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BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON DC 20268-0001

RATE ADJUSTMENT DUE TO	)	
EXTRAORDINARY OR	)	Docket No. R2010-4
EXCEPTIONAL CIRCUMSTANCES	)	

MOTION OF THE AFFORDABLE MAIL ALLIANCE TO DISMISS REQUEST
(July 26, 2010)

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MOTION OF THE AFFORDABLE MAIL ALLIANCE TO DISMISS REQUEST

The Affordable Mail Alliance respectfully moves to dismiss this case on the ground that the Request and supporting documentation filed by the Postal Service on July 6, even taken in their most favorable light, fail to satisfy 39 U.S.C. § 3622(d)(1)(E).

The Affordable Mail Alliance is a coalition of large and small businesses, nonprofit organizations and associations of mailers that together account for a majority of the mail sent in the United States. A list of the Alliance's members appears in Appendix A to this Motion.

SUMMARY

Allowing the Postal Service to raise prices above the Consumer Price Index in this case would nullify the single most important safeguard for mailers and the public in the Postal Accountability and Enhancement Act of 2006 ("PAEA"). One of the most fundamental tasks of rate regulation is to prevent regulated firms from exploiting their market power to earn excessive profits or recover inefficiently high costs. The PAEA, like many other modern regulatory statutes, accomplishes this task by limiting the average price increase for each market-dominant postal class to the rate of inflation as measured by the CPI. This mechanism, known as price-cap or incentive regulation, is designed to encourage the Postal Service to improve its productivity and control its costs, protect mailers from having to pay for inefficiently high Postal Service costs, and protect the overall economy from further cost increases downstream.

Section 3622(d)(1)(E) offers an escape valve from the CPI cap for exigent circumstances, when the Postal Service could not continue operating without overall price increases above the CPI. But the exception is narrow. The authors of PAEA recognized that exigency clauses are the potential Achilles heel of incentive regulation. If failure to recover actual costs led to relaxed enforcement of the index-based price cap, the incentive mechanism would lose its credibility as a control on costs. Hence, Section 3622(d)(1)(E) allows the Postal Service to breach the CPI cap only in "extraordinary or exceptional circumstances" that would otherwise leave the Postal Service short of the funds needed to provide necessary services despite the "best practices of honest, efficient and economical management."

The present circumstances do not begin to satisfy these requirements. The Postal Service claims that it needs more money for a variety of reasons, including the recession that began in December 2007, which has accelerated the long-term diversion of communications from mail to the Internet. But the Postal Service's most fundamental problem is not the Internet, or the recession, but a lack of effective cost control.

The Postal Service has long had great difficulty in managing its costs—particularly the costs of its mail processing network and its workforce. Until recently, the long-term growth of mail volume and revenue allowed the Postal Service to live with this problem. Over the past 15 years, however, the likelihood that the rise of the Internet would slow and eventually reverse the growth of mail volume has become increasingly obvious. Despite ample notice of this threat, the Postal Service took only limited steps to get its house in order by reducing its plant capacity and labor costs and improving its flexibility to shed further costs quickly if the decline in volume and workload accelerated. In FY 2007, the last complete fiscal year before the start of the current recession, the Postal Service still carried an infrastructure and workforce designed to handle 300 billion pieces of mail annually—almost 50 percent more than actual mail volume in the same year, and twice the mail volume that the Postal Service projects for the year 2020.

With the recession came the day of reckoning. The Postal Service was hardly the only enterprise to suffer sharp declines in volume and revenue from the downturn. Most large American companies—including competitors of the Postal Service such as FedEx and UPS—experienced comparable or even greater declines. Indeed, many of the Postal Service's customers saw their own revenue fall by 20 percent or more. Efficiently run private companies, however, responded to the recession by making aggressive (and often painful) cuts in capacity and employment, and freezing or cutting wages and compensation. As a result, FedEx, UPS and other well-run private companies achieved large enough productivity gains to return to profitability within a quarter or two after the recession bottomed out in early 2009. Efficiently managed nonprofit organizations and municipal governments survived with similar austerity measures.

The Postal Service's countermeasures have been far less effective. It has done little since December 2007 to shrink or consolidate its oversized and inefficient mail processing network. It also has implemented virtually no layoffs or furloughs, and has relied almost entirely on attrition and other voluntary measures to reduce the size of the workforce. While these measures have reduced work hours, the downsizing has not come close to offsetting the drop-off in revenue and work load. As a result, while private sector productivity has increased, Postal Service productivity has fallen. Further, while most other American workers have endured pay freezes or cutbacks, the Postal Service has increased compensation rates that were already above market.

The result has been devastating. In Fiscal Year 2009, when prices in the overall economy actually declined, the Postal Service costs per unit of output *increased by more than six percent*. Had the Postal Service merely held its costs to the level of inflation in the general economy, *the Postal Service would have made a profit in 2009*.

The Postal Service's actual performance does not begin to approach the "best practices of honest, efficient, and economical management" required by 39 U.S.C. § 3622(d)(1)(E) as a condition for any exigent rate increase. Nor has the Postal Service satisfied the other two standards of Section 3622(d)(1)(E): that the circumstances causing the Postal Service's financial woes be extraordinary or exceptional, and that the projected shortage of funds would jeopardize the ability of the Postal Service to continue providing service.

This case should be recognized for what it is: less than four years after PAEA became law, the proposed rate increases would nullify the primary line of defense established by Congress to protect mailers and the American public from abuse of the Postal Service's market power. If the increases are approved, the central regulatory constraint of PAEA will be dead. With traditional cost-of-service regulation of class-wide rate increases having been repealed in 2006, allowing the Postal Service to breach the CPI cap whenever the Postal Service expects to lose money would eliminate any regulatory discipline on the Postal Service to control its costs.

The Postal Service's continuing failure to control its costs is a fundamental structural problem, and a long-run threat to the survival of the institution that can no longer be finessed by rising volume or price increases. Failure to confront this reality serves the interests of no one—least of all the Postal Service, its employees, and its customers. As Senator Carper commented a month ago:

> Based on the work I've seen over the years from GAO, the Postal Service's Inspector General and others, we likely have some overcapacity and too large of a workforce. This must be confronted head on. Postal customers . . . still depend on the Postal Service. But at a time when the pace of electronic diversion is likely picking up, we probably can't rely for very much longer on customers' willingness to continue paying for a

> postal system that seems in many ways to be much larger than we need.[1]

Without effective cost control, trying to make the Postal Service solvent through financial infusions will be like trying to fill a bucket with a hole in its bottom. The Postal Service will lurch from one financial crisis to the next.

COMMENTS

I. 39 U.S.C. § 3622(d) ALLOWS THE POSTAL SERVICE TO RAISE RATES FASTER THAN INFLATION ONLY IN EXTREMELY NARROW CIRCUMSTANCES.

A. The CPI Price Cap Of 39 U.S.C. § 3622(d) Is The Main Defense Established By PAEA Against Recovery of Excessive Costs From Users Of Market-Dominant Postal Products.

One of the most fundamental tasks of rate regulation is to serve as a surrogate for effective competition in markets where it is lacking. Thus, regulation is intended to prevent the regulated firm from exploiting its market power by earning excessive profits or recouping inefficiently high costs. Stephen G. Breyer, *et al.*, *Administrative Law and Regulatory Policy: Problems, Text, and Cases* 228 (4th ed. 1999); Stephen G. Breyer, *Regulation*

[1] Opening statement of Sen. Tom Carper in "Having Their Say: Customer and Employee Views on the Future of the U.S. Postal Service," Hearings Before the Subcom. on Federal Financial Management, Government Information, Federal Services, and International Security, Committee on Homeland Security and Governmental Affairs (June 23, 2010).

and its Reform (1982) at 37-38, 47-50; 1 Kahn, *Economics of Regulation* (1970) at 17, 20-21; Kenneth E. Train, *Optimal Regulation* 2 (1991).

Effectively competitive (or contestable) markets tend to limit the prices charged by firms to the costs of efficient participants and force them to achieve productivity gains and share them with customers through lower prices. The discipline of competition pressures firms to match the costs and prices of efficient firms or leave the market. William J. Baumol, John C. Panzar, & Robert D. Willig, *Contestable Markets and the Theory of Industry Structure* (1982); Breyer, *Regulation and its Reform*, *supra*, at 47.

Regulated monopolies, in contrast, tend to be inefficient. A "monopoly is often an inherently inefficient device with a natural propensity for stagnation and mediocrity."[2] One reason is what economists call "x-inefficiency": rather than strive to reduce costs to maximize profits, monopoly firms may instead spend their monopoly rents on extra compensation for management, increased benefits and compensation for labor, and unneeded physical capacity.[3] Rather than reduce costs to maximize profits, a monopoly is "likely to exploit [its] advantage much more by not bothering to get very near the position of maximum profit, than by straining [itself] to get very

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[2] Report of the President's Commission on the United States Postal Service, *Embracing The Future: Making the Tough Choices to Preserve Universal Mail* Service 25 (2003).

[3] *See* Stephen Breyer, *Regulation and its Reform* (1982) at 16 & n. 7; ; *see also* Lawrence A. Sullivan, *The Viability of the Current Law on Horizontal Restraints*, 75 CAL. L. REV. 835, 860 (1987); H. Leibenstein, "Allocative Efficiency vs. 'X-Efficiency,'" 56 *Am. Econ. Rev.* 392 (1966).

close to it. The best of all monopoly profits is a quiet life."[4] Monopolies also tend to be slow to innovate. The tendency to both kinds of inefficiency is especially strong in regulated common carriers and public utilities.[5]

In traditional cost-of-service ratemaking, the main regulatory check on inefficiently high costs was the power of the regulator to disallow recovery of costs that were imprudently incurred, were incurred for assets that were no longer used or useful, or were inconsistent with "honest, economical and efficient management." 1 Kahn, *supra,* at 26-27. Thus, for example, the ICC held early in its existence that, because railroads lacked the market discipline of effective competition, the ICC must act as a surrogate protector of the public by disallowing recovery of costs that could have been eliminated through more efficient management. *See Investigation of Advances in Rates by Carriers in Official Classification Territory*, 20 I.C.C. 243, 279 (1911) ("No general advance in rates should . . . be permitted until carriers have exhausted every reasonable effort toward economy in their business."). Nine

[4] Robert H. Lande, "Wealth Transfers as the Original and Primary Concern of Antitrust: The Efficiency Interpretation Challenged," 34 *Hastings L.J.* 65, 78 (1982) (quoting Sir John Hicks, "Annual Survey of Economic Theory: The Theory of Monopoly," 3 *Econometrica* 1, 8 (1935)).

[5] Sanford V. Berg & John Tschirhart, *Natural monopoly regulation: Principles and practice* 304-305 (1988); Breyer, *Regulation and its Reform*, at 16; Michael A. Einhorn, *Price Caps and Incentive Regulation in Telecommunications* 2-3 (1991); 1 Alfred E. Kahn, *The Economics of Regulation* 27-29 (1970); Kenneth E. Train, *Optimal Regulation* xi-xii (1991); Peter Navarro, "The Simple Analytics of Performance-based Ratemaking: A Guide for the PBR Regulator," 13 *Yale J. on Reg*. 105, 108 (1996) (traditional rate regulation "creates perverse incentives which encourage managers to inflate the firm's operation and maintenance expenses, 'gold plate' or over-invest in capital, avoid optimal risk-taking, and otherwise operate inefficiently").

years later, the Transportation Act of 1920 codified this principle into the Interstate Commerce Act as former 49 U.S.C. § 15a, which limited railroads' revenue requirements to the earnings needed to cover costs and provide a fair return "under honest, efficient and economical management."

Other regulatory commissions followed suit. *See Trans-World Airlines v. CAB*, 385 F.2d 648, 654-55 (D.C. Cir. 1967) (denying airline's application for recovery for losses stemming from a strike because the airline's failure to take actions to end the strike was imprudent and not in accord with principles of "honest, economical and efficient management"); *American Overseas Airlines v. CAB*, 254 F.2d 744, 750 (D.C. Cir. 1958) ("If the strike would not have occurred under honest, economical and efficient management, compensation for losses from that strike is barred by the statutory test to which we have referred.").

In practice, however, effective regulatory review of the efficiency and prudence of the myriad business decisions of regulated companies was difficult. Berg & Tschirhart, *supra*, at 304-305; Breyer, *Regulation and its Reform*, *supra*, at 47-50; 1 Kahn, *supra*, at 29-30; 2 Kahn, *supra*, at 48; Michael A. Crew, *Economic Innovations in Public Utility Regulation* 63 (1992). To achieve more effective control over the costs and efficiency of regulated firms, legislators and regulators in the United States and other advanced economies began in the early 1980s to deemphasize cost-of-service ratemaking for market-dominant services in favor of incentive (or index-based) ratemaking. Incentive regulation constrains prices by reference to an external cost index such as the Consumer Price Index or the Producer Price Index, rather than the costs of the regulated firm itself. The purpose of delinking a regulated entity's overall revenue from its own costs is to create stronger incentives for effective cost control. By "severing the linkage under traditional cost-of-service ratemaking" between a regulated company's costs and rates, incentive ratemaking creates an incentive for a regulated carrier to hold its cost increases below the level of the index.[6]

Postal rate regulation has followed the same path. The Postal Reorganization Act of 1970 established a form of cost-of-service ratemaking. The Act required the Postal Service to set rates that achieved break-even "as nearly as practicable." Former 39 U.S.C. § 3621.[7] The break-even requirement was subject to the qualifier "under honest, efficient, and economical management," although the Second Circuit effectively wrote the condition out of former § 3621 by holding that disallowance of a portion of the Postal Service's general revenue requirement for lack of "honest, efficient and economical" management "was an unlawful encroachment on the policy-making authority of the Board" of Governors. *Newsweek, Inc. v. USPS*, 663

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[6] *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, Order No. 561, FERC Stats. & Regs. ¶ 30,985 (1993) ("Order No. 561") at 30,948-49 & n. 37, *aff'd*, *Ass'n of Oil Pipelines v. FERC*, 83 F.3d 1424 (D.C. Cir. 1996); Michael A. Einhorn, *Price Caps and Incentive Regulation in Telecommunications* 4-8 (1991); Crew, *Economic Innovation in Public Utility Regulation* 57-60 (1992); Peter Navarro, 13 *Yale J. on Reg*. at 108.

[7] Even the Postal Reorganization Act did not require the Postal Service to achieve break-even in every year, or any given year. *See Newsweek, Inc. v. USPS*, 663 F.2d 1186, 1203-1205 (2nd Cir. 1981), *aff'd on other grounds*, *Nat'l Ass'n of Greeting Card Publishers v. USPS*, 462 U.S. 810 (1983).

F.2d 1186, 1203-1206 (2nd Cir. 1981), *aff'd on other grounds*, *Nat'l Ass'n of Greeting Card Publishers v. USPS*, 462 U.S. 810 (1983).

PAEA largely replaced cost-of-service regulation with incentive ratemaking. With certain narrow exceptions, 39 U.S.C. § 3622(d) caps the annual increase in rates for market-dominant classes of mail at the rate of increase in the Consumer Price Index ("CPI"). 39 U.S.C. § 3622(d)(1), (2).

Consistent with this approach, the Postal Service's overall revenue requirement no longer sets either a floor under or a maximum limit on the Postal Service's overall earnings. If the Postal Service's unit costs increase more slowly than the CPI, then the Postal Service is entitled to keep the extra income for itself. Conversely, if the Postal Service's unit costs increase more quickly than the CPI, than the Postal Service must absorb the shortfall or reduce its costs. As the House committee report explained:

> The objective of the bill is to position the Postal Service to operate in a more business-like manner. To achieve this goal, the system must be responsive to market considerations and must provide clear incentives for postal management and the Postal Service as an institution. The Postal Service would no longer operate under a break-even mandate. By maximizing gains and minimizing costs, the Postal Service could generate earnings that would be retained, and which could be distributed as incentives to management as well as to employees through collective bargaining. In the same way, losses could not be recovered by increasing rates beyond specific parameters without regulatory approval.

H.R. Rep. No. 66, 109th Cong., 1st. Sess. 43-44 (2005); *see also* PRC Annual Report to the President and Congress for FY 2009 at 20 ("Nor does the PAEA require the Postal Service to break even.").

