

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION

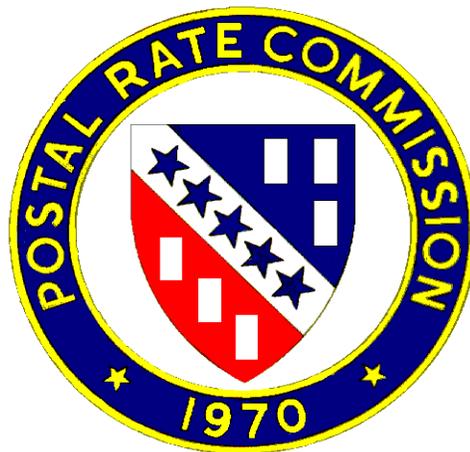
Before:

Chairman Omas,
Vice Chairman Tisdale,
Commissioner Goldway, and
Commissioner Hammond

Complaint on First-Class Mail
Standards

Docket No. C2001-3

COMMISSION REPORT
COMPLAINT ON
FIRST-CLASS MAIL STANDARDS SERVICE



Washington, DC 20268-0001
April 17, 2006

TABLE OF CONTENTS

	<i>Page</i>
Public Report	1
1. Commission Findings	1
2. Commission Recommendations	3

SEPARATE VIEWS OF CHAIRMAN OMAS

APPENDIX A — Background and Procedural History

APPENDIX B — Review of the Realignment

APPENDIX C — Review of the Consistency of the Resulting Service
with Several Statutory Provisions

APPENDIX D — Review of Requested Relief

PUBLIC REPORT

[1001] The Commission, having held a full public hearing to consider a formal Complaint, Docket No. C2001-3, pursuant to section 3662 of the Postal Reorganization Act (the Act), issues this Report to the Governors of the United States Postal Service. The focus of the Report, although it necessarily refers to specific operational details in certain instances, is on consistency with statutory requirements and policies.

1. Commission Findings

[1002] The Commission finds, with respect to changes in certain service standards:

- the Postal Service implemented a nationwide realignment of 2- and 3-day service standards in calendar years 2000-2001 affecting postal patrons throughout the continental United States;
- the implementation plan was materially different from the plan the Service had previously declared it intended to use;
- given this material difference, the Service had an obligation under section 3661(b) to seek an advisory opinion prior to implementing these changes, and failed to do so; and
- Commission jurisdiction over service complaints under section 3662 of the Act extends to filings that allege a violation of section 3661(b) requirements.

[1003] The Commission finds, with respect to the delivery service resulting from the 2000-2001 realignment:

- the service has not been shown to be, in total, inadequate to meet the needs of the Nation's mailers; however, in implementing the changes in issue, the Postal Service appears to have sought little or no direct input from patrons about their service needs. As a result, service resulting from the realignment cannot be said to be sufficient to meet those needs in all areas as required by section 403(b);
- the Postal Service did not consistently adhere to the priorities set out in section 101(e), which requires that it give the "highest consideration" to the expeditious transportation of important letter mail. Instead, administrative convenience resulted in mapping coverage of the 2-day standard exclusively in terms of surface transportation.

[1004] Appendix D of this Report provides additional, more detailed findings leading to these conclusions.

[1005] One reason conclusions are mixed with respect to assertions about the resulting delivery service is because section 3661(a) directs the Commission to consider whether the Postal Service is providing “adequate” services while also considering whether it is providing “efficient” services. This mandate generally requires the Service to make trade offs in its transportation and processing decisions. Adequacy is also a relative term for many postal patrons, as some may be willing to adjust to downgraded service standards by altering their mailing practices (such as by mailing a day earlier), if lower rates are charged, or conversely, may be willing to pay more for a faster, more reliable service. The public process mandated in section 3661(b) is designed to develop a record to inform the Postal Service on how patrons would like such trade offs to be balanced.

[1006] Conclusions are also mixed because the record indicates that service under the adjusted standards appears to have improved for some postal patrons. However, many postal patrons in the western part of the Nation experienced a disproportionate number of service downgrades. Thus, the delivery service under the realignment resulted in a degree of unfairness and undue discrimination under section 403(c) for these patrons.

[1007] The plan the Postal Service originally presented (in Docket No. N89-1) called for consistency and reliability of delivery service to be pursued in the context of a comprehensive framework. That framework included significant components — including several avenues for public involvement — that were absent from, or materially altered, in the 2000-2001 effort. The twin hallmarks of section 3661(b) are advance public disclosure of Postal Service plans that will affect service on a nationwide basis, in the form of a request for an advisory opinion from the Commission, and an opportunity for public comment on those plans. The Service has taken advantage of the section 3661 disclosure and review mechanism infrequently, but recently filed Docket No. N2006-1, Evolutionary Network Development Service Changes.

2. Commission Recommendations

[1008] The Commission does not call for or invite a new hearing, under either section 3661 or 3662. Such an outcome is not necessary or required by statute under the circumstances. Nor does the Commission call for immediate “rollbacks” of service standards to their pre-realignment status. Instead, the Commission suggests that the Governors direct management to:

- consider reinstating, where feasible, 2-day service standards for intrastate origin/destination pairs, and for pairs with established business relationships and/or volumes that meet long-recognized thresholds especially in nearby or adjoining states;
- initiate procedures to identify on a continuing basis regional and local situations (including those identified on this record and others that may come to its attention) where more expeditious First-Class Mail service is consistent with efficient and economic practices. Particular attention should be given to areas where disproportionate effects have been experienced as a result of the realignment;
- resume an evaluation of whether its relationship with FedEx provides any opportunities to efficiently expedite First-Class Mail on a regular basis; and
- provide more effective notice to the mailing public about First-Class Mail service standards, such as website posting and collection box labeling.

[1009] The Commission recognizes the significant complexities the Service must deal with in executing its mission in a manner consistent with the legal dictates of the Postal Reorganization Act, the expectations and desires of the mailing public, finite resources and a challenging operating environment. Notably, just as the record reveals certain statutory deficiencies in the Service’s actions, it also reveals some positive outcomes. There is evidence, for example, that the Service is providing better service in many places. Notwithstanding this, the Commission believes that the Postal Service should actively engage the public in major policy decisions and fully inform the public about matters of direct interest that affect its operations.

[1010] Fifteen years ago, the Commission reported to the Governors that the effort to determine customer preferences prior to Docket No. N89-1 (now overtaken by the emergence of the Internet and demographic changes) was seriously flawed. It appears

that little has been done to systematically ascertain the needs of the mailing public since that time. The Postal Service, as a government monopoly, has a positive obligation to learn the needs and desires of its customers and structure its products to meet those needs and desires where doing so is not inconsistent with reasonably feasible and efficient operations.

[1011] The realignment at issue occurred on a nationwide basis, and affected 2- and 3-day First-Class Mail processed through more than 76,000 ZIP Code pairs. Developing the evidentiary record took more than three years, as the Commission allowed delays to accommodate participants' rate case and other postal-related obligations. Despite the passage of time, the Commission believes this Report provides the Governors with relevant findings that should be useful as the Postal Service continues to explore appropriate service modifications.

By the Commission.

(S E A L)

Steven W. Williams
Secretary

SEPARATE VIEWS OF CHAIRMAN OMAS

I agree fully with the Report the Commission provides to the Governors today. I offer separate comments to emphasize my desire that the Postal Rate Commission work together with the United States Postal Service to efficiently provide the Nation with the most responsive and effective postal services possible.

As the Report makes clear, the Commission strongly believes that the Postal Service should be more aware of the needs and preferences of the mailing public and that it should use this information before it changes service standards.

I believe the Postal Service should regularly obtain information from the mailing public to use in developing its long-term operating strategy, and that it should also provide mailers with the opportunity to comment before it makes decisions to alter service locally. If the Postal Service obtained information from the public as I am suggesting, service changes could be better tailored to meet demonstrated public need before the fact, and the public would be less likely to view the Postal Service as an unresponsive government bureaucracy.

When public input is neither sought nor obtained, the only way mailers can effectively express their concerns is through the complaint process before this Commission. In this case, the complainant and the Postal Service cooperatively agreed to defer procedures to allow other urgent issues before the Commission to be resolved; however, as a result, action to adjust service changes that may have failed to meet mailers' needs has been deferred.

The Postal Rate Commission was never intended to evaluate the potential benefits and problems inherent in individual local service changes, and it is not well equipped to consider such issues. The Postal Service, on the other hand, is expected to make such decisions, and is fully able to do so if it is willing to obtain and use mailers' views. If it does this, mailers will be better served, and there will be less time and money spent on litigating complaints before this Commission.

BACKGROUND AND PROCEDURAL HISTORY

A. Background

[1] This Report responds to a formal service Complaint filed by Douglas F. Carlson (Mr. Carlson or Carlson) under section 3662 of the Postal Reorganization Act. At issue are the statutory implications of:

- the Postal Service’s approach to the realignment of longstanding nationwide 2- and 3-day First-Class Mail service standards in calendar years 2000 and 2001;
- actions leading up to realignment, including some stemming from a 1989 case at the Commission; and
- the delivery service provided under the realignment.

[2] Overnight standards (also referred to as “one-day” or “next day” standards) are not involved, nor is the Service’s success in meeting its First-Class Mail service standards.¹

[3] The Service relies on two key internal consolidation points in its processing network to mesh the practicalities of operations with its delivery windows. These reference points are referred to interchangeably as origin-destination facility pairs, city pairs and ZIP Code pairs. Thus, the delivery standard that attaches to a specific piece of First-Class Mail depends on its city or ZIP Code “pairing.”

[4] One of the linchpins in Mr. Carlson’s theory is a comparison that reaches back to the Service’s 1989 filing of a Request for an advisory opinion on a comprehensive realignment of nationwide First-Class Mail service standards (Docket No. N89-1). The outcome of that case was straightforward in some respects, but clouded in others. The Commission issued a non-binding opinion advising against adoption of the plan on a

¹ A “service standard” is “[a]n expectation by the Postal Service to deliver a piece of mail to its intended destination within a prescribed number of days, after proper deposit by the customer.” Tr. 1/89. Three standards (or benchmarks) apply to delivery of First-Class Mail within the continental United States: overnight, 2-day and 3-day delivery. Each standard is defined somewhat differently. There is no 4-day (or longer) standard for the delivery of First-Class Mail.

nationwide basis, and suggested that local review might be preferable. The Service exercised its statutory prerogative to proceed with the more comprehensive plan, and adjusted overnight standards accordingly. However, action on the 2- and 3-day standards languished, and did not resume in earnest until the late 1990s. At that point, the Service took steps that resulted in the 2000-2001 realignment at issue here.

[5] It is undisputed that the realignment affected 2- and 3-day First-Class Mail processed through more than 76,000 — or about 9 percent of — all facility pairs. However, assessments of the impact differ. For example, if the realignment is viewed strictly in terms of city pairs, there were more service upgrades than downgrades. In terms of volume, however, there was a net annual *decrease* in the number of pieces of First-Class Mail subject to a 2-day standard, and a substantial net *increase* in the number of pieces subject to a 3-day standard. In addition, the realignment had a disparate regional impact, with postal patrons in several western states, including California, experiencing far more service downgrades than those in other parts of the country.

