

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

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COMPLAINT OF AMERICAN POSTAL WORKERS UNION, AFL-CIO    Docket No. C2012-2

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COMPLAINT OF AMERICAN POSTAL WORKERS UNION, AFL-CIO  
REGARDING VIOLATIONS OF 39 U.S.C. 3661 and 3691

Darryl J. Anderson  
Richard S. Edelman  
Jennifer L. Wood  
O'Donnell, Schwartz & Anderson, P.C.  
1300 L Street, N.W., suite 1200  
Washington, D.C. 20005-4126

Counsel for Complainant  
American Postal Workers Union, AFL-CIO

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## COMPLAINT

### I. Introduction

1. In mid-2011 the Postal Service announced what it called its “Network Optimization” plan. Under that plan, it would reduce the number of its mail processing facilities and, in order to facilitate that change, also would change its service standards for First Class Mail by eliminating the requirement of next-day delivery of First Class Mail and by correspondingly elongating other First Class Mail delivery standards. These plans required the Postal Service to meet the requirements of Sections 3661 and 3691 of the Postal Reorganization Act, as amended by the Postal Accountability and Enhancement Act of 2006. 39 U.S.C. §§ 3661, 3691.
2. Under Section 3661 of the Act, when the Postal Service seeks a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis, it must submit a proposal to the Postal Regulatory Commission (the PRC or the Commission), within a reasonable time prior to the effective date of such proposal, requesting an advisory opinion on the change.
3. Under Section 3661 of the Act, the Commission may not issue its advisory opinion on a prospective change in the nature of postal services until after it has held hearings on the record concerning the proposed change in service standards in accordance with the Administrative Procedure Act, Sections 556 and 557 of Title 5 of the United States Code.
4. Under Section 3691 of the Act, the Postal Service was required to promulgate regulations establishing service standards for market dominant products, including First Class Mail, within 12 months after the enactment of the Postal Accountability and

Enhancement Act of 2006. Section 3691 lists four objectives the Postal Service must seek to achieve, and eight factors it must consider, when it promulgates or amends service standard regulations.

5. In this case, Complainant the American Postal Workers Union, AFL-CIO (the APWU), complains that the Postal Service has announced its intention to make nationwide service standard changes effective July 1, 2012, without receiving the advisory opinion of the Commission that it is required to obtain under Section 3661 of the Act. Furthermore, the Postal Service violated Section 3661 of the Act by failing to request an advisory opinion from the Commission a reasonable time before the effective date of its proposed changes. The proposed changes in postal services and in the mail processing network would profoundly change the nature of postal services and, if carried out as proposed, compromise the future viability of the Postal Service itself in violation of Section 3691 of the Act.

## **II. Jurisdiction**

6. The APWU is an unincorporated labor organization with its offices at 1300 L Street, N.W., Washington, D.C. 20005. APWU is a party to multiple collective bargaining agreements with the United States Postal Service, and represents approximately 210,000 employees of the Postal Service. The APWU, its locals and the APWU Health Plan collectively mail millions of pieces of mail each year. The APWU maintains offices and conducts business throughout the United States and has Local affiliates in every state and territory of the United States; APWU sends mail in, and receives mail from, every U.S. State and territory. It is an intervener in the pending

Section 3661 case (Case No. N2012-1), and it brings this Complaint as an interested person under Section 3662 of the Act.

7. The Postal Service issued a press release on May 17, 2012, announcing its intention to move forward with its proposed service standard changes effective July 1, 2012. In response, the Commission scheduled a June 7, 2012, hearing in Case No. N2012-1 and ordered the Postal Service to participate in that hearing and to answer questions posed by the Commission by June 7, 2012. On May 25, 2012, the Postal Service published a Final Rule in the Federal Register establishing new service standards, some of which are to become effective July 1, 2012, and some of which will become effective February 1, 2014. 77 Fed. Reg. 31190-31200 (May 25, 2012) (amending 39 C.F.R. Part 121).

8. The APWU, as an intervener in Case No. N2012-1, participated in the June 7, 2012, Commission hearing concerning the Postal Service's announced intention to implement revised service standards. At that hearing, the APWU stated its intention to file this Complaint if the Postal Service seeks to implement its July 1, 2012, service standard changes without complying with the Act.

9. In accordance with the Commission's Rule 3030.10(9), counsel for the APWU communicated with the general counsel of the Postal Service by e-mail and by telephone on Friday June 8, 2012, and again by telephone on Monday June 11, 2012, in an effort to resolve its complaint without the necessity of filing this action. The APWU is advised that the Postal Service will not delay the effective date of its service standard changes until after the Commission has issued its advisory opinion in Case No. N2012-1. Accordingly, the APWU brings this Complaint before the Commission and requests

that the Commission order postponement of the effective date of the proposed service standard changes until after the Postal Service has received and has had time to consider the Advisory Opinion of the Commission in Case No. N2012-1.

**III. THE POSTAL SERVICE DID NOT SUBMIT ITS NETWORK CONSOLIDATION PLAN TO THE COMMISSION A REASONABLE TIME PRIOR TO JULY 1, 2012.**

**A. The Postal Service Case Is Extremely Lengthy, Technical And Complex**

10. The Postal Service filed its request for an advisory opinion on its network rationalization proposal with the Postal Regulatory Commission on December 5, 2011. This request was accompanied by the written testimonies of 13 witnesses, 34 public library references and 5 non-public library references.