B. The Exigency Exception of 39 U.S.C. § 3622(d)(1)(E) Is Narrowly Drawn.

The developers of incentive regulation were aware that unanticipated circumstances might require price increases above the index-based price cap for the regulated firm to survive. For incentive ratemaking to work effectively, however, any exception for "exigent" circumstances of this kind must be tightly limited; otherwise the exception would destroy the incentive for efficiency that is the main point of incentive ratemaking. If regulated firms came to believe that failure to recover actual costs would lead to relaxed enforcement of the index-based price cap, the incentive mechanism would lose its credibility and effectiveness as a control on costs. Exceptions that allow above-index rate increases when the regulated entity would otherwise lose money tend to undermine the regulatory commitment to the index cap, and have long been recognized as an Achilles heel of incentive regulation.

For this reason, exigency clauses tend to be very narrowly drawn. Thus, the Federal Communications Commission, in determining when carriers would be permitted to exceed a price cap, allowed only those costs that were completely "exogenous" to the cap, in the sense of being "triggered by administrative, legislative or judicial action beyond the control of the carriers." *In the matter of Policy and Rules Concerning Rates for Dominant Carriers*, 5 FCC Rcd 6786, 6807 (1990). Notably, the FCC refused to allow exceptions for "extraordinary costs," such as those caused by natural disasters. Allowing special recovery of such costs, the FCC reasoned, would create "the wrong incentives by reducing the carrier's need to be efficient and innovative." *Id*. at 6809-10.

Like its counterparts in other statutes, the exigency clause of 39 U.S.C. § 3622(d)(1)(E) allows the Postal Service to exceed the CPI cap in only very limited circumstances:

> [N]otwithstanding any limitation set under [39 U.S.C. § 3622(d)(1)(A) and (C)], and provided there is not sufficient unused rate authority under [39 U.S.C. § 3622(d)(2)(C)], [the regulatory system for market-dominant products shall] establish procedures whereby rates may be adjusted on an expedited basis due to either extraordinary or exceptional circumstances, provided that the Commission determines, after notice and opportunity for a public hearing and comment, and within 90 days after any request by the Postal Service, that such adjustment is reasonable and equitable and necessary to enable the Postal Service, under best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States.

Section 3622(d)(1)(E) thus imposes three independent conditions on any exigent rate increase: (1) the Postal Service's proposed rate increases must be "necessary"—and the projected losses otherwise unavoidable—through "best practices of honest, economical and efficient management"; (2) the circumstances that cause the losses must be "extraordinary or exceptional"; and (3) the losses that cannot be avoided by best practices of honest, economical and efficient management must prevent the Postal Service from providing necessary services. Section 3622(d)(1)(E) also forecloses any question about the Commission's authority to enforce these restrictions by explicitly providing that "the Commission"—not the Postal Service or the

Board of Governors—shall determine whether the three criteria have been met. *Id*. We discuss each restriction in turn.

The first element of Section 3622(d)(1)(E) is the requirement that any exigent rate increase be "reasonable and equitable and necessary to enable the Postal Service, under best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States." As noted above, "honest, efficient, and economical management" is a term of art reflecting the principle that inefficiently high costs may not be recovered from ratepayers. *See* pp. 8-9, *supra*; *see also D.C. Transit System v. WMATA*, 466 F.2d 394 (D.C. Cir. 1972) (upholding disallowance of proposed rate increases on the ground that the carrier's deficits resulted from inefficient operations); *id*. at 408-410 (citing precedent); *Consolidated Rail Corp. v. United States*, 812 F.2d 1444 (3rd Cir. 1987). The drafters of PAEA increased the stringency of this restriction by adding the introductory phrase "best practices of," an intensifier absent from earlier codifications of the standard in the Interstate Commerce Act and the Postal Reorganization Act.

The second requirement of Section 3622(d)(1)(E) is that the circumstance leading to the exigency be "extraordinary or exceptional." This phrase implies not only rarity but also unforeseeability. *See* Docket No. RM2007-1, Order No. 26 (Aug. 15, 2007) at ¶ 2105 (noting "the clear import of the PAEA's overarching ratesetting philosophy that exigent requests are meant to be a safety net for dealing with unforeseeable emergencies").

The third condition of 39 U.S.C. § 3622(d)(1) is the requirement that the additional funds sought be "necessary to enable the Postal Service . . . to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States." No financial relief is warranted under Section 3622(d) if the Postal Service can continue providing necessary services without the exigent rate increase.

C. The Legislative History Of Section 3622(d)(1)(E) Confirms The Narrowness Of Its Scope.

The legislative history of the PAEA underscores the narrowness of the exigency provision of 39 U.S.C. § 3622(d)(1)(E). Congress was aware during the deliberations leading to the enactment of PAEA that a CPI cap on rate increases might prevent the Postal Service from recovering all of its costs. In 2004, for example, Postmaster General Potter testified that, because an imperfectly crafted price cap could be harmful "given the volatility of today's marketplace," the price cap should "be constructed to recognize the many cost factors which enter into the ratemaking process, many of which are beyond our control." *The Postal Service in Crisis: A Joint Senate-House Hearing on Principles for Meaningful Reform*, Joint Hearing Before the Committee on Government Reform, U.S. House of Representatives, and Committee on Governmental Affairs, U.S. Senate, 108th Cong., 2d Sess. 63 (2004) ("*2004 Joint Hearings*").

Consistent with this concern, several versions of the legislation considered by Congress between 2004 and 2006 would have allowed the

Commission to implement a mixture of price cap *and* cost-of-service regulation, and would have allowed the Postal Service to exceed the CPI cap whenever the Commission found that above-CPI rate increases were "reasonable and equitable and necessary to enable the Postal Service, under best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States." *See* H.R. 22 § 201 (as reported in H.R. Rep. No. 66, 109th Cong., 1st Sess. 4 & 46 (April 28, 2005) (to be codified as proposed 39 U.S.C. § 3622(d) and (e)).

The version of the bill that ultimately became law added to this restrictive language ("reasonable and equitable and necessary to enable the Postal Service, under best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States") a further requirement that the circumstances giving rise to the Postal Service's financial exigency be "extraordinary or exceptional." 39 U.S.C. § 3622(d)(1)(E).[8]

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[8] The concepts of unforeseeability and unavoidability are implicit in both "extraordinary or exceptional" and the provision limiting relief to losses that cannot be avoided through "efficient and economical management." Rule 3010.61(a)(7) requires the Postal Service to include in its request an "analysis of the circumstances giving rise to the [exigent] request," including, "if applicable . . . a discussion of whether the circumstances were foreseeable or could have been avoided by reasonable prior action." A foreseeability requirement follows from the principles underlying incentive ratemaking. To provide credible incentives for efficient operation, a carrier may not be allowed to seek above-CPI increases to recover shortfalls that result from causes that the carrier reasonably could have anticipated and mitigated.

The enactment of this narrowly drawn exception to the CPI cap precludes any claim that 39 U.S.C. §3622(b)(5), or the other objectives of Section 3622(b), may be read as a broader exception to the CPI cap when the Postal Service is in financial need. "When Congress provides exceptions to a statute," the "proper inference . . . is that Congress considered the issue of exceptions and, in the end, limited the statute to the ones set forth." *United States v. Johnson*, 529 U.S. 53, 58 (2000); *accord*, *TRW Inc. v. Andrews*, 534 U.S. 19, 28-29 (2001).

II. THE POSTAL SERVICE'S REQUEST FAILS AS A MATTER OF LAW TO SATISFY THE CONDITIONS OF 39 U.S.C. § 3622(d)(1)(E) FOR BREACHING THE CPI RATE CAP.

As noted above, the requirements of "best practices of honest, efficient and economical management," "extraordinary or exceptional circumstances," and the necessity of the proposed exigent increase are independent requirements, and all three must be satisfied as a condition to any rate increase under Section 3622(d)(1)(E). In fact, the Postal Service has satisfied none of the three conditions. We discuss each in turn in the remaining sections of this motion.

A. The Postal Service's Projected Losses Could Be Avoided Through More Efficient And Economical Management.

1. Introduction

Inefficiency has been endemic to the Postal Service and its predecessor, the Post Office Department, since at least the 19th Century. Both the Postal

Reorganization Act of 1970 and the PAEA of 2006 were adopted in large measure to reduce these inefficiencies. The Postal Service's losses since the beginning of the recent recession have merely underscored the persistence of these chronic problems.

The Kappel Commission report found in 1968, for example, that "at least 20% of postal costs" were needless; "the Post Office's inefficiency is starkly apparent"; "postal productivity . . . has lagged well behind productivity gains for the national work force"; postal salaries "have risen somewhat more than . . . those in the rest of the economy"; and the "inexorable result of rapidly rising labor costs and slowly rising productivity is a sharp increase in labor costs per unit of output." *Toward Postal Excellence: The Report of the President's Commission on Postal Organization* (June 1968) ("Kappel Commission Report") at 24-29, 154-163.

The Kappel Commission report led to the enactment of the Postal Reorganization Act two years later. One of the main goals of the Act was to remedy these problems by establishing "an efficient and economical postal system" that would be run "in a businesslike way" with the "enhanced efficiency and improved productivity that modern American management techniques can offer." H.R. Rep. No. 1104, 91st Cong., 2nd Sess. (1970), reproduced at 2 U.S.C. Cong. & Admin. News 3650-3661; former 39 U.S.C. § 3621 (defining Postal Service revenue adequacy in terms of "honest, efficient, and economical management").

The Postal Service, however, has continued to suffer from serious inefficiency since 1971. With disheartening regularity, four decades of reports on postal operations by Congressional oversight committees, executive branch auditors, independent scholars and blue ribbon panels have identified the same kinds of operational inefficiencies that the Kappel Commission observed in 1968. *See* Report of the Commission on Postal Service (April 1977) at 12-15; National Academy of Public Administration, *Evaluation of the United States Postal Service* 23-26 (July 1, 1982); GAO Report GAO/GGD-92-58, *U.S. Postal Service: Automation is Restraining But Not Reducing Costs* 3 (1992) (noting the "persistent tendency for [Postal Service] costs to outpace inflation," the increase in total workhours in 1991 despite a decrease in volume, and the "[r]eports from fiscal years 1990 and 1991 identif[ying] over $187 million in lost savings as a result of ineffective procedures and administration."); *Report of the Blue Ribbon Committee* 43 (1997); GAO Report GAO-02-355, *U. S. Postal Service: Deteriorating Financial Outlook Increases Need for Transformation* 45 (2002) (the Postal Service "has long-standing and continuing difficulties with cutting costs and achieving and sustaining productivity gains."); *U.S. Postal Service: Moving Forward on Financial and Transformation Challenges*, Testimony of David M. Walker, Comptroller General, before the Subcom. on International Security, Proliferation and Federal Service, Senate Comm. on Government Affairs, GAO-02-694T at 3 (May 13, 2002) ("Historically the Service has had difficulty in cutting costs and achieving and sustaining increases in its productivity."); President's Commission on the United States Postal Service, *Embracing the Future: Making the Tough Choices to Preserve Universal Mail Service* iv (July 2003) ("Even if the Postal Service were not in financial jeopardy . . . the inefficiency of its operations and legacy network today causes billions of dollars of unnecessary costs that should be eliminated rather than passed on to ratepayers"); *id*. at 4, 6-12, 58, 75-84, 91-94, 102-104, 107-112, 117-123, 135-142; H.R. Rep. No. 66, 109th Cong., 1st. Sess. 42 (2005) (noting the Postal Service's continuing "challenges in restructuring infrastructure and workforce to become more efficient and performance based.").

The Postal Service's current inefficiencies have multiple dimensions. The three most important involve the size and design of the network of mail processing facilities, the size of the work force, and its compensation rates. We discuss each area in turn in parts 2 through 4 of this section. In parts 5, 6 and 7, respectively, we discuss the Postal Service's failure to prepare itself for the long-anticipated loss of mail volume to the Internet; to respond effectively to the current recession, particularly in comparison to efficiently managed enterprises in the private sector; or to plot a more effective course for FY 2011 and future years.

The failure to overcome these problems in earlier decades obviously cannot be laid at the door of current Postal Service management. Moreover, current management deserves credit for making more of an effort than past managements to cut costs (*e.g.*, by reducing the workforce by approximately 200,000 employees over the past decade). These steps have not come close, however, to exhausting the possibilities under current law for reducing costs and increasing efficiency. The Postal Service certainly has not reached the point that the Commission may find that substantial rate increases are *necessary*, under "best practices of honest, efficient and economical management," to maintain "postal services of the kind and quality adapted to the needs of the United States." 39 U.S.C. § 3622(d)(1)(E).

2. The Postal Service maintains an inefficiently large network of undersized and obsolete mail processing facilities.

The Postal Service has also suffered for many years from an oversized network of undersized and obsolete mail processing facilities. The President's Commission found in 2003, for example:

> Without question, the Postal Service has far more facilities than it needs and those facilities it does require often are not used in the most efficient manner.

Report of the President's Commission, *supra*, at 77; *id*. at 10-12, 75-84, 102-104. *Accord*, GAO Report GAO/GGD-92-58, *U.S. Postal Service: Automation is Restraining But Not Reducing Costs* 3 (1992); GAO Report GAO-02-355, *U.S. Postal Service: Deteriorating Financial Outlook Increases Need for Transformation* at 45 (2002); *U.S. Postal Service: Moving Forward on Financial and Transformation Challenges*, GAO-02-694T at 3 (2002); H.R. Rep. No. 66, 109th Cong., 1st Sess. 42 (2005).

In February 2006, the Postal Service acknowledged that its excess capacity was a growing threat to the Postal Service's long-term viability:

Single-piece First-Class Mail volume has been declining for most of the past decade. Consequently, there are fewer cancellations and less processing at originating processing centers. At the same time, prebarcoded and/or presorted mail has increased as a share of total First-Class Mail. Much of this workshare mail bypasses originating postal operations and is initially processed on automation at destinating network facilities. In addition, the volume of Standard Mail now exceeds First-Class Mail and the proportion of mail drop shipped into the postal network in downstream locations continues to increase. The combination of declining First-Class Mail volume and growth in Standard Mail results in less revenue with which to support the Postal Service's current dedicated class-based processing networks. *Assuming current mail mix trends continue, the Postal Service faces tremendous operational and fiscal challenges today that are not expected to disappear soon.*

In recent years, the Postal Service has implemented a number of tactical initiatives to contain costs and improve efficiencies across the network. Nevertheless, postal management considers that *some redundancies created by a class-based network built over many decades will linger until the Postal Service expeditiously examines alternative network distribution concepts*.

* * *

Today and into the future, the Postal Service must continue to change its mail processing network in ways that better recognize such factors as the economies inherent in shaped-based processing and transportation; demographic shifts within and between regions of the country, as well as absolute population and household growth in some regions; a changing mail mix, with an increasing share of Standard Mail and a decreasing share of preferential First-Class Mail; the replacement of labor-intensive manual mail processing operations with automation that is less labor-dependent and requires less plant capacity; and the challenges of replacing aging and no longer optimally located facilities.

The long-term operational needs of the Postal Service will be met best if its mail processing network evolves into one in which excess capacity is reduced and redundant operations and transportation are eliminated. There are economies to be realized by disintegrating some of the mail class-based distinctions among current postal processing facilities. *More than ever, the Postal Service's s long-term viability depends upon*

> *its adherence to the mandate to provide service in an efficient and economical manner.*

Docket No. N2006-1, *Evolutionary Network Development Service Changes*, 2006, Direct Testimony of Pranab M. Shah (USPS-T-1) at 4, 6-7 (Feb. 14, 2006) (emphasis added).

In Docket N2006-1, the PRC found that the cost-saving goals of the network realignment program were laudable and consistent with the pro-efficiency policies of 39 U.S.C. §§ 403(b)(1), 2010 and 3661(a). Docket No. N2006-1, PRC Advisory Opinion Concerning A Proposed Change In The Nature Of Postal Services ¶¶ 4001-4013 (Dec. 19, 2006). The Commission criticized how the Postal Service proposed to execute its plans, however, finding them so poorly designed that the resulting cost savings could not even be estimated. *Id.*, ¶¶ 5001-5008, 5030.

