

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;
Tony Hammond, Vice Chairman;
Mark Acton;
Ruth Y. Goldway; and
Nanci E. Langley

Complaint of James D. Goodman
and Rosalyn Goodman

Docket No. C2015-2

ORDER GRANTING MOTION TO DISMISS

(Issued July 15, 2015)

I. INTRODUCTION

On April 23, 2015, James D. Goodman and Rosalyn Goodman (collectively Complainants) filed a complaint pursuant to 39 U.S.C. § 3662 concerning a Postal Service disruption of mail service to Complainants' home resulting from interference with mail delivery by Complainants' dog.¹ On May 14, 2015, the Postal Service filed a motion to dismiss the Complaint.² Complainants did not respond to the Postal Service's Motion to Dismiss.

¹ First Amended Complaint of James D. Goodman and Rosalyn Goodman Regarding Failure and Refusal to Deliver Mail by the US Postal Service to 1600 Entre Colinas Place, Pomona, California, April 23, 2015 (Complaint). The Complaint, characterized as "amended," was not preceded by any complaint filed with the Commission.

² United States Postal Service Motion to Dismiss the Complaint of James D. Goodman and Rosalyn Goodman, May 14, 2015 (Motion to Dismiss).

For the reasons explained below, the Commission concludes that the Complaint should be dismissed for lack of jurisdiction due to Complainants' failure to state a claim for which relief can be granted and for Complainants' failure to comply with the Commission's rules for filing complaints. The Commission grants the Motion to Dismiss and dismisses the Complaint. The Commission will refer the matter to the Postal Service as a rate or service inquiry pursuant to 39 C.F.R. § 3030.13(b). Because this Order dismisses the Complaint, the Postal Service answer pursuant to rule 3030.12 is no longer necessary. The rate or service inquiry procedures set forth in 39 C.F.R. § 3031.11 shall apply.

II. BACKGROUND

The Complaint. Complainants assert that over the past 4 years mail carriers delivering mail to 1600 Entre Colinas Place, Pomona, California, have failed or refused to deliver packages to the front door of the Complainants' house. Complaint at 7. As a result, Complainants allege they have made complaints to the Postal Service. *Id.*³ The Complaint also includes a certification indicating that reasonable attempts have been made to contact the Postal Service's general counsel, referencing Exhibit B (a Freedom of Information Act (FOIA) request)⁴ and Exhibit C (various documents).⁵ The Complaint

³ The Complaint references an undated and unfiled complaint styled "Before the Postal Regulatory Commission," which is attached to the Complaint. *Id.*, Exhibit C at 1-6. The Complaint also references other documents attached as Exhibit A, which consists of a January 8, 2015, letter to Postal Customer at Complainants' address; a Postal Service form entitled "Customer's Commitment to Restrain Animal;" and a copy of "Civil Liability Under the California Dog Bite Statute."

⁴ Exhibit B consists of the Postal Service's January 23, 2015 letter acknowledging Complainant Goodman's FOIA request; Complainant James D. Goodman's January 10, 2015 FOIA request to the Postal Service; and a copy of 5 U.S.C. § 552, as amended.

⁵ Exhibit C includes an unfiled version of the Complaint. It also includes duplicate copies of the material in Exhibit A, a January 8, 2015 letter to Postal Customer at Complainants' address; the Postal Service form entitled "Customer's Commitment to Restrain Animal;" and a copy of "Civil Liability Under the California Dog Bite Statute." In addition, Exhibit C contains "USPS Product Tracking & Reporting Record for a First-Class Certified Mail Letter from March 28, 2015, through April 1, 2015; a certified mail receipt for the tracked mail letter with a cash receipt for that mailing; and 10 copies of PS Form 3849, "Sorry We Missed You" notices, two of which indicate a year (2015).

says the complaints or demands in the Exhibits have either been ignored or else no response has been forthcoming. Complaint at 9.

