

Before The  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

Complaint on First-Class Mail )  
Service Standards )

Docket No. C2001-3

INITIAL BRIEF OF THE  
OFFICE OF THE CONSUMER ADVOCATE

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The Office of the Consumer Advocate (“OCA”), pursuant to Rule 34 of the Rules of Practice and Procedure of the Postal Rate Commission (“Commission”), 39 C.F.R. §3001.34, and pursuant to the Presiding Officer’s Ruling No. C2001-3/42,<sup>1</sup> hereby submits its Initial Brief on the issues presented by the record compiled in this complaint proceeding initiated pursuant to 39 U.S.C. §3662 of the Postal Reorganization Act (“PRA”). Upon consideration of the record the Commission will issue a public report to the Postal Service upon the complaint. OCA hereby offers proposed findings and recommendations for that report.

I. STATEMENT OF THE CASE

Douglas F. Carlson (Mr. Carlson) filed a complaint in 2001 with the Commission pursuant to 39 U.S.C. §3662 asserting Postal Service violations of the Postal

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<sup>1</sup> “Ruling Addressing Evidentiary Record Issue and Procedural Schedule,” May 14, 2004.

Reorganization Act. (Complaint).<sup>2</sup> Specifically, Mr. Carlson complains the Postal Service failed to seek an advisory opinion pursuant to §3661(b) prior to modifying in 2000 and 2001 its First-Class Mail service standards from 2-day to 3-day service for over 76,440 origin-destination three-digit ZIP Code pairs shifting more than 3.4 billion pieces of mail annually and affecting all regions of the nation except Alaska and Hawaii. The Complaint further alleges Postal Service violations of §3661(a) requiring the Postal Service to provide "adequate postal services," §403(c) proscribing undue and unreasonable discrimination among users of the mail, and further, the complaint, as amended, alleges violations of §101(e) relating to the requirement for the "most expeditious collection, transportation, and delivery of important letter mail" and §101(f) requiring, in pertinent part, that the Postal Service "shall give the highest consideration to the prompt and economical delivery of all mail...."<sup>3</sup> The Commission's order accepting the complaint and instituting this formal complaint docket granted Mr. Carlson's motion to amend the complaint.<sup>4</sup>

The threshold question in this proceeding was defined by the Commission as whether the Postal Service's changes in its service standards fall within the scope of §3661(b) and whether the changes in the service "can reasonably be considered, for purposes of the statute, as a continuum of the original [Docket No. N89-1] plan." The Commission order found that despite the narrative of the Gannon Declaration filed July 30, 2001, in support of the Postal Service's motion to dismiss the complaint explaining

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<sup>2</sup> "Douglas F. Carlson Complaint on First-Class Mail Service Standards," filed June 19, 2001.

<sup>3</sup> "Douglas F. Carlson Motion for Leave to Amend Complaint," August 11, 2001.

<sup>4</sup> "Order Denying Postal Service Motion to Dismiss Complaint, Allowing Amendment of Complaint and Instituting Formal Complaint Docket," September 12, 2001.

the Postal Services actions,<sup>5</sup> Mr. Carlson "has made a prima facie showing that his complaint has statutory merit." (Order at 7.)<sup>6</sup> The Commission found the Postal Service's Gannon Declaration unpersuasive on the threshold issue. Thus, by the order instituting this proceeding, the Postal Service was provided further opportunity to rebut Mr. Carlson's *prima facie* case and show that the delayed realignment of the service standards (the subject of an advisory opinion issued in 1990 in Docket No. N89-1<sup>7</sup>) was timely and permissible and that it did not need to obtain a further advisory opinion pursuant to §3661(b).

Additional issues raised by the complaint and noted in the Commission's order are the adequacy of postal service following the service standard changes, whether the changes were discriminatory and whether the Postal Service has given the highest consideration to the expeditious and prompt delivery of important letter mail.

## II. STATEMENT OF OCA POSITION

- A. The PRA requires the Postal Service to obtain a new advisory opinion pursuant to §3661 before realigning its First-Class Mail service standards and the Postal Service therefore violated the PRA

It is OCA's position that the Postal Service did not rebut the *prima facie* showing of Mr. Carlson and that the Commission must find the Postal Service was required by the PRA to obtain an advisory opinion from this Commission for all those ZIP code pairs

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<sup>5</sup> The Gannon Declaration was filed to support the Postal Service's "Motion of the United States Postal Service to Dismiss Complaint," July 30, 2004. The motion was denied in the Commission's order instituting this proceeding, *supra*.

<sup>6</sup> The order instituting the proceeding also disposed of one statutory hurdle by finding that "This clearly constitutes a major national service change." (Order at 10.)

<sup>7</sup> "Advisory Opinion Concerning a Proposed Change in the Nature of Postal Services," *Change in Service, 1989 First-Class Delivery Standards Realignment*," Docket No. N89-1, July 25, 1990.

that were downgraded from 2-day service to 3-day service by the extensive ZIP Code realignments in 2000 and 2001. Indeed, despite scores of interrogatories and the submission of testimony by the Postal Service, other than the Gannon Declaration which the Commission has already found in this case to be unpersuasive in rebutting Mr. Carlson's *prima facie* case, the record is virtually devoid of further evidence in support of the Postal Service's original view expressed in its answer to the complaint and the Gannon Declaration that the request for an advisory opinion in Docket No. N89-1 was sufficient to meet the requirements of the law. In fact, the Gannon Declaration proves the Postal Service significantly modified the proposals considered in Docket No. N89-1, despite its attempt to maintain the "spirit" of its original proposal. It is, therefore, OCA's position that the Postal Service violated the law and must seek a Commission review pursuant to §3661 of the PRA.

Because the record in this case raises several issues of significance that should be the subject of a complete advisory opinion on the matter, the Commission must not consider the apparent *fait accompli* of the realignment to moot the question of whether an advisory opinion must be sought by the Postal Service for the realigned service. The Postal Service's noncompliance with the terms of §3661 does not obviate the need for a full §3661 request and subsequent procedures. The question of the propriety of the Postal Service's nationwide change in service is still subject to review and it is necessary and desirable for a Postal Service filing to comply with the terms of the legislative policies of that section of the law. The Postal Service should be required to justify the new policies that it applied and the underlying assumptions concerning the needs of its mailers and its application of the mandate for expeditious and prompt

delivery of important letter mail. In OCA's view, the Commission should find that the Postal Service must file a request for an advisory opinion pursuant to §3661 to consider whether the changes are appropriate under §3661.

