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**BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001**

**Complaint on First-Class Mail
Service Standards**

Docket No. C2001-3

**DOUGLAS F. CARLSON
REPLY BRIEF**

August 26, 2004

TABLE OF CONTENTS

I.	Introduction.....	1
II.	Issues Raised in the Postal Service’s Initial Brief.	1
	A. The Postal Service was required to obtain an advisory opinion pursuant to 39 U.S.C. § 3661(b).	1
	B. The Postal Service’s suggestion that an upcoming “adjustment phase” will rectify problems with service standards should be dismissed as implausible.	3
	C. The availability of air transportation — reliable or not — was not a factor in the Postal Service’s determination of whether a particular service standard should be two days or three days.....	6
	D. The suggestion that “one always must draw the line somewhere” trivializes the issues in this case.	7
	E. Section 101(e) interacts with other provisions of the Postal Reorganization Act, and this section should have prohibited the criteria that the Postal Service used for changing service standards in 2000 and 2001.	7
	F. The Postal Service did not balance promptness and economy.....	8
	G. Telling customers who do not like the new service standards to deposit their mail one day earlier is not an acceptable response.....	9
	H. A three-day service standard means slower mail service than a two-day service standard.	9
	I. Conformity to the national model is not the test by which the Commission should judge the validity of the new service standards.....	10
	J. Customers properly may complain about postal services if they are dissatisfied with them.	11
III.	Issues Raised in the OCA’s Initial Brief.	11
IV.	Conclusion.....	12

I. INTRODUCTION

In this reply brief, I will respond to arguments in the initial briefs of the Postal Service and the Office of the Consumer Advocate. I incorporate herein the arguments explained in my testimony and initial brief, and I will respond only to issues not already fully addressed in my testimony or initial brief.

II. ISSUES RAISED IN THE POSTAL SERVICE'S INITIAL BRIEF.

A. THE POSTAL SERVICE WAS REQUIRED TO OBTAIN AN ADVISORY OPINION PURSUANT TO 39 U.S.C. § 3661(b).

Section 3661(b) requires the Postal Service to request an advisory opinion from the Commission prior to implementing a change in the nature of postal services that will generally affect service on a nationwide or substantially nationwide basis. The Postal Service's continued insistence that it had no obligation to seek an advisory opinion before changing service standards in 2000 and 2001 is insulting to the American public.

While section 3661(b) does not impose a sunset date on the validity of an advisory opinion, such as the one that the Commission issued in Docket No. N89-1 and the Postal Service ignored, the Commission correctly observed that a rule of reason must exist. The Commission explained:

[R]eading out a "rule of reasonableness" effectively would nullify the provision, as one broad service change request could then arguably be deemed to operate essentially in perpetuity. It is unlikely the authors of this provision would have intended this result. A common-sense interpretation requires acknowledgment that passage of time, in some instances, may require the Service to request a new advisory opinion. Where, as here, time has not simply passed, but has passed with several changes of Postmasters General, several changes in Governors, several reorganizations, and numerous changes in operations, technology – and possibly public need – the case is even stronger. Accordingly, the Commission finds that Mr. Carlson has made a prima facie showing on this threshold question.

Order No. 1320 at 8, filed September 12, 2001.

Throughout this case, no facts, data, or other information have emerged to indicate that the Postal Service had no obligation to seek an advisory opinion from the Commission before changing the criteria for two-day First-Class Mail service standards and implementing new service standards nationwide. The gap between the advisory opinion and implementation spanned 10 years, a decade in which our nation and the world witnessed the advent of the Internet and a revolution in the speed of communication and the public's expectation for speed.

The Postal Service has cited no record evidence from Docket No. N89-1 to indicate that participants or the Commission contemplated the sweeping nature of the change to the definition of two-day service standards that the Postal Service actually implemented in 2000 and 2001. Nobody envisioned that the Postal Service would uniformly eliminate the planned use of air transportation for *any* two-day mail when developing service standards. Nobody envisioned that the Postal Service would ignore the needs of customers for two-day mail service and instead articulate service standards simply based on a computer projection of the truck drive time from an origin parent P&DC to a destination ADC. Rather, as Postal Service witness Seymour A. Lazerowitz testified in Docket No. N89-1, the Postal Service would provide two-day delivery when reliable air transportation existed and business customers needed two-day delivery. Docket No. N89-1, Direct Testimony of Seymour A. Lazerowitz on Behalf of the United States Postal Service at 22–23. This approach suggested a case-by-case analysis that would consider available and reliable air transportation and customer need. The Postal Service has presented no evidence in this case to indicate that no reliable air transportation — commercial or dedicated — existed between any of the city pairs whose service standard was downgraded from two days to three days. Few of us would doubt that some commercial airline service between some cities is less reliable than we would like. On this point, we would agree with the Postal Service. However, few people would believe that no reliable air transportation is available anywhere in the country between any city pairs that formerly had a two-day service standard. Yet this fact would need to be true for the changes in

service standards to be consistent with the criteria presented in Docket No. N89-1.

