

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

Retail Access Optimization Initiative, 2011

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Docket No. N2011-1

INITIAL BRIEF

OF

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

(November 4, 2011)

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STATEMENT OF THE CASE

On July 27, 2011, the Postal Service filed its “Request of the United States Postal Service for an Advisory Opinion on Changes in the Nature of Postal Services.” The Postal Service began a process to consider eliminating over 3,500 retail post offices, stations, and branches. The request was supported by the direct testimony of postal witness James J. Boldt.

On July 28, 2011, the Commission issued Order No. 778, “Notice and Order Concerning Request for an Advisory Opinion Regarding the Consideration for Closure of Approximately 3,650 Postal Retail Locations,” commencing this docket. Valpak Direct Market Association, Inc. and Valpak Dealers’ Association, Inc. (hereinafter “Valpak”) intervened on August 10, 2011. A hearing on the Postal Service’s direct case was held on September 8, 2011.

The Postal Service’s request for a Commission Advisory Opinion was submitted, pursuant to 39 U.S.C. section 3661(b), for a proposed “change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis.” The Postal Service did not make a determination that section 3661(b) was applicable, but asked the Commission to do so, and if the Commission determined that it had jurisdiction, to provide the appropriate Advisory Opinion. *See* Request, p. 2. When it established this docket, the Commission determined that it does have jurisdiction. *See* Order No. 778, p. 2.

Rebuttal testimony was submitted by six parties: American Postal Workers Union, Center for Study of Responsive Law, National Association of Postmasters of the United States, National League of Postmasters, National Newspaper Association, and the Public Representative, as follows:

Anita B. Morrison (APWU-T-1)

Jeffrey Musto (CSRL-T-1)
Rita Zilinski (NAPUS-T-1)
Curt Artery (NAPUS-T-2)
Mark Strong (NLP-RT-1)
Donald Hobbs (NLP-RT-2)
Max Heath (NNA-T-1)
Nigel Waters (PR-T-1)
John P. Klingenberg (PR-T-2)

The Commission held hearings on the rebuttal witnesses on October 17-18, 2011.

On October 24, 2011, the Postal Service submitted the surrebuttal testimony of two witnesses:

David R. Ruiz (USPS-RT-1)
James J. Boldt (USPS-RT-2)

The Commission held a hearing on the two surrebuttal witnesses on October 28, 2011.

Pursuant to Presiding Officer's Ruling ("POR") No. N2011-1/17, the deadline for initial briefs is November 4, 2011, and that for reply briefs is November 10, 2011.

ARGUMENT

I. Legal Principles.

The Postal Service cited several postal statutes that bear on its Retail Access Optimization Initiative ("RAOI"), specifically: 39 U.S.C. sections 101(a) and (b); 401(6); 403(a), (b)(1), and (b)(3); and 3661(a). *See* Request, pp. 3-4. Further, the Postal Service references section 404(d) when discussing the changes it made to its regulations relating to closing facilities and to its internal operating Handbook on discontinuing retail facilities. *Id.*, p. 6.

Valpak submits that the power vested in the Postal Service by 39 U.S.C. section 404(a)(3) also bears on the Commission's review of the RAOI, that is, the power "to **determine** the need for post offices, postal and training facilities and equipment, and to provide such offices, facilities and equipment **as it determines** are needed." (Emphasis added.) Moreover, the principles contained in 39 U.S.C. section 101(g) which applies to new postal facilities, should be kept in mind for maintaining existing facilities: "the need for facilities and equipment designed to create desirable working conditions for its officers and employees, a maximum degree of convenience for **efficient** postal services, proper access to existing and future air and surface transportation facilities, and **control of costs** to the Postal Service" (emphasis added).¹

The "standard of review" for the Commission Advisory Opinion is that, after a "hearing on the record," it must "conform[] to the policies established under this title," and such conformance must be certified by each Commissioner. 39 U.S.C. § 3661(c). The Commission has many theoretically conflicting statutory provisions within Title 39 that it must balance when providing its Advisory Opinion to be issued in this docket, and must be careful not to focus narrowly on one provision of law while neglecting others.