[6] Mr. Carlson contends that his comparison of the Service's 1989 proposal and the 2000-2001 realignment reveals a material difference between the two approaches.² This difference includes, but is not limited to, the use of a computer-projected "12-hour drive time" rule, via surface transportation, as the dividing line between 2- and 3-day standards. Given his conclusion that the two approaches are materially different, Carlson asserts that the Service had an obligation, under section 3661, to file a new advisory opinion Request with the Commission prior to implementing the 2000-2001 changes. He further claims that the Service failed to seek such an opinion and, relying in part on a standard the Commission articulated in another complaint case (PRC Op.

² Carlson also refers to the Service's overall approach or plan as its model or philosophy. To minimize confusion with the use of the word "model" in connection with a computer program used in the 2000-2001 realignment, this Report generally substitutes the word "approach" for "model" in instances where the reference is to the general approach. It generally uses the word "model" when referring to the computer program.

C2001-1), asserts that this failure triggers the Commission's section 3662 service complaint jurisdiction.

[7] In a related argument, Carlson contends that the delivery service many postal patrons are receiving as a result of the 2000-2001 adjustments violates or exhibits inconsistencies with several statutory policies. These include section 3661(a), which mandates adequate and efficient postal services; section 101(e), which calls for expeditious transportation of important letter mail; section 101(f), which calls for the Service to give the "highest consideration" to the prompt and economical delivery of all mail; and section 403(c), which proscribes undue and unfair discrimination among mail users.

[8] *The Service opposes the Complaint.* The Service acknowledges, concedes or agrees with certain allegations in the Complaint. These include claims that:

- the anticipated realignment of 2- and 3-day First-Class Mail standards described in Docket No. N89-1 was sidelined for more than a decade;
- the 1989 plan and 2000-2001 approach differed in some respects;
- the complained of changes occurred on a nationwide basis; and
- more service downgrades occurred in Western and Pacific areas than in other areas.

[9] The Service disputes essentially all other aspects of the Complainant's allegations. In particular, it contends that the distinctions the Complainant points to do not constitute a material difference in approaches. Instead, it asserts that both realignment efforts were guided by the same objective, which was to improve the consistency and reliability of First-Class Mail delivery through reduced reliance on air transportation. Given this identity of purpose, the Service casts the 2000-2001 realignment as the belated implementation (or finalization) of Phase II of the plan it presented for Commission review in its 1989 filing, and therefore argues that it was under no statutory obligation to seek a new advisory opinion under section 3661(b).

[10] The Service also argues, in the alternative, that even if one assumes that a section 3661 obligation attached to its 2000-2001 actions, its failure to file a Request for

an advisory opinion does not fall within the scope of the Commission's section 3662 complaint jurisdiction. It also denies that delivery service associated with the changes, considered nationwide or regionally, violates or exhibits inconsistency with any of the referenced Postal Reorganization Act policies.

B. Procedural History

[11] Douglas F. Carlson filed a formal service Complaint, along with supporting material, with the Commission pursuant to 39 U.S.C. § 3662 on June 15, 2001.³ The Complaint, as filed and amended, alleges that the Service's implementation of changes in nationwide 2- and 3-day First-Class Mail delivery service standards during calendar years 2000-2001 occurred in violation of 39 U.S.C. § 3661. It also alleges that the ensuing delivery service violates, or is inconsistent with, policies set out in sections 3661(a), 101(e) and 101(f), and 403(c).⁴ The Complaint identifies the jurisdictional basis for pursuing an action under 39 U.S.C. § 3661 and describes the nature and extent of the relief sought. This includes, but is not limited to, institution of a new proceeding to address the 2000-2001 realignment and related delivery service.

[12] *Initial action on the Complaint.* The Commission accepted the filing as Docket No. C2001-3 for administrative purposes, pending a decision on its status under section 3662, and a copy was transmitted to the Postal Service.⁵ The Service filed its Answer, which included a general denial, within 30 days, in compliance with Commission rule 84.⁶ It also sought and received an extension of time to file two documents: a declaration by Postal Service employee Charles M. Gannon (Mr. Gannon or Gannon) and a Postal Service motion to dismiss the case.⁷ The Gannon Declaration was later incorporated by reference into Mr. Gannon's direct testimony.

³ Douglas F. Carlson Complaint on First-Class Mail Service Standards, June 19, 2001 (Complaint); see also Douglas F. Carlson Motion for Leave to Amend Complaint, August 14, 2001. The amendment added a paragraph (No. 66) stating: "The changes in First-Class Mail service standards that the Postal Service implemented in 2000 and 2001, as well as the current definition of the two-day delivery area for First-Class Mail, violate 39 U.S.C. §§ 101(e) and (f)."

⁴ The referenced policies pertain to the Service's obligation to provide adequate and efficient postal services, the prohibition against unduly or unfairly discriminating among mail users; expeditious treatment and prompt and economical service. See 39 U.S.C. § 3661(a); 39 U.S.C. § 403(c); 39 U.S.C. §§ 101(e) and 101(f).

⁵ See June 21, 2001 Letter of Steven W. Williams, Acting Secretary of the Postal Rate Commission, to Mary Anne Gibbons in care of the Office of the General Counsel.

⁶ Rule 84 is one of a set of rules pertaining to formal complaints in Subpart E, Rules Applicable to Rate and Service Complaints. 39 CFR 3001.81-87.

[13] The Commission, following a review of pertinent pleadings, issued a preliminary finding that the Complainant had made a prima facie showing that his claims warranted a hearing. It therefore denied the Service's motion to dismiss the case, instituted formal proceedings, assigned the Commission's Office of the Consumer Advocate (OCA) to represent the interests of the general public, and provided interested parties with an opportunity to intervene. Commissioner Ruth Y. Goldway was appointed presiding officer.⁸

[14] Mr. Carlson conducted discovery; filed direct and rebuttal testimony (DFC-T-1 and DFC-RT-1), and initial and reply briefs.⁹

[15] The Postal Service sponsored the direct testimony of Charles M. Gannon (USPS-T-1). It also submitted affidavits of Greg Whiteman, Francia G. Smith and Richard L. Prescott¹⁰ in connection with a discovery dispute related to disclosure of data associated with the External First-Class (EXFC) Mail measurement system.¹¹ Mr. Whiteman's affidavit was filed in his capacity as the Service's manager of Market Intelligence and Segmentation; Ms. Smith's as Vice President and Consumer Advocate; and Mr. Prescott's as manager of Revenue, Volume and Performance Measurement, Finance Department.¹² The OCA and Mr. Popkin, who also participated in this case,

⁷ Motion of the United States Postal Service to Dismiss Complaint, July 30, 2001 (Motion to Dismiss); Declaration of Charles M. Gannon, July 30, 2001 (Gannon Declaration).

⁸ Order Denying Postal Service Motion to Dismiss Complaint, Allowing Amendment of Complaint and Instituting Formal Complaint Docket, September 12, 2001; Notice of the Vice Chairman Designating Presiding Officer, September 20, 2001.

⁹ Douglas F. Carlson Initial Brief, August 12, 2004 (Carlson Brief); Douglas F. Carlson Reply Brief, August 26, 2004 (Carlson Reply Brief).

¹⁰ Notice of the United States Postal Service Regarding the Filing of Declarations to Accompany December 10, 2001 Reply, December 12, 2001; Notice of the United States Postal Service Regarding the Filing of Final Declaration to Accompany December 10, 2001 Reply, December 13, 2001.

¹¹ EXFC measures service performance from a customer perspective and produces accurate, independent, externally-generated results, and is designed to provide quarterly estimates of First-Class Mail service performance for 85 Performance Clusters from their overnight, 2-day and 3-day service standard areas. PricewaterhouseCoopers conducts the study for the Postal Service. Declaration of Francia G. Smith, December 12, 2001, at 1.

engaged in discovery and filed briefs.¹³ The OCA and Mr. Popkin, who also participated in this case, engaged in discovery and filed briefs.¹⁴

[16] Initial scheduling accommodated participants' requests for extensions of interim deadlines and provided an opportunity for formal appearances by witnesses. The Presiding Officer, acting on representations of the Complainant and the Service, subsequently authorized acceptance of testimony and designated cross-examination via motion and attestation. P.O. Rulings C2001-3/39 (January 28, 2004) and C2001-3/42 (May 14, 2004). The evidentiary record was closed on August 16, 2004.¹⁵

[17] *Significant procedural developments.* Proceedings have been affected by several notable developments. These include the September 11th terrorist attack; the postal-related anthrax bioterrorism attacks; ongoing postal reform efforts; and a significant caseload at the Commission.¹⁶

[18] This case included an extended debate over the confidentiality of certain Postal Service data measuring delivery performance. Although the Service ultimately provided some data under protective conditions, the Commission remains concerned about overbroad claims of confidentiality and about the degree of control the Service seeks to exercise over postal data and information, especially in areas where it enjoys a monopoly. It hopes the issues raised in this case may serve as the basis for continued dialogue on the standards that should apply to production of certain data of interest to

¹² Mr. Whiteman also filed a declaration addressing the Service's submission of three market research reports for *in camera* inspection. Second Declaration of Greg Whiteman, January 4, 2002.

¹³ Brief of the United States Postal Service, August 12, 2004 (Postal Service Brief), and Reply Brief of the United States Postal Service, August 26, 2004 (Postal Service Reply Brief).

¹⁴ Initial Brief of the Office of the Consumer Advocate, August 12, 2004 (OCA Brief); Reply Brief of the Office of the Consumer Advocate, August 26, 2004; Initial Brief of David B. Popkin (Popkin Brief), August 12, 2004.

¹⁵ P.O. Ruling C2001-3/44.

¹⁶ These include, among others, two omnibus rate cases; the first Negotiated Service Agreement (NSA) case as well as subsequent NSAs; other formal complaint cases; and mail classification experiments and major rulemakings.

the public and on meaningful ways to distribute that data or provide other reasonable means of access.

[19] The Postal Service sponsored Charles Gannon as its main witness. His testimony stands as an informative and impressive chronicle that not only addresses events associated with the relatively recent adjustments, but also those that occurred in the latter days of the Post Office Department and the early Reorganization era. His observations have added useful context to the analysis. The Commission recognizes Mr. Gannon for his dedication to the Service's mission, for being the repository of the Service's institutional memory on the development and implementation of First-Class Mail service standards, and for providing extensive information and data in response to numerous interrogatories while engaged in other ongoing and demanding duties.

REVIEW OF THE REALIGNMENT

A. The Service's Early Approach to First-Class Mail Service Standards

[1] A sectional center facility generally provided 2-day delivery to offices within a 600-mile radius via surface transportation, but the use of air transportation allowed 2-day delivery to be provided to some areas beyond this standard. These areas were generally those to which scheduled air transportation had been available since the Service's introduction of delivery standards in the early 1970s. A 3-day delivery standard applied to all mail within the continental United States not included in the overnight or 2-day areas. *Id.* at 7.

