

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Station and Branch)
Optimization and)
Consolidation Initiative, 2009)

Docket No. N2009-1

INITIAL BRIEF OF THE PUBLIC REPRESENTATIVE

(December 2, 2009)

Respectfully Submitted,

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Table of Contents

I. INTRODUCTION..... 3

II. THE RUSH TO IMPLEMENT 4

 A. Hurried Creation of Guidance 6

 B. Contrary and Confusing Goals..... 8

 C. Failure to Consider Alternatives..... 9

III. FAILURE TO FOLLOW APPLICABLE STATUTE ON CLOSING FACILITIES 10

IV. FAILURE TO PROVIDE CLEAR PRINCIPLES AND INTELLIGIBLE STANDARDS FOR DISTRICTS TO APPLY 14

 A. No Objective Standards for District Managers to Apply 14

 B. Special Precautions Needed to Ensure Ready Access to Postal Services 18

 C. Lack of Coordination with Collection Box Rationalization Initiative 20

V. FAILURE TO PROVIDE ADEQUATE NOTICE AND SUFFICIENT TRANSPARENCY 21

 A. Lack of Any Public Participation During the Prescreening Process 21

 B. Lack of Meaningful Participation During the Discontinuance Study Process..... 23

 C. Lack of Transparency as to the Reasons Station and Branch Post Offices are Closed 26

VI. ALTERNATIVE ACCESS CONCERNS..... 27

 A. Substitution of Alternate Access 28

 B. Degradation of Service to Customers 31

 C. Cost Implications of Alternative Access 32

VII. NECESSITY OF A FINAL ACCOUNTING/DATA COLLECTION PLAN..... 34

 A. Reasons for Requiring a Final Accounting..... 34

 B. The Data to be Collected for a Final Accounting..... 40

VIII. CONCLUSION 42

APPENDIX A 43

I. INTRODUCTION

The Postal Service seeks an advisory opinion from the Postal Regulatory Commission on the propriety of its Station and Branch Optimization and Consolidation Initiative (Initiative). This nationwide Initiative is a process designed to review the majority of the Postal Service station and branch post offices to determine whether any such post offices should be closed.

It is difficult to imagine a wider-reaching Initiative. Visits to station and branch post offices are typically one of the general public's most common interactions with the federal government. Thus, the Postal Service must take care to ensure that, at a minimum, any process to close these facilities satisfies statutory requirements, is based upon sound principles and objective criteria, and is open and transparent. Unfortunately, as proposed, the Initiative does not meet these minimum standards and its shortcomings vastly outweigh its potential benefits. The Postal Service needs a better process, a more transparent process, which would enhance the accountability and transparency of this nationwide Initiative.

The Initiative does not provide key stakeholders with the information necessary to make meaningful contributions to the decision makers. Similarly, the Initiative does not provide the local managers, the Postal Service employees responsible for implementing the Initiative, with even a modicum of instruction or guidance to allow them to accomplish the Postal Service's objectives.

The general public understands and recognizes that the Postal Service is in severe financial distress and as a result, service changes may be necessary. However, as a government service, the Postal Service needs to recognize that in these trying economic times, the general public is also financially crippled. Thus, Postal Service cost cutting should be done in such a manner that the effects on the general public are narrowly tailored to provide the greatest efficiency gains with the least negative impact on stakeholders. That means that all less disruptive alternatives should be considered

before instituting more draconian ones. Less disruptive action could and should have been taken in lieu of the Initiative.

The Postal Service also must ensure that any changes in service do not unduly and unfairly discriminate against groups that deserve special protection such as the elderly, minorities, non-native English speaking populations, and the economically disadvantaged. Many of these groups rely heavily on the government services provided by the Postal Service. Drastically disrupting these groups' access would be devastating.

Below, the Public Representative discusses these significant concerns with the Initiative and suggests improvements to that process. Part II discusses the Public Representative's concerns with the Postal Service's hurried implementation of the Initiative. Part III addresses the Postal Service's failure to follow applicable statutory requirements. Part IV analyzes the failure of the Initiative to provide clear principles and intelligible standards for the districts to apply in determining whether to close a facility and how to coordinate this Initiative with other Postal Service Initiatives. Part V examines the Initiative's failure to provide adequate notice and sufficient transparency of the process to the public. Part VI discusses the Public Representative's concerns with alternative access. Finally, Part VII examines the necessity of a final accounting and the details of a proposed data collection plan.

II. THE RUSH TO IMPLEMENT

Congress intended for members of the public to have a right to be heard before the Postal Service implements major changes in the nature of postal services on a substantially nationwide basis. *Buchanan v. United States Postal Service*, 375 F. Supp. 1014, 1018 (N.D. Ala. 1974), *affirmed in part*, 508 F.2d 259 (5th Cir. 1975) (finding, based on the legislative history of 39 U.S.C. 3661, that "[i]t is impossible to conclude otherwise than that Congress intended by Section 3661 to give to each member of the public a right and opportunity to be heard **before** 'changes in the nature of postal services which will generally affect service on a nationwide or substantially nationwide

basis' would be **implemented.**") (Emphasis added). In this instance, however, the Postal Service did not wait until the public has had its opportunity to be heard before implementing the Initiative. Tr. 2/360. Further, it stated that it does not intend to wait for the Commission's advisory opinion in this docket prior to implementing the Initiative. Tr. 2/361-62. Rather, the Postal Service not only began the program prior to submitting a request for an advisory opinion to the Commission, it stated that closures of branch and station post offices could begin as early as 90 days after filing its request – approximately two months ago. Request at 7. In fact, as of the date of the hearing on the Postal Service's direct case, Postal Service headquarters had already received several recommendations to close branch and station post offices as a result of implementing the Initiative. Tr. 2/361.

The Postal Service's failure to comply with section 3661 implies that it believes that it is in such dire financial straits that full compliance with section 3661 is impossible. Such a conclusion might be justified to some if the Postal Service's primary justification for the Initiative were to cut costs and significantly mitigate its fiscal year net loss of approximately \$3.8 billion.¹ Incredibly, however, the Postal Service's most recent testimony on the subject was that the overall goal of this Initiative is not to reduce the Postal Service's costs or save money.² Rather, Witness Vangorder, head of the office responsible for developing policies and procedures related to opening and closing facilities,³ stated the Initiative is merely

an opportunity for us to look at our retail infrastructure and determine if it meets the needs of the business environment that we're in today and whether we can continue to provide adequate service in fewer locations. Cost savings is just a resulting factor.

¹ United States Postal Service, Annual Report (Form 10-K), at 25, 54 (November 16, 2009), available at http://www.usps.com/financials/_pdf/FY_2009_10K_Report_Final.pdf. This \$3.8 billion loss was despite a \$4 billion reduction in retiree health benefits costs and an additional \$6 billion in cost reductions. *Id.*

² Tr. 2/344 ("Q: Now, would it be fair to say that the overall goal of this initiative is to reduce postal cost? A: No.").

³ USPS-T-1 at 1.

Tr. 2/344; see also Tr. 2/307, 308, 311.⁴ In the absence of an imperative to reduce costs, the Postal Service has not provided a compelling urgency to immediately implement the program before (1) allowing interested members of the public to have their statutorily mandated right to be heard and (2) considering the Commission's forthcoming advisory opinion.

The Public Representative questions the timing and propriety of an initiative, designed without regard to cost savings, that substantially degrades customer service. Given the tremendous strain postal customers presently face from the economy, the present seems an inopportune time to introduce a grand thought experiment on postal retail efficiency.

In essence, the Postal Service has not demonstrated any reason for immediate implementation of this program, much less a compelling reason to counter the drastic and detrimental impact on its customers and the general public at large. Yet unnecessary, perfunctory implementation is exactly how the Postal Service proceeded with this Initiative. First, the vast majority of qualitative and quantitative details of the Initiative were created after the decision to implement was made. Second, in its haste, the Postal Service issued numerous contrary and confusing statements to local managers and the general public about the underlying purposes of the Initiative. Finally, in its rush to implement, the Postal Service failed to consider alternatives less disruptive to its customers. Each of these substantial concerns is discussed in more detail below.

A. Hurried Creation of Guidance

The Public Representative is concerned with the fact that all the documents provided to the district managers responsible for implementing the program were

⁴ *Contra* Tr. 2/199, 244-45; USPS-T-1 at 6, 9-10 ("Accordingly, the Postal Service is focusing initially on the opportunity to improve efficiency through consolidation of retail operations at stations and branches.").

reactionary. When this nationwide Initiative was filed on July 2, 2009, the Postal Service could not provide the Commission of an accurate number of station and branch post offices that would be subject to the Initiative. Due to limitations in its centralized accounting systems, initial Postal Service estimates of the facilities subject to the Initiative ranged from to approximately 3200 to approximately 3600 – a 12.5 percent swing.⁵ To date, Postal Service headquarters does not even have a centralized database containing the street addresses and ZIP Codes of all the station and branch post offices subject to the Initiative. Tr. 2/223. Similarly, centralized databases do not contain costs for each station and branch post office. Tr. 2/224. The only way for the Postal Service to determine these disaggregated costs is by manual calculation of all 3200 to 3600 facilities. Tr. 2/225.

