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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

ORDER NO. 1312

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

George A. Omas, Vice Chairman;
Dana B. Covington; Ruth Y. Goldway;
and W.H. "Trey" LeBlanc III

Complaint on Sunday and Holiday Collections

Docket No. C2001-1

ORDER DENYING UNITED STATES POSTAL SERVICE
MOTION FOR RECONSIDERATION OF ORDER NO. 1307

(Issued May 7, 2001)

On October 27, 2000, Douglas F. Carlson filed a complaint with the Commission pursuant to 39 U.S.C. § 3662, Rate and Service Complaints, concerning Sunday, holiday, and certain holiday eve service.¹ The Postal Service filed an answer to the Complaint concurrent with a motion to dismiss on November 27, 2000.² The Commission subsequently ruled on the Postal Service motion to dismiss, granting it in part and denying it in part.³ The Postal Service now requests that the Commission reconsider this ruling and dismiss the Complaint in its entirety.⁴ Carlson has filed in

¹ Douglas F. Carlson Complaint on Sunday and Holiday Collections, filed October 27, 2000 (Complaint).

² Answer of the United States Postal Service and Motion to Dismiss, filed November 27, 2000 (Answer).

³ PRC Order No. 1307, Order Partially Denying Motion of United States Postal Service to Dismiss Complaint and Notice of Formal Proceedings, issued March 20, 2001.

⁴ Response of the United States Postal Service to Order No. 1307, and Motion for Reconsideration, filed April 10, 2001 (Motion for Reconsideration).

opposition to this request.⁵ Upon reconsideration, the Commission reaffirms its ruling as stated in Order No. 1307.

A rate or service complaint is the avenue Congress provided for individuals to request the Commission to address an alleged problem with a Postal Service rate or service. Frequently, Complainants may find themselves at a disadvantage because the Postal Service controls the information necessary to sustain a formal complaint, and typically the Service has superior resources in legal representation and expert opinion. Therefore, the Commission reviews initial pleadings in a light favorable to the Complainant. This includes fairly evaluating the potential merit of the complaint, liberally determining whether the complaint adheres to the statutory scheme, and independently analyzing the facts and allegations presented in relation to the policies of the Act. It also may result in allowing a complaint to proceed when it is apparent that the complaint has potential merit, and the Postal Service is the probable source of information necessary to evaluate the complaint. These steps further the Congressional policy to allow certain types of public participation in postal affairs.

Prior to the Postal Service's filing of its Motion for Reconsideration, Carlson filed a motion for leave to amend his Complaint to include new allegations.⁶ Carlson requests leave to amend the Complaint to allege that holiday service levels may not be adequate within the meaning of § 3661(a). He also moves to amend the Complaint to allege that collection service levels on certain holiday eves may not be adequate within the meaning of § 3661(a). Carlson indicates he may enter evidence on the adequacy of holiday and holiday eve service consisting of evidence obtained through discovery.

In Order No. 1307, the Commission concluded that these issues are related to the initial Complaint and might result in a future complaint that would necessarily cover

⁵ Douglas F. Carlson Answer in Opposition to Postal Service Motion for Reconsideration, filed April 16, 2001. Also, the OCA filed comments in agreement with and supportive of the Carlson Answer. Comment of the Office of the Consumer Advocate on Motion for Reconsideration, filed April 17, 2001.

⁶ Douglas F. Carlson Motion for Leave to Amend Complaint, filed March 29, 2001. See also, Douglas F. Carlson Notice of Filing of Amended Pages of Complaint, filed March 29, 2001.

much of the same territory that will be covered by the initial Complaint.⁷ Therefore, Order No. 1307 provided the Complainant with the opportunity to amend his Complaint to include these allegations. Carlson's Motion is consistent with the opportunity to amend provided by Order No. 1307. The Postal Service did not oppose the filing of this Motion. Thus, the Carlson Motion to amend the Complaint is granted.

The Postal Service challenges the sufficiency of Carlson's Complaint as amended. The Service alleges that Carlson still does not meet the terms of § 3662 for demonstrating the required "belief" that the service levels in question are not in accordance with the policies of the Act. Motion for Reconsideration at 6. Carlson states that the levels of service *may not* be adequate. The Postal Service asserts that Carlson's unwillingness to go beyond the statement that service *may not* be adequate, versus making the statement that service *is* not adequate, is not sufficient to sustain the Complaint.⁸

The Commission finds that the facts and allegations presented in the pleadings indicate that this Complaint has potential merit, and that the Postal Service is the likely source of information required for the Complainant to proceed. Thus, alleging that a service level *may not* be adequate is sufficient to sustain this Complaint, and to afford the Complainant the opportunity for discovery to develop his case.

⁷ A service may not be adequate in a variety of ways. Order No. 1307 contemplates, and Carlson correctly understood, the opportunity to amend was to allow the allegation that the actual level of service provided on holidays and holiday eves is not adequate. This is quite distinct from a service not being adequate because the public is not properly informed of what to expect from service, regardless of whether the actual level of service is acceptable.

