

ORDER NO. 1385

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

Before Commissioners:

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

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

Docket No. C2003-2

ORDER DISMISSING
COMPLAINT OF WALZ POSTAL SOLUTIONS

(Issued October 9, 2003)

On April 29, 2003, Walz Postal Solutions (Walz) filed a complaint with the Commission pursuant to 39 U.S.C. § 3662 alleging that the Postal Service conducted a “pilot test” to test no fee electronic access to Certified Mail delivery status on a bulk basis (bulk electronic access) in violation of certain provisions of the Postal Reorganization Act, 39 U.S.C. § 101 *et seq.* (the Act).¹ Walz asserts that Pitney Bowes, US Certified Letters LLC (a NetPost vendor), and Out Source Solutions (representing WalMart) were selected by the Postal Service to participate in the pilot test, which was conducted from September 2001 through June 2002.² Walz did not participate in the

¹ Complaint of Walz Postal Solutions, April 29, 2003 (Complaint). This Complaint involves bulk electronic access to Certified Mail delivery status. It does not involve the separate special service titled Delivery Confirmation.

² Walz alleges that the pilot test began on or about September 28, 2001. Complaint at 1. The Postal Service admits to beginning the pilot test in November 2001. Answer of the United States Postal Service, May 29, 2003, at 2. The precise date is not material to this ruling.

pilot test, and further alleges it was informed by the Postal Service that there was no money in the budget to add Walz to the list of participants. Walz expresses concern with the potential diversion of Return Receipt volume and revenue that might occur as a result of bulk electronic access, and with the competitive effects resulting from the Postal Service providing this service. After conclusion of the pilot test, the Postal Service implemented bulk electronic access as an option for verifying delivery status of Certified Mail pieces to anyone meeting Postal Service requirements.

Walz presents the Commission with valid allegations of procedural deficiencies in the Postal Service's development of Certified Mail bulk electronic access as a pilot test, and as a standard offering. The Postal Service arguably should have presented a proposal to the Commission requesting either an advisory opinion, or an opinion and recommended decision, prior to conducting the pilot test, or prior to including the service as a standard offering. Regardless of whether the Postal Service thought the Act required Commission involvement at either of these stages, the Postal Service should have, at a bare minimum, informed the Commission that it was making changes to Certified Mail service. Without this knowledge, the Commission can not be an effective partner with the Postal Service in promoting postal services, or in answering mailer inquiries. Also, the Commission and parties could be disadvantaged at the start of a rate case if the full characteristics of a subclass or special service are not known.

The Commission has reviewed bulk electronic access and the substantive arguments present in the Complaint. At the time this Complaint was filed, the Postal Service was not providing adequate notice to mailers of the availability of bulk electronic access. The Postal Service has since corrected this deficiency through publication of the parameters of bulk electronic access in the *Postal Bulletin*. The Commission does not find any additional continuing issue with bulk electronic access that could be resolved via proceeding with this Complaint. Therefore, in its discretion, the Commission shall decline to hold hearings, and shall dismiss this Complaint.

Arguments Presented

Walz proffers three arguments as to why the Postal Service's provision of bulk electronic access is in violation of the requirements of the Act. First, Walz argues that before the Postal Service may offer bulk electronic access as a service, or as an experiment, it must seek a recommended decision from the Commission. It asserts that the Postal Service did not approach the Commission with a proposal for a rate or classification change allowing for the service, or for the experiment. *See generally*, §§ 3622 and 3623. Thus, Walz contends that there has been no showing that the service, or the experiment, is within the policies of the Act.

Second, Walz asserts that § 3622(b)(3) prohibits the provision of a class of mail at no fee.³ Walz alleges that bulk electronic access is a class of mail, and is being provided at no fee. Walz asserts that studies were not undertaken to quantify the costs of bulk electronic access, nor was market research conducted prior to Docket No. R2001-1 to analyze the impact of bulk electronic access. Furthermore, Walz contends that because bulk electronic access is being provided at no fee, bulk electronic access is being cross-subsidized by other postal customers. Thus, Walz contends that by providing bulk electronic access at no fee, the Postal Service is not meeting the requirements of § 3622(b)(3).

Finally, Walz argues that § 3661(b) of the Act requires the Postal Service to seek an advisory opinion whenever the Postal Service determines that there should be a change in the nature of postal services.⁴ Walz alleges that the Postal Service did not seek an advisory opinion from the Commission before implementing bulk electronic access. Walz contends that by not seeking an advisory opinion the Postal Service has not met the requirements of § 3661(b).