11. Features of the Postal Service presentation to the Commission include the following:

- The Postal Service has revised its original testimonies 12 times and has filed supplemental testimony from 5 of its witnesses; two of those supplemental testimonies have subsequently been revised.
- To date, the Postal Service has filed 94 public library references and 26 non-public library references. The most recent filing of each type of library reference was May 25, 2012.
- Interveners have asked approximately 1015 interrogatories (not including subparts).
- The Postal Service has filed 83 Motions for Late Acceptance.
- The Postal Service has filed 20 Objections to interrogatories, objecting to 48 interrogatories total (5% of total).
- On rebuttal, the testimonies of 17 witnesses were filed on behalf of Interveners and the Commission.

- As of June 11, 2012, the Postal Service had propounded 238 interrogatories related to these testimonies.

12. A brief summary of Postal Service direct testimony follows:

Williams (USPS-T-1)

- Testimony provides a general description of the nature of the changes in services that the Postal Service proposed to implement in fiscal year 2012 in conjunction with its plan to amend 39 C.F.R. Part 121 to revise the current service standards for First-Class Mail, Periodicals, Package Services and Standard Mail.

Masse (USPS-T-2)

- Testimony provides the financial context for the proposed changes in the mail processing network and related service standard changes.

Rosenberg (USPS-T-3)

- Testimony provides an overview of the systematic steps used to evaluate and model the Postal Service's mail processing network in support of the proposed changes in the mail processing network and related service standard changes.

Neri (USPS-T-4)

- Testimony describes the current state of mail processing operations that includes current mail flows, service standards, and operating plans and then explains the proposed mail processing network, comprised of less than 200 facilities after implementation, and the revised mail flows, service standards and operating plans that are expected to result. The discussion of the proposed mail processing network includes testimony regarding the opportunity for savings by the repositioning of mail processing equipment and material handling, a decrease in night differential, and improved productivity and staffing alignment.
- This testimony also describes how the Postal Service intends to implement the proposed changes and explains that the Postal Service will utilize its AMP process to facilitate the evaluation and implementation of the proposed changes in the mail processing network.

Bratta (USPS-T-5)

- This testimony describes the current maintenance organization, its role, and how the Network Rationalization Plan would reduce maintenance support requirements.
- Bratta estimates how the staffing will change after network rationalization based on assumptions about equipment and facility space remaining in the rationalized network and provides the basis for the maintenance cost saving estimates in the testimony of USPS witness Marc Smith (USPS-T-6)

#### Martin (USPS-T-6)

- This testimony provides an overview of the current transportation network and the modes used by the Postal Service and then explains how the proposed service standard changes, combined with the corresponding changes in the processing network will enable the Postal Service to realign its transportation network in a manner that will increase its efficiency and decrease transportation costs

#### Mehra (USPS-T-7)

- This testimony provides an overview of the commercial mail entry channel, discusses the impacts to commercial customers that can be expected as a result of the proposed service changes and describes the measures the Postal Service will implement to mitigate these impacts.

#### Rachel (USPS-T-8)

- This testimony discusses how the Postal Service intends to reduce and realign its complement of employees under current proposal. This testimony provides a description of the types of employees in the processing network, discusses the legal obligations that may affect the Postal Service's ability to reduce its complement and describes the tools the Postal Service will use to reduce its complement in accordance with legal obligations.

#### Smith (USPS-T-9)

- This testimony presents annual cost savings, expressed in FY 2010 terms that the Postal Service expects to accrue to the Postal Service as a result of the

proposed changes to the mail processing network. This includes estimates of Mail Processing Equipment Maintenance Labor Savings; Mail Processing Equipment Parts and Supplies Savings; Facility Maintenance and Custodial Labor Savings; Facility-Related Utilities and Supplies Savings; Facility Lease and Sale Related Savings; Savings Due to Reduction in Outgoing Secondary Sorting; Savings Due to Eliminating CSBCS and UFSM 1000 Sortation; and Savings Due to Additional Automated Sorting of Letters

#### Bradley (USPS-T-10)

- This testimony explains the methodology used to determine the change in costs expected to result from the proposed changes to the service standards and the mail processing network. Bradley calculates mail processing labor cost changes and the transportation cost changes expected from the service standards and then provides a calculation of the overall savings expected from this initiative.
  - Original testimony presented an overall savings of \$2,574.0 million
  - On March 21, 2012, this savings estimate was revised to \$2,562.5million
  - On April 30, 2012, Bradley filed supplemental testimony revising all of his calculations based on the February 23, 2012 AMP decisions. The overall savings estimate was reduced to \$2,061.3 million

#### Elmore-Yalch (USPS-T-11)

- This testimony concerns the market research, quantitative and qualitative, that was conducted determine how the proposed change would impact consumers and businesses. The results of the quantitative market research were used to determine an estimate of the loss in revenue as a result of the proposed changes in service standards.

#### Whiteman (USPS-T-12)

- This testimony provides an assessment of the reactions of both consumers and commercial organizations to the proposed changes to service standards based on the qualitative market research and provides estimates of the volume and revenue impact based on the quantitative market research.

