

ORDER NO. 6067

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

Before Commissioners:

Michael Kubayanda, Chairman;
Ashley E. Poling, Vice Chairwoman;
Mark Acton;
Ann C. Fisher; and
Robert G. Taub

Complaint of States of New York,
Pennsylvania, California, Connecticut,
Delaware, District of Columbia, Illinois,
Maine, Maryland, Massachusetts, Michigan,
Minnesota, Nevada, New Jersey, New Mexico,
North Carolina, Oregon, Virginia, Vermont,
Rhode Island, and Washington

Docket No. C2022-1

ORDER GRANTING MOTION TO DISMISS COMPLAINT

(Issued December 17, 2021)

I. INTRODUCTION

On October 7, 2021, the States and Commonwealths of New York, Pennsylvania, California, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, North Carolina, Oregon, Rhode Island, Vermont, Virginia, and Washington and the District of Columbia (Complainants) filed a complaint alleging that the Postal Service's failure to

submit its 10-Year Strategic Plan¹ to the Commission for an advisory opinion violates 39 U.S.C. § 3661(b).² On October 27, 2021, the Postal Service responded to the Complaint with a motion to dismiss.³ On November 10, 2021, Complainants filed an opposition in response to the Motion to Dismiss.⁴

In this Order, the Commission reviews the Complaint and related filings and must determine whether a proceeding is necessary (if there is a material issue of fact or law) or dismiss the Complaint (if there is not a material issue of fact or law). 39 U.S.C. § 3662(b)(1). For the reasons explained in this Order, the Commission dismisses the Complaint. The Commission notes that proceedings on requests for advisory opinions would continue to allow for public input and independent Commission analysis on the specific initiatives falling within 39 U.S.C. § 3661's scope. As noted in this Order, both Complainants and the Postal Service acknowledge that the Postal Service requested advisory opinions in Docket Nos. N2021-1 and N2021-2 on service standard changes for First-Class Mail, Periodicals, and First-Class Package Service, initiatives that were initially described in the 10-Year Strategic Plan. Further, Complainants acknowledge that the 10-Year Strategic Plan indicates the Postal Service intends to request advisory opinions on changes to its retail network, and the Postal Service has confirmed its intent to do so.

¹ See 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 (10-Year Strategic Plan).

² Complaint Regarding United States Postal Service Violation of 39 U.S.C. § 3661(b), October 7, 2021 (Complaint). On October 29, 2021, the Commission granted a motion to amend the Complaint to add the State of Vermont as a Complainant. Order Granting Motion to Extend Response Deadline, October 29, 2021, at 2 n.2 (Order No. 6025).

³ United States Postal Service's Motion to Dismiss, October 27, 2021 (Motion to Dismiss).

⁴ Complainants' Opposition to the United States Postal Service's Motion to Dismiss, November 10, 2021 (Response in Opposition). The Response in Opposition was timely filed by the deadline set forth in Order No. 6025. Order No. 6025 at 2.

II. BACKGROUND

A. The Complaint

On March 23, 2021, the Postal Service issued its 10-Year Strategic Plan, which set forth a myriad of changes the Postal Service planned to make to address various challenges related to its financial health, business and operating models, customer needs, service performance, and changes to mail volumes and the mail mix.⁵ On October 7, 2021, Complainants filed the Complaint, which alleges that the Postal Service violated 39 U.S.C. § 3661(b) when it failed to request an advisory opinion from the Commission on the 10-Year Strategic Plan. Complaint at 4-5. Section 3661(b) requires that “[w]hen 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,” the Postal Service must submit a proposal to the Commission “within a reasonable time prior to the effective date of such proposal” requesting an advisory opinion. 39 U.S.C. § 3661(b).

Specifically, Complainants allege that the 10-Year Strategic Plan, on the assumption it is fully implemented, “will create a new operating model; rework how the Postal Service transports mail and other products; overhaul its processing and logistics network; enact slower service standards for First-Class Mail and Periodicals and First-Class Package Service[]; reconfigure the location of places where customers can obtain postal products and services; and adjust rates.” Complaint at 3-4. Complainants also describe the 11 strategies the Postal Service outlines in the 10-Year Strategic Plan, which include changes to service standards for First-Class Mail, Periodicals, and First-Class Package Service; changes to the processing and logistics network; and changes

⁵ See 10-Year Strategic Plan; see also Complaint at 10-11. The 10-Year Strategic Plan was filed by Complainants as Exhibit 1 to the Complaint. *Id.* at 32.

to the retail network, among others.⁶ Complainants provide public statements made by various Postal Service officials that demonstrate that Postal Service leadership viewed the 10-Year Strategic Plan as transformative, complex, and targeted to have widespread effects. *Id.* at 18-20.

Complainants acknowledge that the Postal Service requested advisory opinions regarding the changes in service standards for First-Class Mail, Periodicals, and First-Class Package Service, which were included in the 10-Year Strategic Plan and were the subject of Docket Nos. N2021-1 and N2021-2 and resulted in advisory opinions being issued by the Commission.⁷ However, Complainants state that “[a]lthough both proposals are components of the larger [10-Year Strategic] Plan, neither proceeding has evaluated the [10-Year Strategic] Plan’s other aspects.”⁸ They further state that these proposals “represent only a small portion of the [10-Year Strategic] Plan’s scope” and do “not eliminate the need for review of the full [10-Year Strategic] Plan,” as the combined effect of the 10-Year Strategic Plan’s changes may have a different impact on postal services than what has already been evaluated. *Id.* at 21, 31. They express concern that some of the changes contained in the 10-Year Strategic Plan have been implemented and that “the Postal Service has taken an exceedingly narrow view of . . . 39 U.S.C. § 3661(b)” in only submitting the two requests for advisory opinions related to

⁶ The 11 strategies are: (1) changes to tackle the decline in mail volume and increase in package volume; (2) changes to service standards for First-Class Mail and First-Class Package Service; (3) changes to the processing and logistics network; (4) optimization of the transportation network; (5) operational improvements related to mail delivery and the last mile; (6) modernization of the Postal Service’s vehicle fleet; (7) changes to the retail network to correspond with customer needs; (8) changes to the Postal Service’s organizational structure; (9) improvements to employee initiatives and the experiences of non-career employees; (10) review of product and pricing strategies; and (11) advocacy for legislative changes to retiree health benefit pre-funding obligations. *Id.* at 12-17.

⁷ *Id.* at 13, 21-25. The Complaint describes several of the Commission’s conclusions, concerns, and recommendations contained in the advisory opinions and attaches the two advisory opinions as Exhibits 2 and 3 to the Complaint. *Id.* at 21-25, 32.

⁸ *Id.* at 13-14. Complainants also note that the Postal Service filed a request with the Commission to increase prices for Market Dominant products, which was approved in Docket No. R2021-2. *Id.* at 17.

the 10-Year Strategic Plan to date.⁹ Complainants state that “[t]hrough discovery, [they] expect to obtain details about what parts of the [10-Year Strategic] Plan have already been implemented and when other parts of the [10-Year Strategic] Plan will be implemented in the future.” Complaint at 33.

Complainants assert that given the 10-Year Strategic Plan is “a comprehensive and holistic effort to transform,” “how the [10-Year Strategic] Plan will affect postal services—and whether the [10-Year Strategic] Plan will accomplish the Postal Service’s goals—can only be evaluated by viewing the [10-Year Strategic] Plan as a whole.” *Id.* at 4. Complainants further assert that because the Postal Service has not requested an advisory opinion on the 10-Year Strategic Plan “as a whole,” it has violated its statutory obligations. *Id.* at 4-5.

