UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

UNITED STATES POSTAL SERVICE,	
Respondent,	**Case No. 05-CA-140963**
and	
AMERICAN POSTAL WORKERS UNION, (APWU), AFL-CIO,	
Charging Party	**Date: November 24, 2015**

RESPONDENT'S REQUEST FOR DISCOVERY TO ENFORCE THE PROTECTIVE ORDER

Pursuant to Rule 102.35 of the National Labor Relations Board's Rules and Regulations, Respondent, United States Postal Service ("Postal Service"), hereby seeks an order directing the Charging Party, American Postal Workers Union, AFL-CIO (APWU), to cooperate fully in providing disclosures related to enforcement of the protective order. Respondent requests that the Charging Party be required to disclose to Respondent the relevant documents set forth at the end of this pleading, in order to determine the source of a disclosure and publication of a confidential document given to Charging Party by Respondent under subpoena, which was ultimately subject to the protective order.

The reasons for the request are as follows:

On October 20, 2015, Respondent provided copies of documents to Charging Party pursuant to subpoena *duces tecum* B-1NIKPDH. One of the documents provided has the title "Retail channel strategy (draft)" and is dated March 26, 2012. Exhibit 1. On

its cover, and throughout, the document states: "Confidential and Proprietary." Despite the confidential designation, the document was mistakenly provided to APWU as "non-confidential."

On October 26, 2015, counsel for APWU, Anton Hajjar, contacted counsel for Respondent, Rod Eves, and requested further information about the document. Respondent discovered at that time that the document had been inadvertently disclosed as non-confidential and then asked if Charging Party would treat it as having been designated as confidential. Charging Party counsel agreed to treat the document as though it had been provided as confidential under the terms of the (pending) protective order. Hajjar cautioned however that the document had already been shared in a limited fashion within the APWU, but that its confidential treatment would be maintained henceforth.

That communication took place as follows:

[From Hajjar]

> **From:** Anton Hajjar
> **Sent:** Monday, October 26, 2015 11:08 AM
> **To:** Eves, Roderick D - Denver, CO
> **Subject:** RE: NLRB Hearing -- Subpoena Responses
> **Importance:** High
>
> Rod – The Postal Service provided the attached document on Tuesday, in response to paragraph 2 of the APWU's subpoena. The USPS has not deemed it to be confidential. I note that it's marked "draft." The APWU may want to offer it into evidence at the hearing as reflecting the USPS's retail channel strategy. Is that correct? If not, please explain, so as to avoid having to track down a USPS official knowledgeable about the document for examination at the hearing. (The original document is probably in color; if so, please send me a copy in that format.) Thanks! - Anton

[From Eves]

From: Eves, Roderick D
Sent: Monday, October 26, 2015 1:27 PM
To: Anton Hajjar
Subject: RE: NLRB Hearing -- Subpoena Responses
Importance: High

Anton,
I will talk to my client tonight and respond to you tomorrow. Looking at the document, I am wondering if it was inadvertently disclosed with the nonconfidential documents. As a courtesy, can you please not disclose the document further until I get back to you tomorrow?

Rod

[From Hajjar]

From: Anton Hajjar
Sent: Monday, October 26, 2015 12:42 PM
To: Eves, Roderick D - Denver, CO
Subject: RE: NLRB Hearing -- Subpoena Responses

Rod - I would honor your request but I'm afraid it's too late. I already shared it with Dan Heltzer; I'm copying him with this response. As you noted in your last message to me, CGC will be getting it soon anyway. I also gave it to a few APWU officials and told them that it was not confidential. I don't know whether they sent it around to others. – Anton

Anton Hajjar
Murphy Anderson PLLC
1300 L Street NW ▪ Suite 1210 ▪ Washington DC 20005
(202) 223-2620 ▪ ahajjar@murphypllc.com

[From Hajjar]

From: Anton Hajjar
Sent: Monday, October 26, 2015 3:17 PM
To: Eves, Roderick D - Denver, CO
Subject: RE: NLRB Hearing -- Subpoena Responses

I will forward your request to the officers who I believe have seen it. I know of no plans to disseminate this document widely. I've not seen anything posted on the APWU web site.

Anton Hajjar
Murphy Anderson PLLC
1300 L Street NW ▪ Suite 1210 ▪ Washington DC 20005
(202) 223-2620 ▪ ahajjar@murphypllc.com

[From Eves]

From: Eves, Roderick D
Sent: Monday, October 26, 2015 4:12 PM
To: Anton Hajjar
Subject: RE: NLRB Hearing -- Subpoena Responses

Anton,

That will probably be fine, but if you could ask the APWU officials not to distribute it, or its contents, outside your/their core group until I have a chance to double-check with my clients tonight, [I] would appreciate it.

