

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

Before Commissioners:

Michael Kubayanda, Chairman;
Thomas G. Day, Vice Chairman;
Ann C. Fisher;
Ashley E. Poling; and
Robert G. Taub

Public Inquiry on Changes Associated
with the Delivering for America Plan

Docket No. PI2023-4

ORDER ON MOTION FOR RECONSIDERATION OF
CHAIRMAN'S INFORMATION REQUEST NO. 7

(Issued February 22, 2024)

I. INTRODUCTION

On December 20, 2023, the Commission issued Chairman's Information Request No. 7, seeking information regarding the network redesign associated with the Postal Service's Delivering for America (DFA) strategic plan.¹ On January 2, 2024, the Postal Service filed a motion requesting the Commission reconsider and withdraw Chairman's

¹ Chairman's Information Request No. 7, December 20, 2023 (CHIR No. 7); see also United States Postal Service, Delivering for America: Our Vision and Ten-Year Plan to Achieve Financial Sustainability and Service Excellence, March 23, 2021, available at https://about.usps.com/what/strategic-plans/delivering-for-america/assets/USPS_Delivering-For-America.pdf (DFA Plan).

Information Request (CHIR) No. 7.² For the reasons below, the Motion is denied in part and granted in part.

II. POSTAL SERVICE MOTION

In its Motion, the Postal Service argues that CHIR No. 7 exceeds the bounds of the docket and the Commission's authority. Motion at 1. It contends that Commission requests must be based on one of the Commission's enumerated "functions and obligations" under title 39. *Id.* at 4. The Postal Service states that Congress provided it managerial independence, with general authority and specific powers necessary to design, maintain, and operate the postal network. *Id.* at 5-6. The Postal Service further states that the Commission does not have authority to infringe on this independence because of potential costs or service impacts. *Id.* at 4. In addition, it asserts that "necessary and proper" provisions like the one found in section 503 do not allow agencies to justify action on any matter relating to its enabling statute. *Id.*

The Postal Service states that it is unaware of a legitimate or regulatory basis for the information requested in CHIR No. 7. *Id.* at 7. It contends that the CHIR requests "extremely granular information concerning the Postal Service's current transportation trips and other operational matters" and it is unclear how analyzing or applying the requested information would further the Commission's statutory responsibilities. *Id.* The Postal Service states that the Commission cannot use a public inquiry docket "to conduct an unending quest into day-to-day Postal Service operations and deliberations" by invoking a need to determine whether it has failed to fulfill its obligations. *Id.* at 11.

In addition to the authority issue, the Postal Service asserts that CHIR No. 7 requests unnecessarily expansive information and information that falls within the Postal Service's sole discretion. *Id.* The Postal Service objects to transportation information requests in questions 1, 2, and 6 as extraordinarily broad, noting that it schedules approximately 40,000 daily trips. *Id.* at 12. It further objects to question 6, with its request for workpapers and analysis, due to the pre-decisional and deliberative nature

² United States Postal Service's Motion for Reconsideration of Chairman's Information Request No. 7, January 2, 2024 (Motion).

of the initiative, the evolving models guiding its outcomes, and labor matters outside of the Commission's jurisdiction. *Id.* The Postal Service states that the burden to gather the data is inversely proportional to any function in pursuit of legitimate regulatory objectives. *Id.* Citing to routine reporting on service and transportation and a prior advisory opinion proceeding, the Postal Service notes that the proceeding and routine reports did not include information similar to the information requested in CHIR No. 7, and it is unclear why this information is required or relevant to the instant docket. *Id.* at 13-14. The Postal Service also notes, in regard to question 6, that the Commission lacks jurisdiction over the labor agreements involved in the insourcing initiative and the Commission seeks information that does not exist in a complete or finalized form. *Id.* at 15.

The Postal Service objects to question 4, with its request for facility functions, space utilization measurements, and accounts of employee staffing, because it concerns facility and labor information outside of the Commission's oversight authority. *Id.* at 16-17. Similarly, the Postal Service objects to question 7, which refers to Office of Inspector General reports on a recent truck driver shortage, as outside the bounds of the Commission's authority and involving information pertaining to employment considerations. *Id.* at 17-18.