Congress, in enacting the Postal Accountability and Enhancement Act of 2006 ("PAEA"), found that the Postal Service's mail processing network needed streamlining "expeditiously":

> Congress finds that—(A) the Postal Service has more than 400 logistics facilities, separate from its post office network; (B) as noted by the President's Commission on the United States Postal Service, the Postal Service has more facilities than it needs and the streamlining of this distribution network can pave the way for the potential consolidation of sorting facilities and the elimination of excess costs; (C) the Postal Service has always revised its distribution network to meet changing conditions and is best suited to address its operational needs; and (D) Congress strongly encourages the Postal Service to—(i) expeditiously move forward in its streamlining efforts; and (ii) keep unions, management associations, and local elected officials informed as an essential part of this effort and abide by

> any procedural requirements contained in the national bargaining agreements.

PAEA § 302(c)(1), Pub. L. No. 109-435, 120 Stat. 3219.

Despite the consensus of the Postal Service, the Commission and the Congress that the postal network urgently needs rationalization, progress in this area since the enactment of PAEA has continued to be halting and limited. In July 2009, the Government Accountability Office ("GAO") reported:

> Although USPS has begun efforts to realign and consolidate some mail processing, retail, and delivery operations, *much more is urgently needed*. GAO recognizes that USPS would face formidable resistance to restructuring with many facility closures and consolidations because of concerns that these actions would affect service, employees, and communities. *USPS management will need to provide leadership and work with stakeholders to overcome resistance for its actions to be successfully implemented*. USPS must use an open, transparent, fair, and consistent process; engage with its unions, management associations, the mailing industry, and political leaders; and demonstrate results. In turn, these stakeholders and Congress need to recognize that *major restructuring is urgently needed for USPS to be financially viable*.

U.S. Postal Service: Broad Restructuring Needed to Address Deteriorating Finances, Testimony of Phillip Herr Before the Subcommittee on Federal Workforce, Postal Service, and the District of Columbia, Committee on Oversight and Government Reform, House of Representatives (July 30, 2009) (GAO Publication GAO-09-790T) (emphasis added).

In February 2010, the Postal Service stated that it expected to have "excess capacity in buildings, equipment, and vehicles in the summer of

2010," and the "postmaster network will have significant excess capacity." Docket No. R2010-3, *Notice of Price Adjustment*, USPS Notice of Market-Dominant Price Adjustment (Feb. 26, 2010) at 6-7 and App. A at 2.

Finally, in April 2010, the GAO reported:

> USPS does not need—and cannot afford to maintain—its costly excess infrastructure capacity. . . . USPS has begun efforts to consolidate some mail processing operations, but much more needs to be done. *Since 2005, USPS has closed only 2 of its 270 processing and distribution centers.*

"U.S. Postal Service: Strategies and Options to Facilitate Progress toward Financial Viability," Report No. GAO-10-455 (April 2010) at 13-14, 31 (emphasis added).

The Postal Service has both the opportunity and the legal authority to do far more than it has done so far to become more efficient by closing and consolidating plants—particularly mail processing facilities. Until the Postal Service has exhausted these opportunities, an exigent rate increase cannot be found necessary under Section 3622(d)(1)(E) to the continued provision of adequate postal services to the American people.

3. The Postal Service has an oversized work force, inflexible work rules, and low productivity.

The Postal Service has long maintained a workforce that is both too large and too inflexible. These problems continue today. In 1985, the GAO warned that the Postal Service would incur a deficit primarily resulting from "larger-than-planned expenses, principally for salaries and benefits and domestic transportation." Statement of William J. Anderson, Director, General Government Division, On The Present State of the United States Postal Service, Before the Subcommittee on Postal Operations and Services of the House Committee on Post Office and Civil Service (Oct. 3, 1985) at 4. The report noted that salaries and benefits constituted 83 percent of the Postal Service's operating costs that year. *Id*. The report cautioned that the Postal Service must find ways to control operating costs going forward, as the number of Postal employees was unlikely to decline and wage increases were required by labor contracts recently put in place. *Id*. at 7.

In 1990, the GAO again explained that the Postal Service's failure to hit profitability targets for the prior year resulted from its inability to control labor costs. GAO/T-GGD-90-16, "Financial Performance of the United States Postal Service" (Feb. 7, 1990) at 3 ("The major cause of the overrun was the Service's failure to accomplish the workforce reductions anticipated in the rate case.") As in 1985, the Postal Service's volume predictions had proved accurate, but it was incapable of keeping its labor costs on budget. *Id*. at 2-3. The report concluded that the Postal Service would need to take significant steps to increase productivity and restrain labor costs to avoid deficits in future years. *Id*. at 12.

In 1994, the GAO, noting the possibility of large declines in mail volume in the future, questioned the Postal Service's ability to respond appropriately as "the Service has historically had difficulty in adjusting its workforce for improved productivity when volume changes." GAO/T-GGD-94-

162, "United States Postal Service: Role in a Competitive Communications Environment" (May 24, 1994) at 4.

Five years, later, the GAO found that "long-standing problems in labor-management relations" have prevented collaboration "that could help ensure the most effective management of the Service's employees." GAO Report GAO/T-GGD-00-2, *United States Postal Service: Challenges to Sustaining Performance Improvements Remain Formidable on the Brink of the 21st Century* 12 (Oct. 21, 1999).

In 2003, the President's Commission on the Postal Service found that the problems were essentially unchanged:

> Essential to this process [of maintaining a world-class workforce] is the ability of management and labor to work constructively together to determine the right size of the postal workforce and to ensure appropriate flexibilities in deployment. This is *the* critical issue when it comes to controlling the future costs and capabilities of the workforce. Far more than individual benefits, the *size* of the workforce determines the *costs* of the workforce.
>
> * * *
>
> [R]igid work rules make it difficult to redeploy employees to new functions aligned with a changing network. To meet the needs of an optimized and efficient new postal network, substantial realignments of the workforce are necessary.

President's Commission, *supra*, at 107 & 111 (2003).

In 2009, the USPS Office of the Inspector General found that the Postal Service's productivity and workforce flexibility fell short in important ways compared with the performance of UPS and FedEx, two private competitors in the package delivery business:

> The Postal Service has limited workforce flexibility compared to the benchmarked companies. The Postal Service processing workforce is predominantly comprised of full-time employees, scheduled in three 8-hour shifts daily, and bound by union agreements with limited ability to cross crafts. Benchmarked companies predominantly use part-time employees, scheduled in 4-hour shifts with staggered start times, which may vary daily or weekly depending on work volumes. In addition, managers at the benchmarked companies monitor workload daily, evaluate productivity in real time, and adjust employee work schedules in response to workload changes. Further, cross-trained employees at benchmarked companies are moved in response to workload needs, including crossing crafts.

USPS OIG, *Management Advisory Report – Benchmarking Postal Service Parcel Productivity*, Report Number EN-MA-09-002 (March 31, 2009), at 2. A similar benchmarking report issued by the OIG last month found that the Postal Service workforce was much less flexible than the workforces of mail presorters. USPS OIG, *Benchmarking Best Practices with Presort Bureaus*, Report Number EN-MA-10-004 (June 7, 2010).

The OIG has also found that the Postal Service also lags behind the best practices of major foreign postal operators, as well as UPS and FedEx, in the use of part-time workers:

> The Postal Service has fewer part-time employees than any other international postal operation. Currently only 13 percent of its workforce is part-time. Meanwhile, Deutsche Post employs a 40 percent part-time staff, while the United Kingdom's Royal Mail employs 22 percent. Local competitors also have a higher percentage of part-time employees. For example, UPS employs a 53 percent part-time workforce and FedEx remains around 40

> percent. Generally speaking, the Postal Service is behind the average American private sector firm, which employs a 30 percent part-time labor workforce.

"Workforce Flexibility – Would it work for the Postal Service?" USPS Office of Inspector General, http://blog.uspsoig.gov/?p=3603, (site visited July 21, 2010).

In August 2009, Postmaster General Potter acknowledged that the size of the Postal Service workforce at the time, 630,000 career employees, was still approximately 80,000 positions above an "optimum" level.[9]

Between 1990 and 2000, the average annual increase in Postal Service productivity was barely 1/10 of one percent per year. GAO/T-GGD-00-206, *U.S. Postal Service: Sustained Attention to Challenges Remains Critical* 1 (Sept. 19, 2000) (noting that the *cumulative* increase in Postal Service productivity between 1990 and 2000 was only 1.5 percent). Postal Service productivity performance from FY 2000 through FY 2009 was somewhat better—a cumulative gain of 8.5 percent. This growth still lagged behind the performance of the private nonfarm business sector, which experienced a

[9] "The U.S. Postal Service in Crisis," Hearings Before The Senate Subcom. on Federal Financial Management, Government Information, Federal Services, and International Security (August 6, 2009) (available at http://hsgac.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=deeb3cbd-c284-4321-bf5a-64c0b21cf38a) (colloquy between PMG Potter and Sen. Coburn). A symptom of the excess labor capacity is the prevalence of "bullpens" where periodicals and other flat-shaped mail are processed manually, while automated flats-processing equipment sits idle, so that postal employees have something to do while they are on the clock. *See* Written testimony of James O'Brien before the in Committee on Oversight and Government Reform Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia (May 12, 2010) at 3-6.

growth in multifactor productivity of 11.3 percent from 2000 to 2008, and almost certainly a further improvement in 2009. Hence, at the end of the decade the Postal Service was even further behind the private sector than at the beginning. *Compare* USPS Annual tables, FY 2009 TFP, Table 52 (filed at PRC on March 2, 2010), and BLS Series ID MPU491007.

As discussed on pp. 55-60, below, the Postal Service has both the opportunity and the legal authority to do far more than it has done so far to become more efficient by reducing the size and cost of its workforce. Until the Postal Service has exhausted these opportunities, an exigent rate increase cannot be found "necessary" under Section 3622(d)(1)(E) to the continued provision of adequate postal services to the American people.

4. The Postal Service pays its employees above-market rates of compensation.

The Postal Service has also agreed in collective bargaining to compensate employees at rates above efficient and economical levels. There is considerable evidence that the Post Office Department paid a hefty premium over the compensation available in the private sector for comparable work in 1970, and that the premium has grown since then.[10] In

[10] *See* Douglas K. Adie, *An Evaluation of Postal Service Wage Rates* 89-101 (1977); D. Adie, "How Have Postal Workers Fared Since the 1970 Act?", in Sherman, Roger, ed., *Perspectives on Postal Service Issues* 74-79 (1980); Sharon P. Smith, "Commentary," in *id*. at 94-98; Michael L. Wachter and Jeffrey M. Perloff, "A Comparative Analysis of Wage Premiums and Industrial Relations in the British Post Office and the United States Postal Service," in Michael A. Crew and Paul R. Kleindorfer, eds., *Competition and Innovation in Postal Services* 115-137 (1991); Michael L. Wachter, Barry T. Hirsh and James W. Gillula, "Difficulties of Deregulation When Wage Costs

2003, Professor Michael Wachter, Co-Director of the Institute for Law and Economics at the University of Pennsylvania and a frequent witness for the Postal Service in wage and compensation arbitration cases, testified to the President's Commission on the U.S. Postal Service that:

- The wage premium is large – econometrically estimated to be 21.2 percent or 33.9 percent by Dr. Wachter using different methods for his October 2001 testimony before the interest arbitration panel.

- Consistent with the presence of a wage premium, newly hired craft employees receive a wage increase of nearly thirty percent compared to their previous salaries, while in the overall economy, the average wage increase for those switching employment is only 4.5 percent; postal quit rates are much lower than in the private sector; and applicant queues for postal jobs are large.

- The total compensation (including benefits) premium is much higher than the wage premium.

- Interest arbitrators have repeatedly agreed that postal workers receive a wage premium.[11]

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are the Major Cost," in Crew and Kleindorfer, eds., *Future Directions in Postal Reform* 1-24 (2001).

[11] For example, in 2002 "Arbitrator Goldberg stated: 'In concluding that there exists a Postal Service wage premium, I join a long list of arbitrators in prior USPS interest arbitrations who have reached the same conclusion.'" *Id.* at 14.

- Despite efforts starting in 1984 to moderately restrain postal wages to achieve comparability, no progress had been made in reducing the total compensation premium that postal workers receive.

Testimony of Michael Wachter before the President's Commission on the USPS (April 29, 2003) (available at www.ustreas.gov/offices/domestic-finance/usps/meetings/4-29-03/witnesses.shtml).

The President's Commission, without trying to estimate the size of the Postal Service's compensation premium, noted that Postal Service employees enjoyed the "'best of both worlds"—an average salary of more than $42,000 and "the job security and ample benefits packages that make Federal employment attractive." President's Commission at 109. The attractiveness of this package vis-à-vis the compensation offered for comparable jobs in the private sector was underscored by the extraordinarily long waiting lists for Postal Service jobs, and the extraordinarily low quit rates of existing postal employees:

> Given this "best of both worlds" package, it is entirely understandable why so many would be attracted to Postal Service employment. As of July 2001, the Postal Service had a backlog of some 400,000 job applicants and virtually no turnover. In 2002, less than 1.5% of bargaining unit employees resigned before they retired, a "quit rate" that is lower than the rate for most private firms in America.

Id. at 109 (footnotes omitted).

The compensation premium appears to have widened since 2003.[12] Despite the enactment of the Postal Civil Service Retirement System Reform Act of 2003 (Pub. L. No. 108-18), which reduced the Postal Service's retirement benefit costs (but not the benefits that employees receive), the Postal Service's aggregate labor price index has increased over the past decade at a much faster rate than has the employment cost index (total compensation). From 2000 to 2009, the Postal Service's aggregate labor price index increased by 46 percent.[13] This is almost 1.5 times the 33 percent increase in the Employment Cost Index – Total Compensation (Private Industry) for the American economy over the same period.[14]

In FY 2009, Postal Service "Salary and Benefits Costs per Total Work Hour" averaged $39.93, almost fifty percent higher than the private sector average compensation per workhour ($27.43).[15] Moreover, the $39.93 figure

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[12] In August 2009, PMG Potter acknowledged that the average annual compensation, including benefits, received by postal employees had climbed above $80,000. "The U.S. Postal Service in Crisis," Hearings Before The Senate Subcom. on Federal Financial Management, Government Information, Federal Services, and International Security (August 6, 2009) (http://hsgac.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=deeb3cbd-c284-4321-bf5a-64c0b21cf38a) (colloquy between PMG Potter and Sen. Coburn).

[13] Calculated from USPS Annual tables, FY 2009 TFP, Table 14 (filed at PRC on March 2, 2010).

[14] Calculated from Bureau of Labor Statistics Series ID CIU2010000000000A.

[15] Docket No. N2010-1, MPA/USPS-T2-3(e); Employer Costs for Employee Compensation Historical Listing March 2004 – March 2010, Table 9, Bureau of Labor Statistics. This comparison is not offered as a precise quantification of the actual premium; unlike Dr. Wachter, we have not controlled for all relevant variables. Nevertheless, the size of the disparity makes evident that a compensation premium exists.

excludes many employee benefits, *e.g.,* retiree health benefits, that postal employees receive. *See* USPS-Consolidation page of National Payroll Hours Summary Report Pay Period 20 – FY 2009 (September 12 – September 25, 2009) (listing benefits included in $39.93 figure). As noted above, PMG Potter has acknowledged that the average Postal Service employee now receives pay and benefits exceeding $80,000 per year.

The compensation rates paid by the Postal Service are also higher than those paid by its direct competitors. A benchmarking report issued by the Postal Service OIG last month found: "Mail presorters have a more flexible workforce that receives an hourly rate significantly lower than that of Postal Service employees." *Benchmarking Best Practices with Presort Bureaus* (Report Number EN-MA-10-004) (June 7, 2010).

The Postal Service's "Exigent Request" assumes that these excessive rates of compensation will continue unchecked into the indefinite future, despite the impending expiration of the Postal Service's major collective bargaining agreements. *See* pp. 55-57, *infra*. That assumption falls well short of "best practices of honest, efficient, and economical management." Moreover, unless and until the Postal Service exhausts its remedies in the collective bargaining process, it is premature to claim that the compensation premium (which violates 39 U.S.C. § 101(c)) is "necessary," except by virtue of Postal Service management's unnecessary acquiescence.

