

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Robert G. Taub, Vice Chairman;  
Mark Acton;  
Tony Hammond; and  
Nanci E. Langley

Complaint of AdvoCare, Inc.

Docket No. C2013-1

ORDER DISMISSING COMPLAINT  
(Issued January 29, 2013)

I. INTRODUCTION

On October 31, 2012, AdvoCare, Inc. (AdvoCare or Complainant) filed a complaint under 39 U.S.C. § 3662 alleging, among other things, that the Postal Service's Post Office Structure Plan (POSTPlan) for reducing window service hours in smaller post offices unfairly discriminates against the customers of small, rural post offices that earn a profit.<sup>1</sup> It also alleges that in applying POSTPlan to the Great Cacapon, West Virginia post office, the Postal Service improperly led the customers of that post office to believe that they could not choose to maintain current window service hours. Finally, the Complaint alleges that the Postal Service violated procedures that the Commission approved for POSTPlan in Docket No. N2012-2. *Id.* at 4-6.

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<sup>1</sup> Complaint of AdvoCare, Inc. Regarding Post Plan Realignment of Great Cacapon Post Office, WV 25422, filed October 31, 2012, at 3-4 (Complaint).

The Postal Service filed a motion to dismiss the Complaint, asserting that the Complainant failed to allege any facts that would, if proven, support a plausible theory that POSTPlan unreasonably discriminates against small post offices, whether or not they make a profit.<sup>2</sup> It argues that under POSTPlan, it selects post offices for reduced window service hours based on objective measures of workload, not profitability. It argues that the workload measures used are rationally designed to achieve the reasonable business purpose of increasing efficiency and reducing the cost of providing retail services. Motion to Dismiss at 7-10.

For reasons discussed below, the Motion to Dismiss is granted. The Complaint is dismissed.

## II. BACKGROUND

*Postal Service initiatives.* In its FY 2011 Annual Compliance Report, the Postal Service stated that from FY 2007 through FY 2011, it lost \$25.3 billion.<sup>3</sup> The Postal Service further indicated that the continued losses have seriously eroded the retained earnings and increased the total debt of the Postal Service. *Id.* For FY 2012, it reports an annual loss of \$15.9 billion.<sup>4</sup> In September 2012, the Postal Service reached its \$15 billion borrowing limit for the first time in its history.<sup>5</sup>

The Postal Service has responded to these financial pressures by, among other things, proposing changes in the nature of postal services that will generally affect service on a nationwide or substantially nationwide basis. For example, in 2011, the Postal Service proposed the Retail Access Optimization Initiative (RAOI), a plan to consider whether the Postal Service should continue providing service at approximately

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<sup>2</sup> Motion of the United States Postal Service to Dismiss Complaint, November 20, 2012 (Motion to Dismiss).

<sup>3</sup> Docket No. ACR2011, FY 2011 Annual Compliance Determination Report at 22.

<sup>4</sup> United States Postal Service FY 2012 Annual Report to Congress at 4 (FY 2012 Annual Report).

<sup>5</sup> United States Postal Service FY 2013 Integrated Financial Plan at 6.

3,650 retail facilities.<sup>6</sup> Under the RAOI, the Postal Service intended to review these and subsequently other facilities to determine whether they should be discontinued. *Id.* at 19.

In its Advisory Opinion on the RAOI, the Commission expressed concern that the RAOI initiative, if fully implemented, could adversely impact affected customers' access to postal services. *Id.* at 110-115. It stated that closing facilities would impact service and put a strain on the Postal Service's network and customer access to the postal system. *Id.* at 111. It recommended that the Postal Service improve alternate access channels, but noted that those channels cannot, in many instances, replace actual postal facilities. *Id.* at 104. The Commission also recommended that the Postal Service make optimization of its retail network one of the primary goals of the RAOI. *Id.* at 39.

The Commission advised the Postal Service to explore options other than closing postal facilities. It stated, "optimization of the retail network should consider operational changes within a given facility as opposed to focusing exclusively on whether or not to close it. It may make sense to adjust the operating hours of a facility...to maximize net revenue or provide appropriate access to postal services." *Id.* at 74.