The changes in service standards that the Postal Service implemented in 2000 and 2001 also abandoned another related and critical standard: “[A]ny destination Area Distribution Center which receives 0.5 percent of a facility’s originating volume should be considered for two-day service.” PRC Op. N89-1 at 8–9. Volume is now irrelevant. This change is a major one. The Postal Service now wants us to believe that this criterion was not, in fact, abandoned because it will be used to adjust service standards in the next phase of this project. See section II.B, *infra*.

The passage of time alone raised enough of an obligation for the Postal Service to request an advisory opinion from the Commission before implementing the changes in service standards in 2000 and 2001. In addition, the clear change in the definition of the two-day service standard — abandoning considerations of volume, customer need, and availability of air transportation and instead focusing purely on surface transportation — confirms that the Postal Service implemented a change in service standards that the Commission never considered in the advisory-opinion process, and the public had no advance notice and no opportunity to provide input on these changes.

B. THE POSTAL SERVICE’S SUGGESTION THAT AN UPCOMING “ADJUSTMENT PHASE” WILL RECTIFY PROBLEMS WITH SERVICE STANDARDS SHOULD BE DISMISSED AS IMPLAUSIBLE.

The Postal Service is now making the remarkable suggestion that the public has nothing to worry about because the next phase of service-standard changes is yet to come: consideration of the 0.5-percent threshold and other circumstances that might warrant restoration of two-day mail service. Postal Service Brief at 9. While the Postal Service cites the declaration and testimony of Charles M. Gannon for support, neither citation confirms that the importance of 12-hour truck drive times will be minimized in the next phase. In fact, the Postal

Service's position is rather hard to believe. Why would an organization impose massive nationwide changes in service standards, including thousands of downgrades from two days to three days, based on a national model if the organization expected to turn around and undo many of these changes after an analysis that should have been conducted *before* the changes were implemented? It is hard to imagine that the Postal Service embarked on a process that it envisioned would require, in many cases, double work to assign service standards and schedule transportation. The Postal Service has provided no assurance that the area offices are going to request numerous upgrades in service standards when the clear message in 2000 and 2001 was to shift two-day mail away from air transportation. Adjustments are exceptions or changes, and the momentum in an organization usually favors the status quo. The Postal Service is seriously misguided if it believes that area offices are going to correct all the errors in an original process that clearly was dictated from headquarters, with deviations from the model labelled and handled as exceptions. Adjustments surely will be few and far between. Therefore, the implementation of the national model and 12-hour truck drive times will endure absent an impetus to review these changes more fundamentally and systematically.

Moreover, if area offices are as free as the Postal Service suggests to request upgrades to two days, and if all the errors that resulted from uniform application of a 12-hour truck drive time will eventually be corrected through the normal adjustment process, where is the flood of requests for adjustments? The Postal Service has not frozen all service standards, as some changes have been implemented since I filed this complaint. For example, the Postal Service restored two-day service between Reno and Las Vegas. DFC-T-1 at 41–42. Yet area offices do not seem particularly inclined to request upgrades in service standards. If area offices were ready to implement changes to the service standards to correct all the deficiencies caused by the blind application of a computer model, one would think that the Postal Service would have provided some evidence to this effect, as it would have supported the case that the downgrades from two days to three days were merely a first pass at

implementing new service standards. In reality, the only example of an upgrade that witness Gannon cites is my example of Reno and Las Vegas. Witness Gannon provides no numbers to suggest that any significant number of requests has arrived or will arrive. USPS-T-1 at 13–14. The service standard from San Francisco to San Diego is still three days, even though this service standard could be upgraded without changing the transportation schedule, but the Pacific Area obviously has not been motivated to make even this minor change. See Carlson Initial Brief at 5. The systematic downgrades to service standards are not going to be corrected absent an external impetus to the Postal Service, particularly since every request for an upgrade could potentially lower an area vice president's on-time delivery performance, even if the speed of delivery increased.

