

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION

Before:

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

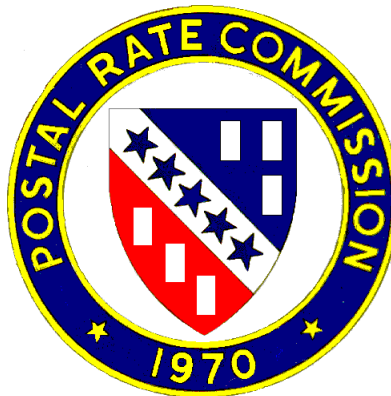
Complaint on Sunday
and Holiday Collections

Docket No. C2001-1

COMMISSION REPORT

COMPLAINT ON

SUNDAY AND HOLIDAY COLLECTIONS



Washington, DC 20268-0001
November 5, 2002

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PUBLIC REPORT

I. INTRODUCTION AND SUMMARY

Douglas F. Carlson initiated this § 3662 service complaint with the Commission requesting review of issues related to First-Class Mail service for mail collected from collection boxes on Sundays, holidays, and certain holiday eves. He alleges that the Postal Service has changed, or may currently be in the process of changing, the availability of Sundays, holidays, and holiday eve collection service without seeking input from the public, or advice from the Commission, as required. He claims that the changes result in postal services that are neither adequate nor efficient. He contends that the services that are provided do not meet the needs of Postal Service customers, and that customers are not adequately notified of the services that are actually provided.

Title 39 places several responsibilities on the Postal Service relevant to this Complaint:

- The Postal Service shall develop and promote adequate and efficient postal services. § 3661(a).
- It shall provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities. § 101(a).
- 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. § 101(e).
- The Postal Service shall plan, develop, promote, and provide adequate and efficient postal services at fair and reasonable rates and fees. . . . § 403(a).
- It shall be the responsibility of the Postal Service—(1) to maintain an efficient system of collection, sorting, and delivery of the mail nationwide; (2) to provide types of mail service to meet the needs of different categories of mail and mail users; and (3) to establish and maintain postal facilities of such character and in such locations, that postal patrons throughout the Nation will, consistent with reasonable economies of postal operations, have ready access to essential postal services. § 403(b).

These responsibilities require the Postal Service to develop and promote adequate and efficient postal services that meet the needs of its customers.

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. Section 3661(b) requires the Postal Service to seek an advisory opinion from the Commission when it “determines that there should be a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis... .” The Commission is required to provide “an opportunity for a hearing on the record” where “users of the mail” may express their views on such proposals, and the Commission is further required to consider these views and provide the Postal Service with an Advisory Opinion on the proposed changes. § 3661(c).

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 a 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. Actions that are, or are perceived to be unilateral in nature may disenfranchise users to the ultimate detriment of the monopoly product. The potential for disenfranchising First-Class Mail customers in a period of declining First-Class Mail volume should especially concern the Postal Service. This report highlights the failure of the Postal Service to meet its obligations under § 3661 by not seeking the views of its customers, or the independent review of the Commission, prior to changing the availability of its monopoly protected First-Class Mail product.

A related concern arises from the Postal Service’s refusal during the course of this case to comply with Commission orders to provide relevant and material information. The Commission and mail users can only view such behavior as exhibiting an arrogant disregard for the public’s interest in obtaining postal services suited to its needs.

The Commission in its discretion refrained from hearing the issues raised regarding the Postal Service’s unilateral, February 14, 1988 decision to eliminate Sunday collection and outgoing mail processing. The Postal Service did not seek an

advisory opinion to review this change in service. This is the type of action that should be preceded by a request for an advisory opinion under § 3661(b), and the Postal Service should have sought an advisory opinion on this matter. However, the Commission was not persuaded that there would be any benefit to reviewing this policy change, given that mailers have been operating under the current policy for more than a decade.

The Commission has reviewed the issues raised regarding the Postal Service's policies and practices of collecting and processing First-Class Mail from collection boxes on holidays and holiday eves. The proceeding record demonstrates that several areas require the immediate attention of the Postal Service to correct deficiencies in the services provided to its customers. The record demonstrates that:

- The Postal Service fails to initiate § 3661(b) proceedings to learn the views of its customers and to become better informed through an independent Commission review of its proposals.
- The Postal Service has no indication of what collection service its retail customers need, and thus, has no indication of whether the service actually provided is adequate and efficient.
- The Postal Service has no effective program to inform customers of what collection service is actually available. A customer's ability to discern the availability of service is further compounded by the publication of inconsistent information, and collection box time decals that do not reflect actual availability of service.
- The Postal Service has no effective program for informing customers of changes to the availability of service, whether the changes occur on a temporary or permanent basis.

The Commission urges the Postal Service immediately to develop and implement programs to provide customers with accurate information on the availability of collection services. This should include programs to provide timely and accurate advance notice to its customers of plans for temporary or permanent changes to the availability of collection service. The Postal Service is also urged to survey the needs of its customers so that the Service can better develop and implement collection services that are responsive and meet the future needs of its customers. Finally, the

Commission urges the Postal Service to utilize § 3661 procedures in the future to aid in the development and promotion of adequate and efficient postal services.

II. PROCEDURAL HISTORY

A. Framing the Issue

On October 27, 2000, Douglas F. Carlson filed a complaint with the Commission pursuant to 39 U.S.C. § 3662, Rate and Service Complaints, alleging that the Postal Service had made changes to the nature of mail service without first seeking an advisory opinion from the Commission as required by § 3661(b).¹ He alleged that the Postal Service had made changes to the nature of mail service on either a nationwide or a substantially nationwide basis by eliminating: (1) Sunday collection and processing of outgoing First-Class Mail; (2) processing of outgoing First-Class Mail on several holidays; and (3) normal mail collections on Christmas Eve and possibly on New Year's Eve. Carlson further alleged that the current level of Sunday, holiday, Christmas Eve, and New Year's Eve service does not conform to the requirements delineated in the Postal Service's *Postal Operations Manual* (POM).

Carlson requested that the Commission issue a public report documenting the alleged Postal Service's noncompliance with collection and outgoing mail processing on Sundays, holidays, Christmas Eve, and New Year's Eve as delineated in the POM. Furthermore, he requested that the Commission consider conducting a hearing to determine: (1) the extent to which the Postal Service provides collection service on Christmas Eve and New Year's Eve; (2) the extent to which customers have access to collection and processing of outgoing First-Class Mail on holidays; and (3) whether the Postal Service provides adequate postal services within the meaning of § 3661(a) when customers do not have access to outgoing First-Class Mail service on Sundays, holidays, or for any two consecutive days.

On November 27, 2000, the Postal Service filed an answer to the Complaint concurrent with a motion to dismiss.² The Answer demonstrated considerable

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).

agreement as to the events that have occurred, but disagreement in interpreting these events as they relate to the obligations of the Postal Service.

In deciding whether to hear this Complaint, the Commission turned to the requirements of the Act. The Complaint was brought pursuant to 39 U.S.C. § 3662, Rate and Service Complaints. The subject of the Complaint was Sunday, holiday, and holiday eve service.

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 in such form and in such manner as it may prescribe.

39 U.S.C. § 3662. Thus, to sustain the Complaint, Carlson had to show (1) that he was receiving (or not receiving) the service in question, and (2) a belief that the service in question is not in accordance with the policies of the Act.

The Commission found that the Complaint sufficiently alleged that Carlson was not receiving the services in question. The more difficult question was whether Carlson demonstrated a “belief” that the service in question was not in accordance with the policies of the Act. Carlson attempted to demonstrate this belief using two separate arguments.

Carlson’s first argument to demonstrate a “belief,” although loosely based on the Postal Service requirement to develop and promote adequate and efficient postal services, § 3661(a), was more accurately characterized as based on the Postal Service’s alleged failure to seek an advisory opinion as required by § 3661(b). The first question before the Commission became whether a § 3662 rate and service complaint was sustainable based upon the Postal Service’s alleged failure to follow a procedural provision of the Act, specifically § 3661(b). This approach for sustaining a complaint appeared “compatible with the statutory scheme of the Reorganization Act.” PRC Order No. 1239 (May 3, 1999) at 14. The Commission noted that the “belief” demonstrated in the complaint also must be reasonable, and not merely a naked assertion. In the instant Complaint, the Commission found Carlson had provided sufficient basis to make a colorable claim that the Postal Service should have

requested an advisory opinion pursuant to § 3661(b). The failure to obtain public input and Commission advice prior to altering the nature of a postal service supports the belief that service is not in accord with the policies of the Act. This was enough to proceed, and to allow discovery to further examine the merits of the Complaint.

The Commission exercised its discretion under § 3662 and declined to consider the Complaint issues related to the elimination of Sunday service. The Postal Service unilaterally eliminated Sunday collection and outgoing mail processing on February 14, 1988, in reaction to the Omnibus Budget Reconciliation Act of 1987 (OBRA). The Commission concluded that the Postal Service was required, but failed, to seek an advisory opinion by § 3661(b) prior to implementing this change in the level of service. However, the passage of time since 1988 controlled the Commission's decision not to hear this issue.

The Commission agrees with the Postal Service argument that there is no practical benefit to reviewing a policy change that occurred more than 12 years ago. There is little relevance in discussing the impact that this service change would have on mailers, when mailers have been operating under this level of service for more than 12 years. [footnote omitted] Carlson does not allege any benefit to reinstating 7-day a week collection and mail processing, nor does he allege any detriment caused by the current 6-day a week collection and mail processing service level. Furthermore, the Commission is not aware of any timely anecdotal or mailer initiated discussions concerning the sufficiency of the current level of service.

PRC Order No. 1307 (March 20, 2001) at 14.

The Commission also declined to consider the Complaint issues related to the POM. It found that the generation and maintenance of the POM is in the Postal Service's domain, and failure to follow a provision of the POM is not *per se* conclusive in determining that the Postal Service has failed to follow a policy of the Act. The Commission was more interested in the actual Postal Service policies and practices involved in the Complaint than whether the Postal Service adhered to a specific provision of the POM. The Commission stated:

However, focusing on the POM, in this case, may do little more than highlight inconsistencies between a Postal Service document, and actual policy and practice. A more prudent focus would be on the sufficiency of the Postal Service's actual policies and practice.

Id. at 15. Nevertheless, the Commission advised the Postal Service that “[t]he Postal Service needlessly places itself in a precarious position when an internal manual, such as the POM, and the actual Postal Service policy or procedure, do not correspond.” Order No. 1307 at 15.

The Commission decided to consider the issues related to holiday and holiday eve service based on the Postal Service's alleged failure to seek an advisory opinion prior to altering those services as required by § 3661(b). The Commission framed the issues before it as follows:

The Commission would like to determine whether current Postal Service policy is clear, concise, and not deceptive to the mailing public. The first issue that the Commission would like to resolve is whether postal customers are adequately informed when the Postal Service temporarily or permanently modifies its holiday and holiday eve collection and mail processing schedules. This includes the issue of mail collections occurring prior to the time indicated on the collection receptacle. Accurately informing the mailing public of Postal Service policy is important. The failure to accurately inform the public of a policy has the potential to rise to a failure or denial to provide a particular service.

The second issue is to determine the actual Postal Service policy on holiday and holiday eve collection and mail processing. This includes an examination of the Postal Service's alleged policy of “exceptions” or “discretion” and whether the exception, or frequent use of discretion, has effectively changed stated policy. The exceptions or discretion topic also should include exploration of what is the decision making criteria, and at what levels are the decisions implemented at, i.e., national, regional, local, or facility specific. Discussion of all issues will be aided by developing a record of the historical trends that have occurred in holiday and holiday eve service levels.

Id. at 16-17.

