

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

Complaint on Bulk Access (Batch Processing) of Delivery Confirmation Information for Certified Mail

Docket No. C2003-2

ANSWER OF THE UNITED STATES POSTAL SERVICE
(May 29, 2003)

Introduction and Background

On April 29, 2003, the Postal Rate Commission received a complaint filed by Walz Postal Solutions (Walz). By letter dated that day, the Office of the Secretary, Postal Rate Commission, designated the docket number above and advised the General Counsel, United States Postal Service, of the Complaint's filing under Title 39, United States Code § 3662. The complaint is styled as "Complaint on Bulk Access (Batch Processing) of Delivery Confirmation Information for Certified Mail," and its stated subject matter is the authority of the Postal Service to provide delivery information for Certified Mail using bulk electronic file transfer.¹

As discussed in more detail below, the Postal Service believes that the concerns raised by Walz do not require any Commission action, and should be dismissed. The Walz Complaint attempts to get the Commission to declare that the Postal Service can

¹ "Bulk electronic file transfer of Certified Mail delivery information" is used in this answer to refer to what Walz calls "bulk access (batch processing) of Delivery Confirmation information for Certified Mail." This alternative wording accurately summarizes the process by which Certified Mail delivery information is transferred in bulk from a postal computer to the customer's computer, in an electronic file. This wording also avoids possible confusion between Certified Mail service and Delivery Confirmation service.

provide bulk electronic file transfer only as a separate special service. That attempt should be rejected. Before explaining these views and recommending that the Commission summarily dispose of this complaint without hearings, however, the Postal Service provides the following Answer to the specific allegations of the complaint.

ANSWER

The Complaint consists of 36 numbered paragraphs, and includes 10 attachments. Pursuant to Rule 84 of the Rules of Practice and Procedure of the Postal Rate Commission (Title 39, Code of Federal Regulations §3001.84), the Postal Service answers each paragraph of the Complaint as follows:

Paragraph 1

This paragraph simply identifies the complainant by name and address; the Postal Service asserts that this sentence is procedural and does not require a response.

Paragraph 2

Admitted that during November, 2001, the Postal Service began a pilot test which eventually provided three customers with electronic files of delivery information for Certified Mail.

Paragraph 3

Admitted that Postal Service account representatives informed potential customers of the availability of NetPost Certified Mail. Denied that Postal Service account representatives promoted US Certified Letters (USCL), the vendor of NetPost Certified Mail, except to the extent that informing customers of NetPost Certified Mail indirectly promotes its vendor.

Paragraph 4

Admitted that the quoted matter is found at USPS.com (www.usps.com/netpost/certifiedmail.htm)(May 29, 2003).

Paragraph 5

Denied that these statements appear on the USPS.com website. Similar

statements may be made by the private company USCL on its own website(s).

Paragraph 6

Denied. Pitney Bowes was not the first vendor selected for the pilot test. Instead, the first company selected was WalMart, which chose Outsource Solutions, Inc. to provide technical assistance. Pitney Bowes and USCL were later added as participants so that users of meters and of hybrid mail services could be part of the pilot test.

Paragraph 7

Denied. Pitney Bowes was not given months of advance notice to prepare software to do the FTP electronic filing with Delivery Confirmation, and did not need such advance notice, because it had already been certified to do FTP electronic filing in June 2000. Once USCL and WalMart/Outsource Solutions were chosen to participate in the pilot test, they were given ample time to prepare for it. Outsource Solutions' file format was certified in November 2001, and USCL's file format was certified in December 2001.

Paragraph 8

Admitted that Postal Service communications did not refer to a "pilot test." Since the Postal Service had no direct relationship with the pilot test participants' customers, it was in no position to communicate with them. Communications with customers were left to the three participants, thus avoiding Postal Service promotion of the pilot test participants themselves. The Postal Service is unable to admit or deny what the pilot test participants communicated to their customers.

Paragraph 9

Admitted that the Postal Service did not prepare written guidelines restricting marketing during the pilot test.

Paragraph 10

Admitted that language similar to these quotes appears in a July 3, 2002, letter from former Postal Service Special Services Manager John Dorsey, which is Attachment E to the Walz Complaint.