5. The loss of mail volume to the Internet was not an unforeseeable surprise; the Postal Service had notice of this threat years before significant volume losses occurred.

For many years, the long-term upward trend in mail volume allowed the Postal Service to cover its bloated costs with rate increases that, in the aggregate, were close to the overall rate of inflation. Beginning in the late 1980s, however, it became increasingly obvious that electronic diversion could cause mail volume and revenue to decline, and that the Postal Service urgently needed to reduce both the magnitude and inflexibility of its costs.

Diversion of mail volume to the Internet has not been a sudden, unexpected or purely recent development. As the Postal Service recently acknowledged in Docket No. N2010-1, this trend has been growing steadily since at least 1988.[16] The cumulative volume losses "have not been reversed in over twenty years, but instead have consistently climbed from one percent to over fifty percent . . ."[17] Moreover, the significant recent decline in absolute volume and revenue was foreseen as well. Observers both within and outside the Postal Service repeatedly warned that it needed to restructure its costs quickly.

Professor George Tolley, a University of Chicago econometrician who was a witness for the Postal Service in omnibus rate cases for many years, testified beginning in Docket No. R84-1, and with growing urgency in

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[16] Docket No. N2010-1, USPS institutional response to GCA interrogatory GCA/USPS-T2-2(a) (filed May 17, 2010).

[17] *Id.*

succeeding cases, about the likelihood of electronic diversion. So did Prof. Daniel Spulber, a Northwestern University economist who testified for another party in Docket No. R94-1.[18]

In 1997, a blue ribbon commission of mailing industry executives appointed by the Postal Service reported that electronic diversion was a growing threat of uncertain but potentially substantial magnitude. *The Report of the Blue Ribbon Committee*.

In 1999, the Postal Service hired the consulting firm PWC to project the economic effects of H.R. 22, an early draft of PAEA, on the Postal Service. PWC projected that electronic diversion would cause a loss of volume as deep as 30 percent by 2008. PWC, *Legislative Reform Simulation Model, Sensitivity Results* (February 26, 1999) at Table 501, l. 13 (Summary-H.R.22; Scenario: H.R. 22 Baseline); *id.*, Scenario: No H.R. 22; *id.*, Scenario: H.R. 22 (Electronic Diversion Sensitivity +1%).

In 2001, the Postal Service predicted that significant declines in First-Class Mail volumes were likely in the next few years, and that reductions in the workforce would be required as a result:

> The Service's Strategic Plan stated that the expected decline in postal workload—in part due to automation and the implementation of information technology—"will inevitably result in both restructuring and a reduction in the workforce."

[18] *Id.* (discussing testimony concerning electronic diversion in omnibus rate cases from R84-1 through R94-1).

GAO, Major Management Challenges and Program Risks: United States Postal Service (January 2001) at 17-18, 25.

In 2002, the Postal Service concluded that electronic diversion was already resulting in volume declines, and that such declines were likely to continue, presenting the Postal Service with significant challenges. *See* USPS Transformation Plan (April 2002) at 3-4 ("Postal Service models indicate that electronic diversion is the largest contributing factor driving the decline in First-Class Mail, single-piece letters.") and Appendix E, "Electronic Diversion of Mail Volumes", at E-1 ("Depending on how communications are transformed by the Internet, the Postal Service could see significant losses in revenue, which could ultimately threaten the Postal Service's ability to meet its universal service obligation.").

The President's Commission on the United States Postal Service made similar findings in 2003. The President's Commission predicted "that Internet use is likely to divert increasingly larger portions of the mailstream to the electronic format" and that significant declines in volume were likely to result:

> [O]ver the next eight years, as much as 20% of bill payment and some presentment could occur electronically rather than through the mail. This poses a significant threat to Postal Service revenue since more than half of all First-Class Mail is composed of communications from businesses and other organizations to households, primarily the invoices and payments now shifting on-line.

President's Commission on the United States Postal Service, *Embracing the Future: Making the Tough Choices to Preserve Universal Postal Service* (July

2003) at iii, 6-8 ("Challenge #1: Electronic Diversion of Mail Changes Everything").

The authors of PAEA were also well aware of the threat to the Postal Service from electronic diversion. The 2004 Senate committee report on the Senate version of the bill that became PAEA stated:

> It is highly likely that, as Americans become more comfortable conducting commercial transactions over the Internet, the Postal Service will continue to see declines in First Class mail volume.
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> * * *
>
> The electronic diversion of mail and its impact on the Postal Service are among the reasons why the Postal Service has been on the Government Accountability Office's (GAO) "high-risk" list of troubled federal programs in need of reform since 2001.

S. Rep. No. 318, 108th Cong., 2d Sess. (2004) at 3. Likewise, the House committee report noted the challenges faced by the Postal Service from "*decreasing volume*, insufficient revenue, mounting debts, and electronic communications alternatives such as Internet advertising, electronic bill payments, emails and faxes." H.R. Rep. No. 66, 109th Cong., 1st Sess. (April 28, 2005) at 42 (emphasis added).

Despite these warnings, the Postal Service contented itself with voluntary buyouts and other incremental reforms, while avoiding the more fundamental restructuring needed to get ready for the deeper declines in volume and revenue that loomed ahead. As discussed above, the Postal Service undertook only minor rationalization of the physical network, continued to agree to labor contracts that provided for no-layoff, lifetime employment of full-time employees, with above-market rates of compensation.

6. The Postal Service's failure to cope effectively with the 2008-2009 recession is further evidence of structural inefficiency.

It took the recession that began in December 2007 to expose how far the Postal Service's cost structure falls short of the "best practices of honest, efficient and economical management." The most vivid evidence has been the comparative performance of the private sector and the Postal Service.

The Postal Service contends that the recession has accelerated the diversion of mail volume to the Internet and caused an acute drop in mail volume and revenue since 2008.[19] But the magnitude of the decline is hardly exceptional or extraordinary among large American enterprises. Between calendar years 2008 and 2009, when the Postal Service experienced a revenue decline of 9 percent, the sales of the 500 corporations in the Fortune 500 group fell by 8.7 percent, or nearly as much.[20] Many major companies suffered even deeper losses of revenue during the same period. UPS and FedEx, for example, suffered declines in revenue of 12 and 16 percent,

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[19] Docket No. N2010-1, USPS Institutional Response to GCA/USPS-T2-1 (May 17, 2010); *accord*, Request at 1-2; Corbett Statement at 3.

[20] Shawn Tulley, "Fortune 500: Profits Bounce Back," *Fortune* (May 3, 2010) at 142.

respectively.[21] The biggest loss in revenue occurred between the last quarter of 2008 and the first quarter of 2009.[22] For the Postal Service, revenue dropped by 11 percent between these two quarters. For UPS and FedEx, revenues dropped by 14 and 15 percent, respectively.

(a) The private sector, including the Postal Service's competitors, responded quickly to the downturn by taking the painful austerity measures needed to return to break-even.

The private sector responded to the downturn with vigorous and often painful cuts in costs. Efficiently run firms in the private sector "cut costs incredibly aggressively" in 2009.[23] These cost-cutting measures included "gargantuan, dispiriting job cuts,"[24] freezes in compensation, and labor give-backs. "During the 30 months from December 2007 through May 2010, the

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[21] The sources of the FedEx, UPS, and USPS revenue and expense figures in this section are as follows: The FedEx values were derived from: http://online.wsj.com/quotes/q_earnings.html?page=qtrEarnings&symbol=FDX&dateRange=1 The UPS values were derived from: http://online.wsj.com/quotes/q_earnings.html?page=qtrEarnings&symbol=UPS&dateRange=1. The USPS values were derived from its 10Q and Annual reports found at: http://www.usps.com/financials. For the USPS and UPS, the figures cover exact calendar years. The data for FedEx correspond with its fiscal year, which run from December through November. The UPS and FedEx expense figures exclude impairment costs. To allow a fair comparison of expenses between calendar years 2008 and 2009, the USPS expense figures for 2009 have been increased by $4 billion to adjust for the reduction in the Postal Service's FY 2009 payment into the Retiree Health Benefit Fund,.

[22] Declines began somewhat earlier, during the second part of 2008, but were offset by the normal seasonal increase in mail volume that occurs during this period.

[23] *Fortune* (May 3, 2010) at 142.

[24] *Id.* at 141.

total number of mass layoff events (seasonally adjusted) was 60,205, and the associated number of initial claims was 6,068,342. (December 2007 was the start of a recession as designated by the National Bureau of Economic Research.).”[25] Moreover, a 2009 Hay Group study reported that “35 percent of employers have either turned to the use of furloughs as a cost cutting option during the recession or have a furlough policy in place at their organization [and that] 50 percent anticipate using furloughs to cut costs for 6-12 months.”[26]

“At the same time, wages rose only slightly.”[27] And executive compensation was often reduced outright, not just frozen in FY 2009. “For the second year in a row, there has been a decrease in the annual compensation of CEOs . . . Since we began conducting The Corporate Library’s annual survey of CEO pay in 2002, we have not seen a median ‘all CEOs’ total realized compensation figure as low as the one found in this preliminary survey for the 2010 proxy season.”[28] “So for all of U.S. industry, the labor costs of creating a good or service—a measure known as unit labor costs—fell by 4.6%, according to the U.S. Department of Labor. That's the sharpest drop in postwar history.”[29] These trends are consistent with the

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[25] http://stats.bls.gov/news.release/mmls.nr0.htm.

[26] http://hr.blr.com/newsAlternate.aspx?category=6&topic=96&id=80422.

[27] *Fortune* (May 3, 2010) at 142.

[28] Kropp, Robert, “CEO Pay Declines for Second Year in a Row.” Sustainability Investment News. April 29, 2010.

[29] *Fortune* (May 3, 2010) at 142. The Bureau of Labor Statistics has reached similar conclusions. According to the BLS, unit labor costs for the average nonfarm business declined by 4.7% from the fourth quarter of 2008 to the

performance of competitive labor markets: when the "labor supply far exceeds labor demand," "wages are likely to be restrained by the unemployment situation."[30]

By the end of 2009, the earnings of the Fortune 500 had returned virtually to normal. This recovery was due only in part to a rise in sales, which have remained "sluggish." The primary cause of the "earnings renaissance" was the "wondrous surge in productivity" that resulted from the cost-cutting measures taken in "frantic response to falling sales."[31] Data from the Bureau of Economic Analysis series summarizing aggregate profits across the entire economy underscore the importance and effectiveness of these cost cutting efforts. The data show a substantial decline in earnings between the third and fourth quarters of 2008, followed by a return to profitability over the course of 2009, with the fourth quarter of 2009 showing slightly greater profits than the third quarter of 2008.[32]

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fourth quarter of 2009. This resulted from a decline in output of -0.2% and a decline in workhours of -5.7% (producing a net rise in productivity of 5.8%), partially offset by an increase in hourly compensation of 0.8 percent. BLS News Release USDL-10-0255 (March 4, 2010) at 3, Table A.

[30] Remarks of Sandra Pianalto, President and CEO, Federal Reserve Bank of Cleveland, before the Economic Club of Pittsburgh (May 18, 2010) (www.clevelandfed.org/For_the_Public/News_and_Media/speeches/2010/Pianalto_20100518.cfm).

[31] *Fortune* (May 3, 2010) at 142.

[32] www.bea.gov/national/nipaweb/TableView.asp?SelectedTable=239&Freq=Qtr&FirstYear=2008&LastYear=2010

Two of the Postal Service's largest competitors, UPS and FedEx, illustrate how efficiently run firms responded to the downturn. From 2008 to 2009, UPS and FedEx cut expenses by 9 percent and 14 percent, respectively:

Table 1.
USPS, UPS and FedEx
Revenue and Expense Declines
(2009 vs. 2008)

	Percent Change (2008 – 2009)	
	Revenues	**Expenses**
USPS	-9%	-3%
UPS	-12%	-9%
Federal Express	-16%	-14%

The quarterly data underscore how quickly UPS and FedEx implemented cost-control measures. Between the last quarter of 2008 and the first quarter of 2009, UPS cut its expenses by 11 percent, and FedEx cut its expenses by 9 percent. Between the first and second quarters of 2009, UPS cut its expenses by another 1 percent, and FedEx cut its expenses by another 6 percent. Thus, after the first two quarters of the largest revenue drop, UPS and FedEx had almost entirely adjusted their expenses to the lower level of revenue.

Table 2.
USPS, UPS and FedEx
Quarterly Changes In Revenue and Expenses
(2008, Q4 vs. 2009, Q1 and Q2)[33]

	Percent Change (Q4 2008 – Q1 2009)	
	Revenues	**Expenses**
USPS	-11%	-3%
UPS	-14%	-11%
Federal Express	-15%	-9%

	Percent Change (Q1 2009 – Q2 2009)	
	Revenues	**Expenses**
USPS	-4%	-1%
UPS	-1%	-1%
Federal Express	-4%	-6%

The cost control measures taken by UPS and FedEx included both layoffs[34] and cuts in compensation per worker. To offset the effect of the economic downturn, UPS "[froze] management wages, reduc[ed] other forms of compensation and suspend[ed] the company's 401(k) match and other benefits."[35] FedEx cut salaries and benefits by "implement[ing] several actions in 2009 to lower our cost structure, including base salary reductions

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33 For USPS and UPS, quarters begin in October for Q4, January for Q1, and April for Q2. For FedEx, quarters begin in September for Q4, December for Q1, and March for Q2.

34 *See, e.g.,* www.bizjournals.com/sanantonio/stories/2009/02/09/daily14.html; www.memphisdailynews.com/editorial/Article.aspx?id=41746 (FedEx layoffs); www.upi.com/Business_News/2010/01/09/UPS-to-lay-off-1800-management-personnel/UPI-13951263052661/ (UPS layoffs); www.wave3.com/Global/story.asp?S=11954398 (UPS layoffs).

35 http://seekingalpha.com/article/118225-united-parcel-service-inc-q4-2008-earnings-call-transcript.

for U.S. salaried personnel effective January 1, 2009, a suspension of 401(k) company-matching contributions effective February 1, 2009, [and] elimination of variable compensation payouts."[36] These austerity measures worked. Despite experiencing sharper revenue losses than the Postal Service, both UPS and FedEx managed to remain profitable in both 2008 and 2009.[37] Indeed, UPS announced last week that a two percent uptick in volume for the company's package business, coupled with "additional efficiencies through the UPS integrated network," yield a 17 percent improvement in adjusted operating profit, and a 46 percent increase in reported operating profit in the second quarter of 2010 compared with the second quarter of 2009.[38]

The basic lesson from these data is that efficient private companies typically responded quickly and aggressively to the recession by cutting their costs, allowing them to return to profitability within a few quarters or a year despite continuing sluggishness in volume and revenue. This is how enterprises with "honest, economical, and efficient management" perform.

Nonprofit organizations have also taken painful austerity measures. According to a survey by The Bridgespan Group in November 2009, nonprofits economized, *inter alia*, by cutting back on programs across the

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[36] 2009 FedEx Annual Report at 11.

[37] 2009 FedEx Annual Report at 8; 2009 UPS Annual Report at 22.

[38] UPS Press Release, "UPS 1Q Earnings Jump 37% on Revenue Increase of 7%" (July 22, 2010) (www.investors.ups.com/phoenix.zhtml?c=62900&p=irol-newsArticle&ID=1418327&highlight=).

board (44%) or selectively (54%), laying off staff (43%), cutting staff salaries (25%), cutting overhead (67%), and redesigning operations to improve productivity (70%).[39]

Layoffs, furloughs, pay freezes and pay cuts have also become widespread in the public sector. In 2009, "51 percent of cities froze or reduced pay, according to the National League of Cities, while 25 percent laid off workers, 24 percent reduced health benefits and 22 percent revised union contracts to reduce pay or benefits." Greenhouse, Steve, "Labor's New Critics: Old Allies in Elected Office," *New York Times* (June 27, 2010); *accord*, "States of Crisis," *Bloomberg Businessweek* 7 (July 19, 2010). Layoffs and furloughs have also at the state level. "Since the recession began in December 2007… more than half [of the states] have laid off and furloughed workers. In all, nearly 1 million state workers—one in five—have been affected by the cutbacks, according to estimates compiled by Stateline.org." Stateline.org, December 2, 2009 (downloaded from www.stateline.org/live/details/story?contentId =440784).

