

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

FIRST-CLASS MAIL AND PERIODICALS
SERVICE STANDARD CHANGES, 2021

Docket No. N2021-1

REPLY BRIEF OF THE UNITED STATES POSTAL SERVICE

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ATTESTATION OF WORD COUNT

The Postal Service attests that this brief contains 10,345 words, not including the cover pages, table of contents, table of authorities, or this attestation.

I. STATEMENT OF THE CASE AND STATEMENT OF POSITION

The United States Postal Service's ("Postal Service's" or "USPS's") Initial Brief summarizes the evidence of record, the scope of the Commission's responsibilities under 39 U.S.C. § 3661, and the legal standards applicable to the exercise of those responsibilities here.¹ The USPS Brief explains why the Commission should conclude that the changes in the nature of service under review (the "Standards") are consistent with relevant policies of Title 39, United States Code.

Because the Postal Service discussed major facets of the case in its Brief, we will not revisit every matter discussed therein. Instead, the Postal Service will focus primarily on arguments propounded by parties in their Briefs and SOPs submitted after June 15.² In short: none of our critics provide a basis for the Commission to conclude that the Standards are inconsistent with the policies of Title 39, or that the Postal Service should not proceed to implement the Standards.³

In their Briefs and SOPs, various parties make arguments either expressing their interpretations or characterizations of applicable law and policy or asserting that the Commission's advisory opinion should include an assessment of issues and policies beyond the limited scope of review under § 3661, such as issues relating to the Postal

¹ Unless otherwise indicated, references to parties' "Briefs," "Statements of Position" or "SOPs" refer to Briefs and SOPs filed in this proceeding. Citations referencing only a party refer to that party's Brief or SOP, *e.g.*, "USPS at 5" would refer to the Postal Service's Initial Brief at 5.

² Multiple participants in this proceeding, such as the National Postal Policy Council ("NPPC"), the Association for Postal Commerce ("PostCom"), the Greeting Card Association ("GCA"), and Douglas Carlson ("Carlson"), have advanced positions and arguments founded largely on speculation, unsubstantiated lay opinion, and incomplete hypotheticals, without attempting to submit probative, material evidence.

³ The fact that the Postal Service has not chosen to respond to every argument presented in each party's Brief or SOP should not be interpreted as agreement with points not addressed herein.

Service's rate authority.⁴ But proceedings under § 3661(c) are conducted in order for the Commission to fulfill its limited role as an advisor to postal management, which otherwise has broad authority to operate the national postal system. After taking evidence in hearings in accordance with 5 U.S.C. §§ 556 and 557, the Commission issues an advisory opinion addressing the "specific changes proposed by the Postal Service in the nature of postal services." 39 C.F.R. § 3020.102(a). The advisory opinion is not binding on the Postal Service, and the Postal Service ultimately decides whether to implement the proposal. See Public Representative ("PR") at 2 (June 21, 2021); Order No. 2080, Order Adopting Amended Rules of Procedure for Nature of Service Proceedings Under 39 U.S.C. § 3661, PRC Docket No. RM2012-4 (May 20, 2014) at 8; Postal Regulatory Comm'n, Press Release, Procedural Overview of the Advisory Opinion Process (Mar. 24, 2021) ("By law, the Commission's final opinion is advisory in nature. The law does not give the Commission authority to veto service changes. As a result, the Postal Service is not required to implement or take any further action with regard to the Commission's opinion."). Finally, issues related to postal rates are beyond the scope of this proceeding, which concerns the nature of the service, not its price.⁵ Order No. 2080 at 16-17. See Hutkins at 26.

In a SOP filed on June 21, 2021, 21 States, the District of Columbia, the City of New York, and the City and County of San Francisco (collectively, the "States") suggest

⁴ See e.g., PostCom at 15; Steve Hutkins ("Hutkins") at 14; Association of Magazine Media ("MPA") at 3.

⁵ GCA and NPPC fault the Postal Service for not considering changes to FCM products to slow and possibly recapture declining demand and caution the Commission that its advisory opinion should account for this omission. GCA at 8-10; NPPC at 10; Hutkins at 26. The potential changes to those products suggested by GCA and NPPC are outside the scope of this proceeding and should not factor into the Commission's advisory opinion. Nonetheless, the Postal Service discusses in detail its efforts to stem the decline of FCM at Tr. 1/33-37.

that the Postal Service has short-circuited the process of planning and seeking an advisory opinion by avoiding “consultation” with the Commission under 39 U.S.C. § 3691(a) before submitting its request in this proceeding or issuing its Proposed Rule on Service Standards for Market-Dominant Mail Products, 86 Fed. Reg. 21,675 (April 23, 2021). States at 2, 3, 12-13.

The Postal Service respectfully submits that the States’ interpretation of § 3691(a) is correct with respect to the Postal Service’s initial establishment of service standard regulations in 2007—but not here. The “consultations” envisaged in § 3691(a) were to “establish” service standards and, subsequently, no service *change* proceeding involved that consultation process, as both the Commission and the Postal Service understood the consultation to be a one-time event. Indeed, the Commission itself opened a public inquiry docket to receive comments prior to concluding its consultations under § 3691, then it submitted comments in response to the Postal Service’s rulemaking. Order No. 21, Comments of the Postal Regulatory Commission on Modern Service Standard for Market Dominant Products, PRC Docket No. PI2007-1 (Nov. 16, 2007).

Today, service standards for market-dominant products are published in 39 C.F.R. Part 121, and the proper procedure to change them is the process under 39 C.F.R. Part 3020 (implementing 39 U.S.C. § 3661). See *also* Modern Service Standards for Market-Dominant Products, 72 Fed. Reg. 58,946, 58,946 n.1 (Oct. 17, 2007) (explaining consultative process applicable to establishment of service standards, not subsequent changes). There is no basis to claim that “consultations” were a

prerequisite to the Request at issue here.⁶ In making our Request, the Postal Service has fully complied with the regulatory requirements applicable to this process.

At the conclusion of this process, for the reasons set forth in the Postal Service's Brief and herein, the Postal Service urges the Commission to issue a favorable advisory opinion finding that the Standards comply with the policies of Title 39.

II. DISCUSSION OF EVIDENCE, REASONS, AND AUTHORITIES

Ample evidence supports a finding that the Standards comport with the policies of Title 39 and that the Postal Service has employed sound methodologies to develop them. The Standards will enable the Postal Service to realize cost savings, increase utilization of transportation capacity, improve transportation network efficiency, and result in consistent, reliable service.

Moreover, the Standards are an essential component of the Postal Service's comprehensive 10-year strategic plan, *Delivering for America: Our Vision and Ten-Year Plan to Achieve Financial Sustainability and Service Excellence* (the "Plan"). When considering the intervenors' speculative and hypothetical criticisms, the Commission should also view the Standards in the larger context of the Plan to create a fully sustainable service for the future.

