

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

First-Class Mail and Periodicals
Service Standard Changes, 2021

Docket No. N2021-1

STATEMENT OF POSITION

The Commonwealth of Pennsylvania, the State of New York, the State of California, the State of Colorado, the State of Connecticut, the State of Delaware, the District of Columbia, the State of Hawai‘i, the State of Illinois, the State of Maine, the State of Maryland, the Commonwealth of Massachusetts, the State of Michigan, the State of Minnesota, the State of Nevada, the State of New Jersey, the State of New Mexico, the State of North Carolina, the State of Oregon, the State of Vermont, the Commonwealth of Virginia, the City of New York, and the City and County of San Francisco respectfully submit this Statement of Position on the United States Postal Service’s Request for an Advisory Opinion on Changes in the Nature of Postal Services (Apr. 21, 2021) (“the Request”).

One year ago, the Postal Service implemented a series of purported cost-saving initiatives that had a devastating effect on mail service. Those initiatives, which included drastic changes to the Postal Service’s policies with respect to extra and late trips, were implemented virtually overnight, in the middle of a pandemic, and without any prior input from the Commission. Mail delivery across the nation slowed, and Americans who depended on the Postal Service for the delivery of prescription medication, paychecks, and other necessities were left stranded. The increased delays also made it more difficult for states and municipalities to perform a variety of essential functions and provide critical services to their residents.

As a result, four different federal judges found that the Postal Service had acted unlawfully and entered injunctions preventing it from further implementing these changes.¹ In a subsequent review of the Postal Service’s action, the Postal Service Inspector General found that the changes were communicated in a way that “resulted in confusion and inconsistent application of operational changes across the country” and were “[i]mplemented without completing a study or analysis of the impact of the changes on mail service.”² The IG concluded: “The Postal

¹ See *Pennsylvania v. DeJoy*, 490 F. Supp. 3d 833, 844 (E.D. Pa. 2020); *New York v. Trump*, 490 F. Supp. 3d 225, 231 (D.D.C. 2020); *Vote Forward v. DeJoy*, 490 F. Supp. 3d 110 (D.D.C. 2020); *NAACP v. United States Postal Serv.*, 496 F. Supp. 3d 1 (D.D.C. 2020); *Washington v. Trump*, 487 F. Supp. 3d 976, 984 (E.D. Wash. 2020); *Jones v. United States Postal Serv.*, 488 F. Supp. 3d 103, 112 (S.D.N.Y. 2020).

² USPS Office of Inspector Gen., Report No. 21-014-R21, *Deployment of Operational Changes*, at 7-8 (Nov. 6, 2020), <https://www.uspsoig.gov/sites/default/files/document-library-files/2020/21-014-R21.pdf>; see also USPS Office of Inspector Gen., Report No. 20-292-R21,

Service’s mail service performance significantly dropped beginning in July 2020, directly corresponding to implementation of the operational changes and initiatives.”

Regrettably, it appears that the Postal Service is poised to repeat many of these mistakes. As part of its Strategic Plan, it seeks to further degrade service standards, such that more than 30 percent of contiguous First-Class Mail would be subject to a delivery standard of 4 or 5 days as opposed to the current standard of 2 to 3 days.³ It proposes these changes to further a flawed philosophy that would prioritize the services it offers in competitive markets over those that it alone provides and on which countless Americans depend. And it seeks to implement these changes, despite never having restored service to its prior levels following the disastrous July 2020 initiatives and while the country still recovers from the COVID-19 pandemic and accompanying economic downturn.

There is a different approach. The Commission should urge the Postal Service to abandon this misguided effort and instead focus its attention on improving its performance in delivering First-Class Mail and other market-dominant products.⁴ It must examine the events of the past year to identify what went wrong with the implementation of its 2020 initiatives to ensure that similar failures do not recur. Only once the Postal Service has shown that it can reliably meet its performance targets should it consider whether it is necessary to change its service standards to address long-term trends in the utilization of its products. And even then, it must comply with its obligation to set such standards “in consultation with” the Commission, 39 U.S.C. § 3691(a), and it should involve the Commission at every stage of the planning process. To ensure that the Postal Service pursues this responsible course of action, the Commission should reject the Request.