Although the Commission and intervenors have already focused much of their attention in this docket on protecting provision of facilities to rural areas, the Commission also has a responsibility to consider this docket in the context of the provision of law relating to

¹ Additionally, several objectives and factors of the market dominant pricing system at least implicitly refer to costs and efficiency of the Postal Service which indirectly bear on the Postal Service's retail network. *See, e.g.*, 39 U.S.C. § 3622(c) and (d).

maintaining the financial health of the Postal Service's near-desperate need to achieve increased efficiencies and cost savings. If the Commission were to disregard the provisions of law relating to the financial condition of the Postal Service, its Advisory Opinion would be fundamentally flawed.

II. Financial Setting.

The Postal Enhancement and Accountability Act ("PAEA") requires that the Postal Service pre-fund retiree health care benefits in the amount of approximately \$57 billion over a 10-year period starting in FY 2007. Efforts by the Postal Service to comply with this section of the law have (i) exhausted such financial reserves as the Postal Service had when PAEA was enacted in December 2006, (ii) caused the Postal Service to borrow the maximum \$15 billion allowed under the law, and (iii) left the Postal Service with no means to make the payment to the Retiree Health Benefits Fund that was due on September 30, 2011.²

Financials for the remainder of the current fiscal year indicate that the financial condition of the Postal Service is getting worse. The Postal Service has warned that sometime next summer, and certainly before September 30, 2012, it expects to run out of cash and be unable to meet its then-current payroll expense.³ The timing of this imminent insolvency depends largely on the rate at which the volume of First-Class Mail declines.

² Default was only avoided by a last-minute provision in Congress's Continuing Resolution, extending the deadline of the payment to November 18, 2011. *See* Pub. L. No. 112-36, Sec. 124.

³ Postal Service Response to Commission's Draft Section 701 Report (Sept. 15, 2011), p. 10.

Observing that the Internet has eroded — and continues to erode — the volume of First-Class Mail by a substantial amount merely states the obvious. In the face of electronic competition, the statutory monopoly on delivery of mail has become ineffective at preventing erosion in the volume of mail, revenues and contribution to overhead costs.⁴ 39 U.S.C. § 101(b) provides that “no small post office shall be closed solely for operating at a deficit.” However, there is no bar to considering economic realities in this nature of service docket, or even in the closing of a post office. As John Adams said, “Facts are stubborn things.” Obligations to continue operations must be paid as incurred. Sometime during 2012 it appears virtually inevitable that the Postal Service will require some form of bailout from Congress, possibly from taxpayers, in order to continue operating. The larger the continuing deficit, the larger the taxpayer bailout(s) that could be required.⁵

Uneconomic retail services, including but not limited to those post offices with a two-hour earned workload, constitute what long has been the most expensive and inefficient way of providing citizens with access to retail postal services. So long as First-Class Mail provided ample surplus revenues, these post offices once could have been viewed as a luxury that the

⁴ The Commission’s conclusions in its 2009 report on universal postal service and postal monopoly concerning effectiveness of the monopoly appear to have been overtaken by rapid, near-universal adoption of the Internet.

⁵ The GAO report “U.S. Postal Service Mail Trends Highlight Need to Fundamentally Change Business Model” (Oct. 14, 2011) concludes that the Postal Service **urgently needs to restructure its networks** to achieve and sustain financial viability. Another GAO report “U.S. Postal Service: Allocation of Responsibility for Pension Benefits between the Postal Service and the Federal Government,” Report GAO-12-146 (Oct. 13, 2011), demonstrates that, despite the Commission’s best efforts, the Postal Service is unlikely to recoup any excess money allegedly paid into the Civil Service Retirement System (“CSRS”) fund.

