

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

PUBLIC INQUIRY ON CHANGES ASSOCIATED
WITH THE DELIVERING FOR AMERICA PLAN

Docket No. PI2023-4

**UNITED STATES POSTAL SERVICE RESPONSE
TO THE ORDER TO SHOW CAUSE REGARDING
CERTAIN DELIVERING FOR AMERICA INITIATIVES (ORDER NO. 7061)**
(May 16, 2024)

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The United States Postal Service (Postal Service) hereby responds to the Postal Regulatory Commission's (Commission) Order Directing the Postal Service to Show Cause or File a Nature of Service Proceeding Regarding Certain Delivering for America Initiatives (Order No. 7061 or Show Cause Order).

I. INTRODUCTION AND BACKGROUND

On April 20, 2023, the Commission established this docket to examine recent and planned network changes associated with the Delivering for America plan (DFA Plan). Notice and Order Initiating Public Inquiry Associated with the Delivering for America Plan, April 20, 2023 (Order No. 6488). In doing so, the Commission explained that the docket's purpose was to provide a forum to seek additional information about certain planned initiatives and was "not intended as an advisory opinion process on the Postal Service Strategic Plan." *See id.* at 4.

The Commission reaffirmed the limited scope of this docket in its denial of the Postal Service's May 5, 2023, Motion for Reconsideration: "[t]he Commission has merely opened a docket, creating a forum to learn more about strategic plan initiatives that may have a significant impact on the postal community." Order Denying Motion for Reconsideration, June 21, 2023, at 8 (Order No. 6548). And "[t]he Commission reiterate[d] that this docket is not intended as an advisory opinion process on the entire DFA Plan." *Id.* at 9.

Consistent with its stated information-seeking purpose, the Commission confirmed that "it will issue information requests to gather information about the proposed changes to the network and the impact of recent changes to the postal network." Order No. 6488 at 4. And so it did, so far issuing ten Chairman's Information

Requests (ChIR) encompassing 71 questions, not counting subparts. Most of those questions specifically address the initiatives that are now the subject of the Show Cause Order. See, e.g., ChIR No. 1, June 21, 2023, Questions 1-2, 5, ChIR No. 2, Aug. 8, 2023, Questions 1-3; ChIR No. 3, Sept. 1, 2023, Questions 2-5; ChIR No. 4, Oct. 13, 2023, Questions 1-4; ChIR No. 56, Nov. 22, 2023, Questions 1-11; ChIR No. 6, Dec. 14, 2023, Questions 1-7; Revised ChIR No. 7, Feb. 22, 2024, Questions 1-5; ChIR No. 8, March 20, 2024, Questions 1-2; ChIR No. 9, April 11, 2024, Questions 1-7; ChIR No. 10, Apr. 26, 2024, Question 17. Moreover, two of those questions sought precisely the same information being sought in the Show Cause Order, *i.e.*, why the Postal Service has not requested an advisory opinion with respect to the subject initiatives. See ChIR No. 1, Question 5; ChIR No. 6, Question 3. The Postal Service duly responded to all of the information requests, including both of the show cause questions. See Responses of the United States Postal Service to Questions 1-5 of Chairman's Information Request No. 1, July 19, 2023, Response to Question 5; Responses of the United States Postal Service to Questions 1-7 of Chairman's Information Request No. 6, Dec. 21, 2023, Response to Question 3. The Postal Service's ChIR responses comprise approximately 164 pages of text supported by approximately 20.6 megabytes of data.

At no point before issuing the Show Cause Order did the Commission express dissatisfaction with the Postal Service responses, nor did it seek additional details in follow-up requests.

Despite the Commission's assertion that this docket is within its statutory authority because it is intended only to seek information about DFA initiatives, and notwithstanding that the Postal Service has already provided extensive information

regarding those initiatives and in particular why the Postal Service has not requested an advisory opinion to date, on April 26, 2024, the Commission ordered:

Pursuant to 39 U.S.C. §§ 503 and 3661(b), the Commission directs the Postal Service to show cause within 20 days as to why it has not violated Section 3661(b) by not seeking an advisory opinion prior to implementing initiatives transforming its processing, transportation, and delivery networks including the RPDC, LPC, S&DC, LTO, and logistics career insourcing initiatives as discussed in the body of this Order.

If unable to show cause, the Postal Service must file a request for an advisory opinion consistent with 39 C.F.R. part 3020 within 40 days.

Order No. 7061 at 14.

II. ARGUMENT

The Commission's Show Cause Order significantly encroaches on the Postal Service's discretion and marks a serious departure from Commission precedent. Consistent with the well-established and longstanding interpretation of 39 U.S.C. § 3661, the Postal Service has the discretion to determine when to request an advisory opinion pursuant to Section 3661(b). Despite this clear delegation of authority to the Postal Service, the Commission has attempted to dictate the scope and timing of the Postal Service's request for an advisory opinion through this Public Inquiry docket, rather than through the procedural mechanism established under 39 U.S.C. § 3662 by which it can legitimately exercise its remedial authority.

The Commission has also provided no substantive basis for issuing the Show Cause Order. To justify the Order, the Commission notes its "skepticism" that the various initiatives it references in the Order will not implicate Section 3661 if they are implemented on a nationwide basis, and points to recent service performance results, including the fact that service performance has declined "across several regions during

and after the implementation of new facility types.” However, the Postal Service has extensively explained in this and other dockets the reasons why problems arose in Richmond, Atlanta, and Houston due to poor operational execution and other factors, and has also noted that service has been improving as those regions have stabilized. The requirement to seek an advisory opinion is not triggered simply because of such temporary service performance challenges. Nor has the Commission identified any other reason why the Postal Service has violated Section 3661 beyond its speculation about potential future service impacts.

Rather, the initiatives cited by the Commission do not satisfy the *Buchanan* factors, either because they will never be changes in “the nature of service,” or because they have only been implemented in a limited geographic area. In this regard, the Postal Service is not required to treat the identified initiatives as a unified whole simply because they are part of DFA Plan, but instead can appropriately assess whether each one would constitute a change in the nature of service once it is sufficiently implemented. As discussed below, while the Regional Processing and Distribution Center and Local Processing Center (RPDC/LPC network), and Local Transportation Optimization (LTO) initiatives may potentially implicate Section 3661 at some point in the future (but clearly not now), the Sorting & Delivery Center (S&DC) and Postal Vehicle Services (PVS) in-sourcing initiatives do not and will not. Furthermore, even for those initiatives that may eventually implicate Section 3661, the time for any such review has not yet ripened. The Postal Service has been conducting operational and pilot tests for both the RDPC/LPC and LTO initiatives, consistent with the Commission’s recommended approach for changes in the nature of postal services, evaluating the

results and making necessary adjustments before determining whether it is necessary to seek an advisory opinion. The Postal Service is mindful of its obligations under Section 3661, but it would be inappropriate for the Commission to order an advisory opinion request on a specific schedule or on specific initiatives—particularly when the Postal Service is actively considering the parameters of such a request.