I. The Postal Service’s Mission and Legal Obligations

Since its creation, the Postal Service has functioned as a public agency with a public service mission. That mission, which has evolved over time, requires it to “provide prompt, reliable, and efficient services to patrons in all areas” and to “render postal services to all communities.” 39 U.S.C. § 101(a). The Postal Service is specifically required to prioritize serving communities that would otherwise be underserved, by “provid[ing] a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining,” *Id.* § 101(b). Consistent with these obligations, the Postal Service must “serve as nearly as practicable the entire population of the United States.” *Id.* § 403(a).

Operational Changes to Mail Delivery, (Oct. 19, 2020), <https://www.uspsoig.gov/sites/default/files/document-library-files/2020/20-292-R21.pdf>.

³ “Contiguous” mail refers to mail sent and received within the contiguous 48 states.

⁴ Market-dominant products are core mail products, including First-Class Mail and periodicals, that the Postal Service has the exclusive right to collect, transport, and deliver. *See generally* Private Express Statutes (18 U.S.C. §§ 1691-99 & 39 U.S.C. §§ 601-06, codified at 39 C.F.R. pt. 310); 39 U.S.C. § 3621(a).

In carrying out its responsibilities, the Postal Service must “give the highest consideration to the requirement for the most expeditious collection, transportation, and delivery of important letter mail.” *Id.* § 101(e). First-Class Mail and the Postal Service’s other market-dominant products still comprise the overwhelming majority of the mail pieces moved by the Postal Service each day. For instance, in fiscal year 2020, the Postal Service handled 122 billion market-dominant products, including more than 52 billion pieces of First-Class Mail.⁵ By contrast, it handled slightly more than 7 billion competitive products⁶ that same year, of which approximately half were ground parcels.⁷

Since 2006, the Postal Service has been required to set service standards for market-dominant products “in consultation with” the Commission. 39 U.S.C. § 3691(a). Such service standards must be “designed to achieve” the following four objectives:

- (A) To enhance the value of postal services to both senders and recipients.
- (B) To preserve regular and effective access to postal services in all communities, including those in rural areas or where post offices are not self-sustaining.
- (C) To reasonably assure Postal Service customers delivery reliability, speed and frequency consistent with reasonable rates and best business practices.
- (D) To provide a system of objective external performance measurements for each market-dominant product as a basis for measurement of Postal Service performance.

39 U.S.C. § 3691(b)(1).

In setting service standards consistent with these objectives, the Postal Service is required to “take into account” eight specified factors. Among these are “the actual level of service that Postal Service customers receive under any service guidelines previously established,” “the degree of customer satisfaction with Postal Service performance in the acceptance, processing and delivery of mail,” and “the needs of Postal Service customers, including those with physical impairments,” as well as “the policies of this title [39],” which include the statutory obligations set forth above. 39 U.S.C. § 3691(c).

Since initially setting them in 2007,⁸ the Postal Service had modified its service standards only once. It did so in 2012 as part of a broader network rationalization initiative to consolidate processing and transportation networks. *See PRC, Advisory Opinion on Mail Processing*

⁵ Postal Regulatory Comm’n, *Financial Analysis of United States Postal Service Financial Results and 10-K Statement*, at 25, 45 (Apr. 26, 2021), <https://www.prc.gov/docs/116/116704/FY2020%20Financial%20Report.pdf>.

⁶ Competitive products are Postal Service products that can also be offered by private sector companies.

⁷ Postal Regulatory Comm’n, *Financial Analysis of United States Postal Service Financial Results and 10-K Statement*, at 48, 67.

⁸ *Modern Service Standards for Market-Dominant Products*, 72 Fed. Reg. 72,216 (Dec. 19, 2007), codified at 39 C.F.R. pt. 121.

Network Rationalization Service Changes, Docket No. N2012-1 (Sept. 28, 2012).⁹ These modifications extended the applicable service standards for certain categories of First-Class Mail. While all First-Class Mail sent and received within the 48 contiguous states remained subject to a “general delivery range” of 1-3 days, the specific standard for certain categories of First-Class Mail was lengthened within this range.

