

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

RETAIL ACCESS OPTIMIZATION INITIATIVE 2011

Docket No. N2011-1

**INITIAL BRIEF OF THE UNITED STATES POSTAL SERVICE**

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I. Statement Of The Case

The United States Postal Service has been established to operate as a basic and fundamental service to the American public that binds the Nation together through the personal, educational, literary, and business correspondence of the people. 39 U.S.C. § 101. Management of the national postal system involves the balancing of important service, operational and financial objectives, including the provision of adequate, prompt, reliable, and efficient services to all communities. See 39 U.S.C. §§ 101(a), 403(a), 403(b)(1), 3661(a). In the context of these responsibilities, a maximum degree of effective and regular service is to be provided to rural areas, communities and small towns where post offices are not self-sustaining; and no small Post Office is to be closed solely for operating at a deficit. 39 U.S.C. § 101(b). The Postal Service is responsible for operating and maintaining such facilities and equipment as are necessary to pursue these objectives. 39 U.S.C. § 401(6). Congress also has directed the Postal Service to expand and promote a mix of alternative postal retail access channels. See Postal Accountability and Enhancement Act § 302(d), Pub. L. No. 109-435, 102 Stat. 3219.

A reasonable time prior to the effective date of any change in the nature of postal services that is at least substantially nationwide in scope, the Postal Service is required by 39 U.S.C. § 3661(b) to request an advisory opinion from the Postal Regulatory Commission regarding whether that change would conform to the polices of Title 39 of the United States Code. The Postal Service filed its

request in this docket on July 27, 2011,<sup>1</sup> seeking the Commission's advisory opinion regarding its Retail Access Optimization Initiative (RAO) Initiative. The purpose of the Initiative is to take advantage of opportunities to increase efficiency in postal retail operations, which helps to ensure that, in concert with its other responsibilities, the Postal Service:

maintain[s] 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)(3). Under the RAO Initiative, the Postal Service anticipates that it will subject approximately 3650 retail facilities to discontinuance review, consistent with the policies and procedures of 39 U.S.C. § 404(d), as implemented by USPS Handbook PO-101.<sup>2</sup> The operation of some Post Office retail locations, as well as subordinate retail stations, annexes and branches, is expected to be discontinued as a result of this Initiative, requiring affected postal customers to obtain access to products and services at remaining postal retail locations or through available alternate postal retail access channels. In this regard, the RAO Initiative can be anticipated to generate change in the nature of postal services for some customers, within the meaning of 39 U.S.C. § 3661. The Postal Service anticipates implementing the first retail location discontinuance under the RAO Initiative, and thus the first change in the nature of service in late

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<sup>1</sup> Docket No. N2011-1, Request Of The United States Postal Service For An Advisory Opinion On Changes In The Nature Of Postal Services (hereinafter, "USPS Request" or "Request") (July 27, 2011).

<sup>2</sup> Docket No. N2011-1, USPS Library Reference N2001-1/1.

December 2011.<sup>3</sup>

The Postal Service's Docket No. N2011-1 advisory opinion request was filed contingent upon a Commission finding that the change in the nature of postal services that could result from the RAO Initiative would be at least “substantially nationwide” within the meaning of section 3661. The evidentiary record in this proceeding provides no basis upon which the Commission could reasonably conclude that the potential service changes arising from the RAO Initiative would be less than substantially nationwide in nature. Accordingly, the issuance of an advisory opinion is warranted. However, the evidentiary record supports the issuance of an opinion affirming that implementation of the anticipated changes in the nature of service resulting from the RAO Initiative is permitted by and consistent with the Postal Service's authority and the policies and objectives of title 39.

## II. Procedural History

The Postal Service filed its Request for an Advisory Opinion on the Retail Access Optimization Initiative with the Postal Regulatory Commission on July 27, 2011. In support of the Request, the Postal Service submitted the direct

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<sup>3</sup> Docket No. N2011-1, USPS Request at 2; Direct Testimony of James J. Boldt on Behalf of United States Postal Service, USPS-T-1 at 23. Under 39 C.F.R. § 3001.72, an advisory opinion request must be filed at least 90 days before the implementation of the resulting service changes. The N2011-1 Request was filed sufficiently in advance of December 2011 to ensure that any changes in postal services resulting from discontinuance of retail operations under the RAO Initiative would be implemented consistent with the requirement in 39 U.S.C. § 3661(b) to give the Commission a reasonable opportunity to issue the requested advisory opinion.

testimony of James J. Boldt.<sup>4</sup> His testimony was accompanied by USPS Library References N2011-1/1 through N2011-1/3, N2011-1/NP1 and N2011-1/NP2.

The next day, the Commission issued Order No. 778, publishing a notice of the filing of the Request, initiating this docket, and appointing a representative for the public's interests in the proceeding.

Eighteen parties intervened. Written discovery commenced on July 28 and was filed as late as September 26, 2011, with the final Presiding Officer's Information Request dated October 24, 2011. The hearing for oral cross-examination of witness Boldt was held on September 8, 2011. In response to a request from the Commission, the Postal Service also made Dean Granholm, Vice President for Delivery and Post Office Operations, available for cross-examination.<sup>5</sup> Written responses to discovery requests have been supplemented by the filing of additional USPS Library References: N2011-1/4 through N2011-1/26, and N2011-1/NP3- through N2011-1/NP22. Additionally, USPS Library Reference N2011-1/11, the RAO Initiative Candidate Facility Status Update, has been revised monthly to identify the facilities no longer under consideration for discontinuance.

Between September 16 and 26, 2011, the following intervenors filed rebuttal testimony presented by a total of 10 witnesses: the American Postal Workers Union, the Center for the Study of Responsive Law, Frederic Foster, the National Association of Postmasters of the United States, the National League of

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<sup>4</sup> Docket No. N20011-1: Direct Testimony of James J. Boldt on Behalf of the United States Postal Service (USPS-T-1).

<sup>5</sup> See Docket No. N2011-1, Tr. Vol. 1 at 600-622.



Postmasters, the National Newspaper Association, and the Public Representative. Hearings for the oral cross-examination of intervenor witnesses were held on October 17-18, 2011.

On October 24, 2011, the Postal Service filed surrebuttal testimony of witnesses David R. Ruiz (USPS-SRT-1) and James J. Boldt (USPS-SRT-2). The hearing for oral cross-examination on their testimony was held on October 28, 2011.

### III. The Rationale For The RAO Initiative Is Simple And Consistent With Applicable Statutory Service Policies

For the reasons explained in its Request and as demonstrated by the record evidence in this docket, the Postal Service submits that the changes in the nature of service that will result from the RAO Initiative are in accord with applicable policies of title 39.

#### A. Scope of the RAO Initiative

Post Offices consist of administrative units of the Postal Service. As of the date of the Request in this docket, there were approximately 26,880 Post Offices in the postal retail network. Each Post Office serves a geographic area that comprises one or more specified 5-digit ZIP Codes and has responsibility for mail processing, collection, delivery, and retail operations for that area. Subordinate postal retail units such as stations, annexes and branches operate under the management of a specific Post Office, and provide many of the same services within its service area.<sup>6</sup> There are approximately 5610 such subordinate retail

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<sup>6</sup> In contrast to a branch, a station is generally located within the same city or municipality as the

facilities in the postal network concentrated in service areas of urban and suburban Post Offices.

For purposes of the RAO Initiative, the following categories of postal retail facilities have been identified for discontinuance review:

Category 1

Post Offices with "low" (less than two hours of) earned workload associated with retail activity per day and no greater than \$27,500 in total annual walk-in revenue;<sup>7</sup>

Category 2

Stations and branches that earned fiscal year 2010 (FY) revenue of less than \$600,000, that had FY 2010 revenue less than the average for FYs 2008 and 2009, and that are located within two miles of at least five postal retail and/or alternate access sites.

Category 3

Retail annexes that had FY 2010 revenue of less than \$1 million and are located within a half-mile of at least five postal retail and/or alternate access sites.

Category 4

Post Offices, stations, and branches that were undergoing locally-initiated discontinuance review independently of RAO at the time of the Postal Service's July 14, 2011 amendment to its retail facility closing regulations, but had not advanced to the community meeting stage of the review process.<sup>8</sup>

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Post Office to which it is subordinate. Some stations may be referenced locally as "annexes" and this latter designation is used in relation to some facilities covered by this Initiative. USPS-T-1 at 2, n.1; see *also*, Tr. Vol. 2 at 783-84.

<sup>7</sup> There are over 4800 Category 1 "low earned workload" Post Offices. Tr. Vol. 2 at 635. The first cull of Category 1 offices yielded an unmanageable 4,500 potential discontinuance candidates until the \$27,500 general walk-in revenue threshold was applied. A \$10,000 revenue threshold was used for low earned workload Post Offices in the state of Alaska. USPS-T-1 at 14-15; see also, Tr. Vol. 1 at 498. The SBOC Initiative that was the subject of Docket No. N2009-1 involved over 3100 retail facilities. It was determined that the scope of the RAO Initiative should be more diverse, but not greatly exceed the SBOC number and should not overwhelm local discontinuance coordinators. Tr. Vol. 1 at 36; Tr. Vol. 2 at 707.

<sup>8</sup> See 39 C.F.R. Part 241.3, as revised by 76 *Federal Register* 41413 (July 14, 2011). To ensure consistency in administration of the discontinuance review process from that date forward, the Postal Service elected to apply the revised public notice and comment procedures in the USPS Handbook PO-101 to these locally-initiated, non-RAO discontinuance proposals, as if they had been identified as candidates for review as part of the RAO Initiative.

USPS-T-1 at 14-17. See also Tr. Vol. 1 at 57, 99, 117; Tr. Vol. 2 at 724.

The Postal Service's selection of candidates for discontinuance review under the RAO Initiative is consistent with the goals and policies of title 39. The candidate retail facilities were selected based on objective criteria identified and explained in the direct testimony of witness Boldt and reflect consideration of rules promulgated to identify and describe the criteria, as well as the data. See 76 *Fed. Reg.* 17794 (March 31, 2011); 76 *Fed. Reg.* 41413 (July 14, 2011); 76 *Fed. Reg.* 43898 (July 22, 2011). One source of data used in the selection of candidate retail facilities for discontinuance study is the Small Office Variance (SOV) tool. USPS-T-1 at 14-16. The Postal Service utilized SOV in developing the above-referenced Category 1 low workload Post Offices. As described in the testimony of Postal Service witness David R. Ruiz,<sup>9</sup> SOV incorporates data from data recording systems reaching throughout the Postal Service, is updated weekly (*Id.*), and measures accurately activity in both small and large offices (Tr. Vol. 5 1781-1782). Accordingly, SOV is a reliable and effective source of data for determining retail facility workload.

B. Purpose of the RAO Initiative

Postal Service witness James Boldt is the Manger of Customer Service Operations within the Delivery and Post Office Operations group at Postal Service headquarters. His experience in postal mail processing, combined with his management of local Post Office retail and rural delivery operations, provide

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<sup>9</sup> Surrebuttal Testimony of David R. Ruiz on Behalf of United States Postal Service (USPS-RT-1) at 2-5).

a firm foundation for his ability to manage the Retail Access Optimization Initiative. See USPS-T-1 at i.

At page 6 of his direct testimony, witness Boldt highlights data showing a decline in retail customer visits. He explains that postal customers have generally responded to the expansion of alternative channels for access to retail postal products and services by using them to conduct an ever-growing proportion of their postal transactions. USPS-T-1 at 7. He summarizes historical changes in the postal retail network over the decades (*id.* at 10) and the general decline in postal retail transactions in recent years as significant evolutions in “the personal, educational, literary and business correspondence of the people” 39 U.S.C. § 101(a), reflecting shifts to electronic communications media.

Witness Boldt explains how, at the same time, the Postal Service has achieved considerable success in improving postal customer convenience through the establishment and expansion of alternate access to postal retail channels. Nearly 3,600 Contract Postal Units provide a broad range of services. Tr. Vol. 2 at 838. To varying degrees, many postal customers have access to a range of other alternate access channels, including the options to purchase postage stamps at over 62,000 private retail locations, and to ship packages and purchase postage at more than 4,300 private Approved Shipper locations. They may also purchase stamps by mail, phone and fax; they can access a broad range of products, services and transactions through the public postal website, [www.usps.com](http://www.usps.com); and they can weigh and rate mail and obtain postage via the utility of 2,500 Automated Postal Centers after regular retail hours in the outer

lobbies of Post Offices, station and branches. USPS-T-1 at 4. Alternate access channels that do not require a visit to a postal facility now account for approximately one-third of annual retail postal revenue. USPS-T-1 at 7. These trends require postal management to be vigilant in exercising its responsibilities under section 403(b)(3). Eighty-five percent of postal walk-in retail transactions consist of postage purchases.<sup>10</sup> The expanded availability of often more convenient, alternate access channels through which customers can conduct this basic postal transaction helps satisfy the section 403(b)(3) mandate to establish postal facilities of such character and in such locations that customers have ready, economical access to essential services. It also responds to the more recent directive that the Postal Service expand and promote a mix of alternative postal retail access channels. See Postal Accountability and Enhancement Act § 302(d), Pub. L. No. 109-435, 102 Stat. 3219.

A Post Office and any subordinate retail units, plus alternate access channels available to customers in its service area, are expected to provide effective and regular access to postal products and services to customers in a geographic service area. Postal retail locations are established and discontinued, and alternate access channels are also developed, in accordance with the aforementioned postal policies. There is no static mix of postal retail locations and alternate access channels that, once established, can be expected to serve the American public into perpetuity. The retail network of the 1980's or 1990's is not necessarily the retail network suitable for the second decade of the 21<sup>st</sup> century and beyond. Postal management has an ongoing responsibility to

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<sup>10</sup> USPS-T-1 at 7-8; USPS Library Reference N2011-1/17.

evaluate whether the retail network in existence at any given time, and in any location, should be changed to economically and efficiently meet the service obligations reflected in title 39.

Initiation of a widespread discontinuance review program such as the RAO Initiative is part of postal management's section 403(b)(3) responsibility. However, decisions regarding the retention of specific postal retail facilities are influenced by the above-referenced trends only to the extent that they are compelling factors in the context of initiating case-by-case review of individual retail facilities. The retail facility discontinuance review process reflected in USPS Handbook PO-101 requires consideration of a variety of facility-specific factors. Accordingly, to the extent that alternate access channels tend to be more concentrated and readily accessible in urban and suburban areas, such relatively high levels of concentration and accessibility, though not controlling, are generally more likely to influence determinations to discontinue, on a case-by-case basis, operating postal retail facilities in those areas. And the converse also is true. To the extent that alternate access channels are generally less concentrated and accessible in rural areas or small towns, such lesser levels of concentration and accessibility on a case-by-case basis would generally require that other factors weigh more heavily in support of a determination to discontinue a Post Office in a rural area or small town.

Taking these and other considerations into account, the objective of the RAO Initiative is to apply the USPS Handbook PO-101 discontinuance review process to evaluate a manageable number of facilities, of varying types, within

the postal retail network and see what the Initiative yields. Tr. Vol. 1 at 138, 151, 166. Each candidate facility is being evaluated on its own merits without a negative presumption. If determinations are made to close particular retail facilities, cost savings can be expected. However, there is no target number of facilities or cumulative cost savings goal. USPS-T-1 at 13. See *also*, Tr. Vol. 1 at 147-48; Tr. Vol. 2 at 631.

It has been estimated that if all 3650 RAO Initiative candidate facilities were discontinued, the Postal Service would reduce its annual operating costs by approximately only \$200 million. Tr. Vol. 1 at 40. Thus, while the RAO Initiative may have been commenced at a time of great financial instability and has the promise to generate *some* financial savings for the Postal Service, it obviously was not undertaken for the purpose of reaping huge savings that could make a material dent in the rather substantial annual deficits that continue to imperil the Postal Service's financial stability.