³ Section 3622(b)(3) states: "the requirement that each class of mail or type of mail service bear the direct and indirect postal costs attributable to that class or type plus that portion of all other costs of the Postal Service reasonably assignable to such class or type;"

⁴ Section 3661(b) states: "When the Postal Service 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, it shall submit a proposal, within a reasonable time prior to the effective date of such proposal, to the Postal Rate Commission requesting an advisory opinion on the change."

Walz requests that the Commission issue a recommended decision rejecting as unsupported the Postal Service's offering of bulk electronic access, along with other relief as the Commission might deem appropriate.

The Postal Service filed an answer to the Complaint on May 29, 2003.⁵ The Service does not refute that bulk electronic access was not explicitly presented, considered, or recommended by the Commission, but nevertheless argues that this service option "is within the scope of the current DMCS [*Domestic Mail Classification Schedule*] language recommended by the Commission in Docket No. R2001-1, and approved by the Postal Service Governors." Answer at 10.

Furthermore, the Postal Service contends that because providing bulk delivery information had been discussed prior to Docket No. R2001-1 in regard to Delivery Confirmation service, Walz should have been aware that the Docket No. R2001-1 electronic access proposal for Certified Mail service could also include a bulk option. Thus, the Postal Service argues that Walz could have argued its position on bulk electronic access in Docket No. R2001-1, and having missed its opportunity to do so, it should not be provided with another opportunity to do so now.

The Postal Service asserts that the \$2.30 fee for Certified Mail includes an appropriate charge for delivery information. It contends that it would not make sense to separately charge for bulk electronic access (estimated at 0.08 cents per transaction) when the more costly telephone access information (estimated at 7.0 cents per transaction) is now included with the Certified Mail fee. *Id.* at 11-12.

The Postal Service argues that providing bulk electronic access is not qualitatively different from the changes reviewed by the Commission in Docket No. R2001-1. Thus, the service is not itself a change in the nature of a postal service that would require the Commission to review the service pursuant to § 3661(b). Furthermore, while acknowledging that the Commission has previously declined to embrace the Postal Service's view, the Postal Service contends that the Postal

⁵ Answer of the United States Postal Service, May 29, 2003 (Answer).

Service's failure to follow the procedural requirements of § 3661(b) does not constitute a cognizable complaint under § 3662.

The Postal Service concludes by arguing that a § 3662 complaint is designed to address whether the Postal Service is charging rates that do not conform to the policies of the Act. The Postal Service contends that Walz has not demonstrated this may be the case. Finally, the Postal Service argues that relief under § 3662 does not extend to a Commission declaration that a service is not authorized.

The Postal Service requests that the Commission either dismiss the Complaint, or summarily indicate that the current DMCS language does not prohibit bulk electronic access as one means of electronic confirmation.

On June 20, 2003, Walz filed a reply to the Postal Service's Answer in which it develops further support for its Complaint and proffers several additional arguments.⁶ Walz contends that the Postal Service did not meet the intent of Rule 64(a) in Docket No. R2001-1 by not disclosing that the Certified Mail changes proposed in that docket could include a bulk electronic access option.⁷

Walz argues that the facts surrounding the bulk electronic access pilot test parallel the facts of *United Parcel Service, Inc. v. United States Postal Service*, 604 F.2d 1370 (3d Cir. 1979). *United Parcel Service*, at 1380, held "that any proposal which would effect a change in mail classification or a rate, including a test or experiment embodying those features, must be submitted to the Rate Commission, no matter how experimental, temporary, or limited in scope the change." Walz contends that the Postal Service has again created a mail classification and conducted a marketplace test without proceeding through the Commission. Reply at 3.

⁶ Walz Postal Solutions, Inc. Motion for Leave to Reply to Postal Service Answer to Complaint, June 20, 2003 (Reply).

⁷ Rule 64 (a)(1) states: Each formal request filed under this subpart shall include such information and data and such statements of reasons and bases as are necessary and appropriate fully to inform the Commission and the parties of the nature, scope, significance, and impact of the proposed new mail classification schedule or the proposed changes therein and to show that the mail classification schedule as proposed to be established or changed is in accordance with the policies and the applicable criteria of the Act. . . .

Walz further alleges that in order to use the bulk electronic access service, a customer “must make a significant capital investment in a digital certified mail postage meter with bulk electronic file transfer capability, approved by the Postal Service, or pay an outsource company to prepare their mail.” *Id.* at 9.

Finally, Walz alerts the Commission to the May 29, 2003 edition of the *Postal Bulletin*, which discusses future revisions to the *Domestic Mail Manual*, in which the Postal Service adds bulk electronic access as an option to obtain Certified Mail delivery status. *Id.* at 6.