A. Under 39 U.S.C. § 3661(b), and Consistent with the Commission’s Regulations, the Postal Service Has Discretion Over the Timing and Scope of a Request for an Advisory Opinion

It is well settled that the intensive advisory opinion process contemplated by Section 3661(b) of Title 39 of the United States Code is limited to a specific class of decisions: “[t]he language of the statute, the legislative history, and the existence of alternative remedies indicate that Congress intended [Section] 3661 to apply to only a specified class of decisions’ and Section 3661 has a ‘limited scope of application.’” Docket No. C2022-1, Order Granting Motion to Dismiss Complaint, Dec. 17, 2021, at 16-17 (Order No. 6067) (quoting *Buchanan*, 508 F.2d 259, 262 (5th Cir. 1975))). In that limited context, three factors must coexist before Section 3661 applies: (1) there must be a “change” that has a meaningful, quantitative, impact on service; (2) the change must be “in the nature of postal services”—i.e., the proposed change must qualitatively alter the manner in which postal services are available to users; and (3) the change must affect service on “a broad geographical area.” Order No. 6067 at 17 (quoting *Buchanan*, 508 F.2d at 262-63).¹

¹ The Commission also requested that the Postal Service explain the impact of two election mail related cases on this analysis. See *Commonwealth of Pennsylvania v. DeJoy*, 490 F. Supp. 3d 833, 884-887 (E.D. Pa. 2020), *order clarified*, No. CV 20-4096, 2020 WL 6580462 (E.D. Pa. Oct. 9, 2020); *New York v. Trump*, 490 F. Supp. 3d 225, 241-243 (D.D.C. 2020), *order clarified*, No. 20-CV-2340(EGS), 2020 WL 6572675 (D.D.C. Oct. 22, 2020), *appeal dismissed*, No. 20-5352, 2021 WL 672390 (D.C. Cir. Feb. 10,

Section 3661(b) sets forth the requirements for requesting an advisory opinion:

When the Postal Service determines that there should be a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis, it shall submit a proposal, within a reasonable time prior to the effective date of such proposal, to the Postal Regulatory Commission requesting an advisory opinion on the change.²

Once the Postal Service has determined that there should be a change within the limited scope of Section 3661(b), based on the three *Buchanan* factors, it has “substantial discretion” as to when and how to request an advisory opinion under Section 3661(b). Order No. 6067 at 23. Of course, the Postal Service’s determination that the change falls within the scope of Section 3661 is an express precondition to requesting an advisory opinion. Section 3661(b) cannot reasonably be interpreted to require the Postal Service request an advisory opinion for a change that it has

2021), and *appeal dismissed*, No. 20-5352, 2021 WL 672390 (D.C. Cir. Feb. 10, 2021), and *opinion clarified*, No. 20-CV-2340(EGS), 2021 WL 7908123 (D.D.C. Apr. 3, 2021).

It must be noted that those authorities are of little precedential value. The court in *Pennsylvania v. DeJoy* issued a preliminary injunction after limited factfinding and time for briefing. This order was not a final judgment in the case and was incorrect as a matter of fact and law. While the Postal Service disputed the court’s order, this case was ultimately settled without a final decision on the merits. A decision granting a preliminary injunction is not precedential and should not be persuasive to the Commission. *See, e.g., Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981) (“[A] court’s findings of fact and conclusions of law at the preliminary injunction stage are often based on incomplete evidence and a relatively hurried consideration of the issues.”); *Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. v. U.S. Dep’t of Agric.*, 499 F.3d 1108, 1114 (9th Cir. 2007) (“This rule acknowledges that decisions on preliminary injunctions are just that—preliminary—and must often be made hastily and on less than a full record.” (internal quotation marks omitted)); *Firearms Policy Coalition v. Barr*, 419 F. Supp. 3d 118, 123 (D.D.C. 2019) (“This Court’s prior decision denying a preliminary injunction does not constitute binding precedent because it was an interlocutory ruling, not a final judgment.”). Thus, while the Commission cites to *Pennsylvania v. DeJoy* in Order No. 7061, the Postal Service does not consider it to be binding precedent and does not rely on its conclusions, including its application of the *Buchanan* factors.

New York v. Biden is likewise incorrect. That decision, while a final judgment, is currently on appeal to the D.C. Circuit and the Postal Service is confident that it will ultimately prevail. The Commission should not accept as persuasive the reasoning of a district court order that is currently on appeal and may well be vacated. Furthermore, taken on its own merit, the court’s analysis in *New York v. Biden* of 3661(b) has little applicability to this case. *See supra* notes 9 and 12.

² 39 U.S.C. § 3661(b).

determined does not come within the scope of 3661(b)—i.e., a change that the Postal Service has determined is *not* “in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis.”³ Indeed, that interpretation is fully consistent with the text of the statute and *Buchanan’s* recognition that Section 3661(b) was intended to preserve broad managerial decision-making power.⁴

Moreover, the Commission itself has recognized the Postal Service’s determination as a precondition to requesting an advisory opinion under Section 3661(b):

The Commission acknowledges that the Postal Service has some discretion in determining when matters are presented to the Commission for review. . . . For example, 39 U.S.C. § 3661(b) requires the Postal Service to request an advisory opinion from the Commission when it is determines [sic] there should be a change in the nature of postal services.

Order No. 6548 at 12 and n.17.

Once the Postal Service has determined that there should be a change within the limited scope of Section 3661(b), as that concept is informed by the three *Buchanan* factors, it must request the advisory opinion “within a reasonable time prior to the effective date of such proposal.”⁵ In that regard, the Commission’s regulations provide that the request be filed “not less than 90 days before the proposed effective date of the change in the nature of postal services involved.”⁶ Indeed, the Commission has held

³ *Id.*

⁴ See *Buchanan*, 508 F.2d at 262 (“The language of the statute, the legislative history, and the existence of alternative remedies indicate that Congress intended 3661 to apply to only a specified class of decisions. Postal Service management was left with broad decision-making power, subject to 3661 requirements for specified decisions.”). As discussed below, this discretion, while broad, is subject to the remedy provided by 39 U.S.C. § 3662. Order No. 6067 at 22 n.34.