Finally, the Postal Service states that questions 3 and 5 request information concerning the Postal Service's disposition of real property. *Id.* at 18. The Postal Service contends that absent service or retail impacts, the Postal Service's deployment of facilities and the criteria for those decisions are solely within the Postal Service's discretion and not subject to Commission oversight. *Id.* The Postal Service emphasizes that the default assumption is that all sorting and delivery centers (S&DCs) will serve as transfer hubs, and the determination as to which S&DCs will not serve as transfer hubs will be settled as the network evolves. *Id.*

Stating that it is unclear how the extensive information requested in CHIR No. 7 would advance the Commission's general understanding of the DFA Plan or aid in determining whether further regulatory action is warranted, the Postal Service requests that the Commission reconsider and withdraw CHIR No. 7. *Id.* at 19.

III. COMMISSION ANALYSIS

The Commission initiated this docket to seek information regarding certain initiatives under the DFA Plan. As the Commission previously stated, this docket is not intended as a comprehensive review of the entire plan.³ The Commission, to date, has neither sought information regarding every initiative related to the DFA Plan, nor required the Postal Service to modify or delay the implementation of any DFA Plan initiatives. The Commission has not issued any rules or regulations regarding the DFA Plan. The Commission has not imposed any requirements on the Postal Service other than requesting that it provide information about several of its planned initiatives. Despite its objections to this docket and this CHIR, the Postal Service has not provided any authority demonstrating that a regulator exceeds its authority when it merely seeks information about the activities of the regulated entity.

The Commission is concerned that recent changes could have an adverse impact on the Postal Service's costs (potentially including measurement and reporting methodologies), revenue, volume, and products, all of which are under the Commission's purview pursuant to Title 39.⁴ Seeking information regarding cost or service estimates and the underlying assumptions is an appropriate use of the Commission's oversight authority. Likewise, the Postal Service's recent and planned changes could have impacts on workshare, service performance measurement, and potential disparate treatment for varying stakeholders, all of which involve the potential for the Commission to exercise appropriate oversight.⁵ The Commission is not alone in expressing these concerns. Stakeholders have noted parallel concerns on these topics and call for more transparency from the Postal Service.⁶ The Commission also notes

³ Order Denying Motion for Reconsideration, June 21, 2023, at 9 (Order No. 6548).

⁴ See, e.g., 39 U.S.C. §§ 3622 (regulation of postal rates and classifications, including workshare discounts), 3652 (report requirements related to costs, revenues, rates, and service).

⁵ See, e.g., 39 U.S.C. §§ 3662 (rate and service complaints), 3691 (service standards).

⁶ See Response of the Association for Postal Commerce and Alliance of Nonprofit Mailers to Motion for Reconsideration of the United States Postal Service, May 12, 2023, at 2-3 (noting the DFA Plan's potential impact on service and efficiency, costs, rates, adequate revenues, and service); Response of the Lexington Institute to Motion for Reconsideration of the United States Postal Service, May 22, 2023, at 1-2 (noting the need for information about the DFA Plan given the evolving information

that recent changes have the potential to affect service on a nationwide or substantially nationwide basis, which implicates section 39 U.S.C. § 3661. The Commission has not yet required the Postal Service to seek an advisory opinion, but it is appropriate for the Commission to seek information to determine whether one is needed.

Despite the Postal Service's assertions, section 503 allows the Commission to "take *any other action* [it] deem[s] necessary and proper to carry out [its] functions and obligations to the Government of the United States and the people as prescribed under [title 39]." 39 U.S.C. § 503 (emphasis added). These functions and obligations include broad oversight of rate changes, service standards and performance, nationwide changes in service, customer complaints, and overall compliance with the Postal Accountability and Enhancement Act of 2006 (PAEA).⁷ The Commission also has several enforcement tools, including the authority to issue subpoenas, the authority to direct the Postal Service to take remedial actions, and the power to levy fines in cases of the Postal Service's deliberate noncompliance.

The Commission previously stated that it intends for this public inquiry to narrowly focus on DFA Plan initiatives related to its statutory obligations that may have an impact on the postal community. Order No. 6548 at 9-10. In accordance with this goal, CHIR No. 7 sought information regarding planned network changes and a new initiative related to transportation. The Postal Service objects to all seven questions in CHIR No. 7, claiming the underlying requests exceed the bounds of Commission authority and that the requests are unnecessarily expansive.

