

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

Complaint on First-Class Mail
Service Standards

Docket No. C2001-3

BRIEF OF THE UNITED STATES POSTAL SERVICE

Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking

Michael T. Tidwell
Attorney

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INTRODUCTION

On June 19, 2001, the Postal Rate Commission received a Complaint filed by Douglas F. Carlson, (hereinafter, “Complainant”),¹ alleging a failure on the part of the United States Postal Service to comply with two general provisions of the Postal Reorganization Act, 39 U.S.C. § 101 *et seq.* (hereinafter, “the Act.”) Complaint’s first general allegation is that the Postal Service implemented changes to the 2-day and 3-day service standards for First-Class Mail on at least a substantially nationwide basis during 2000-01, without first requesting a non-binding opinion from the Commission on the advisability of those changes, as required by 39 U.S.C. § 3661(b).² Secondly, the Complaint alleges that the service standard changes have resulted in postal customers not receiving First-Class Mail service in accordance with various policies of the Postal Reorganization Act. Section 3662 permits persons alleging such a failure in service to lodge a complaint with the Commission. If the Commission finds the complaint to be justified, it is authorized to render a public report to the Postal Service for such action as the Postal Service deems appropriate.³

¹ See Complaint of Douglas F. Carlson On First-Class Mail Service Standards (June 19, 2001).

² Section 3661 provides that “[w]hen 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.”

³ In pertinent part, § 3662 provides that “[i]nterested 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 manner as it may prescribe. The Commission may in its discretion hold hearings on such complaint. If . . . the Commission after hearing finds the complaint to be justified,

On July 30, 2001, the Postal Service filed a motion seeking dismissal of the Complaint. The Commission declined to grant that motion and, instead, exercised its discretion to grant Complainant and other interested parties the opportunity for discovery and hearings on the issues raised in the Complaint.⁴ Accordingly, the instant docket has proceeded with ample opportunity for discovery, culminating in the filing of testimony by both the Complainant and the Postal Service.⁵

The Postal Service respectfully submits that the extensive record developed in this proceeding confirms that the Complaint continues to be without merit. The Postal Service has provided for the record an extensive chronology, description and explanation of all material aspects of the service standard changes at issue in this proceeding. Mr. Gannon's Declaration demonstrates that the 2-day and 3-day service standard changes at issue here were not the product of a plan hidden from public view or previously withheld from Commission scrutiny. Instead, his Declaration reveals that these service standard changes were merely the product of the Postal Service's belated completion of the realignment plan submitted for Commission review in Docket No. N89-1.

it shall render a public report thereon to the Postal Service which shall take such action as it deems appropriate.

⁴ See PRC Order No. 1320 (September 12, 2001).

⁵ See, Direct Testimony of Douglas F. Carlson (DFC-T-1, as revised February 6, 2004); Direct Testimony of Charles M. Gannon On Behalf of United States Postal Service (USPS-T-1; as revised March 15, 2004); and Rebuttal Testimony of Douglas F. Carlson (DFC-RT-1; May 27, 2004).

For the reasons explained below, the Commission should determine that no basis exists for concluding that the service standard changes contested here were implemented in violation of § 3661. Further, the Commission should affirm that implementation of the contested service standard changes has not resulted in First-Class Mail service being provided in a manner contrary to any policy of the Act. Complainant has failed in every material respect to carry his burden of proof on these issues. Accordingly, the Commission should conclude that the Complaint is not justified. And, it should decline Complainant's request for the issuance of a public report recommending any further action by the Postal Service, within the meaning of § 3662.

I. The Facts Belie The Allegation That The Postal Service Has Failed To Comply With § 3661

A. The Contested Service Standard Changes Are Phase II Of The Docket No. N89-1 Realignment Plan

In Docket No. N89-1, the Postal Service put forth what it regarded to be a persuasive justification for a First-Class Mail service standard realignment plan. Phase I of that plan was to involve changes between origin-destination pairs for which there was an overnight service standard. Phase II was to involve origin-destination pairs for which there were either 2-day or 3-day service standards. The Commission subjected the plan to a public hearing on the record and thoroughly reviewed its bases and objectives. After considering the record developed in that docket, the Commission advised against implementation of the Postal Service's plan, offering the opinion that the underlying market research (1) did not measure customer support for the proposed realignment plan and (2) was technically flawed. PRC Op. N89-1, Advisory Opinion Concerning A Proposed Change In The Nature of Postal Services at 2 (July 25, 1990).

From that date forward, the Postal Service has respectfully disagreed with the negative conclusions in the Commission's non-binding advisory opinion and, in accordance with § 3661, has exercised its prerogative to implement its realignment plan. The Postal Service does not recite this history for the purpose of inviting debate on the merits of any aspect of the substance of the

Commission's Docket No. N89-1 opinion. Reference to that history is necessary to rebut the misguided allegation in the instant docket of a failure to

comply with the requirement in § 3661(b) to seek an advisory opinion regarding the service standard changes implemented in 2000-01.

As filed, the Complaint in this proceeding gives every indication of having been driven by the mistaken belief that the contested 2000-01 First-Class Mail service standard changes were something other than the belated completion of Phase II of the realignment plan submitted for Commission review in Docket No. N89-1. Complaint at ¶13; DFC-T-1 at 7. Alternatively, the Complaint asserts that the contested service standard changes, if connected to Docket No. N89-1, represent “a change in, departure from, or abandonment of the criteria that the Postal Service announced in Docket No. N89-1.” Complaint at ¶16; DFC-T-1 at 14-16. The Postal Service thoroughly refuted both of these allegations in its July 30, 2001, Motion to Dismiss.⁶ Rather than repeat those arguments in full here, the Postal Service invites the Commission to review that motion at pages 3-14. Nevertheless, because variations of those allegations surface again in DFC-T-1, additional refutation is offered below.

B. The Gannon Declaration Explains The Origin And Implementation Of The Contested Service Standard Changes

The genesis and nature of the contested 2-day and 3-day First-Class Mail service standard changes have been a matter of record in this docket since July 30, 2001. On that date, the Postal Service, in support of its Motion To Dismiss,

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See Motion of the United States Postal Service To Dismiss Complaint, July 30, 2001.

filed the Declaration of Charles M. Gannon (hereinafter, “the Gannon Declaration”). Acting with the support of senior postal management, Mr. Gannon, in effect, served as the principal architect of the revival of the implementation of Phase II of the Postal Service’s realignment plan. At the time that he assumed responsibility for planning and executing the service standard changes being scrutinized in this docket, Mr. Gannon brought nearly 35 years of postal experience and insight, almost 30 of which had been spent as a manager of mail processing and other postal operations in the field or at postal headquarters. Both the depth and breadth of his expertise on matters relevant to this docket are unassailable. His forthrightness and dedication in completing the record over the duration of this case deserves the Commission’s commendation.