⁸ Additional motions and responses also were filed. The Postal Service filed Motion of the United States Postal Service for Leave to Reply to the Douglas F. Carlson Answer in Opposition to the Postal Service's Motion for Reconsideration, and Reply to the Answer in Opposition, April 20, 2001. The motion for leave to reply is granted. Carlson subsequently filed Douglas F. Carlson Response to Postal Service Reply to Carlson Answer in Opposition to Postal Service Motion for Reconsideration, April 27, 2001. This response is accepted. Both pleadings make arguments based on the *Federal Rules of Civil Procedure* (FRCP) which generally govern lawsuits in federal courts. Although analogies sometimes may be made between the FRCP and the procedures used by the Commission, the arguments made were not persuasive to the Commission's decision, nor are the FRCP controlling in an administrative law setting.

Order No. 1307 sustained the holiday and holiday eve portions of Carlson's § 3662 Complaint in part because of the Postal Service's failure to request an advisory opinion as required by § 3661(b). Order at 8-10. The Postal Service's Motion for Reconsideration alleges that the "issue of whether or not the Postal Service failed to seek a required advisory opinion, however, does not fall within the range of issues which the Commission is authorized to address in a section 3662 service complaint proceeding" and therefore the Commission lacks jurisdiction to hear the Complaint. Motion for Reconsideration at 3. The Postal Service further asserts that § 3662 cannot be used as a "back-door route" to initiate a § 3661(b) proceeding. Motion for Reconsideration at 4.

In Order No. 1307, the Commission reviewed the requirements of § 3661(b) and determined that the Complainant made a colorable claim that the Postal Service should have requested a § 3661(b) advisory opinion before implementing certain service changes. The Complaint thereby brought into question the policies that underlie the procedural requirements dictated by § 3661(b).

Section 403(a) requires that the Postal Service "plan, develop, promote, and provide adequate and efficient postal services at fair and reasonable rates and fees." Section 3661(b) is an essential step that Congress decided was necessary under certain circumstances, to carry out the policy requirements suggested by § 403(a). The Commission concludes that as to substantially nationwide changes in the nature of postal services, the Postal Service can not adequately plan, develop, promote, and provide adequate and efficient postal services without the input and review provided through a § 3661(b) proceeding because an essential step in the process would be omitted.

The Act requires that "[t]he Postal Service shall develop and promote adequate and efficient postal services." § 3661(a). If the Postal Service fails to initiate a § 3661(b) proceeding when required, the Postal Service deprives itself of the intelligence that might be obtained from a public proceeding on the issue, and the

benefit of a Commission advisory opinion. The question of whether the Postal Service has planned a change that will provide adequate and efficient postal services is never independently examined.

A § 3661(b) proceeding requires the Commission to generate an advisory opinion for review by the Governors. This fulfills the policy of providing an independent assessment of issues to the Governors, and Postal Service management, so that they are better informed in making decisions. If the Postal Service fails to initiate a § 3661(b) proceeding, the public is deprived of the opportunity to provide its views, and the Commission is prevented from fulfilling its statutory requirement of providing this independent analysis as contemplated by Congress. This potentially will result in the Governors, and Postal Service management, making less informed decisions.

Section 3661(c) requires the Commission to hold hearings on the record after a proceeding is initiated by § 3661(b). This fulfills a policy of providing an opportunity for public input to aid in the review of the policy stated above in § 3661(a). Without a § 3661(b) proceeding, the public has limited opportunity for input.

The dissemination of information to the public that occurs through the course of the hearing, and through the publication of the advisory opinion issued at its conclusion, is an important consideration in requiring a hearing. This is a part of the § 403(a) "promote" requirement. Without a hearing and an advisory opinion, the public is less informed of the issues in question. Failure to accurately inform also is directly related to adequacy of service and is a potentially serious consequence of not instituting a § 3661(b) proceeding.

Section 3661(a) is a procedural requirement, but it has important policy implications. While the instant Complaint does not provide a detailed legal analysis, it is replete with policy implications suggesting that the services in question do not conform to the policies of the Act. These are services that the Complainant received in the past and that he believes he should still be receiving, but for the Postal Service's unilateral action. In examining the Complaint, the Commission understood that the alleged

change in service had caused some detriment to the Complainant, and concluded that the issues were in no way frivolous, and might have nationwide implications. Therefore, the Commission affirms its decision in Order No. 1307 to partially sustain the Complaint.