Irrespective of its financial status at any given time, the Postal Service has an ongoing obligation under 39 U.S.C. §§ 101(a) and 403(a) to explore avenues, large and small, for operating more economically and efficiently, while continuing to meet its service obligations. As the Postal Service has observed:

Evaluation of the applicable service criteria is an ongoing endeavor. It did not begin with the RAO Initiative. It will not end with the RAO Initiative. It includes review of existing postal facilities. It includes development and promotion of alternate access channels. The Postal Service is obliged to re-evaluate service continuously and, as it deems necessary, adjust the various components of its retail network.

Tr. Vol. 1 at 248. The gap in recent years between the Postal Service's operating

expenses and revenues has indeed been daunting. Some may regard any contribution that the RAO Initiative could make toward closing that gap as being too trivial to pursue. But the Postal Service is obliged to pursue its service obligations in an economical and efficient manner, irrespective of the size of any surplus it may be enjoying or deficit it may be enduring. See Tr. Vol. 1 at 147-48.

Post Offices and their subordinate retail stations and branches are intended to provide access to postal products and services in a geographic service area. Retail locations are established and discontinued in accordance with the aforementioned postal policies. There is no optimal or ideal postal retail network; there is no configuration or mix of postal retail locations and alternate access channels that, once established, can be expected to serve the American public into perpetuity. The retail network of the 1970's or 1980's is not necessarily the retail network suitable for the second decade of the 21<sup>st</sup> century. Postal management has an ongoing responsibility to evaluate whether retail network in existence at any given time should be changed to economically and efficiently meet the service obligations reflected in title 39.



### C. Nature and Magnitude of the Anticipated Service Changes

The discontinuance of retail operations at a Post Office, station or branch would affect customers who formerly visited or were served by the discontinued facility. They would no longer be able to obtain postal retail products and services there, and would find it necessary to find other access, perhaps including patronization of a nearby Post Office, station or branch. They also could make use of reasonably available alternative access channels. Such customers may also need to change where they obtain Post Office Box service, which is often relocated to a nearby postal retail location with no address change, or make use of a different method of entering mail when a collection box is removed from in front of a discontinued retail facility. USPS Request at 1; see *also*, Tr. Vol. 1 at 149; Tr. Vol. 2 at 696-97, 702, 729-30, 752-53.

Case-by-case applications of the USPS Handbook PO-101 discontinuance review process will determine the number of retail facilities discontinued under the RAO Initiative. The cumulative impact on postal customers cannot be known until the RAO Initiative has run its course. When discontinuance review under the RAO Initiative commenced in late July 2011, the Postal Service had no basis for estimating the number or percentage of the approximately 3650 stations and branches that might have their retail operations curtailed, or for quantifying the potential cumulative change in the nature of any postal services that would be effected. As of October 31, 2011, 195 of the original candidate facilities had been eliminated from consideration for

discontinuance as part of the ROA Initiative.<sup>11</sup> Accordingly, the number of ROA Initiative candidate facilities remaining under consideration leaves open the possibility that the eventual result could be a change in the nature of service that is at least "substantially nationwide" in scope, as defined by the court in *Buchanan v. United States Postal Service*, 508 F.2d 259, 262-63 (5th Cir. 1975).

#### IV. The ROA Initiative Complies With the Universal Service Obligation

In binding the nation together through the correspondence of the people, the Postal Service is obliged to provide prompt, reliable and efficient service to all communities. 39 U.S.C. § 101(a). In fulfilling this mandate, the Postal Service is directed to provide effective and regular service and is authorized to establish and maintain postal facilities of such character and in such locations as are necessary to provide customers ready access to essential services. 39 U.S.C. §§ 101(b) and 403(b)(3). At the same time, subsections 403(a), 403(b)(1), 403(b)(3) and 3661(a) direct the Postal Service to be "efficient" and to maintain "reasonable economies" in its operations.

##### A. The Initiative Is Consistent With Views Expressed By The Commission

Referencing 39 U.S.C. § 403(b)(3), the Postal Regulatory Commission has opined that the universal service obligation of the United States Postal Service includes "ready access to essential postal services" that is "consistent with reasonable economies" and includes the time and distance needed to get to

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<sup>11</sup> See USPS Library Reference N2011-1/11, as updated on November 2, 2011.

the location where postal services are available.<sup>12</sup> The Commission has defined “[e]ssential postal services” to include postal products, mail acceptance points and access to letter carriers who accept mail for posting. *Id.* The Commission has observed that:

Section 403(b)(3) requires the Postal Service 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.” This requirement is, like other aspects of the USO, broadly formulated and provides the Postal Service with considerable latitude to exercise discretion. First, the “postal facilities” that section 403(b)(3) directs the Postal Service to establish and maintain do not have to be [P]ost [O]ffices or any other particular type of facility. Nor do these facilities have to be located in any particular place. They need only be of “such character” and “in such locations” that postal patrons “have ready access” to “essential postal services.” Neither “ready access” nor “essential postal services” are defined by the statute. The result is that section 403(b)(3) gives the Postal Service considerable discretion to determine both the type and location of postal facilities.

Second, in exercising its discretion to select and locate facilities giving “ready access” to patrons “throughout the Nation,” the Postal Service has the authority to select and locate facilities which are “consistent with reasonable economies of postal operations.”

PRC USO Report at 26. In that Report, the Commission also observed:

Within the general requirement of ready access consistent with reasonable economies, the Postal Service enjoys considerable discretion to determine the nature and location of postal facilities by which access will be provided. The Postal Service’s discretion is, however, subject to a number of limitations in title 39, including section 101(b) which precludes the closing of a [small] [P]ost [O]ffice solely because it operates at a deficit; section 403(c) which prohibits undue or unreasonable discrimination or undue or unreasonable preferences; section 404 which covers the closing or consolidation of [P]ost [O]ffices; and section 3661(b) which applies if changes in access “affect service on a nationwide or substantially nationwide basis.

*Id.* at 19-20. Looking back, the Commission observed that:

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<sup>12</sup> Postal Regulatory Commission, *Report on Universal Postal Service and the Postal Monopoly* (December 19, 2008) (hereinafter, “PRC USO Report”) at 19.

The Postal Service has used its flexibility to realign the placement of postal facilities to meet the needs of patrons as those needs change. The historic growth and decline in the number of [P]ost [O]ffices . . . demonstrate[s] the continuing realignment of access to comport with the needs of patrons nationwide.

*Id.* at 195. By virtue of its submission of the Request for an advisory opinion in this docket, the Postal Service is acting in accordance with the final of the three above-referenced limitations identified by the Commission. Moreover, as explained below, there is no basis for asserting that the RAO Initiative runs afoul of the other two limitations.

The RAO Initiative is structured so as not to violate the 39 U.S.C. § 101(b) prohibition against closing small Post Offices solely for operating at a deficit. The Commission will observe from the Request and direct testimony of witness Boldt (USPS-T-1) that whether any facilities were "operating at a deficit"<sup>13</sup> was not a criterion for their inclusion as candidates for discontinuance review under the RAO Initiative. The fact that a small Post Office is "operating at a deficit" is explicitly barred from being the determining factor in deciding whether to discontinue a given office, as specified by USPS Handbook PO-101 section 213.4. See USPS Library Reference N2011-1/1 at 8. Hence, there is no basis for asserting that the RAO Initiative has targeted any retail facilities of any size or

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<sup>13</sup> Defined as generating less total revenue than total operating cost. As demonstrated in USPS Library Reference N2011-1/NP3, most Post Office locations currently are operating at a deficit. However, such status does not preclude the Postal Service from considering whether to discontinue their operations. The Postal Service is only precluded from closing a *small* Post Offices *solely* on this basis and must make sure that customers served by such office have effective and regular postal services, should its operations be discontinued. See 39 U.S.C. § 101(b).

description on this basis.<sup>14</sup>

No basis exists for asserting that the RAO Initiative reflects the intent or will have the effect of unduly or unreasonably discriminating among mail users or granting an undue or unreasonable preference for any mail users, within the meaning of 39 U.S.C. § 403(c). An examination of the four categories of RAO candidates reveals a diverse pool of approximately 3650 retail facilities. It includes Post Offices in rural areas and small towns; retail stations and annexes in urban and suburban areas; as well as retail branches in suburban areas. The RAO Initiative follows the Station and Branch Optimization and Consolidation (SBOC) Initiative reviewed by the Commission in Docket No. N2009-1. SBOC focused exclusively on stations and branches that reported to EAS-24 and above Postmasters. By definition, those facilities are generally located in urban and suburban communities. The narrowly-focused SBOC Initiative was not deemed by the Commission to be unduly discriminatory against urban and suburban customers for its failure to include rural and small town Post Offices within its pool of retail facilities. The Commission did not conclude that there was undue or unreasonable discrimination or preference on the basis of a particular urban/suburban station/branch population demographic characteristic.<sup>15</sup>

Accordingly, it would seem less likely for such a claim to be substantiated when leveled against the Retail Access Optimization Initiative, which implicates a much more diverse pool of retail facility types spread among a wider variety of

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<sup>14</sup> Section 404(d) specifies mandatory considerations supporting any decision to discontinue a Post Office, one of which is economic savings. The Postal Service thus cannot discontinue any office solely for operating at a deficit.

<sup>15</sup> Nor did it find there to be any unreasonable or undue preference to non-urban/suburban mail users.

communities with varying demographic profiles in urban, suburban, and rural areas, as well as small towns.

B. The Initiative Reflects A Reasonable Approach to the Postal Service's Section 101(b) Obligation

In this docket, the Commission will review considerable intervenor legal argument regarding the meaning of the Postal Service's 39 U.S.C. § 101(b) obligation to "provide a maximum degree of effective and regular postal services to rural areas, communities and small towns where post offices are not self-sustaining." Neither the statute nor its legislative history offers any specific interpretive guidance, leaving it to the Postal Service as the agency charged with administering and implementing the section to take the lead in interpreting its meaning.

Some might suggest that the Postal Service cannot diminish the current number of existing rural community and small town Post Offices, even if it were to succeed in establishing indisputably robust levels of alternate options for effective access to essential products and services in rural areas and small towns. The Postal Service's view is that the "maximum degree" obligation in section 101(b) must be read in the content of related statutory provisions. It is a directive to recognize that special consideration must be given to the greater likelihood of dependence on postal retail facilities for access to postal products and services in rural communities and small towns. Postal competitors' delivery services and products are generally less likely to be available in rural areas and small towns, compared to more densely populated urban and suburban areas. The same is generally true of alternate channels for access to postal services. At

the same time, there is greater potential for customers in urban/suburban communities to live and work in relatively close proximity to a postal retail facility and rely on alternate channels for access to postal services than in rural communities and small towns. Such proximity can serve to justify minimizing the numbers of postal retail facilities in urban/suburban areas relative to the numbers needed to serve rural areas and small towns.

Accordingly, relative to urban/suburban areas, the Postal Service is directed by section 101(b) to accord a maximum degree of consideration to the access needs of rural communities and small towns. However, it does not—as some argue in this docket—call for the maximum level of service possible. The mandate also should not be interpreted as requiring that every rural or small town Post Office provide every postal service. As the Commission has astutely observed:

The geographic scope of the USO for individual postal products can vary from product to product as long as the reason for variation is based upon economic and efficiency limitations and is not unduly discriminatory.

PRC USO Report at 193-94. Thus, the Commission has noted that the obligation to provide "a maximum degree of effective and regular service" is tempered by reasonable considerations of economy and efficiency. Consistent with that view, the Postal Service has made clear that it considers its universal service obligation to be met when it provides the full range of retail services among its rural and small town retail facilities, but:

subject to more variation in access and less proximity than would be experienced in urban and suburban areas where postal retail facilities and alternate access sites are likely to be clustered and relatively more densely.

Tr. Vol. 2 at 780.<sup>16</sup> The Postal Service is restrained by 39 U.S.C. §§ 101(b) and 404(d) from discontinuing small Post Offices solely because they are not self-sustaining, and it must consider the relatively greater reliance on such offices as the primary means of accessing postal products and services in rural communities and small towns. However, it is not barred from discontinuing such offices if it otherwise properly considers the policies of title 39, as implemented in USPS Handbook PO-101, on a case-by-case basis, whether the review initiates from the top-down or locally.

The Commission has observed that:

As history has demonstrated, what is necessary to bind the Nation together changes over time. When it does, the USO requires that the Postal Service respond. To its credit, the Postal Service has, over the course of its history, honored that obligation.

PRC USO Report at 25-26. The Retail Access Optimization Initiative reflects the Postal Service's response to changes that require it to review and adjust the manner in which it continues to meet its universal service obligation. The record in this docket supports the conclusion that the RAO Initiative similarly honors the universal service obligation.

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<sup>16</sup> Thus, for instance, passport application service, overnight Express Mail and other postal products and services are broadly, but not *universally* available.



V. The Discontinuance Review Process Is Designed To Ensure Consideration of Applicable Statutory Service Policies

A. The RAO Initiative Incorporates Relevant Policies

1. The discontinuance review process examined by the Commission in Docket No. N2009-1 has been improved.

The process for discontinuing an independent Post Office, either closing it permanently or consolidating it with another Post Office, is established in 39 U.S.C. § 404(d), as implemented by postal regulations at 39 C.F.R. Part 241.3, and by USPS Handbook PO-101. Subsection 404(d)(1) requires the Postal Service to provide adequate notice to customers of its intent to close or consolidate a Post Office. Notice must be given at least 60 days in advance to enable customers to present their views. Subsection 404(d)(2)(A) further requires that the Postal Service consider a variety of factors in making determinations to close or consolidate a Post Office, including the effects on the community and employees, economic savings, the policy in section 101(b) that it provide a maximum degree of effective and regular postal services where post offices are not self-sustaining, and such other factors as the Postal Service determines are necessary. Subsection 404(d)(3) requires that a written determination to discontinue a Post Office must be made available to persons served by the Post Office at least 60 days before the discontinuance takes effect. Within the first 30 days after the written determination is made available, any customer of an affected Post Office may appeal the adverse decision to the Commission.

Shortly before filing its Request in this docket, the Postal Service concluded the first phase of a rulemaking to change its retail facility discontinuance procedures.<sup>17</sup> The final rule resulted in the following changes:

Previous regulations only referenced the Postal Service's historical reliance on a locally initiated "bottom-up" process to identify Post Offices for possible discontinuance. At 39 C.F.R. § 241.3(a)(2), the revised regulations explicitly reflect that Postal Service Headquarters management, may also elect to identify candidate offices for initial feasibility studies in a "top-down" approach to initiate consideration of possible discontinuance for Post Offices,<sup>18</sup> while retaining the more commonly used "bottom-up" approach.

The revised regulations at 39 C.F.R. § 241.3(a)(4) clarify factors that can be used to identify candidate retail units for an initial feasibility study. These now include earned workload below the minimum established level for the lowest non-bargaining (EAS) employee grade, insufficient customer demand, and the availability of alternate access channels. It cannot be overemphasized, especially with intervenors who assume that nomination for the conduct of a discontinuance study also equates to actual discontinuance, that these factors only inform a decision whether initiation of a study is warranted; they do not modify legal requirements for justifying an ultimate decision on whether to close or consolidate a facility.

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<sup>17</sup> See 76 *Fed. Reg.* 43898 (July 22, 2011); 76 *Fed. Reg.* 41413 (July 14, 2011); 76 *Fed. Reg.* 17794 (March 31, 2011).

<sup>18</sup> Similar to the top-down approach employed for purposes of the Station and Branch Optimization and Consolidation Initiative reviewed in Docket No. N2009-1.

The new regulations improve the administration and management of the discontinuance process by removing steps such as waiting periods at the end of the discontinuance process, removing requirements for internal circulation of hard-copy documents, and facilitating efficiency of the decision-making process through utilization of internal web-based operating data access and review.