⁵ 39 U.S.C. § 3661(b).

⁶ See 39 C.F.R. § 3020.112.

that “[b]y their plain language, 39 U.S.C. § 3661(b) and the Commission’s regulations grant the Postal Service substantial discretion regarding the timing of a request for an advisory opinion and certainly do not require a request to be made before an initiative’s effective date has been established.” Order No. 6067 at 23.

Section 3661(b) and the Commission’s regulations also give the Postal Service considerable discretion as to the manner and scope of its advisory opinion request and in particular whether to request an advisory opinion as to a single initiative or multiple initiatives together:

In addition, the Postal Service has considerable discretion under 39 U.S.C. § 3661(b) and the Commission’s regulations to determine the scope of its request for an advisory opinion. Nothing in 39 U.S.C. § 3661(b) requires the Postal Service to file a request in a particular manner or scoped in a particular way (e.g., filing a request containing all related initiatives or all initiatives expected to be implemented at the same time) nor do the Commission’s regulations prescribe any such limitations. Under 39 U.S.C. § 3661(b) and the Commission’s regulations, it is the Postal Service that determines whether to file a request related to a single initiative or whether to request that multiple related initiatives be considered together.

Id. at 25-26.⁷

The Commission has also recognized that a particular initiative is not subject to Section 3661 simply because it is part of the same comprehensive plan. *Id.* at 28-29. Indeed, interpreting Section 3661(b) as requiring the Postal Service to include initiatives that would not on their own constitute changes in the nature of postal services that will

⁷ In a footnote to Order No. 6067, the Commission suggests that it may be appropriate to consider the combined effect of multiple changes when determining the need to file an advisory opinion request. Order No. 6067 at 26, n.42. That suggestion, however, was presented in the context of district court actions seeking injunctive relief based on initiatives that had already been implemented. *See id.* The instant Show Cause order is not an injunctive proceeding, nor have all of the subject initiatives been implemented. Moreover, requiring multiple implemented initiatives to be considered in a single advisory opinion request would be a gross overreach of Section 3661(b) to the extent it would seek to compel inclusion of initiatives for which an advisory opinion would not be required on its own.

generally affect service on a nationwide or substantially nationwide basis merely because they can arguably be tied to other initiatives that do fall within the scope of Section 3661(b) would effectively subvert the scope limitations identified in *Buchanan* intended to protect the Postal Service’s managerial freedom.⁸ It is therefore necessary to look at each individual initiative separately to determine whether Section 3661 applies, rather than blur the lines between them.⁹

B. An Advisory Opinion Would Be Unnecessary for Some Initiatives and Premature for Others

The Commission has acknowledged that “[u]nder 39 U.S.C. § 3661(b) and the Commission’s regulations, it is the Postal Service that determines whether to file a request related to a single initiative or whether to request that multiple related initiatives be considered together.” Order No. 6067 at 26. It has further acknowledged that “reviewing applicable initiatives under 39 U.S.C. § 3661(b) on a piecemeal basis does not undermine the policy objectives underlying 39 U.S.C. § 3661.” *Id.* The Commission has also deemed it “more practical to administer” advisory opinion proceedings focused on “a specific change to the nature of postal services in a given proceeding” than to engage in holistic assessments of multiple discrete initiatives, and has furthermore opined that “reviewing initiatives falling within 39 U.S.C. § 3661(b)’s scope in a piecemeal manner does not mean that the interconnected nature of various proposals

⁸ See *Buchanan*, 508 F.2d at 262.

⁹ In Order No. 6067, the Commission noted that *Pennsylvania v. DeJoy* and *New York v. Biden* concerned claims that Section 3661 was implicated due to the “combined effect of multiple policies” that had been implemented. Order No. 6067 at 26, n.42. The reasons why these cases are not precedential are discussed elsewhere. In any event, this argument would only constrain the Postal Service’s discretion if it was shown that each specific implemented initiative was in fact a cause of any change in the nature of service within the meaning of Section 3661.

cannot or will not be considered.” *Id.* at 27. Thus, for the purposes of Section 3661(b), the legally operative question is not whether the initiatives identified by the Commission, “[i]f implemented together across the nation,” will “impact service in significant ways.” Order No. 7061 at 9. The proper questions are, instead, which of the identified initiatives would in fact constitute changes in the nature of postal services under the *Buchanan* factors once implemented on a substantially nationwide basis, and at what time a determination to request an advisory opinion for only those specific initiatives must be made (either singly or in combination as determined by the Postal Service).

As explained below, the ongoing PVS insourcing and S&DC initiatives will not result in changes to the nature of postal services at all. And while the LTO and the RPDC/LPC network initiatives may, pending further assessment of the impacts of their localized deployments thus far, require one or more advisory opinion requests pursuant to Section 3661(b), the time for such a determination has not yet ripened.

1. 39 U.S.C. § 3661 is Not Apposite to the PVS Insourcing and S&DC Initiatives

The Postal Service does not view PVS insourcing or the deployment of S&DCs as possible candidates for an advisory opinion request pursuant to Section 3661(b). These actions fall squarely within the Postal Service’s discretion regarding operational and workforce-related decisions. See, e.g., Order No. 1463, Order Dismissing Complaint, Docket No. C2012, Sept. 10, 2012, at 9; Order No. 2512 at 17 n. 30; Order No. 6548 at 10; Order No. 6067 at 28-29. Furthermore, as explained below, neither PVS insourcing nor the S&DC initiative will qualitatively alter the manner in which postal

services are provided to customers. As such, their inclusion in Order No. 7061 is inappropriate.

a. *PVS Insourcing Does Not Qualitatively Alter the Manner in Which Postal Services Are Available to Customers*

The Commission avers that “[s]taffing issues seem likely under the Logistics Career Insourcing Initiative due to a truck driver shortage and an inability to hire sufficient postal vehicle operators.” Order No. 7061 at 8-9. As the Postal Service has repeatedly explained, the implementation of this initiative at every relevant site has involved, and will in future iterations continue to involve, personnel decisions and labor agreements that exceed the Commission’s oversight authority. See, e.g., Order No. 6067 at 28-29 (conceding that aspects of the DFA plan are inappropriate for its review, including workforce-related initiatives such as reducing non-career staff turnover, improving the hiring process, and building and retaining a diverse pipeline of candidates); United States Postal Service’s Motion for Reconsideration of Chairman’s Information Request No. 7, Docket No. PI2023-4, Jan. 2, 2024, at 15-18.

