

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

Complaint on Sunday
and Holiday Collections

Docket No. C2001-1

REPLY BRIEF OF THE UNITED STATES POSTAL SERVICE

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TABLE OF CONTENTS

Introduction 1

I. Several Issues Are Not in Contention 1

II. Mr. Carlson’s Holiday Service Complaint Is Not Premised
On Any Policy of the Act 4

III. Appropriate Resolution of This Proceeding 12

Conclusion13

Introduction

On July 9, 2002, initial briefs were filed in this proceeding by Douglas Carlson, David Popkin, and the OCA, in addition to the brief filed by the Postal Service. To the extent necessary, the Postal Service hereby responds to the arguments presented in those pleadings.

I. Several Issues Are Not in Contention

Before addressing matters on which the parties continue to disagree, it will be useful to identify issues that are *not* in contention. Many of the discussions contained in the initial briefs of the other parties are no longer relevant, because they are directed towards eliciting from the Postal Service actions which have already been undertaken. Since the parties may only have become aware of these actions with the filing of the Postal Service's initial brief, however, it is understandable why those discussions were included in their initial briefs, filed concurrently with that of the Postal Service. Nevertheless, as a practical matter, there is no utility to be served by attempting to respond to those arguments in this reply brief. That is true even in instances in which the Postal Service may disagree with either the factual, legal, or philosophical premises of the arguments, despite having reached a similar conclusion on the most appropriate course of conduct.¹ In any event, the scope of the case has been narrowed to exclude

¹ Specifically, the Postal Service wishes to make very clear that by taking unilateral steps to improve service in light of matters that arose in this proceeding, the Postal Service is in no way conceding that the previously existing service failed to conform with the policies of the Act. See, for example, the Postal Service's initial brief at pages 25-26. Those actions were taken because they were believed to be the right things to do for our customers, as well as to narrow the scope of issues which the Commission needs to address to those issues regarding which there still exists actual

the need for further consideration of the following issues.

First, much of Mr. Carlson’s initial brief (pgs.11-14, 20-29) is presented in support of his suggested recommendation that the “Postal Service should eliminate the practice of conducting early collections on holiday eves and enforce this policy to ensure compliance from the field” (pg. 31).² The memorandum to the field issued by the Chief Operating Officer on June 26, 2002 (a copy of which was attached to the Postal Service’s initial brief) is intended to achieve that result. Therefore, with respect to the entire issue of holiday eves, the relative merit of his arguments (or corresponding lack of merit) does not need to be addressed.

Second, in their briefs, both Mr. Carlson (at pages 14-15) and the OCA (at page 28) raise concerns about the small fraction of collection boxes on which the schedule labels still indicate holiday pickups, even though virtually none of those labels are likely to be in compliance with the current field instructions. (The problem is that the instructions call for such holiday entries only when mail from the box is collected and processed on every holiday, and almost no plants process mail on every holiday.) Once again, by virtue of the June 26 memorandum to the field, the Postal Service has already taken steps to alleviate these situations. There is no controversy on this issue.

Third, all of the parties propose that the POM provisions regarding holiday (and

controversy. Obviously, the Commission’s evaluation of postal services under section 3662 must focus on current practices and practices going forward, not practices of the past. Moreover, there are potential concerns that, were its motivations in this instance to be misconstrued adversely, such a precedent might inhibit voluntary action by the Postal Service under similar circumstances in the future.

² The OCA makes the same recommendation on page 29 of its initial brief.

Sunday) collections, and the corresponding exhibit in the DMM, be updated to reflect actual collection practices on those days. OCA Brief at 29, Popkin Brief at 3, Carlson Brief at 30. As a practical matter, the Postal Service would dispute the notion that any discernible, much less material, portion of the public relies on information in the POM to ascertain Postal Service collection practices. Responses to DBP/USPS-1, 7.

Nevertheless, as indicated at the beginning of this proceeding (Postal Service Answer, pg. 13), the Postal Service had already initiated efforts to amend the relevant provisions, even prior to the filing of the complaint. This proceeding has caused those efforts to be suspended. See response to DBP/USPS-6. The need to update the POM and the DMM, however, thus constitutes another situation about which there is no controversy, and the Postal Service intends to do just that at the appropriate time.