Complainants assert that the 10-Year Strategic Plan “will transform virtually every aspect of the Postal Service, and concomitantly, transform the nature of postal services with nationwide effect,” thus meeting the statutory definition of when a request for an advisory opinion is required by 39 U.S.C. § 3661(b). *Id.* at 3, 27-31. Specifically, Complainants allege that proposed changes to the Postal Service’s processing and logistics, transportation, and retail networks fall within the scope of 39 U.S.C. § 3661(b)’s requirement and that similar changes have been the subject of previous Commission advisory opinions issued pursuant to 39 U.S.C. § 3661. *Id.* at 27-29. Further, Complainants assert that the changes fall within the statutory definition of postal service found in 39 U.S.C. § 102(5), which defines postal service as “the delivery of letters, printed matter, or mailable packages, including acceptance, collection, sorting, transportation, or other functions ancillary thereto.” Complaint at 29-30; 39 U.S.C. § 102(5). They state that the 10-Year Strategic Plan “details significant changes to all aspects of postal services” by proposing “radical shifts in [the Postal Service’s] processing, transportation, and retail networks, as well as moving towards an operating

⁹ *Id.* at 4. Complainants acknowledge that the Postal Service stated in the 10-Year Strategic Plan that it intends to request advisory opinions related to proposed changes to the retail network and point out that the Postal Service has not filed such cases to date. *Id.* at 26 (citing 10-Year Strategic Plan at 35).

model focused more on packages.” Complaint at 11, 29. Complainants also allege that the proposed changes affect service on a nationwide or substantially nationwide basis as required by 39 U.S.C. § 3661(b) because the 10-Year Strategic Plan “will change the way the Postal Service operates across the country.” *Id.* at 30.

Once an advisory opinion is requested pursuant to 39 U.S.C. § 3661(b), the Commission allows an opportunity for a hearing on the record and public input and participation prior to issuing an advisory opinion. See 39 U.S.C. § 3661(c); Complaint at 26-27. Complainants state that the Postal Service’s violation “deprives users of the mail of their statutory rights, and undermines public accountability” while also “upset[ting] the statutory balance . . . , depriv[ing] the Postal Service of the Commission’s expert recommendations, risk[ing] significant errors in the Postal Service’s decision-making, and ultimately harm[ing] all who rely on the Postal Service for timely and efficient mail.” Complaint at 5; see *id.* at 33-34. They assert that “[t]his constitutes harm to [Complainants] and their residents.”¹⁰ Complainants request that the Commission order the Postal Service to file a request pursuant to 39 U.S.C. § 3661(b) related to the 10-Year Strategic Plan in its entirety. *Id.* at 5, 36.

B. The Motion to Dismiss

On October 27, 2021, the Postal Service filed a motion to dismiss the Complaint, arguing that the Complaint fails to raise a material issue of law or fact within the scope of the Commission’s jurisdiction pursuant to 39 U.S.C. § 3662. Motion to Dismiss at 1, 4. The Postal Service asserts that the 10-Year Strategic Plan is not a “change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis” as required by 39 U.S.C. § 3661(b). *Id.* at 1 (quoting 39 U.S.C. § 3661(b)). Instead, the Postal Service represents that the 10-Year Strategic Plan is simply “an announcement of anticipated strategies that the Postal Service

¹⁰ *Id.* at 34. Complainants state that this harm is demonstrated by operational changes the Postal Service put into effect in June 2020 without first seeking an advisory opinion from the Commission. *Id.* at 34-36.

expects to pursue over the next several years” that “itself effects no changes.” Motion to Dismiss at 1.

The Postal Service contests that the entire 10-Year Strategic Plan falls within the scope of 39 U.S.C. § 3661(b). *Id.* at 5. Citing *Buchanan v. USPS*, the Postal Service states that “it is well settled that [s]ection 3661 is to be applied only to a specific class of actions identified therein.”¹¹ According to the Postal Service, *Buchanan* held that an action falling within the scope of 39 U.S.C. § 3661(b) must meet three separate criteria: (1) there must be a “change” that meaningfully impacts service; (2) the change must be “in the nature of postal services” in that it qualitatively alters the manner in which postal services are available to users; and (3) the change must affect service for “a broad geographic area.” Motion to Dismiss at 6 (citing *Buchanan*, 508 F.2d at 262-63). With regard to the first criterion, the Postal Service states that the publication of the 10-Year Strategic Plan “has no impact on service whatsoever” because the 10-Year Strategic Plan “itself makes no changes to postal services, but merely announces several anticipated initiatives that the Postal Service expects to undertake at various times.” Motion to Dismiss at 6.

The Postal Service also contests that 39 U.S.C. § 3661(b) requires “an immediate review” of all of the initiatives in the 10-Year Strategic Plan. *Id.* at 7. Specifically, the Postal Service states that the plain language of 39 U.S.C. § 3661(b) requires a proposal be submitted to the Commission “within a reasonable time prior to the effective date of such proposal.” *Id.* at 7-8 (quoting 39 U.S.C. § 3661(b)). It asserts that “the statute does not otherwise dictate when the Postal Service must request an advisory opinion” and that “[p]roperly construed, the statute does not support an order from the Commission under [s]ection 3662 compelling the Postal Service to request an advisory opinion in circumstances in which the Postal Service is still developing a proposal that is not subject to imminent implementation.” Motion to Dismiss at 8.

¹¹ *Id.* at 6 (citing *Buchanan v. USPS*, 508 F.2d 259, 262 (5th Cir. 1975)).

The Postal Service acknowledges that some of the initiatives contemplated by the 10-Year Strategic Plan are changes within 39 U.S.C. § 3661(b)'s purview or "may constitute such changes once the Postal Service's strategic deliberations crystalize into concrete operational proposals." *Id.* at 1. For those proposals, the Postal Service states that it has sought or will seek an advisory opinion as required by 39 U.S.C. § 3661(b) and thus is in compliance with 39 U.S.C. § 3661(b). *Id.* at 1-2, 7, 9, 10, 13. The Postal Service notes that it has already requested two advisory opinions on service standard changes in Docket Nos. N2021-1 and N2021-2, and as a result, the Complaint should be dismissed because it "alleges Postal Service noncompliance concerning a matter that the Commission has already addressed in another proceeding." *Id.* at 12. The Postal Service also notes Complainants' lack of formal intervention in those proceedings. *Id.* at 11-12. The Postal Service further acknowledges that the 10-Year Strategic Plan states that the Postal Service will request advisory opinions concerning its retail network realignment plans and confirms it intends to do so if it goes forward with those initiatives. *Id.* at 13. Further, the Postal Service represents that it "will also follow other statutory and regulatory requirements that govern other aspects of the [10-Year Strategic] Plan." *Id.* at 16. The Postal Service notes that "there are many aspects of the [10-Year Strategic P]lan that are subject to other types of regulatory review by the Commission."¹²

The Postal Service asserts that various other initiatives contained in the 10-Year Strategic Plan "are undoubtedly beyond the scope of [s]ection 3661, in that they do not propose nationwide service changes" and contends that "[t]he fact that those initiatives have been announced in a broader strategic plan that also includes initiatives that do implicate [s]ection 3661 cannot serve to shoehorn them into the advisory opinion process." *Id.* at 14. The Postal Service states that these initiatives fail to meet the second of the *Buchanan* criteria (*i.e.*, the change is in the nature of postal services)

¹² *Id.* at 23. The Postal Service discusses several of these aspects of the 10-Year Strategic Plan and the Commission proceedings where the 10-Year Strategic Plan has been or potentially could be implicated, but the governing statutory or regulatory provisions differ from 39 U.S.C. § 3661. *Id.* at 23-28.

because the changes do not alter the manner in which postal services are available to users with any impact on users being “indirect.”¹³

The Postal Service also asserts that “Complainants improperly seek to interpose themselves into the Postal Service’s long-range planning responsibility and interfere unduly with [the] Postal Service’s management of operations and business.” *Id.* at 17. The Postal Service explains that its strategic planning is regulated under a separate statutory framework. *Id.* at 18-19. Under 39 U.S.C. § 2802, the Postal Service must submit a strategic plan covering at least 5 years to the President and Congress at least every 3 years. *Id.* at 18; 39 U.S.C. § 2802. The Postal Service states that it has been creating such plans since 1997 and is “unaware of the Commission or any other party suggesting that the mere issuance of such a strategic plan, in and of itself, constitutes a nationwide service change requiring a [s]ection 3661 advisory opinion.” Motion to Dismiss at 19. It notes that strategic initiatives have never historically required a 39 U.S.C. § 3661 advisory opinion request when first mentioned in a strategic plan and instead have been the subject of later proceedings under 39 U.S.C. § 3661(b). *Id.* at 19-20.