Postal Service was able to afford. Now, however, absent any increase in mail volume, when considering losses and subsidies involved in various and sundry operations that are neither economic nor necessary, the question is: who should have the responsibility to subsidize unnecessary losses?

The vast majority of Postal Service revenues reflect (i) the **price** that mailers pay to send mail, and (ii) the **volume** of mail entered (the totality of all other miscellaneous revenues being comparatively trivial). Under PAEA, the price that mailers pay is constrained by the price cap, regarding which the Commission in its recent Section 701 Report stated that:

The **Commission finds** that the annual rate limitation for market dominant products as expressed by the price cap has kept **prices stable and predictable** since the passage of the PAEA.... Based on [the Commission's] experience, the Commission finds that **no legislative changes are needed with respect to the price cap.** [Commission's Section 701 Report, p. 28 (emphasis added).]

The statutory constraint on prices thus appears to meet with the Commission's approval. At the same time, changes in mail **volume** (as well as revenue and contribution therefrom) is a matter over which neither the Commission nor Congress has any control. Consequently, the Commission can do little "[t]o assure adequate revenues, including retained earnings, to maintain financial stability." 39 U.S.C. § 3622(b)(5). However, the Commission needs to be acutely aware that it **can contribute to increased losses and financial instability** by impeding the adoption of and shift to far more efficient retail operations — as discussed below and in USPS-T-1.

III. The Cost of Collecting Revenue at Many Postal Service Retail Facilities Is Inconsistent with Reasonable Economies of Operation.

39 U.S.C. section 403(a) requires that “[t]he Postal Service shall plan, develop, promote, and provide **adequate and efficient** postal services....” 39 U.S.C. section 403(b) states that “[i]t shall be the responsibility of the Postal Service ... (3) to establish and maintain postal facilities of such character and in such locations, that postal patrons throughout the Nation will, **consistent with reasonable economies of postal operations**, have ready access to essential postal services.” (Emphasis added.) If the Postal Service operates postal facilities that are inconsistent with such “reasonable economies,” the Postal Service violates this principle of postal law. Under PAEA, one objective for the Commission’s “modern system for regulating rates and classes for market-dominant products” is “[t]o **assure adequate revenues**, including retained earnings, **to maintain financial stability.**” 39 U.S.C. § 3622(b)(5) (emphasis added).

For post offices with a two-hour earned workload, the Postal Service reports that in 2010 the average annual revenue was \$21,476, and the average total operating expense was \$76,902. Response to VP/USPS-T1-4. The **annual operating deficit** at such facilities thus **averaged \$55,426**. For communities with a resident population of between 400 to 600, these figures imply that **for each resident** the (i) annual revenues averaged between \$36 and \$54, (ii) annual cost averaged between \$128 and \$192, and thus (iii) **operating per-capita deficit averaged between \$92 and \$139**.

In post offices with a two-hour earned workload, dividing average revenue (\$21,476) by average cost (\$76,902) shows that for each dollar of revenue collected, the Postal Service

spent, on average, \$3.58. By any measure, that is an extraordinarily large cost just to collect a dollar of revenue, especially when one considers the myriad of other costs that the Postal Service must incur to process, transport, and deliver mail to its final destination. Such a cost ratio to collect revenue certainly cannot be justified for thousands of small post offices in areas with good road connections to nearby villages and towns where residents must travel to obtain routine supplies.⁶ This is especially so when postage is readily available from sources such as stamps-on-consignment, stamps-by-mail, and PC postage, generally at much lower cost to the Postal Service (*see* page 9, *infra*), and retail counter services are available in one or more nearby towns.

In rural communities, ownership of or access to motor vehicles tends to be virtually universal, as explained by the Postal Service:

Most people who live in rural communities have access to motor vehicles, whether owned, borrowed, or shared. Those who do not own vehicles nonetheless have friends or relatives who share transportation as they take care of their own needs.... Outside of urban and suburban [sic] areas, the **only** kind of bus service available is **inter-city** service. In general terms, private bus service can only be found in areas where the demand for such service makes it economically viable or it is publicly subsidized. [Response to VP/USPS-T1-1 (emphasis added).]