[39] Alan Tuck, Ann Goggins Gregory and Sarah Sable, *Managing in Tough Times: Survey Update* (November 2009) (available at www.bridgespan.org/managing-in-tough-times-survey-update-november-2009.aspx?Resource=); *accord*, "Trimming charity ranks," *The Chronicle of Philanthropy* (Dec. 10, 2009) (http://philanthropy.com/article/A-Weakened-Charity-Work-Force/57636/; "Organizations That Cut Chief Executive Compensation Due to the Recession," *The Chronicle of Philanthropy* (Oct. 1, 2009) (http://philanthropy.com/article/Organizations-That-Cut-Chie/56719/).

(b) The Postal Service has responded to the recession by letting its costs get further out of control.

The Postal Service has been far less aggressive and effective in reducing its costs during the same period. Because it had agreed to collective bargaining agreements that exempted most of its work force from layoffs or furloughs, the Postal Service could make most of its employees leave the payroll only if they chose to do so voluntarily. Most have not, and productivity has declined. Moreover, capacity utilization in the already-oversized plant network has fallen further. As a result, the Postal Service decreased its expenses by only *three percent* between the last quarter of calendar 2008 and the first quarter of calendar 2009, by only *one percent* between the first and second quarters of calendar 2009, with no further improvements occurring for the rest of the year. *See* pp. 43-44, *supra*. In terms of costs per unit of workload, the Postal Service's costs have increased substantially.

Workforce size and labor productivity. In comparison with the performance of efficiently run firms in the private sector, the Postal Service's actions to rationalize the size of its workforce since the beginning of the 2008 downturn have been halting and limited. Although the Postal Service has reduced its head count through natural attrition, voluntary early retirement authority ("VERA") and a limited number of layoffs of non-craft employees, the total reductions in head count and work hours have lagged far behind the declines in mail volume, revenue, and workload. Even the Postal Service has admitted that it had considerably more labor than optimal in FY 2009.[40]

The Postal Service has suggested that it is doing an excellent job improving productivity because costs fell by $6.1 billion and the equivalent of 65,000 employees left the work force in FY 2009. *See*, *e.g.*, Docket No. N2010-1, USPS-T-2 at 3. But the labor cost portion of the $6.1 billion savings is, by the Postal Service's own admission, just the reduction in hours between FY 2008 and FY 2009 multiplied by approximately $40 per hour.[41] As discussed above at pp. 29 and 43-44, these cuts did not begin to approach the levels required by the massive decline in the Postal Service's volume, revenue and workload during the same period.

The Postal Service's failure to prune its workhours on the scale needed to match the downturn in mail volume and workload is confirmed by the Postal Service's failure to match the productivity gains achieved by efficient and economical private sector firms since 2008. An efficient firm would have reduced its workhours in proportion to, if not more than, the decline in workload. Indeed, labor productivity in the U.S. economy as a whole *increased* by 2.7 percent from FY 2008 to FY 2009[42]—stated otherwise, costs

[40] Docket No. N2010-1, USPS Institutional Response to MPA/USPS-T2-6. As noted above, PMG Potter acknowledged in August 2009 that the current size of the Postal Service workforce at the time, 630,000 career employees, was still approximately 80,000 above an "optimum" level.

[41] Docket No. N2010-1, USPS institutional response to MPA/USPS-T2-2.

[42] Calculated as the percentage difference between the sum of the index values of Bureau of Labor Statistics Series ID PRS84006093 (Business Sector Output Per Hour Index) for the four quarters that comprise FY 2009 and the

declined faster than output. For the Postal Service, the opposite occurred: the USPS labor productivity index—which measures the ratio of workload to labor input[43]—*decreased* by 0.6 percent during FY 2009.[44] Stated otherwise, the Postal Service's percentage reduction in work hours in FY 2009 was less than the decline in workload.[45] In terms of labor productivity growth, the performance of the USPS thus lagged behind the average performance of the U.S. economy by 3.3 percentage points.

The Postal Service's Total Factor Productivity—"the ratio of total workload (mail volume, miscellaneous output, and delivery points) to total resource usage (capital, labor, and materials)"[46]—also dropped in FY 2009 (by 1.0 percent) after a 0.6 percent decline in FY 2008. USPS Annual Tables, FY 2009 TFP, Table 52 (filed at PRC on March 2, 2010). While the analogous private sector index (multifactor productivity) for 2009 is not yet available, in 2008 multifactor productivity in the private business sector grew by 1.2 percent.[47]

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sum of the index values for the same series for the four quarters that comprise FY 2008. The percentage change is also the same for Bureau of Labor Statistics Series ID PRS85006093 (Nonfarm Business Sector Output Per Hour Index).

[43] Docket No. N2010-1, Institutional Response to MPA/USPS-T2-3(a).

[44] USPS Annual Tables, FY 2009 TFP, Table 53 (filed at PRC on March 2, 2010).

[45] Also, the $6.1 billion cost reduction includes no offset for the huge increase in hourly compensation in FY 2009.

[46] Docket No. N2010-1, Institutional Response to MPA/USPS-T2-3(a).

[47] Bureau of Labor Statistics Series ID MPU490007. In the private non-farm business sector, multifactor productivity grew by 1.1 percent in 2008. Series ID MPU491007. Dr. Laurits Christensen, an expert on productivity

As the President's Commission observed in 2003 about similar, and equally inadequate, downsizing efforts in 2000-2002, "while these efforts are a critical down payment on the enhanced productivity and fiscal discipline necessary, *the Postal Service requires reform on a far grander scale*." *Embracing the Future*, *supra*, at 2 (emphasis added).

Wage and compensation levels. The Postal Service has compounded the costs of a needlessly large workforce by paying it inefficiently and uneconomically high rates of compensation. As noted above, efficient firms in the private sector responded quickly to the current downturn by freezing or even reducing pay and fringe benefits. By contrast, the Postal Service gave most of its workers wage *increases*—increases averaging several thousand dollars per employee each year—on top of compensation that was already above market. During the first year of the recession alone, as the Postal Service was hemorrhaging red ink, the Postal Service awarded members of the American Postal Workers Union ("APWU") *three* substantial wage increases that totaled more than *$3,000* annually for each employee.[48]

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measurement for the Postal Service in Docket No. R97-1, testified that "I believe the wide range of activities encompassed by the private nonfarm business sector makes it comparable to the Postal Service as a whole." USPS-RT-7 at 14.

[48] See www.apwu.org/dept/ind-rel/pay/table%20of%20changes.htm. While these wage increases became effective in FY 2008, they resulted in substantially higher FY 2009 compensation vis-à-vis FY 2008 compensation because they were in effect for the entirety of FY 2009 but only part of FY 2008.

Table 3.
FY 2008 APWU Pay Increases

Effective Date	Type of Change	Amount of Change to Basic Pay
8/30/2008	COLA	$1,477
3/15/2008	COLA	$479
2/16/2008	Basic Pay Increase - All Levels Upgraded One Pay Grade (Implemented by Adoption of a New Pay Schedule)	2.6% (on Average)[49]

APWU members were not the only postal workers to receive such bounty. Collective bargaining agreements for other postal unions included similar FY 2008 pay increase provisions: increases in basic pay and two COLAs. The National Association of Letter Carriers ("NALC") Agreement included an additional basic pay increase in FY 2009. *See, e.g.,* Article 9 of the 2006 NALC National Agreement.

Postal labor understood the windfall nature of these pay raises. Six weeks after the end of FY 2009, a fiscal year in which the Postal Service lost billions of dollars, and tens of millions of American workers felt lucky to have any job at all, the president of the APWU boasted to his members about the compensation increases that had driven the Postal Service deeper into the red:

> With the salary increases, upgrades and cost-of-living adjustments, wages for the vast majority of APWU members have increased by approximately $3,800 under the current

[49] This pay increase translates into approximately $1,150 per year (2.6% * $25.15 (FY 2007 APWU average hourly rate including overtime and premium pay) * 1,760 hour/work-year). Docket No. N2010-1, USPS Institutional Response to MPA/USPS-3).

> contract," he said. "*In these difficult times, that is quite an accomplishment*."

APWU News Bulletin (November 18, 2009) (emphasis added). Other postal workers also had reason to cheer. In fact, the FY 2009 USPS-Consolidated percentage increase in average wage hourly rate for employees represented by other unions was actually *larger* than the increase for APWU members.[50]

The USPS Aggregate Labor Price Index, which measures changes in the prices paid by the Postal Service for labor resources,[51] increased by 7.1 percent in FY 2009.[52] By comparison, the Employment Cost Index for total compensation (including benefits) for all private industry in the U.S. economy increased by only 1.7 percent from FY 2008 to FY 2009.[53] By this measure, the Postal Service lagged behind the *average* performance of the U.S. economy by 5.4 percentage points.

Oversized and inefficient network. The Postal Service has made scant progress rationalizing its network of plants during the past few years. The total number of Network Distribution Centers and Processing and Distribution Centers in FY 2009 was essentially unchanged from FY 2008. FY 2009 USPS Annual Report at 38. Indeed, as noted above, the Postal

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[50] Docket No. N2010-1, USPS institutional response to MPA/USPS-T2-3(b).

[51] *Id*.

[52] USPS Annual Tables, FY 2009 TFP, Table 14 (filed at PRC on March 2, 2010).

[53] Calculated as the percentage difference between the sum of the index values of Bureau of Labor Statistics Series ID CIU2010000000000I for the four quarters that comprise FY 2009 and the sum of the index values for the same series for the four quarters that comprise FY 2008.

Service closed only 2 of its 270 processing and distribution centers between 2005 and April 2010. GAO Report No. GAO-10-455 (April 2010) at 13-14, 31.

Aggregate unit cost inflation. The Postal Service's failure to shrink its labor supply and facilities network in tandem with the shrunken workload has caused productivity levels to plummet and unit costs to skyrocket. At the most aggregate level, the Postal Inflation index—which measures increases in cost per unit of workload[54] and thus captures the entire cost performance of the Postal Service—increased by 6.3 percent in FY 2009.[55] For comparison, the Consumer Price Index decreased by 0.3 percent from FY 2008 to FY 2009.[56] By this measure, the Postal Service fell short of even the *average* performance of the American economy by 6.6 percentage points. Compared with the "best practices of honest, efficient and economical management" prescribed as a benchmark by 39 U.S.C. § 3622(d)(1)(E), the Postal Service lagged even further.

The current and projected losses of the Postal Service flow directly from its poor performance in controlling costs and improving productivity. If the Postal Service had merely limited postal inflation to the CPI in FY2009, the Postal Service *would have earned a profit*.[57] If the Postal Service had

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[54] Docket No. N2010-1, USPS Institutional Response to MPA/USPS-T2-3(a).

[55] USPS Annual Tables, FY 2009 TFP, Table 51 (filed at PRC on March 2, 2010).

[56] www.prc.gov/PRC-DOCS/home/CPI.pdf.

[57] Based upon a 6.3 percent growth rate in the Postal Inflation Index, the Postal Service's FY 2009 operating expenses were $71.8 billion. Had inflation in Postal Service operating expenses been -0.3% (the FY 2009 change in the

achieved any additional productivity growth—as regulated firms whose rates are constrained by an inflation index are normally expected to accomplish[58]—the net profit could have been even larger.[59]

In sum, a comparison of the performance of the Postal Service and the private sector during the recession makes clear that the circumstances giving rise to the Postal Service's current and projected deficits are neither "exceptional or extraordinary" nor unavoidable through "best practices of honest, economical and efficient management." Confronted with a decline in revenue comparable to what the Postal Service faced, efficiently managed

CPI-U), its costs would have been $67.3 billion, $4.5 billion less. This would have resulted in a profit of about $700 million, not a $3.8 billion loss.

[58] *See* pp. 61-62 & n. 62, *infra*.

[59] Postal Service witness Corbett suggests that the growth in average unit contribution received by the Postal Service from FY 2006 to FY 2009, while obscured by the loss of volume during the same period, is evidence of how well the Postal Service managed its costs during that period. Corbett Statement at 16 n. 8. The increase in unit contribution proves no such thing. Average unit contribution is computed by reference to attributable costs, not institutional costs. The latter, however, are also inflated by the Postal Service's excess capacity, and the Postal Service also seeks to recover institutional costs from mailers in this case. An overhang of idle plant and labor capacity—much of which is likely to be classified as an institutional cost—is a classic symptom of inefficiency when volume is anticipated to decline over an extended period.

Moreover, the growth in unit contribution is more likely due to rate increases than to cost control. From the beginning of FY 2006 (October 2005) to the end of FY 2009 (September 2009), the Postal Service raised rates by 21% -- 5.4% in R2005-1; 7.6% in R2006-1; 2.9% in R2008-1; 3.8% in R2009-2 -- while the CPI (BLS Series ID CUUR0000SA0) increased by only 8.4% during the same period. The combined effect of these of above-CPI increase should have more than compensated for the loss of volume from FY 2006 to FY 2009.

firms have ridden out the recession by cutting costs more aggressively and effectively than the Postal Service has attempted.

7. The Postal Service's financial loss projections in this case assume no major improvement in cost control in FY 2011.

Despite the missed opportunities for rationalizing the Postal Service's costs in the past, the Postal Service still can reduce if not eliminate its projected losses in FY 2011 through greater efficiencies. The Postal Service's financial projections, however, reveal no expectation of obtaining significant efficiency gains in the next year.

Two of the Postal Service's national collective bargaining agreements expire in November 2010 (with the American Postal Workers Union and the National Rural Letter Carriers' Association), and two more in November 2011 (with the National Association of Letter Carriers and National Postal Mail Handler Union). The expiration of these agreements presents a timely opportunity to negotiate reductions in head count and lifetime employment guarantee. Reductions of this kind could go a long way toward extricating the Postal Service from its financial straits. As the President's Commission noted in 2003, "the size of the [postal] workforce determines the cost of the workforce." GAO Report No. GAO-10-455 (April 2010) at 16 (quoting President's Commission report).

Second, eliminating the substantial compensation premium, a longstanding violation of 39 U.S.C. § 101(c), would save the Postal Service an additional $10 to $14 billion per year or more—considerably more than the earnings shortfall projected by the Postal Service in this case. In FY 2009, total personnel compensation costs were $56.5 billion. USPS FY 2009 10-K at 15. Eliminating a premium of 21.2 percent would reduce these costs by $10 billion; eliminating a premium of 33.9 percent would reduce them by $14 billion. These are likely to be lower-bound estimates of the savings from eliminating the compensation premium that postal workers receive, because the total compensation premium, which appears to have grown in the past decade, probably now exceeds 33.9 percent.

Third, as discussed above, rationalization of the physical network still offers opportunities for major savings.

The financial projections underlying the Postal Service's exigent request, however, reveal no plans to accelerate the attrition rate of the Postal Service's work force, or to eliminate or even reduce the existing compensation premiums. *See* Masse Statement at 7-8. Nor do the Postal Service's financial projections reveal any plans to accelerate rationalization of the physical network. The list of cost reductions in the Postal Service's roll-forward model is devoid of any consolidation-related cost reductions or productivity goals of note. *See* USPS-LR-6, RFInputTable.xls, "CostReductions" and "ProductivityTables"). And the Postal Service has not proposed to roll back the proposed increases if the Postal Service in fact achieves lower unit costs than assumed in its Request in this case.

The Postal Service's roll forward does include approximately $1.5 billion and $0.8 billion, respectively, of projected cost savings in FY 2010 and FY 2011. Masse Statement, Attachments 4 and 5 (totals of "Cost Reductions," "Productivity Goals," and "Other Programs"). These amounts, however, are too small to offset the inefficiencies introduced just in FY 2009, when postal inflation exceeded the CPI by 6.6 percent in FY 2009, thereby increasing postal costs by $4.5 billion.

