

**BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON, DC 20268-0001**

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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY**

**Complaint on Sunday  
and Holiday Collections**

**Docket No. C2001-1**

**DOUGLAS F. CARLSON  
ANSWER IN OPPOSITION  
TO POSTAL SERVICE MOTION FOR RECONSIDERATION**

**April 13, 2001**

**I. INTRODUCTION**

On April 10, 2001, the Postal Service filed a motion for reconsideration<sup>1</sup> of Commission Order No. 1307,<sup>2</sup> which instituted a proceeding to consider my complaint concerning holiday and holiday-eve collections. The Postal Service's motion represents a delay tactic. The Commission should promptly deny the Postal Service's motion, issue a procedural schedule, and authorize participants to commence discovery.

**II. ARGUMENT**

In support of its motion, the Postal Service reiterates various unproven and untested factual assertions. The Postal Service also attempts to resuscitate a number of arguments supporting dismissal of my complaint. In Order No. 1307, the Commission considered and dismissed these arguments. The Postal Service's arguments, however unconvincing, seem more appropriate for its brief than for a motion to dismiss a complaint before a factual record has been

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<sup>1</sup> Response of the United States Postal Service to Order No. 1307, and Motion for Reconsideration ("Motion for Reconsideration") (filed April 10, 2001).

<sup>2</sup> Order No. 1307 ("Order") (filed March 20, 2001).

developed. Therefore, the Commission should proceed with its announced plan to develop a record and evaluate my complaint based on the facts.

**A. THE COMMISSION HAS JURISDICTION TO HEAR THIS COMPLAINT.**

The Postal Service is mistaken in asserting that the Commission does not have jurisdiction to hear this complaint. Motion for Reconsideration at 1–8. The Commission fully considered this issue and properly determined that it has jurisdiction to hear this complaint. The Commission ruled that the Postal Service’s failure to seek an advisory opinion pursuant to 39 U.S.C. § 3661(b) “is sufficient to demonstrate a reasonable belief” that the Postal Service is not providing postal services consistent with the policies of the Postal Reorganization Act. See Order at 8. On the disputed factual issue of whether a change in the nature of postal services has occurred, the Commission held that “Carlson has provided sufficient basis to make a colorable claim as to whether the Postal Service should have requested an advisory opinion pursuant to § 3661(b).” Order at 10. The Postal Service provides no new information to justify reversing this decision.

The Postal Service asserts that the “issue of whether or not the Postal Service failed to seek a required advisory opinion \* \* \* does not fall within the range of issues which the Commission is authorized to address in a section 3662 service complaint proceeding.” Motion for Reconsideration at 3. The Postal Service cites no authority to support this proposition. In fact, the Commission’s ruling was correct. The Act requires the Postal Service to obtain an advisory opinion from the Commission before changing the nature of postal services. 39 U.S.C. § 3661(b). In this instance, the Postal Service skipped the request for an advisory opinion and proceeded to change the nature of postal services anyway. If the Postal Service changes the nature of postal services and also denies the public an opportunity for a hearing on the record before the Commission under section 3661(c), the curtailed services will not be consistent with the policies of

the Act because the Postal Service curtailed them without seeking an advisory opinion. Even though the initial violation of the Act — failing to seek an advisory opinion before reducing holiday mail service — was “procedural” in nature, it led to a substantive failure to ensure that customers would be receiving adequate postal services on holidays. The Commission correctly sustained my complaint.

Rather amazingly, the Postal Service resurrects its original argument that my complaint apparently should be dismissed because my complaint did not include the sentences “I am an interested party” and “I am not receiving postal services in accordance with the policies of the Postal Reorganization Act.” See Motion for Reconsideration at 1–2 and Answer of the United States Postal Service and Motion to Dismiss at 12–13 (November 27, 2000). As I explained in my answer to the Postal Service’s motion to dismiss, the Act does not require a person to state in his complaint that he is an interested party and that he is not receiving postal services in accordance with the policies of the Act. Douglas F. Carlson Answer in Opposition to Postal Service Motion to Dismiss (“Carlson Answer”) at 5–7 (December 14, 2000). Rule 83 of the Commission’s *Rules of Practice* specifies no such requirement, either, and my complaint provides all the information that Rule 83 requires. Rather, the test is whether I, having filed a complaint, am an interested party and whether I am not receiving postal services in accordance with the policies of the Act. Carlson Answer at 6–7. The Commission correctly ruled that my complaint sufficiently alleges that I am not receiving the services in question. Order at 7–11. The Postal Service provides no new information that should cause the Commission to reconsider its decision.