When this nationwide Initiative was initially filed, the Postal Service's only document detailing the new program was a "high-level" slide presentation. Tr. 2/117-38. There was no written guidance provided to the district managers responsible for implementing the program. Tr. 2/144-49.⁶ Rather, the entire program was being implemented via regular telephone conferences. Tr. 2/148. These pivotal teleconferences were not memorialized in any way. This failure leaves Postal Service employees responsible for actually implementing the Initiative with no record of the important decisions made on those calls. Tr. 2/148. This lack of detailed, thought-out memorialized guidance identifying which offices should be studied and ultimately closed leads to inconsistency in application and potentially arbitrary and capricious behavior.

⁵ Compare Tr. 2/125 with Tr. 2/178; see also Tr. 2/222.

⁶ After repeated attempts at obtaining written documents related to this case, the Postal Service provided a PowerPoint training presentation and a sheet answering frequently asked questions that were created during the pendency of the instant proceeding. Tr. 2/151-52. However, in implementing the Initiative, the Postal Service never produced any kind of written guidance for districts to follow in determining which station and branch post offices should be studied as part of either the prescreening process or the discontinuance study process. Tr. 2/214-16.

B. Contrary and Confusing Goals

The Public Representative is also concerned with the lack of consistency of the Initiative's goals. At first, it appeared that the Postal Service's primary goal with respect to the Initiative was for efficiency gains through cost reductions. See Tr. 2/199, 244-45; USPS-T-1 at 6, 9-10. Later, during the pendency of the case, the overall goal changed to realigning the retail infrastructure. Tr. 2/344.

While it may be acceptable to have a variety of aims, the district and local managers need to have clear goals in mind so they have direction in implementing the program. If one local manager believes the overall goal is to save money, he may be more inclined to recommend closure of a particular branch or station post office that has declining revenue. However, if the local manager believes the overall goal of the process is to realign the retail network, he may be more inclined to keep such a facility open based on other factors.

To add to the confusion, although the Postal Service's most recent testimony states the overall goal is to realign the retail infrastructure, the Postal Service's template for providing public notice about a particular discontinuance study states that the reason for the Initiative is due to economic conditions.⁷ The Postal Service's failure to communicate clear goals to the general public makes the public's comments less constructive.⁸ If the public does not know the real reasons why a particular branch or station post office is being considered for closure, members of the public cannot provide a meaningful contribution to allow the Postal Service to make better, more informed decisions. It will also make it more difficult for the public to understand why certain facilities are being closed and others are not. Communicating contrary and confusing

⁷ Tr. 2/403 (The template states: "Current economic conditions require that we review all postal operations for opportunities to streamline processes and provide service more efficiently. Accordingly, we are considering consolidation of retail and delivery operations at the _____ Station/Branch.).

⁸ For example, without knowledge that the Postal Service did not consult the Department of City Planning for the Borough of The Bronx, members of the public did not know that they had to provide the Postal Service with publically available demographic data. They assumed that the Postal Service had previously consulted with government entities that regularly collect and provide such information. See Bronx Field Hearing Tr. at 178-79.

goals does not comport with one of the main policies of title 39 – increasing the transparency of the Postal Service to the public.

C. Failure to Consider Alternatives

In the Postal Service's rash implementation of the Initiative, it failed to consider alternatives less disruptive to its customers. For example, a less disruptive alternative would be adjusting operating hours of individual facilities. As opposed to a complete closure, the general public would prefer the less drastic approach of changing the operating hours of a branch or station post office. If a facility were open for fewer hours, the Postal Service's costs at that particular branch or station post office would be reduced. Tr. 2/270-71.

However, in its haste to implement the Initiative, Postal Service headquarters did not even consider adjusting the operating hours of branch and station post offices as an alternative to complete closure. Tr. 2/269; 310-12. If the Postal Service had considered reducing operating hours and had a rational reason for rejecting that alternative, such action would be justified. However, it simply did not consider that or other alternatives at all. Tr. 2/310-12.

In fact, members of the affected community cannot even legitimately suggest an adjustment to operating hours as a viable alternative. Rather, in order to adjust the operating hours of a branch or station post office in connection with the Initiative, the Postal Service must first go through the entire discontinuance study process and consider whether to close a particular branch or station post office. Tr. 2/96; 166-67. Then, only once the Postal Service decides to keep the facility open will it allow local management to adjust operating hours at management's discretion. Such adjustments to operating hours, if any, are made without allowance for community input. Tr. 2/167.

In essence, through this Initiative, the Postal Service is deliberately circumventing its local management's discretion to adjust the operating hours of a particular branch or station post office in an effort to cut costs. Instead, local management must choose between (1) keeping the station or branch post office open

as it is currently operating, or (2) closing the station or branch post office entirely. The Postal Service should not limit itself to these two polar opposite positions and instead consider less disruptive alternatives such as adjusting operating hours of station and branch post offices.

III. FAILURE TO FOLLOW APPLICABLE STATUTE ON CLOSING FACILITIES

The Postal Service's closing procedures and timelines do not comply with the policies of title 39 because they do not follow the statutory requirements clearly set forth in 39 U.S.C. 404(d). Sections 404(d)(1)-(5) set forth the requirements the Postal Service must follow to "determine...the necessity for the closing or consolidation of any post office." 39 U.S.C. 404(d)(1). Specifically, section 404(d)(1) requires notice of the intent to close or consolidate to persons served by the affected post office so that those persons may have an opportunity to present their views. Section 404(d)(2) describes factors the Postal Service must consider when making a determination whether or not to close or consolidate a post office, and section 404(d)(3) requires the Postal Service to provide, after deciding to close or consolidate a post office, a written determination that addresses the factors listed in section 404(d)(2). Section 404(d)(4) requires 60 days notice after the determination before actual closure may occur. Section 404(d)(5) gives persons the right to appeal a closure or consolidation to the Commission, and describes the Commission's role in the closing or consolidation appeals process. Additionally, the Postal Service must provide notice to postal patrons of their appeal rights to the Postal Regulatory Commission. 39 CFR 3001.110.

Instead of following these clear, statutorily mandated procedures, the Postal Service has issued extremely abbreviated procedures for closing certain post office types it internally classifies as "branches" and "stations."⁹ The abbreviated procedures

⁹ The Postal Service's decision to treat its customers who obtain retail access at station and branch post offices as opposed to other types of post offices differently also appears to run afoul of 39 U.S.C. 403(c) and its prohibition against undue discrimination.

provide a total of only 60 days prior to making a final closure decision rather than the statutorily mandated minimum of 120 days. See USPS-T-1 at 12 & Table 2; Tr. 2/122; 39 U.S.C. 404(d). Furthermore, the Postal Service's abbreviated procedures do not provide the public with the statutory timeframe for public input. In violation of section 404(d), the Postal Service only provides 10 days notice for closures of branch and station post offices while the statute requires at least 60 days notice. 39 U.S.C. 404(d); Tr. 2/472, 437.

As justification for not following these statutorily mandated procedures, the Postal Service makes an argument that was explicitly rejected on appeal that branch and station post offices are not post offices at all – notwithstanding the fact that the Postal Service concedes that its customers, for the most part, do not distinguish between a station and branch post office and other types of post offices. Tr. 2/544. If this issue had not already been fully and fairly litigated in front of the appropriate appellate forum, the Postal Regulatory and Postal Rate Commissions,¹⁰ it might make sense for the Postal Service to put forward such an argument. However, through the appeals process, the proper appellate forum has rejected this argument, finding the Postal Service in clear violation of that section of the statute.¹¹

¹⁰ The section of title 39 dealing with the scope of the Commission's jurisdiction over post office closing appeals (39 U.S.C. 404) was not changed by the Postal Accountability and Enhancement Act of 2006 (PAEA). Congress's decision to keep this part of section 404 unchanged in the PAEA shows that it agrees with the Commission's longstanding interpretation of its jurisdiction of post office closings.

¹¹ See e.g., *In re Gresham, SC*, Docket No. A78-1, Order No. 208 (August 16, 1978); *In re Mt. Eden, Ca.*, Docket No. A80-4, Commission Op. Affirming Determining – 39 U.S.C. § 404(b)(5) (May 28, 1980); *In re Oceana Station Virginia Beach, VA*, Docket No. A82-10, Order No. 436 (June 25, 1982); *In re Knob Fork, WV*, Docket No. A83-30, Commission Opinion Remanding Determination for Further Consideration – 39 U.S.C. § 404(b)(5) (January 18, 1984) (holding that a community post office is a post office for purposes of 404(d)); Docket No. A94-1, Commission Opinion Affirming Decision Under 39 U.S.C. § 404(b) (February 4, 1994) at 5-6; Docket No. A94-3, Commission Opinion Affirming Decision Under 39 U.S.C. § 404(b) (March 15, 1994) (Schley, C. and LeBlanc, C. dissenting) (stating that “[t]he Postal Rate Commission has consistently interpreted § 404(b) to apply to community post offices when they are the sole source of postal services to a community); Docket No. A94-8, Commission Opinion Remanding Decision Under 39 U.S.C. § 404(b) (August 3, 1994) at 7-8; *In re San Francisco Main Post Office, CA*, Docket No. A91-4, Order No. 891 (July 8, 1991); *In re Observatory Finance Station*, Docket No. A2006-1, Order No. 1480 - Order Denying Postal Service Motion to Dismiss and Remanding for Further Consideration, September 29, 2006.