Mr. Gannon’s Declaration provides the Commission with a candid, comprehensive and clear roadmap which lays out the unusual circumstances that caused the implementation of Phase II of the realignment plan to be interrupted and delayed. The Declaration explains Mr. Gannon’s role in reviving the project and designing the Phase II service standard changes that were implemented in 2000-01. Taking into account such intervening factors as the impact of the realignment of the postal management organizational structure that affected the implementation of Phase II, as well as the deteriorating state of commercial airline service upon which the Postal Service depends to transport some First-Class Mail, the Gannon Declaration explains the manner in which the service standard changes were implemented in 2000-01. Gannon Declaration at ¶¶4-27. Mr. Gannon’s thorough chronology and explanation disprove any claim

in the Complaint or in DFC-T-1 that the contested 2-day and 3-day service standard changes are the product of any effort by the Postal Service to avoid or evade any responsibility imposed by § 3661 of the Act. And the Gannon Declaration refutes the contention that, in substance, the changes deviate in any material way from the realignment plan reviewed by the Commission in Docket No. N89-1.

C. The Complaint Misinterprets The Definition Of The 2-Day Service Standard

A key element of the First-Class Mail realignment plan reviewed in Docket No. N89-1 was the amendment of the definition of the 2-day service standard. As indicated at Table I-1 of the Commission's advisory opinion in that docket, the original outer limit for the 2-day service standard was a 600-mile radius from origin using surface transportation, plus other destinations that could be reached by air transportation. The Postal Service gave notice in Docket No. N89-1 of its intent to amend this definition so that it included those destinations "within reasonable reach of surface transportation" and destinations outside this range that met a minimum volume threshold and had sufficiently reliable and timely air transportation to permit achievement of the standard. See *also*, Docket No. N89-1, USPS-T-2 at 6-7 and Appendix A at 7-8.

In the instant docket, at pages 14-16 of DFC-T-1, Complainant testifies that the Postal Service has ignored the availability of air transportation in determining whether a 2-day service standard would apply to any origin-destination pairs beyond the reasonable reach of surface transportation. On this

point, Complainant's testimony reflects an unwillingness or inability to even acknowledge Mr. Gannon's very clear explanation of the effect that the degraded state of commercial air transportation had in the Postal Service's implementation of Phase II of the service standard realignment plan. Complainant also ignores the relevant corroborating evidence provided by the Postal Service. The Commission is invited to review the evidence that the Complainant elects to ignore. See Gannon Declaration at ¶¶15, 16, 27; USPS responses to DFC/USPS-GAN-44, DBP/USPS-24, DFC/USPS-2, and DFC/USPS-12; and USPS Library References C2001-3/2 and C2001-3/8. As explained in response to DFC/USPS-GAN-13, the situation recorded on the videotape in USPS Library Reference C2001-3/8 is representative of an all-too-common problem faced by postal transportation managers systemwide at the time that the contested service standard changes were being developed.

Complainant objects to the manner in which the Postal Service has implemented its Docket No. N89-1 criteria for determining whether origin-destination pairs beyond the reasonable reach of surface transportation might still be subject to a 2-day service standard. It is transparently clear, however, that he objects only because he does not like the results. As was made clear in Docket No. N89-1⁷ and has been the case ever since, and, as Complainant acknowledges at DFC-T-1 at 15, a First-Class Mail 2-day service standard can be applied to origin-destination pairs beyond the reasonable reach of surface transportation, if (a) those pairs meet a specified volume threshold, and (b) the

⁷ See Docket No. N89-1, USPS-T-2 at 6-7 and Appendix A at 7-8.

Postal Service determines that there is sufficiently dependable and timely air transportation.

Generally, as it did in Phase I, the Postal Service is employing a two-part process to make the 2-day and 3-day changes. The first step is to implement changes based upon the reasonable reach of surface transportation between origin and destination.⁸ The changes were implemented in 2000-01. The Complaint in this proceeding was filed immediately thereafter. The second part involves making case-by-case adjustments for origin-destination pairs beyond the reasonable reach of surface transportation that might qualify for 2-day service, based on a business/volume relationship (0.5 percent of mail at origin is headed to that destination), and the availability of sufficiently dependable and timely air transportation. As explained in the Gannon Declaration:

It was intended that when all the 2-Day and 3-Day changes were implemented, they would be reviewed in order to determine if they were consistent with the objectives of the realignment plan.

Gannon Declaration at ¶6. And, as emphasized in his testimony:

Implementation of service standard changes on a national scope is a two-stage process: implementation and adjustment. What we rolled out in 2000-01 was the implementation part. [T]he final decision on transportation mode . . . rests with Area Offices . . . [all of which] have . . . the opportunity . . . to propose service standard upgrades and downgrades. In doing so, they may propose utilization of different transportation modes. Proposals for adjustment have and will continue to be reviewed on a case-by-case basis.

USPS-T-1 at 14-15.

⁸ Defined as a 12-hour drive time by highway truck. See Gannon Declaration at ¶27.

At the time that the Postal Service was developing the service standard changes at issue here, it was relying on commercial air transportation that, as a whole, was insufficiently dependable and timely, as documented by USPS Library References C2001-3/2 and C2001-3/8. Given the state of available commercial air transportation, a factor beyond its control, the Postal Service worked within the parameters of the Docket No. N89-1 realignment plan⁹ to increase its reliance on surface transportation as it developed the changes that were implemented in 2000-01.

An unavoidable impact of the increased reliance on surface transportation (or decreased reliance on commercial air transportation) would be to make a number of 3-digit ZIP Code area origin-destination pairs with a 2-day service standard subject to a new 3-day service standard. Nevertheless, when viewed as a whole, the implementation of Phase II of the realignment plan in 2000-01 resulted in 49,348 3-digit ZIP Code area origin-destination pairs shifting from a 3-day service standard to a 2-day service standard, compared to approximately 27,095 pairs shifting from 2-day to 3-day service. The overall impact has been to reduce the number of number of 3-digit ZIP Code pairs with a 3-day service standard by 22,253, while increasing the number of origin-destination pairs with a 2-day service standard. Gannon Declaration at ¶20; USPS-T-1 at 1. The Commission should take great care in comparing Complainant's claims to the evidentiary record. For example, his testimony pays a great deal of attention to

⁹ The plan emphasized putting transportation changes in place for air to surface diversions. See Docket No. N89-1, USPS-T-2, Appendix A at 29; PRC Op. N89-1 at 11.

the state of California, declaring the impact of the service standard changes there to have been “devastating.” DFC-T-1 at 7. However, as demonstrated by Postal Service witness Gannon (USPS-T-1 at 1), the percentage of First-Class Mail volume originating in 3-digit ZIP Code areas in California that still has a 2-day service standard exceeds the national average. Complainant highlights the existence of non-reciprocal service standards between numerous origin-destination 3-digit ZIP Code pairs (DFC-T-1 at 30), ignoring the fact that the changes implemented in 2000-01 actually reduced such pairs by 46 percent. Gannon Declaration at ¶29.

