

H.R. 3717, THE POSTAL REFORM ACT OF 1996

HEARINGS

BEFORE THE

SUBCOMMITTEE ON THE POSTAL SERVICE

OF THE

COMMITTEE ON GOVERNMENT

REFORM AND OVERSIGHT

HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

ON

H.R. 3717

TO REFORM THE POSTAL LAWS OF THE UNITED STATES

JULY 10 AND 18; SEPTEMBER 17 AND 26, 1996

Printed for the use of the Committee on Government Reform and Oversight



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CONTENTS

	Page
Hearing held on:	
July 10, 1996	1
July 18, 1996	187
September 17, 1996	433
September 26, 1996	749
Text of H.R. 3717	3
Statement of:	
Bates, Hugh, president, National Association of Postmasters of the United States; Bill Brennan, president, National League of Postmasters; and Vincent Palladino, president, National Association of Postal Supervisors	362
Benjamin, Maynard H., president, Envelope Manufacturers Association of America; Dan Goodkind, chairman of the board, Mail Advertising Service Association; Charmaine Fennie, chairperson, Coalition Against Unfair USPS Competition; John T. Estes, executive director, Main Street Coalition for Postal Fairness; and Robert Williamson, executive director, National Association of Presort Mailers	771
Biller, Moe, president, American Postal Workers Union, AFL-CIO; Vincent Sombrotto, president, National Association of Letter Carriers, AFL-CIO; Scottie Hicks, president, National Rural Letter Carriers Association; William Quinn, president, National Postal Mail Handlers Union, LIUNA, AFL-CIO; and John Pesa, president, National Labor Council, Fraternal Order of Police	195
Cassidy, Lee, executive director, National Federation of Nonprofits; and Mark Silbergeld, president, Alliance of Nonprofit Mailers	569
Hunter, Hon. Duncan, a Representative in Congress from the State of California	761
Little, Christopher M., chairman, Government Affairs Council, Magazine Publishers of America; John Sturm, president and CEO, Newspaper Association of America; Stephen B. Waters, vice president and publisher, Rome Sentinel Co., National Newspaper Association; and Stephen L. Bair, senior vice president, Law and Business Affairs for Time Life, Inc., Association of American Publishers	634
Runyon, Marvin T., Postmaster General and CEO, U.S. Postal Service, accompanied by Michael S. Coughlin, Deputy Postmaster General, U.S. Postal Service; Mary Elcano, senior vice president and general counsel, U.S. Postal Service; and Edward J. Gleiman, chairman, Postal Rate Commission	34
Smith, Frederick, chairman and CEO, Federal Express; Kent (Oz) Nelson, CEO, United Parcel Service; and Philip A. Belyew, president, Air Courier Conference of America	864
Todd, David, counsel, Mail Order Association of America; Timothy May, general counsel, Parcel Shippers Association; Ian D. Volner, general counsel, Advertising Mail Marketing Association; and Jerry Cerasale, senior vice president, Direct Marketing Association	449
Letters, statements, etc., submitted for the record by:	
Bair, Stephen L., senior vice president, Law and Business Affairs for Time Life, Inc., Association of American Publishers, prepared statement of	699
Bates, Hugh, president, National Association of Postmasters of the United States, prepared statement of	366
Belyew, Philip A., president, Air Courier Conference of America, prepared statement of	912

IV

	Page
Letters, statements, etc., submitted for the record by—Continued	
Biller, Moe, president, American Postal Workers Union, AFL-CIO, prepared statement of	199
Brennan, Bill, president, National League of Postmasters, prepared statement of	379
Cassidy, Lee, executive director, National Federation of Nonprofits, prepared statement of	573
Cerasale, Jerry, senior vice president, Direct Marketing Association, prepared statement of	508
Collins, Hon. Barbara-Rose, a Representative in Congress from the State of Michigan, prepared statements of	208, 439, 759
Collins, Hon. Cardiss, a Representative in Congress from the State of Illinois, prepared statement of	441
Estes, John T., executive director, Main Street Coalition for Postal Fairness, prepared statement of	804
Fennie, Charmaine, chairperson, Coalition Against Unfair USPS Competition, prepared statement of	794
Gilman, Hon. Benjamin A., a Representative in Congress from the State of New York, prepared statement of	436
Gleiman, Edward J., chairman, Postal Rate Commission, prepared statement of	72
Goodkind, Dan, chairman of the board, Mail Advertising Service Association, prepared statement of	784
Green, Hon. Gene, a Representative in Congress from the State of Texas, prepared statements of	40, 444, 757
Hicks, Scottie, president, National Rural Letter Carriers Association, prepared statement of	228
Hunter, Hon. Duncan, a Representative in Congress from the State of California, prepared statement of	765
Little, Christopher M., chairman, Government Affairs Council, Magazine Publishers of America, prepared statement of	638
Love, Michael E., chairman, Envelope Manufacturers Association of America, prepared statement of	775
May, Timothy, general counsel, Parcel Shippers Association, prepared statement of	464
McHugh, Hon. John M., a Representative in Congress from the State of New York, prepared statements of	190, 750
Meek, Hon. Carrie P., a Representative in Congress from the State of Florida, prepared statements of	212, 446
Nelson, Kent (Oz), CEO, United Parcel Service, prepared statement of	895
Palladino, Vincent, president, National Association of Postal Supervisors, prepared statement of	393
Pesa, John, president, National Labor Council, Fraternal Order of Police, prepared statement of	248
Quinn, William, president, National Postal Mail Handlers Union, LIUNA, AFL-CIO, prepared statement of	236
Silbergeld, Mark, president, Alliance of Nonprofit Mailers, prepared statement of	608
Smith, Frederick, chairman and CEO, Federal Express, prepared statement of	869
Sombrotto, Vincent, president, National Association of Letter Carriers, AFL-CIO, prepared statement of	220
Sturm, John, president and CEO, Newspaper Association of America, prepared statement of	659
Todd, David, counsel, Mail Order Association of America, prepared statement of	451
Volner, Ian D., general counsel, Advertising Mail Marketing Association, prepared statement of	483
Waters, Stephen B., vice president and publisher, Rome Sentinel Co., National Newspaper Association, prepared statement of	690
Williamson, Robert, executive director, National Association of Presort Mailers, prepared statement of	819

H.R. 3717, THE POSTAL REFORM ACT OF 1996

WEDNESDAY, JULY 10, 1996

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE POSTAL SERVICE,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:05 p.m., in room 311, Cannon House Office Building, Hon. John M. McHugh (chairman of the subcommittee) presiding.

Present: Representatives McHugh, Ehrlich, Collins, Owens, Green and Meek.

Also present: Representative Clinger.

Staff present: Dan Blair, staff director; Jane Hatcherson, Robert Taub, Heea Vazirani-Fales, and Steve Williams, professional staff members; Jennifer Tracey, clerk; and Kimberly Williams and Denise Wilson, minority professional staff members.

Mr. MCHUGH. Today marks the first in a series of four legislative hearings on H.R. 3717, the Postal Reform Act of 1996.

I, first off, beyond welcoming our audience, of course want to extend our greetings and best wishes and thanks to our witnesses today, our primary witnesses, Mr. Runyon and Mr. Gleiman.

Mr. Runyon, the Postmaster General of the United States, is accompanied by Deputy Postmaster General Michael Coughlin and senior vice president and general counsel, Mary Elcano.

Both witnesses, of course, are familiar faces before this subcommittee, and I extend our welcome for their appearance here today, and certainly we look forward to their testimony.

I also want to note that when Mr. Gleiman takes the chair he will not be joined at the table but in the room are all of the members, I understand, of the Postal Rate Commission, and we are honored by their presence here today and thank them for their ongoing efforts in helping to administer what I know most of us, if not all of us, agree is the most effective and efficient Postal Service found anywhere in the world.

The Postal Reform Act of 1996 represents the first significant effort at reforming the Postal Service since it was inaugurated 25 years ago this month. Since the inception of the 104th Congress, this subcommittee has heard from more than 60 witnesses regarding the need for what they perceive, certainly, to be significant changes to the current structure of the Postal Service. In addition, I've had the opportunity to meet with postal customers, employees and some of our Nation's business leaders regarding the need for such reform. H.R. 3717 represents these conversations and is in-

tended to address many of the significant issues raised by postal stakeholders.

I believe the Postal Reorganization Act of 1970 was largely successful in turning around a debt-ridden organization, one that was dependent upon taxpayer dollars for its operating revenues. However, the communications environment in which the Postal Service finds itself today has changed dramatically in this interim. In 1970, few could have foreseen the explosion of personal computers, the Internet and fax machines as methods of personal communication.

I believe the Postmaster General, Mr. Runyon, has correctly forecast that unless changes are made in the act, the Postal Service could find itself a communications company bound by outdated legislative constrictions and simply unable to compete.

Our first panelist this afternoon is Postmaster General Marvin Runyon. As I noted, it was Mr. Runyon's clarion call for reform which initiated this legislative process. Many of the reforms sought by the Postmaster General are contained in H.R. 3717, including the ability to offer postal customers volume discounting, the unilateral ability to offer new products and significant flexibilities in determining postal rates. While Mr. Runyon may have begun this process, the ball is now in our court, the Congress, to complete the mission. I look forward to the Postmaster General's statement as an effort to continue the progress we have made thus far.

The subcommittee also welcomes, as I noted earlier, Postal Rate Commission Chairman Ed Gleiman, accompanied by the members of the Rate Commission. H.R. 3717 confers significant new oversight to the Rate Commission while transforming its function from rate-setting to that of true regulator. Some in the postal community have urged the subcommittee to dismantle, to disband this agency. However, given the pricing authorities and other flexibilities contained in this bill, I firmly believe a strong regulatory body is needed to protect captive postal customers from unfairly shouldering the costs that might be incurred as a result of the competitive environment. I look forward to the chairman's testimony and, most importantly, his continuing participation in this critical dialog as our subcommittee moves forward in the legislative process.

Admittedly, many of the reforms contained in this bill are outside the scope of the present postal paradigm. However, the glass needed to be broken in examining the problems and proposing solutions for our Nation's complex postal system. I believe this reform act of 1996 reflects a comprehensive and what I see as a balanced approach, and I want to emphasize the word "balanced" approach toward addressing the needs and concerns of the Postal Service, its employees, customers and competitors.

H.R. 3717 recognizes the dual objectives of preserving universal service at reasonable rates for all postal customers while responding to the competitive marketplace in which the Postal Service currently operates.

This legislation and the ensuing process are of paramount importance. Reform best takes place outside a crisis atmosphere. Two years ago, the Postal Service found itself deep in red ink and reeling from a performance debacle which led to cries for privatization. Today, the Postal Service is projected a year-end net income of almost \$1 billion on top of last year's record \$1.3 billion profit.

The status quo may benefit some. However, it is our responsibility in this Congress to learn from the past and to take those steps necessary to protect postal customers from an increasing spiral of rate increases accompanied by diminishing services.

H.R. 3717 represents an opportunity for Congress to seize the moment and enact comprehensive postal reform before we witness a return to those details of failed policy.

Let me leave the script for a moment and also add words of tremendous gratitude to the staff of the subcommittee, who have given so much of their time and their talents to help produce this product. It is really a labor of their sometimes love, their undying dedication, and although it's unlikely that their pictures may be hung on this wall any time in the near future, I think it should be. They've done a tremendous job. I also want to not just welcome but thank the ranking minority member, Miss Barbara-Rose Collins, the gentlelady from Michigan, for her support of the efforts of this subcommittee, for hers and her staff's efforts on our behalf as well.

And with that, I'd like to turn the dais and the microphone over to the gentlelady for any comments she might wish to make at this time.

[The text of H.R. 3717 follows:]

104TH CONGRESS
2D SESSION

H. R. 3717

To reform the postal laws of the United States.

IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 1996

MR. MCHUGH (for himself and Mr. CLINGER) introduced the following bill; which was referred to the Committee on Government Reform and Oversight, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To reform the postal laws of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

- (a) **SHORT TITLE.**—This Act may be cited as the "Postal Reform Act of 1996".
(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—ORGANIZATION

Sec. 101. Resignations relating to the Governors and the Board of Governors.

Sec. 102. Resignations relating to the Postmaster General and the Deputy Postmaster General.

Sec. 103. Change in salary of Directors.

- Sec. 104. Amendments relating to establishing an Office of Inspector General within the United States Postal Service and certain other matters.
- Sec. 105. Clarification relating to execution of amendments.

TITLE II—GENERAL AUTHORITY

- Sec. 201. Employment of postal police officers.
- Sec. 202. Date of postmark to be treated as date of appeal in connection with the closing or consolidation of post offices.

TITLE III—PRESIDENTIAL POSTAL EMPLOYEE-MANAGEMENT COMMISSION

- Sec. 301. Presidential Postal Employee-Management Commission.

TITLE IV—FINANCE

- Sec. 401. End of Treasury control of Postal Service banking.
- Sec. 402. Postal Service investments.
- Sec. 403. Exclusion from Federal Financing Bank.
- Sec. 404. Elimination of Treasury preemption of borrowing by the Postal Service.
- Sec. 405. Elimination of Postal Service "put" on Treasury.

TITLE V—BUDGET AND APPROPRIATIONS PROCESS

- Sec. 501. Repeal of provision relating to transitional appropriations.
- Sec. 502. Provisions relating to benefits under chapter 81 of title 5, United States Code, for officers and employees of the former Post Office Department.
- Sec. 503. Repeal of authorizations of appropriations for public service costs, revenue forgone, and certain compensatory appropriations.
- Sec. 504. Congressional oversight preserved.

TITLE VI—MISCELLANEOUS PROVISIONS RELATING TO POSTAL RATES, CLASSES, AND SERVICES

- Sec. 601. Change-of-address order involving a commercial mail receiving agency.
- Sec. 602. Reduced rates for certain nonprofit organizations.
- Sec. 603. Powers of the Postal Rate Commission.
- Sec. 604. Volume discounts.

TITLE VII—PROVISIONS RELATING TO THE TRANSPORTATION, CARRIAGE, OR DELIVERY OF MAIL

- Sec. 701. Obsolete provisions.
- Sec. 702. Expanded contracting authority.
- Sec. 703. Private carriage of letters.
- Sec. 704. Mailbox demonstration project.

TITLE VIII—DIRECT APPEAL OF DECISIONS OF THE MERIT SYSTEMS PROTECTION BOARD

- Sec. 801. Direct appeal of decisions of the Merit Systems Protection Board.

TITLE IX—LAW ENFORCEMENT

Subtitle A—Amendments to Title 39, United States Code

- Sec. 901. Make Federal assault statutes applicable to postal contract employees.
- Sec. 902. Sexually oriented advertising.
- Sec. 903. Allow Postal Service to retain asset forfeiture recoveries.
- Sec. 904. Hazardous matter.

Subtitle B—Other Provisions

- Sec. 911. Stalking Federal officers and employees.
- Sec. 912. Nonmailability of controlled substances.
- Sec. 913. Enhanced penalties.
- Sec. 914. Postal burglary provisions.
- Sec. 915. Mail, money, or other property of the United States.

TITLE X—NEW SYSTEM RELATING TO POSTAL RATES, CLASSES, AND SERVICES

Sec. 1001. Establishment.

Sec. 1002. Termination of ratemaking authority under chapter 36 and related matters.

TITLE I—ORGANIZATION

SEC. 101. REDESIGNATIONS RELATING TO THE GOVERNORS AND THE BOARD OF GOVERNORS.

(a) REFERENCES IN TITLE 39.—Title 39, United States Code, is amended—

(1) by striking “Board of Governors” each place it appears and inserting “Board of Directors”;

(2) by striking “Governors” each place it appears (except wherever it appears in “Board of Governors”) and inserting “Directors”; and

(3) by striking “Governor” each place it appears and inserting “Director”.

(b) REFERENCES OUTSIDE TITLE 39.—Any reference in any provision of law outside title 39, United States Code, enacted before the date of the enactment of this Act—

(1) to the Board of Governors, within the meaning of section 102(2) of title 39, United States Code, as in effect before the date of the enactment of this Act, shall be treated as referring to the Board of Directors, within the meaning of such section 102(2), as amended by subsection (a); or

(2) to any of the Governors, within the meaning of section 102(3) of title 39, United States Code, as in effect before the date of the enactment of this Act, shall be treated as referring to the corresponding Director or Directors, within the meaning of such section 102(3), as amended by subsection (a).

SEC. 102. REDESIGNATIONS RELATING TO THE POSTMASTER GENERAL AND THE DEPUTY POSTMASTER GENERAL.

(a) IN GENERAL.—(1) Section 202(c) of title 39, United States Code, is amended by striking “Postmaster General” and inserting “Chief Executive Officer of the United States Postal Service”.

(2) Section 202(d) of such title 39 is amended by striking “Deputy Postmaster General” and inserting “Deputy Chief Executive Officer of the United States Postal Service”.

(3) Section 102 of such title 39 is amended by striking “and” at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting a semicolon, and by adding after paragraph (3) the following:

“(4) ‘Chief Executive Officer’, unless the context otherwise requires, means the Chief Executive Officer of the United States Postal Service appointed under section 202(c); and

“(5) ‘Deputy Chief Executive Officer’, unless the context otherwise requires, means the Deputy Chief Executive Officer of the United States Postal Service appointed under section 202(d).”

(b) OTHER REFERENCES IN TITLE 39.—Title 39, United States Code, is further amended—

(1) by striking “Postmaster General” each place it appears (except wherever it appears in “Deputy Postmaster General”) and inserting “Chief Executive Officer”; and

(2) by striking “Deputy Postmaster General” each place it appears and inserting “Deputy Chief Executive Officer”.

(c) REFERENCES OUTSIDE TITLE 39.—Any reference in any provision of law outside title 39, United States Code, enacted before the date of the enactment of this Act—

(1) to the Postmaster General shall be treated as referring to the Chief Executive Officer of the United States Postal Service; and

(2) to the Deputy Postmaster General shall be treated as referring to the Deputy Chief Executive Officer of the United States Postal Service.

SEC. 103. CHANGE IN SALARY OF DIRECTORS.

(a) IN GENERAL.—Section 202(a) of title 39, United States Code, is amended by striking “\$10,000 a year” and inserting “\$30,000 a year”.

(b) EFFECTIVE DATE.—Subsection (a) shall take effect at the beginning of the next applicable pay period beginning after the date of the enactment of this Act.

SEC. 104. AMENDMENTS RELATING TO ESTABLISHING AN OFFICE OF INSPECTOR GENERAL WITHIN THE UNITED STATES POSTAL SERVICE AND CERTAIN OTHER MATTERS.

(a) **DEFINITIONS.**—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1) by inserting “the Board of Directors, United States Postal Service;” after “the Attorney General;” and

(2) in paragraph (2) by inserting “the United States Postal Service;” after “Treasury;”.

(b) **TRANSFER OF FUNCTIONS.**—Paragraph (1) of section 9(a) of the Inspector General Act of 1978 is amended—

(1) in subparagraph (U) by striking “and” after the semicolon; and

(2) by adding at the end the following:

“(X) of the United States Postal Service, that portion of the Postal Inspection Service which is engaged in internal audit activities or program review activities; and”.

(c) **SPECIAL PROVISIONS.**—The Inspector General Act of 1978 is amended by redesignating the first and second sections 8G as sections 8H and 8I, respectively, and by inserting after section 8F the following:

“SPECIAL PROVISIONS CONCERNING THE UNITED STATES POSTAL SERVICE

“SEC. 8G. (a) In carrying out the duties and responsibilities specified in this Act, the Inspector General of the United States Postal Service shall have oversight responsibility for all activities of the Postal Inspection Service, including any internal investigation performed by the Postal Inspection Service. The Chief Postal Inspector shall promptly report to such Inspector General the significant activities being carried out by the Postal Inspection Service.

“(b) Notwithstanding paragraphs (7) and (8) of section 6(a), the Inspector General of the United States Postal Service may select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office of Inspector General, and to obtain the temporary or intermittent services of experts or consultants or an organization of experts or consultants, subject to the applicable laws and regulations that govern such selections, appointments, and employment, and the obtaining of such services, within the United States Postal Service.”.

(d) **OFFICE OF THE INSPECTOR GENERAL AS A SEPARATE ITEM IN ANNUAL BUDGET AND OTHER REQUIREMENTS.**—

(1) **SEPARATE ITEM IN ANNUAL BUDGET.**—For purposes of the fifth sentence of section 2009 of title 39, United States Code, the operations of the Office of Inspector General of the United States Postal Service shall be considered a major type of activity.

(2) **PAY.**—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

“Inspector General, United States Postal Service.”.

The amendment made by this paragraph shall apply notwithstanding section 410 or any other provision of title 39, United States Code.

(3) **STRATEGIC PLANS.**—

(A) **OFFICE OF INSPECTOR GENERAL OF THE UNITED STATES POSTAL SERVICE.**—The first Inspector General of the United States Postal Service appointed pursuant to the amendments made by this section shall prepare a strategic plan addressing staffing requirements, general goals and objectives for major functions and operations of the Office, and a description of how goals and objectives of the Office are to be achieved (including a description of operational processes, skills and technology, and the human, capital, information, and other resources required to meet those goals and objectives). Such plan shall be prepared in time to be included with the annual budget under section 2009 of title 39, United States Code, next due to be submitted after the end of the 6-month period beginning on the date of appointment.

(B) **POSTAL INSPECTION SERVICE.**—The Chief Postal Inspector shall, with respect to the Postal Inspection Service, prepare a strategic plan similar in content to that required under subparagraph (A) with respect to the Office of Inspector General of the United States Postal Service. Such plan shall be prepared in time to be included with the annual budget under section 2009 of such title 39 next due to be submitted after the end of the 30-day period beginning on the date of the enactment of this Act.

(4) **COMPENSATION AND BENEFITS.**—

(A) **OFFICE OF INSPECTOR GENERAL OF THE UNITED STATES POSTAL SERVICE.**—Compensation and benefits for all officers and employees serving in

or under the Office of Inspector General of the United States Postal Service shall be maintained on a standard of comparability to the compensation and benefits paid for comparable levels of work in the Office of Inspector General of other establishments (within the meaning of section 11(2) of the Inspector General Act of 1978).

(B) POSTAL INSPECTORS.—Compensation and benefits for all Postal Inspectors shall be maintained on a standard of comparability to the compensation and benefits paid for comparable levels of work in the executive branch of the Government outside of the United States Postal Service. As used in this subparagraph, the term "Postal Inspector" includes any agent to whom any investigative powers are granted under section 3061 of title 18, United States Code.

(e) POSTAL RATE COMMISSION.—Section 8H of the Inspector General Act of 1978 (as so redesignated by subsection (c)) is amended in subsection (a)(2) by inserting "the Postal Rate Commission," after "the Smithsonian Institution,".

(f) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) RELATING TO TITLE 39, UNITED STATES CODE.—(A) Section 410(b) of title 39, United States Code, is amended—

(i) by striking "and" at the end of paragraph (9); and

(ii) by amending paragraph (10) to read as follows:

"(10) the Inspector General Act of 1978; and".

(B)(i) Section 204 of such title 39 is amended—

(I) by amending the section heading to read as follows:

"§ 204. General Counsel; Judicial Officer; Chief Postal Inspector";

(II) in the first sentence by striking "such number of Assistant Postmasters General as the Board shall consider appropriate, and a Judicial Officer." and inserting "a Judicial Officer, and a Chief Postal Inspector.";

(III) in the second sentence by striking "and the Judicial Officer" and inserting "the Judicial Officer, and the Chief Postal Inspector"; and

(IV) by adding at the end the following: "The Chief Postal Inspector shall report to, and be under the general supervision of, the Chief Executive Officer. The Chief Executive Officer shall promptly notify the Directors and both Houses of Congress in writing if he or she removes the Chief Postal Inspector or transfers the Chief Postal Inspector to another position or location within the Postal Service, and shall include in any such notification the reasons for the removal or transfer."

(ii) The table of sections for chapter 2 of such title 39 is amended by striking the item relating to section 204 and inserting the following:

"204. General Counsel; Judicial Officer; Chief Postal Inspector."

(2) RELATING TO THE INSPECTOR GENERAL ACT OF 1978.—The Inspector General Act of 1978 is amended—

(A) in section 8H (as so redesignated by subsection (c))—

(i) in subsection (a)(2) by striking "Tennessee Valley Authority," and all that follows through the semicolon and inserting "Tennessee Valley Authority, and the United States International Trade Commission,"; and

(ii)(I) by striking subsection (f) and redesignating subsections (g) and (h) as subsections (f) and (g), respectively;

(II) in paragraphs (3) and (4) of subsection (a) by striking "(h)(1)" and inserting "(g)(1)"; and

(III) in subsection (c) by striking "Except as provided under subsection (f) of this section, the" and inserting "The"; and

(B) in section 8I (as so redesignated by subsection (c)) by striking "or 8E" and inserting "8E, or 8G".

(3) RELATED PROVISION.—Section 304C(b)(1) of the Federal Property and Administrative Services Act (41 U.S.C. 254d(b)(1)) is amended by striking "8G" and inserting "8H".

(g) EFFECTIVE DATE; INTERIM SERVICE.—

(1) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect upon the expiration of the 3-month period beginning on the date of the enactment of this Act.

(2) INTERIM SERVICE.—The individual serving as Inspector General of the United States Postal Service on the day before this section takes effect may continue to serve in that capacity until—

(A) an Inspector General of the United States Postal Service has been appointed and taken office pursuant to the amendments made by this section; or

(B) if earlier, such individual ceases to be the Chief Postal Inspector.

SEC. 105. CLARIFICATION RELATING TO EXECUTION OF AMENDMENTS.

Any amendment made in this title to a term "each place it appears" (or other words to the same effect) shall be considered to include such term when it appears in a table of contents or a section heading.

TITLE II—GENERAL AUTHORITY

SEC. 201. EMPLOYMENT OF POSTAL POLICE OFFICERS.

Section 404 of title 39, United States Code, is amended by adding at the end the following:

"(c)(1) The Postal Service may employ guards for all buildings and areas owned or occupied by the Postal Service or under the charge and control of the Postal Service, and such guards shall have, with respect to such property, the powers of special policemen provided by the first section of the Act cited in paragraph (2), and, as to such property, the Chief Executive Officer (or his designee) may take any action that the Administrator of General Services (or his designee) may take under section 2 or 3 of such Act, attaching thereto penalties under the authority and within the limits provided in section 4 of such Act.

"(2) The Act cited in this paragraph is the Act of June 1, 1948 (62 Stat. 281), commonly known as the Protection of Public Property Act."

SEC. 202. DATE OF POSTMARK TO BE TREATED AS DATE OF APPEAL IN CONNECTION WITH THE CLOSING OR CONSOLIDATION OF POST OFFICES.

(a) IN GENERAL.—Section 404(b) of title 39, United States Code, is amended by adding at the end the following:

"(6) For purposes of paragraph (5), any appeal received by the Commission shall—

"(A) if sent to the Commission through the mails, be considered to have been received on the date of the Postal Service postmark on the envelope or other cover in which such appeal is mailed; or

"(B) if lawfully delivered to the Commission by an enterprise in the private sector of the economy engaged in the delivery of mail, be considered to have been received on the date determined based on any appropriate documentation or other indicia (as determined under regulations of the Commission)."

(b) EFFECTIVE DATE.—This section and the amendments made by this section shall apply with respect to any determination to close or consolidate a post office which is first made available, in accordance with paragraph (3) of section 404(b) of title 39, United States Code, after the end of the 3-month period beginning on the date of the enactment of this Act.

TITLE III—PRESIDENTIAL POSTAL EMPLOYEE-MANAGEMENT COMMISSION

SEC. 301. PRESIDENTIAL POSTAL EMPLOYEE-MANAGEMENT COMMISSION.

(a) IN GENERAL.—Section 206 of title 39, United States Code, is amended to read as follows:

"§ 206. Presidential Postal Employee-Management Commission

"(a) There shall be established a Presidential Postal Employee-Management Commission (hereinafter in this section referred to as the 'Commission').

"(b)(1) The Commission shall study and make recommendations, in accordance with this section, on how employee-management relations within the Postal Service might be improved.

"(2) The Commission shall submit its recommendations—

"(A) to the President and the Congress, to the extent that they involve any legislation; and

"(B) to the Postal Service, to the extent that no legislation would be involved.

"(3) All recommendations shall be submitted in the form of a written report, with the first set of reports due within 18 months after the Commission is first constituted, and the second and third sets of reports in 12-month intervals thereafter.

"(4) The Commission shall terminate after submitting its third set of reports.

"(c)(1) The Commission shall be composed of 7 members, all of whom shall be appointed by the President. Of the members—

“(A) 2 shall be appointed from among persons who will represent the views of nonpostal labor organizations familiar with issues common to postal employees;

“(B) 2 shall be appointed from among persons who will represent the views of the management of private corporations similar in size to the Postal Service;

“(C) 2 shall be appointed from among persons well known in the fields of employee-management relations, labor mediation, and collective bargaining; and

“(D) 1 shall be appointed from among persons well known in the fields described in subparagraph (C), who are also generally viewed as not being predisposed to the interests of employees or management.

“(2) All members shall be appointed for the life of the Commission.

“(3) Not more than 4 members may be of the same political party.

“(4) Members shall serve without compensation, but shall be reimbursed for necessary travel and reasonable expenses incurred in attending meetings of the Commission.

“(5) The member appointed under paragraph (1)(D) shall serve as chairman of the Commission.

“(d)(1) The Commission shall have a Director who shall be appointed by the Commission and paid at a rate not to exceed the rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5.

“(2) Upon request of the Commission, the Federal Mediation and Conciliation Service may detail, on a reimbursable basis, any of the personnel of that agency to the Commission to assist it in carrying out its duties under this Act.

“(3) The Commission may not appoint or retain any staff, except as provided in paragraph (1) or (2).”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 2 of title 39, United States Code, is amended by striking the item relating to section 206 and inserting the following:

“206. Presidential Postal Employee-Management Commission.”

TITLE IV—FINANCE

SEC. 401. END OF TREASURY CONTROL OF POSTAL SERVICE BANKING.

(a) IN GENERAL.—Subsection (d) of section 2003 of title 39, United States Code, is amended to read as follows:

“(d)(1) The Postal Service, in its sole discretion—

“(A) may provide that amounts which would otherwise be deposited in the revolving fund referred to in subsection (a) shall instead, to the extent considered appropriate by the Postal Service, be directly deposited in a Federal Reserve bank or a depository for public funds selected by the Postal Service; and

“(B) may provide for transfers of amounts under this subsection between or among—

“(i) Federal Reserve banks;

“(ii) depositories for public funds; and

“(iii) the revolving fund referred to in subsection (a).

“(2) The Postal Service, after consultation with the Secretary of the Treasury, shall prepare and may from time to time revise a master plan for the exercise of any authority under this subsection. Such plan shall address—

“(A) the criteria that shall be applied by the Postal Service in deciding when and how any such authority shall be exercised;

“(B) matters such as risk limitations, reserve balances, allocation or distribution of monies, liquidity requirements, and measures to safeguard against losses;

“(C) the types of notification or consultation requirements the Postal Service shall follow in connection with any exercise or proposed exercise of authority under this subsection; and

“(D) procedures under which the Postal Service shall, at least annually, render a full accounting as to how any authority under this subsection has been exercised during the period involved.

“(3)(A) Authority under this subsection may not be exercised except in accordance with applicable provisions of the master plan under paragraph (2).

