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POSTAL REGULATORY COMMISSION
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COMPLAINT OF STATES OF NEW YORK, PENNSYLVANIA, CALIFORNIA, CONNECTICUT, DELAWARE, DISTRICT OF COLUMBIA, ILLINOIS, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, NEVADA, NEW JERSEY, NEW MEXICO, NORTH CAROLINA, OREGON, VIRGINIA, RHODE ISLAND, AND WASHINGTON	DOCKET NO. C2021-_____

COMPLAINT REGARDING UNITED STATES POSTAL SERVICE VIOLATION OF 39 U.S.C. § 3661(b)

JOSH SHAPIRO
Attorney General
Commonwealth of Pennsylvania
MICHAEL J. FISCHER
Chief Counsel & Executive Deputy Attorney General
AIMEE D. THOMSON
JACOB B. BOYER
RYAN B. SMITH
Deputy Attorneys General
Pennsylvania Office of Attorney General
1600 Arch Street, Suite 300
Philadelphia, PA 19103
(267) 374-2787
athomson@attorneygeneral.gov
mfischer@attorneygeneral.gov

LETITIA JAMES
Attorney General
State of New York
MICHAEL J. MYERS
Senior Counsel
RACHEL HANNAFORD
LINDSAY MCKENZIE
Assistant Attorneys General
Office of the New York State Attorney General
28 Liberty Street
New York, New York 10005
(212) 416-8250
rachel.hannaford@ag.ny.gov
lindsay.mckenzie@ag.ny.gov

Counsel for Complainants
(additional counsel listed on last page)

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I. Introduction

1. The States and Commonwealths of New York, Pennsylvania, California, Connecticut, Delaware, District of Columbia, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, North Carolina, Oregon, Rhode Island, Virginia and Washington (the "States") bring this complaint against the United States Postal Service for adopting significant and nationwide changes in the nature of postal services without first requesting an advisory opinion from the Postal Regulatory Commission (the "Commission").

2. The Postal Reorganization Act ("PRA"), as modified by the Postal Accountability and Enhancement Act of 2006, provides that:

> When the Postal Service determines that there should be a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis, it shall submit a proposal, within a reasonable time prior to the effective date of such proposal, to the Postal Regulatory Commission requesting an advisory opinion on the change.

39 U.S.C. § 3661(b). The PRA further requires the Commission to conduct a hearing on the record and allow for public participation prior to issuing a written advisory opinion. 39 U.S.C. § 3661(c).

3. The Commission has explained that section 3661 has two principal functions: "(1) to provide an independent, expert critique of Postal Service programs before they are put into practice, and (2) to allow the public to contribute views, objections, and insights to the planning and execution of service changes."[1] As a result, section 3661 proceedings "can be

[1] Postal Rate Comm'n, *Advisory Opinion Concerning a Proposed Change in the Nature of Postal Services*, at 65-66 (Apr. 22, 1976) (N1975-1), https://www.prc.gov/prcarchive/viewpdf.aspx?docid=508276839 ["1975 Advisory Opinion"].

expected to produce both criticisms and suggestions as to the suitability of the methods proposed for carrying out the change, and conclusions as to the consistency of the program's objectives with the policies of the Act."[2]

4. The Commission has recognized that section 3661 best functions as pre-implementation review. The role of the Commission is not just "merely to approve or disapprove the stated goals" of the proposed change, but also to "attempt to predict how efficiently [the Postal Service] will achieve those goals and offer such suggested improvements as are supported by the record."[3]

5. As the Commission has stated, section 3661 contemplates that proposed changes should be presented for review "at an early stage,"[4] and indeed, "as early as possible."[5] This is the case even where "it is not possible to specify *all* the changes [an initiative] may ultimately produce,"[6] because the scope of the Commission's jurisdiction extends to "the overall structure" of a large-scale initiative which affects service on a substantially nationwide basis.[7]

6. Since the Commission's beginnings, its advisory opinions and orders have also reaffirmed the principle that its jurisdiction under section 3661(b) encompasses *all* elements of, and information regarding, a major Postal Service initiative that constitutes a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis. These opinions and orders all underscore the Commission's aim to "[e]nsure

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[2] *Id.* at 66.

[3] *Id.* at 68.

[4] *Id.* at 22 n.2.

[5] *Id.* 9.

[6] *Id.* at 22.

[7] *Id.* at 2 n.1.

transparency and accountability of the United States Postal Service,"[8] a mission inconsistent with the notion that the Postal Service may cherry-pick which aspects of its wide-ranging initiatives are subject to oversight.

7. The Commission has encouraged the Postal Service to err on the side of submitting a proposal for review when the change even arguably falls within the scope of section 3661.[9] And, where the Postal Service seeks to preserve the argument that the change is beyond the law's purview, the Commission has endorsed the Postal Service's practice of disclaiming Commission jurisdiction in its request for an advisory opinion.[10]

8. In March 2021, the Postal Service released a ten-year strategic plan, *Delivering for America: Our Vision and Ten-Year Plan to Achieve Financial Sustainability and Service Excellence* (the "Plan").[11] The stated goal of the Plan is to "quickly achieve financial sustainability and service excellence,"[12] which can only be achieved by "successfully implement[ing] the full breadth and totality of the plan elements."[13]

9. The Plan will transform virtually every aspect of the Postal Service, and concomitantly, transform the nature of postal services with nationwide effect. The Plan will create a new operating model; rework how the Postal Service transports mail and other products;

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[8] Postal Regulatory Commission, *FY 2020 Annual Report to the President and Congress*, at 5 (Jan. 26, 2021), https://www.prc.gov/docs/115/115910/FY2020_AnnualReport.pdf.

[9] 1975 Advisory Opinion, *supra* note 1, at 72 (stating that the Postal Service should request an advisory opinion when "a jurisdictional issue could be raised which is so difficult, doubtful, serious, or substantial as to make it a fair ground for litigation").

[10] *Id.* at 71-72.

[11] USPS, *Delivering for America: Our Vision and Ten-Year Plan to Achieve Financial Sustainability and Service Excellence* (Mar. 23, 2021), https://about.usps.com/what/strategic-plans/delivering-for-america/assets/USPS_Delivering-For-America.pdf ["Plan"] (Ex. 1).

[12] *Id.* at 3.

[13] *Id.* at 40.

overhaul its processing and logistics network; enact slower service standards for First-Class Mail and Periodicals and First-Class Package Services; reconfigure the location of places where customers can obtain postal products and services; and adjust rates, among other changes. Some of the changes detailed in the Plan are already underway.

10. In contrast to the sweeping breadth of these changes, the Postal Service has taken an exceedingly narrow view of the scope of the Commission's jurisdiction under 39 U.S.C. § 3661(b). To date, the Postal Service has submitted to the Commission only two requests for an advisory opinion on important but narrow changes that represent only a small portion of the Plan's scope.

11. As the Commission has already recognized, the Plan is "significantly broader" than the requests submitted, and the combined effect of the Plan's full breadth of changes "may . . . have a much different impact on postal services than what [has been] presented and evaluated"[14] in those cases. The Postal Service likewise acknowledges that the Plan is replete with "interdependencies."[15]

12. Because the Plan is a comprehensive and holistic effort to transform the Postal Service, how the Plan will affect postal services—and whether the Plan will accomplish the Postal Service's goals—can only be evaluated by viewing the Plan as a whole. But the Postal

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[14] Postal Regulatory Comm'n, *Advisory Opinion on Service Changes Associated with First-Class Mail And Periodicals*, at 6 n.3 (July 20, 2021) (N2021-1), https://www.prc.gov/docs/119/119311/Docket%20No.%20N2021-1_Advisory%20Opinion.pdf ["Advisory Opinion First-Class Mail"] (Ex. 2); Postal Regulatory Comm'n, *Advisory Opinion on Service Changes Associated with First-Class Package Service*, at 7 n.8 (Sept. 29, 2021) (N2021-2), https://www.prc.gov/docs/119/119881/N2021-2_Advisory%20Opinion.pdf ["Advisory Opinion First-Class Package Services"] (Ex. 3).

[15] Plan, *supra* note 11, at 40.

Service has not requested an advisory opinion for the Plan as a whole, violating its statutory obligations.

13. The Plan reflects multiple unprecedented changes in the Postal Service's operations and service, at a time when reliance on the mail remains at historic levels, and states across the country grapple with a resurgence of COVID-19 cases caused by the Delta variant. Implementing the full breadth of these changes without adhering to the process set forth in section 3661(b) deprives users of the mail of their statutory rights, and undermines public accountability. In addition, failing to seek the Commission's expert review on such a transformational change upsets the statutory balance established by the PRA, deprives the Postal Service of the Commission's expert recommendations, risks significant errors in the Postal Service's decision-making, and ultimately harms all who rely on the Postal Service for timely and efficient mail.

