

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

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COMPLAINT OF AMERICAN POSTAL WORKERS UNION, AFL-CIO    Docket No. \_\_\_\_\_

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COMPLAINT OF AMERICAN POSTAL WORKERS UNION, AFL-CIO  
REGARDING VIOLATIONS OF 39 U.S.C. 3661 and 3691

Darryl J. Anderson  
O'Donnell, Schwartz & Anderson, P.C.  
1300 L Street, N.W., suite 1200  
Washington, D.C. 20005-4126

Counsel for Complainant  
American Postal Workers Union, AFL-CIO

September 5, 2013

## **COMPLAINT**

### **I. Background**

1. Under Section 3691 of the Postal Reorganization Act of 1970 (the PRA), as amended by the Postal Accountability and Enhancement Act of 2006 (the PAEA), the Postal Service was required to promulgate regulations establishing service standards for market dominant products, including First Class Mail, within 12 months after the enactment of the PAEA. 39 U.S.C. § 3691(a). Section 3691(b) lists four objectives the Postal Service must seek to achieve, and eight factors it must consider, when it promulgates or amends service standard regulations. 39 U.S.C. § 3691(b). Under Section 3691(a), the Postal Service “may from time to time thereafter by regulation revise” service standards for market dominant products. 39 U.S.C. § 3691(a).
2. On September 21, 2011, the Postal Service published an Advance Notice of Proposed Rulemaking (ANPR) in the Federal Register to solicit public comment on a proposal to revise service standards for market-dominant products. 76 Fed.Reg. No. 183, at 58443 (Sept. 21, 2011). The Postal Service gave as a reason for the proposed rulemaking that mail volume was falling and the resulting excess capacity in the Postal Service's mail processing network necessitated a major consolidation of that network. *Id.* at 58434. The Postal Service stated that the major consolidation of the mail processing network was "contingent on revisions to service standards, particularly the overnight standard for First-Class Mail." See Introduction to Revised Standards for Market-Dominant Products, 39 CFR Part 121, 77 Fed.Reg. No. 102, at 31191 (May 25, 2012).

3. Among other things, the proposed changes to service standards would extend expected delivery times for various classes of mail such as eliminating any expectation of one day delivery for First Class Mail and changing the expectation as to the percentage of First Class mail delivered within two days from 26.6 percent to 50.6 percent and changing the expectation as to the percentage of First Class mail delivered within three days from 31.6 percent to 49.1 percent. Delivery times for periodicals would also be extended.

4. The September 21, 2011 ANPR stated that by ending overnight delivery for First Class mail, the USPS could change times during which it processes mail, which is currently done between 12:30 am and 7:00 am, to 12:00pm to 4:00am the next day. The changed processing times would require mailers to deliver mail to the USPS by 8:00 am each day rather than in the evening before the start of processing at 12:30am. The ANPR further stated that as a result of the proposed service standard changes, the USPS would be able to reduce the number of its mail processing facilities from over 500 locations to fewer than 200 locations because of the longer processing windows.

5. The ANPR solicited comments on its proposal, especially comments from senders and recipients of mail concerning the potential effects of the proposed change, and specifically on how they might change their mailing practices and reliance on the mail.

6. The ANPR advised that if the USPS decided to move ahead with the proposed change, it would publish a proposed rule in the Federal Register and would request an advisory opinion from the Commission under 39 U.S.C. §3661(b).

7. On December 5, 2011, USPS filed a request for an advisory opinion under 39 U.S.C. §3661 (“Request”) concerning its proposals for changes in its service standards consistent with those set forth in the ANPR. The Request said the proposed changes would “eliminate the expectation of overnight service for significant portions of First Class Mail and Periodicals”; additionally, “the two-day delivery range would be modified to include 3 digit zip code origin destination pairs that are currently overnight, and the three day delivery range would also be expanded”. PRC Case No. N2012-1

8. The December 5 Request said that “[t]he service changes described in this request potentially affect every sender and recipient of mail served directly by the United States Postal Service, and are likely to affect most of them”. The Request acknowledged that “[w]hen the Postal Service determines that there should be a change in the nature of postal services which will generally affect service on a nationwide basis, it is required by section 3661(b) to request that the Postal Regulatory Commission issue an advisory opinion on the service change, and to submit a request within a reasonable time prior to the effective date of the proposed service change”. The Request further stated that there should be no doubt that the service changes described in the Request “will be nationwide within the meaning of Section 3661(b)”. *Id.*