Before revising its retail discontinuance regulations on July 14, 2011, the Postal Service had not subjected stations and branches to the same public notice and comment periods that have long applied to Post Office discontinuance. Rather, the procedures for stations and branches were more abbreviated. Essentially all of these differences have been erased by 39 C.F.R. § 241.3(a)(1), so that the same time posting periods and community input procedures apply to stations and branches as apply to Post Offices.<sup>19</sup>

Only after consideration of public input responding to the posting of the proposal regarding a particular Post Office, station or branch will a determination be made by the Vice President for Delivery and Post Office Operations at USPS Headquarters regarding whether to discontinue such a facility. When that decision is made, the Postal Service still must ordinarily continue operations in the Post Office, station or branch for a 60-day period from the date of posting a final determination. Thus, service offered to customers actually does not change, within the meaning of section 3661(b), before the conclusion of that 60-day waiting period.

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<sup>19</sup> As explained in the testimony of Vice President Dean Granholm, some of these changes are a result of lessons learned from the Postal Service's experience with its Station and Branch Optimization and Consolidation Initiative and suggestions in the Commission's Docket No. N2009-1 advisory opinion. See, Tr. Vol. 1 at 602-22; see also, Tr. Vol. 1 at 140-142, 268.

At the end of the 60-day notice period for each facility identified for discontinuance, in those Post Offices for which no appeal is filed at the Commission, service at the local level may be changed through implementation of the final determination and commencement of alternative service offered to affected customers. For stations and branches, service at the local level may be changed through implementation of the final determination and the commencement of alternative service offered to affected communities beginning after the 60 day posting period of the final determination.

2. The Retail Access Optimization Initiative utilizes the improved process for discontinuance analysis and review.

The direct testimony of witness Boldt (USPS-T-1) demonstrates that, at the direction of Vice President Granholm, the Postal Service has improved the multi-tiered review process through which specially-trained teams of field managers and discontinuance coordinators at the district and area offices are to apply uniform criteria to screen the 3650 RAO Initiative candidate Post Offices, stations, branches and annexes to identify candidates for further discontinuance analysis. Under Mr. Granholm's direction, and with guidance from witness Boldt, district and areas offices have since been applying those uniform criteria to identify which of these facilities should move forward as candidates for further consideration and be subjected to a full discontinuance study and review by the Vice-President, Delivery and Post Office Operations.

Under revised USPS Handbook PO-101 procedures, cost and operations analyses utilize standardized data sources that ensure greater reliability and consistency in decision-making. At section 321, the revised Handbook lists and

describes the criteria to be applied in the review process, including: the specific customer service, retail trend, and cost and operational data at affected and gaining offices; standardized employee impact analysis; customer demographic data that may highlight service-related socio-economic factors requiring close scrutiny;<sup>20</sup> the feasibility of transferring operations to nearby retail facilities; and qualitative judgments made by knowledgeable discontinuance review team members familiar with local conditions specific to a facility. USPS Library Reference N2011-1/1 at 21-22. *See also*, Tr. Vol. 1 at 69,<sup>21</sup> 74, 188; Tr. Vol. 2 at 826, 849-852.

USPS Handbook PO-101 also describes the public notices that accompany every determination to subject a retail facility to discontinuance review, and the multiple opportunities for public input provided to retail lobby, post office box and carrier delivery customers, as well as addressees in the ZIP Code of the facility being studied for discontinuance, whether by means of a customer survey or a public meeting, or both, plus a formal proposal posted for 60 days together with an invitation for further comments, all before any recommendation is finalized locally and forwarded to headquarters for review and final decision. USPS Handbook PO-101 at §§ 221, 241, 251, 352; USPS-T-1 at 18-20; Tr. Vol. 2 at 797. In reviewing USPS Handbook PO-101 procedures, and as graphically illustrated on page 5, one sees the critical, central role played by local postal management in gathering and analyzing data, and soliciting and

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<sup>20</sup> See USPS Handbook PO-101 section 321.5, which requires notation and consideration of extraordinary services or accommodations to customers on account of their illiteracy, visual impairments or physical disabilities.

<sup>21</sup> The Commission's attention is invited to the Attachment to the Response to Question 3 of Presiding Officer's Information Request No. 1, filed August 9, 2011.

reviewing public input before any possible discontinuance is forwarded to Headquarters with a recommendation that a particular retail facility be discontinued – regardless of whether review of that single facility was initiated locally in isolation from other possible discontinuances or as part of a broader, top-down initiative. See *also*, USPS-T-1 at 19-20; USPS Handbook PO-101 at § 133.

The process provides multiple channels and multiple opportunities for public input. It is designed to ensure that the headquarters review team has sufficient information to assess whether customers served by the retail facility being proposed for discontinuance will retain ready access to essential services if that facility were discontinued and to make an appropriate recommendation to the Vice President for Delivery and Post Office Operations, who is responsible for making the final agency decision. The process is designed to ensure that postal management considers sufficient data and incorporates appropriate judgment in making reasonable, informed decisions regarding the allocation of finite retail network resources.

The Postal Service does pretend that the criteria used to select RAOI candidate facilities described at pages 14-17 of USPS-T-1, or the recently revised USPS Handbook PO-101 discontinuance review process, reflect the only reasonable approaches to identifying and assessing opportunities to discontinue retail operations at various locations.<sup>22</sup> However, the record in this docket demonstrates that the candidate selection criteria are both reasonable and

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<sup>22</sup> USPS Vice President Granholm acknowledges that the Postal Service is investigating the use of modeling techniques that might be employed to identify discontinuance review candidates and other retail options in the future. Tr. Vol. 1 at 620.

permissible, and that the discontinuance review process is designed to require consideration of a variety of information relevant to each facility-specific decision regarding how best to maintain effective access to postal services, consistent with reasonable efficiency and the resources available. While such decisions are a routine management responsibility, the removal of a facility from service affects a specific set of customers in ways that decision-makers may not know first-hand, so the process ensures that a broad range of information, including input from potentially affected customers, informs each decision. Accordingly, as demonstrated by the testimony of witness Boldt, the RAO Initiative discontinuance review process reflects necessary sensitivity to the needs of customers and provides a mechanism for the careful consideration and balancing by postal management of the policy objectives in title 39.

#### VI. The Intervenor Testimony In This Docket Deserves Little Or No Weight

Seven intervenors filed testimony in this docket: the American Postal Workers Union (APWU), the Center for the Study of Responsive Law, Frederic D. Foster, the National Association of Postmasters of the United States (NAPUS), the National League of Postmasters (NLP), the National Newspaper Association (NNA) and the Public Representative. Below, the Postal Service reviews each intervenor's testimony and explains why none of it presents record evidence sufficient to justify an advisory opinion that the Postal Service should not proceed with the service changes under review in this docket.

The intervenor testimony largely fails to address, and in any event does

not refute, the Postal Service's rationale for pursuing the Retail Access Optimization Initiative. Some testimony suggests flaws in the criteria used to include certain types of retail facilities as candidates within the RAO Initiative and offers alternative approaches for selecting offices to review for discontinuance. Other testimony repeats variations on the same unsubstantiated anecdotal allegations of potential adverse impact on the same categories of postal customers—issues that the Postal Service is obliged to consider in the context of facility-specific discontinuance studies that can only follow RAO Initiative nomination of candidate offices for the conduct of those studies. The Commission may have an opportunity to review respective studies pursuant to section 404(d), should they both proceed to the posting of a final determination and be appealed. Hence this other testimony is also not germane to the instant request for an advisory opinion. In any event, unsubstantiated anecdotal allegations of potential adverse impact in this proceeding, while lacking the necessary substantial or probative supporting information or analyses called for by the Commission's rules, must be taken into account when determining how little weight they should be accorded. See 39 C.F.R. § 3001.20a(c).

The absence of substantial evidence in support of specific allegations of harm in intervenor testimony necessarily bears on the Commission's consideration of the potential adverse effects of Postal Service proposals. See PRC Op. R2000-1 at 5786. The proponent of a particular conclusion has the burden of producing evidence and of persuading the trier of fact of its existence as well. See PRC Op. R97-1 at ¶2066. In other testimony, allegations of



widespread irregularities in the administration of the discontinuance process have been eradicated by a mild application of the disinfectant found in adversarial scrutiny and surrebuttal testimony. As explained herein and below, for these and other reasons the intervenors' testimony should be accorded little weight by the Commission.

Finally, certain of the intervenor testimony consists of quantified analyses, two of which venture in the direction of how else access to retail services might be optimized. The third looks for but is unable to substantiate any adverse impacts that RAO Initiative itself could have upon vulnerable customer groups. All three of the quantified analyses incorrectly and improperly presume that each RAOI nominated office is actually discontinued as a condition precedent to analysis. The Postal Service examines each of these separately to illuminate how little they actually bear upon the Retail Access Optimization Initiative.

A. NLP Witness Strong's Shrill Testimony Lacks Substance and Credibility

As part of its opposition to the Retail Access Optimization Initiative, the National League of Postmasters (NLP) presents the testimony of its current President, Mark Strong (NLPM-RT-1). That testimony is undermined by witness Strong's penchant for hyperbole, resort to "straw man" arguments, misreading of the law, misunderstanding of postal policy, omission of material facts, dependence on unreliable and anonymous sources, baseless allegations of senior management intimidation, and a general lack of factual support. Accordingly, his testimony does nothing to advance the Commission's understanding of the substantive issues raised by the Request in this docket.

1. Hyperbole undermines credibility.

Witness Strong wasted no time undermining his credibility by asserting that the Retail Access Optimization Initiative represents a request by the Postal Service to *abandon* the concept of universal service. NLPM-RT-1 at 5. Not stopping there, he proclaimed that the Postal Service's proposal to apply its discontinuance review process to examine the feasibility of closing any of the RAO Initiative candidate facilities -- the mere proposal to do so -- "essentially produces a drastic reduction in availability and service." *Id.* He never explained how, in his view, the mere nomination of an office for the conduct of a discontinuance study, or the mere examination of whether to discontinue a retail office constitutes a *change* in service at that office. And when asked what number less than 3650 RAO Initiative facility closures would be the highest number less than a "drastic" number of closures, witness Strong unequivocally declared that the answer to be "zero" because even "one is too many." Tr. Vol. 4 at 1505. Such assertions lack any credibility.

2. "Straw man" assertions are no substitute for substantial evidence.

Picking up momentum, witness Strong testified that:

*the Postal Service has said that they will be able to serve rural America just as well if not better once all these post offices are closed, but that is truly nonsense. [Emphasis added.]*

NLPM-RT-1 at 5. Seeking clarification of the source for this Postal Service statement attributed to it by the witness, the Postal Service propounded interrogatory USPS/NLP-RT-1/14,<sup>23</sup> which drew an objection from NLP counsel

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<sup>23</sup> Filed on October 3, 2011.

asserting that the Postal Service, itself, possessed whatever document among the millions in its custody reflected the source of the alleged statement and, therefore, the witness should not be burdened to produce what the Postal Service allegedly possessed.<sup>24</sup>

Finding the objection puzzling, illogical and cynical, and inconsistent with usual practice before the Commission, the Postal Service pressed the issue on oral cross-examination,<sup>25</sup> only to draw an objection that the question, in written form, had already drawn an objection.<sup>26</sup> When the Postal Service sought, again, to have witness Strong provide any information that could help validate the existence of the statement that he attributed to the Postal Service and then declared to be "nonsense," the Presiding Officer ruled that the Postal Service was "fishing for something that was inappropriate" and instructed the Postal Service to inquire no further. Tr. Vol. 5 at 1509.

The Postal Service is troubled that cross-examination for the sole purpose of testing or validating the witness' own claim regarding the existence of an alleged postal policy pronouncement would be deemed inappropriate. As the record presently stands, the witness has testified that the Postal Service issued or uttered a particular statement about the RAO Initiative. The witness has followed that claim by asserting that the statement allegedly uttered by the Postal

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<sup>24</sup> Objections and Partial Objections of National League of Postmasters to USPS Discovery Requests USPS/NLP RT 7,8,10,11,14,15(b),17,18,20, 33,36,38(c),42,43(b-f),48(c-e),49,51(b) and (d),52, and 54(c-d) (October 12, 2011).

<sup>25</sup> Because even under the Commission's rules, the objection by a party to an interrogatory, by itself, does not immunize that party's witness from oral cross-examination on the subject matter of the interrogatory.

<sup>26</sup> Tr. Vol. 4 at 1507.

Service is "nonsense." The witness is entitled to testify that such a statement would be "nonsense." However, to persuade the Commission that it is, he must - - and in this instance has failed to -- establish that the statement was ever uttered by the Postal Service in the first place. The Postal Service sought to have the witness bear his own burden of proof. Putting aside how that effort was thwarted, the Commission should draw the appropriate inference from NLP's failure to have done so: no substantial record evidence supports the existence of any such policy pronouncement by the Postal Service.

In a similar manner, witness Strong asserted at page 5 of NLPM-RT-2 that the Postal Service has been driven by its current financial duress to "back off" providing the current level of service to rural American in order to concentrate on large urban and suburban areas. These, of course, would be the same urban and suburban areas that were the exclusive target of the Station and Branch Optimization and Consolidation (SBOC) Initiative reviewed by the Commission in Docket No. N2009-1. If there is a stark contrast between that SBOC and RAO Initiatives,<sup>27</sup> it would be that the latter targets a much more diverse range of retail facilities -- beyond just urban and suburban stations and branches. Of the nearly 6,800 retail facilities within the scope of the combined Initiatives, the split between rural/small town and urban/suburban has been relatively even.

The alleged issue of imbalanced service resolved, it bears emphasizing that the RAO Initiative is not motivated by any inclination to "back off" from any service obligation or the need of any customers for access to postal services. Neither Initiative has been pursued for the purpose of materially affecting the

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<sup>27</sup> Both of which were launched during the same sustained period of financial instability.

Postal Service's ongoing financial instability, the magnitude of which makes a pittance of the cost to operate a few thousand offices. Each Initiative merely serves as evidence of the Postal Service's ongoing obligation to economically and efficiently meet its universal service obligation. Thus, witness Strong's assertion that the Postal Service is on a campaign to abandon rural and small town America because of a supposed policy determination to concentrate on urban/suburban areas bias is without foundation. His opposition to policies that do not exist must surely be seen for the empty rhetoric that it is.

Witness Strong's argument at page 13 of NLPM-RT-1 that the very limited Village Post Office (VPO) alternate access channel concept is a poor replacement for a typical Post Office is yet another "straw man" premised on the false notion that the VPO concept *is* being promoted as such a replacement. To the contrary, the record makes clear:

VPOs will be established as an alternate access channel for some retail and delivery services where opportunities are deemed to exist, irrespective of the whether a nearby Post Office may be nominated for a feasibility study, a study is under way, an office is being discontinued, or an office has been discontinued. A VPO is not intended to or able to "replace" a Post Office. Hence the roll out of VPOs will continue largely regardless of any discontinuance activity.

Tr. Vol. 1 at 199.

Continuing a pattern of baselessly attributing policy pronouncements to the Postal Service and then tearing them down, witness Strong testified that:

The Postal Service seems to suggest that electronics has opened up other communication sources for rural America, and that the role of [P]ost [O]ffices in rural America is passé.

NLPM-RT-1 at 21-22. Yet the record in this docket is devoid of evidence that the

Postal Service either stated such a conclusion or even *seemed* to have done so.

3. Allegations of senior management intimidation are dramatic but unfounded.

At page 14 of NLPM-RT-1, witness Strong characterizes the RAO Initiative as merely a process in which a Headquarters Vice President is directing subordinate District Managers, concerned for their career prospects, to close Post Offices, the USPS Handbook PO-101 notwithstanding. He embellishes this characterization by asserting:

The gap that exists between theory (the manual) and reality (what is happening in the field) is very large in this particular situation. Moreover, sometimes the gap between what the Postal Regulatory Commission is told is supposed to happen in the field, and what really happens in the field is quite large. This is one of those cases.

