

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

Retail Access Optimization Initiative

Docket No. N2011-1

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Reply Brief of the National League of Postmasters

Respectfully submitted this 10th day of November, 2011.

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I. STATEMENT OF THE CASE

This proceeding is brought under Section 3661 of Title 39 of the U.S. Code. Under this section the Commission is to provide an advisory opinion to the Postal Service about any proposal to change the nature of service on a nationwide basis. This advisory opinion must, in essence, contain a policy determination which examines the objectives and effects of the proposal in terms of the public policies of Title 39, and determines whether the proposal conforms to those policies. See Commission Advisory Opinion on Elimination of Saturday Delivery, Docket N 2019-1 at 6 (March 24, 2011) (“opinion . . . considers whether the Postal Service’s planned changes conform, in terms of its objectives and effects, to the policies of section 3661 and the remainder of title 39.”).

Briefs in this case were filed by ten parties, the National League of Postmasters (League), the American Postal Workers Union AFL-CIO (APWU), the Public Representative (PR), the Center for the Study of Responsive Law (CSRL), the National Association of Postmasters of the United States (NAPUS), David B. Popkin (Popkin), the National Newspaper Association (NNA), the Association of United States Postal Lessors (AUSPL), Valpak Direct Marketing Systems, Inc & Valpak Dealers’ Association (Valpak), and the Postal Service. Of those parties, only the Postal Service and Valpak found that the proposal conformed to the policies of Title 39. Additionally, a number of Senators and Congressmen sent letters to the Commission. None of them were in support of the RAOI proposal.

The League has shown that neither the practical objective of this proposal, which is to close down thousands of small rural post offices, nor the effects of this proposal on

small rural communities, conform to the policies of Title 39, specifically the overriding policies of Section 101(b), as informed by Section 2401(b). Those policies indicate that the Postal Service *must provide*, on a public service basis, a *maximum* degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining, and that that is to be done on a public service basis. That is the central policy at play in this docket, and that is the policy by which the Commission must measure this proposal.

II. VALPAK, IN ESSENCE, URGES THAT SMALL POST OFFICES BE CLOSED “FOR OPERATING AT A DEFICIT.”

A. Postal Policies.

Valpak’s policy arguments, which appears in a section entitled Legal Principles, boils down an argument that the Commission should not focus too narrowly on any one provision in the statute, but rather balance the variety of policies that are in the law—including the language that the Postal Service should determine the need for postal services, and provide regular and efficient services—and arrive at a harmonious whole. In Valpak’s view, this balance can trump the maximum service language of Section 101(b).

While this point of view surely has a certain superficial appeal, basic legislative construction mandates that the specific trump the general. See, Sutherland Statutory Construction at § 46.5 (conflict between general and specific terms or provisions of a statute, the specific will prevail.) 2007 New Edition; see also In Re Brown, 329 F. Supp. 422 (S.D. Iowa), cited in Sutherland in 2011 Supplement at § 46.5 note 23 (“However

inclusive the general language of the statute, it will not be held to apply or prevail over matters specifically dealt with in another part of the same enactment.”).

Section 101(b) contains a specific, clear, and unambiguous policy that directs how the Postal Service is to handle the provision of postal services and post office services to rural America:

“The Postal Service 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 for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to resident of both urban and rural communities.”

39 U.S.C. § 101(b). This policy is informed both by § 2401(b) (to be done on a public policy basis) and in § 404(d) (applies to rural post offices).

This RAOI proposal targets, whether by intent or by result, rural post offices, and service to rural America. The League has shown that in its brief, as has the NALC, the NNA, the CSRL, the AUSPL, NAPUS, and APWU. Consequently, the policy in the Act that must be at the center of the Commission’s analysis in this docket is the Act’s postal policy concerning service to rural America and the policy concerning rural post offices, which is contained in Sections 101(b), 2401(b), and 404(d).

The policy is unambiguous, and specific. No other general policy can trump it, under proper statutory construction. Were there to be a major conflict between this policy and some other specific policy concerning the financial health of the Postal Service, then the Commission would be in a difficult position. However, since the financial effects of this proposal on the Postal Service is insignificant, see League brief at 29-31,¹ that is not a concern in this case.

¹ See also briefs of CSRL at 5-6, AUSPL at 10-12, PR at 21-23, APWU at 27-28, Popkin at 13-14.

Valpak makes much of the need for “efficiency” in operating the Postal Service. This is a principle that postmasters share with Valpak.

Indeed, not only do postmasters share that principle, but postmasters, as the managers of the local delivery function, have actually lived that principle for a number of years and *driven billions of dollars of costs* out of the postal system. This is a fact that Postmasters General, Senior Vice Presidents, and Vice Presidents of the Postal Service routinely acknowledge at postmaster conventions, where they appear to thank postmasters for their efforts. But for postmasters’ actions, Valpak’s postal cost and perhaps its rates would be much higher today than they actually are.