The observations that can be drawn from the previous analysis of average revenues and costs for post offices with a two-hour earned workload can be supplemented by an analysis of

⁶ For example, the response to USPS/NLPM-RT-2-5a lists all businesses in Lohrville, Iowa, including a restaurant, gas station, lounge/bar, pub, bank and a nearby gun shop. Types of businesses not listed, indicating that people must travel out of town to obtain necessary goods and services, include a barbershop, drugstore or pharmacy, grocery store, shoe repair shop, or businesses selling articles of clothing for men, women or children.

two specific post offices — Dupuyer and Galata, Montana. Whether the workload at these two offices was higher than two hours is not known. For each dollar of revenue collected at the Dupuyer and Galata post offices, the cost savings from closure, respectively, \$1.78 and \$1.60, can be computed as follows:

Dupuyer, MT	
Average revenue, 2007-2010	\$16,886
Average annual cost reduction (net)	29,805
Average cost/dollar of revenue	\$1.78
Galata, MT	
Average revenue, 2007-2010	\$18,739
Average annual cost reduction (net)	29,945
Average cost/dollar of revenue	\$1.60

Source: USPS-RT-2, Attachments.

Further perspective on the relatively high cost and inefficiency of selling postage and collecting revenue via the retail postal network is gained by comparison with other marketing channels used by the Postal Service. The Postal Service reports that the average cost of collecting revenue at all of its many retail facilities is \$0.23 for each dollar collected. This figure includes the thousands of facilities such as those discussed above, where the cost per dollar of revenue averages \$3.58 — *i.e.*, in order to bring the average cost for all retail counters down to \$0.23, many retail facilities have an average cost that is much less than \$0.23. Cost per dollar of revenue via various marketing channels is as follows:

All retail counters	\$0.23
Stamps-on-consignment	0.02
PC postage	0.04
Click-N-Ship	0.07
Stamps by mail	0.08
Contract Postal Units (CPUs)	0.13

Source: Response to VP/USPS-T1-9.

Expanded use of these alternate retail access channels reflects a positive response on the part of the Postal Service to the 2006 Congressional mandate in PAEA. Response to VP/USPS-T1-11. Congress clearly had a reason for including this mandate in PAEA, and in recognition of that Congressional intent the Commission's Advisory Opinion in this docket should encourage further use of and reliance on these alternate low-cost access channels to the maximum extent practical.

Requiring the Postal Service to maintain thousands of post offices with cost-revenue ratios such as those cited above, which deviate so far from the average for all retail counters (*e.g.*, \$3.58 vs. \$0.23), cannot be considered compliant with 39 U.S.C. section 403(c). The Commission's Advisory Opinion should neither ignore, nor sanction, such widespread inefficiency.

IV. 39 U.S.C. Section 101's Provision Regarding "a Maximum Degree of Effective and Regular Postal Services" Does Not Require the Postal Service to Maintain the Maximum Number of Inefficient Facilities.

Title 39 specifies the level of service the Postal Service is required to provide to rural areas:

The Postal Service shall provide a **maximum degree of effective and regular postal services** to rural areas, communities, and small towns where post offices are not self-sustaining. No small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that **effective postal services** be insured to residents of **both urban and rural** communities. [39 U.S.C. § 101(b) (emphasis added).]

Furthermore, in determining whether to close a post office, the Postal Service is required to consider several factors, including the factor in 39 U.S.C. § 101(b):

whether such closing or consolidation is consistent with the policy of the Government, as stated in section 101(b) of this title, that the Postal Service shall provide **a maximum degree of effective and regular postal services** to rural areas, communities, and small towns where post offices are not self-sustaining. [39 U.S.C. § 404(d)(2)(A)(iii) (emphasis added).]