“(B) The Postal Service shall submit its master plan (and any revision thereof) to the President, the Secretary of the Treasury, and each House of Congress at least 30 days before the date of its proposed implementation.”

(b) SAVINGS PROVISION.—Until the authority under section 2003(d) of title 39, United States Code, as amended by subsection (a), becomes available, the provisions

of such section 2003(d), as last in effect before being so amended, shall be treated as if still in effect.

(c) STATUS OF MONIES UNCHANGED.—(1) Any amounts invested under section 2003(c) of title 39, United States Code, as amended by this title, shall be considered to be part of the Postal Service Fund, to the same extent as if they had been invested under section 2003(c) of such title 39, as last in effect before the date of the enactment of this Act.

(2) Any amounts deposited or transferred under section 2003(d) of title 39, United States Code, as amended by this title, shall be considered to be part of the Postal Service Fund, to the same extent as if they had been transferred under section 2003(d) of such title 39, as last in effect before the date of the enactment of this Act.

SEC. 402. POSTAL SERVICE INVESTMENTS.

Section 2003(c) of title 39, United States Code, is amended by striking all after “it may” and inserting the following: “invest such amounts as it considers appropriate in obligations of, or obligations guaranteed by, the Government of the United States.”.

SEC. 403. EXCLUSION FROM FEDERAL FINANCING BANK.

Section 2005(d) of title 39, United States Code, is amended—

(1) in paragraph (4) by striking “and” after the semicolon;

(2) in paragraph (5) by striking the period and inserting “; and”; and

(3) by adding at the end the following:

“(6) notwithstanding the provisions of the Federal Financing Bank Act of 1973 or any other provision of law (except as may be specifically provided by reference to this paragraph in any Act enacted after this paragraph takes effect), not be eligible for purchase by, or commitment to purchase by, or sale or issuance to, the Federal Financing Bank.”.

SEC. 404. ELIMINATION OF TREASURY PREEMPTION OF BORROWING BY THE POSTAL SERVICE.

Section 2006(a) of title 39, United States Code, is amended by striking all after the first sentence.

SEC. 405. ELIMINATION OF POSTAL SERVICE “PUT” ON TREASURY.

Section 2006(b) of title 39, United States Code, is amended to read as follows:

“(b) The Secretary of the Treasury may purchase obligations of the Postal Service in such amounts as the Secretary of the Treasury and the Postal Service, in their discretion, may agree.”.

TITLE V—BUDGET AND APPROPRIATIONS PROCESS

SEC. 501. REPEAL OF PROVISION RELATING TO TRANSITIONAL APPROPRIATIONS.

(a) REPEAL.—(1) Section 2004 of title 39, United States Code, is repealed.

(2) The item relating to section 2004 in the table of sections at the beginning of chapter 20 of such title 39 is repealed.

(3) Section 2003(e)(2) of such title 39 is amended by striking “sections 2401 and 2004” each place it appears and inserting “section 2401”.

(b) CLARIFICATION THAT LIABILITIES FORMERLY PAID PURSUANT TO SECTION 2004 REMAIN LIABILITIES PAYABLE BY THE POSTAL SERVICE.—Section 2003 of title 39, United States Code, is amended by adding at the end the following:

“(h) Liabilities of the former Post Office Department to the Employees’ Compensation Fund (appropriations for which were authorized by former section 2004, as in effect before the effective date of this subsection) shall be liabilities of the Postal Service payable out of the Fund.”.

(c) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on October 1, 1997.

SEC. 502. PROVISIONS RELATING TO BENEFITS UNDER CHAPTER 81 OF TITLE 5, UNITED STATES CODE, FOR OFFICERS AND EMPLOYEES OF THE FORMER POST OFFICE DEPARTMENT.

(a) IN GENERAL.—Section 8 of the Postal Reorganization Act (39 U.S.C. 1001 note) is amended by inserting “(a)” after “8.” and by adding at the end the following:

“(b) For purposes of chapter 81 of title 5, United States Code, the Postal Service shall, with respect to any individual receiving benefits under such chapter as an officer or employee of the former Post Office Department, have the same authorities and responsibilities as it has with respect to an officer or employee of the Postal Service receiving such benefits.”.

(b) **EFFECTIVE DATE.**—This section and the amendments made by this section shall take effect on October 1, 1997.

SEC. 503. REPEAL OF AUTHORIZATIONS OF APPROPRIATIONS FOR PUBLIC SERVICE COSTS, REVENUE FORGONE, AND CERTAIN COMPENSATORY APPROPRIATIONS.

(a) **IN GENERAL.**—Section 2401 of title 39, United States Code, is amended by striking subsections (b), (c), (d), (f), and (g), and by redesignating subsection (e) as subsection (b).

(b) **CONFORMING AMENDMENTS.**—(1) Section 2003 of title 39, United States Code, is amended—

(A) in subsection (e) by striking paragraph (2) and by redesignating subsection (e)(1) as subsection (e); and

(B) by striking subsection (f) and by redesignating subsection (g) as subsection (f).

(2) Section 2009 of such title 39 is amended by striking the last two sentences.

(3) Sections 2803(a) and 2804(a) of such title 39 are amended by striking “2401(g)” and inserting “2401(b)”.

(4) Section 3626(a)(2)(B) of such title 39 is amended by striking “paragraph (3)(A) or section 2401(c);” and inserting “paragraph (3)(A), section 3217, or sections 3403–3406;”.

(5)(A) Section 3627 of such title 39 is repealed.

(B) The item relating to section 3627 in the table of sections at the beginning of chapter 36 of such title 39 is repealed.

(C) Section 3684 of such title 39 is amended by striking “Except as provided in section 3627 of this title, no” and inserting “No”.

(c) **EFFECTIVE DATE.**—This section and the amendments made by this section shall take effect on October 1, 1997.

SEC. 504. CONGRESSIONAL OVERSIGHT PRESERVED.

Subsection (b) of section 2401 of title 39, United States Code, as so redesignated by section 503(a), is amended—

(1) by striking “Committee on Post Office and Civil Service” each place it appears and inserting “Committee on Government Reform and Oversight”;

(2) by striking “and the Committees on Appropriations of the Senate and the House of Representatives”;

(3) in the matter before paragraph (1)—

(A) by striking “2009 of this title,” and inserting “2009 for a fiscal year,”; and

(B) by striking “for the fiscal year for which funds are requested to be appropriated,” and inserting “for such fiscal year,”;

(4) in paragraph (3) by striking “during the fiscal year for which funds are requested to be appropriated,” and inserting “during the fiscal year referred to in the matter before paragraph (1),”;

(5) by striking “Not later than March 15 of each year,” and inserting “Each year,”; and

(6) by striking “any such committee considers necessary to determine the amount of funds to be appropriated for the operation of the Postal Service,” and inserting “either such committee considers necessary,”.

TITLE VI—MISCELLANEOUS PROVISIONS RELATING TO POSTAL RATES, CLASSES, AND SERVICES

SEC. 601. CHANGE-OF-ADDRESS ORDER INVOLVING A COMMERCIAL MAIL RECEIVING AGENCY.

(a) **IN GENERAL.**—Subchapter V of chapter 36 of title 39, United States Code, is amended by adding at the end the following:

“§ 3686. Change-of-address order involving a commercial mail receiving agency

“(a) For the purpose of this section, the term ‘commercial mail receiving agency’ or ‘CMRA’ means a private business that acts as the mail receiving agent for specific clients.

“(b) Upon termination of an agency relationship between an addressee and a commercial mail receiving agency—

“(1) the addressee or, if authorized to do so, the CMRA may file a change-of-address order with the Postal Service with respect to such addressee;

“(2) a change-of-address order so filed shall, to the extent practicable, be given full force and effect; and

“(3) any mail for the addressee that is delivered to the CMRA after the filing of an appropriate order under this subsection shall be subject to subsection (c).”

“(c) Mail described in subsection (b)(3) shall, if marked for forwarding and re-mailed by the CMRA, be forwarded by the Postal Service in the same manner as, and subject to the same terms and conditions (including limitations on the period of time for which a change-of-address order shall be given effect) as apply to, mail forwarded directly by the Postal Service to the addressee.”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 36 of title 39, United States Code, is amended by adding after the item relating to section 3685 the following:

“3686. Change-of-address order involving a commercial mail receiving agency.”

SEC. 602. REDUCED RATES FOR CERTAIN NONPROFIT ORGANIZATIONS.

(a) RATES FOR CERTAIN NONPROFIT EDUCATIONAL INSTITUTIONS.—Section 3626(b)(3) of title 39, United States Code, is amended by striking the period and inserting “, and includes a nonprofit organization that coordinates a network of college-level courses that is sponsored primarily by nonprofit educational institutions for an older adult constituency.”

(b) RATES FOR MAIL UNDER FORMER SECTION 4358.—Section 3626 of title 39, United States Code, is amended by adding at the end the following:

“(n) In the administration of this section, matter shall not be excluded from being mailed at the rates for mail under former section 4358 solely because such matter does not meet the requirements of former section 4354(a)(5).”

SEC. 603. POWERS OF THE POSTAL RATE COMMISSION.

Section 3604 of title 39, United States Code, is amended by adding at the end the following:

“(f)(1) Any Commissioner of the Commission, any administrative law judge appointed by the Commission under section 3105 of title 5, and any employee of the Commission designated by the Commission may administer oaths, examine witnesses, take depositions, and receive evidence.

“(2) The Chairman of the Commission, any Commissioner designated by the Chairman, and any administrative law judge appointed by the Commission under section 3105 of title 5 may, with respect to any proceeding under section 3624 or 3661 or chapter 37—

“(A) issue subpoenas requiring the attendance and presentation of testimony of any individual, and the production of documentary or other evidence, from any place in the United States, any territory or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia; and

“(B) order the taking of depositions and responses to written interrogatories.

The written concurrence of a majority of the Commissioners then holding office shall, with respect to each subpoena under subparagraph (A), be required in advance of its issuance.

“(3) In the case of contumacy or failure to obey a subpoena issued under this subsection, upon application by the Commission, the district court of the United States for the district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

“(g)(1) If the Postal Service determines that any document or other matter it provides to the Commission pursuant to a subpoena issued under subsection (f), or otherwise at the request of the Commission in connection with any proceeding or other purpose under this chapter or chapter 37, contains information which is described in section 410(c) of this title, or exempt from public disclosure under section 552(b) of title 5, the Postal Service shall, at the time of providing such matter to the Commission, notify the Commission, in writing, of its determination (and the reasons therefor).

“(2) No officer or employee of the Commission may, with respect to any information as to which the Commission has been notified under paragraph (1)—

“(A) use such information for purposes other than the purposes for which it is supplied; or

“(B) permit anyone who is not an officer or employee of the Commission to have access to any such information.

“(3) Paragraph (2) shall not prevent information from being furnished under any process of discovery established under this title in connection with a proceeding

under this chapter or chapter 37 which is conducted in accordance with sections 556 and 557 of title 5. The Commission shall, by regulations based on rule 26(c) of the Federal Rules of Civil Procedure, establish appropriate administrative and other safeguards to ensure the security and confidentiality of any information furnished under the preceding sentence.”

SEC. 604. VOLUME DISCOUNTS.

(a) **IN GENERAL.**—Subsection (c) of section 403 of title 39, United States Code, is amended by striking “(c)” and inserting “(c)(1)” and by adding at the end the following:

“(2) Nothing in this title shall be considered to preclude the Postal Service from offering any discount in a rate or fee, on the basis of volume, so long as—

“(A) all persons are, with respect to the class of mail or postal service involved, eligible for the same volume discount; and

“(B) the discounted rate—

“(i) if a product in the noncompetitive category of mail is involved, does not exceed the maximum rate then allowable for such product under subchapter II of chapter 37; or

“(ii) if a product in the competitive category of mail is involved, satisfies the requirement under section 3742(b) that each such product bear the direct and indirect postal costs attributable to such product plus a reasonable contribution to all other costs of the Postal Service.”

(b) **DEMONSTRATION PROJECT.**—

(1) **IN GENERAL.**—

(A) **PURPOSE.**—As soon as practicable after the date of the enactment of this Act, the United States Postal Service shall conduct a demonstration project, the purpose of which shall be to determine the feasibility and desirability of affording volume discounts to mailers on a negotiated basis.

(B) **LIMITATION.**—The demonstration project shall be limited to products in the competitive category of mail (within the meaning of section 3741(2) of title 39, United States Code, as amended by section 1001).

(C) **DISCOUNTS.**—Under the demonstration project, any discounts shall be on such terms and conditions as may be mutually agreed to by the Postal Service and the mailer, subject to section 403(c)(2)(B)(ii) of title 39, United States Code (as amended by subsection (a)).

(2) **OTHER REQUIREMENTS.**—Subsections (c)(1)(A), (d)(1) (excluding subparagraphs (A)(i), (B)(ii), and (C)(ii) thereof), and (e) of section 704 shall apply with respect to the demonstration project under this subsection.

(c) **EFFECTIVE DATE.**—This section and the amendments made by this section shall take effect on the date on which section 1002 (relating to termination of rate-making authority under chapter 36 and related matters) takes effect.

TITLE VII—PROVISIONS RELATING TO TRANSPORTATION, CARRIAGE, OR DELIVERY OF MAIL

SEC. 701. OBSOLETE PROVISIONS.

(a) **REPEAL.**—Chapter 52 of title 39, United States Code, is repealed.

(b) **CONFORMING AMENDMENTS.**—(1) Section 5005(a) of title 39, United States Code, is amended—

(A) by repealing paragraph (1); and

(B) in paragraph (4) by striking “(as defined in section 5201(6) of this title)”.

(2) Section 10721(b)(1) of title 49, United States Code, is amended by striking “chapters 50 and 52” and inserting “chapter 50”.

(c) **ELIMINATING RESTRICTION ON LENGTH OF CONTRACTS.**—(1) Section 5005(b)(1) of title 39, United States Code, is amended by striking “shall be for periods not in excess of 4 years (or where the Postal Service determines that special conditions or the use of special equipment warrants, not in excess of 6 years) and”.

(2) Section 5402(c) of such title 39 is amended by striking “for a period of not more than 4 years”.

(3) Section 5605 of such title 39 is amended by striking “for periods of not in excess of 4 years”.

SEC. 702. EXPANDED CONTRACTING AUTHORITY.

Subsection (d) of section 5402 of title 39, United States Code, is amended to read as follows:

“(d) Notwithstanding the provisions of subsections (a) through (c), the Postal Service may contract for the transportation of mail by aircraft, except as provided in subsections (f) and (g).”

SEC. 703. PRIVATE CARRIAGE OF LETTERS.

Section 601(a) of title 39, United States Code, is amended by inserting "when the amount paid for private carriage of the letter is at least \$2, or" before "when".

SEC. 704. MAILBOX DEMONSTRATION PROJECT.

(a) **PURPOSE.**—The purpose of this section is to determine the feasibility and desirability of allowing non-postage bearing matter to be deposited in private letterboxes.

(b) **PROJECT.**—As soon as practicable after the date of the enactment of this Act, the United States Postal Service shall—

(1) develop a plan for the conducting of a demonstration project under this section; and

(2) within 18 months after the date of the enactment of this Act, commence implementation of such plan.

(c) **SPECIFICATIONS.**—

(1) **IN GENERAL.**—The demonstration project—

(A) shall be conducted over a 3-year period;

(B) shall include such areas as the Postal Service considers appropriate, except that such project shall include at least 1 urban area, 1 rural area, and 1 suburban area, each of which shall involve a sufficient level of participation so as to ensure meaningful results; and

(C) shall include provisions under which any person may elect not to participate, or to cease to participate, in the project.

(2) **TEMPORARY SUSPENSION OF SECTION 1725 OF TITLE 18.**—Section 1725 of title 18, United States Code, shall not apply with respect to conduct occurring—

(A) within an area included in the demonstration project; and

(B) while the demonstration project is ongoing.

(d) **PROCEDURES.**—

(1) **IN GENERAL.**—The Postal Service shall—

(A) develop a plan for the demonstration project which identifies—

(i) the specific areas to be included in the project;

(ii) the commencement and termination dates of the project;

(iii) the legal authority for the project; and

(iv) specific details as to what the project will entail;

(B) at least 90 days before commencing implementation of the project—

(i) publish the proposed plan in the Federal Register, including notice as to the time and manner in which interested persons may submit written comments; and

(ii) provide notification of the proposed plan to persons served within the areas to be included in the project, including the relevant information as to the time, form, and manner in which any such person shall have the opportunity to present their views, in writing or by oral presentation, as they may elect; and

(C) after considering the comments and views and any other information received under subparagraph (B), prepare the final version of the plan for such project and, not later than 30 days before commencing implementation of the project—

(i) publish the final plan in the Federal Register; and

(ii) provide notification of the final plan to persons served within the areas to be included in the project.

(2) **FACTORS TO BE TAKEN INTO ACCOUNT IN SELECTING AREAS FOR INCLUSION.**—In identifying areas for inclusion in the demonstration project, the Postal Service shall take into account—

(A) what types of data are needed in order to permit a meaningful evaluation under subsection (e); and

(B) such other factors as the Postal Service considers appropriate.

(3) **WRITTEN DETERMINATIONS.**—Any determination of the Postal Service to commence implementation of the demonstration project shall be in writing and shall include the findings of the Postal Service with respect to the factors required to be taken into account under paragraph (2). Such determination and findings shall be made available to the persons served by the Postal Service within each area included in the project.

(e) **EVALUATION.**—Not later than 1 year after the demonstration project ends, the Comptroller General of the United States shall submit to each House of Congress a written evaluation of such project, including recommendations as to whether or not the authority tested by the project should be broadened in scope and made permanent and, if so, with what modifications (if any).

TITLE VIII—DIRECT APPEAL OF DECISIONS OF THE MERIT SYSTEMS PROTECTION BOARD

SEC. 801. DIRECT APPEAL OF DECISIONS OF THE MERIT SYSTEMS PROTECTION BOARD.

Section 7703 of title 5, United States Code, is amended by adding at the end the following:

“(e)(1) The Chief Executive Officer may, with respect to any employee of the Postal Service or applicant for employment with the Postal Service, and subject to the provisions of sections 409(b)–(e) and 411 of title 39, obtain review of any final order or decision of the Board by filing a petition for judicial review in the United States Court of Appeals for the Federal Circuit if the Chief Executive Officer determines, in his or her discretion, that the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management and that the Board’s decision will have a substantial impact on a civil service law, rule, regulation, or policy directive, as applied with respect to the Postal Service. If the Chief Executive Officer did not intervene in a matter before the Board, the Chief Executive Officer may not petition for review of a Board decision under this section unless the Chief Executive Officer first petitions the Board for a reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceeding before the Court of Appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals.

“(2) For purposes of applying the provisions of section 7701(e) in the case of a decision that relates to an employee of the Postal Service or applicant for employment with the Postal Service, such provisions shall be applied by substituting ‘Director or Chief Executive Officer of the United States Postal Service’ for ‘Director’.

“(3) For purposes of this subsection—

“(A) the term ‘Chief Executive Officer’ means the Chief Executive Officer of the United States Postal Service; and

“(B) the term ‘Postal Service’ means the United States Postal Service.”.

TITLE IX—LAW ENFORCEMENT

Subtitle A—Amendments to Title 39, United States Code

SEC. 901. MAKE FEDERAL ASSAULT STATUTES APPLICABLE TO POSTAL CONTRACT EMPLOYEES.

Section 1008 of title 39, United States Code, is amended—

(1) in subsection (a) by inserting “or entrusted with mail under contract with the Postal Service” after “mail”; and

(2) in subsection (b) by inserting “an employee of the Postal Service for the purposes of sections 111 and 1114 of title 18, and” after “deemed”.

SEC. 902. SEXUALLY ORIENTED ADVERTISING.

(a) CIVIL PENALTY.—Section 3011 of title 39, United States Code, is amended—

(1) by redesignating subsections (b) through (e) as subsections (c) through (f), respectively; and

(2) by inserting after subsection (a) the following:

“(b)(1) Upon a finding by the court that a sexually oriented advertisement has been mailed in violation of section 3010(b), the court may assess, on whoever made the mailing or caused it to be made, a civil penalty of not less than \$500 and not more than \$1,500 for each violation. Each piece of mail sent in violation of section 3010(b) shall constitute a separate violation.

“(2) For purposes of this subsection—

“(A) receipt of a sexually oriented advertisement after the recipient’s name and address have been listed (as described in section 3010(b)) for at least 60 days shall create a rebuttable presumption that such advertisement was mailed more than 30 days after that individual’s name and address became so listed; and

“(B) receipt in the mail of a sexually oriented advertisement addressed to ‘Occupant’ or ‘Resident’ (or any other term permitted by Postal Service standards on simplified addressing) at the recipient’s address, or which is specifically addressed to the recipient, but with an inconsequential error or variation in the recipient’s name or address, shall, for purposes of applying the mailing prohibition of section 3010(b), create a rebuttable presumption that such advertisement was mailed to such recipient.

“(3) Any penalty assessed under paragraph (1) shall be paid to the Postal Service for deposit in the Postal Service Fund established by section 2003.”.

(b) REPEAL.—

(1) IN GENERAL.—Section 3008 of title 39, United States Code, and the item relating to such section in the table of sections at the beginning of chapter 30 of such title, are repealed.

(2) CONFORMING AMENDMENTS.—(A) Subsection (f) of section 3011 of such title 39 (as so redesignated by subsection (a)) is amended by striking “section 3006, 3007, or 3008” and inserting “section 3006 or 3007”.

(B) Section 1737 of title 18, United States Code, is amended—

(i) in subsection (a) by striking “3008 or”; and

(ii) in subsection (b) by striking “3008(a) or”.

(c) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect 90 days after the date of the enactment of this Act. The amendments made by this section shall be treated as if they had never been enacted for purposes of any mailing made or caused to be made before this section takes effect.

SEC. 903. ALLOW POSTAL SERVICE TO RETAIN ASSET FORFEITURE RECOVERIES.

Paragraph (7) of section 2003(b) of title 39, United States Code, is amended to read as follows:

“(7) amounts (including proceeds from the sale of forfeited items) from any civil forfeiture conducted by the Postal Service and from any forfeiture resulting from an investigation in which the Postal Service has primary responsibility, except that nothing in this paragraph shall preclude the Postal Service, on such terms as it may determine, from sharing such amounts with any Federal, State, or local law enforcement agency which participated in any of the acts which led to the seizure or forfeiture of the property; and”.

SEC. 904. HAZARDOUS MATTER.

(a) CIVIL PENALTY.—Chapter 30 of title 39, United States Code, is amended by adding at the end the following:

“§ 3016. Civil penalty for prohibited mailing and deficient packaging of hazardous matter

“(a) For the purposes of this section—

“(1) the term ‘parcel’ includes any kind of package, envelope, container, or other piece of mail;

“(2) the term ‘manner’ includes the preparation and packaging of a piece of mail;

“(3) a person shall be considered to have acted knowingly if—

“(A) such person had actual knowledge of the facts giving rise to the violation; or

“(B) a reasonable person acting in the same circumstances and exercising due care would have had such knowledge; and

“(4) the term ‘hazardous matter’ has the meaning given such term by section 1716 of title 18.

“(b) Any person—

“(1) who knowingly mails or causes to be mailed any parcel, the contents of which constitute or include any hazardous matter which has been declared by statute or Postal Service regulation to be nonmailable under any circumstances;

“(2) who knowingly mails or causes to be mailed a parcel in violation of any statute or Postal Service regulation restricting the time, place, or manner in which hazardous matter may be mailed; or

“(3) who knowingly manufactures, distributes, or sells any container, packaging kit, or similar device that—

“(A) is represented, marked, certified, or sold by such person for use in the mailing of any hazardous matter; and

“(B) fails to conform with any statute or Postal Service regulation setting forth standards for containers, packaging kits, or similar devices used for the mailing of hazardous matter;

shall be liable to the Postal Service for a civil penalty in an amount not to exceed \$25,000 per violation.

“(c) The Postal Service may enforce this section by commencing a civil action in accordance with section 409(d). The action may be brought in the district court of the United States for the district in which the defendant resides or any district in which the defendant conducts business or in which a violation of this section was discovered.

“(d) In determining the amount of any civil penalty to be assessed under this section, the district court—

“(1) shall treat as a separate violation—

“(A) each parcel mailed or caused to be mailed as described in paragraph (1) or (2) of subsection (b); and

“(B) each container, packaging kit, or similar device manufactured, distributed, or sold as described in subsection (b)(3); and

“(2) shall take into account—

“(A) the nature, circumstances, extent, and gravity of each violation committed; and

“(B) with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

“(e) All penalties collected under authority of this section shall be paid into the Postal Service Fund established by section 2003.”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 30 of title 39, United States Code, is amended by adding at the end the following:

“3016. Civil penalty for prohibited mailing and deficient packaging of hazardous matter.”.

Subtitle B—Other Provisions

SEC. 911. STALKING FEDERAL OFFICERS AND EMPLOYEES.

(a) IN GENERAL.—Chapter 41 of title 18, United States Code, is amended by adding at the end the following:

“§ 881. Stalking Federal and postal officers and employees

“(a) Whoever—

“(1) repeatedly engages in a pattern of conduct (including maintaining a visual or physical proximity or verbal or written threat) directed at another person who is or was an officer or employee—

“(A) in the executive, legislative, or judicial branch of the Federal Government; or

“(B) in the United States Postal Service;

while such other person is engaged in official duties or on account of such duties;

“(2) knows that such conduct is likely to place that other person in reasonable fear of sexual battery, bodily injury, or death; and

“(3) thereby induces such fear in that other person;

shall be punished as provided in subsection (b) of this section.

“(b)(1) The punishment for an offense under subsection (a) of this section is the greatest of the following:

“(A) In the case of a first conviction under such subsection, a fine under this title or imprisonment for not more than 3 years, or both.

“(B) In the case of a second or subsequent conviction under such subsection, a fine under this title or imprisonment for not more than 15 years, or both.

“(C) If, during the commission of the offense, the offender uses a deadly or dangerous weapon, a fine under this title or imprisonment for not more than 10 years, or both.

“(D) If the offense violates a protective order, a fine under this title or imprisonment for not more than 5 years, or both.

“(2) If a sentence of probation is imposed for an offense under subsection (a) of this section, the court shall require the defendant to undergo appropriate psychiatric, psychological, or social counselling.

“(c) As used in this section, the term ‘protective order’ means any court order that requires an individual—

“(1) to refrain from behavior prohibited by subsection (a) of this section; or

“(2) to refrain from contact with the person who subsequently is a victim of the offense under such subsection that is committed by that individual.

“(d)(1) Whoever is or is about to be aggrieved by a violation of subsection (a) of this section may, in a civil action, obtain from the person engaging or about to engage in that violation, appropriate relief, including punitive damages in the case of a completed violation and reasonable attorney’s fees.

“(2) If—

“(A) the court issues an injunction against the person engaging or about to engage in a violation of subsection (a) of this section;

“(B) such person is an officer or employee in the executive branch of the Federal Government or in the United States Postal Service; and

“(C) there is a nexus between the enjoined conduct and such person’s office or employment;
the court may order that the person be suspended or summarily discharged from such office or employment.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 41 of title 18, United States Code, is amended by adding at the end the following:

“881. Stalking Federal and postal officers and employees.”.

SEC. 912. NONMAILABILITY OF CONTROLLED SUBSTANCES.

Section 1716 of title 18, United States Code, is amended by adding at the end the following:

“Whoever knowingly deposits for mailing or delivery, or knowingly causes to be delivered by mail, according to the direction thereon, or at any place at which it is directed to be delivered by the person to whom it is addressed, unless in accordance with the rules and regulations authorized to be prescribed by the Postal Service, any controlled substance, as that term is defined for the purposes of the Controlled Substances Act, shall, if the distribution of a like amount of such substance is a felony under such Act, be fined under this title or imprisoned not more than 5 years, or both.”.

SEC. 913. ENHANCED PENALTIES.

Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall amend its sentencing guidelines to—

(1) appropriately enhance penalties in cases in which a defendant is convicted of stealing or destroying a quantity of undelivered United States mail, in violation of sections 1702, 1703, 1708, 1709, 2114, or 2115 of title 18, United States Code; and

(2) establish that the intended loss in a theft of an access device as defined in section 1029(e)(1) of title 18, United States Code, shall be based on the credit line of the access device or the actual unauthorized charges, whichever amount is greater.

SEC. 914. POSTAL BURGLARY PROVISIONS.

(a) LARCENY INVOLVING POST OFFICE BOXES AND POSTAL STAMP VENDING MACHINES.—Section 2115 of title 18, United States Code, is amended—

(1) by striking “or” before “any building”;

(2) by inserting “or any post office box or postal products vending machine,” after “used in whole or in part as a post office.”;

(3) by inserting “or in such box or machine,” after “so used”; and

(4) by striking “not more than \$1,000” and inserting “under this title”.

(b) RECEIPT, POSSESSION, CONCEALMENT, OR DISPOSITION OF PROPERTY.—Section 2115 of title 18, United States Code, is amended—

(1) by inserting “(a)” before “Whoever”; and

(2) by adding at the end the following:

“(b) Whoever receives, possesses, conceals, or disposes of any mail matter, money, or other property of the United States, that has been obtained in violation of this section, knowing the same to have been unlawfully obtained, shall be fined under this title or imprisoned not more than 5 years, or both.”.

SEC. 915. MAIL, MONEY, OR OTHER PROPERTY OF THE UNITED STATES.

(a) ENHANCED PENALTY FOR ROBBERY.—Subsection (a) of section 2114 of title 18, United States Code, is amended to read as follows:

“(a) ASSAULT.—Whoever assaults any person having lawful charge, control, or custody of any mail matter or of any money or other property of the United States, with intent to rob, steal, or purloin such mail matter, money, or other property of the United States, or robs or attempts to rob any such person of mail matter, or of any money, or other property of the United States, shall, for the first offense, be imprisoned not more than 10 years or fined under this title, or both. If, in effecting or attempting to effect such robbery the defendant wounds the person having custody of such mail, money, or other property of the United States, or puts that person’s life in jeopardy by the use of a dangerous weapon, or the offense is a subsequent offense under this subsection, the defendant shall be imprisoned not more than 25 years or fined under this title, or both. If the death of any person results from the offense under this subsection, the defendant shall be punished by death or life imprisonment.”.

(b) ATTEMPT OFFENSES.—

(1) The second paragraph of section 501 of title 18, United States Code, is amended by striking "uses or sells," and inserting "uses or sells or attempts to use or sell,"

(2) Section 1711 of title 18, United States Code, is amended by inserting "attempts to loan, use, pledge, hypothecate, or convert to this own use," after "converts to his own use,".

TITLE X—NEW SYSTEM RELATING TO POSTAL RATES, CLASSES, AND SERVICES

SEC. 1001. ESTABLISHMENT.

(a) IN GENERAL.—Title 39, United States Code, is amended by adding after chapter 36 the following:

"CHAPTER 37—NEW SYSTEM FOR ESTABLISHING POSTAL RATES, CLASSES, AND SERVICES

"SUBCHAPTER I—BASELINE RATES AND FEES

"Sec.
"3701. Establishment of baseline rates and fees.

"SUBCHAPTER II—RATES AND FEES FOR PRODUCTS IN THE NONCOMPETITIVE CATEGORY OF MAIL

"3721. Definitions.
"3722. Maximum rates.
"3723. Adjustment factor.
"3724. Action of the Directors.