9. On December 15, 2011, the Postal Service published a Notice of Proposed Rule (NPR) proposing revisions to the service standards for market-dominant mail products, stating that “the most significant revision would largely eliminate overnight service for First-Class Mail.” 76 Fed.Reg. No. 241, at 77942 (December 15, 2011). The Supplementary Information published with the Proposed Rule explained that “Service Standards are comprised of two components: (1) A delivery range within which all mail

in a given product is expected to be delivered; and (2) business rules that determine, within a product's applicable day range, the specific number of delivery days after acceptance of a mail piece by which a customer can expect that piece to be delivered, based on the 3-Digit ZIP Code prefixes associated with the piece's point of entry into the mail stream and its delivery address." *Id.*, at 77944.

10. Under the proposed Service Standards, "[t]he most significant effect of [the proposed] changes [would] be to drastically reduce the amount of First-Class Mail that qualifies for an overnight service standard. Under the [then] current First-Class Mail overnight business rule, intra-Sectional Center Facility (SCF) mail [was] subject to overnight delivery if it [was] entered before the applicable day zero CET." *Id.* (footnote omitted). Under the proposed revisions to the First-Class Mail overnight business rule, overnight service would be accorded only to intra--SCF Presort First-Class Mail that [was] entered at the SCF prior to the CET." *Id.*, at 77945 (footnote omitted).

11. Mail is "intra-SCF" if its destination is within its designated SCF's delivery area. Under the proposed revisions to the First-Class Mail overnight business rule, overnight service was to be "accorded only to intra-SCF Presort First-Class Mail that [was] entered at the SCF prior to the CET." *Id.*, at 77945 (Footnote omitted).

12. The NPR affirmed that the proposed changes would result in alterations of the prescribed delivery times for First Class Mail and that, as a practical matter, delivery times for other classes of mail would change as well, that the USPS would close many facilities and would change the work hours for most employees at its processing facilities. The NPR noted that the USPS had requested an Advisory Opinion from the Commission in accordance with Section 3661(b) and it cited and incorporated by

reference information it had provided in docket no. N2012-1.

13. On May 25, 2012, the Postal Service published a final rule revising the service standards for market dominant mail products, amending 39 C.F.R. § 121.1 First-Class Mail, Effective July 1, 2012. 77 Fed.Reg. No. 102, at 31190 (May 25, 2012). Under the new regulation:

(a)(1) Until February 1, 2014, a 1-day (overnight) service standard is applied to intra-Sectional Center Facility (SCF) domestic First-Class Mail pieces properly accepted before the day-zero Critical Entry Times (CET),

(2) and after February 1, 2014, a 1-day (overnight) service standard is applied to intra-SCF domestic Presort First-Class Mail pieces properly accepted at the SCF before the date-zero CET...

*Id.* at 31196. (Exceptions are made for Puerto Rico, the US Virgin Islands, American Samoa and parts of Alaska). *Id.*

14. Under the new regulation:

(b)(1) Until February 1, 2014, a 2-day service standard is applied to inter-SCF domestic First-Class Mail pieces properly accepted before the day-zero CET if the drive time between the origin Processing & Distribution Center or Facility (P&DC/F) and the destination Area Distribution Center (ADC) is 6 hours or less...

(2) On and after February 1, 2014, a 2-day service standard is applied to inter-SCF domestic First-Class Mail pieces properly accepted for the day-zero CET if the drive time between the origin PDC/F and destination SCF is 6 hours or less...

*Id.* at 31196. (Exceptions are made for Puerto Rico, the US Virgin Islands, American Samoa and parts of Alaska). *Id.*

15. The USPS stated that under the New Rule, it could expand its nightly processing window, thereby reducing the number of processing locations needed in the network.

