

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Station and Branch Optimization and)
Consolidation Initiative, 2009)

Docket No. N2009-1

INITIAL BRIEF

OF

**VALPAK DIRECT MARKETING SYSTEMS, INC. AND
VALPAK DEALERS' ASSOCIATION, INC.**

(December 2, 2009)

STATEMENT OF THE CASE

Course of Proceedings

On July 2, 2009, the Postal Service filed a "Request of the United States Postal Service for an Advisory Opinion on Changes in Postal Service" with the Postal Regulatory Commission. The Postal Service request was accompanied by the initial testimony of Postal Service witnesses Alice M. VanGorder (USPS-T-1) and Kimberly I. Matalik (USPS-T-2).

On July 10, 2009, the Commission issued its "Notice and Order concerning a Postal Service Request for an Advisory Opinion on a Plan to Optimize the Postal Service Retail Network," which commenced Docket No. N2009-1. Commission Order No. 244.

On July 30, 2009, the Commission held a prehearing conference.

On September 20, 2009, the Commission held a hearing on the Postal Service's case-in-chief, at which counsel for the American Postal Workers Union ("APWU") and Association of the United States Postal Lessors ("AUSPL") cross-examined Postal Service witnesses VanGorder and Matalik.

On November 18, 2009, the Commission held a hearing on the case-in-chief of intervenors, at which counsel for the Postal Service cross-examined APWU witnesses Michael T. Barrett (APWU-T-1) and Anita Morrison (APWU-T-2), as well as AUSPL witness Mario A. Principe (AUSPL-T-1).

On November 24, 2009, the record in the docket was closed.

Under Presiding Officer's Ruling No. N2009-1/11, Initial Briefs are required to be filed by December 2, 2009.

Valpak Involvement in Litigation

On July 28, 2009, in accordance with Order No. 244 and Rule 20 of the Commission's Rules of Practice and Procedure (39 CFR § 3001.20), Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. each filed a notice of intervention. These intervenors have proceeded jointly in this proceeding, and are referred to as "Valpak."

On July 30, 2009, counsel for Valpak attended the Commission's prehearing conference. During the discovery period, Valpak conducted written cross-examination of Postal Service witness VanGorder with respect to her direct testimony, some of which interrogatories were responded to by the Postal Service institutionally. *See* Postal Service responses to VP/USPS-T1-1-24, filed August 25, 2009, September 8, 2009, September 21, 2009, and September 25, 2009.

On September 25, 2009, and November 24, 2009, Valpak designated certain responses of Postal Service witness VanGorder, certain institutional responses of the Postal Service, and the Postal Service response to Presiding Officer's Information Request No. 3 for the record.

These designations were made part of the record by Presiding Officer's Ruling Nos. N2009-1/9 and 14, respectively.

ARGUMENT

I. **The Postal Service Has Not Yet Made the Threshold Determination Required by Federal Law to Establish Commission Jurisdiction over these Proceedings, and the Commission Is without Authority to Make that Determination for the Postal Service.**

The Postal Service request to the Commission of July 2, 2009, actually contained two distinct requests:

- “The United States Postal Service hereby **requests** that the Postal Regulatory Commission determine **whether** a plan to optimize the postal retail network by consolidating the operations of some retail stations and branches into nearby facilities **constitutes a substantially nationwide change** in the nature of postal services, within the meaning of 39 U.S.C. § 3661(b).” Postal Service Request, p. 1 (emphasis added).
- “If the Commission determines that pursuit of the optimization and consolidation initiative will likely generate changes in the nature of postal services on at least a nationwide basis, then the Postal Service also hereby **requests** that the Commission issue an **advisory opinion** under section 3661(c) concurring that, for the reasons explained in this request and the accompanying testimony, that such service changes would conform to policies reflected in title 39, United States Code [footnote omitted].” Postal Service Request, p. 2 (emphasis added).

Before addressing the merits of these two issues, it is necessary to carefully examine 39 U.S.C. section 3661 — a statute which antedates the Postal Accountability and Enhancement Act (“PAEA”). (Indeed, in 2006, PAEA’s only change to the statute was a conforming change in the name of the Commission.) Section 3661 states as follows:

(a) **The Postal Service shall develop and promote adequate and efficient postal services.**

(b) When the **Postal Service determines** that there should be **a change in the nature of postal services** which will generally **affect service on a nationwide or substantially nationwide basis**, it shall submit a proposal, within a reasonable time prior to the effective date of such proposal, to the Postal Regulatory Commission requesting an **advisory opinion** on the change.

(c) The **Commission** shall not issue its opinion on any proposal until an opportunity for **hearing on the record** under sections 556 and 557 of title 5 has been accorded to the Postal Service, users of the mail, and an officer of the Commission who shall be required to represent the interests of the general public. The opinion shall be in writing and shall include a certification by each Commissioner agreeing with the opinion that in his judgment the opinion **conforms to the policies established under this title**. [Emphasis added.]

A. First USPS Issue — Asking the Commission Whether the Postal Service Plan Meets the Test of 39 U.S.C. Section 3661(b)

The first question posed by the Postal Service was addressed only in the first paragraph of Order No. 244, which dutifully repeated the Postal Service's request, and then ignored it. Indeed, that fleeting reference appears to be the last time that the question has been expressly raised or addressed by the Commission in this proceeding. If the Commission's silence reflects a desire not to address this issue, it has made the right choice. Indeed, this is not just a prudential matter, but jurisdictional, as the Commission has no statutory authority to make the Postal Service's determination for it either by ruling (or by issuing an "advisory opinion") that the Postal Service needs to ask the Commission to issue an "advisory opinion."

Indeed, the only discussion in this docket which relates to this first issue arose on July 9, 2009, even prior to issuance of the Commission's Order No. 244 commencing the docket, when APWU submitted a "Statement in Support of Commission Jurisdiction," asserting that the Postal Service's Initiative "fits squarely within the Commission's jurisdiction under Section 3661 of Title 39." APWU Statement (July 9, 2009), p. 1.