"SUBCHAPTER III—RATES AND FEES FOR PRODUCTS IN THE COMPETITIVE CATEGORY OF MAIL

"3741. Definitions.
"3742. Action of the Directors.
"3743. Transfers of products from the noncompetitive category of mail.
"3744. Application of antitrust laws.

"SUBCHAPTER IV—MARKET TESTS OF EXPERIMENTAL PRODUCTS

"3761. Market tests.

"SUBCHAPTER V—REPORTING REQUIREMENTS AND RELATED PROVISIONS

"3781. Definition.
"3782. Reporting requirements.
"3783. Use of profits.

"SUBCHAPTER I—BASELINE RATES AND FEES

"§ 3701. Establishment of baseline rates and fees

"(a) REQUIREMENT THAT A RATEMAKING REQUEST BE MADE.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the Postal Service shall, within 18 months after the effective date of this chapter, request the Postal Rate Commission to submit a recommended decision on appropriate changes in rates of postage and in fees for postal services, in accordance with section 3622(a).

"(2) EXCEPTION.—A request under this subsection may not be made if, on the effective date of this chapter—

"(A) a new schedule of rates and fees takes effect under subchapter II of chapter 36 pursuant to a previous request under section 3622(a); or

"(B) a recommended decision or further recommended decision pursuant to a previous request under section 3622(a), or judicial review of any such decision or recommended decision, is pending.

"(b) BASELINE RATES AND FEES ESTABLISHED PURSUANT TO THIS SECTION.—

"(1) IN GENERAL.—For purposes of this title, the baseline rates and fees established pursuant to this section shall be—

“(A) the rates and fees taking effect pursuant to a request made under subsection (a)(1), subject to subparagraph (C)(i) or paragraph (2)(A) (as applicable);

“(B) the rates and fees—

“(i) that, by virtue of subsection (a)(2)(A), preclude the making of a request under subsection (a)(1); or

“(ii) that take effect upon completion of all proceedings referred to in subsection (a)(2)(B), subject to subparagraph (C)(ii) or paragraph (2)(B) (as applicable); or

“(C)(i) if a request under subsection (a)(1) is made, but proceedings pursuant to such request have not been completed by the end of the 18-month period beginning on the date on which such request is made, the rates and fees in effect at the end of such period (including any temporary rate or fee then in effect under subchapter III of chapter 36); or

“(ii) if a request under subsection (a)(1) is precluded by virtue of the provisions of subsection (a)(2)(B), but the proceedings referred to in such provisions have not been completed by the end of the 18-month period referred to in subsection (a)(1), the rates and fees in effect at the end of such period (including any temporary rate or fee then in effect under subchapter III of chapter 36).

“(2) APPLICABLE STATUTORY DEADLINE NOT CHANGEABLE BY ADMINISTRATIVE OR OTHER ACTION.—Rates and fees established under chapter 36 pursuant to—

“(A) a request made under subsection (a)(1) shall take effect as of the date determined in accordance with section 3625(f) or otherwise applicable provisions of such chapter, except that in no event may the date so determined be later than the last day of the 18-month period referred to in paragraph (1)(C)(i); or

“(B) a previous request, as referred to in subsection (a)(2)(B), shall take effect as of the date determined in accordance with section 3625(f) or otherwise applicable provisions of such chapter, except that in no event may the date so determined be later than the last day of the 18-month period referred to in subsection (a)(1).

“(c) PRIORITY OF RATEMAKING FACTORS IF PURSUANT TO A REQUEST UNDER THIS SECTION.—If a request under subsection (a)(1) is made, then, for purposes of all proceedings under chapter 36 relating to such request, subsection (b) of section 3622 shall be considered to be amended to read as follows:

“(b) Upon receiving a request, the Commission shall make a recommended decision on the request for changes in rates or fees in each class of mail or type of service in accordance with the policies of this title and the following factors, set forth in descending order of priority:

“(1) The requirement that each class of mail or type of mail service bear the direct and indirect postal costs attributable to such class or type plus that portion of all other costs of the Postal Service reasonably assignable to such class or type.

“(2) The value of the mail service to senders, as reflected by the volume response of classes of mail and types of service to changes in postal rates and fees, and, as appropriate, the price and quality of alternative means of sending mail.

“(3) The quality of mail service actually provided each class or type of mail service, including the collection, mode of transportation, priority of delivery, and timeliness of delivery (as measured by reference to standards established by the Postal Service).

“(4) The available alternative means of sending and receiving letters and other mail matter at reasonable costs.

“(5) The degree of preparation of mail for delivery into the postal system performed by the mailer and its effect upon reducing costs to the Postal Service.

“(6) The effect of rate increases upon users of the mail and the general public.

“(7) Simplicity of structure for the entire schedule and simple, identifiable relationships between the rates or fees charged the various classes of mail for postal services.

“(8) The educational, cultural, scientific, and informational value to the recipient of mail matter.

“(9) The establishment and maintenance of a fair and equitable schedule.

“(10) Such other factors as the Commission deems appropriate.”

**"SUBCHAPTER II—RATES AND FEES FOR PRODUCTS IN THE
NONCOMPETITIVE CATEGORY OF MAIL**

"§ 3721. Definitions

"For purposes of this subchapter—

- "(1) YEAR.—The term 'year' means a calendar year.
- "(2) GDPPI.—The term 'GDPPI' means the Gross Domestic Product Chain-Type Price Index (published quarterly by the Bureau of Economic Analysis of the Department of Commerce).
- "(3) PRODUCT.—The term 'product' means a class of mail or type of postal service, including—
 - "(A) a subclass or other similar subordinate unit thereof; and
 - "(B) any further subordinate unit thereof (below the first level of subordinate units referred to in subparagraph (A)).
- "(4) PRODUCTS IN THE NONCOMPETITIVE CATEGORY OF MAIL.—The term 'products in the noncompetitive category of mail' means the respective products in the first, second, third, and fourth baskets of products (within the meaning of section 3723(a)).
- "(5) RATE.—The term 'rate', used with respect to a product, means—
 - "(A) for a class of mail, the rate for such class of mail; and
 - "(B) for a type of postal service, the fee for such service.
- "(6) NONCOMPETITIVE PRODUCT.—The term 'noncompetitive product' means a product in the noncompetitive category of mail.

"§ 3722. Maximum rates

"(a) IN GENERAL.—Except as otherwise provided in this subchapter, the rate for a noncompetitive product may not, in any year, exceed the maximum rate allowable for such product in such year under this section.

"(b) COMPUTATION OF MAXIMUM RATE ALLOWABLE.—

"(1) IN GENERAL.—The maximum rate allowable for a noncompetitive product in any year shall be computed by multiplying—

"(A) the change in the GDPPI for such year, adjusted by the adjustment factor for such year, times

"(B) the maximum rate allowable for such product in the preceding year (determined disregarding paragraph (4), any exercise of authority under section 3724(d), and any alternative limitation under section 1002(e) of the Postal Reform Act of 1996).

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) CHANGE IN THE GDPPI.—The change in the GDPPI for any year shall be equal to the percentage (if any) by which—

"(i) the GDPPI for the preceding year, exceeds

"(ii) the GDPPI for the second preceding year.

"(B) GDPPI FOR ANY YEAR.—The GDPPI for any year is the average of the GDPPI for the 4 consecutive calendar quarters ending on September 30th of such year.

"(C) ADJUSTMENT FACTOR.—The adjustment factor for any year shall be determined in accordance with section 3723.

"(3) SPECIAL RULE FOR FIRST COMPUTATION.—For purposes of the first computation of a maximum rate allowable under this section for any product, the rate applied under paragraph (1)(B) shall be the baseline rate established for such product under section 3701.

"(4) ROUNDING.—Any maximum rate computed under this section shall be rounded to the nearest cent (rounding $\frac{1}{2}$ of a cent to the next higher cent).

"§ 3723. Adjustment factor

"(a) DEFINITIONS.—For purposes of this section—

"(1) RATEMAKING CYCLE.—

"(A) IN GENERAL.—The term 'ratemaking cycle' means—

"(i) the 5-year period beginning on the first day of the second year beginning after the effective date of the baseline rates and fees established pursuant to section 3701; and

"(ii) each 5-year period beginning on the day after the last day of the immediately preceding 5-year period under this paragraph.

"(B) EARLIER INITIAL DATE.—The Postal Rate Commission may, by written determination, advance the date applicable under subparagraph (A)(i) to the date which occurs 1 year earlier, but only if that earlier date does not precede the date on which all requirements of this section have been completed with respect to the ratemaking cycle involved.

"(2) BASKET OF PRODUCTS TO WHICH THIS SECTION APPLIES.—The term 'basket of products to which this section applies' means the first, second, third, and fourth baskets of products.

"(3) FIRST BASKET OF PRODUCTS.—The term 'first basket of products' means—

"(A) single-piece first-class letters (both domestic and international);

"(B) single-piece first-class cards (both domestic and international); and

"(C) single-piece first-class parcels (both domestic and international).

"(4) SECOND BASKET OF PRODUCTS.—The term 'second basket of products' means all first-class mail not in the first basket of products.

"(5) THIRD BASKET OF PRODUCTS.—The term 'third basket of products' means periodicals.

"(6) FOURTH BASKET OF PRODUCTS.—The term 'fourth basket of products' means standard mail (except for parcel post).

"(7) RULE OF CONSTRUCTION.—

"(A) IN GENERAL.—Mail matter referred to in paragraphs (3) through (6) shall, for purposes of such paragraphs, be considered to have the meaning given them under the mail classification schedule (within the meaning of section 3623) as of the effective date of this chapter.

"(B) UPDATES.—The Board of Directors shall, whenever any relevant change occurs (pursuant to a reclassification under chapter 36, a transfer of a product from the noncompetitive category of mail under section 3743, or the conversion of an experimental product under subchapter IV to a permanent one), prescribe new lists of products within the baskets under paragraphs (3) through (6), respectively. The revised lists shall indicate how and when any previous lists are superseded.

"(b) PROCEDURES RELATING TO DETERMINING ADJUSTMENT FACTORS.—

"(1) COMMENCEMENT.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the Postal Rate Commission shall, beginning in December of the second year before the start of each ratemaking cycle, provide the opportunity for a hearing on the record under sections 556 and 557 of title 5 to the Postal Service, users of the mails, and an officer of the Commission who shall be required to represent the interests of the general public, with respect to the adjustment factors to be established for the upcoming ratemaking cycle.

"(B) EXCEPTION.—For purposes of the first hearing under this subsection, proceedings shall be commenced during the second month beginning on or after the effective date of the baseline rates and fees established pursuant to section 3701.

"(2) RULES OF PROCEEDINGS.—In order to conduct its proceedings with utmost expedition consistent with procedural fairness to the parties, the Commission may (without limitation) adopt rules which provide for—

"(A) the advance submission of written direct testimony;

"(B) the conduct of prehearing conferences to define issues, and for other purposes to insure orderly and expeditious proceedings;

"(C) discovery both from the Postal Service and the parties to the proceedings;

"(D) limitation of testimony; and

"(E) the conduct of the entire proceedings off the record with the consent of the parties.

"(3) PRINTING AND NOTICE REQUIREMENTS.—

"(A) IN GENERAL.—The Commission's decision and the record of the Commission's hearings shall be made generally available at the time the decision is issued and shall be printed and made available for sale by the Public Printer within 10 days following the day the decision is issued.

"(B) TIMING.—All actions required of the Commission under this section, including those under subparagraph (A), shall be completed as expeditiously as possible, but in no event later than the end of the year before the commencement of the ratemaking cycle to which the decision relates.

"(c) FACTORS.—Adjustment factors shall be established in accordance with the policies of this title and the following:

"(1) The value of the product to senders, as reflected by the volume response of classes of mail and types of service to changes in postal rates and fees, and, as appropriate, the price and quality of alternative means of sending mail.

"(2) Cost to the Postal Service of providing the product.

"(3) Productivity of the Postal Service in providing postal services.

"(4) The level of postal revenues attributable to the product.

"(5) The actual level of service (described in terms of speed of delivery and reliability) provided with respect to the product.

"(6) Such other considerations as the Postal Service and the Commission mutually agree to be appropriate.

"(d) SEPARATE ADJUSTMENT FACTOR REQUIRED FOR EACH BASKET OF PRODUCTS.—A separate adjustment factor shall be established for each basket of products to which this section applies, and, except as provided in section 3724(d), the adjustment factor applicable to any basket shall be uniformly applied to all products within such basket.

"(e) HOW EACH ADJUSTMENT FACTOR IS TO BE EXPRESSED AND APPLIED.—

"(1) EXPRESSION.—Each adjustment factor established under this section shall be expressed as a percentage.

"(2) APPLICATION.—For purposes of section 3722(b)(1)(A), to adjust a change in the GDPPI by an adjustment factor, the adjustment factor shall be added to or subtracted from such change in the GDPPI, as the case may be.

"(f) EXIGENT CIRCUMSTANCES.—

"(1) IN GENERAL.—Upon a majority vote of the Directors then holding office, the Postal Service may request the Postal Rate Commission to render a decision on changing the adjustment factors to be applied during the then current ratemaking cycle (after having previously been established under this section for such cycle).

"(2) CONDITIONS.—A request made under paragraph (1) may be considered only upon written certification by the Directors that—

"(A) the Postal Service faces severe financial exigencies; and

"(B) the change is warranted to restore the Postal Service to fiscal soundness.

"(3) EFFECT; DURATION.—A change granted under this subsection—

"(A) shall supersede the adjustment factors which would otherwise apply under this section; and

"(B) shall remain effective for the remainder of the ratemaking cycle involved, subject to paragraph (5).

"(4) EXPEDITED CONSIDERATION.—A request made under paragraph (1) shall be acted on in the same manner as if initiated under subsection (b)(1), except that a decision on such request shall be rendered not later than 6 months after the date on which such request is made.

"(5) FREQUENCY.—Nothing in this section shall be considered to limit the number of times that authority under this subsection may be invoked or exercised during any particular ratemaking cycle.

"(6) FINALITY.—A decision of the Postal Rate Commission under this subsection shall be final and shall not be subject to administrative or judicial review.

"(g) APPELLATE REVIEW.—Except as provided in subsection (f)(6), a decision of the Postal Rate Commission under this section may be appealed to any court of appeals of the United States, within 15 days after its publication by the Public Printer, by an aggrieved party who appeared in the proceedings under subsection (b). The court shall review the decision, in accordance with section 706 of title 5, and chapter 158 and section 2112 of title 28, except as otherwise provided in this subsection, on the basis of the record before the Commission. The court may affirm the decision or order that the entire matter be returned for further consideration, but the court may not modify the decision. The court may not suspend the effectiveness of the adjustment factors, or otherwise prevent them from taking effect until final disposition of the suit by the court. No court shall have jurisdiction to review a decision made by the Commission under this section except as provided in this subsection.

"§ 3724. Action of the Directors

"(a) IN GENERAL.—The Directors, with the written concurrence of a majority of all of the Directors then holding office, shall establish rates for products in the non-competitive category of mail in accordance with the requirements of this subchapter and the policies of this title.

"(b) PROCEDURES.—

"(1) IN GENERAL.—Rates under this section shall be established in writing, complete with a statement of explanation and justification.

"(2) PUBLICATION.—The Directors shall cause each such decision and statement to be published in the Federal Register at least 45 days before the rate or rates to which they pertain take effect.

"(c) LIMITATIONS ON AUTHORITY.—

"(1) IN GENERAL.—Except as provided in paragraph (2)—

“(A) FREQUENCY.—Ratemaking authority under this section may not be exercised more than once for purposes of any year.

“(B) UNIFORM EFFECTIVE DATE.—All changes in rates pursuant to this section shall take effect beginning on the same date.

“(2) EXCEPTION FOR CHANGE DUE TO EXIGENT CIRCUMSTANCES.—

“(A) IN GENERAL.—If the maximum rate allowable for a product in a year changes pursuant to a request granted under section 3723(f), then, in the event that ratemaking authority under this section was previously exercised with respect to such product for such year, such rate may be modified, not more than once more in such year, based on the change in the maximum rate allowable.

“(B) UNIFORM EFFECTIVE DATE.—All changes in rates pursuant to this paragraph shall, to the extent based on the same change in the maximum rate allowable, take effect beginning on the same date.

“(d) EXCEPTION TO REQUIREMENT RELATING TO UNIFORM APPLICABILITY OF EACH MAXIMUM.—

“(1) DEFINITIONS.—For purposes of this subsection—

“(A) SUBORDINATE UNIT.—The term ‘subordinate unit’, with respect to a product, means a subclass or other similar subordinate unit of such product, as described in subparagraph (A) of section 3721(3).

“(B) FURTHER SUBORDINATE UNIT.—The term ‘further subordinate unit’, with respect to a subordinate unit, means a further subordinate unit thereof, as described in subparagraph (B) of section 3721(3).

“(2) APPLICABILITY.—This subsection applies with respect to the second, third, and fourth baskets of products.

“(3) RULE.—

“(A) IN GENERAL.—Notwithstanding the uniformity requirement in section 3723(d), for purposes of establishing rates for further subordinate units of any particular subordinate unit of a product, rates may be established at such levels as the Directors consider appropriate, subject to subparagraph (B).

“(B) REQUIREMENT.—The rates so established may not exceed the maximum rates established for such further subordinate units in accordance with subparagraph (C).

“(C) ALTERNATIVE MAXIMUM RATES.—Alternative maximum rates may be established under this subparagraph by using adjustment factors (other than those that would otherwise apply absent this subsection) fixed at levels which the Directors consider appropriate, so long as the resulting average maximum rate, for the further subordinate units comprising such subordinate unit (determined separately for each successive level, if there are 2 or more levels of further subordinate units), remains equal to the maximum rate that would otherwise apply with respect to those further subordinate units.

“(e) FINALITY OF DECISIONS.—Decisions of the Postal Service under this section shall be final and shall not be subject to administrative or judicial review.

“SUBCHAPTER III—RATES AND FEES FOR PRODUCTS IN THE COMPETITIVE CATEGORY OF MAIL

“§ 3741. Definitions

“For purposes of this subchapter—

“(1) YEAR, PRODUCT, RATE, ETC.—The terms ‘year’, ‘product’, ‘rate’, and ‘product in the noncompetitive category of mail’ each has the meaning given such term by section 3721, unless the context otherwise requires.

“(2) PRODUCTS IN THE COMPETITIVE CATEGORY OF MAIL.—The term ‘products in the competitive category of mail’ means—

“(A) priority mail;

“(B) expedited mail;

“(C) mailgrams;

“(D) international mail;

“(E) parcel post;

“(F) special services; and

“(G) any product transferred to the competitive category of mail under section 3743; except that such term does not include any product then currently in the non-competitive category of mail.

“(3) RULE OF CONSTRUCTION.—

“(A) IN GENERAL.—Mail matter referred to in paragraph (2) shall, for purposes of such paragraph, be considered to have the meaning given them under the mail classification schedule (within the meaning of section 3623) as of the effective date of this chapter.

“(B) UPDATES.—The Board of Directors shall, whenever any relevant change occurs (pursuant to a reclassification under chapter 36, a transfer of a product from the noncompetitive category of mail under section 3743, or the conversion of an experimental product under subchapter IV to a permanent one), prescribe a new list of products under subparagraphs (A) through (G) of paragraph (2). The revised list shall indicate how and when any previous list is superseded.

“§ 3742. Action of the Directors

“(a) IN GENERAL.—The Directors, with the written concurrence of a majority of all of the Directors then holding office, shall establish rates for products in the competitive category of mail.

“(b) REQUIREMENTS.—Rates under this section shall be established in accordance with the policies of this title and the requirement that each product in the competitive category of mail bear the direct and indirect postal costs attributable to such product plus a reasonable contribution to all other costs of the Postal Service.

“(c) PROCEDURES.—Subsections (b), (c)(1), and (e) of section 3724 shall apply with respect to rates and decisions under this section.

“§ 3743. Transfers of products from the noncompetitive category of mail

“(a) IN GENERAL.—The Postal Service or users of the mails may from time to time request the Postal Rate Commission to submit, or the Commission may submit to the Directors on its own initiative, a recommended decision on transferring one or more products in the noncompetitive category of mail to the competitive category of mail.

“(b) CRITERIA.—A recommended decision under this section shall be made in accordance with the policies of this title and taking into consideration the availability and nature of enterprises in the private sector engaged in the delivery of the product involved.

“(c) PROCEDURES.—If the Commission receives a request under subsection (a) or decides to act on its own initiative, the Commission shall, after proceedings in conformity with section 3624, issue a recommended decision which shall be acted upon in accordance with the provisions of section 3625 and subject to review in accordance with the provisions of section 3628.

“§ 3744. Application of antitrust laws

“(a) APPLICABILITY OF THE ANTITRUST LAWS.—The antitrust laws shall apply with respect to the Postal Service to the extent that the Postal Service engages in conduct with respect to—

“(1) any product in the competitive category of mail; and

“(2) any product offered pursuant to a market test under subchapter IV.

“(b) DEFINITION.—For purposes of subsection (a), the term ‘antitrust laws’ has the meaning given such term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), but includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that such section 5 applies to unfair methods of competition.

“(c) EFFECTIVE DATE.—This section shall not apply with respect to conduct occurring before the effective date of this chapter.

“SUBCHAPTER IV—MARKET TESTS OF EXPERIMENTAL PRODUCTS

“§ 3761. Market tests

“(a) IN GENERAL.—The Postal Service may conduct market tests of experimental products. Subject to the provisions of this section, the conducting of any such market test by the Postal Service shall not be limited by any lack of specific authority under this title to take the action contemplated, or by any provision of this title or any rule or regulation prescribed under this title which is inconsistent with the action.

“(b) PROCEDURAL REQUIREMENTS.—Before conducting a market test, the Postal Service shall—

“(1) develop a plan for such test which identifies—

“(A) the purposes of the test (and how they comport with the provisions of section 101);

“(B) the duration;

“(C) the anticipated costs for each year;

“(D) the anticipated revenues for each year;

“(E) a specific description of any aspect of the test for which there is a lack of specific authority; and

“(F) a specific citation to any provision of law, rule, or regulation which, if not waived under this section, would prohibit the conducting of the test, or any part of the test as proposed;

“(2) at least 60 days in advance of the date any test proposed under this section is to take effect—

“(A) publish the plan in the Federal Register;

“(B) submit such plan to each House of Congress; and

“(C) provide notification of the proposed test to officers and employees likely to be affected by the test.

“(c) RESTRICTIONS.—No market test under this section may provide for a waiver of—

“(1) any provision of section 410(b)–(d) (or any law applicable to the Postal Service by virtue of any such provision);

“(2) section 412 or any other provision of law (not otherwise covered by paragraph (1)) providing for the nondisclosure of names or addresses or any other information or matter by the Postal Service;

“(3) the limitation on compensation under the last sentence of section 1003(a);

“(4) any provision of chapter 10 (relating to employment within the Postal Service);

“(5) any provision of chapter 12 or of any collective-bargaining agreement under such chapter;

“(6) any provision of section 3623(d) (relating to maintaining one or more classes of mail for the transmission of letters sealed against inspection);

“(7) any provision of law—

“(A) providing for equal employment opportunity through affirmative action; or

“(B) providing any right or remedy available to any officer or employee or applicant for employment in the Postal Service; or

“(8) any rule or regulation prescribed under any provision of law referred to in any of the preceding paragraphs of this subsection.

“(d) LIMITATIONS.—

“(1) DURATION.—Each market test under this section shall terminate not later than 3 years after such project takes effect, except that the project may continue beyond the date on which it would otherwise terminate, if proceedings under subsection (g) are then pending with respect to the product involved.

“(2) DOLLAR LIMITATION.—A market test under this section may not be conducted if the anticipated revenues attributable to such test would, for any calendar year, exceed \$100,000,000.

“(e) EMPLOYEES WITHIN BARGAINING UNITS.—Employees within a unit with respect to which a labor organization is accorded exclusive recognition under chapter 12 shall not be included within any market test under this section—

“(1) if the test would violate a collective-bargaining agreement under such chapter between the Postal Service and the labor organization, unless there is another written agreement with respect to the test between the Postal Service and the organization permitting the inclusion; or

“(2) if the test is not covered by such a collective-bargaining agreement, until there has been consultation or negotiation, as appropriate, by the Postal Service with the labor organization.

“(f) OTHER EMPLOYEES.—Employees within any unit with respect to which a labor organization has not been accorded exclusive recognition under chapter 12 shall not be included within any market test under this section unless there has been consultation by the Postal Service regarding the test with the employees in the unit.

“(g) CONVERSION TO PERMANENCE.—A request to make an experimental product (as referred to in subsection (a)) permanent—

“(1) shall be made in accordance with the same requirements as set forth in section 3743(b);

“(2) shall be subject to the same procedures (including review) as set forth in section 3743(c), except as provided in subsection (h); and

“(3) may not be considered unless it is made by the Postal Service.

“(h) TIME LIMITATION ON COMMISSION DELIBERATIONS.—For purposes of applying section 3624 (pursuant to subsection (g)(2)) with respect to a request to make an experimental product permanent—

“(1) section 3624(c) (as deemed to have remained in effect under paragraph (2)) shall be applied with respect to such request in the same manner as would have been applied in the case of a request made under section 3622 (as last in effect before being repealed by section 1002); and

“(2) section 3624 (as last in effect before being repealed by section 1002) shall be deemed to have remained in effect, except that subsection (c) of such section (as then in effect) shall be applied by substituting—

“(A) ‘6 months’ for ‘10 months’ in paragraph (1) thereof; and

“(B) ‘6-month period’ for ‘10-month period’ in paragraph (2) thereof.

“SUBCHAPTER V—REPORTING REQUIREMENTS AND RELATED PROVISIONS

“§ 3781. Definition

“For purposes of this subchapter, the term ‘product’ has the meaning given such term by section 3721(3).

“§ 3782. Reporting requirements

“(a) IN GENERAL.—No later than 3 months after the last day of each fiscal year, the Postal Service shall submit sufficient information to the Postal Rate Commission to demonstrate that the then current rates for products are in compliance with all applicable requirements of this title.

“(b) AUDITS.—

“(1) IN GENERAL.—Before submitting any information under subsection (a), the Postal Service shall have such information audited by an independent professional accounting organization (from outside of government), and such audit shall be submitted along with the information to which it relates.

“(2) ACCESS TO PAPERS AND SUPPORTING MATERIALS.—

“(A) IN GENERAL.—The Commission shall have access to the working papers and supporting materials of an auditor in connection with any audit conducted by such auditor under this subsection.

“(B) CONFIDENTIALITY.—Any information described in paragraph (3) to which the Commission gains access under subparagraph (A) shall be subject to section 3604(g)(2) in the same way as if the Commission had received notification with respect to such information under section 3604(g)(1).

“(3) IDENTIFICATION OF PROTECTED INFORMATION.—

“(A) IN GENERAL.—The Postal Service shall, in accordance with regulations which it shall prescribe, ensure that—

“(i) any protected information shall, before being furnished to an auditor under this section, be appropriately identified (including, to the extent practicable, by being appropriately stamped, labelled, tagged, or otherwise physically marked); and

“(ii) appropriate measures are taken (such as the inclusion of appropriate terms in any contract or other agreement with the auditor) to safeguard the security and confidentiality of protected information.

“(B) PROTECTED INFORMATION DEFINED.—For purposes of this paragraph, the term ‘protected information’ means any information which, in the judgment of the Postal Service, is information of a type which is described in section 410(c) of this title, or exempt from public disclosure under section 552(b) of title 5.

“(c) ADDITIONAL REQUIREMENTS.—The Postal Service shall submit to the Commission, at the time of making its submissions under subsections (a) and (b)—

“(1) a copy of the then most recent comprehensive statement under section 2401(b);

“(2) a copy of the then most recent performance plan and program performance reports required under sections 2803 and 2804, respectively; and

“(3) for the most recently completed fiscal year, with respect to each product in the competitive category of mail, each product in the noncompetitive category of mail, and each product under subchapter IV—

“(A) market information, including mail volumes;

“(B) postal financial information, including costs to the Postal Service and revenues;

“(C) measures of the speed and reliability of postal service, including—

“(i) the service standard applicable to each product;

“(ii) the actual level of service (described in terms of speed of delivery and reliability) provided; and

“(iii) the degree of customer satisfaction with the service provided;

and

“(D) any other information that the Commission and the Postal Service mutually agree upon.

“(d) REGULATIONS.—The Commission shall prescribe regulations specifying the form and detail of the information required under this section, consistent with otherwise applicable provisions of this title. Such regulations shall give due consideration to avoiding unnecessary or unwarranted administrative effort and expense on the part of the Postal Service.

“§ 3783. Use of profits

“(a) DEFINITION OF PROFITS.—For purposes of this section, the term ‘profits’, with respect to any fiscal year, means the amount by which total income of the Postal Service attributable to such year, exceeds total costs of the Postal Service attributable to such year, as determined by the Directors, in writing, in accordance with generally accepted accounting principles.

“(b) DETERMINATION OF NONCOMPLIANCE.—Not later than 90 days after receiving all the submissions required under section 3782 with respect to a fiscal year, the Postal Rate Commission shall make a written determination as to—

“(1) whether any rates or fees were placed in effect during such fiscal year which were not in compliance with applicable provisions of this title;

“(2) whether any performance goals, established under section 2803 or 2804 for such fiscal year, were not met; and

“(3) whether any service standards for such fiscal year were not met, based on the information under section 3782(c)(3)(C).

“(c) IF NO NONCOMPLIANCE IS FOUND.—If the Commission does not make a timely determination of noncompliance under subsection (b), or if a timely determination is made under subsection (b) to the effect that no instances of noncompliance occurred, up to 100 percent of the profits (if any) from the preceding fiscal year may be used by the Postal Service for the purposes described in subsection (e).

“(d) IF ANY NONCOMPLIANCE IS FOUND.—If the Commission makes a timely determination of noncompliance under subsection (b)—

“(1) the Commission may order, based on the seriousness of the noncompliance, that a specific percentage of the previous fiscal year’s profits (if any), not to exceed 50 percent, be set aside for the purposes described in subsection (f); and

“(2) up to 100 percent of the remainder of the previous fiscal year’s profits (if any) may be used by the Postal Service for the purposes described in subsection (e).

“(e) BONUSSES.—

“(1) IN GENERAL.—The Postal Service shall establish a program under which cash bonuses may be paid to officers and employees of the Postal Service out of any profits which are available for that purpose.

“(2) REQUIREMENTS.—Under the program—

“(A) bonuses may be paid to officers and employees of the Postal Service under criteria which shall be fair and equitable;

“(B) the sole source of funding shall be any profits from any fiscal year, subject to the application of subsection (d)(1) with respect to such fiscal year; and

“(C) subject to subsection (h), bonuses shall not be precluded by the limitation on compensation under the last sentence of section 1003(a).

“(3) DISCRETIONARY NATURE OF PROGRAM.—Nothing in this section shall be considered to create any entitlement to receive bonuses or to require that any portion of the profits from any fiscal year be used for bonuses in excess of whatever amount the Postal Service considers appropriate (if any).

“(4) CONSIDERATIONS RELATING TO THE PORTION OF PROFITS TO BE AVAILABLE FOR BONUSSES.—In any decision relating to what portion of the available profits from any fiscal year shall be available or used for purposes of the payment of bonuses under this subsection, there shall be taken into consideration—

“(A) the duty on the part of the Postal Service to provide efficient and economical postal services in accordance with the requirements of section 101, section 403, and this chapter; and

“(B) what portion of those profits (if any) should be used—

“(i) to retire debts or other obligations of the Postal Service;

“(ii) to limit future increases in postal rates or fees for products in the noncompetitive category of mail; or

“(iii) to carry out any other purpose.