The Postal Service filed a response to the Walz Reply on July 7, 2003.⁸ The Postal Service argues that it “cannot see how the [DMCS] language proposed in and later adopted in Docket No. R2001-1 would be any different had the Postal Service concluded prior to filing its Request that implementation of bulk electronic file transfer would be operationally feasible.” Response at 2. Thus, the Postal Service contends that bulk electronic access is consistent with the review of Certified Mail that occurred in Docket No. R2001-1. The Postal Service further suggests that if the Commission concludes that bulk electronic access falls within the scope of the current DMCS language, this Complaint should be dismissed.

The Postal Service also contends that two claims made by Walz are erroneous. First, the Postal Service asserts that what is needed to use bulk electronic access is the ability to send and receive electronic files. A third party service provider is not required as alleged on pages 2, 7, and 11 of the Reply. *Id.* at 4. Second, the Postal Service restates its estimate that the cost for an electronic file transfer (of multiple records) is 0.08 cents, not 8 cents as alleged on page 10 of the Reply. *Id.* at 7.

Commission analysis. The Commission first became aware that the Postal Service was offering a Certified Mail bulk electronic access option, and had conducted a pilot test, in February 2003 when Walz inquired about the Commission’s role in approving bulk electronic access. The Postal Service had not notified the Commission

⁸ Response of the United States Postal Service to Walz Postal Solutions, Inc. Motion for Leave to Reply to Postal Service Answer to Complaint, July 7, 2003 (Response).

that it was conducting a pilot test, nor did the Postal Service inform the Commission that it decided to include bulk electronic access as a standard offering.

When Walz inquired about bulk electronic access, the Commission assumed, incorrectly, that the mailer was confusing the delivery information options available for Certified Mail with the delivery information options available for Delivery Confirmation. The Commission conducted a review of the parameters of both services to attempt to discover the source of the confusion. The Domestic Mail Manual (DMM), the Domestic Mail Classification Schedule (DMCS), the testimony and Opinion and Recommended Decision from Docket No. R2001-1, and the testimony and Opinion and Recommended Decision from Docket No. R97-1 were consulted. The Commission concluded that the documentation clearly indicated the availability of a bulk electronic access option for Delivery Confirmation. However, the documentation did not mention even the possibility of a bulk electronic access option for Certified Mail. The Commission further concluded that Certified Mail bulk electronic access was not explicitly considered in Docket No. R2001-1. The Commission provided a response to Walz based on this review.

As later became evident, the Commission was not aware of the Certified Mail changes (including the pilot test) implemented by the Postal Service. This resulted in the Commission not being able to accurately describe the parameters of an available postal service to a Postal Service customer.⁹

The overriding issue of this Complaint is the dissemination of information in regard to the availability of services offered by the Postal Service. The Postal Service must inform mailers, and the Commission, of the services that it is offering if it expects mailers to use the services, and in order to offer those services in a non-discriminatory manner in compliance with the requirements of the Act.

The Postal Service has many avenues for disseminating information when it decides to offer a new service, or decides to make changes to an existing service. The

⁹ There is no indication that mailers in general could have been aware that bulk electronic access was available. This condition potentially existed until publication of the May 29, 2003, edition of the *Postal Bulletin*, which was published after this Complaint was filed. Offering a service to select mailers, without informing similarly situated mailers of the availability of the service, raises at least the appearance of discrimination.

Commission should be considered as one of the avenues for disseminating information available to the Postal Service. In addition to disseminating information, a proceeding before the Commission allows for public input, and an independent review of the Postal Service's proposals in regard to the policies of the Act. The Postal Service can request expedited consideration of proposals, such as a proposal for bulk electronic access, utilizing the Commission's rules for experimental changes, minor classification cases, and/or market tests. Rules 67-67d, 69-69c and 161-166. Whether or not the Postal Service thought that utilizing any of these procedures was required by statute, proceeding through the Commission would have been an effective avenue for communicating the parameters of bulk electronic access to mailers.

There may be changes to services that the Postal Service considers so minor, or in the realm of operational management, or that might technically fit within existing DMCS language, such that they might not statutorily require a proceeding before the Commission. This does not obviate the benefits of informing the Commission, or alleviate the Commission's need to be informed of how the parameters of a service are changing, and of what services are being offered. Without this knowledge, the Commission can not be an effective partner with the Postal Service in communicating with mailers.

Perspective is gained in regard to the issues of this Complaint by reviewing the documentation available for both Certified Mail and Delivery Confirmation at the time the Complaint was filed.¹⁰

The Postal Service informs mailers of the parameters of its services through publication in the DMM. At the time the complaint was filed, the DMM referenced two

¹⁰ Three time frames are relevant to the Complaint, the occurrence of the pilot test, when the Complaint was filed, and the current state of bulk electronic access. The Commission will comment, but will not dwell on the time frame of the pilot test. The Commission typically has not become involved in relatively minor pilot tests where there is no change in classification or fee. Furthermore, because the test is no longer in effect, it is in general a moot issue.

methods of obtaining delivery status for Certified Mail.¹¹ Section S912 § 1.1

“Description” states in part:

Delivery status information for a certified mail item can be found at www.usps.com by entering the article number shown on the mailing receipt.