D. Complainant Offers No Evidence To Support Assertions Regarding The Availability Or Reliability Of Alternative Air Transportation

At page 15 of DFC-T-1, Complainant testifies that “the Postal Service failed to consider whether reliable [commercial] air transportation between some city pairs was available” and “although perhaps not 100 percent reliable, would have been reliable enough” to justify preserving 2-day standards.¹⁰ The Postal Service concedes that it did not rely on a day-by-day, flight-by-flight analysis of the commercial air service on which First-Class Mail depends while implementing Phase II. However, the testimony of witness Gannon bears repeating:

there has never been any mandate that only surface transportation can be used between 2-day origin-destination pairs. And there has been no

¹⁰ Notwithstanding the lengthy opportunity to review the data in USPS Library References C2001-3/2 and C2001-3/8 before filing his testimony, Complainant’s testimony is silent on the question of what level below 100 percent reliability would be “reliable enough.”

mandate that air transportation not be used as a justification for adjusting any current 3-day standards to 2-day. . . . Implementation of service standard changes on a national scope is a two-stage process: implementation and adjustment. What we rolled out in 2000-01 was the implementation part. [T]he final decision on transportation mode . . . rests with Area Offices . . . [all of which] have . . . the opportunity . . . to propose service standard upgrades and downgrades. In doing so, they may propose utilization of different transportation modes. Proposals for adjustment have and will continue to be reviewed on a case-by-case basis.

USPS-T-1 at 14-15. Thus, Complainant's claim that the Postal Service has modified the Docket No. N89-1 2-day service standard definition by eliminating the use of air transportation for origin-destination pairs beyond the reasonable reach of surface transportation is proven false. Commercial air transportation is still an option for achievement of 2-day service standards, if the volume threshold is met and the transportation service is determined to be sufficiently reliable and timely. And, evidenced by the response to DBP/USPS-85(o), air transportation also is used for other reasons to transport mail for origin-destination pairs that were modeled for 2-day (achievable by surface) and which now have a 2-day service standard.

The Postal Service has an internal process for handling the stream of service standard adjustment requests that flow in from its Area Offices.¹¹ These decisions rely upon the expert judgment of postal headquarters transportation and operations managers, who, in consultation with their field counterparts, are responsible for the day-to-day operation of the postal transportation network. It

¹¹ The adjustment of Reno NV service standards as part of this process cited at page 41 of DFC-T-1 is but one example.

was their considered judgment in the late 1990's that the quality of commercial air transportation, on a postal systemwide basis, as documented on the record in this proceeding, had degraded to a point where it was insufficiently dependable or timely to be relied upon as an integral part of efforts by the Postal Service to achieve 2-day delivery of First-Class Mail, except on a very limited basis.¹² The ongoing adjustment process will determine, on a case-by-case basis, whether changes in the quality of commercial air transportation service justify switching any current 3-day First-Class Mail service standards to 2-day.

In contrast, Complainant offers nothing more than vague, undocumented speculation that “large” numbers of commercial flights in the western states with “light” passenger luggage loads were or are available to carry First-Class Mail. DFC-T-1 at 15. Again, Complainant’s testimony focuses upon a supposed *availability* of such service.¹³ In response to the Gannon Declaration and the compelling corroborating data and videotape relevant to the critical criteria of timeliness and dependability presented in USPS Library References C2001-3/2 and C2001-3/8, Complainant’s testimony is silent. And, Complainant offers no evidence regarding the timeliness or reliability of this “large” number of flights in

¹² The Postal Service considers such changes to be consistent with the policy of making adjustments where current standards cannot reasonably be met. See PRC Op. N89-1 at 2.

¹³ And as seen in the videotape in USPS Library Reference C2001-3/8, a second critical element in evaluating commercial air service is the actual handling of mail before and after it flies. It does little good if an airline has a perfect record of landings and take-offs, but mishandles mail on the tarmac with such regularity that its service, overall, is undependable and untimely and causes delays in downstream postal processing and delivery.

western states with “light” luggage loads that supposedly are available to the Postal Service.

Complainant also testifies that “[t]he Postal Service failed to consider using dedicated air transportation as an alternative to ground transportation to retain speed while replacing supposedly unreliable air transportation.” *Id.* Witness Gannon testifies that he and his team did not regard it as within the scope of their mission to recommend the establishment of new dedicated postal air transportation networks (such as the current arrangement with FedEx) for the purpose of preserving existing 2-day service standards for destinations beyond the reasonable reach of surface from origin. Although he makes clear that cost savings were not an objective in choosing between air and surface transportation during implementation of Phase II of the realignment plan, witness Gannon concedes that his team were aware of the significant differences in magnitude between unit costs for surface transportation and unit costs for dedicated air transportation. And they were mindful of these differences as they eschewed the latter option. See, response of witness Gannon to OCA/USPS-T1-7.

Grasping at the FedEx dedicated air contract entered into by the Postal Service after the contested service standard changes were implemented, Complainant testifies that “the Postal Service should consider restoring two-day delivery service between many city pairs and using FedEx to transport this mail.” DFC-T-1 at 16. Complainant’s testimony offers no analysis of the FedEx network which would suggest that his proposal is workable. In contrast, the testimony of

witness Gannon explains, from an operational standpoint, why Complainant's proposal is generally not feasible. USPS-T-1 at 12.

E. Changes In The Manner of Implementation Of The Realignment Plan Are Not Substantive Changes In Its Objectives

Complainant argues that the procedures employed to implement Phase II "differed significantly" from the model, or philosophy, underlying the previous service standards.¹⁴ He then claims that "the Postal Service designed and implemented this model with little or no consultation with the customers, no advance notice to the public, and no request for an advisory opinion from the Commission."

1. The failure to exceed the level of required public notice required by § 3661 is not actionable under § 3662.

The claim that the public was not consulted in advance is groundless, since the Postal Service was merely completing the implementation in 2000-01 of Phase II of the realignment plan that had been subjected to intense formal public scrutiny in Docket No. N89-1. Admittedly, implementation of Phase II of that plan was completed much later than had initially been anticipated, resulting in a lengthy gap between the opportunity for public notice afforded in Docket No. N89-1 and implementation. However, since the Postal Service injected no material substantive changes in the objectives of that plan, the Postal Service

¹⁴ It is assumed that the "previous service standards" referenced here are the 2-day and 3-day First-Class Mail standards in effect before the 2000-01 changes.

was under no legal obligation to re-submit the plan for a second request for an advisory opinion under § 3661.¹⁵

If the complaint is that the Postal Service could have, but elected not to issue any formal public notice that it was belatedly picking up where it left off, there is no disagreement between Complainant and the Postal Service on that point. However, no provision of the Act, especially § 3661,¹⁶ requires such notice. It is not a failure to provide First-Class Mail service in accordance with the policies of the Act, within the meaning of § 3662, when the Postal Service elects not to provide public notice of its intention to belatedly complete First-Class Mail service standard changes that have been subjected to all of the notice and comment that § 3661 requires.

2. Immaterial deviations in the procedures for developing service standards are not actionable under § 3662 and trigger no obligation to re-submit under § 3661.