The Postal Service further explains that the statute calls for the Commission to review the Postal Service’s annual performance plans, which are required by 39 U.S.C. § 2802(c) to be consistent with the Postal Service’s strategic plans, and provide related recommendations. *Id.* at 20 (citing 39 U.S.C. §§ 2802(c), 2803, 3653(d)). The Postal Service asserts that this statutory framework shows “a clear intention” that strategic plans not be subject to a 39 U.S.C. § 3661 proceeding upon publication but instead an intent that they be assessed by the Commission through its review of the Postal Service’s annual performance plans. Motion to Dismiss at 21.

¹³ *Id.* at 14-15 (citing *Buchanan*, 508 F.2d at 262-63). As examples of such initiatives, the Postal Service identifies “[e]fforts to promote diversity, equity, career development, and employee retention, and to enhance employee safety and wellbeing,” “[e]fforts to obtain legislative and administrative reforms concerning postal employee and retiree benefits,” and “[p]rice and product changes to generate additional revenue.” *Id.* at 15.

The Postal Service also raises concerns about the consequences of the Complainants' interpretation. The Postal Service states that if an advisory opinion were needed on every strategic plan, one of which is released at least every 3 years, the Commission and the Postal Service would be faced with either reviewing the broad strategic plan without being able to look at discrete initiatives "at any level of detail" or the Postal Service would redundantly submit the plan and then discrete initiatives as they became more developed, which the Postal Service asserts would "undermine administrative economy" and "unnecessarily complicate the process." *Id.* at 22, 23.

C. Complainants' Response in Opposition to the Motion to Dismiss

On November 10, 2021, Complainants filed a response in opposition to the Motion to Dismiss. Complainants assert that the Complaint "raises a colorable claim" and "material issues of law and fact" regarding whether the 10-Year Strategic Plan falls under 39 U.S.C. § 3661(b)'s jurisdiction. Response in Opposition at 1, 2. Referencing many of the initiatives described in the 10-Year Strategic Plan,¹⁴ Complainants emphasize that the 10-Year Strategic Plan "as a whole reflects a significant and transformative change to the Postal Service," one that they assert must be presented to the Commission for an advisory opinion in its entirety rather than in a piecemeal manner.¹⁵ They assert that the 10-Year Strategic Plan is "a collection of interconnected and interdependent strategies whose effects and success cannot be measured in isolation." *Id.* at 14.

¹⁴ See *id.* at 2-3.

¹⁵ *Id.* at 3-4. Complainants acknowledge the advisory opinions requested and issued in Docket Nos. N2021-1 and N2021-2 but state that neither proceeding addressed the 10-Year Strategic Plan as a whole. *Id.* at 4.

Complainants assert that the Postal Service discusses the 10-Year Strategic Plan differently in public and in the plan itself than it does in the Motion to Dismiss. *Id.* at 6. Specifically, Complainants state that the Postal Service publicly presents the 10-Year Strategic Plan “as a set of concrete, definite steps that are already being executed” while portraying the plan “as a mere aspiration that it may or may not pursue” in the Motion to Dismiss. *Id.* Complainants assert that the Postal Service has not provided any “evidence or other basis to substantiate its new characterization of the [10-Year Strategic] Plan as mere aspiration.” *Id.* at 8. Complainants argue that contrary to the Postal Service’s framing, “the evidence demonstrates that the [10-Year Strategic] Plan established a concrete set of strategies and is already in effect” and point out that the 10-Year Strategic Plan uses language that is “definite and resolute,” all of which illustrate the Postal Service’s certainty that it will proceed with the 10-Year Strategic Plan’s initiatives.¹⁶

Complainants emphasize that proceedings under 39 U.S.C. § 3661(b) are prospective and take issue with the Postal Service’s view that the 10-Year Strategic Plan is outside the scope of 39 U.S.C. § 3661(b) because it does not in and of itself direct any specific actions or changes. *Id.* at 7. Complainants assert that because 39 U.S.C. § 3661(b) calls for a prospective review, proceedings conducted under that provision only review planned actions and changes. *Id.* Complainants express concern that the Postal Service’s approach of waiting until implementation is imminent means that “the Commission will have to wait a decade” to issue an advisory opinion, at which point “it will be too late” for appropriate Commission review and public participation. *Id.* at 6. Complainants assert that nothing in 39 U.S.C. § 3661 requires that the proposed change be imminent before an advisory opinion is requested and that “[t]he plain language of [s]ection 3661(b) does not attach any level of development or detail to the

¹⁶ *Id.* at 8, 9. Complainants list several parts of the 10-Year Strategic Plan that have already been implemented, including the changes to service standards, increases in Market Dominant rates, the award of a contract for new postal delivery vehicles, and consolidations to mail processing operations. *Id.* at 8-9. Complainants also point to more than 200 uses of the word “will” in the 10-Year Strategic Plan as demonstrative that the Postal Service’s intent is more than aspirational. *Id.* at 9-10.

words ‘change’ and ‘proposal.’” *Id.* at 10. Complainants point to several previous Commission proceedings conducted pursuant to 39 U.S.C. § 3661(b), where the changes central to the case were evolving or the effects were unknown. *Id.* at 10-11.

Complainants agree with the Postal Service that 39 U.S.C. § 3661(b) and *Buchanan* require the three *Buchanan* criteria to be met for a proposal to fall under 39 U.S.C. § 3661(b), and they assert that the 10-Year Strategic Plan as a whole meets these criteria. *Id.* at 21. Regarding the first criterion (*i.e.*, there is a meaningful change to service), Complainants assert that the “all-encompassing changes to virtually every aspect of how the Postal Service operates” contained in the 10-Year Strategic Plan illustrate that the 10-Year Strategic Plan contains meaningful changes within the purview of 39 U.S.C. § 3661(b). *Id.* at 24. Complainants further assert that the 10-Year Strategic Plan should not be reviewed piecemeal under 39 U.S.C. § 3661(b) because it “is a single, unified strategic document whose subcomponents are interconnected and interdependent.” *Id.* at 22. Complainants express concern that the Postal Service is attempting “to avoid its regulatory obligations” through piecemeal review. *Id.* at 23. Complainants assert a comprehensive review is also consistent with federal case law and cite to cases in which federal courts looked at several separate policies’ effects when considering whether the Postal Service was required to request an advisory opinion under 39 U.S.C. § 3661(b). *Id.* at 23-24. Complainants contest the Postal Service’s characterization that the Complaint is targeted to the issuance of the 10-Year Strategic Plan, asserting “the Complaint is clearly targeted toward the transformative change *caused by* this strategic plan.” *Id.* at 25 (emphasis in original).

Regarding the second *Buchanan* criterion (*i.e.*, the change is in the nature of postal services), Complainants assert that the “profound changes” of the 10-Year Strategic Plan fall within the definition of postal service in 39 U.S.C. § 102(5) and list several proposed changes, such as changes to service standards and the retail network, that “are all significant changes in how the American public will interact with the Postal Service.” *Id.* at 25-26. Further, Complainants state that the 10-Year Strategic Plan’s “most transformative subcomponents” including processing, delivery,

retail, and transportation network changes have been subject to prior Commission proceedings under 39 U.S.C. § 3661(b). *Id.* at 26-27. Complainants note that most of the prior proceedings “involved only one or two of these significant types of changes” and that the 10-Year Strategic Plan “contemplates all of these changes, and more, within the same sweeping agenda.” *Id.* at 28.