Given the nature of most of the litigation that the Commission considers, the Commission does not have an extensive body of rules or interpretations on the fine points of pleading in complaints. Therefore, the *Federal Rules of Civil Procedure* may provide some useful guidance.<sup>3</sup> According to Rule 8(f), “All

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<sup>3</sup> Indeed, the Postal Service effectively invokes Rule 8(a) when it claims that I have “failed to state a claim upon which relief may be granted[.]” Motion for Reconsideration at 6; Fed. R. Civ. P. 8(a).

pleadings shall be so construed as to do substantial justice.” Fed. R. Civ. P. 8(f). The Postal Service’s excessively rigid and impractical approach would not survive in federal court because it would deny justice to persons who, in good faith and following applicable rules and statutes, are seeking redress. This Postal Service’s proposed standard is as inappropriate for Commission proceedings as Congress determined it to be for the federal courts.

The Commission stated that it did not “contemplate consideration at this time of whether the level of holiday and holiday eve service is adequate under § 3661(a)” because my complaint did not specifically allege that current service levels are not adequate. Order at 17. To “curtail the possibility of a future complaint that would necessarily cover much of the same territory that will be covered in the instant Complaint,” the Commission granted me an opportunity to amend my complaint. *Id.* On March 29, 2001, I filed a motion to amend my complaint to allege that current holiday and holiday-eve service levels may not be adequate within the meaning of 39 U.S.C. § 3661(a). Douglas F. Carlson Motion to Amend Complaint (“Carlson Motion to Amend”) at 2. In regard to holiday service, I cited information concerning the high cancellation volume at one plant on Memorial Day in 1998 before this service was eliminated. Carlson Motion to Amend at 1. This volume suggests that customers need holiday mail service; without holiday mail service, the Postal Service may not be providing an adequate level of service.

### **1. Amended Complaint**

Now that I have moved to amend my complaint, the Postal Service charges that my amended complaint is faulty because it uses the verb “is” instead of “may.” See Motion for Reconsideration at 6–7. Because I allegedly did not state a definite belief that current service levels are not adequate, the Postal Service concludes that the Commission does not have jurisdiction to hear this complaint. *Id.* Several problems undermine the Postal Service’s argument.

First, the Commission *does* have jurisdiction because the Postal Service failed to seek an advisory opinion under section 3661(b) before changing the nature of holiday and holiday-eve mail services. Order at 11. My amended complaint raises an *additional* issue for the Commission's consideration. On the basis of my amended complaint, the Commission may, in its discretion, decide to consider whether the level of holiday and holiday-eve mail service is adequate under section 3661(a). While my new allegation may also grant the Commission jurisdiction to hear my complaint, I submitted my amended complaint in response to a Commission order initiating a proceeding and, thus, confirming jurisdiction. Moreover, the Commission provided me with an opportunity to amend my complaint *in the context of determining whether I would submit evidence on the adequacy of current services*. *Id.* at 17. I properly used the verb "may" because I expect to use discovery to probe the adequacy of current service levels; I cannot, at present, assure the Commission that I will submit evidence on this issue. Importantly, in alleging the possible inadequacy of service levels, I was not attempting to create jurisdiction for the Commission because jurisdiction already exists.

Absent consideration of the adequacy of holiday service in this complaint proceeding, I surely could obtain data on cancellation volumes on past holidays under the Freedom of Information Act. If the data in any way resemble the data cited in my motion to amend my complaint — 250,000 letters cancelled in Oakland, California, on Memorial Day in 1998 — I am confident that the data would provide a basis for me to allege confidently that the Postal Service is not providing an adequate level of holiday mail service. See Carlson Motion to Amend at 1. I would then either amend this complaint or file another complaint. But in granting me the opportunity to amend my complaint at the beginning of this proceeding, the Commission was seeking to avoid exactly this duplicative effort by allowing me to amend my complaint in order to "curtail the possibility of a future complaint that would necessarily cover much of the same territory that will be covered in the instant Complaint." Order at 17.

Once again, the *Federal Rules of Civil Procedure* provide useful guidance on interpreting my amended complaint. The federal rules allow parties to plead hypothetical claims that they intend to prove through discovery or at trial. See Fed. R. Civ. P. 8(e). Under the federal rules, my amended complaint would be sufficient to raise the issue of the adequacy of current service levels as an issue for consideration.