At page 18 of DFC-T-1, Complainant claims that, contrary to the policies reflected in its Docket No. N89-1 realignment plan, the Postal Service has modified the definition of the 2-day First-Class Mail service standard so as to render the availability of air transportation “irrelevant.” For purposes of this Brief, the Postal Service will assume that Complainant believes that:

¹⁵ Otherwise, what purpose would have been served? To request an advisory opinion regarding the Postal Service’s intention to proceed despite the negative aspects of the Commission’s non-binding advisory opinion? To request whether the Commission was willing to reconsider any of the negative conclusions in that opinion?

¹⁶ Or Commission rule implementing § 3661.

The Docket No. N89-1 realignment plan appears to imply that the establishment of 2-day service standards for origin-destinations pairs beyond the reasonable reach of surface transportation will involve consideration of whether the volume between those pairs meets a certain minimum threshold, and then whether sufficiently reliable commercial air transportation exists to justify establishment of a 2-day standard.

If so, the Postal Service assumes that Complainant is arguing that it is contrary to that plan¹⁷ for the Postal Service to wait until the ongoing Phase II service standard adjustment process (described at USPS-T-1 at 14-15) to make the “volume threshold/availability of reliable air analysis” determination for origin-destination pairs beyond the reasonable reach of surface transportation.

The Gannon Declaration makes clear that it was anticipated in 1990 that the service standard modification process for Phase II would involve mountains of paperwork and that certain components of postal management would play certain roles, as was the case in Phase I. Gannon Declaration at ¶¶25-26. In fact, the postal management reorganizations that interrupted Phase II gave time for the development and availability of computer software that allowed the Postal Service ultimately to take a more centralized and efficient approach and to compensate for its inability to reconstitute its management structure to its “pre-reorganization” configuration, for the purpose of implementing Phase II in the manner originally contemplated.

Consistent with the plan reviewed in Docket No. N89-1, when work resumed on Phase II in the late 1990's, the Postal Service established an objective definition of the “reasonable reach or surface transportation”

¹⁷ And thus, triggers a new § 3661 obligation.

component of the 2-day service standard definition.¹⁸ Then, the Postal Service applied that definition to implement presumptive 2-day and 3-day standards, based on origin and destination. And, as a final stage, the Postal Service is in the midst of considering adjustments based on input from its Area offices in a process that, *inter alia*, addresses cases where a 3-day standard was implemented in 2000-01, but sufficient volume to meet an objective volume threshold exists between a particular origin-destination pair, and sufficiently reliable and timely air service is available to justify establishing a 2-day standard.¹⁹

Even if procedures can be said to differ from those originally expected to be employed, there is no material difference in the substance of the Postal Service's policies or objectives. From the Postal Service's point of view, it is "six of one and a half-dozen of the other." Since the aforementioned "0.5-percent volume/air reliability" factors are not excluded from the process of settling upon service standards for origin-destination pairs beyond the reasonable reach of surface transportation, it would appear that the Complainant is upset that the Postal Service has taken away his "six" and left a "half-dozen" in their place.

As explained in both the Gannon Declaration and subsequent testimony, USPS-T-1, beginning in 1998, the Postal Service's design and implementation of Phase II of its realignment plan deviated procedurally from how it was

¹⁸ The 12-hour drive time standard.

¹⁹ Preservation of these factors contradicts the allegation (DFC-T-1 at 11-14) that the Postal Service is ignoring the needs of customers, as defined by the Docket No. N89-1 origin-to-destination 0.5 percent volume threshold.

anticipated, during Docket No. N89-1, that it would be implemented. Changes in the structure of postal management required that the various implementation responsibilities be managed by those components of postal management that emerged from that restructuring, as opposed to the units formerly in existence. Any such procedural deviations, however (1) are not material, (2) do not constitute “changes” in First-Class Mail “service” within the meaning of § 3661(b), and (3) are not “new” or “different” substantive service standard changes at variance with any implied by the plan reviewed in Docket No. N89-1. Accordingly, the Postal Service respectfully submits that no obligation to submit any such procedural changes to the Commission for review under § 3661 exists or has been created.

3. Use of estimated drive times to determine “reasonable reach” is not a substantive inconsistency with the plan already reviewed by the Commission.

A core element of the service standard realignment plan reviewed by the Commission in Docket No. N89-1 was the change in the general “distance” component of the definition of the 2-day First-Class Mail service standard from destinations within “600 miles” to the those “within reasonable reach by surface transportation”. As explained at ¶122 of the Gannon Declaration, the Postal Service – consistent with its authority to do so, adopted a 12-hour drive time from Processing & Distribution Centers (or other designated facility) of origin to destination Areas Distribution Centers as the general outer limit of the 2-day standard.

In response, Complainant indicts the Postal Service on two counts. First, he regards the 12-hour drive time as arbitrary and, with the assistance of the Postal Service, is able to point to a number of mail processing plant origin-destination pairs that, by mere minutes, fail to qualify as 2-day destinations. DFC-T-1 at 16-17. As the Commission is acutely aware in the execution of its primary function of recommending rates and classifications, it is a rare instance when the Postal Service draws a line that classifies customers in one category or another without provoking some hue and cry that the dividing line could have been drawn elsewhere. Making difficult distinctions in close cases is part and parcel of administering the Postal Service.

However, in its wisdom, Congress did not prohibit all discrimination among mail users. Accordingly, the Act only prohibits the Postal Service from engaging in unreasonable discrimination and giving undue preference to certain mail users over others. See 39 U.S.C. § 403(c). The Gannon Declaration describes the development of the 12-hour standard. It is rationally based and withstands scrutiny under § 403(c).

Next, Complainant takes issue with the Postal Service's use of estimated drive times between origin-destination mail processing plants generated by a computer model instead of, presumably, developing an average drive time between origin and destination based on logs of actual truck runs between designated mail processing plants. For the sake of argument, the Postal Service submits that it also could have incorporated the judgment of transportation managers and truck drivers in developing drive time estimates. Presumably,

each of these methods could generate varying results. However, none of these methods would be impermissible to employ. Furthermore, none represents either a material procedural or substantive change in the realignment plan reviewed by the Commission in Docket No. N89-1.

In the performance of their core functions, both the Postal Service and the Commission have a long-standing practice of relying on many cost and operational models developed by the Postal Service to represent the current or future mail processing environment. The Postal Service's reliance on a computer model to simulate "real world" drive times based on actual road conditions and speed limits between specific origins and destination for the purpose of dividing its origin-destination pairs into 2-day and 3-day is not materially different. Accordingly, notwithstanding any expectations that may have been generated during Docket No. N89-1, there is no basis for concluding that the Postal Service's use of computer-generated drive time estimates constitutes the development of a "new" or "different" service standard realignment plan or triggers an obligation to submit to further § 3661 review.