An issue that has arisen repeatedly in this docket is whether the Postal Service’s RAOI is consistent with providing the level of service required by Congress for rural areas.⁷ Much of the discussion by opponents of the RAOI focus on two words in these statutes: “maximum degree.” For example, during the cross-examination of witness Boldt, this point was repeatedly raised. *See* Tr. 1/427-438. Opponents of the RAOI appear to believe that 39 U.S.C. sections 101(b) and 404(d)(2)(A)(iii) not only bar any closings of rural facilities, but requires an increase in the level of service required by the Postal Service in rural areas.

One of the most basic tenets of statutory interpretation is that words must be read in their context. The context answers the question, “Maximum degree of what?” That answer is “of effective and regular postal services.” Misreading the statute to require the Postal Service to provide “a maximum degree ... of postal services” — leaving out the words “effective and regular” — imposes an impossible standard, leading to the conclusion that there is inherent conflict or tension in the statute. *See* Postal Service response to POIR No. 2, question 3 and

⁷ *See, e.g.*, Postal Service Response to POIR No. 2, questions 3 and 15; Response of Postal Service Witness Boldt to NAPUS Interrogatories, NAPUS/USPS-T1-9, NAPUS/USPS-T1-42, and NAPUS/USPS-T1-44; Response of Postal Service to NLP Institutional Interrogatory, NLP/USPS-11; and Response of the Postal Service to Interrogatory of the Public Representative, PR/USPS-9.

NAPUS/USPS-T1-44 (“Statutory language is often broad and sweeping, and at the same time specific and contradictory.”) However, these supposedly contradictory provisions can be harmonized. If what is being required is “effective and regular postal services to rural areas,” then providing a “maximum degree” of such services is achievable. There is no requirement to provide “ineffective” service which would occur if unnecessary and money-losing services were provided. There is no requirement that “regular” delivery be made multiple times per day. There is no requirement that a retail facility be on every corner.

The phrase “maximum degree” is not a term of entitlement or obligation, but one of policy or discretion. If that phrase had been intended to impose a legally enforceable duty to meet the highest possible degree of effectiveness and regularity, the phrase would have employed the definite article “the,” instead of the indefinite article “a.” By prefacing the phrase with the indefinite article, “a maximum” would best be read as designating a range of effectiveness and regularity, not a specific point of effectiveness or regularity.

This interpretation is reinforced by the appearance of the identical phrase in two other postal statutes. 39 U.S.C. section 101(g) provides that for new facilities, “the Postal Service shall emphasize the need for facilities and equipment designed to create ... **a maximum degree** of convenience for efficient postal services.” (Emphasis added.) This provision has been construed not to impose any legal obligation upon the Postal Service to provide any particular level of service. *See Tedesco v. United States Postal Service*, 553 F. Supp. 1387, 1389 (W.D. Pa. 1983). Indeed, the provision has been characterized as one of many, reflecting that the Postal Service is “essentially a commercial enterprise” empowered “to accomplish no other

purpose than effective delivery of the mails.” See Moore v. United States Postal Service, 2005 U.S. Dist. LEXIS 1000, pp. *17-*18 (N.D.N.Y. 2005).

Additionally, 39 U.S.C. section 1006 uses the same language when it provides that, with respect to employment “promotions and transfers,” the Postal Service “shall ... provide a **maximum degree** of promotion of officers and employees” (Emphasis added.) This provision has been construed not to entitle postal officers or employees to any particular transfer or promotion, but to ensure that such officers and employees are eligible for consideration of a requested transfer or promotion. See Kaiser v. United States Postal Service, 908 F.2d 47, 50-51 (6th Cir. 1990). See also Glenn v. United States Postal Service, 939 F.2d 1516, 1526 (11th Cir. 1991) (“Section 1006 itself does not provide for any specific cause of action.”).