II. The Request Would Have Significant Adverse Effects on Mail Service

Under the Postal Service’s current service standards, all First-Class Mail sent within the 48 contiguous states is under a 1- to 3-day delivery standard. Such mail is subject to a 2-day delivery standard if it can be delivered with a combined drive time of 6 hours or less and subject to a 3-day delivery standard if the origin and destination are within the contiguous 48 states. 39 C.F.R. § 121.1. Under the proposed standards, 39 percent of all First-Class Mail would be subject to slower delivery standards, with 31 percent of all First-Class Mail subject to a new 4-day or 5-day delivery standard.¹⁰ In addition, a significant portion of mail currently under a 2-day standard would be shifted to the 3-day standard.¹¹ Under the Request, that 2-day standard would now apply only to mail with a combined drive time of 3 hours or less.¹² Mail with a combined drive time of 3 to 20 hours would be subject to a 3-day delivery standard. In short, delivery of mail to destinations 3-6 driving hours from their point of origin would slow by 50 percent from current standards.¹³ In states with city pairs that fall within the 3-6 driving hour range, the Postal Service acknowledges that these changes would drastically alter the delivery windows for in-state mail.¹⁴

A significant portion of in-state mail would be adversely affected by the proposed service standard changes. Based on an analysis by Partners for Economic Solutions, “[e]very state will experience some service standard downgrade to the First-Class Mail delivered within their borders.”¹⁵ The analysis concluded that, for certain parts of the country, mail originating in 96 percent of other ZIP codes would be detrimentally impacted—and in no place is the figure lower than 34 percent. The worst impact would occur in the western states, with significantly increased delays in the Mountain, Southwest, and Plains states, as well as parts of Florida, New York,

⁹ Postal Regulatory Comm’n, Docket No. N2012-1, *Advisory Opinion on Mail Processing Network Rationalization Service Changes* (Sept. 29, 2012), https://www.prc.gov/docs/85/85269/Advisory_Opinion_%20PDF%20_09282012.pdf

¹⁰ Direct Testimony of Steven W. Monteith on Behalf of the USPS (USPS-T-4) (Filing ID: 116653) (Filing ID: 116653), at 1-2 (Apr. 21, 2021) (“Monteith Direct Testimony”); Postal Regulatory Comm’n, Order No. 5875 (Filing ID: 116672), at 3 (Apr. 23, 2021).

¹¹ Order No. 5875 (Filing ID: 116672) at 3.

¹² *Id.*

¹³ *Id.*

¹⁴ Responses of USPS Witness Robert Cintron to Questions Posed During Hearings (Filing ID: 18897), at 2 (June 16, 2021).

¹⁵ *E.g.*, Rebuttal Testimony of Anita Morrison on Behalf of American Postal Workers Union (APWU RT-1) (Filing ID: 118262), at 2 (June 2, 2021) (“Morrison Rebuttal Testimony”).

Vermont, and Wisconsin.¹⁶ In all but 12 of the 48 contiguous states, the proposed service standard changes would slow the delivery of in-state First-Class Mail, including election mail.¹⁷ Of the 36 states where even in-state mail delivery standards would be downgraded, the impacts would be significant: the affected number of ZIP codes in those states ranges from 6 to 51 percent.¹⁸ In Florida, Kansas, Kentucky, Mississippi, Missouri, Montana, New York, North Dakota, and Ohio, more than 40 percent of ZIP codes would see slower in-state delivery times.¹⁹

Even assuming the proposed changes would improve reliability, as the Postal Service suggests, the Request disregards both the public interest in speedy mail delivery and the harms that would result from a shift from the current 1-3-day service standard for First-Class Mail within the 48 contiguous states to a slower 3-5-day standard. As explained below, the degradation of service standards proposed by the Postal Service would have detrimental effects on the States and Cities and their residents. The proposed changes would have a detrimental impact on residents who rely on the Postal Service to pay bills, receive paychecks and public benefits, and vote. The impacts of slower delivery would be especially harmful to rural and low-income residents, who have fewer delivery alternatives and are therefore more likely to rely on the Postal Service for timely delivery.