14. The Commission has authority to order the Postal Service to take appropriate action to achieve compliance with the applicable statutory requirements. 39 U.S.C. § 3662(c). The States respectfully request that the Commission order the Postal Service to present the full Plan to the Commission for a hearing on the record and an advisory opinion.

II. Parties and Jurisdiction

15. The State of New York is a sovereign state of the United States of America. The State of New York is represented by and through its Attorney General Letitia James, chief law enforcement officer of the state.

16. The Commonwealth of Pennsylvania is a sovereign state of the United States of America. This action is brought on behalf of the Commonwealth by Attorney General Josh Shapiro, the "chief law officer of the Commonwealth." Pa. Const. art. IV, § 4.1.

17. The State of California is a sovereign state of the United States of America. This action is brought on behalf of the State of California by Attorney General Rob Bonta, the "chief law officer of the State." Cal. Const. art. V, § 13.

18. The State of Connecticut is a sovereign state of the United States of America. This action is brought on behalf of the State by Attorney General William Tong, the chief legal officer of the State of Connecticut. Conn. Const., art. IV, § 4; Conn. Gen. Stat. §§ 3-124 et seq.

19. The State of Delaware is a sovereign state of the United States of America. This action is brought on behalf of the State of Delaware by Attorney General Kathleen Jennings, the "chief law officer of the State." *Darling Apartment Co. v. Springer*, 22 A.2d 397, 403 (Del. 1941). Attorney General Jennings also brings this action on behalf of the State of Delaware pursuant to her statutory authority. Del. Code Ann. tit. 29, § 2504.

20. The District of Columbia is a sovereign municipal corporation organized under the Constitution of the United States. It is empowered to sue and be sued, and it is the local government for the territory constituting the permanent seat of the federal government. The District is represented by and through its chief legal officer, the Attorney General for the District of Columbia, Karl A. Racine. The Attorney General has general charge and conduct of all legal business of the District and all suits initiated by and against the District and is responsible for upholding the public interest. D.C. Code. § 1-301.81.

21. The State of Illinois is a sovereign state of the United States of America. This action is being brought on behalf of the State of Illinois by Attorney General Kwame Raoul, the State's chief legal officer. *See* Ill. Const. art. V, § 15; 15 ILCS 205/4.

22. The State of Maine is a sovereign state of the United States of America. The State of Maine is represented by and through its Attorney General Aaron M. Frey, chief law enforcement officer of the State.

23. The State of Maryland is a sovereign state of the United States of America. The State of Maryland is represented by and through its chief legal officer, Attorney General Brian E. Frosh. Under the Constitution of Maryland, and as directed by the Maryland General Assembly, the Attorney General has the authority to bring this action. Md. Const. art. V, § 3(a)(2); 2017 Md. Laws, Joint Resolution 1.

24. The Commonwealth of Massachusetts is a sovereign state of the United States of America. This action is brought on behalf of the Commonwealth by its Attorney General, Maura Healey, who is the "chief law officer of the Commonwealth," *Commonwealth v. Kozlowsky*, 238 Mass. 379, 389 (1921), and who is authorized to bring such actions. *See* Mass. Gen. Laws ch. 12, s. 3.

25. The State of Michigan, represented by and through Attorney General Dana Nessel, is a sovereign state of the United States of America. The Attorney General is Michigan's chief law enforcement officer and is authorized under Michigan law, Mich. Const. art. V, § 21, Mich. Comp. Laws §§ 14.28 and 14.29, to pursue this action.

26. The State of Minnesota is a sovereign state of the United States of America. This action is brought on behalf of the State by Attorney General Keith Ellison, who is authorized to represent Minnesota in all matters in which it is directly interested. Minn. Stat. § 8.01 (2020).

27. The State of Nevada, represented by and through its Attorney General, is a sovereign state of the United States of America. Attorney General Aaron D. Ford is the chief

legal officer of the State of Nevada and has the authority to commence actions to protect the interests of the State. Nev. Rev. Stat. 228.170.

28. The State of New Jersey is a sovereign state of the United States of America. This action is brought on behalf of the State of New Jersey by Acting Attorney General Andrew J. Bruck, who is the State's chief legal officer and is authorized to bring this action on behalf of the State. N.J. Stat. Ann. § 52:17A-4(e), (g).

29. The State of New Mexico is a sovereign state of the United States of America. This action is brought on behalf of New Mexico by its Attorney General, Hector Balderas, who is the chief legal officer of the State. He is authorized to prosecute all actions and proceedings on behalf of New Mexico when, in his judgment, the interest of the State requires such action. N.M. Stat. Ann. § 8-5-2(B).

30. The State of North Carolina, represented by and through Attorney General Joshua H. Stein, is a sovereign state of the United States of America. The Attorney General is the State of North Carolina's chief law enforcement officer and brings this challenge pursuant to his independent constitutional, statutory, and common-law authority.

31. The State of Oregon is a sovereign state of the United States of America. The State of Oregon is represented by its Attorney General, Ellen Rosenblum, who is the state's chief legal officer. The Attorney General is authorized to perform all legal services for the state.

32. The Commonwealth of Virginia is a sovereign state of the United States of America. This action is brought on behalf of the Commonwealth by Attorney General Mark Herring, who has authority to represent the Commonwealth, its departments, and its agencies in "all civil litigation in which any of them are interested." Va. Code Ann. § 2.2-507(A).

33. The State of Rhode Island is a sovereign state of the United States of America. The State of Rhode Island is represented by and through its Attorney General, Peter F. Neronha, the chief law enforcement officer of the state.

34. The State of Washington is a sovereign state of the United States of America. The State of Washington is represented by its Attorney General, Bob Ferguson, who is the State's chief legal advisor. The powers and duties of the Attorney General include acting on matters of public concern to the State.

35. The States are "interested persons" for the purposes of 39 U.S.C. § 3662(a) because their agencies and officials regularly use the Postal Service to conduct their official business and fulfill their public service obligations. Among other things, the States use the mail to send and receive payments, benefits, legal notices, licenses, ballots and other election mail, and other essential documents.

36. Defendant United States Postal Service is "an independent establishment of the executive branch" of the U.S. government. 39 U.S.C. § 201.

37. The Commission has jurisdiction over this complaint under 39 U.S.C. § 3662, which authorizes it to "order that the Postal Service take such action as the Commission considers appropriate in order to achieve compliance with the applicable requirements and to remedy the effects of any noncompliance."

III. Background

A. The Postal Service has adopted and begun implementing a ten-year plan to transform the nature of postal services.

38. On March 23, 2021, the Postal Service announced a ten-year strategic plan, *Delivering for America: Our Vision and Ten-Year Plan to Achieve Financial Sustainability and Service Excellence*.

39. The Plan purports to "provide[] an important path forward for an organization in crisis."[16] The Postal Service summarizes this crisis as "business and operating models" that are "unsustainable and out of step with the changing needs of the nation and [its] customers," "steep annual financial losses in the billions of dollars, unmet service performance goals, and less market relevancy as consumer behaviors have changed."[17]

40. According to the Postal Service, the "dramatic evolution of the mailing and shipping industries over the past decade—accelerated by the COVID-19 pandemic—requires a new business model and a reorientation of the Postal Service's management, network, and processes."[18] For example, the Plan details the substantial decline in mail volume, which has decreased 42 percent since 2007, and 11 percent in 2020 alone.[19] The Plan further describes the shift to growth in package volume, which has more than doubled during the same period.[20]

41. Against this backdrop, the Plan purports to set in motion "clear strategies" that Postmaster General Louis DeJoy and Board of Governors Chair Ron Bloom claim will allow the Postal Service "to quickly achieve financial sustainability and service excellence" by "transforming [its] business and operations."[21]

42. The Postal Service projects that if the Plan is implemented, the Postal Service will operate with a positive net income beginning in 2023 or 2024.[22]

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[16] *Id.* at 41; *see id.* at 2.

[17] *Id.* at 2; *see also id* at 8-21.

[18] *Id.* at 4; *see also id.* at 8-21.

[19] *Id.* at 9.

[20] *Id.* at 10.

[21] *Id.* at 3.

[22] *Id.* at 7.

