

U.S. Postal Service
Law Department
Letter to William P. Malone, Vice President,
General Telephone & Electronics Corp., Nov. 22, 1974
in "Hearings on the Postal Reorganization Act Amendments
of 1975, H.R. 2445," before the Subcomm. on Postal Service of
the House Comm. on Post Office and Civil Service,
94th Cong. 1st Sess. (1975) at 344

November 22, 1974

Dear Mr. Malone:

This responds to your letter of October 22 requesting that the Postal Service reconsider and modify or clarify the regulations implementing the Private Express Statutes which became effective on October 20, 1974. Before turning to the various points raised in your thoughtful letter, perhaps I should mention that I understand that our Customer Services Department has been in touch with you regarding your need for prompt transmission of urgent correspondence between Stamford and Washington and that express mail service between these two cities should be starting up in the very near future. We certainly hope that this will work out to your complete satisfaction.

Turning now to the matter of the proposed suspension of the Private Express Statutes for intra-company letters, let me say that the question seems to us to boil down to this: On balance, is the Postal Service justified in suspending Congressionally imposed restrictions that are intended to protect postal revenues for "urgent" transmissions of intra-company letters? On the one hand, let us readily acknowledge that there are appealing arguments for suspension (as your letter points out) in those situations for which the Postal Service does not offer an adequately rapid and dependable service. On the other hand, the economic vitality of the national postal system depends heavily on mail volume and we must necessarily tread warily when we approach the possibility of relinquishing any significant part of the protections which the Congress enacted in the form of the Private Express Statutes.

As we try to weigh the competing arguments, two points seem to merit particular attention. First, assuming for the moment that a suspension of the kind that you suggest is conceptually sound, it would be very difficult in actual practice to limit the suspension to situations of bona fide "urgency" in which adequate postal services are not available [345].

For example, in actual practice it would be difficult to exclude from "urgent" transmissions outside of the mails any number of intra-company memoranda and other "letters" which are sent along by private courier for next-day deliver even though it wouldn't really make much difference whether they were delivered on the next day or the day after.

The second point that may merit particular attention is that our decision to refrain from suspending the limitations of the Statutes in respect to the private carriage of intra-company mail leaves the

applicable rules unchanged. Thus, a company which was in compliance with the Private Express Statutes in regard to the transmission of intra-company mail before our new regulations took effect on October 20 need only follow the same practices in order to remain in compliance. Accordingly, our new regulations do not in themselves create any new problems in respect to intra-company letters.

Last summer and again last January, when we tentatively proposed the suspension for intra-company letters, we hoped that we might at least be able to take some approximate measure of the impact that such a suspension might have on postal revenues by requiring the periodic reports which we then proposed. The comments that we received on that proposed reporting system persuaded us that the system would be widely regarded as an onerous imposition and that in all likelihood it simply would not work. Consequently, as matters now stand, we not only lack any immediate quantitative answers to the critical question "How much of a loss in mail volume would result from a suspension for intra-company letters?" but we also lack the prospect of obtaining quantitative answers by an acceptable reporting system.

Our doubts about the impact of the suspension on mail volume had a good deal to do with our decision to maintain the status quo and refrain from the intra-company suspension at least for the present. We are, however, continuing to give the matter close attention and it may be that ways can be devised to serve the particular interests of those who feel a need for especially rapid transmission of letters by private carriers outside the mails while still not undercutting to any significant extent the Congressionally recognized general interest in maintaining postal revenues. We would certainly be interested in any concrete proposals to this end - particularly if the proposals included clear limitations that would demonstrably prevent any significant erosion of mail volume. [346]

Let us now turn to other points that were raised in your letter. The proposal that co-located, related companies be treated as the same company for purposes of the "letters of the carrier" exception raises the difficult problem of where to draw the line, if one moves away from the literal language of the statutory provision on which the exception is based. Several comments asserted that it is inappropriate to rely upon certain technicalities of corporate structure in determining whether or not the "letters of the carrier" exception is available. Particularly in an age of conglomerates, however, treating related companies as one for purposes of this exception would open the door to an expansion of the exception far beyond what its draftsmen must have had in mind. While we recognize that your suggestion would result in an even more narrowly defined extension of this exception, we would be reluctant even to take that step because of the difficulty that might be involved in justifying our decision to go only that far and no further. Any line drawn is likely to be somewhat arbitrary; accordingly at this point we are not persuaded that we should proceed beyond the standards set by the statutory language itself as interpreted consistently in the past.

You suggest that several additional clarifications and modifications may be required in the final Private Express regulations. Our thoughts on the particular matters you mention are as follows. First, we do not know how we can clarify the status of carriers or users of carriers under the criminal Private Express provisions operating under the suspension for data processing materials promulgated by the Postal Service under the civil Private Express provisions. No express authority exists in the

Postal Service to suspend the provisions of the criminal laws. We would very much doubt, however, that a successful criminal prosecution could be maintained against someone operating in good faith under a suspension of the civil prohibitions on the private carriage of letters. We doubt that anything more that we might say on the subject would substantially clarify the situation.

Second, we do not agree that section 3509 of title 44, United States Code, invalidates the notification requirements contained in the suspension of the Private Express Statutes for data processing materials. That provision, providing for advance clearance with the Director of the Office of Management and Budget of certain forms used in collecting information from the public does not, in our opinion, apply to the Postal Service. See, e.g., 39 U.S.C. §410(a). [347]

Third, while we recognize that unforeseeable circumstances could occasionally prevent the commencement of work on data processing materials within the 36-hour limit provided under the regulations as adopted, a rule based on the intention of commencing work within 36 hours would be difficult to police because of its subjective nature. We doubt that any significant remedial action would be taken against anyone who in good faith attempted to comply with the regulation but was prevented by a demonstrable emergency from meeting the 36-hour test. In any event, we would probably not want to change the regulation as it now stands unless a workable objective alternative standard could be developed.

Fourth, we recognize that the regulations do not provide for private carriage of mail during strikes. Since postal strikes are prohibited by law, there would be, I suspect considerable reluctance within this organization to anticipate a possible unlawful strike through officially promulgated regulations. On the other hand, should an illegal strike occur, we could promptly promulgate an emergency suspension of the Private Express Statutes to permit private carriage of vital mail matter.

We very much appreciate the thoughtful comments contained in your letter of October 22, 1974. While, for the reasons outlined above, we do not at this time expect to be proposing the changes which you suggest, we will maintain your letter in our office and give it attention in the future should it appear appropriate for us to make changes in the areas of our regulations touched upon in your letter.

Sincerely,
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