

DISSENTING OPINION OF COMMISSIONER GOLDWAY

I would not dismiss this complaint before it has been heard; particularly where the Commission has itself recognized aspects of the activity comprising the complaint.

As the majority opinion describes, the Commission has consistently expressed concern in its Annual Compliance Determinations about the Postal Service's inability to maintain the service standards it sets for itself and promises the public.

Declines in service quality were observed soon after the USPS began its network realignment program. As network consolidation has proceeded, the quality and speed of service has deteriorated at an ever-expanding pace. The mail that has been affected most is First-Class Mail, where service levels have gone from overnight to 2 days and from 2 days to 3 days, with over 30 percent of 3-day mail actually delivered in 4 or 5 days. The claims brought by APWU in its complaint are colorable and the concerns raised are credible.

For example, there was a precipitous decline in many aspects of service quality in the first two quarters of FY 2015.¹ It is widely recognized in the economic literature that in a price cap rate regulation system, service quality is prone to slippage, unless there is a means of ensuring maintenance of service levels. The Commission's oversight responsibilities require constant attention to, and public review of, service performance.

The existence of ongoing hortatory language in the Commission's Annual Compliance Determination (ACD), urging the Postal Service to raise service quality, should not serve to foreclose complaints about service. The fact that the Commission has repeatedly recognized service quality problems in the ACD should not be used as a bar to legitimate complaints. The Commission has recognized and responded to similar concerns in the preamble to its rulemaking on the Complaint process.

¹ See, e.g., U.S. Postal Service delivery times lag more than expected, by Henry J. Cordes, Omaha World-Herald, May 18, 2015. Viewed at http://www.omaha.com/news/metro/u-s-postal-service-delivery-times-lag-more-than-expected/article_3d184144-3097-591c-801f-0f2026fcdc35.html.

In the Commission's Rulemaking establishing Rules for Complaints, the Newspaper Association of America (NAA) expressed a pair of concerns: "that a Commission finding of compliance or noncompliance in an annual compliance determination could moot a pending complaint on the same issue."²

The Commission in its Rulemaking directly addressed only one of the duo of concerns, limiting its discussion to instances of a complaint over a matter for which there had been a finding of compliance. Order No. 195 at 21-23. The Commission prologue did not settle the issue raised in the instant complaint docket: how an ACD finding that suggests non-compliance, with an accompanying remedy, would impact a complaint raising similar facts. Instead, the Commission found that a timely written determination of compliance creates rebuttable presumption of compliance by the Postal Service for those issues during the applicable year. *Id.* at 22.

Nevertheless, the Commission agreed with NAA in the broad sense that it "would not give full effect to the statutory scheme if complaints could be rendered moot by the issuance of an annual compliance determination." *Id.* The Commission also observed that "Congress recognized that annual compliance determination proceedings are completed in a very short, fixed timeframe and are not subject to the same opportunities for contesting evidence as exist in an adversarial proceeding. These rules contemplate full complaint proceedings to provide thorough, in-depth review of any particular subject matter in the context of a complaint." *Id.* at 23. The Commission concluded by stating that: "Commission findings in an annual compliance determination are relevant to a pending complaint proceeding, but are not necessarily dispositive of those issues." *Id.*

² Docket No. RM2008-3, Order No. 195, Order Establishing Rules for Complaints and Rate or Service Inquiries March 24, 2009, at 21 (Order No. 195). *See also* Docket No. RM2008-3, Comments of the Newspaper Association of America on Notice and Order of Proposed Rulemaking Establishing Rules for Complaints October 6, 2008, at 2, 9-11 (the Commission... "Should ensure that the annual compliance review process does not eviscerate the complaint process.")

The APWU may or may not ultimately be able to prove their case. But APWU has not had that opportunity. The Postal Service, a government monopoly, holds nearly all of the relevant information. There has not been a fair opportunity for discovery to elicit the information needed for a full record. The proceeding has been prematurely foreclosed.

The Commission should not assume that the ACD will suffice as the sole component of the regulatory system. The PAEA anticipates a robust Complaint mechanism and granted the Commission broad remedial authority. The statutory language makes it clear that the ACD and the section 3662 Complaint mechanism, both major aspects of the PAEA, are important, intertwined, and designed to work together in concert.

In light of the documented recent declines in service, this complaint should be heard.

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