Tr. Vol. 4 at 1462. However, when cross-examined by the Public Representative, he admitted to not being aware of any instances of senior management engaging in reprisal or meting out discipline for failure to hew the alleged party line. Tr. Vol. 4 at 1535-36.

Witness Strong then raised the specter of local managers being *reprimanded*<sup>28</sup> for failing to inform their Area office of the basis for concluding that particular facilities should be eliminated from further consideration for discontinuance as part of the RAO Initiative. *Id.* at 1536. Whether local managers are merely being *reminded* to let their Area offices be the first to know that (and why) a facility should no longer be considered for discontinuance or have been *reprimanded* for failing to do so, the basis for senior management's preference that such information flow up before it flows out was articulated early

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<sup>28</sup> A "reprimand" becomes a part of an employee's formal employment record that can serve as a foundation for more consequential adverse action.

in this docket:

Local review teams may make judgments at any time that it would not be feasible to further explore discontinuance of a particular facility. In a perfect world, they would report that information to the Area office so that it can be relayed to Headquarters for publication in an updated candidate list first.

Tr. Vol. 1 at 1252.

Finally, through counsel at page 1479 of Tr. Vol. 4, NLP raised the specter of RAO Initiative discontinuance loyalty oaths being forced on field postal employees. When given the opportunity to provide evidence of such oaths, NLP produced memoranda and emails that merely reiterate existing USPS Employee & Labor Relations Manual policies that employees on-the-clock should not act to hinder the pursuit and implementation of agency decisions, with one email simply quoting from the standard oath administered to Postmasters that they will "well and faithfully discharge the duties of the office."<sup>29</sup>

4. Witness Strong's legal pronouncements also lack foundation.

At page 6 of NLPM-RT-1, witness Strong fantasized the importation into title 39, United States Code, of an obligation based on notions of democracy that the Postal Service is mandated to provide *equal* service to all customers. One will search title 39 in vain for a postal policy mandating *equal* provision of postal services. In contrast, one will observe that section 403(c) permits the Postal Service to discriminate among customers and grant preferences, provided such discrimination and preferences are neither unreasonable nor undue.

Similarly without basis, witness Strong expanded the Postal Service's

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<sup>29</sup> Additional Material Provided By The National League Of Postmasters Per The Request Of The Commission During The Hearings Held On October 17 And 18, 2011 (October 21, 2011) at PDF pages 60-63.

section 101(a) duty to "bind the Nation together through the personal, educational, literary, and business correspondence of the people" into a responsibility to provide community identity and anchor local economies. NLPM-RT-1 at 11. Witness Strong's reading of the law apparently makes no distinction between the potential consequences of a Post Office's existence and the more limited policies that Post Office fulfills.

5. Misunderstanding of postal policy generates inaccurate allegations.

The responsibilities of service as President of the National League of Postmasters are, no doubt, challenging, and pull one away from a focus on the day-to-day responsibilities of running a Post Office. See Tr. Vol. 4 at 1488. Presumably, those challenges account for the degree to which witness Strong proved to be unaware of relevant postal retail service policies and the details of the discontinuance review process.

For instance, it was reliance on witness Strong (Tr. Vol. 3 at 1293-94) that led to NLP witness Donald Hobbs' mistaken claim that Post Offices are *required* to maintain Local Postmark lobby slots to ensure that a local postmark was applied to First-Class Mail not presented at a retail window. Tr. Vol. 4 at 1497-1500.

Witness Strong's apparent unfamiliarity with USPS Handbook PO-101 led him to criticize top-down, systemwide nominations for the conduct of discontinuance reviews as being inherently oblivious to local conditions affecting individual Post Offices. NLPM-RT-1 at 14-15. However, even the most cursory review of USPS Handbook PO-101 § 133 (which includes at page 5 a flowchart



identifying by position who makes what decisions) reveals the very heavy extent to which local management is involved in gathering data, soliciting public input, interpreting and supplementing that information for the benefit of those up the chain-of-command, and then perhaps submitting a proposal for senior management to consider. One of the great strengths of the discontinuance review process is the degree to which it relies on local management's knowledge of local facts, and perceptions of local circumstances -- irrespective of whether the impetus for reviewing particular facilities for discontinuance comes from the District or Area office, or from Headquarters.

Witness Strong's myopic focus at page 30 of NLPM-RT-1 on input at discontinuance related community meetings leaves readers of his testimony to wonder whether he is aware of USPS Handbook PO-101 §§ 241 and 242. These sections require that, in addition to community meetings, customer input must also be solicited through questionnaires and survey forms mailed to customers and made available in Post Office lobbies, and that customers be provided a mailing address to which additional comments may be sent. Witness Strong shows some cognizance of the USPS Handbook PO-101, by inferring a supposed *requirement* that community discontinuance meetings be held on weekends or evenings. However, the Commission will observe that the Handbook has no such requirement. Section 251.1 emphasizes that the meetings should be scheduled by local managers at times that encourage customer participation, *such as* evenings or weekends, but leaves it to local managers, based on local circumstances, to determine what day of the week or

time of day will encourage participation. See Surrebuttal Testimony of James J. Boldt On Behalf Of United States Postal Service, USPS-SRT-2 at 4.

At page 17 of NLPM-RT-1, witness Strong expressed concern that, in assessing whether to discontinue a particular Post Office, the RAO Initiative review process will overlook the level of service provided by Postmasters and postal retail associates to postal customers who are functionally illiterate. He apparently was not aware of USPS Handbook PO-101 § 321.5, which explicitly requires notation and consideration of extraordinary services or accommodations to customers on account of their illiteracy, visual impairments or physical disabilities.

At pages 1468-69 of Tr. Vol. 4, witness Strong bemoaned that, in his view, an insufficient number of discontinuance community meetings are conducted by District Managers. As the Commission will observe, USPS Handbook PO-101 § 253.c assigns the responsibility for the conduct of such meetings to District Managers or their Managers of Post Office Operations.<sup>30</sup> The fact that District Managers delegate some of the tasks associated with managing a District should come as no surprise. Delegation of the conduct of such meetings to specially trained discontinuance coordinators is not contrary to either the letter or the spirit of the USPS Handbook PO-101. See Tr. Vol. 5 at 1814-15. Surely, the irony that such a tempest in a teapot would be raised by a Postmaster whose day-to-day Post Office management responsibilities are delegated to an Officer-in-

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<sup>30</sup> Throughout the Additional Material Provided By The National League Of Postmasters Per The Request Of The Commission During The Hearings Held On October 17 And 18, 2011, NLP goes to great lengths to gather anecdotal evidence that District Managers have delegated much of the responsibility for conducting the thousands of community meetings likely to be generated by the RAO Initiative to their Managers of Post Office Operations and others who serve as discontinuance coordinators.

Charge while he presides over a management association thousands of miles away (see Tr. Vol. 4 at 1488) was not lost on the Commission.

6. The survey data referenced by witness Strong are uninformative and unreliable.

Twice, witness Strong pointed to survey data in support of a proposition in his testimony. In each case, examination of the data shows they are severely flawed and unreliable. First is the Gallup survey he references at pages 20-21 of NLPM-RT-1. The survey appears to allude to the RAO Initiative as something it clearly is not -- a major component of an effort to solve the financial problems facing the Postal Service. And witness Strong offers no evidence that the Gallup survey solicited:

customer reactions to the closure of a local post office branch in the context of a determination that a nearby postal location in combination with one or more alternate access sites were deemed capable of providing the postal services they sought.

See Tr. Vol. 4 at 1453. Accordingly, the Gallup survey cannot be said to offer any indication of customer reaction to anything resembling the RAO Initiative or the postal retail discontinuance process as it is actually applied.

When first queried about the rural Post Office Box holder internet access survey data presented at pages 23-26 of NLPM-RT-1, witness Strong responded as follows:

This was information provided me by postmasters in the respective areas. They gathered the information from their customers and passed it on to me.

Tr. Vol. 4 at 1448. How, when and where?<sup>31</sup> At that point, the flow of information

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<sup>31</sup> Asked in greater detail in interrogatory USPS/NLPM-RT1-37 (October 3, 2011).

stopped. *Id.* at 1447-48. And then the story and timeline seemed to change:

I picked up the phone and called up my vice president, said, get ahold of our community contacts, do what we need to do to get the information on our boxholders, and do an informal survey of everyone of those boxholders that you can.

Tr. Vol. 4 at 1529. First, it was Postmasters gathering information from their customers. Then, it was "community contacts" were able to independently divine the identities of local Post Office Box customers and survey them. When one reviews heavily redacted PDF pages 65-69 of the Additional Material Provided By The National League Of Postmasters Per The Request Of The Commission During The Hearings Held On October 17 And 18, 2011,<sup>32</sup> the answers to "who did what?" and "how?" and "when?" are manifestly unclear at best. In any event, the materials clearly demonstrate that the rural internet survey data were not collected in a manner sufficient to meet the requirements of 39 C.F.R. § 3001.31(k). Nor were they collected in accordance with any lesser standard that could justify giving them any weight whatsoever.

7. Lack of factual support undermines other claims.

At page 16 of NLPM-RT-1, witness Strong expressed concern about the

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<sup>32</sup> Dated October 20, but filed on Friday, October 21, one business day before the October 24, 2011 deadline for the filing of surrebuttal testimony. Under the circumstances, there was no realistic opportunity for the Postal Service to disseminate the NLP Supplemental Rebuttal information to the field in time to assess its content and offer surrebuttal as part of USPS-SRT-2 on September 24, 2011. In Presiding Officer's Ruling N2011-1/22, the Commission established September 28, 2011 as a deadline for parties to file supplemental surrebuttal testimony in reply to NLP's supplemental rebuttal. The Postal Service did not take up the Commission's offer. With all due respect to the Commission, as a matter of due process, the Postal Service does not recognize successive rounds of supplemental (rebuttal and surrebuttal) testimony that are not subject to cross-examination as consistent with the due process requirements spelled out by Administrative Procedure Act (APA) at 5 U.S.C. § 556(d) which states:

A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, *and to conduct such cross-examination as may be required for a full and true disclosure of the facts.*

potential level of inconvenience to be suffered by the *many* customers who currently walk to their local Post Office on a daily basis and would have to find other means of getting to a nearby Post Office, should the nearest one be discontinued. We already know from witness Strong that an adverse impact which affected even 1 out of every 3650 offices would be *drastically* high. Tr. Vol. 4 at 1505. However, witness Strong provided no indication of what percentage these *many* customers might represent.

At page 18 of NLPM-RT-1, he claimed to know of two communities that "survived a rural death spiral and ended up reinventing themselves." He testified that "they were able to do this only because ... their Post Offices ... stayed intact." *Id.* However, his testimony provided no basis for the Commission to conclude that there was any nexus between either town's reversal in fortune and the mere presence of its Post Office.

Twice, witness Strong relied upon correspondence from Capitol Hill attempting to demonstrate flaws in the administration of the RAO Initiative. At page 29 of NLPM-RT-1, he used an email from a Congressional staffer in an attempt to paint a picture of the community discontinuance meeting scheduling process as having sown confusion in the community. However, as demonstrated at pages 3-4 of USPS-SRT-2, the source of the confusion was external to the Postal Service. The second time, at pages 1440-41 of Tr. Vol. 4, witness Strong relied on a letter from a United States Senator as evidence that the Postal Service was posting *final determinations* to close Post Offices mere days after holding the community meeting, supposedly proving the meetings to be a sham.

However, the facts again ruin another perfectly sensational allegation. The *final determinations* turn out merely to have been standard *proposals* to close the offices, which are posted for sixty days, and in response to which customers are invited to submit additional written comments before a final determination is made. See USPS-SRT-2 at 14, and Attachment.

In rich detail, USPS-SRT-2 reveals the perils of relying on unverified allegations from unreliable and unidentified sources to weave together what proved to be an incredible (and non-credible) story presented to the Commission. On pages 30-34 of NLPM-RT-1, witness Strong referenced discontinuance activity regarding Post Offices in Westphalia and Edwardsport, Indiana; as well as Alleene, Fisher, Gepp and Wright, Arkansas. In each case, he relayed accounts of discontinuance meetings or the manner in which they were scheduled from anonymous sources who appear quick and ready to disparage, discredit and dissemble. The credibility of witness Strong's anonymous sources must surely be questioned when one reads the contrary accounts offered by postal managers directly involved in the matters who thereby put their names and reputations on the line before the Commission to correct the record. See USPS-SRT-2, pages 5-14.

To paraphrase witness Strong (Tr. Vol. 4 at 1462): sometimes the gap between what the Postal Regulatory Commission is told happens in the field, and what really happens in the field, is quite large.

B. The Testimony of NLP witness Donald Hobbs Merits Little Consideration

Witness Donald Hobbs, the Mayor of Lohrville, Iowa, offers testimony on behalf of the National League of Postmasters. He is to be commended for being a public servant willing to speak on behalf of his constituents. However, as explained below, his testimony, based as it is on misperceptions and reliant upon misinformation, otherwise fails to provide evidence substantial enough to support the factual and policy conclusions he would have the Commission adopt.

1. Overstatement undermines credibility.

Witness Hobbs' penchant for overstatement undercuts his testimony. For example, at page 4 of NLPM-RT-2, witness Hobbs declares the "truth" to be:

that the Postal Service wants to blow off its mandate to provide rural America with the maximum degree of service that the law requires, and is using its financial challenges as an excuse to do that.

However, irrespective of any financial challenges it may face at any given time, the Postal Service has an ongoing obligation under 39 U.S.C. §§ 101(a) and 403(a) to explore opportunities, large and small, to operate more economically and efficiently, while continuing to meet its service obligations. In that regard, the Postal Service faces the same challenges that confront municipalities of all sizes in Iowa, and throughout the United States. Thus, what witness Hobbs' rhetoric may lack in "truth," it compensates for with "truthiness."<sup>33</sup>

Also at page 4, witness Hobbs refers to proclamations of "many citizens

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<sup>33</sup> A "truth" that a person claims to know intuitively "from the gut" or that it "feels right" without regard to evidence, logic, intellectual examination, or facts.  
[http://en.wikipedia.org/wiki/Truthiness#Merriam-Webster.27s\\_Word\\_of\\_the\\_Year](http://en.wikipedia.org/wiki/Truthiness#Merriam-Webster.27s_Word_of_the_Year)

and business owners" that they will not use the Post Office as much as they do now if the Lohrville, Iowa Post Office were to close. However, witness Hobbs fails to provide the Commission a percentage of the 370 citizens of Lohrville or local businesses have issued such proclamations or how much of their current mail or other postal product volume would be lost.

Witness Hobbs testifies that the Village Post Office (VPO) alternate access channel,<sup>34</sup> by itself, would be an insufficient replacement for the Lohrville Post Office or for any other small town Post Office in Iowa. NLPM-RT-2 at 7. His misperception that the VPO concept has been developed to serve as a *quid pro quo* replacement for Post Offices is substantiated by clear record evidence to the contrary. See Tr. Vol. 1 at 199.

Moreover, his testimony suffers from the misunderstanding, expressed at page 7, that the obligation to provide

[a] maximum degree of effective and regular service is to be provided to rural areas, communities and small towns where [P]ost [O]ffices are not self-sustaining

prohibits the discontinuance of Post Offices in such communities because their discontinuance, by definition, would result in less service than "the highest amount, volume or degree attained or attainable." But Congress has established no such obligation. Instead, in recognizing the inevitability that closing some small Post Offices will prove a reasonable outcome, Congress has only imposed the restriction that no such office shall be closed *solely* because its operating

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<sup>34</sup> VPOs provide a limited range of retail products, including postage and Priority Mail flat rate packaging; they will also collect mail, including parcels, for tender to and transportation by a postal representative. Tr. Vol. 1 at 199. Some may also offer P.O. Box service. In any event, rather than being replacements for Post Offices, they are a new form of alternate retail access whose ultimate utility remains untested by time.



expenses exceed its revenues. See 39 U.S.C. § 101(b). Congress has further anchored this principle by making consideration of the policy underlying section 101(b) just one of five factors that *must* be considered in any final decision to discontinue a Post Office. 39 U.S.C. § 404(d).