Section S912 § 1.5 “Delivery Record” states:

Mailers may request a delivery record after mailing under S915.

Section S915 refers to Return Receipt service, which may be obtained after mailing. References to the telephone call service, and any reference to bulk electronic access are absent from the Certified Mail descriptions in the DMM.

In contrast, the DMM section for Delivery Confirmation explicitly describes the availability of three distinct methods for obtaining delivery information. Section S918 § 1.1 “Description” states in part:

This service may be obtained in two forms: (1) an electronic option for mailers who apply identifying barcodes to each piece, provide an electronic file, and retrieve delivery status information electronically; and (2) a retail option for mailers who do not use an electronic file or who wish to retrieve delivery information through the Postal Service Internet address or a toll-free telephone number.

Delivery information may be obtained through an electronic option, through the Internet, and through a toll-free number. The descriptions continue in Section S918 § 1.4

“Service Options”:

The two Delivery Confirmation service options are:

a. Retail option: Available at post offices at the time of mailing. A mailing receipt is provided. Mailers can access delivery information over the Internet at www.usps.com or by calling 1-800-222-1811 toll-free and providing the article number.

b. Electronic option: Available to mailers who establish an electronic link with the Postal Service to exchange acceptance and delivery data. No mailing receipt is provided.

¹¹ The following references are to DMM 57, June 30, 2002, including applicable *Postal Bulletins* through April 29, 2003.

Subsection S918 also contains additional information about using the electronic option and electronic file transmission. Corresponding subsections are absent from the Certified Mail DMM descriptions.

Review of the above documentation provides the perspective in which the Commission views the parameters of Certified Mail and Delivery Confirmation delivery information options as of the date the Complaint was filed. The Postal Service accurately described an Internet option, a call center option, and an electronic bulk option for obtaining Delivery Confirmation information. The corresponding description for Certified Mail indicated delivery information could be obtained using the Internet, or return receipt. The descriptions obtained by reviewing the DMM are unambiguous. The Postal Service had not described an electronic bulk option for Certified Mail.

Walz' First Argument

Walz argues that the Postal Service did not seek a recommended decision prior to conducting an experiment or adding bulk electronic access as an option for obtaining Certified Mail delivery information as required by §§ 3622 and 3623. Therefore, Walz contends that there has been no showing that this option, or the pilot test, is within the policies of the Act.

The Service contends that because bulk electronic access was already being used as one form of “electronic confirmation” with Delivery Confirmation, Walz should have been aware that bulk electronic access potentially could be an option for providing “electronic confirmation” with Certified Mail. Because Walz should have been aware of this possibility, the Postal Service suggests Walz had an opportunity to litigate bulk electronic access in Docket No. R2001-1, failed to do so, and should not be given another opportunity to litigate this issue at this time.

The Postal Service argues that the Commission, potential participants, and actual participants should have discerned analogies between two unrelated services, which were considered at different periods in time, and in different dockets. This position would require the Commission, potential participants, and actual participants, to

possess an unreasonable level of knowledge. The Commission does not accept this position.

The Postal Service's position would require potential participants, participants, and the Commission to be prescient to the potential for extending the Postal Service's proposals. Participants would have to engage in endless litigation to explore the vast possibilities of meanings that could be attached to DMCS language proposals. This could grind Commissions proceedings to a standstill. It might lead to DMCS language written with such specificity as to allow the Postal Service no operational leeway in implementing its services. The Postal Service can avoid this by preparing its proposals to inform the Commission and the interested participants in accordance with Rule 64(a)(1).

Rule 64(a)(1) requires "[e]ach formal request filed under this subpart shall include such information and data and such statements of reasons and bases as are necessary and appropriate fully to inform the Commission and the parties of the nature, scope, significance, and impact of the proposed new mail classification schedule or the proposed changes therein. . .". Every proposal should be sufficient to inform the Commission, potential participants, and actual participants of all service options.

The Commission does not agree that if a participant were aware of the delivery information options available for Delivery Confirmation, then the participant should realize that these same options will probably become available for Certified Mail. The recommended DMCS languages for the two services are similar. However, the specific Postal Service proposals presented in separate rate cases provide a very different context for each service that does not necessarily allow one to conclude that the corresponding electronic confirmation options could be the same.