First, APWU urged the Commission to assert jurisdiction on the theory that this docket is similar to Docket No. N2006-1. APWU states that “in Docket [No.] N2006-1, neither the Commission, nor any party asserted that the Commission lacked jurisdiction....” However, APWU does not point out that the Postal Service request in that docket stated “[t]his Request does not address the issue of whether 39 U.S.C. § 3611(b) requires that an advisory opinion be requested under these circumstances.... [t]he Postal Service has determined in its discretion to request an advisory opinion before implementing the service changes....” Postal Service Request (Feb. 14, 2006), p. 1, n.1. It could be said that, with this language in Docket No. N2006-1, the Postal Service made a *de facto* determination that the change would meet the standard of the statute. No evidence of such a decision can be found in the instant docket, where the Postal Service merely tossed the decision to the Commission for resolution.

Second, APWU argues that in Docket No. N2006-1 the Commission found that the changes proposed by the Evolutionary Network Design (“END”) program “are *likely* to involve qualitative changes in the nature of postal services,” citing the Commission’s Advisory Opinion (Dec. 19, 2006) in that docket, at 9. APWU Statement, p. 1 (italics original). But APWU does not quote the Commission language where it first expressly stated that it found it “unnecessary to address the abstract jurisdictional question,” revealing that its thoughts constituted at best dicta, and, even at that, merely said the program was “*likely* to involve qualitative changes,” not that the changes proposed were likely to meet the statutory standard of being a “change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis” under 39 U.S.C. section 3661(b) — the first issue posed by the Postal Service.

B. Second USPS Issue — Whether the Proposal Complies with 39 U.S.C. Section 3661(b)

After setting out the general requirement that the Postal Service “develop and promote adequate and efficient postal services” in subsection (a), 39 U.S.C. section 3661(b) specifies four procedural steps (emphasis added):

1. The Postal Service **makes a determination** that there should be a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis;
2. The Postal Service **submits a proposal** to the Commission requesting an Advisory Opinion;
3. The Commission **conducts a hearing** on the record; and
4. The Commission **issues an opinion** as to whether the change conforms to the policies of Title 39.

The first two of these steps are within the province of the Postal Service, and the second two within the province of the Commission. The question then arises as to what role the Commission has in a case where the Postal Service has not made the statutorily-required determination, and, moreover, has not even made a *de facto* determination as was done in Docket No. N2006-1, before it submitted its proposal to the Commission.

This is not a light matter. It involves compliance with a federal statute, not a clause in a memorandum of understanding, for example, that the Postal Service and the Commission could agree to disregard. At this stage of the proceedings, the Commission has the duty to ensure that it has statutory authority to act as it is being asked to act, and would be difficult to argue from the statute that it does. Without the Postal Service first making “a determination that there should be a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis,” or at least “determine in its discretion to

request an advisory opinion” as done in Docket No. N2006-1, the Commission has no authority to issue an advisory opinion.

It would appear that, the Commission has two choices under the statute: (i) send the matter back to the Postal Service to make such a threshold determination before it issues its advisory opinion (at which time the Postal Service may decide that the changes are not nationwide in scope), or (ii) simply decide it is without authority to issue an advisory opinion, and close the docket.

This is not to say that the Postal Service has done anything wrong in initiating this docket prior to making a final determination that the statute applies. Indeed, the failure to make this determination early on can be understood and justified on two grounds.

First, on July 2, 2009, when the Postal Service filed its request, it explained that the review process was ongoing and its result could not be anticipated. The Postal Service reported:

Because the numerous outcomes cannot be predicted with any proposal steeped in the unique attributes of a local context, the Postal Service presently is unable to estimate the number of targeted stations and branches that may eventually experience a discontinuance of operations as a result of this initiative. Nor can the Postal Service currently quantify the potential changes in the nature of affected postal services. [Postal Service Request, p. 6.]

Indeed, the number of affected stations and branches being considered for closure has declined dramatically during the course of this proceeding (dropping from two-thirds of 4,800 when the

request was filed,¹ to over 700,² and currently to under 241³), and even if the Postal Service proposal could have met the standard of affecting the nature of any postal service at the outset, it now seems clear that it could not be “nationwide or substantially nationwide.” *See* discussion in section II, *infra*.

Second, it could be said that the Postal Service has gone the extra mile in providing transparency and seeking to obtain input from the public, as it stated in its request:

Regardless of whether the Commission concludes that this Initiative does, or does not appreciably affect the nature of any postal service on at least a substantially nationwide basis, the filing of this request improves the transparency of changes to Postal Service retail operations that are expected to have an impact on some customers. [Postal Service Request, p. 7.]

Certainly efforts by the Postal Service to provide transparency, and to seek input with respect to its decision-making, should be encouraged.

Now, however, five months after filing its request, the Postal Service has provided transparency, sought input, and better knows the number of stations and branches involved, and now it should make a formal determination (one way or the other) under section 3661(b).

If and when the Postal Service considers the issue of nationwide affect, Valpak offers its thoughts on the proper interpretation of the statute in the next section.

¹ Postal Service Request, pp. 5-6

² *See* Library Reference USPS-LR-N2009-1/4, submitted July 30, 2009.

³ *See* Library Reference USPS-LR-N2009-1/4 (revised Nov. 20, 2009).

II. The Proposed Consolidation at this Time Would Not Constitute a Change in the Nature of Postal Services on a Substantially Nationwide Basis

A. The Proposed Change Does Not Trigger 39 U.S.C. Section 3661(b)

Based on Valpak’s analysis of 39 U.S.C. section 3661(b), the Postal Service’s current proposal to reduce the number of stations and branches does not rise to the level necessary to trigger an advisory opinion. This procedure only applies “when the **Postal Service determines** that there should be [i] **a change** [ii] **in the nature of postal services** [iii] **which will generally affect service on a nationwide or substantially nationwide basis....** 39 U.S.C. § 3661(b) (emphasis added). Thus, the statute has three elements.

1. “**A Change.**” Section 3661(b) must be read in the context of the various grants of authority to Postal Service management to run the company without sharing managerial authority over postal facilities with the Commission. As one example, 39 U.S.C. section 404(a) states:

(a) Subject to the provisions of section 404a, but otherwise without limitation of the generality of its powers, the **Postal Service** shall have the following specific powers, among others:

* * *

(3) to determine the need for **post offices**, postal and training facilities and equipment, and to provide such **offices, facilities, and equipment** as it determines are needed.... [39 U.S.C. § 404(a)(3)(a) (emphasis added).]