Paragraph 11

The Postal Service is unable to admit or deny. The Postal Service has not located records on what was told to Walz concerning its participation in the pilot test. The employee (John Dorsey) who likely was involved in discussing Walz's participation in the pilot test has retired from the Postal Service. Subsequent to the pilot test, as indicated in the third paragraph of the July 3, 2002 letter from John Dorsey included as Attachment E to the Complaint, the Postal Service offered to "work with Walz Postal Solutions, Inc. and provide bulk access to electronic delivery information on the same terms we now do with three other customers."

Paragraph 12

The Postal Service cannot authenticate Attachment A to the Complaint as an advisory letter sent by the Postal Rate Commission's Secretary. Denied that this paragraph accurately quotes Attachment A, although the discrepancy is small.

Paragraph 13

This paragraph states a legal conclusion, to which no answer is required. To the extent that an answer is required, it is denied.

Paragraph 14

This paragraph states a legal conclusion, to which no answer is required. To the extent that an answer is required, it is denied.

Paragraph 15

This paragraph states a legal conclusion, to which no answer is required. To the extent that an answer is required, it is denied.

Paragraph 16

This paragraph states a legal conclusion, to which no answer is required. To the extent that an answer is required, it is denied.

Paragraph 17

Denied with respect to the bulk electronic file transfer method of providing electronic confirmation for Certified Mail, since in Docket No. R2001-1 the Postal Service requested DMCS changes to include electronic confirmation of delivery status as part of Certified Mail. Admitted that the Postal Service has not filed a request with the Postal Rate Commission concerning any product named "Batch Delivery Confirmation CM." To the extent this paragraph states a legal argument or conclusion, no answer is required; if an answer is required, the legal argument or conclusion is denied.

Paragraph 18

This paragraph states a legal conclusion, to which no answer is required. To the extent that an answer is required, it is denied.

Paragraph 19

This paragraph states a legal conclusion, to which no answer is required. To the extent that an answer is required, it is denied.

Paragraph 20

This paragraph paraphrases a section of the Postal Reorganization Act, to which no answer is required.

Paragraph 21

The Postal Service admits that it has not completed market research that specifically quantifies the potential cost and revenue impacts of the bulk electronic file transfer method of providing delivery information for Certified Mail. However, studies provided in Docket No. R2001-1 are relevant to the costs and revenue impact of providing electronic confirmation for Certified Mail.

Paragraph 22

Admitted that the Docket No. R2001-1 market research did not specifically mention the bulk electronic file transfer method of electronic confirmation. Denied that the market research does not include any analysis of the impact of bulk electronic file transfer as one method of electronic confirmation of Certified Mail delivery information.

Paragraph 23

This paragraph paraphrases a section of the Postal Reorganization Act, to which no answer is required.

Paragraph 24

This paragraph is a hypothetical claim to which no answer is required, rather than a statement of fact. Alternatively, to the extent this paragraph states a legal conclusion, no answer is required.

Paragraph 25

This paragraph states a legal conclusion, to which no answer is required. To the extent that an answer is required, it is denied.

Paragraph 26

This paragraph states a legal conclusion, to which no answer is required. To the extent that an answer is required, it is denied.

Paragraph 27

Unable to admit or deny. The Postal Service does not know how substantial the customer base is that is receiving Certified Mail delivery information by using NetPost Certified Mail or a Pitney Bowes Digital postal meter. The Postal Service provides the delivery information to Pitney Bowes and USCL. They, in turn, pass the information to their customers.

Paragraph 28

This paragraph presents speculation, to which no answer is required, rather than a statement of fact.

Paragraph 29

This paragraph states a legal conclusion, to which no answer is required. To the extent that an answer is required, it is denied.

Paragraph 30

This paragraph quotes (inaccurately) a section of the Postal Reorganization Act, to which no answer is required.

Paragraph 31

The Postal Service cannot authenticate Attachment A to the Complaint as an advisory letter sent by the Postal Rate Commission's Secretary. Denied that this paragraph accurately quotes Attachment A, although the discrepancy is small. The paragraph's characterization of Attachment A is a conclusion of law to which no answer is required. To the extent an answer is required, the characterization is denied.

Paragraph 32

Admitted that the Postal Service has not requested an advisory opinion from the Postal Rate Commission, under section 39 U.S.C. § 3661, on its offering of bulk electronic file transfer as one method of electronic confirmation of delivery for Certified Mail.

Paragraph 33

This paragraph states a legal conclusion, to which no answer is required. To the extent that an answer is required, it is denied.