On March 29, 2001, Carlson requested leave to amend the Complaint to allege that holiday service levels may not be adequate within the meaning of § 3661(a).³ He also sought to add allegations that collection service levels on certain holiday eves may not be adequate within the meaning of § 3661(a). Carlson indicated he might enter evidence on the adequacy of holiday and holiday eve service consisting of evidence obtained through discovery.

Order No. 1307 provided the Complainant with the opportunity to amend his Complaint to include these allegations. The Commission had identified these issues as related to the initial Complaint, and as the potential subjects of a future complaint that would necessarily cover much of the same territory as would be covered by Carlson's initial Complaint. The Postal Service did not oppose this Motion, and Carlson's Request to amend the Complaint was granted.

On April 10, 2001 the Postal Service requested that the Commission reconsider Order No. 1307 and dismiss the Complaint in its entirety.⁴ Carlson filed in opposition to this request.⁵ Upon reconsideration, the Commission reaffirmed its ruling as stated in Order No. 1307.

The Motion for Reconsideration first challenged the sufficiency of Carlson's Complaint alleging that Carlson still did not meet the terms of § 3662 by demonstrating that the service levels in question are not in accordance with the policies of the Act. In reviewing this allegation, the Commission found that the facts and allegations presented in the pleadings indicate that the Complaint has potential merit, that the Postal Service is the likely source of information required for the Complainant to proceed, and that the Complainant should be afforded the opportunity for discovery to develop his case.

³ 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.

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

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.

The Postal Service also alleged 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 lacked jurisdiction to hear the Complaint. Motion for Reconsideration at 3.

In Order No. 1307, the Commission found that the Complainant made a colorable claim that the Postal Service should have requested a § 3661(b) advisory opinion before implementing certain service changes. This brought into question the policies that underlie the procedural requirements dictated by § 3661(b), such as: the § 403(a) requirement that the Postal Service “plan, develop, promote, and provide adequate and efficient postal services at fair and reasonable rates and fees” and the § 3661(a) requirement that “[t]he Postal Service shall develop and promote adequate and efficient postal services.” Without the analysis provided through a § 3661(b) proceeding, an essential step in determining whether the altered services met the requirements of the Act had been omitted. Therefore, the Commission affirmed its previous decision to hear the Complaint.⁶

The Postal Service further asserted that § 3662 cannot be used as a “back-door route” to initiate a § 3661(b) proceeding. Motion for Reconsideration at 4.

The Commission observed that §§ 3661(b) and 3662 are complementary, but each has a different focus and place a different burden on each of the parties. Furthermore, the facts and allegations presented in this Complaint went beyond the fact that the Postal Service did not request an advisory opinion. Therefore, the Complaint was not a mere attempt to “back-door” into a § 3661(b) proceeding.

The Commission concluded by identifying the issues to be explored:

- the service that the Postal Service articulates it provides,
- the service that the Postal Service actually provides,
- how the public is apprised of the level of service,
- the adequacy of public information regarding the level of service, and

⁶ Order Denying United States Postal Service Motion for Reconsideration of Order No. 1307, May 7, 2001 (Order No. 1312).

- the adequacy of the level of service.

See Order No. 1312 at 6.

The Commission also clearly asserted that whether the Postal Service should have initiated a § 3661(b) proceeding was not to be the focus of this Complaint.⁷ The Complaint was to focus on the valid § 3662 issues related to holiday and holiday eve service. Carlson would be allowed the opportunity to develop support for this case.

B. Discovery Directed to the Postal Service

The Presiding Officer scheduled five weeks for discovery to gather information relevant to the Complaint.⁸ A total of 113 (some multi-part) interrogatories were directed to the Postal Service by Carlson, Popkin, and the OCA. A majority of the interrogatories were answered without incident. A few required Commission intervention for resolution. One interrogatory, concerning the Collection Box Management System (CBMS) database, resulted in extensive motions practice, and was never successfully resolved. The events surrounding this interrogatory will be discussed separately at the end of this report. See Section V.

The responses to the interrogatories were provided as Postal Service institutional responses, i.e., there was not a sponsoring witness. The Presiding Officer suggested that the participants might be able to enter such responses into the record by stipulation and agreement if it were agreed that the Postal Service had prepared the designated discovery responses, that signatory participants accepted the accuracy of the discovery responses, and that no party objected to treating the discovery responses as record evidence.⁹ The Postal Service prepared and submitted a conforming

⁷ The statute allows the Postal Service to determine when to initiate a § 3661(b) proceeding.

⁸ Presiding Officer's Ruling on Scheduling of Proceedings, May 18, 2001 (P.O. Ruling C2001-1/1).

⁹ Presiding Officer's Ruling on Scheduling of Proceedings, August 23, 2001 (P.O. Ruling C2001-1/11).

stipulation and agreement, agreed to by all parties, along with a motion to enter the designated interrogatories into the record.¹⁰ The motion to accept the Stipulation and Agreement and enter the designated interrogatories into the record as evidence was granted.¹¹ This completed the discovery process directed toward the Postal Service for the purpose of developing support for the Complaint.

C. Procedural Issues Related to Testimony

During the discovery period, Carlson informed the Commission that the nature of his presentation would be the submission of testimony.¹² At this time the discovery dispute related to the CBMS database was pending. Because of this open issue, Carlson decided to file his testimony in two parts. The first half, Direct Testimony of Douglas F. Carlson Part 1, DFC-T-1, was filed on September 19, 2001. Submission of the remaining testimony would be dependent on the resolution of the discovery dispute. Two and one-half weeks were scheduled for discovery in regard to the first part of Carlson's testimony. No discovery requests were filed on this material.

The second half of Carlson's direct testimony, Direct Testimony of Douglas F. Carlson Part 2, DFC-T-2, was filed on April 24, 2002. Four weeks were scheduled for discovery related to this testimony. One discovery request was generated during this period.

No participant indicated a need to conduct oral cross-examination in regard to Carlson's written testimony. This eliminated the need for a hearing, and allowed the testimony to be admitted into the record by affidavit.¹³ Written cross-examination,

¹⁰ Joint Motion of All Parties for Acceptance of Stipulation and Agreement to Place Postal Service Institutional Discovery Responses Into Evidence, September 24, 2001. The Stipulation and Agreement attached to the motion encompassed interrogatories DFC/USPS-1-18, 20-77, DBP/USPS-1, 9, 13-15, 17, 21-22, and OCA/USPS-1(a-h), 2,4-5, 8-9, 11-12, 14.

¹¹ Presiding Officer's Ruling on Outstanding Motions, September 26, 2001 (P.O. Ruling C2001-1/14).

¹² Douglas F. Carlson Response to Presiding Officer's Ruling C2001-1/1 and Comments on Nature of Evidentiary Presentation, July 20, 2001.

¹³ Presiding Officer's Ruling Admitting Testimony Into the Record, June 13, 2002 (P.O. Ruling C2001-1/20).

consisting of the response to interrogatory DBP/DFC-1, also was entered into the record by affidavit.¹⁴

No participant indicated a need to file rebuttal testimony. On July 1, 2002 the record was closed.

D. Briefs

Four participants, Carlson, Popkin, the Postal Service, and the OCA filed initial briefs in this proceeding.¹⁵ The same four participants also filed reply briefs.¹⁶

¹⁴ Presiding Officer's Ruling Admitting Written Cross-Examination Into the Record and Closing the Record, July 1, 2002 (P.O. Ruling C2001-1/22).

¹⁵ Douglas F. Carlson Initial Brief, July 9, 2002 (Carlson Brief). Initial Brief of David B. Popkin, July 9, 2002 (Popkin Brief). Brief of the United States Postal Service, July 9, 2002 (USPS Brief). Initial Brief of the Office of the Consumer Advocate, July 9, 2002 (OCA Brief).

¹⁶ Douglas F. Carlson Reply Brief, July 23, 2002 (Carlson Reply Brief). Reply Brief of David B. Popkin, July 23, 2002 (Popkin Reply Brief). Reply Brief of the United States Postal Service, July 23, 2002 (USPS Reply Brief). Reply Brief of the Office of the Consumer Advocate, July 23, 2002 (OCA Reply Brief).

III. PRESENTATION OF EVIDENCE

A. Facts From the Postal Service's Answer

The discussion that follows draws from the information contained in the Postal Service's Answer and serves as a background for discussing the issues of this Complaint. The Postal Service's Answer exhibits general agreement with the facts that are alleged in the Complaint. However, there is considerable disagreement as to how these facts relate to the obligations of the Postal Service.¹⁷

The Postal Service eliminated Sunday collections and outgoing mail processing on February 14, 1988, to meet the budgetary requirements of the Omnibus Budget Reconciliation Act of 1987 (OBRA). The service change of eliminating Sunday service has not been incorporated into the *Postal Operations Manual (POM)*. The Postal Service did not seek an advisory opinion from the Commission before making this change, but denies that an advisory opinion was required under the specific circumstances of the OBRA. Answer at paras. 9-12 and pp. 15-16.

The Postal Service concedes that in the 1970s and early 1980s it tended to do more processing of outgoing mail on holidays than it does now, although the Service denies that outgoing mail processing has been phased out over time. Outgoing mail processing on Christmas Day and New Year's Day is rare. Outgoing mail processing tends not to be conducted on Memorial Day, Independence Day, Labor Day, and Thanksgiving Day. There also may be two consecutive days without collections or outgoing mail processing, if one of these holidays occurs on a Monday. The Postal Service did not seek an advisory opinion from the Commission in regard to any of the above holiday issues, and further denies that an advisory opinion was necessary. *Id.* at paras. 13-21.

¹⁷ The Postal Service also raised an issue that has greater significance than implied in the Answer. The Postal Service alerts the Commission to alleged occurrences of the Complainant "blurring the distinction between collection and mail processing." Answer at 13-14. The issue of more significance is whether Postal Service customers understand the distinction between collection and mail processing, or whether they view the two services as synonymous. This has not been explored on this record, but it is a necessary ingredient to understanding the expectations of customers and whether the needs of customers are met.

The Postal Service acknowledges instances of Christmas Eve, and possibly New Year's Eve, final collections occurring prior to the times posted on the collection boxes. Notices of early collections probably were not posted on collection boxes for those days. However, the Postal Service asserts that the POM allows exceptions to be made to the availability of holiday and holiday eve service. There is evidence that the specific exception provisions of the POM might be in conflict with the specific exception provisions of the *Domestic Mail Manual* (DMM), but the POM is not intended to be relied upon by the mailing public. The Postal Service did not seek an advisory opinion from the Commission in regard to any of the above holiday eve issues, and further denies that an advisory opinion was necessary. *Id.* at paras. 22-34.

B. Presentation by Complainant

1. Carlson's Testimony—Part One

The first part of Carlson's two part testimony reviews the historical trends in processing First-Class Mail on holidays, the notice to the public in regard to holiday collection and processing, customers' need for holiday collection and processing, Carlson's personal experiences with holiday mail service, and proposals to rectify inconsistent holiday service and insufficient public notice.¹⁸

Carlson contends that prior to 1988, California post offices provided collection and processing of First-Class Mail on all holidays except perhaps on Christmas and New Year's Day. In 1988, the Postal Service eliminated collection and processing of outgoing First-Class Mail on Sundays, without public input, and without seeking an advisory opinion from the Commission. After 1988, Carlson's analysis of Postal Service data indicates a decline in processing of outgoing mail on many holidays. He observes that the decline has been greater for widely observed holidays than for non-widely observed holidays. However, he notes that processing activities vary by area, within each area from year to year, and on non-widely observed holidays from holiday to holiday. Because of these inconsistencies, he concludes that he is unable to take

¹⁸ Direct Testimony of Douglas F. Carlson Part 1, DFC-T-1, September 19, 2001 (DFC-T-1).

advantage of holiday service even when it is provided because he is not aware of the availability of service in advance. DFC-T-1 at 1-9.