Efficiency—the extent to which time or effort is comparatively well used for the intended task or purpose—is often measured in different industries in dollars per unit. In the postal context, the metrics can be in cost dollars per piece, cost dollars per minute, or cost dollars per mile. Since wealth, and citizen and business density—hence pieces—in rural America are inherently lower than in urban America, and since distances in rural America are inherently greater than in urban America, the provision of rural postal services is inherently less “efficient” than the provision of urban postal services.

Were this dichotomy to be examined simply on a business basis, and not on a public service basis, then the lower wealth and density numbers and the greater distance numbers would suggest that urban America should receive a higher degree of services than rural America. For example, given the number of pieces, people, and dollars, it clearly would be more efficient to regularly pickup and deliver only once or

twice a week from rural America and provide retail postal services on a minimum basis. That would, arguably comply with the notion of regular, effective, and efficient service.

However, that is not what the law provides. Congress obviously thought through the notion of efficiency applied to rural and urban America when it created Section 101(b), and specifically called for the *maximum degree of effective and regular postal services* to rural America, and made it perfectly clear, by placing Section 2401 in the law, that this was to be done on a public service basis. This renders much of Valpak's argument moot. Congress also made it clear, by creating the authorization in Section 2401, that it was willing to pay up to \$460 million annually to the Postal Service to help it in this task. The fact that the Postal Service, on its own volition, made a conscious choice to stop asking for the public service appropriation and to assume the responsibility of providing the public service on its own, add even more strength to an already very strong argument.

B. The Maximum Degree of Service.

Both the Postal Service and Valpak try to make a distinction between the maximum degree of service, and the maximum degree of service possible. Valpak Brief at 7, 10-13 and USPS Brief at 7, 18-19. That is a distinction without meaning. The law states that rural America is to enjoy the maximum degree of regular and efficient service. It does not require the maximum degree of regular and efficient service that can possibly, conceivably, imaginably be done. There has to be some context, and there has to be some comparison.

The word “maximum” is used here as a superlative adjective. In grammar, the superlative is the form of an adjective (or adverb) that indicates that the person, thing or action modified has the quality of the adjective (or adverb) to a degree greater than that of anything it is being compared to in a given context. Since the context and comparison that is relevant to 39 U.S.C. §101(b) is that of rural postal services to postal services (see the last line in the section), a reasonable interpretation of the provision of the maximum degree of effective and rural postal services would be that rural America is to get as good as service and a tad better than urban America, in the context of what is effective service for that specific community.

That is the way it has effectively been viewed for years. The provision does not mean that the Postal Service must give rural America the “best” service that is conceivably possible—e.g., five times a day door-to-door delivery, seven days a week, with 24 hour manned retail services for every conceivable product or service. Such an interpretation would not be reasonable, and neither the League nor any other party in this docket is making such claim. The Postal Service does generally have to make any relevant product available to all citizens, and in rural America to a maximum degree of effective and regular service.

Finally, the League must point out the absurdity of statements that suggest that under this standard 1) the League would oppose any closing of any rural post office, 2) the League would suggest that Section 101(b) requires significant increased service to rural America, or 3) that the Postal Service has an affirmative obligation to *open* new post offices just to increase community identity and cohesion. See USPS Brief at 30. The League never suggested anything of the sort.

C. Rural Post Offices and the Non-Postal Services Provided by Rural Post Offices.

To Valpak, rural post offices are a “luxury” that the Postal Service could once arguably afford, but today cannot. Valpak brief at 6, 7. While Valpak is certainly entitled to its view, it gives no examples of statutory provisions that support its view, nor any suggestion from legislative history that Congress shared or shares its view.

That would be difficult to do, since as the League and others have shown, the evidence in this case shows that rural post offices traditionally have been and still are critically important to rural America, and were foremost in Congress’ mind when it passed the maximum standard and small post office language in 1976. The legislative history of that Act specifically shows that Congress intended to maintain and preserve the community function that post offices play and the non-postal services that they offer. See Briefs of NNA at 3 and 6-7, CSRL at 5 and 8, AUSPL at 7-9 and 11, NAPUS at 6-8, and APWU at 17-26.

Valpak’s flippant dismissal of rural post offices and its inability (or stubborn refusal) to understand how such a small community institution can be so important to a rural community of several thousand people in isolated circumstances, is a very good example of the type of urban bias that the League suggests permeates top postal management. We assume that this casual dismissal is not due to ignorance, nor to malice. It is simply due to a lack of understanding that is common in much of the urban community. The League tried to cure some of that in providing the testimony of Mayor

Hobbs. Valpak clearly either didn't read it, or refused to accept the truth of the matters expressed within it.

In much the same way, Valpak dismisses the whole notion of the non-postal role small rural post offices play in their community with the unsupported and dismissive statement that "Small Retail Facilities Confer Few Non-postal-related Benefits which Are Irrelevant to the Commission's Inquiry." That statement is refuted by the testimony of Mayor Hobbs, which Valpak neither contested nor rebutted, the floor statements of the Senators that are cited in both the League's and NAPUS' briefs,² and the thousands of newspaper articles that have been flooding the internet in recent months and of which the Commission can take official notice. See generally Pierce, *Administrative Law Treatise* at § 10.6; *cf.*, 5 *U.S.C.* § 556(e).