The Commission concludes that there was insufficient notice provided to potential and actual participants that the service options for the two unrelated services could be interpreted in the same manor. It follows that the Commission finds Walz did not have the opportunity to litigate bulk electronic access in Docket No. R2001-1.

The Postal Service argues that bulk electronic access is within the scope of the DMCS language recommended by the Commission in Docket No. R2001-1.

The Commission's use of general language when recommending language for the DMCS allows Postal Service management significant operational latitude when implementing an actual service, without having to repeatedly present proposals before the Commission for recommendations. This is consistent with the policies of the Act, as the day-to-day operational details of a service fall within the purview of Postal Service management.

The use of general language, however, does not provide the latitude to employ the general DMCS language to create a new service. A new service created in this fashion, absent Commission review, may or may not comply with the policies of the Act.

A service that clearly does not comply with the applicable DMCS language immediately raises a suspicion of non-compliance with the policies of the Act. The issue in this Complaint, however, is a service that arguably is in technical compliance with the DMCS language, but that has not been reviewed to show compliance with the policies of the Act. Resolving this issue requires the Commission to interpret the applicable DMCS language. To provide the Commission with guidance, the Commission finds it reasonable to interpret the applicable DMCS language within the context of the docket(s) where the DMCS language was developed. Emphasis will be given to the description and implied intent provided by the Postal Service's witnesses.

Postal Service Witness Mayo proposed enhancements to Certified Mail in Docket No. R2001-1.

I am proposing a significant feature enhancement to certified mail. Specifically, this enhancement is providing both Internet access and call center access to delivery time and date for certified mail. This opportunity is possible by using the electronically-captured delivery data now held by the Postal Service. Access to delivery date and time information for certified mail will offer certified mail customers a new way to verify delivery of a mailpiece. By adding Internet access to delivery data for certified mail, customers will be able to apply one certified mail label to a mailpiece and access delivery data via the USPS.com website shortly after delivery. For those customers without easy access to the Internet, or those

customers preferring the telephone, a toll-free phone number to a call center will be available for use in obtaining the delivery data.

Docket No. R2001-1, USPS-T-36 at 25-26. The description discusses “one certified mail label” and “access delivery data via the USPS.com website.” A second option to access data is provided through the call center. This implies a service geared toward the retail customer. It does not discuss the ability to access data electronically in bulk. An electronic bulk capability would imply a service geared toward commercial mailers.

Postal Service Witness Plunkett proposed the corresponding description for Delivery Confirmation in Docket No. R97-1.

There will be two types of acceptance available, each targeted to a different type of customer. Senders of individual mail pieces may obtain delivery confirmation service at the postal retail counter, or through their rural carrier. . . . The customer may then access delivery confirmation information by use of a toll-free phone number or the Internet.

The second type of delivery confirmation acceptance is designed to serve the needs of larger volume shippers who are capable of providing the Postal Service an electronic manifest of all delivery confirmation pieces on the date that the pieces are mailed. . . . Users of the electronic form of delivery confirmation must apply the necessary labeling themselves, and must access the delivery confirmation information electronically.

Docket No. R97-1, USPS-T-40 at 16-17; See *also*, Docket No. R97-1, USPS-T-22. From this description, it is clear that there are two distinct forms of Delivery Confirmation service, one geared toward the retail customer, and one toward the commercial mailer. The Postal Service is specific in indicating the service options available to access delivery information for each group.

Within the context of the Postal Service’s testimony, descriptive language was recommended and implemented in the DMCS. The DMCS typically employs general language, which allows the Postal Service considerable leeway to implement the operational details of the service. The applicable Certified Mail DMCS language appears in two sections:

Section 941.11. 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, and guarantees retention of a record of delivery by the Postal Service for a period specified by the Postal Service.

Section 941.33. The date and time of delivery is made available to the mailer electronically.

The corresponding DMCS language for Delivery Confirmation appears in § 948.11:

Delivery Confirmation service provides, upon request, electronic confirmation to the mailer that an article was delivered or that a delivery attempt was made.

The term “electronic confirmation” is general and not defined. There is no definitive way to tell what the term actually includes without referring to the context of the dockets in which the DMCS languages were originally recommended.

The associated Certified Mail and Delivery Confirmation DMCS fee schedules, however, do indicate that electronic confirmation for Delivery Confirmation is not provided in the same fashion as electronic confirmation for Certified Mail. Delivery Confirmation fee schedule 948 distinguishes “electronic” and “retail” versions of Delivery Confirmation, while Certified Mail fee schedule 941 only indicates a per-piece fee for Certified Mail. Furthermore, “retail” Delivery Confirmation includes two distinct types of “electronic confirmation,” which are both substantively different from the “electronic confirmation” provided with “electronic” Delivery Confirmation.