The Postal Service appears to categorize the appellate forum's unfavorable holdings in these cases as a "disagreement between the two agencies."¹² This characterization is disingenuous. An appellate forum's findings on a particular issue clearly trump those of a lower forum. For example, if the U.S. Court of Appeals for the D.C. Circuit finds that an agency incorrectly interpreted a statute, the D.C. Court of Appeals ruling on the issue would govern unless a higher appellate body (the Supreme Court) overruled that decision. It is not considered a "disagreement" between the agency and circuit court.¹³

As noted above, over the past 30 years, the legal underpinnings of these orders have already been fully and fairly litigated. The Postal Service continually received unfavorable rulings on the issue. Had the Postal Service wished to challenge the legality of these orders, it could have done so on appeal to a higher appellate authority in response to any one of the many final orders in the past 30 years upon which the Postal Service received an unfavorable ruling. An appeal is the proper way to challenge an order that a party believes is based on an error of law. *Duell v. Duell*, 178 F.2d 683, 696 (D.C. Cir. 1949) ("If a party made the subject of an erroneous but not void judgment desires to escape its effect he must appeal from it within the proper time; not so appealing he must obey it."). For some unknown tactical reason, the Postal Service never chose to appeal the rulings.

As a result, the issue now becomes a much more serious one – the Postal Service's defiance of an appellate forum's lawfully issued orders. Indeed, if parties were free to disregard orders that they did not like or agree with, the entire adjudicatory system would be in chaos.

¹² Bronx Field Hearing Tr. at 30-31.

¹³ The Senate version of the bill dealing with post office closing appeals provided postal patrons with the right to appeal the closing of a post office to the U.S. Court of Appeals for adjudication. The conference committee bill substituted the Postal Rate Commission as the appellate body rather than the U.S. Court of Appeals. See H.R. Conf. Rep. 94-1444, 94th Cong., 2nd Sess. 1976 *located at* 1976 U.S.C.C.A.N. 2434, 2440. This shows that Congress intended for the Commission's action in its appellate capacity to have force and effect similar to that exercised by the U.S. Court of Appeals.

The Postal Service's admitted defiance of the appellate forum's holdings may be considered contempt.¹⁴ See e.g., Tr. 2/206. As the Supreme Court has stated: "Persons who make private determinations of the law and refuse to obey an order generally risk criminal contempt even if the order is ultimately ruled incorrect." *Maness v. Meyers*, 419 U.S. 449, 458 (1975). To hold a party in civil contempt for violating an order requires the establishment of two essential elements. *Armstrong v. Exec. Office of the Pres.*, 1 F.3d 1274, 1289 (D.C. Cir. 1993). First, the court must have issued an order that is clear and reasonably specific. *Cobell v. Babbitt*, 37 F. Supp. 2d 6, 9 (D. D.C. 1999) (citing *Food Lion v. United Food and Commercial Workers Int'l Union*, 103 F.3d 1007, 1016-17 (D.C. Cir. 1997)). And second, the putative contemnor must have violated the court's order. *Id.* Those elements are clearly met here. The Commission's remand order in *In re Observatory Finance Station* clearly instructs the Postal Service to reconsider the closing of that postal facility,¹⁵ and the Postal Service has admitted to violating that order. Tr. 2/206.

Most tragically, the Postal Service's failure to follow the requirements of 39 U.S.C. 404(d) and lawful Commission orders deprives postal patrons of the knowledge that they have the right to appeal the Postal Service's decision.¹⁶ Without knowledge of such appeal rights, unsophisticated postal patrons are effectively deprived of those very rights for these approximately 3600 postal facilities. Tr. 2/222.

¹⁴ Contempt is the power of an adjudicatory body to enforce its own orders. A civil contempt action is characterized as remedial in nature, used to obtain compliance with a court order or to compensate for damages sustained as a result of noncompliance. *Evans v. Williams*, 206 F.3d 1292, 1294-95 (D.C. Cir. 2000) (citing *United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 827 (1994)). Contempt citations ought to be issued with caution and "only when the rules do not provide the court with sufficient authority to protect their integrity and to prevent abuses of the judicial process." *Cobell v. Babbitt*, 37 F. Supp. 2d 6, 11 (D. D.C. 1999) (citing *Shepherd v. ABC, Inc.*, 62 F.3d 1469, 1472 (D.C. Cir. 1995)).

¹⁵ *In re Observatory Finance Station*, Docket No. A2006-1, Order No. 1480 - Order Denying Postal Service Motion to Dismiss and Remanding for Further Consideration, September 29, 2006.

¹⁶ Binding regulations require the Postal Service to provide notice to postal patrons of their appeal rights to the Postal Regulatory Commission. 39 CFR 3001.110. However, the Postal Service routinely ignores this requirement in the context of closing a branch or station post office. Tr. 2/153.

IV. FAILURE TO PROVIDE CLEAR PRINCIPLES AND INTELLIGIBLE STANDARDS FOR DISTRICTS TO APPLY

The Initiative does not provide clear principles and intelligible standards for the districts to apply in determining which station and branch post offices to close or how to coordinate this Initiative with other Postal Service initiatives. As a result, the Initiative delegates too much authority to district managers to make decisions on a localized basis. This delegation of authority inevitably will lead to inconsistent application across the nation. It also raises concerns about the Postal Service's ability to ensure that it is providing "ready access to essential postal services" and "adequate service" across the country in compliance with 39 U.S.C. 403. Additionally, Postal Service headquarters does not provide any guidance to district managers about how to coordinate the Station and Branch Optimization and Consolidation Initiative efforts with the Postal Service's collection box removal initiative. Without Postal Service headquarters providing clear principles and intelligible standards for the district managers to apply and coordinate this effort with other programs, the Initiative does not comport with the policies of title 39. Below, the particular problems with the delegation of authority and lack of coordination are discussed.

A. No Objective Standards for District Managers to Apply

The Initiative does not provide any objective standards for the district managers to apply in determining which station and branch post offices pass the "prescreening process" or which station and branch post offices to close pursuant to a discontinuance study. Witness Matalik testified that Postal Service headquarters directs district managers to take into account the following factors when determining which station and branch post offices pass the prescreening process:

- existence of other postal-operated retail facilities within five miles of the candidate; or within five-to-ten miles;
- alternative retail access channels within a one-mile proximity of the station/branch post office (main post offices, station post offices, branch

- post offices, contract postal units, and consignment stamp purchase locations);
- availability of space in nearby postal facilities of any type necessary for carrier operations now located in the candidate station/branch post office;
 - the ability of the candidate facility and any potential gaining facility to accommodate current and future customer, postal and employee vehicle parking needs;
 - the space necessary to accommodate transfer of the candidate facility's operations is located in one or more suitable nearby facilities;
 - the building housing the station/branch post office being considered for discontinuance is structurally designed to meet future postal needs;
 - imminence of a forthcoming lease termination opportunity for the candidate facility;
 - the availability of retail windows and staffing to avoid unreasonable wait-time in line at potential gaining location(s);
 - retail revenue trends at the station/branch post office being considered for discontinuance compared to same period last year;
 - retail visit trends at the station/branch post office being considered for discontinuance compared to same period last year.

USPS-T-2 at 7-8. After applying those factors and determining which branch and station post offices to subject to a discontinuance study, a district manager then takes into account the following factors when determining which station and branch post offices to close:

- mail volume and retail transaction trends;
- proximity to other retail service facilities;
- space requirements and capabilities;
- wait-time in line and retail window service capacity;
- impacts on employees at the facility under study;
- customer concerns as expressed in response to questionnaires or in a community meeting;
- postal financial savings that could result from closure or consolidation;
- alternate retail service and delivery options;
- the ability of nearby postal facilities to accommodate retail, delivery and mail processing workload that may shift to their locations;
- what kinds of non-postal service requirements exist at the station or branch post office being analyzed for discontinuance; and
- other factors as may be deemed appropriate.

USPS-T-2 at 9-10. See also Tr. 2/151, 2/176-181. While the Public Representative agrees that many of these factors are important, these factors alone do not provide specific guidance to the district managers in determining which facilities to consolidate or close.

None of the factors listed above allow a district manager to apply any objective criteria to determine which station and branch post offices to subject to a discontinuance study, or which station and branch post offices should be closed as a result of that study. Postal Service headquarters merely provides a list of subjective elements for district managers to consider. It does not provide any guidance in how those factors are to be applied, the weight given to any of the factors, or the overall goals that the Postal Service is striving to achieve.

The problem with this methodology is best illustrated by the following example. The first two factors considered in the discontinuance study process are “mail volume and retail transaction trends” and “proximity to other retail service facilities.” Mail volume and retail transaction trends are elements that are easily capable of measurement. The Postal Service should know the exact mail volume of each station and branch post office and the mail volume trends in each office. The first factor could easily be made an objective criterion, rather than leaving it up to each individual district manager to subjectively estimate the percentage drop in mail volume or retail transactions at a particular station or branch post office would be enough to make it worthy of closure. Similarly, the second factor, proximity to other retail service facilities is easily measured. The Postal Service could provide guidance to district managers and other field personnel on appropriate physical distances between retail facilities. If Postal Service headquarters does not think that exact physical distances are appropriate, it could provide distance related guidance in the form of ranges or base its guidance on other appropriate objective criteria.

