

UNITED STATES OF AMERICA  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

Before Commissioners: Edward J. Gleiman, Chairman;  
W.H. "Trey" LeBlanc III, Vice Chairman;  
Dana B. Covington, Sr.; Ruth Y. Goldway; and  
George A. Omas

Complaint of Life Time Fitness

Docket No. C98-1

ORDER DISMISSING COMPLAINT

(January 27, 1999)

*Procedural History.* On September 21, 1998, FCA, Ltd. d/b/a Life Time Fitness ("Life Time Fitness") filed a formal complaint pursuant to the Commission Rules of Practice, 39 CFR Ch. III, subpart E, alleging that the United States Postal Service had failed to provide postal services in accordance with the policies of Title 39 of the United States Code § 101 and its own practices and commitments. *Formal Complaint* ("Complaint") at 1, 3. Specifically, Life Time Fitness, a national health club chain, argues that the Postal Service failed to deliver the club's time-sensitive promotional mailings sent via Standard (A) Mail to addresses in the Minneapolis-St. Paul, Minnesota metropolitan area in accordance with the Service's "mailing commitment for third class mail within the applicable zone." Complaint at 2. As the advertisements were received up to three weeks after their expected delivery date, Life Time Fitness maintains that it lost over \$385,937.69 in revenues, in addition to \$15,418.76 in postage. *Id.* at 2-3. As a remedy, Life Time Fitness seeks a refund of its postage costs. *Id.* at 4.

On October 20, 1998, the Postal Service filed its Answer to the Complaint, which included a statement that it intended to file a motion to dismiss the Complaint. Answer

of the United States Postal Service (“Answer”) at 1. On November 10, 1998, it submitted a Motion of the United States Postal Service to Dismiss Complaint (“Motion”). In these filings, the Service argues that the subject matter of the Life Time Fitness complaint: (1) does not raise a matter of policy to be considered by the Postal Rate Commission under 39 U.S.C. § 3662; (2) fails to present an issue which merits a hearing under § 3662; and (3) requests relief which the Commission is not authorized to provide. Answer at 1, 9-10; Motion at 3, 8 and 13. Although Complainant did not submit a Reply to the Postal Service’s Motion, Life Time Fitness’ well-crafted Complaint includes a detailed description of the uncontroverted facts of the case,<sup>1</sup> as well as a cogent discussion of the relevant law. Complaint; Motion at 1.

The Postal Rate Commission grants the Postal Service’s Motion to Dismiss the Complaint, finding that the Complaint does not describe a Postal Service failure to charge rates or provide services in accordance with Title 39 and the regulations thereunder. Further, under current law, the Commission is not empowered to grant the relief sought by Complainant — a postage refund. Nevertheless, the Complaint does highlight a Postal Service practice that should be altered. The Commission has joined in a unanimous concurring opinion to criticize the Postal Service practice of characterizing its service objectives as “commitments” when it has no data to substantiate any service performance claims for Standard (A) Mail.

*Facts of the Controversy.* The Postal Service does not dispute the material facts of the case. Motion at 1. The complaint evolved as follows: In January 1998, complainant Life Time Fitness of Eden Prairie, Minnesota contracted with bulk mail permit holder Prime Net Marketing Services, Inc. (“Prime Net”) of Saint Paul, Minnesota to prepare and distribute a promotional mailing of approximately 100,000 advertisements via Standard (A) Mail through the Coon Rapids and Woodbury, Minnesota Postal Service locations. Complaint at 2; Motion at 1. Life Time Fitness maintains that it coordinated its time-sensitive offer with the Postal Service’s “mailing

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<sup>1</sup> In its Motion, the Postal Service stated that while there is “some uncertainty surrounding some of the circumstances underlying the Complaint in this proceeding,” the Service does not dispute the material facts for the purposes of its Motion. Motion at 1.

commitment” of two to three days within the applicable zone, as provided for by Service software which aids customers in pinpointing delivery dates.<sup>2</sup> The health club chain’s promotion took effect on January 9, 1998, with expiration at the end of that month. Consequently, Life Time Fitness’ advertising mailers were taken by Prime Net to the Bulk Mail Entry Unit at the Postal Service’s St. Paul Processing and Distribution Center on January 5, 1998, with the expectation of delivery to addresses in the Minneapolis-St. Paul metropolitan area on or about January 8-10, 1998.<sup>3</sup> Complaint at 2; Motion at 1-2.

According to the Complaint, the Postal Service’s Business Services Network Coordinator informed Prime Net that the mailings at issue were received at homes in the Woodbury postal district on January 9, 1998. The Coons Rapid Post Office Station delivered the promotions to homes on January 12-14, 1998 (the Station received the mailings on January 9). Complaint at 2.