A. The *Status Quo* Is Unsustainable and Reform is Essential

The Postal Service must provide service that is "prompt, reliable, and efficient" with "prompt and economical" transportation, while also "emphasiz[ing] . . . control of costs." 39 U.S.C. § 101. Many parties fixate narrowly on promptness and would

⁶ Had the Postal Service engaged in such undefined "consultations" in advance of filing its Request with the Commission, it may have given rise to questions regarding the Commission's rules prohibiting *ex parte* communications. See 39 C.F.R. §§ 3012.1(a), 3012.3(b), 3012.5(a).

relegate reliability, efficiency, economy, and control of costs to second-tier policy objectives. Yet the statute does not offer a basis for such a ranking. The Postal Service *must* balance achievement of all our policy objectives in a manner that is operationally and financially sustainable. That cannot be done under current service standards.

The Postal Service's *status quo* is financial instability that threatens the continued fulfilment of the Postal Service's public service mission to the American people. See Order No. 4257, Order on the Findings and Determination of the 39 U.S.C. § 3622 Review, PRC Docket No. RM2017-3 (Dec. 1, 2017) at 165-78, 274 ("Postal Service not financially stable in the medium and long-term timeframes"). As the PR acknowledges, "[t]he current situation represents the worst possible outcome for the general public interest" and the Postal Service's "proposed changes are in the interests of the general public . . . and . . . appear to be support[ed] by [the] Postal Service's business case." PR at 25. The Postal Service intends that the Standards will enable improved service capability, increased efficiency of the transportation network, and realization of the Plan. USPS-T-1 at 2-3; Tr. 2/527.

Key stakeholders recognize the need for reform. See GCA at 5 (does not oppose request); MPA at 2 (Postal Service's request represents "an acceptable tradeoff"); Nat'l Newspaper Assoc. ("NNA") at 1 ("the most service-sensitive of the organizations customarily appearing before the commission . . . supports the Postal Service's request in this docket"). Their positions reflect the reality of steadily declining First-Class Mail ("FCM") volume, increased numbers of delivery points, and service

standards that, today, mandate suboptimal transportation capacity utilization.

USPS-T-1 at 19-21. Reform is essential.

1. Meeting Current Service Standards Is Not Feasible

Multiple parties argue that the Postal Service should address the unsustainable *status quo* by continuing it or by taking measures that would exacerbate the Postal Service's financial condition.

The States argue that the Postal Service should only then consider "chang[ing] its service standard to address long-term trends" after it "reliably meet[s] its [current] performance targets[.]" States at 2.⁷ And the States suggest that the Postal Service is intentionally sacrificing market dominant volume to bolster package capabilities. *Id.* at 10-12. Adopting the States' position would straightjacket the Postal Service because meeting current service standards is not feasible. Waiting to achieve the infeasible would prevent the Postal Service from ever implementing reforms.

The Postal Service has not had the operational capacity to meet the current service standards for years. USPS-T-1 at 6-8, 18-19. This has resulted from multiple factors, including not only constrained transit windows, lack of slack time, and carrier capacities, but also the logistical challenges posed by declining mail volume combined with increased package volume and increased delivery points. Tr. 1/312, 1/316. And the Postal Service has, for years, through study, root-cause analysis, and on-the-ground operational changes, attempted to meet current service standards. Tr. 1/307, 1/311. The *status quo* is simply not the result of intentionally sacrificing market dominant

⁷ The States have made no concrete operational suggestions for improving service against current standards.

volume in favor of packages or of failing to take proactive measures to improve service under existing standards.

PostCom posits that the Postal Service should simply use our available cash-on-hand to improve service, PostCom at 16, sidestepping the infeasibility of current service standards. PostCom further ignores that the Postal Service's current liquidity is, in significant part, the result of new borrowing, deferred Social Security payments, and a one-time appropriation as a result of the pandemic—and two of those three sources of liquidity must be repaid. See USPS Quarter II, 2021 Report on Form 10-Q at 8. Without reform, that liquidity is insufficient “to meet all of [the Postal Service's] existing legal obligations when due[.]” *Id.* at 9.

Remarkably, NPPC's recommend solution is to spend more money to *increase* service standards while *reducing* rates. NPPC at 2. NPPC has submitted no evidence, studies, or analyses suggesting that increasing costs while reducing revenue will lead to better financial health, and the Commission should reject this suggestion out of hand.

Finally, parties theorize that current service standards could more regularly be achieved if the Postal Service ignored the cost of doing so. *E.g.*, APWU at 7. APWU, however, misconstrues Witness Cintron's written cross-examination, Tr. 1/318, to state that meeting current service standards *is* feasible, when record evidence shows that they are not achievable in a manner that will allow the Postal Service to remain solvent.⁸

⁸ Carlson suggests that non-transportation root causes of delay make a 95% service performance target impossible. Carlson at 27-29. As Witness Hagenstein testified, however, “one thing this proposal does is give us additional time more or less to make up for some of those handling errors that we see from the origin and destination perspective, in addition to the transit failures.” Tr. 1/247:11-15. And Witness Cintron explained that the Standards are but “one piece of what we're doing in the organization. Certainly, many other things that are happening today . . . would get us to 95, it wouldn't just be one item.” Tr. 1/388:1-5.

While improving capability of meeting any service standard is theoretically possible if costs are not a factor, Tr. 1/318, it is not possible where the Postal Service must pay for transportation in light of the 14-year trend of progressive FCM volume declines. *Id.*; see *also* USPS-T-1 at 20. Declining mail volume has steadily reduced the revenues needed to offset the costs of maintaining a network designed around the current service standards. Tr. 1/285, 1/294. And “[i]f the Postal Service cannot sustain itself financially, then it also cannot continue to provide adequately prompt and reliable universal service to the country.” USPS-T-1 at 34.

2. The Postal Service’s Ability to Provide Essential Government and Election Mail Services Requires a Solvent Operational Plan

The States argue that the Standards will increase the delivery time for some mail from government entities, including election mail, government payments, and applications for government benefits programs. States at 5-8. They recognize that the Postal Service has not met existing service standards “for some time” but argue that, rather than adjust them, the Postal Service should simply begin meeting them. *Id.* at 11-12. Similarly, PostCom argues, even if the Postal Service must incur additional costs to meet service standards, it should simply do so because it “is not a profit-seeking business.” PostCom at 16-17.

While these critics repeatedly argue that the Postal Service has a responsibility under Title 39 to deliver FCM quickly, they ignore the Postal Service’s obligation to be self-sustaining. As the States note in passing, § 101(a) of Title 39 states that the Postal Service will be “supported by the people.” States at 10; see *also* APWU at 22-27. But, beyond operational challenges unrelated to cost, UPSP-T-3 at 5-6, 13-15, they ignore

that, if the Postal Service is unable to recoup the costs of our operations through revenues, we will be unable to sustain the essential services we provide. 39 U.S.C. § 101(d).

The very services that critics of the Standards emphasize are essential are at risk due to the Postal Service's present unsustainable position. It is no solution to this problem to say that the Postal Service should simply deliver mail more reliably within the existing service standards and ignore our dire financial situation, and it is certainly no solution to say that we should go into an even more precarious position to do so.