However, as currently drafted, the factors to be considered by the field personnel are so vague as to make it virtually impossible for the district managers to know what distances between a closing station or branch post office and the remaining retail

facilities are appropriate. Field personnel who own automobiles may not subjectively think 5 miles is too far while other field personnel who regularly take public transit might think that 2 miles is too far to travel, especially if such alternate facilities are not accessible by public transit.

Postal Service headquarters also does not provide any guidance to the district managers and other field personnel as to the weights placed on each factor in the decision-making process.¹⁷ Without assigning relative weights to at least some of the factors, it becomes difficult, if not impossible, for local field personnel to determine how to simultaneously consider the effects of multiple subjective factors. This is especially true where, as here, there are ten factors for local field personnel to consider at each stage of the process.

For example, the most important factor to the Public Representative is consumer input. As currently drafted, it is unclear if enough negative public input can ever cause the Postal Service to keep a facility open. Even if consumer input could keep a facility open, the guidance provided to the districts does not explain any relative weights to the local decision-makers. Some districts may decide that some amount of negative public input is sufficient cause to keep a facility open after the completion of a discontinuance study while other districts may come to an opposite conclusion. This leads to inconsistency across the country and may lead to arbitrary and capacious behavior.

The Public Representative does not understand how the Postal Service headquarters may abdicate all oversight, offer no objective criteria and expect to come away from the Initiative with a consistent or acceptable result. The Postal Service's reliance on local managers as a panacea to all ills the Initiative may visit on consumers is short-sighted at best.

Overall, the factors that Postal Service headquarters has provided to the districts to apply during the prescreening process and during a discontinuance study are too subjective and will lead to inconsistency and unfairness. To improve the process,

¹⁷ Under the Initiative, no relative weights are assigned to each factor. See Tr. 2/474.

Postal Service headquarters should provide more objective metrics for district field personnel to use in determining which station and branch post offices to study and which station and branch post offices to close. Additionally, the Postal Service should inform district managers of relative weights to apply to each factor, or at least inform them which factors are considered more important than others. This will allow for more consistency and reduce the potential for arbitrary and capacious behavior. As a result, these improvements will help guarantee that the Initiative conforms to the policies of title 39.

B. Special Precautions Needed to Ensure Ready Access to Postal Services

In order to comport with the policies of title 39, the Postal Service needs to institute special procedures to ensure that the Initiative comports with the service standards mandated by 39 U.S.C. 403. In particular, section 403(a) requires the Postal Service to “plan, develop, promote, and provide **adequate** and efficient **postal services** at fair and reasonable rates and fees.” (Emphasis added). Similarly, 403(b)(3) makes it the responsibility of the Postal Service “to establish and maintain postal facilities of such character and in such locations, that postal patrons throughout the Nation will ... have **ready access to essential postal services.**” (Emphasis added). The Postal Service has stated that it does not have any specific plans for the Initiative to ensure compliance with sections 403(a) and (b)(3). Tr. 2/343. Instead, as part of local management’s routine, day-to-day responsibilities, the Postal Service plans to have the local manager assess the needs of the customers and adjust the levels of service accordingly. *Id.* In essence, the Postal Service intends to close station and branch post offices first, review the results, and then make adjustments to the network, if by happenstance, local management perceives a need to do so in order to safeguard “ready access” and “adequate service.”

While such an ad hoc system may work when one isolated branch or station post office is closed, the Initiative is a nationwide program that affects postal services,

service standards, and retail facilities across the country. The closure of several station and branch post offices in one geographic location could have a ripple effect on the service provided in neighboring facilities that remain open. Wait times at those facilities that remain open could increase exponentially due to multiple local closures. Retail window service capacity would also be significantly affected at those station and branch post offices.

The closure of several station and branch post offices in a localized area would have a substantial effect on the Postal Service's ability to provide "ready access" and "adequate service." On a nationwide basis those effects could lead to a severe nationwide degradation in service such that "ready access" and "adequate service" are no longer being provided by the Postal Service. This nationwide issue cannot be solved on a localized basis by district managers. In order to conform to the policies of title 39, Postal Service headquarters needs to initiate a special program to ensure that the closure of station and branch post offices as a result of the Initiative does not lead to a degradation of service to such a degree that "ready access" and "adequate service" are no longer being provided.

The Postal Service seems to believe that "ready access" varies on the basis of differences between cities and their suburbs. Tr. 2/266. Similarly, the Postal Service believes that "adequate service" means that a reasonable level of service should be provided, although such levels also vary depending on the customers' needs. *Id.*

While it may be true that "ready access" and "adequate service" can be thought of as relative concepts, see Tr. 2/343-34, the Postal Service concedes that there is a point where it should not be left up to local management to make such decisions, and Postal Service headquarters should address those concerns directly. Tr. 2/344. The fundamental problem with the Postal Service's methodology for addressing such concerns is that there is no guidance provided to local management in determining at what point such a concern should be elevated to Postal Service headquarters. Similarly, there is no guidance provided by headquarters to help local management

determine whether “ready access” and “adequate service” are being provided in a local area. Tr. 2/159.

In order to conform to the policies of title 39, Postal Service headquarters needs to provide guidance and instructions to local managers on how to guarantee that the Initiative maintains ready access and adequate service for postal patrons. It also needs to provide procedures for allowing customers to elevate such concerns to Postal Service headquarters. See Tr. 2/344. Providing ready access to essential postal services should be foremost on the Postal Service’s institutional mind throughout the Initiative, not an afterthought to be left to local postal management.

C. Lack of Coordination with Collection Box Rationalization Initiative

To conform to the policies of title 39, the Postal Service needs to ensure that the Initiative is properly coordinated with the Postal Service’s initiative to rationalize its collection box network. Currently, the Postal Service is not considering the combined effects of both the Station and Branch Optimization and Consolidation Initiative and its efforts to rationalize its collection box network. Tr. 2/229, 368.

On a local scale, the Postal Service does not make any assessment of whether the upcoming removal of nearby collection boxes will have a detrimental impact on postal patrons such that, along with the Station and Branch Optimization and Consolidation Initiative, the degradation in service means the community will be lacking in “ready access” and “adequate service.” See *Id.* One of the Postal Service’s rationales for implementing the Station and Branch Optimization and Consolidation Initiative is because of the existence of alternative access such as collection boxes. USPS-T-1 at 5-8; Tr. 2/352. Quite simply, the removal of collection boxes removes alternative access.

The Postal Service has stated that, on a national basis, the number of collection boxes has declined from 333,873 in the year 2000 to 227,600 at the end of June 2009. Tr. 2/228. This represents a 31.8 percent reduction. *Id.* By any measure, a 31.8 percent decline across the nation is at least substantially nationwide in scope.

In addition to needing to coordinate these efforts with the Station and Branch Optimization and Consolidation Initiative, the Postal Service needs to file a change in the nature of postal services case with the Commission requesting an advisory opinion on its initiative to rationalize its collection box network in order to comply with the requirements of 39 U.S.C. 3661(b) and (c). Whether the collection box rationalization initiative ends up being substantially nationwide in scope as an unintended effect or is Postal Service headquarters' intended, underlying purpose is immaterial. See *Buchanan v. United States Postal Service*, 375 F. Supp. 1014, 1020 n.11 (N.D. Ala. 1974), *affirmed in part*, 508 F.2d 259 (5th Cir. 1975) (holding that "decentralization of decision making and authority cannot be a shield to insulate a program available to the entire Postal Service from being nationwide"). The substantially nationwide reduction in collection boxes is a change in the nature of postal services, and the public deserves its statutorily mandated right to a hearing in front of the Postal Regulatory Commission and the benefit of an advisory opinion from the Commission.

V. FAILURE TO PROVIDE ADEQUATE NOTICE AND SUFFICIENT TRANSPARENCY

The Initiative does not provide sufficient transparency into the procedures that the Postal Service uses to determine whether to close station and branch post offices. This lack of transparency does not conform to the policies of title 39. In particular, neither the prescreening process nor the discontinuance study process allows for meaningful public participation. Additionally, the Initiative does not provide the public with sufficient information as to why the Postal Service adds or subtracts station and branch post offices from the potential closure list or why a final discontinuance decision is made to close or keep such facilities open.

A. Lack of Any Public Participation During the Prescreening Process

In order to conform to the policies of title 39 regarding the transparency of postal operations and decision-making, the Initiative must provide the public with an

opportunity to meaningfully participate and provide information early in the process – before the Postal Service takes action to decide whether a particular station or branch post office should be closed. This ensures that the Postal Service and the public do not waste time and resources needlessly engaging in full-blown discontinuance studies. However, the Initiative does not allow any public input during the prescreening process. Tr. 2/405, 433, 444. By not permitting the public to participate at this early stage and only allowing the public to participate with respect to a particular discontinuance study, the public only has an opportunity to say: “close this facility” or “do not close this facility.” The public does not have the opportunity to argue that another facility should be closed instead.