Paragraph 34

Denied that "all postal customers" are affected by the Postal Service's providing bulk electronic file transfer of Certified Mail delivery information. Denied that other postal customers are cross subsidizing Certified Mail customers who receive bulk electronic file transfer, since the Certified Mail fee was designed to cover the cost of providing delivery information electronically. The Postal Service does not know whether Postal Service competitors would be affected by the Postal Service's providing bulk

electronic file transfer, but denies that the Postal Service failed to observe the requirements of the Act. The claim that Return Receipt users may be affected as the result of a diversion of volumes and revenues from Return Receipt service is speculation, to which no answer is required.

To the extent this paragraph states one or more legal conclusions, no answer is required. To the extent that an answer is required, any legal conclusions are denied.

Paragraph 35

This paragraph quotes (inaccurately) a section of the Postal Reorganization Act, to which no answer is required.

Paragraph 36

This paragraph states a legal conclusion, to which no answer is required. To the extent that an answer is required, the legal conclusion is denied. This paragraph also includes a request for relief, to which no answer is required. To the extent that an answer is required, the Postal Service denies that the requested relief is either warranted or appropriate.

The Postal Service denies all other allegations of material fact which have not been answered specifically herein.

Postal Service Position

In accordance with Rule 84(b) and (c) of the Rules of Practice and Procedure of the Postal Rate Commission, the Postal Service further states as follows:

The Postal Service's offers Certified Mail delivery information by a variety of electronic means, all of which are in accordance with the policies of the Act. The recent changes in the nature of Certified Mail service that generally affected service on a nationwide or substantially nationwide basis were reviewed by the Commission in Docket No. R2001-1.

Complainant presents three claims regarding the provision of Certified Mail delivery information using bulk electronic file transfer. The first two are that the Postal

Service failed to establish a new classification for this offering, and failed to charge a separate rate for the offering. The third claim is the allegation that the Postal Service has failed to submit to the Commission what Walz believes was a required request for an advisory opinion on a nationwide change in service. See paragraphs 13-33 of the Complaint.

First Claim

Walz's first claim is that the Postal Service failed to request the Commission to submit a recommended decision on its providing Certified Mail delivery information by bulk electronic file transfer. Paragraphs 13-19. The Postal Service has already requested and implemented a classification for this offering. In the last rate case the Postal Service enhanced Certified Mail to include providing information indicating whether and when the mail was delivered. This delivery information is available for the base Certified Mail fee.

The resulting DMCS change used the general language proposed by the Postal Service and recommended by the Postal Rate Commission:

Certified Mail service provides a mailer with evidence of mailing and, upon request, electronic confirmation that an article was delivered or that a delivery attempt was made

DMCS § 941.11 (new language underlined). Prior to this change, customers needed to purchase return receipt service to get delivery status information (along with the recipient's signature).

Providing Certified Mail delivery information in electronic files is certainly one form of electronic confirmation. The delivery information is provided through a bulk electronic file transfer, rather than in the traditional (non-electronic) manner of a "green card" return receipt sent through the mail. In fact, the new Certified Mail DMCS language is modeled on the language used for Delivery Confirmation (DMCS §948.11).

Bulk electronic file transfer is one of the methods of electronic confirmation used to transmit Delivery Confirmation data to customers. See DMM §918.1.4b; Publication 91, pages 13-14 (www.usps.com/cpim/ftp/pubs/pub91.pdf) (May 29, 2003). In fact, downloading of delivery information in bulk has been an option for Delivery Confirmation since its implementation in 1999.² Thus, providing Certified Mail delivery information through bulk electronic file transfer, as challenged by Walz, is within the scope of the current DMCS language recommended by the Commission in Docket No. R2001-1, and approved by the Postal Service Governors.

Because electronic file transfer has been used since before Docket No. R2001-1 as one form of “electronic confirmation” for Delivery Confirmation, a proposal to exclude such an option for Certified Mail should have been presented in that docket, if an interested individual or company wanted the scope of the Certified Mail enhancement to be more limited, or believed that bulk electronic file transfer required a separate classification. Thus, the Commission should dismiss this Complaint because the adoption of electronic file transfer as one method of “electronic confirmation” did not “produce a substantive change in mail classification” resulting from the previous omnibus rate case. PRC Op., C96-2, at 9. Parties that fail to raise an issue in a rate case should not get a second bite through the section 3662 complaint procedures.