At pages 18-31 of DFC-T-1, Complainant challenges the implementation of service standards in California that reflect deviations the general protocols that guided the Postal Service in 2000-01, particularly the use of computer-generated drive times to "pseudo-Area Distribution Centers," as opposed to the actual ADC's at which the mail is processed. However, witness Gannon (USPS-T-1 at 6-8) explains in a very straightforward manner the rational basis for reliance upon the "pseudo-ADC" concept and refutes any suggestion that employment of the

concept to develop service standards for California destinations is arbitrary or unduly discriminatory. His testimony also demonstrates that reliance upon the concept does not constitute a material procedural or substantive deviation from the plan reviewed in Docket No. N89-1, and that it does not generate service standards inconsistent with that plan. Nor does it otherwise trigger any obligation to submit to § 3661 review.

II. The Service Standard Changes Do Not Result In First-Class Mail Service That Violates Any Policy Of The Postal Reorganization Act

At pages 26-46 of its July 30, 2001, motion to dismiss, the Postal Service attempted to address all of the allegations in the Complaint that implementation of the contested 2000-01 service standard changes results in the provision of First-Class Mail service that fails to comply with explicitly or implicitly referenced policies of the Postal Reorganization Act, within the meaning of § 3662. Instead of repeating or summarizing those arguments here, the Postal Service will incorporate them by reference. The long and winding litigation of Docket No. C2001-3 has resulted in the Complainant filing testimony (DFC-T-1) which clarifies some of the earlier alleged § 3662 violations. That testimony also alleges that the service standard changes result in a failure to provide service that conforms to other specified policies of the Act. Below, the Postal Service responds to the additional claims and, as necessary, supplements the arguments in its July 30, 2001, motion.

A. There is No Basis For The Claim That The Postal Service Failed To Consider The Needs Of Customers

An extensive record was developed in Docket No. N89-1 regarding the “needs” of customers for overnight, 2-day and 3-day First-Class Mail service. At the end of that proceeding, the Commission found itself in disagreement with the Postal Service concerning the conclusions that could be drawn from the evidence

regarding customer preferences for “speed vs. consistency.” The Commission expressed its disagreement in its non-binding advisory opinion. Notwithstanding the misgivings expressed by the Commission, the Postal Service exercised the prerogatives granted to it by § 3661 and relied upon the conclusions it drew from the market research presented in that docket as the basis for implementing the service upgrades and downgrades implied by its realignment plan.

Complainant is free to disagree with the Postal Service’s decision not to follow the Commission’s contrary advice. However, there is no basis for the assertion at pages 12-14 of DFC-T-1 that, in staying the course, the Postal Service ignored customer need. Complainant testifies that “[t]he Postal Service may not be meeting the needs of its customers, particularly in the Western states.” DFC-T-1 at 14 (Emphasis added). But he is vague about what those “needs” may be, other than to declare with regard to service standard downgrades (from 2-day to 3-day) that “[c]ustomers care about speed, and speed declined.” *Id.* at 37. When pressed on the question of whether the Postal Service is meeting the needs of its customers, he takes care to emphasize that:

My testimony does not assert that the Postal Service is not meeting the needs of its customers; it merely raises the question based upon the Postal Service’s disregard of its own 0.5-percent volume threshold and, more importantly, its decision not to consider the needs of customers in changing service standards.

Response of Mr. Carlson to OCA/DFC-T1-5(b). However, the two conditions that supposedly prompted the question to be raised are non-existent. First, as explained at USPS-T-1 at 14-15, with the “implementation” stage of Phase II complete, the Postal Service is now in the “adjustment” stage, reviewing requests

from Area Offices for changes, including requests to upgrade origin-destination pairs from 3-day to 2-day standards that are beyond the 12-hour drive-time that meet the 0.5-percent volume threshold, and that are subject to sufficiently reliable and timely commercial air transportation that could be utilized to meet the upgraded service standard. Second, the assertion that the realignment plan submitted for review in Docket No. N89-1 was developed without customer input is contradicted by the record in that proceeding.

B. Complainant's Reliance On Disaggregated EXFC/ODIS Data Is Problematic

At pages 31-38 of DFC-T-1, Complainant criticizes what he describes as the failure of the Postal Service to achieve the Docket No. N89-1 objective of improving consistency of delivery for origin-destination pairs that were subjected to downgrades (from 2-day to 3-day) in First-Class Mail service standards in 2000-01. In this section of DFC-T-1, Complainant suggests ways in which the Commission might use alternate measures of "variability" in delivery times as barometers for "consistency." In doing so, he argues that the External First-Class Mail (EXFC) and Origin-Destination Information System (ODIS) data that he requested and received from the Postal Service (in the form of USPS Library Reference C2001-3/14) during the instant docket support the conclusion that the service standard downgrades implemented in 2000-01 fail to achieve the Postal Service's objective of improving "consistency." Based upon these data, Complainant offers sweeping generalizations about the impact of the 2000-01

Phase II service standard changes.²⁰ However, as explained below, there are serious problems with Complainant's reliance upon these EXFC/ODIS data as the basis for his conclusions regarding the impact of the implementation of Phase II of the realignment plan.

First, he attempts to use disaggregated EXFC/ODIS data for the purpose of depicting the quality of service performance for various performance cluster origin-destination pairs. However, as emphasized at page 1 of USPS Library Reference C2001-3/12,²¹ and as explained further in response to discovery, EXFC:

is designed [for example,] to produce statistically reliable aggregate estimates of service performance for mail to the Washington DC performance cluster from all . . . [performance clusters] that have a 3-day service standard to Washington DC. However, EXFC is not designed to provide statistically reliable estimates of service performance between specific performance cluster pairs -- Phoenix to Washington DC, for example. Much more extensive seeding of EXFC origins and destinations would be necessary to accomplish such an objective. Accordingly, the Postal Service does not use the EXFC system internally or otherwise on a disaggregated basis for the purpose of estimating the level of service performance between various performance clusters.

USPS Response to DBP/USPS-157. Accordingly, "since generation of reliable service performance estimates for specific origin-destination pairs exceeds the parameters of EXFC test design[,]” much of the disaggregated data relied upon

²⁰ The assertion (DFC-T-1 at 13) that, in requesting the production of USPS-LR-C2001-3/12 and 14, Complainant selected the subject origin-destination pairs solely on the basis of a desire “[t]o restrict the analysis to a manageable scope” and without regard to the fact that service standard downgrades were concentrated in western states, stands out as a rare injection of levity into this proceeding.

²¹ Which serves as a source document for USPS Library Reference C2001-3/14.

by Complainant “are at a level insufficient to produce statistically accurate results.” *Id.*²²

Readers of USPS Library Reference C2001-3/14 are reminded that the Variance Estimate (+/- Range) Columns (F, J, N and R) on the 1998, 1999 and 2002 spreadsheets in that Library Reference generally reflect very high variances around most point estimates (where variances are even reported). As a result, for these origin-destination pairs, it is difficult to draw precise conclusions with confidence. Where variances are not reported in these columns (as indicated by “N/A”), the underlying data are so thin that no variances could be calculated at the 95 percent confidence level.²³ Accordingly, the Commission should approach Complainant’s use of EXFC data with great caution. At best, the disaggregated data serve as diagnostic indicators that identify origin-destination pairs that the Postal Service might want to monitor in order to determine whether mail processing operations and/or transportation need to be “tweaked.” However, the data fall short of proving, one way or the other, that a particular level of consistency is being achieved.

