

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

STATION AND BRANCH OPTIMIZATION AND
CONSOLIDATION INITIATIVE, 2009

Docket No. N2009-1

INITIAL BRIEF OF THE UNITED STATES POSTAL SERVICE

UNITED STATES POSTAL SERVICE

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I. Statement Of The Case

The United States Postal Service has initiated a Station and Branch Optimization and Consolidation (SBOC) Initiative for the purpose of identifying and taking advantage of opportunities for increased efficiency in its retail operations, so as to ensure that the Postal Service “maintain[s] 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 operation of some postal retail stations and branches is expected to be discontinued as a result of this Initiative, requiring affected postal customers to obtain access to service at remaining Post Offices, stations and branches or through available alternate postal retail access channels.

The SBOC Initiative commenced with an examination of that portion of the retail network consisting of station and branches that report to Postmasters at or above the USPS Executive & Administrative Schedule level 24 (EAS-24) pay grade. Stations and branches that meet this criterion are located primarily in urban and suburban population centers. At the time the SBOC Initiative commenced, the Postal Service had no basis for estimating the number or percentage of the approximately 3300 stations and branches that would have their retail operations curtailed or discontinued, or for quantifying the potential cumulative change in the nature of any postal services that would be affected. The Postal Service filed a request for an advisory opinion from the Commission regarding the SBOC Initiative under 39 U.S.C. § 3661 contingent upon a Commission finding that the changes in the nature of postal services that could result from the Initiative would be at least “substantially nationwide” within the meaning of that

section. Updated information developed since the initiation of Docket No. N2009-1 establishes that any changes in the nature of postal services that could result from the SBOC Initiative will not be substantially nationwide. Accordingly, the Commission lacks jurisdiction to issue an advisory opinion.

II. Procedural History

On July 2, 2009, the Postal Service filed with the Postal Regulatory Commission a Request for an Advisory Opinion on the Station and Branch Optimization and Consolidation Initiative. In support of this Request, the Postal Service submitted the direct testimonies of Alice M. VanGorder and Kimberly I. Matalik.¹ Their testimonies were accompanied by USPS Library References N2009-1/1 through N2009-1/2. On July 10, 2009, the Commission issued Order No. 244, publishing a notice of the filing of the Request, initiating this docket, and appointing a representative for the public's interests in the proceeding. Discovery commenced that same day.

Over a dozen parties intervened, and the Commission convened a pre-hearing conference on July 30, 2009. The Postal Service direct case now consists of the testimonies of Postal Service witnesses VanGorder and Matalik (plus the two library references filed contemporaneously on July 2) and the written responses to discovery, which have been supplemented by the filing of additional USPS Library References: N2009-1/3 through N2009-1/19. Additionally, USPS Library Reference N2009-1/4, the Current List of Stations/Branches Identified As Candidates For Discontinuance Study Under Station/Branch Optimization/Consolidation Initiative, has been updated monthly.

¹ Docket No. N2009-1: Direct Testimony of Alice M. VanGorder on Behalf of the United States Postal Service (USPS-T-1); and Direct Testimony of Kimberly I. Matalik on Behalf of the United States Postal Service (USPS-T-2).

Written discovery on the Postal Service's direct case was filed as late as September 29, 2009. The hearing for oral cross-examination of witnesses VanGorder and Matalik was held on September 30, 2009.

The Commission conducted two field hearings related to the SBOC Initiative on September 16 and 23, 2009, respectively, in Independence, Ohio and the Bronx, New York. For these hearings, the Commission solicited and received testimony from the Postal Service, elected public officials, postal union leaders, as well as representatives from the mailing industry, the military, and an association representing colleges and universities. In addition, members of the general public in attendance were permitted to offer comments to the Commission.

On October 13, 2009, the Association of United States Postal Lessors filed the direct testimony of witness Mario Principe (AUSPL-T-1). On October 21, 2009, the American Postal Workers Union filed the direct testimony of witness Michael T. Barrett (APWU-T-1), which was followed the next day by the filing of the direct testimony of APWU witness Anita B. Morrison (APWU-T-2). The hearing for the oral cross-examination of intervenor witnesses was held on November 18, 2009.

III. The Commission Lacks Jurisdiction To Issue An Advisory Opinion And Is Obligated To Terminate This Proceeding

Section 3661 of title 39, United States Code, confers upon the Commission a narrow grant of jurisdiction to issue advisory opinions in response to proposals by the Postal Service to implement changes in the nature of postal products and services, but only if those changes are at least substantially nationwide in scope. The present case has confirmed a decades-old pronouncement by the Commission that there may be

circumstances where a detailed examination of the facts is necessary to assess whether jurisdiction attaches under section 3661.² It is now clear that the potential service changes that could result from the Station and Branch Optimization and Consolidation (SBOC) Initiative are insufficient to trigger the exercise of the Commission's jurisdiction to issue an advisory opinion. Accordingly, for the reasons explained below, the Commission is obliged to terminate proceedings in Docket No. N2009-1, thus obviating all remaining procedural steps.

A. The Docket No. N2009-1 Request For An Advisory Opinion Is Contingent Upon A Necessary Finding Of Jurisdiction

Section 3661(b) requires that:

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

The Station and Branch Optimization and Consolidation (SBOC) Initiative is a program under which local postal managers have been directed by Postal Service headquarters to examine urban and suburban Post Office service areas and analyze opportunities to discontinue retail operations at stations and branches that are in close proximity to one another.³ As part of the SBOC Initiative decision-making process, the Postal Service has established pre-screening criteria for use in identifying the most likely candidate stations and branches for discontinuance. Then, the Postal Service employs its long-standing station and branch discontinuance review process, a standard set of

² PRC Docket No. N75-1, Advisory Opinion Concerning A Proposed Change In The Nature of Postal Services, at 70 (April 22, 1976).