B. Review of the Two Approaches

1. The Service's proposed Docket No. N89-1 methodology

[2] The Service characterized its proposed new approach to service standards as “an historic change” in philosophy. Under the new approach, First-Class Mail service standards — and any ensuing changes in delivery service for specific city pairs — would no longer be as closely tied to the reach of surface transportation as they had been in the Post Office Department days. Instead, they would be determined through a systematic process comprised of several coordinated elements. The initial step was to be an evaluation of existing origin-destination pairs in light of then-current market research. The Realignment Plan noted that the major findings of the market research were that customers:

- viewed consistency of service as more important than speed of delivery;
- needed overnight delivery to what they considered their “local”¹ area, which may be a different geographic area than defined by the Service;
- would have most of their needs met if they received 2-day delivery to areas outside of their local area, but within their state and nearby states, and to other areas where significant business/mail volume relationships existed;
- may not need 2-day delivery to all of the area the Service then defined as 2-day delivery areas, and 3-day delivery to some of these areas would meet the needs of most customers.

USPS-T-2, Appendix A at 6 (Docket No. N89-1).

[3] *The proposed new framework.* The Service developed a comprehensive new framework for revising First-Class Mail delivery standards based on its conclusions about the thrust of the market research. This framework consisted, among other things, of the following guideline for 2-day mail:

¹ The “local area” was defined as mail originating and destinating within an SCF. PRC Op. N89-1 at 8 (fn. 3).

2-day delivery standards must include, in addition to all areas downgraded from overnight status as part of the realignment, all SCFs within the home state and nearby states that are within the reasonable reach of surface transportation (as defined by the Office of Transportation and International Services); and may include other 3-digit areas outside the reach of surface transportation if significant business/mail volume relationships exist and timely air transportation is available.

Id., see generally 7-8.

[4] The 3-day standard was to include all remaining destinations. *Id.* at 8.

[5] The Realignment Plan reflected the Service's intention to apply the new framework, in conjunction with a long list of supporting criteria, on a case-by-case basis. The criteria included an evaluation of transportation availability and reliability; an assessment of daily volume and business relationships; solicitation of public input prior to establishing service standards; management review of proposed standards; use of detailed implementation guidelines; scheduled implementation of adjustments; and notice to the public of impending changes. Postal Service Brief at 9.

[6] Related instructions for conducting the review noted that key elements were to include customer contact/query, analysis of volume flows, identification of available transportation and an assessment of potential impact on postal operations. USPS-T-2 at 19 (Docket No. N89-1). Moreover, the Service stated that "[c]ustomer contact and customer input are an integral part of every phase of the realignment process." Initial Brief of the United States Postal Service, April 24, 1990, at 18 (Docket No. N89-1).

[7] The implementation schedule went through several revisions while Docket No. N89-1 was pending. By the end of the case, the Service anticipated making changes related to overnight standards no earlier than July 28, 1990 and making the changes associated with 2-3 and 3-day standards no later than the May-September 1990 period, with implementation subject to the completion of supporting operational changes.

2. Issuance of PRC Op. N89-1 and subsequent Postal Service actions
(1989 —1991)

[8] The Commission's Docket No. N89-1 Opinion advised against adoption of the Service's proposed plan on a nationwide basis, but acknowledged that local adjustments might be warranted where existing standards could not reasonably be met. This conclusion was based mainly on a finding that the Service's market research failed to support its central conclusion — that customers preferred consistency over speed. PRC Op. N89-1 at 24.²

[9] The Service exercised its statutory prerogative to proceed with its comprehensive approach in the latter part of 1990 and early 1991. Gannon believes the process associated with the overnight adjustments followed the description provided by Postal Service witnesses in Docket No. N89-1. He also recalls that a plan for the 2- and 3-day service standard changes was developed relatively early on, and believes some related changes may have been implemented in 1991. However, he finds no evidence of any subsequent evaluation to determine the consistency of those changes with the objectives of the original plan, and confirms that there were no further significant changes in nationwide 2- and 3-day service standards until the 2000-2001 adjustments. Gannon Declaration at 3.

[10] Gannon attributes the long gap to several factors, including:

- several agency-wide restructurings in the early- to mid-1990s, which decentralized certain decisionmaking affecting operations and policy implementation;
- the emergence of higher-priority operational programs; and
- the need for operational changes.

Id. at 3-5.

[11] Gannon explains that the need for operational changes was due, in part, to the move toward decentralized decisionmaking, as this had allowed local mail processing

² The Commission's Opinion also cited technical flaws in the research and the absence of any quantitative information that would permit evaluation of the impact of the proposed realignment on costs as factors affecting its conclusion.

plants to establish their own Clearance Times (CTs) for finalizing outgoing originating mail and their own Critical Entry Times (CETs) for processing destinating mail.³ *Ibid.* He also asserts that problems with commercial air performance had arisen, requiring the Service to purchase more costly dedicated air transportation to move mail between certain Pacific, Western and Southwestern cities. *Ibid.*

3. Further developments: 1998 — 2001

[12] Gannon notes that a Headquarters-mandated review of the Service's First-Class Mail service standards began in 1998. *Id.* at 5-6. The possibility of filing a new Request with the Commission was considered, but rejected.

[13] A Washington-based National Review Team (Team) determined that finalization required two main changes in terms of operations. One involved changing the mode of transportation for destinations within the state of origin and in nearby states; the other involved improving plant-to-plant processing. With respect to transportation, Gannon says that erratic and less reliable commercial air transportation performance and non-standardized CTs and CETs were considered significant contributors to the Service's inconsistent level of 2-day service performance. He attributes this, in part, to the fact that the Postal Service was substantially dependent on air transportation for meeting many 2-day and 3-day service standards at the time. Gannon also says the lower-than-expected level of internal discipline and coordination resulting from locally-established CTs and CETs impeded the ability to consistently exchange mail between postal facilities, particularly 2-day mail. *Id.* at 6-7.

[14] The Team addressed this by establishing national parameters for CTs (for origin facilities) and CETs (for destination facilities), in addition to plant-specific CTs and CETs.⁴ Gannon says this allowed the postal network as a whole "to move mail in a more coordinated and consistent fashion." *Id.* at 7. The Team also established "minimum"

³ A CT is the time by which all incoming, or originating, mail in a processing facility must be completely processed and ready for final dispatch. A CET is the last planned time which a receiving facility can accept mail and still be expected to make subsequent delivery within the scheduled service standard. *Id.* at 5.

⁴ Subsequently, the use of a national Estimated Time of Arrival (ETA) replaced the CET.

and “maximum” windows for transportation between origin and destination processing facilities, which allowed more consistent transportation planning across the national network. *Ibid.*

[15] Gannon says the Team then began the process of trying to determine the most appropriate adjustments between 2-day and 3-day service standards, in the sense of enabling the Service to consistently move mail between processing plants. *Ibid.* To define the 2-day service standard, Gannon explains that for each originating processing plant:

... we looked beyond the overnight service areas that resulted from the completion of Phase 1 [realignment of overnight standards]. We then examined the remaining SCFs and ADCs to determine which ones were (a) within the home State and nearby States and (b) within reasonable reach of surface transportation. Having established minimum transportation windows available with which to transport mail, we decided upon a maximum 12-hour highway drive-time range by which to determine those destinations that would become part of the 2-Day service area for any Processing Plant of origin. The remaining 3-digit ZIP Code areas beyond 12 hours became part of the 3-Day service standard network.

Id. at 8.

[16] Gannon further explains:

... we built a computer model which used a customized transportation software package to determine reasonable and safe drive-times between postal facilities by which to even-handedly determine which pairs qualified for 2-Day service by using a formula that could be applied nationwide.

Ibid.

[17] Notwithstanding the use of a surface transportation assumption for developing service standard coverage, Gannon notes that decisions as to which mode of transportation would be used to meet the standard were left for local determination.

Tr. 1/249.

[18] *Roll-out and impact.* The first of four subsets of what Gannon refers to as “finalized Phase 2 service standard modifications” were made in January 2000. The second and third subsets were implemented in September 2000 and February 2001, and the fourth in May 2001. Gannon Declaration at 8. The adjustments affected more than 76,000 origin-destination three-digit ZIP Code pairs in all postal areas in the continental United States, or about 9 percent of the Service’s paired facilities. *Ibid.*

C. Complainant's Assessment of the 2000-2001 Approach

[19] *Arguments in support of the position that there was a material distinction in the two approaches.* Carlson identifies and reviews nine “essential characteristics” — or features — of the Service’s approach to making the 2000-2001 changes to support his contention that it differed in a material (and thus statutorily significant) sense from the approach described in the 1989 Request.⁵ DFC-T-1 at 11-12. These include:

- the alleged irrelevance of mail volume and customer needs (Feature No. 1) and the availability of air transportation (Feature No. 2) in determining whether a 2- or 3-day service standard would apply;
- a willingness to accept 3-day delivery within the same state, to accept 3-day delivery for bordering regions, and to accept non-reciprocal service standards as permissible results (Feature No. 3);
- the establishment of national clearance times (CTs) and critical entry times (CETs) for 2-day mail (Feature 4); and
- several considerations related to the Service’s reliance on a computer software program to determine adjustments between 2- and 3-day standards (Features Nos. 5 – 9).⁶

Ibid.

[20] *Feature No. 1 — irrelevance of mail volume and customers’ needs.* Carlson notes that in Docket No. N89-1, the Service considered volume from an origin P&DC to a destination facility of at least 0.5 percent of the originating facility’s volume significant enough to warrant consideration for 2-day delivery. *Id.* at 12-13, citing PRC Op. N89-1 at 8-9. He further contends that his review of volume data provided under protective conditions (USPS-LR-10) in this case suggests that an originating P&DC’s volume to a

⁵ To avoid confusion with the Service Standards Team’s use of computer model as part of its work, the Commission’s discussion in this section generally uses the term “approach” where Carlson has used the term “model” or “philosophy” to refer to the overall methodology the Service used in making the 2000-2001 service standard changes. See, e.g., DFC-T-1 at 11-12.

⁶ “Pseudo ADCs” is the term Carlson uses to describe his understanding of the Service’s use (in certain instances when it is projecting 12-hour drive times) of a destination ADC that is *not* the P&DC that actually processes the mail for that destination ADC. This practice and term are addressed in “Point 9” in Carlson’s discussion of essential characteristics.

destination ADC continues to be noteworthy starting at about 0.5 percent of the originating P&DC's volume. *Id.* at 13. (Emphasis supplied.) He contends that this shows that the Postal Service may not be meeting the needs of its customers, particularly in the western states. *Id.* at 13-14.