8. The Postal Service's alternative explanations for its losses are without merit.

The Postal Service also argues that it has been prevented from performing better since 2008 by several constraints that are assertedly beyond the Postal Service's control: (1) the no-layoff provisions and other terms of its collective bargaining agreements; (2) the growth in delivery points coupled with a decline in the average volume per delivery point; (3) the CPI price cap; and (4) the required annual payments to the Health Care Benefits Fund. *See* Corbett Statement at 3-7, 8-10. These explanations do not withstand scrutiny. We discuss each one in turn.

(a) The Postal Service's collective bargaining agreements

The Postal Service has claimed repeatedly in this case and Docket No. N2010-1 that existing collective bargaining agreements bar implementation of cost-saving measures adopted by the rest of the economy. USPS Request at 3; Corbett Statement at 2; Docket No. N2010-1, USPS-T-2 (Corbett) at 4;

USPS Responses to NNA/USPS-T2-3 and MPA/USPS-T2-7. This defense founders on several grounds:

1. Three of the four collective bargaining agreements now in effect were established by agreement, not binding arbitration. In the face of the looming downturn in mail volume and workload resulting from electronic diversion, the Postal Service's continued acquiescence in lifetime job security for such a large percentage of postal employees was inefficient and imprudent.

2. The Postal Service did not lay off any of the nearly 120,000 craft employees (with salary and benefit costs of nearly $5 billion) who were *not* covered by the "no layoff" provisions of the current collective bargaining agreements.[60]

3. In FY 2009, the Postal Service incurred about $2.4 billion to pay for 66 million overtime hours. National Payroll Hours Summary Report: Pay Period 20 – FY 2009 (September 12 - September 25, 2009). Nothing in the collective bargaining agreements requires the Postal Service to incur so much overtime.

4. The Postal Service did not furlough any of its managerial employees, none of whom were protected by any anti-furlough provision.

[60] Docket No. N2010-1, USPS Institutional Responses to MPA/USPS-T2-9 and 10 and NNA/USPS-T2-3(e).

5. Unlike many other public sector employers, the Postal Service has refused to ask postal labor even to consider whether the circumstances of the current recession were exigent enough to warrant reopening existing collective bargaining agreements. *Cf.* Letter from PMG Potter (Feb. 23, 2008) (disavowing any intention to seek to reopen agreements); *Wall Street Journal* (July 19, 2010) at A3; Greenhouse, Steve, "Labor's New Critics: Old Allies in Elected Office," New York Times (June 27, 2010);, "States of Crisis," Bloomberg Businessweek 7 (July 19, 2010); Stateline.org, Dec. 2, 2009 (www.stateline.org/live/details/story?contentId =440784).

6. Two of the Postal Service's current collective bargaining agreements (with American Postal Workers Union and National Rural Letter Carriers Association) expire in November 2010, and the other two in November 2011 (with National Association of Letter Carriers and National Postal Mail Handler Union). Masse Statement at 7-8. These expirations present opportunities to negotiate reductions in head count, the lifetime employment guarantee, and the compensation premium. As discussed above, however, the Postal Service's financial projections in this case assume that the next generation of contracts will not significantly change the existing provisions (*see* pp. 55-57, *supra*).

The Postal Service's failure to try more aggressively to reduce its work force to efficient and economical levels—as private sector firms have done—

appears to reflect a judgment that tolerating a needlessly costly postal workforce, and recouping the resulting costs from the American mailing public, is politically easier than reducing the size of the workforce to levels consistent with efficient and economical management. This kind of distortion is common when the benefits of a government decision inure to a relatively small and well-organized interest group, while the costs are borne by the public at large. *See*, *e.g.*, Gordon Tullock, "Public Choice," in *The New Palgrave Dictionary of Economics* (2nd ed. 2008). But Section 3622(d)—and Section 3622(d)(1)(E) in particular—forbid this kind of monopoly rent-seeking.

With labor contract negotiations coming up, the Postal Service will never be in a better position to negotiate multi-year contracts that address the Postal Service's core cost issues. Sending a signal now that the CPI cap is malleable and non-binding will undermine both the incentive for and bargaining leverage of the Postal Service to pursue such concessions aggressively.

(b) Growth in the number of delivery points

The Postal Service's perennial attempt to blame its financial woes on the growth of delivery points (*e.g.*, Corbett Statement at 4) is also unavailing. In response to N2010-1, MPA/USPS-T2-8(a), USPS admitted that it could not even quantify the cost of this. Also, the growth in delivery points in FY 2008 and FY 2009 was much lower than in the past – 0.9 million and 1.2 million, respectively, compared to two million in FY 2005. USPS 2009 10-K Report at 70. Finally, the FY 2010 non-volume workload effect, which includes the impact of delivery points, for carriers was less than $100 million, as was the entire non-volume workload effect. Masse Statement, Attachment 5. These results are consistent with the response of USPS Witness Tayman in Docket No. R2001-1 to DMA interrogatory DMA/USPS-T6-23. In the response, the Postal Service admitted that growth in non-volume workload accounted for only 1-3 percent of the growth in city carrier costs, and only 2-4 percent of the growth in rural carrier costs.

(c) The CPI cap imposed by PAEA

The Postal Service asserts that its financial woes are due in part to the supposed impossibility of making ends meet under the CPI cap of 39 U.S.C. § 3622(d), which allows only limited price increases when inflation is limited. Corbett Statement at 18-19. This conclusion is illogical. CPI-based rate increases are designed to allow the Postal Service to recover the effect of inflation on costs. When inflation is low, the price increases necessary to keep up with costs should also be low—at least if the firm is managed efficiently.[61]

Indeed, the version of the CPI cap embodied in PAEA is actually much more *lenient* than the price cap imposed by other regulatory regimes or the competitive market. The versions of index or incentive regulation adopted by

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[61] The Postal Service has also asserted that PAEA has increased its costs. In Docket No. R2006-1, however, the Postal Service projected that the net costs of PAEA in the test year were only $662 million. R2006-1 PRC Op. & Rec. Decis. (Feb. 26, 2007) at ¶ 2045.

other jurisdictions typically include an offset for the productivity growth anticipated or desired by the regulator. That is, the pricing constraint is not "CPI" but "CPI-minus-X," where X is a productivity adjustment set in advance by the regulator.[62] Similarly, in competitive markets, market forces compel firms to achieve productivity gains and disgorge them relatively quickly to the public through lower rates.[63] By contrast, the index formula established under 39 U.S.C. § 3622(d) has no productivity offset at all.

Moreover, the lagged formula for calculating the price cap has worked in the Postal Service's favor, allowing it to raise market-dominant product prices at a rate that is faster than inflation. The Postal Service has raised market-dominant product prices two times under the PAEA's price cap mechanism, by 2.9 percent in May 2008 and 3.8 percent in May 2009, for a cumulative increase of 6.8 percent. This cumulative increase is much higher than the increase in the Consumer Price Index–All Urban Consumers (CPI-

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[62] *See* Einhorn, *Price Caps and Incentive Regulation in Telecommunications*, *supra*, at 4-8 (surveying productivity offsets in various state and federal jurisdictions); John E. Kwoka, Jr., "Productivity and Price Caps in Telecommunications," in Einhorn, *supra*, at 77-93; *Edison Elec. Institute v. ICC*, 969 F.2d 1221 (D.C. Cir. 1992) (upholding decision of ICC to require productivity adjustment to Railroad Cost Adjustment Factor). *See also* Verified Statement of Douglas W. Caves and Laurits R. Christensen in ICC Docket Ex Parte No. 290 (Sub-No. 4), *Railroad Cost Recovery Procedures—Productivity Adjustment* (filed Oct. 25, 1982) (advocating adoption of productivity adjustment to Railroad Cost Adjustment Factor); William J. Baumol, "Productivity Incentive Clauses and rate Adjustment For Inflation," *Public Utilities Fortnightly* (July 22, 1982) at 16 ((advocating adoption of productivity adjustment in setting public utility rates).

[63] In the theoretical extreme of a perfectly competitive market, the pass-through of productivity gains is essentially instantaneous. *See* George J. Stigler, *The Theory of Price* 183-184 (3rd ed. 1966) (discussing the "quicksilver character of competitive industries").

U) from May 2007 (the data of the last pre-PAEA increase) to May 2009—2.8 percent—and even higher than the increase in the three-year period since the last pre-PAEA increase—4.9 percent.[64]

While the cumulative increase is allowable under the PAEA's price cap mechanism because the cap is necessarily calculated using CPI-U data from previous periods,[65] the Postal Service's financial troubles have occurred even though the Postal Service has increased its prices for market-dominant products over the last three years faster than the increase in prices in the general economy as measured by the CPI-U.

Speaking to the National Postal Forum on March 26, 2007, Postmaster General Potter noted that the rate cap was "challenging," but vowed that the Postal Service would "find new efficiencies" and manage its costs to meet the challenge of the new law. Similarly, in testimony to the Subcommittee on Federal Workforce, Postal Service, and the District of Columbia of the House Committee on Oversight and Government Reform on April 17, 2007, Mr. Potter stated that despite a likely permanent trend of decreasing volume, "the potential for annual rate adjustments tied to the Consumer Price Index for market-dominant products" placed the Postal Service "in a much better

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[64] Compare the May 2007, May 2009, and May 2010 values for Bureau of Labor Statistics Series CUUR0000SA0.

[65] For example, the price cap for the May 2008 increase was based upon the average increase in the CPI-U from Calendar Year 2006 to Calendar Year 2007 (the most recent information available at the time that the May 2008 request was filed at the PRC).

position than ever to respond quickly as the market and our financial situation demand."

(d) The required payments to the Health Care Benefits Fund And The Retirement System.

The Postal Service has suggested that its financial problems are also due to its obligations to make annual payments of $5.4 billion to the Retire Health Care Benefits Fund, and to continue making pension contributions even though the OIG and a Commission to the Commission have estimated that the Postal Service has overpaid the Treasury by $75 billion or $50-55 billion, respectively. As discussed below, the undersigned parties agree with the Postal Service that these two obligations should be corrected. Even with these financial burdens, however, the Postal Service would have earned a profit in FY 2009 if it had held its other costs to efficient levels. *See* pp. 17-34 and 39-55, *supra*.

B. The Causes Of The Postal Service's Losses Are Not "Extraordinary Or Exceptional."

The Postal Service also has failed to satisfy a second and independent condition of 39 U.S.C. § 3622(d)(1)(E): the requirement that the causes of the Postal Service's financial shortfall be "extraordinary or exceptional circumstances." 39 U.S.C. § 3622(d)(1)(E). The Postal Service seems to assume that the standard is satisfied because the current recession is severe, the diversion of mail volume to the internet is significant, and the Postal

Service's current and projected deficits are large. This reasoning is mistaken for several reasons.

First, as noted above, the loss of mail volume to the Internet cannot be regarded as an "extraordinary" or "exceptional" development. As described above, the Postal Service and other observers have been aware of this trend for more than 15 years. *See* pp. 35-39, *supra*. So was Congress when it enacted PAEA. The 2004 Senate committee report on the Senate version of the bill that became PAEA stated:

> It is highly likely that, as Americans become more comfortable conducting commercial transactions over the Internet, the Postal Service will continue to see declines in First Class mail volume.
>
> * * *
>
> The electronic diversion of mail and its impact on the Postal Service are among the reasons why the Postal Service has been on the Government Accountability Office's (GAO) "high-risk" list of troubled federal programs in need of reform since 2001.

S. Rep. No. 318, 108th Cong., 2d Sess. (2004) at 3. Likewise, the House committee report noted the challenges faced by the Postal Service from "decreasing volume, insufficient revenue, mounting debts, and electronic communications alternatives such as Internet advertising, electronic bill payments, emails and faxes." H.R. Rep. No. 66, 109th Cong., 1st Sess. (April 28, 2005) at 42.

Senator Collins, one of the primary authors of PAEA, has noted the foreseeable and unexceptional character of the Internet within the meaning this provision. In announcing her opposition to the Postal Service's exigent rate proposal on July 6, she stated:

> As the principal author of the 2006 postal reform act, I am disappointed that the Postal Service is seeking rate increases that far exceed the rate of inflation . . . Only when the Postal Service can demonstrate "exceptional or extraordinary circumstance" does the law allow for rate increases that exceed the rate of inflation. The Postal Service cites as one factor justifying the exigent rate case "continued movement toward electronic alternatives" despite that trend being neither unexpected nor ordinary.

"Senator Collins' Statement On Proposed Postal Service Rate Increase," News Release (July 6, 2010).

Nor can the current recession be regarded as an extraordinary or exceptional event. Recessions are a recurring fact of life: the American economy has experienced 21 of them since 1900.[66] Moreover, while the present recession has been of above-average severity, it has not been so extraordinarily severe that firms with the resources, market power and customer base of the Postal Service could not survive by adhering to "best practices of honest, efficient and economical management." As described above, most large American businesses returned to break-even within a quarter or two of the trough of the recession in March 2009 by cutting costs and adopting other efficiency measures. *See* pp. 40-45, *supra*.

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[66] *See* National Bureau of Economic Research, "Business Cycle Expansions and Contractions," www.nber.org/cycles/cyclesmain.html (site visited Jan. 5, 2010).

Third, the Postal Service's inefficiency and excessive costs most certainly cannot be considered an extraordinary or exceptional circumstance. To the contrary, these problems have persisted for decades. *See* pp. 17-39, *supra*. And Congress made explicit reference to the Postal Service's efficiency problems in the legislative history of both the Postal Reorganization Act and PAEA. *See* pp. 10-11, 18 and 20, *supra*.

C. The Postal Service Has Not Shown That It Needs An Exigent Rate Increase To Continue Providing Necessary Postal Services.

Because USPS has failed to satisfy the "best practices of honest, efficient and economical management" and "extraordinary or exceptional circumstances" requirements, the Commission's inquiry is at an end. Failure to satisfy either element requires the PRC, as a matter of law, to deny the requested exigent rate increase. The Postal Service also has failed, however, to meet a third independent requirement of 39 U.S.C. § 3622(d)(1)(E)—it has failed to show that above-CPI rate increases are "necessary to enable" the Postal Service to continue offering "postal services of the kind and quality adapted to the needs of the United States."

First, the Postal Service, despite its inefficiencies, is now performing considerably better than initially projected for FY 2010, with a return to volume growth expected in FY 2011. *See* Masse Statement (showing higher-than-IFP FY 2010 volumes; lower-than-IFP FY 2010 losses; and volume growth in FY 2011). Similarly, the Postal Service's Preliminary Financial Information for May 2010 shows that: (1) YTD Operating revenue 2.9%

better than plan; (2) YTD volume 3.0% better than plan; and (3) YTD net income nearly $1.4 billion better than plan. The Postal Service now projects that it will have $1.3 billion in cash remaining at the end of FY 2010 *after* making the health care prefunding payment of $5.5 billion, a cash position more than $1 billion better than previously projected.

Second, the Postal Service can solve its financial problems by dealing more effectively with the inefficiencies discussed at pp. 17-64, *supra*.

Third, Congress can (and should) defer payment of $5.4 billion retiree health care payment obligation due on September 30, 2010, if the payment would threaten the Postal Service's solvency. This relief, which the Postal Service almost certainly intends to seek (despite understandably refraining from assuming its availability in the Request), would be consistent with the performance of efficient competitive firms, which properly defer prefunding payments of this kind during lean years, and accelerate prefunding during fat years.

Fourth, Congress also can (and should) provide further financial relief to the Postal Service by remedying the overfunding of the Postal Service's pension obligations caused by its obligation to pay an excessive share of the pension costs of employees whose careers overlapped the July 1, 1971, changeover from the Post Office Department to the Postal Service. As both the Postal Service's OIG and the Commission have observed, the current attribution formula improperly assigns to the Postal Service a significant amount of costs more properly attributable to the Post Office Department.

USPS Office of Inspector General, Risk Analysis Research Center, Report Number: RARC-WP-10-001, January 20, 2010; The Segal Company, *Report to the Postal Regulatory Commission on: Civil Service Retirement System Cost and Benefit Allocation Principles* (June 29, 2010).

Relief from the pension overfunding ($75 billion according to the OIG, roughly $50-55 billion according to the Segal report to the PRC), would also eliminate the need for an exigent rate increase. In its report on the issue, the OIG states that if this issue is fixed, two changes could be made –

> Since all of the Postal Service's accrued liabilities for retiree health benefits would be fully funded, the seven remaining annual payments to the retiree health benefits fund, which average $5.6 billion each, could end.
>
> * * *
>
> In addition, Postal Service payments for the health benefit premiums of current retirees could start coming from the retiree health benefits fund immediately.