³ The SBOC Initiative candidate pool started with approximately 3300 retail stations and branches that report to Post Offices managed by Postmasters at or above the EAS-24 pay grade. See, Docket No. N2009-1, USPS Library Reference N2009-1/19. This pool has diminished to fewer than 250. *Infra*.

procedures through which local managers provide public notice that discontinuance is being considered, analyze facility-specific retail customer service and operations data together with related costs and capacities, incorporate their own knowledge of local customer transactions, consult U.S. Census data for indicators of potential customer service issues, and solicit survey responses and/or comments from potentially affected customers. Based upon these considerations and specific documentation of all pertinent data collected, local management makes its own determination whether to recommend discontinuance, and if so, it submits a proposal up the chain-of-command to headquarters regarding the feasibility of discontinuing retail operations at a specific station or branch. Final authority to act upon proposals submitted by the field is vested in the Vice President, Delivery & Post Office Operations at headquarters. See, Docket No. N2009-1, Direct Testimony of Kimberly I. Matalik on Behalf of United States Postal Service, USPS-T-2 at 11.

When it filed its SBOC Initiative request in Docket No. N2009-1 on July 2, 2009, the Postal Service intended to implement related service changes as early as October 2, 2009. See Request at 7. Section 3661 requires that a substantially nationwide service change request be filed a “reasonable time prior to the effective date of such proposal.” For purposes of interpreting section 3661, the Commission has implemented 39 C.F.R. § 3001.72, which defines this interval as being at least 90 days before the implementation of the substantially nationwide service changes. On July 2, 2009, when it filed its request, the Postal Service emphasized that it:

ha[d] no basis for estimating the number or percentage of . . . stations and branches that may have their operations discontinued, or for quantifying the potential cumulative impact on the nature of any postal services that may be affected.

Docket No. N2009-1, Request of the United States Postal Service at 2, n.1.

Accordingly, on the presumption that Commission jurisdiction *might* be proper under section 3661, the Postal Service requested that an advisory opinion be issued:

[i]f the Commission determines that pursuit of the optimization and consolidation initiative will likely generate changes in the nature of postal services on at least a substantially nationwide basis

Id. at 2. *See also*, Direct Testimony of Alice VanGorder, USPS-T-1 at 11. Lacking sufficient information at the time with which to preclude an assertion of jurisdiction, the Commission prudently initiated proceedings. PRC Order No. 244 (July 10, 2009).

B. The SBOC Initiative Will Not Lead To Substantially Nationwide Service Changes

Notwithstanding this initial uncertainty, the Docket No. N2009-1 record now clearly rebuts any presumption of Commission jurisdiction. USPS Library Reference N2009-1/4 reveals that, as of November 20, 2009, only 241 stations and branches remain under consideration for discontinuance as part of the SBOC Initiative. As is self-evident by the nature of the SBOC Initiative review process, only a subset of these stations and branches are likely to be the subject of a discontinuance proposal submitted to headquarters for decision; and only a portion of the stations and branches within that smaller subset will be discontinued. It bears emphasizing that retail stations and branches are subordinate to the approximately 27,200 Post Offices whose operations they supplement. It also is noteworthy that any particular station/branch serves as the most conveniently located postal retail facility for only a portion of the patrons in the geographic service area of any particular Post Office, meaning that the discontinuance of a station/branch can only be said to impact adversely some of the

customers in that Post Office's service area. Thus, it is fair to conclude the changes in the nature of postal services that could result from the SBOC Initiative will affect only portions of a relatively miniscule number of isolated Post Office service areas.

Nevertheless, for purposes of argument, the Postal Service will make the highly unrealistic assumption that the SBOC Initiative will result in the discontinuance of all 241 of the stations and branches identified in USPS Library Reference N2009-1/4 on November 20th as still under consideration. As explained below, even with that assumption, no rational basis exists for concluding that the SBOC Initiative will generate changes in the nature of postal services of at least a substantially nationwide character. Accordingly, the Commission lacks jurisdiction to under section 3661 to issue an advisory opinion in Docket No. N2009-1.

This conclusion is supported by both judicial and Commission precedent. In the case of *Buchanan v. United States Postal Service*, 508 F. 2d 259 (5th Cir. 1975), the court identified three factors that must coexist for section 3661 to apply:

First, there must be a "change." This implies that a quantitative determination is necessary. There must be some meaningful impact on service. Minor alterations which have a minimal effect on the general class of postal users do not fall within § 3661. Second, the change must be "in the nature of postal services." This involves a qualitative examination of the manner in which postal services available to the user will be altered. Third, the change must affect service "on a nationwide or substantially nationwide basis." A broad geographical area must be involved.

508 F.2d at 262-63.

The Postal Service readily concedes that even if only one of the remaining 241 candidate stations and branches were discontinued, the result would be a "change" and that it would be "in the nature of postal services" as described above. However, the Postal Service operates approximately 27,200 Post Offices and 4,800 subordinate

stations and branches through which it provides retail postal services of the sort that could be affected by the discontinuance of operations resulting from the SBOC Initiative.⁴ It is now clear that the SBOC Initiative will result in no more than 241 -- less than 0.075 percent -- of the Postal Service's total retail locations being discontinued.