“(f) DEDICATION OF FUNDS TOWARD REDUCING RATES AND FEES.—

"(1) IN GENERAL.—Any amounts ordered to be set aside under subsection (d)(1) may not be used for any purpose other than to defray increases in future rates and fees for products in the noncompetitive category of mail or to reduce the rates and fees already in effect for such products.

"(2) COMPLIANCE.—Whenever an order under subsection (d)(1) is issued, the Postal Service shall include in its next comprehensive statement under section 2401(b) (and each subsequent statement thereunder until the order has been fully complied with)—

"(A) a statement of the measures which have been or will be implemented in order to comply with the order;

"(B) the amount of savings actually passed on to mailers during the reporting period, as compared to the estimated savings for such period; and

"(C) what measures, if any, have been or will be implemented in order to reconcile any difference identified under subparagraph (B).

"(3) NONREDUNDANT INFORMATION.—Nothing in paragraph (2) shall be considered to require that the same information be reported if included in a previous report under this subsection.

"(g) PROCEDURES.—The provisions of sections 556 and 557 of title 5 shall not apply to any review carried out by the Commission under this section.

"(h) REPORTING REQUIREMENT.—Included in its comprehensive statement under section 2401(b) for any period shall be—

"(1) the name of each person receiving a bonus during such period which would not have been allowable but for the provisions of subsection (e)(2)(C);

"(2) the amount of the bonus; and

"(3) the amount by which the limitation referred to in subsection (e)(2)(C) was exceeded."

(b) REPRESENTATION IN AN ANTI-TRUST ACTION.—Section 409(d) of title 39, United States Code, is amended by striking "(d) The" and inserting "(d)(1) Except in any instance in which the Postal Service elects to employ attorneys under paragraph (2), the" and by adding at the end the following:

"(2)(A) As used in this paragraph, the term 'antitrust laws' has the meaning given to it by section 3744(b).

"(B) The Postal Service may, in connection with any litigation brought against the Postal Service under any of the antitrust laws, employ attorneys by contract or otherwise to conduct litigation on its behalf without regard to any provision of paragraph (1)."

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 410(c)(4) of title 39, United States Code, is amended by inserting "or 37" after "36".

(2) Section 409(a) of title 39, United States Code, is amended by striking "section 3628" and inserting "section 3628 (or any provision of this title incorporating such section by reference) or section 3723(g)".

SEC. 1002. TERMINATION OF RATEMAKING AUTHORITY UNDER CHAPTER 36 AND RELATED MATTERS.

(a) AUTHORITY TO FIX RATES AND CLASSES.—Section 3621 of title 39, United States Code, is amended—

(1) in the first sentence by striking "this chapter" and inserting "this chapter and chapter 37";

(2) by repealing the last 2 sentences.

(b) RATES AND FEES.—

(1) IN GENERAL.—Section 3622 of title 39, United States Code, is repealed.

(2) CLERICAL AMENDMENT.—The item relating to section 3622 in the table of sections at the beginning of chapter 36 of such title 39 is repealed.

(c) RECOMMENDED DECISIONS OF COMMISSION.—Section 3624 of title 39, United States Code, is amended—

(1) in subsection (a) by striking "section 3622 or 3623" and inserting "section 3623";

(2) by repealing subsection (c); and

(3) in subsection (d)—

(A) by striking "rate, fee, or"; and

(B) by striking "section 3622 or 3623, as the case may be." and inserting "section 3623."

(d) ACTION OF THE GOVERNORS.—Section 3625 of title 39, United States Code, is amended—

(1) in the third sentence of subsection (d)—

(A) by striking "(1)"; and

(B) by striking “chapter, and (2)” and all that follows through the period and inserting “chapter and chapter 37, respectively.”; and

(2) by amending subsection (f) to read as follows:

“(f) Except as otherwise provided in this title, the Board shall determine—

“(1) the date on which any changes in the mail classification schedule (whether made under this chapter or chapter 37) shall become effective; and

“(2) the date on which new rates and fees under chapter 37 shall become effective.”.

(e) REDUCED-RATE CATEGORIES OF MAIL.—

(1) CONTINUED APPLICABILITY OF RELEVANT PROVISIONS OF CHAPTER 36 FOR THE LIMITED PURPOSE OF COMPUTING ALTERNATIVE RATE LIMITATIONS FOR NON-COMPETITIVE PRODUCTS.—Notwithstanding any other provision of this Act (or any amendment made by this Act), the rate of postage established under subchapter II of chapter 37 of title 39, United States Code, as amended by this Act, for a class of mail or kind of mailer referred to in section 3626(a)(1) of such title may not, at any time, exceed the lesser of—

(A) the maximum rate then otherwise allowable under chapter 37 (determined as if this subsection had not been enacted) for such class of mail or kind of mailer; or

(B) the rate determined under paragraph (2) for such class of mail or kind of mailer.

(2) DETERMINATION OF RATES WHICH WOULD THEN OTHERWISE APPLY UNDER CHAPTER 36.—

(A) IN GENERAL.—For purposes of paragraph (1)(B), the United States Postal Service shall determine, and subsequently revise whenever necessary in order to keep determinations under this paragraph current, the rate of postage which would then otherwise apply with respect to each class of mail or kind of mailer referred to in section 3626(a)(1) of such title 39.

(B) METHODOLOGY.—Subparagraph (A) shall be carried out—

(i) by applying the provisions of paragraphs (2) through (5) of section 3626(a) and of section 3642 of such title 39; and

(ii) by using the then most recent information available to the Postal Service relating to costs attributable and institutional costs (within the meaning of the provisions referred to in clause (i)).

(3) LIMITATION UNDER THIS SUBSECTION TO BE USED INSTEAD OF (AND TO BE TREATED AS) THE LIMITATION UNDER SECTION 3722.—The maximum rate determined for a product under this subsection shall, for all purposes (except paragraph (1)(A)), be used instead of (and shall be treated as) the maximum rate allowable for such product under section 3722 of such title 39.

(4) STATEMENT OF LIMITED PURPOSE.—Section 3626(a) of such title 39 is amended by adding at the end the following:

“(6) Neither this subsection nor section 3642 shall have any force or effect, except for purposes of section 1002(e) of the Postal Reform Act of 1996. Nothing in the preceding sentence shall be considered to affect any baseline rate established pursuant to section 3701.”.

(5) REGULATIONS.—The United States Postal Service shall prescribe such regulations as may be necessary to carry out the provisions of sections 3626 (including subsections (b) through (n) thereof) and 3642 of such title 39 (as amended by this Act) in a manner consistent with chapter 37 of such title 39 (as amended by this Act) and with the purposes of this Act.

(f) OTHER TEMPORARY RATES.—

(1) IN GENERAL.—Section 3641 of title 39, United States Code, is amended—

(A) by repealing subsections (a) through (d); and

(B) in subsection (f) by striking “in rates of postage, and fees for postal services, or”.

(2) CLERICAL AMENDMENTS.—

(A)(i) The heading for section 3641 of such title 39 is amended to read as follows:

“§ 3641. Temporary changes in classes”.

(ii) The item relating to section 3641 in the table of sections at the beginning of chapter 36 of such title 39 is amended to read as follows:

“3641. Temporary changes in classes.”.

(B)(i) The heading for subchapter III of chapter 36 of such title 39 is amended to read as follows:

“SUBCHAPTER II—TEMPORARY CLASSES”.

(ii) The analysis for chapter 36 of such title 39 is amended by striking the item relating to subchapter II and inserting the following:

“SUBCHAPTER II—TEMPORARY CLASSES”.

(g) RATE AND SERVICE COMPLAINTS.—Section 3662 of title 39, United States Code, is amended to read as follows:

“§ 3662. Rate and service complaints

“(a) Interested parties who believe the Postal Service is charging rates which do not conform to the policies set out in this title or 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.

“(b)(1) If the Commission, in a classification matter covered by subchapter II, determines the complaint to be justified, it shall, after proceedings in conformity with section 3624, issue a recommended decision which shall be acted upon in accordance with the provisions of section 3625 and subject to review in accordance with the provisions of section 3628.

“(2) If a violation of a limitation under section 3722 or 3724(d) (relating to the maximum rate allowable for products in the noncompetitive category of mail) or section 3742(b) (relating to requirements applicable with respect to rates established for products in the competitive category of mail) is involved, it may issue an appropriate order under section 3783.

“(3) If a matter other than a matter covered by paragraph (1) or (2) is involved, and the Commission after a hearing finds the complaint to be justified, it shall render a public report thereon to the Postal Service which shall take such action as it deems appropriate.”

(h) LIMITATIONS.—Section 3684 of title 39, United States Code, is amended by striking “or 34” and inserting “34, or 37”.

(i) MAIL CLASSIFICATION.—Section 3623 of title 39, United States Code, is amended—

(1) by repealing subsection (a);

(2) in subsection (b) by striking “Following the establishment of the mail classification schedule requested under subsection (a) of this section, the” and inserting “The”;

(3) in subsection (c) (in the matter before paragraph (1)) by striking “this title” and inserting “this title, subsection (e),”; and

(4) by adding at the end the following:

“(e)(1) Any change under this subchapter in the mail classification system shall be in accordance with the requirements of paragraph (2).

“(2) The requirements of this paragraph are as follows:

“(A) A product may not be reclassified from the competitive to the noncompetitive category of mail.

“(B) The reclassification of a product from one basket to another basket of the noncompetitive category of mail shall not be effective during a ratemaking cycle unless notice of the final decision on the reclassification is given to the Postal Rate Commission before the start of proceedings under section 3723(b) in connection with such cycle.

“(C)(i) A new product may not be made available to the public before it has been placed in—

“(I) either the competitive or the noncompetitive category of mail; and

“(II) if placed in the noncompetitive category of mail, the appropriate basket thereof.

“(ii) Any decision as to whether a new product should be placed in the competitive or the noncompetitive category of mail shall be made in accordance with the requirements set forth in section 3743(b). Such requirements shall be specifically addressed in any statement required under section 3624(d) with respect to such decision.

“(3) For purposes of this subsection—

“(A) the term ‘product’ has the meaning given such term by section 3721(3);

“(B) the term ‘noncompetitive category of mail’ refers to the category of mail under subchapter II of chapter 37;

“(C) the term ‘competitive category of mail’ refers to the category of mail under subchapter III of chapter 37;

“(D) the term ‘basket’ refers to a basket under paragraph (3), (4), (5), or (6) of section 3723(a);

“(E) the term ‘ratemaking cycle’ has the meaning given such term by section 3723(a)(1); and

“(F) the term ‘new product’ means a product which, as of the effective date of this subsection, is not available to the public through the Postal Service.”.

(j) EFFECTIVE DATE.—This section and the amendments made by this section shall become effective on the effective date of the baseline rates and fees established pursuant to section 3701 of title 39, United States Code, as amended by section 1001.

Miss COLLINS. I thank the chairman. Mr. Chairman, I'm pleased to join you for the first in a series of four hearings to examine H.R. 3717, the Postal Reform Act of 1996.

I would like to commend the chairman for bringing this issue to the table in an effort to answer the many calls for a more effective and efficient mail service that will lead this Nation into the 21st century.

During the first session of the 104th Congress, this subcommittee conducted 10 hearings, providing general oversight and review of the operations of the Postal Service. The common theme echoed throughout those hearings was postal reform. Monopoly, labor/management relations, ratemaking and new postal products were all areas of major concern and possible areas to target for legislative change. As we concluded those hearings, we found there to be no consensus on the manner in which to achieve an overhaul of the current system.

On June 25, 1996, Chairman McHugh introduced legislation based on testimony conveyed before this committee. Initial reaction to H.R. 3717 has been mixed.

Comments have been minimal, and concerns expressed have been limited, giving concerned parties a chance to thoroughly weigh the impact of this legislation.

H.R. 3717 includes a few measures that are noncontroversial and necessary. Title I encompasses many of these features.

One noncontroversial change is an increase in the salary for the Board of Governors. This is a welcomed provision and much-needed increase for those who worked hard for what many considered a mere stipend.

Further review of this legislation unveiled several areas of serious and potentially detrimental impact. Many provisions of H.R. 3717 pose a threat to the Postal Service's current ability to maintain universal service.

Floodgates will be unleashed by this legislation that Congress sought to safeguard in the 1970 Postal Reorganization Act.

Title IV of the proposed legislation grants the Postal Service sole discretion over deposits of revenue. It removes these publicly generated funds from the safeguard of the Department of Treasury and opens the door for revenues to be deposited in private institutions.

This may be a blessing for the Postal Service, but it may very well be a nightmare for the Federal Government, the banking industry and consumers if financial loss occurs.

Another area of concern is the proposal found in Section 704, the Mailbox Demonstration Project. Current law prohibits the deposit of nonpostage items in private mailboxes. H.R. 3717 would open the door for anyone to put nonpostage items in any box. Regardless of the proposed 3-year trial period and participation waiver, this

provision would unleash more unwanted junk mail and create a serious breach in current mail security.

Last, and certainly not least, are the provisions for the rate-setting process. Current statutes governing this process have been labeled by many as cumbersome. The current process does not allow the Postal Rate Commission access to needed accounting systems or allow the performance of its own audits.

H.R. 3717 would give the Postal Rate Commission greater power to request pertinent documents. However, the proposed legislation opens a whole new can of worms by instituting only two rate categories—noncompetitive and competitive.

Noncompetitive services would be subject to price cap regulations, while the USPS would have broad discretion to price competitive services.

In an attempt to afford the Postal Service more independence, is it really necessary to give them carte blanche to consumers' pockets?

Such changes need to be thoroughly examined as we consider implementing such an important provision. It has been my experience in this Congress—that is, the 104th Congress—that when we speak of privatizing, it usually means the removal of African-American jobs and, quite frankly, I'm sick and tired of this buzz word.

Through this hearing and the three to follow, it is my hope that we carefully consider the Postal Reform Act of 1996 and its impact.

To that end, I look forward to hearing from each of our witnesses, and, Mr. Chairman, I would like to join the ranking minority member of the Government Reform Committee, Congresswoman Cardiss Collins, in requesting that this subcommittee invite the Postal Board of Governors to testify on this very important reform measure. I thank you, Mr. Chairman.

Mr. MCHUGH. I thank the gentlelady. I guess we're going to have to hold a couple of hearings to iron out those issues that you brought up. But obviously, they are serious concerns, and I appreciate your interest and your willingness to examine them, and that's why we're here.

Let me make two comments before we proceed to the witnesses. The first is I read in a publication that it is the subcommittee's intent to mark up this bill by the end of July.

I wanted to disabuse anyone of that notion who may have it. We are on no such schedule, and indeed, as I've said to many of the people in this room privately and I now want to say for the record, we're going to take as long as is necessary to do this in a responsible way.

Our concern is doing it correctly, not doing it quickly. And the issues that Ms. Collins raises and that others will raise need to be addressed in a very serious and a very considered manner, and it is my intention to proceed in that fashion.

To the second point, the last comment by the gentlelady as to the Postal Board of Governors, if the board wishes, in whatever way is appropriate under their rules, their chairman or whomever to make an appearance and they indicate that to us under their procedures, we will certainly make that available.

I have the greatest respect for the Governors, and if it's their body, their considered opinion as a body that they want to formally appear, we can work that out, and we will.

With that, as I've noted to our witnesses before on previous occasions, I don't for a second question their veracity, but the full committee rules do require the swearing in of all witnesses that appear before the subcommittee.

[Witnesses sworn.]

Mr. MCHUGH. The record will show that all three people at the table responded in the affirmative.

And with that, Postmaster General Runyon, welcome, and the floor, the microphone and, I would bet, the attention of most people in this room is all on you.

STATEMENTS OF MARVIN T. RUNYON, POSTMASTER GENERAL AND CEO, U.S. POSTAL SERVICE, ACCOMPANIED BY MICHAEL S. COUGHLIN, DEPUTY POSTMASTER GENERAL, U.S. POSTAL SERVICE; AND MARY ELCANO, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, U.S. POSTAL SERVICE; AND EDWARD J. GLEIMAN, CHAIRMAN, POSTAL RATE COMMISSION

Mr. RUNYON. Thank you very much, Mr. Chairman. Joining me here today are Mike Coughlin, our Deputy Postmaster General, and Mary Elcano, our senior vice president and general counsel.

Nine days ago we celebrated our 25th birthday. As you know, July 1, 1971, was the day that the Postal Reorganization Act of 1970 took effect. The ground-breaking legislation crafted by Congress and the administration created the Postal Service and set a new course for mail service in the Nation.

Mr. Chairman, 18 months ago you accepted a tough challenge to take the next legislative step, to update the Postal Reorganization Act to help prepare the Postal Service to meet today's new and, in many ways, dramatically different communication needs.

You put a lot of work into accomplishing this. You've held 12 subcommittee hearings. You've met and talked with hundreds of people, the Governors, postal management, directors general of foreign post, labor leaders, industry experts and a wide variety of customers, people who know the mail and people who wanted it to succeed.

We asked you for legislative reform, and you responded. You've delivered a comprehensive bill, a good beginning to the process that can lead to great change, change that's good for all, change that can prepare the Postal Service and its customers for the next century.

I think it's important to revisit the benchmarks you've set for yourself and this legislation. You said you wanted a bill to maintain universal service at a uniform, affordable rate. You said you wanted to address the increasingly competitive communications marketplace by delivering long needed prices and product freedoms in creative new ways, while at the same time strengthening oversight and reporting systems to safeguard the public interest.

Mr. Chairman, your bill takes steps to address each of these areas. With any legislation of such size and magnitude, there are going to be areas of common ground and areas of concern.

Mr. Chairman, there are some serious issues we want to work with you to address. I believe that you're on your way to delivering a bill that can successfully serve the mailing needs of the American people in the decades to come.

First, let's look at the common ground. The bill completely changes our postal paradigm. It allows us to make profits from competitive services and offer rewards for financial success. It gives us some freedom in banking, borrowing and investing. It introduced pricing latitude, market testing authority, volume discounts and a test period for negotiated service agreements in the competitive product arena.

For those products deemed noncompetitive, it introduces the rate index concept. It deregulates our use of international air transportation.

It provides for direct appeals of MSPB decisions, and it levies stiff penalties against people who commit violent acts against postal contractors, stalk postal employees or pander by mail.

However, we do have some areas of concern; three major issues that we'd like to address with you as the bill moves forward in Congress.

First among our concerns is regulation and oversight. Mr. Chairman, checks and balances are appropriate and necessary in both government and business, and being a bit of both, we recognize that we'll be held to the highest standard. However, we're concerned that some of the systems' precautions and shifts in authority put forward here with good intent unnecessarily add regulation, duplicate safeguards and substitute bureaucratic controls for marketplace discipline.

For example, the re-regulation of half of our highly competitive international business, which is now fully deregulated, would be a step backward for this growing product line.

Then there is the issue of oversight. Today, the Postal Rate Commission, the General Accounting Office, the Inspector General, two Houses of Congress and an independent auditor all have some oversight and audit authority. The proposed bill would add two new layers of oversight authority, the Federal Trade Commission and the Department of Justice and give a significantly greater role to the PRC.

Expanded Postal Rate Commission authority would overlap that of the Postal Service's Board of Governors in the area of service, productivity, finances and overall performance. Mr. Chairman, we need to give additional thought to what could become conflicting mandates or agendas which may not serve our customers' best interests, and overlapping PRC complaint and antitrust provisions could inhibit new products and innovations. We'd like to work with you to bring better balance to this area in terms of liability, accountability and control.

The second is rate-setting. We appreciate the efforts of the subcommittee to streamline and simplify the ratemaking process.

Providing flexibility to adjust rates annually, if needed, so long as they remain below an appropriate measure of inflation is a thoughtful, progressive approach to the pricing of public services. We feel there are opportunities to simply still further in this area, so set pricing guidelines that are clear from the start that everyone

can see, anticipate and budget for. We look forward to discussing them with you.

Finally, there is a bottom line—the price of business flexibility. The bill would create some new revenue opportunities and cost savings.

There is the new pricing latitude granted by the bill to six competitive products. We anticipate gains from volume discounts and the test of service agreements. Adding in savings from the deregulation of international transportation and new investment freedoms, we expect to make about \$370 million a year.

Then, there are the costs. The bill would wipe out the \$1 billion debt the Government owes America's postage rate-payers. While it would continue to provide for free mail service for the blind, it would end congressional appropriations to pay for that service, about \$60 million a year.

It would end workers' compensation payments to the Department of Labor for employees who retired under the old Post Office Department, another \$240 million hit. The relaxation of the private express statutes by the establishment of a \$2 price threshold would put more than \$4 billion of our current business at risk.

The bottom line, the bill is likely to cost some \$2 billion in the first year alone, and these costs would begin immediately. A lot of the opportunities for new revenue would be delayed for 18 months until the completion of the baseline omnibus rate case. This imbalance between revenues and costs is of deep concern to us.

Mr. Chairman, I know you recognize the highly competitive marketplace in which we find ourselves.

We have intense competition in every area of our business. I have the greatest confidence in the employees of the Postal Service and their ability to run on an even track with our private sector opponents and win the race.

Effective competitive response is the key. It's at the heart of maintaining affordable universal service, service for everyone, everywhere every day, the No. 1 benchmark we both feel that this legislation must meet.

The bill would extend limited pricing flexibility to only six postal products, 12 percent of our business. We're committed to working with you to address this issue and make the price of business flexibility a price we and all postal customers are prepared to pay.

Mr. Chairman, members of the subcommittee, you've taken on a massive and what many would call a thankless task, so let me fix that last part and thank you for your initiative, your courage and your determination to make change happen in a fair, balanced and thoughtful way.

The bill you crafted is a solid beginning. We have a lot of common ground to build on. We recognize that legislative reform is a long process, and we're going to be in it with you for the long haul.

We look forward to working with you to implement a bill that can serve the mailing needs of the American people in the 21st century. Thank you very much. Now Mike and Mary and I would be glad to answer questions that you have.

Mr. MCHUGH. Thank you, General Runyon. I appreciate as always your comments and your time. Let me start with some of the comments that you made during the course of your testimony to try

to get a fuller picture of where and how you view certain components of this bill.

First of all, just a point of information. We had 14 hearings, but who's counting? You mentioned that we're only moving six of your products into the competitive area.

I get the impression from that that you feel we should have gone further in that regard, and you don't, in your testimony, expand or expound upon that.

Are there other product areas that are remaining in the non-competitive category or basket that you feel we ought to move over into the competitive area, and if so, which ones might they be?

Mr. RUNYON. Yes, sir. In analyzing the bill, we have come up with some. We would like to continue to look at those because we haven't had a lot of time to really get down into the bottom line on this thing.

For example, every product we have has some competition. Even First Class Mail that we consider in the monopoly has some competition.

I'm not asking to move that out. I'm just saying that we have competition there. We've lost over \$2 billion worth of business in that segment alone in the F&T part of our business in the last 5 years.

So we have competition there through fax and e-mail and the net. So there is competition there. One area that—

Mr. MCHUGH. May I interrupt you there?

Mr. RUNYON. Surely.

Mr. MCHUGH. Because I think terminology is important here. Is that competition, or is that alternatives? And I understand it's a fine line, but I don't see how we, in this or any other bill of practical implications, end those kinds, any way to level the playing field of those kinds of alternatives.

When we see competition, I'm really trying to focus on those areas where you're really going head to head with some entity.

Mr. RUNYON. I agree with you.

Mr. MCHUGH. In First Class, there is no such thing.

Mr. RUNYON. I agree with that totally. We see our business going away.

Mr. MCHUGH. OK.

Mr. RUNYON. And so I'm saying that as we see that business going away by other people—you call them alternatives, and they are.

And by the way, we're doing pretty good against some of those alternatives. We had some alternative delivery systems that have closed their doors because they can't compete with us anymore in those arenas. So we've been doing fairly good there.

But an area that we could talk about is advertising mail. Now, again, we're talking alternatives. There is nobody else that can take a piece of advertising material and put it in our mailbox. I think that's what the mailbox test is all about, but there is nobody else that can put a stamp on it and put it in our mailbox.

But we do have all alternatives out there. You take television, radio, newspapers—those are people that are taking our business.

And in the area of advertising mail, it might be that we should better control our pricing on that and how we deal with that. I just put that out as an example.

As I say, we're studying this bill still to try to come up with the things that we think might fit in different kinds of boxes. So that's really where we are with that.

Mr. MCHUGH. OK. Well, let's just say, then, that this is an important point for the development of this bill. There will be others, I feel fairly certain, that will come forward and say we have gone beyond the bounds of reason by moving those products that we have into a more unregulated, to use conflicting terms, a more unregulated environment, deregulated environment.

And we certainly want to entertain those areas that you feel we could go further into in providing you the kind of ability to compete that you think is not just necessary but, indeed, appropriate.

You say that the six products in question represent about 12 percent of your business.

Mr. RUNYON. Yes, sir.

Mr. MCHUGH. I note not everybody had as much fun over the Fourth of July weekend as I did in reading all of these testimonies we'll hear today, but in Chairman Gleiman's comments, he ranks it at 14 percent. I suppose that's an insignificant amount, although it's a large amount of money.

But how much money are we talking about, in your estimation? What is 12 percent of your business now being deregulated? How many millions, I suspect billions of dollars, might that be?

Mr. RUNYON. Mike says \$6 to \$7 million—billion, I mean.

Mr. COUGHLIN. \$6 to \$7 billion.

Mr. MCHUGH. OK. So it's a significant amount of money. Also, I think it's important to note, and again—and I'm not here to nitpick, but I think if we're going to address this bill, we've got to be cautious about what we say.

This bill, unlike your current regime, where you're held to a break even standard, allows you to make a profit not only in the competitive area but, in you're good enough or clear enough or whatever, in the noncompetitive area as well. I mean, you can derive profits, so that a little bit different as well. I'm not sure you're calculating that in your overall mathematical assessment of this legislation.

But as you go forward, I'd urge you to consider that at least because I think the standard we're creating here anew of not requiring a break-even is a significant one. Would you agree or disagree?

Mr. RUNYON. Well, Mr. Chairman, I know that there is an ability to make a profit there, and that means that I've really got to change my paradigm, because I'm not, frankly, of the opinion that the Postal Service really should be making a profit.

I think the Postal Service should be breaking even, providing universal service at an affordable rate. And if we could drop those rates, it would be even better.

So I think when we find ourselves in a position of making profit that we should be then dropping our rates so that we do break even.

We shouldn't be a money-making proposition. Now, I realize that I've talked a lot about the fact we made \$1.8 billion last year, and we're going to make \$1 billion this year.

But even after we make \$1 billion this year we will still have a negative equity of over \$3.5 billion. So we have got to somehow get rid of that negative equity, and the only way you do that is to make a profit.

But I think after we make that profit and get the negative equity to zero, then our objective as a Postal Service would be to deliver our mail and not make a profit.

I realize what you're saying, that we have the opportunity to make a profit, and in the competitive area, market demand should determine what we set our prices at.

And if the market will allow us to charge more for some of those services because that's what the market allows, then we ought to do that.

If we can make a profit on that, then that would help us to maintain our rates at a lower rate on the things that apply to the universal service.

Mr. MCHUGH. OK. You make some important points for the record and points that I'm sure Mr. Gleiman is taking down with great interest as well.

I would like, if I could interrupt here, because we have been joined by two members both of particular note, but I want to signify with great gratitude the presence of the full committee chairman, Mr. William Clinger, the gentleman from Pennsylvania. Welcome, sir.

Mr. CLINGER. Thank you very much, Mr. Chairman. I really very definitely wanted to attend this hearing, because it is of enormous importance.

I think it is the kickoff of what I hope is going to be a very successful legislative endeavor thanks to the fine work that you and your subcommittee have been doing in really touching every facet of this very important activity, Federal activity.

I think the bill that you've produced is an outstanding effort, and I want to commend you on that, and I wanted to be here to hear some of the testimony from some of the witnesses.

Mr. MCHUGH. I thank the gentleman very much. And whatever we've achieved is because the chairman has been enormously understanding and patient, and I appreciate that.

Also, from the minority side, a gentleman who has attended, I believe, all of our hearings, and for that I'm very, very grateful, the gentleman from Texas, Mr. Green, Gene Green, welcome.

Mr. GREEN. Thank you, Mr. Chairman. And I'll submit a statement for the record, but I wanted to congratulate you on putting together a bill. It has been talked about for 25 years, and I look forward to the hearings over the next month so we can look at your bill.

On first glance, it's a good start, and I look forward to working with you.

[The prepared statement of Hon. Gene Green follows:]

CONGRESSMAN GENE GREEN'S OPENING STATEMENT
JULY 13TH HEARING ON H.R. 3717

Thank you Mr. Chairman, I would like to commend you and your staff for the many hours of hard work that went into making this bill a bi-partisan effort and one that is accepted by the various postal groups. During this Congress we have heard from many groups associated with the Postal Service, on what their ideas are for reforming the Postal Service. This bill is a comprehensive effort to reform the Postal Service and attempts to make the Postal Service more like an independent corporation. While at the same time making it responsive to the public by putting in protections such as the Commission and Inspector General. I believe that while there is always room for

improvement, Mr. McHugh and his staff have laid out the foundation for the making of a good bill. I look forward to the next few weeks of hearings to see what changes we can make to this bill to make it more effective and widely accepted by all parties involved. Thank you Mr. Chairman.

Mr. MCHUGH. Thank you. And I thank the gentleman, as I said, for not just his support but his participation, and without objection, his opening comments will be placed in the record in their entirety.

General Runyon, let's go back to your testimony for a moment. You mentioned that the bill and what you assess as its various impacts could cost the Postal Service, I forget the exact figure you've ascribed, several billion dollars?

Mr. RUNYON. \$2 billion.

Mr. MCHUGH. \$2 billion at risk. You mentioned, when you talked about the relaxation of the Private Express statutes, moving the threshold from \$6 to \$2 could put \$4 billion at risk.

Let me make a comment and you respond to it. "At risk," it seems to me, means competition. Now, I must be frank with you. I thought that was the purpose of this exercise, to put you in a position to compete.

We have tried to do it in a variety of ways, taking what we think is a balanced approach but certainly a multi-directional approach. I think all would agree to that.

What part of that \$4 billion did you calculate into the cost of the \$2 billion?

Mr. RUNYON. One and a half.

Mr. MCHUGH. How did you arrive at that? Because if you're out there competing, "at risk" doesn't necessarily mean that you'll lose a cent of it.

Mr. RUNYON. Well, what you say is true, but we just use the models that we had and the pricing that we had. There is a lot of work that has to be done before we come to a conclusion here, but that's what our models would indicate today under present existing conditions that that would cost us.

Mr. MCHUGH. And others use that phrase "at risk," and I understand this, but "at risk" means the ability or the opportunity or, perhaps, the requirement to compete.

And I don't know what your models look like, but they don't have the faith in the Postal Service that I do. So I'm not so sure you'd lose a cent off it, but we can revisit that.

I don't want to monopolize the microphone here. I've many more questions, and we can go around several times, but I certainly want to defer to the other Members that are kind enough to be here. They have busy schedules as well.

I would ask the chairman if he has any questions he'd like to direct to the panel. The gentleman from Texas.

Mr. GREEN. Thank you, Mr. Chairman. I apologize for not being here earlier our schedules are always so crazy, I have a number of questions, after looking at the testimony over the last few days, of the Postmaster General, and after hearing some of your responses to the questions today.