43. Postmaster General DeJoy and Chairman Bloom assert that implementation of the strategies in the Plan will reverse a projected $160 billion in losses over the next ten years.[23]

44. They also assert that "success depends upon implementing the totality of the Plan."[24]

45. The Plan details significant changes to all aspects of postal services, including acceptance, collection, delivery, sorting, transportation, and ancillary functions:

> Our new operating model will dramatically improve service through strategies aligned to the changing needs of our customers. We will optimize our mail and package processing capabilities, improve the technology and oversight of our surface logistics network, realign service standards to enable the best use of our transportation and processing networks, strengthen our delivery network, promote measurable operating excellence, modernize vehicles and infrastructure, revitalize our post offices, enable long-term postal careers for employees, and innovate solutions and services for customers.[25]

46. The Postal Service repeatedly characterizes the strategies detailed in the Plan as "changes"[26] that will "transform"[27] the Postal Service.

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[23] *Id.*

[24] *Id.*

[25] *Id.*; *see also, e.g., id.* at 5-7.

[26] *E.g., id.* at 2 ("the urgent case for change"), 5 ("the breadth of our operating model changes"), 6 ("regulatory changes" "pricing changes"), 12 ("process change"), 19 ("substantial changes"), 21 ("substantive changes to our operating model"), 25-29 ("service standard changes"), 36 ("ongoing structural changes"), 38 ("organizational changes," "changes in work practices").

[27] *E.g., id.* at 2 ("bold vision for transformation"), 3 ("transforming our business and operations"), 6 ("A modern, transformed network of Post Offices"), 27 ("we will transform our processing and logistics network"), 29 ("Transform Network Distribution Centers," "All 21 [Network Distribution Centers] will be transformed into [Regional Distribution Centers]," "We will transform 15-20 additional package processing [Processing and Distribution Centers] to [Regional Distribution Centers]"), 30 ("we will transform our transportation operations"), 32 ("our broader strategy to transform our financial performance and customer service"), 34 ("Transform Retail Locations"), 40 ("our future transformation"), 49 ("To transform our Post

47. Many of the strategies in the Plan directly respond to the Postal Service's claim that "there is a compelling need to redesign our operating model to enable growth in our package delivery business."[28]

48. The Postal Service asserts that as the mix of mail and packages continues to change, its processing, transportation, and delivery networks are increasingly misaligned with the products it accepts, processes, transports, and delivers, because of its reliance on facilities, trucks, and delivery tools that were originally designed for much higher letter mail volume, far smaller packages, and far lower package volume.[29]

49. Yet, the Postal Service notes in a footnote of the Plan that package volume represents "only a minor portion of overall volume," and that competitive products, those which are comparable to products offered by private sector carriers, make up 3.9 percent of its total mail volume.[30]

50. In total, the Plan details eleven "key strategies" to achieve what the Postal Service describes as a "high performing future."[31]

51. First, to address the relative decline in mail volume and increase in package volume, the Postal Service intends to (1) expand the capacity of delivery units to handle packages for same or next day delivery; (2) expand the capacity of mail processing facilities to handle packages for 1- and 2-day delivery; and (3) shift First-Class Package Services to an

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Offices and retail facilities"), 50 ("if we are to transform the Postal Service"), 55 ("Network Distribution Centers . . . which will be transformed into Regional Distribution Centers").

[28] *Id.* at 5.

[29] *Id.* at 9.

[30] *Id.* at 10 n.2.

[31] *Id.* at 22-39.

expanded ground network.[32] New delivery services will be available through an expanded suite of competitive products under the new umbrella of "USPS Connect."[33] The Postal Service anticipates that the change will allow businesses using the delivery service to "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."[34]

52. Second, the Postal Service will change service standards for First-Class Mail and First-Class Package Services.[35] The Postal Service will change to a 1- to 5-day service standard, which will slow nearly 40 percent of all mail nationwide.[36] The Postal Service will make a similar change to slow First-Class Package Services.[37] According to the Postal Service, these changes will allow it to transport more First-Class Mail and First-Class Packages by truck instead of by plane.[38] The Postal Service asserts that it can more reliably meet lower standards, which will also achieve significant cost savings.[39]

53. The Postal Service's changes to its service standards are the subject of Docket Nos. N2021-1 and N2021-2. The Commission has issued advisory opinions on both proposals, discussed *infra* Part III.B. Although both proposals are components of the larger Plan, neither

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[32] *Id.* at 23.

[33] *Id.*

[34] *Id.* at 24.

[35] *Id.* at 25-27.

[36] *Id.* at 26.

[37] *Id.* at 27.

[38] *Id.* at 26-27.

[39] *Id.* at 27.

proceeding has evaluated the Plan's other aspects, despite the additional substantial changes it calls for.

54. Third, the Postal Service "will transform [its] processing and logistics network."[40] The Plan states that this transformation involves: (1) recalibrating operating plans at facilities; (2) updating processing modeling procedures to reduce the overtime demand on employees, achieve predictability and precision, and improve employee engagement and retention; (3) obtaining and deploying new package sorters; (4) reorienting "facility footprint[s]" to shift from processing letter mail to processing packages and potentially consolidating and realigning facilities, including facility consolidations from Docket No. N2012-1 that were deferred; (5) transitioning all 21 Network Distribution Centers and 15 to 20 Processing and Distribution Centers into Regional Distribution Centers dedicated only to package processing, leaving all mail to be processed only in the remaining Processing and Distribution Centers; (6) implementing new technologies to improve daily and long-term decision-making; and (7) enhancing product tracking.[41]

55. Fourth, the Postal Service states that it will optimize its transportation network to "consolidate [its] network and eliminate redundant trips."[42] According to the Postal Service, this means greater dependence on trucks instead of planes and "[e]liminat[ing] the need to rely on extra and late trips."[43]

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[40] *Id.*

[41] *Id.* at 28-29.

[42] *Id.* at 30.

[43] *Id.* The Postal Service previously attempted to prohibit extra and late trips outright in connection with operational changes introduced in June 2020. As discussed *infra*, this change in policy was challenged by the States and other plaintiffs in several lawsuits across the country.

56. Fifth, the Postal Service's Plan states that it will "increase operational precision at the unit, route, and delivery point level to provide the most efficient, consistent, and affordable last mile delivery services."[44] In connection with these changes, the Plan further states that the Postal Service will "improve [its] delivery unit footprint,"[45] and deploy small package sorting systems to delivery units.[46]

57. Sixth, in what the Plan refers to as "the most dramatic modernization of our vehicle fleet in three decades," the Postal Service will invest in 50,000 to 165,000 Next Generation Delivery Vehicles over the next 10 years.[47] According to the Postal Service, this change is "part of [the Postal Service's] broader strategy to transform [its] financial performance and customer service over the next ten years through significant investments in people, technology, and infrastructure."[48] The Postal Service announced in February 2021 that it awarded a 10-year contract to Oshkosh Defense to build the vehicles.[49]

58. Seventh, the Postal Service states that it will reconfigure "retail footprint, hours, and services to meet evolving customer demands."[50] This change includes evaluating whether to

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[44] *Id.* at 31.

[45] *Id.*

[46] *Id.*

[47] *Id.* at 32.

[48] *Id.*

[49] USPS, *U.S. Postal Service Awards Contract to Launch Multi-Billion-Dollar Modernization of Postal Delivery Vehicle Fleet* (Feb. 23, 2021), https://about.usps.com/newsroom/national-releases/2021/0223-multi-billion-dollar-modernization-of-postal-delivery-vehicle-fleet.htm.

[50] Plan, *supra* note 11, at 34.

consolidate low-traffic stations and branches of city Post Offices into nearby full-service retail Post Offices.[51]

59. Eighth, the Postal Service will revamp its entire organizational structure—a process that began in August 2020[52] and continued in early 2021.[53] Under the new structure, the Postal Service will be organized into three units: Retail and Delivery Operations, Logistics and Processing Operations, and Commerce and Business Solutions.[54] The Postal Service's field operations, including operational areas and districts, will also be consolidated and reorganized.[55]

60. Ninth, in addition to creating more opportunities for development, and implementing diversity and employee wellbeing initiatives, the Postal Service will improve the experience of "non-career employees," with the goal of reducing their turnover by half.[56]

61. Tenth, the Postal Service "will conduct a review across the breadth of [its] postal products and services to determine opportunities to drive higher revenues based on organizational and market needs."[57] As an example, the Postal Service states that it will petition the Commission to expand the number of post office boxes defined as competitive.[58] The Postal

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[51] *Id.* at 35.

[52] *Id.*

[53] USPS, *U.S. Postal Service Announces Next Phase of Organizational Changes Begun in August 2020* (Mar. 3, 2021), https://about.usps.com/newsroom/national-releases/2021/0303-usps-announces-next-phase-of-organizational-changes-begun-in-august-2020.htm.