The Postal Service's true intent regarding the service standards may be reflected in the PowerPoint presentation that I obtained from the Postal Service through the Freedom of Information Act before filing this case. This presentation says nothing about the 0.5-percent threshold or an intent later to correct the errors that one surely could foresee that would result from implementing changes in service standards based on a uniform computer model. The focus is on the kinds of changes that were, in fact, implemented.

Even if everything that the Postal Service says is true, and all the errors will eventually be corrected — still, however, without public input — the Postal Service nevertheless changed the nature of postal services on a nationwide basis by implementing major changes in service standards. Even though a Phase III allegedly is on the way to save the public from the detrimental effects of what the Postal Service describes as Phase II of the alignment plan reviewed in Docket No. N89-1, postal services nonetheless changed in a significant way. Section 3661(b) does not relieve the Postal Service of requesting an advisory opinion for changes in the nature of postal services that last only three to five years. Indeed, if the Postal Service had requested an advisory opinion, the Commission might very well have advised the Postal Service to conduct the extra

analysis *before* implementing the changes in order to implement them correctly the first time.

The Postal Service's suggestion that help is on the way — that all the problems identified and discussed in this complaint will be rectified in the adjustment process — is almost as incredible as its claim that the changes in service standards implemented in 2000 and 2001 were merely a delayed implementation of the service standards that were reviewed in Docket No. N89-1. While the Postal Service apparently was willing to wait a decade to implement its changes in service standards, postal customers are not willing to wait years while an agency blindly implements service downgrades dictated by a computer model and then slowly gets around to applying the existing 0.5-percent criterion to fix the errors on an ad hoc basis.

C. THE AVAILABILITY OF AIR TRANSPORTATION — RELIABLE OR NOT — WAS NOT A FACTOR IN THE POSTAL SERVICE'S DETERMINATION OF WHETHER A PARTICULAR SERVICE STANDARD SHOULD BE TWO DAYS OR THREE DAYS.

The Postal Service cites witness Gannon's testimony for the misleading proposition that there has never been a mandate that only surface transportation may be used to transport two-day mail. Postal Service Brief at 11–12. Strictly speaking, this statement is true because area offices, *after service standards have been determined based on the rule of a 12-hour truck drive time*, are free to choose any mode of transportation. This freedom itself raises questions of efficiency: If the Postal Service is, in fact, using air transportation, in some instances the service standard should be two days instead of three days. But the more-pertinent observation is that the Postal Service did not consider the availability of reliable air transportation *in determining whether the service standard for a city pair should be two days or three days*. Once the damage is done and the service standard has been downgraded to three days, the importance of the exact mode of transportation diminishes because the service standard is three days.

D. THE SUGGESTION THAT “ONE ALWAYS MUST DRAW THE LINE SOMEWHERE” TRIVIALIZES THE ISSUES IN THIS CASE.

The Postal Service dismisses complaints about three-day service standards between city pairs whose truck drive time barely exceeded 12 hours with the assertion that one always must draw the line somewhere, and somebody always is going to fall on the other side of it. Postal Service Brief at 20. The Postal Service sets up a false dilemma because the Postal Service does not necessarily need to draw a line. The test should be whether the Postal Service can provide two-day service between two city pairs. If a particular ADC can provide two-day mail service if the mail arrives by 17:40 and if the truck drive time is 12.5 hours, the Postal Service should provide two-day service. The Postal Service does not need to draw a line. With no line, nobody will unfairly land on the other side of a line. Unfortunately, the Postal Service’s national model, with its narrow focus on the 12-hour truck driving time, created this need to draw an arbitrary line that the Postal Service now tries to hide behind.

E. SECTION 101(e) INTERACTS WITH OTHER PROVISIONS OF THE POSTAL REORGANIZATION ACT, AND THIS SECTION SHOULD HAVE PROHIBITED THE CRITERIA THAT THE POSTAL SERVICE USED FOR CHANGING SERVICE STANDARDS IN 2000 AND 2001.

Section 101(e) states:

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.