Rod

[From Eves]

From: Eves, Roderick D - Denver, CO
Sent: Tuesday, October 27, 2015 9:00 AM
To: Anton Hajjar
Subject: RE: NLRB Hearing -- Subpoena Responses
Importance: High

Anton,

I did speak with my clients and they have indicated that it was inadvertently disclosed as non-confidential. It should be identified "USPS/McKinsey Confidential" as business strategy and proprietary. We will ask the ALJ to include it among the documents ultimately covered by the protective order and ask that, unless and until the ALJ denies that request, it not be disclosed further.

Relative to the question in your original email below, this document constitutes pre-decisional business strategy prepared by a third party and does not necessarily reflect the USPS's ultimate retail strategy.

Rod

The APWU agreed to maintain the confidential status of the Retail channel strategy document pursuant to the protective order. At the hearing, on November 2, 2015, APWU counsel referred to the initial disclosure of the document as non-confidential, but reiterated the pledge to treat it as confidential, though Mr. Hajjar also suggested that a future challenge to the confidential status might be raised. On November 3, 2015, APWU counsel also objected to the section of the protective order requiring those within the APWU who would gain access to confidential materials to sign an agreement barring further disclosure, etc. Counsel claimed the signature requirement was excessive and burdensome.

Despite these assurances, on Thursday, November 12, 2015, the "Retail channel strategy" document was published on a website supportive of the postal workers, known as "savethepostoffice.com." Exhibit 2. Steve Hutkins, Associate Professor, Gallatin School, New York University, who operates the website, has advised the Postal Service that he received the Retail channel strategy document from a contact within the APWU, who he referred to as John Dennie.

Respondent asked Counsel for Charging Party to provide, *inter alia*, a narrative explanation of the release of the document; emails and correspondence related to the disclosure; and any advice, warnings, or instructions related to release of the document or treatment of it as confidential; as well as any efforts to retrieve the document after it was released. Respondent also asked for copies of the agreements that have been generated and were required to be signed by those who have been given access to the confidential documents submitted by Respondent. APWU counsel explained that he

asked his client about disclosure of the document and did not receive any information. He has since refused repeated requests to provide any other information or documents.

It is understood that if APWU officials released the document to the public at a time when it had not yet been designated as confidential, it did so legally. There is no record of such release however. On the other hand, if the document was released on or after October 26, 2015, once the Respondent asked that it be treated as confidential, then such release violates the terms of the protective order. Publication took place on November 12, 2015, however, which raises the question of when it was released.

The release is a serious matter, not merely because it violates the explicit terms of the Judge's protective order, but because it releases sensitive business strategy information to the public (even if in draft form, and even if the document was merely the recommendation of a third party).

Significantly, the document does not relate or refer to Staples at all and does not relate to any changes or activities related to the approved shipper program. It refers to approved shipper generically only as a minor revenue comparison. The document has nothing to do with the instant litigation. It is for this reason that Respondent has been concerned about releasing such documents to Charging Party at all. Nonetheless, it contains sensitive business strategy (pre-decisional and deliberative recommendations) and should not be and should not have been released to the public. This is precisely the kind of document that the Respondent asserted should not be released to the public and it is one whose confidential status the APWU stated it was planning to challenge. However, despite not challenging the confidential status to date, the APWU appears to

have released the document. Respondent now seeks to find out how and when it did so, and by whom. Charging Party resists the inquiry.

Given the sensitivity of thousands of other documents that Respondent has shared with APWU, which are also confidential, Respondent is concerned about the security of these documents and the APWU's efforts to maintain their security. Respondent seeks to assure that the protective order is strictly followed in the future, and the only way to do that with some confidence is to determine how the Retail channel strategy document was released and to make sure it does not happen again.

When the facts become available to show how the document was disclosed, by whom and when, Respondent will determine whether to seek sanctions and/or any other appropriate relief.