In the course of review, the Commission will determine significant issues of policy that should guide the formation of service standards. For instance, there is a wide disparity between the complainant, Mr. Carlson, and the Postal Service as to the meaning of expedition in the PRA. That is, what is the meaning and how should the Postal Service be applying the legislative directive in §101(e) that the Postal Service insure the "most expeditious...transportation, and delivery of important letter mail"<sup>8</sup> and in §101(f) requiring, in pertinent part, that the Postal Service "shall give the highest consideration to the prompt and economical delivery of all mail....?" By not aggressively undertaking management initiatives to insure that all mail is delivered promptly by using as much air service as possible, we believe the Postal Service is out of compliance with the reasonable intent of the legislation.

- B. Pending the outcome of a §3661 proceeding, the Postal Service should immediately restore a 2-day service standard to all of those 3-digit ZIP Code pairs which were downgraded from 2-days to 3-days

Further, it is OCA's position that, pending the filing of the request for an advisory opinion, the Postal Service should immediately restore all downgraded 2-day service to its former service standard level of 2-days.<sup>9</sup> Public notice of the upgrades should be publicized and not merely noted in the USPS Service Standards CD-ROM which only

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<sup>8</sup> The Postal Service regards all First-Class Mail as equally important. (DFC/USPS-GAN-38.)

<sup>9</sup> Based upon application of the Realignment Model, the 3-digit ZIP Code area origin-destination pairs determined to have a drive-time range of greater than 12 hours became part of the 3-day service standard network. The service standards for a total of 27,095 pairs were downgraded from 2-days to 3-days. (Gannon Declaration at 8.)

732 customers receive quarterly by subscription. (DFC/USPS-GAN-56.) This proposal would not be as draconian as it appears. First, the driving time was calculated from originating P&DC facilities to ADCs. (Gannon Declaration at 9, para. 22; DFC/USPS-GAN-48.) The 2 and 3-day standards are applied consistently to an entire destination ADC area. (DBP/USPS-34.) Thus, service between the P&DCs and each ADC represents many ZIP Code pairs and as a practical matter the effort to make the adjustments would not require a separate analysis to adjust each of the total number of ZIP Code pairings that were downgraded. Also, as recently as 2000 and 2001 the service standard for those downgraded ZIP-Code pairs was two days. At that time, air services apparently were utilized. In many cases, the same air services must still be available so that the 2-day service would be available and could even improve service in the interim rather than lead to a deterioration of service. In fact, depending on how one defines a deterioration in service, although the reverted service may not be as consistent as the Postal Service claims is its goal, service may be faster, especially in the western states, as Mr. Carlson demonstrated in his testimony. (DFC-T1-33-36).

- C. The 3-day service provided by the realignment is not adequate within the meaning of the PRA, the application of the model has led to some discrimination in certain areas of California, and the Postal Service has failed to give the highest consideration to the expeditious and prompt delivery of mail

The Order instituting this proceeding recognized other "critical policy issues" such as:

1. whether the resulting postal service is inadequate;
2. whether there is undue or unreasonable discrimination; and
3. whether the highest consideration has been given to certain considerations pertaining to delivery of First-Class Mail. (Order at 8.)

Some evidence was presented in the record on each of these issues. First, lacking the resources of a \$70 billion enterprise, Mr. Carlson made a commendable attempt to illuminate the issue of the adequacy of the realigned service standards. The evidence Mr. Carlson presents naturally reflects the limitations of a lone individual to make an assessment of the adequacy of service across a large region of the United States. It is very apparent from the record developed by Mr. Carlson, OCA and Mr. Popkin that the Postal Service focused almost exclusively on minimizing its use of expeditious air transportation and maximizing its First-Class Mail reliability scores. The Commission's Docket No. N89-1 advisory opinion makes it very clear that the Postal Service has an affirmative duty to evaluate the public's need for adequate service by means of market research that is presented in a §3661 request for changes in the nature of postal services. This the Postal Service has utterly failed to do.

As to the second issue raised by the Commission for consideration in this docket regarding undue discrimination, the record contains some evidence of disparate treatment between mailers. In certain cases, those situated similarly are not treated similarly. There is some evidence that some mailers have the benefit of 2-day service when others similarly situated have 3-day service. The network is complex and each pairing has its own distinct travel situations. The Commission should find that certain anomalies of service based upon the use in California of "pseudo ADCs" should be adjusted. Other anomalies discussed by Mr. Carlson would be eliminated pending further review if the Postal Service reverts back to 2-day service standards those ZIP Code pairs which were downgraded in 2000 and 2001.

The third issue raised by the complaint concerns whether the highest consideration was given to the delivery of First-Class Mail, *i.e.* whether the Postal Service is applying appropriately the statutory requirement to provide expeditious and prompt service for important letter mail. This relates not only to the adequacy of service, but also to the separate statutory requirements of §101(e) and (f). The Postal Service has not met the obligations imposed on it by §§101(e) and (f) of title 39. It is obligated under part (e) of §101 to "give the highest consideration to the requirement for the most expeditious collection, transportation, and delivery of important letter mail." This obligation was not only not fulfilled, it was never even undertaken. Although the Postal Service's system of using the drive time to determine the service standard seems to have been applied reasonably evenly in most instances, the question remains whether the approach is appropriate in that it eliminated, from the very start, consideration of more expeditious air service for those ZIP Code pairs with calculated driving times exceeding 12.05 hours.<sup>10</sup>

The Postal Service finds support for this approach by contending that surface transportation provides better and more desirable service because it is more consistent rather than more timely. This contention is suspect and was rejected by the Commission in Docket No. N89-1. The Postal Service relies on a very thin reed for rejecting the use of air service between many localities. The Postal Service has not made a convincing case for its construction of the statute's meaning and its rejection of air service for more expeditious 2-day service. There is only skimpy and vague

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<sup>10</sup> An explanation as to the determination of the 12-hour standard appears in DBP/USPS-75.

evidence supporting the downgrading from 2-day to 3-day service in so many individual cases.

OCA proposes that the Commission require the Postal Service to approach the matter from an angle that is more consumer friendly, in keeping with the PRA. As applied, it appears the Postal Service took the easy way out in *not* making every attempt to provide 2-day service using air transportation and analyzing the costs of that transportation for each ZIP Code pair. Rather, the approach to designing the system put an inordinate premium on improving its on-time scores by seeking "consistency," which was rejected by this Commission in Docket No. N89-1. The presumption for determining a service standard should be that air service will be provided to avoid 3-day service, if practicable, on a regular basis, even if it is not certain that service standards will be met on a daily basis where mismanagement or Acts of God can delay service.