Furthermore, the PVS insourcing initiative will have the exact opposite effect from what the Commission is claiming, by improving rather than impeding the Postal Service’s service performance. Insofar as the Commission envisions a trucking shortage that will somehow befall PVS transportation while leaving Highway Contractor Route (HCR) transportation unscathed, the Commission’s concerns are completely baseless. The OIG white paper cited by the Commission addresses the effects of trucker shortages on *both* PVS and HCR transportation, noting that “[t]he driver shortage has contributed to challenges in recruiting and retaining drivers for both the PVS and the Postal Service’s HCR suppliers.” Office of Inspector General, Report No.

RISC-WP-22-002, at 7. The same report singles out HCR transportation as particularly vulnerable to performance challenges, noting that shortages may contribute to “HCR suppliers omitting service for trips — that is, failing to provide services as expected under the contract — potentially because the HCR supplier did not have a driver available.” *Id.* at 1. And while OIG Report No. 23-161-R24, also cited by the Commission, notes that “the Richmond RP&DC was not able to hire sufficient postal operators to cover the newly created routes,” it does so not to impugn PVS insourcing *per se*, but to fault the Postal Service for inadequate advance planning. *Id.* at 10. (Indeed, the remark in question falls under “Finding #3,” titled “Inadequate Transportation Planning Affected Performance.”)

The Postal Service has already explained why PVS fleets are well-suited to the local transportation network and will help to mitigate against any truck driver shortage. Specifically, such fleets can be deployed for varying commercial endeavors across regions, thereby affording greater flexibility than contracted transportation; can stabilize the Postal Service’s cost base by mitigating the impact of price increases that may arise due to high levels of cost variability in local freight markets; and—more to the point—can mitigate any availability shortfalls with qualified HCR suppliers, given that postal vehicle operators (unlike many HCR suppliers) are not required to possess a commercial driver’s license. Response to ChIR 7, Question 5.

At all events, Section 3661(b) contemplates substantially nationwide changes in the nature of postal services *as provided by the Postal Service*, not potential exogenous factors that may or may not disrupt Postal Service operations. The trucker shortage discussed in OIG Report No. RISC-WP-22-002 may (or may not) recur or intensify—but

if it does, as discussed, PVS insourcing will stabilize the employee base and mitigate availability shortfalls. More fundamentally, so long as the PVS insourcing initiative bears on who will drive the trucks—and not on the services enabled by those trucks—this initiative will not give rise to any obligations under Section 3661(b).

b. The S&DC Initiative Does Not Qualitatively Alter the Manner in Which Postal Services Are Available to Customers

The purpose of the S&DC initiative is to consolidate sorting and delivery operations from smaller destination delivery units (DUs) into larger centralized sorting and delivery facilities. See Response to ChIR 1, Question 1. Most S&DCs will be housed in existing repurposed postal facilities that already house delivery operations.

Id.

The consolidation of local sorting and delivery operations into larger, centralized facilities will allow better utilization of automated sorting equipment to reduce manual handling of packages and improve throughput, optimization of surface transportation to reduce the number of trips needed to move mail between processing plants and delivery facilities, and improved reach of same-day and next-day delivery for products entered at these facilities. See *id.*, Questions 1 and 5; see also Responses of the United States Postal Service to Questions 1-6 of Chairman's Information Request No. 2, Aug. 22, 2023, Question 3 (Response to ChIR No. 2); Responses of the United States Postal Service to Questions 1-5 of Chairman's Information Request No. 3, Sept. 12, 2023, Question 2.b. (Response to ChIR No. 3). In addition, the modernization of these facilities will allow upgrades to electrical capacity to accommodate charging infrastructure needed to facilitate the roll-out of electric delivery vehicles and will

improve the working environment for our employees. See Response to ChIR No. 1, Questions 1 and 5.

The practical effect of the S&DC initiative is to relocate delivery operations from one facility to another. These behind-the-scenes operational changes will result in the improvements noted above, and may provide additional ancillary customer benefits, such as giving customers the *choice* to drop-off mail at each local facility appurtenant to an S&DC, as they could before the S&DC became operational, or directly at the S&DC with a Business Mail Entry Unit, where a single drop-off would serve for all appurtenant facilities. See *id.*, Questions 1-5. For mail delivery, the carrier route will merely originate from the S&DC rather than the former DU. See *id.* In this respect, it must be recognized that, while the Commission relies heavily on service performance impacts of the RPDC/LPC initiative to justify its Show Cause Order, it offers no hint of such impact from the S&DC initiative and, indeed, Postal Service analysis of delivery service performance measured from arrival-at-unit to delivery for those S&DCs activated so far corroborate the Postal Service's expectation that relocating sorting and delivery operations into S&DCs does not impact the service experienced by the customer.

In addition, consolidating sorting and delivery operations from local facilities into an S&DC will not affect retail services provided at those local facilities—*i.e.*, retail operations, PO Boxes, acceptance of mail and packages, including commercial volume, and pick-up of hold mail, will all remain as before the consolidation. See *id.*

Because the S&DC initiative does not qualitatively alter the manner in which postal services are available to customers it is not a change “in the nature of postal

services” as defined in the second *Buchanan* factor. Consequently, an advisory opinion as to that initiative is not required by Section 3661(b).¹⁰

2. An Advisory Opinion Request for the RPDC/LPC Network and LTO Initiatives at This Time Would Be Premature

As explained below, neither the RPDC/LPC network initiative nor the LTO initiative has yet given rise to a change in the nature of postal services within the meaning of Section 3661. Both initiatives have been geographically limited in scope; impacts are local and are attributable to exogenous disruptions and transitory errors in execution; both remain in an initial phase of experimentation and data gathering, consistent with the Commission’s repeated advice; and effective dates for their nationwide implementation have yet to be determined.

a. *The RPDC/LPC Network and LTO Initiatives Have So Far Been Geographically Limited in Scope*

The Commission states that “transformation activities” have been initiated “in RPDCs in nine areas: Richmond, Atlanta, Portland, Boise, Charlotte, Chicago, Houston, Jacksonville, and Indianapolis.” Order No. 7061, at 3. The Commission therefore recognizes the limited geographic scope of the initiative to date. It should be noted, moreover, that in these locations, transformation activities have not progressed to the same extent; indeed, only in Richmond have the planned networks of RPDCs and LPCs been finalized.

It also bears emphasizing that pursuant to the Mail Processing Facility Reviews (MPFRs) that have so far been conducted to facilitate the RPDC network’s implementation and to establish LPCs, only at the Eugene, Medford, Macon, and

¹⁰ See, e.g., *Buchanan*, 508 F.2d at 262-63.