Another grant of authority to the Postal Service is in 39 U.S.C. section 403(b), which vests authority in the Postal Service (not the Commission) to determine the “postal facilities” needed:

(b) It shall be the responsibility of the **Postal Service** --
 (1) to maintain an efficient system of collection, sorting, and delivery of the mail nationwide;

(2) to provide types of mail service to meet the needs of different categories of mail and mail users; and

(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) (emphasis added).]

Although virtually any change in the nature of postal services which the Postal Service makes could be said to have some effect on service, often nationally, the statute could not possibly envision advisory opinions for changes that are not significant. For this reason, the changes involved needs to be quantitatively significant.

2. “In the Nature of Postal Services.” The term “postal service” is a term defined in the statute — 39 U.S.C. section 102(5) provides that “‘postal service’ refers to the delivery of letters, printed matter, or mailable packages, including acceptance, collection, sorting, transportation, or other functions ancillary thereto....” Therefore, changes need to relate to mail. They do not relate to special services, such as money orders.⁴ Therefore, even if the Postal Service were to eliminate money orders nationally, it would not trigger section 3661(b).

3. “Which will Generally Affect Service on a Nationwide or Substantially Nationwide Basis.” The current number of stations and branches being studied for closure is 241, out of a total of 4,800,⁵ an average of less than five per state. One definition of

⁴ The impairment of access to money orders from facility closures was stressed in this docket. *See, e.g.*, Rebuttal Testimony of APWU witnesses Michael T. Barrett (APWU-T-1) at 10, Rebuttal Testimony of APWU witness Anita Morrison (APWU-T-2) at 15.

⁵ *See* Postal Service Request, p. 3.

“nationwide” is “covering or available to the whole of a nation...”⁶ Affecting small pockets of people in geographically diverse areas does not necessarily equate to affecting service nationwide. A Postal Service determination that the changes were not nationwide would be difficult to refute.

If the Postal Service disagrees with Valpak’s views on nationwide effect and the jurisdiction of the Commission is established, Valpak urges the following points be considered by the Commission.

III. Achieving Serious Reductions in Retail Postal Costs Has Become an Economic Imperative, Necessitated by Plummeting Postal Service Volume and Postal Service Losses

A. Postal Service Mail Volume Losses

Largely as a result of the Internet, it generally is understood that mail volume is in a secular decline. The rate of decline has been exacerbated, since 2007, by the most severe economic recession this country has experienced since the Great Depression. Unemployment, even when measured by the most conservative U-3 measure published by the Bureau of Labor Statistics, moved into double digits in October 2009. Entire categories of large mailers — including credit card offerers, retail advertisers, and magazine publishers — have suffered financially and curtailed mail volume.

⁶ See <http://www.thefreedictionary.com/nationwide>.

The high water mark for postal volume occurred in FY 2006, with 213 billion pieces. After a slight drop in FY 2007, mail volume fell in FY 2008 by a shocking 9 billion pieces.⁷ In FY 2009, mail volume fell by an unprecedented 25.6 billion pieces to 177 billion, with volume declining in every market dominant class of mail:

- First-Class -8.6%
- Standard -16.5%
- Periodicals -7.6%
- Package Services -13.7%

The Postal Service's operational plan for FY 2010 projects a further decline this year of another 10 to 15 billion pieces.⁸ Although some believe that volume losses in FY 2010 will again exceed Postal Service projections, the Postal Service's projected loss of 15 billion pieces would result in total annual volume for FY 2010 dropping to 162 billion — a reduction of 24 percent over three years, returning the Postal Service to a level of volume not seen for a generation, since FY 1986.⁹

B. Postal Service Financial Losses

Declining mail volume has led inexorably to dramatic operating losses and a dire financial situation for the Postal Service. In FY 2009, the Postal Service incurred a loss of \$3.8 billion.¹⁰ Excluding the \$2.0 billion contribution to the Postal Service Retiree Health

⁷ United States Postal Service FY 2009 Annual Report, p. 3.

⁸ United States Postal Service's SEC Form 10-K (filed Nov. 16, 2009), p. 6.

⁹ Postal Rate Commission, Docket No. R87-1, *Opinion and Recommended Decision*, Volume 2, Appendix G, Schedule 1 (161,260,395,000 pieces).

¹⁰ United States Postal Service's SEC Form 10-K (filed Nov. 16, 2009), p. 6.

Benefit Fund (“PSRHBF”), the Postal Service had a net operating loss of \$1.8 billion during the fiscal year which ended on September 30, 2009.¹¹

The Postal Service’s Integrated Financial Plan for FY 2010 (filed November 25, 2009) projects a gross loss of \$7.8 billion. Excluding the \$5.5 billion mandated contribution for the PSRHBF, the projected operating loss would be \$2.3 billion.

On October 1, 2009, the president signed Public Law 111-68, which gave the Postal Service a temporary reprieve from having to make the full payment into the PSRHBF as required by PAEA. Without that law, the Postal Service would have exhausted its borrowing capabilities and been unable to pay its bills as of September 30, 2009. However, relief provided by this law applied **only** to FY 2009. S. 1507, if enacted, would provide the Postal Service a more reasonable and realistic payment schedule to prefund the PSRHBF, but it would be irresponsible for the Postal Service or the Commission to assume it will be enacted.

The above data indicate the serious financial difficulty facing the Postal Service. Last July, the Postal Service again was declared a “high-risk” government agency by the Government Accountability Office (“GAO”), which cited mounting losses and inability to cut costs “fast enough to offset accelerated declines in mail volume and revenue.”¹²

¹¹ *Id.*, p. 6. Certain witnesses appearing before the Commission’s field hearings on September 16, 2009 in Independence, Ohio and September 23, 2009 in Bronx, New York, urged the Commission consider the serious fiscal challenge facing the Postal Service. *See, e.g.*, statement of Louis Geisler, p. 2.