For the reasons described above, Respondent requests that Charging Party be required to provide complete disclosure of all documents, emails, correspondence, papers, or communications of any kind in its possession, or within the possession of any of its officers, that address or relate to the following:

1. All documents showing or regarding to whom, by whom, and when any disclosure was made of the "Retail channel strategy" document within or outside of the APWU at any time (electronically or otherwise), including disclosure to or from counsel;

2. All documents indicating or related to the disclosure by or within APWU of any confidential documents provided by Respondent pursuant to the subpoena in this case or pursuant to the Non-Disclosure Agreement related to the request for information regarding the Staples Pilot case;

3. All documents showing or regarding what instructions were given, and when, to anyone within or outside the APWU about non-disclosure and/or the confidential nature of the "Retail channel strategy" document (or any other confidential documents provided by Respondent) since October 20, 2015;

4. All documents indicating or relating to what efforts were made to retrieve the "Retail channel strategy" document or have it deleted or forbid its use, dissemination or publication since October 26, 2015;

5. All documents indicating or related to the identity of the person within the APWU who provided a copy of the document, including the date of disclosure, to John Dennie, Prof. Steve Hutkins, or the "savethepostoffice.com" website;

6. All documents indicating or relating to the efforts made to prevent the disclosure or publication of the document by John Dennie, Prof. Steve Hutkins, and "savethepostoffice.com," or anyone else;

7. All documents describing the relationship between the APWU and John Dennie, Prof. Steve Hutkins, and "savethepostoffice.com" (and/or any person within that organization);

8. All documents indicating what effort the APWU has been made to request that "savethepostoffice.com" not publish and/or remove the document from its website;

9. All documents, emails, etc., related to the "Retail channel strategy" document and the treatment of any documents received from the USPS in the Staples Approved Shipper NLRB case (and Staples Pilot RFI case), including copies of any signed certifications where recipients of confidential documents agree to safeguard them from disclosure or misuse.

Respectfully submitted,

Roderick Eves, Deputy Managing Counsel
Law Department – NLRB
United States Postal Service
1720 Market Street, Room 2400
St. Louis, MO 63155-9948
(314) 345-5864
(314) 345-5893 FAX

Mark F. Wilson, Attorney
United States Postal Service
Headquarters Law Department
475 L'Enfant Plaza, S.W., Room 6502
Washington, D.C. 20260
(202) 268-3060
(202) 268-5402

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of November, 2015, I served the foregoing Respondent's Request for Discovery to Enforce the Protective Order via regular mail, unless otherwise indicated, to the following individuals:

Hon. Paul Bogas
Administrative Law Judge
1015 Half Street SE
Washington, DC 20570-0001
paul.bogas@nlrb.gov

VIA E-FILING + EMAIL

Daniel Heltzer, Esq.
National Labor Relations Board
Region 5
Bank of America Center, Tower II
100 South Charles Street, Suite 600
Baltimore, MD 21201
daniel.heltzer@nlrb.gov

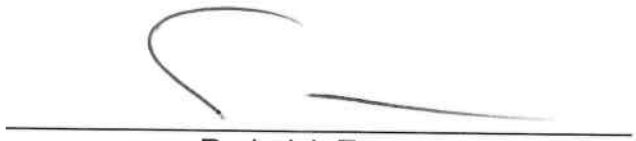
VIA EMAIL

Anton Hajjar, Esq.
Jeremiah Fugit, Esq.
Murphy Anderson, PLLC
1300 L Street, NW, Suite 1201
Washington, DC 20005-4107
ahajjar@murphypllc.com
jfugit@murphypllc.com

VIA EMAIL

Patricia A. Dunn, Esq.
Nikki McArthur
Jones Day
Counsel for Staples, Inc.
51 Louisiana Avenue, NW
Washington, DC 20001
pdunn@jonesday.com
nmcarthur@jonesday.com