Augusta locations have mail moves occurred. Furthermore, and despite the fact that approximately 60 MPFR studies have been conducted, there has been no movement of processing operations other than those associated with the four facilities mentioned above, and no additional movement of processing operations associated with these MPFRs will occur until at least calendar year 2025. These facts amply demonstrate that the LPC portion of the network redesign is in its relative infancy, that the geographic scope of the implementations is extremely limited, and that any suggestion that this aspect of the redesign requires a request for an advisory opinion is significantly premature.

Moreover, the status of the MPFRs and the limited places where the studies have been implemented also reflect that the RPDC/LPC network activations in the Atlanta and Portland regions are farther along than those in the Boise, Chicago, Charlotte and Indianapolis regions, and the remainder are still being designed. The Postal Service is currently assessing whether to implement any additional RPDC/LPC network-related changes (unrelated to the movement of processing operations associated with the MPFRs discussed above) this calendar year, but to the extent any further changes do occur, they will be limited in scope.

That some of the initial RDPC activations have coincided with localized service performance impacts is no secret; these impacts have been acknowledged and explained at length in various dockets before the Commission. See, e.g., Response to Commission Information Request 1, Docket No. ACR 2023, Feb. 20, 2024 (noting execution failures in Richmond, including problems with staffing, scheduling, machine set plans, adherence to the operating plan, and aligning transportation schedules with

operations); Response to ChIR 16, Question 10, Docket No. ACR 2023, Mar.8, 2024 (explaining how during construction activities in North Houston, a confluence of machine removal, space constraints, insufficient employee availability, and weather disruption caused delays). See Response to ChIR 9, Question 7 (detailing the longstanding operational deficiencies, workforce challenges, truckload congestion, poor execution at subsidiary facilities, subpar supervision and accountability, and the unexpected bankruptcy of the Atlanta area Surface Transfer Center contractor that hampered the Atlanta area RDPC activation and caused service disruptions which the Postal Service has worked consistently to reduce). The Show Cause Order cites news articles, blog posts, and OIG Report No. 23-161-R24 to document service declines in the Richmond, Houston, and Atlanta areas. Order No. 7061 at 9.

These service performance challenges, caused by poor operational execution and other factors in discrete regions, do not demonstrate that the Postal Service should by now have filed a Section 3661 request for the very limited roll-out of the RPDC/LPC network. The Postal Service has declared these regional service declines unacceptable and has taken steps to address them, and indeed service performance results have improved in those regions as operations have stabilized. Moreover, the Commission presents no analogous performance data surrounding other regions such as Portland and Boise in which RPDC activations have occurred, and indeed results for those regions do not show the same level of service declines that have occurred in Atlanta, Richmond, and Houston. Nor does the Commission acknowledge key contextual factors that resulted in implementation issues that are not reflective of the broader DFA network redesign efforts: the sheer complexity of the Atlanta RPDC/LPC network

activation (with 12 processing centers, 600 daily plant to plant trips within the region, over 550 Post Offices and 750 ZIP Codes served, a significant uptick in volumes processed, and a large number of employees in the region moved on a single day); the bankruptcy of the supplier that operated numerous STCs, including the Atlanta region STC; historically poor performance in the Atlanta area prior to the RPDC activation (with market dominant performance scores consistently falling in the bottom 50th percentile, and in most years the bottom 25th percentile, since 2016, and trending downward prior to the network changes (Response to ChIR 9, Question 7)); and severe weather events compounding employee shortages in Houston (Response to ChIR, 16, Question 10, Docket No. ACR 2023). The Commission also fails to acknowledge that in the Atlanta region, and prior to the 2023 peak season, the transfer of originating processing operations to the Atlanta RPDC began, freight was routed to and from the Atlanta RPDC, and a terminal handling operation was insourced to the Atlanta RPDC—all without disruption (Response to ChIR 9, Question 7); and that despite increased volume, 2023 peak season performance in the Houston region improved from the same period last year (Response to ChIR 16, Question 10, Docket No. ACR 2023).

Finally, the Commission does not acknowledge the ameliorative measures implemented in these regions, or the improvements in service performance that have recently been reported there. Response to ChIR 9, Question 7; Reply Comments of the United States Postal Service, Docket No. ACR 2023, Mar. 29, 2024, at 7. Thus, when viewed in their proper context, the localized service declines discussed by the Commission—declines that the Postal Service considers temporary byproducts of poor execution combined with exogenous shocks, rather than permanent features of the

RPDC/LPC network—do not constitute a nationwide change in the nature of postal services within the meaning of Section 3661. Implementation efforts thus far have been too partial and geographically dispersed, their impacts too transitory and localized, to support any other conclusion.

The same holds true of the LTO initiative, which has to this point been even more geographically limited than the RPDC/LPC network activations. To date, collections have been optimized for a subset of locations meeting certain criteria in the Richmond, Wisconsin, Phoenix, Alabama, Portland, Atlanta, and Mid-Hudson regions, with three more planned for the near future, and none currently planned after July 2024 (though it is possible that the Postal Service may plan a few additional regions during the summer). The Postal Service is currently assessing the impact of the initial regions and how it may impact service.

In sum, the RPDC/LPC network and LTO initiatives have thus far been implemented to a limited degree, in a limited number of locations, and with service impacts that are of limited geographical scope and duration. Such impacts, moreover, reflect circumstances peculiar to the Richmond, Houston, and Atlanta regions that the Postal Service considers to be temporary and are not broadly representative of the DFA network redesign. In this regard, the Commission's suggestion that the nationwide trends in First-Class Mail depicted in Figure IV-1 are wholly due to a combination of DFA initiatives is speculative and without basis. See Order No. 7061 at 9. It is far from evident that, once execution failures have been addressed and mitigation efforts refined, the regional impacts that have occurred due to the DFA initiatives will become permanent features of the redesigned network, and in fact the Postal Service fully

expects such impacts to be reversed and eliminated. For these reasons, and as explained at greater length below, it would be premature to conclude that a Section 3661 request for these initiatives is necessary at this time.

b. Localized Service Impacts and Temporary Service Performance Failures Do Not Amount to Nationwide Changes in the Nature of Postal Services as Contemplated by 39 U.S.C. § 3661

As explained above, the RPDC/LPC network and LTO initiatives have thus far been geographically confined in scope. Under the *Buchanan* analysis, facility changes and operational decisions that are limited to discrete geographical areas do not constitute nationwide changes in the nature of postal services.¹¹ Thus, the mere fact that at a limited number of sites, RPDC/LPC network activities have been initiated and local transportation optimized, does not on its own compel an advisory opinion request under Section 3661(b).¹²

