. It was written up in the notes, but was not reflected on sheet 4a. The TPH volume for 060 should have been 2,928,963 pieces. Tacoma does not have the available runtime on the AFSM 100 to process all of the Olympia 331 volume. The Olympia 331 TPH volume of 5,862,254 pieces. The distribution will be as follows:

Op 331- 1,940,750 pieces op 441 – 1,588,004 pieces op 060 2,333,500

If you check the previous sheets, you will see that all the 331 volume was not accounted for. Operation 060 is the manual distribution of flat mail. Thus, the AMP report for the Olympia/Tacoma pairing apparently overlooks the fact, except in footnote 2, that one effect of this transfer of mail will be to cause a very substantial increase in the manual processing of flat mail in Tacoma. This raises serious questions of staffing levels, cost and service standards.

We suppose that the Postal Service will reply to this point that the fact that the AMP for Olympia/Tacoma makes this mistake is not of systemic significance and is thus beyond the scope of this proceeding. But from the data that is available, it seems that this problem is endemic. We can see that average piece handlings rather than actual daily piece handlings have been used to evaluate AMPs also in Santa Clara/Industry (page 000020); and the Bakersfield/Mojave pairing (page 000184). Thus, substantial discovery will be necessary on this point.

CONCLUSION

For the above-stated reasons, the Commission should reject the proposed schedule submitted by the Postal Service and should provide the parties sufficient time for discovery. The APWU also requests that a hearing be scheduled in this matter. The APWU requests that the schedule provide for three rounds of discovery (approximately 90 days) and requests that the schedule thereafter follow the Commission's usual practices in setting hearings and briefing deadlines.

Respectfully submitted,

Darryl J. Anderson
Counsel for American Postal Workers Union, AFL-CIO

O'Donnell, Schwartz & Anderson, P.C.
1300 L Street, N.W., Suite 1200
Washington, D.C. 20005-4126
Voice: (202) 898-1707
Fax: (202) 682-9276
Danderson@odsalaw.com