

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

COMPLAINT OF THE NATIONAL  
ASSOCIATION OF POSTMASTERS OF  
THE UNITED STATES, THE LEAGUE OF  
POSTMASTERS, MARK STRONG,  
ROBERT RAPOZA, MARILYN SHAW,  
AND MARILYN HILL

Docket No. C2011-3

**Comments Re: Opposition of the United States Postal Service to  
Complainants' Motion to Renew Complaint**

**November 22, 2011**

On November 7, 2011, Complainants filed a Motion to Renew Complaint and for other relief. On November 14, 2011, the Postal Service filed an Opposition to that Motion. A few matters in that Opposition require Comment.

**I. The Commission Is Certainly At Liberty to Allow Further Briefing As It  
Wishes Or Deems Necessary For Due Process Or A More Informed Record.**

The only really new argument in the Postal's Service's Opposition is its claim that Due Process would be violated if it does not get a further crack at arguing that its regulations and actions are legal. The Commission certainly may allow the parties further briefing on this matter. The Commission could do this on both of the two pending claims before it, or it could rule on one issue and allow further briefing on the

other. But as noted below, the Commission will learn nothing new. The legal issues have been thoroughly briefed, and there are no factual disputes at issue.

**A. The issue of “Consolidation” has been fully briefed and no material changes have been made in the Final Rule.**

Despite the Postal Service’s lengthy discussion of rules, stages, consultation, etc., there are only two issues in this docket. One is whether the Postal Service’s “redefinition” of the term “consolidation” in its rule is consistent with the Act. We believe that its reinterpretation effectively reads “consolidation” out of Section 404 of the Act. If we are right, that rule is not consistent with the Act, and thus the Postal Service does not have the authority to adopt it. See, 39 U.S.C. 401(2); see also, 39 U.S.C. 3662(a) (Commission has authority to hear challenges to regulations not consistent with the Act). The Commission has the authority to nullify the rule and order the Postal Service to take whatever remedial action it deems necessary and to fine the Postal Service should it not comply. 39 U.S.C. (c)-(d).

The Postal Service tries to argue that the cosmetic changes it made to the Final Rule by adding another clarifying sentence to the rule somehow changes the substance of the rule. We fail to see the distinction. The form of the rule does not control the substance of the rule. There is no substantive change in the rule.

Were the Commission to take another round of pleading, it would simply receive a restatement of arguments previously submitted.

**B. The Changes to “Postmaster” in the Final Rule are merely cosmetic, and additional briefing will likely only repeat the same arguments.**

The Final Rule allows “consolidation” at any level, and so long as there is a postmaster somewhere in the line of management, but not necessarily present at any particular post office. The Final Rule thus seeks to avoid the Congressional direction and definition that a “postmaster” be “the manager in charge of the operations of a post office...” 39 USC §1004(1)(3) (emphasis added).

**II. The Issue Before The Commission Is Not The USPS’ Intentions Regarding Consolidation, But What Its Final Rule Allows It To Do.**

The Postal Service spends pages discussing its intent about its Rule. Our Complaint is not grounded in the Postal Service’s intent, but in the actual language of the Rule, and what the reinterpretation of the word “consolidation” allows the Postal Service to do, and whether that would be consistent with Section 404. Intent is irrelevant.<sup>1</sup>

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<sup>1</sup> While the issue of consultation is not germane to any issue in this docket, we do need to correct one matter. The Postal Service says that the final rule separated the later two issues—the definition of consolidation and the removal of postmasters from an office—from the other issues because the Postal Service was in the process of consultation regarding the proposed rules. That is inaccurate. Neither postmaster organization was ever in the process of consultation with the Postal Service regarding the proposed rules. Further, the Postal Service said that “Consultation with management associations were accordingly continued . . . and concluded in October 2011.” That, too, is inaccurate, for no consultations ever took place. At no time did the postmaster organizations talk with the Postal Service about these rules. The Postal Service made it very clear they were not interested in talking, and we both knew they had no intention of changing their minds.

## **CONCLUSION**

The two issues pending here are purely legal. No facts are at issue. The issues have been thoroughly briefed and are ripe for the Commission to rule. Should the Commission feel that one or both the issues need further briefing, it can obviously require further briefing.

The December 1, 2011, date is approaching, however, and on that date the new rules go into effect.<sup>2</sup> While anything that the Postal Service could do on that date might, in theory, be undone afterwards, it could require great difficulties, disruption, and expense. Moreover, ruling before December 1, 2011, will not only avoid those costs, but prevent the Postal Service from losing an enormous amount of good will and customer support.

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<sup>2</sup> Indeed, postal District Managers have begun acting on the Postal Service's Final Rule. For example, the Lakeland District Manager has already announced the abolition of seven Postmaster positions, and the conversion of their post offices to "retail outlets."