[54] Plan, *supra* note 11, at 35-37.

[55] *Id.* at 36-37.

[56] *Id.* at 37-38.

[57] *Id.* at 39.

[58] *Id.*

Service will also "holistically review [its] pricing strategy with regard to [its] package products, and more appropriately optimize [its] prices."[59]

62. Consistent with its intention to adjust pricing to drive revenue, and pursuant to a separate statutory obligation, the Postal Service filed a request with the Commission to increase the price on market-dominant letters and flats (Docket No. R2021-2). These increases include a 6.8 percent increase for First-Class Mail.[60] Several members of Congress expressed concern with the rate increases in light of the economic devastation caused by the COVID-19 pandemic and asked the Postal Service not to implement them.[61] The Commission approved the pricing changes, which took effect August 29, 2021.[62]

63. Finally, the Plan states that the Postal Service will push to eliminate an estimated $57 billion in liabilities over the next 10 years by asking Congress to eliminate pre-funding retiree health benefit obligations imposed by the 2006 Postal Accountability Enhancement Act.[63] Legislation has been introduced in both the House and the Senate to eliminate this obligation.[64]

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[59] *Id.*

[60] Postal Reg. Comm'n, *Order on Price Adjustments for First-Class Mail, USPS Marketing Mail, Periodicals, Package Services, and Special Services Products and Related Mail Classification Changes*, at 2 (July 19, 2021) (R2021-2), https://www.prc.gov/docs/119/119291/Order%20No.%205937.pdf ["Order on Price Adjustments for First-Class Mail"].

[61] Letter from Members of Congress to Postmaster General DeJoy (July 1, 2021) https://grothman.house.gov/uploadedfiles/usps_rate_increase_letter_-_final.pdf.

[62] Order on Price Adjustments for First-Class Mail, *supra* note 60.

[63] Plan, *supra* note 11, at 39.

[64] *See* H.R. 3076, 117th Cong. (2021); S. 1720, 117th Cong. (2021).

64. The Postal Service concluded its description of the Plan by explaining that it "will only be able to achieve [its] financial stability and service excellence goals if [it] successfully implement[s] the full breadth and totality of the plan elements."[65]

65. In public statements, the Postal Service has reinforced the broad scope and dramatic changes reflected in the Plan.

66. In a press release issued on March 23, 2021, Postmaster General DeJoy explained that the "need for the U.S. Postal Service to transform to meet the needs of our customers is long overdue."[66]

67. That same day, the Postal Service explained on Twitter: "Our business & operating models are unsustainable and out of step with the changing needs of the nation & our customers. While these problems are serious, we are optimistic about our future with a plan that invests in our people and calls for growth."[67]

68. On March 23, 2021, Chair Bloom described the Plan as "large" and "complex."[68]

69. On March 23, 2021, USPS Chief Financial Officer Joe Corbett explained the significance of the Plan: "Our ability to return to financial sustainability by 2023 and thereafter is

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[65] Plan, *supra* note 11, at 40.

[66] USPS, *USPS Unveils 10-Year Plan to Achieve Financial Sustainability and Service Excellence* (Mar. 23, 2021), https://about.usps.com/newsroom/national-releases/2021/0323-usps-unveils-10-year-plan-to-achieve-financial-sustainability-and-service-excellence.pdf.

[67] U.S. Postal Service (@USPS), Twitter (Mar. 23, 2021, 12:39 p.m.), https://twitter.com/USPS/status/1374400524645109765

[68] Todd Shields & Bloomberg, *The U.S. Postal Service's new 10-year plan includes slower mail deliveries and higher prices*, Fortune (Mar. 23, 2021), https://fortune.com/2021/03/23/usps-postal-service-mail-slowdown-louis-dejoy-10-year-plan-post-office-delivery-times-rate-increases-reduced-hours/.

based on two large assumptions — that we are able to implement the totality of [the Plan], and that we can do so on a reasonable schedule."[69]

70. On March 31, 2021, Postmaster General DeJoy released a message to all Postal Service employees, stating that the Plan "touches nearly every part of the postal service."[70] The message further stated that employees "will be hearing a lot about the initiatives in this plan. Most of these initiatives you should like, some of them you may not. . . . We are just at the beginning of a process of transformation."[71]

71. On June 24, 2021, Postmaster General DeJoy issued another message to all Postal Service employees, stating that the organization is "in the early stages of a transformation that will improve our service far beyond what the postal service is able to achieve today, or at any time in the past. Our goal is to consistently deliver 95 percent or better of all mail and packages on time. We can only achieve this by making substantial changes to our processing, transportation and delivery network – so that we can operate with the best-in-class reliability and precision."[72]

72. On July 13, 2021, the Postal Service's Inspector General testified before members of the U.S. Senate, seeking an additional $17 million in its 2023 fiscal year budget, to "expand [its] oversight role in alignment with upcoming and ongoing postal changes," i.e., the changes

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[69] Jory Heckman, *USPS aims to break-even starting in 2023 under 10-year infrastructure plan*, Fed. News Network (Mar. 23, 2021), https://federalnewsnetwork.com/management/2021/03/usps-aims-to-hit-break-even-year-by-2023-under-10-year-infrastructure-plan/.

[70] Louis DeJoy, *Planning for the future*, U.S. Postal Service (Mar. 31, 2021), https://link.usps.com/2021/03/31/planning-for-the-future-2/.

[71] *Id.*

[72] Louis DeJoy, *Improving Service*, U.S. Postal Service (June 24, 2021), https://link.usps.com/2021/06/24/improving-service-2/.

reflected in the Plan.[73] The Inspector General described these changes as "significant,"[74] "dramatic,"[75] and "complex."[76] The Inspector General also stated that the changes require "judicious oversight . . . to ensur[e] timely, efficient, and equitable mail service to all areas of the country."[77]

73. On August 6, 2021, during a Board of Governors meeting, Postmaster General DeJoy stated: "I came to the Postal Service 14 months ago at a time when, for a variety of reasons, we were in a significant crisis. . . . [W]e did not have a comprehensive plan to correct the trajectory of our future which—to sum up—was headed for continued financial insolvency and continued diminished use and relevance to the nation . . . . This plan calls for investments in facilities, technology, equipment, and people, enabling us to evolve our organization to address current economic trends, provide affordable and reliable service and therefore enhance our relevancy to the American people."[78]

74. At the same Board of Governors meeting, Postmaster General DeJoy noted that the Plan "propos[es] some uncomfortable changes."[79]

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[73] *Statement of Tammy L. Whitcomb, Inspector General, United States Postal Service*, at 7, Hearing before the Subcommittee on Financial Services and General Government Committee on Appropriations United States Senate (July 13, 2021), https://www.appropriations.senate.gov/imo/media/doc/USPS%20OIG%20Written%20Testimony%20-%20FSGG%20Hearing.pdf.

[74] *Id.* at 4.

[75] *Id.*

[76] *Id.*

[77] *Id.* at 5.

[78] USPS, *Postmaster General and CEO Louis DeJoy's Remarks During Aug. 6 Postal Service Board of Governors meeting* (Aug. 6, 2021), https://about.usps.com/newsroom/national-releases/2021/0806-pmg-louis-dejoy-remarks-during-aug-6-board-of-governors-meeting.pdf.

[79] *Id.*

B. The Postal Service has selectively presented only parts of the Plan to the Commission.

75. Although the Plan as a whole reflects significant and transformative changes to the Postal Service, including its operations and the availability of postal services nationwide, the Postal Service has not presented the entire Plan to the Commission for an advisory opinion, as required by law. *See infra* Part IV.

76. Instead, the Postal Service is presenting only certain segments of the Plan to the Commission.

77. As noted above, to date, the Postal Service has only submitted two requests for an advisory opinion, which represent only a small portion of the Plan's scope.

78. The first request concerned the proposal to add up to two days to service standards for First-Class Mail and Periodicals, which will slow 39 percent of First-Class Mail and Periodicals nationwide (Docket No. N2021-1).

79. In July 2021, the Commission issued a thorough advisory opinion on this proposed change.[80]

80. As a general matter, the Commission concluded that the Postal Service's proposal to change service standards for First-Class Mail rested on unreasonable and untenable assumptions, incomplete and faulty analysis, and poor modeling.[81] The Commission added that the "Postal Service has not confidently demonstrated that its plans" will achieve its goals of improving service performance and its financial condition.[82]

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[80] Advisory Opinion First-Class Mail, *supra* note 14.