“Presently, the Postal Service’s delivery point sequencing (DPS) operations are generally run for six and one-half hours per day, from 12:30 a.m. to 7 a.m. Once

implementation of Phase One [under the interim version of the New Rule] is complete, the DPS window will expand to up to ten hours, from 8 p.m. to 6 a.m. This change will facilitate the consolidation of the mail processing operations of approximately 140 facilities. Then, once implementation of Phase Two [the final version of the New Rule] is complete, the DPS window will expand to up to sixteen hours, from 12 p.m. to 4 a.m. This will make possible the consolidation of the mail processing operations of approximately 230 facilities (inclusive of the approximately 140 consolidated in Phase One).” 77 Fed.Reg. No. 102, at 31192.

16. The Postal Service explained its decision to conduct a phased implementation as follows:

From the outset, the Postal Service has understood that implementation of Network Rationalization will require more than one year. The phased application of the new rules accommodates this reality and also provides the Postal Service with enough flexibility that, should subsequent events or changed circumstances so warrant, the Postal Service will be able to revisit the final version before February 1, 2014, and amend or withdraw it, as appropriate, through a new notice-and-comment rulemaking...

77 Fed.Reg. No. 102, at 31191-31192; and it reiterated that explanation:

As noted above, the Postal Service recognizes the possibility that subsequent events or changed circumstances could cause it at a future date to revisit the final version of the new rules that will apply beginning on February 1, 2014, and to alter or withdraw those rules through a new notice-and-comment rulemaking....

77 Fed.Reg. No. 102, at 31192.

17. On September 28, 2012, the Postal Regulatory Commission (PRC) issued its Advisory Opinion on Mail Processing Network Rationalization (MPNR) Service Changes. PRC Docket No. N2012-1. The Executive Summary of those recommendations made the following three observations among others:

(1) “Interim service standards were adopted that preserve overnight First-Class Mail service through January 31, 2014, with the exception of First-Class Mail that is handled by more than one processing facility.” *Id.* at 1.

(2) “The Commission estimates that MPNR cost savings may be as low as \$46 million annually assuming mail processing productivities remain at current levels, or as high as \$2 billion annually if all proposed assumptions prove correct. Cost savings may be offset by reduced contribution to the bottom line from volume loss by mailers who no longer believe the level of service provided meets their postal needs.” *Id.* at 2.

(3) “The advice provided by the Commission in this docket can be succinctly summarized. The Commission views positively the network rationalization actions planned by the Postal Service through January 31, 2014, and recommends that the Postal Service take into account the considerations outlined in this Advisory Opinion before proceeding further. Specifically, the Commission encourages the Postal Service to make every attempt to retain overnight delivery in keeping with the analysis presented in the subsequent chapters [of the Commission’s Advisory Opinion].” *Id.* at 5-6.

18. The Commission in its order, however, cautioned the Postal Service that the Postal Service’s assumption of a systemwide increase in productivity of more than 20 percent was “remarkably ambitious and involve[d] some risk.” *Id.* at 2.

19. In response to direct questions from the Chairman of the PRC, the Postal Service assured the Commission that care would be taken to ensure that intra-SCF First-Class Mail service would be maintained until February 1, 2014, and that the decision to move forward with Phase 2 would be made very deliberately. The Postal Service stated:

“...The Phase I network reflects a judgment reached by Headquarters after consultations with Area and District operations and transportation experts to

determine a subset of feasible consolidations that could permit the preservation of intra-SCF overnight First-Class Mail service. Additional review may lead to adjustments to ensure that Phase I operations support applicable service standards.” PRC Case No. N2012-1, Responses of United States Postal Service Witness Emily Rosenberg to Commission Information Request No. 1 (Question 8(a)(i)).

\* \* \* \* \*

“I am informed that any decision by senior postal management regarding “whether to retain phase one service standards or to proceed with implementation of phase two” will be influenced by whether a legislative enactment prohibits the Postal Service from implementing Phase II. The Postal Service also will review the advisory opinion issued in this case.” *Id.* (Question 9(b)).

20. There is legislation pending in the United States Congress that would, if enacted, require the Postal Service to maintain Phase I delivery standards for First-Class Mail and periodicals.