- The original testimony concluded that the Postal Service could expect a 1.7% reduction in total volume and an overall reduction in contribution of \$498,653,734. (Chart 1)
- On March 6, 2012, the Postal Service provided the findings of an earlier phase of the quantitative research which was abandoned prior to completion, in a library reference filed under seal.
- During the March 21, 2012 hearing, the results of this earlier quantitative research were made public and conclude that the Postal Service could expect a 7.7% reduction in total volume and an overall reduction in contribution of \$1,963,277,590. (APWU-XE-1)

LaChance (USPS-T-13)

- This testimony describes the outreach processes that have been utilized to provide insight during the development of the network rationalization service changes and explains the communication plan to be used to inform consumers and stakeholders of the proposed changes, final decisions on the changes and implementation.

**B. The Postal Service Revised Its Plan and Revised Its Testimony**

13. On February 23, 2012, the Postal Service announced the results of the more than two hundred individual AMP studies that will define the contours of the proposed redesigned postal network, and which provide the details regarding the Postal Service's anticipated costs and savings associated with each planned facility consolidation. Since the initial Postal Service testimonies included cost and savings estimates without knowing the results of the AMP studies, the 5 testimonies detailing these estimates required revision to reflect the redesigned network resulting from these studies.

14. As a result of its revised network plans, the Postal Service revised downward its estimate of total savings, as measured by total AMP savings, to less than \$1 billion. It

also reduced its estimate of the net savings it would obtain from its Network Optimization Plan downward, from \$2.1 billion to \$1.6 billion.

15. A brief summary of Postal Service revised direct testimony follows:

Bratta (USPS-ST-1)

- This testimony updates the estimated reductions in maintenance activity anticipated from the service standard changes under review in this docket and corresponding changes in the mail processing network presented in Bratta's direct testimony. This was necessary because the original testimony included estimates based on the assumption that all 264 facilities for which the Postal Service was conducting an AMP would be consolidated. The February 23, 2012 AMP results indicated that only 223 facilities were approved for consolidation.

Martin (USPS-ST-2)

- This testimony updates the estimated reductions in transportation activity anticipated from the service standard changes under review in this docket and corresponding changes in the mail processing network presented in Martin's direct testimony. This was necessary because the original testimony included estimates based on the assumption that all 264 facilities for which the Postal Service was conducting an AMP would be consolidated. This testimony provides updated estimates based on the fact that only 223 facilities were approved for consolidation.

Smith (USPS-ST-3)

- This testimony updates the annual cost savings presented in Smith's direct testimony based on the results of the completion of the AMP studies. Smith revised his cost savings from \$910.9million to \$652.2million.

Bradley (USPS-ST-4)

- This testimony provides revisions in the areas of mail processing labor cost and transportation cost, as well as the revised overall change in cost in light of the results of the AMP studies announced February 23, 2012. The overall savings estimate was reduced to \$2,061.3 million from \$2,562.5 million presented by Bradley in his direct testimony, revised March 21, 2012.

Neri (USPS-ST-5)

- This testimony presents updated In-Plant Support and Workload Outgoing Secondary Sorting Workload Reduction estimates based on the results of the AMP studies announced February 23, 2012.

16. As a result of the filing of the Postal Service supplemental testimonies, Interveners were given the opportunity to provide supplemental testimony by May 24, 2012.

**C. Responsive Testimony Was Provided By 17 Witnesses, 2 Filed By The Commission, 2 Filed By The Public Representative, and 13 Filed By Interveners**

17. The PRC-provided testimony may be summarized as follows:

Weed (PRCWIT-T-1)

- This testimony provides an evaluation of cost and staffing changes resulting from the Postal Service's proposed changes. This includes: (1) an evaluation of the Postal Service's assumptions related to productivity gains as presented by USPS witness Neri and an evaluation of the labor cost savings estimates provided by Neri and Bradley; (2) a determination of which processing costs are variable and which are fixed, for purposes of network consolidation; and (3) an estimate of the savings, or range of savings, for the proposed consolidation and for an alternate proposal under which a portion of current overnight committed mail would continue to receive overnight service.

Matz (PRCWIT-T-2)

- This testimony provides an evaluation of the operational benefits and drawbacks of the proposed facility consolidations and sort scheme changes that the Postal Service has planned. This includes: (1) an evaluation of the operational benefits and drawbacks of expanding the outgoing primary and incoming secondary processing windows as the Postal Service proposes; (2) an evaluation of the operational benefits and drawbacks of eliminating - letter outgoing secondary sorting and compressing the incoming primary operation; (3) an evaluation of the feasibility and desirability of preserving overnight service standards for a portion of current overnight committed mail; and (4) and evaluation of the assumptions underlying the Postal Service's estimate of the number of maintenance hours that will be saved by network consolidation.

18. The Public Representative-provided testimony may be summarized as follows:

Neels (PR-T-1)

- This testimony discusses the relationship between service quality standards and rates in a rate cap regime, and how regulated firms and regulatory bodies make trade-offs between these variables. Specifically, this testimony addresses the regulatory implications of the Postal Service's plan to revise service standards and concludes that the reduction in service standards that the Postal Service has requested is, in effect, a relaxation of the regulatory price cap that has been established for market dominant services.