In conclusion, OCA's position in this proceeding is that, based upon the Commission's previous finding that Mr. Carlson established a *prima facie* case for the violation of the PRA and in light of the extremely limited additional evidence presented by the Postal Service to rebut Mr. Carlson's case, the Commission is bound to find the violation by the Postal Service. Given this situation, the question arises as to how best to proceed. Should the Commission ignore the violation and review the record as if the Postal Service were here seeking an advisory opinion? Unfortunately, the facts provided by the Postal Service do not support a favorable finding and recommendation regarding the realignment. Alternatively, the Commission, upon finding a violation of the PRA, should report that the Postal Service must file for an advisory opinion regarding the 2-day service downgraded to three days. In the meantime, because of the

disregard of the PRA, and the unlawful change in service, the Postal Service should return the service standards for those ZIP Code pairs downgraded from 2-day service to 3-day service back to 2-day service pending proper demonstration that the changes are appropriate. This is the most logical way to proceed in order to allow the Postal Service the opportunity to justify thoroughly its realignment.

Of course, much of the record compiled here would be incorporated into the new filing for convenience. However, given the information and facts that have come to light concerning the method the Postal Service used for the realignment, it would be extremely useful for the Commission to provide as much guidance as possible concerning its views as to the meaning of the PRA as it applies to service standards. The complaint also alleges violations of various sections of the PRA. The Commission should discuss in its opinion those issues raised by this complaint as to the adequacy of service, discrimination, and the expedition, promptness and economy of service.

### III. DISCUSSION OF THE EVIDENCE

- A. The Postal Service did not rebut the *prima facie* case that it violated the PRA in not obtaining a new advisory opinion pursuant to §3661 of the PRA and a further proceeding pursuant to §3661 is required.

Section 3661 requires the Postal Service to submit a proposal to this Commission 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. Mr. Carlson's *prima facie* case that the Postal Service changed the nature of its postal services consists of the following primary assertions

that remain un-rebutted. The facts clearly demonstrate the service standard changes undertaken by the Postal Service in 2000 and 2001 generally affected service on a nationwide basis. Service standard changes were made nationwide in 48 states affecting 76,440 origin-destination three-digit ZIP Codes pairs in all 11 postal areas--now nine areas. (DFC-T-1 at 5.) These changes affected "significantly greater than nine percent of the origin-destination pairs that could reasonably have been considered possible candidates for switching." (*Id.* at 6.) The changes affected 100 percent of the ZIP Codes, except for Alaska, Hawaii, and the Caribbean (*Ibid.*) and shifted over 3.4 billion mail pieces per year from a 2-day to 3-day service standard. (*Ibid.*) Although the changes increased the number of 2-day origin-destination 3-digit ZIP Code pairs by a net of 22,250, the net volume of First-Class Mail subject to a 2-day service standard decreased by about 1.5 billion pieces per year. (*Id.* at 6-7, DFC/USPS-GAN-37.) Over 99 percent of the changes in the Pacific Area were downgrades from 2-day to 3-day service and 79 percent of the Western Area changes were downgrades from 2-days to 3-days. (*Id.* at 7.)

Mr. Carlson described the impact on those areas as "devastating." (*Ibid.*) Witness Gannon suggested he does not believe the impact was so harsh. (DFC/USPS-T1-4, 5.) The Postal Service answer to the complaint included the Declaration of witness Gannon describing the Postal Service management procedures that led to the massive changes. The Postal Service argued the statutory requirement to seek Commission analysis was met because the Postal Service had obtained an advisory opinion in 1990 pursuant to its 1989 proposal in Docket No. N89-1 to change delivery standards. The Postal Service contended the changes known as Phase II were merely

a slight modification of those changes reviewed by the Commission. However, over a decade passed between the issuance of that opinion and the Phase II changes in 2000 and 2001. Witness Gannon's Declaration details the many changes that rendered the 1990 opinion inapplicable. The Gannon Declaration confirms many, if not all, of the facts alleged by Mr. Carlson and adds many additional facts that demonstrate the Phase II realignment differed significantly from the earlier proposal reviewed in Docket No. N89-1.

The testimony of Postal Service witness Charles M. Gannon, revised March 15, 2004 (USPS-T1), was limited to clarifying certain specific matters discussed in Mr. Carlson's testimony. Witness Gannon's testimony does not respond to the initial *prima facie* case presented by Mr. Carlson's complaint. It is fair to conclude the Postal Service offered no new testimony in this case to rebut the initial *prima facie* showing by Mr. Carlson. In fact, witness Gannon's testimony recognizes the significant delay between the advisory opinion in Docket No. N89-1 and the Phase II realignment: "At the time that the Service Standards team was developing plans for the *admittedly belated* completion of Phase II of the Docket No. N89-1 service standard changes...." (Emphasis supplied, Gannon-USPS-T1 at 9.)

Further, as the Commission found in the order instituting this proceeding (Order at 9), the realignment process differed in another way from that contemplated in Docket No. N89-1. In the recent realignment, the Postal Service exhibited a preference for surface transportation in lieu of air transportation thought by the Postal Service to be less dependable. The Gannon Declaration says the preferences resulted from the deteriorating air service after the Docket No. N89-1 proceeding. The record here

includes very little, if any, evidence supporting the management's conclusions on a nationwide basis. It appears that only anecdotal evidence of relatively few isolated instances exist in a few documents on the subject at the Postal Service regarding air service deficiencies. Rather, the preference for surface transportation was a "consensus opinion" gleaned from national meetings, telephone conferences, and visits made by the Service Standard Review Team. (DFC/USPS-2.) The "anecdotal" information is bolstered by airline on-time reports. (DBP/USPS-24(e), USPS LR-C2001-3/2.)

As the order instituting this proceeding recognized, the ZIP Code changes "entailed many internal logistical decisions" that were not presented to the public for consideration. In fact, the Postal Service had been previously admonished, in the advisory opinion in Docket No. N89-1, and had agreed that it would consult with and interact with the public on the realignments. (OCA/USPS-8) There was no attempt to obtain the views of any customers or this Commission's views regarding the desirability of expeditious delivery of important letter mail and the prompt delivery of that mail as compared to the oftentimes conflicting statutory mandate for economical service. In this record, the Postal Service confirms that it did not do that. (*Ibid.*, DBP/USPS-60.)

