

PRESIDING OFFICER'S
RULING NO. N2006-1/32

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

Evolutionary Network Development
Service Changes

Docket No. N2006-1

PRESIDING OFFICER'S RULING REGARDING
PRESIDING OFFICER'S RULING N N20 06-1/24

(Issued August 16, 2006)

Question 11 of Presiding Officer's Information Request No. 5 asked the Postal Service to explain how the END optimization model assigns mail processing operations to facilities, and to provide the computer code that accomplishes this task. On July 11, 2006, the Presiding Officer issued Ruling No. N2006-1/24, which proposed standard protective conditions designed to encourage the provision of the referenced computer code.

On July 14, 2006, the Commission received the Motion of the United States Postal Service in Reply to Presiding Officer's Ruling No. N2006-1/24 (Motion). Attached to its Motion is a copy of "the standard LogicTools Software License Agreement governing the Postal Service's use of ... the source code version of the software." The Postal Service observes that under paragraph 1.B. of that agreement, it has "no right to obtain or use the source code version of the software. " The Motion states that LogicTools, Inc. "is reviewing the protective conditions appended to Presiding Officer's Ruling No. N2006-1/24 with its own counsel, and independently assessing whether those conditions would be adequate to protect its interests" The Postal Service says that to inform its assessment, LogicTools would like to know whether the

Commission would consider limiting access to the source codes to *in camera* inspection by the Commission and its technical staff as an alternative to the standard protective conditions attached to Presiding Officer's Ruling No. N2006-1/24. The Postal Service moved that the Commission consider adopting the alternative protective conditions described and/or soliciting public comments from the parties.

At the hearing on July 19, 2006, in this docket, the Presiding Officer reminded the participants of the approaching July 21 deadline for answering the Postal Service's motion. No answers were filed.

The protective conditions that are attached to Presiding Officer's Ruling No. N2006-1/24 are the standard conditions that the Commission applies to proprietary information. They appear to be as rigorous as the protective conditions that are typically applied to material covered by patent applications. See, for example, the protective conditions applied in *In re Columbia University Patent Litigation*, 330 F.Supp. 2d 18, 22 (D. Mass. 2004). Since the Commission's fundamental duty is to preserve the participant's rights to due process, I am reluctant to impose more restrictive conditions unless there is a showing of unusually high risk that unauthorized disclosure will occur and that if it occurs it will cause irreparable harm.

This appears not to be the circumstance here. No direct competitor either of the Postal Service or LogicTools, Inc. has intervened in this docket. Therefore, no direct competitor is eligible to receive the requested information, even under protective conditions. Those that are eligible to receive the information do so under restrictions that are as rigorous and comprehensive as that are applied in federal civil courts to patent litigants who are direct competitors. Accordingly, it does not appear necessary to adopt the unusual procedures that the Postal Service's Motion proposes. Accordingly, the Motion will be denied. The response to Question 11 of Presiding Officer's Information Request No. 5 will be due on August 29, 2006. The Postal Service may, if it chooses, submit its response under the standard protective conditions attached to Presiding Officer Ruling No. N2006-1/24.

In lieu of providing the computer code required by Question 11 of POIR No. 5, the Postal Service may provide a programming flowchart for the END optimization model that describes how the 18 output tables provided in Appendix B of USPS Library Reference N2006-1/18 interact to arrive at the optimized solution. The flowchart should include, at a minimum, input/output, decision, and process objects and should describe the program route from initial input to final output. In terms of its potential commercial sensitivity, such a flowchart would be comparable to the diagrams already publicly provided in Appendix B of Library Reference 18.

RULING

1. The Motion of the United States Postal Service in Reply to Presiding Officer's Ruling No. N2006-1/24 is denied. The Postal Service is directed to provide the information specified in Question 11 of Presiding Officer's Information Request No. 5 by August 29, 2006. If it chooses, it may provide its response under the protective conditions attached to Presiding Officer's Ruling No. N2006-1/24.
2. In lieu of responding to Question 11 of Presiding Officer's Information Request No. 5, the Postal Service may provide the program flowchart described in this Ruling.

Dawn A. Tisdale
Presiding Officer