It is also incorrect to claim that the Postal Service has not considered the potential impact of the Standards on election mail. *But see* APWU at 8; States at 6-8. The Postal Service has used Intelligent Mail barcode tracking specifically to evaluate the amount of ballot volume that would experience a downward change and concluded that it was only 3.84%. USPS at 57. The Postal Service has already held briefings to discuss the changes with election officials to enable them to align their mailings with the Standards and will continue to conduct outreach during and after any implementation. *Id.* Finally, none of the changes proposed in this case is specific to election mail or the kinds of measures the Postal Service has taken during past elections to expedite election mail.

3. Adjusting Service Standards Is Not Degrading the Mail

The Postal Service designed the Standards to achieve Section 3691's objectives (taking into account its factors). USPS at 37-42. PostCom's argument that speed is an overriding factor is unavailing. PostCom appears to treat "service" as a proxy for expected delivery time, arguing that service "will significantly decline" for mail impacted

by the change, even if reliability increases, because expected delivery time will lengthen. PostCom at 2-3; see *also* APWU at 23-27.

The Postal Service's own analysis supports the premise that reliability and consistency are the factors customers care most about, USPS at 38; Tr. 1/64, which PostCom tacitly admits. See PostCom at 8-9. Nor has the Postal Service ignored other factors while attempting to improve reliability and consistency. The Standards are "designed to minimize negative service impacts" retaining the same standard for most FCM at the same time as they enable significant reliability and efficiency improvements. USPS at 38-39; USPS-T-3 at 27.

The Postal Service does not dispute expected delivery time may be the preeminent factor for some mailers. USPS at 39. However, any reduction in volume from this factor will be relatively small, compared to the corresponding improvements in reliability and efficiency. *Id.* at 39-40; USPS-T-2 at 14. PostCom presents no evidence that the diverted mail volume is greater than the Postal Service's analysis shows. Instead, PostCom simply invents hypothetical mailers, who would have to account for the Standards and could instead divert to electronic alternatives. PostCom at 10-12.

PostCom does not attempt to quantify these hypothetical customers, nor does it recognize the advantages that increased reliability would offer them. For mailers who are concerned about timeliness, reliability is likely to also be important. For example, PostCom notes that a mailer creating a nationwide ad campaign would have to stagger mailing to ensure that it is received around the country on the same date. *Id.* at 11. That mailer might prefer staggering those mailings over being unable to target a specific date nationally due to less reliable service.

Likewise, mailers using the Postal Service for time-sensitive medical research will also benefit from enhanced reliability, even if planning needs to be adjusted in some instances. See Univ. of Pittsburgh Sch. of Med. SOP at 1; USPS at 5-6. A majority of volume will retain its current service standard, *id.*; Tr. 1/53, and local mail (which would apply to, for example, most patients of a specific hospital) will still be delivered within 2 days. USPS at 6. Where the service standard has changed, researchers will be able to count on their mail being delivered within that standard 95 percent of the time and plan their mailing accordingly, unlike the current standards, which are less reliable for time-sensitive mailers. USPS at 38; Tr. 1/348.

B. The Postal Service's Proposal Is Consistent with Statutory Requirements

The Postal Service has explained how we have reasonably balanced the various Section 3691 objectives and factors and the statutory policies set forth in Sections 101, 403, 2010, and 3661(a). The Standards would enhance the value of postal services by improving reliability and consistency, while minimizing the tradeoffs in terms of lengthened service standards. This balancing of reliability, speed, and frequency is also consistent with reasonable rates and best business practices, both of which require efficient cost management, and with various other statutes that require a balance between efficiency and service. Congress committed to the Postal Service the discretion to perform this balancing of numerous and sometimes competing priorities. Other parties may favor one factor or another in their own narrower interests, but the Postal Service must, and does, take all the factors into account in weighing initiatives.

The States' and APWU's reliance on federal lawsuits from 2020 is entirely misplaced here. States at 1 n.1; APWU at 21 n.6. First, the substance of the

operational changes in those cases had nothing to do with the proposed shift from air transportation to surface, let alone the proposed (or any other) service standard changes. Instead, those cases concerned alleged operational changes from July 2020, including eliminating late and extra trips and overtime, among other claims, particularly in the unusual context of the pandemic and the 2020 election. The courts did not review the Postal Service’s balancing of the various statutory policies as the Commission must do here. Second, the challenges in those cases arose largely from procedural allegations that the Postal Service had not sought proper regulatory review of the alleged changes prior to implementation. By contrast, this case is itself precisely the *ex ante* regulatory review that litigants in those cases had sought. To the extent those federal lawsuits have any bearing on this case, they merely support the process that the Postal Service has employed here.⁹

The States mischaracterize the Postal Service’s motivation as seeking to favor package performance at the expense of FCM. States at 10-11 n.42.¹⁰ Despite selectively quoting certain portions of the Plan that refer to packages, the States do not quote the Plan when inaccurately claiming “the Strategic Plan makes explicit that the Postal Service intends to ‘give the highest consideration’ to the transportation of

⁹ APWU’s dire warnings of litigation are also misplaced. APWU at 21-22. The Commission should not prejudge hypothetical complaints not currently before it. This proceeding is limited to the Postal Service’s Request, and the Commission’s advisory opinion regarding statutory policies pursuant to § 3661. APWU’s cries of “certain legal exposure” only divert attention from the fact that it offers no constructive alternative solutions to the Postal Service’s needs to improve service and ensure sustainability. Likewise, APWU’s theory that the public finds it “difficult” to understand the Commission’s process is belied by the hundreds of SOPs that the Commission received; moreover, any deviation in scope in those SOPs from the purposes of this proceeding may have something to do with the manner in which APWU itself solicited public comments.

¹⁰ Note that the States (at 2 n.4, 3 n.6, 10) oversimplify the differences between market-dominant and competitive mail. 39 U.S.C. § 3642(b).

packages, rather than ‘important letter mail.’” States at 10 (quoting § 101(e)). That is *not* what the Plan says or implies; to the contrary, the Plan explicitly and repeatedly emphasizes the Postal Service’s intent to improve reliability for both FCM and First-Class Package Service, not favoring the latter at the expense of the former. *E.g.*, Plan at 6, 8, 24, 27, 30, 34, 40.¹¹

The States are also off base in expressing concerns, States at 5-6, about FCM used for their governments’ mailings to their own residents. Neither those factual assertions, nor those of individuals who submitted SOPs, are part of the evidentiary record, see Rule 3020.123(g), meaning that the Postal Service has had no opportunity to test the meaning, scope, accuracy, probity, or credibility of such assertions. To the extent that the Commission nonetheless considers such factual assertions, it is then only reasonable to infer that a substantial proportion of governmental-to-individual mailings is mailed from somewhere in the same general region; indeed, the States (at 5) admit that “much of [such mailings] involves in-state mail.” In other words, the likelihood that the Standards would lengthen the delivery time of these mailings—particularly that any would now be subject to 4- or 5-day service standards—is low.¹² In fact, no FCM would actually shift to 5-day for pairs originating and destinating within the same state, and Alaska is the only state in which some 3-day could shift to 4-day for pairs within the state.