[81] *Id.* at 65

[82] *Id.*

81. With respect to the Postal Service's assertion that the proposal would improve service performance, the Commission explained that the proposal to transport much of First-Class Mail by truck rather than plane would not address many of the root causes of service delays, such as processing failures at the district, area, and national levels.[83] The Commission stated that the Postal Service did "not provide evidence that the proposed changes will eliminate these type of failure points."[84] Moreover, shifting more mail to the Postal Service's ground network would slow that network; the proposal's measures to mitigate those delays historically "have not significantly increased service performance results."[85] Even if one were to accept the virtue of transitioning to surface transportation, the Commission noted that the Postal Service overstated how much mail would meet the slower service standards.[86] On top of all this, the Postal Service had not "conducted operational or pilot testing of the proposed service standard changes."[87]

82. As for the expected financial benefits of the proposal to change service standards for First-Class Mail, the Commission concluded that the estimated cost savings "may be inflated" because "the data are not complete," "several underlying assumptions appear untenable," and "estimated cost savings are based on an outlier year (FY 2020) when costs and

[83] *Id.* at 66, 86, 88, 90.

[84] *Id.* at 93.

[85] *Id.* at 98.

[86] *Id.* at 84-85

[87] *Id.* at 99.

modes were in flux compared to prior years."[88] Even if all cost savings were realized, the proposal would "not substantially affect the Postal Service's financial condition."[89]

83. Expectations that the proposal would improve the Postal Service's "capacity utilization," the Commission concluded, were based on models not "grounded in reality."[90] Baseline expectations that the Postal Service set in its analysis did not accurately reflect the Postal Service's operations.[91] Given that, the Commission explained that "it is infeasible to compare the modeled routings with the current costs and inaccurate to develop a numerical estimate of the cost savings from the potential new surface transportation network."[92]

84. Assumptions the Postal Service made about customer satisfaction with the intended changes also were not based on "any research on segmented groups of mailers," which might not "behave as mailers in general behave."[93] Some assumptions, such as a preference for reliable delivery over faster delivery, were not supported by existing market research.[94] Because it failed to conduct adequate research or make use of existing research, the Postal Service had "not demonstrated evidence to substantiate its claim that customer satisfaction will not be materially affected by the proposed changes."[95]

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[88] *Id.* at 66.

[89] *Id.* at 67; *see also id.* at 103-113.

[90] *Id.* at 67.

[91] *Id.* at 115-116, 143-146.

[92] *Id.* at 145.

[93] *Id.* at 68.

[94] *Id.* at 155.

[95] *Id.*

85. Finally, the Commission concluded that the Postal Service overstated the level of certainty that its proposal would not reduce the demand for First-Class Mail and Periodicals.[96]

86. Based on these conclusions, the Commission wrote that, while the Postal Service's proposal was not facially at odds with certain statutory directives, the proposal would be consistent with those directives only if the Postal Service's assumptions proved correct notwithstanding all the identified flaws.[97]

87. Chairman Kubayanda wrote separately to question "whether the Postal Service has conducted a serious cost-benefit analysis with respect to the plan for remittance mail," which is relied on disproportionally by elderly Americans and which will be significantly impacted by the proposed changes.[98]

88. Vice Chairwoman Poling also wrote separately, pointing out how the proposed changes ignore the needs of rural America and vulnerable groups.[99]

89. The Postal Service's second request for an advisory opinion concerns changes to service standards that will slow nearly one third of First-Class Package Services nationwide (Docket No. N2021-2).

90. The Commission issued its advisory opinion on this proposed change in September 2021.[100]

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[96] *Id.* at 160.

[97] *Id.* at 168-169, 179-180.

[98] Advisory Opinion First-Class Mail, Separate Views of Chairman Kubayanda, at 2-7.

[99] Advisory Opinion First-Class Mail, Separate Views of Vice Chairwoman Poling, at 4-9.

[100] Advisory Opinion First-Class Package Services, *supra* note 14.

91. The Commission again concluded that the Postal Service's proposal suffered from unsupported assumptions, non-representative model data, inflated cost savings, and an unrealistic transportation model.[101] As with the First-Class Mail service standard changes, the Postal Service had not substantiated its claim that transporting more First-Class Package Services packages by surface transportation would improve service performance.[102] The Postal Service's projected cost savings were inflated and, even if fully realized, not substantial.[103] The Postal Service's transportation models were incomplete and based on an unrealistic baseline, which could lead to misleading and inaccurate surface network impact projections and estimated cost changes.[104] As a result, the Postal Service had "again failed to demonstrate that it has a detailed plan to implement an efficient and reliable surface transportation network, which is a necessary condition for achieving operational efficiency."[105]

92. The Commission noted that the Postal Service referenced another initiative from the Plan—the transformation of Network Distribution Centers into Regional Distribution Centers—but did not include this initiative "in its transportation modeling for this docket," rendering the "projected cost savings from the Postal Service's transportation models" of "limited utility."[106]

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[101] *Id.* at 3-5.

[102] *Id.* at 65-81.

[103] *Id.* at 88-99.

[104] *Id.* at 103-139.

[105] *Id.* at 138.

[106] *Id.*

93. According to the Plan, the Postal Service intends to request "advisory opinions from the [Commission] concerning [its] retail network alignments."[107] However, it has not done so to date.

94. The Postal Service does not intend to present the entire Plan to the Commission for an advisory opinion—even though the Postal Service claims that it "will only be able to achieve [its] financial stability and service excellence goals if [it] successfully implement[s] the full breadth and totality of the plan elements."[108]

IV. The Postal Service's failure to submit the Plan to the Commission violates 39 U.S.C. § 3661(b).

95. Section 3661 "require[s] an initial Postal Service presentation and full opportunity for public input, and a review in a hearing on the record,"[109] guaranteeing "the mailing public the opportunity to be heard in a neutral public forum *before* changes in service [a]re imposed upon them."[110]

96. As the Commission has recognized, "[a]t its core, section 3661 underscores the importance of meaningful public participation and Commission advice in the process leading up to management decisions on nationwide service changes."[111] That process "envisions the Postal

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[107] Plan, *supra* note 11, at 35.

[108] *Id.* at 40.

[109] Postal Reg. Comm'n, Order 1387, at 12 (June 29, 2012) (C2012-2), https://www.prc.gov/docs/83/83307/Order_No_1387.pdf ["Order 1387"].

[110] Postal Rate Comm'n, Order 1461, at 16 (Apr. 18, 2006) (C2005-1), https://www.prc.gov/docs/48/48324/Order1461.pdf ["Order 1461"]; *see also NAACP v. United States Postal Serv.*, 496 F. Supp. 3d 1, 17-18 (D.D.C. 2020) ("Congress clearly intended Section 3661 to require an opportunity for public participation and for independent review before the USPS implements service changes that will have a broad effect."); *New York v. Trump*, 490 F. Supp. 3d 225, 243 (D.D.C. 2020) (same).

[111] Order 1387, *supra* note 109, at 12.

Service taking the advisory opinion into account" before adopting significant new initiatives.[112] Accordingly, the "public interest is served when the full process is completed."[113]

A. The Plan adopts changes in the nature of postal services with nationwide effect.

97. The Plan contains "change[s] . . . in the nature of postal services" that "affect service 'on a nationwide or substantially nationwide basis'" under section 3661(b).

1. The changes reflected in the Plan fall well within the scope of section 3661.

98. As discussed above, the Plan contains eleven "key strategies" that the Postal Service intends to pursue. These strategies enact transformative changes to the Postal Service's "package processing, transportation, and retail and delivery networks," among many other aspects of postal operations and services.[114] *See* Part III.A, *supra*.

99. The Postal Service has formulated much of its Plan "to redesign [its] operating model to enable growth in [its] package delivery business."[115] These include expanding the capacity of delivery units to handle packages for same or next day delivery and expanding the capacity of mail processing facilities to handle packages for 1- and 2-day delivery.[116]

100. To support the redesign of its operating model, the Postal Service will overhaul its "processing and logistics network."[117] Specifically, the Plan reflects the Postal Service's intention to reorient its "facility footprint" to shift from processing letter mail to processing

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[112] *Id.*

[113] *Id.*

[114] Plan, *supra* note 11, at 47.

[115] *Id.* at 5.

[116] *Id.* at 23.