Finally, one consequence of the removal of the above issues from contention bears noting. Mr. Carlson devotes a portion of his brief (pgs. 3-5) to an attempt to explain why resolution of certain issues in this proceeding was hindered by the manner in which the Postal Service ultimately chose to respond to DFC/USPS-19, under the unique circumstances that developed over the course of a lengthy and protracted discovery dispute. It should come as no surprise to anyone familiar with the dispute that the Postal Service perceives the claims made in that portion of his brief to constitute transparent makeweights, concocted *post hoc* to rationalize the pursuit of access to a database actually sought for purposes unrelated to this proceeding. The Postal Service, however, sees no point in attempting to resurrect this debate, which is much more complex and multifaceted than Mr. Carlson's brief might suggest. What may be of some consequence, though, is that, as chance would have it, all of the issues with

respect to which Mr. Carlson claims on pages 3-5 to have been disadvantaged are issues which are no longer in contention. Specifically, Mr. Carlson's purported need for access to CBMS data, allegedly to better plead his case regarding holiday eve collections and box labels with scheduled holiday pickups, evaporates now that the Postal Service has already taken the necessary steps to meet his concerns on those matters. Given these favorable developments, there is simply no credible basis for Mr. Carlson to continue to assert that he has been harmed by the manner in which the Postal Service chose to reconcile his request for information with its concerns about public and employee safety.

II. Mr. Carlson's Holiday Service Complaint Is Not Premised On Any Policy of the Act

What does remain in contention in this proceeding is the level of service on the holidays themselves. The root of Mr. Carlson's disenchantment with the Postal Service's treatment of outgoing mail on holidays is found in the following statement from Part 1 of his testimony:

I believe, as a general principle, that customers who deposit mail in collection boxes need their mail to be collected and processed within one day.

Testimony at 14. If this "general principle" were based on a policy of the Act, rather than on Mr. Carlson's personal belief, then there might be some point to this entire exercise. In fact, however, there is no policy of the Act which mandates compliance with this "general principle" on holidays, any more than there is a policy of the Act which requires that mail be delivered on holidays. As suggested in note 2 on page 5 of the Postal Service's initial brief, if statement of a "general principle" were warranted, the

operative one would call for collection and processing of outgoing mail within one business (or delivery) day, rather than merely one calendar day.

In his brief, Mr. Carlson appears to attempt to bootstrap his “general principle” into a policy of the Act, when, in fact, it is not. First, he starts with what is mutually agreed to be a relevant policy of the Act, the “adequate and efficient” standard of section 3661(a). Carlson Brief at 7-9. Next, he claims that “adequate” and “efficient” are separate, independent, requirements. *Id.* at 8. Choosing to focus exclusively on the “adequate” leg of that standard, he contends that “adequate postal services are postal services that meet the needs of customers.” *Id.* at 7, 8. In this vein, for example, he asserts that the “Postal Service must provide services that meet the needs of customers,” and further likewise suggests that, “if postal customers need collections and processing of outgoing First-Class Mail on Martin Luther King, Jr.’s Birthday, the statutory requirement to provide adequate postal services compels the Postal Service to provide this service.” *Id.* Mr. Carlson even goes so far as to assert that “considerations of cost, performance, or efficiency do not temper adequacy.” *Id.* at 8.

These assertions, however, are based on mere supposition, with no citation to any authority. Perhaps more importantly, they do not withstand logical scrutiny. Congress had an obvious purpose in linking “adequate” with “efficient” – application of the two objectives necessarily involves balancing both simultaneously. Glaringly absent from Mr. Carlson’s formulation of adequacy is any rule of reason. Must the Postal Service meet the “needs” of customers, whether those “needs” are reasonable or not? Is the “need” of one postal customer sufficient to constitute the “needs of customers” if no other “needs” are expressed? If some but not all postal customers “need” a

particular service, how far must the Postal Service go to make sure that its service offerings are at least available to every member of that limited subset of customers? Common sense suggests that only by incorporation of the concept of efficiency can these types of questions be meaningfully addressed, which is undoubtedly why Congress chose to include both terms in establishing the policy.³ Mr. Carlson’s postulation that “adequate” and “efficient” should be examined separately is fundamentally flawed.

For purposes of application in this proceeding, moreover, his notion of adequacy is especially lacking. By rigidly treating all customer “needs” as automatically translating into a minimum level of “adequate” service, Mr. Carlson is completely disregarding the fact that the services in question are those to be provided on holidays. Regardless of their “needs,” customers are not entitled to the same level of service on holidays as they might be on nonholidays. Mr. Carlson’s approach to adequacy blithely assumes that customer “needs” necessarily trump the determination of Congress to treat certain days of the year as federal holidays.⁴ Under his reasoning, for example, if customers “need” *delivery* on the King holiday, it would seem “that the statutory requirement to provide

³ Consider the example of modes of residential delivery. Under Mr. Carlson’s interpretation, once customers decide that curbside delivery does not meet their “needs” (even for reasons other than legitimate physical hardship), the Postal Service would automatically be required under his “adequate” standard to provide them with door delivery. In reality, though, barring reference to considerations of efficiency when establishing policies to govern general mode of delivery (i.e., for entire routes, as opposed to individual hardship exceptions) would be patently absurd.