Under the POSStPlan,<sup>7</sup> the Postal Service is realigning the hours of operation at approximately 17,700 of the approximately 32,000 postal retail locations. *Id.* The Postal Service has reviewed the workload at all EAS Level 16 and lower post offices to determine whether: (1) the post office will be upgraded to EAS Level 18 or above; (2) window hours will be realigned to reflect actual workload; or (3) the post office will undergo a discontinuance study. *Id.* at 1-2. Hours of operation at more than 13,000 post offices nationwide are set to be reduced to 6, 4, or 2 hours per weekday.<sup>8</sup>

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<sup>6</sup> Docket No. N2011-1, Advisory Opinion on Retail Access Optimization Initiative, December 23, 2011, at 14 (RAOI Advisory Opinion).

<sup>7</sup> Docket No. N2012-2, United States Postal Service Request for an Advisory Opinion on Changes in the Nature of Postal Services, May 25, 2012, at 1 (Request).

<sup>8</sup> Docket No. N2012-2, Advisory Opinion on Post Office Structure Plan, August 23, 2012, at 1 (Advisory Op.).

In its Advisory Opinion, the Commission found POSTPlan to be a significant improvement over the RAOI, and which, if implemented properly, “should help balance service and cost savings in a manner consistent with title 39.” *Id.* at 1-2. It commended the Postal Service for maintaining its current retail presence, especially in remote areas. *Id.* It stated that the POSTPlan represents an improved effort to optimize its retail network in that the Postal Service proposes to reduce hours rather than discontinue post offices. *Id.* at 5. The Commission noted that the POSTPlan incorporates many of the recommendations the Commission made in its RAOI Advisory Opinion. *Id.* The POSTPlan addresses some of the Commission’s concerns about the RAOI by enabling post offices to continue to operate and provide the necessary services to communities.

*Great Cacapon post office.* AdvoCare is a non-profit organization devoted to reducing crime by sponsoring programs to rehabilitate ex-offenders, assisting their families, and seeking alternatives to incarceration.<sup>9</sup> It uses the post office located in Great Cacapon, an unincorporated area in West Virginia’s Eastern Panhandle.

Historically, the Great Cacapon post office provided window service from 8:00 a.m. to 12:00 p.m. and from 12:30 p.m. to 4:30 p.m. The Great Cacapon post office is included in the POSTPlan initiative. Under that plan, its weekday retail window service hours would be reduced from 8 hours to 6 hours based on its workload of 4.58 hours.

On September 19, 2012, the Postal Service mailed a letter and survey to all customers served by the Great Cacapon post office and made both available at the post office’s retail counter. The letter invited patrons to elect either window service hours reduced from 8 to 6, or a discontinuance study that would result in closing the Great Cacapon post office and receiving substitute service provided through one of three alternative means.<sup>10</sup> The letter explained that the Postal Service intended to reduce

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<sup>9</sup> See [www.smartoncrimessolutions.org](http://www.smartoncrimessolutions.org).

<sup>10</sup> The alternative forms of service offered were carrier delivery, newly established contract office, or relocating post office boxes to a nearby post office. See Complaint, Exhibit A at 2.

window service hours unless over 60 percent of the survey responses indicated a preference for a discontinuance study.<sup>11</sup>

Of the 860 surveys distributed, 376 were returned. Ninety-six percent of the respondents chose the option of reducing window service hours. These results were summarized on a fact sheet that was circulated at the community meeting held on October 24, 2012. The fact sheet included a statement that the Postal Service would reduce window service hours to 6, and its tentative conclusion as to how those 6 hours would be distributed throughout the day. At the community meeting, the fact sheet was discussed, and notice was given that reduced window service hours would begin in January 2013.

### III. THE ADVOCARE COMPLAINT

On October 31, 2012, AdvoCare filed a document that is titled a complaint.<sup>12</sup> On November 20, 2012, the Postal Service filed a motion to dismiss. On November 28, 2012, AdvoCare filed an answer to the Motion to Dismiss.<sup>13</sup> The Complaint raises substantive and procedural claims. Both are addressed below.

#### A. Substantive Allegations

The Complaint contends that POSTPlan targets profitable small, rural post offices for reductions in window service hours, but does not target profitable larger, urban post offices for any reductions. This, according to AdvoCare, constitutes unreasonable

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<sup>11</sup> See Complaint, Exhibit A at 1.