[117] *Id.* at 27.

packages,[118] potentially consolidating and realigning processing facilities,[119] and transitioning Network Distribution Centers and Processing and Distribution Centers into Regional Distribution Centers dedicated only to package processing.[120]

101. In prior instances where the Postal Service has contemplated significant changes to its processing network, the Commission has concluded that such changes were subject to its review under section 3661(b).[121] Indeed, the Plan contemplates "evaluat[ing] the remaining facility consolidations that were deferred in 2015" and "strategically implement[ing] some of those consolidations where facilities remain underutilized."[122] These consolidations were the subject of Docket No. N2012-1.[123]

102. The Postal Service also plans to make substantial changes to its transportation network. The Plan states that in addition to shifting "a proportion of First-Class Mail and First-

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[118] *Id.* at 28-29.

[119] *Id.* at 28.

[120] *Id.* at 29.

[121] *See, e.g.*, Postal Rate Comm'n, *Advisory Opinion Concerning a Proposed Change in the Nature of Postal Services*, at 71 (Dec. 19, 2006) (N2006-1) (although the Postal Service did not concede the Commission's jurisdiction, and the Commission did not squarely hold it has jurisdiction, it nevertheless issued an advisory opinion on the Postal Service's "network realignment program," which intended to "reconfigure its logistical network . . . to reduce redundancy and inefficiency through consolidation of operations and transportation links"), https://www.prc.gov/docs/55/55431/N2006-1AdvDec.pdf ["2006 Advisory Opinion"].

[122] Plan, *supra* note 11, at 28.

[123] Postal Reg. Comm'n, *Advisory Opinion on Mail Processing Network Rationalization Service Changes* (Sept. 28, 2012) (N2012-1), https://www.prc.gov/docs/85/85269/Advisory_Opinion_%20PDF%20_09282012.pdf ["2012 Advisory Opinion"].

Class Package Service volume to surface transportation,[124] the Postal Service will "consolidate [its] network and eliminate redundant trips."[125]

103. The Postal Service's Plan also includes transformative changes to its retail network.[126] The Plan states that the Postal Service will "align [its] retail footprint [and] hours" to current market conditions, including by "evaluat[ing] and consolidat[ing] low-traffic stations and branches."[127]

104. When the Postal Service previously took similar action to transform its retail network, the Commission concluded that the change fell within section 3661(b).[128]

2. The Plan's changes are in the nature of postal services.

105. To determine whether a change is "in the nature of postal services" as contemplated by section 3661(b), the focus of the inquiry includes "a qualitative examination of the manner in which postal services available to the user will be altered."[129]

106. The PRA defines "postal services" as the "delivery of letters, printed matter, or mailable packages, including acceptance, collection, sorting, transportation, or other functions ancillary thereto."[130]

107. The Postal Service's radical shifts in its processing, transportation, and retail networks, as well as moving towards an operating model focused more on packages, directly

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[124] Plan, *supra* note 11, at 30.

[125] *Id.*

[126] *See, e.g.*, *id*. at 34-35.

[127] *Id.*

[128] *See* Docket Nos. N75-1, N2009-1, N2011-1, N2012-2.

[129] *Buchanan v. U.S. Postal Serv.*, 508 F.2d 259, 262-63 (5th Cir. 1975).

[130] 39 U.S.C. § 102(5).

relate to "the delivery of letters, printed matter, or mailable packages," and specifically alter the Postal Service's processes relating to "sorting, transportation," and "other functions ancillary thereto."

108. The Plan further notes that in the course of the Postal Service's logistics overhaul, "[l]etter and flat products will be merged into streamlined, shape-based mail flows within [its] Processing and Distribution Centers."[131] The Commission has previously recognized that such modifications constitute changes that are "in the nature of postal services" within the meaning of section 3661(b).[132]

3. The Plan's changes affect service on a nationwide basis.

109. Postal Service changes subject to Commission review under section 3661(b) "must affect service 'on a nationwide or substantially nationwide basis.'"[133] In other words, "[a] broad geographical area must be involved."[134]

110. By the terms of the Postal Service's own Plan, its vast operational changes are not limited to a particular district or area; the Plan will change the way the Postal Service operates across the country. Based on the Postal Service's statements, and consistent with the

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[131] Plan, *supra* note 11, at 29.

[132] *See* 2006 Advisory Opinion, *supra* note 121m at 9 (concluding that "the changes to be made . . . are likely to involve qualitative 'changes in the nature of postal services' because they contemplate moving from mail class-based distinctions in designing postal operations to alternative, largely shape-based processing and distribution concepts").

[133] *Pennsylvania v. DeJoy*, 490 F. Supp. 3d 833, 876 (E.D. Pa. 2020) (quoting *Buchanan*, 508 F.2d at 262); *New York v. Trump*, 490 F. Supp. 3d at 241 (same).

[134] *Pennsylvania v. DeJoy*, 490 F. Supp. 3d at 876 (quoting *Buchanan*, 508 F.2d at 262); *New York v. Trump*, 490 F. Supp. 3d at 241 (same).

Commission's analysis of prior Postal Service changes, there is no reason to doubt that the Plan's changes will affect service on a nationwide basis.[135]

111. The Commission's review of the Postal Service's proposals to change service standards for First-Class Mail and First-Class Package Service does not eliminate the need for review of the full Plan. As the Commission has twice now recognized, the Plan is "significantly broader" than those proceedings, and the combined effect of the Plan's full breadth of changes "may . . . have a much different impact on postal services than what [has been] presented and evaluated"[136] in those cases.

112. The notion that the Plan's changes must be reviewed holistically in order to accurately assess its impact is consistent with the Commission's observation that "[t]he dynamic and complex nature of the postal network requires vast components working in harmony to deliver mail consistently, reliably, and efficiently."[137]

113. With reliance on timely mail service still at historical levels, including by low-income, rural and elderly populations, as well as every level of government, the Postal Service's decisions have critical consequences felt across the country. Now, more than ever, it is necessary for the Commission to carefully examine the full breadth of the Postal Service's sweeping changes, and to afford the public the opportunity to comment on them, as Congress intended.

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[135] *Advisory Opinion Concerning the Process for Evaluating Closing Stations and Branches*, at 11, Postal Reg. Comm'n (Mar. 10, 2010) (N2009-1) ("As an indication of the scope of the Initiative, the Postal Service asserts that the Initiative is a nationwide program . . . ."), https://www.prc.gov/docs/67/67174/Advisory_Opinion_031010.pdf.

[136] Advisory Opinion First-Class Mail, *supra* note 14, at 6 n.3; Advisory Opinion First-Class Package Services, *supra* note 14, at 7 n.8.

[137] *Id.* at 86.

114. The Postal Service's failure to seek an advisory opinion on the Plan violates both the plain text and spirit of 39 U.S.C. § 3661(b), depriving the Commission of a full record on which to provide its expert critique and depriving stakeholders—including the States—the opportunity to contribute their "views, objections, and insights."[138]

B. Evidentiary Support

115. Evidence that the Plan is a change in the nature of postal services with nationwide effect can be found in:

a. *Delivering for America: Our Vision and Ten-Year Plan to Achieve Financial Sustainability and Service Excellence* (Ex. 1).

b. Public statements by the Postal Service and its employees. *See* ¶¶ 65-74, *supra*.

c. The advisory opinion prepared by the Commission in Docket No. N2021-1 (Ex. 2).

d. The advisory opinion prepared by the Commission in Docket No. N2021-2 (Ex. 3).

e. The written testimony and evidence presented by the Postal Service, its witnesses, the several intervenors, and members of the public in Docket No. N2021-1, including, but not limited to:

   i. The designated materials for Postal Service witness Robert Cintron

   ii. The designated materials for Postal Service witness Curtis Whiteman

   iii. The designated materials for Postal Service witness Stephen B. Hagenstein

   iv. The designated materials for Postal Service witness Steven W. Monteith

   v. The designated materials for Postal Service witness Thomas E. Thress

[138] 1975 Advisory Opinion, *supra* note 1, at 65.

vi. The designated materials for Postal Service witness Sharon Owens

vii. Additional library references filed by the Postal Service

viii. The rebuttal testimony filed by the American Postal Workers Union

ix. The 481 statements of position and 2 comments

f. The written testimony and evidence presented by the Postal Service, its witnesses, the several intervenors, and members of the public in Docket No. N2021-2, including, but not limited to:

i. The designated materials for Postal Service witness Stephen B. Hagenstein

ii. The designated materials for Postal Service witness Michelle M. Kim

iii. The designated materials for Postal Service witness Thomas J. Foti

iv. The designated materials for Postal Service witness Sharon Owens

v. Additional library references filed by the Postal Service

vi. The statements of position and comments

g. The written testimony and evidence presented by the Postal Service, its witnesses, and members of the public in Docket No. R2021-2.