Walz’s complaint (paragraph 12) claims that “at no stage in the process of considering potential changes in Certified Mail in Docket No. R2001-1 was the concept of bulk access to delivery status information explicitly presented, considered, or recommended by the Commission.” Nonetheless, the bulk electronic file transfer

² See Docket No. R97-1, USPS-T-22, at 10.

technology for providing electronic confirmation is within the scope of the Commission's recommendation of the Certified Mail DMCS language, especially since "bulk access" through electronic file transfer was one method of electronic confirmation already in use for Delivery Confirmation.

The Commission has described the purpose and scope of the DMCS as "definitional," including enough detail to properly define and distinguish different classifications, while recognizing that "the Postal Service needs the maximum amount of operational flexibility possible if it is to operate efficiently." PRC Op., MC76-5, at 14-16. Therefore, in the DMCS the Commission uses "general language which [leaves] flexibility for the Postal Service to make adjustments in its implementing regulations as its needs change." PRC Op., MC95-1, at VI-7. "In conducting its operations, the Postal Service necessarily exercises considerable latitude in interpreting and administering mail classification provisions." *Id.* at VI-8. Adding another method of electronic confirmation for Certified Mail certainly falls within this latitude.

Second Claim

Walz's second claim is that the Postal Service fails to charge for Certified Mail delivery information provided using bulk electronic file transfer. Paragraphs 20-25. But the Postal Service does charge for this service by charging the Certified Mail fee. That fee was increased from \$2.10 to \$2.30 in Docket No. R2001-1, partly to reflect the costs of enhancing Certified Mail to include the provision of delivery information. See PRC Op., R2001-1, at 134. Thus, the Certified Mail fee includes an appropriate charge for the delivery information.³ In fact, the current fee for Certified Mail is only 35 cents less than the combined fees for Certified Mail and return receipt resulting from Docket No.

³ Similarly, the Postal Service does not charge separately when it obtains the recipient's signature, because that also is an integral part of Certified Mail service.

R97-1, in effect until June 1, 2000, which provided the recipient's signature in addition to the delivery information. The recent rapid increase (from \$1.40 in 1999 to \$2.30 today) in the Certified Mail fee justifies providing customers with an enhanced product.

It would make no sense to charge an additional fee for bulk electronic file transfer, when the much more costly telephone access to Certified Mail delivery information is available for the Certified Mail fee alone. The cost for telephone access for one Certified Mail item is about 7 cents, while the cost for electronic file transfer, for one or more items, is about .08 cents. USPS-LR-J-135/R2001-1, Section A, Worksheet I-6, and Worksheet D-1, line D.

Third Claim

Walz's third claim is that the implementation of bulk electronic file transfer as one means of providing Certified Mail delivery information is a change in the nature of postal services requiring prior review by the Commission under 39 U.S.C. § 3661. Paragraphs 26-33. Walz claims that bulk electronic file transfer is being used by a substantial number of companies, and could have an impact on use by mailers of other mail services, such as return receipts and Certified Mail. Paragraph 27. Walz fails, however, to distinguish bulk electronic file transfer from the general enhancement of Certified Mail to include provision of delivery information. Offering bulk electronic file transfer as a means of providing delivery information is not itself a change in the nature of postal services, and Walz has not shown it to be so.

The changes raised by Walz concerning bulk electronic file transfer are not qualitatively different from the changes resulting from the general Certified Mail enhancement. These changes were reviewed by the Commission in Docket No. R2001-1, when the Postal Service proposed to enhance Certified Mail by including access to delivery information. The Commission endorsed the proposed enhancement, calling it "an important step in the right direction as it should allow a range of users to benefit from newer technology." PRC Op., R2001-1, at 135. Moreover, this change

responded to the Commission's suggestion that the Postal Service "consider utilizing some of the information technology and infrastructure used for delivery confirmation which has much lower costs." PRC Op., R97-1, Vol. 1, at 569. In particular, the adoption of bulk electronic file transfer as one method of providing delivery information responds to the Commission's suggestion "that the Postal Service explore other methods to reduce the cost" of Certified Mail service. PRC Op., R2000-1, Vol. 1, at 572.