Regarding the third *Buchanan* criterion (*i.e.*, the change must be on a nationwide or substantially nationwide basis), Complainants assert that the Postal Service does not dispute that the 10-Year Strategic Plan will affect nationwide service. *Id.* They also note that the 10-Year Strategic Plan was developed and issued by headquarters and disseminated throughout the country and that its impacts will be felt nationwide. *Id.*

Complainants further assert that the Postal Service is incorrect that when to request an advisory opinion is solely within the Postal Service’s discretion because “the Postal Service must submit a proposal to the Commission *before* the effects of the change—whether direct or indirect—have a substantially nationwide impact on service.” *Id.* at 11 (emphasis in original). Complainants are concerned that the Postal Service has failed to do this in the past and the effects of the 10-Year Strategic Plan “are already being felt.” *Id.* at 11, 12. Complainants state that if the Postal Service fails to request an advisory opinion in advance of implementation of a proposal, important policy objectives, including independent Commission examination and analysis and an opportunity for public input and enhanced public understanding of a proposal, are undermined. *Id.* at 12-13. They assert that their interpretation does not improperly interfere with Postal Service management but instead properly would allow for the Commission to provide analysis of the 10-Year Strategic Plan as a whole and allow for public input as Congress intended. *Id.* at 14.

Complainants disagree with the Postal Service's arguments that review of the 10-Year Strategic Plan's initiatives under other statutory provisions is adequate. *Id.* at 14-15. Specifically, Complainants take issue with the Postal Service's argument that the Commission's review of strategic plans is governed by other statutory provisions and not 39 U.S.C. § 3661, stating that no statutory provision "excludes strategic plans from the scope of [s]ection 3661, and the Postal Service does not identify one." *Id.* at 15. Complainants also contest the argument that because some subcomponents of the 10-Year Strategic Plan are reviewable under other statutory provisions, the 10-Year Strategic Plan should not be reviewed under section 3661, re-emphasizing that no statutory provision removes the 10-Year Strategic Plan from section 3661's scope. *Id.* at 19-20. Complainants assert that none of the other proceedings identified by the Postal Service are "an adequate substitute" for a section 3661 proceeding because they do not address the 10-Year Strategic Plan as a whole and do not grant authority to assess the substance and merits of the 10-Year Strategic Plan. *Id.* at 20.

Complainants also disagree with the Postal Service's argument that strategic plans historically have not been considered within 39 U.S.C. § 3661(b)'s purview, stating that the fact there has not been a previous complaint on a strategic plan "is irrelevant to whether *this* strategic plan constitutes a nationwide change in the nature of postal services." *Id.* at 15 (emphasis in original). Complainants allege that the 10-Year Strategic Plan "is fundamentally different" from previous strategic plans and thus must be viewed differently.¹⁷

¹⁷ *Id.* at 15-19. Complainants also assert that given that most outreach occurred after the 10-Year Strategic Plan was released, there is a question as to whether the 10-Year Strategic Plan complied with 39 U.S.C. § 2802(d), which requires the Postal Service to "solicit and consider the views and suggestions of those entities potentially affected by or interested in . . . a plan" when developing one. *Id.* at 17-18; 39 U.S.C. § 2802(d). Because this allegation is not contained in the Complaint and is outside the scope of the Commission's 39 U.S.C. § 3662 jurisdiction because it is not one of 39 U.S.C. § 3662(a)'s enumerated sections, the Commission does not further opine on this allegation.

Complainants also take issue with the Postal Service's arguments concerning the import of Docket Nos. N2021-1 and N2021-2, the two requests for advisory opinions previously filed with the Commission related to service standard changes also contained in the 10-Year Strategic Plan. First, Complainants object to the Postal Service's implication that Complainants' limited participation in those proceedings should affect the disposition of the Complaint. Response in Opposition at 29-31. Second, Complainants state that the Postal Service is incorrect that the Complaint should be dismissed because its allegations have already been addressed in Docket Nos. N2021-1 and N2021-2. *Id.* at 31. Complainants assert that the Complaint is significantly broader and looking to assess the wider effects of the 10-Year Strategic Plan, rather than solely the service standard changes addressed in Docket Nos. N2021-1 and N2021-2. *Id.*

III. COMMISSION ANALYSIS

In accordance with 39 U.S.C. § 3662(b), the Commission must begin proceedings on a complaint within 90 days "upon a finding that such complaint raises material issues of fact or law." 39 U.S.C. § 3662(b)(1)(A)(i). Such proceedings permit parties to engage in discovery prior to a formal hearing on the record. See 39 C.F.R. part 3010, subpart F. If the complaint does not raise material issues of fact or law, the Commission must issue an order dismissing the complaint with the Commission's written statement setting forth the bases of its determination. 39 U.S.C. § 3662(b)(1)(A)(ii), (B); 39 C.F.R. § 3022.30(a)(2), (b).

The Motion to Dismiss does not contest the facts raised in the Complaint.¹⁸ Given that there are no facts in dispute, the only issue for the Commission to resolve is whether 39 U.S.C. § 3661(b) requires the Postal Service to request an advisory opinion

¹⁸ For example, the Motion to Dismiss does not contest the 10-Year Strategic Plan's existence, the substance of its contents, the various statements made by Postal Service officials describing the nature of the 10-Year Strategic Plan, its breadth, and its importance, or the existence of other Commission proceedings related to the 10-Year Strategic Plan. See *generally* Motion to Dismiss.

from the Commission on the entirety of the 10-Year Strategic Plan. Neither discovery nor further proceedings are needed to answer that question, which can be resolved through the application of 39 U.S.C. § 3661(b) to the 10-Year Strategic Plan.¹⁹ For the reasons discussed below, the Commission finds that 39 U.S.C. § 3661(b) does not require the Postal Service to request an advisory opinion on the entirety of the 10-Year Strategic Plan and therefore grants the Motion to Dismiss.

A. No Requirement to Request an Advisory Opinion on the 10-Year Strategic Plan in its Entirety

1. Not a Change Under 39 U.S.C. § 3661(b)

Section 3661(b) requires that the Postal Service request an advisory opinion from the Commission “[w]hen 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.” 39 U.S.C. § 3661(b). In the seminal case interpreting this statutory language, the U.S. Court of Appeals for the Fifth Circuit found that “[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.” *Buchanan*,

¹⁹ Complainants assert that the Complaint presents a “colorable” claim of violation of 39 U.S.C. § 3661(b) and as a result, they should prevail. Response in Opposition at 4-6. Under Commission precedent, a “colorable” claim does not require proof of a statutory violation, but it must be reasonable and “not merely a naked assertion.” Docket No. C2001-1, Order Partially Denying Motion of United States Postal Service to Dismiss Complaint and Notice of Formal Proceedings, March 20, 2001, at 9 (Order No. 1307); Docket No. C2005-1, Order on Complaint on Express Mail, April 18, 2006, at 13-14 (Order No. 1461). Although the cases cited by Complainants were governed by the prior version of section 3662, which was amended in 2006, the Commission has applied the “colorable” claim standard under the current version of section 3662. See Docket No. C2008-3, Order Denying Motion of United States Postal Service to Dismiss Complaint and Notice of Formal Proceedings, August 1, 2008, at 4-5 (Order No. 92). This standard is meant to prevent “an evidentiary-based ruling” that “would also be conclusive as to the outcome of the complaint” at the motion to dismiss stage. See Order No. 1461 at 14 n.12. Because no facts are in dispute and application of the plain meaning of 39 U.S.C. § 3661(b) forecloses Complainants’ view that a violation of 39 U.S.C. § 3661(b) has occurred, the Commission determines that the Complaint does not raise a “colorable” claim of a violation of 39 U.S.C. § 3661(b). See Section III.A., *infra*.

508 F.2d at 262. Specifically, the court determined that section 3661(b) is implicated when three criteria are met: (1) the Postal Service is making a “change” that has “some meaningful” or quantifiable rather than “minor” impact on service; (2) the change is “in the nature of postal services,” which necessitates a “qualitative examination of the manner in which postal services available to the user will be altered;” and (3) the change affects service “on a nationwide or substantially nationwide basis”—*i.e.*, over a “broad geographical area.”²⁰ Postal service is defined by statute as “the delivery of letters, printed matter, or mailable packages, including acceptance, collection, sorting, transportation, or other functions ancillary thereto.” 39 U.S.C. § 102(5).