In Tr. Vol. 3 at page 1258, witness Hobbs references the money orders purchased at the Lohrville Post Office during a two-week period (collected during the conduct of a discontinuance study) as evidence of the community's reliance on the Postal Service for that product. Yet, at page 1260, he describes the shopping and driving trips of persons with low-to-moderate incomes as typically being conducted during evenings or weekends when the Post Office "is likely to be closed,"<sup>35</sup> thus making postal money orders (unlike those of many competitors) unavailable. Without downplaying the convenience of purchasing money orders at the Lohrville or any other Post Office, it seems fair to observe that if the population presumed to be most dependent on money orders is presently either not able or inclined to visit the Lohrville Post Office to purchase them during regular business hours, witness Hobbs' testimony sheds little light regarding the degree of dependence on that Post Office or any other as a source for money orders.

2. The Searsboro timeline contradicts witness Hobbs' claim.

At pages 12-14 of his testimony, witness Hobbs summarizes the role that a Post Office can play in strengthening a community's sense of identity while serving as a venue for occasional social interaction. Post Offices are not unique

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<sup>35</sup> At line 4682, the SOV archive spreadsheet in USPS Library Reference N2011-1/26 shows the Lohrville Post Office to have had weekday hours *and* Saturday morning hours in FY 2011, casting doubt on the assertion that the office was "likely to be closed" on weekends.

in this regard; more generally, the strength of a community depends upon the vitality of its residents, the extent to which they share interests, and how they interact during all opportunities, not just while buying a stamp, picking up mail, or reading official announcements on Post Office bulletin boards. And the sociological consequences of a Post Office's existence do not give rise to their being distinct postal services or responsibilities. The Postal Service is aware of the facilitating impact the existence of a Post Office can have on a community's interaction and self-image,<sup>36</sup> and the impact upon the community does get considered in each discontinuance study. However, Congress did not create the United States Postal Service nor require it to establish retail locations for the purpose of bolstering "community images that are weary to begin with." See NLPM-RT-2 at 13.

The example of Searsboro, Iowa, provided as supposed evidence of the adverse impact that a Post Office closing has on the viability of a community, actually proves the reverse. According to witness Hobbs, urban migration and "many trials" over the last decade led the town to disincorporate in August 2011. Only *after* the town could no longer keep going did the Post Office finally cease operations. *Id.* Clearly, the discontinuance of the Post Office did not initiate the unfortunate downward spiral experienced by Searsboro. The Post Office's closing was a *result* of the town's long decline, not its precipitating event. Witness Hobbs' claim is refuted by his own timeline, which makes clear that the Post Office discontinuance followed the community's disintegration, not the other

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<sup>36</sup> As well as the derisive image of that same Post Office others in the same community may have, as reflected in lines 8-9 of page 4 of NLPM-T-2.

way around.

3. Hobbs' economic impact claims lack evidentiary support.

On the issue of the impact of Post Offices on community economic development, witness Hobbs' testimony fails to live up to its promise. At page 15 of NLPM-RT-2, he declares that "[a] much easier quality to quantify is the fact that losing one's Post Office kills any community development program a small town might have." Then, at page 16, he characterizes the RAO Initiative as "condemning thousands of local community development programs, thus ensuring that the economic future of those communities would be grim." Yet, when offered the opportunity to substantiate his assertions, he dismisses as an "irresponsible" expenditure of resources the notion that any empirical analysis in his own community might illuminate facts that substantiate his claims.<sup>37</sup> Tr. Vol. 3 at 1264. So witness Hobbs both claims quantitative support for his claims about the effect of a Post Office's presence upon economic development but declaims the irresponsibility of actually collecting the data he claims are available. As a whole, his testimony reveals very little regarding factors -- postal or otherwise -- affecting local economic development. See, Tr. Vol. 3 at 1266-69.

At page 1237, he lauds the Mid-Iowa Development Association Council of Governments (MIDAS) for "understand[ing] ... the critical importance of small rural post offices to the successful rural economy and successful rural development." However, the record does not reveal what MIDAS' understanding is or what serves as its basis. Witness Hobbs conceded on cross-examination

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<sup>37</sup> See also, the discussion *infra* of APWU witness Morrison's testimony and her questionable claims that research shows material declines in employment associated with Post Office discontinuances.

that MIDAS has not shared with his lowans for Post Offices Services organization *any* studies or analyses of the economic impact rural post offices may or may not have on local economies or development plans because "[t]hat's not something . . . they have been focused on, spending their resources on." *Id.* at 1285. Thus, witness Hobbs undercuts any weight his testimony might have had by repeatedly making quantitative assertions that claim or beg for appropriate support, but then dismissing as either wasteful or unimportant the collection of supporting quantified information he previously claimed exists. Accordingly, his testimony merits little consideration by the Commission.

C. NNA's Concerns Regarding Impact of RAOI on Community Newspapers and Adequacy of the Discontinuance Process Are Overstated

NNA's concerns regarding the impact of RAOI on community newspapers are overstated. As Witness Heath stated in his testimony (NNA-T-1), "[t]he [P]ost [O]ffices in the target list of 3,652 named in this docket are not typically serving as original entry offices for ... In-County readers." NNA-T-1 at 4, lines 21-23. Accordingly, community newspapers that rely on these offices are unlikely to be affected by the RAOI. Additionally, because original entry offices also serve as "primary destination offices" for newspapers intended for In-County readers, there is little risk that such newspapers will be dispatched to another facility for processing. *Compare* NNA-T-1 at 5, lines 6-10 *with* Tr. Vol. 3 at 1202, lines 18 through 23. Moreover, no record evidence supports the notion that the RAOI will, by itself, drive community newspapers from the mail. Tr. Vol. 3 at 1018; 1207, lines 10 through 19; 1210, lines 17-25; and 1211, lines 1-7. Indeed, much of NNA's written and oral testimony in this docket seems to be directed towards

previous or anticipated postal initiatives, as opposed to the one proposed in this docket. See, e.g., Tr. Vol. 3 at 1203, lines 8-11; NNA-T-1 at 11, lines 11-12.

There is no basis for NNA's concern that a newspaper currently eligible for In-County prices may lose such eligibility if the Postal Service discontinues all Post Offices in the newspaper's county. While witness Heath asserts that "a challenge to [a] newspapers [sic] eligibility as a 'within-county' product/price user is possible" "if future closings leave a newspaper without an in-county original entry office," (NNA-T-1 at 5), no record evidence establishes that RAOI will create that result. See Tr. Vol. 3 at 1047. Moreover, even if the Postal Service were to discontinue all Post Offices in a specific county, the existing regulations would permit an In-County newspaper to maintain its eligibility for those prices. Specifically, *Domestic Mail Manual* (DMM) 707.11.3.2 permits newspapers to pay In-County prices when those newspapers are addressed to a destination within the county of publication and the entry Post Office serving that address is outside the county. Accordingly, NNA's concern cannot manifest itself if any RAOI nominated office is discontinued.

NNA's concerns regarding the potential loss of exceptional dispatch offices (NNA-T-1 at 7) should not impact the Commission's opinion in this docket. Contrary to NNA's suggestion, RAOI does not entail change to Postal Service policy regarding exceptional dispatch, set forth in DMM 707.28.3. In any event, as USPS Witness Boldt explained in his testimony (Tr. Vol. 1 at 470, lines 5 through 18) and as acknowledged by Witness Heath (Tr. Vol. 3 at 1044), the elimination of exceptional dispatch offices serving a specific area could result in

decreased transportation costs for publishers when those publishers are able to enter mail at fewer offices while reaching the same universe of subscribers.

NNA criticizes the manner in which the Postal Service accounts for commercial mailer revenues when the Postal Service considers discontinuing a Post Office. As USPS Witness Boldt acknowledged in his response to POIR No. 1, the Postal Service did not consider (1) revenue from business mail entered using permits issued at a different facility, or (2) revenue from mail delivered to or through the facility, including post office boxes, caller service, or street delivery, when identifying “candidate facilities” under the RAOI. Tr. Vol. 1 at 68. The Postal Service will not be re-identifying RAOI offices.

Witness Heath expresses concern that the failure to consider such revenues could lead to the loss of an entry office. NNA-T-1 at 8. Because origin entry offices are not, for the most part, on the candidate list, NNA’s concern is largely theoretical. Moreover, should that concern arise in the context of a particular discontinuance study, it will be then be evaluated. The Postal Service is unable to make any blanket assertion of how it would be evaluated (since the totality of circumstances affecting study of a single possible discontinuance cannot be predicted with any certainty), but other options and possible mitigation would surely be considered once a publisher raises its concern.

NNA’s criticism of the conduct of the discontinuance process are also overstated. As the Postal Service has demonstrated throughout this docket, and in A-series dockets, proper conduct of discontinuance studies is serious business. Moreover, the Postal Service seriously considers input by customers,

so that issues raised by customers can and do result in cancellation of some discontinuance studies and mitigation strategies in others. Criticism of particular community meetings, regardless of how well a meeting is conducted, is quite common as demonstrated in the A-series dockets.

Witness Heath relies for support of his criticisms on a survey that has its own flaws. To start, in response to an interrogatory NNA revealed that the survey “[q]uestions [were] not designed with scientific data methods in mind, but rather to learn what [NNA] members and others in the industry are thinking.” Tr. Vol. 3 at 1034. A review of NNA’s response to USPS/NNA-T1-6 also reveals that NNA’s survey was not designed to conform with, nor was it documented as contemplated by, Commission Rule 31(k). 39 C.F.R.

§ 3001.31(k); Tr. Vol. 3 at 1032-1036. That rule evolved over time to help ensure the reliability of evidence submitted in Commission proceedings; failure to meet that rule’s requirements is accordingly a concession by its proponents that its weight will be limited in any Commission proceeding.

One can also readily observe that certain survey questions were not designed to ensure the consistence and reliability of responses across respondents. For example, in the survey question about community meetings related to a Post Office discontinuance study, the survey was unable, as a matter of design, to distinguish between (1) negative responses indicating that no community meeting occurred, and (2) negative responses indicating that a particular newspaper was never aware that a meeting took place. See Tr. Vol. 3 at 1217, lines 11-20. This survey question also misrepresents Postal Service

policy by incorrectly supposing that a community meeting is optional. Tr. Vol. 3 at 1033. In fact, regulations require the conduct of a community meeting unless exceptional circumstances enable a Postal Service officer to authorize otherwise. NNA's failure to design a survey that collects accurate information across respondents, or accurately reflects current policy, illustrates the absence of a commitment to collect reliable information.

Other survey questions sought only to elicit the subjective views of survey participants about their perceptions of the discontinuance process. Tr. Vol. 3 at 1218-19. Such responses provide little useful guidance to the Postal Service or the Commission about the discontinuance process. Regardless, the Postal Service has demonstrated through the rebuttal testimony of Witness Boldt its dedication to the proper conduct of community meetings, and collection of the necessary feedback from customers that informs Postal Service decisions.

NNA's concerns regarding the impact of RAOI on community newspapers may well be perceived by publishers as genuine, even if the evidence supporting NNA's views is weak. However, specific impacts upon particular newspapers are quite unlikely and amenable to attention paid during discontinuance studies should any ever impact a particular newspaper. NNA's generalized concerns about community meetings are not new; nor are they substantiated as a matter of objective fact. While the Postal Service can understand that small newspapers perceive change in the world as threatening, since their very existence is marginal, nothing inherent to RAOI specifically targets small newspapers or their existence. NNA's concerns do not change the basic vitality of the RAOI



proposal, and should accordingly have little impact upon the Commission's advisory opinion.

D. Witness Artery's Knowledge Of SOV Proves To Be Very Limited

As explained in Section III above, the Postal Service has applied an objective process for selecting candidates for discontinuance study under the RAO Initiative, and this process is consistent with the goals and policies of title 39. But despite the Postal Service's detailed explanation of the RAO Initiative, intervenor witnesses have challenged the Postal Service's selection of candidate retail facilities for discontinuance study, and its reliance on particular data sources used in this selection process. Chief among them is NAPUS witness Curt Artery.<sup>38</sup> It appears that witness Artery has limited or outdated knowledge of SOV. The surrebuttal testimony of Postal Service witness David Ruiz (who has extensive knowledge of SOV, experience with it, helped develop it, and continues to develop SOV as one of its principal architects), demonstrates that witness Artery misrepresents even the most fundamental elements of SOV. See USPS-RT-1 at 6-8. For example, witness Artery states that SOV "is not periodically updated to integrate new data" and does not measure workload accurately. NAPUS-T-2 at 2. Postal Service witness Ruiz, corrects these misrepresentations, explaining that SOV receives weekly updates and incorporates both earned workload data and administrative workload data from an extensive collection of sources. USPS-RT-1 at 6. Moreover, he emphasizes

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<sup>38</sup> Rebuttal Testimony of Curt Artery On Behalf Of The National Association of Postmasters of the United States (NAPUS-T-2). See *also*, the testimony of NLP witness Strong, NLP-T-1 at 27-28. The criticisms of witness Artery's testimony offered here apply as well to this portion of NLP-T-1.

that SOV is as accurate for small offices as it is for larger ones. Tr. Vol. 5 1781-1782.

In an apparent attempt to bolster his credibility, witness Artery asserts that he is responsible for instructing other Postal Service employees regarding SOV.<sup>39</sup> But his knowledge regarding SOV is far inferior to that of witness Ruiz, who provides SOV training to Postmasters at witness Artery's employment level, and who fields phone calls from throughout the organization regarding how to use SOV. Tr. Vol. 5 at 1737-1739, 1773-1775, 1790-1791. Witness Artery's lack of fundamental knowledge regarding SOV undermines the attempt by NAPUS to portray him as a knowledgeable expert. The principal benefit of Mr. Artery's testimony has been to serve as a signal to Mr. Ruiz that remedial training to field employees regarding SOV deserves a higher priority than he may previously have earlier assumed.

E. NAPUS Witness Rita Zilinski's Testimony Warrants Minimal Weight Commensurate With Her Limited Experience and Lack of Qualitative and Quantitative Support

NAPUS witness Rita Zilinski offers testimony<sup>40</sup> expressing concern about potential adverse effects of the RAO Initiative on rural communities; yet her narrow geographic experience and the absence of quantitative support for her assertions limit the weight that can be accorded to her testimony. Her main focus is on the "civic and governmental presence" of a Post Office and her

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<sup>39</sup> Response of witness Artery to interrogatory USPS/NAPUS-T2-2 (October 7, 2011), designated into evidence by the Postal Service on October 11, 2011.

<sup>40</sup> Rebuttal Testimony Of Rita Zilinski On Behalf Of National Association of Postmasters of the United States (NAPUS-T-1).

perception of threats to “security and safety of our mail,” focused particularly upon the claimed utilization of neighborhood delivery collection box units (“NDBCUs”) in and other attributes of non-city delivery. As a former postmaster and Officer-in-Charge (OIC) in four small, rural communities in West Virginia, witness Zilinski has experienced the civic and communal presence that a Post Office can have in a community and how the needs of postal customers can be met. However, the specific concerns relating to the safety of mail that she asserts would necessarily be driven by the RAO Initiative are unsupported, anecdotal, and unfortunately not projectable on a systemwide basis from her very limited experience in four small, rural communities in one state. Thus, no conclusions can be drawn from her testimony that meaningfully inform the Commission’s preparation of an advisory opinion that casts a far wider net.

