

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

**MAIL PROCESSING NETWORK
RATIONALIZATION SERVICE CHANGES, 2012**

Docket No. N2012-1

**REPLY OF AMERICAN POSTAL WORKERS UNION, AFL-CIO IN OPPOSITION
OF USPS MOTION FOR RECONSIDERATION OF PRESIDING OFFICER'S RULING
N2012-1/5 ESTABLISHING PROCEDURAL SCHEDULE
(January 24, 2012)**

On January 18, 2012 the Postal Service filed a motion seeking reconsideration of Presiding Officer's Ruling No. N2012-1/5 which established the procedural schedule for this docket. Pursuant to Rule 21(b) of the Commission's Rules of Practice, the American Postal Workers Union, AFL-CIO (APWU) hereby submits its Reply in Opposition to the Postal Service Motion.

The Postal Service by its Motion seeks to have the Commission revise the current procedural schedule to permit issuance of its Advisory Opinion in this case by mid-April. The Motion focuses on the Postal Service's need to implement the proposed service and operational changes as "expeditiously as possible."¹ In seeking a rushed procedural schedule, the Postal Service elevates its interests in quickly implementing its proposal above the interest of the participants, the Commission and the public in ensuring that the proposal comports with all of the policies of Title 39. USPS gives no consideration to the Commission's statutory responsibilities in this case. It ignores the due process interests of participants and the complexity of the issues and the severity of the impacts. The timeframe proposed by the Postal Service is unreasonably limited and represents a dramatic departure from previous Section 3661 dockets. An expedited procedural schedule would limit examination of the Postal Service's proposal and reduce the efficacy of the Commission's advice. For these reasons, as explained more

¹ Motion for Reconsideration of Presiding Officer's Ruling No. N2012-1/5 Establishing Procedural Schedule, at 3 (January 18, 2012).

fully below, the Postal Service's motion must be denied and the present procedural schedule maintained.

I. The Postal Service's Revised Schedule Would Encumber Participants' Due Process Rights and Must Be Rejected

Section 3661(b) of Title 39 provides

(b) When the Postal Service determines that there should be a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis, it shall submit a proposal, within a reasonable time prior to the effective date of such proposal, to the Postal Regulatory Commission requesting an advisory opinion on the change.

Section 3661(c) specifies the Commission's responsibilities once the Postal Service has filed a request under subsection (b) by mandating the Commission "not issue its opinion on any proposal until an opportunity for hearing on the record under sections 556 and 557 of title 5 has been accorded to the Postal Service, users of the mail, and an officer of the Commission who shall be required to represent the interests of the general public." The revised timeframe the Postal Service proposes would eviscerate the due process rights guaranteed by this subsection and must be rejected.

The Postal Service has worked on its proposal in this case for the better part of a year, yet it requests the review of its proposal be completed in a little over 4 months. Thoughtful review and evaluation of the Postal Service proposal simply cannot be completed in such a limited time period. The Postal Service Request was accompanied by the written testimony of thirteen different witnesses and numerous library references. The Postal Service's case is complex and material information continues to be produced daily. Much of the supporting evidence filed in this docket is not immediately understandable and requires time for careful review and essential discovery. Furthermore, several participants have indicated their intent to file rebuttal testimony. Some, like the APWU, are contracting with experts and consultants to file rebuttal testimony and evidence. In particular, APWU intends to produce work modeling the network. This is work that will be rushed under the current schedule and obviously impossible under the schedule the Postal Service asks the PRC to consider. The participants must be given ample time to properly review, evaluate and rebut the Postal

Service's direct case as necessary, which is simply not possible under the Postal Service's proposed schedule. The procedural and due process rights of citizens and mailers will be violated by such a schedule and it must be rejected.

II. The Commission's Statutory Responsibilities and Relevant Precedent Do Not Support the Postal Service's Motion

The Postal Service contends that it must address its financial challenges "in a timely manner" and that the service and operational changes proposed in this docket must be implemented "as expeditiously as possible."² However, Section 3661(c) specifies that the Commission's Advisory Opinion "shall be in writing and shall include a certification by each Commissioner agreeing with the opinion that in his judgment the opinion conforms to the policies established under this title." Compliance with this provision requires more than a cursory review of the Postal Service proposal, yet that is all that would be allowed under the Postal Service's proposed schedule. By seeking a severely limited schedule in this case, the Postal Service's Motion seeks to elevate the speed of the Commission's decision above the efficacy of its advice and must be rejected.

To comply with the edict of Section 3661(c) the Commission must fully examine and understand the Postal Service proposal in order to ensure that it conforms to the myriad policies of Title 39. Review of past Section 3661 dockets demonstrate that it is implausible that the Commission could fully and meaningfully satisfy its statutory responsibilities under the schedule proposed by the Postal Service. For example, Docket No. N2009-1 (SBOC Initiative, 2009) took over eight months to complete³ and in Docket No. N2010-1 (Six-day to Five-day Street Delivery and Related Service Changes, 2010) the Commission issued its Advisory Opinion almost one year after the Postal Service submitted its initial request. Furthermore, the timeframe proposed by the Postal Service in this case is even shorter than what was followed in Docket No. N2011-1, the shortest docket to date, which was less complicated than the present case and utilized special expedited procedures.

² Id.

³ The Postal Service filed its Request in Docket No. N2009-1 on July 2, 2009. The Commission issued its Advisory Opinion on March 10, 2010.

The schedule sought by the Postal Service is also less than half the time required in Docket No. N2006-1(END Service Changes, 2006). This is important to note because the END case involved issues similar to some of the issues present in the current docket. Docket No. N2006-1 was initiated on February 14, 2006. The majority of discovery on the Postal Service's direct case concluded four months later, on June 16, 2006, though discovery on some issues remained open until August 14, 2006. The Commission issued its Advisory Opinion on December 19, 2006; over 10 months after the Postal Service filed its Request.

The present case is no less complex than N2006-1. In fact, while the present docket shares some similarities with N2006-1, the current proposal is broader in scope and complexity and the anticipated impacts are more severe than in N2006-1. For example, unlike N2006-1, there is no doubt that the current proposal will result in a change in postal services nationwide. Additionally, while the service impacts expected from N2006-1 could be fairly traced to END and did not need to be considered alongside the impacts of other USPS programs, the current proposed changes come on the heels of several other initiatives that would adversely impact service, including the 6-day to 5-day delivery changes proposed in N2010-1 and the retail access changes proposed in N2011-1. We submit that the Commission cannot evaluate the current proposal without also looking at how it will be affected by these other initiatives. To date, the Postal Service has failed to provide a witness with the scope to consider these other cases despite the fact that they are certain to magnify the adverse service impacts in this case. The Commission must be permitted the time necessary to examine and opine on the impacts of these other initiatives on the present proposal. The schedule proposed by the Postal Service would essentially foreclose this examination; therefore, the Commission should decline to revise the procedural schedule as the Postal Service requests.

III. Conclusion

For the forgoing reasons, the Postal Service Motion to reconsider the procedural schedule in this case must be denied.

Respectfully submitted,

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