<sup>12</sup> Although titled a “complaint,” the October 31 filing characterizes itself, at times, as an appeal of the Postal Service’s decision to reduce window service hours at the Great Cacapon post office pursuant to POSTPlan. There is no statutory provision or regulation that provides for an “appeal” of a Postal Service decision to reduce a post office’s hours under POSTPlan. While the Complaint does not specifically invoke 39 U.S.C. § 3662, it does allege a violation of section 403(c). The Commission, therefore, will treat this filing as a section 3662 complaint.

<sup>13</sup> Complainant AdvoCare’s Answer in Opposition to the Motion of the United States Postal Service to Dismiss Complaint, November 28, 2012 (AdvoCare Answer). See *also* Motion for Late Filing of the Complaint AdvoCare’s Answer in Opposition to the Motion of the United States Postal Service to Dismiss Complaint, November 28, 2012 (Motion). That motion is granted.

discrimination because it uses size (or measures of workload that are proxies for size) rather than profitability to determine which post offices will have to reduce their window hours or close. See Complaint at 4 (“The United States Postal Service’s (USPS) decision to approve the [POStPlan] realignment and reduction of service hours while maintaining similar full service hours in other facilities based on location and size of the community, as opposed to the positive financial income, violates 39 U.S.C. § 403(c).”).

Complainant asserts that the Great Cacapon post office operates “in the black” and maintains a balanced budget, thus “eliminate[ing] the need to consider reductions to this facility based on any legitimate governmental objective.” *Id.* at 5. AdvoCare suggests that “based on revenue reports, it would be more efficient to consider the elimination or consolidation of other postal units with negative balance sheets.” *Id.*

Complainant argues that the Postal Service

has demonstrated a bias against a particular class of rural customers, such as AdvoCare, who are limited by geographic location, undeveloped methods of transportation, inferior maintenance of rural and mountainous roads, inadequate internet access, and reasonably affordable mailing options. In fact, the entire POStPlan seems to focus entirely on how to reduce or eliminate these smaller rural locations without looking at real business solutions such as cutting back in some of the largest urban facilities that are revenue draining or increasing contract rates with private carriers.

AdvoCare Answer at 12.

Complainant also contests that POStPlan was designed to address “real and threatening financial burdens and economic realities” faced by the Postal Service. *Id.* Instead, it contends that the Postal Service’s failure to address profitability and revenues when determining hours of operation at POStPlan offices “will create the very loss in [net] revenue that [POStPlan] purports to avoid or reduce” due to “the loss of business through reduced weekday window service hours” at POStPlan offices. *Id.*

at 13. In short, AdvoCare appears to argue that reducing window service hours will suppress revenue at the Great Cacapon post office and make it financially non-viable which, it claims, is contrary to POSTPlan's ultimate objective to increase the Postal Service's net revenue.

#### B. Procedural Allegations

Complainant's principal procedural claim is that the Postal Service misrepresented the options available to post office patrons under the POSTPlan procedures adopted in Docket No. N2012-2. As the Complaint notes, the post office represented to Great Cacapon patrons that they could choose to have weekday window service hours reduced from 8 to 6, or they could choose to have the Postal Service begin a discontinuance study. The Postal Service explained that choosing to subject the Great Cacapon post office to a discontinuance study was a choice to close it. See Complaint at 2, 4, 6.

The Complaint contends that a discontinuance study conducted under section 39 C.F.R. § 241.3 with respect to a post office designated for reduced window service hours under POSTPlan could result in a Postal Service decision to maintain the status quo.<sup>14</sup> At the least, the Complaint contends, it is for the Commission to decide if maintaining the status quo remains an option under POSTPlan. Answer at 2. The Complaint asserts that by ruling out the possibility that a discontinuance study could result in a decision to maintain the status quo, the Postal Service misrepresented the options available under the Postal Service's discontinuance regulations (39 C.F.R. § 241.3).