Clearly, Congress was not asking the Postal Service to do the impossible, to be inefficient, or to operate to its own serious financial detriment, and any effort to misread the requirement of 39 U.S.C. section 101(b) should be rejected.

V. Postal Law No Longer Provides a Means to Fund Unnecessary, Inefficient Retail Facilities.

Widespread modernization of postal operations, including the extensive retail network, requires change, and change is often, perhaps unusually, viewed as disruptive. Nevertheless, modernization is absolutely necessary to achieve substantial cost savings to rescue the Postal Service from financial ruin. If the Commission were to disagree with modernization in the belief that inefficient retail postal operations need to be maintained, its Advisory Opinion must

then address who should be compelled to subsidize costly, uneconomic post offices. Most intervenor testimony in this docket concerning merits of maintaining post offices on the RAOI list seem to have neglected to mention this critical issue, but the Commission cannot ignore this issue and should specify who should subsidize those retail facilities the Commission might like to keep open. As we see it, there are three choices:

- **Ratepayers** certainly cannot be forced to provide more revenue, as they are protected not only by PAEA’s statutory rate cap, but also, and more importantly, by what is becoming nearly universal access to the Internet.⁸
- **Residents** who use the local post office cannot be expected to compensate the Postal Service for any of the “non-postal” benefits and services provided by the local post office. Their “responsibility” vis-a-vis support of the local post office clearly extends only to their voluntary purchase of stamps and other retail postal services.
- **State taxpayers** may support local communities, especially rural communities, in various ways. Clearly, however, state governments have no responsibility to contribute to or support the fiscal losses incurred to operate uneconomic rural retail facilities just to enable those communities to retain the non-postal benefits which so often are cited as a *raison d’etre* for their continued operation.

If the Commission wants retail facilities with large operating deficits kept open, but agrees that none of these three stakeholders can be required to subsidize substantial postal losses, its Advisory Opinion would need to recommend that Congress provide the requisite

⁸ Previously expressed concerns about the lack of high-speed Internet access in rural areas appears overblown. The Commission should take note that the Federal Communications Commission (“FCC”) is reportedly revising telephone rates in a manner designed to expand Internet access to more people in rural areas. “Calling its plans ‘the most significant policy step ever taken to connect Americans to high-speed Internet,’ the Commission voted unanimously to approve the revamped Universal Service Fund, which includes a **\$4.5 billion annual budget** cap for its main Internet component, the Connect America Fund.” See “F.C.C. Overhauls a Telephone Subsidy,” *New York Times*, Oct. 28, 2011, p. B4, (emphasis added). A predictable result of this FCC initiative will be to reduce further the volume of First-Class Mail.

subsidy. However, Congress is unlikely to assist. In addition to the current financial crisis, history is on the other side of the issue. From 1900 until 1970 (when the Postal Reorganization Act of 1970 was enacted), in every annual budget cycle Congress was faced with the alternative of maintaining small post offices or saving money for taxpayers. Almost invariably, Congress opted to save money for taxpayers and, as a result, nearly 45,000 “post offices” were closed during the years the Post Office operated under Congressional authority. *See* USPS-T-1, p. 10 and Response to VP/USPS-2. In other words, thousands upon thousands of communities saw their local post office closed, all with Congressional approval (and with no right of appeal to any Commission).

In this docket, the Commission received a letter dated September 15, 2011, signed by approximately 40 members of Congress, which states that:

We appreciate that dire fiscal condition of the Postal Service and the need to change the Postal Service’s business model to protect its viability.... Unfortunately, widespread post office closures are the wrong way to deal with the Postal Service’s fiscal problems, and they could harm the Postal Service’s competitiveness in the long run.