[21] *Feature No. 2 — irrelevance of the availability of air transportation.* Carlson contends that the Service computer program was explicitly designed to shift 2-day mail to surface transportation and to exclude 2-day service standards when the projected drive time exceeded 12 hours. *Id.* at 14-15. He further asserts that the Service failed to consider whether reliable air transportation between some city pairs was available, and whether it would have been sufficiently reliable — even if not 100 percent — to provide customers with better service than 3-day delivery by truck. *Id.* at 15.

[22] Carlson also says that the Service does not provide much quantitative or other persuasive data to support the view that air transportation for 2-day mail was “too unreliable” for 2-day delivery. He says he does not doubt that air transportation between some city pairs was problematic, but rejects the contention that air transportation between *all* downgraded city pairs was unreliable. *Ibid.* (Emphasis supplied.) Moreover, Carlson asserts that the Service failed to consider the option of using *dedicated* air transportation as an alternative to ground transportation to retain speed where it was replacing supposedly unreliable *commercial* air transportation. *Ibid.* (Emphasis supplied.) He maintains that dedicated air is not merely “a theoretical possibility,” and observes that the Service has acquired a considerable amount from FedEx in recent years.

[23] *Feature No. 3 — output of the model includes 3-day delivery within the same state, 3-day delivery for bordering regions, and non-reciprocal service standards as permissible results.* Carlson objects to the fact that application of the computer-projected “drive time” rule resulted in service standards that are not reciprocal and that do not allow for all intrastate or all nearby pairs to have 2-day delivery. He points out several examples on the record.

[24] *Feature Nos. 5–9 — reliance on a new computer program, along with the adoption of certain critical assumptions.* Carlson asserts that reliance on the computer program (Feature No. 5) resulted in the Service imposing a 3-day service standard when the computer-projected drive time was more than 12 hours, even if the mail was *actually* scheduled to arrive at the destination ADC before the CET of 18:00 (Feature No. 6). *Id.* at 12. (Emphasis in original.)⁷ He criticizes this approach for failing to consider actual conditions, and contends that actual transportation conditions should supersede a computer model. *Id.* at 16. He also asserts that 3-day service forces customers who need 2-day service to upgrade to expensive products such as Priority Mail and Express Mail. *Id.* at 17.

[25] Carlson also says the computer program allowed the projected drive time via truck to dictate service standards, even if the Postal Service used (or continued to use) air transportation to transport the mail (Feature No. 7). *Id.* at 12. Similarly, he claims that reliance on the program allowed the Service to use the projected drive time via truck from the origin P&DC to the destination ADC, even if the mail bypassed sortation at the ADC, and even if the mail from the origin P&DC was transported directly to the destination P&DC (Feature 8). *Id.* at 12. Finally, Carlson says that in some instances, the Service used a destination ADC to project the 12-hour drive time when that facility was not the P&DC that actually processes the mail for that destination ADC (Feature No. 9). *Ibid.* He refers to this as the use of “pseudo ADCs.”

[26] Carlson says that when the Service implemented the national model for service standards, it permitted the Pacific Area to designate any P&DC to be the P&DC associated with the “pseudo ADC” *for purposes of mapping 12-hour drive times.* Once these values were entered, the computer calculated the drive time from the origin P&DC to the supposed destination ADC — the P&DC that the Pacific Area designated solely for the computer drive-time calculation. The Pacific Area designated the Santa Clarita P&DC as the P&DC associated with ADC Twin Valley CA and the Santa Ana P&DC as

⁷ The Service replaced the CET concept (designated as 18:00) with the ETA concept (designated as 17:00) after the realignment. Carlson claims this does not undermine his point.

the P&DC associated with ADC Sequoia CA. However, Carlson claims the mail for both ADCs is actually processed at the Los Angeles P&DC, not in Santa Clarita or Santa Ana. *Id.* at 24. (Emphasis in original.)

[27] The rationale for this approach was that it would allow mail for a few limited city pairs to be managed more effectively, but Carlson claims the results were illogical and detrimental. *Id.* at 25. Carlson asserts that with further refinement, the Postal Service could have provided 2-day delivery instead of 3-day delivery for more mail, thus giving better consideration to the transportation and expeditious delivery of important letter mail, as section 101(e) requires. *Ibid.*

[28] *Additional concerns — “consistency versus speed.”* Carlson observes that in this proceeding, as in Docket No. N89-1, the Service asserts that customers prefer consistency over speed. *Id.* at 31. However, he discounts the validity of this conclusion, arguing instead that:

Evidence [on this point] that was unconvincing in Docket No. N89-1, when most Americans had never even heard of the Internet, carries even less weight in our current information era, where people demand real-time access to information and expect speed in the conduct of life and business. Intuitive arguments aside, the Postal Service’s preference for consistency over speed is inconsistent with section 101(e), which requires the Postal Service to give ‘highest consideration to the prompt and economical delivery of all mail.’

Id. at 31.

[29] Carlson further states that while most customers do not know the Postal Service’s delivery standard for the mail they send through the postal system, he believes: “For most customers, faster is better.” *Id.* at 32.

[30] *Public input.* Carlson notes that the Service’s 1989 plan anticipated that there would not only be public input into the development of the standards, but notice to affected patrons prior to implementation of any changes. He contends that this did not occur in connection with the 2000-2001 effort. In addition, as for the standards that have

been implemented, Carlson contends that most customers are not aware of the existence or availability of service standard information. He says that the retail terminals used by window clerks have this information (although he maintains it is not always correct); that the Service's website provides it in the domestic mail calculator, and that the Service mails a Service Standards CD-ROM to customers who request it. He praises the graphical representations in this CD as excellent, but notes that the availability of the CD is not widely publicized, and that only 732 customers receive it. *Id.* at 38. He also notes that the Service has placed a label on collection boxes in the St. Louis area and in southern Maine showing overnight, 2-day and 3-day delivery areas for First-Class Mail. *Id.* at 39.

D. The Postal Service's Assessment of the Two Approaches

[31] Witness Gannon cites several reasons why Carlson's contentions regarding the nature of the 2000-2001 changes are wrong. First, he says that toward the conclusion of Docket No. N89-1, the Service indicated that it would initiate the Phase 2 changes (the 2- and 3-day standards) upon completion of Phase 1 (the overnight standards), and after necessary mail processing and transportation changes were in place to ensure the effectiveness of the Phase 2 changes. Gannon Declaration at 3.

[32] Second, he contends that the changes are in line with the primary realignment goal addressed in 1989, which was *improved consistency* in the delivery of First-Class Mail. He notes that the definition of the 2-day service standard reflects the following approach:

For each Processing Plant of origin, we looked beyond the overnight service areas that resulted from the completion of Phase 1. We then examined the remaining SCFs and ADCs to determine which ones were (a) within the home State and nearby States and (b) within reasonable reach of surface transportation. Having established minimum transportation windows available with which to transport mail, we decided upon a maximum 12-hour highway drive-time range by which to determine those destinations that would become part of the 2-Day service area for any Processing Plant of origin. The remaining 3-digit ZIP Code areas beyond 12 hours became part of the 3-Day service standard network.

Id. at 8.

[33] Third, Gannon characterizes the changes as the reflection of a general trend toward making the 2-day zones more contiguous, more consistent with the reasonable reach of surface transportation from each processing plant of origin, with less potential reliance on air transportation. He asserts that this outcome was one of the explicit objectives of the plan the Commission reviewed in Docket No. N89-1. *Id.* at 9. He therefore claims that in general, the changes were driven by the same objectives as Phase 1 — namely, the determination to improve consistency in First-Class Mail delivery, as described on the Docket No. N89-1 record.

[34] At the same time, Gannon acknowledges that there were some differences in the context of the realignment. He points to a significant change in the Service's management structure since 1990; the advent of the Service Standards Mapping Program, which allowed for more centralization in the determination of what type of changes to consider; and changed assumptions about the role of air transportation. With respect to the latter, Gannon asserts that the movement of more time-sensitive 2-day mail volumes by air transportation over the last decade had become less dependable, consistent with — or even worse than — the same declining trends in passenger air travel. He says this consistent trend, not clearly evident during the early 1990s, later caused the Postal Service to make trade offs regarding its more distant 2-day markets that necessitated timely air transportation versus the expansion of 2-day standards to nearby 3-day markets, now made more reachable by the standardization of CTs and CETs at processing plants. *Id.* at 11. Gannon maintains that to have consistent and timely service for 2- and 3-day mail, it was crucial that the Service have a reasonable expectation of meeting the more operationally time-sensitive 2-day markets with a regularity that air transportation did not appear to provide. *Ibid.*

[35] *Volume considerations.* Gannon acknowledges that the Service's Docket No. N89-1 testimony indicates that the idea was to consider origin-destination pairs over the threshold of 0.5 percent as candidates for a 2-day service standard and to take into consideration whether timely and dependable air transportation was available. Tr. 1/327. He concedes that during the 2000-2001 realignment, volume was not a determining factor, noting: "The objective ... was having 2-Day standards which could reasonably be reached in a consistent and timely fashion, without specific regard to paired city volumes. Of course, the general lack of dependable air transportation was a central impetus for the final changes made during FY-00/01." *Id.* at 328.

[36] *Non-reciprocal standards.* Gannon notes that after the "partially finalized" 1990-1991 service standard changes, there were still non-reciprocal service standards. Gannon Declaration at 11-12. He notes that these can be caused by time zone crossings, by the "non-square" network structure (with 177 Origin P&DCs, but only 88

destinating ADCs), or “just the legacy of the way the service standards had been over the last 30 years.” Thus, he says isolated examples of non-reciprocal standards have always existed. Tr. 1/175; Gannon Declaration at 12. However, he also points to the possibility of re-examining some of the situations Mr. Carlson has identified to see if adjustments are appropriate. *Ibid.*

E. Commission Assessment

[37] The Commission finds that the nature and timing of the 2000-2001 realignment places it outside the scope of the Service’s Docket No. N89-1 Request. Table 1 summarizes some of the elements in the two approaches.

Table 1
Selected Elements of Postal Service’s Approaches to Realignment of 2- and 3-Day First-Class Mail Service Standards

Feature	1989 Realignment Plan	2000-2001 Realignment Plan
A. Stated Objective	Consistency over speed, with reduced reliance on air transportation	Consistency over speed, with reduced reliance on air transportation
B. Use of Computer-Projected 12-Hour “Drive Time” Rule	No	Yes; strict application
C. Field Input	Yes	Yes
D. Supporting Operational Changes	Yes	Yes, including a change in designated mode of transportation and uniform national CTs and CETs
E. Public Input	Yes, formal process	No
F. Public Notice Prior to Implementation	Yes	No
G. 2-Day Standard: Role of Minimum Volume Threshold and Business Relationships	0.5 percent (of originating volume) to destination and business relationship could be considered at outset	No recognition in definition; potential for use in a field-generated appeal
H. 2-Day Standard: Coverage Extended to: — All Intrastate Pairs — Locations Outside the State, but Nearby	Yes	No recognition in definition; potential for use in a field-generated appeal
I. 2-Day Standard: Use of Air Transportation	Possible, but role minimized	Not part of initial determination; could be used to satisfy predetermined service standard
J. Non-Reciprocal Standards	No	Yes

[38] *Plan objectives (Table 1, A)*. The Table entries indicate that the stated objective is the same in both plans. However, the 1989 approach assumed that this objective would be carried out in a much more comprehensive fashion than occurred in 2000-2001. This included input from the field (which occurred in the later realignment), as well as a considerable role for the public, including business users of First-Class Mail. The public's intended role, both in the development of standards and in terms of being informed of impending changes, was eliminated in the 2000-2001 approach. See USPS-T-2, Appendix A (Docket No. N89-1). Moreover, the possibility exists that the public's view of "consistency versus speed" may have changed over time, and the later plan did not explicitly take this into consideration.