⁴ Thus, Mr. Carlson (Brief at 16) cites press reports indicating that only 10 percent of businesses observed the Martin Luther King, Jr. holiday, and suggests that the Postal Service is therefore required to gear its level of operations to those who ignore the holiday.

adequate postal services compels the Postal Service to provide this service” every bit as much as it would compel the provision of collection and processing to meet a commensurate customer need for those services on that day. Yet no one, Mr. Carlson included, has suggested that postal services are inadequate if delivery is not provided on holidays. The situation on holidays clearly demonstrates why Mr. Carlson’s simplistic attempt to equate “customer needs” with “adequate service” is fallacious.

In addition, Mr. Carlson relies on an unduly constrained notion of efficiency. In his view, efficiency “is measured by evaluating the expense or waste involved in producing postal services that meet certain standards.” *Id.* at 8. His example of the application of this concept is that, if customers “need” mail service on the King holiday, efficient service is provided if the Postal Service incurs the minimum possible expense to furnish mail service on that day, and inefficient service is provided if the Postal Service incurs any greater expense to furnish mail service on that day. *Id.* Any introductory textbook in economics, however, would show that the concept of efficiency encompasses much more than producing a given quantity at the lowest possible cost. Efficiency is also measured by comparisons of relative aggregate utility at different levels and combinations of inputs and outputs.⁵

One of the more telling deficiencies in Mr. Carlson’s analysis is that he treats customer “need” as a binary variable – in his mind, a service is either needed, or not needed. In fact, however, the potential value a service may have to consumers ranges

⁵ For example, in *Economics*, 13th Edition (McGraw-Hill 1989) at page 971, Paul Samuelson and William Nordhaus define efficiency as “The use of economic resources that produces the maximum level of satisfaction possible with the given inputs and technology.”

across a wide continuum. At one end of that continuum, if it has no value, perhaps one could meaningfully say that the service is not “needed.” Beyond that, however, the terminology of “need” can play no useful role in a discussion of efficiency, because it cannot distinguish between a service that has only slight value, and a service with extremely high value.⁶ To use Mr. Carlson’s example of service on the King holiday, the Postal Service efficiently provides postal service on that day if the value of such service to customers exceeds the cost of providing it. Conversely, if customers in the aggregate place a value on outgoing mail service that is much lower than the associated costs, to nonetheless incur those expenses could be construed as inefficient.⁷ To suggest merely that customers “need” outgoing mail service sheds no light on whether we are talking about a small portion of customers with only tepid interest, or whether we are talking about a large portion of customers who would place a very high value on such service. Therefore, even a compelling showing that customers

⁶ Practically speaking, the limitations inherent in the term “need” in this context arise from the absence of any objective basis to distinguish between “needs” and “wants” (the apparent views of the Rolling Stones notwithstanding). On the one hand, it is perhaps tautological to maintain that, for a level of service to be “adequate,” it must meet the “needs” of mailers. But as long as there is nothing to prevent every “want” from being expressed as a “need,” requiring “adequate” service to meet the “needs” of mailers is tantamount to setting an unrealistic standard that in the real world could never be met.

⁷ During the course of meeting its universal service obligation, the Postal Service is highly likely to provide service at some times or places where the cost of the service appears to exceed its value. The Postal Service is certainly not intending to suggest that service which may be “inefficient” by this measure should necessarily not be provided. Rather, this factor is part of the balancing exercise in which the Postal Service seeks to provide service levels overall that are adequate and efficient. Directly contrary to Mr. Carlson’s assertion, however, to comply with the statutory policy appropriately, perceptions of adequacy *must* be tempered by considerations of cost and efficiency.

perceive some “need” for a particular service could not provide a sufficient basis to prove failure to comply with the “adequate and efficient” standard.

Mr. Carlson, however, makes no such compelling showing of need. He relies on his testimony, quoted above, that he believes that customers need uninterrupted outgoing mail service. He presents no quantitative evidence which indicates whether this belief of his is actually borne out by the attitudes and expectations of other postal customers to any material extent. (Beyond the filings by Mr. Carlson and Mr. Popkin, no other indications of customer dissatisfaction with holiday service have surfaced, either in this proceedings or elsewhere.) In essence, we are left to accept that postal customers “need” outgoing mail service on holidays because Mr. Carlson believes that they do.⁸ The Postal Service rejects this contention.