Complainant argues that the Postal Service’s attempt to improve “consistency” at the expense of “speed” is contrary to the policies of the Postal Reorganization Act. The Commission will recall that it did not reach that conclusion in Docket No. N89-1. Because Complainant regards pursuit of that

²² The response contains a similar admonition regarding the use of disaggregated Origin-Destination Information System data.

²³ See USPS Library Reference C2001-3/12, Comments page.

Docket No. N89-1 objective as contrary to the policies of the Act, it will be difficult for Complainant to explain how the alleged failure to achieve that objective also fails to comply with the policies of the Act.

C. Complainant Misconstrues The Requirement For The Most Expeditious Transportation Of Important Letter Mail

Complainant's dissatisfaction with the service standard downgrades implemented by the Postal Service appears to be premised on his belief that the Postal Service "must provide the best possible service within a particular set of operating parameters." DFC-T-1 at 1. As explained below, it is fair to read Complainant's testimony as cobbling bits and pieces of the Postal Reorganization Act together to support the argument that the Act requires the "best possible service; the "best possible" service means "speediest" service; "efficient" means "speediest;" the act requires "efficiency" as well as "expedition;" and downgrades are the opposite of "efficiency" and "expedition" and therefore contrary to the policies of the Act.

At page 4 of DFC-T-1, Complainant discusses § 101(e), which mandates that:

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.

His testimony expresses the view that, "even if it were true [that customers prefer consistency to speed], the law would not permit the Postal Service to slow mail delivery in the name of improving consistency." DFC-T-1 at 5.

Complainant's testimony in the instant docket about the legality of the Postal Service's Docket No. N89-1 realignment plan objectives is not consistent with any reasonable reading of the Act. It is especially not consistent with the legal conclusions that may be reasonably inferred from the Commission's opinion in that case. Indeed, the Commission did question the quality of the evidence underlying the Postal Service's conclusions regarding customer preferences, but the Commission never determined that the service standard downgrades implied by those preferences were, *per se*, inconsistent with § 101(e).

Complainant's reading of § 101(e) appears to be based upon two missteps: (1) his interpretation of the word "possible" after the words "highest" and "delivery" and (2) his failure to discern the proper context for interpretation of the statute. On the first score, if Complainant's reading of the statute were adopted, the Postal Service could never shift a service standard from overnight to 2-day or from 2-day to 3-day, even if there were undisputed evidence of universal support for such changes. Complainant's obviously result-driven analysis leads to the conclusion that the service standards in existence at the time of postal reorganization²⁴ were cast in stone by the Congress.²⁵ Taking Complainant's view to its logical conclusion, in order to give the "highest" consideration to the "most expeditious" transportation of important letter mail, the

²⁴ Both in terms of their parameters (overnight, 2-day, and 3-day) and the manner in which they applied to specific origin-destination pairs at the time.

²⁵ Except, no doubt, to permit the Postal Service to implement upgrades (from 3-day to 2-day and from 2-day to overnight) which, then, could never be downgraded.

Postal Service is compelled to establish whatever operations and transportation are necessary to change all existing First-Class Mail 3-day standards to 2-day and all existing 2-day standards to overnight.

Stepping out of Complainant's analytical vacuum and reading § 101(e) in the context in which was enacted, it becomes clear that it is no more than a mandate -- in a post-1970 world in which all manner of unpredictable and unforeseeable change may otherwise occur -- to maintain a collection, transportation, and delivery network that preserves the long-standing preferential status of "important letter mail," relative to other mailable matter. Relative to what were denominated as second-, third-, and fourth-class mail at the time of postal reorganization, the Postal Service continues to give First-Class Mail preferential status in terms of resources devoted to collection, transportation, and delivery. No mail class has as extensive a collection system as First-Class Mail. Periodicals, Standard Mail, and the Parcel subclasses must rely on surface transportation. In contrast to First-Class Mail, Standard Mail letters and letter-sized Periodicals are subject to deferral in processing and delivery.²⁶ And, when one compares the different service standard ranges for these other mail classes,²⁷ it is evident that First-Class Mail maintains a preferred status.

D. Complainant Misconstrues The Requirement For Promptness And Is Silent About Economy

²⁶ Except under the unusual circumstances in Alaska.

²⁷ See, e.g., the quarterly USPS Service Standards CD-ROM provided in USPS Library Reference C2001-3/4.

The Postal Reorganization Act does not dictate the number of days that establish the parameters for the service standards for any class of mail. Nor does the Act impose any specific criteria to be employed in determining which origin-destinations pairs qualify for what level of service. Congress gave great deference to postal management in determining the service standards to apply to each class of mail, only requiring that management establish standards that reflect consideration of broad policy guidelines, such as those embodied in § 101(f).²⁸

The requirement in § 101(f) applies to all mail, regardless of class, including, for example, highly expeditious Express Mail on the one hand and deferrable Standard Mail, on the other. The “promptness” criterion, therefore, cannot be rigidly interpreted as imposing a singular requirement, unless one’s objective is to blur the distinctions between Express Mail, First-Class Mail and Standard Mail. The service standards for First-Class Mail reflect the Postal Service’s objective of providing more prompt service – from origin to destination – than it does for, to choose an example, Standard Mail. The service standard differences are significant and, in part, result from the policy of reserving access to air transportation for First-Class Mail, but not Standard Mail. The differences also result, in part, from giving the First-Class Mail priority access to surface transportation and to mail processing equipment.

²⁸ In pertinent, this section requires that, “[in] selecting modes of transportation, the Postal Service shall give the highest consideration to the prompt and economical delivery of all mail”

The combination of such criteria as “prompt” and “economical” in § 101(f) is representative of a Congressional mandate to balance competing considerations. The Postal Service is to give the highest level of consideration to promptness, but must also give the highest consideration to matters of economy and cost, and their impact on the prices that customers must ultimately pay. Each value in the pertinent part of § 101(e) must be read in harmony with the other. Thus, the Postal Service is not required, in pursuit of promptness, to put on blinders and disregard the cost differences between modes of transportation (dedicated air vs. commercial air vs. surface) or the economies associated with massing mail and transporting it , for example, on three truck runs between points A and B per day, as opposed to six runs. At the same time, the Postal Service cannot allow its obligation to reduce mail processing and transportation costs to completely overtake its obligation to maintain relatively prompt service for each mail class.