## **II. Summary of Complaint**

21. In this case, Complainant the American Postal Workers Union, AFL-CIO (the APWU), which together with its locals and its health plan mails millions of pieces of mail each year, complains that the Postal Service is regularly failing to comply with the Service Standards set by its regulations in violation of Section 3691(b)(1)(B) of the PRA as amended by the PAEA, which requires the Postal Service to “preserve regular and effective access to postal services in all communities, including those in rural areas or where post offices are not self-sustaining.” 39 U.S.C. § 3691(b)(1)(B).

22. As a consequence of these violations, the Postal Service is depriving individuals

and business mailers, including the APWU and its locals, of the service to which they are entitled by law under service standard regulations in violation of Section 3691(d) of the PRA as amended by the PAEA. 39 U.S.C. § 3691(d)

23. The Postal Service unreasonably discriminates against individuals, small businesses, and organizational mailers in the provision of postal services by failing to comply with its regulations providing for the delivery of First-Class Mail and other mail, particularly those in rural areas, because the effects of service standard violations are more frequently found there. These discriminatory actions by the Postal Service violate Section 403(c) of the PRA as amended by the PAEA. 39 U.S.C. § 403(c).

24. In addition, the APWU complains that this failure by the Postal Service to comply with the law and regulations providing for postal services is the result of a decision made either by the postal Board of Governors or by postal management to implement in 2013 mail processing facility closures the Postal Service had not planned to make until after the effective date of regulation changes to take effect February 1, 2014, even though the Postal Service knew or should have known that those closures would result in the regular and systematic violation of First-Class Mail service standard regulations,

25. The APWU also complains that the Postal Service has information that it has not made public that will show the violations described above; and that information also will show that the closures planned for 2014 but implemented in 2013 have generally affected service on a nationwide or substantially nationwide basis.

26. As a remedy for these violations, the Complainant requests (1) that the Postal Service be instructed to take necessary steps to come promptly into compliance with Service Standard regulations; (2) that the Postal Service be ordered to cease and desist

from making changes in its mail processing network that will cause it to violate service standards; and (3) that the APWU and its locals be provided an appropriate remedy for any adverse impact on them due to the delay of their mail.

### **III. Jurisdiction**

27. The APWU is an unincorporated labor organization with its offices at 1300 L Street, N.W., Washington, D.C. 20005. APWU is a party to multiple collective bargaining agreements with the United States Postal Service, and represents approximately 200,000 employees of the Postal Service. The APWU, its locals and the APWU Health Plan collectively mail millions of pieces of mail each year. The APWU maintains offices and conducts business throughout the United States and has Local affiliates in every state and territory of the United States; APWU and its locals send First Class Mail and other classes of mail into, and receives mail from, rural and urban districts in every U.S. State and territory. APWU locals send and receive First Class Mail and other mail pertaining to APWU business that originates and destines in the same Sectional Center Facility (SCF). The APWU brings this Complaint as an interested person under Section 3662 of the Act.

28. Under Section 3662(a) of the PRA as amended by the PAEA (39 U.S.C. § 3662(a)) the Commission has jurisdiction to hear these complaints of violations of Sections 403(c), 3661, 3691(b) and 3691(d) of the Act and of Regulations promulgated thereunder.

29. In accordance with the Commission's Rule 3030.10(9), counsel for the APWU communicated with the office of the general counsel of the Postal Service by telephone and e-mail on Wednesday, September 4, 2013, in an effort to resolve its complaint

without the necessity of filing this action. Despite good faith consideration by both parties, further efforts to resolve this matter without the filing of this Complaint would be futile..

#### **IV. THE POSTAL SERVICE IS VIOLATING SERVICE STANDARDS ON A NATIONWIDE OR SUBSTANTIALLY NATIONWIDE BASIS**

##### **Tyler, Texas**

30. Deactivation of the East Texas P&DC was scheduled to occur after the February 1, 2014 change in delivery standards. It was re-scheduled and implemented in May and June 2013.

31. As a result of the deactivation of the East Texas P&DC, the Postal Service is consistently failing to meet the one-day service standard for First-Class Mail.

32. As a result of the deactivation of the East Texas P&DC, First-Class Mail that used to be picked up on Saturday is not picked up until Monday and then is transported for processing.