¹¹ At the same time, the States express concerns about the delivery of prescription medications. States at 1. Such packages are not at issue in this proceeding.

¹² See Responses of the United States Postal Service Witness Robert Cintron to Questions Posed During Hearings, Docket No. N2021-1 (June 16, 2021) [hereinafter “Cintron Hearing Responses”], at 2. The States’ claims (at 4) that the Postal Service acknowledged “these changes would drastically alter” in-state mail, and (at 5, 8) that in-state mail in 36 contiguous states would be downgraded, are wrong. See *id.* (only 1-27% of 2-day mail in only 28 contiguous states would move to 3-day, and none would move to 4 or 5 days).

The States attack the proposal as if it were intended only to degrade service standards and nothing more. It is incorrect, however, to suggest that, because the Postal Service has often failed to meet service performance targets in the past, the proposal amounts to nothing more than “simply moving the goalposts.”¹³ States at 12. The record is unquestionably clear that the principal purpose of the Standards is to enable operations to provide more reliability for customers and a more cost-effective network to help sustain the Postal Service’s long-term financial stability by shifting some volume from air to surface transportation. Similarly, for offshore delivery, the changes would enable a shift from air cargo to commercial air. However, from the States’ SOP, one would never know that these are, in fact, the underlying purposes of the Standards; the States’ SOP never once even mentioned “air” or “surface,” let alone tried to address the reasonableness of such underlying operational changes that the Standards would enable. In short, the States have entirely ignored the very premise of the changes at the heart of the Request.

The Commission cannot be so cavalier. It must evaluate the Postal Service’s Request as a whole. In developing this Request, the Postal Service has reasonably balanced the relevant statutory objectives and factors. It would enhance value for customers, providing greater reliability and consistency. Customers would have a better ability to predict when to expect FCM delivery, based on objective criteria.

Notwithstanding the attacks of PostCom, the Postal Service’s proposal would indeed enhance the value of postal services, 39 U.S.C. § 3691(c)(1)-(3), and the Postal

¹³ Mailers Hub (“MH”) argued a similar metaphor (mischaracterizing the Postal Service’s proposal as simply “just lower the bar”). MH at 1-2. MH at least noted once in passing that the key feature of the present proposal is the shift away from air transportation; the States did not.

Service is reasonably balancing all objectives and factors, including reliability, speed, and frequency, consistent with best business practices. *Id.* § 3691(b)(1)(C). PostCom, at 2, contends that “[i]t should be obvious that slowing the transportation and delivery of mail will not enhance its value,” see *also* NPPC at 4-7; APWU at 13, but this “obvious” conclusion is anything but, for three reasons. First, PostCom does not give due weight to the value to customers of reliability, consistency, and predictability. Second, PostCom does not give due consideration to the value to customers of universal service at reasonable rates. Although this case is not a review of rates, it is essential to consider that timeliness of delivery is not to be prioritized at any cost, no matter how exorbitant. If the Postal Service were to incur the costs necessary to guarantee overnight delivery for all FCM, the rates for such mail would have to rise if the corresponding costs were to be covered. But that does not provide “value” to customers; value factors in the need to maintain reasonable rates, and at the same time considers the availability of higher-cost, higher-rate alternative products when expedited speed is of the utmost essence. Third, PostCom unreasonably discounts the value to the public of ensuring the long-term financial sustainability of the Postal Service. There is little value to customers in prioritizing speed at any cost in the short term if that means they will lose their universal postal services in years to come. That tradeoff ultimately deprives them of value.

The Commission’s aim should not be to make these balancing determinations in the first instance, but rather should recognize the broad discretion that the

Postal Service exercises under Section 3691.¹⁴ Here, the Postal Service has reasonably determined that the Standards would improve both delivery reliability and efficiency, while minimizing the extent of impact on delivery speed. But, contrary to the myopic view portrayed by the States, the Postal Service is not merely “moving the goal posts” of the service standards. The Standards are necessary to facilitate much more concrete operational initiatives to improve transportation efficiency.

Several parties fail to recognize the greater significance of the first sentence of § 101(f) to this case than either its second sentence or § 101(e). The States, for example, quote § 101(e) (at 3, 10), but never mention § 101(f). Carlson argues that the Standards are contrary to §§ 101(e) and (f) (“Congress generally considered ‘faster’ delivery to be ‘better’ delivery”), but he fails to reconcile its mandate to balance both “prompt” and “economical” delivery in selecting modes of transportation. Carlson at 23-26. The statute requires both, and the “economical” prong cannot be relegated to some lesser aspirational goal, given the self-sufficiency requirement. The Postal Service cannot simply incur huge costs to ensure a narrower conception of speed.

First, subsection (e) does not say that all letter class mail must be delivered in the fastest manner. It also does not define “important.” The Postal Service is not proposing changing the standard for overnight delivery of FCM. We also have other options for speedier delivery available to customers who want their important letter mail to travel overnight, even for long distances. This interpretation is bolstered by the second sentence of subsection (f), which does not require overnight delivery of all mail,

¹⁴ See, e.g., *Lignite Energy Council v. EPA*, 198 F.3d 930, 933 (D.C. Cir. 1999) (where statute requires balancing multiple factors without specifying weight to assign each factor, agency is afforded broad discretion in balancing the factors).

and instead recognizes that only certain important letter mail may warrant the added cost to the customer for expedited treatment. By contrast, the first sentence of subsection (f) does address “all mail,” and thus is much more relevant to the present proposal, which will affect letters, flats, and periodicals broadly based on distance of transportation. Indeed, the proposal would not change the service standard for any mail that today has an overnight standard, let alone for the narrower subset of “important letter mail.”¹⁵

Second, to the extent there is any tension between § 101(e) and § 101(f), subsection (f) is more significant in the balance as applied to this case. The first sentence of subsection (f) focuses specifically on “modes of transportation”—the underlying issue in this case.¹⁶ Carlson’s overemphasis, then, on subsection (e) is misplaced. Given the specific application to the initiative here, subsection (f) is especially pertinent. Prompt and economical, when considered together, cannot mean speediest in all instances, but necessarily entails reasonably fast speeds to the extent that they can be achieved at reasonable costs. The Postal Service’s current usage of air transportation has proven inadequate to meet that test, and so the Postal Service is taking measured steps to improve the selected modes of transportation. To do so, however, we must also adjust the Standards.

Some parties acknowledge that the first sentence of § 101(f) is directly applicable to the present case, Carlson at 24; NPPC at 4-5; Hutkins at 29; the same cannot be said for APWU. Rather, APWU at 22-23, 25, quotes only from the second sentence of

¹⁵ As previously discussed, the Standards do not preclude “important letter mail” from receiving speedier service, given the continued availability of Priority Mail Express and Priority Mail. USPS at 8.

¹⁶ See *Morton v. Mancari*, 417 U.S. 535, 550 (1974) (more specific statute controls over general).