Carlson contends that the availability of holiday service is a mystery to the public. For example, he asserts that most collection boxes do not indicate a holiday collection time, and if indicated, the information is not always reliable. He contends that changes to collection schedules supporting processing activities typically are not announced, and that even prior mailer experience, with knowledge of the past availability of service, does not help in determining if there will be collections and processing on a particular holiday. Furthermore, he claims that his phone calls to the Postal Service, in attempts to discern the availability of service, sometimes result in inaccurate information. *Id.* at 9-12.

Carlson believes that customers have a need for collection and processing on non-widely observed holidays, and additionally on Memorial Day and Labor Day, and that customers need collection and processing of outgoing mail with sufficient frequency to prevent two days from passing without outgoing mail service.¹⁹ This is based on his observation that many businesses are open on holidays, his observation of many people visiting post offices to deposit mail on holidays, and his own personal needs. Moreover, he contends that the Postal Service's service standards are based on customer need. Carlson alleges that the overnight and two-day service standards and the customer's needs are not being met, if the Postal Service fails to process outgoing mail for two consecutive days. He also postulates that the cancellation volumes on holidays demonstrate a customer need for service. *Id.* at 13-21.

He considers the Postal Service's policy of not providing a holiday collection time on collection box time decals unless a collection will be made on every holiday a problem. Carlson proposes that the solution is for the collection box time decals to show holiday collection times, and indicate the holidays that are exceptions to those specified times. *Id.* at 22-25.

¹⁹ Except possibly at Christmas and New Year's.

2. Carlson's Testimony—Part Two

The second part of Carlson's testimony reviews problems with collection service on holiday eves, and the extent to which holiday times are posted on collection boxes that do not, in fact, provide customers with outgoing mail processing on every holiday.²⁰

Carlson alleges that on the eves of some holidays, in some parts of the country, the Postal Service performs final collections from collection boxes prior to the time posted on the collection boxes. He further alleges that the level of notice that the Postal Service provides to advise the public of early collections is insufficient. He describes the Postal Service's holiday policy as being set by an office at headquarters, which issues a memo to each area prescribing operations policy for the upcoming holiday period. However, some field offices adhere to the direction from headquarters, while others disregard it, with the substantial majority of early collections involving districts that perform early collections contrary to headquarter's policy. Carlson notes that with few exceptions, early collections have been limited to Christmas Eve and New Year's Eve. DFC-T-2 at 26-29.

Carlson believes that customers, faced with one or two days of no outgoing First-Class Mail service, need outgoing mail service on the holiday eve. As evidence of this need, he observes that businesses open on the eve of a holiday generate mail, and office workers sometimes deposit their mail after work. In further support of customer need, he observes that at year's end customers go through the effort of obtaining hand postmarks because December 31 postmarks sometimes have tax consequences, and some undergraduate colleges establish a January 1 postmark deadline for students to submit applications. *Id.* at 29-35.

Carlson believes that customers need accurate information about whether normal collection times will apply before they deposit mail into a collection box. He asserts that notice to the public about early collections must reach every postal customer with sufficient advance notice to allow them to make alternate arrangements. He also believes that a traveler passing through an area should have the same right to be notified about early collections as a resident of that area. He contends that the

²⁰ Direct Testimony of Douglas F. Carlson Part 2, DFC-T-2, April 24, 2002 (DFC-T-2).

Postal Service's notice to the public is insufficient. Carlson performed an unscientific survey to test customer awareness of early collection times. Only three of the 34 respondents were aware of the early collections in December 2001. The remaining 31 respondents indicated that they were not aware of the early collections. DBP/DFC-1.

Carlson would be surprised if even a significant minority of customers receive notice of changes in collection schedules when the Postal Service's publicity effort is limited to a simple press release. To verify whether notice is reaching the customers, Carlson proposes that the Postal Service issue press releases concerning early collections, and monitor the actual level of information being disseminated. If the level of notice is determined to be insufficient, then the Postal Service should discard its plan for early collections. DFC-T-2 at 57-58.

He contends that early collections on eves of holidays can harm customers. He gives examples: delayed business and personal correspondence; customers suffering financial harm when bill payments are delivered late; mail sitting in collection boxes increasing the potential for identity theft and other monetary loss; the Postal Service's service standards for First-Class Mail (based in part on customer need) not being met; and failure to obtain December 31 postmarks having consequences for taxes and college applications. *Id.* at 58-63.

He is not persuaded by Postal Service justifications for early collections. The Postal Service states that mail volume on eves of holidays is low, and that advancing final collections helps employee morale. However, Carlson alleges that the Postal Service fails to establish that customers do not need collection service after the early collection time. He contends that most Postal Service justifications for early collections on holiday eves reflect the convenience of the Postal Service, not the needs of the customer, and that the Postal Service uses early collections on eves of holidays to save work hours. Carlson considers mail an essential service. He believes that employee morale must be weighed against the need for service and the harm that may result when service is not provided. *Id.* at 63-66.

Carlson observes that the majority of districts do not perform early collections on holiday eves, and that some districts vary their practice from year to year. If the

benefits of this practice were large enough to justify reduced service, Carlson asserts that these districts would perform early collections year after year. *Id.* at 66.

Carlson concludes with a brief discussion about posted holiday collection times on collection receptacles. He interprets the Postal Service's stated policy as prohibiting the posting of holiday collection times on collection boxes, unless the mail will be collected and processed on every holiday. Carlson notes that 4,016 collection boxes show holiday collection times, but only 11 adhere to this policy. Therefore, Carlson concludes that the Postal Service does not provide accurate information to the public about holiday collection service. *Id.* at 67-68.

3. Carlson's Arguments on Brief

Carlson's brief discusses how the alleged changes in postal service amount to a change in the nature of postal services, and relates the arguments in his testimony to the statutory "adequate and efficient" postal services requirement. Throughout this discussion, he argues his belief or definition of what service is "needed" by customers. Also, he comments on the harm caused to his Complaint by the unresolved Collection Box Management System (CBMS) discovery dispute.

Carlson lists several suggestions for the Commission to recommend to the Postal Service. He suggests that the Postal Service provide collection and processing of outgoing First-Class Mail to all customers on non-widely observed holidays. He suggests that the Postal Service should provide collection and processing of outgoing First-Class Mail to all customers on widely observed holidays that fall on a Monday, except possibly for Christmas and New Year's Day. He suggests that the Postal Service should announce the availability of holiday service to the public. This includes indicating specific holiday collection times on the collection box time decals, revising the DMM and POM, and placing signs in post office lobbies. Finally, he suggests that the Postal Service should eliminate the practice of conducting early collections on eves of holidays, and ensure compliance of this policy. Alternatively, if early collection times can not be eliminated, he suggests that the Postal Service should permanently place accurate holiday eve collection times on collection box time decals. Carlson Brief at 30-31.

C. Other Participants

The record evidence in this proceeding consists of the written testimony of Carlson, the interrogatory responses designated by the parties, and the Postal Service's Answer to the extent that it admits certain facts. Participants to this proceeding have presented no other evidence for the record. The Postal Service, OCA, and Popkin have submitted arguments on brief. The contentions made on brief that do not rely on record evidence are of limited value in considering the issues of this Complaint. However, contentions that rely on record evidence have been considered, especially in regard to suggestions offered for potential improvements to postal services. This section reviews, in turn, the materials presented on brief by the Postal Service, OCA, and Popkin.

1. Postal Service

After the record had been closed in this case, the Postal Service issued a memorandum from Patrick R. Donahoe, Chief Operating Officer and Executive Vice President, directed to the Vice Presidents, Area Operations Manager, Capital Metro Operations, concerning the Postal Service's Policy on Holiday and Holiday Eve Collections.²¹ The guidance contained in the memorandum was issued to reiterate what allegedly had been the customary headquarter's guidance to the field, and to alleviate future routine occurrences of the holiday eve conditions mentioned in this Complaint. The topics discussed include the policy for collection box time decal holiday information, holiday eve adjustments to collection schedules, and notification to the public when holiday eve adjustments become necessary. The instructional part of the memorandum states:

Unless the mail from a receptacle is collected and processed on every holiday including Christmas and New Year's Day, no holiday pick-up can be shown on the receptacle's Collection Time Decal. Despite the absence of a holiday pick-up time, mail can still be collected (e.g. on non-

²¹ Memorandum from Patrick R. Donahoe, Chief Operating Officer and Executive Vice President, to Vice Presidents, Area Operations Manager, Capital Metro Operations, concerning Policy on Holiday and Holiday Eve Collections, dated June 26, 2002 (Donahoe Memorandum). A copy of this memorandum appears in the USPS Brief as an attachment.

widely-observed holidays) to avoid box overflows or advance processing for the next processing day.

Routine district-wide collection adjustments on holiday eves will not be permitted and EXFC testing will not be suspended. However, requests to advance or suspend collections in a localized area will be approved if collections are impractical due to special activities (e.g. Times Square in New York City on New Year's Eve, special requests from public officials due to public events such as parades, festivals, etc.). Effective prior notice to the public will be required. Notification efforts should include the media and attempts to notify the public directly. Direct notification should include prominent signs in all relevant retail locations and should be made sufficiently in advance to allow customers to adjust their mail deposits, if necessary. Please refer to the Transit Time Measurement System policy of the Consumer Advocate's office for specific requirements.

USPS Brief at Attachment.

The Donahoe Memorandum is not evidence on the record of this proceeding. However, the memorandum is substantially consistent with expressions of Postal Service policy that do appear elsewhere in the record. It is also the most current expression of Postal Service policy, and it has been authored by a senior member of Postal Service management. To the extent that the memorandum reiterates and clarifies current policy, and further attempts to have all Postal Service operations adhere to that policy in the future, the memorandum will be relied on in considering the issues of this Complaint.

The memorandum does not resolve all issues of this Complaint, but it represents a positive step taken by the Postal Service. As one example, Carlson comments that the Donahoe Memorandum does not completely solve the issue of customer notification when adjustments to collection schedules are implemented. Thus, Carlson suggests that the Commission also recommend that notices of collection adjustments be posted on each affected collection box whenever possible. Carlson Reply Brief at 28-30.

On brief, the Postal Service argues that Carlson has not shown that the Postal Service fails to provide holiday, or holiday eve, postal services in conformance with the policies of the Act. Furthermore, it contends that no policy basis exists to require any particular level of outgoing holiday service. The Postal Service questions the

soundness of Carlson's definition of customers' "need" for holiday mail service. Also, the Postal Service contends that historical analysis of past practice reveals no policy-based minimum level of outgoing holiday service.²²

The Postal Service contends that decisions regarding outgoing holiday operations are driven by anticipated workload, which includes analysis of changes in volume, and changes in technology to process mail. The Postal Service argues that the present system provides the Postal Service with flexibility, and customers are not given a reasonable expectation of service when it might not exist, and thus, the needs of the customers are satisfied. USPS Brief at 9-22.

Finally, the Postal Service contends that local decisions to adjust collection schedules on holiday eves in some locations do not create policy to be considered by the Commission. It states that Christmas Eve and New Year's Eve are the only holiday eves germane to the Complaint, and that Postal Service headquarters has been issuing instructions to maintain normal collections on these days. Nevertheless, the Postal Service does not dispute that a minority of districts, 15 of the 85 districts, chose to adjust collection schedules in 2001 on one or both of these days. It characterizes these occurrences as localized, temporary, and not occurring on a substantially nationwide basis. The Postal Service concludes that this does not constitute a failure to provide postal services in accord with the policies of the Act. Therefore, this does not raise a matter of policy to be considered by the Commission. *Id.* at 23-26.