To support its contention that the requests in CHIR No. 7 exceed authority, the Postal Service devotes a substantial amount of discussion regarding its managerial independence. The Commission recognizes that the Postal Service has considerable discretion in its operational matters. However, this discretion is not without

released by the Postal Service in a piecemeal fashion); Motion of the Greeting Card Association for Issuance of an Information Request, August 14, 2023, at 1-2 (explaining the lack of support or explanation for projections that underpin the DFA Plan's impacts); Motion of the Association for Postal Commerce for Issuance of Information Request, November 21, 2023, at 1-2 (explaining the lack of information concerning the impact on service of the DFA Plan's potential reduction or elimination of end-of-day trips from Post Offices to sorting facilities).

⁷ Pub. L. 109-435, 120 Stat. 3198 (2006).

accountability or transparency. Indeed, the PAEA sought to improve Postal Service accountability by strengthening Commission oversight.⁸ In a floor statement, Senator Susan Collins stated: “The bill transforms the existing Postal Rate Commission into the Postal Regulatory Commission with enhanced authority to ensure that there is greater oversight of the Postal Service as its management assumes greater responsibility.”⁹ It is well within the Commission’s authority to explore whether sweeping changes to the postal network will have an impact on cost or quality of service, particularly when there is little information about initiatives prior to implementation. Pre-implementation review, at least at a level that allows the Commission to determine if its jurisdiction is implicated, is necessary because there is little recourse should implementation of these initiatives conflict with the policies of title 39. For example, a post-hoc advisory opinion proceeding does not serve the public interest if substantial changes have already been made to nationwide postal services.

CHIR No. 7, like other CHIRs filed in this docket, sought information regarding the Postal Service’s planned network and transportation changes. Although the Commission appreciates the information provided by the Postal Service thus far, it remains unclear whether or how some of the DFA Plan initiatives will affect costs, rates, nationwide services, or a significant portion of customers. As the Commission learns more about these initiatives, it is also unclear why the Postal Service believes these changes will have no effect on postal services or why the Postal Service believes these changes will improve its financial condition.¹⁰ Whether and how network and transportation initiatives impact costs, how costs are measured and reported, the speed of delivery, and retail accessibility are all reasonable inquiries under the Commission’s statutory authority. See Order No. 6548 at 11.

⁸ See, e.g., 151 Cong. Rec. H6511, H6513 (daily ed. Jul. 26, 2005).

⁹ 152 Cong. Rec. S11,674, S11,675 (daily ed. Dec. 8, 2006) (statement of Sen. Collins).

¹⁰ See United States Postal Service, *Postmaster General and CEO Louis DeJoy’s Remarks During Feb. 8, 2024, Postal Service Board of Governors Meeting* (February 8, 2024), available at: <https://about.usps.com/newsroom/national-releases/2024/0208-pmg-and-ceo-louis-dejoy-remarks-during-feb-8-usps-bog-meeting.htm> (describing a goal of reducing overall transportation cost by \$3 billion over the next 2 years and reducing processing, distribution, and delivery costs by at least \$2.5 billion).

Although the Postal Service maintains that service will not be affected by changes associated with the DFA initiatives, the Postal Service has been reluctant to share specific details as to how it reaches these conclusions. It is one thing to state that service will be unaffected; it is another for a regulated entity to provide underlying analysis or estimates to its regulator showing how this conclusion was reached. It is even more critical for the regulator to understand transformative changes being implemented by virtually every employee at every level at all times.¹¹ If the Postal Service does not have the requested information, it may state so. Otherwise, the Commission finds it reasonable to seek information to support claims that these changes will not adversely affect cost or service, or to ensure that these initiatives do not require an advisory opinion from the Commission.

Furthermore, the Commission has noted its concern with the lack of information from the Postal Service regarding its DFA Plan. The Commission previously explained that it learned of the deployment of new facilities from media statements rather than the Postal Service. See Order No. 6548 at 12. In another case, the Commission learned of potential changes in the nature of services while conducting another proceeding and directed the Postal Service to seek an advisory opinion.¹² Indeed, the public has asked for more transparency and clarity as the Postal Service rolls out its DFA Plan.¹³ Moreover, both Congress and the public have pressured the Postal Service to allow the public opportunities to comment on its DFA Plan.¹⁴ Similarly, following prior

¹¹ See Docket No. ACR2023, Responses of the United States Postal Service to Questions 8, 15(g), and 17 of Chairman's Information Request No. 1, January 19, 2024, question 17.a. (explaining that the DFA Plan is a "living plan" and the Postal Service evaluates and adjusts operations on a daily or regular basis at the local, district, division, and national level).

¹² *Id.* (citing 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 (Order No. 6232)).