¹² GAO, *Restructuring the U.S. Postal Service to Achieve Financial Viability*, Testimony GAO-09-958T (July 2009), p. 3.

C. Postal Service Cost Cutting Efforts

The Postal Service has made heroic efforts to cut costs with increased use of automation, buy-out offers to employees, realignment of delivery routes, etc. Except for retail operations, these cost reductions have reached into every aspect of the organization, including processing and transportation. In FY 2009, the Postal Service cut costs by \$6 billion.¹³

It is widely anticipated that the Postal Service soon will file with the Commission another request for an advisory opinion on having the flexibility to reduce delivery service generally from 6 to 5 days. Cost savings from such a measure are estimated to be in the range of \$3 billion annually.

D. Need for Further Retail Cost Cutting to Stay within Statutory Cap on Borrowing, and Avoid an Exigent Rate Case.

Since PAEA provides for a cap on annual rate increases (39 U.S.C. § 3622(d)(1)(A)) and a cap on annual and aggregate borrowing (39 U.S.C. § 2005(a)), continued annual deficits could prompt an exigent rate increase (under 39 U.S.C. § 3622(d)(1)(E)), which no mailer wants to see. The Postal Service clearly needs to be given discretion in exercising its statutorily-vested managerial flexibility¹⁴ to adjust its operations to the reality of lower volume and to reduce expenses where feasible, including its costly retail operations.

¹³ United States Postal Service FY 2009 Annual Report, p. 4.

¹⁴ *See generally*, 39 U.S.C. §§ 403-404.

The Postal Service has 61,231 full-time-equivalent retail associates and approximately 13,751 working postmasters at approximately 32,000 locations.¹⁵ These 74,982 employees constitute over 10 percent of the Postal Service's full-time labor force.¹⁶ With respect to the Initiative being considered in this docket, Postal Service witnesses have been quite explicit that the Postal Service must close certain retail facilities altogether, and not try to save only marginal amounts of money by reducing hours of operation.¹⁷

The decision to study closure of certain retail facilities was not made, and cannot be analyzed, in a vacuum. It must be seen in the context of the financial crisis at hand. Existing losses are unsustainable. Existing debt, coupled with the statutory debt limit, means that borrowing is not a realistic option. Congress has not undertaken to pay to keep open underutilized retail facilities. Placing impediments in the way of Postal Service management cannot be defended if there are no other cost cutting choices — and there appear to be none. Alternatives to cutting costs are raising rates, leading to yet further volume losses and, possibly, the “death spiral” often discussed during consideration of PAEA, or draconian

¹⁵ Response to VP/USPS-T1-9(a), Tr. 2/289-290. On October 8, 2009, in a speech at the National Press Club on “The State of the Postal Service,” PMG Potter observed that the Postal Service has more retail outlets than Starbucks, McDonalds, and Walmart combined.

¹⁶ On October 8, 2009, in a speech at the National Press Club on “the State of the Postal Service,” Postmaster General Potter reported that the Postal Service has reduced its workforce to 618,000 employees.

¹⁷ See response to PR/USPS-T1-11, Tr. 2/270-271. See also Objection of the United States Postal Service to David Popkin interrogatory DBP/USPS-31 and Opposition of the United States Postal Service to Popkin Motion to Compel Response to Interrogatories DBP/USPS-31, Sept. 17, 2009 (cited in POR No. N2009-1/7).

reductions in service (which also might cause a reduction in volume). The Commission, which monitors Postal Service finances closely, understands these truths which may be lost on policymakers elsewhere in Washington, D.C. Through an advisory opinion in this docket, the Commission has the opportunity to educate those who do not fully understand the business of the Postal Service that closing some retail facilities, although painful, is reasonable, prudent, and unavoidable.

IV. The Postal Service Is Seeking to Rationalize Its Retail Network

The postal retail network is both vast and expensive. In 2009, facilities selling postal products include a few thousand Contract Postal Units (“CPUs”) and tens of thousands of post offices, stations, and branches, only a few of which are the subject of this docket.¹⁸ For the last 30 years or so, the network of Postal Service retail facilities has been relatively static.

In the 70 years prior to 1971, the year the Postal Reorganization Act of 1970 (“PRA”) took effect, the predecessor Post Office Department closed over 45,000 post offices, or about 650 per year on average.¹⁹ At the same time, the retail postal network continued to evolve and adapt. In many cities, new stations and branches were opened (or expanded and renovated) to accommodate needs of the expanding population. What made the difference between then and now?

¹⁸ In addition to retail facilities, the Postal Service deserves credit for innovating other ways of making certain items, such as stamps, conveniently available to the public. *See* USPS-T-1, pp. 5-10.

¹⁹ *See* J. Haldi, “The Cost and Affordability of Universal Retail Postal Service,” paper delivered at Conference at Brookings Institute (June 18, 2002).

Prior to 1971, the old Post Office Department typically operated at a deficit, and received an annual appropriation from Congress to cover the shortfall. The Congressional appropriation was not earmarked for support of specific items such as economically inefficient retail outlets. Nevertheless, Congress was paying for those outlets as any reduction in unnecessary expenses would reduce the size of the deficit and the appropriation needed to make up the shortfall to sustain the Post Office Department. Under those conditions, Congress seemed not to have been as reluctant as it is now to see redundant retail facilities closed.

With passage of the PRA, Congress shifted all costs of the retail network from tax payers to rate payers. Having relieved itself of any fiscal burden, Congress imposed on mailers the cost of sustaining redundant post offices and made elimination of small post offices considerably more difficult by prohibiting closure for economic reasons alone. *See* 39 U.S.C. § 101(b). Looking back at the number of post offices closed prior to 1971, it appears to have been much easier then to close redundant post offices when Congress had to appropriate funds to pay for them.

Since 1971, as the two Postal Service witnesses have discussed, the retail network has evolved in a number of imaginative ways — *e.g.*, selling stamps via consignment, the Internet, toll-free telephone, etc. Moreover, despite Congressional constraints, small uneconomic post offices continue to be closed, albeit at a much reduced pace, while some additional stations and branches have been opened in expanding metropolitan areas. Despite changes over the last 35 years, considerable geographical imbalance exists, and may even be worsening. For instance, states that have experienced rapid population growth, such as Arizona, California, and Florida, average over 20,000 inhabitants per post office, whereas states such as North Dakota, Vermont

and West Virginia have fewer than 3,000 inhabitants per post office. (*See* fn. 18.) Like any business, the Postal Service needs to be able to rationalize its retail network and adapt its outlets to changing circumstances.