Also, not only was there no public input, it appears there was no solid management analysis measuring the costs of air transportation weighed against the loss of 2-day service. The Postal Service has not been able to produce any cost comparisons by which management would have been able to weigh the costs of air transportation against the benefits lost by moving to surface transportation. The OCA believes that the legislation favors expedition over economy in matters of First-Class

Mail delivery and service standards. Other classes of mail are designed to meet the needs of those who require more economical than expeditious delivery. Thus, there is insufficient record evidence to rebut Mr. Carlson's case that the Phase II service standard changes were not reviewed in Docket No. N89-1 and should now be reviewed by this Commission. A further proceeding is necessary in order to provide adequate public input into the needs of the mailers for service faster than 3-day First-Class Mail service.

B. The adequacy of the service

The evidence on the adequacy of the service standards is of two types. One is the mailers' perception as to the adequacy of the service. The other is the adequacy of the service in terms of whether it is all it can be--that is, does the management give the highest consideration or as high a consideration as it ought to give to the expeditious handling of important letter mail. There is no issue in this case that the Postal Service is not meeting the service standards it has set for the 2-day mail that was downgraded to 3-day mail. But the more far-reaching issue is whether the Postal Service is expediting the mail as fast as it should, and could, and delivering it promptly, while also insuring the service is economical.

1. Mailers' need for two-day service

Mr. Carlson presented extensive evidence relating his personal views of mailers' perceptions of the adequacy of the realigned service standards. It does not appear that a case has been made that the new service does not meet the needs of mailers. However, the statute does not leave that duty solely to a lone individual such as Mr.

Carlson. In fact, because §3661 requires the Postal Service to seek an advisory opinion, the views of mailers as to the adequacy of service can be and are considered there. It should not be the burden of a lone mailer to make that showing.

In Docket No. N89-1, the Commission was concerned about consumer input and advised that the Postal Service work with consumers in revising its service standards. The Commission concluded, "The market research on which the Service bases its conclusions is inadequate to advise the Service to proceed. This research does not measure customer support for the proposed realignment, and is subject to a number of technical criticisms." (Opinion at 2.) In this case, the Postal Service admits it did not inform business and residential customers of these Phase 2 changes in advance. (OCA/USPS-4.) The Postal Service also promised to permit review of service changes by ABA and other bankers before the changes were put into effect, but they did not do so; nor could any records be found pertaining to customer comments. (OCA/USPS-8.)

In the earlier Docket No. N89-1 case, the Commission found the limited amount of market research unsatisfactory. There was no national or specific point-to-point assessment of customer needs as part of the process of determining the service changes at issue in this proceeding. (DBP/USPS-60.) Consequently, the Commission must conclude that the market research for the 2000 and 2001 changes was inadequate. The Commission report should make clear that the Postal Service must obtain input from the public as to the impact of downgrading the service. That must be a standard the Commission should insist upon before favorably advising for change.

Mr. Carlson notes that the volume of mail and the needs of customers were irrelevant to the Postal Service's service standard decisions. (DFC-T-1 at 11-12, see

also DBP/USPS 19(b).) However, in Docket No. N89-1, if the volume of mail between an origin P&DC and a destination ADC was at least 0.5 percent of the originating P&DC's volume, it was considered noteworthy and given consideration for 2-day service. (DFC-T-1 at 12-14.) Mr. Carlson believes that percentage is still a noteworthy percentage and that there is a significant number of ZIP Code pairs meeting this threshold. That threshold ought to be considered in determining the service standard between any such facilities. (*Ibid.*) In effect, Mr. Carlson's position is that if volumes are that large, then *per se* there is a demonstrated need for faster service. He concludes that where the volume exceeded a threshold of 0.5 percent between ZIP Code pairs and the service was downgraded from two days to three days, the service may not meet the statutory obligation in §3661(a) to provide adequate service. (DFC-T1 at 43.) On the other hand, volume was not a "controlling factor" for the Postal Service in deciding between a 2-day and 3-day standard. (DFC/USPS-GAN-17, DFC/USPS-12.) Mr. Carlson cited several cases where there is 3-day service between nearby communities and argued that is inadequate. (Carlson Ans. at 27.<sup>11</sup>)

In reply, the Postal Service said its Service Standards Team was aware of the need to provide adequate service and cited to the increase in ZIP Code pairs targeted for 2-day service as evidence of adequate service. (DFC/USPS-GAN-4) As far as the Postal Service is concerned, the only indicator of customer need is to increase consistency, (DFC/USPS-GAN-3(c),43) but performance was not satisfactorily sustained. (OCA/USPS-GAN-1.)

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<sup>11</sup> "Douglas F. Carlson Answer in Opposition to Postal Service Motion to Dismiss," August 11, 2001.

In Docket No. N89-1, the Commission rejected the theory advanced by the Postal Service that the mailers' needs are better met if the service is more consistent, but takes three days for delivery, than if the service is less consistent but usually takes two days for delivery. The Postal Service's definition of consistency is met if the greatest percentage of mail is delivered within the service standard target. (DFC/USPS-CMG-2, see DBP/USPS-9.) Despite this elaborate system for consistency devised by the Postal Service, common sense suggests that, to the contrary, the primary goal of mail delivery, especially important First-Class Mail, is for a greater percentage of mail to reach the recipient as fast as possible, with questions of consistency and economy taking a backseat. In Docket No. N89-1, the Commission expressed in no uncertain terms its view of the Postal Service notion that mailers prefer consistency over speed of delivery. The opinion states, "In the Commission's opinion, it is specious for the Postal Service to construe the choice of consistency over speed as constituting support for a realignment which contemplates increasing the standard time for mail delivery while providing minimal, if any, countervailing benefits to the postal customer." (Footnote omitted, Opinion at 33.) The Postal Service continues to ignore that conclusion. If mail has a 2-day service standard and misses that standard 30 percent of the time versus a 3-day standard that misses the standard 10 percent of the time, more mail will nevertheless certainly reach the recipient sooner if the standard is two days rather than three days, even if the certainty of meeting the service standard is lower. In any event, the Commission has found the preferable approach, in assessing consumer reaction to realignment (i.e. a measure of consumers' needs), is to give consumers a choice reflecting the reality of the proposed realignment--how much speed is the consumer

willing to forgo to obtain greater predictability of delivery. (Opinion at 35. See also Opinion at 40-1.) A §3661 proceeding would provide a forum to weigh consumers' choices.

2. The Postal Service never applied the analysis necessary to comply with the §101(e) and (f) requirements to give the highest consideration for providing the most expeditious and prompt service for important letter mail.