¹³ See, e.g., *UP lawmakers protest postal changes*, The Daily News (February 8, 2024), available at: <https://www.ironmountaindailynews.com/news/local-news/2024/02/up-lawmakers-protest-postal-changes> (citing unclear information from the Postal Service regarding its Optimized Collections Plan).

¹⁴ See, e.g., Letter from U.S. Senator Gary Peters (MI) to the United States Postal Service (Dec. 5, 2023), available at: <https://www.hsgac.senate.gov/media/dems/peters-presses-for-transparency-on-potential-impacts-of-postal-services-network-plan/>.

modernization efforts in 2004, a Senate committee noted that the President's Commission on the United States Postal Service praised the Postal Service for pursuing a plan to modernize its processing network, but the committee noted the lack of information on the plan.¹⁵ It stressed that the Postal Service implement its facilities realignment in the most transparent manner possible, stating: "Transparency will not prevent communities and elected officials from raising concerns about the Postal Service's actions. It will, however, make it possible for those affected by the Postal Service's actions to see the connection between those actions and the need to preserve the vital services the Postal Service provides." S. Rep. No. 108-318, at 25.

Given the lack of clarity regarding the DFA Plan initiatives, the Commission will continue to act proactively in seeking information to determine whether Commission action is required, particularly where the Postal Service has not been forthcoming with providing the information to the Commission or the public.

However, the Commission recognizes a need to balance transparency and access to postal information against extensive administrative expenses and burden. In addition, the Commission recognizes that the DFA Plan is subject to regular revision and evaluation, and initiatives may evolve over time. Thus, to the extent that the Postal Service objects to the level of detail requested by the Commission, or where the Commission finds that the Postal Service is unlikely to have the requested information, the Commission will amend CHIR No. 7. The Commission reviews each request below.

Questions 1 and 2 seek transportation information for the analysis of the network redesign. These questions will be amended to seek more general or less granular information, such as transportation and cost information or facilities in particular districts.

Question 3 asks for the criteria used to identify facilities for conversion to S&DCs. This question will be modified to ask for an update to the list of planned S&DCs. The Postal Service previously provided such a list in response to CHIR Nos. 1 and 4.¹⁶

¹⁵ S. Rep. No. 108-318, at 24-25 (2004).

¹⁶ Responses of the United States Postal Service to Questions 1-5 of Chairman's Information Request No. 1, July 19, 2023; Responses of the United States Postal Service to Questions 1-4 of Chairman's Information Request No. 4, October 23, 2023.

Question 4 seeks information that will be useful for calculating cost changes at individual facilities. This question will be amended to seek more general information on changes at each facility.

Question 5 asks for the criteria used to determine whether an S&DC will act as a transfer hub, and to identify current S&DCs that serve as transfer hubs. In the Motion, the Postal Service states that all S&DCs are transfer hubs (see Motion at 18).

Therefore, this question has been answered and will be deleted.

Question 6 seeks information that would allow the Commission to compare the transportation cost before and after the implementation of the planned initiative to convert Highway Contract Route (HCR) transportation to Postal Vehicle Service (PVS) transportation. This question will be amended to seek more general information about the initiative.

Question 7 seeks information about the impact of the truck driver shortage on the planned initiative to convert HCR to PVS. This question relates to the initiative referenced in question 6, which, as the Postal Service has stated in the Motion, is in its early stage, and relevant information “do[es] not exist in a reliably complete or finalized form.” Motion at 15. Therefore, this question will be deleted.

The Commission finds that these amendments will help determine if the transportation initiative or facility changes will impact cost or service, without overly burdening the Postal Service. The Commission notes that amending these questions at this time does not foreclose the opportunity to seek further information at a later date if it becomes apparent that such information is necessary for the Commission to fulfill its obligations and that necessity outweighs the potential burden on the Postal Service. Where it is unclear whether the planned or implemented initiatives will adversely impact costs or rates, the speed of delivery, or retail accessibility, the Commission will continue to seek relevant information or take any action deemed necessary and proper to carry out its oversight obligations to the government and the public.

Accordingly, the Motion to reconsider CHIR No. 7 is denied in part and granted in part. A revised CHIR No. 7 will be issued concurrently with this Order.

IV. ORDERING PARAGRAPHS

It is ordered:

1. The United States Postal Service's Motion for Reconsideration of Chairman's Information Request No. 7, filed on January 2, 2024, is denied in part, and granted in part.
2. Revised Chairman's Information Request No. 7 will be issued concurrently with this Order.

By the Commission.

Erica A. Barker
Secretary