116. Through discovery, the States expect to obtain details about what parts of the Plan have already been implemented and when other parts of the Plan will be implemented in the future.

V. The Postal Service's failure to request an advisory opinion harms the States and their residents.

117. The lack of input from the Commission and the public removes a critical safeguard designed to ensure Postal Service accountability. Indeed, the whole purpose of the Commission's advisory opinions is to provide "advice as to the potential consequences of the Postal Service actions upon itself and the mailing community, and inform[] the Postal Service

with options and considerations that it should take into account before proceeding, including steps it should take in order to ameliorate the impact of these proposals."[139]

118. The Postal Service's efforts to circumscribe this process by seeking an advisory opinion that addresses only isolated segments of a larger plan deprives the States and the mailing public of their statutory rights, and diminishes the Postal Service's transparency and accountability. This constitutes harm to the States and their residents.[140]

119. In addition, the failure to seek an advisory opinion on substantial operational changes upsets the statutory balance established by the PRA, deprives the Postal Service of the Commission's expert recommendations, and heightens the risk that the Postal Service will implement ill-conceived changes. In fact, that is precisely what occurred last year.

120. In June 2020, the Postal Service implemented a series of major operational overhauls without first seeking an advisory opinion from the Commission.[141]

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[139] 2012 Advisory Opinion, *supra* note 123, at 45.

[140] *See, e.g.*, Order 1461, *supra* note 110, at 15-16 ("A post-hoc examination of the Postal Service's Express Mail network changes through allegations in a complaint and not through a more formal § 3661(b) proceeding frustrates the purposes of the Act's public participation provision and provides for a much less reliable Commission analysis. . . . Congress provided the mailing public the opportunity to be heard in a neutral public forum before changes in service were imposed upon them. After giving reasonable notice, the Postal Service might well decide to proceed with certain changes, but it would do so informed by public comments and the advice of the Postal Rate Commission. . . . Here, the Postal Service should have given notice to potential participants prior to making changes to its Express Mail network. Its failure to do so was contrary to Congressional intent and statutory requirements. It also contributed to public confusion as to these nationwide changes since one of the benefits of a Commission proceeding is to notify the public of potential changes. As a result, the public is harmed."); Order 1387, *supra* note 109, at 12-13 ("At its core, section 3661 underscores the importance of meaningful public participation and Commission advice in the process leading up to management decisions on nationwide service changes. . . . The public interest is served when the full process is completed.").

[141] *See, e.g.*, Complaint ¶ 3, *New York v. Trump*, No. 20-2340 (D.D.C. Aug. 25, 2020) ("The U.S. Postal Service removed hundreds of collection boxes and high-speed sorting machines; cut or curtailed overtime; prohibited needed late trips and extra trips; and began a pilot

121. The operational changes produced significant mail delays across the country,[142] wreaking havoc mere months after the COVID-19 pandemic had become a full-blown crisis. States and local government entities, including the States, rely on the mail "to perform essential government functions,"[143] including the administration of federal, state and local elections, which were scheduled to take place that fall.[144] In addition, due to the COVID-19 pandemic, Americans were counting on the Postal Service more than ever before to send and receive critical items such as government benefits and medications.[145] Postmaster General DeJoy ultimately acknowledged to Postal Service employees that its "transformative initiative" had "unintended consequences that impacted our overall service levels."[146] The Postal Service's Office of the Inspector General later agreed that the operational changes "resulted in a significant drop in the

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program in almost 400 localities that turned how the agency processes mail on its head. For the first time in recent memory, the U.S. Postal Service also backed away from its policy of ensuring election mail delivery at the First Class rate speed of one to three days regardless of the rate actually paid."); Complaint ¶ 3, *Pennsylvania v. DeJoy*, No. 20-2096 (E.D. Pa. Aug. 21, 2020) ("[Changes] which include prohibiting late or extra trips by postal workers that are often necessary to keep the mail moving forward in the mailstream; requiring carriers to adhere rigidly to start and stop times regardless of whether all mail for their route has arrived or been delivered; and limiting the use of overtime"); *New York v. Trump*, 490 F. Supp. 3d at 241-43 (holding that the Postal Service failed to comply with 39 U.S.C. § 3661(b)); *Pennsylvania v. DeJoy*, 490 F. Supp. 3d at 884-87 (same).

[142] *See, e.g.*, *New York v. Trump*, 490 F. Supp. 3d at 237; *Pennsylvania v. DeJoy*, 490 F. Supp. 3d at 885-87.

[143] *See, e.g.*, Complaint ¶¶ 218-220, *Pennsylvania v. DeJoy*, No. 20-4096 (E.D. Pa. Aug. 21, 2020).

[144] *See, e.g.*, *id.* ¶¶ 31-102.

[145] *See, e.g.*, Complaint ¶ 7, *New York v. Trump*, No. 20-2340 (D.D.C. Aug. 25, 2020).

[146] *PMG addresses restructuring*, Postal Times (Aug. 13, 2020), https://www.postaltimes.com/postalnews/pmg-addresses-restructuring/.

quality and timeliness of mail delivery," and were "[i]mplemented without completing a study or analysis of the impact of the changes on mail service."[147]

122. The Postal Service's failure to present the full Plan to the Commission risks repeating the same mistake the Postal Service made when it implemented its sudden and sweeping operational changes in 2020. Furthermore, that mistake risks the same harms to its stakeholders, including the States and their residents, who continue to rely on the mail, particularly during the resurgence of COVID-19 cases caused by the Delta variant.

VI. Requested Relief

123. If the Commission finds a complaint "to be justified, it shall order that the Postal Service take such action as the Commission considers appropriate in order to achieve compliance with the applicable requirements and to remedy the effects of any noncompliance." 39 U.S.C. § 3662(c).

124. The States respectfully request that the Commission order the Postal Service to request an advisory opinion on the entire Plan, which will ensure the Commission's review of these significant changes and provide the States and the broader public the opportunity to comment on them.

VII. Other Proceedings

125. The issues presented in this Complaint are not pending in and have not been resolved by an existing Commission proceeding or proceeding in any other forum.

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[147] Office of the Inspector Gen., *Deployment of Operational Changes*, at 1, 8, U.S. Postal Serv. (Nov. 6, 2020), https://www.uspsoig.gov/sites/default/files/document-library-files/2020/21-014-R21.pdf.

126. After the Postal Service implemented the sweeping operational changes in June 2020 that severely damaged service performance, government and private plaintiffs filed lawsuits across the country seeking to enjoin them.[148] Those lawsuits do not seek relief relating to the Plan. Instead, those cases challenged operational and policy changes that predate and are separate from the Postal Service's Plan, most notably the Postal Service's effort to eliminate late and extra trips, its drastic reduction in approving overtime, the removal of sorting machines, and its treatment of election mail.[149]

127. As noted above, the Postal Service has also requested an advisory opinion on its proposals to modify service standards for First-Class Mail and Periodicals (Docket No. N2021-1) and for First-Class Package Services (Docket No N2021-2).

128. The Commission issued its advisory opinion in Docket No. N2021-1 in July 2021 and its advisory opinion in Docket No. N2021-2 in September 2021. Both opinions raised concerns about the Postal Service's proposed changes to service standards but did not substantively address the rest of the Plan. *See* Part III.B, *supra*. The Postal Service published a final rule in the Federal Register, intending to proceed with the changes to First-Class Mail service standards, effective October 1, 2021.[150]

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[148] *New York. v. Trump*, No. 20-2340 (D.D.C.); *Pennsylvania v. DeJoy*, No. 20-4096 (E.D. Pa.); *Washington v. Trump*, No. 20-3127 (E.D. Wash.); *NAACP v. USPS*, No. 20-2295 (D.D.C.); *Vote Forward v. DeJoy*, No. 20-2405 (D.D.C.); *Jones v. USPS*, No. 20-6516 (S.D.N.Y.); *Richardson v. Trump*, No. 20-2262 (D.D.C.); *National Urban League v. DeJoy*, No. 20-2391 (D. Md.); *Bullock v. USPS*, No. 20-79 (D. Mont.); *Johnakin v. USPS*, No. 20-4055 (E.D. Pa.); *Colorado v. DeJoy*, No. 20-2768 (D. Colo.).

[149] *See, e.g.*, Complaint ¶¶ 60-80, *New York v. Trump*, No. 20- 2340 (D.D.C. Aug. 25, 2020); Complaint ¶¶ 3, 166-74, *Pennsylvania v. DeJoy*, No. 20- 4096 (E.D. Pa. Aug. 21, 2020).

