

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

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Retail Access Optimization Initiative, 2011 )  
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**Docket No. N2011-1**

**REPLY BRIEF OF JEFFREY MUSTO,  
ON BEHALF OF THE  
CENTER FOR STUDY OF RESPONSIVE LAW**

(November 11, 2011)

The Center for Study of Responsive Law respectfully submits this reply brief in response to the U.S. Postal Service's initial brief, filed November 4, 2011.

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## **I. The U.S. Postal Service Misrepresents Witness Musto's Testimony**

The U.S. Postal Service (USPS) first starts its initial brief's discussion of witness Musto's testimony by stating that the witness claims that title 39 of the United States Code requires that an "equal provision" of postal services is provided to customers. The USPS cites witness Musto's rebuttal testimony at page 4, lines 5 and 6. Unfortunately, much like the USPS has done with portions of its own witness' testimony, it has taken this out of context. However, these lines make no direct reference to title 39. That said, title 39, Part I, Chapter I, Section 101 (b) does very clearly state that the USPS:

"...shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. No small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities."

Further, section 101(a) states:

"It shall provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities. The costs of establishing and maintaining the Postal Service shall not be apportioned to impair the overall value of such service to the people."

While the word "equal" is not used in either of these passages, the intent seems to be quite clear that residents found in both rural and urban areas should be provided with adequate postal services. And as has been discussed in this docket, the intent of title 39 (section 101(b) specifically) is to protect citizens in rural areas and other communities or towns where post offices are not self-sustaining and ensure that they receive a "maximum degree of services." The USPS should not argue that simply because the word "equal" is not used in title 39 that they can deprive citizens of these areas of services (whether through closure or consolidation of postal facilities or through forcing them to rely on inadequate "alternate access" sites after the closure of a postal facility).

The USPS continues to claim that witness Musto's use of the words "vulnerable" and "harsh" are inappropriate in the consideration of the Retail Access Optimization Initiative (RAOI) and that there is no basis for the witness' assertion that a reliance on "alternate access" sites may be unexpected. Again, the USPS either takes the witness' testimony out of context or makes faulty assumptions. The witness, in this section (page 4, lines 22 through 24 of witness Musto's rebuttal testimony) is using the words "vulnerable" and "harshest effects" to describe the possible results of the RAOI of postal facility closings or consolidations.

In the USPS's statements that witness Musto inappropriately uses the word "unexpected" with the possible need for citizens to increase their reliance on "alternate access" sites, they come to a faulty conclusion. The USPS apparently continues to believe, despite evidence offered by the National League of Postmasters during this proceeding, that the public notice and comment procedures that it has pursued have indeed afforded appropriate public participation in and knowledge of the process. This is especially disturbing considering evidence that the NLP has

offered that puts this at question: accounts of public meetings held during the workday when many can't attend them, held in a different town, restrictions on recording the public meetings, inadequate responses provided by postal officials to the questions posed by citizens of some communities, and public officials who failed to record public comments during the meetings so that they could be included in the discontinuance review process. The Center for Study of Responsive Law has already addressed this in other documents submitted to the Commission, but this is especially troubling given that the scenarios outlined above leave the consumers and citizens that would be affected most by the RAOI without an adequate voice in this process.

## **II. The U.S. Postal Service Takes Witness Musto's Testimony and Interrogatory Responses Out of Context**

In the U.S. Postal Service's initial brief they claim that witness Musto originally expressed concern that the sale of stamps at a stamp on consignment outlet represents an "inherent service cut" simply because it did not occur at a postal retail location. The USPS then continues to say that the witness retreats from this characterization of stamp on consignment outlets as an "inherent service cut" in a response to an interrogatory. The USPS's representation of witness Musto's testimony completely misrepresents the point that the witness was making and their interpretation of witness Musto's interrogatory response takes it completely out of context.

First, the USPS claims that the witness argues that the purchase of a postage stamp at a stamp on consignment outlet is an inherent service cut because it occurs at a facility other than a postal retail location. In fact, that is not at all what the witness was arguing in the portion of his rebuttal testimony that the USPS is referencing (the direct reference is on page 4, lines 22 through 24 – however this statement relies on information provided by witness Musto's rebuttal testimony, page 6 and 7 which discuss "alternate access" sites proximate to RAOI candidate facilities). The witness examined documents provided by the USPS as a part of this docket that provided the number and type of "alternate access" facilities within a designated proximity of the candidate postal facilities being considered for closure or consolidation under the RAOI. One of the criteria for inclusion in the RAOI candidate list was proximity to "alternate access" sites so the witness deemed this an important component to analyze.