The Delivery Confirmation and Certified Mail proposals were presented in different contexts. The Certified Mail proposal infers a service applicable to a retail customer, versus a service targeted to a commercial mailer. The enhancements to Certified Mail specifically cite provision of delivery information through the Internet, and through the call center. In contrast, the Delivery Confirmation proposal separately targeted retail customers and commercial mailers, with specific services tailored to each

groups' individual needs. The proposal indicates that delivery information will be provided through the Internet, the call center, or electronically in bulk.¹²

The Commission concludes that the Postal Service did not submit a proposal specifically mentioning bulk electronic access pursuant to §§ 3622 or 3623, nor was Certified Mail bulk electronic access specifically considered in Docket No. R2001-1. Limiting analysis to whether bulk electronic access falls within the technical DMCS language, necessarily ignores the context in which the Certified Mail enhancements and the associated DMCS language was originally proposed. This has the potential for allowing the introduction of new services, absent Commission review, that may not comply with the policies of the Act. Thus, the Commission is not persuaded by the Postal Service's argument that bulk electronic access is acceptable because technically it is within the scope of the DMCS language recommended in Docket No. R2001-1.

Finally, the Postal Service argues that it can not foresee how the recommended DMCS language would have been any different if bulk electronic access had been explicitly considered. The Commission does not accept this standard. Proposals are reviewed in context, and it is not possible to know what DMCS language would have been recommended had the Commission been fully informed of the parameters of the electronic option at the time the Certified Mail DMCS language was under consideration.

The Commission concludes that in Docket No. R2001-1 the Postal Service did not present a proposal designed to inform the Commission on Certified Mail bulk electronic access necessary to satisfy the requirements of § 3622 or § 3623. The Complainant has brought to light a valid procedural deficiency. The Postal Service should have presented a more comprehensive proposal. However, the Complainant does not contend that evidence will be produced showing that bulk electronic access, as currently being offered, is in any way inconsistent with the policies of the Act. As a

¹² The changes that the Postal Service implemented in the DMM after the Commission provided its recommendations correspond to the descriptions provided in each docket, except for omission of the call center option for Certified Mail.

result, there is no substantive issue for the Commission to consider which could be remedied through hearing this Complaint.

Walz' Second Argument

Walz argues that the absence of a separate fee for bulk electronic access violates the requirements of § 3622(b)(3). Section 3622(b)(3) requires “that each class of mail or type of mail service bear the direct and indirect postal costs attributable to that class or type plus that portion of all other costs of the Postal Service reasonably assignable to such class or type.” Walz contends that bulk electronic access is a class of mail or type of mail service. Walz asserts that because there is no separate fee associated with bulk electronic access (assuming that there is a cost to provide bulk electronic access), bulk electronic access does not bear the direct and indirect postal costs attributable to that class or type plus that portion of all other costs.

Walz further argues that because there is no fee associated with bulk electronic access, mailers other than the users of bulk electronic access pay for the cost of this class of mail or type of mail service. Thus, bulk electronic access is cross-subsidized by other mailers.

The Postal Service responds that the \$2.30 fee for Certified Mail includes an appropriate charge for delivery information, and it would not make sense to separately charge for bulk electronic access when a more costly telephone access option is already included in the Certified Mail fee.

Historically, the Commission scrutinizes Certified Mail service as a single entity when analyzing the requirements of § 3622(b)(3). Walz does not identify any § 3623(c) consideration that suggests bulk electronic access should be distinguishable as a separate class of mail or type of mail service requiring separate application of § 3622(b)(3). The Postal Service would collect the same information, incur the same costs, and follow the same procedures in providing Certified Mail whether or not it provided bulk electronic access. The only difference is in the provision of delivery information. The Postal Service contends that bulk electronic access is provided at a

lower cost than the other available delivery information options. Thus, it has not been demonstrated that bulk electronic access should be viewed as a separate type of mail service that requires an independent price.

In Docket No. R2001-1, the Commission recommended a Certified Mail fee in compliance with § 3622(b)(3). As a check, the Commission will consider whether Certified Mail, with the addition of the service option of bulk electronic access, continues to comply with the policies of § 3622(b)(3).

The most direct method for evaluating the requirements of § 3622(b)(3) is to analyze Certified Mail cost coverage. The cost coverage of Certified Mail is calculated by dividing Certified Mail fee revenues by the Certified Mail attributable cost, expressed as a percentage. A cost coverage over 100 percent indicates that the class of mail or type of mail service is not cross-subsidized by other mailers. The magnitude of the cost coverage greater than 100 percent indicates the portion of Certified Mail revenues expected to be available to offset institutional costs. The Commission weighs all of the factors of the Act in determining reasonable levels of contribution to institutional costs for each class and service.