In a related allegation, Complainant contends that the Postal Service violated the decisional sequence that was to be followed when implementing POSTPlan by making

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<sup>14</sup> *Id.* at 2-3; AdvoCare Answer at 6-8. AdvoCare cites USPS Handbook PO-101 at 415.1 and 39 C.F.R. § 241.3(e)(2)(i) as allowing for the possibility that a discontinuance study can result in a decision to keep the studied post office open. Although it does not explicitly say so, Complainant appears to assume that a decision to keep the post office open would also constitute a decision to maintain the status quo, *i.e.*, to retain current window service hours.

the decision to reduce window service hours at Great Cacapon before it solicited and evaluated patron feedback in surveys and in the October 24, 2012 community meeting that it hosted. *Id.* at 5-6; Answer at 3, 8-9, 13-14.

### C. Relief Requested

Complainant requests that service at the Great Cacapon post office be “maintained at its status quo with full-time weekday window service hours and its full—time staff.” Complaint at 9.

## IV. THE POSTAL SERVICE’S MOTION TO DISMISS

The Postal Service moves to dismiss the Complaint on several grounds. At the outset, it notes the “fundamental flaw” in Complainant’s position is the assumption that the Great Cacapon post office has the option of retaining 8 hours of weekday retail window service. POStPlan post offices, like Great Cacapon, have only two options—realigned window service hours or a discontinuance study with replacement service. Motion to Dismiss at 2.

The Postal Service disputes Complainant’s allegation that POStPlan violates the prohibition against undue discrimination in 39 U.S.C. § 403(c). It asserts that POStPlan procedures apply objective measures of workload even-handedly when it identifies which post offices will have their window service hours reduced and how much those hours will be reduced. It argues that matching hours to workload is a reasonable way to achieve efficiencies in retail services in areas served by small post offices while maintaining local access to those services, and the Commission concluded as much in Docket No. N2012-2. *Id.* at 7-10.

Second, the Postal Service argues that patrons of the Great Cacapon post office were properly advised of their service options. *Id.* at 11-13. Further, it contends that Complainant’s position “reflect[s] unfamiliarity with the Post Office discontinuance process.” *Id.* at 13. The Postal Service asserts that it has unreviewable discretion to decide whether to keep a post office open at the conclusion of a discontinuance study.

It further contends that any appeal under 39 U.S.C. § 404(d) is “limited to ensuring that the Postal Service complied with all applicable procedures, not whether the decision to discontinue a Post Office was operationally prudent.” *Id.* at 14.

Third, the Postal Service argues that Complainant’s reliance on rules applicable to discontinuance of a post office, set forth in 39 C.F.R. § 241.3, is erroneous. It notes that the Great Cacapon post office is not being discontinued “but is instead merely changing its staffing and hours of operation.” *Id.* at 15.

The Postal Service also asserts that Complainant attempts to re-litigate issues addressed in Docket No. N2012-2. It, therefore, argues that those issues should be precluded under the legal doctrine of *res judicata* and should not be reheard in a section 3662 complaint. *Id.* at 17.

In the alternative, the Postal Service argues that if the Commission decides not to dismiss the Complaint with prejudice on substantive grounds, it should dismiss it without prejudice for failure to satisfy 39 C.F.R. § 3030.10(a)(9) which requires a complainant to certify that it contacted the Postal Service’s General Counsel in an attempt to resolve or settle the complaint. *Id.* at 18-23.

## V. COMMISSION ANALYSIS

Complainant filed its Complaint under 39 U.S.C. § 3662(a), which authorizes the filings of complaints by “any interested person.”

(a) In general.—Any interested person (including an officer of the Postal Regulatory Commission representing the interests of the general public) who believes the Postal Service is not operating in conformance with the requirements of the provisions of sections 101(d), 401(2), 403(c), 404a, or 601, or this chapter (or regulations promulgated under any of those provisions) may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.

Complainant contends that POSTPlan violates section 403(c). In addition, it raises procedural objections to the manner in which the Postal Service has implemented POSTPlan. Its claims are addressed below.