The Postal Service has the flexibility to open new facilities (as well as explore other retail options) without interference or control. It is much less likely that a citizen will complain of the lack of a non-existent post office than a citizen will object to the closure of an existing post office. Stations and branches are not subject to the closure restriction of 39 U.S.C. section 101(g) and the closure appeal process of 39 U.S.C. section 404(d), but some would seek to have the Commission intrude into this area. Although this issue will not be resolved in this docket, it should be understood that Commission involvement into the closure process beyond that specified in 39 U.S.C. section 3661 would be without statutory warrant, and may have the perverse effect of discouraging the Postal Service from opening new facilities where they truly may be needed. If, under applicable rules, it is effortless to open a retail facility, but almost impossible to close one, that reality could come to overshadow Postal Service retail decision-making. Postal Service awareness of such a “ratchet effect” could likely impede opening new retail facilities when they are economically justified, while retarding rational and efficient closures in the postal retail network.

V. When Rationalizing Its Retail Network, the Postal Service Should Focus on Expanding Alternate Ways of Providing Postal Patrons with Essential Services at Reasonable Cost

Discussed in the record of this docket are various ways utilized by the Postal Service to provide retail postal services. Most common, by far, are the ubiquitous brick-and-mortar

postal facilities, some of which are included in the current Initiative. To its credit, however, the Postal Service also utilizes alternate access arrangements to make a range of postal services accessible and convenient to all patrons within a limited geographical area, such as a ZIP code, or even a neighborhood within a ZIP code area. These other means of access include:

- mobile retail vans,
- rural carriers acting as “mini-post offices,” and
- contract postal units.

As discussed below, these alternate access arrangements can be far less costly than brick-and-mortar facilities, and thereby help the Postal Service fulfill its statutory obligation to provide postal services consistent with reasonable economies of operation. Indeed, alternate retail channels are an appropriate means of the Postal Service’s general duty to “provide adequate and efficient postal services at fair and reasonable rates and fees.” *See* 39 U.S.C. § 403(a).

A. Some of the Postal Service Retail Brick-and-Mortar Facilities May No Longer Be Justified

The Postal Service sells a narrow line of retail products. A listing of the Postal Service’s retail products is shown in the attachment to the response to PR/USPS-T1-1(a) [Errata]. Tr. 2/252-256. Within the context of a retail store, each item in the list would be referred to as an individual “stock keeping unit,” or SKU. For many of these SKUs, the unit price is under \$5.00. Although not mentioned by either Postal Service witness, these 116 SKUs constitute a rather narrow line of comparatively low-priced products to support a free-standing brick-and-mortar “store,” or facility that is dedicated solely to postal products.²⁰

²⁰ The Postal Service is not alone in this respect. Retail postal items comprise a limited line for postal administrations in other countries as well. In some countries, the postal administration has helped alleviate the problem of limited postal offerings by providing retail

Exhortations to expand the number and variety of services offered by the Postal Service are all well and good, but 39 U.S.C. section 404(e) precludes the Postal Service from selling new unrelated products in its retail outlets. Moreover, even if the Postal Service were not so proscribed, contemplation of such diversification would make little sense for a number of reasons, including, for example, (i) space constraints, and (ii) lack of expertise in marketing and selling unrelated products.

Retail postal facilities have high fixed costs. Many of the Postal Service's stations and branches are leased, and in urban areas the cost of leasing or renting alone can represent a significant fixed cost.²¹ Moreover, Postal Service employees at the retail clerk level generally are employed full-time, and post offices typically are open eight to nine hours a day, Monday through Friday, plus half a day on Saturday.²² Although the number of retail clerks at a station

banking services. Whether provision of banking or any other financial services might be a viable option for the Postal Service, it is not under consideration in this docket.

²¹ The statement of William Bruce Grygus, Postmaster of Ringwood, N.J., at the Commission's hearing on September 23, 2009, discussed two closed retail facilities in New Jersey. Both were leased. At the same hearing, John Vincenzi, President of Branch 459 of the National Association of Postal Supervisors, stated:

I'm acutely aware of the continued costs to the Postal Service of operating these retail facilities, due especially to the rental costs associated with the space they occupy. All seven of the stations or branches in the Bronx that are under consideration occupy leased space.... Most of the public is not aware that the Postal Service leases a major portion of the space its facilities occupy, so the costs of leasing present a tremendous burden on the Postal Service. [P. 3.]

²² The extent to which post offices are open for business during the week is necessarily estimated; *see* response to VP/USPS-T1-13, Tr. 2/294.

or branch can vary, the minimum fixed cost to operate a brick-and-mortar retail postal facility doubtless is substantial.²³

To justify high fixed retail costs, large dollar volume is required. The average cost per dollar of revenue generated from sale of stamps via different channels reported ranges from \$0.01 to \$0.123, as follows:²⁴

PC Postage	Between \$0.01 and \$0.05
Stamps by Mail	\$0.090
Stamps on Consignment ²⁵	\$0.011
Vending	\$0.123
Contract Postal Units	\$0.087
Post Office Retail Window	\$0.068

To provide adequate revenue for processing, transporting, and delivering the mail, the average cost of selling stamps and providing other retail services needs to be a relatively small percentage of revenues collected, and for any individual station or branch probably not more

²³ The average number of full-time window clerks in the Postal Service's 3,600 stations and branches reporting to postmasters at or above pay level 24 is 4.3. Response to VP/USPS-T1-9(c), Tr. 2/290. In response to POR No. N2009-1/10, on December 1 the Postal Service filed data on operating costs for 3,300 stations and branches. The cost data appear to include both retail clerks and carriers (where applicable), which makes it impossible to isolate the contribution to profit from retail operations alone.