The second question concerning adequacy of service is more significantly tied to management's methodology for realigning the service. The Postal Service evidence indicates the manner in which the new realignments were determined. Witness Gannon indicated the Postal Service management decided to reduce or eliminate its reliance upon air service. Witness Gannon testifies that:

the Postal Service was phasing out regional contracts for dedicated air service that was being used primarily to fly mail between points in the West and Southwest. Further, since dedicated air was not used, or available, on a nationwide basis, the team did not consider it to be a viable, primary element for the 2-day portion of the National 2 & 3-Day Model that we were trying to build...we did not consider dedicated air to be a requirement for the National Model. We took the approach that existing dedicated air would simply continue being a transportation method available, when appropriate, to get 2-day mail to an ADC destination, when surface transportation was locally deemed not practical, just like commercial air could continue to be used when appropriate. (Gannon-USPS-T1 at 9.)

However, phasing out of the contracts does not necessarily mean air transportation was no longer available. Emery air freight contracts were being phased out and replaced with FedEx air transportation contracts. (OCA/USPS-T1-6.)

This testimony is very telling as it indicates the mindset of the Postal Service personnel working on this project. Air transportation was only considered an alternative means to meet an *already determined* 2-day service standard for a ZIP Code pair. The limited use to which the model was put is stated more precisely by Witness Gannon who testified, "The 2 & 3-Day Model only built the surface network model to ensure the feasibility of transporting *2-day mail* by surface when establishing the service standard." (Emphasis supplied, Gannon-USPS-T1 at 14, see also DBP/USPS-8(b) rev. 10/22/01) Air transport was apparently not considered as a means to avoid downgrading a 2-day service standard to a 3-day service standard.<sup>12</sup> Mr. Carlson testified the Postal Service "did not consider the availability of air transportation." (*Id.* at 14.) Section 403(c) of the PRA does not permit service criteria that dismiss the use of available air transportation. (See Carlson Ans., *supra*, at 34.)

The Postal Service used an elaborate computer model to calculate the driving time between facilities taking into account certain driving difficulties. (OCA/USPS-12, 13, 14, and 15.) If the driving time was 12.05 hours or more, the service standard was set at three days. (DBP/USPS-10.) The process undertaken was fruitful and useful. The resulting upgrade of 5.81 percent of the 3-digit ZIP Code origin-destination pairs nationally from 3-day service to 2-day service is commendable and, if no other changes

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<sup>12</sup> This does not even raise the broader issue of whether there were pre-existing 3-day service standards that could have been upgraded to a 2-day service standard. The Postal Service could have started with a universal policy that each ZIP Code pair has a 2-day service standard unless it is absolutely infeasible with air or other transport. Air service between P&DCs and ADCs, in the continental United States, requires far less than twelve hours flying time (not to mention the additional up to 3.5 hours buffer time allowed for ground transport, DBP/USPS-36). In the interest of providing the best possible service for First-Class Mail, the operating presumption ought to be that every effort will be made to offer 2-day service. This is particularly true with respect to 3-day mail that was downgraded from 2-days. Exceptions could be granted if the service is impossible or the costs are prohibitive and not merely greater than normal.

had been made, would have represented a significant upgrade between a large number of locations. (Gannon-USPS-T1 at 1)

However, although the computer transportation model analysis discovered a large number of ZIP Code pairs that could be upgraded, it does not necessarily follow, and should not necessarily follow, that those ZIP Code pairs that were more than 12.05 hours driving distance apart--3.19 percent of the 3-digit ZIP Code pairs (*ibid.*)--should necessarily have been downgraded. The Postal Service apparently never determined which of those pairs scheduled for downgrading could not be served within two days using other means or combinations of transportation.

According to Gannon, several bottlenecks for mail traveling by air were common and disruptive of daily postal mail processing plans. (Gannon-USPS-T1 at 10.) It was also difficult to develop a "centralized air transportation information technology capability." (*Id.* at 11.) The Postal Service management intended to review its FedEx contracts to determine if they could be used to improve service from 3-day to 2-day but because of the September 11 terrorist attacks, that process was never done. However, FedEx arrival times are typically later than the latest ETA time for 2-day First-Class Mail precluding their satisfactory use. (Gannon-USPS-T1 at 12.)

At first blush, the Postal Service approach seems logical and fair in that it provides for a universally even application of service standards. Unfortunately, the Postal Service's approach to this problem was one-dimensional and limited. The process as explained was generally reasonable, subject to some anomalies as pointed out by Mr. Carlson, as far as it went. However, it appears the Postal Service started with a faulty premise and drew the wrong conclusions from the study and applied it

incorrectly. The Postal Service had it backward. It applied the driving time study results in a negative fashion as a means of excluding from 2-day service those facilities with a projected drive time of 12.05 hours or more.<sup>13</sup> Having been excluded, the ZIP Code pairs to be downgraded and assigned 3-day service were only permitted to remain at the original 2-day service standard level if special circumstances met the burden of demonstrating a need for 2-day service. Although some pairs were allowed to remain 2-days even though they were over 12.1 hours drive time (DBP/USPS-10(c).), in fact, no ZIP Code pairs that had a 2-day service standard and were downgraded to 3-days were re-set at 2-days. (DFC/USPS-4, DBP/USPS-10, see also DFC-T1 at 16.)

The Postal Service applied the 12 hour drive-time minimum cut-off very rigidly. For example, the drive-time between the origin P&DC Columbia SC 290 and the ADC Miami FL was calculated at 12:06 hours, just seconds more than the maximum cut-off time despite the availability of an additional 2.5-3.5 hour buffer time. Yet, management apparently gave little consideration to providing the most expeditious service as the service standard for the pair was designated as 3-days. (DBP/USPS-42.)<sup>14</sup>

Rather than using the study to establish that facilities with a driving time between them of 12.05 hours would automatically be designated to have 3-day service, the Postal Service should have limited the application of its study to determine only which facilities would be assigned 2-day service. As for the remaining ZIP Code pairs where ground travel time was calculated to be 12.05 hours or more, the Postal Service did not

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<sup>13</sup> Actually, the drive time study was fashioned to decide which pairs could readily be served in 2-days without reliance on air.