Life Time Fitness experienced a lackluster response to the promotion during January 8-10, unlike customer reaction to previous special savings mailings. *Ibid.* This prompted Prime Net (on behalf of its client) to quickly question local Postal Service personnel about the status of the mail pieces, apparently learning that some of the mailing had been delivered or would be delivered by January 14, 1998. Life Time Fitness ultimately discovered that an undetermined number of individuals received the mailings as late as the end of that January, some three weeks after deposit with the Postal Service. A subsequent meeting with representatives from the Postal Service,

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<sup>2</sup> According to the Postal Service, the publicly-distributed USPS Service Commitment Diskette upon which Life Time Fitness relied indicates that “the service commitment of the Postal Service for Standard (A) Mail originating in the St. Paul 3-digit ZIP code area and destinating in 3-digit ZIP code areas within the Minneapolis-St. Paul metropolitan area does not exceed 3 days.” Motion at 2.

<sup>3</sup> Although the parties have stipulated to the facts as recounted herein, the Commission observes that there is some ambiguity in the record as to when the advertisements at issue were actually posted. In the Complaint, Life Time Fitness states that “[o]n January 5, 1998, the advertising mailers were delivered to the USPS drop station in St. Paul, Minnesota, with the expectation that the mailings would be delivered on or about January 8-10, 1998.” Complaint at 2. Postage Statement Form 3602-R, attached to the Complaint as Exhibit B, lists the mailing date as January 5, 1998. Complaint, Exhibit B. Yet, the January 14, 1998 Prime Net follow-up letter to the local Business Services Network Coordinator of the Postal Service records an unsuccessful January 9th request by Prime Net to the Service to delay the mailing until “the following week (Monday, January 12, 1998).” Complaint, Exhibit C. This requested delay is further puzzling given the time-sensitive nature of the advertisement, with the offer effective on January 9, 1998.

Life Time Fitness and Prime Net about the late mail delivery and possible restitution proved unfruitful for Complainant. *Id.* at 3. According to the Complaint, the Postal Service advised the parties that the Service does not guarantee the timeliness of mail, and therefore further efforts to pursue the matter would be futile. *Ibid.* Life Time Fitness maintains that the company lost over \$385,937.69 in revenue due to the late delivery of the promotionals, plus the \$15,418.76 in postage cost. *Ibid.*

*Legal Arguments of the Parties.* Life Time Fitness asserts that by the Postal Service's late mail delivery and subsequent dilatory response to Prime Net on the matter, the Service has failed to act in accordance with its established practices and provide "prompt reliable, efficient services to patrons in all areas," as required by statute. 39 U.S.C. §101(a); Complaint at 3. The Postal Service's computer software, upon which Life Time Fitness relied, expressly committed to delivery of third class (Standard (A)) Mail within two to three days of receipt. Life Time Fitness maintains that the term 'commitment' "strongly denotes a warranty or guaranty to perform within the stated time period." *Id.* at 4. Yet, some of the mailings at issue appear to have been delivered two to three weeks after they had been deposited with the Postal Service branch stations. It is Life Time Fitness' position that the Service's software contains no express waiver of liability for failure to comply with its delivery commitment. Postal Service practice and policy were further transgressed when the Service failed to promptly address Prime Net's inquires and concerns about the delayed mail delivery. *Id.* at 3-4. Under these circumstances, Life Time Fitness argues that — at a minimum — it is entitled to be reimbursed for its postage expense. *Id.* at 4.

While not disputing the material facts of the case, the Postal Service submits that the subject matter of the Life Time Fitness Complaint does not raise a matter of policy to be considered by the Postal Rate Commission, nor does it present an issue meriting a hearing, under relevant law 39 U.S.C. § 3662.<sup>4</sup> Answer at 1, 9; Motion at 3,

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<sup>4</sup> The Postal Service concedes that mail delivery was late. However, it refutes Life Time Fitness' contention that the Service was subsequently dilatory in responding to the mailer's concerns. Motion at 7. In fact, the Complaint, with exhibits chronicling follow-up conversations between Service personnel and Prime Net about the status of the mailings, is cited as evidence that the Service acted in a reasonable, proper and nondiscriminatory manner. The Postal Service contends the mere fact that Life