III. The Proposed Changes to First-Class Mail Service Standards Would Harm the States and Cities and Their Residents

The prompt and reliable delivery of First-Class Mail is essential to the States and Cities and their residents. The proposed service standards would slow down mail delivery for a significant portion of First-Class Mail, harming the States' and Cities' ability to fulfill essential government functions. The States and Cities rely on First-Class Mail to carry out a vast array of governmental functions, including providing public assistance to low-income individuals and families, running essential government services such as drivers' licensing and child welfare programs, and administering elections. The States and Cities and their residents have a significant interest in both the reliability *and* speed of First-Class Mail delivery. The Postal Service's plan sacrifices speed for reliability, slowing down a significant portion of mail to the detriment of the States and Cities and their residents. And contrary to the Postal Service's mandate to "provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining," 39 U.S.C. § 101(b), the Request would disproportionately impact our residents in these areas.

A. Public Benefits and Government Services

The States and Cities rely on the Postal Service to assist in administering public benefits and other government services, much of which involves in-state mail. The States and Cities echo the concerns of members of the public who have already commented on the proposed service

¹⁶ *Id.* at 3-4.

¹⁷ *Id.* at 5.

¹⁸ *Id.* at 16.

¹⁹ *Id.*

changes.²⁰ Many comments expressed concerns that increased delivery times would result in lapsed insurance coverage, difficulty receiving checks, late fees or service cuts, and delayed government payments, among other harms.²¹

First-Class Mail is essential for the administration of public benefits programs used by low-income residents, including cash assistance, Supplemental Nutrition Assistance Program (SNAP), Medicaid, and other programs. Eligible individuals and families often rely on the mail to apply for and receive benefits, submit recertifications, pursue administrative appeals, and keep abreast of program requirements and changes. Delayed receipt of applications by governmental agencies—even by a day or two—can prolong the time eligible individuals are without benefits and may reduce the net amount of benefits they receive overall. In some states, public benefits may be terminated for recipients whose cases are closed for failure to timely complete recertification processes, even when slowed or delayed mail is the cause. The loss of these benefits for any amount of time would lead to increased financial deprivation, risk of food insecurity, inability to obtain medical care, and other adverse consequences.

States also rely on First-Class Mail for other critical government functions. These include processing and issuing vital records such as birth certificates, marriage records, and death records, among others, which residents often need in connection with employment, obtaining government-issued identification such as drivers' licenses and passports, registering to vote, and other needs. In addition, other important services like drivers' license and vehicle registration renewals are often conducted by mail. So too is the issuance of documents related to unemployment and workers' compensation, including documents scheduling and holding hearings, responding to litigation, adjudicating claims, and paying benefits. States also use the mail for documents related to professional licensing, including exam scheduling letters, licenses, applications, and fees. Slower mail service would prolong processing times for such services to the detriment of many residents.

The Postal Service ignores these likely harms. While admitting “that some customers may need to adjust their internal processes to account for the changed service standards,”²² the Postal Service did not consider or address the specific challenges to state and local governments of administering benefits and services within fixed statutory and regulatory frameworks that, in many cases, can only be changed by legislation or rulemaking.

B. Election Mail

The States and Cities also rely on First-Class Mail to administer elections, including to register voters, process absentee and mail-in ballot applications, and issue and process mailed

²⁰ Rebuttal Testimony of Stephen DeMatteo on Behalf of the American Postal Workers Union, AFL-CIO (APWU RT-2) (Filing ID: 118278), at 2-10 (June 22, 2021) (“DeMatteo Rebuttal Testimony”).

²¹ *Id.* at 6.

²² Direct Testimony of Robert Cintron on Behalf of USPS (USPS-T-1) (Filing ID: 116652), at 31 (Apr. 21, 2021) (“Cintron Direct Testimony”).

ballots. The majority of States have adopted no-excuse mail-in voting and five States—Colorado, Hawai‘i, Oregon, Utah, and Washington—conduct elections entirely by mail. Over the past several decades, voting by mail has steadily expanded nationwide. In 1996, 7.8 percent of Americans mailed in their votes; in 2016, 20.9 percent did; and in 2020, 43 percent of voters used the Postal Service to cast their ballots.²³ The projected delays in inbound and outbound First-Class Mail resulting from the proposed services changes would slow election-related mail,²⁴ frustrating the States’ ability to administer their elections and potentially resulting in voter disenfranchisement.