The established fee for Certified Mail is \$2.30, with a cost coverage of 133.4 percent. Docket No. R2001-1, Appendix G, Schedule 1. The average unit attributable cost of Certified Mail was found to be 172.44 cents per piece, and the contribution of Certified Mail was expected to be 57.56 cents per piece. No costs for bulk electronic access were included in this analysis. The Postal Service asserts that the cost of providing bulk electronic access is 0.08 cents per transaction (a transaction may include multiple pieces).¹³ The cost of providing bulk electronic access (0.08 cents) is negligible in comparison to the cost (172.44 cents), contribution (57.56 cents), or fee (230.00 cents) for Certified Mail. Because of the differences in magnitudes of these relationships, the cost of bulk electronic access will not have a material impact on the calculation of the overall cost coverage for Certified Mail. As recommended in Docket

¹³ The Complaint does not provide a persuasive basis for questioning the accuracy of this estimate. The cost would have to be underestimated by orders of magnitude before it would affect the analysis.

No. R2001-1, Certified Mail demonstrates an acceptable cost coverage and meets the requirements of § 3622(b)(3).

There is no plausible possibility that the addition of bulk electronic access causes Certified Mail to violate the requirements of § 3622(b)(3), or causes Certified Mail to be cross-subsidized by other mailers. The Commission is not persuaded that this presents a reasonable ground for hearing the Walz Complaint.

Walz' Third Argument

Walz argues that § 3661(b) requires the Postal Service to submit a proposal to the Commission requesting an advisory opinion prior to implementing bulk electronic access. Walz contends that the Postal Service did not request the necessary advisory opinion. Section 3661(b) states: "When the Postal Service 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, it shall submit a proposal, within a reasonable time prior to the effective date of such proposal, to the Postal Rate Commission requesting an advisory opinion on the change."

The Postal Service argues that seeking an advisory opinion was unnecessary because bulk electronic access was qualitatively no different from the changes reviewed by the Commission in Docket No. R2001-1.

The Postal Service notes a difference of opinion with the Commission on whether failure to comply with the procedural requirements of § 3661(b) can be used as a basis for hearing a § 3662 complaint. Answer at 13. The Commission believes that complaints can be sustained on this basis. See, e.g., PRC Order No. 1239 (May 3, 1999) at 14. This Complaint does not present the appropriate framework for resolving this issue.

The Postal Service admittedly did not seek a § 3661(b) opinion for Certified Mail bulk electronic access. Whether the Postal Service arguably should have sought an advisory opinion because there has been a change in the nature of a postal service on a nationwide or substantially nationwide basis is a procedural argument. However, the

change that has been made is relatively minor, it is an addition which enhances an existing service. Walz does not contend that bulk electronic access to Certified Mail delivery information is inconsistent with the policies of the Act. This procedural argument does not present a reasonable ground for hearing the Walz complaint.

Miscellaneous Arguments

Three issues appear in the pleadings that bear on the merits of the Complaint, but that are not directly associated with Walz's three primary arguments. Each issue will be briefly examined.

It is clear that Walz is dissatisfied with the Postal Service's selection process for including participants in the pilot test. This could have been mitigated if the Postal Service proceeded through the Commission and presented a proposal for a pilot test. The Commission provides an effective avenue for communicating with mailers in order to notify them of possible Postal Service actions. However, mailers also must realize that there is no individual right to participate in a Postal Service test. Short duration tests may limit participation to a limited number of participants, or limit participation to specific geographic areas without violating the requirements of the Act.

The second issue is the absence of notice of the availability of bulk electronic access at the time the Complaint was filed. At the time the Complaint was filed, only specific mailers, not the Commission or mailers in general, were aware of the availability of bulk electronic access. The mailers that were aware of the service could have had a potential business advantage over the mailers that were unaware of the service. This might be viewed as discriminatory. If this situation had been continuing, the Commission might well have allowed this Complaint to proceed.

However, after the Complaint was filed the Postal Service rectified this problem by providing notice in the May 29, 2003 edition of the *Postal Bulletin*, which discusses future revisions to DMM S912 Certified Mail § 1.1 "Description":

Certified Mail service provides the sender with a mailing receipt and, upon request, electronic verification that an article was delivered or that a delivery attempt was made. Customers can verify the delivery status in

three ways: (1) over the Internet at *www.usps.com*; click *Track & Confirm* and enter the article number shown on the mailing receipt; (2) by telephone at 1-800-222-1811; or (3) by bulk electronic file transfer for mailers who provide an electronic manifest to the Postal Service. . . .

This notice clearly describes three methods of obtaining delivery information for Certified Mail.¹⁴ The notice now places all mailers in an equal position to utilize bulk electronic access in a non-discriminatory manner.