VIA EMAIL



Roderick Eves

DRAFT

Retail channel strategy

EXHIBIT 1
tabbies

UNITED STATES POSTAL SERVICE®

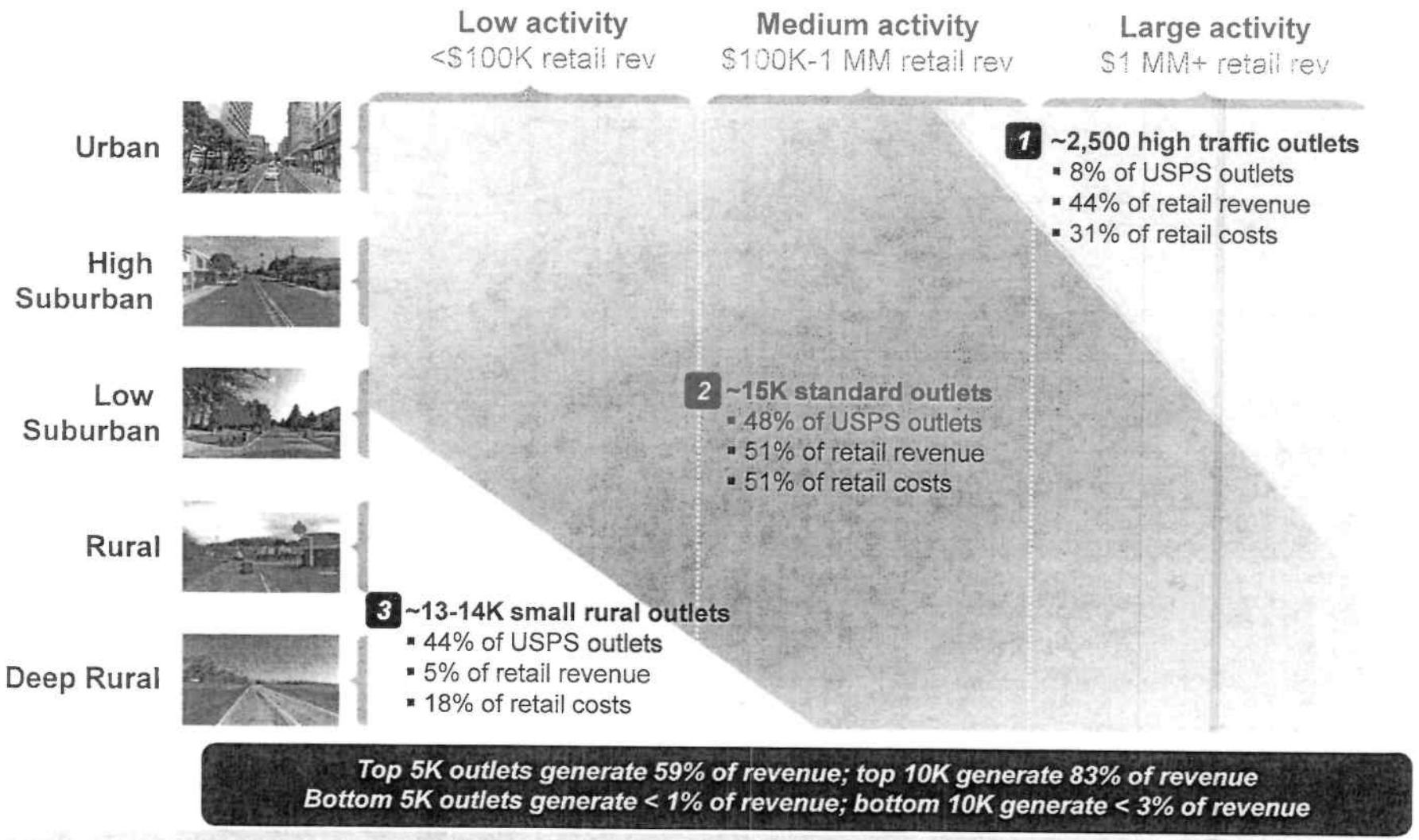
Discussion document

March 26, 2012

CONFIDENTIAL AND PROPRIETARY
Any use of this material without specific permission of McKinsey & Company is strictly prohibited

The retail channel strategy will need to take a balanced approach across activity and geography

Overview of USPS owned outlets



SOURCE: USPS Facilities Database, McKinsey Geospatial Analysis

DRAFT

The USPS retail network faces four fundamental challenges

Tough and declining economics

- Worsening viability of USPS-owned outlets (revenue decline outpacing cost trends)

Meeting evolving customer needs

- Growing importance of convenience, service & experience, online & multichannel, and product simplification

UNITED STATES POSTAL SERVICE®

Competitive pressure

- High competitive pressure in urban areas specifically in parcels & SMB (where growth is present)

Fulfilling the USO

- Need to balance meeting the USO with addressing customer, economic & competitor challenges