As the Postal Service concedes, “[a]ll Election Mail may be impacted by the service standard changes.”²⁵ Although the Postal Service estimates that “less than 4 percent of Election Mail would potentially be impacted by the change in service standards,” that estimate is based *solely* on inbound ballots and not on other types of election and election-related mail.²⁶ The estimate does not include, for example, (1) blank and completed voter registration applications sent to and from prospective voters; (2) voter registration cards; (3) blank and completed absentee/mail-in ballot applications; (4) absentee/mail-in ballots sent to voters; and (5) voter information materials. Confusingly, the Postal Service asserts that “[n]o operational or business rules regarding Election Mail will need to change on account of the proposed service changes,” while also acknowledging that “[t]he mailers and public will need to adjust timing based on the service standards to add two days to the previous recommended lead time.”²⁷ The Postal Service admits that it did not study the impact of the proposed service standard changes on election mail from overseas voters, overseas military personnel, or military personnel stationed domestically who are away from their voting residence,²⁸ and concedes that election mail for voters outside the United States “are expected to be impacted.”²⁹

Moreover, the Partners for Economic Solutions have demonstrated that the impact on election mail would be significant. Even assuming that most election mail is mailed and

²³ Pew Research Center, *Share of voters casting ballots by mail has steadily risen since 1996* (June 23, 2020), https://www.pewresearch.org/fact-tank/2020/06/24/as-states-move-to-expand-the-practice-relatively-few-americans-have-voted-by-mail/ft_2020-06-24_votebymail_01/; Zachary Scherer, *Majority of Voters Used Nontraditional Methods to Cast Ballots in 2020*, U.S. Census Bureau (Apr. 29, 2021), <https://www.census.gov/library/stories/2021/04/what-methods-did-people-use-to-vote-in-2020-election.html>.

²⁴ *E.g.*, Morrison Rebuttal Testimony at 4-5.

²⁵ Responses of the United States Postal Service Witness Robert Cintron to the American Postal Workers Union, AFL-CIO Interrogatories (APWU/USPS-T1-1-2 and 4(a) and (c)) (Filing ID: 118037), at 4 (May 26, 2021) (“Cintron APWU Interrogatory Responses”).

²⁶ *Id.* at 3, 4.

²⁷ *Id.* at 4.

²⁸ Responses of the United States Postal Service to First Request for Admissions of American Postal Workers Union, AFL-CIO (APWU/USPS-1/1-13) (Filing ID: 118068), at 3, 4, 10 (May 26, 2021) (“USPS Responses to APWU First Request for Admissions”).

²⁹ Cintron APWU Interrogatory Responses at 3.

delivered within one state, 36 States would experience service downgrades to First-Class Mail travelling in-state.³⁰

The States' election laws and election systems have been built around the Postal Service's existing service standards. Deadlines for voter registration, absentee ballot applications, distribution of absentee and mail-in ballots, and mail-in ballot submissions are often set by statute and rely on the assumption that mail sent to and from voters will be delivered within 1-3 days. Adding two days' lead time to existing election-related mail, especially for November 2021 elections that will take place shortly after the new standards would come into effect on September 30, 2021, may be infeasible under existing law or practice. Consider, for example, a voter who wishes to vote by absentee ballot. Consistent with the Postal Service's recommendation "to add two days to the previous recommended lead time," the voter's absentee ballot request, blank absentee ballot, and returned absentee ballot would all need to be mailed with two additional days of lead time relative to current standards. If that voter is temporarily located in another state, mail at each step of that process could take as many as five days for delivery under the new standards. The proposed service changes would require significant changes to election mail deadlines and public education, and likely result in more voters being unable to cast a ballot because of missed deadlines.

The Postal Service recognizes that election mailers "have unique needs and will be impacted by the changes differently than our other mailers" and, thus, the Postal Service "ha[s] and will conduct specific outreach efforts to discuss the changes, in order to mitigate any confusion, and to receive feedback on the proposed changes."³¹ But the record does not shed light on what outreach has occurred, whether or how election officials' feedback, if any, was considered in proposing the service changes or the September 30, 2021 implementation timeline, or whether the Postal Service considered the impact of slower mail delivery on election-related mail other than return mail-in ballots.