I explained in my testimony, DFC-T-1 at 4, that, even if postal customers preferred consistency over speed, the law would not permit the Postal Service to slow mail delivery in the name of improving consistency. The Postal Service criticizes my interpretation of section 101(e) by asserting that, under my interpretation, the Postal Service could never downgrade a service standard from two days to three days because the service standards were cast in stone when Congress passed the Postal Reorganization Act. See Postal Service Brief at 29. In reality, while section 101(e) requires the Postal Service to give “highest consideration” to the most-expeditious transportation and delivery of important

letter mail, this section interacts with other statutes, including section 3661(a), which requires the Postal Service to provide efficient postal services. Therefore, if an airline cancels or significantly alters air service between two city pairs, two-day service may no longer be efficient. Moreover, implementation of dedicated air service may not be cost-effective if the volume of mail between these city pairs was low and customers did not have a strong need for two-day service. The statutory scheme provides some flexibility. However, flexibility is not without limit. The statute exists to prevent exactly the result that occurred in this case: The Postal Service decided to improve on-time delivery scores, while slowing speed, under the flawed contention that customers prefer consistency over speed. By ignoring the statutory mandate, the Postal Service is now able proudly to announce “better” service while withholding the fact that the volume of mail destined for two-day delivery has fallen by 1.5 billion pieces. Section 101(e) should have prevented this action. If Congress had wanted to give the Postal Service unfettered discretion to determine the expeditious transportation and delivery of important letter mail, it would not have enacted section 101(e).

F. THE POSTAL SERVICE DID NOT BALANCE PROMPTNESS AND ECONOMY.

Section 101(f) states:

In selecting modes of transportation, the Postal Service shall give highest consideration to the prompt and economical delivery of all mail and shall make a fair and equitable distribution of mail business to carriers providing similar modes of transportation services to the Postal Service.

The Postal Service states that my testimony is silent on the “economical” criterion in section 101(f) and that I have not demonstrated a failure by the Postal Service to balance these criteria reasonably. Postal Service Brief at 33.

The Postal Service needs to look no further than its own brief to confirm that the Postal Service failed to balance these criteria. According to the Postal Service, “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[.]” Nobody else considered

establishing a new dedicated air transportation network either. Moreover, postal managers kept witness Gannon and his team in the dark about the FedEx negotiations, USPS-T-1 at 11–12, thus ensuring that the Postal Service would fail in its statutory mandate to consider economical issues associated with various transportation methods, including dedicated air transportation. The events in fall 2001 disrupted subsequent consideration of whether the FedEx network could be used to accommodate two-day mail. *Id.* at 13. By all reasonable assessments, the effects of the crises of fall 2001 have abated, but the Postal Service still has not undertaken this review. And now the Postal Service criticizes *me* for not engaging in the statutorily required balancing of promptness and economy.

G. TELLING CUSTOMERS WHO DO NOT LIKE THE NEW SERVICE STANDARDS TO DEPOSIT THEIR MAIL ONE DAY EARLIER IS NOT AN ACCEPTABLE RESPONSE.

The Postal Service believes that customers who do not like the new service standards should simply deposit their mail one day earlier. Witness Gannon was the first to provide this insight into the thinking of Postal Service managers, USPS-T-1 at 2, and now the Postal Service affirms it on brief. Postal Service Brief at 34. The Postal Service simply fails to recognize that customers cannot always control the day on which a need to mail a letter arises; sometimes a need arises exactly two days before the letter must arrive at the destination. Moreover, the Postal Service misquotes my interrogatory response to the OCA. I stated that I am acquainted with one recipient of a monthly bill *payment* who is annoyed by the time required for delivery from Phoenix. OCA/DFC-T1-5(a). She is the creditor, in effect, and the sender is a bill-payment service. She does not directly control the date on which the bill-payment service sends the mail, nor can the bill-pay customer. She would prefer to receive the check in two days, rather than three.

H. A THREE-DAY SERVICE STANDARD MEANS SLOWER MAIL SERVICE THAN A TWO-DAY SERVICE STANDARD.

The Postal Service attempts to distance itself from situations in which, for example, mail arrives at the destination ADC 30 minutes before the critical entry

time of 18:00, yet the mail carries a three-day service standard because the computer-projected truck drive time was more than 12 hours. The Postal Service is creating the impression that this mail probably will be delivered in two days, anyway, and that I have overstated the likelihood in which this mail, although labelled for three-day delivery, would actually be delayed until the third day. Postal Service Brief at 37. We are going in circles, with the Postal Service seemingly saying that I should not complain about the three-day service standard because the mail is being delivered in two days. If the mail is not being delayed until the third day, a service standard of three days is inefficient because it causes customers to send mail a day earlier than necessary or to upgrade to Priority Mail or Express Mail. If a two-day service standard is possible, an efficient Postal Service would provide it. On the other hand, if the mail *is* being delayed until the third day, the Postal Service is operating inefficiently because this mail clearly could be delivered in two days if it were labelled as two-day mail. Either way, the two-day service standard is inefficient. And the facts support my contention that mail labelled for three-day delivery will be delivered more slowly than mail labelled for two-day delivery: For mail from San Francisco to San Diego, the average number of days to delivery rose from 2.0 to 2.2 from FY 1999 to FY 2002. DFC-T-1 at Appendix 2.

