

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

Complaint of Jan Book

Docket No. C2005-2

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MOTION OF THE UNITED STATES POSTAL SERVICE
TO DISMISS COMPLAINT
(May 17, 2005)

The Complaint in this proceeding was filed in response to a decision of the United States Postal Service to consolidate and transfer the mail processing operations of its Processing & Distribution Center (P&DC) in Marina del Ray, California (hereinafter, the Marina P&DC) to several of the remaining seven mail processing facilities in the Los Angeles, California metropolitan area.¹ In accordance with 39 U.S.C. § 3662, as implemented by the Rules of Practice and Procedure of the Postal Rate Commission (39 C.F.R. § 3001.81 through 3001.87), and for the reasons stated below in this motion, the United States Postal Service hereby moves that the Commission dismiss the Complaint.

I. The Contested Changes In Service Are Very Limited In Scope And Impact

On January 14, 2005, the Postal Service announced its determination to transfer the mail processing operations of the Marina P&DC, which serves the 902 through 905 3-digit ZIP Code areas of the Los Angeles metropolitan area. See the attached Declaration of Robert W. Field, Jr. at ¶2 (hereinafter, the Field

¹ Although the Complaint correctly alleges that such a decision has been made and is being implemented by the Postal Service, it mistakenly asserts that the operations in question are being transferred only to the Los Angeles P&DC.

Declaration). At the conclusion of the transfer of operations from the Marina P&DC, mail originating from and destinating to the 902 through 904 3-digit ZIP Code areas will be processed at the Los Angeles P&DC; mail originating and destinating in the 905 3-digit ZIP Code area that was formerly handled at the Marina P&DC will be processed at the Long Beach P&DC. Field Declaration at ¶6. There are no plans to close any downstream post offices or stations formerly served by the Marina P&DC as a result of the transfer of upstream mail processing operations. Field Declaration at ¶7. The functions of the Marina P&DC Business Mail Entry Unit will be absorbed primarily by Los Angeles Airport Station 90009. *Id.* at 8. Caller service will be moved to the Hillcrest Station 90301 or to an office of the customer's choice. *Id.* The Postal Service plans to retain retail window and post office box operations of the Alla Vista postal retail unit on the Marina P&DC property as part of any commercial redevelopment of the property. *Id.* The relocation of mail processing functions will have a very limited impact on service standards for some mail originating and destinating in the 902-905 ZIP Code areas. As the Commission is aware, there are 849,106 3-digit ZIP Code pair service standard combinations in the national First-Class Mail network.² In light of the description in ¶9 of the Field Declaration, the realignment of service standards expected to result from the transfer of mail processing operations from the Marina P&DC to Los Angeles and Long Beach -- from a nationwide or even substantially nationwide perspective -- can best be described as extremely limited, if not negligible.

² See, Docket No. C2001-3, Declaration of Charles Gannon at ¶20 (July 30, 2001).

II. The Complaint Fails To Raise A Matter Of Policy To Be Considered By The Postal Rate Commission Under 39 U.S.C. § 3662

The Postal Rate Commission is authorized under 39 U.S.C. § 3662 to consider complaints which raise questions concerning whether postal services are being provided in accordance with the policies of the Postal Reorganization Act, 39 United States Code § 101 *et seq.*

In pertinent part, 39 U.S.C. § 3662 provides that:

Interested parties . . . who believe that they are not receiving postal service in accordance with the policies of . . . title [39, United States Code] may lodge a complaint with the Postal Rate Commission in such form and in such manner as it shall prescribe. The Commission may in its discretion hold hearings on such complaint. . . . If a matter not covered by subchapter II of this chapter is involved, and the Commission after hearing finds the complaint to be justified, it shall render a public report thereon to the Postal Service which shall take such action as it deems appropriate.