<sup>14</sup> The failure to make a minor exception for this borderline case is even more surprising since the reciprocal trip is service from South Florida P&DC 330 to ADC Columbia SC 290 has a designated 2-day service standard because that driving time is 11:36 hours. (DBP/USPS-42.)

undertake the necessary further analysis to determine that it is infeasible to provide 2-day service between those facilities using other means of transportation, *i.e.* air or rail service. Mr. Carlson testified the Postal Service "failed to consider whether reliable air transportation between some city pairs was available." (DFC-T1 at 15) In addition, the Postal Service failed to consider whether 2-day air transportation between some city pairs was available. The Postal Service's intent was to minimize the planned movement of 2-day air transportation, (Gannon-USPS-T1 at 14, LR DFC-1-"Two-Day Model Parameters" slide) and dedicated air was not considered by the Service Standards Team. (DFC/USPS-GAN-54.) The Postal Service agrees that, hypothetically, a perfect supply of airplanes with perfect capacity and schedules would permit conversion of "a substantial percentage (if not almost all)" 3-day origin-destination pairs to 2-day service. (DBP/USPS-47.) Yet, the Postal Service with a mindset against providing the most expeditious service possible said that, even if that were the case, "it is not clear what purpose would be served by seeking to accomplish such an objective." (*Ibid.*) Although air transport would not be 100-percent reliable, it could be reliable enough to provide customers with better and more expeditious service than 3-day delivery by truck. (DFC-T1 at 15.)

Mr. Carlson's testimony suggests the use of dedicated air transportation if commercial air transportation is unreliable. Being concerned about economical delivery, the Service Standards Team gave this possibility only cursory examination without really measuring the cost or giving the Team, upper management, the public, or this Commission the opportunity to see any analysis of costs. (DFC/USPS-GAN-14, 5(c), and 57.)

The Postal Service claims some preliminary estimates of cost savings were made but the documents cannot be found although some cost savings are recalled, but offset by the cost of additional surface transportation costs. (OCA/USPS-11.) Amazingly, the Team was asked not to develop or use potential costs as a factor in developing service standards, (DFC/USPS-GAN-16.) and they did not do so. (DFC/USPS-GAN-15(f), DFC/USPS-GAN-39.) Mr. Carlson points out the current relationship with FedEx may provide a means of air transport of mail. (*Ibid.*) Also, as noted above, the Postal Service decided to undertake a review to determine whether the FedEx contract could be used to reduce 3-day to 2-day service standards, but that was never done and was postponed indefinitely. (DFC/USPS-CMG-1, DFC/USPS-GAN-33, OCA/USPS-T1-10, DFC/USPS-T1-23) However, on "some occasions" the FedEx contract could be used to carry 2-day mail. (OCA/USPS-T1-9.) Mr. Carlson even notes at least one example where service was downgraded to three days but air transport is, nevertheless, still used from Miami to Columbia, SC. (*Id.* at 18.) In fact, witness Gannon recognizes the possibility that air transport may serve to upgrade 3-day service to 2-day service (or, of course, permit downgraded 2-day service to be restored to 2-day service). (Gannon-USPS-T1 at 14-5--"And there has been no mandate that air transportation not be used as a justification for adjusting any current 3-day standards to 2-day.") There is the possibility, for some ZIP Code pairs downgraded from 2 days to 3 days service, that the mail transported by air is sufficiently reliable to meet a 2-day service standard. (DFC/USPS-GAN-51.)

However, the Postal Service management, having downgraded thousands of ZIP Code pairs has left it to Area Offices to make the final decision on service standard

modification requests as "those offices are in the best position to consider all local variables." (Gannon-USPS-T1 at 15.)<sup>15</sup> But, it is unlikely Area offices will consider dedicated air contracts to upgrade service from 3 days to 2 days as national transportation airline contracts cannot be entered into at the Area office level. (OCA/USPS-T1-11) The Postal Service initiated a policy that virtually eliminates Headquarters from initiating steps to improve services on a local basis by giving local Areas limited authority to make significant improvements. (See OCA/USPS-1, USPS-LR C2001-3/1, OCA/USPS-3.) Authority for final approval of service standard changes remains at headquarters upon recommendation to the Vice President, Operations and Planning and Processing and the office of Service Management Policies and Programs. (OCA/USPS-2.)

Thus, the Postal Service only undertook the first step of what should have been a two step process. By excluding at the outset the possibility of using air service to reduce 3-day drive times to two days, management failed to do all it could do to expedite the mail. In that sense, the service is not adequate. Mr. Carlson also points out that by not offering a 2-day delivery service standard when it is possible, the Postal Service is not providing efficient postal services in violation of §3661(b). (DFC-T1 at 42.)

The record thus demonstrates the Postal Service did not look at each ZIP Code pair or even each P&DC-ADC pair to assess the availability and consistency of air service or even rail service for that matter. The decision to avoid air service generally seems to have been based upon limited anecdotal evidence or localized or regional

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<sup>15</sup> The directive as to when Areas are to use air transportation service is contained in Handbook M-22 Dispatch and Routing Policies (October 1994). (USPS-LR-2001-3/5, DBP/USPS-27(f), see also, DFC/USPS-T1-24.)

problems with air service caused by delays or mismanagement. Despite interrogatory requests for documentation of those problems that led to the Postal Service's decision to eliminate most air carrier service, the only internal document provided relating to the Postal Service's decision to make a decision of nationwide impact not to use air service was a Power Point presentation. (DFC-LR-1, DFC/USPS-GAN-6.) Witness Gannon stated,

No analysis has been performed for the purpose of determining what dedicated air service could be contracted for some or all of the shifted origin-destination pairs service or what such service might cost or how that cost might compare to some other figure. (DFC/USPS-GAN-39(c).)

This Commission recognized in Docket No. N89-1 that a nationwide realignment "may be an excessive reaction to what may be localized problems on a limited scale." (Opinion at 14.)

Moreover, it appears the cost of air service or its use for those ZIP Code pairs to be downgraded was never considered systematically. Although, generally, the cost of air transportation is greater than the cost of surface transportation (DBP/USPS-27(a)), there is no record of any analysis that the cost of air service for each of the downgraded ZIP Code pairs would be greater than the cost of ground transportation. Even if the costs for air carrier service were greater, it does not necessarily follow that air service should not be used for First-Class Mail if it will result in 2-day rather than 3-day service a substantial portion of the time. In Docket No. N89-1, the Commission found the Postal Service's analysis inadequate. The Commission concluded, "Further, no cost justification was developed to allow evaluation of the impact of the proposed realignment on the costs to the Postal Service and its customers." (Opinion at 2.) The

Commission further concluded, "the Service has not developed *quantitative* information regarding the potential improvements in timely delivery performance, or the operational *cost benefits* it could reasonably expect from realignment." (Emphasis supplied, Opinion at 9.) The Commission concluded, "In any event, before implementing nationwide service changes, the Postal Service should make relevant and appropriate investigations of the cost consequences of changes in delivery standards." (Opinion at 41.) The Postal Service did not attempt to determine and certainly has not shown that a 2-day standard for the thousands of downgraded ZIP Code pairs cannot be satisfactorily achieved. Having been advised previously in Docket No. N89-1 of this deficiency, the Postal Service repeated the same mistake and again failed to evaluate the cost impact of the service standard changes on either the Postal Service or its customers.