²⁴ Response to VP/USPS-T1-10, revised Sept. 8, 2009, Tr. 2/291. The Postal Service's April 2002 *Transformation Plan* indicated that the average cost of selling each dollar's worth of postage stamps at a retail counter was a staggering \$0.24, and the vast majority (80 percent) of all stamp sales then occurred at post office counters. See p. 15; see also App. K, p. K-2.

²⁵ Businesses typically promote their most profitable items. In that regard, it is interesting to note that the stamps-on-consignment program, which has by far the lowest cost per dollar of revenue generated, has no advertising budget whatsoever. See response to VP/USPS-T1-12(b), Tr. 2/293.

than 20 to 25 percent (which is about three times the average retail window cost of \$0.068).²⁶ In order to cover high fixed operating costs, and in view of the low price of most postal SKUs, a retail unit consequently needs to do a substantial volume of business in order for it to be “consistent with reasonable economies of postal operation.” 39 U.S.C. § 403(b)(3). Should well-paid window clerks at a facility spend much of their time idle — *e.g.*, waiting for customers to arrive — that quickly becomes an expense which the Postal Service can ill afford. It is understandable that the Postal Service would desire to reduce some of these costs by closing stations and branches altogether, rather than by reducing hours of operation.

B. Mobile Retail Vans Offer a Means of Convenient Alternate Access that Is Considerably Less Costly

Mobile retail vans complement brick-and-mortar facilities.²⁷ Such vans have existed since at least the 1970’s, and the Postal Service now has 179 of them operating in 97 metropolitan areas.²⁸ The stamp inventory of a mobile retail van is similar to that available in stations and branches,²⁹ and customers can purchase stamps at face value, with no minimum requirement (*e.g.*, a single stamp, if so desired).³⁰ In addition to stamps, these vans also offer

²⁶ Any stations or branches whose costs exceed revenues by, say, 25 percent, might well be considered candidates for closure and replacement with a less expensive alternative on grounds that continued operation is not “consistent with reasonable economies of postal operation.” The prohibition of closing a post office “solely for operating at a deficit” does not apply to stations and branches. *See* 39 U.S.C. § 101(b).

²⁷ Responses to VP/USPS-T1-4(a-b), Tr. 2/281, and T1-16, Tr. 2/296.

²⁸ Responses to VP/USPS-T1-2(a-b), Tr. 2/279, T1-7, Tr. 2/285, and T1-17, Tr. 2/297.

²⁹ Response to VP/USPS-T1-3(a), Tr. 2/280.

³⁰ Response to VP/USPS-T1-1(e), Tr. 2/278.

a moderately wide range of products and services, and accept for delivery all services purchased from the van.³¹ Limited security, however, prevents mobile vans from offering high security and cash volume items such as money orders.³² Another limitation is that the Postal Service's mobile vans do not have wireless data transmission capability, generally limiting transactions to cash or check.³³

Of the 179 retail vans operated by the Postal Service, 24 have designated routes, and they average three stops per route.³⁴ From October 1, 2008 through August 2009, 19 of those 24 vans serving designated routes had average gross Walk-in Revenue of \$133,858, which was several times greater than the average gross Walk-in Revenue of the smallest stations and branches recently closed.³⁵ From an economic perspective, a mobile retail van, staffed by only one retail clerk, would appear to be less costly — and much more flexible — than a brick-and-mortar facility with low Walk-in Revenue, especially if the brick-and-mortar facility is staffed by two or more persons. Moreover, if one mobile retail van could replace two such brick-and-mortar facilities, that clearly would be a far less costly alternative — offset, however, by

³¹ Response to VP/USPS-T1-1(c & f), Tr. 2/278.

³² Response to VP/USPS-T1-6(a), Tr. 2/283.

³³ Response to VP/USPS-T1-6(c), Tr. 2/283-284.

³⁴ Postal Service Response to VP/USPS-T1-17(b), Tr. 2/297.

³⁵ Postal Service Response to VP/USPS-T1-19, Tr. 2/230.

limitations on the range of products offered, most especially the unavailability of money orders.³⁶

C. Rural Carriers Provide Customers With Services Other Than Delivery

It is said that rural carriers often operate as “mini-Post Offices on wheels,” selling retail products and providing certain services not available from city carriers.³⁷ Rural carriers also accept letters for delivery when customers leave them in their mail box with the flag up. Data are lacking, however, on the extent to which people actually utilize those “non-delivery” services that are available from rural carriers, as well as the cost of having rural carriers provide customers with postal services other than delivery.³⁸

The instant docket concerns stations and branches located in urban and suburban areas. Postal Service Request, pp. 5-6. While it is true that the majority of people who use these particular post offices, and who would be affected by their closure, are not served by rural carriers,³⁹ rural carriers, operating as a “mini-post office on wheels,” are a viable alternate access point for those affected citizens in suburban areas who are served by rural carriers.

³⁶ To the extent that mobile retail vans can relieve the community tension which arises from threatened closure of a retail facility, the Postal Service might find it worthwhile to investigate upgrading the capability of mobile retail vans so that they could operate point-of-sale (“POS”) terminals, process credit cards, and handle money orders.

³⁷ Postal Service Response to PR/USPS-16(e-f), Tr. 2/154-158. The range of services provided by rural carriers should not be confused with the Stamps by Mail program, which uses delivery by both city and rural carriers, and which accounted for 2.9 percent of retail sales in FY 2008). *See* Postal Service witness VanGorder Response to PR/USPS-T1-8 (revised Sept. 29, 2009), Tr. 2/268.

³⁸ Postal Service Response to VP/USPS-T1-15, Tr. 2/295.

³⁹ Postal Service Response to VP/USPS-T1-14, Tr. 2/294.