D. Valpak's Numbers about Postmasters Are Mismatched.

At page 19 of its brief, Valpak argues that the number of postmaster positions has increased between 2009 and 2011. That is ridiculous. Postmasters positions have decreased, not increased. While we believe Valpak is mixing postmaster positions with actual numbers of postmasters, there appears to be a conflict between the numbers in the interrogatories and the data in the Postal Service's annual report, which we believe to be accurate. This factual inconsistency should have been explored during the hearing, and it is too late to do it now.

The 2010 annual report indicates that—in terms of headcounts—there were 23,111 postmasters in 2010; 23,672 postmasters in 2009; 25,250 in 2008; 25,285 in

² See also See Briefs of NNA at 3 and 6-7, CSRL at 5 and 8, AUSPL at 7-9 and 11, NAPUS at 6-8, and APWU at 17-26.

2007; and 25,429 in 2006. 2010 Annual Report of the Postal Service at 83. The line item is entitled postmasters/installation heads, and our understanding is that these numbers are postmasters only.

While there should be one postmaster position for each post office in the country, the number of postmaster positions always differs from the actual postmaster head count. Moreover, the head count is always lower than the position count because of postmaster vacancies, retirements, deaths, promotions, etc. According to the 2010 Postal Service Annual Report—in terms of numbers of post offices— there were 27,077 Post Offices in 2010; 27,161 Post Offices in 2009; 27,232 Post Offices in 2008; 27,276 in 2007; and 27,318 in 2006. Most of the differences between the postmaster numbers and post office numbers has to do with the large numbers of postmaster vacancies. *Id.* at 84.

Finally, Valpak seems to equate post offices with retail offices on a national scale. That is fundamentally misguided.

Postmasters of most post offices, particularly the ones larger than those in the RAOI, are the managers of the local delivery function and the retail function, *but the delivery function is the dominant function, and takes most of their time.* Thus, to the degree that Valpak drops ships into SCFs, and then relies on postal delivery to DDUs and then to the consumer, postmasters supervise half of that process (DDU to consumer). To the degree that Valpak drops directly into DDUs, postmasters supervise all of that delivery. Is Valpak suggesting that the postal executives who manage more than half of its delivery are or should be classified as retail employees?

The whole notion of a post office as solely a retail unit, and the postmaster as one who only manages retail units is incorrect, and any analysis based on that paradigm is not going to be accurate. While most of the post offices at issue in the RAOI do not have carriers assigned to them, most do have post offices boxes, and are the primary delivery unit.

III. THE POSTAL SERVICE EVINCES ITS CONVICTION THAT THEORY, NOT REALITY, SHOULD GUIDE THE COMMISSION, THAT ONLY IT CORRECTLY UNDERSTANDS THE MEANING OF THE APPLICABLE LAW, AND THAT ONLY ITS WITNESSES OFFERED USEFUL TESTIMONY IN THIS DOCKET.

A. The Postal Service Claims Primacy In Defining What "A Maximum Degree of ... Service" Means, Then Gives That Phrase an Unlikely Lack of Meaning.

The Postal Service acknowledges that Congress has directed it to "provide a maximum degree of effective and regular postal services to rural areas, communities and small towns where post offices are not self-sustaining." 39 U.S.C. § 101(b). However, the Postal Service asserts that "[n]either the statute nor its legislative history offers any specific interpretive guidance, leaving it to the Postal Service as the agency charged with administering and implementing the section to take the lead in interpreting its meaning." USPS Initial Brief at 18.

As part of its "interpretation," the Postal Service believes that this section only guarantees "effective access to essential products," and that, for example, "overnight Express Mail and other postal products and services" only need to be "broadly, but not universally available." USPS Brief at 18 (emphasis added), and at 20, Footnote 16

(emphasis original). The Postal Service further claims that the statute "does not -- as some argue in this docket -- call for the maximum level of service possible. The mandate also should not be interpreted as requiring that every rural or small town Post Office provide every postal service." USPS Initial Brief at 19. "Consistent with that view, the Postal Service has made clear that it considers its universal service obligation to be met when it provides the full range of retail services among [but not necessarily to] its rural and small town facilities, but: subject to more variation in access and less proximity than would be experienced in urban and suburban areas..." USPS Initial Brief at 19. That just does not sound very "maximum."

Despite the clearest possible statutory mandate, the Postal Service claims the authority to determine that not "every rural or small town Post Office" needs to provide "every postal service," and should be satisfied with less access and proximity. Congress, in Section 101(b), seemed to have a very different vision, and mandate, for the service that should be required to be made available to rural and small town America.

B. The Postal Service Is Very Unhappy About The Commission's Conduct Of These Proceedings, And About the Quality, Tone, And Credibility Of Every Witness (Except Its Own).

The Postal Service invests seven pages of its Initial Brief in complaining about the Commission's conduct of the hearings in this docket, and the overwhelming bulk (61 pages, or 70 percent) of its Brief in ad hominem attacks on all witnesses other than its own.