A. Substantive Claims

Complainant makes two substantive claims. First, it contends that POSTPlan is “apparently designed to eliminate the eight (8) hour work day so as to eliminate a full-time position instead of acknowledging the communities interest and needs in maintaining the weekday service hours, and thereby violates 39 U.S.C. § 403(c).” Complaint at 4 (footnote omitted). This claim is without merit. It raises no apparent issues under section 403(c). Under the Postal Accountability and Enhancement Act, the Postal Service has considerable leeway concerning its labor relations, including staffing decisions. The community’s “interest and needs in maintaining the weekday service hours” (*id.*) are concerns to the Commission as expressed in its Advisory Opinion in Docket No. N2012-2.

Under the Commission rules, a complainant must “[c]learly identify and explain how the Postal Service action or inaction violates applicable statutory standards or regulatory requirements . . .” 39 C.F.R. § 3030.10(a)(2). Other than its allegation, Complainant offers no explanation of how this claim may properly lie under section 403(c). The obligation to do so is particularly imperative here, given the Postal Service’s statutory duty “to maintain an efficient system of collection, sorting, and delivery of the mail nationwide; [and] to establish and maintain postal facilities of such character and in such locations, that postal patrons throughout the Nation will, consistent with reasonable economies of postal operations, have ready access to essential postal services.” 39 U.S.C. § 403 (b)(1) and (3).

Second, Complainant alleges that POSTPlan unfairly discriminates against small, rural post offices that earn a profit. Complaint at 4. Specifically, it contends that POSTPlan’s “realignment and reduction of service hours while maintaining similar full service hours in other facilities based on location and size of the community, as

opposed to the positive financial income, violates 39 U.S.C. § 403(c).” *Id.* (footnote omitted). Stated otherwise, Complainant appears to argue that the Postal Service’s failure to consider whether individual POStPlan offices are profitable, *i.e.*, generate net income, affects small, rural post offices disproportionately, and is therefore unduly discriminatory.

This claim is based on two misperceptions. First and foremost, section 403(c) does not prohibit all differences in service among mail users, but only those that are undue or unreasonable. To establish its claim of undue discrimination, Complainant would need to establish that POStPlan offices are similarly situated to non-POStPlan offices, and that there is no rational or legitimate basis for the Postal Service’s plan to reduce window service hours at small post offices based on actual workload. In this case, the Commission finds it unnecessary to address whether POStPlan post offices and non-POStPlan offices are similarly situated since even assuming, *arguendo*, that they are, there is a rational basis for the Postal Service’s plan to increase efficiency at small post offices based on actual work levels.

A series of court cases has found that the Postal Service’s authority to provide efficient and economic postal services permits it to differentiate among customers provided that the differences have a rational basis. *See, e.g., Egger v. US Postal Service*, 436 F. Supp. 138, 142 (W.D. Va. 1977) (*Egger*); *Currier v. Potter*, 379 F.3d 716 (9th Cir. 2004); *Parsons v. U.S. Postal Service*, 380 F.Supp. 815 (D.N.J. 1974); and *Grover City v. U.S. Postal Service*, 391 F.Supp. 982 (C.D. Cal. 1975).

*Egger* is illustrative. Regarding section 403(c), the court found, “[W]hile it is obvious that this section prohibits undue or unreasonable discrimination among users in the provision of delivery services, it is also equally obvious that the Postal Service may provide different levels of delivery service to different groups of mail users so long as the distinctions are reasonable.” *Egger* at 142. As discussed below, POStPlan’s goal is to improve efficiency and meet customers’ needs by matching post office retail hours with workload. The goal is legitimate and the different levels of retail services available at post offices are rationally related to the achievement of the goal.

In Docket No. N2012-2, the Postal Service requested an advisory opinion on POSTPlan, an initiative to systematically realign the hours of operation at approximately 17,700 postal retail locations.<sup>15</sup> POSTPlan's principal objective is "to improve efficiency and meet customer needs by matching retail hours and services to community postal needs and use patterns." *Id.* at 3. The Postal Service planned to become more efficient by realigning window service hours to reflect actual customer use and by using less costly labor. Advisory Op. at 9-14.<sup>16</sup>

To match retail service hours with workload, the Postal Service reviewed the earned workload of approximately 17,700 EAS Level 16 and below post offices.<sup>17</sup> Based on this review, the Postal Service determined that the hours of operation at more than 13,000 post offices will be reduced to 6, 4, or 2 hours per weekday. *Id.* at 1. For each of these post offices, POSTPlan could result in: (1) an upgrade to EAS Level 18 or above; (2) realigned retail window service to match actual workload hours, or (3) a discontinuance study. *Id.* at 9-10.<sup>18</sup>