On January 8, 2015, the Postal Service delivered a letter to Complainants' address terminating the delivery of packages to the address because on December 31, 2015, [sic] Complainants' "dog was out and interfered with the letter carrier."⁶ The letter states that delivery was curtailed for the safety of Postal Service employees. The Postal Service further stated that it would continue to hold mail for 10 days which could be picked up during office hours or it would be returned to sender. To restore mail service, a customer at the address is required to meet with a delivery supervisor at the post office with a copy of the "current Dog License and Rabies Vaccination Certificate" and is asked to sign a "commitment to restrain the animal."⁷ *Id.*

The Complainants state that the letter "contains false and malicious allegations" in order to unlawfully terminate the delivery of mail. Complaint at 7. They argue that the Postal Service has claimed there is a "vicious dog" on the premises which Complainants assert is calculated to avoid delivering mail to the standard mail box on the curb or to the front door when mail exceeds the capacity of the standard mail box. *Id.* Complainants also reject the authority of the Postal Service to condition mail service on presentation of the documentation recited in the Postal Service Letter. *Id.* Complainants contend this termination is in violation of statutes, laws, regulations and policy set forth in the Complaint. *Id.* The Complaint includes excerpts of statutes and Postal Service orders implementing regulations referenced in the Complaint. *Id.* at 1, n.1, 3-7.

The Complaint states that Rosalyn Goodman is age 91 and "unable to ambulate effectively," seldom leaves home and is entirely dependent on delivery of mail and other

⁶ Letter from Alejandro L. Peralta, Supervisor, Customer Services, addressed to Complainants, January 8, 2015 (Postal Service Letter). *Id.*, Exhibit A.

⁷ The Customer's Commitment to Restrain Animal form provides options to the customer to prevent "any further dog attacks." Customer may sign the form, obtain a P.O. Box, remove the dog from the premises, provide the Postal Service with a new address or restrain the dog during delivery hours. Any further interference will result in only one option, obtaining a post office box. Complaint, Exhibit A.

packages of food and medicine to the door of the premises. Complaint at 7. She is without means to transport herself to a post office. Packages from food stores and medicines have been refused delivery by the Postal Service. *Id.* James D. Goodman claims that for 5 days a week he is required to perform his duties as a government official and is unable to assist Rosalyn Goodman in providing for herself, as she may provide for herself through the mail. *Id.*

Complainants contend their dog is good-natured, is used for comfort and companionship, and is never outside the interior of the premises except in a gated backyard while Rosalyn Goodman is home alone. *Id.* The Complaint claims all these facts were made known to employees and agents of the Postal Service, including the signatory of the Postal Service Letter. *Id.*

The Complaint alleges Rosalyn Goodman has been deprived of reasonable accommodation required under Title 26, Chapter 126 (Americans with Disabilities Act (ADA)). *Id.* at 7-8. Complainants conclude the Postal Service's action is unlawful and not consistent with the regulations and policies to be enforced by the Commission, and that the Postal Service has no authority to condition mail delivery, impose documentary indemnification or bonding, or require other assurances from home owners. *Id.* at 8.

The Complaint invokes Commission jurisdiction under 39 U.S.C. § 3662. It references provisions of 39 U.S.C. § 3691 regarding modern service standards for market dominant products. *Id.* at 1, n.1.⁸ It also claims the Postal Service's action violates 18 U.S.C. § 1701 regarding criminal sanctions for willful obstruction of the mail and the ADA, 42 U.S.C. Chapter 126, §§ 12101-12133. *Id.* at 3-5.