The Postal Service first declares that it "is troubled" that it could not conduct cross examination against witness Mark Strong concerning an interrogatory which had been objected to, and for which the Postal Service had made no motion to compel. The Postal Service strongly believes that it should nonetheless have been allowed to proceed to cross-examine on that interrogatory, despite the absence of any motion to compel or other response to the objection. USPS Initial Brief at 31.

Next, the Postal Service believes "that the hearing took an unfortunate procedural turn" when it "was not allowed" to pursue extended cross-examination against witness Anita Morrison regarding alternative research design options. The Postal Service complains bitterly that the Commission "unfortunately misapplied the rules of both evidence and procedure, and appears to have ... based [its ruling] on an apparent misunderstanding of the testimony already provided." USPS Initial Brief at 71-73.

Fortunately, in the Postal Service's view, these proceedings were saved from error and irrelevance by testimony from James Boldt. Even though Mr. Boldt has been in his present job, and responsible for the Retail Access Optimization Initiative ("RAOI"), for only three months before his direct testimony was filed: "His experience in postal mail processing, combined with his management of local Post Office retail and delivery operations, provide a firm foundation for his ability to manage the Retail Access Optimization Initiative." USPS Initial Brief at 7-8.

In sharp contrast, and despite their greater years and range of postal experience, their more significant academic accomplishments, or their civic responsibilities, the Postal Service opines that all of "The Intervenor Testimony In This Docket Deserves

Little Or No Weight." USPS Initial Brief at 27. Indeed, according to the Postal Service, "none of it presents record evidence sufficient to justify an advisory opinion that the Postal Service should not proceed with service changes under review in this docket." Id.

The litany of character flaws, faults or fatally flawed testimony, and irrelevant and unreliable data or observations attributed to all other witnesses (by the Postal Service) shows a vehemence which suggests that the Postal Services wishes to avoid some very uncomfortable truths about its RAOI.

Of Mark Strong, the national President of the National League of Postmasters, the Postal Service states:

- * His "Shrill Testimony Lacks Substance and Credibility;" USPS Initial Brief at 29;
- * He has a "penchant for hyperbole;" Id;
- * He has a "misunderstanding of postal policy;" Id;
- * He makes "baseless allegations;" Id;
- * He provides "a general lack of factual support;" Id;
- * His testimony is "empty rhetoric;" USPS Initial Brief at 33;
- * His "pronouncements ... lack foundation," and he "fantasized" concerning the Postal Services' statutory obligations; USPS Initial Brief at 35;
- * He has "myopic focus;" USPS Initial Brief at 37;
- * His data "are severely flawed and unreliable;" USPS Initial Brief at 39; and
- * He presents "an incredible (and non-credible) story." USPS Initial Brief at 42.

These personal attacks hardly seem merited or appropriate for a manager with many more years of postal and leadership experience than Mr. Boldt, and for a postmaster who has been selected for national leadership by his fellow postmasters.

Of Donald Hobbs, the Mayor of Lohrville, Iowa, the Postal Service states:

* His testimony is based "on misperceptions and reliant upon misinformation;"

USPS Initial Brief at 43;

* His testimony suffers from "misunderstanding;" USPS Initial Brief at 44;

* He has a "penchant for overstatement;" USPS Initial Brief at 43; and

* As a consequence, Mayor Hobbs' testimony "Merits Little Consideration."

USPS Initial Brief at 43.

Somewhat ironically, the Postal Service faults Mayor Hobbs for failing to expend municipal funds to conduct an empirical analysis to substantiate the fact that closing post offices imperils community economic development. USPS Initial Brief at 47. This, despite the fact that the Postal Service chose to conduct no empirical studies to support its conclusion that small-town customers might go to other towns to conduct business. Witness Boldt Tr. 380-381. Nor did the Postal Service feel any business need to find out the percentage of its customers who would be using alternative venues. Witness Boldt Tr. 393-384. Nor did the Postal Service make any effort to determine where customers would go after their post offices were closed. Witness Boldt Tr. 415. Nor has the Postal Service conducted, or planned to conduct any follow-up tracking process to find out what actually happened to its customers at closed post offices. Witness Boldt Tr. 418. Nor did the Postal Service look for any way to measure the inconvenience to its customers from post office closings, nor take into account any

census or demographic data as part of its RAOI. Witness Boldt Tr. 444; Witness Morrison Tr. 996.

The Postal Service asserts that National Newspaper Association witness Max Heath's criticism of its discontinuance process was "overstated," even though the Postal Service admits, in the same paragraph, that "[c]riticism of particular community meetings ... is quite common." USPS Initial Brief at 50-51. Similarly, the Postal Service claims that witness Heath's concern about the Postal Service's failure to consider many revenue sources when evaluating post offices under the RAOI was "largely theoretical," even though the Postal Service "is unable to make any blanket assertion of how such commercial revenues would be evaluated during discontinuance proceedings." USPS Initial Brief at 50. And, in the face of the Postal Service's failure to consider or collect important data, as identified in the League's Initial Brief at 34-37, the Postal Service criticizes Witness Heath for an alleged "absence of a commitment to collect reliable information." USPS Initial Brief at 52.