To calculate estimated labor cost savings under POSTPlan, the Postal Service assumed that employees at EAS Level 2 and Level 4 post offices would be compensated based on the new hire projected salary and benefits scale. For EAS Level 6 post offices, the Postal Service used the incumbent projected salary and benefits scale. *Id.* at 15. Based on this analysis, the Postal Service estimated annual labor savings under POSTPlan would equal approximately \$516 million. The

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<sup>15</sup> See Docket No. N2012-2, Request *supra* at 1.

<sup>16</sup> The Postal Service estimated that POSTPlan would generate labor savings of approximately \$516 million annually. *Id.* at 14.

<sup>17</sup> Earned workload represents the sum total of employee hours spent performing mail distribution, post office box distribution, retail sales, and administrative functions such as personnel and time and attendance work. *Id.* at 10. Post offices are categorized by an EAS designation. The EAS designation reflects the Executive and Administrative Pay Schedule level of the postmaster assigned to the post office.

<sup>18</sup> The Commission found that in approximately 73 locations, hours of operation will increase. *Id.* at 12.

Commission estimated savings under three scenarios, resulting in estimated annual savings ranging from \$ 386 million to \$704 million. *Id.* at 17-18.

On its review of POSTPlan, the Commission found:

The POSTPlan is intended to achieve cost savings with limited reductions in access and service. The Commission finds that the objective of the POSTPlan is consistent with public policy. By matching retail hours to workload, the Postal Service expects to save several hundred million dollars each year. If implemented properly, the POSTPlan should help balance service and cost savings in a manner consistent with title 39.

*Id.* at 1-2.

In sum, the Commission found the objective of POSTPlan consistent with public policy. It improves efficiency in providing retail services at small post offices while minimizing the reduction in access to those services; and employs a reasonable strategy for accomplishing that purpose by matching window service hours with workload.<sup>19</sup> Complainant fails to demonstrate that the metric used to improve efficiency (workload) is unreasonable.

Complainant's second misperception in support of its claim that POSTPlan is unduly discriminatory is that profitability of individual post offices is a meaningful metric in this context. The notion that a retail post office is "profitable" simply because it generates revenues in excess of its labor costs (a clerk's salary) is flawed.

The Postal Service operates approximately 32,000 retail postal facilities.<sup>20</sup> In addition, the Postal Service operates hundreds of processing facilities, *e.g.*, network distribution centers, area distribution centers, and sectional center facilities. It also

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<sup>19</sup> The Commission found the Postal Service's methodology for calculating workload to be reasonable. It urged the Postal Service, when applying that methodology to realign retail hours, to be mindful that "[t]he number of retail hours should be adequate to handle customer transactions." Advisory Op. at 23.

<sup>20</sup> Post office revenues are determined by sale of stamps and services at individual offices. Permit imprints and other forms of prepaid postage are not attributed to individual post offices, but rather accrue to the system as a whole.

operates a vast transportation network to transport mail among its processing facilities and ultimately to the delivery unit, the local post office responsible for delivering mail to the addressee. To remain profitable, the Postal Service must generate sufficient revenues to sustain its network. Given that in FY 2012, the Postal Service reported a net loss of \$15.9 billion, of which \$2.4 billion represents a net operating loss, in this context, it would be imprecise to attribute profitability to any specific postal facility or operation.<sup>21</sup>

Among its duties, the Postal Service is charged with establishing and maintaining postal facilities nationwide of such character and such locations that postal patrons will, “consistent with reasonable economies of postal operations, have ready access to essential postal services.” 39 U.S.C. § 403(b)(3). POSTPlan, which did not consider profitability of a post office,<sup>22</sup> is consistent with the Postal Service’s statutory responsibilities. That profitability was not used as a metric of improved efficiency does not give rise to any undue discrimination among users of the mail. Accordingly, the Commission finds that Complainant has failed to allege facts, which, if proven, would demonstrate that POSTPlan, as implemented, is unduly discriminatory.