The Complaint avers the Postmasters in Ohio would provide affidavits regarding the refusal of Pomona, California officials to make deliveries to the premises. *Id.* at 8. Complainants state that they, neighbors, and others familiar with the alleged circumstances will provide testimony together with photographs to the Commission

⁸ The Complaint also includes passages from the Postal Service's notice of proposed rulemaking on modern service standards for market dominant products subsequently implemented as service standards for the Postal Service as 39 C.F.R. part 121 and 122. *Id.* at 5-7; citing 72 FR 58946.

when the merits are presented for adjudication. *Id.* The Complaint concludes reasonable efforts have been made to resolve the issues by direct communication with the parties, including the Postmasters in Ohio. *Id.* at 9. Complainant certifies that reasonable attempts have been made to confer with the Postal Service's general counsel as shown by the demands in Exhibits B and C and has either been ignored or no response has been forthcoming. *Id.*

Relief requested. Complainants request that the Commission order and direct mail service to be re-instituted to the premises at 1600 Entre Colina Place, Pomona, California 91768 without condition or limitation. *Id.* They further request that the Commission impose sanctions upon each of the respondents including removal or award of damages as allowed under the circumstances, and order other relief as may be appropriate. *Id.*

Postal Service Motion to Dismiss. In its Motion to Dismiss, the Postal Service asserts several grounds for dismissal, including the failure to state a claim upon which relief may be granted, failure to exhaust administrative remedies, and failure to follow appropriate procedures. Motion to Dismiss at 2. The Postal Service contends that if the Complaint is not dismissed, it should be referred to the Postal Service for resolution through the rate or service inquiry process pursuant to 39 C.F.R. part 3031 of the Commission's rules. *Id.*

The Postal Service's Motion to Dismiss provides some additional background. The Postal Service explains the Complainants' physical address receives curbside delivery, which does not require the city carrier to dismount to deliver mail to the mail receptacle. *Id.* at 2-3. Certain service was suspended to ensure the safety of postal workers because on at least four occasions Complainants' dog interfered with delivery. *Id.* at 1-2. The Postal Service notified the Complainants via form notice that the carrier was unable to deliver a parcel or accountable mailpiece. *Id.* at 4. Complainants received a copy of the Postal Service's policy that carriers are not required to deliver

mail where animals interfere with delivery. *Id.* at 3. See also Postal Service Letter. The Postal Service references two of its employee Handbooks expressing this policy.⁹

Complainants have spoken to the delivery supervisor as requested in the Postal Service Letter, but have not provided the requested documentation or committed to restraining the animal.

The Postal Service first contends the Complaint fails to state a valid claim within the Commission's complaint jurisdiction. *Id.* at 4. Commission jurisdiction to adjudicate complaints resides in 39 U.S.C. § 3662(a), permitting complaints when the Postal Service is not operating in conformance with the provisions of 39 U.S.C. §§ 101(d), 401(2), 403(c), 404a, or 601, or Chapter 36 (or regulations promulgated under any of those provisions). The Postal Service cites recent Commission orders where the Commission has dismissed complaints for lack of jurisdiction because the sections of law alleged to be violated were not enumerated in section 3662. *Id.* at 4-5.¹⁰ The Postal Service observes that neither 18 U.S.C. § 1701 (criminal obstruction of mails generally) nor portions of the ADA are enumerated in section 3662(a) and therefore neither is a valid basis for a complaint. *Id.* at 5. Also, the alleged suspension of parcel and accountable mail delivery does not violate 39 U.S.C. § 3691(c)(2) (relating to the establishment of modern service standards) and fails to state a claim upon which relief can be granted. *Id.* The Postal Service asserts that it met the requirements of that section when it established the modern service standards, and the Complaint admits the Postal Service met its obligations under section 3691(c). *Id.* at 6. The allegations in the Complaint involve an isolated incident and are not relevant to the process for establishing the modern service standards. *Id.* The Postal Service concludes that the Complaint fails to state a claim upon which relief may be granted. *Id.*

⁹ Handbook M-41, Section 133.5; Handbook EL-814, Section IX.D.1 (2013), providing that carriers are not required to deliver mail when animals interfere or threaten them during delivery.

¹⁰ See Docket No. C2013-3, et al., Order No. 1762, Order Dismissing Complaints, June 26, 2013, at 10; Docket No. C2015-1, Order No. 2377, Order Granting Motion to Dismiss, March 4, 2015, at 6; Docket No. C2010-2, Order No. 471, Order Granting Motion to Dismiss, June 11, 2010, at 3.