The Postal Service expresses scathing contempt for NAPUS witness Curt Artery. It asserts that witness Artery:

- * "Has limited or outdated knowledge;" USPS Initial Brief at 53;
- * That he "misrepresents even the most fundamental elements of SOV;" Id;
- * That he has a "lack of fundamental knowledge;" USPS Initial Brief at 54; and,

most insultingly,

- * That Mr. Artery needs "remedial training." Id.

For NAPUS witness Rita Zilinski, the Postal Service observes:

- * Her "Limited Experience;" USPS Initial Brief at 54;

* That her concerns "are unsupported, [and] anecdotal, and unfortunately not projectable;" USPS Initial Brief at 55;

* That her "testimony amounts to speculation;" USPS Initial Brief at 55;

* That she has a "lack of understanding" and is "uninformed;" USPS Initial Brief at 57; and

* In summary, "her criticism is not relevant to the RAOI Initiative, and the Commission need not consider her outdated testimony," that she "deserves no credence," and that "the Commission should not accord her testimony any material weight." USPS Initial Brief at 58, 59, and 60.

The Postal Service similarly dismisses witness Jeffrey Musto, on behalf of the Center for the Study of Responsive Law, with the claim that he "Misreads" and "Misunderstands" the RAOI. USPS Initial Brief at 60. The Service also criticizes his claimed "idealized misreading of Section 101(b)," and they entirely dismiss his concerns about the essential nature of local post offices as indulging in "improbable tragedy" and "apocalyptic nightmare scenarios." USPS Initial Brief at 63-64.

The Service states that APWU witness Anita Morrison "has little real understanding" of the distinction between the RAOI process and discontinuance studies, and that "she conducted an apples to oranges comparison," causing her results to "lack real significance;" indeed, the Service dismisses her entirely with the observation that "none of her results are statistically significant." USPS Initial Brief at 76, 69, and 74.

The Postal Service is no more approving of the testimony of Public Representative witness John Klingenberg. Despite his expertise, the Service cites "his

misbegotten understanding of RAOI." USPS Initial Brief at 80. They state that he "allowed his preferences for data-driven decision-making processes ... to corrupt his fundamental understanding of what the Postal Service requests in this docket," and that, therefore, it "is no surprise that his analysis bears little upon the actual RAOI proposal." USPS Initial Brief at 81. The Postal Service also claims that witness Klingenberg, despite his training and experience, "has relatively little professional experience with postal data systems and traditional data sources," and that his "views ensured that his testimony would be less than helpful in evaluating RAOI." USPS Initial Brief at 81, Footnote 53, and at 82.

The Postal Service is entirely dismissive of the direct testimony and location allocation analysis performed by Public Representative witness Professor Nigel Waters, characterizing them as "an interesting intellectual side trip." USPS Initial Brief at 84. The Service claims that Dr. Waters "approaches the optimization are unrelated to what the Postal Service actually attempts via RAOI." USPS Initial Brief at 85. They also assert that Dr. Waters "totally ignores the economic context," and states that however "useful location allocation analysis may be in academia, when applied to the real world it can lead to absurd results." USPS Initial Brief at 86. The Service's concluding observation concerning Dr. Waters' testimony is that "while perhaps interesting, it is not especially useful or informative ..." USPS Initial Brief at 88. We suggest that this concluding observation reveals more about the student than it does about the professor.

C. Despite Compelling And Voluminous Evidence To The Contrary, The Postal Service Believes That Its Handbooks Have The Magical Power To Alter Realty.

Astonishingly, after the extensive testimony of witnesses Max Heath and Mark Strong, based on their personal observation and nationwide reports from their respective organizations, the Postal Service states that "as demonstrated by the testimony of Witness Boldt, the RAOI Initiative discontinuance review process reflects necessary sensitivity to the needs of customers and provides a mechanism for the careful consideration and balancing by postal management of the policy objectives in Title 39." USPS Initial Brief at 27.

Even though witness Max Heath, on behalf of the National Newspaper Association, testified about the poor publicity, inevitable result, unwillingness to allow recording, and lack of information at community meetings, the Postal Service simply observed that his testimony, and the survey he conducted, only "illustrates the absence of commitment to collect reliable information." USPS Initial Brief at 52.

When witness Mark Strong testified concerning all the information the League had received concerning the poor scheduling, inconvenient locations, preordained results, and nonresponsive management at community meetings, the Postal Service complains of his "myopic focus" and their doubts as to his familiarity with USPS Handbook PO-101. USPS Initial Brief at 37.

Yet Mark Strong testified compellingly concerning:

"The gap that exists between theory (the manual) and reality (what is happening in the field) is very large in this particular situation. Moreover, sometimes the gap between what the Postal Regulatory Commission is told is supposed to happen in the field, and what really happens in the field is quite large. This is one of those cases."

Witness Mark Strong Tr. 1462.

While the Postal Service dismisses this as an embellishment, USPS Initial Brief at 34, this poor performance in the field has not gone unnoticed. As Senator Moran (R-KS) said just earlier this week:

We have attended, staff of mine have attended, 90 of those closing meetings. I can't think of an instance in which any member of the community goes to the community meeting and comes away believing that the Postal Service has a plan in place for why their post office was chosen or that there is anything that a member of the community can do about it. And so it seems to me we have the Postal Service going through the motions of conducting these community meetings, explaining that their post office is on the list for whatever reasons that the person representing the Postal Service explains, and when folks suggest what do we do to see that our post office isn't closed, almost without exception there is no answer except to call your Congressman and your Senator.