Because, on the record before the Commission, the Postal Service has failed to fully consider the impact on election administration and the voters' ability to vote that may result from the proposed service standard changes, the Commission should reject those changes.

C. Impact on Rural and Low-Income Communities

The States are concerned about the Postal Service's failure to study the effects of the proposed changes on specific populations—including low-income residents, the elderly, and individuals with disabilities—who rely on the postal system for paying bills, obtaining government services, and transacting everyday business,³² as well as its failure to adequately

³⁰ Morrison Rebuttal Testimony at 4-5.

³¹ Monteith Direct Testimony at 23.

³² USPS Responses to APWU First Request for Admissions at 3, 4, 10, 11; Response of United States Postal Service Witness Monteith to Interrogatories of American Postal Workers Union, AFL-CIO Redirected from Witness Cintron (APWU/USPS-T1-3, 4(b)) (Filing ID: 118015), at 2 (May 25, 2021) ("Monteith APWU Interrogatory Responses").

consider the likely impacts on rural communities. The Postal Service is statutorily obligated to “provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining,” as it was “the specific intent of Congress that effective postal services be insured to residents of both urban and rural communities.” 39 U.S.C. § 101(b).

With respect to rural communities, the Postal Service asserts that the proposed service standard changes would have “a nearly proportional effect on urban and rural areas,”³³ pointing to a 37- to 39-percent downgrade in mail originating from or delivered to both urban and rural communities.³⁴ This purported parity, however, masks the disproportionate burdens that rural states, communities, and residents would face because of the proposed service changes.

Unlike their urban counterparts, rural communities often lack suitable alternatives to using First-Class Mail. As summarized in the testimony of Mr. DeMatteo of the APWU, rural residents are especially concerned about the proposed changes because they often have few acceptable alternatives to the Postal Service for sending and receiving critical correspondence.³⁵

Moreover, these overall rates do not reflect the fact that geographically large and heavily rural states—especially in the West—would, as the Postal Service confirms, be disproportionately subject to the new 4- and 5-day delivery standards.³⁶ Despite the Postal Service’s acknowledgment that pronounced geographic disparities would result from the changes,³⁷ it admits that “[n]o studies were performed or commissioned to address unintentional geographic discrimination”³⁸ and denies that the changes would have any discriminatory effect on residents of certain states or regions.³⁹

³³ Direct Testimony of Stephen B. Hagenstein on Behalf of the United States Postal Service (USPS-T-3) (Filing ID: 116646), at 25 (Apr. 21, 2021).

³⁴ *Id.*

³⁵ DeMatteo Rebuttal Testimony at 8-9.

³⁶ Responses of the United States Postal Service Witness Stephen B. Hagenstein to Steve Hutkins Interrogatories and Request for Production of Documents SH/USPS-T3-6 through 8 (Filing ID: 118032), at 3 (May 26, 2021).

³⁷ *Id.*

³⁸ Responses of the United States Postal Service Witness Stephen B. Hagenstein to Steve Hutkins Interrogatories and Request for Production of Documents SH/USPS-T3-1 through 5 (Filing ID: 118012), at 9 (May 25, 2021).

³⁹ The Postal Service also admits that it did not study the impact of the proposed service standard changes on low-income communities, elderly consumers, or consider the needs of customers, including those with physical impairments, in connection with the proposed service standard changes. USPS Responses to APWU First Request for Admissions at 3, 4, 10, 11; Monteith APWU Interrogatory Responses at 2.

The Postal Service's Request would produce geographic disparities, especially in rural communities and states, which is inconsistent with its universal service mandate. The proposed changes should be rejected.

IV. The Request Cannot Be Justified Based on the Postal Service's Rationale

For the second time in the past decade, the Postal Service seeks to extend its service standards for First-Class Mail. But unlike the 2012 modification, the current Request would extend the "general delivery range" for contiguous First-Class Mail: instead of the current 1-3 day range that has been in place since the Postal Service first adopted service standards, this mail would now be subject to a range of 1-5 days. Moreover, the effect of these changes would be significant: nearly half of all First-Class Mail would be subject to longer service standards, and more than 30 percent of all contiguous First-Class Mail would be subject to either a 4- or 5-day standard, longer than that applicable to *any* contiguous First-Class Mail today.