In its Docket No. N75-1 Advisory Opinion, the Commission provided a general "policy statement establishing guidelines concerning the filing of future requests for advisory opinions pursuant to § 3661."⁵ The Commission stated that, in deciding whether to file a request, the Postal Service "should be governed by a good faith judgment whether a jurisdictional issue could be raised *which is so difficult, doubtful, serious, or substantial as to make it a fair ground for litigation.*"⁶ In the Commission's view, the Postal Service should consider that a change in service is involved if either the goal or a "reasonably foreseeable effect" of the program in question is:

An appreciable alteration in the accessibility of postal services to the public, viewed from the standpoint not of a "net" or aggregate effect, but from that of the effect on representative mailers; or

An appreciable alteration in the type or quality of postal services offered to the public.

Id. at 72 (emphasis in original). The Commission characterized the *Buchanan* court's jurisdictional test as tripartite in nature, emphasizing that:

It also is necessary . . . to determine whether the alteration is a substantial one and not a minor or insignificant detail, and whether it is substantially "nationwide" -- that is, whether a "broad geographical area" will be affected.

⁴ Those service changes are described by Postal Service witness VanGorder at USPS-T-1, pages 12-13, and would generally consist of obtaining access to postal retail products and services through window service at a nearby Post Office, station or branch or via alternative postal access channels; or having one's Post Office Box relocated to a nearby postal retail location.

⁵ PRC Op. N75-1 at 65-74.

⁶ *Id.* at 72.

PRC Op. N75-1 at 73.

The Postal Service does not minimize the personal inconvenience that individual customers who use any of the remaining 241 SBOC Initiative candidate stations and branches may experience if they have to adjust to obtaining services through nearby Post Offices, stations, branches, or through various alternate postal retail channels, to the degree that they do not already do so. After all, one consistent characteristic of the human condition when change is imposed by external force is to proclaim, "Change is bad." Yet equally consistent with the human condition is the ability to adapt to changed circumstances. However, even if all 241 stations/branches were discontinued, there is no basis for concluding that the general class of retail postal customers will experience anything other than a "minor" or "minimal" change in service. The Postal Service submits that the SBOC Initiative clearly will not affect a "broad geographical area." Instead, it will affect the cumulatively miniscule number of customers in portions of the service areas of less than one percent of its approximately 27,200 Post Offices. By any credible standard, the service changes that could result from the SBOC Initiative standard are not "substantially nationwide" in scope, within the meaning of section 3661. When viewed from a systemwide perspective, it is clear that the discontinuance of up to 241 stations and branches will not result in a "meaningful" change in service.

Assuming a relatively even distribution of station or branch discontinuances among the 50 states, the SBOC Initiative has the potential to result in the closure of up to as many as five retail locations in each state. Some might argue that a change in the nature of service that is implemented at any location in all 50 states or a substantial number of states is "nationwide or substantially nationwide" within the meaning of

section 3661 and triggers the Commission's advisory opinion jurisdiction. But such an interpretation of section 3661 would negate Congressional intent to limit the scope of the Commission's service change review jurisdiction. Hypothetically, under such an interpretation, the Postal Service would be required to submit to the Commission for review under section 3661 a headquarters directive to eliminate service on the last Friday of each month at the retail station closest to each state capitol building. After all, such a change, by affecting service in all 50 states, might be characterized by some as "nationwide." However, the fact that the change affected service somewhere in all 50 states, by itself, does not trigger Commission jurisdiction under section 3661.

For purposes of determining section 3661 jurisdiction, the extent to which the SBOC Initiative involves a headquarters-directed service change program also is not controlling. Jurisdiction is triggered by the nature of the change, not the source of its impetus. Nor is it determinative that the original focus of the Initiative was a candidate pool of approximately 3300 stations and branches in 396 urban and suburban areas in virtually every state of the union. What matters is whether the changes in the nature of postal services that can be expected to occur are at least substantially nationwide in character, not whether the entire network was scoured in determining where service changes might occur. Viewed from another perspective, the Postal Service has divided the United States into approximately 42,500 5-digit ZIP Code service areas. Tr. 2/187. If one assumes that any material impact of a station or branch closure is, for all practical purposes, confined to a single ZIP Code, this means that the SBOC Initiative is currently confined to a continuously shrinking total of 241 5-digit ZIP Codes and could – at most – affect customers in just over 1 out of every 2000 5-digit ZIP Code areas. Simply put,

there is no credible basis for asserting that this smattering of ZIP Codes covers a broad geographic area or represents a substantial swath of the nation.

The court in *Buchanan* also made clear that a service change had to be “meaningful,” that it had to be more than “minimal,” and that “a broad geographical area must be involved.” The potential discontinuance of 241 stations and branches will affect a fraction of one percent of all approximately 27,200 Post Office service areas. And, by the very definition of stations and branches and their role in any Post Office service area, customers in only a portion of each of the 241 Post Office service areas can claim to be affected materially. No basis exists for concluding that even the maximum possible resultant changes in postal services will have a “meaningful” effect on the class of retail postal customers as a whole or in a broad geographical area. The *Buchanan* court determined that three factors must co-exist in order for the Commission to have jurisdiction to issue an advisory opinion under section 3661. Two of the three factors are absent here.