D. Contract Postal Units Offer Convenient Alternate Access while Benefitting Greatly from Economies of Scope and Expands Branding of the U.S. Postal Service Name

CPUs sell all postal items of interest to individuals. The aforementioned attachment to PR/USPS-T1-1 also shows postal SKUs sold by contract postal centers, or CPUs, which are shown under Brick & Mortar facilities (column 3). As indicated there, CPUs sell almost all items of interest to individual customers; hence, for the average citizen, a CPU can be a good substitute for a closed station or branch.⁴⁰

CPUs offer expanded hours of operation. Approximately 159 urban and suburban CPUs are situated within ZIP codes of stations and branches being considered for closure,⁴¹ and many of them are said to be located within establishments such as drug stores, grocery stores, and convenience stores.⁴² Establishments such as the aforementioned typically carry thousands of SKUs. For many people, such CPUs enable one-stop shopping. As explained below, this can be the basis for a major difference in the economics of operating a CPU versus a free-standing post office. Further, some CPUs are open evenings, as well as all day Saturday and Sunday, when Postal Service stations and branches typically are closed.⁴³ The fact that CPUs may be open during times when post offices are closed could be an added

⁴⁰ Items which CPUs do not sell are of interest only to business customers, such as fees from BRM, Bulk Mail, Permit Imprint, etc. *See* response to VP/USPS-T1-8(c), Tr. 2/287. *See also* Tr. 2/545, ll. 18-19 (Matalik), “A contract postal unit, you know, provides the same services as a post office.”

⁴¹ Postal Service Response to VP/USPS-T1-21, Tr. 2/300.

⁴² Postal Service Response to VP/USPS-T1-22, Tr. 2/301.

⁴³ Postal Service Response to VP/USPS-T1-8(d) and 8(e), revised Sept. 21, 2009, Tr. 2/287; also response to VP/USPST1-23, Tr. 2/302.

convenience for some customers. Use of CPUs can actually increase the retail exposure of the Postal Service. Indeed, the physical presence of a postal counter in a CPU maintains brand exposure for the Postal Service far more than, say, the stamps on consignment program.

CPUs benefit from economies of scope. The economics of operating a CPU can be quite different from a retail post office. Employees work for the sponsoring establishment, not the Postal Service.⁴⁴ Consequently, when the retail postal counter of a CPU has no customers, employees need not stay behind the counter waiting for a customer to arrive. Instead, they can do productive work elsewhere in the store. This reduces employee costs chargeable to postal products, and results in economies of scope with respect to the supply side.

Further, presence of a CPU inside a store helps attract people who then may purchase some of the other available SKUs, rather than shopping for the same or similar items elsewhere. In other words, from a marketing or demand perspective, a CPU also can help the host establishment realize economies of scope (also referred to sometimes as synergy) with respect to the demand side that simply are not available to the Postal Service. A CPU can thus be a profitable undertaking for the host establishment and the Postal Service even if its dollar volume is somewhat less than that of the closed station or branch.

VI. The Postal Service Effort to Move Toward Alternative Retail Is Mandated by PAEA.

The Postal Service initial filing referenced, in passing, one of the most interesting sections in PAEA which has bearing on the Postal Service's retail network. The Postal Service

⁴⁴ Postal Service Response to VP/USPS-T1-9(a), Tr. 2/289.

discusses its various efforts to expand retail access through nontraditional channels, and then states:

Collectively, these alternatives extend, facilitate and expedite customer access to retail postal transactions that once required a visit to a retail window in a Post Office, station or branch, **consistent with uncodified subsection 302(d)** [of PAEA]. [Postal Service Request, p. 4 (emphasis added).]

In truth, the Postal Service’s move away from brick-and-mortar facilities is called for by PAEA. Although not codified into Title 39, this provision of PAEA is set out in the notes to 39 U.S.C. section 3691. The provision applies to the Postal Service plan required to be filed within 6 months after the establishment of service standards under 39 U.S.C. section 3691, and reads as follows:

(d) **Alternative retail options.** — The Postal Service plan shall include plans to expand and market retail access to postal services, in addition to post offices, including —

- (1) vending machines;
- (2) the Internet;
- (3) postage meters;
- (4) Stamps by Mail;
- (5) Postal Service employees on delivery routes;
- (6) retail facilities in which overhead costs are shared with private businesses and other government agencies;
- (7) postal kiosks; or
- (8) any other nonpost office access channel providing market retail access to postal services.

It is impossible to read this statute as anything other than a 2006 congressional requirement that the Postal Service move rapidly into alternative retail options in a significant way.⁴⁵ It

⁴⁵ Subsection (f) of PAEA section 302 confirms this view: “Nothing in this section shall be construed to prohibit the Postal Service from **implementing any change** to its processing, transportation, delivery, and **retail networks** under any authority granted to the Postal Service for those purposes.” (Emphasis added.)

would be only natural that less efficient retail channels be reduced. This is exactly what the Postal Service is doing in this docket.

VI. The Postal Service Process for Retail Facility Review Could Be Improved

The Postal Service has invited the Commission to comment on its retail facility review process.

The Postal Service has structured this Initiative so as to consider the concerns of potentially affected customers. Should the Commission develop constructive advice in furtherance of the Initiative at the conclusion of this docket, its view would be welcomed. [Postal Service Request, p. 7.]

As requested by the Postal Service, this docket could provide the vehicle for the Commission to assist the Postal Service in improving its retail review process, and Valpak offers the following thoughts for consideration by the Commission and the Postal Service.

The existing closure review process already reviews many pertinent considerations.

Prior to undertaking the current consolidation Initiative, the Postal Service had in place an established review process that traditionally was used when closure of an individual station or branch was contemplated. This pre-existing closure process reviews a number of pertinent considerations before reaching a final decision to close a single station or branch. The Postal Service also is using its pre-existing process to evaluate stations and branches identified in this Initiative as possibly redundant. It is explained in some detail by witness Matalik, USPS-T-2, along with a number of library references and interrogatory responses that further illustrate the process.