Tangential to the foregoing, Complainant also contests that POSTPlan was designed to address “real and threatening financial burdens and economic realities” faced by the Postal Service. Answer at 12. Instead, it contends that the Postal Service’s failure to address profitability and revenues when determining hours of operation at POSTPlan offices “will create the very loss in [net] revenue that [POSTPlan] purports to avoid or reduce” due to “the loss of business through reduced weekday window service hours” at POSTPlan post offices. *Id.* at 13.

The issue of revenue loss was a concern addressed in the Commission’s Advisory Opinion. See Advisory Op. at 18-20. The Commission recognized that

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<sup>21</sup> The difference represents the accrual for mandated retiree health benefits payments (\$11.1 billion) and expense related to the long-term portion of workers’ compensation. FY 2012 Annual Report at 4, 36.

<sup>22</sup> Advisory Op. at 13.

POStPlan's unprecedented scale would make it difficult for the Postal Service to measure its effect on revenue. The Commission concluded that "POStPlan presents an opportunity to collect data to attempt to measure the impact of reducing hours at retail facilities on revenue, and the Postal Service should track revenue when hours are reduced. If reducing retail hours significantly reduces revenues, the Postal Service should reevaluate whether to continue the POStPlan in future years." *Id.* at 20.

In sum, the Commission concludes that the POStPlan does not constitute undue discrimination against small, rural post offices in violation of 39 U.S.C. § 403(c). The differences in the availability of retail services throughout the Nation are rationally related to the Postal Service's statutory mandate to provide adequate and efficient postal services, including an efficient system of collection, processing, and delivery of mail nationwide. See 39 U.S.C. §§ 101(a), 403(a) and (b)(1) and (3); see also *Egger*, 436 F. Supp. at 143. Therefore, the Commission denies all of Complainant's substantive claims. The Postal Service Motion is granted, and Complainant's substantive claims are dismissed with prejudice.

## B. Procedural Claims

Complainant alleges that the Postal Service's implementation of POStPlan as applied to the Great Cacapon post office was procedurally defective in two respects. Neither has merit.<sup>23</sup>

Based on the Postal Service's September 19, 2012 letter and survey (September 19 Letter) to patrons of the Great Cacapon post office informing them of their POStPlan options, Complainant contends that the Postal Service was not truly soliciting input from the community, but had predetermined the issue of whether window service hours should be reduced at that post office, thus violating POStPlan implementing procedures. See Complaint at 5-6, Exhibit A.

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<sup>23</sup> Furthermore, the Complaint fails to demonstrate that these procedural claims properly lie under section 3662.

As discussed above, the Postal Service's analysis under POSTPlan began by examining the earned workload of each of the approximately 17,700 POSTPlan post offices. As a result of that analysis, the Postal Service determined that the hours of operation at more than 13,000 post offices nationwide will be reduced to 6, 4, or 2 hours per weekday. Advisory Op. at 1, 10. Thus, once it had completed its POSTPlan review, the Postal Service had "already determined how many hours of window service each of those offices will provide." *Id.* at 10. That determination, however, was the product of POSTPlan, which the Commission found to be consistent with public policy. *Id.* at 1. Thus, Complainant's characterization of the September 19 Letter is inaccurate.

That letter informs patrons of POSTPlan offices, including those served by the Great Cacapon post office, of the binary choices available to them under POSTPlan.<sup>24</sup> They could elect either the realigned retail window service hours (6, 4, or 2 hours as appropriate for that office) or a discontinuance study. Patrons of the Great Cacapon post office overwhelmingly elected the realigned retail window service hours (6 hours), in lieu of a discontinuance study. Motion to Dismiss at 4.

Second, Complainant alleges that the Postal Service misled the patrons of the Great Cacapon post office by failing to provide notice that they could have opted for a discontinuance study, apart from the choices available under POSTPlan, which "would have initiated the protections and requirements of 39 C.F.R. § 241.3. Complaint at 6; *see also id.* at 4. In other words, Complainant contends that a fourth discontinuance option should have been available to patrons of the Great Cacapon post office.<sup>25</sup>

Complainant's procedural claim is misplaced. POSTPlan represents a change in the status quo. Patrons of POSTPlan post offices have two choices: (1) reduced window service hours, or (2) a discontinuance study. Patrons electing a discontinuance study are given choices: (a) discontinue the post office and offer curbside delivery;

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<sup>24</sup> Under POSTPlan, an upgrade to EAS Level 18 or above was also possible. In total, 73 post offices were upgraded. Advisory Op. at 1.