Significantly, the Postal Service did not consider systematically in great detail, as part of Phase II for each downgraded two-day ZIP Code pair, the most expeditious method of providing service--air transport. Presumably, the most expeditious method is air transport. Rather than measuring each ZIP Code pair subject to downgrade by comparing the impact of surface transport with air service, the Postal Service made wholesale changes based on its own formula which eliminated entirely air transport as a consideration. The Postal Service says it has provided for the most expeditious handling of mail by, for example, moving letter mail directly to an AADC without an intermediate stop at an ADC. (DFC/USPS-GAN-5.) We agree that the example appears to speed mail delivery to a particular locale. However, it is not the kind of broad legislatively commanded management initiative that gives the highest consideration to the expeditious and prompt delivery of all important letter mail. Previously, air

transportation was thought to provide expeditious delivery to the downgraded ZIP Code pairs. The PRA continues to command that the Postal Service shall give the highest consideration to the methods and means to enable expeditious service standards for thousands of ZIP Code pairs and expedite the delivery time for a significant amount of mail. This record demonstrates the Postal Service did not downgrade all those ZIP Code pairs out of operational necessity or even on the basis of cost analysis, but merely because the drive-time exceeded 12.05 hours..

This deficiency is the very same problem the Commission found in the Docket No. N89-1 case. The Commission objected to the proposal at that time because, "The Service does not, however, rely on operational necessity or anticipated cost savings to support its realignment proposal." (Opinion at 1.) Rather than taking management steps to improve service standards, the Postal Service appears to be regressing from the standards established prior to the Docket No. N89-1 case. The Commission noted that at that time "Current standards provide for overnight or two-day delivery of First-Class Mail where it is logistically feasible." Yet the changes in 2000 and 2001 did not follow that philosophy. There was no attempt to establish a 2-day standard where it is "logistically feasible." The Postal Service has not demonstrated, and there is nothing in this record to show, that it is not logistically feasible to maintain the 2-day service standard for those ZIP Code pairs downgraded to 3 days. The fact that these pairs were downgraded indicates that, at one time, it was considered logistically feasible to provide 2-day service to those downgraded pairs. In fact, dedicated air service was purchased from July 1999 to August 2001 for many Pacific, Western, and Southwestern cities, representing most if not all of the P&DC locations in those areas: Billings, Dallas,

Denver, Houston, Las Vegas, Los Angeles, Phoenix, Portland, Reno, Sacramento, Salt Lake City, San Antonio, San Diego, San Francisco, Seattle, and Spokane. (DFC/USPS-GAN-24) Although some delay problems existed, the Postal Service does not make a convincing argument that the air transportation delays were more than minor or intermittent. Although some crowded airplanes or terminals and increased traffic problems may have caused unsatisfactory delays in mail delivery; on the other hand, improved technology in computer scheduling of airplanes and trucking makes it likely that in many cases the delivery times have been shortened. It is fair for the issue to be reviewed in light of the more recent technology and post 9/11 realities.

Mr. Carlson also points out:

the Postal Service's continued use of air transportation in place of available and sufficient ground transportation undermines the entire justification for the changes in service standards and raises a question of why many other downgrades in service standards from two days to three days should not be reversed because air transportation is available to achieve two-day delivery. (DFC-T1 at 28.)

For instance, the Postal Service continues to use air transportation to transport 2-day mail from Reno, Nevada to Los Angeles P&DC for ADC Twin Valley, California. (*Ibid.*) The Postal Service continues to use air transportation for 2-day service--the actual mode of transportation is locally determined. (DBP/USPS-72, see DBP/USPS-GAN-48.) Nor does the Postal Service make any claim that the 2-day service quality for those downgraded ZIP Code pairs fell below a certain threshold on-time percentage such as, say 50 percent.<sup>16</sup> Thus, the extensive downgrading of thousands of 2-day ZIP Code

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<sup>16</sup> That is not to suggest that even such a low on-time percentage as that would not be more desirable than if more mail arrived at its destination in two days rather than three days.

pairs was not based upon sufficient management analysis designed to meet the statutory requirements for giving the highest consideration to expeditious and prompt service.

The Postal Service should recognize this logical need of mailers and should tailor its policies appropriately. This means taking all steps necessary and available to use air service when distances are so great as to preclude 2-day ground transportation, which according to the Postal Service, generally is a driving time of more than 12.05 hours. The Postal Service has not been able to demonstrate any attempt to provide 2-day service between those facilities that are further than 12.05 hours driving time apart. That is, in this case, the Postal Service management has merely called balls and strikes in determining the drive times, it did not attempt to meet its obligation to provide the most expeditious service it could for those pairs downgraded to 3-day service by using available air service. The Postal Service has not contended that air service was not available, only that it was not as consistent as ground transportation. Thus, a case has not been made that mailers' needs are met. Customer input is necessary, and should be the subject of further Postal Service, mailer and Commission study.

C. Is the service discriminatory?

The evidence of discrimination toward individual mailing groups is limited. Arguably, the impact of the application of the model to the western states is to provide a somewhat lessened service. In large part, the longer 3-day service standards prevalent in the western areas seems to be a result of geographic accident and reasonable given the greater distances in the western state areas. There are instances as described by Mr. Carlson where the application of the changes appears discriminatory in that the

service standard to some ZIP Code pairs is greater than it would be if the model had been applied in California in the same way as it had been applied in other areas. (See generally, DFC-T1 at 18-30.) More specifically, in California, the Postal Service used artificial ADC destinations (referred to as pseudo-ADC's by Mr. Carlson) to calculate the 12 hour drive times and thus applied the 2 or 3-day service standard based on those artificial geographic designations. As a result, some service standards were downgraded from 2-day service to 3-day service when, if the model had been applied as it was in other areas, the downgrades would not have occurred. (DFC-T1 at 25-7.) The effect is to apply the model unevenly and discriminatorily in those areas without a reasonable basis and thus discriminates against mailers in various ZIP Codes.

The final result in some cases is unequal service standard treatment. However, if the Postal Service restores all of the ZIP Code pairs downgraded to 3-day service back to 2-day service, on the recognition that if 2-day service was previously practicable, though not as consistent, many of the situations complained of by Mr. Carlson will be alleviated. The Postal Service will then be required to demonstrate, with specific facts, the delays and other problems caused by air transportation that require downgrading of the previous 2-day service standards.

- D. The Postal Service must give the highest consideration to the expeditious and prompt mail service for important letter mail.