Interestingly, it is believed that not one member of Congress who signed this letter has sponsored or endorsed any legislation that would fund a public service appropriation to help offset that portion of the Postal Service deficit caused by continued operation of small, highly costly and totally uneconomic post offices. Until such legislation is enacted, the wishes contained in that letter could best be viewed as precatory, not directive. Moreover, it is

entirely possible that some in Congress may not be aware that the Postal Service is near insolvent — the Commission knows how bad the finances are.⁹

The Postal Reorganization Act included an appropriations provision to reimburse the Postal Service for the “public service costs” incurred by it in providing the level of service required of section 101(b). *See* 39 U.S.C. § 2401(b). Obviously, when the statute was written, Congress intended that this public service cost would be provided by Congress up until a certain point. Subsequently, the public service appropriation has been phased out, leaving it as a vestigial requirement and, at best, an unfunded mandate. It would be reasonable to view the requirement as tied to the funding provision, and thus inoperative once the funding ended.

VI. Contract Postal Units, Village Post Offices, and Other Alternatives Can and Are Providing Retail Services at Far Less Cost.

Contract Postal Units (“CPUs”) are operated by private sector establishments under contract with the Postal Service. CPUs thus constitute a method of outsourcing the provision of retail services. For a number of years, the postal administrations of Australia, Canada, Finland, Germany, and Sweden have reduced their brick-and-mortar retail facilities and successfully outsourced retail operations to a far greater extent than has the Postal Service. Each of these postal administrations has found that outsourcing to the private sector not only

⁹ The Commission has received testimony (and comments) that any estimate of savings from closure of all small post offices on the RAOI list is but a small percentage of total Postal Service revenues. However, the principles the Commission adopts in this docket could influence other closings which may come later. The financial imperative which drives the Postal Service at this critical time cannot be ignored because the dollar amounts are modest.

reduces costs, but **also improves service to customers**. See “Foreign Posts’ Strategies Could Inform U.S. Postal Service’s Efforts to Modernize,” GAO Report No. 11-282 (Feb. 2011), cited in Response to VP/USPS-4.

The Postal Service has accumulated extensive experience with outsourcing provision of retail services to the private sector, especially in rural areas. It currently has 3,584 CPUs.

The distribution of costs vis-a-vis revenues collected for those 3,584 CPUs is as follows:

	Number	Dist.
Costs > 100%	448	12.5%
Costs 75 – 100%	129	3.6
Costs 50 – 75%	147	4.1
Costs < 50%	<u>2,860</u>	<u>79.8</u>
Total number of CPUs	3,584	100.0%

Source: Response to VP/USPS-3.

Since CPUs tend to be located in communities that do not have a post office, the Postal Service can point to thousands of communities that have no post office and instead receive postal services via a CPU. There is no record evidence that use of the CPU alternative has led to the extinction of the communities so served. The Postal Service domestic service area also covers many thousands of other communities that do not have either a post office or a CPU. Response to VP/USPS-T1-2. CPUs provide the Postal Service with a means of providing universal service and maintaining a governmental presence in the communities served.¹⁰

¹⁰ See also discussion of 39 U.S.C. § 2401(b) in section V, *supra*.

In this docket, the establishment of many more CPUs, along with the new Village Post Offices¹¹ (“VPOs”), are proffered by the Postal Service as an important means of providing retail services in rural areas where a post office may be terminated as a result of the RAOI. On its face, in rural areas this would appear to be a reasonable, perhaps the best available, solution for fulfilling the universal service obligation to provide citizens with ready access to the postal network.

VII. Small Retail Facilities Confer Few Non-postal-related Benefits, which Are Irrelevant to the Commission’s Inquiry.

A non-postal benefit is one for which the Postal Service has no responsibility under the law or otherwise, and for which the Postal Service receives no compensation whatsoever. Although such non-postal social “benefits” may have emotional or political appeal, they would appear to be irrelevant to the Commission’s Advisory Opinion in this docket. Although the list of theoretical non-postal “benefits” from small post offices is long — *e.g.*, exchanging weather reports, transmission of local news, planning of non-postal events such as charity balls, etc. (*see* NLPM-RT-2, pp. 12-14) — it is unclear why such “informal” events could not take place elsewhere. These non-postal benefits generally are limited to small, *ad hoc*, meetings, because