<sup>25</sup> A possible source of confusion is that the term "discontinuance study" is applicable both in instances when the Postal Service is deciding *whether* to discontinue an office, and, as it was used here, to determine *what type of alternate service* should be provided.

(b) find a suitable alternative location operated by a contractor, usually at a local business; or (c) provide Post Office Box Service via another nearby post office and relocate post office box delivery to that post office. Advisory Op. at 39; see *a/so* Complaint, Exhibit A.

In its Advisory Opinion, the Commission found that “[t]he customer preference survey should provide customers with a clear choice between (1) keeping their post office open with reduced hours, or (2) closing their post office and providing replacement delivery service.” Advisory Op. at 2. The Postal Service’s September 19 Letter is consistent with the finding.

The possibility of retaining pre-POSTPlan retail window hours is not an option to patrons of POSTPlan offices.<sup>26</sup> Thus, even assuming the Postal Service told patrons that maintaining the pre-POSTPlan status quo was not an option would not give rise to a violation of any other statutory or regulatory provision that may be considered in a section 3662 complaint. Instead, it would merely confirm that POSTPlan’s choice is binary.

A final, somewhat related point warrants mention. While the Great Cacapon post office retail window service hours will be reduced to 6 per weekday, the possibility remains that they could be increased in the future. The Postal Service will recalculate the workload of each POSTPlan post office annually, and may, depending on the circumstances, increase or decrease window service hours to reflect changes. Advisory Op. at 11.

### C. Other Grounds for Dismissal

Given its conclusion that the Complaint raises no material issues of fact or law, the Commission finds it unnecessary to address Postal Service other arguments in

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<sup>26</sup> See Motion to Dismiss at 2 (“The fundamental flaw in AdvoCare’s position is the assumption that the Great Cacapon Post Office has the option of remaining an EAS Level 15 Post Office with eight hours of daily retail window service.”).

support of dismissing the Complaint, *e.g.*, *res judicata* and failure of Complainant to consult with the Postal Service's general counsel. See Motion to Dismiss at 17-23.

Accordingly, the Motion is granted and the Complaint is dismissed with prejudice.

*It is ordered:*

1. The Motion of the United States Postal Service to Dismiss Complaint, filed November 20, 2012, is granted.
2. The Complaint of AdvoCare, Inc., Regarding Post Plan Realignment of Great Cacapon Post Office, WV 25422, filed October 31, 2012, is dismissed with prejudice.

By the Commission.

Shoshana M. Grove  
Secretary

## CONCURRING OPINION OF CHAIRMAN GOLDWAY

Complainant raises two concerns that do not rise to the level that would support a complaint but nevertheless indicate certain problems with the POSTPlan that should be reviewed and addressed by the Postal Service in future POSTPlan implementations.

First, Complainants wonder why an active, well-attended post office with a positive cash flow would be included in the POSTPlan. This question is understandable and the Postal Service may wish to review the list of 17,000 POSTPlan offices in order to find and preserve those post offices which are thriving and for which a reduction in hours would seem more likely to hurt revenue than to save costs.

Second, the Postal Service's use of the term discontinuance study is confusing. We have heard from other communities in the context of post office closing appeals that the Service seems to have made its mind up before engaging in a discontinuance study which, in the USPS Handbook, presumes an open mind and the chance that a decision to keep a post office open is possible. In the context of POSTPlan, a decision has indeed been made in advance of any discontinuance study but the discontinuance study is used as a balance to the option of keeping the post office open – albeit at fewer operating hours.

The letters to communities and the surveys and options offered to them should clarify this distinction and inform the community that there is no option to maintain the status quo hours of operation.

The Postal Service should work diligently to maintain the goodwill and support of mail users and community leaders. It should use the concerns expressed publicly in this docket to improve relationships and build a stronger postal service for the future.