§ 101(f), as if the first sentence had no relevance. However, the second sentence is more limited and pertains only to “important letter mail,” unlike the first sentence which pertains to “all mail.” Moreover, as noted, the first sentence specifically addresses “selecting modes of transportation” for “all mail,” meaning that it should be accorded much more significance in assessing the current proposal than the second sentence, which pertains only to containerization and overnight transportation which are not at issue here. Simply put, for purposes of the actual Request on review, APWU has ignored the most important part of this statute to spotlight its one-dimensional interpretation.

Finally, the States’ reliance on § 101(b) is unavailing. States at 2, 5, 9. Section 101(b) requires the Postal Service 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.” First, the Standards would affect urban and rural mailers similarly. Tr. 1/158; USPS-T-3 at 25. Second, the Standards are measured only after acceptance at a postal facility, and the proposal would not alter that *status quo*. Accordingly, whether post offices are present in a community, and § 101(b), are irrelevant to this case.

In sum, the Standards are consistent with applicable statutory requirements.

C. The Service Standard Changes Do Not Discriminate Against Customers

For the Postal Service to violate § 403(c), three conditions must be met: (1) one or more mailers must be offered less favorable rates or terms and conditions than those offered to other mailers; (2) the two sets of mailers must be similarly situated; and (3) there must be no rational or legitimate basis for differing treatment. Order No. 718,

Order on Complaint of GameFly, Inc., PRC Docket No. C2009-1 (Apr. 20, 2011) at 28. Several parties assert that the Standards implicate these conditions. As explained below, they do not. USPS at 45–53.

It is suggested that §§ 101(a) and 404(c) constrain the interpretation of the phrase “undue or unreasonable discrimination,” such that any geographical disparities in service standards would, by definition, trigger a § 403(c) violation. Hutkins, for instance, cites a statement made by Representative Morris Udall in reference to former § 3623(d) (arguing that no territory should be made to pay more for the delivery of its mail simply because of its remoteness to the continental United States); infers that the “principal purpose” of § 404(d) “is to prevent the kinds of discrimination prohibited by § 403(c)”; then asserts—via a speculative leap nowhere grounded in the law—that the scope of “discrimination” under § 403(c) should likewise bar geographically-based differentials in service standards. Hutkins at 28. Section 404(c), however, speaks to rates, not to service standards.

Carlson purports to read, in § 101(a)’s stated goal of “bind[ing] the Nation together,” an obligation to impose uniform service standards across the United States. Carlson at 15. The argument has no logical end: one could just as easily argue against the current distinctions between 2- and 3-day service standards. Moreover, Carlson acknowledges, but does not contest, that geographical disparities currently exist. *Id.* Since § 403(c) does not preclude longer service standards for distant locations, then mere geographical disparity is not “undue” discrimination: it is “obvious that the Postal Service may provide different levels of delivery service to different groups of mail users

so long as the distinctions are reasonable.” *Egger v. USPS*, 436 F. Supp. 138, 142 (W.D. Va. 1977).

APWU contends that the Standards will result in discrimination as against certain demographic groups. APWU at 15-16; Hutkins at 7. APWU acknowledges that “the characteristics of the impacted areas vary widely among the affected states,” yet claims to have identified, among the most affected ZIP Codes, disproportionately large clusters of elderly individuals and of individuals belonging to minority populations. *Id.* This claim suffers from several deficiencies. First, the list of most affected ZIP Codes, provided by Witness Morrison, is by its very nature selective and incomplete, and as such provides a drastically truncated picture of the Standards’ broader impact. Secondly, percentage deviations from the national average can—and in this list, frequently do—cut both ways, with some demographic categories falling below the national average. Such is the case for minority populations, of which 22 out of 28 ZIP Codes contain less than the listed national average of 27.5%. *Id.* at 16. Finally, comparisons to national averages do not on their own suffice to demonstrate disparate impact; for that, comparison among ZIP Codes (including less affected ZIP Codes) would be required.

Similarly, the States express concern over the proposed changes’ impact on rural, low income, elderly and disabled customers. States at 5-8. Yet they do not assert that the proposed changes will fall unequally on such customers; in other words, they neither claim nor purport to demonstrate that these changes would target a disproportionately large percentage of mailings conveyed by vulnerable populations. Furthermore, assuming *arguendo* that rural, low-income, disabled, and minority customers may be disproportionately reliant on FCM, they likewise prove, as the

disruptions of the past year attest, particularly vulnerable to the unreliable air network and to the resulting delays, both of which the Standards aim to relieve.

Others mount a more ambitious argument, suggesting that any geographical disparities resulting from the Standards will suffice to satisfy the first two § 403(c) criteria. As Hutkins puts it: “Imposing greater costs on some people just because of where they live is a perfect example of unfair discrimination” (where the alleged “greater costs” presumably arise from more frequent recourse to Priority Mail Express and Priority Mail). Hutkins at 6; *see also* APWU at 9–15; PostCom at 6. This takes for granted that, by virtue of sending and receiving the “same kind of mail,” customers in different geographical locations are “similarly situated.” Hutkins at 10. The argument is confused on several counts. The relevant question is not where customers live, but how far their mailings travel. We do not propose to “degrade” service standards in selected states, but rather to lengthen the delivery standards for mailings that traverse longer distances; it is therefore more proper to say that customers are “similarly situated” who convey FCM between comparable ZIP Code pairs. Furthermore, as we explain in our initial brief, the uniform FCM rate masks a disparity that advantages long-distance mailings, which travel faster and more cost-intensively than other mailings, yet bear the same price tag—an advantage that, while somewhat reduced, will continue to inure to longer-distance mailers after the changes go into effect. USPS at 47–51.

Ultimately, the “geographical discrimination” argument repurposes a truism born of the laws of physics. If customers at the end of an HCR rural route must wait longer to receive their mail than do customers at the beginning, this reflects not “discrimination,” but rather the length of the route and the time required to reach it.

As for the third strand in the § 403(c) analysis, courts have granted the Postal Service broad latitude in distinguishing between different mailers, given the Postal Service's statutory responsibility to provide universal service in an economical and efficient manner. Order No. 5491, Order Granting the Postal Service's Motion to Dismiss Complaint with Prejudice, PRC Docket No. C2020-2 (Apr. 28, 2020) at 634; *Egger* at 142. In the Commission's words, "the Postal Service may differentiate among customers where the differences have a rational basis." Order No. 4294, Order Granting the Postal Service's Motion to Dismiss, PRC Docket No C2019-1 (Dec. 12, 2018) at 10. Indeed, Hutkins' extended treatment of 403(c) grants that our proposed changes will allow us to shift mail volumes from air to surface transportation, cut costs, raise net income, and improve customer satisfaction. Hutkins at 21. The PR finds that the untenable *status quo* precludes reliability and deems our business case "compelling." PR at 19-20. As NNA recounted: "If the standard were diminished but actual service improved to a 5-day performance, publishers would be delighted." NNA at 1; see *also* MPA at 2. The same holds true for any customer who wishes to know when a mailing will reach its destination.