The Commission's regulations which implement this statute are published at 39 C.F.R. §§ 3001.81 through 3001.87. In pertinent part, § 3001.82 indicates:

The Commission shall entertain only those complaints which clearly raise an issue concerning whether or not rates or services contravene the policies of the Act; thus, complaints raising a question . . . with regard to an individualized, localized or temporary service issue shall generally not be considered as properly raising a matter of policy to be considered by the Commission.

In Docket No. C99-1, the Commission summarized the standards that it applies to complaints filed under § 3662:

By its terms, the complaint procedure provided in § 3662 is available to two categories of persons: (1) interested parties who believe the Postal Service is charging rates not in conformity with the policies set out in Title 39; and (2) interested parties who believe that they are not receiving postal service in conformity with the policies in Title 39. The second category is restrictive, in that an interested party's complaint must be directed to a service or services it is receiving (or allegedly should be receiving), rather than some generalized complaint about postal service.

* * * *

Once a qualifying complaint has been lodged, § 3662 commits to the Commission's discretion a choice whether to hold hearings on the complaint, or not. Generally, the Commission has exercised this discretion on a case-by-case basis. However, early in its institutional history the Commission adopted a rule to guide the discretionary exercise, which states:

The Commission shall entertain only those complaints which clearly raise an issue concerning whether or not . . . services contravene the policies of the [Postal Reorganization] Act; thus, complaints raising a question . . . with regard to an individual, localized or temporary service issue not on a substantially nationwide basis shall generally not be considered as properly raising a matter of policy to be considered by the Commission.

39 C.F.R. § 3001.82. While the Commission has not used this regulation to bar absolutely any consideration of individual or localized rate and service complaints -- especially where the Postal Service allegedly acted in an arbitrary, discriminatory, capricious or unreasonable manner -- it has served as a basis for declining to conduct hearings on controversies that did not raise questions of general postal policy.

PRC Order No. 1239 at 9-10. (May 3, 1999).

At ¶¶2 and 6, the Complaint cites the case of *Wilson v. United States Postal Service*, 441 F. Supp 803 (C. D. Cal. 1977). This reference is both ironic and illuminating. The *Wilson* case arose from an effort to enjoin the transfer of certain Los Angeles area mail processing operations to what is now the Marina P&DC. As here, the plaintiffs in *Wilson* claimed that the Postal Service's failure to submit its operational plans for review to the Commission before taking action violated 39 U.S.C. § 3661.³ Quoting the holding in *Buchanan v. United States Postal Service*, 508 F2d 259, 262-263 (5th Cir 1975), the court in *Wilson* affirmed

³ This section requires the Postal Service to submit plans for changes "in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis" to the Postal Rate Commission for review "within a reasonable time prior to the effective date of such proposal."

the proposition that three factors must co-exist before the hearing requirement in § 3661 applies to an action of the Postal Service:

- there must be a change that has some meaningful impact on service;
- the change must be in the nature of postal services; and
- the change must affect service on a nationwide basis.

Wilson at 807-808.

Of particular relevance to the instant case is the *Wilson* court's concurrence with the holding in *National Association for the Advancement of Colored People vs. United States Postal Service*, 398 F. Supp 562, 565 (N.D. Ga. 1975), that the mere transfer of mail processing functions from one facility to another does not affect postal services on a nationwide or substantially nationwide basis. In 1977, the Postal Service's consolidation of the Inglewood, California Sectional Center Facility and transfer of its operations (to what is now the Marina P&DC) reduced the number of mail processing plants serving the Los Angeles metropolitan area from six to five. Reviewing the facts before it, the *Wilson* court concluded that the transfer of mail processing functions to Marina "merely affects the western region of Los Angeles County. This is a far cry from affecting postal services on even a substantially nationwide basis." See, *Wilson*, 398 F. Supp at 808.