The following example highlights the problems with barring early public participation. For purposes of this example, there is a particular facility located very close to a cluster of elderly residents with limited mobility and there is another station or branch post office a few miles away that does not have any elderly residents living in the vicinity. It might make sense for the Postal Service to undertake a discontinuance study with respect to only one of those facilities. Since the Postal Service’s prescreening process does not take demographic information into account during the prescreening process,¹⁸ USPS-T-2 at 8-9, the first facility may be the facility that the Postal Service decides to subject to a discontinuance study while the second facility is removed from the potential closure list. The elderly patrons at the first facility are then only left with the option of arguing that their local facility should either remain open or be closed. Because the Postal Service has already removed the second facility from the potential closure list, the elderly patrons are foreclosed from suggesting that the second facility be removed instead. Accordingly, to avoid such problems and conform to the

¹⁸ This example also highlights the fundamental problem with the Postal Service not taking into account demographic data early in the process. Tr. 2/480-81; *see also generally* APWU-T-2. Of greatest concern is that the Postal Service apparently has some census and other demographic data available in its ROAM system, but it does not use such data early in the process since it does not believe it is the “best source” of customer retail habits. *Compare* USPS-T-2 at 7-8 (prescreening factor list does not include demographic or census information) *with* Response of the United States Postal Service to

transparency and other policies of title 39, the Initiative should provide the public with an opportunity to provide meaningful insight into the prescreening process.

B. Lack of Meaningful Participation During the Discontinuance Study Process

The Initiative also does not allow for meaningful public input during the discontinuance study process and as a result, does not conform to the policies of title 39 or applicable statutory requirements. In particular, (1) the amount of time that the Postal Service provides for the public to comment is too short to allow for meaningful input; (2) it does not provide adequate notice of the discontinuance study to potentially affected patrons; and (3) the Postal Service fails to allow the public to provide comments by methods other than by filling out a questionnaire or attending a community meeting. Each discontinuance study public input concern is addressed below.

1. Ten Day Public Input Period

The discontinuance study process only requires the Postal Service to provide the general public with ten days to comment on the proposal. Tr. 2/472, 437. This is an inadequate amount of time for the public to provide meaningful comment. Not all users of station and branch post offices visit those facilities during a given ten day period. Those individuals may not find out about the potential closing until after the comment period has closed.¹⁹ The policies of title 39 require at least 60 days notice to allow interested members of the public an opportunity to present their views. See 39 U.S.C. 404(d)(1); see *also supra* Part III. In addition to complying with the applicable statutory

Presiding Officer's Information Request No. 3 (November 17, 2009) at 19-28 (showing availability of ESRI-type demographic forecasts).

¹⁹ While the Postal Service says it reviews late filed comments, Tr. 2/472, a better approach would be to allow more time for public comment. Potential commenters who belatedly find about the closure may not be aware of the Postal Service's policy of reviewing late filed comments and instead may refrain from providing any late comments.

requirements, this more appropriate timeframe will ensure that patrons who visit the branch or station post office on a bi-weekly or monthly basis receive notice of the discontinuance study before the Postal Service takes action to decide whether the office should be closed.

2. Distribution of Notices

The Postal Service's discontinuance study process informs the public of a potential closure in one or more of the following ways: (1) newspaper publication; (2) distribution in the facility's lobby, and (3) distribution to the delivery customers (post office box and carrier delivery customers).²⁰ These methods are inadequate. First, newspaper publication is insufficient since it incorrectly assumes that all patrons of a branch or station post office read the newspaper. This is an invalid assumption. Station and branch post office patrons might not read the local newspapers; they may get their news from other sources.²¹ If they do read newspapers, they may only read national newspapers, foreign newspapers, or read online newspapers which do not contain the same classified ads as print newspapers.

Additionally, Postal Service headquarters issues no guidance on placing acceptable ads in the newspaper. It is up to the individual districts to decide, on an ad hoc basis, if the newspaper notice is to be a half page color ad in the metro section or whether it is to be one small classified ad among many, buried along with the foreclosure notices in the classifieds section. See Tr. 2/565-66. Even if every affected patron regularly read the local newspaper, the latter notice would clearly not be sufficient.

²⁰ As currently implemented, both of these methods are not available in all cases. In most cases, customers can voice their concerns at either a community meeting or by responding to a questionnaire depending on which method the local district manager prefers. Tr. 2/399, 401.

²¹ Indeed, newspaper circulation has recently seen its lowest level in seven decades. See "The Accelerating Decline of Newspapers," Washington Post, October 27, 2009 *available at* <http://www.washingtonpost.com/wp-dyn/content/article/2009/10/26/AR2009102603272.html>.

Second, the distribution of notices in the facility lobby needs to be readily apparent to all patrons who visit the facility. Questionnaires should be easily accessible and out in the open – not behind the counter. Large, bright lobby signs should be placed on the doors of the lobby and elsewhere around the facility.²²

Third, the Postal Service's distribution should not be limited to just delivery customers or post office box customers. More than half of the facilities on the potential closure list do not have any delivery customers. Tr. 2/294. For those station and branch post offices where there is no carrier delivery, people living in close proximity to those facilities will not receive notice of the discontinuance study unless they happen to visit the facility during the ten day notification window. Such notification is inadequate. Whether a delivery route originates from the branch or station post office or elsewhere is immaterial as to whether a patron uses the facility.²³ The policies of title 39 require the Postal Service to notify all of potential discontinuances. Accordingly, the policies of title 39 require the Postal Service to send notice by mail to all delivery points within reasonable travel distance of the affected branch or station post office. Otherwise, individuals living near the facility may never get notice of the potential closure.

3. Alternative Comment Media

The Postal Service should also allow postal patrons to provide their comments via methods other than by mailing a questionnaire or voicing their concerns at a community meeting (if local Postal Service personnel decide, in their discretion, to hold such a community meeting). As the Postal Service acknowledges, a significant number of postal patrons in the areas affected by the Initiative use alternative media to communicate. USPS-T-1 at 8-9. The Postal Service is even catering to those customer preferences by allowing them to use the internet and telephone to mail packages,

²² While under the Initiative it is possible for individual districts or postmasters to decide to mandate such action, it is not required under the Postal Service headquarters directive.

²³ The average patron is concerned with timely delivery. He has no idea from where his delivery routes originate.

purchase stamps, and perform other postal activities. Tr. 2/255-56. Thus, it stands to reason that the Postal Service should allow those postal patrons to communicate their views on the potential closures of station and branch post offices via those same media. In particular, the Postal Service should allow postal patrons to provide comments via e-mail and telephone. Accordingly, to obtain more representative comments on the Initiative from all affected customers,²⁴ the Postal Service should expand the avenues by which it allows the public to voice its concerns.

C. Lack of Transparency as to the Reasons Station and Branch Post Offices are Closed

The Initiative does not provide the public with sufficient information as to (1) why the Postal Service adds or subtracts station and branch post offices from the potential closure list or (2) the reasons that a Postal Service discontinuance study results in a decision to close a facility or keep it open. The Postal Service apparently requires its local decision makers to provide the reasons that a facility is removed from the potential closure list to Postal Service headquarters. Tr. 2/579-80.²⁵ However, this information is not provided to the affected postal patrons. In order to comport with the transparency policies of title 39, this information should be directly provided to the local postal patrons who regularly use the facility.

Additionally, at the completion of a discontinuance study, the Postal Service does not require a final determination to be posted at the facility (or elsewhere)²⁶ informing affected patrons why the facility is being closed or even that a final determination was

²⁴ Unfortunately, the sample templates demonstrate that the Postal Service is focused on responding in writing to concerns raised rather than addressing and considering them in the decision making process. See Library Reference USPS-LR-N2009-1/6 (August 8, 2009) at 43-55.

²⁵ See *also* Response of the United States Postal Service to Presiding Officer's Information Request No. 3 (November 17, 2009) at 2-15. Very late in this case, some very cursory information on why branch and station post offices were removed from the potential closure list was provided to the Commission. *Id.*

²⁶ The Postal Service also does not require a final decision regarding closure to be mailed to postal patrons living near the facility or placed in newspapers.

made to close the facility.²⁷ In addition to failing to provide transparency into Postal Service's operations, this lack of information also keeps adversely affected patrons from knowing whether they have grounds to appeal an unfavorable decision to the Commission. In order to comport with the transparency policies of title 39, the reasons for the final closure decision and other relevant closure information should be directly provided to the local patrons.

VI. ALTERNATIVE ACCESS CONCERNS

The Postal Service is required to "have as its basic function the obligation to provide postal services to bind the Nation together," and it shall "provide prompt, reliable, and efficient services to patrons in **all areas** and shall render postal services to **all communities**." 39 U.S.C. 101(a) (emphasis added). Further, the Postal Service is directed:

to establish and maintain postal facilities of such character and in such locations, that postal patrons throughout the Nation will, consistent with reasonable economies of postal operations, have ready access to essential postal services.

39 U.S.C. 403(b)(3).

The Postal Service justifies the Initiative, in part, on the availability of alternative retail and delivery access channels for postal services.²⁸ This section examines, in the context of the Initiative, those alternate means of access the Postal Service claims provide "ready access to essential postal services" in the absence of a local station or branch post office. While the Public Representative is encouraged by the Postal Service's innovation with respect to alternative access channels, the Postal Service's reliance on alternate access channels as a means to justify the replacement of station and branch post offices does not comport to the policies of title 39.

²⁷ See Library Reference USPS-LR-N2009-1/6 (August 8, 2009) at 26 ("Final Determination posting is not required for CPO, classified branch or classified station discontinuance.").

The Postal Accountability and Enhancement Act (PAEA) specifically addresses the issue. PAEA section 302(d)²⁹ states that “the Postal Service’s plan [required under this section] shall include plans to **expand** and market retail access to postal services, **in addition to post offices...**” (Emphasis added). This clearly articulated “addition to” language shows that Congress intended the Postal Service to use alternative access channels as a supplement to station and branch post offices, not as a replacement for those retail channels. Yet the Postal Service appears to advocate replacement of post offices with respect to its PAEA section 302 plan. Tr. 2/139, 150.