Raghavan (PR-T-2)

- This testimony examines the models used and analysis conducted by Postal Service witness Rosenberg, and points out several shortcomings in this analysis. This testimony also evaluates the productivity improvement estimates and transportation cost savings estimates provided by witnesses Neri and Martin respectively, and relied upon by witness Bradley to compute cost savings. This evaluation suggests that the cost savings estimated by Bradley may not be achievable. This testimony also presents the results of running witness Rosenberg's model under the current service standards and concludes that significant cost savings may be achievable while preserving current service standards.

19. The APWU-provided testimony may be summarized as follows:

Kobe (APWU-T-1)

- This testimony provides an evaluation of the net savings estimates provided by the Postal Service in support of its proposed changes. This testimony details reasons to believe that the Postal Service has overestimated the likely cost savings resulting from its proposal and has underestimated the potential contribution losses.

Schiller (APWU-T-2)

- This testimony explains the likely adverse consequences in the market associated with the purposeful degradation of service standards and includes examination of qualitative market research into customer reaction to the changes, customer perception of the impact from the changes, and assessment of the likely impact of the proposed changes on the parcel

products. This testimony critiques the absence of any evidence that the Postal Service has examined the long-term consequences of its proposal and examines opportunities in parcel markets to find strategic alternatives to grow the business.

Kacha (APWU-T-3)

- This testimony describes a network simulation model used to conduct a study designed to evaluate a number of scenarios against current existing service standards, based on accurate depiction of USPS operating conditions and origin/destination mail volumes. This model allows various scenarios to be tested to determine what level of service can be maintained and the resulting cost savings from a variety of network configurations.

20. The NALC-provided testimony may be summarized as follows:

Crew (NALC-T-1)

- This testimony presents and evaluation of the Postal Service's proposal to reduce the service standards for first-class mail and concludes that the Postal Service underestimates the amount of business it will likely lose from reducing the quality of its service and overestimates the savings its proposal will generate and ignores the loss of benefits to its customers. This testimony also concludes that implementation of the proposal, especially if USPS is also successful in implementing its plan to abandon Saturday delivery, may herald the death knell for the Postal Service.

21. The NNA-provided testimony may be summarized as follows:

Heath (NNA-T-1)

- This testimony discusses the impacts upon community newspapers if overnight and same-day service standards are changed and recommends: (1) continued overnight service within existing SCF zones; (2) the use of transportation or "hand-off" hubs in areas where a facility is closed; (3) meaningful CETs; and (4) more 5-digit containers.

Bordewyk (NNA-T-2)

- This is the testimony of the general manager of the South Dakota Newspaper Association detailing the information SDNA has gathered on how newspapers and others in South Dakota have been affected by the closing of the Mobridge Sectional Center Facility and the resulting decline

in service performance. The testimony concludes that further research into the true needs of rural areas is needed and requests that the Commission recommend the Postal Service institute such a study.

22. The NPMHU -provided testimony may be summarized as follows:

Hora (NPMHU-T-1)

- This is the testimony of an NPMHU Contracts Administration Department employee detailing his general review of the Postal Service proposal. This testimony addresses the estimated savings associated with the Postal Service's proposals; the effects of the planned consolidations on the processing and delivery of mail; and the opportunity for public input into this process. This testimony expresses concern that the Postal Service has over-estimated the savings associated with the proposed consolidations, under-estimated the effects it will have on the efficient delivery of the mail, and has generally failed to consider adequately the concerns of employees and mailing customers.

Hogrogian (NPMHU-T-2)

- This is the testimony of a Mail Handler and Local President detailing his evaluation of the proposed consolidations in the New York metropolitan region and concludes that the Postal Service under-estimated the negative effects that its plans will have on the efficient delivery of the mail and that the loss of revenue will more than offset any savings that the AMPs may contain or ever produce.

Bentley (NPMHU-T-3)

- This is the testimony of a Mail Handler and Local Vice President detailing his evaluation of the proposed consolidation of the Springfield, Missouri P&DC into the Kansas City, Missouri P&DC and concludes that Postal Service has underestimated the costs of this consolidation and the negative effects it will have on the efficient delivery of the mail.

Haggarty (NPMHU-T-4)

- This is the testimony of a Mail Handler and Local President detailing his evaluation of the proposed consolidations in Michigan and expresses concern that the Postal Service under-estimated the costs of these

consolidations and the effects it will have on the efficient delivery of the mail.

Wilkin (NPMHU-T-5)

- This is the testimony of a Mail Handler and Local President detailing his evaluation of the proposed consolidations in upstate New York and concludes that the Postal Service under-estimated the effects its plans will have on the efficient processing and delivery of the mail.

Hayes (NPMHU-T-6)

- This is the testimony of a Mail Handler and Local President detailing his evaluation of the proposed consolidations in the Mid-Atlantic and Appalachian region and concludes that the Postal Service under-estimated the effects its plans will have on the efficient processing and delivery of the mail.

Broxton (NPMHU-T-7)

- This is the testimony of a Mail Handler and Local President detailing his evaluation of the proposed consolidations in New England and expresses concern that the Postal Service under-estimated the costs of these consolidations and the effects it will have on the efficient delivery of the mail.