Complainants and the Postal Service are in agreement that the three *Buchanan* criteria set forth the requirements for when an advisory opinion request is required by 39 U.S.C. § 3661(b). Motion to Dismiss at 6; Response in Opposition at 21. However, they come to different conclusions in their applications of the criteria as to whether the Postal Service’s failure to request an advisory opinion on the 10-Year Strategic Plan constitutes a violation of 39 U.S.C. § 3661(b).²¹ After considering the filings by Complainants and the Postal Service as well as the 10-Year Strategic Plan itself, the Commission determines that the 10-Year Strategic Plan is not in and of itself a change within 39 U.S.C. § 3661(b)’s purview.

²⁰ *Id.* at 262-63 (internal quotation marks omitted). The Commission has used the *Buchanan* criteria to evaluate previous motions to dismiss complaints alleging violations of 39 U.S.C. § 3661 as well as to evaluate questions concerning its jurisdiction under 39 U.S.C. § 3661(b). See, e.g., Docket No. C2014-1, Order Dismissing Complaint, July 28, 2014, at 5-6 (Order No. 2136); Docket No. N2009-1, Advisory Opinion Concerning the Process for Evaluating Closing Stations and Branches, March 10, 2010, at 10-11.

²¹ Motion to Dismiss at 5-7; Response in Opposition at 22-28; see Complaint at 27-32.

The Postal Service's strategic plans are governed by 39 U.S.C. § 2802.²² Section 2802 requires that strategic plans contain "general goals and objectives," "a description of how the goals and objectives are to be achieved," and "a description of the program evaluations used in establishing or revising general goals and objectives," among other requirements. 39 U.S.C. § 2802(a). A strategic plan must cover a period of at least 5 years and must be updated and revised at least every 3 years. *Id.* § 2802(b). Thus, under 39 U.S.C. § 2802, strategic plans are forward-looking planning documents that are subject to regular evaluation, updating, and revision.²³ As such, they do not appear to be intended to effectuate changes simply by their development or issuance, and therefore, the development and issuance of a strategic plan alone does not appear to implicate 39 U.S.C. § 3661(b) because 39 U.S.C. § 3661(b)'s applicability is premised on a change in service, something the development and issuance of a strategic plan does not appear to do. As discussed in more detail in Section III.B., *infra*, this is not to say that specific initiatives described in a strategic plan would not require a request for an advisory opinion pursuant to 39 U.S.C. § 3661(b) in advance of implementation of those initiatives but simply to acknowledge that a strategic plan issued consistently with 39 U.S.C. § 2802 does not function to institute or implement changes within the meaning of 39 U.S.C. § 3661(b) and the first of the *Buchanan* criteria simply by its development and issuance.

²² Complainants state that they "do not argue that the issuance of a strategic plan alone violates [s]ection 3661(b)" and that "the Complaint is clearly targeted toward the transformative change *caused by* this strategic plan." Response in Opposition at 25 (emphasis in original). Although the Commission agrees that the Complaint is specifically targeted at the 10-Year Strategic Plan and its specifics must be considered, the statutory provision governing strategic plans generally is applicable to informing the analysis of whether the 10-Year Strategic Plan constitutes a change under 39 U.S.C. § 3661(b).

²³ The nature of strategic plans as routinely revised and updated documents is demonstrated not only by the statutory terms of 39 U.S.C. § 2802 but also by past practice. For example, the 10-Year Strategic Plan was a wholesale replacement for a strategic plan issued a little more than a year prior. Response in Opposition at 2, 15-16 n.18.

Complainants assert that no statutory provision excludes strategic plans from the scope of 39 U.S.C. § 3661 and that the Commission must look at the 10-Year Strategic Plan itself in making its assessment.²⁴ The Commission agrees that it must also look at the specifics of the 10-Year Strategic Plan itself; however, a review of the 10-Year Strategic Plan confirms that the 10-Year Strategic Plan alone does not constitute a change within the meaning of 39 U.S.C. § 3661(b) and the first of the *Buchanan* criteria.

The 10-Year Strategic Plan covers just 55 pages and describes the plan's goals and objectives and the planned initiatives aimed at meeting the goals and objectives as called for by 39 U.S.C. § 2802(a). It sets forth two central goals—service excellence and financial sustainability—and contains 11 key strategies for achieving these goals. 10-Year Strategic Plan at 5, 22-39; see Complaint at 12-17. Under each strategy, the 10-Year Strategic Plan discusses at a very high level various initiatives it intends to undertake in furtherance of each strategy. These initiatives are described in broad terms without any timelines or other specific details. For example, under its “a modernized post office network” strategy, the Postal Service states it will “transform retail locations into go-to destination centers” by investing in “retail units to provide a

²⁴ *Id.* at 15. Specifically, Complainants object to the Postal Service's argument that the Commission's review of strategic plans is governed by 39 U.S.C. §§ 2803, 2804, and 3653(d) and not 39 U.S.C. § 3661. *Id.*; see Motion to Dismiss at 20-22. The Commission agrees with Complainants that nothing in the statute explicitly exempts strategic plans from falling under 39 U.S.C. § 3661(b)'s scope although the Commission also acknowledges that the form and function of strategic plans as defined in 39 U.S.C. § 2802 make it unlikely that the development and issuance of a plan alone would bring it within 39 U.S.C. § 3661(b)'s purview. Nonetheless, the Commission's review of the Postal Service's annual performance plans under 39 U.S.C. §§ 2803 and 3653(d) is limited (see 39 U.S.C. § 3653(d)), and the fact that performance plans must be consistent with strategic plans in accordance with 39 U.S.C. § 2802(c) does not in any way limit the Commission's review of issues related to strategic plans under other statutory provisions including 39 U.S.C. § 3661 when appropriate.

Complainants also object to the Postal Service's argument that strategic plans historically have not been considered within 39 U.S.C. § 3661(b)'s scope, stating that the 10-Year Strategic Plan is fundamentally different from prior strategic plans and the fact that no party previously alleged that a strategic plan fell within 39 U.S.C. § 3661's scope does not exempt the current plan from 39 U.S.C. § 3661(b). Response in Opposition at 15-19; see Motion to Dismiss at 19-20. The Commission agrees that the fact that strategic plans have not historically been considered under 39 U.S.C. § 3661(b) proceedings does not limit Complainants' ability to make arguments that this particular strategic plan falls within 39 U.S.C. § 3661(b)'s scope. Thus, the Commission considers the specifics of the 10-Year Strategic Plan itself in its analysis. See Sections III.A. and III.B., *infra*.

world-class customer experience;²⁵ “align retail footprint, hours, and services to meet evolving customer demands;”²⁶ expand public trust services;²⁷ and become go-to places for local businesses.²⁸

Under the first of the *Buchanan* criteria, to fall within 39 U.S.C. § 3661(b)’s scope, the Postal Service must be making a change that has “some meaningful” or quantifiable rather than “minor,” impact on service. *Buchanan*, 508 F.2d at 262. Articulating broad and high-level future initiatives in a strategic plan cannot be considered instituting or implementing a change with a meaningful impact on service within the meaning of 39 U.S.C. § 3661(b). It is clear from reviewing the 10-Year Strategic Plan in its entirety as well as individual strategies like the “modernized post office network” strategy described above that the 10-Year Strategic Plan itself does not implement any changes and simply outlines future plans. Although it is also clear from the 10-Year Strategic Plan that the Postal Service intends to implement the initiatives contained in the plan and that the Postal Service envisions these changes to be

²⁵ 10-Year Strategic Plan at 34. This includes “improved retail training, modernized uniforms, refreshed lobbies, and expanded self-service and digital options” as well as providing “local businesses with access to expert shipping and mailing solutions consultants, and enabl[ing] them to quickly move and market their products through [the Postal Service’s] ubiquitous network of retail locations.” *Id.*

²⁶ *Id.* This includes evaluation of “operations at [the Postal Service’s] retail facilities to ensure that services are cost-effective while also providing adequate community access” and aligning “Post Office hours of operation to local use” by “[e]valuat[ing] and consolidat[ing] low-traffic stations and branches of city Post Offices into nearby full-service retail Post Offices” and “[e]xpand[ing] access and services based on market demand.” *Id.* at 34-35. The 10-Year Strategic Plan states that “[t]he Postal Service will request advisory opinions from the [Commission] concerning [the Postal Service’s] retail network alignments.” *Id.* at 35.