U.S. Postal Service Office of Inspector General, Risk Analysis Research Center, Report Number: RARC-WP-10-001, January 20, 2010.

The combined effect of these changes—greater than $7 billion per year —would more than eliminate the Postal Service's annual losses. The pre-funding payments are $5.5 billion per year in FY 2010 and 2011. Eliminating the retiree health benefit premium payments would reduce costs by more than $2 billion annually. These costs were $2 billion in FY2009. FY 2009 Annual Report at 48. Through the second quarter, the FY 2010 retiree health benefit premium payments were $1.1 billion.

The smaller adjustment recommended by the Segal report to the Commission, roughly $50-$55 billion, would be sufficient to eliminate the entire $52 billion unfunded retiree health benefit obligation as of the end of FY 2009 and thus at least eliminate the prefunding payment. FY 2009 USPS 10-K at 20.[67]

To be sure, these favorable scenarios may not come to pass. It is certainly possible (if unlikely) that, if the Commission disallows the proposed exigent rate increase, the Postal Service will nonetheless fail to get its costs under control, and Congress will nonetheless fail to provide relief from the annual retiree health benefit obligation or the pension overpayment problem. If these unfavorable developments occur, however, even the full amount of the exigent increase is unlikely to avoid insolvency. As the Postal Service has acknowledged, the proposed increases "will not be sufficient by themselves to avert the liquidity crisis at the end of FY 2011." Masse Statement at 13. "The large losses experienced from FY 2007 to FY 2009 and the projected losses for the next two years are expected to drain all the Postal Service's cash, push its debt to the statutory limit of $15 billion, and leave the Postal Service unable to pay all its obligations before the end of FY 2011, *regardless of whether the exigent price increases are approved*." *Id*. at 11.[68]

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[67] On July 15, Rep. Stephen Lynch Chairman of the Subcommittee On Federal Workforce, Postal Service, And The District Of Columbia, introduced H.R. 5746, legislation that would require a recalculation of the Postal Service's pension obligations along the lines contemplated by the OIG and Segal reports.

[68] As shown in Table 5 on the same page of Mr. Masse's testimony, the Postal Service projects a cash shortfall of $2.098 billion in FY 2011 even with the proposed price increase.

Which path the Postal Service takes is likely to depend on whether the Commission enforces Section 3622(d)(1)(E). If the Commission denies the proposed price increases on the ground that the section has been unsatisfied, the Postal Service will have a strong incentive to live within its means, just as the private sector has done. If the Commission allows the Postal Service to raise prices above the rate of inflation on the theory that the Postal Service cannot effectively resize its workforce, eliminate the compensation premium, and significantly rationalize its facilities network, these predictions almost certainly will become self-fulfilling. The interest groups that have inflated the Postal Service's input costs certainly will not reduce their claims on the Postal Service and its customers voluntarily. *See*, *e.g.*, APWU News Bulletin (June 16, 2010) (statement of APWU President William Burrus) (asserting that the upcoming collective bargaining agreement "will not be a giveback contract.").[69]

In sum, for the Postal Service to move toward the "best practices of honest, efficient and economical management," Section 3622(d)(1)(E) must be enforced. If the Postal Service's request is approved, the CPI constraint of Section 3622(d)—the single most important part of PAEA—will be a dead letter.

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[69] *See also Having Their Say: Customer and Employee Views on the Future of the U.S. Postal Service*, Testimony of Williams Burrus before the Subcom. on Federal Financial Management, Government Information, Federal Services, and International Security (June 23, 2010) (available at http://hsgac.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=4e81dbf0-5806-4f69-9f69-56ee22dfacbf), at 225:30-230.1 ("I don't expect the membership of the APWU to save the Postal Service" in contract negotiations).

CONCLUSION

The Commission should summarily deny the proposed rate increases. The Postal Service's Request fails to satisfy 39 U.S.C. § 3622(d)(1)(E) as a matter of law. The Postal Service's recent cost cutting initiatives represent progress only by comparison with the Postal Service's own past record. By the standards of efficient private enterprises, they do not begin to approach the "best practices of honest, efficient, and economical management" required by 39 U.S.C. § 3622(d)(1)(E) as a condition for any exigent rate increase.

The Postal Service's Request also fails to satisfy two additional requirements of Section 3622(d)(1)(E): that the causes of the losses are "extraordinary or exceptional" and that the requested additional funds are needed for the Postal Service to continue providing service. Allowing the Postal Service to breach the CPI cap in these circumstances would eviscerate the central pricing constraint of the 2006 legislation, and eliminate any meaningful prospect of reining in the Postal Service's bloated costs. The likely outcome would be a spiral of further rate increases, declining mail volume, and eventually taxpayer-funded bailouts.

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July 26, 2010

APPENDIX A

MEMBERS OF THE AFFORDABLE MAIL ALLIANCE

ASSOCIATIONS

Alliance of Independent Store Owners & Professionals
Alliance of Nonprofit Mailers
American Academy of Family Physicians
American Business Media
American Catalog Mailers Association
American Forest & Paper Association
Association for Mail Electronic Enhancement
Association for Postal Commerce
Association of Marian Helpers
Association of State Baptist Papers
Canadian Printing Industries Association
City & Regional Magazine Association
Coalition of Religious Press Associations
Continuity Shippers Association
Custom Content Council
Direct Marketing Association
DMA Nonprofit Federation
Envelope Manufacturers Association, The
Financial Services Roundtable
Graphic Arts Association (GAA)
IDEAlliance
Magazine Publishers of America
Mailing & Fulfillment Service Association
Major Mailers Association
Midwest Circulation Association
National Alliance of Standard Mailers & Logistics
National Association for Printing Leadership, The
National Catholic Development Conference
National Newspaper Association
National Postal Policy Council
Pacific Printing and Imaging Association
PINE
Printing & Graphics Association MidAtlantic
Printing & Imaging Association of MidAmerica
Printing and Imaging Association of Georgia
Printing Association of Florida
Printing Industries Alliance

Printing Industries Association of San Diego
Printing Industries Association, Inc. of Southern California
Printing Industries of America
Printing Industries of Arizona/New Mexico
Printing Industries of Michigan
Printing Industries of Ohio - N.Kentucky
Printing Industries of St. Louis, Inc.
Printing Industries of the Gulf Coast
Printing Industries of the Midlands
Printing Industries of Utah, Inc.
Printing Industries of Virginia
Printing Industries of Wisconsin
Printing Industry Association of the South, Inc.
Printing Industry of Illinois/Indiana Association
Printing Industry of Minnesota, Inc.
Printing Industry of the Carolinas, Inc., The
Promotional Products Association International
Reserve Officers Association
Visual Media Alliance

COMPANIES AND NONPROFIT ORGANIZATIONS

1105 Media
ABIS, Inc.
Access Press, St. Paul, MN
AccuList USA®
Active Interest Media
Adair County Community Voice, Columbia, KY
Akron (CO) News-Reporter
ALG Worldwide Logistics
Allegan County News, Allegan, MI
Alliance Times-Herald, Alliance, NE
Alvarado (TX) Star
American Girl
American Institutes for Cancer Research
American Lung Association
American Media, Inc.
Announcer, Wagner, SD
Antiques & Fine Art Magazine
Appalachian News-Express, Pikeville, KY
Arandell Corporation
Argus-Press, Owosso, MI
Associated Newspapers of Michigan, MI

At Home in Central Illinois, Champaign IL
Auburn Citizen, Sangamon County, IL
Auburn Journal, Auburn, CA
Auburn Trader, Auburn, CA
Baldwin Herald, Baldwin, NY
Ball Publishing, West Chicago, IL
Barton Cotton
Battle Mountain Bugle, Battle Mountain, NV
Baudville Inc.
BCC Software
Bellmore Herald, Bellmore, NY
Belvoir Media Group
Benchmark Brands
Big Buck Saver (Eau Claire, Chippewa Falls, Menomonie, WI)
Bismarck (ND) Tribune
Bixby Bulletin, Bixby OK
Blackwell Journal-Tribune, Blackwell, OK
Blood-Horse Publications
Boardroom Inc.
Boise Inc.
Bolivar Herald-Free Press, Bolivar, MO
Bonnier Corporation
Bon-Ton Stores, INC.
Bookspan
Bottineau Courant in Bottineau, ND
Böwe Bell + Howell
Bowling Green Times, Bowling Green, MO
Bowling This Month
Breckenridge (TX) American
Broken Arrow Ledger, Broken Arrow OK
Brown Printing Company
Brownsville States-Graphic, Brownsville, TN
Brush (CO) News-Tribune
Buffalo Bulletin, Buffalo, WY
Buffalo Reflex, Buffalo, MO
Burleson (TX) Star
Burlington (CO) Record
Burnet Bulletin, Burnet, TX
Bust Magazine
Cadillac News, Cadillac, MI
Cambridge Clarion in Cambridge, NE
Campbellsport News, Campbellsport, WI
Canon Communications
Carson Press, Elgin, ND

Cass City, Cass City, MI
Cass County Reporter, Casselton, ND
Catamount Color, a division of the Offset House
Catoosa Times, Catoosa OK
Cedar County Republican, Stockton,MO
Cedar grove/Verona Observers, Cedar grove and Verona, NJ
Center for Science in the Public Interest
Central Illinois Business, Champaign IL
Central Illinois Families, Champaign IL
Centralia Fireside Guard, Centralia, MO
Century Direct
Charles Mix County News, Geddes, SD
Charlevoix Courier, Charlevoix, MI
Charlton County Herold, Folkston, GA
Chatham Clarion, Sangamon County, IL
Chatham Courier, Chatham Township and Chatham Borough, NJ
Chefwear, Inc.
Chester County Independent, Henderson, TN
Chippewa Herald, Chippewa Falls, WI
Chippewa Valley Business Report
Choteau Acantha Publishing Inc. ,Choteau, MT
Christian Book Distributors
Christian County Headliner News, Ozark MO
Citizen Tribune, Morristown, TN
Civil War Courier, Morristown, TN
Clark Fork Chronicle, Superior, MT
Classic Designs by Matthew Burak
Clerics of St. Viator
Coalfield Progress, Norton, VA
Colfax Record, Colfax, CA
Collinsville News, Collinsville OK
Commercial Record-Resorter, Saugatuck, MI
Community Publishers, Inc., Bentonville, AR
Comstock Chronicle, Virginia City, NV
Concord Litho
Condé Nast
Congregation of Notre Dame
Consumers Union
Cooking Enthusiast LLC
Corporate Press Communications Companies
Coweta American, Coweta OK
Crawford County Independent and Kickapoo Scout in Gays Mills, WI
Creative Age Publications, Inc.
Crested Butte News, Crested Butte, CO

Crosslists, Cross & Company
Crowley (TX) Star
Cuba Free Press, Cuba, MO
Cuddledown
Cut Bank Pioneer Press in Cut Bank, MT
Daily Jefferson County Union, Fort Atkinson, Wisconsin
Daily Sentinel, LeMars, IA
Daily Sparks Tribune, Sparks, NV
Dakota Action Rocket, Wagner, SD
Das Fenster German Magazine
Data-Mail, Inc.
DATAMATX
Dawson (MN) Sentinel
Dawson News, Dawson, GA
Dayton Courier, Dayton, NV
Detroit Legal News, Detroit, MI
Diamond Marketing Solutions
Dickenson Star, Clintwood, VA
Dickinson (ND) News
DIR Corporation
Direct Brands, Inc.
Disabled American Veterans
Divernon News, Sangamon County, IL
Dodge County Pionier, Mayville WI
Domtar Paper Company, LLC
DRG
DST Mailing Services
DTN/The PROGRESSIVE FARMER
Dunn County Herald, Killdeer, ND
Dunn County News, Menomonie, WI
Dwell LLC
East Meadow Herald, East Meadow, NY
Easter Seals
Eastern Times-Register, Roland OK
Echoes-Sentinel, Warren, Watchung, Long Hill Twp, Gillette, Millington and Stirling, NJ
Editorial Projects in Education, Inc.
Edmond (OK) Sun
Edmund Optics
El Dorado Hills Telegraph, El Dorado Hills, CA
Elk Valley Times, Fayetteville, TN
Elko Daily Free Press, Elko, NV
Ely Times, Ely, NV
Emmons County Record,Linton, N.D

Enderlin Independent, Enderlin, ND
ESPN the Magazine
Estes Park (CO) Trail-Gazette
Eureka Sentinel, Eureka, NV
Everglades Direct, Inc.
Everman (TX) Star
Experian
Faribault Daily News, Faribault, MN
Farm Progress Media
Farmers' Progress, Columbia, KY
Fennimore Times in Fennimore, WI
Fernley Leader, Fernley, NV
Fidelity Investments
First Data Corporation
FIS
Flint Genesee County Legal News, Flint, MI
Florham Park Eagle, Florham Park, NJ
Folsom Telegraph, Folsom, CA
Foothills Marketplace, Grass Valley, CA
Forbes Inc.
Fort Bragg (CA) Advocate-News
Fort Morgan (CO) Times
Franklin Favorite, Franklin, KY
Franklin Square/Elmont Herald, Franklin Square, NY
Frontier County Enterprise, Curtis, NE
GameInformer Magazine
Gasconade County Republican, Owensville, MO
Gatesville (TX) Messenger & Star Forum
Gaylord Herald Times, Gaylord, MI
Gill Ashton Food Service Media Group
Gilmer Mirror, Gilmer TX
Glacier Reporter, Browning, MT
Glasgow Courier, Glasgow, MT
Glatfelter
Glenpool Post, Glenpool OK
Grand Rapids Legal News, Grand Rapids, MI
Grand View Media Group
Grant County News, Elgin, ND
Grant County Press, Petersburg, WV
GrayHair Software
Great American Business Products
Grundy County Herald, Tracy City, TN
Guideposts
Guthrie News-Leader, Guthrie, OK

Hannibal Courier-Post, Hannibal, MO
Hanover Eagle, East Hanover Township and Hanover Township, NJ
Harrison Daily Times, Harrison, AR
Harte-Hanks
Hastings Banner, Hastings, MI
Havre Daily News, Havre, MT
Hays Free Press, Buda, TX
Hazelden Foundation
Hearst Magazines
Henderson News, Henderson, Nebraska
Herald Times Reporter, Manitowoc, WI
Hermann Advertiser-Courier, Hermann, MO
High Desert Advocate, West Wendover, NV
High Plains Publishers
Highlights for Children, Inc.
Hillsboro Banner, Hillsboro, ND
Hoard's Dairyman
Hood County News, Granbury, TX
Hudson Star-Observer, Hudson, WI
Humboldt Chronicle, Humboldt, TN
Hunterdon Review, Hunterdon, NJ
Huntsinger & Jeffer
I Do Magazine, Champaign IL
IlliniHQ Magazine, Champaign IL
Imaging Network Group
IMS Inc.
inde supply chain consultancy
Indianapolis Business Journal, Indianapolis, IN
InfoPrint Solutions
Ingham County Legal News, Mason, MI
Integrated Media Cooperative
intelisent
Interlink. Inc., Berrian Springs, MI
InterMedia Outdoors
International Masters Publishers
International Paper
IPC Print Services
IWCO Direct
Jacksboro (TX) Gazette-News
Jackson County Legal News, Jackson, MI
Janesville Argus, Janesville, MN
Jenks Journal, Jenks, OK
Joshua (TX) Star