**D. Due To The Scope And The Complexity Of The Case, The Postal Service Had Difficulty Responding To POIRs In A Timely Manner**

23. The Postal Service had substantial difficulty responding in a timely manner to information requests made by the Presiding Officer. The Presiding Officer issued 7 information requests (POIRs) on the Postal Service's direct case. The Postal Service provided late responses to questions contained in all of these POIRs. Specifically, the Postal Service provided late responses to approximately 32 of the 92 questions posed in the POIRs (about 35% of responses to the Commission were late).

24. Examples of substantially late responses by the Postal Service to POIRs include:

- POIR 1 Q 13 inquired about the methodology for estimating the number of pounds diverted from surface to air transportation and the cost savings from diverting First Class Mail from surface to air transportation.
  - Although the information requested is clearly important to the understanding and evaluation of the transportation savings expected from the Postal Service proposal, the Postal Service response to this information request was 33 days late and then was revised 1 week later. Another 42 days later, the day the hearings on the Postal Service's direct case began, the Postal Service provided another substantive revision to this response.
- POIR 1 Q 22 asked for information needed to understand and evaluate 12 worksheets relevant to the cost savings estimates which are part of the initial library references filed by the Postal Service.
  - The Postal Service provided a partial answer 38 days late and filed the rest of the answer 8 days later. Then, three weeks later, the Postal Service revised the response to revise the estimates for maintenance personnel cost reductions and maintenance labor savings.
- POIR 1 Q 8 sought information regarding past AMPs, including questions designed to evaluate how accurate these AMPs were at estimating cost savings. The Presiding Officer also asked for a copy of each AMP and PIR conducted since 2008.
  - The Postal Service response to this request was filed 63 days late. It was filed after the close of discovery on the Postal Service's direct case and was provided only 9 days before the hearings on the Postal Service's case.
- POIR 6 Q 7 sought information from USPS witness Elmore-Yalch necessary to understand the market research she conducted and the results as reported to the Commission.
  - The Postal Service provided its response 24 days late.

- POIR 7 Q 7 sought information from witness Neri necessary to understand the transportation information contained in the AMP consolidation studies whose results were released February 23, 2012.
  - The Postal Service provided its response 24 days late.

**E. Material Market Research By Postal Contractors Was Not Revealed Until March 21, 2012, More Than Three Months After Case No. 2012-1 Was Filed**

25. On March 6, 2012, the Postal Service provided the quantitative market research initially conducted by witness Elmore-Yalch of ORC in response to interrogatory DFC/USPS-T12-9 (March 21, 2012, Tr. 5/733). This research was initiated in July 2011 along with qualitative market research on the Postal Service's proposed changes in service standards, but unlike the qualitative research, was "abandoned without completion at the direction of the Postal Service" (USPS Notice of Filing USPS-LR-N2012-1/NP14 and Application for Non-Public Status) in mid-October 2011 (Tr. 5/619-620).

26. At the time the Postal Service directed ORC to stop this market research, the data collection had been completed and preliminary results had been provided to the Postal Service (Tr. 5/619). All that was required for this research to be completed was for OCR to "clean" the data and eliminate outlier data points. (Tr. 5/627). In fact, at this time there was no expectation of a second market research study so Elmore-Yalch had started drafting testimony in anticipation of the Postal Service's filing its proposal with the Commission (Tr. 5/622, 624).

27. The primary difference between the original quantitative research and the subsequent research presented by witnesses Elmore-Yalch and Whiteman in this case is the 'concept statement' that precedes the questionnaires. The original statement included details of other initiatives being pursued by the Postal Service including legislative reform, eliminating Saturday mail delivery and closing many small post offices.

28. The preliminary results of the original quantitative research indicate that a 7.7% reduction in mail volume and a corresponding reduction in revenue contribution of approximately \$2 billion could result from the Postal Service's plans to reduce postal services. (APWU-XE-1).

29. The preliminary results of the ORC research are materially different from Postal Service witness Whiteman's testimony reporting results of the subsequent quantitative research by ORC as showing only a 1.7% reduction in mail volume and only \$.5 billion contribution reduction.

30. The Commission is obligated to inquire about and seek to understand the significance of the two materially different research results obtained by ORC.

31. The Postal Service announced the results of the AMP studies on February 23, 2012. It did not provide the actual studies for the record in this case until 2 weeks later, and only after the Commission asked for this information (POIR 5 Q9). The Postal Service did not provide a summary of the results of these studies, including the

estimated costs and savings resulting from the approved consolidations until March 30, 2012, more than three months after it had filed Case No. N2012-1.

32. The Postal Service indicated during the March 20-23 hearings on its direct case that testimony might be updated after it publishes final rules associated with the consolidation initiative. At the time, the Postal Service anticipated that publication of the final rules would occur by the middle of April. The final rules were published in the Federal Register on May 25, 2012.

33. On May 17, 2012, the Postal Service issued a press release summarizing a modified plan that now estimates the annual net cost savings to be \$2.1 billion. No testimony or data was provided to justify this estimate. The modified plan changes the implementation of the Postal Service proposal and maintains the overnight service standard for a significant portion of First Class Mail.

34. On May 24, 2012, the Commission issued its first Information Request seeking details of the changes to the Postal Service's proposal and seeking support for the cost savings estimate in the May 17 press release. The Commission also scheduled a hearing on the modified plan for June 7, 2012. The CIR required responses from the Postal Service by June 4, 2012.