[39] *The drive time rule*. The 1989 plan did not include a specific surface transportation formula (or a computer-based process), but it clearly intended to alter the long-standing 600-mile rule. The 2000-2001 plan introduced the use of a computer, along with the 12-hour drive time rule. However, it is not the use of computer programs that is problematic; instead, it is the "2-day" rule, or formula, incorporated into the computer projection that defined coverage exclusively in terms of surface transportation. Thus, the use of air transportation (Table 1, I) no longer entered into the determination of eligibility for the 2-day standard. In effect, while area officials could still choose to use air to meet any assigned First-Class Mail standard, the "master" 2-day definition did include an air option as part of the critical first cut in determining coverage. It is not clear how inclusion of an air option would have altered coverage, but this marks a clear distinction between the two plans.

[40] The record makes clear that the 1989 plan anticipated expanding the role of surface transportation and minimizing the role of air transportation, but it did not wholly eliminate air transportation as a consideration in the 2-day definition, and thus limit the city pairs that could be candidates for 2-day delivery.

[41] Although there is little, if any documentary evidence on this record supporting claims the Service found air transportation difficult and costly to use in terms of its obligations with respect to delivering First-Class Mail, the Commission accepts witness

Gannon's representation that this was the general consensus. It also appreciates that management's attitude about the feasibility of using air transportation may have changed in the period between development of the 1989 plan and its execution in 2000-2001, given factors such as industry instability, the logistics of transfers and scheduling, and emerging security issues. However, as the Complainant notes, it seems unlikely that air transportation is so unreliable that it cannot be considered, along with surface transportation, in the determination of 2-day standards for at least some city pairs. In addition, the 1989 plan emphasized that the First-Class Mail delivery standards review process was not a cost reduction program. It said: "Doubts about the inclusion of an area in a particular delivery standard should be resolved on the side of expanding the delivery area, in an effort to satisfy customer needs." *Id.* at 18.

[42] *Field input and operational changes.* The 1989 plan called for, and the 2000-2001 plan included, field input (under a different organizational setup) and supporting operational changes (Table 1, C and D). While the field input process may not have unfolded exactly as outlined in the 1989 plan, the intent of the original plan appears to have been realized in many respects. With respect to supporting operating changes, the Team responsible for the 2000-2001 realignment appears to have improved on the 1989 plan by imposing a workable system of uniform national clearance and critical entry times throughout the processing network. Moreover, the Team appears to have succeeded in initially establishing a later CET (of 18:00) than many facilities had been using. Even with the subsequent change to the ETA concept (17:00), this can be seen as providing more potential for the establishment of 2-day pairs, relative to the pre-realignment situation, given later entry.

[43] *Public involvement (Table 1, E and F).* The 1989 plan identified several avenues for public involvement in the standard-setting process, including (but not limited to) meetings with major mailers and customer surveys during the development stage, along with notice to the public prior to implementation. *Id.* at 11-14.

[44] Direct public involvement is absent from the later plan. The Commission does not doubt that postal employees involved in the realignment were conscientious, had an

accurate sense of the interests of many First-Class Mail customers, and worked hard to improve nationwide delivery. However, it is convinced that the results of the realignment could have been better had the Service incorporated a role for the public in the process leading up to the 2000-2001 realignment. The public has a unique stake in the outcome, and should be included in the process, as the 1989 plan contemplated.

[45] *Factors for 2-day eligibility (Table 1, H)*. The process outlined in the original plan allowed intrastate city pairs, pairs exceeding a minimum volume threshold (0.5%), pairs with established business relationships to be considered as candidates for 2-day delivery.⁸ This did not guarantee eligibility, but pairs fitting these profiles were not automatically ruled out if they were beyond a “reasonable reach” of surface transportation. The use of the “objective” computer-projected 12-hour drive time precluded these considerations from entering into the initial determination of standards. It appears that an appeal process (funneled through a postal employee, not a member of the public) may have allowed for the possibility of some relief after implementation, but this arrangement is far different from the approach described in the 1989 plan.

[46] Witness Gannon defends its formulation of the rule, in part, by asserting that it entailed “drawing a line,” and that this inevitably leads to having some pairs on one side, and some on the other. The Commission appreciates the Service’s need to “draw a line.” However, the 1989 plan appears to have incorporated flexibility for “gray areas” into the initial development of the standards; the later plan did not. Thus, the two plans differ substantially in this respect.

[47] *Non-reciprocal standards (Table 1, J)*. Service standard reciprocity is a concept that has appeal. It seems to be a common sense proposition that the same delivery standard should apply to the exchange of mail between Point A and Point B. Many of the examples of non-reciprocal standards cited on this record appear to be the result of the Service’s rigid application of the 12-hour rule. However, witness Gannon’s testimony indicates that even with less rigidity, some instances of non-reciprocal

⁸ The record does not indicate the origin of the “0.5%” threshold, but it is mentioned in USPS-T-2, Exhibit A at 16 (Docket No. N89-1) in connection with identifying possible 2-day delivery areas.

standards would have arisen due to time zones, network design and geographic distance. The Commission urges the Governors to direct management to review the issue of non-reciprocal pairs to determine whether adjustments can be made to some of them, especially those that arise because of small differences in drive time.

[48] With respect to other seemingly illogical results, the Commission notes that the service standard issues associated with the “pseudo ADC” situation in California appear to be the result of the use of a sorting scheme assignment, and delegation (to a local official) of responsibility for deciding which facility should serve as the designated ADC. It appears that 2-day service could be provided to all areas involved in the “pseudo ADC” arrangement. It appears that management could rectify this situation without undue effort, if not already addressed.

F. Review of the Relationship of the Service's 2000-2001 Realignment to Section 3662

[49] Section 3662 is the recognized avenue of redress under title 39 for postal patrons who feel aggrieved by certain official Postal Service actions affecting mail service. It provides, in pertinent part, that: "Interested parties . . . who believe that they are not receiving postal service in accordance with the policies of this title may lodge a complaint with the Postal Rate Commission . . ."

[50] The Commission has observed, in another formal complaint case, that this provision reflects Congressional interest in having basic statutory policies remain in the forefront of postal management decisions. PRC Op. C2001-1 at 1. Given that interest, section 3662 identifies the role of the Commission and the Postal Service in formal complaints. The Commission, for example, is not obligated to hold a hearing on formal complaints, but may exercise its discretion to do so. If a hearing on a service complaint ensues and the complaint is found to be justified, section 3662 provides that the Commission "shall render a public report thereon to the Postal Service . . ." The report is strictly advisory in nature, given related statutory language providing that the "... Service shall take such action as it deems appropriate" on any such report. 39 U.S.C. § 3662.

[51] Given the numerous and sweeping policies embodied in the Postal Reorganization Act and the expansive wording of section 3662, the potential for invoking the formal complaint mechanism is seemingly quite broad; however, a guideline in Commission rule 82, captioned "Scope and nature of complaints" significantly narrows the range of permissible filings. It provides:

The Commission shall entertain only those complaints which clearly raise an issue concerning whether or not . . . services contravene the policies of the Act; thus, complaints raising a question . . . with regard to an individual, localized, or temporary service issue not on a substantially nationwide basis shall generally not be considered as properly raising a matter of policy to be considered by the Commission.

[52] Rule 82’s reference to “substantially nationwide basis” is taken directly from section 3661(b), where the phrase identifies the type of anticipated “changes in postal services” that require the Service to seek an advisory opinion from the Commission prior to implementation. In both provisions, this phrase has been understood, in application, to foreclose isolated or purely local matters from distracting the Service from its overall mission and from dominating the Commission’s caseload.

[53] Traditionally, the existence of the rule 82 guideline has meant that the threshold question in reviewing every section 3662 service complaint is whether the filing poses an issue that has sufficient significance in terms of statutory policies.⁹ In this case, however, the Service concedes the nationwide impact of the underlying changes, so the usual question is moot. Instead, the focus is on a different argument: specifically, whether the Service’s failure to file a section 3661 Request can be the subject of a section 3662 Complaint.

[54] In Docket No. C2001-1, the Commission stated: “Congress has determined that eliciting public input in an open forum is an integral part of the process of developing postal services that meet the needs of Postal Service customers and fulfill the requirements of the Act. Section 3661 is the statutory tool provided by Congress for gathering such public input.” PRC Op. C2001-1 at 2. The points the Commission raised in that case are equally pertinent here. Specifically,

- obtaining the views of Postal Service customers is vitally important where the Postal Service’s monopoly First-Class Mail product is concerned;
- the privilege of holding governmentally-established monopoly status includes the responsibility to hear and consider the needs of the constituency that must function under the constraints of that monopoly; and

⁹ Order No. 1227, issued January 27, 1999, Docket No. C98-1, Complaint of Life Time Fitness, includes a discussion of the Rule 82 test.

- actions that are, or are perceived to be, unilateral in nature may disenfranchise users to the ultimate detriment of the monopoly product; and the potential for disenfranchising First-Class Mail customers in a period of declining First-Class Mail volume should especially concern the Postal Service.

Ibid.

[55] The Commission finds that the Complaint raises a matter that is within the scope of section 3662 jurisdiction in citing the Service's failure to obtain an advisory opinion from the Commission prior to implementing the 2000-2001 changes in 2- and 3-day standards.

REVIEW OF THE CONSISTENCY OF THE RESULTING SERVICE WITH SEVERAL STATUTORY PROVISIONS

[1] Carlson asserts that the delivery service being provided as a result of the 2000-2001 realignment violates, or exhibits inconsistency with section 3661(a), which calls for the Service to provide “adequate” and “efficient” postal service; with section 101(e), which calls for the Service to provide expeditious transportation of important letter mail; with section 101(f), which calls for the Service to provide prompt and economical service; and with section 403(c), which calls for the Service to avoid undue and unreasonable discrimination among mail users.

1. Relationship to section 3661(a)

[2] Section 3661(a) provides that the Postal Service shall develop and promote adequate and efficient postal services.

[3] *Mr. Carlson’s view.* Carlson contends that as a result of the 2000-2001 changes, the Service is not providing adequate First-Class Mail service to many postal customers in the statutory sense. As evidence, he points to the fact that the realignment shifted a considerable amount of First-Class Mail from a 2-day to a 3-day standard and disproportionately affected mailers in the western states. Table 2 in his testimony lists some specific examples of service standards that were downgraded from 2 days to 3 days.