Among others, contract postal units, supermarket checkouts, usps.com, collection boxes, and stamps on consignment are alternate retail access.³⁰ Alternate delivery services may include physically relocating post office boxes to a neighboring facility, a nonpersonnel units, cluster box units, or carrier delivery. Tr. 2/448.

The Public Representative identifies three main issues regarding the substitution of alternate retail and delivery access for post office access at a station or branch post office. First, alternative access to retail and delivery services is far from a viable substitute for window or post office access for service. Second, alternate access degrades service to customers and causes hardship to some groups of customers. Finally, the Postal Service does not provided a complete picture of the costs associated with alternative access channels.

A. Substitution of Alternate Access

Alternate delivery and retail access channels are far from perfect substitutes for retail window and post office access for those services. First, customers who have the right to appeal to the Commission for the closing of a station, branch, community, or

²⁸ See Request of the United States Postal Service for an Advisory Opinion on Changes in Postal Services, July 2, 2009 (Request) at 4-5; See *a/so* USPS-T-1 at 5.

²⁹ Pub. L. 109-435, Title III, section 302 (December 20, 2006).

³⁰ Tr. 2/347-349, 352, 368, 470.

main post office lose that right if alternate access channels are substituted for protected methods of access. See 39 U.S.C. 404(d)(5).³¹ In fact, they do not have any right to participate in the process if the Postal Service decides to alter or discontinue the vast majority of these alternative access channels. Second, customers are typically subject to additional fees for utilizing alternate access channels. Third, many of the alternate “substitutes” for a station or branch post office do not offer the full range of services available at a station or branch post office. Each of these concerns is discussed below.

A member of the public served by a post office, be it a station, branch, community post office, or main post office, has the right to appeal to the Commission if the Postal Service makes a determination to close that office. See 39 U.S.C. 404(d)(5).³² There is, however, no right to appeal if the local supermarket ceases to sell stamps, or the Postal Service stops deploying a mobile unit to a particular area. Therefore by closing or consolidating station and branch post offices and funneling retail access to alternate channels, the Postal Service may effectively circumvent statutorily guaranteed review by replacing post office retail access with alternate non-statutorily protected methods.

Another problem with the alternative access is that many retail services offered at a station or branch post office are only available for a fee in alternate access channels. For example, customers who wish to have scheduled carrier pickup of items such as First-Class parcels, letters, flats, parcel post mailpieces, or stamped postage weighing more than 13 ounces may not avail themselves of the Postal Service’s free Carrier

³¹ See *In re Knob Fork, WV*, Docket No. A83-30, Commission Opinion Remanding Determination for Further Consideration – 39 U.S.C. § 404(b)(5) (January 18, 1984) (holding that a community post office is a post office for purposes of 404(d)).

³² See also Docket No. A2006-1, Order No. 1480, Order Denying Postal Service Motion to Dismiss and Remanding for Further Consideration, September 29, 2006 (finding that the Postal Service did not follow proper statutory closing procedures in its attempt to close the Observatory Hill Finance Station); Docket No. A2009-1, Order No. 319, Order on Appeal of Hacker Valley, West Virginia Post Office Closing, October 19, 2009 (denying the Postal Service’s motion to dismiss on jurisdictional grounds and holding that proper closing procedures have not been completed).

Pickup service. Tr. 2/257-58.³³ Rather, to schedule carrier pickup of those mailpieces, such customers would have to use Pickup On Demand service and pay a hefty fee of \$15.30. See Tr. 2/92. Similarly, certain stamp purchases (or philatelic purchases), including those from usps.com require a \$1.00 shipping and handling fee. Also, ordering non-standard stamp amounts (such as a single stamp) incur a special order fee of \$2.00 in addition to the \$1.00 handling fee. Tr. 2/252, 262.

An additional problem with many of the alternative access channels is the delay in receiving service. While a customer who visits a station or branch post office may immediately obtain the goods or services he seeks, many of the alternative access channels require a significant wait time for delivery. For example, stamps by mail takes between 3 and 6 days to receive the stamps ordered. Orders by phone usually take between 3 and 5 days to be received by the customer. Tr. 2/261-62

Services like money orders, passport services, and many others are available only at station and branch post offices or from limited alternate access channels. Tr. 2/253-256. Post office box service requires a brick and mortar location, unless the Postal Service elects to open unmanned, "nonpersonnel units."³⁴ Current post office box patrons are forced to relocate to another station post office, branch post office, main post office, or give up post office box service altogether.

The Public Representative is concerned about the Postal Service's overly optimistic reliance on these alternative access channels that customers may utilize instead of using station and branch post offices. As discussed above, these alternatives are far from perfect substitutes and do not offer the same consumer protections as the facilities being closed under this Initiative.

³³ If, however, First-Class parcels, letters, flats or parcel post mailpieces are sent in connection with Express Mail, Priority Mail, Express Mail International, Global Express Guaranteed, Priority Mail International, or Returns (Merchandise Return Service and Parcel Return Service), free Carrier Pickup is available. *Id.*

³⁴ Tr. 2/447-48. Nonpersonnel units are non-staffed units that are serviced by rural carriers. Such units provide, on a self-service basis, mail services such as the collection and delivery of mail and sale of stamps. Nonpersonnel units also include detached post office box units. *Id.*

B. Degradation of Service to Customers

As the Postal Service is well aware, certain customers use the Postal Service more than other customers. Likewise, certain customers rely more on particular services, like retail window service, post office box service or money order service than other customers. The Postal Service indicates that it will take into account some demographic and census data, but that local managers' subjective observations are the "best source" of identifying customer needs in affected areas. See Tr. 2 at 479-481. Local managers are encouraged to rely on their own observation and public comment to garner "valuable information" on customers who have limited English language skills, conduct a disproportionate number of international mail/customs transactions, have physical mobility issues, or utilize the postal money order service because they do not have bank accounts. *Id.* However, the Postal Service is not willing to say that a certain concentration of customers with the above-described socio-economic characteristics would keep a station or branch post office in operation. *Id.* at 481.

Disruption of service to groups that rely on the Postal Service more than others, like the elderly, minorities, non-native English speaking populations, or the economically disadvantaged is a serious concern. Essential postal services are all the more essential when the customer does not have alternatives. Ready access to those essential postal services in such communities is of paramount importance. By not directly taking this demographic information into account – in a way that does not rely on the subjective, personal knowledge of the local managers – it has a disproportionate impact on these groups.³⁵ Such information must be directly considered using objective criteria to avoid a disparate impact on these disadvantaged groups.

The Postal Service does not offer services in a vacuum. As this section demonstrates, the removal of access channels may increase the need for access by another means. Yet, the Postal Service appears to consider collection boxes as outside

³⁵ See generally APWU-T-2 at 2 (finding the Postal Service process to have a discriminatory impact on certain underprivileged groups).

the scope of this Initiative. Tr. 2/229, 321-322. In fact, the Postal Service has made no attempt to link the realignment of collection boxes with the Initiative. Tr. 2/368. See *supra* Part IV.C.

The Postal Service should develop some form of oversight of access channels (including alternative access) that allows for the application of unbiased criteria – a baseline of service that one may expect regardless of where in the country one resides. This will ensure consistency, predictability, and transparency of retail access.

C. Cost Implications of Alternative Access

The Postal Service has not provided a complete picture of the costs associated with alternative access channels – those incurred by the Postal Service and those incurred by its customers as a result of the Initiative. First, in its discussion of “efficiency gains,” the Postal Service never attempts to quantify the customers who will not utilize alternate access and will simply drop out of the system, resulting in a net loss of business for the Postal Service. Second, the Postal Service does not consider costs to consumers to utilize alternate access or restructure business operations. Finally, the Postal Service’s own analysis shows that several alternative access channels are more costly than traditional retail window service at station and branch post offices.

Inevitably at least some users of the mail will find the Initiative creates enough of a burden on them such that a portion of their business leaves the system. The Public Representative understands that there may be difficulties measuring the amount of “leakage” that will occur if the Initiative moves forward. However, to measure “efficiency gains” through lease costs, utility costs, and labor savings³⁶ while assuming 100 percent revenue retention paints an overly optimistic picture.³⁷ At least some and perhaps a substantial number of postal customers may leave the system entirely or may increase

³⁶ See Tr. 2/490.

³⁷ The Postal Service assumes that there will be no revenue loss from the Initiative. Tr. 2/272. That assumption means that not one money order that would have been purchased at a closed branch or station post office would instead be purchased from a drugstore that is closer to the customer than a remaining branch or station post office.

the use the Postal Service's competitors due to the Initiative. For example, customers at station and branch post offices that are closing may not obtain post office box service at a new location. At the very least, the Postal Service can easily calculate the revenue loss from the removal of Federal Express and UPS collection boxes from the lobbies of these facilities. The Public Representative suggests that the Postal Service, at a minimum, estimate based on its extensive experience and expertise, the amount of revenue that will be foregone as a result of a closed station or branch post office.