The Postal Service also argues the Complaint should be dismissed for failure to exhaust available administrative remedies. Even if the Complaint were within the Commission's jurisdiction, the Postal Service provides for administrative remedies in its Domestic Mail Manual (DMM).¹¹ *Id.* There is no record of Complainants initiating a service complaint with the Postal Service. *Id.* at 7. Although the exhaustion doctrine applies to Article III courts, the Postal Service contends there are sound policy reasons for applying a similar approach, primarily to avoid premature interruption of the administrative process and to permit development of a factual background and opportunity for an agency to exercise its discretion or expertise. *Id.* at 7-8. The Postal Service argues that Complainants should not be encouraged to bypass the available processes and it is a more efficient use of Commission resources not to entertain complaints when the Postal Service has opportunities to reconsider. *Id.* at 8.

The Postal Service also contends the Complaint should be dismissed on procedural grounds for failing to comply with the Commission's precondition rule at 39 C.F.R. § 3030.10(a)(9) to meet or confer with the Postal Service prior to filing a complaint. *Id.* Complainants must notify the Postal Service's general counsel of concerns in order to permit the parties to confer as a prerequisite to filing a complaint. *Id.* at 9. This provides a reasonable time to resolve the issues and inform Complainants of the time required for resolution. The Postal Service argues that neither Exhibit B (including the FOIA request) nor Exhibit C (including the prior draft complaint) attached to the Complaint support a claim of a reasonable attempt to meet or confer with the Postal Service's general counsel. *Id.* The Postal Service contends that the first notification of any potential complaint was received via email on April 21, 2015, 2 days before the Complaint was filed. *Id.* at 10-11. Even if that filing was a request to confer, the Postal Service states that 2 days is insufficient notice.¹² *Id.* at 11.

¹¹ DMM, section 608.6.1, Consumer Complaints and Inquiries; <http://pe.usps.com/text/dmm300/608.htm#1256084>.

¹² The Postal Service also states that the individuals named in the Complaint are not personally subject to the Commission's jurisdiction because complaint cases filed under section 3662 only allow for remedies affecting the Postal Service. *Id.*

Finally, the Postal Service suggests that if the Commission does not dismiss the Complaint, it should refer the complaint to the Postal Service for resolution through the rate or service inquiry process established in the Commission's rules at 39 C.F.R. § 3030.13(a). *Id.* at 12. It notes that the Complaint does not trigger any of the exceptions in subsections 3030.13(a)(1)-(4) to that rule. *Id.* at 12-13. The Postal Service concludes the Commission should dismiss the Complaint with prejudice. *Id.* at 13.

III. COMMISSION ANALYSIS

A. Commission Jurisdiction

The Commission has jurisdiction over complaints that meet the statutory requirements of 39 U.S.C. § 3662(a). Section 3662(a) permits interested persons to file complaints if they believe "the Postal Service is not operating in conformance with the requirements of the provisions of sections 101(d), 401(2), 403(c), 404a, or 601, or this chapter [36] (or regulations promulgated under any of those provisions)" ¹³

Complainants invoke Commission jurisdiction under section 3662(a), but fail to address specific sections listed within section 3662(a) that may be violated by the Postal Service's actions. In the absence of specific allegations, the Commission will assess the validity of the Complaint against the statutory provisions cited, consider the general allegations and facts presented in the Complaint, and consider the Postal Service's Motion to Dismiss.

1. Failure to State a Claim

Three of the provisions of title 39 included in section 3662(a) bear no relationship to the issues or facts asserted by Complainants. The Complaint as based on sections

¹³ 39 U.S.C. § 3662(a); *see also* 39 C.F.R. § 3030.2.

101(d), 404a, 401(2), and 601 is dismissed for failure to state a claim for which relief may be granted.