The Postal Reorganization Act was enacted against the backdrop of the Senate Post Office and Civil Service Committee’s formal expression of dissatisfaction with the Postal Service’s policies regarding the deployment of air transportation for First-Class Mail. See Senate Report 91-912 at 17-19 (June 3, 1970). In the context of a discussion regarding the establishment of procedures and policies for the contracting of air service, the Committee expressed dissatisfaction in response to the Postal Service’s recent termination of an “air-taxi” program apparently established in 1967 to supplement the standard practice

of employing air transportation only for First-Class Mail destined for points more than 750 miles from origin.²⁹

In criticizing the termination of the “air-taxi” program, the Committee expressed a preference that “[a]ll letter mail should be transported by air” but only when postal management had “reasonable assurance” that it could be employed to shorten delivery time by one day.” *Id.* at 18. Nevertheless, in drafting the Postal Reorganization Act, Congress avoided imposing any specific guidance regarding service standard parameters in the Act. Accordingly, it is a stretch to interpret the Act as a Congressional mandate to prefer air transportation simply because it exists, and without regard to other factors, such as the reliability or relative cost of different options, as Complainant seems to suggest should be done.

Complainant’s testimony is misguided on the “promptness” criterion and is silent on the “economical” criterion in § 101(f). He has not demonstrated any failure on the part of the Postal Service to reasonably balance these criteria in implementing the contested service standards changes.

E. Any Claim That The Service Standard Changes Result In Service That Violates § 3661(a) Is Fatally Flawed

Section 3661(a) directs the Postal Service to develop and promote adequate and efficient postal services. At pages 1-2 of his testimony, Complainant appears to suggest that implementation of the contested service

²⁹ The “air-taxi” program was employed to put First-Class Mail destined more than 225 miles from origin on air transportation on a space-available basis.

standards results in the provision of First-Class Mail service that fails to meet this criterion. Complainant testifies that service is “adequate” if “it meet[s] . . . the needs of customers” and that the “Postal Service risks violating this requirement when it changes postal services without considering the needs of its customers.” DFC-T-1 at 1. As for the “efficiency” component of § 3661, Complainant asserts that “efficient” means that, if is possible for the Postal Service to provide 2-day service between a particular origin and destination, then that level of service must be provided. *Id.* at 2. As will be explained below, Complainant admits to no evidence to support the claim of “inadequate” service and is mistaken about the facts underlying his claim of “inefficiency.”

1. Complainant candidly admits to no evidence of inadequate service.

Putting aside for the moment whether “customer need” defines “adequacy” within the meaning of § 3661(a), it is noteworthy that what little record evidence Complainant offers regarding “customer need” is largely anecdotal and/or personal. He hypothesizes about customers whose only response to discovering that some First-Class Mail service standards have changed from 2-day to 3-day is to use Priority Mail or Express Mail or private courier services. DFC-T-1 at 2.³⁰ And we learn, for instance, that he “is acquainted with one recipient of a monthly bill who is annoyed by the time required for delivery” from Phoenix.” See response to OCA/DFC-T1-5(a).

³⁰ Apparently because, in the face of a one-day service standard downgrade, they are unable to comprehend and execute the cost-free alternative of simply, before a looming deadline or birthday, mailing a letter one day earlier than they used to.

More importantly, the Complainant does not assert that the Postal Service is failing to meet the needs of First-Class Mail customers. In fact, in response to OCA/DFC-T1-5(b), Complainant distances himself from any such claim. Moreover, the record in Docket No. N89-1 refutes any claim that the Postal Service failed to consider customers needs when developing its realignment plan.³¹ On these grounds, there is no record basis on which to rest any conclusion that the contested service standard changes result in First-Class Mail service not meeting the “adequacy” requirement in § 3661, even as defined by Complainant.

2. Complainant’s claims regarding inefficiency are unsubstantiated.

As for the “efficiency” component of the requirement in § 3661(a), Complainant appears to assert that the term requires that, if it is possible for the Postal Service to provide 2-day service between a particular origin and destination “within established operating parameters,” then that level of service must be provided. DFC-T-1 at 2.³² All that can be discerned from Complainant’s testimony is that, if it is possible for delivery to have been provided faster, then the service that was provided was not “efficient” and, therefore, failed to satisfy the second element of § 3661(a). However, his allegation of “inefficiency”

³¹ As explained at USPS-T-1 at 14-15, consideration of customer need comes into play again in the process of considering adjustments to the service standards implemented in 2000-01.

³² The testimony gives the hypothetical example of mail that could have been put on a 6:00 p.m. truck on Day 1 in order to achieve 2-day service but, instead, “lingers . . . for an extra day” before being transported to destination [presumably after the relevant service standard is changed from 2-day to 3-day]. DFC-T-1 at 2.

appears to be founded on his mistaken assumption about the application of a uniform 6:00 p.m. Critical Entry Time for all destinating Area Distribution Centers. Mistakenly believing 6:00 p.m. to be the CET for all destinating ADCs, he compounds that error by concluding that mail arriving for processing between, for example 5:30 and 6:00 p.m. that is not dispatched at 6:00 p.m., that may not be worked with the mail that is received by the latest possible Estimated Time of Arrival of 5:00 p.m. is being “inefficiently” delayed. The testimony of Postal Service witness Gannon explains why Complainant is mistaken in his understanding of the CET and ETA concepts, as outlined in the Model. See USPS-T-1 at 2-6.

In his rebuttal testimony, DFC-RT-1 at 5, Complainant asserts that the effect of a change in service standards is to delay delivery of some unspecified quantity of mail. He then points to witness Gannon’s confirmation (in response to interrogatories DFC/USPS-T1-12 and 13) that the labeling of a tray of mail for 3-day delivery could result in the mail that on a given day is a candidate for 2-day delivery being delayed. Complainant tries to make way too much of this concession. Witness Gannon’s interrogatory responses reflect a wisdom born of 39 years of postal mail processing experience and management. He knows that, no matter what mail processing policies and practices the Postal Service may have in place, very few phenomena are completely beyond the realm of possibility. Thus, he concedes that it is possible that somewhere in the postal system some employee could be influenced by service standard information on a mail tray label to delay the dispatch of that mail, depriving it of an opportunity to

be delivered before the date implied by the applicable service standard. The record is devoid of any evidence regarding the degree to which this phenomenon allegedly occurs. Nevertheless, Complainant asks the Commission to leap to the conclusion that:

As a result of the new service standards, the Postal Service unnecessarily delays delivery of some First-Class Mail by one day. Therefore, the Postal Service is failing in its statutory obligation to provide efficient postal services.

DFC-RT-1 at 5.

After reviewing the record, the Commission should determine that there is no basis for concluding that, as a result of the implementation that the contested service standard changes, First-Class Mail service is either “inadequate” or “inefficient” within the meaning of § 3661(a).

F. What We Have Here Is A Failure To Comprehend

As explained above in section I.A. of this Brief, the filing of the Complaint in this docket was motivated, in part, by a mistaken assumption about the origin of the 2000-01 service standard changes. This trend continues with the filing of DFC-T-1, which reflects an incomplete understanding of the service standard model employed by the Postal Service to implement those changes. And, it follows through into Complainant’s rebuttal testimony.