The Postal Service makes allegations in its Motion for Reconsideration that must be addressed from a more literal perspective. The Postal Service alleges that the “issue of whether or not the Postal Service failed to seek a required advisory opinion, however, does not fall within the range of issues which the Commission is authorized to address in a section 3662 service complaint proceeding” and therefore the Commission lacks jurisdiction to hear the Complaint. Motion for Reconsideration at 3. The general jurisdiction question has been answered above. In this Complaint, the Commission contemplates addressing what service the Postal Service articulates it is providing, what service the Postal Service is actually providing, how the public is apprised of this service, is the public adequately informed, and, as the Complaint is amended, if the level of service is adequate. These are the valid § 3662 complaint issues. Discussion of § 3661(b) was useful for demonstrating a § 3662 belief, examining underlying policy issues and bringing the issues to the Commission’s attention. At this point, whether an advisory opinion should have been requested falls into the background. The issues to be focused on in subsequent stages of this proceeding are service related, and are the proper subject matter of a complaint.⁹

⁹ The Postal Service is incorrect in asserting “[t]he matter of potential deception of the public regarding the services to be provided on specific holidays, while perhaps theoretically of interest, is not likely to be a substantial issue.” Motion for Reconsideration at 9. Public awareness is at the heart of this Complaint.

The conclusion to Footnote 4 of this same paragraph is too broad. It states: “How successfully particular field units conveyed that message to potential mailers in specific instances may be a cause for concern to postal management, but such matters clearly fall within the range of temporary and localized service issues placed outside the scope of complaint proceedings by Commission Rule 82.” This Complaint may indicate a widespread systemic problem, which is within the scope of a complaint proceeding, not a temporary or localized service issue.

The Postal Service alleges that § 3662 cannot be used as a “back-door route” to initiate a § 3661(b) proceeding because only the Postal Service has the authority to initiate a § 3661(b) proceeding.¹⁰ The Commission observes that §§ 3661(b) and 3662 are complementary, but each has a different focus. A § 3661(b) proceeding places the burden on the Postal Service to go forward, whereas a § 3662 proceeding places the burden on the Complainant. The requirements for when the Postal Service must initiate a § 3661(b) proceeding are significantly higher than for when a Complainant may initiate a § 3662 complaint. A § 3662 service complaint might or might not result in a public report. A § 3661(b) proceeding results in an advisory opinion. An advisory opinion requires the certification by each Commissioner, which indicates a higher level of significance.

The Complainant has filed a § 3662 complaint, and has the burden of going forward and making a case. The Commission will resolve this Complaint under the § 3662 procedures. The facts and allegations presented in this Complaint go beyond the fact that the Postal Service did not request an advisory opinion. These additional

¹⁰ The inferences made by the Postal Service in Footnote 2 of its Motion for Reconsideration mischaracterize the nature of a § 3662 complaint. Footnote 2 states in part:

There is another important distinction between sections 3661(b) and 3662 that appears to be getting lost in the shuffle here. By their very nature, proceedings under section 3661(b) present nationwide issues, and therefore can potentially encompass activities across a wide range of spectrums. Under section 3662, however, the focus is on the services being received by the complainant—presenting a potentially much more narrow range of issues. Thus, it makes little sense for a complainant under section 3662 to be contemplating discovery for the purpose of finding out the characteristics of the service about which he is ostensibly complaining. . . .

First, both § 3661(b) and § 3662 proceedings must present issues that have a substantially nationwide impact. Rule 82 generally directs the Commission not to consider § 3662 complaints that are not on a substantially nationwide basis. Second, the premise that § 3662 proceedings present a “potentially much more narrow range of issues” is unsubstantiated. Third, a § 3662 complaint does not necessarily focus on the services being received by the complainant. If it did, it might fall under “an individual, localized, or temporary service issue” and be dismissed under Rule 82. Fourth, discovery is entirely appropriate where the Postal Service is in control of the facts related to the complaint.

facts further indicate that this Complaint may have merit and is not a mere attempt to "back-door" into a § 3661(b) proceeding.

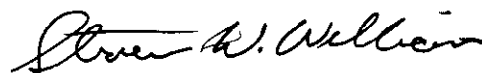
In conclusion, a member of the general public has brought an issue to the attention of the Commission. The Commission has reviewed the Complaint and has determined that it has potential merit. If the conclusion eventually reached is that there are problems with the services at issue, the Postal Service will have the benefit of a public report on the issues, including public input. From a broader perspective, the public has a right to understand changes, if any, made in the bounds of basic services.

It is ordered:

1. The motion for leave to amend contained in the Motion of the United States Postal Service for Leave to Reply to the Douglas F. Carlson Answer in Opposition to the Postal Service's Motion for Reconsideration, and Reply to the Answer in Opposition, filed April 20, 2001, is granted.
2. Douglas F. Carlson Motion for Leave to Amend Complaint, filed March 29, 2001, is granted.
3. Upon reconsideration of Order No. 1307, the motion to dismiss the Complaint in its entirety contained in Response of the United States Postal Service to Order No. 1307, and Motion for Reconsideration, filed April 10, 2001, is denied.

By the Commission.

(SEAL)



Steven W. Williams
Acting Secretary