8. The Commission's established regulation, 39 C.F.R. § 3001.82, implementing § 3662, indicates that if a disputed postal operating procedure, practice or actual service to the mailer is individualized, localized and temporary in nature, and does not reflect arbitrary, discriminatory, capricious or unreasonable action on the Postal Service's part, then no policy issue appropriate for Commission consideration is raised. See Motion at 5-6. Commission case law supports this proposition. *Ibid.*, citing PRC Order No. 435 at 3 (June 11, 1982); Docket No. C84-3, PRC Order No. 580 at 5-6 (Sept. 24, 1984). The Postal Service maintains that the nature of the Life Time Fitness Complaint is a delivery problem concerning an individual (one mailer), "temporary" (single) mailing which was "localized" to the Minneapolis-St. Paul metropolitan area, and that there is no evidence of an underlying Postal Service policy problem which extends substantially nationwide, as contemplated under § 3001.82. Motion at 5-6. Thus, while conceding that its delivery of "some unquantifiable portion" of the Life Time Fitness January 5, 1998 mailings failed to meet the published service commitment for Standard A Mail, the Postal Service maintains that the matter is not appropriate for Commission review under 39 U.S.C. § 3662. *Id.* at 5.

With regard to the "second prong" of the analysis, the Postal Service states that the Complaint is devoid of any allegation of arbitrary, discriminatory, capricious or unreasonable action on the Service's part. *Id.* at 6. It is the Service's position that any failure on its part to meet its service commitment (as in this instance) is not *per se* evidence of an action which would merit a hearing, and that a narrow interpretation of the standard by the Commission would ignore the "necessary and reasonable limits" imposed on the Commission's scope of inquiry under § 3662 jurisdiction. *Id.* at 8.

The Service also disputes Complainant's stance that the Postal Service's computer software commits the Service to a particular delivery standard for Standard

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Time Fitness was not satisfied with the resolution of the matter is insufficient to warrant a Commission hearing under § 3662. *Ibid.*, citing Docket No. C83-1, PRC Order No. 512 at 3 (July 12, 1983).

(A) Mail, with failure to achieve the standard obligating the Service to provide a refund.<sup>5</sup> Motion at 9. According to the Service, there is no express or implied Standard (A) Mail service guarantee, nor any reasonable basis on which to presume one exists. Rather, the computer diskette language merely indicates

the level of delivery service the Postal Service is committed to *trying* to provide for various mail classes between any 3-digit ZIP Code origin-destination pairs. . . . The service commitment represents the level of service the Postal Service strives to provide-- its operational goal, the standard it tries to achieve, the benchmark against which actual service performance is measured.

*Id.* at 9-10. (emphasis added). In this regard, the Postal Service argues that the term “service commitment,” as used on the computer diskette, is synonymous with the common postal terms “service objective” and “service standard,” found in the Domestic Mail Classification Schedule (DMCS) and the Domestic Mail Manual (DMM), which establish and define the general terms and conditions of Standard (A) Mail service. *Ibid.*

Further, while Life Time Fitness contends that it detrimentally relied on the “service commitment” delineated in the computer diskette, the Postal Service argues that the Complaint is silent regarding Prime Net’s understanding of the Service’s terms for Standard (A) Mail service. As an experienced bulk mail permit holder, Prime Net presumably is aware that there is no postage refund guarantee for late delivery of Standard (A) Mail. In light of Prime Net’s agency relationship with Life Time Fitness, any such knowledge can be imputed to Complainant. *Id.* at 12.

Finally, the Postal Service argues that even if the Commission asserted jurisdiction in the matter and found in favor of Life Time Fitness, the Commission lacks authority to grant Life Time Fitness the relief it seeks — a postage refund. Under § 3662, the Commission is limited to issuing a nonbinding, advisory document as a result

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<sup>5</sup> The Service highlights that the DMCS and DMM, which provide broader bases of information relating to Standard (A) Mail, explicitly attach no postage refund guarantee for Standard (A) Mail (in contrast to a refund policy specified for the Express Mail categories). Motion at 11-12.

of a hearing, with the Postal Service free to use its own discretion regarding responsive action. *Id.* at 13-14.

*Commission Analysis.* Upon review of the facts of the Complaint and application of relevant law, the Commission grants the Postal Service's Motion to Dismiss. The Life Time Fitness Complaint about the Service's delayed Standard (A) Mail delivery is brought pursuant to 39 U.S.C. § 3662, which provides in relevant part:

Interested parties . . . who believe that they are not receiving postal service in accordance with the policies of this title may lodge a complaint with the Postal Rate Commission in such form and in such manner as it may prescribe. The Commission may in its discretion hold hearings on such complaint.