First of all, the question that we came up with yesterday, on a marketability design and where the profits would go, you may have talked about that in saying the profits would go to pay down the debt that you owe.

How would it be reinvested? If there is a profit to be made after the debt is paid down, would that be reinvested in the institution just like another business would, in new equipment or what have you?

Also, the administration of the bonuses that would be allowed in here and how would you determine fair and equitable as suggested in Title X of the bill?

Mr. RUNYON. Well, first, on the reinvestment, we have a 5-year plan right now to spend \$9 billion in new capital. Actually, I think that number is probably low, because I think we need to go into more automation than that \$9 billion will allow us.

Any good business would want to raise that money so we wouldn't have to go borrow that money. In the past, we've borrowed money for capital investments.

We've been able to reduce the amount of borrowings that we have recently, and we'd like to continue to reduce that. So we would take the moneys, if we had a surplus of funds, to reinvest.

I wouldn't necessarily consider that a profit, but I'd consider that something that we would use to keep the business going to make it more efficient so that we could eventually reduce prices.

I also indicated that one of the things I'd like to do would be to reduce prices, because I think the American public is due what we can recover by being efficient. So I think that's the way that we would do that.

Mr. GREEN. Under questioning, you talked about the postal paradigm. Could you just tell us a little bit of what that means?

I guess, in your analysis of the bill, would that be an increase in the First Class rates, for example, from 32 to 52 cents? And for those of you who like puns, in my district, they would say that looks like a couple of paradigms to me. But if you can just tell us about the postal paradigm.

Mr. RUNYON. Well, the bill, as we see it, we keep re-reading this bill, and every time we read it we see something different in it.

And one of the problems that I'm having in dealing with the bill is I've only been in the Postal Service 4 years, and I learned the way it was.

This bill will, sort of, change the way the Postal Service will operate more than just a little bit. People like Mike, who has been here a much longer period of time, is probably more set in his ways on how the Postal Service is operated.

And I think what this bill does is interject a lot of new ideas, which is good. I mean, we're looking for that. We're just like everybody else. When you go to make change, you kind of back off of and look at it and say, you know, "Is this really good for me?"

That's what I'm talking about in the paradigm. I think it's a major paradigm. Mike, would you want to address that?

Mr. COUGHLIN. If I could just add, because he hit right on something I've been dealing with since we saw the bill a couple of weeks ago.

When I first saw the bill, I had a hard time looking at it and escaping from my experience over the last 25 years with the current ratemaking scheme with revenue requirements and the 10-month litigation with the Postal Rate Commission and some of the kind of litigious activity that goes on around that.

But the more I thought about it the more I began to appreciate that this really does make you think about this process in an entirely different way.

It brings a whole new set of forces to play. I'm not sure they're all good, but I'm not saying that all the pieces of this particular solution are the right ones, but it really does represent a different way of looking at the marketplace, at the way we change rates, potentially at the way we control costs.

Mr. RUNYON. I got a letter just this week from a person that says, "When are you going to get in the real world? When are you going to act like a business? Any other business like you're in would be cutting their prices 10 percent and increasing their volume."

This bill would allow us to do that, because the bill says we can't go up but so much. It doesn't say we can't go down.

Right now it takes quite a long period of time for us to go down on rates, and we have to have a rate case to do it. Under this bill, we could just drop the First Class rate by 5 cents and, you know, try to increase our volume.

I don't know that that would do it, and I'm not recommending that. I'm just saying that it's a whole new paradigm. We can do things under this bill we couldn't do before.

Now, there are certain things that we don't like too well, and that is not one of them.

Mr. GREEN. Mr. Chairman, we don't have lights, and I know if I run out of my time—but I have a number of questions—just kind of wave at me and tell me if I'm using up too much of the time.

Another question is about the trial program with opening up the mailboxes and the safety and privacy issue. I know, in comparing to other industrialized nations, that Germany and Sweden, for example, although I also know that even though they're industrialized nations, we are a little bit different from our neighbors in Europe or Western Europe or even Northern Europe on the use of the post office for utility bills, for example, or things like that.

That may not be the case in Sweden or Germany, although we try to compare apples to apples. Can you talk a little bit about the opening up of the post office boxes, the ones that are at our homes, necessarily, to other delivery systems?

Mr. RUNYON. The one concern—well, probably there is more than one concern, but one concern that I have is the sanctity of the mailbox I think would be lost when you open it up to anybody to be using the mailbox.

One of the concerns we have today is that anybody can go to a mailbox and take something out, but right now it's against the law to do that.

It's against the law to even open a mailbox door unless you are a letter carrier or a postal employee. Under the test, anybody could put mail in that box, and you don't know whether it's going in or coming out.

That's a real problem, and I think from a standpoint of sanctity, I think that's a concern. Again, Mike has been here a lot longer than I have, and he could talk more about the operational concept of that.

Mr. COUGHLIN. There are some operational issues to be dealt with in the test, but this particular piece of the bill, along with the section that would relax the Private Express statutes, are the two parts of the bill that I think fundamentally get at and potentially

endanger our ability to provide an affordable universal service, which I think is an underlying theme here and what this whole thing is all about.

Mr. Runyon mentioned the operating problems with them. There are problems. It's a practice in this country for you or I to be able to leave mail, outgoing mail, in a box.

That box and nothing else is going to be in there when the carrier comes by, picks it up and takes it away. It's a post office at your front door almost.

That, obviously, is one issue. It becomes more complicated when you've got other material in the box as well.

Mr. MCHUGH. I don't disagree with anything either the Postmaster General or Mr. Coughlin said. I think these are concerns, but I would note they are at this moment, although very serious, nothing more than concerns.

To my knowledge, there has never been a test of this issue officially sanctioned. Maybe in some communities they do it, and we didn't know all about it.

It was very strongly suggested on the record when we had the heads of postal services from other nations before this subcommittee that where it is done in other countries it is not a problem.

Now, I agree with the gentleman. That doesn't mean it's necessarily transferable at all to this country. We have different realities and different expectations.

But the test is designed to try to get a better framing of that issue here. We were very careful in letting the post office, Postal Service, be the authors of the study so that if there were a commission of error, it would be more than likely on the side of caution.

I don't want to do anything that unnecessarily or directly challenges the ability of that universal service at uniform price. That doesn't mean I'm right, you're wrong or we're all right or wrong.

It's just that is the reasoning, and if at the end it shows the kinds of concerns are indeed reality, then we'd consider that, but that is the intent.

Mr. COUGHLIN. Mr. Chairman, I don't want to prolong this, but you're absolutely right. The bill does allow us to kind of structure the test across the three cities, and then the GAO eventually checks it out, I guess, or audits it. One of the things I'm puzzled about is how do we structure a test where we can really know whether there is success or failure?

That part I haven't been able to fathom yet, and it's not clear to me how almost any test will really get at a potential long-term threat to our ability to provide universal service with a short-term test like that. It's a puzzler, and I think we need to spend some time, perhaps, talking with the—

Mr. MCHUGH. Is the problem in the words you use, "short-term," or is the problem in the very nature of the issue?

Mr. COUGHLIN. I think it may well be in short-term. I think, for example, if the mailbox rule were to be eliminated tomorrow, I don't think we'd see a tremendous out-rush of material from the U.S. Mail to an alternative carrier, which is one potential longer term threat, I think.

Again, it's just not clear to me how we're going to measure success in that test. I'm not saying there isn't an answer to that, but it has not made itself clear yet.

Mr. MCHUGH. I think there are two sides to that equation. One is you're right, if we're calling for a test and we have to design one that somehow and, in reasoned ways, projects and ultimately defines the outcome.

But with all due respect, I would suggest if you are the ones who are concerned that opening up the mailbox is going to lead to some minor or major catastrophe, it's up to you to define what that catastrophe is as well.

I don't know. You the ones that are saying it. I assume you have concerns of outcomes, so what are they, and you measure for them. But you're right, we shouldn't prolong this. I thank the gentleman for yielding. He has been very patient. I yield back.

Mr. GREEN. Let me go back to the question of the bonuses that the bill talks about. Now the Postal Service does not provide bonuses.

If the postmaster in Houston, for example, has a 99 percent success rate or delivery rate compared to someone with a 79 percent, there is no way to reward that postmaster, is that correct, under current law?

Mr. RUNYON. Under the current law, we can pay anyone up to the pay cap, and we do have a bonus program right now. The bonus program, if things—if we continue down the road we're going right now, that postmaster might be entitled to as much as a 28 percent bonus this year.

Now, that wouldn't all be paid out this year. The bonus we've got paid out is economic value added, and we'd pay out part of that this year because we want to make sure that they continue to do good.

And if they were to have a bad year, part of that bonus, which is "banked" we say, they would lose. So there is a way to lose it, and there is a way to get it.

Mr. GREEN. And that's only available to supervisors, I imagine?

Mr. RUNYON. That's available to our management except for people like Mr. Coughlin, who is \$400 charged to the cap. We had a bonus last year, and some of our people got as high as \$16,000. Mr. Coughlin got \$400.

So we're able to do that now. As I read the bill, the bill would allow Mr. Coughlin to also participate in the bonus program.

We probably have somewhere around—and it depends on the size of the bonus—but about 200 people right now that regardless of the bonus they would not get all of it.

Some of them get some of it, but they can't get it all under the present way it's being administered.

Mr. COUGHLIN. Probably equally important is that the current system goes down through all of our exempt employees. They all have an opportunity to share in the organization's success or failure.

Mr. GREEN. But it doesn't cover, for example, bargaining units?

Mr. COUGHLIN. Let me add one other thing, too. It does not cover bargaining unit employees.

Mr. GREEN. Thank you, Mr. Chairman. I have a lot of other questions, but I'll be glad to defer to some of the colleagues who are here.

Mr. RUNYON. Well, I could go further, as far as bargaining unit employees are concerned. I would like to see bonuses applied to all employees of the Postal Service.

I would like to see pay for performance be the way people are paid, as opposed to getting a pay increase every year because another year came by. I'd like to see performance be the criterion for pay.

Mr. MCHUGH. Then you love my bill, because that's what it does.

Mr. RUNYON. Right. I like that part of that bill great.

Mr. MCHUGH. Well, I should know when to let well enough alone.

Mr. GREEN. Mr. Chairman, this side might have a little trouble with that, although I'm glad they don't pay Congress on that, particularly this session.

Mr. MCHUGH. The other important point about this is beyond your current bonus system this one, as was just noted, applies to all employees.

And certainly, that was one of our major intents, to get that kind of reward system down to what are known as the rank and file that as I know you agree, Mr. Runyon, are really the heart and soul of the Postal Service.

But also it provides going away again from the break-even provisions to a profit motive that would, I hope and I feel relatively certain, would encourage those rank and file employees to become more effective, more efficient because the incentive is now there for them to help generate a profit which, in turn, could be directed in part back to them.

That's private sector thinking, I believe. I've been around here for long enough to lose some of that.

Mr. RUNYON. I hate to say this, but I have missed the part that this is for every employee in the Postal Service in the bill. I just didn't read it right.

Mr. MCHUGH. My blood pressure went up 97 points, until I saw everyone nodding yes.

Mr. RUNYON. I understand. See, I missed it.

Mr. MCHUGH. Well, we probably still have other issues, but let's move on. I'd like to acknowledge gratefully the presence of the gentleman from New York a little bit down-State from me, Major Owens, and turn the microphone over to him for either opening statement or questions, if he has any at this time.

Mr. OWENS. Mr. Chairman, I was obtaining most of the testimony. I would like to yield to my colleague, Mr. Green, if he had a few questions he didn't cover. I'll submit some questions in writing.

Mr. GREEN. Going back on the question that the bill would limit you on increases, for example, in first class, and the example was 32 cents to 52 cents, how is that when compared to—right now I know the Postal Rate Commission may take a year or longer on first class rates, but what would the bill do as compared to the current law now on first class postage?

Mr. RUNYON. Well, as I understand the bill, there would be a factor set that we could go to. Now, I think GDPPI is the base factor, and then there is an X factor which troubles us considerably. The X factor seems to be rather subjective.

Mr. GREEN. Which was my next question. Could you talk about the X factor so maybe some of us who didn't do very well in high school algebra can understand the X factor?

Mr. RUNYON. Well, it's a factor that, to me, is rather subjective, as I read the bill. I mean, I quite understand it thoroughly.

I have no problem at all with having an index that says—I have been talking about CPI, and to say that we can't raise our prices any more than CPI goes up—because that's what I've been—I've not referred to GDPPI before, because that's not something that people normally talk about.

They normally talk about CPI, although I know the GDPPI is used in other areas for rate-setting purposes. If you use that, then I wouldn't have a problem, because that means that you have to be productive.

I'm firmly of the opinion that we should be productive enough so that we could keep within the rate index.

Now, I would point out that we had a price increase after 4 years, and that price index was two points below CPI.

I don't know how it related to GDPPI. We weren't looking at that. We were looking at CPI. But we were below CPI.

Now, if CPI were to be the index that was in effect, then we would have been able to just change that rate ourselves without going to a Postal Rate Commission, because it was below what we would consider in an index.

If we considered GDPPI, I'd have to go back and see if we could have actually raised our prices the 10.3 percent on average that we did raise.

So the indexing idea, I like that idea. I'm very concerned, though, about the subjective nature of the X factor, and I need to learn a lot more about that.

Mr. GREEN. I think all of us do on that. My last question, and I know this creates an Inspector General that we're fairly familiar with in other agencies.

How do you view the creation or the Inspector General being involved, for example, in collective bargaining that this bill does not touch?

Mr. RUNYON. Well, we have an Inspector General now. This creates—the change is that the Inspector General would be appointed by the President.

At the present time our Inspector General, who also is our chief inspector, does do collective bargaining with the postal police union.

They're involved in that because the postal police work for the chief inspector. Under this bill, I would assume, if I read it correctly, the Inspector General would really not be controlling the chief inspector. So the chief inspector would do any negotiating.

The Inspector General would not be involved, I don't believe, in any kind of collective bargaining.

Mr. GREEN. That's the only change you can see in how—

Mr. RUNYON. Well, there is another change that is very objectionable to our Board of Governors and also to ourselves, and that is it's Presidentially appointed.

We think that the system is working. We have an Inspector General right now, and we think the Inspector General is doing a good job of carrying out their duties and responsibilities of waste, fraud and abuse, which is what they're set out to do.

We think it's working. I guess we don't understand why it needs to be Presidentially appointed.

Ms. ELCANO. If I could answer that, there is another provision instituting an Inspector General for the Rate Commission, the Postal Rate Commission, and it's not clear.

We're still trying to understand the intent. It's not clear what role that Inspector General at the Rate Commission would have vis-a-vis rate cases or in activities that may translate back to the Postal Service.

And that one is not Presidentially appointed, but by the head of the agency. I think that we would like to spend some time with you staff and try to figure out what the clarity would be between the role of the two Inspectors General.

Mr. RUNYON. Normally, Inspectors General would have the authority to go into any kind of a relationship. For example, our Inspector General can go into our vendors and check on how they figure their prices, and things of that nature.

We would have to assume that the Inspector General of the Postal Rate Commission could also come in and check on how we do our rates in addition to our Inspector General being able to do that also.

So we kind of see double jeopardy there. It may not be that way, but that's the way we see it under the Inspector General law, that they have the authority to go do that.

Mr. GREEN. Thank you.

Mr. MCHUGH. Maybe I can help. First of all, I want to make it very clear—and the purpose of these hearings is not for me to sit here and defend the bill, not that I in any way object to that. I really am far more interested in trying to ascertain for the record your concerns.

But nevertheless, as two points of information, I want it to be very clear that I in no way, nor does anything in this bill intend to criticize the current Inspector General.

I've met with him. I admire the man. His record as an employee of the Postal Service and his record in the current position are exemplary.

I, however, am concerned about, if nothing more, the sense and the impression that is given when a \$55-plus billion enterprise that we are now moving or attempting to move very deliberately toward, for the lack of a better word at the moment, commercialization, has an IG who is internalized to the extent that this IG is internalized.

And across this Government at this level of function I'm not aware of another agency that has that structure. I won't say it's inappropriate, but it is troubling.

Beyond that, we have heard time and time again from, particularly, employees who have the impression—and I'm not saying it's correct, but like in politics, sometimes impression is reality, and

perception is reality—who have the impression that the IG is directly controlled by the administration and yourself and the Board of Governors and therefore has little trust, they have little if no trust in the IG.

And that greatly, in my opinion, hinders the IG's ability to pursue certain matters. So that is the reasoning, and it's not in any way intended to be critical of the current process.

It's to clean it up in terms of structure and to conform it with other IG functions. As to the IG in the PRC, we are proposing, as you know, Mr. Runyon, that we assign to the PRC rather extraordinary new powers, power of a subpoena.

In that regard, we presume there will be proprietary information that may be exposed, and we feel that it is important for the PRC to have an Inspector General to perform those very new and, for them working in this new paradigm, very different functions as well.

And if we're looking for a way to understand their role in the process, as Ms. Elcano suggested, I would suggest perhaps we look at the functions of the IG in the FCC, because that is the model upon which we built it.

So maybe by looking at those, we can help to better understand the reasoning there. The gentleman has left. I'd be happy to yield to the chairman of the full committee, Mr. Clinger, for any questions.

Mr. CLINGER. Thank you very much, Mr. Chairman. Mr. Runyon, I appreciate your testimony and your thoughts on this really, I think, landmark piece of legislation that we're undertaking to start the consideration of here today.

As I understand it, from having a cursory review of the legislation, it would take the Postal Service out of the appropriations process where you now receive somewhere around \$100 million, as I understand it, through the appropriations process.

What impact will that—well, maybe you could explain a little bit how that appropriation process works now and what the impact of taking the Postal Service out from under that process would impact upon your nonprofit mailers, do to the fact that that really is their benefit?

Mr. RUNYON. There are two ways that we're affected. First is the first year effect. We get money from Congress today to pay for workers compensation cases of post office employees.

By "post office employees," I mean those members of the post office before it became the U.S. Postal Service. At the time that legislation was organized in 1970, it was decided by Congress at that time that they would be responsible for any costs associated with those employees who were members of the old Post Office Department.

That amounts to us over the first year, roughly, \$240 million first year we'd have to write off. And then, each year after that it would cost us around \$15 million that we would pay to those workers.

Under the not-for-profit mailers, in 1983, Congress owed the Postal Service about \$1.2 billion because they had not paid what they had owed at that time.

So they passed a bill and said, "We're going to get out of this business of giving you money." And so the way we're going to do that is they passed a bill.

And the bill said that "We owe you \$1.2 billion, and so therefore we're going to pay that off at the rate of \$29 million a year, and we'll do that for 42 years, provided Congress reappropriates that every year," and we've received that money for a couple of years.

So if that were stopped, which the bill recommends, it would cost us, in our profit and loss statement, \$350 million the first year.

Then, every year after that it would cost us somewhere around \$29 million. The other thing where we're affected is free mail for the blind and for overseas voters.

People who are overseas can vote free, and mail for the blind is provided free. That amounts to, on an ongoing basis, about \$62 million a year.

And when you add that all up, it would come up to, roughly, \$100 million, \$105 million a year that we would not receive in appropriations. The first would be, roughly, \$600 million, but then, thereafter, it would be \$100 million, roughly.

Mr. CLINGER. The only other question I had related to the proposal to create a Presidential Postal Employee/Management Commission to help address what I think everybody would agree have been some fairly serious labor/management issues in the past to help alleviate that and to undertake part of the mediation apparatus of this thing.

How do you view this, or do you view that as helpful?

Mr. RUNYON. In looking at the bill and knowing, you know, not that much about it yet, I don't know if that commission is going to lead to legislation that would legislate our labor relations matters.

Now right, we're under the National Labor Relations bill, except that we do have some things that have been legislated by Congress.

For example, we have mandatory binding arbitration. That has been legislated. I don't know if this would lead to more legislation or not.

If it did lead to more legislation, then I could be in favor of it, or I could be opposed to it, depending on what that legislation was. The GAO has just made a study—

Mr. CLINGER. Do you think it's superfluous, though? Do you think that the existing structure would permit you to address the problems that, hopefully, would be addressed by this commission?

Mr. RUNYON. Well, GAO made a study recently, about a year and a half study, and they released that about a year ago.

And when they released that study, we went forward to our unions and said, "Look, we got this study. Let's sit down and try to work out these things."

It just so happened that that came about at the time we were in negotiations on our contracts, and we said, "We don't want to talk to you right now because we're in negotiations."

Well, we're out of negotiations, and it looks like next month we're going to sit down and have a meeting with all our union leaders and employee organizations to discuss those things.

Now, if we start the commission, what I don't know is whether it would slow that down and people say, "Well, there is no need for

us to meet on this GAO report, because we're going to have another report, and we'll wait and see what that says."

I don't know if it would slow it down or not. It might slow down the need or the willingness of people to participate in that, if they thought that, "Well, why should we agree with something here now"—in another 2 years or so—I think the first report is due after 18 months, and then a year later is another report, if I remember it correctly.

We are going to be in negotiations in 1998, I believe, with all of our unions again on wages and other matters. I don't know how the timing would be.

I know when the Kappel Commission met I believe that the Kappel Commission completed their work in 1 year. That work set up the Postal Reform bill of 1970.

So I would think that if we were going to go into a commission, it would be better to shorten it down as short as possible.

Mr. CLINGER. Thank you. Thank you, Mr. Chairman.

Mr. MCHUGH. I thank the chairman. I'd be happy to yield to the ranking member.

Miss COLLINS. Thank you, Mr. Chairman. Mr. Runyon, when you go to buy a new car, you tend to get overwhelmed by the car salesman.

He or she tries to dazzle you with fancy descriptions and features, but the bottom line for me and the people in my district and consumers across the country is what is all of this going to cost me?

I have a series of questions for you to respond to. Just what does this new postal paradigm mean? How much more will it cost to mail a First Class letter? Will rates stay at 32 cents or balloon up to 52 cents?

Is this going to make our mail service better or create administrative chaos? Will you operate more like a business or abandon our commitment to maintain a universal Postal Service at a uniform affordable rate? How about first the cost?

Mr. RUNYON. Well, first, I don't think that the bill, depending on how it ends up, would even start to do what you're talking about to a First Class letter.

Miss COLLINS. What am I talking about?

Mr. RUNYON. Raising the price from 32 cents to 52 cents.

Miss COLLINS. Will it raise the price at all?

Mr. RUNYON. It shouldn't increase the price.

Miss COLLINS. At all?

Mr. RUNYON. I don't think the bill itself will do that. That price is going to be determined by our cost and our volume. If our volume drops, the cost goes up.

Miss COLLINS. Have you figured that out yet, that our volume will drop or go up?

Mr. RUNYON. Our volume right now is not going up the way we anticipated that it would go up this year.

Miss COLLINS. So that means the cost will go up?

Mr. RUNYON. Well, unless we reduce our cost.

Miss COLLINS. Mr. Runyon, I ask again will the cost of a letter go up? Do you project the cost of a letter going up?

Mr. RUNYON. Over time the cost of mail will probably increase. It has for the past 25 years. I don't anticipate any huge increases because of this bill. I just don't understand why it would.

Miss COLLINS. So you mean, like, 2 cents or 5 cents, the usual?

Mr. RUNYON. Well, I can speak only in the near future. We don't expect that prices are going to go up in 1997. We see we are clear this year to have a no price increase in 1996.

With the plans that we have in place now, we think that the price will not go up in 1997. Now, I did just get through saying we're at a break-even, basically, in 1997.

As a matter of fact, we look like we would make about \$55 million based on our plans at the present time in 1997. Now, if this bill got passed in 1997, then that \$55 million gain would have some loss to it.

We would have to take a loss that year, if we didn't do something to offset it. We should always be trying to offset any costs, and we are.

Miss COLLINS. And the price will go up?

Mr. RUNYON. It wouldn't necessarily go up—

Miss COLLINS. How can you offset costs? I mean, how do you offset costs?

Mr. RUNYON. Well, you offset costs through productivity. You offset costs through—

Miss COLLINS. What does that mean? You mean lay off people?

Mr. RUNYON. No. It means having looked at all of our processes, determining a better way to do it. It means the longer we hold our prices the same, the more our volume stays the same or goes up. When we raise prices, volume comes down.

Miss COLLINS. I know that.

Mr. RUNYON. And if we lowered prices, volume might go up. We don't really know that.

Miss COLLINS. So you might lower prices, then?

Mr. RUNYON. We have the capability to under this law, but I'm not holding my breath to think that's the first thing we'd do.

Miss COLLINS. So you won't be lowering prices. OK. Mr. Runyon, time and again in appearances before this subcommittee and in ads taken out in major newspapers across the country, you've stressed the importance and the success of the U.S. Postal Service in improving the overnight delivery of our mail.

I mailed a letter. It cost me over \$10, just a regular old letter, for overnight delivery. It got there 2 days later. Can I get a refund? Never mind.

Can we expect good or even better mail service under H.R. 3717?

Mr. RUNYON. That's not something I've analyzed yet. We're expecting better mail service next year than this year, and we're expecting better mail service every year than the year before.

I don't think that there is anything in this bill that makes mail service go bad all of a sudden.

Mr. COUGHLIN. Could I add something to that? This bill, and the chairman has recognized this, this bill expects us to compete, and I'm convinced that the secret to our competing on whatever playing field is being able to control both our costs and improve our quality.

So if that effect comes out of this bill, I'd say the answer is yes.

Miss COLLINS. What do fewer postal employees and privatized personnel and operations mean to mail service and delivery? What will fewer postal employees mean to the security and integrity of mail service?

Mr. RUNYON. I don't know anything in the bill that says there would be fewer postal employees. I'm not familiar with that. Maybe I missed something.

Miss COLLINS. For some time now you've been calling for a summit with postal labor unions. H.R. 3717 establishes a Presidential Postal Employee/Management Commission. Should not postal labor unions be specifically included in this commission?

Mr. RUNYON. Well, how you would make that commission up is something that we need to discuss. The way it is now it's made up, I think, by two union members, two management members and three other members appointed by the—

Miss COLLINS. I will tell you how it's made up. The commission would have seven members, two representing large, nonpostal labor organizations, two from management ranks of similar-sized private corporations and two who are well known in the employee/management labor mediation and collective bargaining area. An additional nonpartisan appointee would serve as chair.

Do you agree that postal unions should be specifically included? Would you support that?

Mr. RUNYON. I think the way it's drawn up would be quite all right, because I think we need to get a—we're talking about something for the country.

Miss COLLINS. OK. Never mind. You support it. Mr. Chairman, would you consider putting that in specifically?

Mr. RUNYON. Excuse me.

Miss COLLINS. Either you do or you don't.

Mr. RUNYON. I didn't say I supported having postal unions in that.

Miss COLLINS. What do you support, then?

Mr. RUNYON. I support having large unions in there who also deal with large employers, because I think what we're looking at in that commission, if I understand it correctly, is to bring the whole nationwide look at this thing, as opposed to just a parochial postal look at it.

Right now we are working with our postal unions. GAO has put a report out that says what we should be doing, and we should be having that summit, and it is planned to be in August. And we'll be talking with our postal unions in August about that.

Miss COLLINS. You're opposed to specifically having postal unions on the commission?

Mr. RUNYON. I haven't really made a decision yet on whether you really should have the commission or not. What I'm saying is that the commission, as it now stands, would not give us a response totally to the labor/management situation for, I believe, 3 years.

I may be wrong on that, but I think there is a report that comes out in 18 months and then two other reports 6 months apart, or something like that.

Mr. MCHUGH. If the gentlelady would yield?

Miss COLLINS. Sure.

Mr. MCHUGH. Let me just say we came forward with this with something in mind. I think the Postmaster General has defined it reasonably well.

We were trying to provide an opportunity that really hasn't occurred, to my knowledge, previously to let outside union folks, organized labor folks, outside labor as well as management experts, so-called experts, take an outside-in look at it and make a report.

There is nothing binding about it. That doesn't mean that it's the best approach to take, but that is the intent. I know hell is paved with such things, but certainly, as we go forward, if there are those who feel that conceptually the commission is a good way to start but they feel there are twists and turns and additions or deletions that need to be made, we're more than happy to consider those.

And the Postmaster General doesn't need me to defend him, but I don't think he's particularly enamored with the concept as yet.

So to ask him would he support changing it before he even supports doing it may be a little ahead of where he is at this moment.

Miss COLLINS. Well, I just want him to think, Mr. Chairman. I think, as we go into the 21st century, that this country should lead the way in involving the employees, who actually make organizations and systems go, in this case the postal employees.

I mean, the whole postal system consists of postal employees, and as Mr. Runyon knows, I've been on the committee 6 years, and I've always argued against plantation-type management where the workers have no input, little input.

The workers could tell you how to streamline the post office and how to make it more efficient and how to make it more cost-effective, if you'd listen to the workers.

But when we have that adversarial role of management versus the employees—and the postal unions represent the employees. That's not a bad thing. It's a great thing. It is what made this country the way it is today.

And I would just like to see it spelled out in the bill that the postal unions are included everywhere here.

One final question, Mr. Chairman. Under your leadership, the Postal Service now employs over 822,000 people.

Last week you were quoted in a Washington Post Federal Page section as predicting the need for a smaller workforce. Could you explain how this legislation will assist you in reducing the Postal Service workforce?

Mr. RUNYON. I was asked at that meeting, symposium that we had with former Postmasters General, what my vision was of how many employees would be there, and I said I think there will be less.

And the reason I think there will be less is because there are alternate means of moving communications that we now call mail such as through the Internet, through fax and through other things like that.

I think that they will continue to get at our business. I am vitally concerned about the Internet because one of these days—that Internet has been going now for about 20 years, and one of these days it's going to reach terminal velocity, and it's going to really cut in.

And when it cuts in, we're going to see mail really drop off, and when mail really drops off, the need for as many people as we have will drop off.

So that's just a vision that I've got out there 10 years from now. We're going to have less people. It's just going to be that way.

Miss COLLINS. I know. Unfortunately, we will have less people working all over this country, which will probably put us back in the Third World class eventually, because you need workers to buy products.

But Mr. Chairman, one thing to you, I wish you would rethink the mailbox project where nonpostage items would be deposited in private mailboxes, because you're taking a chance with any Tom, Dick or Harry putting things in a mailbox.

And you have senior citizens and fixed income people who wait for a Social Security check. They don't want nonpostal any Tom, Dick or Harry coming to their door going through their mailbox.

Right now the only people who are legally allowed to do that are postal employees. So I think we need to look at that as a security measure.

Mr. MCHUGH. I appreciate the gentlelady's comments, and I appreciate her coming back and her willingness to do that explains why she was not here when we talked about this earlier. We are concerned about that as well.

Miss COLLINS. OK.

Mr. MCHUGH. That is why, at the risk of repeating myself—

Miss COLLINS. Oh, I'm sorry.

Mr. MCHUGH. No, no. Please don't apologize, because you raise a good point. We are concerned, as I said. We have had testimony before the subcommittee, as the gentlelady is aware, from other postmasters general of other nations who have opened mailboxes where it has not been a problem.

And we felt the test would be a good way to try to assess it. As I mentioned earlier, the Postmaster General and his administration, who are not particularly enamored with this either are given the controls and the authority to structure this test.

So if there is error, it will be on the side of caution, because it's certainly not my interest to see the kind of chaotic situations that the gentlelady very rightly cites.

So we're concerned about it, too, and I certainly promise you we'll proceed very cautiously in that regard.

Miss COLLINS. Thank you.