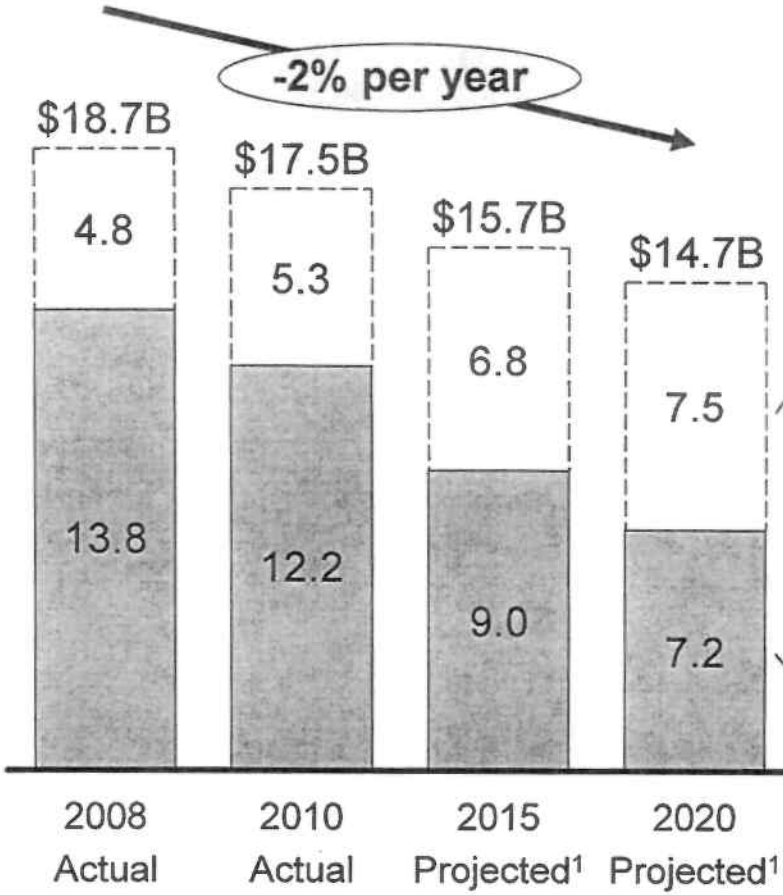
This document contains pre-decisional opinions, advice, and recommendations that are offered as part of the deliberations necessary to the formulation of postal policy. It is protected from disclosure pursuant to the Deliberative Process Privilege. This document also contains commercially sensitive and confidential business/proprietary information that is likewise protected from disclosure by other applicable state privileges.

DRAFT

USPS faces further challenges as revenue expected to decline faster than cost reduction, driving up cost to serve

USPS retail revenue by channel

$billion



Channel	2011 retail revenue, %	2011 cost per $ revenue	
CPUs	3%	$0.15	
Self Service Kiosk	3%	$0.08	
USPS.com	3%	$0.05[3]	
Stamps on Consignment	7%	$0.02	
PC Postage	17%	$0.02	
Other[2]	3%		
USPS owned outlet	65%	$0.47	~$0.76 by 2020

1 Revenue based on FY2011 actual revenue and projected using USPS strategy planning forecasts for first class mail and packages. Portion attributed to Post Office revenue calculated based off of historical data trending to a 3% decrease of % of revenue through Post Offices per year

2 Other includes catalog, mail, phone, and fax sales and Approved Shippers

3 Click N Ship cost to serve only

Source: USPS financials (FPR/EDW) + McKinsey Growth & Trends Analysis

USPS retail channel vision

The retail channel strategy will focus on enhancing the customer experience, protecting revenue and reducing cost to serve while ensuring USPS remains a trusted American institution

Meet customer needs	▪ Ensure consumers and small businesses have the customer **service, convenience, speed and information** they require ▪ Provide the **products and services the customer wants**, when and where they want them in all areas (e.g., urban, rural) ▪ Improve the **customer retailing environment** ▪ Ensure a **seamless multichannel offering** integrating online/digital/mobile and self-service with physical channels
Ensure cost efficiency and financial sustainability	▪ **Demonstrate financial stewardship** by optimizing the network to migrate customers to the lowest-cost channels ▪ **Reduce retail cost base by at least $1.5 bn** to contribute to overall viability of USPS
Protect our revenues from competition	▪ **Maximize our retail revenues** where feasible ▪ **Defend market share** from intensifying competition – particularly in the SMB segment
Remain a trusted American institution	▪ **Fulfill our USO** ▪ **Preserve the trust and integrity** of our brand ▪ Work with **trusted partners** to support our retail proposition

To achieve this vision, USPS will adopt a retail channel strategy that is tailored by market, which could deliver $2.6bn savings by 2020

DRAFT

PRELIMINARY

Pillars of Retail Channel Strategy

1 Improve experience in high traffic outlets

- *Invest in ~2,500 owned outlets (e.g., self service, training) to lower cost to serve*

2 Significantly expand retail partnerships

- *Migrate majority of volume from owned standard outlets to ~12-22K retail partners (maintain 4K USPS-owned locations)*