On reply brief, the Postal Service identifies four areas that it considers no longer in contention. The Postal Service contends that, first, the practice of conducting early collections on holiday eves, and second, the issue of the small percentage of collection boxes with collection decals indicating holiday collections that are not in conformance with Postal Service policy have been addressed by the Donahoe Memorandum. Third, the Postal Service has stated that it will update the POM and the DMM to reflect actual collection practices. Finally, because of the action taken by the Postal Service

²² The Postal Service also questions why the Complaint is limited to the collection and outgoing mail processing, and not incoming mail delivery service. However, this issue does not appear to vitiate the issues under consideration in this Complaint.

concerning holiday eve collections, the issues related to the CBMS database discovery dispute are no longer factors in this proceeding. USPS Reply Brief at 1-4.

The Postal Service argues that the remaining Complaint issue, the availability of service on holidays, is not premised on any policy of the Act. It presents a discussion of the meaning of “adequate” and “efficient” postal services, and how Carlson’s arguments are more representations of his personal beliefs than requirements of the Act. The Service discusses Carlson’s use of the term “need” for postal services, and contends that Carlson’s interpretation of “need” for service has not been supported in the record by a quantitative analysis of the attitudes and expectations of other postal service customers. As to the issue of public notification, the Postal Service asserts that the information it releases should not cause reasonable customers to assume that outgoing mail service is necessarily provided on holidays. The Postal Service argues that this cannot reasonably be construed as sufficiently misleading or deceptive so as to rise to the level of an inadequate postal service. *Id.* at 4-11.

Finally, the Postal Service argues that for the Commission to issue a report, it would need to find that a postal service is not in accordance with a policy of the Act. The Postal Service concludes that Carlson has not met his burden of providing evidence to support such a finding. Therefore, the Postal Service suggests that the Commission should issue an order concluding that the Complaint has not been justified. *Id.* at 12.

2. OCA

The OCA Brief includes a rendition of the facts carefully organized to examine the questions originally posed by the Commission as pertinent to this Complaint. The brief also includes proposed findings, conclusions, and recommendations for the Commission to consider, which are subsequently revised in the reply brief to take into consideration the Donahoe Memorandum.

The OCA Reply Brief expresses agreement with the Donahoe Memorandum’s instructions to limit early holiday eve collections. The OCA does not consider the Donahoe Memorandum as suggesting a policy change that would require review by the Commission. Rather, the memorandum reaffirms an existing policy that has been in

place for a number of years. However, OCA comments that in light of recent history, there is no guarantee that districts or smaller units will adhere to the nationwide policy. Furthermore, the OCA does not consider the steps prescribed in the Donahoe Memorandum regarding public notification of early collections on holiday eves as adequate. OCA Reply Brief at 4-7.

The OCA comments on whether the type of issues involved in this Complaint should be subject to Commission review. OCA contends that if delivery times for mail deposited on holidays and holiday eves have degraded because of changes made by the Postal Service, there has been a change in the nature of service. However, if delivery times have not been degraded, then the changes made by the Postal Service are outside the jurisdiction of the Commission. The OCA concludes that the record does not permit a clear-cut answer. *Id.* at 1-2, 10-14.

The OCA discusses the Postal Service policy of not listing holiday collection times on collection box decals unless the mail in the box is expected to be collected and processed on every holiday. It asserts that “the practice may mislead the public if indeed the Postal Service does provide collection services on certain holidays.” The OCA suggests that the “better practice is for headquarters to squarely address the issue and undertake to provide all the information that may be needed by mailers at each box concerning each holiday.” This includes providing a list on each collection box time decal of the name of each holiday and the date of the holiday each year to insure that mailers are made aware that a holiday is being observed by the Postal Service on a particular date. *Id.* at 8-9.

The OCA offers the following proposed findings and recommendations for the Commission’s report:

1. The Postal Service should take immediate steps necessary to insure that its POM and the DMM sections regarding holiday collection and processing policies are consistent and correctly reflect current operational policies.
2. The Postal Service’s internal procedural policies providing for rare exceptions to normal collections on holiday eves are sufficiently clear and concise and are applied consistently on a nationwide basis.

3. To the extent there are limited necessary exceptions to holiday eve collection policies, Postal Service management should:
 - Standardize, to the extent possible, public messages concerning early collections;
 - Standardize the system for notifying the public of changes in collections;
 - Increase significantly the public notices, to include notices placed on individual mail boxes and the issuance of additional media notices; and
 - Standardize post office notices.
4. The holiday collection and processing service appears to comport with current management policy, but it is not clear whether there has been a significant deterioration in service as a result of changes in holiday collection and processing.
5. The Postal Service should provide on every mailbox label a list and the date of each holiday observed by the Postal Service and any collections that will be made from that box on holidays.

3. Popkin

On brief, Popkin observes that there is variation in the amount of mail processing depending on the area of the facility, the holiday, and the year. He contends that there “seems to be no rhyme or reason as to whether a given plant will be processing mail on a given holiday.” He expresses concern with the publicity, or lack thereof, as to the availability of service on or around a given holiday, and the accuracy of service information originating from the Postal Service, including the accuracy of the collection box time decals. Finally, he expresses concern with the adequacy of service when there are two consecutive days without outgoing mail service. Popkin Brief at 1-2.

Popkin suggests that the Postal Service evaluate the need for service on different holidays and the days surrounding each holiday. He contends that the appropriate level of publicity to meet the needs of the public is for the collection boxes to show the times that the box will be collected, including showing holiday information when holiday service is provided. He comments that other forms of publicity are not sufficient. *Id.* at 3.

Popkin asserts that the Commission should issue a report stating that a permanent solution to collection policy should be developed, the DMM and POM modified to reflect this policy, and the decals on collection boxes printed to fully indicate the availability of service at that box on and around the various holidays. *Id.* at 4.

He believes the Donahoe Memorandum makes an effort to resolve one of the concerns of the complaint, that collections are reduced or eliminated on the eves of holidays with or without ample notice to the public. Nonetheless, he contends that the Postal Service policy of not indicating collection times on boxes unless there are collections and processing on all ten holidays has reduced the amount of mail processed on holidays. He asserts that if the Postal Service would make a decision as to what collection will be provided on various holidays, and post the times on collection boxes, the volume of mail processed on holidays and the service to the public would improve. Popkin Reply Brief at 1-2.

IV. FINDINGS AND CONCLUSIONS

After a thorough review of the record of this proceeding, the Commission finds five issues that must be addressed. Regarding holiday and holiday eve service, the issues to be addressed are:

- the collection service that the Postal Service publicizes it provides;
- the collection service that the Postal Service actually provides;
- the availability of holiday eve collection service and the adequacy of public notification when scheduled collection times are changed;
- the adequacy of public information regarding the availability of holiday collection service; and
- the adequacy of holiday collection service as provided.

The issues will be addressed in order, and will be used to analyze the issues of the Complaint and to make recommendations to the Postal Service. The order of presentation starts with an analysis of the factual record and ends with an analysis of whether the service, as provided, is adequate.

The first issue, the collection service the Postal Service publicizes that it provides, focuses on the Domestic Mail Manual (DMM), the Postal Operations Manual (POM), and collection box time decals. These are publicly accessible sources of information that indicate Postal Service policy. Each has been researched and compared by the Complainant. The audience for each source may be very different, however. The DMM is more likely to be referred to by “sophisticated” mailers, or parties interested in the intricate details of postal matters. The POM is more likely to be referred to by Postal Service employees. The collection box time decals are more likely to be referred to by “typical” mailers who use collection boxes to deposit mail.²³

The second issue is the collection service that the Postal Service actually provides. This requires a deeper analysis than a cursory review into the documents cited above. To get an indication of the availability of service, the materials generated

²³ The terms “typical” and “sophisticated” mailers are admittedly broad generalizations meant only to indicate the level of involvement that a customer has with the Postal Service.

through discovery are analyzed including memoranda to the field, customer perceptions, and actual performance data.

The third issue discussion will focus on the evidence of temporary changes to holiday eve collection schedules, and the adequacy of customer notice when the Postal Service made these changes. The adequacy of the Postal Service policy regarding informing customers of temporary changes in holiday collection schedules is also examined.

The fourth issue, the adequacy of public information regarding the availability of holiday collection service, examines the Postal Service's policy of indicating holiday collection times on collection box time decals, and whether this provides accurate and adequate notice to customers.

Finally, the adequacy of the actual service is examined. The evidence predominately deals with an analysis of the actual service provided, with little analysis of what service is required in relation to the requirements of the Act. Because the record is not sufficiently developed to fully answer this question, this discussion also focuses on better ways to analyze this issue in the future.

The Complaint focus is on First-Class Mail deposited in a Postal Service collection box for collection and/or processing on a Postal Service recognized holiday, or on the day immediately preceding the holiday. Postal Service customers typically depositing such mail include individual persons and businesses that are likely to deposit mail in collection boxes, rather than large commercial mailers.

A. The Collection Service That the Postal Service Publicizes it Provides

Three sources were examined to determine what collection service the Postal Service publicizes that it provides on holiday and holiday eves: the DMM, the POM, and generally, the collection box time decals. The Postal Service acknowledges it does not issue signage or other preprinted materials to notify the public of holiday collection and processing levels. DFC/USPS-4.

The DMM provides one indication of Postal Service policy regarding holiday and holiday eve collection service. Sophisticated mailers, or parties interested in the intricate details of postal matters, would likely refer to this source. The availability of

holiday, and holiday eve, collection service is described in DMM § G011.1.5. The availability of collection service is shown in tabular form for holidays that are considered by the Postal Service to be widely observed (New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day), and not widely observed (Martin Luther King, Jr.'s Birthday, Presidents Day, Columbus Day, and Veterans Day). See DMM § G011.1.5 Exhibit 1.5. The availability of service for the pertinent days either preceding or following the holiday is also shown. The table notes that "[e]xceptions to these service levels must be approved by a district manager."

In addition to the DMM, the POM provides further indication of Postal Service policy regarding holiday and holiday eve collection service. The POM is available as a reference source to Postal Service employees.²⁴ The availability of holiday collection service is described in POM § 125.22. The availability of service is shown in tabular form (similar to DMM § G011.1.5 Exhibit 1.5) for holidays that are considered by the Postal Service to be widely observed, and not widely observed. See POM § 125.22 Exhibit 125.22. The table notes that "[e]xceptions to these service levels must be approved by the Chief Operating Officer and Executive Vice President."

Also, several other sections of the POM provide guidance to the availability of holiday service. For example, POM § 322.233 "Sunday and National Holidays" states:

Sunday and holiday pickups should be at least once a day, as late as possible, to ensure that the mail will connect with dispatches of value to meet established standards.

POM § 322.343. "Sunday and National Holidays" provides nearly identical guidance, but adds: "The last collection should be no earlier than 3:00 p.m." POM § 313.5 provides specific guidance for collections from small offices and airports. Finally, POM § 323.42 provides specific guidance for residential collection boxes.

The third source of information providing an indication of Postal Service policy regarding the availability of holiday and holiday eve service is the collection box time decal. "Typical" customers arguably would not consult the DMM or the POM, but

²⁴ Postal Service customers might also refer to the POM, but it has not been shown that this is a likely source of information for this group.

instead would refer to the information presented on a convenient collection box time decal. An example collection box time decal can be found in response to DFC/USPS-23.²⁵ The decal appears to have sufficient space and a conducive format to adequately describe many possible variations in regard to the availability of collection service.