Many businesses and retail customers may bear expenses as a result of the Initiative. For example, businesses or individuals may have to change letterhead, return address labels, business cards, collection procedures, etc. as a result of a mailing address change. Additionally, the closure of branch or station post offices could result in longer trips, longer waits for service, less favorable hours of acceptance and a detrimental effect on the delivery standards of the mail for Bulk Mail Entry Unit users. Tr. 2/71. Customers who previously utilized these services at a branch or station post office may incur expenses to switch to alternate access channels like usps.com or stamps by mail. The Postal Service does not offer any explanation of how it will account for these expenses to consumers. *Id.* at 331.

Finally, the Postal Service's own analysis shows that traditional retail window service at station and branch post offices is more efficient and less costly for the Postal Service than two of the alternative access channels touted by the Postal Service as improved alternative access channels – stamps by mail and contract postal units. In 2004, the Postal Service conducted an analysis showing the cost per revenue dollar for various revenue generation channels. Tr. 2/291. It found that the cost was 6.8 cents for a retail window such as in a station or branch post office. The study also found that the cost was 9.0 cents for stamps by mail and 8.7 cents for contract postal units. Thus, the study found that it was cheaper for the Postal Service to sell stamps at a retail window than it was for the Postal Service to sell stamps by mail or through a contract postal unit. Unfortunately, this analysis has not been updated since 2004. However, it begs the question: why would the Postal Service seek to expand two more expensive

revenue sources and attempt to shrink, though this Initiative, a cheaper revenue source?

VII. NECESSITY OF A FINAL ACCOUNTING/DATA COLLECTION PLAN

The Commission should require a greater degree of transparency and accountability concerning the closure or consolidation of station and branch post offices. To comport with the policies of title 39, the Commission should require a final accounting from the Postal Service on the efficiency gains achieved and the actual effect on ready access to essential postal services following the closure or consolidation of station and branch post offices under this Initiative. After discussing the reasons that a final accounting is required, the Public Representative discusses the details of a proposed final accounting.

A. Reasons for Requiring a Final Accounting

The Postal Service seeks a “constructive and thorough” Commission advisory opinion “based upon a record reflecting the nature of the service changes that might occur, even if the ultimate degree of change was not subject to precise quantification.”³⁸ Currently, the record is devoid of reliable information on the number of station and branch post offices to be closed or the amount of “increased efficiency” to be achieved.³⁹ However, the Commission should not accept the current state of the record as the final say on the matter. Rather, the Commission should require a final accounting as to the actual results achieved by the Postal Service pursuant to the

³⁸ Tr. 2/114.

³⁹ *Id.* Request at 1. At times, witnesses Vangorder and Matalik, and the Postal Service alternatively describe the Initiative’s objectives as “efficiency gains,” USPS-T-1 at 11, and Tr. 2/244 (APWU/USPS-T1-2(a-c)); “improved efficiency,” Tr. 2/108 (PR/USPS-1(b)); “cost savings,” Tr. 2/164 (PR/USPS-21(c)); “net cost savings,” Tr. 2/313-314, 329, 490; “economic savings,” Tr. 2/203 (PR/USPS-T2-11(a)(4)); “postal financial savings,” USPS-T-2 at 10; and, “to reduce inefficiency and redundancy, and to capture the resulting cost savings.” Request at 6. As used herein, the terms “efficiency gains” or, alternatively, “net cost savings,” shall encompass all other terms and phrases, and refer to expense reductions to the Postal Service estimated to result from the closure or consolidation of one or more stations and branches under the Initiative.

Initiative. In this regard, the Postal Service should collect data and report to the Commission on the number of station and branch post offices closed and the actual efficiency gains resulting from those closures. The shortcomings with the current state of the record in these areas and a final accounting as a solution to these shortcomings are discussed below.

1. Lack of Reliable Information on the Number of Affected Station and Branch Post Offices and Estimates of Efficiency Gains

The Postal Service's seeks an advisory opinion from the Commission concluding that Initiative conforms to the policies of title 39. However, the Initiative is not yet complete. Consequently, any Commission guidance will be limited principally to the timelines of the decision-making process and limited materials used in that process. The problems with a Commission advisory opinion based unreliable information on the number of affected station and branch post offices and estimated efficiency gains are discussed below.

- a. *Number of Station and Branch Post Offices to be Closed*

The Commission's obligation to provide an advisory opinion is complicated by an absence of reliable information on station and branch post offices to be closed. The Postal Service's Request, dated July 2, 2009, was filed at the tail end of the first phase of the Initiative – the prescreening process.⁴⁰ The “principle purpose” of the prescreening process was to identify and prioritize EAS-24⁴¹ and above station and branch post offices for more in-depth review.⁴² Station and branch post offices so

⁴⁰ See USPS-T-2 at 8-9.

⁴¹ “EAS-24” refers to station and branch post office types that are primarily located in urban and suburban areas. Request at 1-2.

⁴² *Id.* at 9.

identified are then subject to further analysis under a facility-specific discontinuance study process.⁴³

According to the Postal Service, “[h]undreds of discontinuance studies are currently underway as part of this initiative.”⁴⁴ Moreover, these studies “are in various states of progress.”⁴⁵ As of November 20, 2009, the Postal Service reports that a total of 241 station and branch post offices remain under consideration for potential closure.⁴⁶ To date, however, the Vice President of Delivery and Post Office Operations has not approved any facility-specific discontinuance studies that would finalize the closure of any station and branch post office.⁴⁷

As a result, reliable information concerning the closure or consolidation of station and branch post offices will only become available from the Postal Service after completion of the Initiative. In fact, the Postal Service states that it “will not know the number or percentage of station and branch post offices that will have their operations discontinued as part of this Initiative until all discontinuance studies have been submitted to HQ Vice President, Delivery and Post Office Operations, for review and approval.”⁴⁸ The Postal Service expects to complete the closure of the station and branch post offices as a result of the Initiative “[d]uring Fiscal Year 2010.”⁴⁹

b. *The Postal Service’s Flawed and Incomplete Methodology to Estimate “Efficiency Gains”*

Without knowledge of the total number of station and branch post offices being closed or consolidated pursuant to the Initiative, the Postal Service cannot provide

⁴³ *Id.*

⁴⁴ Tr. 2/386.

⁴⁵ Tr. 2/427.

⁴⁶ See Library Reference USPS-LR-N2009-1/4 - Current List of Stations/Branches Identified as Candidates for Discontinuance Study Under Station/Branch Optimization/Consolidation Initiative, November 20, 2009.

⁴⁷ *Id.*

⁴⁸ Tr. 2/115.

⁴⁹ Tr. 2/274.

reliable estimates of the expected efficiency gains. Moreover, the Postal Service's methodology for estimating the Initiative's resulting "efficiency gains" is flawed and incomplete. Presently, the only data relating to the Initiative that the Postal Service is able to provide are the Total Operating Expenses for all station and branch post offices reporting to Postmasters at the EAS 24 level and above. For FY 2008, these expenses amounted to \$13.376 billion,⁵⁰ representing the total possible savings if all eligible station and branch post offices were closed. It is clear, however, that the estimated efficiency gains will be far less than Total Operating Expenses, given that only 241 of the several thousand eligible station and branch post offices remain under consideration for closure or consolidation.⁵¹ The Postmaster General has stated that the Postal Service's best estimate shows that the Initiative could save the Postal Service between \$20 and \$100 million.⁵²

In estimating efficiency gains resulting from the Initiative, the Postal Service only reviews information on a facility-by-facility basis.⁵³ To make this calculation, the Postal Service relies on a worksheet entitled "Station and Branch Optimization and Consolidation Return on Investment Worksheet."⁵⁴ This worksheet purports to estimate all the costs and cost savings to the Postal Service. Tr. 2/556.

⁵⁰ Tr. 2/192.

⁵¹ The Postal Service only discusses the general direction of the likely change in costs; that is, whether costs for certain cost categories will increase, decrease, or remain the same as a result of the Initiative. In this regard, the Postal Service observes that Function 2 (Delivery) salaries and benefits "have the potential to increase minimally" to the extent carriers experience additional travel time to their route after relocation to a nearby facility. Tr. 2/170. With respect to all other identified cost categories, i.e., Function 4 (Retail Operations), LDC 20/40 (Management/Administrative), Function 3B (Maintenance), and "All Other" salaries and benefits; and, Facility Rent/Utilities, and Nonpersonnel Expenses (less rent/utilities), the Postal Service considers a decrease "likely" as operations cease at station and branch post offices. *Id.*

⁵² Postmaster General Live at the National Press Club on October 8, 2009 at 1:00 PM, Minute 33:00 to 33:08 "[The Initiative is] worth on the order of...\$20 to \$100 million at best," *available at* http://minnesota.publicradio.org/www_publicradio/tools/media_player/popup.php?name=minnesota/news/programs/2009/10/08/midday/midday_hour_2_20091008_64. However, the Postal Service has repeatedly refused to provide quantitative supporting information in the context of this case to allow for independent verification of this range by participants. See, e.g., Tr. 2/115-16, 147, 160, 186.

⁵³ Tr. 2/494, 496.

⁵⁴ Library Reference USPS-LR-N2009-1/6 at 7.

However, the Postal Service's methodology for estimating net cost savings is problematic because certain known costs are not counted, while others are excluded from consideration without appropriate justification. One of the most egregious examples is the exclusion of certain labor costs. In the context of this Initiative, labor cost savings are not attributed to the Postal Service as a whole, rather they are attributed to a particular branch or station post office. Tr. 2/493-94. Where a closure results in employee workhour savings, those savings are attribute to that station or branch post office in the facility-specific discontinuance study—even when the employee is transferred to another station or branch post office.⁵⁵ This means that an employee's salary and benefits are inappropriately counted as cost savings in the calculation, even though the Postal Service still has to pay that employee's salary and benefits.