3 Match costs to volume in low traffic outlets

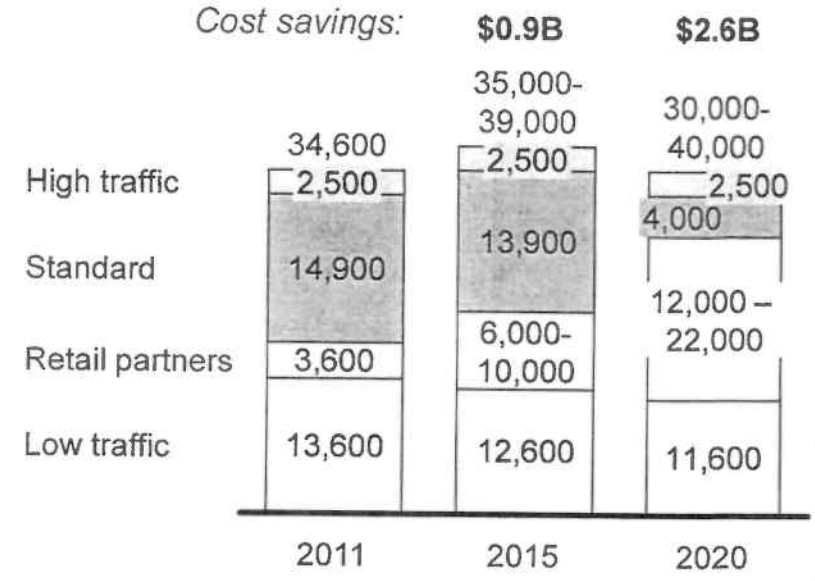
- *Fulfill USO cost effectively where no national retail partner available and continue to conduct PO studies where appropriate*

4 Grow digital access

- *Drive volume in .com and mobile platforms from SMBs & consumers while improving content and enhancing outlet support functionality*

Resulting impact

Number of outlets (preliminary)[1]



	2011	2015	2020
Retail cost	***$5.9 bn***	***~$5.0 bn***	***~$3.3 bn***
Overall cost to serve	***$0.35***	***$0.31***	***$0.23***
USPS cost to serve[2]	***$0.38***	***$0.36***	***$0.27***
% of revenue - alternative access	***~35%***	***~50%***	***~67%***

1 Excludes ~67K stamps on consignment and ~4K approved shippers partners today
2 Includes digital access
Source: USPS financials (FPR/EDW) + McKinsey Growth & Trends Analysis

USPS is developing multiple options for retail partnerships

Store-in-Store

- Postal outlet located in a **dedicated space** at a partner retailer, operated by **dedicated staff** (employed by the partner), offering a full set of postal products and services

USPS cost to serve: $0.20

Over the counter

- **USPS products and services** sold through **existing retailer space (retail till or customer service desk)** leveraging existing retailer staff (not dedicated to USPS activities)

USPS cost to serve: $0.07

CPG (consumer packaged goods)

- Simplified mail & packages offerings **sold off the shelf and paid for at a standard POS** (via barcode scanning)

USPS cost to serve: $0.08

Self-service

- **Retailer owns / rents / leases certified USPS self service machine** and places it in their outlets with nearby merchandising

USPS cost to serve: $0.09

All formats fully-integrated with digital access (.com & mobile channels)