Section 3001.82 of the Commission's regulations, which addresses the scope and nature of complaints, states in relevant part that:

The Commission shall entertain only those complaints which clearly raise an issue concerning whether or not rates or services contravene the policies of the [Postal Reorganization] Act; thus, complaints raising a question as to whether the Postal Service has properly applied its existing rates and fees or mail classification schedule to a particular mail user or 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. Past Commission complaint cases have interpreted this provision, in conjunction with 39 U.S.C. § 3662, to further require consideration of whether the Postal Service acted in an arbitrary, discriminatory, capricious or unreasonable manner in a given case, "as for example, if the Postal Service did not afford complainants an opportunity to present their grievances to responsible management." Docket No. C83-1, PRC Order No. 512 at 2 (July 12, 1983). *See also* Docket No. C84-3, PRC Order No. 580 (Sept. 24, 1984). While this provision specifically allows the Commission to hold hearings on rate and classification complaints, the Commission has no authority over operational aspects of postal management. The Commission is limited to rendering a public report on issues not

related to rates or classifications, upon which the Postal Service may act in its discretion. See Docket No. C83-2, PRC Order No. 524 at 6-7 (Sept. 2, 1983).

In the Commission's view, the present Complaint does not satisfy the Section 3662 requirements for a Commission hearing. The Complaint arises from *one* particular delayed delivery of advertisements sent via Standard (A) Mail.<sup>6</sup> The problem thus may be characterized as a temporary service issue. This isolated mailing concerned a single, individual mailer. Finally, the mailings at issue were localized — sent from the Minneapolis-St. Paul, Minnesota area via Standard (A) Mail to addresses in the same metropolitan area. The facts of the case simply do not indicate a matter involving Postal Service public policy on a nationwide basis.

Life Time Fitness claims that its Complaint recounts events that show the Postal Service failed to provide it with service at a level consistent with the policies of Title 39. Unfortunately, the Postal Service does not provide the Commission with a thorough explanation of events in its Answer, as it claims that it does not have sufficient knowledge to make statements to that effect. See Rule of Practice 84(a). However, even if it could be established through an evidentiary hearing that one or more Postal Service employees acted in an arbitrary, capricious, or unreasonable way to the detriment of Life Time Fitness, those acts are presented as an individual local problem. Complainant does not suggest that the Service acted in an unduly discriminatory manner, and its own records indicate a series of timely communications between Postal Service personnel and mailer representatives regarding the status of the Life Time Fitness mailing, albeit to Complainant's dissatisfaction.

The Commission has no authority to grant the type of relief specifically requested by Life Time Fitness — a postage refund. Denial of the Service's Motion to Dismiss would merely permit Complainant to participate in a hearing on the allegations before the Commission, which would undoubtedly be financially and otherwise burdensome on Complainant. Moreover, if the Commission were to determine the

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<sup>6</sup> DMM § D600.1.0 explicitly states that "[t]he USPS does not guarantee the delivery of Standard Mail within a specified time."



Complaint justified, it cannot order the remedy that is requested. Thus, Complainant seeks relief which the Commission lacks authority to provide. Under these circumstances, the Commission finds no cause to convene an evidentiary hearing.

*Conclusion.* Based upon the above analysis, the Commission concludes that Complainant has failed to present an issue on which relief can be granted under 39 U.S.C. § 3662, as implemented by Commission regulations.<sup>7</sup> Therefore, a hearing on the subject complaint is not merited. Nevertheless the Commission considers the use of the term “service commitment” as an extremely inappropriate description of the Service’s operational goal, or the standard it *tries* to achieve for Standard (A) Mail, and the Commission provides a unanimous concurring opinion to address its concerns with this practice.

It is ordered:

The Motion of the United States Postal Service to dismiss the Complaint of Life Time Fitness, filed November 10, 1998, is granted.

By the Commission.

(S E A L)

Margaret P. Crenshaw  
Secretary

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<sup>7</sup> Because the Commission finds the Complaint does not warrant Commission action under 39 U.S.C. § 3662, it does not address Complainant’s ancillary argument of detrimental reliance (except to the degree that it may have resulted from the Postal Service’s undue discrimination, or arbitrary, unreasonable or capricious behavior). Nor does the Commission consider the “agency relationship” between Life Time Fitness and Prime Net, with its corresponding implications of imputed knowledge.

CONCURRING OPINION OF CHAIRMAN EDWARD J. GLEIMAN,  
VICE CHAIRMAN W.H. "TREY" LEBLANC III,  
COMMISSIONERS DANA B. COVINGTON, SR., RUTH Y. GOLDWAY AND  
GEORGE A. OMAS

The USPS Service Commitment Diskette upon which Life Time Fitness relied offers a "service commitment view" map which allows the mailer to determine the Service's "commitment" in days for mail delivery based upon the mail's particular class and originating and destinating locations. The language on the diskette is quite limited, with the term "commitment" used exclusively to indicate the delivery service day parameters. No further explanation regarding the Service's conception of "commitment" is offered, nor is any other terminology (such as "service objective" or "service standard") present.