[150] *Revised Service Standards for Market-Dominant Mail Products*, 86 Fed. Reg. 43,941 (Aug. 11, 2021), https://www.govinfo.gov/content/pkg/FR-2021-08-11/pdf/2021-17127.pdf.

129. In neither of these proceedings has the Postal Service requested a review of the full breadth of the Plan.

130. Similarly, in the regulatory context, the Postal Service has generally declined to engage issues it considers to be outside the scope of the precise change at issue. For example, in its final regulation on changes to First-Class Mail and Periodicals, the Postal Service deemed "non-germane" and refused to address issues such as "[p]otential changes to [its] retail network," and service standard changes to First-Class Package Services, both of which are in fact contemplated in the Plan."[151]

VIII. Certifications

131. We hereby certify that, in compliance with 39 C.F.R. § 3022.11, a copy of this Complaint has been served on the United States Postal Service at the following address on this 7th day of October, 2021:

United States Postal Service
PRCCOMPLAINTS@usps.gov

132. The States have notified the Postal Service's Office of General Counsel of their position that the Postal Service is in violation of 39 U.S.C. § 3661(b). The States have set forth their views in emails to the Postal Service's Office of General Counsel dated September 27, 2021, and October 6, 2021. A video conference took place on October 4, 2021, between members of the Postal Service's legal team, and representatives of the offices of the New York and Pennsylvania Attorneys General. The parties have not been able to resolve the matter, and the States do not believe that further discussions with the Postal Service will be useful, as the

[151] *Id.* at 43,942.

Postal Service maintains that presentation of the full Plan to the Commission for an advisory opinion is not required by 39 U.S.C. § 3661(b).

Respectfully submitted this 7th day of October, 2021.

JOSH SHAPIRO
Attorney General
Commonwealth of Pennsylvania
MICHAEL J. FISCHER
Chief Counsel & Executive Deputy Attorney General
AIMEE D. THOMSON
JACOB B. BOYER
RYAN B. SMITH
Deputy Attorneys General
Pennsylvania Office of Attorney General
1600 Arch Street, Suite 300
Philadelphia, PA 19103
(267) 374-2787
athomson@attorneygeneral.gov
mfischer@attorneygeneral.gov
Attorneys for the Commonwealth of Pennsylvania

LETITIA JAMES
Attorney General
State of New York
MICHAEL J. MYERS
Senior Counsel
RACHEL HANNAFORD
LINDSAY MCKENZIE
Assistant Attorneys General
Office of the New York State Attorney General
28 Liberty Street
New York, New York 10005
(212) 416-8250
rachel.hannaford@ag.ny.gov
lindsay.mckenzie@ag.ny.gov
Attorneys for the State of New York

ROB BONTA
Attorney General
State of California
MARISSA MALOUFF
ANTHONY O'BRIEN
LISA C. EHRLICH
Deputy Attorneys General
Office of the Attorney General
for the State of California
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102
(415) 510-3489
lisa.ehrlich@doj.ca.gov
Attorneys for the State of California

WILLIAM TONG
Attorney General
State of Connecticut
JOSHUA PERRY
Special Counsel for Civil Rights
Office of the Connecticut Attorney General
165 Capitol Avenue
Hartford, CT 06106
(860) 808-5318
joshua.perry@ct.gov
Attorneys for the State of Connecticut

KATHLEEN JENNINGS
Attorney General
State of Delaware
CHRISTIAN DOUGLAS WRIGHT
Director of Impact Litigation
VANESSA L. KASSAB
Deputy Attorney General
Delaware Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 683-8881
christian.wright@delaware.gov
vanessa.kassab@delaware.gov
Attorneys for the State of Delaware

KARL A. RACINE
Attorney General
District of Columbia
KATHLEEN KONOPKA
Deputy Attorney General
BRENDAN DOWNES
Assistant Attorney General
Office of the Attorney General for the District of Columbia
400 6th Street N.W.
Washington, D.C. 20001
(202) 805-7515
brendan.downes@dc.gov
Attorneys for the District of Columbia

KWAME RAOUL
Attorney General
State of Illinois
ELIZABETH MORRIS
Deputy Bureau Chief, Special Litigation Bureau
REBEKAH NEWMAN
Assistant Attorney General, Special Litigation Bureau
Office of the Illinois Attorney General
100 West Randolph Street, 12th Floor
Chicago, IL 60601
(773) 590-6961
elizabeth.morris@ilag.gov
rebekah.newman@ilag.gov
Attorneys for the State of Illinois

AARON M. FREY
Attorney General
State of Maine
PAUL SUITTER
Assistant Attorney General
Office of the Maine Attorney General
6 State House Station
Augusta, ME 04333-0006
(207) 626-8888
paul.suitter@maine.gov
Attorneys for the State of Maine

BRIAN E. FROSH
Attorney General
State of Maryland
JEFFREY P. DUNLAP
Assistant Attorney General
200 St. Paul Place
Baltimore, MD 21202
T: (410) 576-7906
F: (410) 576-6955
jdunlap@oag.state.md.us
Attorneys for the State of Maryland

MAURA HEALEY
Attorney General
Commonwealth of Massachusetts
DAVID C. KRAVITZ
Deputy State Solicitor
Office of the Massachusetts Attorney General
One Ashburton Place
Boston, MA 02108
(617) 963-2427
david.kravitz@mass.gov
Attorneys for the Commonwealth of Massachusetts

DANA NESSEL
Attorney General
State of Michigan
HEATHER S. MEINGAST
ERIK A. GRILL
Assistant Attorneys General
PO Box 30212
Lansing, Michigan 48909
517-335-7559
meingasth@michigan.gov
grille@michigan.gov
Attorneys for the State of Michigan

KEITH ELLISON
Attorney General
State of Minnesota
NATHAN J. HARTSHORN
Assistant Attorney General
Atty. Reg. No. 0320602
Minnesota Attorney General's Office
445 Minnesota Street, Suite 1400
St. Paul, Minnesota 55101-2134
(651) 757-1252 (Voice)
(651) 297-1235 (Fax)
nathan.hartshorn@ag.state.mn.us
Attorneys for the State of Minnesota

AARON D. FORD
Attorney General
State of Nevada
HEIDI PARRY STERN (Bar. No. 8873)
Solicitor General
Office of the Nevada Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101
hstern@ag.nv.gov
Attorneys for the State of Nevada

ANDREW J. BRUCK
Acting Attorney General
State of New Jersey
MAYUR P. SAXENA
Assistant Attorney General
Division of Law
124 Halsey Street, 5th Floor
P.O. Box 45029
Newark, New Jersey 07102
mayur.saxena@law.njoag.gov
Attorneys for the State of New Jersey

HECTOR BALDERAS
Attorney General
State of New Mexico
MATT BACA
Chief Counsel
NICHOLAS M. SYDOW
Civil Appellate Chief
Office of the New Mexico Attorney General
408 Galisteo Street
Santa Fe, New Mexico 87501
(505) 490-4060
mbaca@nmag.gov
nsydow@nmag.gov
Attorneys for the State of New Mexico

JOSHUA H. STEIN
Attorney General
State of North Carolina
SRIPRIYA NARASIMHAN
Deputy General Counsel
SARAH G. BOYCE
Deputy Solicitor General
North Carolina Department of Justice
114 W. Edenton Street
Raleigh, NC 27603
(919) 716-6421
snarasimhan@ncdoj.gov
sboyce@ncdoj.gov
Attorneys for the State of North Carolina

ELLEN ROSENBLUM
Attorney General
State of Oregon
MICHAEL KRON
Special Counsel
Oregon Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 378-6002
michael.c.kron@doj.state.or.us
Attorneys for the State of Oregon

MARK R. HERRING
Attorney General
Commonwealth of Virginia
MICHELLE S. KALLEN
Acting Solicitor General
Office of the Virginia Attorney General
202 North 9th Street
Richmond, VA 23219
(804) 786-7704
mkallen@oag.state.va.us
Attorneys for the Commonwealth of Virginia

PETER F. NERONHA
Attorney General
State of Rhode Island
KEITH HOFFMANN
Special Assistant Attorney General
Rhode Island Office of the Attorney General
150 South Main Street
Providence, RI 02903
(401) 274-4400, ext. 1882
khoffmann@riag.ri.gov
Attorneys for the State of Rhode Island

ROBERT W. FERGUSON
Attorney General
State of Washington
KRISTIN BENESKI, WSBA #45478
First Assistant Attorney General
ANDREW HUGHES, WSBA #49515
Assistant Attorney General
Office of the Washington Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7744
kristin.beneski@atg.wa.gov
andrew.hughes@atg.wa.gov
Attorneys for the State of Washington