SOURCE: McKinsey cost to serve analysis

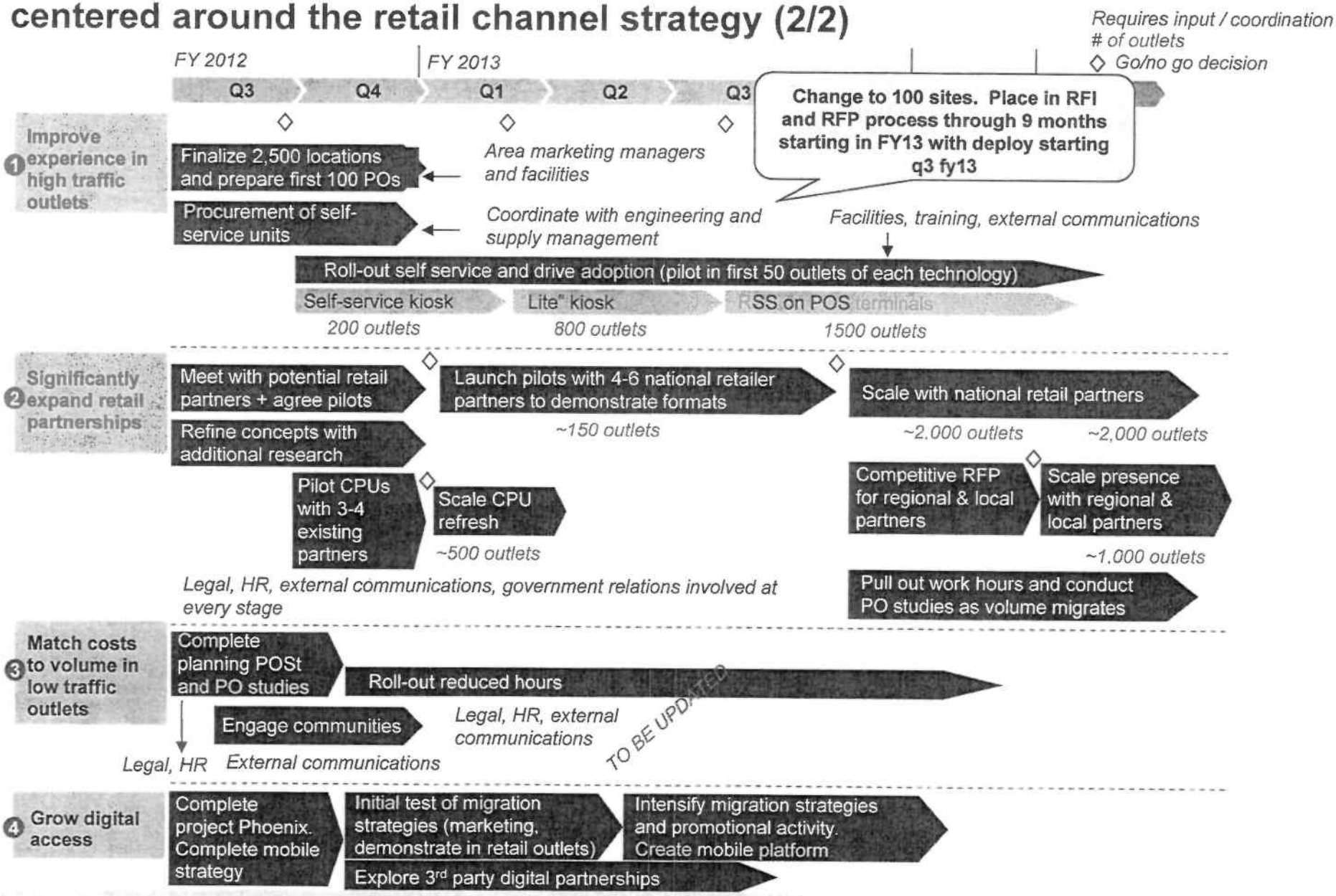
We are in the process of developing a detailed implementation plan centered around the retail channel strategy (1/2)

DRAFT

		Objectives
Strategic pillars	❶ Improve experience in high traffic outlets	▪ Deliver $220M in annual cost saving by 2015 (and $450M by 2020) by dramatically increasing deployment and customer adoption of self service (from ~10% to ~65% of transactions in 2,500 high traffic outlets) and mobilizing employees to support change
	❷ Significantly expand retail partnerships	▪ Migrate majority of volume from USPS owned standard outlets to ~12-22K retail partners (increasing access and convenience) to achieve estimated annual savings of $90M by 2015 and $1.3B by 2020
	❸ Match costs to volume in low traffic outlets	▪ Fulfill USO cost effectively in small rural areas through POSt + VPO to achieve estimated annual savings of $500M by 2015 (and continue to 2020) and conduct PO studies where appropriate (additional annual savings of $100M by 2015, $200M by 2020)
	❹ Grow digital access	▪ Significantly grow volume in .com and mobile platforms from SMBs & consumers while improving content and enhancing outlet support functionality
Enablers	Rationalize products	▪ Continue to rationalize and simplify the product set (e.g., flat rate) to enable self service, retail partnerships and digital access growth while providing a simpler experience to the consumer
	Upgrade supporting technology	▪ Enable timely deployment of USPS retail strategy and continue to support operations to better understand the customer and meet their needs (e.g., RSS, CARS, ID management, 3rd party kiosk certification)
	Consumer marketing and messaging	▪ Drive customer adoption of self service, migration to retail partners and use of digital access channels. Communicate overall strategy to key stakeholders (internal & external)
	Build organization capabilities	▪ Design the organization required to deliver on overall retail channel strategy (including PMO, new talent/skills at HQ, field support) and identify additional resource needs

We are in the process of developing a detailed implementation plan centered around the retail channel strategy (2/2)