At ¶¶10-11, the instant Complaint focuses on the relative number of mail processing facilities in the Los Angeles metropolitan area in 1977 and 2005 and expresses concern, in light of intervening population growth, whether there will

be sufficient processing capacity to handle the mail flowing in and out of the Los Angeles metropolitan area. The 2005 decision to transfer operations from Marina to Los Angeles and Long Beach will leave the Los Angeles metropolitan area with seven mail processing plants, two of which have the capacity to share responsibility for processing Marina P&DC service area mail.⁴ Complainant's concerns reveal a less than complete understanding of the intervening revolution in mail processing technology that has permitted more efficient use of postal personnel and floor space since 1977. Notwithstanding changes in population, number of households, or mail volume trends since 1977, the decision to transfer the functions of the Marina P&DC merely affects only a portion of the Los Angeles Customer Service District, which is a still a far cry from affecting postal services on a substantially nationwide basis, within the meaning of either 39 U.S.C. § 3661 or 39 C.F.R. § 3001.82. The Attachment to the Field Declaration provides a graphic representation of the limited geographical scope of the transfer of operations from Marina to Los Angeles and Long Beach.

In dismissing an earlier complaint, the Commission emphasized that

[a]ll of the specific deficiencies alleged by the complainant relate either to . . . [him] as a particular mail user or to alleged localized mail service deficiencies. Of singular importance in reaching this conclusion is the fact that the complainant's allegations relate to issues of Postal Service operational practices or mail delivery services, rather than to policies set forth in the Act. When read together, the governing statute and the Commission's rules of practice intend that the statutory complaint procedure is to entertain only those complaints which involve policy matters, substantially nationwide in scope, relating to postal services or

⁴ USPS Answer at ¶11 (April 27, 2005). Mail processing operations and facilities are subject to efficiency reviews as a routine function of postal management. Field Declaration at ¶3 and 6.

the application of rates and fees or the Domestic Mail Classification Schedule. The local mail processing aspect of the subject allegations clearly does not satisfy this requirement.

PRC Order No. 435, at 3 (June 11, 1982). At its core, the instant Complaint pertains to the transfer of mail processing operations from one P&DC in the Los Angeles California metropolitan area to a pair of neighboring facilities and the transfer of the Marina Business Mail Entry Unit and caller service to other local post offices. By its very terms, the Complaint raises a “localized” service issue, not a matter that can fairly be described as having a “substantially nationwide” character, within the meaning of 39 C.F.R. § 3001.82. On this basis, the Postal Service considers that the Commission is obligated to dismiss the Complaint.

III. There is No Nexus Between The Hypothetical Harm Alleged In The Complaint And The Transfer Of Operations From The Marina P&DC

Without any specificity, ¶1 of the Complaint asserts that Complainant would be adversely affected by the transfer of operations from the Marina P&DC to the Los Angeles P&DC. It is not clear whether this claim mistakenly assumes a shutdown of the Alla Vista postal retail unit on the Marina property or whether, for instance, some of Complainant’s First-Class Mail that currently has a 2-day service standard will end up with a 3-day service standard. The Postal Service does not dismiss the concerns of any customer lightly. Nevertheless, such a grievance is “individualized” and “localized” at best, and does not rise to the level

of being substantially nationwide in scope, within the meaning of 39 C.F.R. § 3001.82.⁵

At ¶8, the Complaint speculates that “the entire city of Los Angeles would be virtually shutdown” if the Los Angeles P&DC (to which some Marina P&DC operations are being transferred) were “shut down as a result of fire, earthquake, anthrax scare or terrorist attack.” The apparent purpose of such speculation is to imply that the operations of the Marina P&DC should remain open in order to provide back-up capacity in the event that some unpredictable future catastrophe befalls the Los Angeles P&DC. In other words, Complainant would have the Commission read into the Postal Reorganization Act (1) a perpetual ban against the transfer of operations from any P&DC because a disaster could disable any facility to which its operations were shifted and (2) the existence of Commission authority to enjoin such a move.⁶