<http://www.senate.gov/fplayers/jw57/urlMP4Player.cfm?fn=govtaff110911&st=1200&dur=19800>. At 147:55.

Despite the evidence of Strong, and the views of Senator Moran, the Service self-servingly and sycophantically asserts that the "direct testimony of witness Boldt ... demonstrates that, at the direction of Vice President Granholm, the Postal Service has improved the multi-tiered review process through which specially-trained teams of field managers and discontinuance coordinators at the district and area offices are to apply uniform criteria to screen the 3650 RAOI Initiative candidate Post Offices ... to identify candidates for further discontinuance analysis. Under Mr. Granholm's direction, and with guidance from witness Boldt, district and area offices have since been applying those uniform criteria to identify which of those facilities should move forward as

candidates for further consideration and be subjected to a full discontinuance study ..."

USPS Initial Brief at 24.

Even though witness Strong provided compelling testimony concerning the criticism local postal management and the public have had about the way discontinuance processes and community meetings are going, the Postal Service, ignoring this reported and well-documented evidence, claims that in reviewing Handbook PO-101, "one sees the critical, central role played by local postal management in gathering and analyzing data, and soliciting and reviewing public input before any possible discontinuance is forwarded to Headquarters ..." USPS Initial Brief at 25 26. In short, the Postal Service prefers, and hopes the Commission will prefer, the due process fictions of Handbook PO-101 to the documented reality of what is occurring in the field.

IV. ALL INTERVENORS EXCEPT VALPAK READILY RECOGNIZE THAT THE RAOI CONTAINS FATAL DEFICIENCIES IN ITS CONCEPTION AND IMPLEMENTATION

A. The RAOI Criteria Used To Identify Candidate Post Offices Discriminates Against Rural Communities

The Postal Service used inadequate criteria to identify candidate post offices, 75%³ to 99%⁴ of which are serving vulnerable rural populations, populations which are subject to special statutory protections.

³ AUSPL Brief at 5, referring to 2,800 of the 3,650 candidate offices identified using earned workload data.

⁴ PR Brief at 9.

As several Intervenors have pointed out, the low workload criteria used to select candidate post offices—“\$27,500 in gross revenue and 2 or less hours of daily workload”⁵—are “nothing more than a proxy for selecting post offices that are operating at a deficit.”⁶ “[S]imple math shows that application of these criteria results in the selection of post offices that are losing money....”⁷ “Given that this revenue would not fund a self-sustaining office with one employee means that these postal facilities will, by definition, run at a deficit.”⁸

As the other parties have shown, the two factors—gross revenue and daily workload—are inadequate because they are “intrinsically linked,” since workload is largely a byproduct of revenue,⁹ and they fail to account for actual use of a postal facility, ignoring such things as “customer inquiries (both in-person and telephone), mail and parcel retrieval, and mail cancellation....”¹⁰ “Other examples of non-financial activities not accurately recorded within the SOV include building maintenance, street delivery, parcel returns, and premium forwarding.”¹¹

Although the RAOI is ostensibly only used “to identify facilities for discontinuance studies,”¹² as the Public Representative noted: “[r]emoval from the RAOI candidate list is extremely difficult,”¹³ and there is no mechanism in the Handbook PO-101 for

⁵ PR Brief at 1.

⁶ APWU Brief at 9, PR Brief at 1.

⁷ APWU Brief at 9.

⁸ PR Brief at 3.

⁹ NAPUS Brief at 13.

¹⁰ NAPUS Brief at 11 and 13.

¹¹ NAPUS Brief at 14.

¹² PR Brief at 6.

¹³ PR Brief at 11.

information gathered through community meetings to prevent a candidate post office from closing.¹⁴

As the RAOI selection criteria target rural post offices operating at a deficit, and since there is nothing the Postal Service has in place to prevent closings once the selection has been made, NAPUS agrees with the League that the RAOI “has a significant adverse effect on rural post offices”¹⁵ “that provide essential mail services to the nation’s rural areas.”¹⁶

B. The Postal Service Failed To Consider Available Financial, Alternative Access, Demographic And Other Useful Information In Developing Its RAOI.

The Postal Service, in its very own testimony, admitted that it did not review costs, demographic or operational information before bringing the RAO Initiative to the Commission.¹⁷ Moreover, the Postal Service failed to conduct any studies to collect additional information pertinent to the development of its RAOI. Some information was readily available and could have been used, prior to announcing the RAOI discontinuance process to local communities, to: 1) decide whether the minimal cost savings from these post offices was worth the time and effort to proceed with the discontinuance process; 2) whether the alternative access points assumed to exist not only actually existed in the communities to be affected, but also would provide even a similar level of services to the community if the post offices closed. Additional information about whether the facilities identified were located in rural areas could have

¹⁴ PR Brief at 17.

¹⁵ AUSPL Brief at 4.