DRAFT



Overview of investment required

DRAFT | HIGHLY PRELIMINARY

	Description of investment	Assumptions	Total capital / startup expense	*Annual estimated savings ($M)*
1 **Improve experience in high traffic outlets** ▪ Invest in ~2,500 owned outlets (e.g., self service, training) to lower cost to serve	▪ Rapidly deploy "Lite APCs" pre-RSS in ~1K outlets in 2012-13 ▪ Deploy self service POS w/ RSS across all outlets 2014-15	▪ 3 heavy APC @ $14K each in 100 outlets in 2012 ▪ 4 lite APC @ $6K each in 800 outlets in 2013 ▪ 4 POS w/ RSS @ $3K each in ~1,500 outlets ▪ $18K/outlet + $2K/machine build-out ▪ $1K training & cust. adoption	▪ **~$100M**	▪ $220M by 2015 ▪ $450M by 2020
2 **Significantly expand retail partnerships** ▪ Migrate majority of volume from owned standard outlets to ~12-22K retail partners (maintain 4K USPS-owned locations)	▪ Invest to pilot new formats w/ retailers ▪ Establish ~13K new partner outlets ▪ Encourage migration to retail partner (mktg) ▪ Upgrade ~500 current CPUs	▪ ~$33K capital upgrade[1] for all pilots with new retailers (10% of outlets = 1,300) ▪ ~$1.5K setup per new outlet (e.g., training) ▪ ~$10K per retail partner for cust. migration (mktg, awareness) ▪ ~$2K per CPU upgrade (e.g., counter, signage)	▪ **~$45M** ▪ **~$20M** ▪ **~$127M** ▪ **~$3M**	▪ $90M by 2015 ▪ $1,300M by 2020
3 **Match costs to volume in low traffic outlets** ▪ Fulfill USO cost effectively where no national retail partner available and continue to conduct PO studies	▪ Implement POSt in ~10K small rural outlets ▪ Conduct PO studies in ~3K outlets (where appropriate)	▪ - ▪ -	▪ **~$5M** (TBC) ▪ -	▪ $500M by 2015 ▪ $500M by 2020 ▪ $100M by 2015 ▪ $200M by 2020
+ **Incremental cost to implement program**	▪ Bring in necessary skills & expertise to team ▪ Program mgmt. & field oversight		▪ **~$30M (TBC)** ▪ **~$15M (TBC)**	▪ - ▪ -
		TOTAL:	▪ **~$345M**	▪ **~$0.9B** by 2015 ▪ ~**$2.5B** by 2020

1 Assumed 1/3 pilots are store in store (70K), 2/3 are over the counter (15K)

Strategic overview of USPS retail channel strategy

Retail channel vision

- Meet customer needs
- Ensure cost efficiency and financial sustainability
- Protect our revenues from competition
- Remain a trusted American institution

Pillars of Retail Channel Strategy

1. **Improve experience in high traffic outlets** through step change increase in self service lowering cost to serve
2. **Significantly expand retail partnerships** increasing convenience for consumers and lowering cost to serve for USPS
3. **Match costs to volume in low traffic outlets,** fulfilling USO where no national retail partner available and continue to conduct PO studies where appropriate
4. **Grow digital access** across .com and mobile platforms while improving content and enhancing outlet support functionality

Retail channel transformation will result in the following by 2020:

- ***Balanced and segmented outlet strategy*** (mix of USPS high traffic outlets, standard host outlets, USPS small rural outlets and retail partnerships)
- **67% of retail revenue flowing through alternative channels**
- **>$1.5B costs savings** with investment case currently being developed

The Postal Service's "Retail Channel Strategy": A blueprint for privatizing the post office

November 12, 2015

It's been clear for a long time that the Postal Service is in the process of privatizing itself by shifting processing operations to companies like Pitney Bowes through the workshare system and contracting out billions of dollars of work to private corporations (over $12 billion in 2014). The Postal Service has also been working to privatize its retail operations by creating a vast network of alternative retail channels.

This transformation of the retail system is the subject of a revealing and recently unearthed PowerPoint presentation entitled "Retail Channel

NEWS BRIEFS

APWU endorses Bernie Sanders for President

Bernie Sanders's passion for the presidency — or why the Post Office is part of what makes America great

Historic Mankato Post Office Up For Sale

Postal Banks Are People's Banks: 6 Things You Need To Know About Postal Banking

Canada Post puts c... mailbox progra...

RECENT POSTS

Postal Service releases on-time performance reports for Q4 2015

Richmond's historic Saunders Station post office sold, finally

When Titans collide: UPS petitions the PRC to change USPS costing methodologies

Did yesterday's election just kill mass conversion to cluster boxes in Canada?

...to analyze ...erformance

tabbies EXHIBIT 2