The PRA requires that the Postal Service "shall give the highest consideration to the requirement for the most expeditious...transportation and delivery of important letter mail." 39 U.S.C. §101(e). Also, in selecting modes of transportation, the Postal Service "shall give highest consideration to the prompt and economical delivery of all mail." 29 U.S.C. §101(f). The Postal Service approach to determining specific service standards

that considers consistency in meeting the service standard to be of highest priority, rather than giving the highest consideration to expediting the largest amount of important letter mail as feasible, violates that statutory requirement. The primary goal of the legislation ("highest consideration") is expedition of mail delivery rather than consistency of delivery.<sup>17</sup> Certainly, consistency in meeting delivery standards is important, but the delivery standard must be set to provide the most expeditious service. As Mr. Carlson testified, "For most customers, faster is better." (DFC-T1 at 32, 37) The Postal Service did not do that. Mr. Carlson's analysis determined the service standard changes "significantly diminished the quality of service." (DFC-T1 at 37.)

The Postal Service's own testimony recognizes the mail in virtually all of these cases can be delivered within two days when air service is not delayed or other mishaps do not occur. Therefore, that being the case, the Postal Service should strive to provide that service as often as possible.

When the Postal Service establishes a three-day service standard, there is no incentive for the mail to be delivered faster than the 3-day period permitted. The Postal Service denies that it holds 3-day mail that could be delivered in two days (Gannon-USPS-T1 at 3-6) but this does not negate the probability that in scheduling transportation, the Postal Service is using ground transportation. By using ground transportation, the mail will assuredly be delivered in three days whereas if air transport were used, in many cases delivery of that same mail would be in two days and the delivery would be more expeditious.

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<sup>17</sup> The Postal Service does not contend that Express Mail or Priority Mail rather than First-Class Mail is the important letter mail referenced in the law. First-Class Mail is important letter mail.

The Postal Service contends that the on-time score is more consistent if the 3-day service standard is applied rather than a 2-day service standard, and that was the goal of the Realignment Model. (DFC/USPS-GAN-30)<sup>18</sup> But that contention neglects the statutory requirements and is a specious argument. Taken to its logical conclusion, why not establish a four-day service standard and then consistency would approach 100 percent on-time delivery, or five days and the on-time record would be even better. The Postal Service argument might have some weight if the Postal Service had determined that, if it had a 2-day service standard for a particular ZIP Code pair, the on-time scores would be so low as to be misleading, such as if it knew it could not possibly deliver under normal circumstances within the two days (because planes only fly to the location once a week, for instance, and dedicated air service is infeasible or cost prohibitive). But the Postal Service says only that maintaining a 2-day service standard was not "realistically attainable on a constant basis." (DFC/USPS-GAN-44) Although the Postal Service does not define what is constant, it would seem that for the air option to be dismissed, the experienced on-time score using air transportation should be at a very low percentage and well below 50 percent. Otherwise, the statutory obligation is to take every step possible to provide for the expeditious delivery of important letter mail. Mr. Carlson's testimony points out that "in our current information era, where people demand real-time access to information and expect speed in the conduct of life and

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<sup>18</sup> The record demonstrates the obvious, that overall on-time delivery performance improved for those downgraded ZIP Code pairs. Perhaps as probable but harder to prove, the record, nevertheless, demonstrates that of 255 origin-destination pairs in a group of the western states, after downgrading to 3 days, the number of days to delivery increased in 240 pairs and decreased in only 14 pairs and on average was 0.7 days slower. (DFC-T1 at 33-4.) Additionally, variability in delivery increased in the downgraded pairs. (*Id.* at 34-5.) Further, Mr. Carlson calculated that for 51 pairs, the Postal Service not only slowed delivery and increased variability of delivery but also reduced the on-time percentage of deliveries. (*Id.* at 36.)

business" the Postal Service's theory posited way back in Docket No. N89-1 is deficient and even then it was rejected by the Commission. (DFC-T1 at 31, Docket No. N89-1 at 33) The Postal Service's consistency theory is based on an "implausible assessment of customer desires" (DFC-T1 at 31.) A better, more straightforward measure of the speed of mail delivery is the average number of days to delivery, and that measure better conforms to the requirements of §101(e) of the PRA. (DFC-T1 at 33.)

The record clearly demonstrates that the Postal Service has moved away from air transport because it is difficult to work with, not because the air transport is infeasible or unavailable. Certainly, wherever there is air transport usually available, it stands to reason that a two-day service standard is more likely than not to be feasible even though the on-time scores may be lower. A greater proportion of the mail would be delivered sooner using air transport than in not using air at all, and without downgrading the standard to three-days. Most significantly, the record demonstrates the Postal Service did not analyze the availability of air service to each of these ZIP Code pairs on a case-by-case basis.

The Postal Service was unable to present any evidence of the cost of such a program, or to show that it would be more costly, or to show that, even if it is more costly, that the cost of 2-day service is prohibitive. For all the record shows, the added cost may be so minimal as to have no meaningful impact on rates. We propose that each and every downgraded ZIP Code pair be costed-out for a 2-day service standard and a record compiled to enable a specific management decision as to whether 2-day air service can be reasonably utilized for each ZIP Code pair. From the Commission's standpoint, in preparing an advisory opinion, the Commission ought to be able to review

costs to determine whether the air service is uneconomical and to weigh that against the benefits of expeditious and prompt service. As far as we can decipher, the Postal Service has not done this. Nor has the public had the opportunity to be provided with the information as to the impact on First-Class postage of such an approach.

It is for situations such as these that the provisions of the PRA are valuable by requiring the Postal Service to seek advice from this Commission before undertaking policy changes of nationwide impact. Proposed changes can be reviewed in the public forum. It is OCA's view that the Postal Service was required by the PRA to undertake a second analysis in order to insure that it is providing the most expeditious delivery of important letter mail and prompt service mandated by the statute in §101(e) and (f).

#### IV. PROPOSED FINDINGS, RECOMMENDATIONS AND CONCLUSIONS

Wherefore, for the above reasons, the Commission should find a violation of the PRA and that the Postal Service must file with the Commission a request for an advisory opinion. The Commission should further discuss in the report on this proceeding its conclusions regarding the statutory requirement to provide adequate service, discrimination resulting from the changes undertaken by the Postal Service without prior Commission consideration, and the importance of the Postal Service giving the highest consideration to expedition and promptness in the delivery of important letter mail. Most importantly, pending the outcome of further proceedings, recommended above, the Postal Service should restore 2-day delivery service where service was downgraded to 3-day service in 2000 and 2001, pending the outcome of a §3661(b) proceeding.

Respectfully submitted,

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ADVOCATE

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