These changes are necessary, according to the Postal Service, to implement its Strategic Plan, of which the Request is a "key component." Request at 9. And that plan is premised on the idea that "there is a compelling need to redesign [the Postal Service's] operating model to enable growth in [its] package delivery business."⁴⁰ Specifically, the Postal Service wishes "to participate more fully in the strengthening U.S. market for package delivery services." *Id.* And to facilitate this goal, it proposes slowing the delivery of nearly half of all First-Class Mail.

This policy has things precisely backwards. The Postal Service "operate[s] as a basic and fundamental service provided to the people by the Government of the United States, authorized by the Constitution, created by Act of Congress, and supported by the people." 39 U.S.C. § 101(a). In furtherance of its public service mandate, Congress has awarded the Postal Service market dominance over core mail products, including what is now classified as First-Class Mail. *See generally* Private Express Statutes (18 U.S.C. §§ 1691-99 & 39 U.S.C. §§ 601-06, codified at 39 C.F.R. pt. 310); 39 U.S.C. §§ 3621-29.

Under its new policy, the Postal Service seeks to degrade service in its market-dominant products in order to facilitate growth in its competitive products. But a policy that prioritizes competitive packages above First-Class letter mail cannot be squared with the statutory requirement that the Postal Service "give the highest consideration to the requirement for the most expeditious collection, transportation, and delivery of important letter mail." 39 U.S.C. § 101(e); *see also id.* § 3691(c)(8) (requiring service standards to take into account the policies of § 101). In fact, the Strategic Plan makes explicit that the Postal Service intends to "give the highest consideration" to the transportation of packages, rather than "important letter mail," in direct contravention of this congressional mandate.⁴¹ While the Postal Service would soon take

⁴⁰ USPS, *Delivering for America*, at 5, https://about.usps.com/what/strategic-plans/delivering-for-america/assets/USPS_Delivering-For-America.pdf.

⁴¹ The Postal Service cannot dispute that First-Class Mail constitutes important letter mail; it recognized that First-Class Mail falls within § 101(e) more than four decades ago. *See General Oversight and Postal Service Budget Hearing Before the Subcomm. on Postal*

up to 5 days to deliver First-Class Mail in the contiguous United States, it also plans to redesign its transportation network so packages “can reach up to 90 percent of the population in one day and more than 95 percent of the contiguous U.S. population in two days.”⁴²

The policy also runs counter to virtually all of the criteria specified in 39 U.S.C. § 3691(b)(1), which are to guide the determination of service standards. It would degrade, rather than enhance, “the value of postal services to both senders and recipients,” § 3691(b)(1)(A); it would undermine “regular and effective service in all communities, including those in rural areas or where post offices are not self-sustaining,” § 3691(b)(a)(B); and it would do nothing to “reasonably assure Postal Service customers delivery reliability, speed and frequency consistent with reasonable rates and best business practices,” § 3691(b)(1)(C). Moreover, the Request would extend delivery the most for those letters that already take the longest to arrive: according to the Postal Service, 81 percent of 1-2 day mail would be subject to the same standards, but a majority of mail currently subject to a three-day standard would now be subject to either a four- or five-day standard. *See* Request at 4. As a result, mail that is already slow would only get slower.

While the Postal Service suggests that this shift in priorities is a necessary response to the long-term decline in the volume of letter mail, it will inevitably serve as a cause of further decline. Customers with the ability to pay more will opt for other services, including the Postal Service’s own competitive products, rather than waiting 4 or 5 days for a service that used to take 2 or 3. Indeed, the Postal Service expects this result.⁴³ And if the response to future declines is to further degrade service in the Postal Service’s market-dominant products in order to favor its competitive products, it will lead to a continued eroding of the Postal Service’s obligation to “provide prompt, reliable, and efficient services to patrons in all areas and [to] render postal services to all communities.” 39 U.S.C. § 101(a). The result will be a system with significant and growing disparities in service based on geography and other factors. The 250-year history of postal delivery in the United States, as reflected in the Postal Service’s current statutory obligations, makes clear that such an outcome is unacceptable.