Section 101(d) relates to the apportionment of costs of postal operations to all users of the mail on a fair and equitable basis. That section is not relevant to the Complaint. Complainants make no assertion that the apportioned costs of the Postal Service are not fair and equitable. The Commission lacks jurisdiction to consider the Complaint on that ground and it must be dismissed.

Section 404a limits the scope of complaints: (1) to those either involving Postal Service rules or regulations that create unfair competition; (2) to certain Postal Service actions compelling disclosure of intellectual property; and (3) the Postal Service's offering of a postal service based on its use, without consent, of non-public information obtained from a person providing a product. The Complaint does not address any of these matters, and thus section 404a is not a basis for Commission jurisdiction to consider the Complaint.

Section 601 applies to the carriage of letters out of the mails (and thus outside the scope of the Private Express Statutes), a subject inapposite to the issues raised in the Complaint. The Commission concludes that it lacks jurisdiction to consider the Complaint under section 601 and that element of the Complaint must also be dismissed for lack of jurisdiction.

Section 401(2). Complainants also rely on jurisdiction pursuant to section 401(2) listed in section 3662(a). Complaint at 1. Pursuant to section 401(2), the Postal Service has authority "to adopt, amend, and repeal such rules and regulations, not inconsistent with this title [39], as may be necessary in the execution of its functions under this title [39]." Commission jurisdiction to hear a complaint alleging violation of section 401(2) would lie if the Postal Service adopted, amended, or repealed rules or regulations inconsistent with title 39.

The Commission finds no allegation in the Complaint supporting a finding that the Postal Service's rules and regulations (or interpretation thereof) are inconsistent with any provisions of title 39, nor does the Commission have jurisdiction to hear a complaint

pursuant to 401(2) as pertains to the Postal Service Letter. Therefore, the Complaint's claims pursuant to section 401(2), are dismissed for failure to state a claim for which relief may be granted.

Complainants allege the Postal Service is without authority to require the postal customer to present a dog license and rabies vaccination certificate and other documentation to resume normal delivery. Under section 3662(a) complaints invoking section 401(2) must demonstrate the regulations are inconsistent with title 39.

The Postal Service has statutory authority to provide efficient and effective nationwide service, as well as to ensure the safety and well-being of its employees delivering mail on their routes. The Postal Service has established regulations in employee handbooks that address the interference or threat of dog attacks that do not require carriers to deliver mail in such cases. See, Handbook M-41, Section 133.5; Handbook EL-814, Section IX.D.1 (2013).¹⁴

In this case, the Postal Service issued a letter interpreting those rules or regulations, providing the Complainants with options to restrain the animal (and provide reasonable documentation as to a commitment to restrain the animal and concerning the animal's health for the safety of the carrier) or make alternate delivery options for Complainant's accountable mail. The Postal Service Letter is consistent with and a reasonable interpretation of those rules or regulations. The regulations address a real threat to the physical well-being of carriers on their routes. In FY 2014, over 5,700 carriers were victims of dog bites, an increase over the previous year. *Id.* at 2, n.2.¹⁵ The Postal Service's adoption of employee regulations restricting mail delivery at addresses with unrestrained dogs that interfere with the delivery of mail is rationally

¹⁴ Handbook M-41, section 133.5, for City Delivery Carriers provides that carriers are not required to deliver mail where dogs or other animals interfere. Handbook EL-814, Section IX.D.1 (2013), provides that carriers are not required to deliver mail when an animal threatens them. Motion to Dismiss at 3, n.4. 39 C.F.R. § 211.2(a)(3) specifically lists handbooks as among the Postal Service documents that are Postal Service regulations.

¹⁵ The Postal Service references Postal Bulletins. The Postal Service has also issued Notice 204 asking customers to do their part in preventing dog bites of letter carriers; <http://about.usps.com/notices/not204.pdf>. *Id.* at 3, n.4.

based to ensure the safety of its carriers, reduce costs, and maintain operational efficiency necessary in the execution of its functions under, and consistent with title 39.