²⁷ *Id.* This includes “partner[ing] with all levels of government to engage and provide services for citizens,” “leverag[ing] the Postal Service’s] trusted brand to expand identity services such as passport services, fingerprint capture, biometric data capture, in-person proofing and notary services,” and “becom[ing] a one-stop shop for a wide range of government services,” which will “generate new revenue and additional foot traffic.” *Id.*

²⁸ *Id.* This includes “connect[ing] local businesses to their community and beyond with shipping and mailing solutions,” provid[ing] small businesses a second storefront to elevate their brand and services in the local community,” “offer[ing] the Postal Service’s] unparalleled retail network for package returns with convenient features such as printing, packing, pick up, and package-less returns,” and “improv[ing] parcel locker services.” *Id.*

transformative,²⁹ in practice, the initiatives may be implemented, but may also be revised, changed, postponed, or cancelled as they are further developed.³⁰ Given this, the Commission finds that the 10-Year Strategic Plan by itself is not a change impacting service and therefore does not fall within 39 U.S.C. § 3661(b)'s scope.³¹ Thus, the Postal Service's failure to request an advisory opinion on the entirety of the 10-Year Strategic Plan does not violate 39 U.S.C. § 3661(b).³²

2. Postal Service Discretion as to the Timing of a Request for an Advisory Opinion

The Postal Service's intent to implement the entirety of the 10-Year Strategic Plan is also not relevant as to the requirement to request an advisory opinion unless and until initiatives meeting the three *Buchanan* criteria have established

²⁹ See, e.g., 10-Year Strategic Plan at 3 (stating 10-Year Strategic Plan envisions "transforming [the Postal Service's] business and operations" and "[the Postal Service's] success depends upon implementing the totality of the [p]lan"), 6 (stating the 10-Year Strategic Plan envisions a "modern, transformed network of Post Offices"), 27 (stating the Postal Service "will transform [its] processing and logistics network"), 30 (stating the Postal Service "will transform [its] transportation operations"), 32 (stating the Postal Service's vehicle investment "is a key part of [its] broader strategy to transform [its] financial performance and customer service over the next ten years"), 40 (stating the Postal Service "will only be able to achieve [its] financial stability and service excellence goals if [it] successfully implement[s] the full breadth and totality of the plan elements"); see also Complaint at 11, 18-19.

³⁰ Complainants raise that the Postal Service has presented the 10-Year Strategic Plan as definite steps that have been or will be taken repeatedly in both the plan itself and in public statements, while taking the inconsistent position in the Motion to Dismiss that the 10-Year Strategic Plan is aspirational without providing evidence to support this characterization. Response in Opposition at 6, 8-10. The Commission does not see these statements as contradictory. The Postal Service can both intend to implement the 10-Year Strategic Plan in its entirety and recognize that each and every one of the myriad of initiatives mentioned in the 10-Year Strategic Plan may not be implemented because various initiatives are still being developed. See Motion to Dismiss at 8-9, 13 n.10, 18. However, even assuming the Postal Service has already decided to implement each and every initiative in the 10-Year Strategic Plan, that does not make the failure to request an advisory opinion on the 10-Year Strategic Plan in its entirety a violation of 39 U.S.C. § 3661(b) for the reasons discussed in the body of this Order.

³¹ The Commission discusses how individual initiatives may fall within 39 U.S.C. § 3661(b)'s scope in Section III.B., *infra*.

³² Because the Commission determines that the 10-Year Strategic Plan is not a change, the Commission need not analyze the other two *Buchanan* criteria. See *Buchanan*, 508 F.2d at 262-63. Clearly, if there is no change, then there is no basis to consider whether the change is "in the nature of postal services" and has occurred "on a nationwide or substantially nationwide basis." See *id.*; 39 U.S.C. § 3661(b).

implementation dates. The Postal Service and Complainants agree that the requirement to request an advisory opinion is prospective, that is, the request must be made in advance of implementing any initiative satisfying the *Buchanan* criteria.³³ Complainants assert that even if parts of the 10-Year Strategic Plan are still in development, “[t]he plain language of [s]ection 3661(b) does not attach any level of development or detail to the words ‘change’ and ‘proposal’” and cite to prior Commission proceedings conducted pursuant to 39 U.S.C. § 3661 where the Commission described the proposal that was subject to the advisory opinion as evolving or remaining under development to support their position that the current level of development of the 10-Year Strategic Plan is sufficient to bring it within 39 U.S.C. § 3661(b)’s scope. Response in Opposition at 10-11.

There is no question that section 3661(b) is prospective and that the Postal Service must file a request for an advisory opinion prior to implementing a change that falls under section 3661(b)’s purview. However, section 3661(b) also provides a clear statement as to the required timing of a Postal Service request, in stating that the Postal Service must request an advisory opinion “within a reasonable time prior to the effective date of such proposal.”³⁴ In accordance with the Commission’s regulations, the Postal Service must file its request “not less than 90 days before the proposed effective date of

³³ Complaint at 2, 26-27; Motion to Dismiss at 8; Response in Opposition at 7.

³⁴ 39 U.S.C. § 3661(b). The Commission also notes that section 3661(b) places the initial burden upon the Postal Service to determine whether to request an advisory opinion from the Commission when it is contemplating a change in the nature of postal services. 39 U.S.C. § 3661(b) (stating the request should be made “[w]hen the Postal Service determines that there should be a change . . .”). See Order No. 1307 at 10. Complainants assert that this discretion must be limited, and they express concern that the Postal Service “does not always properly gauge when a change falls under [s]ection 3661.” Response in Opposition at 11. The Commission notes that section 3662 as well as the federal courts’ ability to grant injunctive relief for violations of 39 U.S.C. § 3661(b) serve as checks on this general grant of discretion to the Postal Service. See, e.g., *Buchanan*, 508 F.2d at 261-62, 266-67 (upholding lower court’s granting of preliminary injunction in part); *Pennsylvania v. DeJoy*, 490 F. Supp. 3d 833 (E.D. Pa. 2020) (granting preliminary injunction); *New York v. Trump*, 490 F. Supp. 3d 225 (D.D.C. 2020) (granting preliminary injunction); 39 U.S.C. § 3662(a).

the change in the nature of postal services involved.”³⁵ By 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. The 10-Year Strategic Plan does not set forth specific effective dates for its myriad of initiatives.³⁶ Further, nothing in the filings before the Commission suggests effective dates have been set for initiatives for which the Postal Service has not already requested advisory opinions from the Commission and might otherwise be within 39 U.S.C. § 3661(b)’s scope.³⁷ That the Commission has previously reviewed requests for advisory opinions that were in the early stages of development is of no consequence here because those requests were filed by the Postal Service, in accordance with its discretion under 39 U.S.C. § 3661(b) to control the timing of its requests.³⁸ Although the Postal Service has discretion to request an advisory opinion on initiatives that are still under development, it would be inconsistent with 39 U.S.C. § 3661(b)’s clear grant of

³⁵ 39 C.F.R. § 3020.112. Complainants reference prior Commission decisions to support their view that a request for an advisory opinion should be filed “at an early enough time that the Postal Service will be receptive to feedback on the entire plan.” Response in Opposition at 12; see Complaint at 2. Although the Commission does not discourage early filing of such requests, such early filing is plainly not required by the applicable statutory and regulatory requirements. Complainants acknowledge that under the Commission’s rules, the request must be made not less than 90 days in advance. Response in Opposition at 12 (citing Docket No. N75-1, Advisory Opinion Concerning a Proposed Change in the Nature of Postal Services, April 22, 1976, at 69).