It is true, of course, that the Postal Service has not met its service performance targets for quite some time. But rather than attempting to remedy its ongoing performance issues, the Postal

Operations and Services of the H. Comm. on Post Office and Civil Service 95th Cong. 67 (Mar. 15, 1977).

⁴² *Delivering for America* at 23; *see also, e.g., id.* at 29 (“All 21 [Network Distribution Centers] will be transformed into [Regional Distribution Centers]. . . . We will dedicate these facilities to package processing, enabling us to expand each center’s processing windows and reach.”). The Postal Service has separately indicated that it will propose changes to its service standards for First-Class Packages from 2-3 days to 2-5 days. *See* Postal Regulatory Comm’n Docket No. N2021-2. This suggests that the primary beneficiaries of the Postal Service’s new operating model will be competitive products.

⁴³ Request at 12 (“For those customers who need faster delivery than would be provided under these standards for their letters, Priority Mail Express and Priority Mail would continue to be available.”).

Service is simply moving the goalposts. Under the Request, more than half of all mail that is now subject to a 3-day standard would have 4 or 5 days to reach its destination. But at present, the Postal Service still meets its standards with respect to such mail approximately 80 percent of the time. In fact, even in the fourth quarter of fiscal year 2020—when all service saw a precipitous decline as a result of the July 2020 cost-savings initiatives—the Postal Service still met its standards for 3-day First-Class Mail more than 70 percent of the time.⁴⁴ Nowhere in its Request does the Postal Service explain why its failure to meet its standard 20 or even 30 percent of the time justifies weakening those standards for 50 percent of the relevant mail.

Indeed, the events of the past year caution strongly against imposing sweeping changes of the type the Postal Service proposes. The Postal Service has faced enormous challenges as a result of the pandemic, and postal employees have performed their jobs admirably under incredible strain. As has been well documented, package volume increased significantly as Americans remained at home, and First-Class Mail volume continued to decline. Postal employees, who had no choice but to continue to perform their duties throughout the pandemic, were disproportionately at risk for COVID-19, making it even more challenging for the Postal Service to provide consistent, reliable service. But the anomalous nature of the past year should give the Postal Service pause before seeking to impose sweeping changes of the type envisioned in the strategic plan. The trends seen in 2020 and early 2021 may continue into the future, or they may not, but no one would suggest using the results from this time period as a baseline for long-term planning.

The Postal Service has already once imposed sweeping changes in the face of these unprecedented challenges, and the result was disastrous. As the Inspector General found, the July 2020 cost-saving initiatives were implemented without adequate planning and were poorly communicated, leading to a rapid decline in service from which the Postal Service has not fully recovered. Postal Service leadership has yet to acknowledge that the cost-saving initiatives were responsible for the decline in service seen in the last half of 2020, much less gone through the arduous process of understanding exactly what occurred, correcting the errors, and figuring out how to prevent similar disasters in the future. Without such understanding, the Postal Service risks repeating similar mistakes—and its apparent desire to rush headlong into a reorientation of its business model while the nation still recovers from the pandemic suggests it has learned little from its experience.

The Postal Service should abandon its current effort and refocus its energies on fixing its ongoing performance deficiencies. The Commission can play a vital role in encouraging the Postal Service to pursue this option. In its Request, the Postal Service has sought an advisory opinion from the Commission under 39 U.S.C. § 3661(b), which requires it to do so before implementing “a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis.” But because the Postal Service seeks to modify service standards, its obligation to involve the Commission goes further: under 39 U.S.C. § 3691(a), it may only set service standards “in consultation with” the Commission. When the Postal Service originally set service standards in 2007, it detailed the extensive consultation it had with the Commission, which began months before it issued a Noticed of Proposed

⁴⁴ Cintron Direct Testimony at 7.

Rulemaking. *See* Modern Service Standards for Market-Dominant Products, 72 Fed. Reg. 58,946, 58,948 (Oct. 17, 2007). Here, there is no evidence of such consultation. To the contrary, the Postal Service appears to have made up its mind already, and is treating the involvement of this Commission as a formality. The Commission should insist that the Postal Service live up to its statutory obligations and encourage it to abandon this ill-advised effort.

Respectfully submitted,

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