¹⁶ NAPUS Brief at 4.

¹⁷ AUSPL Brief at 10.

been used to determine whether a closure would reduce service levels below that maximum degree required for rural communities.

1. Minimal cost savings

The RAOI's principle objective¹⁸ "is to evaluate certain categories of facilities...to determine whether their numbers can be reduced while the Postal Service still maintains 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."¹⁹ Note that nothing is said of maintaining the maximum degree of service for rural America, despite the fact that most of these post offices are located in rural areas.

In considering cost savings, the APWU highlights that the Postal Service has failed to account for several costs that would likely remain or have to be created even if the facility closes. These include rent under continuing leases and "the cost of the increase in rural or HCR delivery, the cost of appeals and the cost of reestablishing service after an appeal."²⁰

Without considering these sorts of costs, as the APWU has identified, the Postal Service has not determined "what the legitimate savings are from taking the drastic step of removing a valuable post office from a community."²¹ As the Public Representative points out, while the Postal Service has made "the general statement that the discontinuances will result in a net savings...the Postal Service cannot say what those

¹⁸ See APWU Brief at 4 and 28: "While the Postal Service denies that the sole reason for conducting the RAO Initiative is to save costs, the current financial state of the Postal Service cannot be ignored."

¹⁹ APWU Brief at 4, internal quotation marks citing the USPS request for an Advisory Opinion omitted here.

²⁰ APWU Brief at 27.

²¹ APWU Brief at 27.

savings will be or, state with confidence, if they will be significant.”²² Indeed, if all the facilities were closed, then the maximum savings would be \$200 million. That is a miniscule saving relative to the Postal Service’s net deficit, as the CSRL points out.²³ This is one of the key aspects of this docket.

The Postal Service has “not even determined whether such post office closures will, in fact, result in greater efficiency or cost savings. “It would seem that... the most important factors you would examine” to meet the objective of saving costs is to identify the target amount to be saved and “examine what amount of savings can be realized, if any, before proposing to close up to 3,650 post offices.”

Additionally, the RAOI imposes the Postal Service’s cost savings onto “hundreds or even thousands of customers” who will be “inconvenienced and incur potential additional cost just so the Postal Service can potentially save a small amount of money.”²⁴ The APWU adds that the Postal Service has “provided no evidence of how it intends to mitigate this hardship for many rural residents who simply cannot afford, in terms of time and money spent on gas, to go to a distant post office, or who are physically unable to go great distances, as is the case with many elderly members of rural communities.”²⁵

2. Alternative Access Points

The Postal Service acknowledges, as the APWU points out, that a “maximum degree of effective and regular postal services’ would include all of the retail services

²² PR Brief at 2.

²³ CSRL Brief at 5.

²⁴ Popkin Brief at 13.

²⁵ APWU Brief at 10.

currently available at a Post Office....”²⁶ While the Postal Service has suggested that alternative access sites will provide access to postal retail services, the Public Representatives calls attention to the fact that the “Postal Service has made no effort to define customer access and show that the initiative improves the accessibility of postal services.”²⁷

Providing alternate access sites that only sell postage for a couple of items “would represent a diminution of services to USPS patrons.”²⁸ As the Center for the Study of Responsive Law indicates, “[s]ervices that were once available to them at another postal facility would no longer be readily available to them at these ‘alternate access facilities.’”²⁹ Without access to a local pharmacy or drug store, “Rural America receives many of its medications through the mail.... The ability to store these medicines in a safe, secure and enclosed environment is essential for the safe delivery of these medicines,”³⁰ says the AUSPL. And as the Center points out, the proximity of the nearest Post Office is not nearly as close in many cases as the Postal Service would like the Commission to believe.³¹

The Intervenors point out that rural carriers can provide some delivery services, but are highly impractical as a substitute for most retail and pick-up services provided by a brick-and-mortar post office.³² Village Post Offices, which even the Postal Service appears to be reconsidering as a substitute,³³ are also an inadequate facility for retail

²⁶ APWU Brief at 10.

²⁷ PR Brief at 2.

²⁸ CSRL Brief at 6.

²⁹ CSRL Brief at 6.

³⁰ AUSPL Brief at 7.

³¹ CSRL Brief at 4.

³² See, e.g., AUSPL Brief at 7, APWU Brief at 10-11, 14.

³³ See, e.g., NNA Brief at 2, PR Brief at 19.

and pick-up services,³⁴ especially where a small town does not boast another local business able to house a VPO.³⁵ Moreover, “relocating interior secure post office box[es]” to outdoor cluster boxes reduces the quality of delivery services, since outdoor cluster boxes subject customers’ mail (including such sensitive items as medication or social security checks) to such perils as inclement weather and security breaches.

3. Demographic Data

The Postal Service did not inquire or evaluate whether any of the 3,650 candidate offices were located in rural communities, or would disproportionately impact vulnerable or protected groups of people.³⁶ The Commission should find this not acceptable.