A second problem exists with the Postal Service's approach. Section 3661(b) requires the Postal Service to seek an advisory opinion before changing the nature of postal services. In a proceeding for an advisory opinion, Rule 74 requires the Postal Service to explain how the proposed change will be consistent with the policies of the Act. Whether the proposed change would still provide the public with adequate and efficient postal services under section 3661(a) presumably is one of the standards that the proposed change must meet. The Postal Service appears to admit as much. Motion for Reconsideration at 5. Section 3661(c) provides for a public hearing to evaluate the proposed change.

In this instance, the Postal Service has changed the nature of holiday mail service without seeking an advisory opinion that would have evaluated the adequacy of the proposed level of service. The Postal Service now would like customers to be unable to initiate a complaint under section 3662 unless they can allege, and provide evidence, that holiday service levels are not adequate. But how would an individual customer independently determine that service levels are inadequate when the Postal Service bypassed the required section 3661(b) procedure that would have developed evidence on this issue? The Commission is absolutely correct in ruling that a person may initiate a complaint proceeding under section 3662 if the Postal Service failed to seek an advisory opinion before changing the nature of postal services. Absent this ruling, the Postal Service would be able to skip the advisory opinion that would develop evidence on the adequacy of the proposed change, then move to dismiss any complaint because the person would be unable to prove that the service was

inadequate. By circumventing the law initially, the Postal Service could immunize itself from complaint proceedings. The Commission's ruling correctly prevents this unfair result. Otherwise, postal customers would be placed in a classic Catch 22 — exactly where the Postal Service wants to place customers who question agency practices or complain about service problems.

The Postal Service charges that the “material aspects of the Postal Service’s holiday practice have been amply documented in the information attached to the Postal Service’s Answer.” Motion for Reconsideration at 7. Therefore, according to the Postal Service, I should be able to determine whether I wish to allege that holiday service does or does not conform to any of the policies of the Act. *Id.* This statement warrants closer examination. The headquarters memos provided in the Postal Service’s answer suggest that the default policy is not to process outgoing mail on holidays. Moreover, collection schedules on collection boxes are likely to show a blank in the space for a holiday collection. *Id.* at 9. Reading the Postal Service’s pleadings in response to my complaint and believing all the statements contained therein, one could reasonably conclude that the Postal Service no longer collects and processes mail on holidays. If the Postal Service wants me to believe that this information represents the current state of holiday mail service, I would be pleased to allege that current service levels are not adequate. However, I know that Postal Service *practice* differs from the practice that the policy statements provided thus far would suggest. I am attempting to nurture a productive proceeding based on facts, including my own knowledge of actual practice. But if the Commission instead directs me to proceed by taking as fact the information that the Postal Service has provided thus far, I will amend my complaint to allege definitively that customers do not have access to holiday mail service — blank holiday collection times on labels would be proof — and that this level of service is inadequate. I submit, however, that my approach thus far, which considers actual practice, will foster a better, more-efficient, and more-useful proceeding for the Commission, the Postal Service, participants, and the public.

## **2. “Back-Door” Proceeding**

The Postal Service suggests that the Commission’s order is problematic because it effectively allows parties other than the Postal Service a “back-door route” to initiate “section 3661(b) service change proceedings.” Motion for Reconsideration at 4. The Postal Service is incorrect because this proceeding is a service-complaint proceeding under section 3662. A parallel example exists on the rate side that further dampens the surprise that the Postal Service expresses. Only the Postal Service may institute a proceeding to change a rate. 39 U.S.C. § 3622. However, under section 3662, customers may file a complaint concerning rates that the Postal Service is charging. Such a complaint may lead to a proceeding that very closely resembles the proceeding that follows after the Postal Service files a request for an opinion and recommended decision. 39 U.S.C. § 3662. The end result may be identical: an opinion and recommended decision. To the extent that section 3662 creates a “back-door route” to initiate a proceeding, section 3662 intends precisely this result. Section 3662 is one of the few remedies that the Act grants customers to ensure that the Postal Service provides services and charges rates that are consistent with the policies of the Act.

### **B. THE POSTAL SERVICE’S ASSESSMENT OF MY MOTIVE IS INACCURATE.**

Despite not having contacted me to discuss issues related to this complaint, the Postal Service nevertheless professes to know my intentions. See Motion for Reconsideration at 6–7. The Postal Service blames me for not seeking either monetary damages or an order directing certain behavior from the Postal Service. *Id.* The Postal Service forgets that section 3662 provides a remedy: a public report describing the service problem. I assure the Commission and the Postal Service that, in initiating a complaint proceeding under section 3662, I am seeking the remedy that section 3662 provides. As the Postal Service seeks to reform the Postal Reorganization Act, Congress would benefit from the public report that this proceeding likely will generate.