³⁶ This is consistent with the fact that pursuant to 39 U.S.C. § 2802(b), a strategic plan must cover a period of at least 5 years, and the 10-Year Strategic Plan in particular covers a period of 10 years. This means that the Postal Service intends to implement the 10-Year Strategic Plan over a number of years, and it may still be developing the details of many of the initiatives. See Motion to Dismiss at 7, 8-9, 13; see also 10-Year Strategic Plan at 3 (stating that implementation of the 10-Year Strategic Plan “will occur through deliberate, well-communicated phases in the coming years”). As a result, many initiatives described in the 10-Year Strategic Plan may yet to have estimated or expected effective dates. Motion to Dismiss at 8-9.

³⁷ As discussed in more detail in Section III.B., *infra*, the Postal Service requested advisory opinions in two proceedings related to changes in service standards that are also discussed in the 10-Year Strategic Plan. In addition, Section III.B., *infra*, also discusses initiatives outside 39 U.S.C. § 3661(b)’s scope, some of which have been implemented.

³⁸ See, e.g., Docket No. N2012-1, Advisory Opinion on Mail Processing Network Rationalization Service Changes, September 28, 2012, at 13-14.

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 on the 10-Year Strategic Plan when the effective dates for the majority of its initiatives have yet to be determined or announced.

B. Commission Review of Planned Initiatives

Although the 10-Year Strategic Plan in its entirety is not a change within the meaning of 39 U.S.C. § 3661(b), there is also no question that various initiatives proposed within the 10-Year Strategic Plan have implicated or potentially will implicate all of the *Buchanan* criteria and therefore necessitate a request for an advisory opinion pursuant to 39 U.S.C. § 3661(b).³⁹ Both Complainants and the Postal Service acknowledge that the Postal Service requested advisory opinions in Docket Nos. N2021-1 and N2021-2 on service standard changes for First-Class Mail, Periodicals, and First-Class Package Service, initiatives that were initially described in the 10-Year Strategic Plan.⁴⁰ Further, Complainants acknowledge that the 10-Year Strategic Plan indicates the Postal Service intends to request advisory opinions on changes to its retail network, and the Postal Service has confirmed its intent to do so. Complaint at 15-16, 26; Motion to Dismiss at 13. In addition, Complainants state that the 10-Year Strategic

³⁹ Complainants make various allegations that the 10-Year Strategic Plan is already in effect or currently being implemented. Response in Opposition at 6, 7-9. However, for the specific initiatives they raise as already being in effect, Complainants make no allegations that the Postal Service has violated 39 U.S.C. § 3661(b) because it implemented any specific change falling under the *Buchanan* criteria prior to requesting an advisory opinion. See *id.* at 8-9. The Complaint states that Complainants plan to use discovery “to obtain details about what parts of the [10-Year Strategic] Plan have already been implemented and when other parts of the [10-Year Strategic] Plan will be implemented in the future.” Complaint at 33.

⁴⁰ Complaint at 4, 13-14, 21-25, 31, 37; Motion to Dismiss at 1, 18; Response in Opposition at 4. The Postal Service claims that the Complaint should be dismissed because it raises issues that were already addressed in those proceedings. Motion to Dismiss 12. The Commission agrees with Complainants that the Complaint is substantially broader than the issues raised in those proceedings and therefore is not foreclosed by those proceedings. See Response in Opposition at 29-31. The Postal Service also observes Complainants’ lack of formal intervention in those proceedings, which the Commission agrees with Complainants is of no consequence here. See Motion to Dismiss at 10-12; Response in Opposition at 29-31.

“Plan’s most transformative subcomponents—from processing and transportation network changes to delivery and retail network changes—have already been recognized by the Commission in prior proceedings as constituting changes . . . warranting review.” Response in Opposition at 26; see Complaint at 27-29, 30. The Postal Service represents that it will request advisory opinions on initiatives meeting the 39 U.S.C. § 3661(b) criteria within a reasonable time prior to implementation. Motion to Dismiss at 1-2, 10, 13, 15-16.

Complainants, however, insist that the 10-Year Strategic Plan’s initiatives cannot be reviewed piecemeal under 39 U.S.C. § 3661(b) as the 10-Year Strategic Plan is “a collection of interconnected and interdependent strategies whose effects and success cannot be measured in isolation.” Response in Opposition at 14. Complainants assert that the Postal Service intends for the 10-Year Strategic Plan to be implemented together and breaking initiatives into separate proceedings allows the Postal Service “to avoid its regulatory obligations.” *Id.* at 22-23. They state that the policy objectives underlying 39 U.S.C. § 3661(b) necessitate that the 10-Year Strategic Plan be reviewed to allow for public input and an independent analysis by the Commission and to limit public confusion. *Id.* at 12-13. They further claim that if the Commission cannot review the 10-Year Strategic Plan until every initiative has been fully developed, “then the Commission will have to wait a decade—at which point it will be too late” for the Commission’s views and public participation. *Id.* at 6.

Complainants’ arguments are incorrect for several reasons. First, reviewing the various initiatives that meet the *Buchanan* criteria and fall under 39 U.S.C. § 3661(b)’s jurisdiction in separate proceedings is plainly permissible under 39 U.S.C. § 3661 and the Commission’s regulations. As described in Section III.A.2., *supra*, the Postal Service has discretion under 39 U.S.C. § 3661(b) to determine the timing of its requests for advisory opinions so long as it does so “within a reasonable time prior to the effective date.” 39 U.S.C. § 3661(b). 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.⁴¹ 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.⁴²

Second, 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. Proceedings on requests for advisory opinions would continue to allow for public input and independent Commission analysis on the specific initiatives falling within 39 U.S.C. § 3661's scope.⁴³ Third, although the Postal Service has discretion to request an

⁴¹ The Commission's regulations in 39 C.F.R. part 3020 reflect the discretion granted to the Postal Service in shaping its request. For example, 39 C.F.R. § 3020.113 requires that a formal request for an advisory opinion contain "such information and data and such statements of reasons and basis as are necessary and appropriate to fully inform the Commission and interested persons of the nature, scope, significance, and impact of the proposed change in the nature of postal services," including "[a] detailed statement of the present nature of the postal services proposed to be changed and the change proposed" and "[t]he proposed effective date for the proposed change in the nature of postal services." 39 C.F.R. § 3020.113(a), (b).

⁴² Complainants cite to two federal cases where the courts looked at the combined effect of multiple policies in enjoining changes that were made by the Postal Service without first requesting an advisory opinion. Response in Opposition at 23-24 (citing *New York*, 490 F. Supp. 3d at 233-34, 243; *Pennsylvania*, 490 F. Supp. 3d at 845-55, 885). These cases are distinct from the instant proceeding in that the changes at issue had already been implemented by the Postal Service without the Postal Service first requesting an advisory opinion and the courts were assessing the issues as framed by plaintiffs seeking injunctions. In this case, there is no allegation that specific initiatives falling within 39 U.S.C. § 3661(b)'s scope have been implemented without a prior request for an advisory opinion. See n.39, *supra*. In situations where changes have yet to be implemented, the Postal Service has discretion to determine whether it requests advisory opinions on initiatives separately or in combination.

⁴³ For example, in the Docket No. N2021-1 advisory opinion, the Commission concluded, "the Postal Service[] . . . relies upon assumptions that may not be well founded and it may be unable to achieve successful implementation where reliability and efficiency are required." Docket No. N2021-1, Advisory Opinion on Service Changes Associated with First-Class Mail and Periodicals, July 20, 2021, at 4. Further, in the Docket No. N2021-2 advisory opinion, the Commission was "concerned . . . that the reasonableness of the proposal rest[ed] upon the Postal Service being correct in its assessments about consumer preferences . . . and its ability to achieve the modeled increases in reliability, cost savings, and efficiency." Docket No. N2021-2, Advisory Opinion on the Service Standard Changes Associated with First-Class Package Service, September 29, 2021, at 169 (Docket No. N2021-2, Advisory Opinion). In

advisory opinion on a broad array of initiatives together, as Complainants acknowledge, previous proceedings conducted pursuant to 39 U.S.C. § 3661(b) have focused on a specific change to the nature of postal services in a given proceeding, such as a change to service standards, the mail processing network, or the retail network. See Response in Opposition at 26-28. This approach is more practical to administer as the Commission strives to issue an advisory opinion within 90 days of the Postal Service's request for an advisory opinion.⁴⁴ Within that 90-day period, discovery, a technical conference, preparation of rebuttal and surrebuttal testimony, a hearing on the record, and briefing all occur. See 39 C.F.R. § 3020.110(a). Given the pace at which proceedings conducted pursuant to 39 U.S.C. § 3661(b) are expected to move, focused requests allow for a more organized proceeding with more focused and thorough discovery by the parties and analysis by the Commission on the specific proposals at issue.