At page 1, n.1, in DFC-RT-1, Complainant responds to witness Gannon’s explanation (USPS-T-1 at 2-6) that DFC-T-1 had overlooked the Expected Time of Arrival (ETA) concept, as applied in the model, by defensively blaming the

Postal Service for witness Gannon's not having addressed the ETA concept in his July 2001 Declaration. Complainant then downplays his oversight as "immaterial" and as "in no way undermin[ing] the conclusions of . . . [his] direct testimony." *Id* at 1. Complainant's predictable attempt to shift the blame elsewhere is unfair, given that the Gannon Declaration was prepared for the narrow purpose of responding to the specific allegations in the Complaint, which, itself, did not reference the ETA concept.

Complainant's failure to grasp the significance of the ETA concept is his own fault. As was his right, Complainant obtained a wealth of information from the Postal Service under the Freedom of Information Act, 5 U.S.C. § 552, before filing the Complaint in this proceeding. Referring to the copy of a particular PowerPoint presentation thus obtained, ¶ 38 of his Complaint alleges that the contested service standard changes were implemented "using no written criteria other than the words and phrases contained in . . . [that] PowerPoint presentation."¹

An examination of those words and phrases is in order. And, that examination is made convenient by the fact that Complainant attached a copy of the presentation to his Complaint. In a copy of one of the Postal Service PowerPoint slides (#18) attached to the Complaint, both the historic 18:00 CET concept and its successor, the ETA concept, are discussed. For whatever reason, Complainant latched on to the former and ignored the latter.

¹ Another assertion proven wrong by the extensive record in this proceeding. But, we digress.

Consequently, a great deal of his criticism of the service standard model is based of his mistaken belief that the 18:00 CET concept (and not the ETA concept) was employed in developing the contested service standards. Complainant had the luxury of over two years between June 2001 and January 2004 (when he initially filed his testimony) to utilize discovery to explore the significance and meaning of the “word and phrases” referenced in the documents that he introduced into this proceeding. The “word and phrases” on the PowerPoint introduced into this proceeding by the Complainant make clear that the ETA concept replaced the CET concept in the development of the contested service standard model. Complainant neglected to explore this matter during discovery and should finally accept responsibility for the consequences of mistakenly fixating on the CET concept in drafting his direct testimony. The body of the Complaint does not reference the ETA concept. Accordingly, it was not referenced in the Postal Service’s responsive motion to dismiss the Complaint. The Postal Service had no obligation to anticipate in July 2001 which specific “word and phrases” in that PowerPoint presentation would have a material bearing on the testimony that Complainant, alone, would decide to file in early 2004.

At page 4 of DFC-RT-1, Complainant responds to Mr. Gannon’s testimony by asserting:

If two groups of mail can arrive at a P&DC prior to a particular time, whether this time is a CET, an ETA, or something else, and if one group of mail is destined for that P&DC while the other group is destined for another P&DC downstream, the service standard for the mail destined to the first P&DC should be at least as good as the service standard for the mail that is destined to another P&DC downstream.

This is not necessarily the case, however. Mail processing may not be “rocket science.” But, if nothing else, the record in this proceeding ought to raise the level of esteem in which those responsible for organizing the former are held. It is not always easy for those who are not immersed in it to comprehend it all and not always easy for those who are immersed in it to communicate the details in a way that others can easily follow. Repetition may help.

The Postal Service built a national model structured around an originating clearance time with a No Later Than (NLT) CT of 02:30, and the receipt at the destinating ADC, based on the ETA concept, by no later than 17:00. USPS-T-1 at 3-4. Individual facilities have the option of allowing mail to clear before 02:30 and to arrive after the scheduled ETA. These are local decisions, based on local variables. The Service Standards team established the national core hours in order to determine the reasonable reach of surface transportation and implement corresponding 2-day service standards across the nation. Beyond that, local facilities can schedule mail to be received from another facility as late as they think they can successfully process it. See, responses to DBP/USPS-72 and DFC/USPS-T1-31.

At page 4 of DFC-T-1, Complainant testifies that:

A national CET of 18:00 is one of the constraints of the national model. Even though the model sought to have an ETA for each ADC at 17:00 or earlier, witness Gannon’s testimony confirms that the national CET still is 18:00. USPS-T-1 at 5. Witness Gannon previously declared that “a CET is the last planned time which an incoming (receiving) facility can accept mail and still be expected to make subsequent delivery within the scheduled service standard.” Gannon Declaration at 5, ¶ 12. Witness Gannon has not demonstrated that assigning a two-day delivery standard to mail that arrives at the destination ADC by 18:00 would interfere with

the goal of a staggered arrival profile or otherwise disrupt postal operations.

However, as is clear from the above-referenced PowerPoint presentation (particularly Slide #35), the latest Clearance time of 02:30, plus the longest drive time of 12 hours, plus the maximum 2.5-hour Buffer Time results in a latest possible arrival time of 17:00.

Complainant ignores the explanation at page 4 of USPS-T-1 that the ETA concept is in effect and, instead, vainly cites ¶12 of the Gannon Declaration, which only defines the CET concept and how things worked before the service standards were realigned. Subject to subsequent local adjustment, the latest ETA employed in the model is now 17:00, not 18:00. It is possible that some or all of the mail received between 17:00 and 18:00 could be delivered by the second day. However, Complainant is mistaken in continuing to assert, as he does in his rebuttal testimony, that the failure of such mail to be delivered within 2-days is contrary to the parameters of the national model because of his mistaken assumption about the application of the historic 18:00 CET.

CONCLUSION

Complainant's testimony contains a section devoted to a discussion of the contents of a public report under § 3662. DFC-T-1 at 42-45. This portion of his testimony apparently assumes that the Commission will be issuing a public report. In fact, however, the Commission would issue a public report pursuant to § 3662, only if it were to determine that the Complaint in this proceeding was justified. In order to reach such a conclusion, the Commission would need to find a policy of the Act with which the postal services being provided are not in accordance.² Complainant has the burden of providing the evidence necessary to support such a finding, and he has not met that burden.

For the reasons stated above and in its initial brief, the Postal Service submits that the Complaint filed by Mr. Carlson regarding the belated implementation of Phase II of the Postal Service's Docket No. N89-1 First-Class Mail service standards realignment plan has not been justified. Complainant has

² Otherwise, it would seem to be a degradation of the § 3662 complaint process to have it serve as a vessel for the transmission of customer suggestions regarding the posting of additional service standards information on collection boxes or at www.usps.com, when such suggestions are not offered to remedy any alleged violation of some policy of the Act. See DFC-T-1 at 38-42. Postal patrons who have ideas for enhanced communications from the Postal Service are free to transmit them directly to the Postal Service at any time without Commission involvement.

failed to show that the Postal Service is not providing postal services in conformance with the policies of the Act. Instead, the Postal Service submits that the Commission should issue an order concluding that the complaint has not been justified.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux
Chief Counsel
Ratemaking

Michael T. Tidwell
Attorney

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-2998/ FAX: -5402
August 12, 2004

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 upon all parties of record in this proceeding.

Michael T. Tidwell

August 12, 2004