The process entails a number of elements, including notice to the public and either an invitation to a public hearing or an opportunity to fill out and file a questionnaire. It also entails documentation and consideration of all **existing** alternate access points within the immediate neighborhood. These include the number and location of stamps available from consignment outlets and proximity to other nearby post offices and CPUs.⁴⁶

The existing process also has limitations. The closure process used for the current Initiative requires no explicit effort to study the feasibility of bringing to the affected neighborhood alternate access arrangements, even though that might be a cost-effective way to provide postal services to locales affected by closure of a station or branch. In light of this void, assurances that “we will take steps to ensure that service remains adequate” can ring hollow, especially to those customers who reside in the immediate vicinity of a facility to be closed.⁴⁷

Stamps are a necessity for the average citizen to mail a letter or remittance, to be sure, but ready availability of stamps is no substitute for other items essential to some mailers, such as a money order. Stamps via consignment outlets, the telephone or the Internet will not fulfill such a need, hence closure of a post office can leave a void which availability of stamps alone

⁴⁶ See Tr. 2/347, ll. 15-16 (VanGorder). “Contract postal units, we do include as alternate access.” It seems somewhat ironic that an existing CPU is considered as alternate access equivalent to another post office, yet the examination and review process at headquarters by senior management excludes any consideration of the feasibility of establishing a new community post office, or CPU to replace a station or branch recommended for closure. See Tr. 2/545, ll. 6-14, Matalik.

⁴⁷ See response to APWU/USPS-T1-2(i), Tr. 2/245.

cannot fill, and which is not addressed by the Postal Service in this docket.⁴⁸ Despite the various public notices, public hearings and opportunity for public comment, it makes no systematic effort to explore alternate access arrangements that might continue bringing the most commonly used postal services (*e.g.*, money orders, as well as stamps) to affected residents and businesses.⁴⁹ It would seem wise for the Postal Service, in evaluating service to the community, to also study concurrently the feasibility of a neighborhood CPU, or solicit bids for one.⁵⁰

The Postal Service now has over 4,000 CPUs.⁵¹ It thus has extensive experience with respect to the minimum level of revenue that is necessary for a CPU to be economically viable. Consequently, for a station or branch being closed, its revenues (a datum readily available to the Postal Service) ought to go a fair way toward indicating the feasibility of establishing a community post office (*i.e.*, a CPU) somewhere within the immediate neighborhood as a replacement. The Postal Service, in conjunction with this Initiative, states that it is not

⁴⁸ Witness Matalik stated that contemplating any revision to the closure process is beyond the scope of the witnesses authority, as her job is simply to help implement the existing process.

⁴⁹ Extenuating circumstances, such as deterioration of a neighborhood and security concerns, may indicate that a particular office should be closed. See, for example, statement of William Bruce Grygus (submitted to the Sept. 23, 2009 field hearing) at pp. 11-13 concerning closures of the General Lafayette Station in Jersey City. For isolated situations such as that described by Mr. Grygus, the existing closure process could well be adequate. However, such individual situations should be distinguished from a wide-ranging Initiative like that in the instant docket.

⁵⁰ Precedent for such action exists. See statement of William Bruce Grygus, Sept. 23, 2009, p. 10, which states with respect to closure of the station in Elizabethport N.J., "We also pursued establishment of a nearby CPU, although the solicitation drew no qualified bids."

⁵¹ Response to VP/USPS-T1-9(d), Tr. 2/289-290.

considering CPUs as replacements for closed stations or branches.⁵² Possible establishment of neighborhood CPUs is simply left to another day and depends entirely upon the initiative of local management.⁵³ In the meantime, the existing process causes residents in each affected neighborhood to find ways to cope with loss of their retail postal unit.⁵⁴

The existing process, which simply offers the affected community a choice between (i) the existing post office, or (ii) no post office, seems guaranteed to create considerable angst among existing customers. It should be no surprise when the current closure process leads to maximum local resistance. Far worse, it may result in subjecting the closure of stations and branches to legislation which would surely be counterproductive for the future of the Postal Service and mailers. By making a good-faith effort, before a facility is closed, to consider and hopefully provide meaningful alternate retail access — one that is perhaps even more convenient (in terms of hours of operation) — the Postal Service would do everyone a favor.

Further, should the Postal Service fail to receive an adequate response from a qualified bidder for a CPU, it should endeavor to assure people in the neighborhood that it will continue providing postal services with a mobile retail van unless and until usage of the van declines to

⁵² Response to VP/USPS- T1-8(g), Tr. 2/286-288. The Postal Service lags far behind other countries such as Canada, Great Britain, Germany, New Zealand, and Holland in rationalizing the postal retail network; see the 2002 *Transformation Plan*, Appendix H.

⁵³ See Tr. 2/353, II. 23-24 (VanGorder), "there are not particular studies that occur, to the best of my knowledge There is no specific study" (In response to question "what studies do district managers conduct to determine if the needs of the particular community are being met?")

⁵⁴ The average citizen has no knowledge of the alternate access arrangements available to the Postal Service, and it should not be incumbent upon the citizens to study the feasibility of, or petition for, some alternate access arrangement.

a point where it no longer is needed.⁵⁵ In conjunction with this Initiative, however, the Postal Service states that it has neither considered, nor does it have any plans to use, mobile retail vans as replacements for “brick-and-mortar” retail facilities.⁵⁶ Nevertheless, mobile retail vans should be employed as needed to service communities.

CONCLUSION

For the reasons set out above, Valpak recommends that the Commission request the Postal Service to make the threshold determination required under 39 U.S.C. section 3661(b). If the Postal Service makes that finding, Valpak then urges that the Commission issue an advisory opinion that does not constrain, or impose additional burdens on, Postal Service flexibility to close retail facilities in question, particularly in view of the precipitous decline in postal volume, and the serious deterioration of postal finances. Lastly, Valpak urges the Commission to provide input to the Postal Service as to how it can improve its retail review procedures by incorporating into the decision-making process express consideration of lower-cost alternatives to brick-and-mortar facilities, such as mobile retail vans and Contract Postal Units. Such alternative retail channels, which are designed to meet the needs of customers

⁵⁵ Precedent for such relief exists. *See* statement of William Bruce Grygus, Sept. 23, 2009, pp. 9-10, which states with respect to closure of the station in Elizabethport N.J., “After the suspension took place on March 17, 2007, we positioned a mobile van near the suspended station. After easing customers’ transition to other retail options, utilization of that unit diminished and its use was discontinued in that area.” A better substitute would be vans that have been upgraded.

⁵⁶ Response to VP/USPS-T1-5(b), Tr. 2/282.

currently served by uneconomic and unsustainable stations and branches, must be advanced by the Postal Service under the mandate of PAEA.

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