Finally, both Hutkins and Carlson assert that the Commission's public report in Docket No. C2001-3 should guide its analysis of the present case. Hutkins at 24; Carlson at 20-21. Carlson, who filed the complaint that prompted that report, declares: "My assertions in this proceeding are the same as my assertions in Docket No. C2001-3." *Id.* Carlson's assertions may indeed be the same as before; however, the facts and context this time are markedly different. See USPS at 51-53. Furthermore, the service standard changes discussed in Docket No. C2001-3 depended on local

management decisions about facility arrangements, which in turn gave rise to service disparities. *Id.* at 52. If anything, then, the objective, nationally uniform service-standard framework we now propose should be seen not as replicating the faults at issue in Docket No. C2001-3, but as remedying them.

D. The Postal Service’s Market Research Supports the Standards

Parties criticize the Postal Service’s market research on the impact of the Standards on customers, calling it backward-looking and lamenting that the Postal Service did not conduct a customer survey specifically for this case. PR at 22; Hutkins at 16; GCA at 6; PostCom at 8; Carlson at 3. However, neither Title 39 nor the Commission’s rules require the Postal Service to submit customer surveys (or any other particular kind of evidence). In fact, the PRC exhorted the Postal Service in its Advisory Opinion on Mail Processing Network Rationalization Service Changes, PRC Docket No. N2012-1 (Sep. 28, 2012) at 70-71, to present evidence of both “stated preference models (surveys) and revealed preference models (econometric modeling)” in the next proceeding. The Postal Service has done exactly that here—providing the Brand Health Tracker (“BHT”) surveys in combination with Witness Thress’s econometric analysis. USPS-T-4 at 11-17, 18-20.

Moreover, the BHT is reliable evidence of customer satisfaction. Documents prepared in the ordinary course of business, like the BHT, are inherently reliable because businesses conduct them regularly and use them to make decisions. See *US v. Blackburn*, 992 F.2d 666, 670 (7th Cir. 1993); McCormick on Evid. § 286 (8th ed.). Here, the Postal Service conducts the BHT every quarter and uses the results to assess the Postal Service’s performance on customer satisfaction and other metrics. Tr. 1/92-94.

1. The Postal Service's Customer Satisfaction Research Findings Withstand Scrutiny

The record evidence amply supports witness Monteith's finding that reliability is consistently more predictive of customer satisfaction than "fast delivery." Tr. 1/63-68; PR at 19 (market research supports analysis that mailers prioritize reliability over speed). Intervenors claim that the record does not support this finding but offer no probative evidence to rebut it. PostCom at 2. Rather, they offer unsupported contentions as grounds for the Commission to reject reliable evidence of customer satisfaction.

The States, NPPC, and PostCom claim without support that mailers have a strong interest in both reliability and fast delivery. States at 5; NPPC at 2; PostCom at 8. The Postal Service has never contended that "fast delivery" was unimportant to customers. Tr. 1/63-67. "Fast delivery" has been in the top five drivers of customer satisfaction. *Id.* While "fast delivery" is an important driver of customer satisfaction, reliability has consistently been *the most* predictive driver of customer satisfaction. *Id.* at 1/64-65. This finding supports the conclusion that a proposal tailored to improve the reliability of mail will enhance customer satisfaction.

Intervenors also find fault with BHT's survey methodology. Postcom at 8; Hutkins at 20. They theorize as to whether the survey appropriately framed the different satisfaction drivers as requiring a tradeoff and indirectly imply that is the only appropriate way to assess drivers of customer satisfaction. *Id.* Some also speculate that the survey lacks value because it does not define the key drivers. Hutkins at 16-18; Carlson at 5. Other than speculation and innuendos, these parties offer nothing probative demonstrating that BHT's survey methodology was inadequate.

None of these arguments provides grounds for the Commission to reject the results of a statistically sound and reliable survey. These parties provide no basis to suggest that BHT survey's findings are unreliable or its survey methodology improper. Nor do they provide the Commission with an alternative for assessing customer satisfaction. Surveys conducted in the regular course, such as BHT, are inherently reliable. Its findings align with the SOPs submitted in this docket voicing anecdotal frustration with the Postal Service's service performance. USPS at 55. A closer examination of those statements revealed that their frustrations arose from the current transportation network's lack of reliability, which supports the finding that reliability is more predictive of customer satisfaction. *Id.*

2. The Econometric Analysis Underlying the Contribution Impact Estimate Is Both Relevant and Reliable

Witness Thress's econometric analysis, in combination with the BHT, provides the Commission with the appropriate basis to assess the Postal Service's contribution impact estimate. The Commission recommended that the Postal Service use a revealed preference model, which is a method of inferring individuals' preferences given their historical purchasing behavior. The analysis employed by witness Thress provides the Commission with this insight by analyzing historical data to identify the effect of delivery performance on mail volume. USPS-T-5 at 3. Moreover, Thress's analysis builds upon demand equations that are updated quarterly and have been filed with the Commission every year since 2009. USPS-T-5 at 4.

Several question whether witness Thress's contribution loss estimates are reliable. The Public Representative and Hutkins criticize the econometric analysis for failing to provide assurances that past performance is predictive of future behaviors.

PR at 22-23; Hutkins at 13. The Public Representative speculates that these changes could lead to the tipping point in mailers' behavior and recommends that the Postal Service combat those speculations by providing studies of how the changes would impact mailers' costs. PR at 22-23. It is unclear how assessing the proposal's impact on mailers' costs will provide insight into whether this proposal constitutes a tipping point in mailers' behavior and whether such a study would even be feasible given it requires an assessment of mailers' commercially sensitive information.

Hutkins similarly argues that past performance provides an inadequate basis for estimating contribution loss. Hutkins at 13. His arguments rest entirely upon on his personal opinions, which have no probative value and should be disregarded.

PostCom and NPPC argue that the regression analysis's variables may not appropriately isolate the impact of delivery performance on mail volume but provide no evidence that the variables do undermine the contribution impact estimate.

PostCom at 13; NPPC at 8-9; see *also* Carlson at 31. Nor do they provide any evidence demonstrating that witness Thress's findings are not aligned with trends observed in the postal market or do not rely on sound methodology. Their criticisms lack probative value. PostCom indicates the delivery performance data may not correlate to actual changes in delivery times, but offers no evidence rebutting the estimate's reliability. Postcom at 13. The average days to delivery data set is the best, and only, data set available to the Postal Service to perform this analysis. NPPC theorizes that the electronic diversion variable may capture volume lost due to delivery performance. NPPC at 8-9. But, NPPC offers no alternative analysis demonstrating

that delivery performance had a greater impact on volume than what witness Thress estimated.