The holding in *Buchanan* makes clear that the Postal Service faces the risk of court injunction should it fail to request an advisory opinion from the Commission at least a reasonable time prior to implementing a substantially nationwide service change. As was its prerogative when it decided in April 2009⁷ to pursue the SBOC Initiative, the Postal Service settled upon an implementation date to coincide as closely as possible with the beginning of Fiscal Year (FY) 2010. However, the Postal Service faced a dilemma on July 2, 2009. Before it could be determined whether service changes likely to be generated by the SBOC Initiative were at least “substantially nationwide” thus triggering the Commission’s section 3661 review jurisdiction, the Postal Service faced

⁷ See.Tr. 2/146,148.

the requirement in 39 C.F.R. § 3001.72 that its advisory opinion request be filed at least 90 days before the scheduled implementation of those changes.⁸

Had the Postal Service proceeded with the SBOC Initiative without filing a request under section 3661, it would have assumed the risk that the scope of the potential SBOC Initiative service changes would not emerge in time to discourage some self-appointed guardian of the section 3661 process from seeking a court injunction based upon uncertainty regarding the scope of those changes. In order to preserve its ability to implement those changes at the beginning of FY 2010 as planned without the risk of injunction, the Postal Service filed its SBOC Initiative request for an advisory opinion on July 2nd. In light of the uncertainty regarding the scope of the service changes at the time, the Postal Service conditioned its request for an advisory opinion upon a determination by the Commission that the service changes at issue were sufficient to trigger an exercise of its jurisdiction under section 3661 to issue.

The Postal Service is second to no party in appreciating the value of the earliest possible access to information that would clarify whether the service changes likely to result from the SBOC Initiative require the filing of a request for an advisory opinion and confer jurisdiction upon the Commission to issue an advisory opinion. When presented with a request for an advisory opinion regarding service changes of uncertain scope, it was prudent for the Commission to proceed based on the presumption that it had jurisdiction. However, there are now undisputed facts that replace the original presumption. Accordingly, as a threshold matter, the Commission is obliged now to

⁸ Even with a July 2 filing of its Request, implementation could begin 90 days later, or October 1. Rather than noting that 31-day months of July and August enable this outcome, the Postal Service chose to count the 90 days as three months, leading to implementation not sooner than October 2. Since no station or branch has yet been discontinued, these quirks are now moot.

examine the record and determine whether any reasonable basis exists for concluding that the potential changes in the nature of postal services resulting from the implementation of the SBOC Initiative will be at least “substantially nationwide” in scope, within the meaning of section 3661. The Postal Service submits that the facts now make clear that the potential service changes do not satisfy that threshold. Thus, the Commission lacks jurisdiction to issue an advisory opinion and must terminate this docket, consistent with the limitations established by section 3661, as clarified by the court in *Buchanan* and the Commission’s own precedent.

The Postal Service submits that it would be erroneous for the Commission to conclude that the changes in the nature of postal services likely to result from the SBOC Initiative are “substantially nationwide” within the meaning of section 3661 and that it continues to have jurisdiction to issue an advisory opinion in this docket. It also would be inappropriate for the Commission to offer an advisory opinion after concurring that it lacks jurisdiction. The fact that Docket No. N2009-1 concludes without the issuance of an advisory opinion, however, does not equate with a conclusion that the public interest has not been served. At a minimum, the transparent nature of Docket No. N2009-1 has provided the mailing public with improved understanding of how and why the Postal Service is obliged to analyze whether to discontinue operations at retail stations and branches, while providing for the Postal Service an abundance of information.

IV. All Service Changes Resulting From The SBOC Initiative Conform With Applicable Statutory Postal Policies

Notwithstanding the fact that the Commission now clearly lacks jurisdiction to issue an advisory opinion under section 3661, the Postal Service submits that, for the

reasons explained in its request and as demonstrated by the record evidence in this docket, the service changes that flow from the SBOC Initiative comply with applicable policies of title 39, United States Code.

A. The Rationale For The SBOC Initiative Is In Accord With Title 39 U.S.C.

In binding the nation together through the correspondence of the people, the Postal Service is obliged to provide prompt, reliable and efficient service to all communities. 39 U.S.C. § 101(a). In fulfilling this mandate, the Postal Service is directed to provide effective and regular service and is authorized to establish and maintain postal facilities of such character and in such locations as are necessary to provide customers ready access to essential services. 39 U.S.C. §§ 101(b) and 403(b)(3). At the same time, subsections 403(a), 403(b)(1), 403(b)(3) and 3661(a) direct the Postal Service to be “efficient” and to maintain “reasonable economies” in its operations.

Postal Service witness Alice VanGorder is the Manger of Customer Service Operations within the Delivery and Post Office Operations group at Postal Service headquarters. Her testimony describes the relationship between the approximately 27,200 Post Offices and 4800 stations and branches⁹ in the Postal Service’s extensive retail network and the forces behind the expansion of that network over recent decades. USPS-T-1 at 4-5. Nevertheless, postal retail transactions have declined in recent years as mail volume, including “the personal, educational, literary and business correspondence of the people” (39 U.S.C. § 101(a)), shifts to electronic communications media. *Id.* at 8. Witness VanGorder explains how, at the same time, the Postal Service has achieved considerable success in improving postal customer convenience through

⁹ USPS-T-1 at 4.

the establishment and expansion of alternate access to postal retail channels, including its website: www.usps.com, the sale of postage stamps at approximately 50,000 private retail locations, the establishment of 2700 private Approved Shipper locations, not to mention the availability of stamps by mail, phone and fax, as well as the broad utility of Automated Postal Centers in Post Office, station and branch lobbies. These alternate access channels now account for over a quarter of annual retail postal revenue. *Id.* at 6-8. See also Tr. 2/227, 268. The expanded availability of these more convenient, alternate access channels through which customers can conduct many basic postal transactions helps satisfy the mandate to establish postal facilities of such character and in such locations that customers have ready access to essential services.

However, current postal transaction and revenue trends, combined with the ongoing economic recession, have created a perfect storm of fiscal pressures on the Postal Service. *Id.* at 8. At a time when it is examining a variety of other opportunities to maintain customer service while streamlining various other operations,¹⁰ the Postal Service elected in April 2009 to explore whether the discontinuance of retail operations at stations and branches in close proximity to one another might also be justified. Tr. 2/207.