In previous complaint cases, the Postal Service has fully articulated its position that an allegation of Postal Service failure to follow the procedures of section 3661(b) of the Act does not constitute a cognizable complaint under section 3662. That position is presented most comprehensively in the Postal Service's "Response of the United States Postal Service to Order No. 1307, and Motion for Reconsideration," at pages 1-8, filed in Docket No. C2001-1 on April 10, 2001. As fully explained in that pleading, the Commission's role in service complaints under section 3662 is limited to evaluation of allegations that the service provided is not in accordance with the *policies* of the Act, and the Commission therefore lacks jurisdiction to litigate allegations that the Postal Service has failed to follow *procedural* provisions of the Act. While acknowledging that the Commission has previously declined to embrace this view (e.g., in Docket No. C2001-1), the Postal Service nonetheless continues to regard it as an inherent limitation on the scope of service complaint cases under section 3662.

Request for Relief

Walz requests that the Commission submit to the Postal Service Governors a recommended decision declaring as unsupported the Postal Service's provision of Certified Mail delivery information using bulk electronic file transfer.⁴ But section 3662

⁴ This request for relief properly focuses on the current offering of Certified Mail delivery information, using electronic file transfer. While the Complaint provides, as background, allegations about the pilot testing of the electronic file transfer technology, this pilot test began after that docket was initiated, and ended with the implementation of Docket No.

is designed to address complaints in which the Postal Service is “charging rates which do not conform to the policies set out in this title.” Relief under section 3662 therefore does not extend to a declaration that a service is not authorized. Moreover, Walz has not demonstrated that the Postal Service is charging rates which do not conform to the policies of the Act. Bulk electronic file transfer is provided as part of Certified Mail service, at a fee that the Commission recommended in Docket No. R2001-1.

Moreover, as discussed above, the DMCS provides the Postal Service with flexibility to make operational decisions. Thus, the DMCS language on Certified Mail, “electronic confirmation,” authorizes an option to provide the confirmation using bulk electronic file transfer. This flexibility is especially present when the Postal Service is simply applying the term “electronic confirmation” the same way it has been applied to Delivery Confirmation for several years.

Recommended Disposition of the Complaint

The facts and arguments stated above demonstrate the complaint’s failure to establish that the Postal Service is providing a service that is not authorized by the DMCS, or otherwise contravenes the policies of the Act. The Certified Mail enhancement recommended in Docket No. R2001-1 specified “electronic confirmation that an article was delivered or that a delivery was attempted.” DMCS § 941.1. The Commission already has enough information to reach the legal conclusion that bulk electronic file transfer is not in itself a service, but is simply one form of “electronic confirmation” available as part of Certified Mail service.

Moreover, the DMCS language enhancing Certified Mail was litigated in Docket No. R2001-1. Walz did not litigate this issue, or even intervene in the case. The Commission has determined “that the opportunity to litigate is more significant than the

R2001-1 on June 30, 2002. The Postal Service therefore asserts that, to the extent there are any subsequent proceedings or Orders, should be limited to the status of the current offering, rather than any actions taken prior to June 30, 2002.

actual litigation.” Order No. 1310 at 16.

The Commission thus should decline to exercise its discretion to hold hearings or otherwise entertain the complaint. No discovery should be allowed, nor hearings be held. Instead, this proceeding should be summarily terminated.⁵ The Commission should either dismiss this Complaint, or summarily indicate that the current DMCS language does not prohibit bulk electronic file transfer as one means of the “electronic confirmation” now offered as part of Certified Mail service. Allowing further proceedings based on the allegations in the complaint would simply delay a resolution of the legal issues presented by the Complaint, and would be a needless expenditure of resources.

⁵ In Docket No. MC82-2, Southwest Publishing Corporation complained that the Postal Service’s bulk rate mail verification procedures constituted an unlawful change in postage rates, because they failed to allow that portion of the mailing complying with postal rules to pay the discounted rates. The Commission dismissed the complaint, without examination of any factual issues which may exist as a result of the sampling techniques contained in a Management Instruction, because the Management Instruction did not constitute any change in the current DMCS policy with respect to third-class bulk mail eligibility requirements, and otherwise did not provide an actionable claim subject to 39 U.S.C. § 3662. Opinion Dismissing Complaint, at 12-14 (attached to Order No. 475). Similarly, Walz’s complaint should be dismissed without discovery or hearings because the Postal Service’s offering of bulk electronic file transfer as one method of providing the “electronic confirmation” of delivery authorized by the DMCS does not constitute any change in the DMCS that requires prior review by the Commission.

Respectfully submitted,

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May 29, 2003

CERTIFICATE OF SERVICE

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

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