The Commission's finding that the Postal Service Letter is a reasonable interpretation of the Postal Service's regulations is consistent with Commission and Court precedent. Commission Order No. 779 rejected a claim that a Postmaster's letter was unlawful, reasoning that, "[t]he Postal Service has the inherent authority to implement its regulations and, in doing so, is not subject to formal rulemaking procedures."¹⁶ Similarly, in the *Egger* case the court found the Postal Service's interpretation of its regulation "controlling since it is not plainly erroneous or inconsistent with the regulation," (internal citation omitted).¹⁷ While the Postal Service Letter interprets the Postal Service's regulations, it is not a rule or regulation of the Postal Service.

Because the requirements in the Postal Service Letter to which the Complainants object are not rules or regulations of the Postal Service, the Commission is without jurisdiction to consider that claim, and the Complaint, therefore, fails to state a claim under section 401(2) for which relief can be granted.

Section 403(c). In providing services and in establishing classifications, rates and fees under title 39, "the Postal Service shall not, except as specifically authorized in this title [39], make any undue or unreasonable discrimination among users of the mails" 39 U.S.C. § 403(c).

¹⁶ Docket No. C2011-2, Order No. 779, Order Granting, in Part, Postal Service Motion to Dismiss Count 1, July 29, 2011, at 6.

¹⁷ *Egger v. U.S. Postal Service*, 436 F. Supp. 138, 142 (W.D. Va. 1977), at ¶ 142 (*Egger*).

The Commission has previously recognized that a series of court cases considering section 403(c) have found that the Postal Service's authority to provide efficient and economic postal services, including delivery services, permits it to differentiate among customers, provided that the differences have a rational basis.¹⁸ The court in the *Egger* case, which involved different methods of delivery to married and unmarried students in university-owned buildings concluded:

The Postal Service is responsible for the development of nationwide cost-effective delivery policies and must be granted broad rule-making authority. While plaintiff's residence may structurally be identical to an apartment that fact is not determinative and the Postal Service clearly may focus on the broad delivery characteristics of various mail users.

Egger at ¶ 142.

The Court specifically rejected plaintiffs' claim that the Postal Service's delivery policies were discriminatory in violation of 39 U.S.C. § 403(c). The court reasoned that "the Postal Service may provide different levels of delivery service to different groups of mail users so long as the distinctions are reasonable." *Id.* at ¶ 142. It concluded that the Postal Service's delivery method was "rationally related to the achievement of the Postal Service's statutory goal of providing economical and efficient mail delivery." *Id.* at ¶ 143.

Here, Complainants have not alleged any facts that if proven true demonstrate their treatment is discriminatory. They have not alleged specific facts that if proven true would demonstrate their dog is not interfering with or harassing the carrier. While the Complaint alleges that "over the past four years mail carriers ... have consistently failed or refused to deliver packages to the front door of the house," the Complaint fails to

¹⁸ See Docket No. C2011-2, Order No. 1327, Order Dismissing Complaint, May 1, 2012, at 14. See, e.g., *City and County of San Francisco v. USPS, N.D. Cal.* (No. C 09-01964, Order Granting in Part and Denying in part Defendants' Motion to Dismiss, November 5, 2009, aff'd memorandum opinion, No. 12-15473, (9th Cir. 2013); *Currier v. Potter*, 379 F.3d 716 (9th Cir. 2004); *Parsons v. U.S. Postal Service*, 380 F. Supp. 815 (D. N.J. 1974); *Grover City v. U.S. Postal Service*, 391 F. Supp. 982 (C.D. Cal. 1975).

explain the circumstances of those instances or the specific facts surrounding the Postal Service's alleged refusal to deliver certain mail to the door. Complaint at 7. The record before the Commission indicates from a carrier report dated January 8, 2015, that the "dog has been out 4 times." Motion to Dismiss, Exhibit 1 at 2. In addition, the Postal Service claims that since January 9, 2015, after its January 8, 2015, letter notification, Claimants' dog has continued to interfere with delivery of larger parcels and accountable mail. Motion to Dismiss at 3-4. Complainants offer no response or explanation about their dog's behavior when the carrier approaches the door.