Certain other costs (and revenue losses) associated with the closure of station and branch post offices are also inappropriately excluded from the facility-specific discontinuance studies. Costs associated with the removal or disposal of equipment in closing facilities are not considered as part of the discontinuance study.⁵⁶ Similarly, costs associated with the elimination or removal of collection boxes are not considered.⁵⁷ Nor are costs associated with forwarded mail considered in the discontinuance study process when customers obtain post office box service at another location or rely on carrier delivery service as a result of the closure. Moreover, as discussed previously, the Postal Service does not attempt to measure the loss of revenue when customers decide not to obtain post office box service at a new location. Tr. 2/502.

To provide an accurate picture of resulting net cost savings, the above referenced costs, incurred as the result of the Initiative, should be considered in the methodology to estimate net cost savings attributable to the particular facility to be

⁵⁵ Tr. 2/494, 496.

⁵⁶ Tr. 2/497, 411.

⁵⁷ Tr. 2/500; Tr. 2/410-11.

closed. Otherwise, any calculation of net cost savings will provide a skewed picture of the net cost savings of each facility closure. The inaccuracy problems are compounded when these incomplete and inaccurate net cost savings calculations are extrapolated to calculate the net cost savings of the entire Initiative.

For example, the Postal Service declares that the disposal of postal equipment is “a separate process” and a “matter of normal Postal Service procedure.” Tr. 2/497, 499. Similarly, the removal or relocation of collection boxes is considered a “routine, ongoing district management function.”⁵⁸ However, the collective closure of hundreds of station and branch post offices under the Initiative is not a normal, everyday occurrence, and the extraordinary costs incurred as a direct result of the Initiative should be taken into account.⁵⁹

2. A Final Accounting of “Efficiency Gains” Achieved Is Reasonable

As discussed above, under the Initiative, the record lacks reliable information on the number of branch and station post offices to be closed and inaccurate estimates of net cost savings. Moreover, the Postal Service’s witnesses are unaware of any future effort by the Postal Service to measure the accuracy of the estimated efficiency gains with empirical data. Tr. 2/348, 558. As a result of this lack of information and lack of plans to collect such information, it is reasonable for the Commission to require a final accounting of the actual number of station and branch post offices closed and the net cost savings achieved as a result of the Initiative.

Such information would improve both accountability and transparency by providing empirical data on the Postal Service’s efforts under the Initiative. It will also be important to various stakeholders. At a minimum, the final amount of net cost

⁵⁸ Tr. 2/410-11.

⁵⁹ Tr. 2/498. With respect to post office boxes, the Postal Service simply assumes that all current post office box customers will obtain post office box service at a nearby facility and there will be no loss in revenue. Tr. 2/502-03. The Postal Service makes no effort to verify the validity of this counterintuitive assumption, Tr. 2/503, even as it incurs significant cost to relocate post office box sections from closed station and branch post offices.

savings will be important to demonstrate the ability of postal management to achieve its stated goals and control costs in a challenging economic environment. Moreover, stakeholders expect Postal Service transparency to include an explanation of the results of Postal Service efforts to reduce postal costs and improve efficiency while maintaining ready access to essential postal services. In this regard, the Commission should seek data from the Postal Service at the conclusion of FY 2010 as a basis for understanding the final results in comparison to the current incomplete, unreliable information provided by the Postal Service during this case.

B. The Data to be Collected for a Final Accounting

The Public Representative believes one of the most important outcomes of this proceeding would be an improvement in the methodology used to estimate net cost savings associated with the closure of station and branch post offices. One valuable means of determining the level of accuracy of the facility-specific estimates is to collect data on the net cost savings actually achieved by the Postal Service and compare estimates to results. For this reason, the Public Representative suggests that the Commission institute a reporting requirement for these actual efficiency gains through a data collection plan. The Public Representative's proposed data collection plan is presented in Appendix A.

For purposes of determining actual efficiency gains, the data to be collected is drawn from the worksheet on page 7 of Library Reference USPS-LR-N2009-1/6. To remedy the problems with the Postal Service's methodology for net cost savings discussed above, the proposal includes four additional data items. In particular, the proposal would require the reporting of the costs or net cost savings associated with (1) the removal and disposition of equipment; (2) the removal of collection boxes; (3) the forwarding of mail from post office boxes at closed facilities to other nearby facilities or carrier delivery points; and (4) the loss of post office box revenue from customers dropping post office box service rather than obtaining post office box service at nearby facility.

Data items 1 and 2 deal with costs that can be easily obtained from ongoing district operations. Data items 3 and 4, however, concerning forwarding costs and post office box revenue loss, require further explanation. With respect to forwarding costs resulting from the Initiative, such cost data can be derived primarily from the Postal Automated Redirection System and be supplemented by the district where local forwarding is involved. Conceptually, the estimation of revenue loss from post office box revenue can be obtained by comparing the number of post office boxes rented at a station or branch post office prior to closure with the number of post office boxes rented at the station or branch receiving the relocated box section at the end of the fiscal year.

The plan in Appendix A also proposes to collect data for the purpose of demonstrating “ready access to essential postal services” from the closure of station and branch post offices. The data requested may be used to determine changes in trends at nearby postal facilities to ensure compliance with 39 U.S.C. 403(a) and (b).⁶⁰

To facilitate data reporting on efficiency gains actually achieved, the Commission should require that the Postal Service to provide such data either as part of its FY 2010 Annual Compliance Report (ACR) or separately as part of a strategic periodic reporting-type rulemaking. It is expected that the Postal Service will, at a minimum, need this information for reporting purposes as part of its financial reporting in the ACR as well as for its own internal business management purposes. Establishing the requirement as a logical outgrowth of the Commission’s advisory opinion early in the fiscal year will permit the Postal Service to plan for this requirement and thereby facilitate the reporting of this data.

⁶⁰ See *supra* Parts IV.B. and VI.B.

VIII. CONCLUSION

The Commission should advise the Postal Service that the Station and Branch Optimization and Consolidation Initiative does not conform to the policies of title 39 in the manner set forth above. Further, the Commission should require a final accounting and initiate the subsequent proceedings discussed above.

Respectfully Submitted,

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APPENDIX A

Docket No. N2009-1 Data Collection Plan for
Determining Actual Efficiency Gains and Changes
In Ready Access to Essential Postal Services

Efficiency Gains:

For each of the items listed below, provide the following data to demonstrate the net cost savings achieved from the closure or consolidation of station and branch post offices during FY 2010:

- the number of career employees by craft actually separated from employment with the Postal Service (if any);
- the salary, grade level(s), and fringe benefits of career employees actually separated from employment with the Postal Service (if any);
- the number of supervisory personnel actually separated from employment with the Postal Service (if any);
- the salary and fringe benefits of supervisory personnel actually separated from employment with the Postal Service (if any);
- station and branch post office actual lease/rental costs saved;
- additional lease/rental costs incurred by the Postal Service;
- station and branch post office actual utility costs saved;
- additional utility costs incurred by the Postal Service;
- station and branch post office actual maintenance labor or contract costs saved;
- additional maintenance labor or contract costs incurred;
- station and branch post office actual maintenance material and supply costs saved;
- additional maintenance material and supply costs incurred;
- additional costs for construction or renovation (including parking), or facility modifications or repairs to provide retail postal services or accommodate additional carriers;
- additional costs associated with providing delivery services, including costs to provide post office box service at another facility, install cluster box units, extend carrier routes, provide inter-station transportation, etc.;
- the sale price of postal-owned station and branch post offices, less any “build-out” costs incurred to facilitate sale (i.e., new retail or other space), and real estate transaction costs.

Additional Items:

- the cost to remove and dispose of any office or other equipment;
- the cost to remove and relocate (if necessary) any collection boxes;
- the cost to forward mail to customers with post office boxes at closed station and branch post offices to nearby (or gaining) postal retail facilities or carrier delivery points;
- the loss of revenue when customers with post office boxes at closed or consolidated station and branch post offices decline to obtain post office boxes at nearby (or gaining) postal retail facilities.

Ready Access to Essential Postal Services:

For each of the items listed below, provide the following data to demonstrate “ready access to essential postal services” from the closure or consolidation of station and branch post offices during FY 2010:

- changes (if any) in mail volume trends at nearby (or gaining) postal retail facilities (including CPUs);
- changes (if any) in the wait-time in line at nearby (or gaining) postal retail facilities (including CPUs);
- changes (if any) in revenue and transaction trends (including Bulk Mail Acceptance, dropship and permit accounts) at nearby (or gaining) postal retail facilities (including CPUs), and consignment outlets;
- changes (if any) in retail visit trends at nearby (or gaining) postal retail facilities (including CPUs);
- changes (if any) in Customer Satisfaction Measurement trends at nearby (or gaining) postal retail facilities (including CPUs);
- changes (if any) in delivery, such as the number of (1) post office boxes in use, (2) carrier routes added, (3) carrier stops added, (4) cluster box units installed, (5) nonpersonnel units established, etc. at or within the service area of nearby (or gaining) postal retail facilities (including CPUs).