35. On May 31, 2012, the Presiding Officer issued her 9th Information Request to clarify the record on the Postal Service's request for an advisory opinion on its network rationalization plan. The POIR contains 5 questions addressed to 4 Postal Service witnesses, which primarily seek an understanding of discrepancies in Postal Service

statements/evidence on the record. The POIR required responses from Postal Service witnesses by June 7, 2012.

- On June 7, 2012, the Postal Service provided responses to three of the nine POIR questions; responses to the remaining two questions are still outstanding.

36. On June 6, 2012, Postal Service witness Whiteman (USPS-T-12) provided his response to an interrogatory from the Public Representative dated January 5, 2012.

#### **IV. THE POSTAL SERVICE DECISION TO IMPLEMENT SERVICE STANDARD CHANGES JULY 1, 2012, WAS MADE REGARDLESS OF THE PENDING CASE BEFORE THE COMMISSION**

##### **A. USPS Advance Notice Of Proposed Rulemaking**

37. On September 21, 2011, the USPS published an Advance Notice of Proposed Rulemaking (“ANPR”) for a proposal to revise its service standards for First Class mail, periodicals and standard mail. Among other things, the proposed changes to service standards would extend expected delivery times for various classes of mail such as eliminating any expectation of one day delivery for First Class Mail and changing the expectation as to the percentage of First Class mail delivered within two days from 26.6 percent to 50.6 percent and changing the expectation as to the percentage of First Class mail delivered within three days from 31.6 percent to 49.1 percent. Delivery times for periodicals would also be extended.

38. The September 21, 2011 ANPR stated that by ending overnight delivery for First Class mail, the USPS could change times during which it processes mail, which is currently done between 12:30 am and 7:00 am, to 12:00pm to 4:00am the next day. The changed processing times would require mailers to deliver mail to the USPS by 8:00 am each day rather than in the evening before the start of processing at 12:30am. The

ANPR further stated that as a result of the proposed service standard changes, the USPS would be able to reduce the number of its mail processing facilities from over 500 locations to fewer than 200 locations because of the longer processing windows.

39. The ANPR solicited comments on its proposal, especially comments from senders and recipients of mail concerning the potential effects of the proposed change, and specifically on how they might change their mailing practices and reliance on the mail.

40. The ANPR advised that if the USPS decided to move ahead with the proposed change, it would publish a proposed rule in the Federal Register and would request an advisory opinion from the Commission under 39 U.S.C. §3661(b).

41. On October 5, 2011, APWU filed comments in response to the ANPR urging that the USPS abandon the proposed service standard changes.

#### **B. The USPS Request For An Advisory Opinion**

42. On December 5, 2011, USPS filed a request for an advisory opinion under 39 U.S.C. §3661 (“Request”) concerning its proposals for changes in its service standards consistent with those set forth in the ANPR. The Request said the proposed changes would “eliminate the expectation of overnight service for significant portions of First Class Mail and Periodicals”; additionally, “the two-day delivery range would be modified to include 3 digit zip code origin destination pairs that are currently overnight, and the three day delivery range would also be expanded”.

43. The December 5 Request said that “[t]he service changes described in this request potentially affect every sender and recipient of mail served directly by the United States Postal Service, and are likely to affect most of them”. The Request

acknowledged that “[w]hen the Postal Service determines that there should be a change in the nature of postal services which will generally affect service on a nationwide basis, it is required by section 3661(b) to request that the Postal Regulatory Commission issue an advisory opinion on the service change, and to submit a request within a reasonable time prior to the effective date of the proposed service change”. The Request further stated that there should be no doubt that the service changes described in the Request “will be nationwide within the meaning of Section 3661(b)”.

44. On December 7, 2011 the Commission docketed the USPS Request as case No. N2012-1, provided notice of the Request to interested persons and scheduled a pre-hearing conference for January 4, 2012.

**C. The USPS Notice Of Proposed Rule**

45. On December 15, 2011 the USPS published a Notice of a Proposed Rule (“NPR”), citing the September 21, 2011 ANPRM, and stating that the Postal Service had “developed the concept [described in the ANPRM] into a concrete proposal”; and that it had “decided to continue pursuing the proposal with some changes by issuing the proposed rules”. The NPR described the proposed rule change as revising service standards and stated that “[t]he most significant revision would largely eliminate overnight service for First Class Mail”.

46. The NPR affirmed that the proposed changes would result in alterations of the prescribed delivery times for First Class Mail and that, as a practical matter, delivery times for other classes of mail would change as well, that the USPS would close many facilities and would change the work hours for most employees at its processing facilities. The NPR noted that the USPS had requested an Advisory Opinion from the

Commission in accordance with Section 3661(b) and it cited and incorporated by reference information it had provided in docket no. N2012-1.

47. The NPR stated that any responsive comments must be received by the Postal Service by February 13, 2012.

**D. Commission Deliberations Concerning The Schedule In Case No. N2012-2**

48. On January 12, 2012, the Commission issued a procedural schedule for its consideration of the USPS Request in docket no. N2012-1. The Commission's schedule provided for opening of hearings on March 20, 2012 with the beginning of the Postal Service's direct case, hearings for rebuttal evidence in June of 2012 and the close of briefing on July 20, 2012.