[4] Carlson also contends that to satisfy section 3661(a), the Postal Service must provide “the best possible service within a particular set of operating parameters.” DFC-T-1 at 1. He claims, for example, if the Postal Service determines that mail destined for 2-day delivery must arrive at a destination processing center by 6 p.m., the Postal Service will not be providing efficient service if it assigns a 3-day delivery standard to mail that is regularly scheduled to arrive by 6 p.m. *Id.* at 1-2. He asserts: “Matters of mere convenience are not a justification for failing to provide a service.” *Id.* at 2.

[5] Carlson continues: “The concept of efficiency stated in section 3661(a) extends beyond internal considerations. Efficiency encompasses the effects of Postal

Service policies and services on the public and society.” *Ibid.* In this context, he cites the Service’s monopoly over First-Class letter mail, noting:

When the Postal Service elects to reduce the level of First-Class Mail service, postal customers, by definition, have no alternative, comparably priced service. Instead, the Postal Service’s action forces customers to pay for another service that, at minimum, will cost them more than *10 times* the rate for a one-ounce First-Class letter.

Id. at 2-3. (Emphasis in original; footnote omitted.)

[6] Carlson also asserts, as evidence that the Postal Service may not be providing adequate service pursuant to section 3661(a), the fact that it changed service standards from 2 days to 3 days between city pairs whose volume exceeded the 0.5 percent threshold that the 1989 plan had identified as a factor to be considered in establishing 2-day standards. *Id.* at 43.

[7] *The OCA’s view.* OCA suggests that there are two types of record evidence in this case on the question of the adequacy of post-realignment delivery service in the statutory sense. One is the mailers’ perception as to adequacy. The other is adequacy of service in terms of whether it is all it can be — that is, “does the management give the highest consideration or as high a consideration as it ought to give to the expeditious handling of important letter mail.” OCA Brief at 15.

[8] OCA asserts that there is no argument in this case that the Postal Service is not meeting the service standards it has set for 2-day mail that was downgraded to 3-day mail. It believes that the 3-day service provided under the realignment may not be adequate within the meaning of the Postal Reorganization Act. It says the more far-reaching issue is whether the Service is expediting the mail as fast as it should, and could, and delivering it promptly, while also insuring the service is economical. *Ibid.*

[9] OCA notes that Carlson presents extensive evidence concerning his personal views of mailers’ perceptions of the adequacy of the realigned service standards, but says it does not appear that a case has been made that the new service does not meet the needs of mailers. *Ibid.* At the same time, it maintains that the statute does not leave

that duty solely to a lone individual such as Mr. Carlson. In fact, it asserts that because the Postal Reorganization Act requires the Postal Service to seek an advisory opinion, the views of mailers as to the adequacy of service can be and are considered in that type of proceeding, and a lone mailer should not have the burden of making that showing. *Id.* at 16.

[10] *Mr. Popkin's view.* Mr. Popkin's assessment is that 2000-2001 adjustments were mainly computer-driven. Popkin Brief at 1. He notes that the computer-derived drive time "was probably a reasonable evaluation of the approximate drive time" between Points A and B, but nevertheless characterizes it as arbitrary. *Ibid.* He reasons that this arbitrary division does not allow the Postal Service to provide statutorily-mandated "efficient postal services" (in the statutory sense) because it:

- completely ignores the needs of the public;
- fails to take into account the volume of mail carried on that path;
- fails to take into account the actual arrival time of the mail at the destinating ADC;
- has the potential to force next-door neighbors in adjacent ZIP Code areas to have 3-day delivery standards between them; and
- allows for a 3-day delivery standard between mailers located within the same state.

Id. at 2.

[11] *The Postal Service's position.* The Service cites several grounds why the Complainant errs in contending that the realignment results in service that does not meet section 3661's "adequacy" requirement. One is the assertion that "what little record evidence the Complainant offers regarding 'customer need' is largely anecdotal and/or personal." Postal Service Brief at 34. Another is that Complainant does *not* assert that the Postal Service is failing to meet the needs of First-Class Mail customers, and contends that one of his interrogatory responses distances himself from any such claim. *Id.* at 35. (Emphasis in original.) A third is that there is no record basis on which to rest any conclusion with respect to this point. *Ibid.*

[12] With respect to the “efficiency” component of this provision, the Service claims that the Complainant’s arguments are unsubstantiated, stem in part from a misunderstanding about the application of the CET and ETA concepts, and an overreading of one of witness Gannon’s responses. It contends that the Commission should determine that there is no basis for concluding that First-Class Mail service is either “inadequate” or “inefficient” within the meaning of section 3661(a). *Id.* at 37.

[13] *Commission assessment.* The OCA is correct. The Postal Service has an obligation to ascertain the needs of its customers, and then determine whether these needs can be met efficiently.

[14] The approach the Service used in determining the initial demarcation of 2- and 3-day standards in 2000-2001 allowed management’s assessment of what is achievable by highway transportation to serve as a proxy for customers’ needs. The assertion that the Complainant’s evidence of customer needs is limited, and essentially personal or anecdotal in nature, does not preclude finding that service under the realignment may not be “adequate.” It is undisputed that the realignment resulted in downgrades for many California pairs that had previously enjoyed 2-day service within the state, to nearby cities, and to cities with established business relationships.

[15] While the resulting delivery service cannot be found to be inconsistent with section 3661(a)’s mandate for many postal patrons, for some patrons in California and locales in the Western and Pacific area, it does not exhibit an appropriate balancing of the considerations inherent in providing “adequate and efficient” postal services.

2. Relationship to sections 101(e) and 101(f)

[16] Section 101(e) provides, in pertinent part, that: “In determining all policies for postal services, the Postal Service shall give the highest consideration to the requirement for the most expeditious collection, transportation, and delivery of important letter mail.” Section 101(f) provides: “In selecting modes of transportation, the Postal Service shall give highest consideration to the prompt and economical delivery of all mail”

[17] *Mr. Carlson's view.* Carlson asserts: "Sections 101(e) and 101(f) exist to prevent the Postal Service from using words and language to obscure a diminution in the speed of mail delivery." DFC-T-1 at 37. He maintains that section 101(e) is "a powerful mandate" to the Postal Service, as the Service must not only provide expeditious transportation and delivery of important letter mail, but also must give the *highest* consideration to this requirement in determining *all* policies for postal services. *Id.* at 3. (Emphasis in original.)

[18] He asserts that section 101(e) interacts with the efficiency requirement in section 3661(a). His reasoning is that if the Postal Service could be providing 2-day delivery service within established operating parameters but instead is providing only 3-day service, it is not providing efficient service. In turn, he claims that if the Postal Service is not providing efficient service, it probably is not giving highest consideration to the most expeditious transportation and delivery of important letter mail either. *Ibid.*

[19] In addition, Carlson notes:

... the Postal Service attempted to justify the changes in service standards by asserting that customers prefer consistency to speed. This statement is dubious on its face. Even if it were true, the law would not permit the Postal Service to slow mail delivery in the name of improving consistency. The Postal Service must give the highest consideration to the most-expeditious transportation and delivery of important letter mail. 'Speed' and 'expeditious' are similar concepts; 'consistency' and 'expeditious' are not. By law, speed is more important than consistency.

Id. at 4. (Emphasis in original.)

[20] Carlson asserts that the Service's "pseudo ADC" arrangement (the sorting scheme approach the Service adopted for four California ADCs, coupled with a local decision on which facility would be identified as the designated ADC) has resulted in illogical standards. He asserts that with further refinement, the Postal Service could have provided 2-day delivery instead of 3-day delivery for more mail, thus giving better consideration to the expeditious delivery of important letter mail, as section 101(e)

requires. *Id.* at 25. Carlson also asserts that non-reciprocal service standards are further examples of inconsistencies with 101(e) and (f). *Id.* at 30.

[21] “*Consistency versus speed.*” Carlson contends that the Postal Service’s preference for consistency over speed is inconsistent with section 101(e), which requires the Postal Service to give “highest consideration to the prompt and economical delivery of all mail.” *Id.* at 31. He also states that “average number of days to delivery” is a straightforward measure of the speed of mail delivery, and suggests that it is probably “the best metric” to determine the Postal Service’s compliance with section 101(e)’s requirement that the Postal Service give “highest consideration to the prompt and economical delivery of all mail.” *Id.* at 33. He then asserts that out of 255 origin-destination pairs in a data set the Service provided, the number of days to delivery increased in 240 pairs, decreased in 14 pairs, and remained the same for one pair. He therefore claims “... one predictable result came true: mail delivery slowed.” *Ibid.*

[22] *Air transportation.* Carlson asserts that he has shown that the decision to abandon air transportation violated sections 101(e) and 101(f) because the Postal Service failed to give the highest consideration to the prompt or expeditious transportation and delivery of important letter mail. *Id.* at 42. He also claims that the Postal Service may violate section 101(f) when it shifts mail from air transportation to surface transportation and adds a day to the service standard for First-Class Mail. *Id.* at 4.

[23] *The OCA’s view.* OCA also asserts that the Postal Service has failed to give the highest consideration to the expeditious and prompt delivery of mail. OCA Brief at 7. It claims that it is “very apparent” from the record that the Postal Service focused almost exclusively on minimizing its use of expeditious air transportation and maximizing its First-Class Mail reliability scores. *Id.* at 8. OCA further contends that the Commission’s N89-1 Opinion makes it very clear that the Postal Service has an affirmative duty to evaluate the public’s need for adequate service by means of market research that is presented in a section 3661 request for changes in the nature of postal services, and asserts that this is something the Service “has utterly failed to do.” *Ibid.*

[24] OCA states that the impact of the application of the Service's computer model in the western states is to provide a "somewhat lessened service," noting that the prevalence of the 3-day standard seems to be the result of geographic accident, and reasonable given greater distances. *Id.* at 30. However, it notes that Mr. Carlson has described instances where application of the changes appears discriminatory in the sense of section 403 (c), such as the "pseudo ADC" situation in California. OCA says the effect is that the model has been applied unevenly and discriminatorily in those areas, without a reasonable basis, and thus discriminates against mailers in various ZIP Codes. *Id.* at 31.