In the analysis of these "alternate access" sites, the witness found them to be overwhelmingly composed of stamp on consignment outlets. Stamp on consignment outlets only provide customers with a single service: the sale of stamps. This does not constitute the full range of services that a postal facility might otherwise provide, nor does it constitute a "maximum degree of services." The number of "alternate access" sites for the postal facilities that were included in the RAOI based, in part, upon their proximity to these sites amounted to a total of almost 20,000. Of these, over 85 percent of them were stamp on consignment outlets.

Further, of nearly 575 postal facilities that were included in the RAOI in part based on their proximity to five "alternate access sites," over 70 percent of them would have been excluded from the RAOI if stamps on consignment outlets were excluded as an appropriate "alternate access site." Further, if *only* other post offices were included in the definition of "alternate access sites," only 17 percent of the nearly 575 postal facilities requiring 5 nearby "alternate access sites" would remain a part of the RAOI, eliminating at the outset nearly 475 postal facilities from even being considered for closure or consolidation.

The inclusion of stamp on consignment outlets in the definition of “alternate access sites” inflates the number of “alternate access sites” found near the nearly 575 postal facilities referenced above. This demonstrates that a significant number of the RAOI facilities do not in fact have adequate “alternate access sites.” Consequently, closing many of the facilities included in the RAOI could leave the citizens in many communities without a “maximum degree of services” should the RAOI precipitate the closure or consolidation of these facilities.

Thus, the witness’ argument is not that simply because a transaction was carried out at an “alternate access” site that it would constitute an “inherent service cut,” but that should the RAOI result in the closure or consolidation of postal facilities, the communities that subsequently must rely on their nearby “alternate access” sites will experience an “inherent service cut” due to the lack of services provided by many of these supposed “alternate access” sites.

Following from this, the USPS misrepresents witness Musto’s response to USPS/CSRL-T1-11 as a “retreat” from this position. In fact, USPS/CSRL-T1-11 was an incredibly narrow question that only asked about customers whose sole objective would be to purchase stamps:

“USPS/CSRL-T1-11, Please refer to your testimony at page 8, line 46. Do stamps on consignment outlets provide a “sufficient” level of service to postal patrons at times when the sole objective of those customers is to obtain generic First-Class Mail letter rate stamps? If your answer is not fully affirmative, please explain.”

While the witness’ response is in the affirmative (due to the narrow nature of the question posed), it continues to state:

“Yes. However, the U.S. Postal Service should acknowledge that its patrons make use of postal facilities for a much broader range of services than simply purchasing stamps. Further, citizens may believe the U.S. Postal Service needs to provide a fuller range of services in order to comply with its obligations according to title 39.”

It is unfortunate that the USPS has forced CSRL to point this out yet again, but the simple sale of stamps does not represent the full range of services that a customer could avail themselves of at a postal facility. Thus, should the RAOI result in the closure or consolidation of a postal facility, the citizens that once could avail themselves of services at this previously available postal facility like the purchase of stamps, purchase of packaging, the procurement of a passport, completion of money order transactions, the use of a P.O. Box, and many more would see an “inherent service cut,” should they now have to rely on “alternate access” sites that do not provide these services. Such a scenario is a de facto reduction of service.

### **III. The USPS Fails to Connect Witness Musto’s Assertions With Its Own Witness’ Testimony**

The USPS claims in its initial brief that witness Musto’s characterization that the Postal Service “must believe that these ‘alternate access sites’ are sufficient alternatives and could serve to replace that the postal facility that may ultimately be closed” is based upon faulty assumptions. The USPS continues by stating that the presence of “alternate access” sites are not the primary factor for determining whether to discontinue RAOI candidate facilities. One would

hope that this is true given that it has already been demonstrated that such “alternate access” sites provide inadequate alternatives to customers.