48. On January 18, 2012 the USPS filed a motion seeking alteration of the case schedule. The USPS said that its motion was "an attempt to secure the Commission's Advisory Opinion prior to the conclusion of its pending rulemaking on changes in service standards and prior to May 16, 2012, the date on which the Postal Service would like to begin implementation of the service changes" (footnote to NPR omitted). The USPS also noted that it had "voluntarily announced a decision to delay the closing or consolidation of any mail processing facility until May 15, 2012.

49. On January 31, 2012, the Commission denied the USPS motion for alteration of the case schedule. Among other things, the Commission noted that the Postal Service Request was complex including the testimony of 13 witnesses and over 50 library references, that the USPS had already sought more time to response to Presiding Officer information requests and party discovery requests, and that the USPS desire for expedited handling had to be balanced against the Commission's obligation to afford

due process to participants in the proceeding. The Commission also noted that no party, including the USPS, had made any suggestion that would have resulted in a decision within the time frame sought by the USPS in the motion for reconsideration; that the USPS had not even suggested a revised schedule that would result in a decision within the time frame it desired; and that the schedule proposed by the USPS at the scheduling hearing would have provided for submission of reply briefs in mid-June only a little more than one month less than the schedule established by the Commission and more than two months after the date for decision sought by the USPS in its motion for reconsideration.

**E. USPS Published a Final Rule And Announced Plans To Cut First Class Mail Service Standards Effective July 1, 2010**

49. On Monday May 21, 2012, the USPS published a New Rule in the Federal Register. In the New Rule, the Postal Service announced that it would establish an “interim version” of the new rules that would be in effect from July 1, 2012, through January 31, 2014. Then, on February 1, 2014, the “final version” of the plan would go into effect.

50. Under the New Rule, the interim version of the rule changes would be implemented on July 1, 2012. The USPS stated that “[t]he interim version of the new rules differs from the final version in three respects:

(1) the interim version applies an overnight service standard to all intra-Sectional Center Facility (SCF) First-Class Mail, regardless of the point of entry or level of preparation, whereas the final version applies it only to intra-SCF First-Class Mail pieces that are entered at the SCF and meet specified preparation and entry time requirements; (2) the interim version applies a two-day service standard to First-Class Mail pieces if there is a six-hour or less driving time between the pieces’ origin Processing and Distribution Center or Facility (P&DC/F) and destination Area Distribution Center (ADC), whereas the final version applies it if there is a

six-hour or less driving time between the pieces' origin P&DC/F and destination SCF; and (3) the interim version modifies the delivery day range for end-to-end Periodicals in the contiguous forty-eight states from the current one to nine days to two to nine days, while the final version modifies it further to three to nine days (under both the interim and final versions, there will continue to be an overnight service standard for qualifying destination-entry Periodicals).

51. The USPS stated that under the New Rule, it can expand its nightly processing window, thereby reducing the number of processing locations needed in the network. "Presently, the Postal Service's delivery point sequencing (DPS) operations are generally run for six and one-half hours per day, from 12:30 a.m. to 7 a.m. Once implementation of Phase One [under the interim version of the New Rule] is complete, the DPS window will expand to up to ten hours, from 8 p.m. to 6 a.m. This change will facilitate the consolidation of the mail processing operations of approximately 140 facilities. Then, once implementation of Phase Two [the final version of the New Rule] is complete, the DPS window will expand to up to sixteen hours, from 12 p.m. to 4 a.m. This will make possible the consolidation of the mail processing operations of approximately 230 facilities (inclusive of the approximately 140 consolidated in Phase One)."

52. In its publication of the Final Rule the USPS asserted that it had complied with Section 3661 because it had requested an Advisory Opinion from the Commission on the NPR and that it had done so 200 days prior to the planned implementation of the New Rule. The USPS also noted that, the PRC requires that requests for advisory opinions be made 90 days prior to implementation.

**V. THERE IS NO EVIDENCE TO SUPPORT THE SERVICE STANDARD CHANGE TO BE IMPLEMENTED JULY 1, 2012; BUT THERE IS EVIDENCE THAT THE CHANGE IS UNNECESSARY**

53. On June 4, 2012, Postal Service witness Rosenberg provided responses to the CIR in anticipation of the June 7<sup>th</sup> hearing. These responses have subsequently been revised 3 times, including a final revision the morning of the June 7 hearing.

- Rosenberg's responses indicate that the Postal Service "implementation plan" is evolving.
- Rosenberg's responses also state that the savings estimates contained in the May 17<sup>th</sup> press release are based on "high level assumptions" and some estimates are simply "operational goals."

54. At the June 7, 2012, hearing on the Postal Service's Plan, the Postal Service provided no evidence or analysis to support its decision to reduce service standards for First Class Mail effective July 1, 2012.

55. On June 11, 2012, the APWU filed testimony showing that the service standard cuts scheduled for July 1, 2012, are not justified by the planned reductions in the number of mail processing facilities that may occur before February 2013.

## **VI. IMPLEMENTATION OF THE INTERIM RULE ON JULY 1, 2012, WOULD VIOLATE SECTIONS 3661 AND 3691 OF THE ACT**

### **A. Violations Of The Act**

56. If the USPS puts the interim version of the New Rule and related operational changes into effect on July 1, 2012, the USPS will have effected "a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis" without first seeking an Advisory Opinion from the Commission on the New Rule.