Postal retail stations and branches are subordinate facilities managed by a Post Office and designed to help bring delivery and retail operations of that Post Office closer to addresses within its geographic service area. USPS Request at 3-4, USPS-T-1 at 4-5. Stations and branches are established and discontinued in accordance with the operational needs of the Post Office they support. Needs change over time, so the flexibility of using stations and branches (compared to Post Offices themselves)

¹⁰ Including the consolidation of carrier routes that operate from many stations and branches. Tr. 2/271.

illustrates that they are not intended to operate as monuments to a bygone era of postal customer interaction. The retail network of the 1970's or 1980's is not necessarily the retail network suitable for the second decade of the 21st century.

Accordingly, the Postal Service turned its attention in April 2009 to retail stations and branches that support Post Offices managed by Postmasters at the EAS-24 and above pay grade. As indicated by the Attachment to USPS-T-1, these Post offices are in urban and suburban population centers. Of the universe of about 4800 stations and branches that serve in a subordinate capacity to the approximately 27,200 Post Offices, those in urban and suburban areas are more likely located in relatively close proximity to one another.¹¹ Urban and suburban stations and branches also are more likely to be located in areas that afford greater access to various “brick and mortar” facilities that offer alternate access to postal retail channels. Such areas also offer generally greater access to the Internet (and www.usps.com) than rural areas. Tr. 2/77. Such proximity and access creates opportunities for considering elimination of a redundant urban or suburban station or branch, while still providing that portion of a Post Office service area with ready access to essential services. USPS-T-1 at 9; Tr. 2/75, 266. As reflected in USPS Library Reference N2009-1/19, approximately 3300 such stations and branches were originally identified as candidates sharing these attributes, making them reasonable candidates for examination.

The changes in the nature of postal services resulting from the discontinuance of a station or branch would generally be limited to customers of the discontinued facility who can no longer obtain postal retail products and services there, and who must

¹¹ Than, for instance, in less densely populated areas where the next closest Post Office, station or branch could be many miles away.

therefore go to a nearby Post Office, station or branch or make use of alternative access channels. Such customers may also need to change where they obtain Post Office Box Service, which is usually relocated to a nearby postal retail location with no address change, or make use of a different method of entering mail when a collection box is removed from in front of a discontinued facility. USPS-T-1 at 12-13; Tr. 2/82, 83, 85, 165, 200.

B. The SBOC Decision-Making Process Ensures Careful Consideration of Relevant Policies

As an Operations Specialist in the Delivery and Post Office Operations group at Postal Service headquarters, witness Kimberly Matalik (USPS-T-2) serves as Program Manger of the Post Office Discontinuance Program, with responsibility for administering the station and branch discontinuance process reflected in pertinent portions of USPS Handbook PO-101.¹² Her testimony demonstrates that the Postal Service has established a multi-tiered review process through which specially trained¹³ teams of field managers at the district and area offices applied uniform criteria to screen the 3300 SBOC candidate stations and branches and, by July 30th,¹⁴ identified 759 candidates for further discontinuance analysis. Under her direction, field and areas offices have since been applying uniform criteria to analyze which of these remaining facilities should move forward as candidates for further consideration and be subjected to a full discontinuance study.¹⁵ Subsequently filed versions of USPS Library Reference N2009-

¹² See USPS Library Reference N2009-1/3 and Tr. 2/184.

¹³ See USPS Library References N2009-1/5 and N2009-1/8.

¹⁴ See USPS Library Reference N2009-1/4 (September 2, 2009 version).

¹⁵ As indicated in the November 20th version of USPS Library Reference N2009-1/4, further facility-specific analysis has eliminated almost 418 of the 759 survivors of the pre-screening process, leaving

1/4 reveal that 413 (as of September 2, 2009), then 371 (as of October 9, 2009), and now (as of November 20, 2009) only 241 candidate stations and branches remain under consideration for discontinuance.

Witness Matalik lists and describes the criteria applied in the pre-screening process and subsequent analytical review stages; these include customer service and retail trend data; cost and operational data at affected and gaining offices; employee impacts, customer demographic data that may highlight socio-economic factors requiring close scrutiny; the feasibility of transferring operations to nearby retail facilities, and qualitative judgments made by knowledgeable discontinuance review team members familiar with local conditions specific to a facility. USPS-T-2 at 8-11. See *also*, USPS Library Reference N2009-1/6; and Tr. 2/119, 129-132, 141-143, 176-182, 475-478 and 480-481. Witness Matalik's testimony also describes the public notices that accompany every determination to subject a station or branch to discontinuance review, and the opportunities for public input provided to retail lobby, post office box and carrier delivery customers of stations or branches, whether by means of a customer survey or a public meeting, or both, before any recommendation is finalized locally and forwarded to headquarters for review and final decision. USPS-T-2 at 5; Tr. 2/399-403, 432-439, 466, 469-472.

The process is designed to ensure that the headquarters review team has sufficient information to assess whether customers served by the station or branch being proposed for discontinuance will retain ready access to essential services if that facility were discontinued and to make an appropriate recommendation to the Vice

only 241 stations and branches as candidates for further study and possible discontinuance out of the original candidate pool of 3300.

President for Delivery and Post Office Operations who is responsible for making the final agency decision. USPS Library References N2009-1/1, N2009-1/2 as well as N2009-1/14 through N2009-1/17 offer examples of the application of the station and branch discontinuance review process over the past five years.