Witness Boldt’s testimony indicated that the Postal Service does not have a definition for “rural,” and the Postal Service does not believe it is either important or legally required to identify whether an office on the RAOI list is in a “rural” area.³⁷ Without such a determination, the Postal Service cannot know whether its RAOI complies with the provisions of Title 39.³⁸

The AUSPL points out that, of the 2,800 RAOI offices identified through the use of earned workload data, “2,059 of these offices can be identified and linked to census blocks to determine whether they are located in rural areas. Of these 2,059 offices, 99.6% serve at least one rural census block.”³⁹ The Postal Service has access to tools

³⁴ See, e.g., Popkin Brief at 8, CSRL Brief at 6-7, AUSPL Brief at 7, APWU Brief at 10, PR Brief at 19.

³⁵ PR Brief at 19.

³⁶ See PR Brief at 5.

³⁷ See NAPUS Brief at 5; PR Brief at 3, 11, 14; APWU Brief at 11; AUSPL Brief at 8.

³⁸ See APWU Brief at 11; PR Brief at 3, 11.

³⁹ AUSPL Brief at 5.

that can readily evaluate demographic information in order to identify rural areas and vulnerable populations, but apparently chose not to do so.⁴⁰

“[T]his oversight” of not considering demographic data to identify and recognize rural communities among the candidate facilities “underscores the lack of consideration given to the RAOI’s effect on residential and business customers in rural, remote, and non-contiguous populations,”⁴¹ says NAPUS. “Before even proposing to close these post offices, the Postal Service should define what is categorized as a rural post office and then determine whether the closure of such rural post offices violates its obligations to provide universal mail coverage.”⁴² “The Postal Service should [then] be required to undertake demographic and economic development analysis to confirm that the closing of a post office will not adversely impact the community and its residents.”⁴³

C. The Postal Service has Ignored Community Input and has Failed to Provide a Meaningful, Non-transparent Process for Discontinuance Reviews.

Without conducting any studies of its own, the Postal Service appears to rely on the input of local communities to provide the sole source of information to evaluate whether particular post offices should close or remain open.

As Intervenors have shown, the community meetings and input process should allow the Postal Service to obtain “information from the community about their needs and the impact of closing a local post office,”⁴⁴ and “is an especially important part of the

⁴⁰ PR Brief at 12-13.

⁴¹ NAPUS Brief at 5-6.

⁴² AUSPL Brief at 8.

⁴³ APWU Brief at 26-27.

⁴⁴ APWU at 15.

[discontinuance] process, since it is the citizens and consumers in the communities surrounding a postal facility that can best express the benefits that a postal facility provides them and the potential harm that removing it could do to the local community.⁴⁵ Therefore, the Postal Service should ensure that the public is “given ample opportunity to voice its opinions and to ensure that the public interest is represented.”⁴⁶

Ideally, the Postal Service would provide a community with information about the proposed discontinuance, the community would have an opportunity to respond to that information using the questionnaires, and then the Postal Service would address the community’s questions and concerns at the community meeting.

However, as the APWU correctly notes, the process of obtaining meaningful community input to inform the discontinuance review has become “woeful[ly] inadequate as a means to discovery and protect the interests of these communities.”⁴⁷

Evidence of what is happening in the community meetings “reveals some troubling examples of situations in which the public interest was not protected and the public interest may have been ignored. There are disturbing examples provided of public meetings being scheduled during weekdays...being held outside of the local communities...misrepresentations made by postal management and staff, accounts of restricting audio or visual recordings of the public meetings, and accounts of entirely inadequate recording of public comments for inclusion in the discontinuance review or of inadequate answers provided to public questions and comments.

The Postal Service is also supposed to provide written responses to customer comments that “address the individual concerns expressed by the customer. However,

⁴⁵ CSRL Brief at 8.

⁴⁶ CSRL Brief at 8.

a review of the administrative record provided in recent appeals to the Commission reveals that the responses are not individualized. Instead, they are boilerplate responses that fail to adequately respond to issues raised by the community.”

Indeed, the Postal Service has admitted in this RAOI “that the purpose of the community meetings is for the Postal Service to inform the community of possible service changes and address the related concerns; the meetings are not forums for information gathering.”⁴⁸ “[Boldt] conceded that there are no issues that could be brought up at a community meeting that would lead to the re-evaluation of a proposed closing. Consequently, it should be no surprise that postal customers believe such meetings are not productive, and the USPS has already made a decision regarding the post office under review.”⁴⁹

As the Center argues: “The procedure for public comment on the study of postal facilities for closure or consolidation has left the consumers and citizens that would be affected most without an adequate voice in this process.”⁵⁰ This has not gone unnoticed by Congress.

Finally, NAA has said that “Americans will not trust what they cannot see.”⁵¹ Not only does that comment apply to the notion of the transparency of the process, but it can also apply to the notion of removing the Postal Service from thousands of rural Communities across the country, as this process would do.⁵²

⁴⁸ PR Brief at 13-14.

⁴⁹ NAPUS Brief at 11.

⁵⁰ CSRL Brief at 4.

⁵¹ CSRL Brief at 4. See also NAPUS Brief at 8.

⁵² NNA Brief at 8.

V. CONCLUSION

The Commission should advise the Postal Service that the RAOI does not conform to the policies of Title 39.