1. Witness Zilinski’s testimony regarding security concerns arising from a Post Office discontinuance are speculative.

Witness Zilinski’s testimony amounts to speculation about specific security concerns she sees as arising from how she believes postal customers are served after a Post Office discontinuance. Witness Zilinski claims, for example at page 3 of NAPUS-T-1, that “closing a [P]ost [O]ffice forces postal customers . . . to receive their mail through a highway contract route via a single family mailbox erected in front of their residence or at the end of a rural road, or by a neighborhood delivery collection box unit (NDCBU).” Her concern about the security and sanctity of the mail is one that the Postal Service and all of its employees share. Yet while she contends that she is “always extremely concerned about the security and safety of our mail” and that “the closure of a

[P]ost [O]ffice can very well jeopardize the confidence in security, particularly in rural areas,” her conclusion is based upon a single assumption about how mail would be delivered subsequent to a discontinuance. She fails to consider the full range of options, or how the security and sanctity of the mail can impact both options offered by the Postal Service and options selected by customers.

When making a determination about rural carrier or contract delivery service (non-city delivery) in a possible discontinuance context, USPS Handbook PO-101 § 233.2, directs officials to evaluate a range of considerations affecting the optimum mode of delivery, whether to roadside mailboxes, cluster box units (CBUs), or both. The potential for mail theft or vandalism in a given area would impact the choice of replacement services on a given carrier route, both in terms of what the Postal Service would offer and in what customers might choose. Such issues can also lead customers to choose the greater security of Post Office Box service.

Witness Zilinski admits in her response to interrogatory USPS/NAPUS-T1-2<sup>41</sup> that she has no personal knowledge of what percentages of rural customers who are served through curbside boxes, NDCBUs, other centralized delivery, or other delivery options. She forthrightly acknowledges (response to interrogatory USPS/NAPUS-T1-1) that her contention that NDBCUs and unlocked curbside boxes are not safe is based on “real-life work experience” and that her “familiarity is limited” to her own state so she is “unable to speak with authority about other

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<sup>41</sup> Filed on October 7, 2011 and designated by the Postal Service on October 11, 2011. All interrogatory responses of witness Zilinski referenced herein by the Postal Service were filed by NAPUS on October 7 and designated by the Postal Service on October 11.

communities.” The Postal Service agrees that these are meaningful limitations upon witness Zilinski’s experience and the consequent weight of her testimony.

2. Witness Zilinski’s testimony lacks understanding of the evolution and current use of delivery equipment in response to mail security challenges.

Witness Zilinski’s testimony, including responses to written cross-examination, also reflect her lack of understanding of how delivery equipment, especially cluster box units, has evolved over the last decade in response to mail security challenges; consequently, she is also uninformed about how CBUs are currently placed into service by the Postal Service. For instance, witness Zilinski could not explain the design and performance differences between an NDCBU, Rev E CBU, or Rev F CBU<sup>42</sup> or which one the Postal Service currently deploys and uses as replacements; she also could not identify which type of cluster box unit is now in use. She is not aware of such critical changes as the fact that NDCBUs have not been authorized mail receptacles for new delivery or as replacement equipment since the late 1990s.<sup>43</sup>

As this and the related *Postal Bulletin* notices confirm, now-outdated NDCBUs and CBUs have undergone extensive evolution to improve the security

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<sup>42</sup> Responses to interrogatories USPS/NAPUS-T1-4 through 7 and 10.

<sup>43</sup> As explained in Postal Bulletin 22310, May 5, 2011, at 50 and 53:

**Note:** NDCBUs are not approved for use in new delivery or as replacement units for existing NDCBUs -- even when privately purchased. Postal Service officials must not install Arrow locks in new NDCBUs or initiate delivery to NDCBU units installed as replacements.

\* \* \* \* \*

In January of 1999, the Postal Service announced that NDCBUs cannot be installed for delivery of mail beginning in FY 2000. As previously stated, there are no waivers granted for this policy. Place all orders for CBUs and OPLs against the national contracts listed below. Use eBuy2 to place all orders.

of delivery receptacles, the size and security of parcel lockers and collection box compartments, and their general utility for current mail mixes of letters, flats and parcels. Nevertheless, witness Zilinski expends considerable attention upon the various ways in which NDCBUs are not a suitable option for post-discontinuance delivery service due to their durability—which the Postal Service would agree is not up to current CBU standards. Her criticism of NDCBUs as a delivery alternative triggered by RAOI’s mere nomination of several thousand offices for the conduct of discontinuance studies -- although perhaps not actual discontinuance -- thus misses the mark for several reasons. In sum, however, her criticism is not relevant to the RAO Initiative, and the Commission need not consider her outdated testimony when developing its advisory opinion.

3. Witness Zilinski’s claims about ndcbu damage lack any qualitative and quantitative support.

Moreover, despite the fact that NDCBUs would not be deployed as delivery receptacles after an RAOI triggered discontinuance, witness Zilinski provides no documentation or statistical evidence that might support her claim that damage to NDCBUs -- supposedly threatening the “security and safety” of mail -- is caused by the weather, postal carriers, and/or acts of vandalism, outside of statements made to her as Postmaster or her own, apparently unique, insight.<sup>44</sup> In the Postal Service view, none of her claims are applicable to current CBU equipment. Witness Zilinski’s inability to provide any basis in her response to interrogatory USPS/NAPUS-T1-8 for her contention that systemic freezing issues exist for “Standard” or “Modified” Arrow locks in areas outside of the

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<sup>44</sup> See her responses to interrogatories USPS/NAPUS-T1-3, 8, 12 through 14 and 16.

communities where she served makes any rebuttal unnecessary. She provides no empirical evidence and did not conduct any research on NDCBUs or CBUs before submitting her testimony. See her response to interrogatory USPS/NAPUS-T1-4.

She also did not apparently look for, let alone consult, any law enforcement statistics before making the unfounded assertions in her testimony regarding the destruction of mailboxes; as a consequence, she has no idea how few complaints are recorded in the financial crimes database for NDCBUs in West Virginia. See her response to interrogatory USPS/NAPUS-T1-13; NAPUS-T-1 at 4. She has no familiarity with the data or statistics on the number of Volume Mail Attacks on CBUs over the past three years, how often follow up to reports of vandalism occurs, or the number of “customers who move there [sic] mail from highway contract mail boxes to a PO Box because their box had been destroyed or continually damaged.” See her responses to interrogatories USPS/NAPUS-T1-12, 14 and 16; NAPUS-T-1 at 4. Further, the fact that she has no training in the strength of materials and admits that the damage to locks and curbside boxes that she is concerned about was not even on postal property is a further indication that her testimony about supposed challenges to the safety of the mail, occasioned by RAOI, deserves no credence. See *a/so*, her response to interrogatory USPS/NAPUS-T1-11.

4. Witness Zilinski never reported the incidents of vandalism or theft she claims to have observed (notwithstanding her obligation to do so).

In the end, witness Zilinski’s testimony is more self-serving than it is

informative. The Postal Service addresses challenges to mail security, which have nothing to do with Post Office discontinuance, only with the assistance of employees such as the postmasters who report apparent incidents. However, witness Zilinski never reported the incidents involving vandalism/theft of NDCBUs or mailboxes she now claims to have observed; nor did she propose as a postmaster any specific initiatives or actions that might address what she claims to have observed. See her response to interrogatory USPS/NAPUS-T1-12. Even in the specific illustration of mail theft she provides on pages 4-5 of NAPUS-T-1, she made no recommendation to the victim as to reporting the incident; nor did she do so herself. See her response to interrogatory USPS/NAPUS-T1-15.

The Postal Service does not dispute that witness Zilinski performed her job as a West Virginia postmaster. The Postal Service has simply demonstrated that her assertions about post-discontinuance mail security problems are unsupported and uninformed. At best, they are limited to the geographic locales in which she served and for which she was (moderately) responsible for mail security. Thus, the Commission should not accord her testimony any material weight.

F. CSRL Witness Musto Misreads The Law And Misunderstands The RAO Initiative

At page 4 of his testimony, Center for the Study of Responsive Law witness Jeffrey Musto (CSRL-T-1) argues that the RAO Initiative poses a threat to the ... equal provision of postal services to consumers in



the communities that surround the postal facilities being studied for closure or consolidation.

One will search title 39 of the United States Code in vain for a postal policy mandating "equal" provision of postal services. In contrast, one will observe that section 403(c) permits the Postal Service to discriminate among customers and grant preferences, provided such discrimination and preferences are neither unreasonable nor undue.

At page 4 of CSRL-T-1, witness Musto testifies that the Postal Service cannot implement a change in the nature of service if anyone who could, by any standard, be deemed "vulnerable" experiences the "harshest effects of a Post Office closing or the inherent service cuts related with an unexpected reliance on 'alternate access sites.'" In response, the Postal Service can only observe that the only service change initiative guaranteed to protect the "vulnerable" from the "harsh" would be the ANCW<sup>45</sup> Initiative. With the degree of actual and constructive notice afforded to parties potentially affected by a retail facility consolidation, there is also no basis for the assertion at page 4 of CSRL-T-1 that the need to increase one's reliance on a nearby postal retail office and/or alternate access channels to obtain postal products and services as a result of the RAO Initiative would be "unexpected."

Witness Musto initially argues at page 4 of CSRL-T-1 that conducting the overwhelmingly dominant postal retail transaction, the purchase of postage stamps, at one of more than 62,000 consignment stamp sales location or through another alternate access channel is an "inherent service cut" simply because the

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<sup>45</sup> Absolutely No Change Whatsoever.

transaction takes place other than at one of 32,000 postal retail locations.

Inevitably, he retreats and concedes that stamps on consignment outlets provide a sufficient level of service to postal patrons at times when the sole objective of those customers is to obtain generic First-Class Mail letter rate stamps. Tr. Vol. 3 at 882.

At pages 6-7 of CSRL-T-1, witness Musto combines a misreading of title 39 with a misunderstanding of the difference between the criteria used to create Categories 2 and 3 (stations, annexes and branches) of the RAOI candidate pool and the USPS Handbook PO-101 discontinuance review process itself. He essentially argues that the selection criteria for each RAOI Category 2 or 3 candidate facility include reference to alternate access channels that would be insufficient to provide "maximum" service for a community, and that this should preclude the Postal Service from discontinuing retail operations at any of these candidate facilities. Witness Musto's worries are premised upon his belief that the Postal Service "must believe that these 'alternate access sites' are sufficient alternatives and could serve to replace the postal facility that may ultimately be closed." CSRL-T-1 at 6. His testimony seems to miss the point that the mix of sites in proximity to RAO Initiative Category 2 and 3 candidate facilities includes postal retail facilities deemed sufficiently nearby to consider as potential sources of service for the community currently served by the RAO Initiative candidate facilities. There is no basis for his worry that the Postal Service expects any community to rely exclusively on non-postal alternate access channels. Nor is there any basis for his apparent belief that the Category 2 and 3 candidate

selection criteria are the controlling factors in determining whether to discontinue the stations, branches and annexes within those candidate categories. Witness Musto asserts that the RAO Initiative is flawed because the Postal Service:

- (a) has a general obligation to provide a "maximum degree of service,"
- (b) non-postal alternate access channels provide less access to postal products and services than postal retail outlets;
- (c) only nearby postal retail facilities should be considered in determining whether an RAOI candidate facility should be discontinued.

CSRL-T-1 at 6. An improved reading of the postal obligation to provide a "maximum degree of effective and regular" service would be one that acknowledges that section 101(b) is expressly limited to "rural areas, communities and small towns where post offices are not self-sustaining."

Contrary to witness Musto's, a fair reading of that statute would also be one that did not substitute the words "a maximum degree" with "the maximum possible degree." Witness Musto's idealized misreading of section 101(b) aside, the Postal Service has very broad discretion in identifying which of its retail facilities to group together for purposes of a centrally directed discontinuance review initiative. It is not a failing of the RAO Initiative that a criterion utilized merely for the purpose of creating a portion of the candidate pool cannot possibly, by itself, be determinative when the USPS Handbook PO-101 discontinuance review process is ultimately applied to respective candidates. Moreover, witness Musto's plea that the Postal Service completely exclude consideration of nearby alternate access channels in determining whether an RAO Initiative candidate facility can be considered for discontinuance is contrary to the spirit of the

uncodified Postal Accountability and Enhancement Act section 302 directive by Congress that the Postal Service expand and market alternate retail access options.

At page 8 of CSRL-T-1, witness Musto sounds the alarm that "[w]ithout measuring driving distances ... it is impossible to completely understand that additional burden that may be placed on consumers in the event of a post office closure or consolidation." However, his testimony neglects numerous assurances that driving distance is a metric used in the discontinuance review process. *See, e.g.,* Tr. Vol. 1 at 67, 151, 236, 285; Tr. Vol. 2 at 758-59.

At page 9 of CSRL-T-1, witness Musto warns that communities affected by natural disasters or national security incidents would be especially dependent on convenient access to a postal retail facility. Taking his warning to its logical conclusion, the Postal Service apparently should take no measures that would diminish the current number or location of its retail facilities because some improbable tragedy might occur somewhere during which a surviving Post Office could play some vital role in the survival and recovery effort through the delivery of its products and services. The Postal Service considers it more prudent to manage its resources and evaluate each RAO Initiative candidate facility based on what the future can more reasonably be expected to hold, rather than on the basis of 3650 individual apocalyptic nightmare scenarios.

G. Witness Foster's Testimony Merits No Weight

The Postal Service appreciates the concern for its well-being expressed in the September 16, 2011 Testimony of Frederic Foster. However, witness Foster's proposed alternative to the RAO Initiative relies on a misunderstanding of the 39 U.S.C. § 3661 advisory opinion process, as well as a misreading of the restrictions on the private carriage of letters embodied in the Private Express Statutes, 18 U.S.C. §§ 1693-1699; 39 U.S.C. §§ 601-606, and the restriction on the placement of unstamped mailable matter in mail receptacles reflected in 18 U.S.C. § 1725. Accordingly, the Postal Service considers that his testimony should be afforded no weight in this proceeding.

H. APWU Witness Anita Morrison Shows Concern For Potential Disparate Impacts And Support For The Postal Service Approach

1. RAOI candidate selection criteria are properly focused.

The testimony of APWU witness Anita B. Morrison (APWU-T-1) closely resembles the testimony she provided in the Station and Branch Optimization and Consolidation Initiative, 2009 (SBOC), PRC Docket No. N2009-1 (APWU-T-2 in that docket). In both cases, she criticizes the Postal Service proposal for what she can discern as, and therefore characterize as, supposed disparate impacts upon more vulnerable customer groups such as the elderly, poor, or minority customers. In this docket, she also agrees that the Postal Service could not have targeted offices with low workload and avoided such impacts (Tr. Vol. 3 at 987-88), thereby leaving the Postal Service with the necessity for considering such impacts in the context of respective discontinuance studies. Tr. Vol. 3 at

989-90.

In the Postal Service view, RAOI does not consider impacts on customers by itself. It just serves to nominate a group of offices using, for the first time, the newly established authority of Headquarters officials to undertake such nomination rather than relying exclusively upon field officials to do so. Moreover, the largest group of offices embodied in RAOI are those with low workload, a criterion that relates directly to the business purposes for which RAOI was undertaken as an optimization initiative. Discontinuance studies themselves are controlled by USPS Handbook PO-101, which fulfills the Postal Service obligations under section 404(d) of title 39, while also providing guidance that incorporates policies in other sections of that title. In this context, the Postal Service has long examined the impact upon customers as a group and as individuals; for the most part, the Commission has found those discontinuance studies, when examined on appeal to the Commission, as satisfying the applicable legal requirements. Accordingly, witness Morrison's testimony provides direct support for the Postal Service's overall approach to RAOI.