Nor do geographically concentrated, temporary service failures due to poor execution, labor shortages, adverse weather events, significant contractor failures, etc.,

¹¹ See *National Ass'n for Advancement of Colored People (Atlanta Local) v. U.S. Postal Service*, 398 F. Supp. 562, 564-65 (N. Ga. 1975) (The decision to move postal operations to a new facility, which like the old one would process mail to and from Atlanta area, was not one encompassed by provisions of Postal Reorganization Act requiring that the Postal Rate Commission hold hearings and submit advisory opinions as to changes in the nature of postal services which affect service on a substantially nationwide basis); *Wilson v. U.S. Postal Service*, 441 F. Supp. 803, 807-08 (C.D. Cal. 1977) (Transfer of mail processing functions affecting only the western region of Los Angeles County, California, did not constitute a change in the nature of postal services which would generally affect services on a substantially nationwide basis so as to require Postal Service first to request advisory opinion from the Postal Rate Commission); *Bradley v. U.S. Postal Service*, 554 F.2d 186, 187 (5th Cir.1977) (Denial of door-to-door delivery at one community did not affect nationwide service under Section 3661(b)).

¹² In this regard, and as pertains to Section 3661(b), neither *New York v. Biden* nor *Pennsylvania v. DeJoy* apply to the initiatives here under discussion. The *New York* court concluded that the Postal Service had deliberately affected a nationwide ban of late and extra trips and a nationwide program to remove sorting machines, both of which the court found caused a significant nationwide decline in service. *Id.* at 21-23. The *Pennsylvania* court likewise found that nationwide initiatives to reduce late and extra trips and overtime work hours amounted to a nationwide change in the nature of postal services. *Id.*

amount to nationwide changes in the nature of postal services under *Buchanan*. Docket No. C2013-10, Order No. 1892, Nov.27, 2013, at 13 (finding that service delays allegedly linked to processing plant consolidations and closures did not necessitate an advisory opinion request pursuant to Section 3661, as such failures involved neither the implementation of new service standards, nor supported a determination that the Postal Service had knowingly and/or intentionally degraded service). Until such time as the Postal Service can distinguish between local temporary impacts due to poor execution and exogenous disruptions, and any more permanent changes to the nature of postal services that may or may not inhere in the postal network's redesign, calls for an advisory opinion request are premature.

c. The RPDC/LPC and LTO Initiatives Are in an Initial Phase of Development; As Such, They Are Preliminary to An Advisory Opinion Request Under 39 U.S.C. § 3661

The Commission has routinely admonished the Postal Service for implementing nationwide changes in the nature of postal services without first conducting operational or pilot testing. Thus, in its advisory opinion on service changes associated with First-Class Mail and Periodicals, the Commission expressed concern “that the Postal Service has not conducted operational or pilot testing of the proposed service standard changes,” and deemed the perceived “lack of testing to be problematic as data suggest that mail processing is dynamic and requires timely execution to provide reliable service

at 884-87. Here, to the contrary, the RPDC/LPC network and LTO initiatives have so far been of limited geographic scope, and as discussed below, effective dates for nationwide implementation for these initiatives have not been established. As such, the *New York* and *Pennsylvania* courts' conclusion that purported nationwide changes fell within the scope of Section 3661(b) is not applicable.

performance.” Docket No. N2021-1 Advisory Opinion, July 20, 2021, at 2. The Commission later revisited this theme at length, stating:

The Commission is concerned that the Postal Service has not conducted operational or pilot testing of the proposed service standard changes. Further, the Postal Service states that it did not consider operational testing necessary due to its well-established understanding of the nexus between current service standards and its time and distance framework. . . . The Commission has found in the past that that nexus may not be as well-understood as the Postal Service claims as evidenced by its failure to improve service performance even after identifying pinch points throughout the network. The Commission finds the lack of testing to be problematic as data suggest that mail processing is dynamic and requires timely execution to provide reliable service performance.

Id. at 99.

In an advisory opinion on service standard changes associated with First-Class Package Service, the Commission again recommended further operational testing as a prerequisite to implementation, “urg[ing] the Postal Service to carefully evaluate its planned implementation timeframe” given “the lack of operational testing regarding the expansion of the service standards.” Docket No. N2021-2 Advisory Opinion, Sept. 29, 2021, at 80.¹³

The limited geographical scope of the RPDC/LPC network and LTO initiatives to date; the gathering of data from localized deployments, together with the application of such data to subsequent implementations; the adjustments made to both initiatives to mitigate their localized service impacts and to accommodate the distinct environments in which they are embedded—these epitomize the very sort of “operational or pilot

¹³ As regards the service standard changes discussed in Docket Nos. N2021-1 and N2021-2, the Postal Service did not consider advance operational testing necessary or practical. There, the changes in question built upon already well-established practices and concepts: namely, shifting between air and surface transportation and determining service standard impacts based on transit times. See Docket No. N2021-1, Tr. 1 at 374; Docket No. N2021-2, Tr. 1 at 71-72. Such is not the case for the RPDC/LPC network and LTO initiatives, which can be and are being subject to operational testing.

testing” recommended by the Commission. Rather than require an advisory opinion request, these initiatives in their current stage of implementation are best conceived as probative tests that will reveal whether such a request is necessary and will help determine the contents of such a request.¹⁴ They will also generate information that would prove useful to the Postal Service, the Commission, and the public, in the event the Postal Service determines that it is necessary to initiate a Part 3020 nature of services proceeding.

d. No Effective Nationwide Implementation Dates for the RPDC/LPC Network and LTO Initiatives Have Yet Been Established

The data gathering inherent in these initial phases not only serves to refine operations moving forward; it helps assess when and how to move forward. The Postal Service continues to gather information and assimilate lessons learned; accordingly, effective dates for nationwide implementation of these initiatives have yet to solidify. As noted by the Commission, it would be inconsistent with Section 3661(b)’s clear grant of discretion to the Postal Service concerning the timing of requests “for the Commission to conclude that the Postal Service is in violation of 39 U.S.C. § 3661(b) for failure to request an advisory opinion . . . when the effective dates for the majority of [the DFA Plan’s] initiatives have yet to be determined or announced.” Order No. 6067 at 23-24. Furthermore, “the Postal Service has discretion under 39 U.S.C. § 3661(b) to determine