33. As a result of the deactivation of the East Texas P&DC, mail that has been processed for delivery consistently arrives late at the Area Offices. This significantly delays letter carriers' departure to make deliveries. As a result, postal patrons receive their mail hours later than they did before the consolidation. For small businesses, mail that should have been received during the business day is not received until the next business day.

### **Brooklyn, New York**

34. As a result of recent network consolidations, both originating and destinating mail processing has been moved from Brooklyn to the Morgan P&DC in Manhattan, New York.

35. As a result of the change described in the paragraph above, a substantial percentage of First-Class Mail is not receiving one-day delivery service within the SCF where it both originates and destinales (intra-SCF mail). This is in violation of service standards.

36. The use of mail placards in the mail processing operation in Brooklyn has become irregular and no longer serves as a reliable means of determining whether mail is meeting delivery standards.

### **Colorado Springs, Colorado**

37. The outgoing mail processing operation was moved from Colorado Springs to Denver, Colorado on June 1, 2013. As a result, cut-off times at stations and collection boxes were changed to one hour earlier. All mail dropped in those boxes after the new earlier cutoff time is delayed by one day. A substantial percentage of the mail is failing to meet delivery standards.

38. Mail that used to be processed and delivered overnight in Colorado Springs now takes two to three days for delivery.

### **Kilmer, New Jersey**

39. The Kilmer, New Jersey, postal facility no longer processes its own originating or destinating mail. This was not scheduled to occur under the Postal Service's Network Consolidation Plan until 2014.

40. As a result of Network Consolidation affecting Kilmer, its residents receive mail that does not comply with service standards.

41. Processed mail routinely arrives at the Kilmer P&DC at 10 a.m. instead of 7 a.m. as it did before consolidation. This significantly delays letter carriers' departure to make deliveries. As a result, postal patrons receive their mail hours later than they did before the consolidation. In the case of small businesses, mail that should have been received during the business day is not received until the next business day.

### **Saginaw, Michigan**

42. Mail originating and destinating in Saginaw, Michigan, is now transported to Pontiac, Michigan for destinating processing due to a change in mail processing that was not scheduled to occur until 2014 under the Postal Service Network Consolidation Plan but was made in 2013.

43. As a result of the elimination of mail processing operations in Saginaw, mail destinating in Saginaw is regularly being delayed, and service standards are being violated.

### **Williamsport, Pennsylvania**

44. As a result of the closure of the Williamsport, Pennsylvania, destinating mail processing operation in 2013, a change which was not scheduled to occur until 2014 under the Network Consolidation Plan, mail is being delayed and is being delivered in violation of service standards in the Williamsport area.

45. A weekly magazine called Sports Illustrated is being delivered five days late.

46. Wall Street Journals were delivered 36 hours late for more than a month.

47. Numerous complaints have been received from small businesses about delayed

payments from customers in the Williamsport community.

48. As a result of the late arrival of trucks carrying processed mail, letter carriers are delayed and regularly must deliver mail until after 8 p.m. As a result, postal patrons receive their mail hours later than they did before the consolidation. In the case of small businesses, mail that should have been received during the business day is not received until the next business day.

### **Salem, Oregon**

49. As a result of a consolidation that was scheduled for 2014 being carried out in 2013, mail is being delayed in the Salem, Oregon, area, and service standards are not being met. For example, a test mailing of a First Class Mail parcel sent certified mail was due to be delivered on June 22, 2013, under applicable service standards. It was not received until June 24, 2013.

50. Mailers complaining of delayed mail in Salem include Doneth Wealth Management, First Pacific Corporation, the Oregon Department of Motor Vehicles, and the U.S. Department of Justice. Complaints have included delays in First-Class Mail and parcel mail.

51. Because of the consolidation, collection times from postal mail boxes have been moved to earlier times throughout the area, and dispatch times from coastal Oregon are as early as 1:30 p.m. Mail deposited after earlier collection times or arriving at a facility after an earlier dispatch time is delayed by one full day in addition to mail processing delays caused by the consolidation.

### **LaCrosse, Wisconsin**

52. As a result of a mail processing consolidation that had been scheduled to be done in 2014, mail in the LaCrosse, Wisconsin, area is being delayed. For example, the Vernon County Broadcaster, a weekly newspaper, reports that many of its newspapers are not being received until days or even a week late as a result of mail being transported to Minnesota for processing.