Approximately one percent of collection box time decals display a holiday collection time. USPS Brief at 22-23.²⁶ There is no indication in the record that the Sunday spaces on the time decals are ever utilized to indicate Sunday service. Additionally, there is no indication in the record that collection box time decals are ever commonly used to notify customers when adjustments are made to normal collection times.

Commission Analysis and Recommendations. After reviewing the three sources of information, conclusions can be drawn on the availability of collection service that the Postal Service publicizes it provides. Both the DMM and the POM refer the reader to the collection box time decal to determine the availability of service on a holiday. Except for a minute fraction of collection box time decals, the space for holiday service on the collection box time decal is blank, and thus, does not indicate that holiday service is provided. Both the DMM and the POM state that for holidays that fall on a Sunday there will be no collections. Correspondingly, the Sunday field on a collection box time decal is blank and gives no indication of Sunday service.

The Commission finds that a reasonable customer would likely conclude that a blank field on a collection box time decal is an indication that collection service will not be available on any particular Sunday or holiday.

The DMM, the POM, and the collection box time decals give no indication that the availability of service provided on the day preceding the holiday, the holiday eve, will be anything other than that normally available for the corresponding day of the week.

There are instances where the language used in the DMM and the POM could lead to confusion. For example, the DMM and the POM provide for different levels of

²⁵ See also POM § 316 Collection Time Decals. This section indicates the requirements for the collection box time decal.

²⁶ The number of boxes that display this information is likely to drop in the near future. See Donahoe Memorandum.

authority necessary to approve exceptions to the availability of collection service. However, the wording in both documents clearly indicates that adjustments in the availability of collection service is possible, and requires approval from a Postal Service authority.

A second cause for possible confusion occurs in the explanatory notes to the DMM and the POM. For Sunday or Monday holidays, the DMM and the POM express a preference that “[c]onsecutive days without collections should be avoided.” This may lead a Postal Service customer to incorrectly infer that mail “will” be collected on one day during a Sunday/Monday holiday period.

The most likely source of confusion is that the POM has not been comprehensively updated to reflect that Sunday collections have been eliminated—an event that occurred in 1988. In defending its position regarding the POM, the Postal Service asserts that the POM is not available to the public in the same sense as the DMM.²⁷ Furthermore, the Postal Service asserts that “neither the members of the general public nor anyone else can properly assume that provisions of the POM regarding Sunday and holiday collection service reflect current operational practices.” DBP/USPS-14; *See also* DBP/USPS-1[a].

The Commission previously provided its opinion on the importance of the POM:

The POM is often useful to explain how an actual Postal Service policy, regulation or procedure relates to provisions of the Act. The POM may be used as evidence of the Postal Service’s intent, interpretation or implementation of that policy, regulation or procedure. The Postal Service needlessly places itself in a precarious position when an internal manual, such as the POM, and the actual Postal Service policy or procedure, do not correspond. This may require the Postal Service to explain its actual policy, regulation or procedure, and why the actual policy, regulation or procedure does not correspond to its written documentation.

Order No. 1307 at 15. These comments are also applicable to the DMM. The Postal Service has placed itself in a position of where its documentation is inconsistent, and does not reflect its actual policy and practice. The documentation can not be fully relied upon, and further explanations of Postal Service policy must be provided.

²⁷ The Postal Service also acknowledges that the POM is not treated as a proprietary document.

Publicizing information that is inaccurate, or inconsistent with other material, is confusing and/or misleading to customers, and to postal employees responsible for advising customers. Allowing a situation to exist for a long period of time that is confusing or misleading is not being responsive to the needs of customers, and does not comport with the policies of the Act. The information in the DMM and the POM represent a failure to provide clear, concise, and non-deceptive notification to the mailing public.

The Postal Service recognizes that the DMM and the POM contain inconsistencies, and may not reflect actual practice. It also recognizes that the DMM and the POM need to be revised for consistency, and to reflect current policy. See OCA/USPS-2(d), OCA/USPS-14(a), DBP/USPS-6, and DBP/USPS-15. In addition, the intervenors, on brief, urge the Postal Service to correct the discrepancies in the DMM and the POM. The Commission concurs with the Complainant, the Postal Service, and the intervenors, and recommends that the POM and the DMM be revised for consistency and to reflect current practice.

Moreover, the Commission is concerned about the Postal Service's slow response to correcting these problems. The Postal Service has not taken any action to correct the inconsistencies or inaccuracies since the problem has been highlighted by the filing of this Complaint, nor has it revised its documentation to reflect the elimination of Sunday collections in 1988. Correcting documentation to reflect actual policy, when it already has been acknowledged that corrections are necessary, would not have affected this proceeding, and would have prevented the further dissemination of inconsistent or inaccurate information. Once a customer brings such problems to the attention of the Postal Service, the Postal Service should be responsive and take appropriate action. Otherwise, the Postal Service is not meeting the needs of its customers. The Commission recommends that immediate action be taken to resolve this problem.

B. The Collection Service That the Postal Service Actually Provides

The focus of this discussion is on how actual collection service on holidays and holiday eves differs from the service levels published in the DMM, the POM, and on the collection box time decals.

1. Actual Holiday Collection Service

The Postal Service policy for displaying normal holiday collection times on collection box time decals is explained as follows: “Field managers have been instructed to indicate a holiday collection time on the box label only if mail from the box is collected and processed every holiday.” DFC/USPS-1; *see also* DFC/USPS-2, and DFC/USPS-3. The Donahoe Memorandum reiterates this policy by stating: “Unless the mail from a receptacle is collected and processed on every holiday including Christmas and New Year’s Day, no holiday pick-up can be shown on the receptacle’s Collection Time Decal.”

The Postal Service is aware of a small number of collection boxes that currently indicate a holiday collection time that do not adhere to the above policy. USPS Brief at 22-23. The instructions in the Donahoe Memorandum direct that all collection box time decals be brought into compliance with current policy.

However, the Postal Service reports that even though collection box time decals may not indicate that a holiday collection will occur, “there may be one or more holidays during the year when mail is collected and processed.” DFC/USPS-1. The Postal Service indicates that mail might be collected to prevent overflow, or when mail is actually being collected for outgoing processing to avoid the situation of having more mail than can be timely processed on the day after the holiday. DFC/USPS-7. The Donahoe Memorandum allows continuation of this practice in stating: “Despite the absence of a holiday pick-up time, mail can still be collected (e.g. on non-widely-observed holidays) to avoid box overflows or advance processing for the next processing day.”

Carlson's analysis of Postal Service data from a recent year indirectly confirms that mail processing is taking place on holidays.²⁸ His analysis shows that 82 to 97 percent of plants nationwide did not process outgoing mail or forward their mail to another plant for processing on widely observed holidays. The percentage of plants nationwide that did not process outgoing mail or forward their mail to another plant for processing on non-widely observed holidays decreases to 25 to 54 percent. DFC-T-1 at 6. This implies that the remainder of the plants were either forwarding their mail for processing, or processing the mail themselves.

The Postal Service also allows adjustments to the service being provided on a holiday, and the days surrounding the holiday. The Postal Service states: "the current practice with regard to collection and outgoing mail processing on holidays is to issue a memorandum to the field for each holiday providing guidance on those operations for that holiday." DBP/USPS-4. "Rather than starting at the bottom (i.e., the local office), the current procedure is to start at the top (i.e., Headquarters) for each holiday with a holiday memo." DBP/USPS-2. Examples of such memorandum that have been located were provided in Library References USPS-LR-C2001-1/1 and USPS-LR-C2001-1/3.

Commission Analysis and Recommendations. The exception for displaying collection times on collection boxes that have mail collected on every holiday applies to so few collection boxes that its significance on holiday collection policy is negligible. Therefore, the Commission finds that the Postal Service's policy is to not indicate holiday collection times on collection box time decals. Applying the Commission's previous finding, that a reasonable customer would conclude that a blank field on a collection box time decal indicates that collection service is not available on that particular day, the Commission finds that a reasonable customer would conclude that holiday collection service is not available.

Carlson, however, has demonstrated that the Postal Service is processing mail on holidays. His data infers that up to 75 percent of mail processing facilities could be

²⁸ It is important to note that Carlson's analysis focuses on mail processing, which he assumes occurs together with mail collection. The exact relationship between the two services has not been fully explored on the record.

processing mail on some non-widely observed holidays and up to 18 percent of mail processing facilities could be processing mail on some widely observed holidays.

An important problem is the limited notification of service availability provided to the public. If the Postal Service is collecting mail as a matter of course at certain locations, for example on non-widely observed holidays, it should provide that information to its customers. It is essential that the public get accurate information on holiday service, and on changes applicable to specific holidays. The issue of adequate notice is addressed more thoroughly in subsections C and D, below.

The Postal Service's policy for adjusting holiday service is to issue a memorandum to the field sometime prior to each holiday to provide guidance on operations for that holiday. This is not consistent with the approval procedure for exceptions to collection service publicized in the DMM or the POM. The Commission recommends that the Postal Service immediately resolve this inconsistency and appropriately revise the DMM and the POM.

2. Actual Holiday Eve Collection Service

The DMM and the POM both state that holiday eve collection service will be that normally available for the particular day of the week that the holiday eve falls on, and that if the holiday falls on a Sunday or Monday, there will be no Sunday collection service. There is no indication in the record that this is not current policy. However, there have been a series of exceptions to this policy that will be reviewed in the following section.

C. The Availability of Holiday Eve Collection Service and the Adequacy of Public Notification When Scheduled Collection Times are Changed

This section focuses on the Postal Service's policy for making exceptions to the availability of holiday eve collection service, and the methods used to inform customers when the Postal Service decides to make exceptions to the service normally provided. The methods used to inform customers of exceptions to holiday service requires similar consideration, and shall be examined in parallel with the methods used to inform customers of exceptions to holiday eve service.

The Postal Service believes that exceptions to the availability of holiday eve collection service, represented by the practice of final collections from collection boxes occurring prior to the posted collection time on the day preceding a holiday, is relatively uncommon. DFC/USPS-14. The two known instances cited by the Postal Service of this practice being authorized by headquarters are for Christmas Eve 1999, and the third of July 2000. The Postal Service notes that other instances of early collections occurring are evident in the notice files associated with requests for adjustments to the EXFC: 14 notices Christmas/New Year's 1998 holiday period; 28 notices Christmas/New Year's 1999 holiday period; 2 notices (not occurring on an eve of a holiday) Christmas/New Year's 2000 holiday period; and 1 district accelerating collections on the third of July 2000. Postal Service contact with field communication offices also identified other sporadic instances of early collections on the eves of holidays. See *also* USPS-LR-C2001-1/4.

Carlson's focus on the practice of making early collections on eves of holidays is limited to Christmas Eve and New Year's Eve. He states, "[t]he substantial majority of the instances of early collections involve rogue districts that perform early collections on eves of holidays contrary to headquarters policy." DFC-T-2 at 29. Carlson alleges that early collections on Christmas Eve have occurred in 15 districts in 1998, 22 districts in 1999, 2 districts in 2000, and 14 districts in 2001 (out of 85 districts). Also, early collections on New Year's Eve have occurred in 3 districts in 1998, 5 districts in 1999, 2 districts in 2000, and 11 districts in 2001. *Id.* at 28.

The Donahoe Memorandum attempts to eliminate further occurrences of exceptions to the availability of normal collection service on holiday eves. It specifically directs that "[r]outine district-wide collection adjustments on holiday eves will not be permitted and EXFC testing will not be suspended." The memorandum describes limited, specific exceptions that apply to this policy.²⁹

²⁹ The Commission considers the Donahoe Memorandum as an expression of Postal Service policy. Therefore, it is considered to supercede the Postal Service assertion that it has no explicit policy regarding permitting final collections on the day before a holiday to be made prior to the posted collection time, because this event is allowed only rarely, on a case-by-case basis. See DFC/USPS-16.