The third issue is the Walz allegation that bulk electronic access is only available through a third party provider. This issue also raises issues of discrimination as to the Postal Service's selection process of selecting the third party providers. The Postal Service denies that a third party provider is necessary to use bulk electronic access.

After reviewing the changes to the DMM Certified Mail section presented above, and gaining a better understanding of the parameters of bulk electronic access through the pleadings, the Commission concludes that Walz has made an incorrect assumption. As described, bulk electronic access is available to all mailers willing to meet Postal Service requirements without the need to utilize third party providers.¹⁵

Commission Discretion

Section 3662 allows the Commission discretion on whether or not to hear a complaint.¹⁶ The Commission has developed rules to guide the Commission's exercise of discretion.

The Commission shall entertain only those complaints which clearly raise an issue concerning whether or not rates or services contravene the policies of the Act; thus, complaints raising a question as to whether the Postal Service has properly applied its existing rates and fees or mail

¹⁴ As a future step, the Postal Service might consider including information in the Certified Mail section that is similar to what is in the Delivery Confirmation section on accessing bulk electronic file transfer.

¹⁵ Apparently, a postage meter vendor is distributing a postage meter that directly utilizes bulk electronic access. The Commission welcomes third party innovation, which benefits and encourages greater use of Postal Service products. Innovation by the Postal Service and the mailing community is essential for the future success of the Postal Service.

¹⁶ Section 3662 states in part: "The Commission may in its discretion hold hearings on such complaint."

classification schedule to a particular mail user or with regard to an individual, localized, or temporary service issue not on a substantially nationwide basis shall generally not be considered as properly raising a matter of policy to be considered by the Commission.

Section 3001.82. To determine whether this complaint clearly raises an issue concerning whether or not rates or services contravene the policies of the Act, the Commission has weighed the arguments that are implicitly and explicitly evident regarding whether or not rates or services contravene the policies of the Act.

The arguments in favor of hearing this Complaint are based on the procedural requirements of §§ 3622, 3623, and 3661(b). The Postal Service did not present a proposal to the Commission for consideration pursuant to the procedural requirements of §§ 3622, 3623, or 3661(b) prior to initiating a bulk electronic access pilot test, or prior to making bulk electronic access a standard offering. These procedural requirements provide an avenue for the Postal Service to vet its service offerings through the public hearing process, which potentially could have improved the service offering, improved the Postal Service's communications with mailers and the Commission, and led to less mailer dissatisfaction (as evident by this Complaint). However, after alerting the Commission to these valid procedural deficiencies, the Complainant did not present any persuasive argument alleging a continuing violation of the Act, which could be remedied via hearing this Complaint.

The Commission has not been persuaded that bulk electronic access may contravene the substantive policies of § 3662(b)(3). The Commission does not consider bulk electronic access as a class of mail or type of mail service separate from Certified Mail, and thus, it does not require independent analysis under § 3662(b)(3). The fee charged for Certified Mail more than adequately covers the cost of providing the bulk electronic access option, and there does not appear to be any issue of cross-subsidization.

The substantive issue that was most troubling to the Commission at the time the Complaint was filed was the Postal Service's failure to notify mailers that bulk electronic access was an option for obtaining delivery information. There was a question of

discrimination because the Postal Service was effectively offering bulk electronic access to only a select few mailers. The Postal Service has since rectified this problem by publishing the parameters of bulk electronic access in the May 29, 2003 edition of the *Postal Bulletin*.

In Docket No R2000-1, the Commission recommended that the Postal Service explore methods to reduce the cost of Certified Mail.¹⁷ “Although the Service has introduced electronic signature capture, the Commission suggests that the Postal Service explore other methods to reduce the cost of this service.” PRC Op. R2000-1 (November 13, 2000) para. 6084. This same docket included a concurring opinion expressing the Commission’s philosophy in regard to modernizing postal services, including Certified Mail. Docket No. R2000-1, Concurring Opinion of Chairman Gleiman, Commissioner Goldway and Commissioner Omas. The Commission concludes that bulk electronic access is consistent with the Commission’s prior recommendations that manual services, such as Certified Mail and Return Receipt, should be modernized through the use of less costly electronically-based options.

For the foregoing reasons, the Commission will exercise its discretion not to hold hearings, and shall dismiss this Complaint.

¹⁷ Because of the correlation between high use of Return Receipt with Certified Mail, providing a lower cost option for Return Receipt such as bulk electronic access is beneficial to users of Certified Mail.

It is ordered:

The Complaint of Walz Postal Solutions, April 29, 2003, is dismissed.

By the Commission.
(SEAL)

Steven W. Williams
Secretary