### **Carbondale, Illinois**

53. The Carbondale, Illinois, mail processing center recently shut down and now its mail is sent to St. Louis, Missouri, for processing.

54. An official Postal Service announcement about this change stated that the fact that the mail is now being processed in St. Louis “may add a day or two to the normal delivery timeframe.”

55. If the postal spokesperson quoted in the paragraph above is correct, the Postal Service is violating delivery standards in the Carbondale area due to the elimination of mail processing in Carbondale.

### **Cape Girardeau, Missouri**

56. Mail delivered to Cape Girardeau, Missouri and the surrounding area is first processed in St. Louis, but it is regularly delayed by nearly three and a half hours before it is delivered to the Cape Girardeau P&DC for sorting. The St. Louis processing center is overwhelmed by the volume of mail, resulting in large delays and service standards not being met.

57. These delays have actual and, in some instances, detrimental consequences in Cape Girardeau and the rural communities around it. Residents in Cape Girardeau are

receiving newspapers two days after their publication, while residents in nearby Gideon, Missouri, have received water shut-off notices in the mail two days after their water was shut off.

**Service Adversely Affected on a Nationwide or Substantially Nationwide Basis**

58. Altogether, the Postal Service has decided to close down 55 mail processing operations in 2013 that had been originally scheduled to be included in Phase II of its Network Consolidation Plan in 2014.

59. Approximately 90 facilities were scheduled for closure in 2014 instead of in 2013 for two reasons: (1) Closure of these facilities would require elimination of one-day First-Class Mail service within SCFs for individuals and small businesses, and correspondingly slower service for all other types of mail; and (2) The service standard changes necessary to permit the slower delivery standards are not scheduled to take effect until February 1, 2014.

60. The decision to close 53 or 55 of the mail processing operations in 2013, that were originally scheduled for closure in 2014, was made by the Board of Governors or by postal management despite the likelihood that mail would be delayed in violation of applicable service standards.

61. Despite postal management's best efforts, it has been impossible and will remain impossible for the Postal Service to meet its delivery standards in areas where 2014 closures have been carried out in 2013.

## REQUEST FOR RELIEF

For the reasons stated above, the APWU respectfully requests that the Commission:

A. Hold that the Postal Service has violated its Service Standard Regulations as described in the Complaint above;

B. Hold that the Postal Service has violated Section 403(c) of the Act by making undue and unreasonable discrimination among users of the mails, specifically individuals, small businesses, and organizations, including the APWU and its locals;

C. Hold that the Postal Service has violated Section 3661(a) and (b) of the Act by changing to a generally less adequate and effective nationwide system without seeking an advisory opinion from the Postal Regulatory Commission;

D. Order the Postal Service to take necessary steps to come promptly into compliance with its Service Standard regulations;

E. Order the Postal Service to cease and desist from making changes in its mail processing network that will cause it to violate service standards; and

F. Order the Postal Service to provide the APWU and its locals an appropriate remedy for any adverse impact on them due to the delay of their mail.

Respectfully submitted,

/S/

Darryl J. Anderson  
O'Donnell, Schwartz & Anderson, P.C.  
1300 L Street, N.W., suite 1200  
Washington, D.C. 20005-4126

Counsel for Complainant  
American Postal Workers Union, AFL-CIO

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CERTIFICATIONS REQUIRED BY RULE 3030.10(9) and (10)

I hereby certify that a copy of this complaint is being simultaneously served on the Postal Service at [PRCCOMPLAINTS@usps.gov](mailto:PRCCOMPLAINTS@usps.gov) in accordance with Rule 3030.11.

I hereby certify that counsel for the APWU conferred with the Postal Service's general counsel in an attempt to resolve or settle this complaint, and that, despite good faith consideration by both parties, additional efforts to settle or resolve this complaint would be unsuccessful at this time.

/s/

Darryl J. Anderson  
O'Donnell, Schwartz & Anderson, P.C.  
1300 L Street, N.W., suite 1200  
Washington, D.C. 20005-4126

Counsel for Complainant  
American Postal Workers Union, AFL-CIO

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