I. CONFORMITY TO THE NATIONAL MODEL IS NOT THE TEST BY WHICH THE COMMISSION SHOULD JUDGE THE VALIDITY OF THE NEW SERVICE STANDARDS.

In the interest of “repetition,” Postal Service Brief at 37–41, the Postal Service once again plays up the estimated time of arrival of 17:00 and ignores the fact that mail that arrives by the critical entry time of 18:00 can be processed in time for two-day delivery. See USPS-T-1 at 3–5 and DFC-RT-1 at 1–3. The Postal Service fails to comprehend that conformity to the national model is not the legal standard by which the commission should judge the validity of the new service standards. Carlson Initial Brief at 13–14. The Postal Service should change a service standard to two days whenever it can provide two-day service using existing resources.

J. CUSTOMERS PROPERLY MAY COMPLAIN ABOUT POSTAL SERVICES IF THEY ARE DISSATISFIED WITH THEM.

The Postal Service asserts that I am objecting to the changes in service standards “only because [I do] not like the results.” Postal Service Brief at 8. Is a customer’s dissatisfaction with the service that the Postal Service is providing so irrelevant and so trivial that the customer’s opposition to the new service standards can be dismissed on the grounds that he merely does not like the results? Is a customer’s dissatisfaction with losing most of his two-day delivery area — including two-day delivery from San Francisco to San Diego — with no prior opportunity for public input so irrelevant that he has no legitimate right to scrutinize and criticize the underlying criteria? While one might be tempted to chalk this language up to a Postal Service attorney overzealously advocating for his client, I submit that this statement actually sums up the Postal Service’s attitude toward customer complaints: trivialize the complaints, question the motives of the complainant, and hope that complainant will tire of protracted battles with a large bureaucratic organization. In reality, section 3662 exists to provide a hearing for customers who are dissatisfied with postal services.

III. ISSUES RAISED IN THE OCA’S INITIAL BRIEF.

The Initial Brief of the Office of the Consumer Advocate provides a rigorous and methodical review of the evidence in this proceeding, along with sound recommendations. Only a few concurring comments are necessary.

I support the OCA’s recommendation that the Commission find that the Postal Service is still required to request an advisory opinion on the changes in service standards that it has implemented and that, as witness Gannon asserts, the Postal Service will continue to adjust. OCA Brief at 5–6. An administrative finding from the Commission that the Postal Service is still required to obtain an advisory opinion would strengthen a citizen’s attempt to obtain a court order requiring the Postal Service to request an advisory opinion if the Postal Service decided to ignore the Commission’s recommendation.

The OCA discusses the issue of discrimination inherent in the new service standards. OCA Brief at 30–31. Over 99 percent of the changes in service standards in the Pacific Area resulted in downgrades from two days to three days. Complaint at ¶ 54. A model that ignores the needs of customers and focuses solely on truck driving times discriminates against postal customers who live in regions where distances are long and cities are far apart. Business and personal communications between these cities may be no less intensive than in densely populated areas in the East, but the use of surface transportation denies some customers two-day mail service.

Finally, the OCA's brief twice touches on a concept that the Postal Service and Commission should seriously consider. OCA Brief at 20, fn. 12 and at 23. Rather than focusing on surface transportation for two-day mail and downgrading mail to a three-day service standard if the truck drive time exceeds 12 hours by more than a few minutes, the Postal Service should consider ways of substantially expanding the two-day reach of First-Class Mail. The Postal Service could potentially make First-Class Mail much more competitive in the delivery marketplace than it is now, taking business away from private companies that provide two-day delivery at prices that are substantially higher than the rates for First-Class Mail. In the Internet age, one conclusion in the delivery marketplace is certain: Faster is better.

IV. CONCLUSION

The Commission should issue an order determining that this complaint is justified and, pursuant to section 3662, issue a public report detailing the recommendations described in my initial brief at 16–17.

Respectfully submitted,

Dated: August 26, 2004

DOUGLAS F. CARLSON