When the Postal Service decides to make exceptions to the availability of holiday and holiday eve collection service, there does not appear to be a standard policy in place for notifying customers. Carlson mentions press releases, newspaper advertisements, and post office lobby displays as methods various Postal Service districts have used to notify customers of holiday and holiday eve service adjustments. DFC-T-2 at 38. He contends that the notices are sometimes confusing, or inaccurate, and each method of notification has its own shortcomings when trying to reach the majority of customers.

Carlson's testimony infers that there is no standard Postal Service policy on the methodology to be used to inform customers of service adjustments. He argues that when the Postal Service decides to vary from the holiday or holiday eve collection schedule, the notice provided to the public is insufficient. Carlson believes that notice to the public about early collections on eves of holidays must reach every customer. He believes that customers need to be aware if normal collection times do not apply before they approach collection boxes on a holiday eve. He contends customers need to know early collection information sufficiently in advance to allow them to take alternative steps to deposit their mail. DFC-T-2 at 37. Carlson suggests that the Postal Service monitor the actual level of information reaching the public when service adjustments are announced. If the level of notification is not sufficient, then the plans for early collections should be abandoned. *Id.* at 57.

The Postal Service acknowledges it does not issue signage or other preprinted materials to notify the public of holiday collection and processing levels. DFC/USPS-4. Furthermore, the Postal Service acknowledges it does not issue signage or other preprinted materials to notify the public of adjustments to collection schedules on holiday eves. DFC/USPS-5.

The Donahoe Memorandum mentions public notification of collection service adjustments by requiring "[e]ffective prior notice to the public." The memorandum provides additional direction for informing the public:

Notification efforts should include the media and attempts to notify the public directly. Direct notification should include prominent signs in all relevant retail locations and should be made sufficiently in advance to allow customers to adjust their mail deposits, if necessary.

The Postal Service acknowledges that it would seem unlikely that any form of communication would effectively reach every person who may deposit mail on days that early collections are performed. However, the Postal Service asserts that “[t]he majority of the mailing public is aware that postal operations are affected by holidays.”
DFC/USPS-15.

Commission Analysis and Recommendations. The Complaint suggests the examination of three issues in regard to the Postal Service making exceptions, adjustments, or changes in the availability of service: whether the use of exceptions that change the availability of holiday eve collection service is so pervasive that it represents a change in existing Postal Service collection policy; whether the Postal Service’s policy of authorizing exceptions to the expected availability of collection service causes customers undue hardship; and whether the notification given to customers of adjustments to the availability of service on holiday and holiday eves is adequate.

Extent of Exceptions. The first issue to consider is whether the Postal Service’s use of exceptions to adjust the availability of collection service on holiday eves is slowly eroding the existing policy of providing normal collection service for the day of the week on which the holiday eve falls. Such a *de facto* policy change would result in more and more Postal Service customers no longer receiving postal services on an increasing percentage of holiday eves. If this practice were found to be occurring, the implicit *de facto* policy change would be a change in the nature of postal services on a nationwide or substantially nationwide basis, and would require review by the Commission.

Carlson testifies that service adjustments are typically limited to two holiday eves, and are limited to certain postal districts. Carlson’s testimony demonstrates that adjustments to the availability of service do occur, but the testimony is not comprehensive enough to demonstrate a pervasive pattern. Additionally, the

instructions in the Donahoe Memorandum, if adhered to, should restrict future occurrences of adjustments to the availability of service on holiday eves. The indication that EXFC testing will not be suspended should give further incentive to avoid service adjustments. A more comprehensive study would be needed to determine the full extent of past occurrences of service adjustments. The evidence of record is not sufficient for the Commission to conclude that there has been a *de facto* policy change.

There is an indication, however, that in the past, the Postal Service has not exercised adequate control over the field regarding adjustments to holiday eve collection service. History demonstrates that some districts ignored Postal Service management's direction and adjusted holiday eve collection times without authorization. For instance, Carlson discusses the occurrences of unauthorized service adjustments by "rogue" districts. DFC-T-2 at 26, 66; Carlson Brief at 25-27. Additionally, the Postal Service initially discussed the authorization of two service adjustments in 1999 and 2000, but further Postal Service examination revealed that additional service adjustments took place. The Commission recommends that the Postal Service put in place the necessary procedures to assure that districts adhere to current Postal Service policy as enunciated in the Donahoe Memorandum.

Potential Hardship. Carlson's testimony suggests that adjustments to holiday eve collection service can be problematic when they do occur, especially without sufficient advance notice. It is understandable that service adjustments are sometimes necessary for operational, morale, or local condition reasons. Adequate advance notice to customers could help transform these occurrences into nothing more than a minor inconvenience for the customer.

The Postal Service should be aware that there are consequences to holiday eve collection service adjustments, and the consequences might vary for different holiday eves. For example, Carlson discusses the significance of New Year's Eve for college applications and certain tax filings. A holiday eve such as the fourth of July eve might not have the same significance. The Postal Service's awareness of the needs of its customers, and the ability to adequately communicate and respond will help limit any inconvenience that holiday eve service adjustments might cause. The Commission recommends that the Postal Service examine the needs of its customers, and not

authorize service adjustments on holiday eves that cause undue customer inconvenience.

Adequacy of Notice. Carlson raises the issue of insufficient customer notice when the Postal Service makes adjustments to the availability of collection service. The methods used to apprise the customer of adjustments to the availability of holiday and holiday eve service are important because a customer can not effectively and efficiently use a service unless the customer is aware of what service is being provided. When a change to service is made, customers must be given advance notice so they can plan accordingly. The Postal Service has indicated it will notify customers of service adjustments through the media and direct notification in retail locations.

There is no current standardized methodology for notification. To improve notice to customers, the OCA's Reply Brief suggests: standardizing public messages concerning early collections; standardizing the system for notifying the public of changes in collections; increasing significantly public notices to include notices placed on individual mail boxes and the issuance of additional media notices; and standardizing post office notices. The Postal Service can consider these suggestions when determining the best way to communicate with its customers.

Adequacy of notice is a relative concept with many factors to be considered. Carlson's position that notice must reach every potential customer is extreme. At the same time, a high level of notice is appropriate when service availability is adjusted. The Postal Service's contention that customers have some awareness that postal services may not be at a normal level around the holidays does not negate the Postal Service's responsibility to provide adequate notice to customers.

The record does not indicate that the Postal Service intentionally provides inaccurate or misleading service adjustment information. The record demonstrates, however, that the Postal Service has provided less than adequate notification in the past. The newsprint announcement for a change in collection schedule on July 3, 2000, included as a response to DFC/USPS-35 Revised is one example of an inadequate notice. See *also* DFC/USPS-70.

The Commission concludes that the Postal Service has not demonstrated that it adequately notifies customers when adjustments to service levels are made, nor does it

have a policy in place to systematically notify customers of these events. The Commission recommends that the Postal Service implement a systematic procedure to notify customers of adjustments in the availability of collection service on holiday and holiday eves. Anything that the Postal Service can do to increase customer awareness of adjustments to the availability of collection service will benefit the customer's ability to efficiently use postal services, and will result in a more satisfied customer.

D. The Adequacy of Public Information Regarding the Availability of Holiday Collection Service

This section focuses on the Postal Service's collection box time decal policy, which results in holiday collection times not being displayed on collection box time decals for holidays when the service is in fact being provided. The issue is whether the Postal Service is providing adequate notice of the actual collection service that is being provided.

Generally, Carlson does not believe that the Postal Service adequately informs Postal Service customers of the availability of holiday, and holiday eve, service. He contends that "holiday service levels are a mystery to the public." DFC-T-1 at 9. Carlson relates several anecdotal stories about how the Postal Service did not give him accurate information about the availability of holiday service either verbally or as displayed on the collection box time decals. He further alleges that experienced mailers, such as himself, can not rely on past Postal Service practice as an indication of future holiday service. His conclusion is that the Postal Service should provide customers accurate notice of the availability of holiday service. He suggests that collection box time decals show holiday collection times, but also specify the holidays on which the holiday collection times will and will not apply.

Commission Analysis and Recommendations. The Complainant asks the Commission to examine the access that customers have to collection and processing service on holidays. Part of the examination of access concerns customer awareness of what service may or may not be available. If a customer is not able to become aware of a particular service, that customer will not take the steps necessary to receive the service. Essentially, the customer is denied access by the absence of information.

Stated differently, if a customer does not know of the existence of a service, or know how a service operates, then the customer can not effectively use that service. A failure of the Postal Service to provide clear, concise, and non-deceptive notice of the parameters of a service to its customers does not comport with the Postal Service's responsibility to "develop and promote adequate and efficient postal services." § 3661(a).

The information presented on the collection box time decals regarding holiday service is at least, inadequate, and at worst, misleading. Not indicating a holiday collection time on a collection box time decal when collections are actually planned does not provide the customer with the information necessary to efficiently use available postal services. The Postal Service's position that by not indicating the possibility of holiday collections to customers, the customers will have no expectation of holiday service benefits neither customers, nor the Postal Service. USPS Brief at 15. The Postal Service should operate as a modern, customer-driven enterprise. It should be responsive to the needs of its customers, and explain what service is actually available, instead of intentionally leaving customers uninformed.

The Postal Service alleges that not displaying holiday collection times on collection box time decals allows it flexibility. The Commission is not persuaded that this level of flexibility is needed. The Postal Service should be able to predict in advance on what holidays it plans to provide collection and processing services. It has historical data on which to base these predictions. The historical holiday trends should be a good indication of future mailing patterns. If the historical data were employed, planning could be done one or more years in advance, and sufficient lead-time provided such that customers could be informed in advance of the actual availability of holiday mail service.

If the Postal Service is providing service, it should inform its customers that the service is being provided. This could result in higher mail volumes because customers will be more aware that certain holiday service exists. Under the current policy, there is no incentive to deposit mail on a holiday if the customer perceives that the mail will be sitting in the collection box until the next Postal Service business day. Providing notice

to customers of holiday service may result in a customer perception of a higher level of service, at little cost to the Postal Service, as the service is already being provided.

The record indicates that the current policy for displaying Sunday or holiday collection times on collection boxes was first disseminated to the field by memorandum from W.J. Bothwell, Manager, Delivery Policies and Programs, dated September 30, 1999. DFC/USPS-3. The memorandum directs that Sunday or holiday collection times should be displayed only if the deposited mail will be collected, canceled, processed, and dispatched on the same day and only if this occurs for every Sunday or holiday of the year. The memorandum was issued to institute a uniform labeling policy because of customer inquiries and complaints regarding Sunday and holiday collection times displayed on collection boxes. Issuing the memorandum implies that the labeling policy is relatively new, and represents a change to the nature of a postal service on a nationwide basis.

The Commission concludes that Postal Service customers are effectively being denied holiday collection and/or processing service as a result of the Postal Service's policy of not indicating holiday collection times when they in fact occur.

Intervenors Popkin and the OCA offer suggestions on approaches that the Postal Service might want to consider in improving customer awareness of the holiday service that the Postal Service is currently providing.

Popkin suggests that the appropriate level of publicity to meet the needs of the public is for the collection boxes to show the times that the box will be collected, including holiday information when holiday service is being provided. He also asserts that posting holiday collection times on collection boxes might improve the volume of mail processed on holidays and the service to the public. The Commission concurs with these opinions.

The OCA suggests that: "The Postal Service should provide on every mailbox label a list and the date of each holiday observed by the Postal Service and any collections that will be made from that box on holidays." OCA Reply Brief at 15.