The station and branch discontinuance review process is designed to ensure that postal management considers sufficient data and incorporates appropriate judgment in making reasonably informed decisions regarding the allocation of finite retail network resources. The Postal Service does not engage in the pretense that the station and branch discontinuance review process in USPS Handbook PO-101, as enhanced for purposes of the SBOC Initiative and described by witness Matalik, reflects the only reasonable process for assessing whether to discontinue the retail operations at stations and branches. The process is designed to require consideration of a variety of information relevant to each decision of how best to maintain ready access to postal services, consistent with reasonable efficiency and the resources available. While such decisions are a routine management responsibility, the removal of a facility from service affects a specific set of customers in ways they typically do not appreciate, so the process assures that a broad range of information is available to the decision maker. Accordingly, as demonstrated by the testimony of witness Matalik, the SBOC Initiative discontinuance review process reflects considerable sensitivity to the needs of customers and provides a mechanism for the careful consideration and balancing by postal management of the sometimes conflicting mandates of title 39, United States Code.

V. The Intervenor Testimony In This Docket Deserves No Weight

Two intervenors filed testimony in this docket, the Association of United States Postal Lessors (AUSPL) and the American Postal Workers Union (APWU). For the reasons explained below, these testimonies do not warrant serious consideration by the Commission.

A. The AUSPL Testimony Fails To Achieve Its Stated Objectives

The purposes of the testimony of AUSPL witness Mario A. Principe were to:

collectively rebut the direct testimony of [postal witnesses Matalik and VanGorder] and to show the failure of the current USPS station and branch closing process to provide continued effective service to customers of the Postal Service.

AUSPL-T-1 at 6. The testimony accomplishes neither objective. Witness Principe bemoans the fact that the discontinuance process applied by the Postal Service to stations and branches is not identical in every respect to the process required by 39 U.S.C. § 404(d) for the closure of Post Offices whose operations such stations and branches supplement.¹⁶ *Id.* at 7-10. Notwithstanding the statutory latitude granted by Congress to the Postal Service in distinguishing between Post Office discontinuance

¹⁶ Putting aside the fact that the law does not require application of the section 404(d) process to stations and branches, the Postal Service observes that there are two significant differences between the two processes. For Post Office closings, subsection 404(d)(1) requires a 60-day comment period after public notice of a proposed Post Office closing; and subsection (d)(4) requires another 60 day notice period between a decision to close and the actual closure. In the absence of such statutory notice requirements for station and branch closures, the Postal Service has implemented a policy of requiring a 10 business day public comment period and a 30-60 day public notice period before a discontinuance of operations is implemented. Secondly, by operation of section 404(d)(5) a decision to close a Post Office is subject to review by the Commission in response to a petition filed by a person served by that Post Office. There is no statutorily mandated Commission review of decisions to close stations or branches. Otherwise, the station and branch discontinuance review process employs the same retail, customer service, cost and operations analysis, and the same headquarters review process, but only requires one opportunity for public input before a discontinuance proposal is forwarded to headquarters for decision. That one opportunity is the same one that Post Office customers use for the vast majority of their input in Post Office discontinuance studies. The statutorily required posting/comment period only rarely draws any comments in a typical Post Office discontinuance.

and station/branch discontinuance, witness Principe testifies that general public indifference to such distinctions, by itself, should compel the Postal Service to make the processes absolutely identical. *Id.* at 7. However, if public indifference to such distinctions should serve as the controlling factor in eliminating any variance in the respective discontinuance processes, such indifference would likely justify requiring multiple rounds of public comment on whether the Postal Service should terminate agreements negotiated with private parties to operate contract postal units (CPUs), since the general public is also likely to be indifferent to the fact that CPUs are not Post Offices.

In describing the Postal Service's station and branch discontinuance review process, witness Principe originally was of the view that "the Postal Service appears to only go through the formality of conducting a community meeting and/or providing questionnaires, without any real interest in considering what customers have to say." AUSPL-T-1 at 9. However, during cross-examination, he acknowledged that the opposite is true. Tr. 3/748, 753. At page 11 of AUSPL-T-1, witness Principe expresses concern that "Postal Service Headquarters will 'rubber stamp' any [discontinuance] proposal in order to save dollars, since affected customers have no appeal rights to the Postal Regulatory Commission." However, that concern is unjustified, given the fact that the Postal Service has established no financial targets or goals for the SBOC Initiative and thus, has no incentive to blindly disregard non-financial considerations. See USPS-T-1 at 11. Witness Principe's concern is further undermined by the fact that, to-date, the SBOC Initiative review process has eliminated all but 241 of nearly 3300 candidate stations and branches from consideration. If the Postal Service were only

motivated to cut costs, it would not have allowed over 90 percent of the opportunities afforded by the SBOC Initiative's original scope to slip through its penny-pinching grasp. Finally, a cursory review of the reasons why many of the 759 stations and branches identified by the SBOC Initiative pre-screening process as discontinuance candidates were eliminated from further consideration reveals the significant influence of factors other than postal retail operations cost savings. See USPS Response to Question 1 of Presiding Officer's Information Request No. 3 (November 17, 2009).¹⁷ Contrary to witness Principe's worries, the discontinuance review process employed for purposes of the SBOC Initiative has proven to be no more of a rubber stamp than the review process employed during witness Principe's postal tenure described at page 4 of AUSPL-T-1 and at Tr. 3/749, 753-55.