Mr. Carlson’s argument that the Postal Service is failing to provide holiday service in accordance with the policies of the Act collapses like a house of cards. He argues that “adequate” holiday service can be nothing less than the service customers “need,” that the need for “adequate” service cannot be tempered by considerations of cost or efficiency, and that a statement of his personal belief is a satisfactory basis to establish what constitutes the services that customers need. Each of these arguments is flawed. While “adequate” service must respond to *reasonable* customer needs,

⁸ On page 7 of his brief, Mr. Carlson seems to be vaguely implying that because the Postal Service did not take the opportunity to cross-examine him with respect to his testimony on customer needs, it has forfeited its opportunity to challenge his views on that topic. In fact, however, because there was so little substance to that testimony, there would have been little on which to cross-examine him. His testimony ultimately rests on his personal beliefs, and the utility of attempting to probe whether that testimony *really* reflects his true beliefs is not apparent.

legitimate evaluation of such needs cannot be isolated from factors such as cost and efficiency. Considerations of service adequacy in this particular context, moreover, cannot ignore the significant distinction between those days which have been designated as holidays, and those which have not. Lastly, something far more substantial than Mr. Carlson's statement of personal belief is required to establish that there is a material proportion of the mailing public for which a discrepancy exists between what they need or expect with respect to outgoing holiday mail service, and what they actually receive. None has been presented in this case. Ultimately, Mr. Carlson's holiday complaint boils down to his opinion that the Postal Service should collect and process more outgoing mail on holidays. His opinion does not equate to a policy of the Act.⁶

Additionally, there remains the issue of public notification. Mr. Carlson maintains that when notice is inadequate, postal services are inadequate as well. Carlson Brief at 9. As a matter of legal principle, the Postal Service does not agree that Mr. Carlson's conclusion necessarily follows from his premise. Practically speaking, however, the Postal Service does not contest that inadequate notice to the public could hypothetically raise nontrivial concerns. If, for example, the Postal Service were to routinely make representations that outgoing mail service is provided nationwide on every holiday, despite the lack of retail or delivery service, such representations would not be

⁶ Based on the proposed findings and conclusions in its brief (pgs. 7, 30), the OCA appears to share the conclusion that the Postal Service's service on holidays is adequate. Implicitly, therefore, the OCA likewise seems to reject Mr. Carlson's claim that service on holidays is not in accord with the policies of the Act. Mr. Popkin, on the other hand, seems more inclined to share Mr. Carlson's view that more holiday service is warranted, but offers no additional grounds to support that opinion.

consistent with current practice. As discussed in some detail at pages 14-16 of its initial brief, however, the Postal Service does not routinely make such representations. Instead, the holiday information available to the public tends to stress that post offices will be closed and normal delivery will not be provided, and is generally silent with respect to outgoing collections and processing. Such information should not cause reasonable customers to assume that outgoing mail service is necessarily provided on holidays. It is a far cry from anything which could reasonably be construed as so misleading or deceptive as to rise to the level of “inadequate” postal service.

In reality, although they are couched in the relatively severe language of statutory terms like “adequate” and “efficient,” Mr. Carlson’s views on public notification regarding holidays seem primarily directed towards the more modest objective of presenting suggestions that he thinks would facilitate improvements over current practice. Initially, it bears noting that complaint proceedings under section 3662 would generally not appear to be the most appropriate vehicles for individuals to bring their suggestions to the attention of postal authorities. More substantively, however, at pages 16-22 of its initial brief, the Postal Service has already explained why its holiday public communications reasonably coincide with its actual holiday operations, and why those components of holiday service jointly appear to satisfy the appropriate needs of mailing public.⁷ As Mr. Carlson’s brief largely tracks his testimony on this subject, the Postal Service sees no need to augment its initial brief in this regard.

⁷ The sole exception noted was the small fraction of collection boxes with inappropriate holiday labels, and steps have already been taken to fix that problem.

III. Appropriate Resolution of This Proceeding

Mr. Carlson's initial brief contains a section devoted to a discussion of the contents of a public report under section 3662. Carlson Brief at 2-3. This portion of the brief apparently assumes that the Commission will be issuing a public report. In fact, however, the Commission would issue a public report pursuant to section 3662 only if it were to determine that Mr. Carlson's complaint is justified. In order to reach such a conclusion, the Commission would need to find a policy of the Act with which the postal services being provided are not in accordance. Mr. Carlson has the burden of providing the evidence necessary to support such a finding, and he has not done so. As he himself acknowledges (Brief at 7), the Postal Service is not required to provide services which are spectacular or extravagant, but only those which are adequate and efficient. His suggestions regarding the contents of a public report appear to be premature. Instead, the Postal Service submits that the Commission should issue an order concluding that the complaint has not been justified.

CONCLUSION

For the reasons stated above and in its initial brief, the Postal Service submits that the complaint initiated by Mr. Carlson regarding outgoing mail service on and before holidays has not been justified. He has failed to show that the Postal Service is not providing postal services in conformance with the policies of the Act.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, in accordance with section 12 of the Rules of Practice, I have this day served the foregoing document upon:

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