57. Because USPS implementation of the interim version of the New Rule and related operational changes on July 1, 2012 without seeking an Advisory Opinion of the

Commission would violate Section 3661(b), the Commission should order the Postal Service not to implement the interim version of the New Rule and related operational changes until the USPS seeks an Advisory Opinion from the Commission.

58. Even if the New Rule is deemed to have been covered by the December 2011 request for an Advisory Opinion, if the USPS puts the interim version of New Rule and related operational changes into effect on July 1, 2012, the USPS will have effected “ a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis” without receiving an Advisory Opinion of the Commission as required by 39 U.S.C. §3661(b) because the Commission will not issue an Advisory Opinion before July 1, 2012.

59. Because USPS implementation of the interim version of the New Rule and related operational changes on July 1, 2012, before receiving an Advisory Opinion of the Commission would violate Section 3661(b), the Commission should order the Postal Service not to implement the interim version of the New Rule and related operational changes until the USPS obtains an Advisory Opinion from the Commission.

60. Even if USPS implementation of the interim version of the New Rule and related operational changes before the Commission issues its Advisory Opinion is not deemed a facial violation of Section 3661(b), the Commission should find that such actions would necessarily violate Section 3661(b) because by acting prior to seeking and receiving an Advisory Opinion from the Commission, the USPS would render nugatory the requirement that it seek an Advisory Opinion from the Commission, that the Commission hold formal evidentiary hearings in accordance with the Administrative Procedure Act, and that the Commission provide the USPS with an Advisory Opinion

after completion of hearings. The USPS would thereby thwart the intent of Congress in enacting Section 3661(b) and (c).

61. If the USPS puts the interim version of New Rule and related operational changes into effect on July 1, 2012, and the PRC later issues an Advisory Opinion on the proposed changes, that Advisory Opinion would be meaningless; the focus of the proceedings would no longer be on whether the USPS should make proposed changes but whether changes that were already implemented should be reversed, regardless of whether the Commission would have supported them in the first instance before the USPS made the changes. APWU respectfully submits that if the Commission would allow the USPS to make the changes before the Commission issues an Advisory Opinion, the Commission would not be fulfilling the purpose of Congress in enacting Section 3661.

62. Because there is no competent evidence before the Commission to support the Postal Service's decision to cut First Class Mail service standards effective July 1, 2012, the Postal Service has failed to show that the regulation meets the objectives of Section 3691 of the Act.

63. Because there is no competent evidence before the Commission to support the Postal Service's decision to cut First Class Mail service standards effective July 1, 2012, the Postal Service has failed to show that it has taken into consideration the factors it must consider when modifying its service standard regulations, in violation of Section 3691 of the Act.

**B. Effects Of USPS Implementation Of The New Rule On APWU And Others**

64. If the USPS puts the interim version of the New Rule and related operational

changes into effect on July 1, 2012, and the PRC later issues an Advisory Opinion recommending that the USPS not adopt the changes, the USPS will have incurred substantial costs in implementing the proposed changes and would incur additional substantial costs if it later sought to undo the changes it had already made in response to the Commission's Advisory Opinion.

65. If the USPS puts the interim version of the New Rule and related operational changes into effect, mailers, including APWU, will have to adjust their production and delivery schedules. Mailers will therefore have to alter their work schedules and employee reporting times to be able to deliver mail to the USPS in order to obtain needed services.

66. If mailers, including APWU, adjust their production and delivery schedules to adjust to the new service standard to be implemented July 1, 2012, they will make substantial changes and incur significant unreimbursable costs in doing so.

### **REQUEST FOR RELIEF**

For the reasons stated above, the APWU respectfully requests that the Commission:

A. Declare that the USPS cannot implement the New Rule it proposes to implement on July 1, 2012, until it seeks an Advisory Opinion from the Commission regarding the changes described in the New Rule.

B. Declare that USPS implementation of the interim version of the New Rule and related operational changes on July 1, 2012, before the Commission issues an Advisory Opinion would violate Section 39 U.S.C. §3661.

C. Declare that the USPS has failed to satisfy the requirements of Section 3691

of the Act with respect to the implementation of new service standards on July 1, 2012.

D. Order the USPS not to implement the changes described in the New Rule until after the Commission issues an Advisory Opinion.

Respectfully submitted,

/S/

Darryl J. Anderson  
Richard S. Edelman  
Jennifer L. Wood  
O'Donnell, Schwartz & Anderson, P.C.  
1300 L Street, N.W., suite 1200  
Washington, D.C. 20005-4126

Counsel for Complainant  
American Postal Workers Union, AFL-CIO

June 12, 2012

CERTIFICATIONS REQUIRED BY RULE 3030.10(9) and (10)

I hereby certify that a copy of this complaint is being simultaneously served on the Postal Service at [PRCCOMPLAINTS@usps.gov](mailto:PRCCOMPLAINTS@usps.gov) in accordance with Rule 3030.11.

I hereby certify that counsel for the APWU conferred with the Postal Service's general counsel in an attempt to resolve or settle this complaint, and that, despite good faith consideration by both parties, additional efforts to settle or resolve this complaint would be unsuccessful at this time.

/s/

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Darryl J. Anderson  
O'Donnell, Schwartz & Anderson, P.C.  
1300 L Street, N.W., suite 1200  
Washington, D.C. 20005-4126

Counsel for Complainant  
American Postal Workers Union, AFL-CIO

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