B. APWU's Data Analysis Suggestions Would Not Materially Change The Review Process And Its Concerns About Discriminatory Impact Are Unfounded

1. Witness Barrett Shows Insufficient Regard For The Qualitative Nature Of The Discontinuance Review Process

In a nutshell, witness Michael T. Barrett (APWU-T-1) testifies that, before making the qualitative judgment regarding whether to discontinue the operation of a station or branch, the Postal Service should rely on more granular data than are called for by USPS Handbook PO-101¹⁸ in analyzing customer service transactions and operating costs. The Postal Service observes that one common characteristic of the separate

¹⁷ Witness Principe laments at page 12 of AUSPL-T-1 that postal lessors are not separately notified when a station or branch discontinuance is being contemplated. However, the response to Question 1 of POIR 3 demonstrates that leasehold considerations can be significant determining factors in decisions by postal management to continue the operation of a particular SBOC Initiative candidate station or branch, before any public comment is solicited and without soliciting the all too predictable plea by a lessor that the Postal Service preserve the *status quo* by continuing to lease the facility.

¹⁸ Post Office Discontinuance Guide, USPS Library Reference N2009-1/3.

Post Office closing and station/branch discontinuance processes in Handbook PO-101 is that they call for analysis of the same customer service and operating cost data. The Postal Service does not suggest that there is no room for improving the Handbook PO-101. However, caution should be exercised in recommending that the data used as factors in assessing the feasibility of discontinuing a station or branch be more granular than those used when determining whether to discontinue a Post Office to which such a station or branch has a subordinate relationship.

More importantly, APWU witness Barrett's emphasis on examination of more and more granular customer service and operational cost data ignores the fact that such data, by themselves, do not always provide a complete picture. As part of the discontinuance review process, the Postal Service looks beyond available facility-specific transaction and cost data and takes into account such intelligence as may be reflected in local management's knowledge of actual customer transactions and trends, socio-economic factors that might influence community reliance on a particular station or branch for a disproportionate volume of international mail or postal money order transactions, as well the feasibility of access to alternate postal retail locations or alternate postal access channels. USPS-T-2 at USPS-T-2 at 7-9. See *also*, Tr. 2/117-137, 141-143, 407, 413-417; and USPS Library References N2009-1/5 and N2009-1/6. The qualitative nature of customer survey responses and public meeting comments may merit greater weight than is suggested by a mere quantitative tally of responses.

Every station or branch discontinuance decision is an important and delicate one for the Postal Service. Nevertheless, the Postal Service cannot get so immersed in retail transaction and cost minutiae that it suffers paralysis by analysis. For instance, at

page 11 of APWU-T-1, witness Barrett suggests that discontinuance studies include a detailed analysis of the cost resulting when “the entire volume of arriving [Post Office] box mail becoming Undeliverable As Addressed (UAA) mail” as the result of the discontinuation of a given station or branch. At page 15, he testifies that such costs can be “significant in the short run.” However, when asked – in the spirit of his testimony -- to quantify the volume of UAA mail likely to result from such discontinuance, he offers no such quantitative estimate and concedes that a variety of factors can result in this “entire volume” of UAA mail either gradually disappearing (APWU-T-1 at 15) or avoiding UAA status altogether. Tr. 3/622.

Otherwise, witness Barrett finds fault where none exists. His recommendation at page 14 of APWU-T-1 that the Postal Service examine demographic data “to identify customers who may be unusually disadvantaged by the closing of . . . [a] facility” ignores the fact that the Postal Service already relies on U.S. Census data and local officials’ own knowledge for that very purpose. See USPS Response to Question 4 of POIR 3 (November 17, 2009). Likewise, witness Barrett’s critique at page 15 of APWU-T-1 of the Postal Service’s use of Window Operations Survey data from the months of March and October is misguided. Examination of daily, or lunch hour or seasonal peak transaction data, as he proposes, might be useful if the objective is to determine whether to adjust staffing at a station or branch that the Postal Service intends to continue to operate, but are of less value in analyzing whether to discontinue operations altogether. This is especially true with seasonal data, since virtually all retail locations experience the same December holiday surge. It is less important whether one includes or excludes seasonal peak data from the discontinuance analysis than whether

one uses the same data set (March/October vs. all 12 months) on a consistent basis.

It also is critical that minutiae not bog down the discontinuance review process. It is one thing to review and consider, as the Postal Service does, each customer survey form completed during the public comment period of the discontinuance review process. On the other hand, APWU witness Barrett goes overboard at page 9 of APWU-T-1 in suggesting that the Postal Service establish a process for routinely printing, storing, retrieving and parsing through copies of all non-revenue transaction receipts for later review in the event that a station or branch may one day be the subject of discontinuance review. Notwithstanding how unwilling some parties may be to concede it, there are instances where local postal management's knowledge and judgment about such matters are valid alternative bases for decision-making.

Sometimes more data are simply more data and do not provide a materially superior qualitative basis for making the judgments postal management must make as part of the SBOC Initiative. The determination of whether the discontinuance of a station or branch within a Post Office service area leaves postal patrons with ready access to essential postal services is unavoidably qualitative. Contrary to the apparent preference of APWU witness Barrett, it should not be reduced to a mere accounting exercise.

2. Witness Morrison's hastily conducted analysis is fatally flawed

The principal purpose of the testimony of APWU witness Anita B. Morrison (APWU-T-2) is to sound an alarm that the SBOC Initiative will have a disproportionate, adverse impact on postal customers who are elderly, economically disadvantaged, members of racial/ethnic minority groups, and those who do not own automobiles.