Ms. Morrison's testimony nonetheless stands for the proposition, as it did in SBOC, that the Postal Service should harvest, in any future optimization efforts, census data for use both in shaping those future efforts and also for possible use in respective discontinuance studies. The Postal Service sees the possible use of census data as skating on thin ice that would open up any optimization effort and any discontinuance study to charges that it is targeting customers by the very criteria which they happen to reflect. This is especially so

when it is wielded for purposes of analyzing, as witness Morrison does, possible disparate impact. To illustrate this, should the Postal Service again nominate a group of offices for the conduct of discontinuance studies, and once again use a basic measurement of low demand for access to retail service in each facility—low walk-in revenue, for example—then opponents will quickly seize upon the potential (a certainty in witness Morrison’s view) that such selections will by definition result in disparate impacts upon poor, elderly, minority and rural customers.

The Postal Service view thus remains that it should continue using its operational information as a starting point when targeting possible low utilization facilities for discontinuance studies. This explicit tie between decline in demand for service at a facility and its possible replacement by the sum of nearby traditional and alternate access options, together with access options not tied to specific locations, and perhaps also mitigation strategies applicable to customers of a given office, simply ensures the focus in their nomination stays upon the business purpose rather than upon the characteristics of customers who live nearest. The characteristics of those customers would then be examined in the subsequent discontinuance study. Customers who actually use the facility would likely make their own preferences and feedback known to postal officials using the legally required and time-tested procedures embodied in discontinuance studies.

2. The Postal Service is sensitive to potential impacts upon customers that concern witness Morrison.

Witness Morrison's views are accordingly valuable in that they reflect policies to which the Postal Service also pays attention. This is particularly true with respect to the legal obligation in section 101(b) to maintain access to service also in rural areas, where Post Offices typically are not self-sustaining. But it is also true for elderly customers, for whom certain of the alternate access options are less enticing. And, while little in this docket's evidentiary record bears directly, the Postal Service also pays attention as a matter of policy to the need for access by those less well off economically for whom money orders may serve as a form of banking services. These issues, however, are ones that are considered in the context of respective discontinuance studies, not in the context of figuring out what optimization opportunities for the retail network are actionable, at least in the current RAOI context.

3. Ms. Morrison could have testified directly on retail access questions central to an advisory opinion.

The evidence in this docket uncovered a way in which witness Morrison's paradigmatic approach, one that involves comparison using census data of customers served by a group of facilities nominated for the conduct of discontinuance studies with other locations, might actually elucidate something she has not already examined in her SBOC and RAOI testimony. More specifically, she could examine locations nominated for discontinuance studies, and therefore possible discontinuance, with locations that do not currently have classified retail units. Unlike her current testimony, this approach holds out the



potential for a true apples to apples comparison, rather than the apples to oranges approach she has chosen to use in both SBOC and RAOI.

Her approach in both cases was to compare locations that might lose their classified retail unit, with locations that would not lose their classified unit. In SBOC, she compared a group of offices that had led field officials to terminate discontinuance studies with those whose discontinuance studies were still ongoing; in RAOI, she compared all offices nominated by the initiative for the conduct of discontinuance studies with separate control groups (urban and rural) of locations with classified retail units not nominated by Headquarters for the conduct of discontinuance studies. So in both situations, witness Morrison's testimony examined locations that might be without retail units with locations that would retain classified retail units. In this sense, she conducted an apples to oranges comparisons.

A more direct apples to apples comparison would entail a look at locations soon to be without a classified retail unit with locations that do not have a retail unit. As reflected in Tr. Vol. 3 at 958-66, albeit with almost no comment allowed by witness Morrison, such research would face a design challenge in the form of defining what constitutes a community without a classified retail unit; yet this challenge could be met in various ways. While the record does not include any testimony about how best to respond to this challenge, the point remains that RAOI is about access to retail facilities.

4. The Postal Service was precluded from exploring core issues RAOI raises.

Witness Boldt's direct testimony describes in simple terms the challenge faced by the Postal Service. Its traditional brick and mortar facilities are seeing steeply declining usage at the same time when use of alternate access is growing steadily; moreover, the types of alternate access and their availability, whether location specific or not, are also growing. Actual utilization of smaller retail facilities is very modest, especially when compared to their actual hours of operation. Witness Boldt's most fundamental point is that today, retail access cannot be defined solely with reference to what traditional classified retail facilities provide; the world is changing and access to retail services is changing. The challenge for the Postal Service is: How can it manage change, continuing to offer broad access to retail services while accommodating diminished reliance upon brick and mortar facilities operated by career postal employees? In this context, while witness Morrison's testimony provides similar input to what she provided in SBOC, the point is that access to retail services cannot be defined exclusively by reference to how service is provided in locations with classified retail facilities. Hence an apples to apples comparison, one that looked at how access to retail services is realized in communities that lack retail facilities compared to how customers might access retail services in communities who may soon lose their retail facility has the potential to be much more illuminating than the apples to oranges comparison she testifies about. While witness Morrison acknowledged she had not previously thought of this alternative paradigm, she was also interested in it and, apparently, in keeping with her skills

as a social scientist, prepared to consider it. Despite this being a common and recommended means for exploring the testimony of expert witnesses on oral cross-examination, the Postal Service was not permitted to undertake this reasoned discussion with the witness. The possible utility of the Commission's advisory opinion was thereby compromised unnecessarily.

To her credit, witness Morrison expressed interest in the approach: "It in fact had not occurred to me in doing the analysis to do it that way." Tr. Vol. 3 at 956-57. She then started thinking about it and quickly recognized challenges that would be inherent in the research design.<sup>46</sup>

5. Cross-examination regarding issues fundamental to an advisory opinion was improperly foreclosed.

It was at this point, however, that the hearing took an unfortunate procedural turn. Exploration of the research design chosen by an expert witness—options considered and chosen versus those not selected, and options not considered and why—are classic examples of ways to test the reasonableness, reasoning and credibility of an expert witness and her testimony. Such issues, properly explored, help inform the judicial body of the weight, credibility and ultimate utility of an expert witness' testimony. The Commission has, moreover, traditionally allowed such examination of the most highly qualified experts that have appeared before it. These are certainly reasonable ways to explore or cross-examine a witness' chosen approach. The Postal Service was not allowed to do so.

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<sup>46</sup> A considered approach would be necessary given that she has no idea how many cities, towns or census tracts exist in the lower 48 states. Tr. Vol. 3 at 954-55.

However, despite the witness' apparent understanding and willingness to discuss the subject, the Presiding Officer declared:

I think this opens us up to defining what these communities may or may not be. We have an ongoing Postal Service that says that it provides universal service, which means it provides some service everywhere. There's no testimony on the record identifying communities, a pattern of communities that do not have postal services at the moment. If the Postal Service has that information we'd be more than happy to review it, but this witness has said she doesn't have it, so can we move forward?

Tr. Vol. 3 at 960. Postal Service counsel proceeded to explain why witness Morrison was precisely the witness able to answer these very questions, and why this constitutes reasonable cross examination of an expert witness. *Id.* at 960-61. That explanation drew the following response from the Presiding Officer:

I don't want to argue with you to extend this, but ... she's presenting her analysis of data that she prepared based on what the Postal Service's proposal was, which was assuming that there are Post Offices and a reduction in Post Offices, not a proposal from the Postal Service about what the maximum service should be provided to everybody or what the current lack of Post Offices are around the country that should be compared to the further lack of Post Offices you want to propose in this particular proceeding. I think you're getting into very dangerous territory, and if you think there's interesting information there it's something that you certainly can pursue, but we've got not very much time and a witness who's I think focused on an important aspect considering two possible subsets that are rationally understandable, and that's her testimony.

*Id.* at 961-62. It is the Postal Service's view that the decision to preclude pursuit of these questions on the basis of concern that Postal Service counsel was entering unexplained "dangerous territory," engaging in a waste of time, the instruction that the Postal Service ought instead to conduct the research embodied in its hypothetical questions, all unfortunately misapplied the rules of

both evidence and procedure, and appears to have been based on an apparent misunderstanding of the testimony already provided.

The Presiding Officer, to her credit, also attempted to paraphrase a form of the question which the witness was allowed to answer. Unfortunately, the net result is that this area of questioning, reasonable and appropriate though it seemed to be, with a witness apparently quite willing to discuss the science on which her testimony is founded, was foreclosed to the detriment of the evidentiary record and the Commission's ability to provide useful advice in its opinion. The Postal Service is concerned that this turn of events may undercut the vitality of the Commission's forthcoming opinion.

The soundness of research design and methodology is a fundamental element that must be considered in determining an expert opinion's reliability and admissibility as evidence. This is precisely what postal counsel was attempting to undertake. Under the Federal Rules of Evidence, an expert may testify only if "the testimony is the product of reliable principles and methods." FED. R. EVID. 702. When considering the scientific validity, relevance, and reliability of an expert's testimony, "[t]he focus ... must be solely on principles and methodology, not on [] conclusions." *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 594 -595 (1993). A party has a right to cross-examine an expert regarding her methodology, and the testing of an expert's methodology is an important exercise essential for assessing the weight and admissibility of expert testimony. See *R.F.M.A.S., Inc. v. Mimi SO, et al.*, 748 F.Supp.2d 244, 252 (S.D.N.Y. 2010) ("[a party] may present [] challenges [to expert testimony] through cross-

examination”); *Oliver-Gely v. Hi Development PR Corp.*, 472 F.Supp.2d 140, 144 (D.P.R. 2007) (“challenges to the methodology used by an expert witness are usually adequately addressed by cross-examination”). If an expert’s methodology contains major flaws, *Daubert* and Rule 702 mandate its exclusion. *R.F.M.A.S.*, 748 F.Supp.2d at 252. Even if the methodology contains only minor flaws, the testimony will be given less weight. *Id.* The expert’s methodology must also be tested to determine whether it is reliable and appropriate for the particular subject of the expert’s testimony. *See id.* at 253. Ultimately, the trier of fact, in this case the Commission, “must decide not only whether the methodology is reliable for some purposes, but also whether it is a reliable way to draw a conclusion regarding the particular matter to which the expert testimony was directly relevant.” *Id.*

6. Witness Morrison’s results lack real significance.

Aside from the fact that witness Morrison might have taken an approach more useful to the actual question posed by RAOI, the approach she used is not unreasonable. She certainly follows through on her research design competently, capably reporting her results. Of course, with one exception for rural customers (APWU-T-1 at 12, n.6), none of her results are statistically significant (above the 95 percent confidence level). Tr. Vol. 3 at 977. As such, while she summarizes the data she provides in ways that help illustrate the potential for disparate impact, she is unable to state with any real certainty that such disparate impacts will in fact arise from RAOI. Given her starting point assumption that all RAOI offices will be discontinued, of course, her results are

even less likely to manifest themselves in reality. And, like various other witnesses in this proceeding, she assumes that retail access can be defined exclusively in terms of the proximity of customer homes to retail facilities, without including in the analysis alternate access, or such simple possibilities as visiting a retail facility near a job location, or while undertaking other personal business such as shopping. Notwithstanding, the Postal Service would concede that witness Morrison illustrates challenges the Postal Service faces in managing the overall need for access to retail service.

Ms. Morrison also cites to a study supposedly showing negative impact on employment in ZIP Code areas experiencing facility discontinuances (APWU-T-1 at 22, n.9); that study shares weaknesses similar to those in her own. That study does consider past facility closings but, contrary to Ms. Morrison's claims, finds no statistically significant effect on local employment.<sup>47</sup>

Witness Morrison explains that her analysis entails "test[ing] whether the review process is fair and reasonable with respect to burdens on minority, low-income and elderly households." APWU-T-1 at 8-9. Unfortunately, she never defines "fair and reasonable" nor how that concept can be applied to assess any review process. It thus appears that, as of the time she submitted her written direct testimony, she did not appreciate that RAOI involved nominating offices for the conduct of discontinuance studies, while the process of evaluating respective

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<sup>47</sup> One statistically significant result is found, but not for the fully specified model. The report states, "Neither [model's] estimate of impact was statistically significant at conventional levels." Report at 9. Other nominally significant results should be dismissed, as the study explains, due to "the lack of adjustment of the standard error due to clustering in this specification, or simply by the shrinking of the standard error of the regression resulting from inclusion of the dummies for ZIP [C]odes." *Id.*

offices for possible discontinuance was already established and mature. On oral cross-examination, she allowed that she had never read an administrative record created to support a discontinuance decision (Tr. Vol. 3 at 944-45). Although she has read several appeals filed (*id.*), witness Morrison's knowledge of discontinuance studies is drawn from press reports concerning RAOI. Tr. Vol. 3 at 969-73. So despite her apparent intention to assess the review process announced by RAOI, she has little real understanding of the distinction between nominating offices for the conduct of discontinuance studies, and the studies themselves, nor the fact that only the latter actually involves examination of burdens on minority, low income and elderly households.

Witness Morrison does recognize that her criticism of RAOI stems primarily from the low walk-in revenue selection criterion for most of the offices nominated by RAOI. Tr. Vol. 3 at 987-88. Yet that means, from her perspective, the Postal Service should not be allowed to address a business problem, diminishing and under-utilization of retail facilities, by selecting those very offices for examination of possible discontinuance, based upon a rather precise measure of the low utilization. Or, perhaps more generously, her position is that if the Postal Service chooses facilities for possible discontinuance based on their low utilization, it should guard against disparate impact upon vulnerable customer groups during its actual discontinuance studies. Tr. Vol. 3 at 989-90. While she knows little about those discontinuance studies (which allows her to make suggestions about what should be considered (APWU-T-1 at 29), without realizing that most of them already are (Tr. Vol. 3 at 965-66)), that does happen



to be exactly the position the Postal Service actually takes with respect to her testimony, and what the Postal Service actually does.

7. Future plans for retail access need to take a broader look.

The Postal Service would also concede that simply closing retail facilities cannot be its sole strategy for optimizing retail facilities, even though realistically that is all RAOI entails. Public Representative witness John Klingenberg does reference and commend work done by Dr. Anthony Yezer, a professor of economics at George Washington University (and former witness before the Commission<sup>48</sup>). Tr. Vol. 3 at 1664, 1666. Mr. Klingenberg also picked up on references by Postal Service witnesses Boldt and Granholm indicating that the Postal Service is working with Dr. Yezer. *Id.* While the Postal Service relationship with Dr. Yezer is nascent, it is safe to assume that some future Postal Service optimization efforts could expand to encompass locations not only where existing classified units are located, but also to the more general proposition of aligning the retail network, both alternate access and traditional brick and mortar units, with customer demand.<sup>49</sup>

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<sup>48</sup> Dr. Yezer testified in PRC Docket No. R2000-1 (USPS-T-31), wherein he developed what amounts to the first national index for real estate values; it was used to help set Post Office Box fees and assignment of respective P.O. Box locations to fee groups.

<sup>49</sup> See, e.g., *Analyzing the Postal Service's Retail Network Using an Objective Modeling Approach*. USPSOIG (June 14, 2010), available at [http://www.uspsdig.gov/foia\\_files/RARC-WP-10-004.pdf](http://www.uspsdig.gov/foia_files/RARC-WP-10-004.pdf).

I. Witness Klingenberg's Data Analyses Do Not Inform An RAOI Advisory Opinion But May Apply To Future Optimization Approaches

The testimony of Public Representative witness John Klingenberg (PR-T-2) largely does not address the Postal Service Request, nor the testimony of witness Boldt. That is not the fault of the Postal Service, and perhaps need not be viewed as the fault of Mr. Klingenberg, whose forté is data analysis.<sup>50</sup> The Postal Service Request was accompanied by relatively little data aside from (soon thereafter) that used to identify RAOI offices nominated for the conduct of discontinuance studies. From the Postal Service perspective, aside from data underlying selection of retail facilities for inclusion in RAOI, and the commencement (although not necessarily completion) thereafter of a discontinuance study regarding each nominated facility, RAOI is not a data driven initiative.