[25] *The Postal Service's view.* The Service asserts that the Complainant's reading of section 101(e) as requiring, among other things, "the best possible service" is based on two missteps. One is his interpretation of the word "possible" after the word "highest" and "delivery." The other is his failure to discern the proper context for interpretation of the statute. Postal Service Brief at 28-29. With respect to the first step, the Service argues that adoption of Carlson's reading would mean that the Service could never shift a service standard from overnight to 2-day or vice versa, even if there is undisputed evidence of universal support for such changes. It asserts, among other things, that the Complainant's "result-driven analysis" leads to the conclusion that service standards in existence at the time of postal reorganization were cast in stone. *Id.* at 29. Instead, the Service contends that section 101(e) stands as "no more than a mandate ... to maintain a collection, transportation, and delivery network that preserves the long-standing preferential status of 'important letter mail,' relative to other mailable matter." *Id.* at 30. Viewed in this context, the Service contends it is evident that First-Class Mail maintains a preferred status. *Ibid.*

[26] The Service notes that section 101(f) applies to all mail, regardless of class, and therefore contends that the "promptness" criterion in this provision cannot be rigidly interpreted as imposing a singular requirement, unless the objective is to blur distinctions between Express Mail, First-Class Mail and Standard Mail. *Id.* at 31. It also observes that the combination of "prompt" and "economical" in this provision is representative of

a mandate to balance competing considerations. *Id.* at 32. In addition, the Service states that the Postal Reorganization Act was enacted “against the backdrop of the Senate Post Office and Civil Service Committee’s formal expression of dissatisfaction with the Postal Service’s policies regarding the deployment of air transportation for First-Class Mail.” *Ibid.* It notes that the Committee, in fact, expressed a preference for the transport of all letter mail by air, but only when postal management had reasonable assurance that this would shorten delivery time by a day. *Id.* at 33. Thus, the Service argues that “it is a stretch” to interpret the Act as a Congressional mandate to prefer air transportation simply because it exists, without regard to other factors, such as reliability or relative cost. *Ibid.* The Service further asserts that the Complainant has not demonstrated any failure on the part of the Service to reasonably balance these criteria in implementing the contested service standards. *Id.* at 33-37.

[27] *Commission assessment.* The Postal Service’s observations on the congressional history associated with these provisions provide useful additional context, but leaves the impression that the delivery of “important letter mail” (under section 101(e)) was simply to be somewhat better than delivery of other mail, such as Standard Mail. This largely reads out of the statute the explicit statement that the “highest consideration” was to be given to expeditious collection, transportation and delivery. Thus, the Commission rejects the Service’s argument on this count to the extent it expresses the view that *any* degree of preference, relative to other classes, is acceptable. A “rule of reason” must apply in considering the Service’s provision of service under this mandate: while First-Class Mail delivery need not be the “best possible” delivery, it should be “as fast as practicable.”

[28] Had the Service filed a new Request prior to implementing the 2000-2001 realignment, it would have had an opportunity to develop a record to support the contention that “3 days is fast enough” to satisfy the statute. As it stands, however, there is not a record to support this proposition, which is inherent in the approach the Service adopted.

[29] There is general agreement that section 101(f) should be read in tandem with section 101(e). This provision, like many others in the Postal Reorganization Act, entails a balancing act. The pairing of “economical” with “prompt” in connection with the type of service that is to be provided indicates that Congress expected that the Service would have to make trade offs in selecting transportation. It did not want resources to be poorly allocated in the process. At the same time, the second sentence in this provision clearly states that “programs designed to achieve overnight transportation to the destination of important letter mail to all parts of the Nation shall be a primary goal of postal operations.” This sentence, while not directly pertinent to 2- and 3-day standards at issue here, buttresses the conclusion that Congress generally considered “faster” delivery to be “better” delivery.

[30] The Commission recommends that the Postal Service review its current service, and where significant volumes of First-Class Mail exist between city pairs where reliable air transportation exists, the Service give serious consideration to utilizing that transportation when it will result in more expeditious delivery.

3. Relationship to section 403(c)

Section 403(c) provides, in pertinent part, that “[i]n providing services ... , the Postal Service shall not, except as specifically authorized in this title, make any undue or unreasonable discrimination among users of the mails, nor shall it grant any undue or unreasonable preferences”

[31] *Mr. Carlson’s view.* Carlson asserts that the criteria and process that the Postal Service employed to change First-Class Mail service standards in 2000-2001 do not ensure that the revised standards will not unduly or unreasonably discriminate against users of the mail located in California and other western states. Complaint at 9. He also asserts that compared to the service standards provided to users of the mail in other states, the changes in First-Class Mail service standards unduly and unreasonably discriminate against users of the mail located in California and other western states by depriving them of 2-day First-Class Mail service to a reasonable number of neighboring

states with which they have significant contacts and need 2-day First-Class Mail service. *Ibid.* See also *id.* at 14.

[32] Carlson also notes that over 99 percent of the changes in service standards in the Pacific area resulted in downgrades from 2 days to 3 days. He maintains that a model that ignores the needs of customers and focuses solely on truck driving times discriminates against postal customers who live in regions where distances are long and cities are far apart. He observes that business and personal communications between these cities may be no less intensive than in densely populated areas in the East, but the use of surface transportation denies some customers 2-day mail service. Carlson Reply Brief at 12.

[33] *The OCA's view.* The OCA considers the evidence of discrimination toward individual mailing groups limited, and notes that the impact of the model's application to the western states is arguably to provide a somewhat lessened service. On the one hand, it says the longer 3-day service standards prevalent in the western areas seems to be a result of geographic accident, and thus reasonable given the greater distances in those areas. On the other hand, OCA states that there are instances as described by Mr. Carlson — involving the pseudo ADCs — where the application of the changes appears discriminatory in that the service standard to some ZIP Code pairs is greater than it would be if the model had been applied in California in the same way as it had been applied in other areas. As a result, OCA notes that some service standards were downgraded from 2-day service to 3-day service when, if the model had been applied as it was in other areas, the downgrades would not have occurred. It asserts that the effect is to apply the model unevenly and discriminatorily in those areas without a reasonable basis, and thus discriminates against mailers in various ZIP Codes. The OCA concludes that the final result in some cases is unequal service standard treatment. OCA Brief at 30-31.

[34] *The Postal Service's view.* The Service's response to the assertion that the approach or results associated with the 2000-2001 realignment are inconsistent with section 403(c) emphasizes the rationality of its realignment process and geographic

realities. In particular, it states that the record in this case clearly demonstrates that the Service has applied a rational methodology to the task of implementing Phase II of its realignment plan. It asserts that variables such as the quality of air service between certain origins and destinations, and inputs incorporated into the model used to estimate “drive times” between specific origins and destinations for purposes of defining “reasonable reach” have been and will continue to be the determining factors. Postal Service Reply Brief at 14.

[35] The Service asserts that it is “inescapable” that these variables will have differing impacts on regions of the United States with large numbers of population centers in relatively close proximity to one another, compared to other regions with relatively fewer population centers spread much farther apart and subject to different surface and air transportation variables. *Ibid.* Moreover, it maintains that Congress did not impose upon the Service an obligation to provide equal or symmetrical service to all residents. Instead, it claims that discrimination is “inherent” in the distribution of service to more than 280,000,000 customers of varying circumstances at over 120,000,000 delivery points. It says that section 403(c) merely prohibits undue discrimination and the granting of undue preferences among mail users. It acknowledges that the impact of service standard downgrades or upgrades may be felt more in one region, state or city than another. However, it says that when, as in this case, the differences emerge from variables such as those described above and are not based on the arbitrary application of different sets of rules in different regions, states or cities, it cannot be said the Service, in working with those variables, has violated section 403(c). *Ibid.*

[36] *Commission assessment.* The Commission agrees with the Service that in evaluating claims of undue discrimination, it must be borne in mind that postal management’s service-related decisions, like rate and classification decisions, involve hard choices in deciding “where to draw the line.” The focus must be on scrutinizing the appropriateness of the process used to accomplish this task, particularly in terms of whether it was arbitrary in the statutory sense.

[37] The Service defends its process in this case as an even-handed, objective approach to the difficult task of adjusting service standards, but the record shows, among other things, that the “drive time rule” the Service adopted and application of the model had a disproportionate impact on California and other western states. The Complainant does not assert that the Service set out to discriminate against postal patrons in California, or that service in those places must be identical to that provided in other areas. Instead, he finds fault with the internal assumptions and decisions that drove the eventual determination of 2- and 3-day standards, in that they had a disproportionate impact on some postal patrons.

[38] The Commission finds that the Complainant’s assertions of undue discrimination, to the extent they involve delivery in California and other locales in the Pacific and Western areas, have merit. The Service’s approach and application of the new model, given its underlying assumptions, resulted in a degree of unfairness that was clearly unintended, but nevertheless real. Geography, network design, and distances all play legitimate roles in determining service standards, but the Service’s starting point — which, among other things, proceeded without public involvement and eliminated air transportation from initial determinations — exhibits an inappropriate degree of arbitrariness with respect to delivery in the areas Mr. Carlson highlights. The results, in turn, also impede the Service’s ability to meet the mandate of section 101(a), which exhorts the Service “... to provide prompt, reliable, and efficient services to patrons in all areas”

REVIEW OF REQUESTED RELIEF

A. Findings

[1] Complainant asks that the Commission conduct a public hearing, pursuant to section 3662, and issue a public report documenting four findings.

[2] *Finding No. 1— inadequate First-Class Mail service.* This finding pertains to the Complainant's position that he has documented the inadequate First-Class Mail service many customers are now receiving as a result of the 2000-2001 changes. The Commission's conclusions on this point are mixed. It is clear that the Complainant has documented many instances where service is not as good as it was prior to the realignment in terms of the delivery window. However, adequacy is difficult to assess without information on what postal customers need, and because "efficiency" must be part of the equation. The absence of a section 3661 record prevents evaluating this claim further.

[3] *Finding No. 2 — undue and unreasonable discrimination.* This finding pertains to the Complainant's position that he has documented undue and unreasonable discrimination experienced by mail users in California and other western states. Postal Service witness Gannon claims there is a "simple and rational" basis for the seemingly disproportionate results for Western and Pacific areas: greater distances to cover between 3-digit ZIP Code areas in states that are generally larger than others; states in which population centers are relatively farther apart than in other parts of the country; and states with a preponderance of relatively large, sparsely populated 3-digit ZIP Code areas. Gannon Declaration at 13.

[4] The Commission agrees that the record supports a finding that the Postal Service failed to take reasonable account of the needs of some mailers in California and in other parts of the Service's Western and Pacific areas..

[5] *Finding No. 3 — changes in the 2-day service criteria.* This finding pertains to the Complainant's position that he has documented the changes the Service made in its 2-day service standard criteria. The Commission agrees that the record supports a

finding that the Complainant has documented the referenced changes. The Service, in fact, acknowledges that it relies in the first instance on a computer-projected 12-hour drive time via surface transportation to demarcate the coverage of 2- and 3-day standards. Exceptions, to the extent they occur, occur via an appeals process.

[6] *Finding No. 4 — the Service’s failure to seek requisite advisory opinion.* This finding pertains to the Complainant’s interest in the Commission confirming that the Service’s failure to seek an advisory opinion in connection with the complained of changes has been documented, and that the Service should have sought such an opinion. Both Popkin and the OCA agree with Carlson’s position that the Commission should issue a public report noting that the Postal Service implemented the changes in issue without the benefit of an advisory opinion from the Commission. Popkin Brief at 2; OCA Brief at 5. The OCA further contends that the Postal Service must now seek Commission review pursuant to section 3661(b) of the Postal Reorganization Act. *Ibid.* It contends that the realignment’s apparent status as a *fait accompli* should not moot the question of whether an advisory opinion must be sought by the Postal Service. Instead, the OCA asserts:

The Postal Service’s noncompliance with the terms of §3661 does not obviate the need for a full §3661 request and subsequent procedures. The question of the propriety of the Postal Service’s nationwide change in service is still subject to review and it is necessary and desirable for a Postal Service filing to comply with the terms of the legislative policies of that section of the law. The Postal Service should be required to justify the new policies that it applied and the underlying assumptions concerning the needs of its mailers and its application of the mandate for expeditious and prompt delivery of important letter mail.