The Direct Testimony of James J. Boldt, USPS-T-1 (Page 3, Line 15 through Page 6, Line 3), discusses alternate access facilities, their growing popularity, the number of private retail stores, and follows this discussion with one of changing customer behavior (Page 6, Line 4 through Page 9, Line 6). It was witness Musto’s determination that a citizen would come to the logical conclusion based upon the structure of this testimony that the U.S. Postal Service’s witness was implying – and in fact possibly leading the reader to assume – that alternate access facilities serve the needs of consumers, that consumers are using less Post Office facilities, and that thus alternate access facilities may be able to replace existing Post Office facilities. The remainder of witness Musto’s testimony is intended to stand in opposition to these implied points.

That said, the following quotes from USPS witness Boldt’s testimony provide the basis for witness Musto’s concern that the USPS believes these “alternate access” sites may serve to replace a RAOI candidate facility that is ultimately closed:

“As the Post Office’s role in the postal retail network has diminished, other aspects of the postal retail network have become more important. For example, alternate retail access channels have proven increasingly popular with postal customers, now accounting for approximately thirty-five percent of retail revenue and trending upward.” (Direct Testimony of Witness James Boldt, Page 4, Lines 12 – 16.)

“Awareness of these general trends and a desire to continue to improve customer convenience in terms of accessing its products and services has compelled the Postal Service to reconsider the composition of its retail network, leading to the creation of a wide range of options that expand retail service beyond Post Offices, stations, and branches.” (Direct Testimony of Witness James Boldt, Page 4, Lines 16-20.)

“Collectively, these alternatives extend, facilitate, and expedite customer access to postal retail transactions that once required a visit to a retail window in a Post Office, station, or branch.” (Direct Testimony of Witness James Boldt, Page 6, Lines 1-3.)

“An understanding of the variety of options for alternate access to postal products and services helps to provide an understanding of the context and justification for the RAO Initiative.” (Direct Testimony of Witness James Boldt, Page 9, Lines 4-6.)

The USPS also claims that witness Musto fails to acknowledge that driving distances to nearby postal facilities are taken into account in the discontinuance review. The portion of the witness’ testimony that the USPS cites here is not referencing what the USPS’s discontinuance review examines (witness Musto’s rebuttal testimony, page 7 and 8). Instead, it is intended to discredit the usefulness of a chart in USPS witness Boldt’s testimony that examines the proximity of retail locations with “walk-in-revenue” below \$100,000 to the nearest retail location (page 12 of witness Boldt’s direct testimony). This chart is used in an effort to demonstrate the USPS’s point that many postal facilities are in fact not far from their nearest neighbors.

But the chart bears no relevance in a discussion of the RAOI because it does not use driving distances (it uses geographic coordinates) in examining a subset of postal facilities

similar to those on the RAOI candidate list (it uses a completely different subset). Using geographic coordinates to measure proximity does not adequately represent the additional burden that may be placed on consumers in the event of a post office closure or consolidation to reach the nearest neighbor. And using a separate subset of postal retail facilities makes the chart entirely useless in examining the RAOI. Only 11 percent of retail locations in the chart were more than 10 miles from the nearest Post Office, but nearly 30 percent of those facilities that are candidates for closure in the RAOI are 10 or more miles away from their nearest neighbor.

#### **IV. The USPS Inappropriately Challenges Witness Musto's Discussion of its Title 39 Mandate to Provide a "Maximum Degree" of Services**

Finally, the USPS attempts to discredit witness Musto's testimony by claiming that his testimony represents a misreading of title 39. In fact, it does not. Witness Musto is well aware of the fact that the portion of title 39 that references a "maximum degree" of services. It states that the USPS:

“...shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. No small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities.”

It is implausible that the USPS can demonstrate that no postal facility that “serves rural areas, communities, and small towns where post offices are not self-sustaining” was included in the RAOI candidate list and may ultimately be closed at the end of the RAOI process. It has already been demonstrated that the RAOI candidate list is composed largely of rural postal facilities. In fact, the process by which the RAOI candidate list was generated – inclusion based, in part, on “low workload”, “insufficient demand”, and low revenue – all but ensured that the postal facilities on the list were those that were “not self-sustaining.” Consequently, witness Musto's concern about the USPS providing citizens with a “maximum degree” of services is well-founded and supported by title 39.