However, a cursory examination of her analysis reveals that it:

was completed in a rush between execution of the contract and filing of the testimony;

- eschews any attempt at statistical validity;
- focuses arbitrarily upon a thin sliver of the process by which the SBOC Initiative eliminated stations and branches from consideration;
- looked for impacts upon certain groups when a basic awareness of demographic variance would by itself predict such impacts;

compares “apples to oranges” by comparing “close-in” customers of stations and branches to national averages of demographic vectors without sustaining the condition of proximity to postal facilities;

- confuses mere consideration of the closure of a station or branch with a decision to actually close that facility,
- does not support several of her key conclusions, and
- is generally tautological.

When cross-examined, witness Morrison revealed that she only had two weeks within which to familiarize herself with the issues raised by Docket No. N2009-1 and prepare her written testimony. Tr. 3/614. She conceded originally that she had only read portions of the testimony of Postal Service witness Matalik, but none of the discovery responses of the Postal Service or its witnesses. Tr. 3/687.¹⁹

At Tr. 3/676-677, witness Morrison agrees that the quality of a study and its data inform the quality of the study’s result. She expresses a clear understanding of the concept of statistical significance, standard error and confidence levels. Tr. 3/713-715.

However, she admits at Tr. 3/682-283 that she undertook no effort to estimate the

¹⁹ The Commission will observe that the December 1, 2009 Stipulation between APWU and the Postal Service confirms that, after an opportunity for extended further reflection, witness Morrison’s familiarity with other significant portions of the record was, at best, secondary via reliance upon a colleague. See Motion by APWU and USPS For Admission Into The Evidentiary Record Of Stipulation Identifying Materials Provided To Witness Morrison In Advance of Her Testimony (December 1, 2009).

statistical robustness or reliability of the data presented in her testimony.

The SBOC Initiative discontinuance candidate pool originally consisted of approximately 3300 stations and branches. The pre-screening process narrowed the Postal Service's attention to a subset of 759 of these facilities on July 30th. Further waves of facility-specific analysis narrowed the candidate pool down to 413 and then to 371.²⁰ Witness Morrison's analysis of discriminatory impact is based entirely on a comparison of the 42 facilities that were eliminated from consideration between September 2nd and October 9th and the 371 that remained under consideration as of October 9th. She was unaware that the entire 3300-facility SBOC Initiative station and branch candidate pool was under consideration until cross-examination (Tr. 3/708-709). This oversight appears to contribute to the absence of any analysis of the entire candidate pool. See Tr. 3/711. Witness Morrison offers no explanation for her failure to examine the 346 stations eliminated (759 minus 413 = 346) between July 30th and September 2nd.

In analyzing the potential for discriminatory impact on residents living near stations and branches still under consideration, witness Morrison engages in an "apples to oranges" comparison that undercuts her thesis. Tr. 3/690-692. She compares the demographic characteristics of residents living within a half-mile of each such station or branch to the general population of the United States as whole. She offers no compelling basis for distinguishing customers of a station or branch on the basis of a half-mile proximity. Tr. 3/727. In any event, a more apt comparison would have been to the general population living within a half-mile of a postal station or branch as a whole, which she concedes. Tr. 3/692.

²⁰ And, since witness Morrison's testimony, down to 241.

Witness Morrison's assertions that the SBOC Initiative discontinuance review process has an adverse impact on particular population sub-groups is premised upon a conflation of the process that evaluates whether to discontinue the operation of a station or branch and a decision to actually discontinue the operation of that facility. See Tr. 3/719-722. To-date, not one decision has been made to discontinue the operation of a single station or branch as part of the SBOC Initiative, yet this does not stop her from claiming "undue impact" upon the few sensitive populations she studied. Tr. 3/672-732 (passim). Accordingly, there is no basis for the witness Morrison's testimony that the Initiative has had or will have a disproportionately adverse impact on the economically disadvantaged, the elderly, or members of racial or ethnic minority groups. Her concerns about disproportionate, adverse impact on the elderly and those who do not own automobiles are undercut by the data she presents at pages 9-10 of APWU-T-2.

Witness Morrison concedes that persons who do not own automobile tend to cluster in urban areas, where they can manage without driving. Tr. 3/716. She concedes that any challenges in obtaining postal services faced by urban customers who lack cars are no different than any related to other important life activities, such as getting groceries or getting to work. *Id.* at 724-725. She acknowledges that members of racial and ethnic minorities tend to be clustered in urban areas. *Id.* at 723-724. Given the fact that SBOC Initiative candidate stations and branches are, by definition, clustered in urban and suburban areas, it is tautological to assert that the SBOC Initiative will have an impact on members of these sub-populations. The Initiative will have an impact on anyone, irrespective of their demographic characteristics, that lives in an urban or

suburban area near a station or branch that is discontinued. However, witness Morrison's analysis fails to establish any basis for concluding that any such impact will be disproportionately adverse on any population sub-group, when compared, for instance, to persons who are not members of racial or ethnic minorities.

VI. Conclusion

As demonstrated above, the service changes that could result from implementation of the Station and Branch Optimization and Consolidation Initiative are founded upon a rational plan for improving the nation's postal system and are the product of a proper balancing and consideration of pertinent objectives of title 39, United States Code. For the reasons described by witness Alice VanGorder (USPS-T-1), and based upon the decision-making tools and processes described in the testimony of witness Kimberly Matalik (USPS-T-2) and various other supporting documentation, there is every reason to expect the result of the Initiative to be a slightly streamlined retail network comprised of postal facilities and alternate access channels of such character and in such locations as are necessary to provide ready access to essential services. The SBOC Initiative is a faithful exercise of the Postal Service's statutory responsibilities. The record in this docket supports the conclusion that, although the section 3661 jurisdictional grounds for Commission review of the Initiative no longer exist, the resulting changes in the nature of postal services can be expected to conform to the policies of title 39, United States Code.

Respectfully submitted,

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