### **C. THE POSTAL SERVICE INCORRECTLY MINIMIZES THE ISSUE OF DECEPTION CONCERNING HOLIDAY SERVICE LEVELS.**

The Postal Service asserts that the potential deception of the public regarding the services to be provided on specific holidays “is not likely to be a substantial issue.” Motion for Reconsideration at 9. This assertion is nothing short of amazing. The Postal Service suggests that media reports, blank holiday collection times on collection labels, and information available from local post offices should allow customers to obtain correct information concerning holiday mail processing. In my experience, media reports generally indicate simply that the post office is closed on a particular holiday. Media reports do not delve into the specifics of holiday collections and processing.<sup>4</sup> This distinction is important because the Postal Service *does*, in fact, process and collect mail on some holidays, despite blank holiday collection labels and vague media reports indicating that post offices are closed. If customers believe that holiday service is not available, they effectively are being denied this service because they may defer mailings until the next day. Once again, if the Postal Service believes that no deception occurs because customers are clearly informed that no holiday service is available, this complaint should proceed under the assumption that holiday mail service no longer is available, and I will amend my complaint to allege that the absence of holiday service is inadequate.

The Postal Service also is incorrect in suggesting that deception occurs in only one direction. In reality, customers have a right to know *whether or not* a particular service will be provided. Some customers may deposit mail, such as bill payments, in the hope and with the expectation that their mail will *not* be processed until the day after the holiday because they are waiting for their paycheck to be deposited to cover the check. They may be harmed if their mail *is* processed when the collection-times label indicates no holiday collection.

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<sup>4</sup> The Postal Service asserts that “[t]here is no reason to believe that information conveyed in [media reports] would be inaccurate.” Motion for Reconsideration at 9. In reality, there is no reason to believe that information reported in the media would, except by chance, provide accurate information concerning collections and mail processing on holidays.

As for the assertion that local post offices have information on whether the plant that services them will be processing mail on holidays, the Postal Service apparently has not called local post offices lately to obtain this information. Even using a Headquarters Telephone Directory to call plant managers' offices directly — telephone numbers that are not published for the general public — I have received incorrect information about holiday service plans. I have never seen a sign in a post office or plant describing the holiday collection and processing service that will or will not be provided — and I have visited many post offices. In fact, as further evidence of the difficulty of obtaining accurate information, some window clerks working at processing and distribution centers, and even some staff answering the telephone in plant managers' offices, still tell customers that the Postal Service processes outgoing mail on Sundays.

The Postal Service concludes that “The Postal Service is unaware of any basis to believe that a material number of mailers have found themselves receiving holiday mail service that was inconsistent with what they had been led to believe by the information made available to the public.” *Id.* at 9–10. I submit that every customer who has deposited mail in a collection box on a holiday and whose mail has been processed on that holiday has received holiday mail service that was inconsistent with the information that the Postal Service made public, given that most collection-times labels show a blank for the holiday collection times. *Id.* at 9. Since most plants do process mail on certain holidays every year, the number of customers affected by the incorrect information surely numbers in the tens of millions. Some of them probably were pleased by this service and assumed that they would receive it on the next holiday, too — but the Postal Service may not have processed mail on the next holiday. Simply stated, the current situation is haphazard, and customers receive no reliable information concerning holiday service levels.

This dispute over the information provided to customers concerning holiday service levels provides further support for my contention that the Commission needs to hear evidence on this issue and produce a public report

that would be helpful to the Postal Service in addressing these issues. Indeed, the Postal Service clearly would benefit from a public report because, thus far, the Postal Service has failed to grasp the nature and extent of the problem.

### III. CONCLUSION

The Postal Service's motion for reconsideration offers no new information or justification for the Commission to dismiss my complaint. Moreover, the Postal Service's motion for reconsideration actually underscores the need for a hearing because the Postal Service still does not appreciate the problems that current holiday service practices create for the public. The complaint process of section 3662 exists to remedy precisely the problems that the Commission sought to address in ordering a hearing on my complaint. In the course of this complaint, I look forward to offering useful and practical suggestions on how the Postal Service can provide better information to the public.

The Commission should deny the Postal Service's motion for reconsideration, issue a procedural schedule, and authorize participants to commence discovery.

Respectfully submitted,



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DOUGLAS F. CARLSON

Dated: April 13, 2001

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### CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the required parties in accordance with section 12 of the *Rules of Practice*.



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DOUGLAS F. CARLSON

April 13, 2001  
Santa Cruz, California