At a minimum, collection box time decals must be clear, concise, and not deceptive to the mailing public to comply with the requirements of the Act. This implies accuracy as well. The Commission recommends that the Postal Service abandon its

approach of not informing its customers of the service that is actually already being provided, and inform customers of the actual availability of holiday service. The Postal Service should explore all appropriate methods for providing its customers with accurate and useful holiday collection information so that its customers may take advantage of the service that is being provided. Declining mail volumes will be a self fulfilling prophecy if the Postal Service does not inform its customers that mail services are available.

E. The Adequacy of Holiday Collection Service as Provided

Carlson testifies as to his belief of what customers need. He believes customers need collection and processing of outgoing mail on non-widely observed holidays, in addition to on Memorial Day and Labor Day. DFC-T-1 at 13. He believes that customers need collection and processing of outgoing mail with sufficient frequency to prevent two days from passing without outgoing mail service. *Id.* He believes that customers need collection box mail collected and processed within one day. *Id.* at 14. He also believes that customers need normal collection services before holidays, and that they may even need additional collection services. DFC-T-2 at 29-34. His testimony is largely based on his personal beliefs, observations, and personal needs.

Carlson may personally need the level of service represented by his beliefs. However, his views represent only one of millions of possible views. There is little attempt to scientifically gauge, statistically or otherwise, the true needs of customers presented on the record. Without a better quantification of customer need, it is impossible to determine whether customer needs, as a class, are being met. Carlson's testimony is not sufficient to demonstrate that the needs of customers are not being met, or to carry the burden of demonstrating that the services under review are inadequate in relation to the policies of the Act.

The Postal Service also expresses a "belief" that, as a result of the Donahoe Memorandum, the entire issue of holiday eves does not need to be addressed. USPS Reply Brief at 2. If the directives of the Donahoe Memorandum are followed, typical holiday eve service will be equivalent to the service that is normally provided on the day of the week preceding the holiday. This assumes that normal service for the day of the

week preceding the holiday is adequate on a holiday eve. However, the record does not show what level of service customers normally need. On holiday eves, the needed level of service might be more, or less, than that needed on the normal day preceding the holiday. Therefore, the Postal Service's assumption does not support a conclusion that holiday eve service is adequate.

The Postal Service has not identified any studies specifically intended to analyze the adequacy of collections and outgoing mail processing. It asserts that efforts to minimize "plan failures" may be an indication of adequacy of service. DFC/USPS-18.

In this docket, the Postal Service asserts that it is unaware of any analyses performed that studies customers' perceptions of the type of service mail receives after it is deposited in a street collection box. OCA/USPS-12. However, the Postal Service previously discussed possible customer expectation in a 1999 memo: "When a pick up time is displayed for either a Sunday or holiday, it is an indication to our customers that mail will be collected from the receptacle every Sunday and holiday throughout the year, canceled, processed, and dispatched to its intended destination." DFC/USPS-3. Without knowledge of customer expectations, the Postal Service can not persuasively assert that the policies of the Act are being met, and can not demonstrate that it is being responsive to the needs of its customers.

Different customers may express different needs for holiday and holiday eve mail service. Some may deposit a letter and not care what happens to it or not care when it reaches its destination, as long as it eventually does reach its destination. Some may have critical delivery requirements; without information on the service actually available, they may unnecessarily opt for a more expensive guaranteed service.³⁰ Some may know about delivery standards, base deposits into collection receptacles on those standards, and need the delivery standard to be met. Some may only care about the postmark, which is one of the initial steps in processing. Some may need mail collected

³⁰ The Postal Service argues that customers may opt to use a more expensive guaranteed mail service for critical mailings around holidays. DFC/USPS-15, USPS Brief at 5-6. This Postal Service philosophy troubles the Commission. First, Postal Service customers must be able to rely on the service standards offered by the Postal Service for typical First-Class Mail. Otherwise, the perceptions of the Postal Service, along with mail volumes, are likely to decline. Second, a customer may opt to use a more expensive delivery service other than the Postal Service if the customer is unaware that the Postal Service will provide the desired level of service.

late in the day so that mail can be deposited after work. The variety and extent of customer needs have not been fully explored on this record.

It should be recognized that any single postal service can not realistically be expected to meet the needs of all mailers. In the case of First-Class Mail deposited into a collection box, the Postal Service should strive to meet the needs of a representative cross-section of Postal Service customers by developing and promoting levels of service that are both convenient and affordable. This dictates that the needs of customers must be examined as a class. This also opens the possibility that the needs of an individual customer might not be met.

Once the needs and expectations of customers are assessed, there has to be a measurement standard in place to determine whether customers' needs are being met. For example, measurement standards could be based on the time it takes to postmark the mail, or deliver the mail. Carlson introduces additional measurements such as the number of plants that process mail on holidays, and the "stranded" mail volumes. The OCA discusses delivery standards that can be used as a measurement standard.³¹ Appropriate measurement standards for determining whether customer needs are being met is another topic that has not been fully explored on this record. Without standards, it also is difficult to fully analyze how the availability of service has changed over time.

Whether or not the actual level of First-Class Mail holiday and holiday eve collection and processing services are adequate in relation to the requirements of the Act has not been answered on the record of this Complaint. This is partially due to the nature of the procedural mechanisms used to explore these issues and partially due to the nature of the evidence presented. What is evident, based on the record of this Complaint, is that the Postal Service does not appear to be aware of whether the needs of its customers are being met for First-Class Mail, a monopoly product, on holidays and holiday eves. Furthermore, the Postal Service does not appear to know the

³¹ The OCA discusses delivery standards as a measurement to determine whether service has changed over time, and thus whether the Commission has jurisdiction to hear this Complaint. The Commission finds that this measurement standard alone is not sufficiently broad to be conclusive on whether the Commission has jurisdiction over this issue.

expectations of its customers. It is crucial for businesses to be aware of customers' needs and expectations, and know whether their products and services are meeting these needs and expectations. Without this knowledge, a business can not adjust to the marketplace.

The Postal Service should be aware that § 3661(b) is a procedural mechanism that can be used to get public input through a formal Commission proceeding when it is considering changes to a service.³² The Commission strongly recommends that when changes are contemplated, the Postal Service take advantage of this procedural mechanism to gain a better understanding of its markets.

The Postal Service historically has under-utilized the § 3661(b) procedures by employing a narrow definition of a "change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis... ." Using a narrow definition, the Postal Service apparently concludes that practically no issue requires use of § 3661(b). This approach deprives the Postal Service of an independent review of its proposals. It also appears to violate Congressional intent.

A § 3661(b) proceeding is preferable to a § 3662 rate and service complaint for exploring the parameters of a postal service.³³ A § 3662 rate and service complaint places the burden on the complainant to go forward and present evidence that the service in question is not in accordance with the policies of the Act. This is a relatively high burden for a complainant to meet, given that the Postal Service frequently controls much of the information about the service under review. Furthermore, the adversarial nature of a complaint proceeding provides little incentive for the Postal Service to volunteer information. In the instant Complaint, Carlson has not met his burden of presenting persuasive evidence that the actual holiday or holiday eve service levels are not in accordance with the Act. At the same time, the Postal Service did not offer

³² Adjustments to holiday collection times could have been explored under this procedure. The Postal Service's recent advancements of normal collection times was a newsworthy event in Texas. The Commission was also notified recently of an advancement in final collection time where it deposits mail. If advancement of final collection times is becoming desirable for operational reasons, the Postal Service might want to consider the benefits of a § 3661(b) proceeding.

³³ Commission Docket No. C2001-3 Complaint on First-Class Mail Service Standards is another example of a complaint case triggered by a narrow interpretation of the § 3661(b) requirements.

evidence that its services were adequate in relation to the requirements of the Act—procedurally it was not required to.

The Postal Service may believe that its burden is greater under § 3661(b), because it must take the initiative to present evidence and defend its proposed service change. However, it would have the benefit of presenting proposals in the light most favorable to the Service. Had the Postal Service utilized the § 3661(b) procedures to explore the alleged changes to holiday and holiday eve services, there would have been a higher likelihood that the issues could have been fully explored on the record with the benefit of public input. The Commission then would have been able to provide the Postal Service with an informed independent review of the issues for its consideration as required by the Act.

The Postal Service must meet the needs of its customers to fulfill its obligations under the Act, and to survive in business. It is the Service's responsibility "to provide types of mail service to meet the needs of different categories of mail and mail users." § 403(b). The Postal Service is required to accomplish this through the development and promotion of "adequate and efficient" postal services. § 3661(a). The record in this Complaint fails to demonstrate the "needs" of customers as a class, or whether those needs are being met. The record also demonstrates that the Postal Service itself has not analyzed the needs of its customers. The Commission recommends that the Postal Service independently survey the needs and expectations of its customers, and otherwise analyze the adequacy of holiday, and holiday eve, collections and outgoing mail processing service. These steps can be used to reassure the Postal Service that its services comply with the policies of the Act, and to help it make adjustments for the future.

V. COLLECTION BOX MANAGEMENT SYSTEM DISCOVERY DISPUTE

A discovery dispute concerning the Collection Box Management System (CBMS) database was the cause of considerable delay in this proceeding. The Presiding Officer's attempt to resolve the dispute required the consideration of potential Postal Service security concerns, the need for Carlson to gather relevant information necessary to proceed with his Complaint, and the effect of a concurrent Freedom of Information Act (FOIA) lawsuit seeking CBMS information. Over the course of seven months, the Commission entertained multiple pleadings and issued several rulings and orders. The Postal Service was given opportunities to respond to the discovery request under protective conditions, to provide a limited response free of protective conditions, arguably with the sensitive data redacted, and to provide authoritative support to justify its positions. The Postal Service refused to comply with Presiding Officer rulings and Commission orders and this dispute remains unresolved.

Carlson filed the discovery request, interrogatory DFC/USPS-19, that is the subject of this dispute on May 25, 2001.³⁴ Interrogatory DFC/USPS-19 states:

Please provide the following information, in files in Microsoft Excel or similar format, from the Collection Box Management System database for every collection box in the United States that is in the database: location ID number, box address, description of address, service class, type of box, area of box, posted weekday collection times, posted Saturday collection times, and posted holiday collection times.

In essence, the interrogatory requests nine data elements from the CBMS database. The database aggregates information on Postal Service collection boxes, including the collection times information openly visible on the collection sticker located on every collection box in the United States. Access to this information would allow analysis of national and regional collection practices.

³⁴ Douglas F. Carlson Interrogatory to the United States Postal Service (DFC/USPS-19), May 25, 2001.

The Postal Service objected to the interrogatory based on privilege, relevance, and burden.³⁵ The privilege argument raised employee safety and mail security concerns because public disclosure of the database could reveal a mail carrier's schedule and line of travel. Carlson subsequently filed a motion to compel a response, which answered the Postal Service's objections. He also discussed the relevance of the interrogatory, the fact that the data is publicly available in non-aggregate form, and presented arguments related to FOIA.³⁶ The Postal Service responded to the motion to compel by elaborating on its objections, and alternatively suggested providing the data under protective conditions, if its objections were not accepted.³⁷

The Presiding Officer concluded that the information requested was likely to lead to admissible evidence that had relevance in this proceeding. Therefore, the motion to compel was granted.³⁸ The Presiding Officer accepted the Postal Service proposal to apply protective conditions to the material. Applying protective conditions allowed the Presiding Officer not to rule on the arguments related to public disclosure of the database, such as mail carrier safety and mail security, and gave deference to the federal courts to resolve the issues present in the FOIA litigation. Applying protective conditions where the potential for safety and security concerns exist would typically resolve the discovery dispute.