PostCom's argument that witness Thress should have modeled impacted volume only falls flat. PostCom at 7, 13-14. PostCom makes no attempt to explain why modeling impacted volume only would be appropriate given postal market dynamics. It cannot. Modeling the financial impacts of all FCM volume is appropriate given that customers make mailing decisions based on how their aggregate mail volume is impacted. Tr. 1/47-48. Any attempt to model narrower slices of volume would lead to less accurate contribution impact estimates. *Id.*

PostCom and other intervenors fault the Postal Service for not modeling the impact of the Standards in combination with rate increases. Issues related to the Postal Service's rate authority are outside the scope of this proceeding and should not factor into the Commission's advisory opinion.

None of the intervenors' criticisms provide any substantive grounds for the Commission to reject witness Thress's analysis. Nor can they. Witness Thress provided the Commission with statistically significant, econometric analysis that is aligned with established market trends. See, e.g., USPS-T-5 at 11; USPS-T-4 at 13-14, 17.

E. The Postal Service Properly Considered Customer Needs When Deciding Upon this Proposal

The Postal Service considered customers' needs when deciding upon this proposal.¹⁷ Consumers' needs are identified through market research the Postal

¹⁷ *But see* GCA at 7.

Service regularly conducts such as BHT, Mail Moments, and Household Diary Study. The Postal Service identifies small and larger businesses' needs through the Postal Customer Councils, Mailers' Technical Advisory Committee, industry associations, and other avenues. A review of customers' needs leads to the conclusion that our customers are best served by providing reliable delivery of mail, six days a week. This proposal helps achieve that goal.

1. PostCom's and NPPC's Arguments Regarding Customer Costs and Needs Are Unsupported by Record Evidence

PostCom criticizes the Postal Service's conclusion that reliability will enhance the value of postal services, PostCom at 8, taking issue with the Postal Service's reliance on survey results and arguing that it should have instead consulted directly with "the mailing industry." *Id.* PostCom, however, fails to acknowledge the challenges in obtaining confidential business information and personal financial records.¹⁸ Nor does PostCom offer anything beyond baseless speculation to suggest that a direct outreach would have revealed different results.

PostCom and NPPC take issue with the perceived failure to weigh consequential costs to mailers of the Standards. PostCom at 9-12; NPPC at 10. This argument also fails to acknowledge the challenges in obtaining commercially sensitive and personal financial information. Neither PostCom nor NPPC offers anything beyond mere speculation to hint at consequential costs, much less whether such costs outweigh the benefits gained from greater reliability. PostCom at 10-11; NPPC at 10; *see also* MH

¹⁸ In discussing consumer surveys conducted in another proceeding, the Commission noted that respondents may overstate or understate their volume reduction in response to a survey and noted "the uncertainty of predicting future mailer behavior . . ." Advisory Opinion on Elimination of Saturday Delivery, PRC Docket No. N2010-1 (2011) at 109, 111.

at 1. These parties also ignore the broad discretion that the Commission has granted the Postal Service in determining whether certain research achieves the appropriate cost/benefit balance. See Advisory Opinion on Mail Processing Network Rationalization Service Changes, N2012-1 at 71 (“The decision of whether to conduct this type of research should balance the cost and reliability against the value of the information.”).

2. Carlson’s “Customer Needs” Argument Is No More Than Unsupported Personal Opinion

Throughout Section III of his Brief, Carlson asserts that the Standards will not meet customers’ needs. See Carlson at 5-8, 11-12. Those arguments, however, rest entirely on Carlson’s own testimony as to his personal impression of what the public thinks of mail delivery and how customers would feel about the proposed change. See *id.* at 5-8; see also DFC-RT-1 at 6-11. Such unsupported speculation has no material probative value and the Commission should disregard the arguments dependent on it.

To the extent that Carlson’s arguments relate his own personal experience about the postal needs of the University of California, see Carlson at 12; DFC-RT-1 at 2-6, the Commission should likewise disregard such testimony since he lacks any authority to speak for the University. See DFC-RT-1 at i, 3.

3. Effects on Individual Remittance Mailers Will Be Minimal and Well Communicated to Customers

NPPC and others contend that the Postal Service did not take account of remittance mailers’ needs when assessing the Standards. See, e.g., NPPC at 11; PostCom at 4-5. NPPC further argues that even though it presented no evidence on the impacts of the Standards on remittance mailers, the record somehow clearly shows

that the Standards will impose substantial harm on them. In fact, the opposite is true. The record clearly demonstrates that the effects on remittance mailers will be minimal. Specifically, the record shows that 75% of remittance mail will remain subject to a service standard of up to 3 days.

The Postal Service recognizes the need of individual remittance mailers to ensure their payments arrive on time. To that end, the Postal Service had been and will continue to actively publicize the Standards through its *Federal Register* notices, press releases, and through its website. USPS at 36; USPS-T-4 at 24-25. This process is ongoing and will continue past any implementation. USPS at 36.

F. Other Parties Have Failed to Present a Credible Challenge to the Postal Service's Projected Cost Savings and Transportation Modeling

The Postal Service's projected cost savings and transportation model include reasonable and appropriate inputs and factors. Perhaps the strongest indication of the reasonableness of the Postal Service's position is the absence of any alternative offered by other parties to this proceeding notwithstanding the opportunity to do so. The Commission should, accordingly, confirm that the projected cost savings and transportation model are reasonable and support approval of the Standards.

1. The Postal Service Will Realize Projected Cost Savings

NPPC attempts to cast doubt about the ability of the Postal Service to realize the projected cost savings. NPPC at 12-14. The record shows, however, that the cost savings are based on shifting mail from air to surface transportation, and the savings will result from using different suppliers. Because suppliers are external providers, it is a straight-forward exercise to calculate, assess, and change

supplier costs by using alternative modes. Thus, there is no reason to believe that the cost savings here will not be captured, as NPPC suggests.

2. The Postal Service's Modeling Is Accurate and Reasonably Informs Operational Changes

The Postal Service has presented clear and logical transportation modeling to support the Standards. USPS at 17-20. The model uses proven and accepted computer software and appropriate inputs to simulate how a more reliable, efficient, and better-utilized transportation network would operate to meet the Standards for FCM and Periodicals. Indeed, the PR concludes that the model is reasonable, PR at 21-22, finding that various aspects of the model are “not unreasonable” and that there is no expectation that the Postal Service must provide a “perfect model.” *Id.*

In contrast, the other parties raise only speculative concerns about this model and offer no effective argument as to why the model is unreasonable, or what an acceptable alternative would be. Nor has any other party expended the time and effort to develop an alternative transportation model in opposition to the Standards.

a. APWU “Challenges” the Model But Offers No Effective Alternative

Other parties to this proceeding have largely not addressed the Postal Service's transportation model. Having no legitimate basis to criticize the modeling, they instead take issue with the model's results and the fact that those results support the reasonableness of implementing the Standards.

In that regard, APWU asserts that any modeling effort is facially unreasonable, claiming that the Postal Service has no basis for implementing the Standards “because they are based on unimplemented models and theories.” APWU at 6. That argument, however, is a *non sequitur*: by definition, a “model” constitutes an artificial exercise; if a

model were actually implemented (APWU's apparent preference) it would cease to be a model.