There is no allegation if proven true that demonstrates the Postal Service is treating Complainants differently than others who may be in their group or that the group is treated differently without reason or cause. The Postal Service's response to the reported dog interference and/or harassment is reasonably related to the situation presented by the pleadings. *Id.* Exhibit 1 at 2.

Complainants suggest their mail delivery at the door was withheld because the Postal Service found their good-natured dog to be vicious, but they vigorously contend their dog is not vicious. The Postal Service's Letter only indicates that mail could not be delivered "because your dog was out and interfered with the letter carrier." Likewise, the Postal Service's form labeled "Carrier's Report of Dog Problem" indicates that it is used if the carrier has "a dog interference or harassment on your route." There is no contention or allegation by the Postal Service that Complainants' dog is vicious.

The Postal Service's provision of restricted delivery service for Complainants is reasonable and rationally related to the achievement of economical and efficient mail delivery and the preservation of mail carrier safety. There is no allegation that supports a finding of unreasonable discrimination against Complainants compared to other postal customers.

The requirement to pick up packages at the post office follows from the inability to deliver the parcels or accountable mail. This procedure is an option routinely offered by the Postal Service through the use of PS Form 3849 ("Sorry We Missed You" notice) and is not inconsistent with title 39.

The Commission concludes that the Postal Service Letter, pursuant to and interpreting its regulations that permit restricted delivery of mail when a dog has interfered with or harassed its carrier, does not constitute undue discrimination against Complainant in violation of 39 U.S.C. § 403(c). Withholding large parcels and accountable mail for post office pick up is a delivery limitation rationally related to the Postal Service's statutory mandate to provide adequate and efficient postal services, including an efficient system of delivery of mail nationwide. See *Egger* at ¶ 143.

Accordingly, the Commission dismisses the claim that the Postal Service is unduly discriminating against Complainants in violation of section 403(c). The Complaint fails to state a claim for which relief can be granted; therefore, Complainant's claim regarding section 403(c) is dismissed.

Section 3691. The Complaint reproduces section 3691 of title 36 covering modern service standards for market dominant products. Complaint at 1, n.1. Complainant does not directly claim section 3691 is violated, but as it is referenced the Commission construes the reference as a claim that the Postal Service violated section 3691.

Section 3691 provides for the establishment of a modern system of service standards for market dominant products. Those standards were established by the Postal Service in consultation with the Commission.¹⁹ The isolated incidents of carrier safety and restricted home delivery at issue here are unrelated to the general modern delivery standards which indicate the anticipated days to deliver the various classes and other types of mail.

Complainants do not implicate the process for establishing the service standards. The Complaint, itself, lists the factors set out in section 3691(c) that were considered when the standards were established. Complaint at 2. These factors, such as the needs of customers, including customers with physical impairments, were discussed by the Postal Service when it established the standards published in the *Federal Register*

¹⁹ 72 Fed. Reg. 58965 (2007); (codified at 39 C.F.R. Part 121 and 122).

and are actually cited in the Complaint. *Id.*, part IIC. at 5-7. Complainants have failed to identify a nexus between the section 3691 service standards and their claims.²⁰ The claim of violation of section 3691 must be dismissed for failure to state a claim for which relief may be granted.

2. Alleged Violations Outside the Scope of Commission Jurisdiction

The Complaint also reproduces other statutory provisions that Complainants allege the Postal Service has violated: 18 U.S.C. § 1701 and portions of the ADA, 42 U.S.C. Chapter 126. Complaint at 3-5. Neither section 1701 nor any section of the ADA is enumerated in section 3662(a) or Chapter 36 of title 39 as a basis for Commission jurisdiction to act on a complaint.