Mr. MCHUGH. I thank the gentlelady for her comments. I'd like to recognize now the gentleman from Maryland, Mr. Ehrlich. Welcome. Thank you for being here, sir.

Mr. EHRLICH. Thank you, Mr. Chairman. Mr. Runyon, I just want to explore one issue with you. I apologize for being late. I'm needed somewhere else actually right now.

On page 3 of your statement, with respect to the issue of rate-setting, you say, "Providing for flexibility to adjust rates annually, if needed is good," et cetera.

"Thoughtful, progressive approach to the pricing of public services," and then you go on to say, "We feel there are opportunities to simplify still further in this area to set pricing guidelines that are clear from the start."

Would you expand on that statement?

Mr. RUNYON. As I understand the pricing guidelines, first, GDPPI is used as a factor, and then there is an X factor that is come in there that I believe is very subjective.

I don't quite understand it. I need to know more about that. I personally believe that we should be held to some indicator that is used in the country as a whole.

Mr. EHRLICH. All objective standards?

Mr. RUNYON. Excuse me?

Mr. EHRLICH. You want all objective standards?

Mr. RUNYON. Right. They should be objective and not subjective is what I'm saying. For example, we raised our prices after 4 years. We didn't raise our prices for 4 years, and we raised our prices after 4 years.

And we raised them two points below CPI. We thought that was pretty good, and so did our mailers think that was pretty good.

CPI is being used. GDPPI is being used, and that could well be OK. I just don't understand GDPPI. I know it's used for setting rates in other industries, so it might be OK.

The X factor, though, is a question mark in my mind. I don't quite understand that. I see the possibility of a lot of subjectiveness going into that, and that's my concern.

Mr. EHRLICH. And you need this in order to budget, obviously, which is, I guess, the last statement that you make.

"We feel there are opportunities to simplify so that everyone can see, anticipate and budget for these pricing guidelines."

Mr. RUNYON. Yes. Not only our budgets, but people who use the mail need to know the extent to which that can move, and the X factor, I think, would be a little confusing to all of us.

Mr. EHRLICH. Thank you very much. I yield back, Mr. Chairman.

Mr. MCHUGH. I thank the gentleman. Let's stay on this point of what your concerns are with respect to the "arbitrary" I believe was the first word you used, "arbitrary nature of the determination of the X factor."

Under your current system, when you put in for a rate increase to the PRC, there are nine factors that are used to determine the appropriateness of that rate increase, correct?

Mr. RUNYON. Yes, sir.

Mr. MCHUGH. I have them in front of me. They are such things as, No. 1, the first, and if we presumed they are in declining order of importance, this would be the most important, "the establishment and maintenance of a fair and equitable schedule." That's pretty arbitrary.

No. 5, "The available alternative means of sending and receiving letters and other mail matter at reasonable cost."

Who says what is a reasonable cost? Who decides—my point, without belaboring it is I think any time you have a schedule by which you're guiding a certain process there has to be almost by definition, certainly from a practicality perspective, some arbitrary aspects to it.

We have, as you know, or if you haven't, I don't mean that in a critical way, I'm just saying if you haven't had a chance to look at it, six factors.

"The level of postal revenue is attributable to the product." That's pretty definable. I don't think that's arbitrary.

"Productivity of the Postal Service in providing postal services." You, yourself, maintain an internal measurement of productivity. Is that not true?

Mr. RUNYON. Yes, we do.

Mr. MCHUGH. So that's pretty definable. That's not to say that the X factor cannot be more precisely defined, and we're willing to do that.

But I don't want the record to reflect an indication that I don't think is either fair or accurate that somehow this is a new sense of arbitrary disposition that heretofore has not occurred.

We're willing to talk about them, but I don't think this is anything new, and I think if you pick and choose, actually, the measurements that we have defined, six of them, at least four of them are far more precise and less arbitrary than those that you're currently under.

So in your effort to strive to better focus on this new paradigm we're proposing, I think it's important that you look at those as well.

With that, let us, for the purposes of this discussion, assume this bill to have passed, let's say, next month, give ourselves some time.

I'd like very much from you the input as to how to make the X factor better. I'd like to assume—and oppose it if you will.

I'm not suggesting you shouldn't, but I would very much appreciate how you. The X factor could be more precisely defined, because I don't want this to be an arbitrary process. We're trying to get away from that.

Mr. RUNYON. Well, I appreciate that offer, and we will supplant the record on that. As a matter of fact, there are several issues, Mr. Chairman, that we would like to have the opportunity to supplement the record as we go along in studying this bill.

Mr. MCHUGH. Sure. Absolutely. If I might, you talk about the re-regulation of the international mail business. There are some slight differences, but in reality, the biggest change that we propose is that because we place the international mail into one of two baskets that's what we have to deal with here.

Into the competitive basket, it is thereafter subjected to two qualifications. The first is that it cover costs, and the second is that it makes a reasonable contribution to overhead.

And beyond that, you can charge whatever you feel the market will allow, which is what I assume you're doing now.

So unless you're pricing international mail now under cost, I don't see that that's a real substantial change.

Mr. RUNYON. Well, you're saying that even though it's in a monopoly position, which is where it is for the single-piece letter—

Mr. MCHUGH. I'm not. We need to get to single letter later. I'm talking about all other.

Mr. RUNYON. Oh, well, the other is no problem. That's in the competitive arena, but I would contend that every piece of international mail is competitive.

Right now that's the way it is. It is competitive, and what this does is to take the single-piece letter, the single-piece package and

move it out of being competitive and put it into a monopoly position.

And we don't think there is a monopoly on international mail, because we've got four countries coming in here now taking mail internationally and moving it out.

We don't have a monopoly on that, and this would indicate that we would start to regulate it as if we had a monopoly.

Mr. MCHUGH. So your concern, then, out of the whole international mail market in which you're dealing at this moment is that piece that we retain in the monopoly or the noncompetitive area?

If we were to move that within remaining piece out of noncompetitive into competitive, you would no longer be troubled by the—

Mr. RUNYON. Oh, no. We have no problem with monopoly mail or with the international mail being in the competitive arena. That's where we think it ought to be.

But right now it's in both arenas, and we just don't think it belongs in both arenas.

Mr. COUGHLIN. If I could add something to this, Mr. Chairman?

Mr. MCHUGH. Yes, sir.

Mr. COUGHLIN. The list within what is now called the noncompetitive categories, the four baskets, it's more than international mail.

International mail is a totally deregulated product, but the whole area of parcels, there are single-piece parcels included in that. There is standard mail, the former adverting mail that's included in that which has a great deal of competition out there and we believe are clear candidates to be considered in another area.

When you look at the design of the competitive side of this thing, there are checks and balances there, at least if I'm reading this bill correctly.

It does require us to cover our attributable costs. It does require us to make a reasonable contribution to overhead, and it does provide or an audit of that activity as to compliance with that requirement.

Now, I'm not sure whether—if it requires reasonable, I'm assuming that that also requires that there is a corresponding unreasonable amount as well.

I do believe there is a check there, and there are some reasons to think seriously about being able to push some of that over into the competitive basket.

Mr. RUNYON. He's bringing up a separate thing there under parcels, which we're far from being a monopoly on parcels. We are very much a minority on parcels, and we need to be able to compete more.

I would like to say one more thing about the competitive arena that does change in the international mail arena, and that is today we can change the price on an international product when we need to change the price, when the market demands it. As I read the bill, we can only change the price one time a year, and I think it has to be on the same day each year.

So that takes away some flexibility that we have now even in the international mail. So I would like to correct myself and say there

is a problem with that, because I think anything that is competitive should be competitive.

And "competitive" means that if your competitor changes their prices, and you can change your prices, still meet all of the conditions that you're talking about, then you ought to be able to do that.

Now, there is one thing further in the bill. When you say you have to meet all your costs, competitors don't have to do that.

I think that if you could take on the competitive side, the 12 or 14 percent, whatever that is and say that it had to break even, that would be better than saying every product has to break even, because any business out there has some products to get their product name in the market that they might sell at a below-cost situation.

Not everything that competitors sell makes money, especially our competitors. So that's another aspect that we'd like to study a little bit more and be able to supplement the record.

Mr. MCHUGH. Well, we certainly encourage you to do that. Playing, as I have in the past, devil's advocate, I suspect if some of your competitors were here, they'd say, "Well, that may be true, but we also pay taxes. We also pay parking tickets. We also pay a lot of things."

And I'm not suggesting necessarily that you should, but that is a unique challenge in trying to provide a transition from your current status to a new, more competitive one, that those kind of issues are not something I don't think we're going to resolve here. So we're trying to balance that back and forth.

Mr. RUNYON. Oh, sure. But on the tax situation, if we are a break-even company, then no taxes are due.

Mr. MCHUGH. Well, you won't be a break-even company under this, I hope.

Mr. RUNYON. Well, I understand that, but we would like to make sure that we keep our postage rates as low as we can.

Mr. MCHUGH. Well, I want you to do that as well, believe me. Mr. Gleiman will—and we need to get him up here very soon because he has been very patient—but he talks about in his testimony a provision technically known as Section 601(b) of Title XXXIX that allows you to suspend on a case-by-case basis the Private Express statutes and your monopoly on First Class mail.

The concern that he expressed, and I think it's important to state this for the record, is that in that area where, for example, we narrow the First Class limits from \$6 to \$2, it might theoretically be possible for you to command certain markets in the country and suspend that, thereby undoing some of the privatization efforts that are attempted in this bill.

Now, on previous testimony, you and others have indicated that the Postal Service has always interpreted that section of Title XXXIX to mean that you only narrow your monopoly, not broad even it.

And insofar as I'm aware, that's the only exercise to which you have ever put that. Is that just luck that you've only used it to narrow it, or is that the official interpretation of the Postal Service in Title XXXIX, that Section 601(b) is only used to narrow the monopoly?

Ms. ELCANO. The experience has been to narrow, but I would like to suggest that it's a question of complicated statutory construction. If it would be all right, we could submit our answer for the record to you?

Mr. MCHUGH. Certainly.

Ms. ELCANO. It's a debate that has gone on in the postal community, as you are aware, for 25 years about whether it's a gain or a loss provision and authority attached to that. So I'd be glad to supplement on that.

Mr. MCHUGH. And we would appreciate that. As you all just heard, we just have been buzzed for a vote. Certainly, I'd be happy to yield to the ranking member.

Miss COLLINS. Thank you. Mr. Runyon, going back to Section 401 of H.R. 3717, have you gotten—that's allowing you to take Postal Service money and deposit it in other institutions other than the Treasury Department.

Have you gotten any proposals from anyone in the banking industry regarding this, or recommendations?

Mr. COUGHLIN. Congresswoman, we have a pretty extensive banking operation. Right now, we're required to deposit all of our funds into the Postal Service fund at the Treasury Department of the Federal Reserve Bank.

We do have extensive relationships with something like 5,000 banks out there right now to help us channel money in.

Miss COLLINS. Mr. Coughlin.

Mr. COUGHLIN. Yes.

Miss COLLINS. Have you had any proposals on what to do with the money if H.R. 3717 passes?

Mr. COUGHLIN. We have some ideas internally about that.

Miss COLLINS. Have you received any proposals from any banks—

Mr. COUGHLIN. Not since this bill was—

Mr. RUNYON. I'm not aware of any myself.

Miss COLLINS. Or recommendations from any banks?

Mr. COUGHLIN. No.

Miss COLLINS. Will the Postal Service continue to use the U.S. Treasury?

Mr. COUGHLIN. We will use the banking system as it's prescribed by this bill for our deposits.

Miss COLLINS. Well, this bill gives you the discretion.

Mr. COUGHLIN. That's right. It does, and we would use that discretion as long as it was to the benefit of the postal customer and the postal rate-payer.

Miss COLLINS. So you might use the Treasury Department, and you might not?

Mr. COUGHLIN. Well, we would be using Federal banks, but it would not necessarily be the Federal Reserve Bank or the Treasury, no.

Miss COLLINS. All banks are Federal banks, aren't they?

Mr. COUGHLIN. No.

Miss COLLINS. Which ones are not.

Mr. COUGHLIN. There are State bank systems.

Miss COLLINS. OK. Mr. Chairman, maybe you want to put some guidelines in the bill for that. I don't think we want to give people

an open hand on what to do with taxpayers' money, do we, with no checks and balances?

Mr. RUNYON. Well, actually, the money we deal with is not taxpayers' money.

Miss COLLINS. The money you deal with is taxpayers' money.

Mr. RUNYON. No. It's rate-payers' money.

Miss COLLINS. That's taxpayers. Well, let's say constituents. Let's say consumers.

Mr. MCHUGH. The gentelady's point is not without merit. We certainly don't want to provide a totally chaotic situation where there is far more risk than return.

And if we can better construct that part of the bill to reflect that, we will, but at the same time, just as local governments and State government try to invest in our pension plans, try to invest in those vehicles that provide a rate of return that is easily above what the Treasury does, we want to be able to provide them that as well because that's money that can help generate, in turn, monneys that go to our mutually important friends, the 800,000-plus employees of the Postal Service.

Miss COLLINS. Mr. Chairman, we're going to have to really look at that, because some pension plans go belly up because of bad investments. I think we're going to have to look at that very carefully.

Mr. MCHUGH. I'd be happy to look at it to the gentelady's satisfaction. That's the promise. Is the gentelady—

Miss COLLINS. Yes. I'm finished. Thank you.

Mr. MCHUGH. Thank you. We will go and vote now. With that, let me just thank the members of the first panel, Mr. Runyon, Mr. Coughlin and Ms. Elcano, for your presence here today.

We have, as you know, a long way to go. We're going to have extensive questions for the record to submit to you and, in all likelihood, we will see you back here, I hope, at some time in the not too distant future to talk about some evolving issues and questions. But I do appreciate this very important first step.

So if we can stand in recess for about 15 minutes, and upon my return, we'll reconvene and have our second witness, Mr. Gleiman join. I appreciate it. Thank you.

Mr. RUNYON. Thank you very much.

[Recess.]

Mr. MCHUGH. Let us reconvene. Mr. Gleiman, welcome. Please be seated, sir. Although now you just have to stand up, and let's administer the oath of office. You were ahead of me on that.

[Witness sworn.]

Mr. MCHUGH. Thank you, sir. The record will show that the chairman responded in the affirmative. Thank you, Mr. Gleiman, and thank you all for your patience.

As often happens, what I thought was going to be one vote turned into a series. I apologize for that, but it was beyond our control.

Welcome, as I've said earlier. At least at some point, and if they had to go for other business, I certainly understand that, we did have a number, if not all, of your Commissioners with you.

And we appreciate their attentiveness not just in what they do for the Commission on a day-by-day basis but for their interest in this process.

So with that, let me turn the microphone over to you for your opening statement.

Mr. GLEIMAN. Thank you, Mr. Chairman. I appreciate that, and my colleagues do, too. Mr. Chairman, members of the subcommittee, good afternoon, or shall I say evening.

I'm accompanied today by my fellow Commissioners, Trey LeBlanc, George Haley and Ed Quick. They have been very involved in our analysis of this legislation. Vice Chairman LeBlanc has submitted his individual views.

I've been asked to keep my remarks to 10 to 12 minutes, and I will endeavor to do so, although some of you know me, and that is a task.

In any event, I would request that my prepared statement and that of Commissioner LeBlanc be included in the hearing record.

Mr. MCHUGH. Those statements shall be entered in the record in their entirety.

Mr. GLEIMAN. Mr. Chairman, 15 days ago, after months of hearings, I now understand it to be 14 hearings, you introduced H.R. 3717, the Postal Reform Act of 1996.

It would indeed revolutionize the way postal rates are set and free the Postal Service to compete in many areas. My purpose today is neither to endorse nor reject the economic premise upon which the legislation is founded.

You've developed a new, complex structure, and I've not fully evaluated the variety of potential ramifications of implementing all of these changes.

Hopefully, we will have an opportunity to provide additional thoughts in the coming weeks on both the proposed ratemaking reforms, which are the primary focus of my testimony, and on the many other aspects of H.R. 3717 which we have yet to examine.

Mr. Chairman, we may differ on what is best from a public policy standpoint. Ultimately, however, in my role as a regulator, I will work with you to ensure that whatever the legislative output it is workable with minimal confusion and dislocation.

So today I have some questions and some suggestions intended to clarify and strengthen your bill. Among the matters on which we definitely agree is your commitment to maintaining universal postal service for our citizens at uniform and affordable rates and especially your emphasis on the need to increase Postal Service efficiency.

These policies should be the bedrock of any postal reform legislation.

Mr. Chairman, I want to thank you and your staff to the courtesies they have shown the Commission.

Last week, our staffs met and clarified many matters of concern, including that the Commission's subpoena authority under the bill is intended to extend to its audit responsibilities and to consideration of complaints and that the Commission will indeed determine both what costs are attributable and the costing methodology employed in reporting and auditing.

These are important. No, I would say they are critical issues, the clarification of which will do much to strengthen your bill.

Following a brief overview of the bill, my prepared testimony addresses the following issues: the responsibilities of the Directors, the Commission's responsibilities, the baseline case, competitive and noncompetitive categories, flexibility, level playing fields, volume discounts, experimental products, the finality of decisions and price cap regulation generally.

In the interest of time, I will skip the overview of the bill, how we think it is intended to work and several other areas such as the responsibility of the Directors and the section on price cap regulation.

I would hope, however, that the Members and those in the postal community who have been calling us for the past several weeks seeking our insight regarding the bill will take the time to read the Commission's entire prepared statement.

With respect to Commission responsibilities, Mr. Chairman, again I want to thank you for the confidence you've shown and that your bill expresses in the Postal Rate Commission.

You've pointed out that the legislation places significant responsibility in the Commission. Section 3723 gives the Commission final decisionmaking authority in determining price caps.

And under Section 3783, the Commission would be given oversight responsibilities not just with respect to Postal Service rate-setting and classification but also with respect to determining whether the service is meeting its performance goals and, importantly, whether it is meeting its service standards.

An additional area of review should be Postal Service productivity, the extent to which the service is meeting reasonable productivity standards or targets it has established.

Given the absence of a residual stakeholder; that is, stockholder, if you will, to hold the Postal Service accountable for inefficiencies, some review of postal productivity is warranted.

The absence of total factor productivity as a major consideration in postal rate-setting and in considering bonuses that might be awarded would permit huge and unwarranted rewards in the face of declining productivity.

For example, postal officials are currently touting record profits for the second straight year and each of these 2 years where they have had record profits have seen declining productivity.

Productivity also declined in 1994. In that year, however, there were no profits. The difference between 1994, 1995 and 1996, in 1995, rates and, therefore profits were increased.

I might add, in the way of putting things in perspective for the current year it is my understanding that the Postal Service is projecting a total factor productivity for the year of minus 1.7 percent, against the alleged profits that they are going to realize.

But this matter aside for a moment, our initial reading of the bill suggests that the Commission may need additional guidance as to how Congress intends to meet its new responsibilities.

Determining the adjustment factor; a/k/a, the X factor. This rate-making provision requires the Commission to commence proceedings every 5 years to establish adjustment factors for the four baskets of products in the noncompetitive category.

If I might interject before I go further, sir, there was some discussion earlier about the arbitrary nature of the provisions.

I prefer to think of these factors and factors in the existing law as factors which provide for subjective judgment, as opposed to arbitrary consideration.

In any event, these adjustment factors coupled with the percentage change in the GDPPI determine the price caps which apply to all noncompetitive postal products.

Proposed Section 3723(c) lists six factors that the Commission must consider in determining appropriate adjustment factors and also requires the Commission to take into account other policies of the Postal Reorganization Act which would continue in existence.

The explanatory material circulated on June 24th with the draft bill sets forth examples where the adjustment factor is applied to offset increases in inflation as measured by the GDPPI.

This is consistent with practice in other price cap regulatory regimes where the adjustment factor is typically a productivity offset, bringing pressure to bear on management to control costs and operate efficiently.

It is also consistent, I might add, with the legislative proposals made by at least two organizations representing mail advertising mailers.

Proposed Section 3723(e)(2), however, provides that the adjustment factors shall be added to or subtracted from the GDPPI.

The second criteria the Commission is to consider in setting the adjustment factor is the cost of the Postal Service of providing the product in question.

Is the Commission supposed to set adjustment factors to ensure that the Postal Service may recover all of its costs? This is a critical question.

Labor costs constitute approximately 82 percent of the total Postal Service cost. H.R. 3717 leaves the existing collective bargaining system intact, and I do not advocate change in this area.

However, the facts of the past and the expectations for the future may well clash when an adjusted GDPPI meets an arbitration decision.

Attachment B to my prepared statement compares increases in postal labor costs since postal reorganization as measured by the Postal Service's productive hourly wage rate with two inflation factors, the CPIU and your proposed consideration, the GDPPI, over the period.

Using 1971 as a base period, labor costs have increased by 340 percent while GDPPI and CPIU have increased by only 241 percent and 281 percent respectively.

If this trend continues, should the Commission establish factors which are added to the GDPPI, thereby permitting noncompetitive postal rates to increase faster than the rate of inflation, or should it establish adjustment factors which are subtracted from the GDPPI, thereby forcing postal management to operate more efficiently and, perhaps, indirectly bringing substantial pressure to bear on the collective bargaining process.

It would appear that the latter is what is contemplated in the bill, since the bill repeals existing requirements that rates be set

to permit the Postal Service to break even. Additional congressional guidance on this question would be helpful.

With respect to our audit responsibilities and authority, H.R. 3717 creates a new responsibility for the Commission annually reviewing the Postal Service data and information to assure compliance with the Postal Service's obligations under law.

Fortunately, most data collection systems and cost analysis methodologies, which will be integral to this, are already in existence.

The Commission is directed to make a written determination that all rates and fees placed into effect were in compliance with the law.

In the noncompetitive rate area, the Commission would be responsible for assuring that the Postal Service does not obtain revenues in excess of the maximum allowable for any product; that it does not exceed the price cap.

For competitive products, compliance would mean rates would cover attributable costs and make a reasonable contribution as required by proposed Section 3742(b).

It is my understanding that the Commission would continue to exercise its current responsibility for determining what costs are attributable to the various types of mail. For the system to work, I view this role as essential.

In the past, the Postal Service has contended that even service specific advertising costs should not be attributed, a position rejected by the Commission.

If, for example, the Postal Service could initiate a multi-million dollar advertising campaign to support a new discounted express mail service or a nationwide priority mail service and unilaterally determined that these advertising expenses should not be attributed when evaluating whether the new service covered costs, an annual audit would be meaningless.

Similarly, the Commission would be expected to determine if a product made a reasonable contribution to other postal costs.

With respect to the reasonableness of contribution to overhead made by Postal Service competitive products, "reasonable" for a private sector competitor means recovering all costs from its basket of products.

The baseline case, which is proposed in Section 3701, requires the establishment of a set of baseline rates and fees.

In essence, it provides for what we call the last great omnibus rate case and appears to contemplate a proceeding analogous to those conducted under existing law.

Although, if the case were initiated after enactment of the bill, pricing factors different from those required under existing law would be used to allocate substantial institutional cost.

This baseline case is critical because it establishes the foundation for establishing price caps for noncompetitive products. It will have long-lasting influence on the extent to which the Postal Service can recover institutional or overhead costs from the competitive versus noncompetitive products.

And I have two primary concerns. Who establishes the revenue requirement in this case and the appropriateness of the new pricing factors for this next and last omnibus rate case?

With respect to the revenue requirement, judicial precedents have established that the Postal Service has broad discretion to determine how much revenue must be generated by rate cases.

The bill appears to contemplate a price cap system where the regulator would encourage the regulated entity to perform efficiently by limiting its ability to increase revenues simply to cover costs.

Yet, in the proceeding which sets the baseline for the new system, the regulated entity would have every incentive and, indeed, virtually unfettered authority to pad its revenue for at least the short term, thereby assuring large profit-based bonuses in at least the early years of reform.

A related issue is whether the revenue requirement for the baseline should include amounts for contingencies. Proposed Section 3723(f) provides a mechanism for the Postal Service to request relief from a price cap if it faces "severe financial exigencies."

This is the type of emergency the contingency was intended for, so it seems inappropriate to include an amount for contingency in the baseline case.

Another question is how to deal with prior year's losses. This convention which is established in the late 1970's by the Rate Commission to help the Postal Service retire huge losses it had accumulated earlier in that decade substantially increases the revenue requirement.

In the last omnibus rate case, Docket No. R94-1, \$1 billion above expected operating expenses was allowed for this purpose, for covering and retiring prior year's losses.

While this convention was justifiable in the context of break even ratemaking, inflating base rates over expected costs by hundreds of millions of dollars seems inconsistent with the new system which is designed to limit increases to reflect the index of the economy as a whole.

Mr. Chairman, members of the committee, I think there is an interesting and, perhaps, relevant factoid here. Inasmuch as H.R. 3717 instills a profit incentive, it is anticipated that profits for the current year that postal management has begun to crow about are, coincidentally, on the same order as the billion dollars that was built into the last rate case as a cushion for prior year losses.

It's not clear to me that one should pat one's self on the back for profits or surpluses realized as a consequence of a cushion built into a rate case.

Skipping potential problems with the use of pricing factors for the next and last rate case and the baseline case and moving on to an area involving noncompetitive and competitive categories, one on which you touched a little earlier today, I would note that while one might expect the term "noncompetitive" to equate with "monopoly" and "competitive" to equate with "non-monopoly," this appears not to be the case under the bill.

The noncompetitive product category includes some products which are not subject to the monopoly, such as catalogs and magazines, for which little competition exists and others, such as addressed saturation mail, which are subject to the monopoly but for which there is substantial competition.

Under the bill, the only constraint on the Directors' pricing authority for noncompetitive products is that prices generally may not exceed the price caps.

This is a ceiling. There appears to be no floor. It appears that rates for noncompetitive products could be set below cost and that the Directors' pricing activities in this area are not covered by antitrust law.

Thus, it appears that Directors could engage in predatory pricing with a noncompetitive product such as saturation mail which, in essence, is a highly competitive product.

Now, I'm not suggesting that they would do this, but if the primary goal of one at the Postal Service were to increase market share, perhaps they would.

It also appears that there may be some anomalies in the competitive category, particularly in the special services arena.

Many special services, such as post office boxes in rural areas and certificates of mailing and delivery, both of which, by the way, are the subject of a \$330 million-plus rate increase case that is currently before the Commission, may only be available from the Postal Service.

Is there real competition for these services, or are they likely to become competitive cash cows?

Moving to flexibility in your bill, the principal feature of the bill is increased flexibility for postal management in pricing products. What is the extent of this flexibility?

In the competitive category, the only constraint is that the rate must cover direct and indirect costs and make a reasonable contribution toward overhead.

In the noncompetitive category, generally, the only constraint is the price cap, although, in many instances, it appears numerous rate elements could be averaged to determine compliance with the caps.

Under proposed Section 3724, rates for products in the first basket, which is the single piece first class basket, may not be averaged.

For the other baskets, as we interpret the bill, rates at the subclass level would not be averaged, but rates at lower levels; for example, rate category and discount category levels, could be averaged.

Attachment C to my prepared statement attempts to classify existing products as "subordinate units" not subject to averaging and "further subordinate units," to use the terms of the bill, thereby being subject to averaging.

If this is correct, what does it mean? What is the true extent of flexibility that the Postal Service has to price within the market baskets?

My prepared statement details several significant changes the Postal Service and/or the Commission propose for periodical class mail over the years, changes that led to contentious litigation and which were ultimately rejected by either the Postal Rate Commission or the Governors.

It appears that the bill would allow the Postal Service to implement its own version of almost all of these changes and then some; that is, the Postal Service, following Federal Register Notice, could

implement a pallet discount, a zoned rate structure for editorial matter and a bulk discount for high density publications.

Further, it could develop discounts based on other characteristics and could amplify the discounts that already exist.

If changes of this kind were made, the potential exists to increase the rates for many thousands of publications by 20 to 30 percent or more to offset rate reductions for a relatively few publications by percentages of similar magnitude.

For example, the third discussed above, splitting periodicals into two products, one high density and one low density, was a key element in the reclassification proposal for Second-Class mail in the first phase of reclassification. After the Postal Service worked on the proposal for several years, there was a 10-month litigation period before the Commission.

More than 40 pieces of testimony focused predominantly on or to a substantial degree on this issue. A range of Second-Class mailers and mailer groups undoubtedly spent hundreds of thousands of dollars analyzing the proposal and then, based on the extensive record, which included considerable attention to testimony from several economists with expertise in the regulatory area, the Commission recommended against the split.

Under the bill, the Postal Service, on the basis of short-term notice and limited or no additional review, it appears, could proceed with a quantity discount or a density discount to bring about almost the exact same split that it originally proposed in the reclassification case.

There would be no need to consult with customers, and it appears there would be no recourse short of a legislative remedy for aggrieved parties.

With respect to the level playing field, in the competitive category, does the bill really level the playing field? Antitrust laws are made applicable, but the question is is this enough?

Under the bill, the Postal Service could continue to enjoy other cost advantages that economists might view as artificial in a competitive arena.

It would not have to earn profits for investors or pay taxes even in its competitive activities. Also and, perhaps, most importantly, the Postal Service still enjoys the stature of being an entity of the U.S. Government.

This gives it an advantage in negotiating with foreign postal administrations over matters such as customs procedures. I think that point was mentioned in the Postmaster General's earlier visit to the committee.

Or it could negotiate or have a negotiating advantage with other government agencies, as may have been the case when the Postal Service obtained one of the two reserved nationwide blocks of narrow band data transmission frequencies which it can now use for competitive purposes while the unreserved blocks, as I understand it, have not been made available to the public, although the telecommunications bill has directed that they be auctioned in a competitive manner.

My prepared statement points out several other competitive advantages not earned through greater efficiency which may enable the Postal Service to displace private competitors in a competitive

market even though it may not be the least cost provider of those services.

And if I may talk about volume discounts for a moment, sir, the bill would allow the Postal Service to offer volume discounts as long as all users would be eligible for the same discounts.

You have an equal access provision in the section dealing with volume discounts which is, I think, necessary to promote fairness and, in my view, should be an essential component of any Postal Service program of discounted rates.

However, the discretion to set eligibility criteria can result in discrimination, and the discounts themselves deserve careful attention.

My prepared statement also points out that without an assessment of respective cost and revenue benefits of the program of discounts for a competitive product it would be difficult to establish whether the product is covering its costs and making a contribution, as the bill contemplates.

With respect to experimental products, the bill grants the Service broad authority to offer new and modified products on an experimental basis.

An experimental product could be offered for up to 3 years before the Service would have to take action to make the experiment a permanent competitive or noncompetitive product.

The only substantive limitation on the market test is that it could not generate more than \$100 million in revenue in a given year.

First, it goes without saying \$100 million is a huge amount of money for most businesses. Gross revenues of this magnitude, if achieved by the Postal Service relative to a single product or service, could seriously disrupt many existing markets.

As an example, I would point out that last year Netscape, which many of us have become familiar with in recent months, had revenues of only \$81 million.

I have a list of about 100 or so New York Stock Exchange listed firms which also had revenues of less than \$100 million during the past year.

As you may recall, recently the Commission granted a Postal Service request to increase flexibility by adopting new rules of procedure.

One week ago today the Commission received a Joint Motion for Reconsideration filed on behalf of diverse parties questioning the potential financial impact of the Commission's action.

I cannot comment on the merits of the arguments presented. However, I think the motion which we included as an attachment to the prepared statement gives you a sense of the depth of concern that many in the mailer community have about giving the Postal Service more flexibility in certain areas involving experiments.