Participants in the case, however, quickly sought to acquire data in the RAOI docket, via discovery and information requests, much of which focused on attributes of RAOI nominated facilities far beyond what was necessary to their selection into RAOI, and other information which focused more broadly upon all Postal Service facilities. With the aggressive schedule foisted by circumstances upon all participants, data production was uneven, and as Mr. Klingenberg sometimes points out, lacking in optimum consistency across the range of data

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<sup>50</sup> Witness Klingenberg's testimony is certainly consistent with what he was asked to do (thereby implying no fault), at Tr. Vol. 4 at 1640, where he states:

The public representative asked me if I had seen any technical or analytical information in this case that would help the participants and public representative better understand the proposal at hand. As such, she requested that I put together a piece of testimony that would help further the discussion.

productions. The fact that additional data specific to each RAOI facility becomes relevant to RAOI itself only when those facilities undergo discontinuance studies in no way constrained data requests, or attempts by postal officials to as respond as expeditiously and completely as possible.

Witness Klingenberg defines the purpose of his testimony as “provid[ing] analysis of the Postal Service’s retail network and the Docket No. 2011-1 Retail Access Optimization Initiative” (PR-T-2 at 2) in terms that focus upon available data: “Due to data limitations, this testimony generally focuses on the facet of the proposal for which the most data is available, the ‘Low workload’ proposal.”

*Id.* Witness Klingenberg further explains that he drew data from Public Representative witness Waters (who relies upon census data via ESRI), and that his testimony looks broadly at possible optimization strategies. *Id.* at 2-3.

Witness Klingenberg then criticizes the Postal Service for not making RAOI a proposal more to his liking, driven by data of the sort he prefers, and therefore better suited to the kind of analysis he can produce. *Id.*

Mr. Klingenberg was later given an opportunity to explain his preference for how the Postal Service should have structured its initiative in a colloquy commenced with Commissioner Langley and concluded with Vice-Chairman Acton. Tr. Vol. 4 at 1709-14.<sup>51</sup> Witness Klingenberg was asked by “the Public Representative ... to look at the information available, and discern what I could from that information.” Tr. Vol. 4 at 1709. As such, his preference was to have

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<sup>51</sup> That colloquy concludes with discussion between witness Klingenberg and Commissioner Acton of the limited utility afforded by the comparisons included in PR-T-2 regarding postal services in Canada, France and Australia because of different constraints applicable to respective posts. Tr. Vol. 4 at 1713-17.

been served with “the operating costs for all the offices, the location for all the offices, the revenue for all the offices, hopefully the costs broken down by cost segment.” *Id.* Then, Mr. Klingenberg provides the explanation for his misbegotten understanding of RAOI; “You know, a very informed and educated way of looking at what the potential cost savings could be, and maybe revenue broken down by some demographic information to think about from a marketing perspective, and what happens next if this [P]ost [O]ffice closes.” *Id.*

As the Postal Service has repeatedly had to explain throughout this docket, RAOI is not driven by a cost savings goal. It is simply a test of a newly established authorization for Headquarters officials to nominate, for the first time, four groups of retail facilities for the conduct of discontinuance studies, in a legal context where a request for an advisory opinion is mandatory. No financial goals exist within RAOI. Since that discontinuance process already defines how and whether postal officials can, in conformity with the law, conclude whether a facility’s operation is amenable to discontinuance, RAOI can do no more than nominate offices. It cannot also embrace a financial goal that might prove untenable, or illegal. Further, as some participants make a point of repeating, RAOI cannot possibly have financial consequences that bear directly upon the magnitude of the financial challenges faced by the Postal Service. RAOI is, accordingly, a small step in the direction of retail network optimization with, at best, modest potential. The Postal Service can only learn whether one or more of the facility groups is, or is not, amenable to discontinuance—or more likely—whether respective facilities within each group are each amenable to

discontinuance.<sup>52</sup> Notwithstanding, the results of RAOI, including any advisory opinion that ensues, will help guide future decisions regarding retail access and the brick and mortar facilities through which it has traditionally been provided.

Into this modest context, Mr. Klingenberg has therefore allowed his preferences for data driven decision making processes, final facility-specific decisions, and approaches to network optimization to corrupt his fundamental understanding of what the Postal Service requests in this docket to something quite different. It therefore is no surprise that his analysis bears little upon the actual RAOI proposal. Whether the Commission can nonetheless utilize his testimony as a foundation for an advisory opinion remains to be seen. If so, and if there is any likelihood that Mr. Klingenberg's testimony ultimately proves useful, it will do so in the context of future decisions, and perhaps optimizations, but not RAOI. On that basis, and because the Commission's advisory opinion should prove useful, the Postal Service has engaged Mr. Klingenberg and his testimony directly, on their own terms, rather than discounting his input as largely unrelated to RAOI; as such, the data problems he encountered in a proceeding dedicated to a purpose much different from what he conceives, become bumps in the road that need not obscure what witness Klingenberg has to offer.<sup>53</sup>

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<sup>52</sup> Reference elsewhere in this brief to exploration of potential future optimization with the assistance of Dr. Yezer further illustrates just how modest RAOI's goals should be understood as being.

<sup>53</sup> Witness Klingenberg also lacked meaningful support from professional resources at the Commission. Tr. Vol. 4 at 1643. Of course, this is driven in part by the need to erect a "Chinese wall" between the Public Representative and staff advising the Commissioners more directly. But since Mr. Klingenberg is a recent employee of the Commission, he has relatively little professional experience with postal data systems and traditional data sources. It did not occur to

One major foundation for witness Boldt's direct testimony (USPS-T-1) is the under utilization of classified retail facilities for accessing retail facilities. USPS-T-1 at 14-16 (describing low workload Post Offices, and stations/branches/annexes with low demand for retail services and nearby access options). Indeed, the intention to examine these facilities and see if discontinuance is a viable option for any of them goes to the very heart of whether RAOI amounts to an optimization exercise. This aspect of RAOI was not, however, of apparent interest to witness Klingenberg, who indicated that excess capacity in postal facilities is not a topic he has examined. Tr. Vol. 4 at 1675 (confirming that is the gist of his response to USPS/PR-T2-16, found at Tr. Vol. 4 at 1597.)<sup>54</sup> His lack of apparent interest is even more surprising given his awareness of an OIG report cited in his testimony. See, *id.* at 1675 (confirming his awareness of published economic literature reporting that excess capacity has been identified in the Postal Service retail network). Hence witness Klingenberg chose to steer clear of what he knew was a key foundation for RAOI. While witness Klingenberg also explains that he had not found data, at least of the types he considered useful, that bears on the issue of excess capacity (Tr. Vol. 4 at 1676-78), the fact remains that the Postal Service explained, while providing supporting data, for how it selected offices for RAOI based on that criterion. At the very least, witness Klingenberg's views ensured that his testimony would be less than helpful in evaluating RAOI. Perhaps

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him, for example, that the Domestic Mail Manual might be a resource worth consulting regarding details of the Postal Service retail network. *Id.* at 1704.

<sup>54</sup> Notwithstanding, witness Klingenberg does recognize that access to retail services is a key underpinning to this case (Tr. Vol. 4 at 1655) and that alternate access should be a measured part of overall retail access (*id.* at 1656).

understandably, he would prefer to have been faced with a different optimization effort, as he discussed with Commissioners Langley and Acton.

One interrogatory to Mr. Klingenberg from the Postal Service (USPS/PR-T2-32) was designed to lead him down a road consisting of evidence in previous Commission proceedings where the term “Pareto optimality” has been defined and applied by leading lights in the field of economics; the point was to illustrate to Mr. Klingenberg that he was not using the term correctly. Mr. Klingenberg responded (reasonably so) by filing errata to his testimony, replacing the term “pareto optimal” with “pareto dominant,” then answering the interrogatory based on the revised testimony. While the Postal Service was largely comfortable with his response, an attempt to clarify some discussion Mr. Klingenberg had with counsel for the League went mildly awry when the witness stated, “I believe I refer to pareto dominance, which is a way of measuring pareto optimality.” Tr. 4/1631. However, absent quantification of the various parameters entering into a discussion of, or more specifically a measurement of, Pareto dominance, no actual measurement is possible; accordingly, “Pareto dominance” as used in witness Klingenberg’s testimony cannot be a measure of “Pareto optimality”, although it can indicate in qualitative terms whether a Pareto improvement is obtained. This potential improvement in witness Klingenberg’s discussion of Pareto dominance is confirmed by the very article he cites in his response to the interrogatory: [http://en.wikipedia.org/wiki/Pareto\\_efficiency](http://en.wikipedia.org/wiki/Pareto_efficiency).

J. Witness Waters' Optimization Analysis Bears Little Relation To The Postal Retail Network

The testimony by Public Representative witness Professor Nigel Waters (PR-T-1), including his written direct testimony, and written and oral cross-examination, sheds light on a standard form of “location allocation analysis” (PR-T-1 at 10-14) that he was able provide for a single state in the Postal Service domestic service area. He chose Kansas because its flat topography and square shape simplify the analysis. Tr. Vol. 3 at 1368-70. He defines network optimization in a way that is quite unrelated to the Retail Access Optimization Initiative; indeed, he emphasizes this disconnection by confirming that knows what alternate access is to the Postal Service, but that he deliberately omitted it from his analysis. Tr. Vol. 3 at 1357-58. Given that inclusion of alternate access would have weakened the strength of a location allocation analysis (Tr. Vol. 3 at 1362-63), the limited purpose of his testimony is clear. Dr. Waters never read documents laying out the Postal Service’s chosen approach, such as witness Boldt’s testimony or the Postal Service request. *Id.* at 1356. His testimony thus addresses a definition of optimization that may constitute an interesting intellectual side trip, but one that bears little relationship to the network the Postal Service uses to provide retail access to customers. Dr. Waters’ optimization goal is simple: minimize the average distance of population to the nearest Postal Service classified retail facility. Dr. Waters’ approach accordingly allows him to observe:

This initial LA analysis reveals that based solely on minimizing population weighted impedance or distance, the recommended list of closures in Kansas is less than optimal, and a different set of



closures would achieve a greater savings in travel time and travel distance encountered by potential post office patrons as measured by the general population in Kansas.

PR-T-1 at 11.

While Dr. Waters chose to minimize the average distance of populations from Kansas postal facilities, he chose not to use two related approaches toward which his research design could have been directed. The first, known as a 'coverage problem', would have been to optimize the number of people within a given distance of Post Offices; second, he could have attempted to minimize the distance of the most distant census block of customers from a Post Office. Tr. Vol. 3 at 1354-55. Since those would have been still further removed from the Postal Service RAOI objectives, that appears to have been a wise choice. Moreover, had Dr. Waters been permitted twice the time frame actually available for conducting his analysis, he could have increased the granularity of his results down to the block, rather than block group, although this may have raised confidentiality issues. *Id.* at 1359-61. The bottom line, however, is that Dr. Waters' approaches to optimization are unrelated to what the Postal Service actually attempts via RAOI. However, given that the Postal Service expects to learn more about optimization in this proceeding, as the law apparently allows, his contributions are appreciated.<sup>55</sup>

Dr. Waters makes no attempt even to address the challenges actually

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<sup>55</sup> While Dr. Waters recognizes generally the need to document his work, he was evidently never introduced by to the Commission's own rules of practice, particular Rule 31(k) (Tr. Vol. 3 at 1379-82). While no party sought to strike his testimony for this reason, the Postal Service would very much prefer to see the Commission's standards applied consistently, or at least systematically, across proceedings and participants.

faced by the Postal Service, so he makes no attempt to assess the demand for access to postal services, the sensitivity of that demand to distance, capacity limits or utilization at respective facilities, differences in travel costs or times from place to place, or the cost of producing service at respective locations. In other words, Dr. Waters totally ignores the economic context in which the Postal Service is assessing and in which it has launched RAOI. Howsoever useful location allocation analysis may be in academia, when applied in the real world it can lead to absurd results; if, for example, fewer facilities than cities exist in a given analysis, the facilities would be located between cities rather than in them, so as to minimize the average distance customers must go to reach a facility.<sup>56</sup>

Dr. Waters does explain that he had little time in which to prepare his testimony (PR-T-1 at 2); hence he was unable to look at the entire domestic service area—an approach that would tend to limit challenges inherent in dealing with state borders (where a customer might cross state lines to reach a closer facility in a neighboring state). Nor did he consider locations providing access to postal services beyond those nominated for possible discontinuance, or not, by RAOI. Tr. Vol. 3 at 1313. Rather than including in his analysis any consideration of what the Postal Service seeks an advisory opinion regarding, RAOI, or providing the Commission with information that informs its evaluation of RAOI, Dr. Waters simply provides “a starting point for understanding the spatial aspects

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<sup>56</sup> The Postal Service recognizes that location allocation analysis can meet real world needs. Dr. Waters provided examples during his oral cross-examination, including work on the national locations of liver transplant facilities in the USA and heart transplant facilities in Canada. Tr. Vol. 3 at 1386-87. His affirmative avoidance of results based on ZIP Codes (at any level), instead maximizing utilization of census data (*id.* at 1377-79) was perhaps suboptimally instructive in this context.

of trying to optimize the closure of facilities such as Post Offices.” *Id.* Hence Dr. Waters is content to look at one state within the domestic service area, Kansas (able to be completed quickly, *id.* at 1313), in isolation of its surroundings, and look at static patterns in population density within that geographic area. *Id.*

Limits upon the utility of his analysis are no surprise to Dr. Waters. So he recognizes he does not evaluate whether RAOI nominated offices may not actually be discontinued (he assumes all of them will be). See Tr. Vol. 3 at 1325, 1330. He further assumes that each postal customer uses only the nearest classified retail unit to her home, and not the one closer to work or other locations where one may routinely travel (*id.* at 1325, 1328-29), even though his analysis could be materially improved by including those possibilities. *Id.* at 1345-47. Dr. Waters deems how the Postal Service actually manages and operates its facility network “irrelevant” (*id.* at 1328), just as readily as he disclaims that the Postal Service should adopt and apply the goal his testimony uses. *Id.* at 1332-33. Curiously, Dr. Waters cannot even answer whether a customer can access a postal facility near her grandmother’s home, although he does explain he sees that as a complex hypothetical question. *Id.* at 1328-29. Dr. Waters recognizes that the goal he uses for optimization purposes is not one the Postal Service likely shares (*id.* at 1332), and, in any event, he does not recommend that the Postal Service manage to that goal. *Id.* at 1332-33. Rather, illustrating that he is moderately well grounded in the world postal management faces, Dr. Waters hopes that his testimony illustrates to postal management how location allocation analysis could be used as “only one type of analysis that needs to be done.

Other evidence and analysis of many forms needs to complement the spatial analysis advocated here.” *Id.* Dr. Waters testimony, while perhaps interesting, is not especially useful or informative for purposes of the instant docket.

## VII. Conclusion

As demonstrated above, the service changes that could result from implementation of the Retail Access Optimization Initiative are founded upon a rational plan for improving the nation’s postal system and are the product of a proper balancing and consideration of pertinent objectives of title 39, United States Code. For the reasons described by witness James Boldt (USPS-T-1), and based upon the decision-making tools and processes described in his direct testimony and the surrebuttal testimony of witness David Ruiz (USPS-RT-1) and various other supporting documentation, there is every reason to expect the result of the Initiative to be a streamlined retail network comprised of postal facilities and alternate access channels of such character and in such locations as are necessary to provide effective and regular access to essential services at relative levels appropriate for urban and suburban areas as well as rural communities and small towns. The RAO Initiative is a faithful exercise of the

Postal Service's statutory responsibilities. The record in this docket supports the conclusion that the resulting changes in the nature of postal services can be expected to conform to the policies of title 39, United States Code.

Respectfully submitted,

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