The Commission has consistently held its jurisdiction is limited to alleged violations of the sections enumerated in section 3662 or Chapter 36. Motion to Dismiss at 4.²¹ The Commission dismisses the elements of the Complaint to the extent they claim violations of section 1701 of title 18 and Chapter 126 of title 42 ADA because they do not lie within the Commission's jurisdiction under 39 U.S.C. § 3662(a) or Chapter 36 and Complainant has therefore failed to state a claim for which relief may be granted.²²

3. Procedural Requirements for Complaints

No attempt to meet or confer. The Complaint must also be rejected for failure to comply with Commission rules about the content of complaints. A complaint is required to include a certification that Complainant has attempted to meet or confer with the

²⁰ See Order No. 1762. In that case complainants did not tie their request for Area Mail Processing feasibility studies with the establishment of modern service standards.

²¹ See Order No. 1762 at 10; Order No. 2377 at 6; Order No. 471 at 3.

²² Because the Complaint is dismissed for lack of jurisdiction, the Commission need not reach the validity of the Complainants' request for relief through Commission sanction upon each of the respondents. Complaint at 9. See Motion to Dismiss at 11-12.

Postal Service's general counsel. 39 C.F.R. § 3030.10(9).²³ The Complaint includes a certification that "reasonable attempts have been made to the Postal Service's General Counsel by letter or demand as shown in Exhibit B and Exhibit C for which such complaints or demands have been ignored or for which no response has been forthcoming." Complaint at 9. The referenced exhibits evidence a FOIA request directed to the Postal Service in Exhibit B and an unfiled complaint prepared for filing with this Commission in Exhibit C. Exhibit B evidences no communication by Complainant with any office in the Postal Service to meet or confer on this matter. The Complaint does not offer sufficient evidence that Complainants reasonably attempted to meet or confer with the Postal Service's general counsel prior to filing the Complaint. Neither Exhibit B nor Exhibit C provides evidence that the Complainants attempted to meet or confer with the Postal Service's general counsel in any manner that would be sufficient to meet the requirements of section 3030.10(9).

No explanation why meetings would be inadequate. The Complainants' also fail to state why they believe additional steps to meet or confer would be inadequate and the reasons for that belief, as further required by section 3030.1(9).

B. Alternate Process for Resolution: Rate or Service Inquiry

While the Commission determines that the Complaint must be dismissed, as discussed above, the Postal Service suggests the Complaint should be treated as a service inquiry pursuant to 39 C.F.R. part 3031. The Commission has established procedures for resolving rate or service inquiry issues. See 39 C.F.R. § 3031.10 *et seq.* The Commission may, at its discretion, apply these procedures to complaints that concern rate or service matters that are isolated incidents affecting few mail users (with limited exceptions). See 39 C.F.R. § 3030.13. In an attempt to aid Complainants in the

²³ "A complaint must: ... (9) Include a certification that states that prior to filing, the complainant attempted to meet or confer with the Postal Service's general counsel to resolve or settle the complaint, why the complainant believes additional such steps would be inadequate, and the reasons for that belief"

resolution of their grievances, the Commission applies the provisions of 39 C.F.R. § 3031 to the instant Complaint, consistent with previous complaints about isolated service issues.²⁴ The Commission, therefore, refers the Complainants' filing to the rate and service inquiry process. The Postal Service will report within 45 days to the Commission whether Complainants' issues were resolved.

Accordingly, the Motion to Dismiss is granted and the Complaint is dismissed.

IV. ORDERING PARAGRAPHS

It is ordered:

1. The United States Postal Service Motion to Dismiss the Complaint of James D. Goodman and Rosalyn Goodman, filed May 14, 2015, is granted.
2. The Complaint of James D. Goodman and Rosalyn Goodman is dismissed.
3. The Postal Service shall report within 45 days to the Commission whether Complainants' issues were resolved as set forth in the body of this order.

By the Commission.

Ruth Ann Abrams
Acting Secretary

²⁴ See, e.g., Docket No. C2011-4, Order No. 759, Order Dismissing Complaint, July 14, 2011.