With respect to the finality of decisions—and I am coming down the home stretch, sir, and trying to move quickly—the Commission previously had testified in favor of eliminating multiple layers of review in order to simplify and expedite the process.

My opinion remains that the current system of multiple checks and balances is, in some cases, too much of a good thing.

At the same time, the bill may go too far in the other direction. H.R. 3717 provides no recourse and no remedy should the Postal Service implement rates which unintentionally or unwittingly destroy a small business or even a whole segment of an industry.

Even if the Postal Service rationale for its decision as published in the Federal Register was completely arbitrary or based on inaccurate factual predicate, there would be no recourse.

The Directors' decisions are final. They are not subject to administrative review, and they are not subject to judicial review.

The complaint procedure also provides no effective remedy. If a complaint is filed and the Commission finds it justified, the Commission cannot order the Postal Service to change an unlawful rate. It can only order the Postal Service to set aside profits for limited purposes.

If there were no profits, a complaint case is meaningless, and even if profits exist, the Postal Service may satisfy its obligations by claiming to delay future increases.

I mentioned earlier the prospect of predatory pricing based on the fact that several postal products in the noncompetitive basket are indeed in direct competition with products offered by private enterprises.

For example, enhanced carrier route saturation mail competes with newspaper inserts. There is nothing that prevents the Postal Service from exploiting some captive users of one or more further subordinate units in the enhanced carrier route mail area; for example, catalog mailers, in order to cross subsidize saturation mail's direct competition with daily and weekly newspapers.

Again, here a complaint to the commission would provide no relief to either the exploited captive mailers or to the private enterprises facing unfair competition.

Even if the Commission were to find the complaint justified and find a particular product should be reclassified as competitive, the Directors could reject the recommendation, and their decision would not be subject to review.

I'm not confident that the antitrust laws by themselves will provide a satisfactory solution. While the specter of an adverse treble damage award may restrain stock-owning managers of publicly held private businesses from unfair competition, Postal Service managers would be motivated to stretch the edge of the competitive envelope.

They would benefit in profitable years and would suffer no personal harm if they inadvertently go too far. An antitrust award against the Postal Service will only reduce taxpayers' equity. It will not depress future profits which are measured on an accrual basis.

Mr. Chairman, as I mentioned earlier, my testimony today, both the shortened version, which may seem somewhat disjointed, and the longer version, which I think hangs together a bit better, were intended to focus primarily on the new pricing mechanism.

We will, undoubtedly, have additional questions and comments and suggestions about this and other aspects of the bill as you proceed, and I look forward to continuing to work with you.

This completes my testimony for today, and I will endeavor to answer any questions that you may have.

[The prepared statement of Mr. Gleiman follows:]

Mr. Chairman and Members of the Subcommittee,

Good afternoon. I am accompanied today by my fellow Commissioners-- W. H. "Trey" LeBlanc, George W. Haley, and H. Edward Quick. They have been very involved in our analysis of this legislation. Vice Chairman LeBlanc has submitted individual views for the record.

When I testified here 15 months ago, I closed my testimony by urging the Congress to address a fundamental public policy question: What should be the role of the Postal Service in the future? Mr. Chairman, 15 days ago, after months of hearings and careful consideration, you moved forward and addressed that question. H.R. 3717, the Postal Reform Act of 1996, would revolutionize the way postal rates are set and free the Postal Service to compete in many product areas.

My purpose today, is neither to endorse nor reject the economic premise on which the legislation is founded. You have developed a new, complex structure and I have not fully evaluated the variety of potential ramifications of implementing all of these changes. Hopefully we will have the opportunity to provide additional thoughts in the coming weeks.

In preparing this testimony I recalled a passage from John Steinbeck's *Travels with Charlie* which I think is apt:

A long time ago I was in the ancient city of Prague and at the same time Joseph Alsop, the justly famous critic of places and event, was there. He talked to informed people, officials, ambassadors; he read reports, even the fine print and figures, while I in my slipshod manner roved about with actors, gypsies, vagabonds. Joe and I flew home to America on the same plane, and on the way he told me about Prague, and his Prague had no relation to the city I had seen and heard. It just wasn't the same place, and yet each of us was honest, neither one a liar, both pretty good observers by any standard, and we brought home two cities, two truths.

We may ultimately differ on what is best from a public policy standpoint. Ultimately, however, in my role as a regulator I will work with you to ensure that whatever the legislative output, this new paradigm is workable, with minimal confusion and dislocation.

So, today I have some questions, and some suggestions intended to clarify and strengthen your bill.

Among matters on which we definitely agree is your commitment to “maintain universal postal service to our citizens at a uniform, affordable rate” and your emphasis on the need to increase Postal Service efficiency (142 CONG. REC. E1159 (daily ed. June 25, 1996)). These policies should be the bedrock of any postal reform legislation.

My testimony focuses primarily on the proposed ratemaking reform. It presents a brief overview of how I think the new system is intended to work, and discusses several areas on which you may wish to focus particular attention. There are many other important issues which, given the limited time to prepare for this hearing, are not addressed in this testimony; and, we may have many more questions and, hopefully, constructive suggestions.

Mr. Chairman, I thank you and your staff for the courtesies you have shown the Commission during the drafting of H.R. 3717. While the actual proposal was a tightly held document, your staff has kept us apprised of your progress, and several provisions we suggested are in your bill. This cooperation continues. Last week our staffs met and clarified many matters of concern including: (1) the Commission’s subpoena authority is intended to extend to its audit responsibilities under proposed sections 3781, 3782, and 3783, and to consideration of complaints under revised section 3662; (2) in fulfilling its audit responsibilities, the Commission will determine whether prices for competitive products “cover direct and indirect costs” and “make a reasonable contribution” to overhead; (3) the Commission will determine both what costs are attributable and the costing methodology employed in the reporting and auditing process; and (4) the

proposed amendment to the third sentence of section 3625(d) of title 39 (see, H.R. 3717, §1002(d)(1)) is not intended to change the conditions which under existing law apply to the Governors' (Directors') ability to modify Commission recommended decisions.

We look forward to continuing to work with the Subcommittee and will provide whatever assistance we can.

Following a brief overview of the bill, my testimony addresses the following issues:

RESPONSIBILITIES OF THE DIRECTORS

COMMISSION RESPONSIBILITIES

THE BASELINE CASE

NONCOMPETITIVE AND COMPETITIVE CATEGORIES

FLEXIBILITY

LEVEL PLAYING FIELD

VOLUME DISCOUNTS

EXPERIMENTAL PRODUCTS

FINALITY

PRICE CAP REGULATION

OVERVIEW

H.R. 3717 would divide postal "products" into two categories: Competitive and Noncompetitive. It would provide separate pricing mechanisms for these two categories.

Competitive products, initially, would include Priority, Expedited (Express Mail), Mailgrams, International, Parcel Post, and Special Services. The Postal Service would be free to price competitive products as it saw fit, subject only to the constraints of the anti trust laws and the requirement that rates cover "direct and indirect costs" and make "a reasonable contribution" to overhead.

For Noncompetitive products, H.R. 3717 would replace the existing rate setting system, a “cost-of-service” system, with a form of incentive regulation which, to the extent it can be characterized, would be considered “price-cap” regulation. The bill establishes five-year cycles for setting price caps, and annual rate adjustment authority for the Postal Service.

Noncompetitive products would be divided into four “baskets” as follows:

--First basket: single piece First Class letters, parcels, and cards (domestic and international).

--Second basket: all other First Class (domestic only).

--Third basket: Periodicals (regular rate, within county, nonprofit, classroom).

--Fourth basket: Standard (single piece, regular, enhanced carrier route, nonprofit, bound printed matter, special rate, library rate).

Every five years the Commission would conduct a proceeding to establish separate price caps for each of the Noncompetitive baskets. These price caps would be based on the percentage change in the Gross Domestic Product Chain-Type Price Index (GDPPI) modified by an “adjustment factor” which the Commission, after hearings, would determine for each basket.

The Postal Service could price Noncompetitive products as it saw fit, subject only to the requirement that prices, generally, could not exceed the price caps.

Interestingly, it appears that at today’s rates Competitive products would constitute only about one percent of total postal volume and generate 14 percent of total postal revenues. The volumes, revenues, and contributions to overhead of Noncompetitive and Competitive products under current classifications and rates are set forth in Attachment A.

Following enactment, one last omnibus rate case (the baseline case) would be conducted under, generally, existing procedures and rules. The rates from this case

would, forever, serve as the foundation for future rate adjustments. This would be an especially important case for Noncompetitive products, which would never again have their cost base reviewed.

The Commission annually would audit the Postal Service to ensure it was acting in compliance with the law, with respect to both Noncompetitive and Competitive products.

A matter not directly related to rate setting, but which could nevertheless have a significant effect on the financial viability of the Postal Service, is the bill's narrowing of the postal monopoly. Section 703 of the bill would amend the Private Express statutes to allow private carriage of letters outside the Postal Service when the amount charged is at least \$2. This would replace the existing "double the postage rule." At current First-Class rates, the \$2 minimum would effectively exempt any letter weighing more than 8 ounces. Also, because the \$2 minimum would be a statutory limitation which is not indexed, more mail matter might qualify for this exemption as postal rates increase with the passage of time.

One feature of current law that could complicate application of the \$2 minimum is section 601(b) of title 39, which allows the Postal Service to "suspend the operation of any part of this section"—which would include the \$2 provision—"upon any mail route where the public interest requires the suspension." The bill does not repeal or alter the quoted language. Consequently, section 601(b) could be read to authorize the Postal Service to suspend and subsequently increase the \$2 minimum in selected service areas based on its assessment of what the public interest requires. The Postal Service may need this escape hatch. A 1992 General Accounting Office report concluded that Priority Mail would be immediately at risk to competition if the double the postage rule were suspended (*U.S. Postal Service: Priority Mail at Risk to Competition if Double Postage Rule is Suspended*, GAO/GGD-92-68 (May 1992)).

RESPONSIBILITIES OF THE DIRECTORS

H.R. 3717 greatly increases the responsibilities of the Postal Service Directors (now, Governors). It is the Directors who will set the rates for both Competitive and Noncompetitive products. Under the existing system, they adjust rates, generally, every three or four years, and, at that, against a backdrop of an extensive body of public input. Under the bill, they would be adjusting many rates as often as annually. It is not clear, but perhaps they would also be required to pass on experimental market tests and volume discounts. Also unclear is the extent to which the Directors' deliberations would be governed by the Government in the Sunshine Act (5 U.S.C. §552b). Thus, it appears the Directors' responsibilities will increase substantially; and so will their liability. They will be subject to civil and criminal penalties under the anti trust laws (see, section 3744).

The bill would triple Directors' compensation, from \$10,000 per year to \$30,000. The salary increase is the first since postal reorganization 25 years ago and really amounts to little more than a cost-of-living adjustment. The bill contemplates that Directors will continue to serve part time. The 42-day per year statutory service limitation, which would be unchanged, may not be sufficient given their increased authority and responsibility (see, 39 U.S.C. §202(a)).

COMMISSION RESPONSIBILITIES

Mr. Chairman, I want to thank you for the confidence you have expressed in the Postal Rate Commission. You have pointed out that "[t]he bill enacts stringent reporting requirements to the Congress and to the U.S. Postal Rate Commission by providing the Commission with the ability to issue subpoenas, manage proprietary documentation and procure necessary information. This legislation places significant responsibilities on the Commission . . ." (142 CONG. REC. E1159 (daily ed. June 25, 1996)). Section 3723 gives the Commission final decision making authority in determining price caps. Under section 3783 the Commission would be given oversight responsibilities, not just with respect to Postal Service ratesetting and classification, but also with respect to determining whether

the Service is meeting its performance goals, and, importantly, whether it is meeting its service standards. The Commission would determine if the Postal Service was truly delivering. An additional area of review should be Postal Service productivity, and the extent to which the Service is meeting reasonable productivity standards or targets it has established. Given the absence of residual stakeholders, i.e., stockholders, to hold the Postal Service accountable for inefficiencies, some review of productivity is warranted. The absence of total factor productivity as a major consideration would permit huge and unwarranted rewards in the face of declining productivity. For example, postal officials are currently touting record “profits” for the second straight year and each of these years has seen a drop in productivity. Productivity also declined in 1994. In that year however, there were no profits. The difference: rates *and* profits increased in 1995.

Our initial reading of the bill suggests the Commission may need additional guidance as to how Congress intends it to meet these new responsibilities.

Determining the Adjustment Factor.

The ratemaking provisions (proposed 39 U.S.C. §3723) require the Commission to commence proceedings every five years to establish adjustment factors for the four baskets of products in the Noncompetitive category. These adjustment factors, coupled with percentage changes in the GDPPI, determine the “price caps” which apply to all Noncompetitive postal products. Proposed section 3723(c) lists six factors the Commission must consider in determining appropriate adjustment factors. These factors are similar to, but not identical to, the nine factors currently used to set rates (see, 39 U.S.C. 3622(b)). Proposed section 3723(c) also requires the Commission to take into account other “policies of this title” (i.e., the Postal Reorganization Act) in determining adjustment factors. I expect this is intended to include policies such as:

--“[t]he Postal Service shall have as its basic function the obligation to provide postal service to bind the Nation together through the personal, educational, literary, and business correspondence of the people” (39 U.S.C. §101(a));

--“[t]he Postal Service shall plan, develop, promote, and provide adequate and efficient postal services at fair and reasonable rates and fees . . .” (39 U.S.C. §403(a));

--“[t]he Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining” (39 U.S.C. §101(b));

--“the Postal Service shall give highest consideration to the requirement for the most expeditious collection, transportation, and delivery of important letter mail” (39 U.S.C. §101(e));

--“[n]o small post office shall be closed solely for operating at a deficit, it being the intent of the Congress that effective postal services be insured to residents of both urban and rural communities . . .” (39 U.S.C. §101(a)); and

--“[a]s an employer, the Postal Service shall achieve and maintain compensation for its officers and employees comparable to rates and types of compensation paid in the private sector of the economy of the United States” (39 U.S.C. §101(c)).

The bill repeals the policy added by the 1976 amendments, that when setting rates recognition should be given to the educational, cultural, scientific, and informational value to the recipient of mail matter and relegates the concept of fairness and equity---previously the first criterion for both ratemaking and classification---to an “also ran” status.

The explanatory material circulated June 24 with the draft bill sets forth examples where the adjustment factor is applied to *offset* increases in inflation as measured by the GDPPI. This is consistent with practice in other price cap regulatory regimens where the adjustment factor is typically a productivity offset. Subtracting an adjustment factor from an inflation index brings pressure to bear on management to control costs and operate efficiently. Proposed section 3723(e)(2), however, provides that “the adjustment factor

shall be *added to* or subtracted from such change in the GDPPI, as the case may be” (emphasis added).

The second factor the Commission is required to consider in setting an adjustment factor is “[c]ost to the Postal Service of providing the product” (proposed section 3723(c)(2)). Is the Commission supposed to set the adjustment factors to ensure that the Postal Service may recover all of its costs? This question is critical.

Labor costs constitute approximately 82 percent of total Postal Service costs. While H.R. 3717 establishes a Postal Employee-Management Commission to study and report on labor matters, it leaves the existing collective-bargaining system intact. I do not advocate changes in this area. However, the facts of the past and the expectations for the future may well clash when the adjusted GDPPI meets an arbitration decision.

Attachment B compares increases in postal labor costs since postal reorganization (as measured by the Postal Service’s productive hourly wage rate for clerks, mailhandlers, city carriers, rural carriers, and vehicle service drivers) with two inflation factors, the CPI-U and the GDPPI, over the same period. Using 1971 as the base period, labor costs have increased by 340 percent, while the GDPPI and the CPI-U have increased by only 241 percent and 281 percent, respectively. If this trend continues, should the Commission establish adjustment factors which are *added to* the GDPPI, thereby permitting Noncompetitive postal rates to increase faster than general inflation? Or should it establish adjustment factors which are *subtracted from* the GDPPI, thereby forcing Postal Service management to operate more efficiently, and perhaps, indirectly, bringing substantial pressure to bear on the collective-bargaining process? It appears the latter is contemplated since the existing requirement that rates be set to permit the Postal Service to “break even” is repealed by section 1002(a) of the bill. Additional congressional guidance on this question would be helpful.

Audit Responsibilities and Authority.

H.R. 3717 creates a new, extremely important responsibility for the Commission -- annually reviewing Postal Service data and information to assure compliance with the Service's obligations under the law. This audit plays a central role in assuring that mailers continue to receive the kinds and quality of postal services envisioned in section 101 of title 39.

Fortunately, data collection systems and cost analysis methodologies which will be integral to audit efforts already exist. The bill allows the Commission to develop regulations so that data will be available in a form and detail to enable it to meet its new responsibilities. At the same time, the bill directs the Commission to give due consideration to avoiding unnecessary effort and expense for the Postal Service. Over the years the Commission has been very responsive to Postal Service concerns of this nature. Current reporting requirements reflect a cooperative, continuing open dialogue between the agencies. This will continue. It seems, however, that the Postal Service would have no basis for withholding or objecting to the availability of any and all data pertaining to Noncompetitive products, since such information if disclosed could not, by definition, result in competitive harm.

The Commission is directed to make a written determination that all rates or fees placed in effect were in compliance with law.

In the area of Noncompetitive rates, the Commission would be responsible for assuring that the Service does not obtain revenues in excess of the maximum allowable for any product. This is the type of analysis the Commission has performed continuously during the past 25 years. It would have no difficulty in making such determinations.

For Competitive products, compliance with the law would mean rates which recover attributable costs and make a reasonable contribution as required by proposed section 3742(b). It is my understanding that the Commission would continue to exercise its current responsibility for determining what costs are attributable to the various types of

mail. For the system to work, I view this role as self-evidently essential. In the past, the Postal Service contended that even service-specific advertising costs should not be attributed, a position rejected by the Commission. If, for example, the Postal Service could initiate a multi-million dollar advertising campaign to support a new, discounted Express Mail service or a nation-wide Priority Mail service, and unilaterally determine that those advertising expenses should not be attributed when evaluating whether the new service recovered costs, the annual audit would become meaningless.

Similarly, the Commission would be expected to exercise independent, unbiased judgment to determine that a product made a “reasonable” contribution to other postal costs. With respect to the reasonableness of the contribution to overhead made by Postal Service competitive products, “reasonable” for a private sector competitor means recovery of all overhead costs.

There is some ambiguity in the language of proposed section 3783(b)(1). The Commission is to identify when “rates or fees were *placed in effect* . . . which were not in compliance with applicable provisions of this title” (emphasis added). The clause “placed in effect” is ambiguous: does it mean rates which are *offered* to the public, or does it mean only rates which are *changed*? This is an important distinction, because rates for competitive products which comply with the Act one year, might come to be below cost in a subsequent year if extensive additional resources are applied in providing service during a period when rates remain unchanged. Presumably, Congress and the public would like to know whenever the Service fails to adhere to the standards of the law.

THE BASELINE CASE

Proposed section 3701 requires the establishment of baseline rates and fees. In essence, it provides for “The Last Great Omnibus Rate Case.” Proposed section 3701 appears to contemplate a proceeding analogous to those conducted under existing law, although if the case is initiated after the enactment of the bill, pricing factors different from those required under existing law would be used to allocate institutional costs

(*compare*, proposed section 3701(c), 39 U.S.C. §3622(b)). This baseline case is critical because it establishes the foundation for establishing price caps for Noncompetitive products. It will have long-lasting influence on the extent to which the Postal Service can recover institutional (overhead) costs from Competitive versus Noncompetitive products. I have two primary concerns: who establishes the revenue requirement, and the appropriateness of new pricing factors for this next and last omnibus rate case.

The Revenue Requirement.

Judicial precedents under the Postal Reorganization Act have established that the Postal Service has broad discretion to determine how much revenue must be generated by a rate case (*Newsweek, Inc. v. U.S. Postal Service*, 663 F.2d 1186 (2d Cir. 1981); *Time, Inc. v. U.S. Postal Service*, 710 F.2d 34 (2d Cir. 1983)). The bill appears to contemplate a price cap system where the regulator would encourage the regulated entity to perform efficiently by limiting its ability to increase revenues simply to cover costs. Yet in the proceeding which sets the baseline for this new system, the regulated entity would have every incentive and, indeed, virtually unfettered authority, to pad its revenue at least for the short term.

A related issue is whether the revenue requirement for the baseline case should include amounts for contingencies and for prior years' losses. Proposed section 3723(f) provides a mechanism for the Postal Service to request relief from the price caps if it faces "severe financial exigencies." This is the type of emergency the contingency was intended for, so it seems inappropriate to include an amount for contingencies in the baseline case.

Another area where Congressional guidance would be helpful is the treatment of the provision for prior years' losses. This convention was established in the late 1970s by the Commission to help the Postal Service retire the substantial losses it had accumulated earlier in that decade. In recent cases, the Commission has allowed the Service to add one-ninth of its cumulative losses to the revenue requirement, with the intention of

bringing the Postal Service's book equity back to its 1970 level in nine years. This practice substantially increases the revenue requirement. In the last omnibus rate case, Docket No. R94-1, \$936 million over and above expected operating expenses was allowed for this purpose.

While this convention was justifiable in the context of "break-even" ratemaking, should it be allowed to inflate the rates which will be the basis for the profit-oriented, price-cap ratemaking called for by H.R. 3717? The Postal Service Directors will be expected to use market-based rates to build and maintain sufficient equity over time, without regard to the figure which happened to be on the books when the 1970 legislation became effective. Inflating base rates over expected costs by hundreds of millions of dollars seems inconsistent with the new system, which is designed to limit rate increases to reflect an index of the economy as a whole.

The New Pricing Factors.

For almost 25 years omnibus rate cases have been conducted in accordance with the pricing factors set forth in section 3622(b) of title 39, United States Code. Section 3622(b) directs how institutional (overhead) costs shall be assigned to the various classes of mail and types of mail service. These criteria have been examined and applied in nine omnibus rate cases and numerous other proceedings. They have been interpreted repeatedly by the courts, including the Supreme Court in *National Association of Greeting Card Publishers v. U.S. Postal Service* (462 U.S. 810 (1983)). I suggest that rewriting them for one last omnibus case could raise uncertainties and might unnecessarily generate judicial appeals, which could frustrate the attempts to avoid administrative delays in establishing the new system which are built into the bill. Moreover, demand, which is identified as second most important of the proposed new factors, is among the existing factors and has been given substantial weight in recent Commission proceedings. For example, formulistic measures of demand, i.e., elasticities,

were significant factors leading to the establishment of an Enhanced Carrier Route subclass in the recent reclassification case (Docket No. MC95-1).

NONCOMPETITIVE AND COMPETITIVE CATEGORIES

While one might expect that the term “Noncompetitive” would equate with “monopoly” and “Competitive” would equate with “nonmonopoly,” this appears not to be the case under the bill. The Noncompetitive product category includes some products which are not subject to the monopoly, such as catalogs and magazines, for which little competition exists; and others, such as addressed saturation mail, which is subject to the monopoly *but* for which substantial competition exists.

Under the bill, the only constraint on the Directors’ pricing authority for Noncompetitive products is that prices, generally, may not exceed the price caps (proposed section 3724). This is a ceiling. There appears to be no floor. It appears that rates for Noncompetitive products could be set below cost, and that the Directors’ pricing activities in this area are not covered by the anti trust laws (proposed section 3744). Thus, it appears the Directors could engage in predatory pricing with a Noncompetitive product such as saturation mail which, in essence, is a highly competitive product. I am not suggesting that they would; but, if their primary goal were to increase market share in the advertising market and eliminate competition from newspapers and others, they could (see e.g., *The Federal Times*, September 1993, quoting Chief Operating Officer William Henderson: “Henderson predicted, ‘ . . . the Postal Service, by the year 2000, will be the advertising medium of choice.’ . . . Two-day Priority Mail is a gold waiting to be mined, he added. ‘If we can make it two days, we could drive everybody out of business.’”).

There also appear to be some anomalies in the Competitive category, particularly in the Special Services area. Many special services such as post office boxes in rural areas and certificates of mailing and delivery may be available only from the Postal Service. Is there really competition for these services?

FLEXIBILITY

A principal feature of the bill is increased flexibility for Postal Service management in pricing products. What is the extent of this flexibility?

In the Competitive category, the only constraint is that rates must cover “direct and indirect” costs and make “a reasonable contribution” toward paying overhead (proposed section 3742). In the Noncompetitive category, generally, the only constraint is the price caps (proposed section 3724), although in many instances it appears numerous rate elements could be averaged to determine compliance with the caps.

Proposed section 3721 sets forth a rather complicated classification mechanism, consisting of “subordinate units,” “further subordinate units,” and, perhaps, even “further, further subordinate units.” The existing mail classification structure is incredibly complex. It consists not just of classes, subclasses, and rate categories. It also includes rate elements, discounts, pound and piece rates, surcharges, and zones. The drafters of H.R. 3717 have tried diligently to capture and address this complexity; but, the new, complex terminology raises new questions.

Under proposed section 3724 rates for products in the First Basket may not be averaged. For the other baskets, as we interpret the bill, rates at the subclass level could not be averaged, but rates at lower levels, e.g., rate categories and discounts, could. Attachment C attempts to classify existing “products” as subordinate units (not subject to averaging) and further subordinate units (subject to averaging). If this is correct, what does it mean? What is the true extent of pricing flexibility?

Three contentious proposals arose during the last decade in the Regular Periodicals subclass, formerly called second class. The Periodicals rates apply to more than 12,000 magazines and newspapers. They range from very small to very large, from local to nationwide, from light to heavy, and from bound to unbound. Some carry large portions of advertising and some carry none.

The first proposal was to give a discount to periodicals submitted to the Postal Service on pallets instead of in sacks or in some other container. To the degree that that discount depends on the minimum weight of the pallet and on the geographical make-up required for the pallets, it would have decreased rates for the larger mailers and increased them for the smaller mailers. The second proposal was to make pound rates for non-advertising material (commonly referred to as editorial material) vary with the distance the mail travels. This change would have increased rates for periodicals that go long distances and that have a high proportion of editorial content. The third proposal was to split periodicals into two products, one with high density and one with low density. In this case, density is defined roughly in terms of the proportion of postal delivery points in relevant delivery areas receiving the publication.

Each of these proposals was hotly debated. Each was discussed in terms of competition and other factors. The pallet discount was, after several steps, recommended by the Commission and then rejected by the Governors. The proposal to zone the editorial content of publications was rejected by the Commission in both the 1987 case and the 1990 case. The proposal to split second class into two separate products was also rejected, although the rates finally recommended went a long way toward recognizing the cost differences on which the Service's proposal was based.

It appears that the bill would allow the Postal Service to implement its own version of all of these changes, and then some. That is, the Postal Service, following Federal Register notice, could implement a pallet discount, a zoned rate structure for editorial matter, and a bulk discount for high-density publications. Further, it could develop discounts based on other characteristics, and it could amplify the discounts that already exist. If changes of this kind were made, the potential exists to increase the rates for many thousands of publications by 20 to 30 percent or more to offset rate reductions for a relatively few publications by percentages of similar magnitude.

The nature of such a chain of events deserves attention. If the Postal Service develops a change and finds it possible under the new bill to make the change quickly and without the substantial cost of litigating it before the Commission, this saves time and money. But, what about those times when the proposal was found wanting? Then, perhaps, the time and money were well spent. For example, the third change discussed above, splitting periodicals into two products, one high density and one low density, was the key element in the reclassification proposal for second class in the first phase of reclassification, Docket No. MC95-1. After the Postal Service worked on the proposal for several years, there was a 10-month litigation period before the Commission. More than 40 pieces of testimony focused predominantly or in substantial degree on this issue. A range of second class mailers and mailer groups undoubtedly spent hundreds of thousands of dollars analyzing the proposal. Then, based on an extensive record, which included considerable attention to testimony from several economists with expertise in the regulatory area, the Commission recommended against the split.

Under the bill, the Postal Service, on the basis of short notice and limited or no additional review, could proceed with a quantity discount or a density discount to bring about almost the exact same split it originally proposed. There would be no need to consult with customers. Equally important, it appears there is no recourse short of a legislative remedy. This type of extensive Congressional involvement is what the Postal Reorganization Act sought to reduce.

Classifying Products.

Classifying "products," and identifying subordinate units and further subordinate units will be very important. Under proposed section 3741, it appears that the Domestic Mail Classification Schedule will be controlling, at least initially. Who interprets and applies its provisions? The Commission and the Postal Service have disagreed on this. Perhaps the bill should address the issue more fully.

45-Day Notice; Annual Adjustments.

For both Competitive and Noncompetitive products, the Postal Service may adjust rates only once each year and only after 45 days advance notice in the Federal Register (proposed sections 3724, 3742). In the Competitive area, does this give the Postal Service sufficient flexibility? If Postal Service management designs a Priority Mail marketing campaign to increase market share at the expense of its competitors, should it be required to disclose publicly those rates 45 days before the campaign begins? If a campaign launched in February flops, should management be able to change rates again in October? Although an annual limitation on rate adjustments would probably assist the Commission in performing its annual audit function, in all fairness, given the stated goal of increased flexibility, I wonder if these limitations are appropriate for pricing products in the Competitive category.

LEVEL PLAYING FIELD

In the Competitive category, does the bill really “level the playing field”? The anti trust laws are made applicable; but is this enough?

Under the bill, the Postal Service would continue to enjoy other cost advantages that economists might view as artificial in a competitive arena. It would not have to earn profits for investors or pay taxes, even on its competitive activities, in the communities in which it operates. Economists might view this as a failure to recognize the “true opportunity cost” of the resources that the Postal Service diverts from other economic uses in order to provide Competitive postal products. Also, except for a proposed limited experiment, the Postal Service’s monopoly on mail box access remains in effect.

Perhaps most importantly, the Postal Service still enjoys the stature of being an entity of the United States Government. This gives it an advantage in negotiating with foreign postal administrations over matters such as customs procedures. Additionally, despite the financing changes contemplated by Title IV of the bill, it appears the Federal Government would in all likelihood still be seen as an implicit guarantor of the Postal

Service's debt. This would allow the Service to borrow on terms more favorable than commercial enterprises in the private sector and, indeed, allow it to borrow in circumstances where no private sector firm could borrow.

Other advantages continue also. The Postal Service would continue to exercise eminent domain in instances where it deemed it advantageous to build processing or delivery facilities. It would also continue to be immune from parking tickets in accessing urban delivery points.

All of these give the Postal Service a competitive advantage not earned through greater efficiency and may enable the Postal Service to displace private competitors in competitive markets, even though it may not be the least-cost provider.

VOLUME DISCOUNTS

Section 604 of the bill would allow the Postal Service to offer volume discounts in a rate or fee, as long as all users of the class or service involved would be eligible for the same discount, and as long as the discounted rate satisfies a criterion applicable to the mail's status in the Competitive or Noncompetitive category. The "equal access" provision in this section is necessary to promote fairness, and in my view should be an essential component of any Postal Service program of discounted rates. However, the discretion to set eligibility criteria can result in discrimination, and the discounts themselves deserve very careful attention.

Under current law and Commission practice, the Postal Service must justify volume discounts by demonstrating that there will be a cost saving, which usually results from worksharing performed by the mailer. The bill in its current form does not require any assessment of costs before discounts can be offered in the Noncompetitive area. Without an estimate of cost savings as a benchmark, the net effects of volume-based discounts on the revenues and costs of particular services could be difficult to gauge. Discounts, after all, reduce revenues for mail volume that is already in the postal system, and "loss leader" discounts for new volume may not produce a net financial benefit to the

Postal Service, although they could be used to take business away from competitors. These issues should be addressed before discounts are put into effect.