In a similar vein at ¶12, the Complaint alleges that if the City of Los Angeles were unable to receive or send out mail as a result of a shutdown of the Los Angeles P&DC, “the negative impact would have a rippling effect across the region and the nation resulting in a negative impact on a ‘substantially nationwide basis.’” Still, the Commission should ignore Complainant’s speculation. The

⁵ To further inflate the impact of the transfer of mail processing operations from the Marina P&DC, Complainant alleges without foundation that the Postal Service has plans to close the Long Beach P&DC. Complaint at ¶9. That allegation is refuted at ¶10 of the Field Declaration. And, contrary to the assertion at ¶11 of the Complaint, with the demise of the Marina P&DC, there still remain seven mail processing plants in the Los Angeles metropolitan area, not three. USPS Answer at ¶11 (April 27, 2005); Field Declaration at ¶5.

⁶ On this issue, Complainant is invited to review the *Wilson* opinion at 806, n.1.

hypothetical disaster that would result in the hypothetical closing of the Los Angeles P&DC that would produce the hypothetical substantially nationwide impact remains, for now, a figment of Complainant's imagination. Complainant's supposition bears no relation to the real-world decision to transfer operations from the Marina P&DC. Complainant's disaster scenario appears designed to provoke the Commission to read into the Act an absolute prohibition against the reduction in the number of locations at which mail processing is performed – out of concern that catastrophic circumstances beyond the Postal Service's control could one day render a currently redundant facility useful again.

The Postal Service still bears the scars of its tragic experience with anthrax contamination in 2001 that resulted in the deaths of two postal workers and injuries to others. And, the Postal Service faces the risk of natural disasters every day that could have an impact on any of its thousands of post offices and hundreds of mail processing plants. Those realities, however, provide no basis for interpreting §§ 3661 and 3662 in a manner that suggests that the Commission has jurisdiction to review the action at issue here – the transfer of mail processing operations from the Marina P&DC. Nor does the Postal Reorganization Act grant the Commission authority to review contingency plans designed to address catastrophic scenarios or threats to postal security and safety. In formulating the Postal Reorganization Act, Congress did not intend to convey to any entity other than the Postal Service the authority to manage the details of determining the location of mail processing operations and other

matters necessary to establish, maintain, secure, or refine the mail processing system.

IV. The Complaint Alleges No Arbitrary, Discriminatory, Capricious, Or Unreasonable Action

The Commission has indicated that the absence of “substantially nationwide” impact, by itself, is not dispositive on the issue of whether a complaint invoking § 3662 should be dismissed. In response to complaints which question whether a postal operating procedure or practice (otherwise lacking substantially nationwide implications) or the actual service provided to a mailer conforms with the policies of the Postal Reorganization Act, the Commission has stated that its policy is to hold hearings only when the surrounding circumstances raise the question of whether the Postal Service policy or action was unduly discriminatory, or otherwise arbitrary, capricious or unreasonable. See Docket No. C84-3, PRC Order No. 580, at 5-6; Docket No. C84-2, PRC Order No. 540, at 5 (December 6, 1983); Docket No. C83-2, PRC Order No. 524, at 10. (September 2, 1983). As demonstrated by the Field Declaration, no such circumstances exist. The absence of any allegation in the Complaint of unduly discriminatory, arbitrary, capricious or unreasonable action by the Postal Service further establishes that there is no basis for continuation of this docket.

In conclusion, the Complaint fails to allege a basis for the Commission to assert jurisdiction under § 3662 or any other provision of the Postal Reorganization Act. Accordingly, the Commission should dismiss the Complaint.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel
Ratemaking

Michael T. Tidwell
Attorney

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-2998/ FAX: -5402
May 17, 2005
michael.t.tidwell@usps.gov

CERTIFICATE OF SERVICE

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

Michael T. Tidwell

Washington, D.C. 20260-1137
(202) 268-2998/ FAX: -5402
May 17, 2005
michael.t.tidwell@usps.gov