As an alternative to modelling, the APWU suggests that the Postal Service should simply “maintain its current service standards while it tests changes to its transportation model to meet those standards.” *Id.* at 2-3. In effect, APWU argues that the Postal Service should “test” additional surface transportation—which the Postal Service has already indicated (in this proceeding and elsewhere) cannot meet current service standards. Put another way, using the network’s current mix of surface and air transportation resources, the Postal Service has long failed to meet its service standards. USPS at 10-12. APWU’s “solution” would be to utilize more surface transportation and less air transportation to see if the Postal Service can meet these same standards. This is nonsensical: if the Postal Service’s present-day mix of surface and air transportation cannot meet current service standards, using more surface transportation will surely fail to meet those same standards.

G. Other Criticisms Are Unpersuasive and Lack Evidentiary Support

1. The Commission Should Reject APWU’s Public Comments Argument

APWU contends that the public broadly opposes the proposed service standard change. APWU at 16-21. In support, APWU relies on a public outreach program it developed and shared with “some organizations” to educate and inform the public about the Standards, the result of which was some 77,000 comments that “were nearly unanimous in opposing the planned service standard changes.” *Id.* at 17-18. APWU’s contention and statements of underlying support, however, do not survive closer scrutiny. Additionally, these comments will be addressed by the Standards.

To begin, APWU is deliberately vague as to the nature and scope of its outreach and the number of organizations with which it partnered. In truth, APWU partnered with 25 other organizations, Tr. 2/499-500, and its education efforts provided only partial information about the Standards—e.g., highlighting the change to “as long as five-days” without explaining how much or little volume is expected to be downgraded and without acknowledging the cost benefits and other efficiencies that will be gained from the proposed change, *compare id.*, Exhs. A, B with USPS-T-3 at 21-29—and encouraged negative comments that opposed the proposed service standard change. Tr. 2/497, Exhs. A, B. Moreover, APWU’s assertion of “near-unanimous objection” fails to mention that APWU offered scripted language for comments to reflect the negative result it and its partners were seeking. See Tr. 2/496-7 (“I am opposed to the proposed service standard changes . . .”).

Given that the commenters were encouraged to follow a boilerplate template, APWU’s assertion of near unanimity is hardly a revelation. Yet the assertion is over-reaching and the comments do not constitute a representative sample of public opinion given how they were solicited. Because APWU’s “public response” arguments do not survive scrutiny, the Commission should reject them when considering its advisory opinion.¹⁹

Nonetheless, the comments addressed by APWU’s assertion are summarized as expressing “personal hardship because of existing delays in mail service.” APWU Rebuttal at 6. These frustrations with mail service relate to the Postal Service’s

¹⁹ The APWU’s “public response” arguments depend entirely on the APWU Rebuttal Testimony of Stephen DeMatteo (APWU-RT-2) for evidentiary support. Carlson relies on that same testimony to make the same arguments (Carlson at 9-10). Carlson’s arguments fail for the same reasons as the APWU’s arguments.

reliability. When mail delivery is delayed by an unpredictable amount, it makes it difficult to ensure that time sensitive mailings will be delivered on time. The Standards will reduce the frequency of these delays and increase the predictability of the mail to 95%.

2. The Proposed Service Standards Do Not Undermine the Value of FCM to Incarcerated Persons

The Prison Policy Initiative (“PPI”) claims that the proposed changes “vitate the value and utility of FCM to incarcerated customers,” a subset of customers who “depend on FCM perhaps more extensively than any other constituency in today’s world.” PPI at 1-3. We acknowledge the unique challenges faced by incarcerated mailers. To be sure, to the extent that incarcerated customers generally lack access to electronic means of communication, they may be more reliant on FCM for sending and receiving tax documents, court filings, and other correspondence. PPI at 1-2. But it does not follow that the Standards would necessarily impair those activities.

First, as noted most Single-Piece FCM would retain its current service standard, and the operational changes enabled by the Standards would, if anything, improve the probability that that mail would be delivered on time. USPS at 5-6.

Second, no intrastate correspondence will be subject to a 5-day standard, and only Alaska will have a 4-day standard for some such intrastate Single-Piece FCM; with that sole exception, all intrastate Single-Piece FCM will continue to have a service standard of 1, 2, or 3 days. *Compare* PPI at 5 *with* Cintron Hearing Responses at 2.

Finally, PPI’s argument that the Postal Service’s customer satisfaction surveys do not include incarcerated people among potential participants is speculative. PPI at 4. Evidence to bear out or refute this hypothesis cannot be advanced at this late

procedural stage, and so the argument should be accorded little weight. And PPI itself appears to agree that reliability is of paramount importance to incarcerated persons, given its fear that “the proposed 1–5 day delivery range leaves incarcerated mailers utterly unable to reliably estimate the time in which it will take for FCM to be delivered.” *Id.* at 9. It is puzzling, then, that PPI should oppose changes that will improve incarcerated mailers’ ability to rely on standard delivery times.²⁰

III. STATEMENT OF PROPOSED FINDINGS AND CONCLUSIONS

Based on the record, in addition to the proposed findings in the Initial Brief (see USPS at 60-64), the Commission should find the following:

1. The intervenors failed to submit market research regarding customer preferences, either to support their contentions or refute the Postal Service’s findings.
2. The intervenors failed to submit probative, material evidence regarding likely customer effects of the Standards, either to support their contentions or refute the Postal Service’s findings.
3. The intervenors contradicting the Postal Service’s research rely primarily on anecdotal statements and conjecture, unsupported by reliable predictive modeling.
4. The Postal Service was the only party to submit reliable, probative, and material evidence regarding customer preferences.

²⁰ It also bears noting that PPI here appears to misstate the nature of the Standards. A given FCM item sent to or from an incarcerated person (or anyone else) would not be subject to a “1–5 delivery day range” in the sense that it could be delivered, regardless of distance, at any time within 5 days. Rather, a mailing would have a single service standard, depending on the distance that it travels.

5. The Postal Service was the only party to submit probative and material data based on reliable predictive modeling regarding the effects of the Standards.

In sum, the intervenors are quick to criticize the Postal Service's research and modeling but fail to offer any legitimate alternatives. The Postal Service does not have unlimited resources to address the real problems it faces regarding financial and operational viability. In addition, the nature of the Commission's Advisory Opinion accelerated process further validates the Postal Service's proffered market research and modeling as reasonable and appropriate. Notwithstanding these facts, the intervenors criticize the Postal Service's efforts: "There must be more" the Postal Service could do, they seem to say. The reality is that they are more displeased with the results of the Postal Service's leg work supporting its proposed changes, not the reasonableness or sufficiency of this supporting material.

On the basis of these findings as supported by the record and the authorities discussed, the Commission should reach the conclusions of law in the Initial Brief. USPS at 65-67.

IV. CONCLUSION

For the foregoing reasons and those in the Initial Brief, the Postal Service respectfully requests that the Commission issue a favorable advisory opinion endorsing the Standards and finding that they comply with the policies of Title 39.

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Respectfully submitted,

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