When the Postal Service through its marketing material states that it has a "service commitment" for certain mail matter, mailers can reasonably expect that commitment to be kept. Further, an ordinary citizen or unsophisticated mailer may reasonably believe that this represents an implied warranty.<sup>1</sup> Sophisticated customers of the Postal Service may understand that the distribution of days-to-delivery for the various subclasses of mail are only operational goals or objectives — a standard the Service hopes to achieve — and they may understand that there is a tail to any such distribution. Moreover, they may know that the Service provides refunds only on rare occasions. The same cannot be expected of ordinary citizens and unsophisticated mailers. The marketing materials involved in this Complaint are used to inform potential customers and unsophisticated mailers. Consequently, characterization of what the Postal Service regards as an "operational standard" as a "commitment" in the Service diskette is deceptive and inappropriate.

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<sup>1</sup> According to Webster's Seventh New Collegiate Dictionary, a commitment is "an agreement or pledge to do something in the future." WEBSTER'S SEVENTH NEW COLLEGIATE DICTIONARY 167 (1970).

The Federal Trade Commission is the federal agency primarily charged with ensuring that private businesses do not disseminate deceptive advertising or marketing materials. 15 U.S.C. § 45. Its Policy Statement on Deception identifies particular elements as present in all deception cases brought against private sector entities: (1) there must be a representation, omission or practice that is likely to mislead the consumer; (2) that practice or act must be considered from the perspective of the “reasonable” consumer, given the circumstances; and (3) the representation, omission or practice must be “material,” or likely to affect the consumer’s decision or conduct with regard to a service or product. FTC Policy Statement on Deception, October 14, 1983. The “commitment” made by the Postal Service to the reasonable, potential mailer in the USPS Service Commitment Diskette could materially impact the mailer’s choices in posting his mail matter, and that commitment is more than the Service actually can justify.

The Federal Trade Commission also requires that private businesses have a reasonable basis for claims before they are disseminated. FTC Policy Statement on Advertising Substantiation.<sup>2</sup> The Postal Service widely distributes a “diskette” that commits to a certain time frame for delivery for Standard (A) Mail, yet it has no systematic data collection in place which verifies the reliability of those promised delivery times. In Order No. 1224, issued in conjunction with this Complaint case, the Commission requested supplemental Postal Service information regarding the Service Commitment Diskette and service standards for Standard (A) Mail. Specifically, question 3 asked, *inter alia*, whether the Postal Service had reliable information on the extent to which it meets its “service commitment” for Standard (A) Mail in those areas where the USPS Service Commitment software is made available. Order No. 1224 (December 17, 1998) at 3. The Postal Service responded that it does not maintain any data system which provides a basis for estimating the percentage of Standard (A) Mail (nationwide or otherwise) delivered within the service commitment for such mail. Response of the United States Postal Service to PRC Order No. 1224 Requesting

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<sup>2</sup> Both Federal Trade Commission Policy Statements are available at <[www.ftc.gov](http://www.ftc.gov)>.

Supplemental Information (January 8, 1999). The Service is making delivery service commitments for Standard (A) Mail to the general public based on conjecture, rather than on hard substantiating data.

The Postal Service is an independent establishment in the executive branch of the United States government, not a private enterprise, but it frequently has expressed its intent to operate in a businesslike manner. Postal Reorganization was consummated in order to allow the Postal Service to become more businesslike. It is a fundamental tenet in today's economy that businesses must be able to identify with some degree of accuracy the quality of their services. The Postal Service, in this aspect of Standard (A) Mail (its second largest product), is acting not in a businesslike way, but like an agency that seeks to hold itself unaccountable for its performance. The Postal Service should strive to hold itself to the highest standards of corporate behavior. Until the Service possesses substantiating delivery data for a particular mail class, it should not proffer a service "commitment" for that class of mail to the general public.

The Postal Service should review its advertising and marketing materials in general, and in particular the pertinent language in dispute here, with a view toward eliminating any potentially deceptive or misleading language.

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Edward J. Gleiman, Chairman

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W.H. "Trey" LeBlanc III, Vice Chairman

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Commissioner Dana B. Covington, Sr.

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Commissioner Ruth Y. Goldway

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Commissioner George A. Omas