Finally, Complainants' argument that the Commission and public will have to wait a decade to consider the 10-Year Strategic Plan's initiatives is plainly incorrect, and 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 cannot or will not be considered. As discussed above, the Postal Service has already filed and represents it will file requests for advisory opinions in the future related to initiatives in the 10-Year

addition, as discussed below, the piecemeal approach has additional policy benefits, including ensuring initiatives outside of 39 U.S.C. § 3661(b)'s scope are not improperly pulled into a 39 U.S.C. § 3661 proceeding and allowing for the efficient administration of proceedings. See Section III.B., *infra*.

⁴⁴ 39 C.F.R. § 3020.110(a)(12). This deadline is subject to change for good cause only. *Id.* § 3020.110(b). The 90-day deadline for advisory opinions was established in Docket No. RM2012-4, in which the Commission sought to adjust procedures in ways that allowed for more timely and relevant advisory opinions after acknowledging that recent cases had taken 5 to 12 months to complete and that the Postal Service was seeking more prompt opinions in light of its financial situation. Docket No. RM2012-4, Advance Notice of Proposed Rulemaking on Modern Rules of Procedure for Nature of Service Cases Under 39 U.S.C. 3661, April 10, 2012, at 3 (Order No. 1309); Docket No. RM2012-4, Notice of Proposed Rulemaking Regarding Modern Rules of Procedure for Nature of Service Cases Under 39 U.S.C. 3661, May 31, 2013, at 2 (Order No. 1738); Docket No. RM2012-4, Order Adopting Amended Rules of Procedure for Nature of Service Proceedings Under 39 U.S.C. 3661, May 20, 2014, at 1 (Order No. 2080).

Strategic Plan that fall within the scope of 39 U.S.C. § 3661(b). The Commission notes that nothing precludes the Commission from considering the relationship between already implemented initiatives and new requests for advisory opinions within a 39 U.S.C. § 3661(b) proceeding. For example, in its advisory opinion in Docket No. N2021-2, the Commission noted “[t]he Postal Service tends to rely heavily on the achievement of cost savings related to changes proposed in Docket No. N2021-1” Docket No. N2021-2, Advisory Opinion at 56. As such, the Commission expects that when a proposal being reviewed under 39 U.S.C. § 3661(b) is related to, impacted by, or would impact an initiative that has already been implemented, the Commission would explore that relationship within the proceeding on the new request for an advisory opinion. In that way, the Commission expects subsequent cases filed pursuant to 39 U.S.C. § 3661(b) to take into account prior ones to the extent the initiatives are related, build upon, or affect one another.

The Commission also determines that it would be inappropriate to review the 10-Year Strategic Plan in its entirety pursuant to 39 U.S.C. § 3661(b) because various initiatives mentioned in the 10-Year Strategic Plan fall outside the scope of 39 U.S.C. § 3661(b), the definition of postal service in 39 U.S.C. § 102(5), and the *Buchanan* criteria. For example, many of the Postal Service’s workforce-related initiatives, including reducing non-career staff turnover, improving the hiring process, and building and retaining a diverse pipeline of candidates, do not appear on their face to implicate the first and second of the *Buchanan* criteria in that they neither are changes that would have a meaningful impact on service nor do they appear to be “in the nature of postal services” in that they would alter “the delivery of letters, printed matter, or mailable packages, including acceptance, collection, sorting, transportation, or other functions ancillary thereto” available to the user.⁴⁵ Other examples of initiatives mentioned in the 10-Year Strategic Plan and outside the scope of 39 U.S.C. § 3661(b) include initiatives to advocate to Congress for legislative changes related to employee health care costs

⁴⁵ See 10-Year Strategic Plan at 37; *Buchanan*, 508 F.2d at 262-63; 39 U.S.C. § 102(5).

and to the Administration to change its method for apportioning government contributions to specific employee annuities. 10-Year Strategic Plan at 39. Further, the Commission previously found that rate and product changes regulated under other provisions of chapter 36 of title 39 are “generally more appropriately considered” under those provisions and that to require a 39 U.S.C. § 3661 proceeding before the Postal Service changed rates, services, or the product lists “would appear to impose an unnecessary requirement” that “is inconsistent with other provisions of [title 39].”⁴⁶ The Postal Service includes both rate and product changes among its initiatives in the 10-Year Strategic Plan, some of which have already been the subject of Commission proceedings conducted pursuant to other provisions of chapter 36 of title 39.⁴⁷ Requiring the Postal Service to file a request for an advisory opinion on the entirety of 10-Year Strategic Plan would improperly pull these and other initiatives outside of 39 U.S.C. § 3661(b)’s scope into a proceeding conducted pursuant to 39 U.S.C. § 3661.

⁴⁶ Docket No. C2012-1, Order on Motion to Dismiss Holding Complaint in Abeyance Pending Further Proceeding, June 13, 2012, at 12-13 (Order No. 1366).

⁴⁷ See *generally* 10-Year Strategic Plan at 38 (discussing increasing prices for Market Dominant products pursuant to new rate authority); Docket No. R2021-2, Order on Price Adjustments for First-Class Mail, USPS Marketing Mail, Periodicals, Package Services, and Special Services Products and Related Mail Classification Changes, July 19, 2021 (Order No. 5937) (reviewing and approving price increases for Market Dominant products pursuant to new rate authority); 10-Year Strategic Plan at 23, 39 (describing future implementation of USPS Connect Local and conducting a review of Competitive product pricing); Docket No. CP2022-22, USPS Notice of Changes in Rates of General Applicability for Competitive Products, November 10, 2021 (proposing changes to Competitive product prices and the introduction of USPS Connect Local). Complainants assert that other proceedings are not an adequate substitute for review of the 10-Year Strategic Plan pursuant to 39 U.S.C. § 3661(b) because none of those regulatory reviews address the substance and merits of the 10-Year Strategic Plan as a whole. Response in Opposition at 20; see Motion to Dismiss at 23-28. Although the Commission acknowledges that these proceedings do not provide for the wide-ranging review of the entire 10-Year Strategic Plan that Complainants seek, the Commission also notes that these proceedings allow for public participation and input and independent Commission review of various other aspects of the 10-Year Strategic Plan falling within the scope of the Commission’s jurisdiction under statutory provisions other than 39 U.S.C. § 3661.

IV. CONCLUSION

Complainants and the Postal Service agree on the relevant facts but disagree on the question of whether the Postal Service violated 39 U.S.C. § 3661(b) when it failed to request an advisory opinion on the entirety of the 10-Year Strategic Plan. Given that there are no facts in dispute, the only issue before the Commission is whether 39 U.S.C. § 3661(b) required the Postal Service to request an advisory opinion from the Commission on the entirety of the 10-Year Strategic Plan. For the reasons explained in the body of this Order, the Commission concludes that a request for an advisory opinion was not required on the entirety of the 10-Year Strategic Plan. Based on the applicable standard of review, the Commission further concludes that the Complaint fails to raise any material issues of fact or law. Accordingly, pursuant to 39 U.S.C. § 3662(b)(1) and 39 C.F.R. § 3022.30, the Commission dismisses the Complaint.

V. ORDERING PARAGRAPH

It is ordered:

The United States Postal Service's Motion to Dismiss, filed October 27, 2021, is granted.

By the Commission.

Erica A. Barker
Secretary