Journal Publishing Inc. publisher of The Journal of Crosby, ND and the Tioga Tribune, Tioga, ND
Journal-Advocate, Sterling, Colorado
Journal-Republican, Monticello IL
JST Marketing Solutions, LLC
Julesburg (CO) Advocate
Keene (TX) Star
Kentucky Press Association
Kenyon Leader, Kenyon, MN
Key Communications Inc.
Kulm Messenger, Kulm, ND
Lahontan Valley News, Fallon, NV
Lake Andes Wave, Wagner, SD
Lake Country (TX) Shopper
Lake Country (TX) Sun
Lake County Examiner, Lakeview, OR
Lakeshore Guardian, MI
LakeVille Messenger, Millington, MI
Lamar (CO) Ledger
LaMoure Chronicle, LaMoure, ND
Landmark Community Newspapers, LLC Shelbyville, KY
L'Anse Sentinel, L'Anse, MI
Las Vegas Review-Journal, Las Vegas, NV
LDS Group Inc.
Le Center Leader, Le Center, MN
Le Sueur News-Herald, Le Sueur, MN
Leader Telegram, Eau Claire, WI
Leelanau Enterprise, Lake Leelanau, MI
Lehigh Direct
Lincoln County Record, Caliente, NV
Lincoln News Messenger, Lincoln, CA
Litchville Bulletin, Litchville, ND
Long Beach Herald, Long Beach, NY
Long Island Graphic, Freeport, NY
Lonsdale News-Review, Lonsdale, MN
Loomis News, Loomis, CA
Lorraine Press, Salt Lake City, UT
Lovelock Review-Miner, Lovelock, NV
Lubenow & Associates
Ludington Daily News, Ludington, MI
Lynbrook/East Rockaway Herald, Lynbrook, NY
M2MEDIA360
Macomb County Legal News, Pontiac, MI
Madelia Times-Messenger, Madelia, MN

Madison Eagle, Madison, NJ
Magazines of Politics, Policy, and Current Events
MAGIC Magazine
Mahomet Citizen, Mahomet IL
Mailbox Marketing Inc.
Malverne/West Hempstead, Malverne, NY
Manchester Times, Manchester, TN
Mannford Eagle, Mannford OK
Maple River Messenger, Mapleton, MN
Marketsmith Inc.
Maryville Daily Forum, Maryville, MO
Mason Valley News, Yerington, NV
McIntosh County Democrat, Checotah, OK
McKenzie County Farmer, Watford City, ND
Medco Health Solutions
MedTech Media
Meister Media Worldwide
Mendocino (CA) Beacon
Mercy Home for Boys & Girls
Meredith Corporation
Merrick Herald, Merrick, NY
Milton Times Inc., Milton, MA
Mineral County Independent-News, Hawthorne, NV
Minot (ND) Daily News
Missouri Press Association, Columbia, MO
Mobridge Tribune, Mobridge, SD
Monadnock Paper Mills Inc
Monroe Publishing Co., Monroe, MI
Montmorency County Tribune, Atlanta, MI
Motheral Printing Company
Mount Desert Islander, Bar Harbor, ME
Mount Horeb Mail, Mount Horeb, WI
Mount Olive Chronicle, Mount Olive Township, Flanders and Budd Lake, NJ
Mountain Citizen, Inez, KY
Mt. Lebanon Magazine
Muskegon Legal News, Muskegon, MI
Myllykoski-North America
Mystic Logistics
Nassau Herald, Lawrence, NY
National Committee to Preserve Social Security and Medicare
National Geographic Society
Naval Aviation Museum Foundation
Naylor
Nebraska Journal-Leader, Ponca, NE

Neosho Daily News, Neosho, MO
NetGram
Nevada Appeal, Carson City, NV
Nevada Legal News, Las Vegas, NV
New Berlin Bee, Sangamon County, IL
New Page Corporation
New York Magazine
NewBay Media
Newcastle News Letter Journal, Newcastle, WY
Newcastle News, Newcastle, WA
Newport Business Media
News-Enterprise, West Concord, MN
News-Monitor, Hankinson, ND
Newton County Times, Jasper, AR
Nixa Xpress, Nixa, MO
Nodaway News Leader, Maryville, MO
Nomis Publications, Inc.
Norman County Index Ada, Minnesota
North Lake Tahoe Bonanza, Incline Village, NV
North Vernon Plain Dealer, North Vernon, IN
Northern Neck News, Warsaw, VA
Northfield News, Northfield, MN
Northumberland Echo, Heathsville, VA
NPI, Dallas, TX
Oakland County Legal News, Troy, MI
Observer-Tribune, Washington Township, Chester Township, Chester, Mendham Township, Mendham and Harding Township, NJ
Oceanside/Island Park Herald, Oceanside, NY
Oregon Lithoprint, Inc, McMinnville. OR
Our Lady of Victory Homes of Charity
Our Sunday Visitor, Inc
Owasso Reporter, Owasso OK
Owatonna People's Press, Owatonna, MN
Ozark County Times, Gainesville, MO
Pahrump Valley Times, Pahrump, NV
Palm Coast Data
Palmyra Spectator, Palmyra, MO
Pawnee Post, Sangamon County, IL
Paxton Record, Paxton IL
Pennsylvania Newspaper Association, Harrisburg, PA
Penton Media
PESI HealthCare
Petoskey News Review, Petoskey, MI
Pierce County Herald, Ellsworth, WI

Pike County Journal Reporter, Zebulon, Ga.
PIME Missionaries
Placer Herald, Rocklin, CA
Pleasant Plains Press, Sangamon County, IL
Plow & Hearth
Port Aransas South Jetty, Port Aransas, TX
Potter County News, Gettysburg, SD
Prairie Pioneer, Pollock, S.D
Premier Education Solutions, powered by PESI
Presque Isle Newspapers, Rogers City, MI
Press-Sentinal, Jesup, GA
PrimeTime Xpress, Nassau County, NY
Publishers Clearing House
Pure Gold advertiser, Madelia, MN
Putman Media, Inc.
Quad/Graphics
Quadratec Inc.
Raceline Direct, Inc.
Rantoul Press, Rantoul IL
RBC Ministries
Reader's Digest
Record-Harold, Greensburg, KY
Reno Gazette-Journal, Reno, NV
Reppert Publications, Anna, IL
Republic Monitor, Republic, MO
Ripon Printers
River Falls Journal, River Falls, WI
Riverton Register, Sangamon County, IL
Rochester Times, Sangamon County, IL
Rockaway Journal, Far Rockaway, NY
Rockville Centre Herald, Rockville Centre, NY
Rodale, Inc.
Rolling Stone
Rome (NY) Daily Sentinel
Roseville Press-Tribune, Roseville, CA
Roxbury Register, Roxbury Township and Mount Arlington, NJ
RR Donnelley
Sacramento Gazette, Sacramento, CA
Sacred Heart Southern Missions
Saint James Press, St James, MO
Sammamish Review, Sammamish, WA
Sand Springs Leader, Sand Springs OK
Sappi Fine Paper – North America
Scholastic Inc.

Scotland Journal, Scotland, SD
Sequoyah County Times, Sallisaw, OK
Servants of the Paraclete
Shelby Promoter in Shelby, MT
Shelton Mason County Journal, Shelton, WA
Sidney Herald in Sidney, MT
Sisters of St. Louis
Skiatook Journal, Skiatook OK
SkillPath Seminars
SnoValley Star, North Bend, WA
South County Express, Sangamon County, IL
South County Mail, Rogersville, MO
South County Publications, Ltd. ,Sangamon County, IL
South Shore Record, Hewlett, NY
Southeast Dakota Publishing, Inc., ND
Southworth Company
SRDS
St. Cloud (MN) Times
St. Croix Press, Inc.
St. Louis/Southern Illinois Labor Tribune, St. Louis, MO
St. Peter Herald, St. Peter, MN
Stamats Business Media
State Farm
Statesboro (GA) Herald
Steelville Star-Crawford Mirror, Steelville, MO
Stenhouse Publishers
Stony Creek Brands LLC
String Letter Publishing
Structural Graphics
Sturgis Journal, Sturgis, MI
Summit Business Media
Summit Media
Swift County Monitor, Benson, MN
Sylvania Telephone, Sylvania, GA
Texarkana Gazette, Texarkana, TX
The Aberdeen Times, Aberdeen, ID
The Advance, Vidalia, GA
The Advocate Messenger, Danville, KY
The Alma (GA) Times
The Alpena News, Alpena, MI
The Association of the Miraculous Medal
The Banner Press, Austin, Colorado and Fayette Counties, TX
The Beacon, Clifton, NJ

The Bernardsville News, Bedminster, Bernards Township, Far Hills, Peapack/Gladstone and Bernardsville, NJ
The Bethany Republican-Clipper
The Bird City Times, Bird City, KS
The Blackshear (GA) Times
The Boscobel Dial in Boscobel, WI
The Bucks County Courier Times, Levittown, PA
The Burlington County Times, Willingboro, NJ
The Canadian RECORD, Canadian, TX
The Caroline Progress, Bowling Green, VA
The Cass Lake Times, Cass Lake MN
The Catholic Times, Saginaw, MI
The Catholic Weekly, Saginaw, MI
The Central Record, Lancaster, KY
The Central Virginian, Louisa, VA
The Chaffee County Times, Buena Vista, CO
The Citizen, Boonton Township, Denville Township, Dover, Mountain Lakes, Montville, Rockaway Borough and Rockaway Township, NJ
The Climax Crescent Newspaper, Kalamazoo County, MI
The Clinton County Leader, Plattsburg, MO
The Colby Free Press, Colby, KS
The Collierville Herald, Collierville, TN
The Columbia Press, Warrenton, OR
The Congregation of the Blessed Sacrament, Saint Ann's Shrine
The Country Advocate , Colby, KS
The Country Today, Eau Claire, WI
The County Star, Savoy IL
The Courier-Times.Roxboro, NC
The Current Local, Van Buren, MO
The Daily News, Iron Mountain, MI
The Daily Reporter, Milwaukee, WI
The Darien News in Darien, GA
The Eagle Post, Oakgrove/Fort Campbell, KY
The Ellsworth American, Ellsworth, ME
The Elsberry Democrat, Elsberry, MO
The Eufaula Indian Journal, Eufaula, OK (The oldest newspaper in Oklahoma)
The Fairbury Journal-News, Fairbury, NE
The Farmers Independent of Bagley, MN
The Franciscans/St Anthony's Guild
The Frankston Citizen, Frankston, TX
The Freeport Shopping News (IL)
The Goodland Star-News, Goodland, KS
The Graham (TX) Leader

The Grant County Express, Dry Ridge, KY
The Grant County Herald Independent in Lancaster, WI
The Grant County News, Dry Ridge, KY
The Grant Tribune-Sentinel, Grant, NE
The Hanska Herald, Hanska, MN
The Hartford
The Hebron Journal, Hebron, NE
The Herald Chronicle, Winchester, TN
The Herald Democrat, Leadville, CO
The Herald Progress, Ashland, VA
The Herald-Gazette, Barnesville, GA
The Highlander, Marble Falls, TX
The Hillsboro Sentry-Enterprise in Hillsboro, WI
The Holyoke Enterprise, Holyoke, CO
The Honker, Middle River, MN
The Humboldt Sun, Winnemucca, NV
The Imperial Republican, Imperial, NE
The Independent News-Gazette, Georgetown, IL
The Independent, Monroe County, MI
The Independent-Observer, Conrad, MT
The Intelligencer, Doylestown, PA
The Interior Journal, Stanford, KY
The Issaquah Press, Issaquah, WA
The Jack County (TX) Herald
The Jessamine Journal, Nicholasville, KY
The Jewish Star, New York City and Long Island, NY
The Jones County News, Gray, GA
The Journal-Enterprise, Providence, KY
The Karnes Countywide, Karnes City, TX
The Kiplinger Washington Editors, Inc.
The Leader, Covington, TN
The Leader, St.Joseph-Ogden IL
The Lincoln County Journal, Troy, MO
The Llano County Journal, Llano, TX
The Louisiana Press-Journal, Louisiana, MO
The Magazine Factory
The Marion Press, Marion, MI
The Marist Brothers
The Marshfield Mail, Marshfield, MO
The Milan Standard, Milan, MO
The Millington Herald, Millington, MI
The Minden Courier, Minden, Nebraska
The Mining Journal, Marquette, MI
The Missaukee Sentinel, Lake City, MI

The Monday Extra, Norton, KS
The Monroe County Reporter, Forsyth, GA
The Monroe Shopping News (WI)
The Monroe Times (WI)
The Moore County News, Lynchburg, TN
The Morris News Bee, Morris Plains, Morris Township and Morristown, NJ
The Mountain Mail, Salida, CO
The Nebraska Signal, Geneva, Nebraska
The New Richmond News, New Richmond, WI
The Newberry Eagle, La Pine, OR
The News Guard, Lincoln City, OR
The News-Gazette Corp, Lexington, VA
The News-Gazette, Champaign IL
The North Vernon Sun, North Vernon, IN
The Northern Michigan Review, Petosky, MI
The Northwoods Press, Nevis MN
The Norton Telegram, Norton, KS
The Obelrin Herald, Oberlin, KS
The Olney (TX) Enterprise
The Ozona Stockman, Ozona, TX
The Park County Republican and Fairplay Flume, Bailey, CO
The Phonograph-Herald in St. Paul, NE
The Platteville Journal, in Platteville WI
The Port Network
The Post, Big Stone Gap, VA
The Power County Press, American Falls, ID
The Progress, Caldwell, Essex Fells, Fairfield, North Caldwell, Roseland and West Caldwell, NJ
The Randolph Reporter, Randolph and Mine Hill, NJ
The Record-Courier, Gardnerville, NV
The Record-Review, Abbotsford, WI
The Republican Journal in Darlington, WI
The Retrospect, Collingswood, NJ
The Richland Observer in Richland Center, WI
The Riverdale Press, Bronx, NY
The Saint Francis Herald, St. Francis, KS
The Sebeka Menahga Review Messenger, Sebeka MN
The Sheridan Group
The Society of the Little Flower
The Star News, Medford, WI
The State Bar of Wisconsin
The Statesman, Kewaskum, WI
The Sun-Times, Williamsville and Sherman, IL
The Taunton Press

The Telfair (GA) Enterprise, McRae, GA
The Thomasville Times, Thomasville AL
The Tribune-Phonograph, Abbotsford, WI
The Valierian in Valier, MT
The Vandalia Leader, Vandalia, MO
The Walsh County Record, Grafton, ND
The Wauneta Breeze, Wauneta, NE
The Westfield Leader & The Scotch Plains-Fanwood Times, Westfield, NJ
The Winchester Sun, Winchester, KY
The Wolbach Messenger in Wolbach, NE
The Zeeland Record Co., Zeeland, MI
Time Inc.
Times Leader, Princeton, KY
Times Printing Company, Random Lake, WI
Tonopah Times-Bonanza, Tonopah, NV
Total System Services, Inc.
Tradin' Post Buyer's Guide (Eau Claire, WI)
Trail County Tribune, Mayville, ND
Trainers Warehouse
Transcontinental RBW Graphics
Trend Offset Printing
Tri-City Register, Sangamon County, IL
Tri-City Reporter, Dyer, TN
Tri-County Press in Cuba City, WI
Trinity Direct
Troublesome Creek Times, Hindman, KY
Tullahoma News, Tullahoma, TN
Tulsa Business Journal, Tulsa OK
Tulsa Daily Commerce and Legal News, Tulsa OK
Union Enterprise, Plainwell, MI
Uno Alla Volta LLC
UPM, North America
Valley Stream Herald, Valley Stream, NY
Vance Publishing
Vandalia Leader, Vandalia, MO
Vermillion Plain Talk, Vermillion, SD
Vernon Daily Record, Vernon, TX
Verso Paper
Vertis Communications
Vian Tenkiller News, Vian OK
Vicon Publishing
View Newspaper Group (publisher of 14 newspapers), MI
Virginia Diner, Inc.
Voice News, Hickman, NE

W. A. Wilde
Wagner Post, Wagner, SD
Wagoner Tribune, Wagoner OK
Walhalla Mountaineer, Walhalla, ND
Wallis News-Review, Wallis, Texas
Waseca County News, Waseca, MN
Washingtonian Magazine
Washtenaw County Legal News, Ann Arbor, MI
WATT
Wayne County News, Waynesboro, TN
Wayne County Outlook, Monticello, KY
Weiser Signal American, Weiser, ID
West River Eagle, Eagle Butte, SD
Westmoreland News, Montross, VA
Williams Publications Company
Williams Sonoma
Williston (ND) Herald
Winnebago Voice, Winnebago, MN
Wise County Messenger, Decatur, TX
World Marketing Inc.
Xpress Coups, Nassau County, NY
Yankee Publishing
Yankton Daily Press and Dakotan, Yankton, SD
York News-Times, York, NE