Id. at 5-6.

[7] The Commission notes that the Service concedes that it did not seek an advisory opinion before making the 2000-2001 changes; thus, it is undisputed that the record supports one element of the requested finding. The issue, instead, has been

whether the Service was under a statutory obligation to seek a section 3661(b) opinion. The Commission agrees the record supports a finding that the nature and timing of the 2000-2001 realignment gave rise to a new obligation under section 3661.

[8] The Commission rejects contentions that a new hearing (either under section 3661(b) or section 3662) should be instituted with respect to the 2000-2001 changes or resulting service at this point. This is due, in part, to the conclusion that the extensive record developed here indicates it would be preferable for the Service to proceed with reviews on a local and regional level. Under these circumstances, the Commission believes it is more appropriate to urge the Governors to direct management to identify regional and local situations (including those detailed on this record) where postal patrons might benefit from a review that takes the concerns Mr. Carlson has raised here into consideration. The perspective provided by this Report should assist postal management in this undertaking.

[9] The Commission finds that the Postal Service, as a government monopoly, has a positive obligation to learn the needs and desires of its customers and structure its products to meet those needs and desires where doing so is not inconsistent with reasonably feasible and efficient operations. The flawed, and now outdated, customer research performed prior to Docket No. N89-1 did not satisfy that obligation.

B. Recommendations

[10] Carlson proposes that the Commission make 10 remedial recommendations. The OCA and Popkin also suggest several recommendations, some of which closely resemble those Mr. Carlson has proposed. Popkin indicates that his recommendations are intended to resolve six shortcomings he associates with the method the Service used to determine 2- and 3-day standards in 2000-2001, which are essentially identical to those of Mr. Carlson. Popkin Brief at 2.

1. Restoration of certain 2-day service standards to their pre-realignment status

[11] Recommendations for re-instituting the pre-realignment status quo take several forms. For example, Carlson's proposed Commission Recommendation No. 1 — Restoration of Certain 2-Day Service — entails having the Service restore 2-day delivery service in all instances where transportation modes currently in use permit 2-day delivery. In connection with this recommendation, Carlson specifically suggests that the San Francisco-San Diego service standard should be changed to 2 days, given his contention that the truck from San Francisco arrives 30 minutes prior to the CET for 2-day mail and one hour before the truck carrying 2-day mail from San Jose. Carlson Brief at 16.

[12] The OCA's recommendation is similar, but broader, in that it is not tied to current transportation modes. Specifically, OCA suggests that pending the outcome of a new section 3661 proceeding it supports, the Commission should recommend immediate reinstatement of a 2-day service standard for all 3-digit ZIP Code pairs that were downgraded from 2 days to 3 days during the 2000-2001 initiative. OCA Brief at 6. It urges that the restoration be publicized and not merely noted in the Service Standards CD-ROM. *Id.* at 6-7.

[13] OCA cites two reasons why restoration "would not be as draconian as it appears." One is its conclusion that the effort would not require a separate analysis to adjust each ZIP Code pairing, given that drive time was calculated from originating P&DC facilities to ADCs. The OCA notes that the Service applies 2- and 3-day

standards consistently to an entire destination area; thus, service between the P&DCs and each ADC represents many ZIP Code pairs. The other reason is that the service standard for the downgraded ZIP Code pairs was 2 days as recently as 2000 and 2001, and that air services apparently were utilized. OCA contends that in many cases, the same air services must still be available so that the 2-day service would be available and could even improve service in the interim rather than lead to a deterioration of service. OCA argues that depending on how one defines deterioration in service, the reverted service may not be as consistent as the Postal Service claims is its goal, but service may be faster, especially in western states. *Id.* at 7.

[14] *Commission position.* The Commission has considered the rollback proposals, but rejects this option for several reasons. First, it is far too sweeping, even if limited to modes of transportation currently in use (presumably surface transportation). Second, its across-the-board nature appears to be punitive in nature. Third, the Service apparently has made some adjustments during the course of this proceeding and claims others are in progress. Based on these representations, the Commission concludes that it is preferable to urge the Service to develop current and reliable information in three main areas: (1) customer needs; (2) reliability of air links; and (3) actual results of ground transportation and delivery performance. This information may provide insight on standards that should revert to their previous service level.

2. California service improvements

[15] Carlson's proposed Commission Recommendation No. 2 — California Service Improvements — entails having the Service acknowledge problems with interactions between the pseudo ADC network in California and the nationwide service standards model, and implement appropriate service improvements in California. Carlson Brief at 16.

[16] *Commission position.* The Commission does not call for a public acknowledgment of problems with the California network, but recommends that the Service conduct a focused review to determine whether the problems associated with the "pseudo ADC" arrangement can be resolved, if they have not already been

addressed. The review should also investigate how reliable 2-day service can be provided throughout the state of California.

3. New customer survey

[17] *New survey.* Carlson's proposed Recommendation No. 3 — New 2-Day Customer Needs Survey — calls for the Commission to recommend that the Service conduct a new evaluation of customers' needs for 2-day mail service between cities to ensure that adequate service is provided pursuant to section 3661(a) of the Postal Reorganization Act. *Ibid.*

[18] *Commission position.* The Commission supports soliciting public input, and agrees that a statistically sound survey is one appropriate method of achieving this. However, management is responsible for determining how to develop necessary information on local and national customer preferences. Hopefully, this Report will focus attention on the importance of staying familiar with the needs and preferences of First-Class Mail users.

4. Air transportation

[19] *Re-introducing air transportation.* Carlson's proposed Recommendations No. 4, 5 and 6 focus on air transportation. No. 4 — Restoring Air Transportation to Meet 2-Day Needs — and No. 5 — Restoring Air Transportation to Remedy Service Declines — entail directing the Service to restore the use of air transportation so that 2-day service can be provided where customer need exists and where service levels between city pairs declined after the change in service standards.¹ Proposed Commission Recommendation No. 6 — Evaluating Dedicated Air Transportation/FedEx Contract — calls for reviewing the FedEx contract to see whether it presents an opportunity to use reliable dedicated air transportation for 2-day service. Carlson suggests that this evaluation start with considering the use of FedEx transportation to restore 2-day delivery between city pairs that exceed the 0.5 percent volume threshold. *Id.* at 44.

¹ With performance measured in terms of average days to delivery and on-time delivery percentage.

[20] The Commission recommends that the Service resume the FedEx study referred to in witness Gannon's testimony, as well as evaluate whether the current status of the airline industry presents an opportunity to meet mailer needs by moving more First-Class Mail via air.

5. Elimination of non-reciprocal standards

[21] Carlson's proposed Recommendation No. 7 — Reciprocal Standards — calls for the elimination of non-reciprocal service standards unless justified by a compelling operational need. *Id.* at 17.

[22] Commission position. Reciprocal standards have appeal and seem logical, but witness Gannon's testimony identifies several difficulties with mandating them in all instances. Thus, the Commission does not recommend that reciprocal standards be required for all city pairs. However, it believes a review might indicate where some reciprocal standards could be re-introduced, and urges the Service to pursue this point.

6. Elimination of certain existing 3-day standards

[23] *Limited rollback.* Carlson's proposed Commission Recommendation No. 8 — 2-Day Intrastate and Certain Other 3-Day Service Standards — involves directing the Service to eliminate 3-day service standards for mail between adjacent areas and within states. *Ibid.*

[24] *Commission position.* The Commission agrees that intrastate locations, nearby locations, and locations with established business relationships or with certain minimum volume should be considered as candidates for 2-day service. However, it does not recommend an across-the-board rollback. Instead, selected review and adjustment appears to be the preferable approach.

7. Public involvement

[25] *Insuring public input.* Carlson's proposed Commission Recommendation Nos. 9 and 10 — Public Information/Collection Box Labels and Public Information/Web Posting — seek more effective communication of service standard information to the general public. Carlson suggests that the Service provide service standard information

on collection box labels and post service standard maps on the Postal Service's website. *Id.* at 44.

[26] Carlson maintains that most customers are not aware of the existence or availability of service standard information, and contends that this may cause customers to make unwise choices. He asserts, for example, that a customer who wants a letter delivered in 2 days may use Priority Mail or an expensive alternative from a competitor when, in reality, the customer could expect delivery in 2 days with regular First-Class Mail. *Id.* at 38. He says the Service has placed a label on collection boxes in St. Louis and in southern Maine that shows the overnight, 2-day and 3-day First-Class Mail delivery areas. *Id.* at 39. He notes that the information on the label is outdated, but believes the idea is good, and suggests that the Service consider posting this information on boxes nationwide. He also says the Service, like UPS and Airborne Express, should place some form of the Service Standards CD-ROM on its website for the public to access to obtain service standard maps. *Id.* at 40-41.

[27] Carlson acknowledges that the retail terminals window clerks have this information (although he maintains it is not always correct); that the Service's website provides it in the domestic mail calculator; and that the Service will mail a Service Standards CD-ROM to customers upon request. He praises the CD's graphical representations as excellent, but notes that the CD is not widely publicized, and that only 732 customers receive it. *Id.* at 38.

[28] Mr. Popkin also urges better communication with the public with respect to service standards. Like Carlson, he suggests that this could include maps on the collection boxes and on the web, but also recommends that the Service provide this information in post office lobbies. Popkin also suggests that the Service add 2- and 3-day delivery EXFC results to the quarterly press release on overnight results. Popkin Brief at 2-3.

[29] *Commission position.* The Commission strongly endorses suggestions that it recommend that the Service provide more information to the general public about nationwide service standards and that it do so via several avenues. The Commission

urges the Governors to direct the Service to consider posting service standard information on collection box labels, at post offices and on its website. The Commission also agrees that the Service should add 2- and 3-day results to its quarterly report on EXFC overnight scores. These are all steps that could be undertaken within a short time.

[30] *Additional observations.* The record amply illustrates the complexities and uncertainties the Service faces in managing an elaborate delivery network within a framework of important, and often competing, statutory policies. The need for new security measures, based in part on acts of bioterrorism that occurred while this case was underway, adds yet another element to the mix. Given these circumstances, the Commission does not hasten to find statutory shortcomings in management's decisionmaking, nor does it consider this case a referendum on the Service's response to the Docket No. N89-1 Opinion. At the same time, the Commission emphasizes that the Service should not be so resistant to public input or to providing the general public with data and information that can be used to make more informed choices about their mailing practices. The Service should post and maintain up-to-date service standard information on its website and in its retail facilities. Additionally, it should widely publicize the availability of this information and take other steps to make this information readily available to the public.