¹¹ See Val Van Meter, “Village post office 1st of kind in region,” *The Winchester Star*, Oct. 26, 2011, p. A1 (“When officials hold their grand opening for a village post office at Star Market Friday afternoon, it will be the first such operation in the southeastern region and only the fourth in service in the United States.... Having postal services available at Star Market will help residents in one respect over the regular facility. The market is open from 8 a.m. to 8:30 p.m.”).

the small size of lobbies and limited operating hours make large or regular meetings difficult if not impossible. *See* Response to VP/USPS-T1-6.

VIII. The Number of Postal Service Retail Employees Appears to Be Increasing, both Absolutely and Relative to Total Employment.

Between 2009, the time of Docket No. N2009-1, and September 12, 2011, the number of retail associates increased from 61,321 to 63,310 (row 1, below). Response to VP/USPS-T1-10. The number of postmaster positions appear to have increased even more, from 13,751 to 17,688 (row 2, below) — an increase of over 28 percent. *Id.* While the Postal Service has been reducing its total number of career and non-career employees by almost 10 percent, the number of retail associates and postmasters has increased both in absolute terms, from 75,072 to 80,998 (row 3 below), and as a percentage of total career and non-career employees from 10.54 to 12.54 percent (row 6, below).

	2009	9/11/11	Change 2009 to 9/11/11
1. Retail Associates	61,321	63,310	3.24%
2. Adjusted Postmaster count	<u>13,751</u>	<u>17,688</u>	28.63%
3. Subtotal, retail	75,072	80,998	7.89%
4. All other employees	<u>637,010</u>	<u>564,984</u>	-11.31%
5. Total Career & Non-Career	712,082	645,982	-9.28%
6. Retail employees as a Percent of Total	10.54%	12.54%	

Based on this analysis, the argument that the retail function has been forced to absorb a disproportionate share of postal cost cutting and employee reductions is demonstrably false.

IX. Parties Cannot Criticize the Postal Service for Following Commission Guidance.

The Commission's Advisory Opinion in Docket No. N2009-1, with respect to the SBOC Initiative, recommended that the Postal Service develop clearer guidance from headquarters for the criteria for selecting facilities for closure consideration:

The Commission finds that the **Postal Service should develop** and disseminate **national guidance** to Districts, both explaining all factors to be considered and identifying any particularly important factors. Such guidance can reduce confusion and help ensure that local managers provide **consistent**, well-reasoned decisions. [Docket No. N2009-1, Advisory Opinion (Mar. 10, 2010), p. 43 (emphasis added).]

The Postal Service appears to have responded to this recommendation by amending its post office closure rules (and other internal guidance documentation) to indicate that closure initiatives and guidance could come from headquarters and then be implemented locally. *See* 39 C.F.R. § 241.3(a)(3). “Under the final rule, Postal Service Headquarters management can also identify candidate offices for initial feasibility studies, thereby making clear the possibility of a ‘top-down’ approach to initial stages of the process for Post Offices **in addition to** the former ‘bottom-up’ approach. This measure is intended to improve consistency of decision-making.” Request, pp. 7-8 (emphasis added, footnotes omitted).

Not surprisingly, the Postal Service is now being challenged that initial decisions about closure or consolidation should not be coming from the top down. Counsel for National League of Postmasters described the Postal Service's new process as “bipolar,” “schizophrenic,” and similar to socialist “eastern Europe” Tr. 1/359, 1. 8 – 360, 1. 2. The Commission should reject any such criticism and commend the Postal Service for considering and adopting the very changes recommended by the Commission in Docket No. N2009-1.

CONCLUSION

For the reasons set out above, the Commission should issue an Advisory Opinion recommending that the Postal Service proceed with its planned re-evaluation of retail facilities.

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