¹⁴ In this regard, findings in *New York v. Biden* about the Postal Service’s intent are inapplicable to the LTO and RPDC/LPC network initiatives. The *New York* court found (erroneously in our view) that the Postal Service had “knowingly or intentionally denigrate[d] service” by failing to study the potential effects of these alleged changes before implementing them nationally. *Id.* at 23. Here, the Postal Service is testing potential changes at the local and regional level prior to rolling out any nationwide change, precisely in line with the Commission’s previous exhortations that the Postal Service should pilot changes, and with the *New York* court’s statement that the Postal Service must study the likely impact of changes before implementing them nationally.

the timing of its requests for advisory opinions so long as it does so ‘within a reasonable time prior to the effective date.’” *Id.* at 25 (quoting 39 U.S.C. § 3661(b)). As the effective dates for the nationwide implementation of these initiatives—which, to reiterate, have been implemented in a geographically limited manner, and are still subject to operational testing and refinement—have yet to be established, any determination by the Commission that an advisory opinion request pursuant to Section 3661(b) is necessary now would be premature.

C. The Commission’s Show Cause Order Exceeds Its Authority Under Both 39 U.S.C. § 3661 and § 503

The Show Cause Order purports to order that “the Postal Service must file a request for an advisory opinion. . .within 40 days” if it is unable to show cause as to why an advisory opinion is not required for the subject initiatives. Order No. 7061 at 14. Nothing in 39 U.S.C. § 3661 or § 503 authorizes the Commission to order the Postal Service to submit such a request.

Congress set out separate and distinct roles for the Postal Service and the Commission in Section 3661. As detailed above, the Postal Service was expressly charged with determining when there should be a nationwide change in the nature of postal services and requesting an advisory opinion from the Commission within a reasonable time prior to the effective date,¹⁵ while the Commission was tasked with issuing an opinion on the Postal Service’s proposal after an opportunity for a hearing on the record.¹⁶ This division of responsibility represents a balance of the fundamental purposes of the Postal Reorganization Act: recognizing Postal Service management’s

¹⁵ 39 U.S.C. § 3661(b).

¹⁶ *Id.* § 3661(c).

“freedom to manage without unnecessary limitations” while providing an opportunity for the public to present their views on significant decisions that affect them.¹⁷ It is also consistent with the Postal Accountability and Enhancement Act’s delegation to the Postal Service of primary responsibility for both long-range planning and day-to-day operations and the Commission’s complementary advisory role. As noted above, the Commission has previously recognized the Postal Service’s discretion.

This discretion is substantial and can only be potentially circumscribed by the Commission in defined circumstances. As discussed below, the Commission may have the authority to order an advisory opinion request following procedures under Section 3662 and a determination that the Postal Service has violated Section 3661. The Commission may also indicate a need for a Section 3661 request before issuing a regulatory approval within its authority. For example, when the Postal Service proposed modifications to the Service Performance Measurement plan involving the critical entry times for Periodicals, the Commission issued numerous information requests to understand the proposal and requested that the Postal Service explain why the planned change did not constitute a nationwide or substantially nationwide change to the nature of postal services in order to “facilitate the completion of the Commission’s review.” Docket No. PI2022-3, Order Providing Instructions for Implementation of Modification of Service Performance Measurement Plan, Establishing Deadline for Reply Comments, and Granting Motion for Late Acceptance, May 20, 2022, at 3-5. The Commission reserved its disposition of these issues until after this information was provided and appropriately considered. See *id.* at 5. Based on this information, the Commission

¹⁷ See *Buchanan*, 508 F.2d at 262.

explained why it believed Section 3661(b) was triggered and conditionally “order[ed] the Postal Service, should it intend to implement its proposed change to the critical entry times for Periodicals, to file a request for an advisory opinion pursuant to 39 U.S.C. § 3661(b) and in accordance with 39 C.F.R. part 3020” before it would authorize any change to the Service Performance Measurement plan. Docket No. PI2022-3, Order Directing the Postal Service to Request an Advisory Opinion Prior to Implementing Its Proposed Change to the Critical Entry Times for Periodicals and Approving the Other Proposed Revisions to Market Dominant Service Performance Measurement Plan, July 18, 2022, at 8-24, 26-27. And ultimately, the Postal Service filed a request for an advisory opinion on this topic. Docket No. N2022-2, United States Postal Service’s Request for an Advisory Opinion on Changes in the Nature of Postal Services, Sept. 2, 2022.

The Commission has gone further here. First, rather than reserving its final disposition of the issues until after it has had the opportunity to carefully review and consider the information provided by the Postal Service, the Commission has apparently pre-judged the issue and has already determined that it will “order” the Postal Service to file a request if the Postal Service is “unable to show cause” in the Commission’s view. Order No. 7061 at 14. It would do so not pursuant to Section 3662, and with respect to initiatives whose implementation does not otherwise implicate its regulatory authority.

Second, the Show Cause Order supplants the Postal Service’s discretion for the Commission’s preferences. As detailed above, the Postal Service, not the Commission, has been vested with the authority to determine the timing and scope of a request for an

advisory opinion under the plain language of Section 3661 and as recognized by the Commission. See Order No. 6067 at 25-26 (explaining that the Postal Service must first determine that the initiative falls with Section 3661, then it must establish an effective date for the initiative, and then it must decide “whether to file a request related to a single initiative or whether to request that multiple related initiatives be considered together.”). Attempting to dictate these matters to the Postal Service circumvents the statutory scheme established by Congress and exceeds the bounds of the Commission’s authority. No provision of Title 39 permits such a result.

Instead, the Commission must give effect to Congress’s clear intent in Section 3661; it cannot rewrite the statutory scheme under the guise of Section 503. While Section 503 authorizes the Commission to address gaps that may arise when exercising its existing authority, it does not provide an independent basis to expand its substantive authority or to disregard the text of Section 3661.¹⁸ For example, where, as is the case here, a statute specifically provides for the situation at issue and no such gaps exist, agencies may not rely on “necessary and proper authority” to expand their authority beyond the statutory limits or contravene the terms of the statute.¹⁹ Similarly, an agency may not substitute its policy judgments for those of Congress on the basis of its own conception of the needs of a particular situation.²⁰ Thus, even if there were a gap, the Commission may not use Section 503 to transfer to itself authority reserved for

¹⁸ See *New England Power Co. v. Fed. Power Comm’n*, 467 F.2d 425, 430-31 (D.C. Cir. 1972), *aff’d*, 415 U.S. 345 (1974); *Am. Inst. of Certified Pub. Accts. v. IRS*, 746 F. App’x 1, 10 (D.C. Cir. 2018).