Both parties expressed dissatisfaction with the ruling. The Postal Service filed a motion for partial reconsideration that argued an inappropriate standard had been applied by the Presiding Officer, and that Carlson had not articulated a use for all of the database.³⁹ The Postal Service set forth its views of what data might be relevant, and

³⁵ Objection of the United States Postal Service to Carlson Interrogatories DFC/USPS-19-21, June 4, 2001.

³⁶ Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Interrogatories DFC/USPS-19-21, June 26, 2001. Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Interrogatories DFC/USPS-19-21—Erratum, July 22, 2002, 2001.

³⁷ Response of the United States Postal Service in Opposition to the Carlson Motion to Compel Regarding DFC/USPS-19-21, July 9, 2001.

³⁸ Presiding Officer's Ruling on Motion to Compel the United States Postal Service to Respond to Interrogatories DFC/USPS-19-21, July 23, 2001 (P.O. Ruling C2001-1/6).

³⁹ Motion of the United States Postal Service for Partial Reconsideration of Presiding Officer's Ruling No. C2001-1/6, July 27, 2001.

sought to limit the scope of the material to be provided to what it considered relevant to the Complaint. Carlson answered the Postal Service's motion for reconsideration, and filed a cross-motion to reconsider the application of protective conditions.⁴⁰

Upon reconsideration, the Presiding Officer reaffirmed the ruling and again directed the Postal Service to respond to DFC/USPS-19 under protective conditions.⁴¹ The Postal Service's proposal to limit the scope of the response was rejected because the proposed response would subdivide the CBMS database to such an extent that potentially all perspective in using the data to analyze a national issue would be lost. Carlson's request for access to the CBMS database without protective conditions also was denied, as protective conditions would satisfy any security concerns and allow Carlson access to the information that he needed to proceed with his Complaint.

Although denying both motions for reconsideration, the Presiding Officer fashioned an alternative solution separate from providing the database under protective conditions. Under this option, the Postal Service could exclude the data field raising the most sensitive safety and security concerns from the database, and provide the remainder of the database free of protective conditions. The Presiding Officer was explicit in directing that objections to this option should not delay providing a response to interrogatory DFC/USPS-19 under protective conditions.

For a second time, a response to the interrogatory from the Postal Service was not forthcoming. On August 28, 2001, the Postal Service requested certification to the Commission of an appeal from the ruling on reconsideration.⁴² The Postal Service sought to limit the scope of its response to CBMS data from 27 identified districts (under protective conditions). It rejected the compromise solution of providing a subset of the database absent protective conditions.

Certification of an appeal from a Presiding Officer's ruling is allowable only in extraordinary circumstances. See Rule 32(a). For certification, the Presiding Officer

⁴⁰ Douglas F. Carlson Cross-motion for Reconsideration and Answer to the Postal Service Motion for Reconsideration of Presiding Officer's Ruling C2001-1/6, August 2, 2001.

⁴¹ Presiding Officer's Ruling on Reconsideration of Presiding Officer's Ruling No. C2001-1/6, August 21, 2001 (P.O. Ruling C2001-1/10).

⁴² Motion of the United States Postal Service for Certification of Appeal From Presiding Officer's Ruling No. C2001-1/10, August 28, 2001.

must find: “(i) the ruling involves an important question of law or policy concerning which there is substantial ground for difference of opinion and (ii) an immediate appeal from the ruling will materially advance the ultimate termination of the proceeding or subsequent review will be an inadequate remedy.” See Rule 32(b)(1).

Two issues were before the Presiding Officer on reconsideration: (1) whether the discovery request was reasonably calculated to lead to admissible evidence, and (2) whether it was appropriate to provide the material under protective conditions. The first issue, which is essentially a relevance issue, did not fit the criteria for certification of an appeal. However, the second issue, the application of protective conditions, was found to involve an important question of law or policy for which subsequent review would be an inadequate remedy.

Hence, P.O. Ruling C2001-1/10, the ruling on reconsideration, was certified to the Commission for review.⁴³ In order for the Commission to fully consider the issues bearing on the application of protective conditions to the requested information, the Presiding Officer directed the Postal Service to answer five multi-part questions. The questions allowed the Postal Service to provide the Commission with information necessary to resolve these issues, and to provide authoritative support for its positions. The Commission accepted the issue for certification, set dates for the Postal Service to respond to the five sets of questions, and provided the other participants an opportunity to comment.⁴⁴

The Postal Service declined to answer the questions put forth by the Presiding Officer and the Commission, except for providing a status report on the pending FOIA litigation.⁴⁵

Certification of a question to the Commission, *en banc*, is an extraordinary procedural mechanism which often sets precedent. In this instance, standards related to applying protective conditions were under consideration. The Postal Service’s

⁴³ Presiding Officer’s Ruling Certifying Appeal to Commission of Presiding Officer’s Ruling No. C2001-1/10, September 19, 2001 (P.O. Ruling C2001-1/13).

⁴⁴ Acceptance of Certification for Commission Review of Residing Officer’s Ruling No. C2001-1/10, September 19, 2001 (Order No. 1321).

⁴⁵ Response of the United States Postal Service to Presiding Officer’s Ruling No. C2001-1/13 at 4-5, October 9, 2001.

refusal to answer questions deprived the Commission of pertinent information and discussion necessary to comprehensively review the issues involved. Without this critical input, the Commission reluctantly decided to terminate consideration of the Postal Service's request for review, thus affirming P.O. Ruling C2001-1/10 (and P.O. Ruling C2001-1/6).⁴⁶

On December 4, 2001, the Postal Service announced that it would not fulfill its initial undertaking, to provide the requested information under protective conditions, notwithstanding the Commission's order directing it to do so.⁴⁷

This discovery dispute continued to affect the procedural schedule for the next five and one-half months. While the discovery dispute was pending, Carlson filed a portion of his testimony that was unrelated to obtaining a response to DFC/USPS-19. The remainder of his testimony was withheld pending resolution of the discovery dispute. Carlson next requested a two-month suspension of the complaint proceeding to allow for the expected resolution of the FOIA litigation.⁴⁸ The Presiding Officer granted the two-month suspension because of the potential for Carlson to obtain access to the CBMS data.⁴⁹ Unfortunately, the federal court did not rule while the Commission proceeding was suspended, and the date for filing the remainder of Carlson's testimony was rescheduled. The testimony was provided without the insight that could have been gained from a response to interrogatory DFC/USPS-19. Eleven

⁴⁶ The Postal Service also filed what purported to be a response to DFC/USPS-19. Response of the United States Postal Service to Carlson Interrogatory DFC/USPS-19, October 9, 2001. To prepare this response, the Postal Service determined what data from the CBMS it considered relevant, categorized or performed calculations on this data, and presented the results in summary form. The Commission found this answer unresponsive and not in accordance with previous Presiding Officer rulings. It also stated that the policy of the Commission is to allow the participant requesting discovery material the leeway to analyze, compile, digest, and draw conclusions from material as he sees appropriate. The Postal Service's response was contrary to that policy. It again directed the Postal Service to provide a complete response. Order Affirming Presiding Officer's Ruling No. C2001-1/10, November 27, 2001 (Order No. 1331).

⁴⁷ Response of the United States Postal Service to Commission Order No. 1331, December 4, 2001.

⁴⁸ Douglas F. Carlson Response to POR C2001-1/16 and Motion to Suspend Proceedings, December 31, 2002.

⁴⁹ Presiding Officer's Ruling Granting Motion to Suspend Proceedings, January 8, 2002 (P.O. Ruling C2001-1/17).

months after the discovery request was first submitted, the second part of Carlson's testimony was filed on April 24, 2002.

Commission comments. Businesses often find customer input can be invaluable in improving existing products and services, and in developing new ideas for the future. Businesses profit by listening to find out what their customers want, and then providing the customers with that product or service. This sometimes applies even when a business's "better judgement" might have pointed in a different direction. Businesses that lose sight of "the customer is right" attitude have a much more difficult time in a competitive marketplace.

These concepts are directly applicable to § 3661 Nature of Service proceedings, to § 3662 complaint proceedings, and even to this discovery dispute. Hearings before the Commission provide a forum for the Postal Service to listen to its customers, and to avoid or resolve problems. Even though the proceedings are technically adversarial in nature, an attitude of respect for the process and the participants will further the public's perception of the Service, and in return the Service may learn something that it has not thought of on its own. In this case, the public's inability to learn what collection service is available during holiday periods has been brought to the attention of postal management. Additionally, it has become clear that management has little to no hard information on what collection services customers want or need.

The adversarial nature of a Commission complaint proceeding contemplates each participant presenting views within the rules of the forum. In this instance, the Postal Service and Carlson disagreed on the discoverability of the CBMS database. The rules of the forum designate the Commission, and its appointed Presiding Office, as responsible for arbitrating these disagreements, in a manner that respects the rights of the individual participants. The successful resolution of issues is only accomplished through the cooperation of the participants involved, with no statutory provisions for it to work otherwise.

In the CBMS discovery dispute, the Postal Service initially suggested the application of protective conditions, then reneged on its offer, and finally disregarded Commission rulings and orders. In doing so, the Service tried to defend three untenable positions: that as the owner of the material in question it could unilaterally

decide its relevance to the proceeding; that it could determine the material should not be disclosed (even under protective conditions); and that it did not have to justify its positions beyond mere assertions. This diminished the usefulness of the process.

Businesses that listen to their customers, and respond with informative explanations of their products and services are more likely to retain satisfied customers and improve their chances for success. In this instance, providing customers with knowledge about collection box service inevitably will improve the Postal Service's chances for success, and may even lead to increased mail volume. The CBMS database contains important information related to the use of collection box service—box collection times and box locations. It would be odd to construe the Postal Service's position as being that collection times and box locations should not be disseminated to its customers.

Collection boxes are a very visible interface that customers have with the Postal Service that are predominately associated with First-Class Mail, a monopoly product. Customers should have access to collection box locations and collection times, and the Postal Service should consider effective ways to disseminate this information. The failure to provide this information under protective conditions for use in this proceeding remains totally unjustified.

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

Before Commissioners:

George Omas, Chairman;
Dana B. Covington, Vice Chairman;
Ruth Y. Goldway; and Tony Hammond

Complaint on Sunday
and Holiday Collections

Docket No. C2001-1

PUBLIC REPORT

(Issued November 5, 2002)

A full public hearing having been held in the above-entitled proceeding, and the Commission, upon consideration of the record, having found that the Complaint was in part justified as set forth in its Opinion, which is attached hereto and made a part hereof,

IT IS ORDERED:

1. That the Commission's Report be transmitted to the Governors of the Postal Service and that the Governors thereby be advised that:
 - a. The Postal Operations Manual and Domestic Mail Manual contain inaccurate information concerning mail collection policies. These reference documents should be corrected immediately.
 - b. Service availability decals on collection boxes should indicate the service actually provided. If, for example, collection occurs on some, but not all national holidays, the decal should identify those holidays on which collections will be made.

- c. The Postal Service should undertake a program to become aware of the service needed by retail customers during the various holiday periods. This information should be used to tailor collection service to meet the needs of local customers. Periodic reviews then should assess whether service levels continue to meet customer needs.
 - d. The Postal Service should develop a program to provide timely, effective notice to retail customers when temporary (or permanent) changes to collection schedules will be made.
2. The Postal Service has failed to seek advisory opinions as required by 39 U.S.C. § 3661 before implementing nationwide or substantially nationwide changes in the nature of Sunday and holiday service.
3. The Postal Service failure to comply with orders directing it to produce, subject to protective conditions, information relevant and material to this complaint, constitutes a serious breach of its responsibilities.
4. Except to the extent granted or otherwise disposed of herein, all motions, exceptions, and other outstanding requests filed in Docket No. C2001-1 hereby are denied.

By the Commission.

(S E A L)

Steven W. Williams
Secretary