¹⁹ See, e.g., *Ragsdale v. Wolverine World Wide, Inc.*, 535 U.S. 81, 92-96 (2002); *Maislin Indus., U.S., Inc. v. Primary Steel, Inc.*, 497 U.S. 116, 134-35, (1990); *Am. Fed’n of Lab. & Cong. of Indus. Organizations v. Chao*, 409 F.3d 377, 384 (D.C. Cir. 2005); *Public Service Comm’n v. FERC*, 866 F.2d 487, 491-92 (D.C. Cir. 1989).

²⁰ See *Brown & Williamson Tobacco Corp. v. FDA*, 153 F.3d 155, 176 (4th Cir. 1998), *aff’d*, 529 U.S. 120 (2000).

the Postal Service as a means to overcome its skepticism about the impact of DFA Plan initiatives. Such an action would violate the basic tenets of administrative law, the specific directives from Congress, and decades of Supreme Court and D.C. Circuit precedent, and therefore, would be impermissible.

And yet, the Show Cause Order would dictate the initiatives for which the Postal Service must submit a request and impose an arbitrary timeline for filing such a request. In doing so, the Commission exceeds the scope of its authority, as demonstrated above, and ignores the underlying purpose of the advisory opinion process. Much of the value of the advisory opinion process lies in the exchange of views and information between the Postal Service, the public, and the Commission. But, if an initiative does not fall within the scope of Section 3661(b) or if the Postal Service decides not to move forward, for instance, there is no value in expending significant time and resources on such an exchange. Likewise, rushing the Postal Service's deliberations and preparations for filing a request to fit into an arbitrary 40-day timeline would produce an inefficient result. The Postal Service may not have sufficient time to produce a reasoned plan and work product, which in turn would reduce any benefits to sharing the information in the first place and would not further the interests of transparency. Absent a clear, thoughtful proposal, the public would be deprived of the opportunity to provide informed feedback and meaningfully participate in the advisory opinion process. Moreover, the Commission has not identified any abuse of the Postal Service's discretion over the timing for filing a Section 3661 request, nor offered any explanation, let alone a reasoned one, for its 40-day timeline.

Of course, the Commission is not powerless if it reasonably believes that the Postal Service is not operating in conformance with the requirements of Section 3661(b). Under those circumstances, the Commission, through a designated officer representing the public's interest, is authorized under 39 U.S.C. § 3662(a) to initiate a complaint. Indeed, the Commission has long found that examining alleged violations of Section 3661(b) through a complaint proceeding is both consistent with the statutory scheme in Title 39 and a proper exercise of its discretion. See, e.g., Docket No. C2001-1, Order Partially Denying Motion of United States Postal Service to Dismiss Complaint and Notice of Formal Proceedings, Mar. 20, 2001, at 8-9; Docket No. C2005-1, Order on Complain on Express Mail, Apr. 18, 2006, at 14. See also Order No. 6067 at 23 n.34 (noting that Section 3662 serves as a check on the Postal Service's discretion to determine whether and when to seek an advisory opinion). If, through those proceedings, the Commission makes a finding of "noncompliance," it may then determine the appropriate remedy, potentially including ordering the Postal Service to request an advisory opinion consistent with Section 3661.²¹ In any event, this docket is not a complaint proceeding, and whatever authority may be available to the Commission there does not excuse it from operating within the bounds of 39 U.S.C. § 3661 and § 503 here.

D. The Postal Service is Actively Considering the Scope and Contents for a Request for an Advisory Opinion

While the Postal Service has complied with all its legal obligations at this stage, it has also been working through the process of determining whether to seek any

²¹ See 39 U.S.C. §§ 3662(a), 3662(c).

additional advisory opinions from the Commission concerning the implementation of DFA Plan initiatives, including those that have been piloted thus far, and what the scope of any such advisory opinion case might be. Exactly how and when this process unfolds are squarely matters of Postal Service discretion. As the Postmaster General explained in his recent Congressional testimony before the Senate Homeland Security and Governmental Affairs Committee, the Postal Service's first step is to understand the issues that are leading to disconnects between the DFA Plan and its execution, to determine whether any initiatives would, if implemented, result in changes to the nature of service on a substantially nationwide basis, and on that basis to decide whether any initiatives warrant an advisory opinion request.²² The Postal Service has been carefully considering these questions for weeks.²³

The Postal Service has been earnestly engaged in determining the scope of any potential request, and the administrative requirements related to it, pursuant to a systematic, methodical, and deliberative approach. Although this process cannot and should not be rushed to accommodate the Commission's arbitrary 40-day deadline (which by its terms is only triggered if the Postal Service is unable to show cause that an advisory opinion was not required—which we have done here), the Postal Service is working to resolve these questions and finalize any resulting proposals as soon as practicable. However, the current discussions are pre-decisional, and are not appropriate to share on an interim basis, let alone ripe for filing. Indeed, these matters strike at the very heart of the Postal Service's most sensitive business deliberations and

²² Oversight of the United States Postal Service: Hearings before the Senate Homeland Security and Governmental Affairs Committee, 118th (2024) (testimony of Louis DeJoy).

²³ *Id.*

strategic decision-making. Management is committed to promptly presenting any final proposals to the Board of Governors for approval—a prerequisite to filing such a request with the Commission²⁴—and that process is well underway. Thereafter, and as appropriate, the Postal Service intends to promptly present the relevant issue to the Board of Governors, and we will use all available means, including special meetings, to ensure these matters are considered on an expedited basis.

Even so, it remains critical that the Postal Service be able to explore these important issues in a systematic way, free from artificial timelines that are untethered to the statutory requirements. Doing so advances the interests of transparency by ensuring that any such request is fully considered, and the related evidentiary basis is fully developed, and that in turn also best serves the public. The Postal Service is continuing to carefully consider whether to seek an advisory opinion and the exact scope of that advisory opinion and is committed to timely making such a request where appropriate and consistent with its obligations under 39 U.S.C. § 3661.

III. CONCLUSION

As demonstrated above, the Postal Service has appropriately exercised our discretion under Section 3661 to this point and has therefore satisfied the Show Cause Order. The Postal Service will continue its evaluation of the RPDC/LPC network and LTO initiatives and will request an advisory opinion, at such time and in such manner as required by Section 3661(b), if it determines that one or more of these initiatives present a change “in the nature of postal services which will generally affect service on a

²⁴ 39 C.F.R. § 3.3(g).

nationwide or substantially nationwide basis,” and the Board of Governors authorizes such request.

Respectfully submitted,

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