Both section 604 and the ratemaking provisions in Title X of the bill require that each product in the Competitive mail category recover its direct and indirect costs and make a reasonable contribution to the other costs of the Postal Service. This is a reasonable and necessary standard, because it would prohibit cross-subsidies of Competitive products by the Noncompetitive category, most notably First-Class Mail. However, without an assessment of the respective costs and revenue benefits of a program of discounts for a competitive product, it could be difficult to establish whether this requirement is being met.

EXPERIMENTAL PRODUCTS

This bill grants the Postal Service broad authority to offer new or modified products on an experimental basis. An experimental product could be offered for up to three years before the Service would have to take action to make it a permanent Competitive or Noncompetitive product. The only substantive limitation is that a market test could not be conducted if its anticipated annual revenues exceed \$100 million.

First, it should go without saying that \$100 million per year is a huge amount of money for most businesses. Gross revenues of this magnitude, if achieved by the Postal Service relative to a single product or service, could seriously disrupt many existing markets. Of even more importance to mailers, if the Postal Service spends serious money in the expectation of obtaining this much revenue, but it in fact loses substantial sums of money, the question then arises who must bear the burden of recovering these losses.

Recently the Commission granted Postal Service requests to increase its flexibility by adopting new rules of procedure. One week ago today, the Commission received a joint Motion for Reconsideration filed on behalf of diverse parties questioning the potential financial impact of the Commission's actions with respect to expedited treatment of provisional services and multi-year test periods (which did not grant nearly

as much flexibility as H.R. 3717). I can not comment on the merits of the arguments presented. The Motion is included as Attachment D so that you can understand the depth of concern of those mailers that view themselves as captive to the Postal Service.

FINALITY

One aspect of the new ratesetting process that bears a special mention is that the current extensive provisions for multiple reconsiderations and judicial reviews of rate decisions would be eliminated. The Commission previously has testified in favor of eliminating some of these reviews in order to simplify and expedite the rate process. My opinion remains that the current system of multiple checks and balances is, in some instances, too much of a good thing.

At the same time, I suggest caution about going too far in the opposite direction. For individuals and numerous diverse business interests, the Postal Service provides the only hard copy access to every American. This means that a flawed rate decision could have a devastating impact on a sector of the business community.

H.R. 3717 provides no recourse and no remedy should the Postal Service implement rates that unintentionally or unwittingly destroy small businesses, or even a whole segment of an industry. For example, if rates for publications are changed so that copies sent locally pay much less, while copies sent to distant or rural areas pay much more, on average the increase might not exceed the GDPPI. Nonetheless, such a decision might leave a substantial number of low circulation publications with national mailing lists unable to afford to have their product delivered, and they might fail. Even if the Postal Service rationale for its decision, as published in the Federal Register, was completely arbitrary or based on an inaccurate factual predicate, those publications would have no recourse. The Directors' decisions are final. They "are not subject to judicial or administrative review" (proposed sections 3724, 3742).

The complaint procedure also provides no effective remedy. In the previous example, suppose that when the Postal Service increased the rates for publications sent to

distant areas it accidentally increased the rates for publications by more than the GDPPI. If a complaint is filed and the Commission finds it justified, relief still may not prevent many of the publications harmed by those rates from being put out of business. The Commission cannot order the Postal Service to change the unlawful rate. It can only order the Postal Service to set aside profits for limited purposes. If there are no profits, a complaint case is meaningless; and even if profits exist, the Service may satisfy its obligations by claiming to delay future increases for Noncompetitive products. Deferring an increase for all Noncompetitive products would be of little benefit to these low circulation publications.

In this hypothetical situation, publications may not be the only ones adversely affected. If the Postal Service changes rates so that it becomes uneconomic to send publications longer distances, citizens living in remote rural areas may effectively be denied access to many publications.

Earlier I discussed the predatory pricing possibilities created by the fact that several postal products in the "Noncompetitive" baskets are in direct competition with products offered by private enterprises. For example, Enhanced Carrier Route saturation mail competes with newspaper inserts. There is nothing that prevents the Postal Service from exploiting some captive users of one or more further subordinate units in Enhanced Carrier Route mail, for example catalog mailers, to cross-subsidize saturation mail's direct competition with daily and weekly newspapers.

Here again, a complaint to the Commission would provide no real relief to either the exploited captive mailers or to the private enterprise facing unfair competition. H.R. 3717 appears to allow for exploitation of one further subordinate unit to benefit others. Even if the Commission were to find a complaint justified and find that a particular product should be reclassified as "Competitive," the Directors could reject that recommendation and their decision would not be subject to judicial review.

I believe that there should be some mechanism to allow those who are convinced that certain Postal Service rates are in direct violation of law to present their concern, and if their concern is valid, to obtain relief. I suggest that if the Commission finds that the Postal Service has implemented unlawful rates, it should be authorized simultaneously to direct the Service to implement changes to bring those rates into conformance with the standards of title 39.

I am not confident that the anti trust laws, by themselves, will provide a satisfactory solution. While the specter of an adverse treble damage award may restrain stock-owning managers of publicly-held private businesses from unfair competition, Postal Service managers would be motivated by H.R. 3717 to stretch the edge of the competitive envelope. They would benefit in profitable years and would suffer no personal harm if they inadvertently go too far. An anti trust award against the Postal Service only will reduce taxpayers' equity. It will not depress future profits which are measured on an accrual basis.

PRICE CAP REGULATION

Price-cap regulation is a form of incentive regulation. The incentive that drives price-cap regulation is the profit incentive. Owners of a monopoly franchise are offered a deal. In return for imposing a cap on prices, the regulator or legislature allows the monopolist to keep any profits it might earn through lowering costs. In other words, the price cap places downward pressure on prices, which translates into downward pressure on costs.

In a Postal Service where 80-85 percent of costs are labor costs, downward pressure on costs means downward pressure on total wages and benefits. A reduction in total wages and benefits can only be accomplished by reducing wage rates or number of employees. Whether significant reductions of this kind can realistically be achieved without significant changes in postal labor-management relations and/or service seems questionable.

A second problem with price-cap regulation has been identified in the economic literature. This problem relates to the inability of a regulator to make an irrevocable commitment to maintain a price-cap mechanism no matter how much profit a monopolist earns. After all, the whole point of regulation--whether old-fashioned cost-of-service regulation or modern incentive regulation--is to prevent a monopolist from exploiting its monopoly power. Large, "obscene" profits are likely to be interpreted as evidence of monopoly exploitation, which in turn could lead to reimposition of stringent price controls.

With a very real threat of more stringent regulation hanging over their heads, owners of a monopoly franchise may prefer to forgo large profits in order to retain the pricing freedom that is available under price-cap regulation. But a self-imposed limit on profits is no different than one imposed by a regulator. In the end, price-cap regulation may not be much different from cost-of-service regulation in terms of ultimate outcomes.

Mr. Chairman, as I mentioned earlier, my testimony today focuses primarily on the new pricing mechanisms. We will, undoubtedly, have additional questions, comments and suggestions about this and other aspects of H.R. 3717 as consideration of the bill proceeds. I look forward to continuing to work with you. This, however, completes testimony for today. I will try to answer questions you may have.

Current Class or Subclass	Noncompetitive Services				Competitive Services		Total
	First Basket	Second Basket	Third Basket	Fourth Basket	A Priority Mail	B Expedited Mail	
Single Piece First Class Letters, Parcels and Cards (domestic and International)		All Other First Class (domestic)	Periodicals	Standard Mail except Parcel Post			
First Class: Letters and sealed parcels (partial) 1/ Cards (partial) 1/ International (partial) 1/		First Class: Letters and sealed parcels (partial) 2/ Cards (partial) 2/ Classroom	Periodicals: Regular Rate Within County Nonprofit Classroom	Standard: Single piece Regular Enhanced Carrier Rta Nonprofit Bound Pmt Mtrr Spec Rate Library Rate			
1/ Nonpresort portion. 2/ Presort portion.							
Volume (millions) % of total	58,924 33%	36,647 21%	10,467 6%	70,048 39%	1,997 1%		178,083 100%
Revenue (\$millions) % of total	22,032 41%	10,334 19%	2,059 4%	12,387 23%	7,344 14%		54,156 100%
Contribution (\$millions) % of total	7,912 40%	5,762 29%	242 1%	3,598 18%	2,211 11%		19,725 100%

Breakdown of Competitive Services:

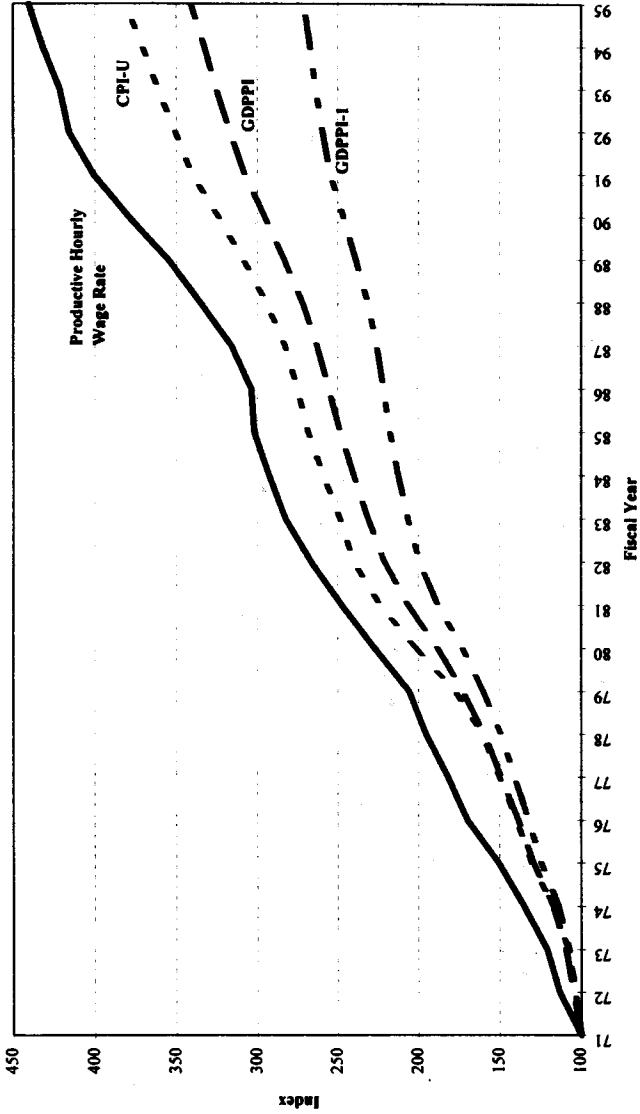
	Volume	Revenue	% Rev	Contribution	% Cont
Priority Mail	762	2,763	5.1%	1,362	6.8%
Expedited Mail	53	682	1.3%	108	0.5%
Mailgrams	5	8	0.0%	-	0.0%
International Mail	991	1,671	3.1%	299	1.5%
Parcel Post	186	678	1.3%	47	0.2%
Special Services		1,542	2.8%	395	2.0%
Total	1,997	7,344	13.6%	2,211	11.2%

Note: All International Mail data are included in Competitive Services figures. Information breaking out First Class International Mail is not available.

Source: PRC R94-1 Opinion, Appendix G, Schedule 1.

Attachment B

Indices for USPS Productive Hourly Wage rate, CPI-U, GDPPI, & GDPPI-1
1971 = 100



USPS Productive Hourly Wage Rate for Clerks, Mailhandlers, City Carriers, Rural Carriers, and Vehicle Service Drivers from USPS Cost and Revenue Analysis Report and National Payroll Hours summary Report, FY 1971 - 1995
 CPI-U - Department of Labor, Bureau of Labor Statistics
 GDPPI - Department of Commerce, Bureau of Economic Analysis
 GDPPI - 1 assumes a negative one percent (1%) adjustment factor of the GDPPI each year

Subordinate Units in Bold
Further Subordinate Units in Italics

BASKET 1

(Rates for Basket 1 may not be averaged)

Single Piece First-Class Letters

Domestic

International

Single Piece First-Class Cards

Domestic

International

Single Piece First-Class Parcels

Domestic (weigh up to 12 ounces)

International (weigh up to 4 pounds)

BASKET 2**First-Class Letters (not single piece)**

Presort

Automation Basic

Automation Three-digit

Automation Five-digit

Automation Carrier Route

Presort Flats

Automation Basic Flats

Automation Three- and Five-digit Flats

First-Class Cards

Presort

Automation Basic

Automation Three-digit

Automation Five-digit

Automation Carrier Route

BASKET 3

Regular Publications

Basic
Three-digit City and Five-digit
Carrier Route

Within County Publications**Nonprofit Publications**

*Basic**
*Three-digit City and Five-digit**
*Carrier Route**

Classroom Publications**Science of Agriculture**

[* proposed in MC96-2]

BASKET 4

Single Piece (weighing less than 16 oz.)

Basic
Keys and Identification Devices

Standard Regular (weighing less than 16 oz.)

Basic Sortation
Basic Sortation, Prebarcoded
Three- and Five-digit Presort
Three-digit Presort Letters, Prebarcoded
Five-digit Presort Letters, Prebarcoded
Three- and Five-digit Presort Flats, Prebarcoded

Enhanced Carrier Route (weighing less than 16 oz.)

Residual Basic
Basic Prebarcoded
High Density
Saturation

Nonprofit Standard (weighing less than 16 oz.)

*Basic Sortation**

*Basic Sortation, Prebarcoded**

*Three- and Five-digit Presort**

*Three-digit Presort Letters, Prebarcoded**

*Five-digit Presort Letters, Prebarcoded**

*Three- and Five-digit Presort Flats, Prebarcoded**

Nonprofit Enhanced Carrier Route (weighing less than 16 oz.)*

*Residual Basic**

*Basic Prebarcoded**

*High Density**

*Saturation**

Special

Single Piece

Level A (5-digit) Presort

Level B (Destination Bulk Mail Centers) Presort

Library

[*proposed in MC96-2]

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

Rules of Practice and Procedure)

Docket No. RM95-4

**MOTION FOR RECONSIDERATION OF
AMERICAN BANKERS ASSOCIATION, AMERICAN BUSINESS PRESS,
GREETING CARD ASSOCIATION, AND
THE NEWSPAPER ASSOCIATION OF AMERICA**

American Bankers Association ("ABA"), American Business Press ("ABP"), Greeting Card Association ("GCA"), and the Newspaper Association of America ("NAA") (collectively, "Movants"), respectfully submit this motion for reconsideration of the Commission's Order No. 1110 ("*Order*") in this proceeding.¹

In the *Order*, this Commission adopted special procedures for the expedited consideration of certain types of proceedings. Movants respectfully submit that two of these new rules -- the provisional services rule and the five year test period -- should be reconsidered. In particular, Movants urge the Commission:

- To rescind the rule (39 C.F.R. §§ 3001.171 *et seq.*) for expedited consideration of "provisional" services;² and
- Limit multiyear test periods (39 C.F.R. §§ 3001.181 *et seq.*) for new services to, at most, three years.

¹ 61 *Fed. Reg.* 24,447 (May 15, 1996).

² Alternatively, should the Commission be able to articulate exactly what a "provisional" service is and how it differs from "experimental" or "new services," the Commission should treat this motion as one for clarification.

I. INTRODUCTION AND STATEMENT OF INTEREST

Movants represent thousands of mailers that collectively use all classes of mail. While Movants represent a variety of interests, they share a deeply-held concern that the Postal Service must not use revenues generated by First Class, periodicals, and other captive mailers to support ill-advised ventures and that the Service, as a public service, must not favor some mailers at the expense of others. This motion is filed out of a strong belief that the new rules for provisional services and *five-year* test periods for new services pose a substantial risk of precisely such dangers. Accordingly, they respectfully urge the Commission to reconsider its recent *Order*.

ABA is the only national trade and professional association serving the entire banking industry, from small community banks to large bank holding companies. ABA members represent approximately 90 percent of the commercial banking industry's total assets. About 94 percent of ABA members are community banks with assets less than \$500 million.

ABP is an association of over 100 publishing companies that mail at periodical rates approximately 700 trade, professional, medical, and business periodicals to readers in every industry and profession. ABP filed comments on the proposed rules that were adopted by the Commission. In every rate and most classification cases that have come before this Commission, ABP has been the primary advocate for thousands of nationally-circulated smaller-volume periodicals.

GCA is a trade association representing many of the greeting card producers in the United States. In 1995, an estimated 7.4 billion greeting cards were purchased by American consumers, most of which were sent by First-Class mail. GCA represents the interests of its members as well as the interests of over 95% of American households which mail greeting cards.

NAA represents approximately 1,500 newspapers in the United States and Canada. Members account for about 85 percent of the daily circulation in the United States. Many non-daily newspapers also are members of NAA. NAA members are users of all classes of mail, and spend several hundred million dollars annually with the Postal Service.

Although Movants have specific concerns, as described below in Sections III and IV, with each of the new rules for provisional services and the five years allowed for the test period for new services, they also have fundamental concerns of a more general nature that arise from the mandates of the Postal Reorganization Act, as discussed in Section II below. For these reasons, Movants submit that the new rules are inappropriate and should be rescinded (provisional services rule) or modified (multiyear test period to no more than three years).

II. THE ORDER FAILS TO CONSIDER ADEQUATELY THE CONSEQUENCES OF THE COMMISSION'S LIMITED POWERS UNDER THE ACT ON ITS ABILITY TO MONITOR PROVISIONAL SERVICES AND TEST PERIODS OF UP TO FIVE YEARS DURATION

Whatever might be the appropriateness of the expedited rules for provisional services and the five year test period for new services in the case of a private, commercial firm subject to the discipline of shareholder oversight as well as the competitive market, they are inappropriate for a large governmental institution that is required by statute to operate in the public interest. The Postal Service's status as a government service not only confers substantial benefits and powers that private businesses do not enjoy -- such as immunity from tax laws and a legal monopoly over the vast majority of its products -- but also creates incentives markedly different from those facing a private business. Unless and until these fundamental differences are changed by Congress, they have a major bearing on the propriety of the final rules, and militate in favor of reconsideration.

The Postal Service has plainly demonstrated over many years that its major motivation is the generation of increased volumes. Such a goal poses a particularly strong danger that the Postal Service will underprice "provisional" services or market tests of five-year duration in order to maximize volumes, secure in the knowledge that other mailers will pick up the tab.³

³ See *Comments of the Newspaper Association of America*, Docket No. RM95-4 (Jan. 11, 1996) ("*NAA Comments*") at 4-5, 9-12.

This danger arises under current ratemaking practice because any financial losses that the Postal Service incurs in an expedited service venture, or over a five year test period, will simply become part of the Prior Year Loss component of the revenue requirement in the next rate case. Because Prior Year Losses are apportioned in the same manner as institutional costs to be recovered, any financial losses stemming from ill-advised or underpriced "provisional" services under the new rules effectively would shift from the users of these services to First Class or other small volume mailers that lack alternatives and that cannot qualify for the provisional service.⁴ This would constitute a cross-subsidy of such services,⁵ a result specifically rejected by Congress.⁶

Although the Commission in the *Order* acknowledges the merit of this concern, it simply asserts a belief that it has fashioned rules "that will serve to limit the potential

⁴ First Class mailers currently pay approximately 69 percent of institutional costs. See *Postal Rate and Fee Changes, 1994*, Docket No. R94-1 at Appendix G, Schedule 1 (November 30, 1994) (Opinion and Recommended Decision). In the past, the Commission has declined to accept proposals that prior year losses should be recovered from subclasses of mail that can be shown to have caused the losses. *Id.* at III-60-64.

⁵ By definition, since the new or provisional service would have lost money, its rates could not have met the statutory requirement that they recover their attributable costs. See 39 U.S.C. § 3622(b)(3).

⁶ As the Senate Report stated: "The temptation to resolve the financial problems of the Post Office by charging the lion's share of all operational costs to first class is strong: that's where the big money is." S. Rep. No. 912, 91st Cong., 2d Sess. 13 (1970) ("*Senate Report*"). In addition, although small volume periodicals mailers pay a relatively small proportion of overall institutional costs, they might experience large percentage increases if institutional costs now paid by third-class (or, as of July 1, Standard Class) mail or large-volume periodicals were shifted to residual mail.

negative financial impact" of the new rules" and thereby "avoid this potential harm."⁷ Movants respectfully submit that the protections set forth in the *Order* are insufficient. The truncated period which intervenors will have in which to review, analyze, and critique the Postal Service's request for expedited consideration simply will not allow sufficient time to assess the quality of the Postal Service's financial projections (which one may reasonably assume will always paint a rosy financial forecast for whatever service is offered) and identify flaws (which can take weeks of discovery to uncover).⁸ Consequently, Movants urge the Commission to reconsider its conclusions.

The dangers of non-compensatory provisional services and multiyear test periods are of particular concern because the Act does not grant this Commission many of the powers commonly possessed by regulatory commissions having jurisdiction over private firms. Experience has now demonstrated that the Commission may need *more* powers, including the ability to subpoena data from the Postal Service. Certainly the Commission should not be *reducing* its regulatory oversight, and limiting its own powers, which Movants believe is exactly what it has done through these rules.

The Commission's greatest powers are the ability to say no at the outset of a Postal Service request, and to exercise its power under 39 U.S.C. § 3603 to craft clear and strong precise rules that fully protect the substantive and procedural rights of all

⁷ 61 *Fed. Reg.* at 24,448.

⁸ See *American Bankers Association Comments*, Docket No. RM95-4 (Jan. 11, 1996) ("*ABA Comments*") at 3, 4; *Comments of American Business Press*, Docket No. RM95-4 (Jan. 11, 1996) ("*ABP Comments*") at 6; *NAA Comments* at 15-17.

parties. Giving postal management a means to reprice cosmetically altered versions of existing services on an expedited basis and without a corresponding and offsetting increase in its own powers merely reduces what limited power the Commission possesses to prevent rampant cross-subsidies of "competitive" services from services used by captive mailers. It should not do so.

If Congress makes fundamental changes to the Postal Reorganization Act to authorize the types of proceedings contemplated by these rules, to grant the Commission appropriate regulatory powers, and to ensure that captive mailers will not bear any losses arising from such ventures, the situation would be different. Unless and until Congress changes the law, however, the Commission should not be weakening its oversight powers in such a sweeping manner.⁹

III. THE RULE FOR EXPEDITED CONSIDERATION OF "PROVISIONAL SERVICES" UNNECESSARY, VAGUE, AND POTENTIALLY DETRIMENTAL TO MAILERS AND SHOULD BE REPEALED OR SUBSTANTIALLY CLARIFIED

Movants urge the Commission to repeal the special rule for expedited consideration of provisional services on the grounds: (1) that it is unnecessary; (2) that it is excessively vague and broad; and (3) that it creates far too many opportunities for abuse. Alternatively, the Commission should try to clarify the rule to resolve these problems.

⁹ The Postal Service would be free, of course, to seek waivers of its procedural rules at any time.

First, the fundamental problem with the rule for expedited consideration of "provisional services" is that the concept is so grossly vague as to be meaningless. It is a basic precept of administrative law that vagueness in agency rules is undesirable: agencies should give the public clear notice of what is at stake. A vague rule is especially problematic because it is susceptible to arbitrary application; if no one knows what a rule really means, it can easily be abused. *See, e.g., Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926) ("a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law"); *Georgia Pacific Corporation v. OSHRC*, 25 F.3d 999 (11th Cir. 1994) (voiding regulation as unconstitutionally vague because of susceptibility to many plausible and inconsistent interpretations).

In particular, the difference between a "provisional" service and either a "market test" of a "new" service or an experimental service under longstanding rules remains utterly unclear.¹⁰ No one -- the Commission, the Postal Service, those supporting the proposal, or even the Joint Task Force -- has identified a single example of an offering that requires the unique designation of "provisional." Although the Commission states that the primary difference between provisional services and market tests is that the latter are intended to be "limited in scope, scale, duration, and potential

¹⁰ 61 *Fed. Reg.* 24,450 ("a separate rule *may* be useful . . . ") (emphasis added).

adverse impact,"¹¹ while provisional services will "supplement, but will not alter, existing mail classifications and rates for a limited and fixed duration,"¹² this distinction is meaningless. Nothing in the market test rules would limit such a test to a particular scope, scale or duration that a provisional service could not have.¹³

Virtually any service imaginable, including one subject to a market test, could "supplement, . . . but not alter" existing services. Therefore, the *Order* does not justify a separate rule for "provisional" services.

Furthermore, given the vagueness of the concept of provisional services, there now appears to be two sets of different (and conflicting) rules that could apply to the same conduct.¹⁴ If the Postal Service wants to offer a "new" service in a tentative manner, the existing experimental service rules and newly adopted market test rules offer adequate latitude. The recent reclassification case was intended to simplify and streamline USPS services; overlapping special procedural rules runs directly contrary to this purpose.

¹¹ § 3001.161, *id.* at 24,454.

¹² § 3001.171, *id.* at 24,456.

¹³ Indeed, the market test rule expressly states that the Postal Service is not prohibited from "conducting more than one market test in support of a potential permanent change in mail classification." 61 *Fed. Reg.* at 24,455. Plainly, if the Postal Service can conduct more than one market test, each of sufficient scale, it would equate to a provisional service -- only pursuant to different rules.

¹⁴ See *ABP Comments* at 6; *NAA Comments* at 15.

Second, compounding the vagueness problem is the potential for abuse created by the potential breadth and duration of provisional services, coupled with the severe curtailment of the procedures by which they would be established.¹⁵ As shown above, virtually any proposal could qualify for two years of "provisional" service, which can be a very long time in the postal world. In particular, nothing in the provisional services and five-year test period rules prevent the Postal Service from relabelling existing services, with cosmetic differences, in order to engage in anti-competitive price discrimination or to tailor a service to the specific eligibility criteria of a particular large and influential mailer, and from attempting to recover losses from such activities through the Prior Year Loss cost component of the revenue requirement.¹⁶

Third, the rule as adopted is defective in another important respect. In particular, the *Order* did not adopt the proposal of Movants that the Postal Service be required to provide sufficient cost data, such as an estimate of the product incremental cost (or, in the case of a discount, avoided cost), to establish that rates for a provisional service would actually be compensatory and non-predatory.¹⁷ Given the danger that any financial losses would result in a cross-subsidy by captive mailers, the

¹⁵ See *ABA Comments* at 3, 4; *NAA Comments* at 14-18.

¹⁶ The Postal Service's ill-conceived "Neighborhood Mail" program, had it included a new rate, might even have met that standard. Similarly, the "supplement" standard appears so elastic that even the Publications Service and Enhanced Carrier Route subclass proposals -- so controversial in Docket No. MC95-1 -- might have qualified. *ABP Comments* at 5, *NAA Comments* at 14.

¹⁷ See *ABP Comments* at 3, 4; *NAA Comments* at 15.

Commission should condition any such authorization on a requirement that the Postal Service provide a calculation of the incremental costs associated with a proposed provisional service.

"Provisional" services remain far too vague to deserve any form of expedited procedures. Movants respectfully request that, upon reconsideration, the Commission issue an order withdrawing the Rules 3001.171 *et seq.*

IV. THE FINAL RULE FOR MULTIYEAR TEST PERIODS IS SERIOUSLY FLAWED

Although Movants are not opposed to the concept of a multiyear test period for new services, a five year period is *far* too long. Accordingly, Movants respectfully request that the Commission reconsider section 3001.181 *et seq.* of its rules of practice to shorten the maximum test year period and tighten the showing the Postal Service must make to invoke this rule.

First, a test period of five years is simply unwarranted.¹⁸ Although five years is the outer bound of the recommendation of the Joint Task Force cited in the *Order*, the Task Force's recommendations do not enjoy the force of law, nor did it ever come to grips with the problems inherent in long-range projections for new services. Neither history nor the record in this proceeding provides grounds for believing that the Postal

¹⁸ The *Order* appears to attach no real significance to the five-year limit, for it states that the Postal Service "is free" to ask for an even longer period. 61 *Fed. Reg.* at 24,452.

Service is able to make reliable five-year forecasts of costs, volumes, and revenues with respect to new services.¹⁹ Movants respectfully suggest that a maximum period of three years or less is sufficient.²⁰

The problem of accurate measurements is especially pertinent to multiyear test periods because, as the Joint Task Force recognized:

The Postal Service should recognize its responsibility to minimize its losses by requesting changes or terminations when it sees expectations unfulfilled. It should anticipate that the general receptivity of the Commission and other participants to new service proposals will be affected by its record in limiting its losses as well as in building successes.²¹

This problem persists. Nothing in either the non-binding Task Force Report or in the newly-adopted rule prevents the Postal Service from shifting losses from ill-advised "provisional" services to captive mailers through the Prior Year Loss component.

Second, the *Order* compounds this danger by materially reducing the standard of proof that the Postal Service must sustain in order to support its request for a multi-year test period. The proposed rules had included a standard of "convincing substantial

¹⁹ Movants note that recently filed testimony of a Postal Service witness in the *Special Services* proceeding defends the selection of FY96 as the Test Year in that proceeding on the reasonable grounds that estimates for that period "are likely to be more reliable than those for future fiscal years." Direct Testimony of W. Ashley Lyons, USPS-T-1 at 7, Docket No. MC96-3 (filed June 7, 1996).

²⁰ *NAA Comments* at 25-26.

²¹ *Joint Task Force Report* at 52.

evidence"²² that the Postal Service would have to meet to justify a multiyear test period, which Movants believe appropriately reflected the policy, substantive and procedural concerns shared by many parties.

Unfortunately, in the *Order* the Commission eliminated altogether the word "convincing," thus eviscerating this potentially strong safeguard, while stating that it had not intended to require a stronger showing than normally is required. On the contrary, Movants submit that the more persuasive showing required by a "convincing" standard, as proposed, would be a prudent, even necessary, prerequisite for the special privilege of a multiyear test period, especially one stretching for up to five years. The Commission should reconsider its decision to accept a weaker showing.

For all these reasons, Movants respectfully request the Commission to reconsider its approval of the five year multi-year test period, and either withdraw section 3001.181 *et seq.* of the rules or implement the modifications suggested herein.

²² Proposed § 3001.181, *Notice* at 54,985.

V. CONCLUSION

For the foregoing reasons, Movants American Bankers Association, American Business Press, Greeting Card Association, and the Newspaper Association of America respectfully urge the Commission to reconsider the recently adopted rule for expedited consideration of provisional services and five year test periods for new services.

Respectfully submitted,

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July 3, 1996

CERTIFICATE OF SERVICE

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William B. Baker
William B. Baker

July 3, 1996

**PREPARED TESTIMONY
OF
COMMISSIONER WILLIAM H. LEBLANC III
POSTAL RATE COMMISSION
BEFORE THE
HOUSE COMMITTEE ON POST OFFICE AND CIVIL SERVICE**

July 10, 1996

1 Ladies and gentlemen, I am pleased to be able to present to you my
2 views on the issues raised by this significant legislation which, if passed by the
3 Congress, will make dramatic changes both in the manner that the Postal
4 Service conducts its business and in the way that the nation is served by the
5 Postal Service.

6 At the outset, you should know my belief in the purpose of the Postal
7 Service. Traditionally, and surely still, it is the delivery of what is called "hard
8 copy" mail. We all hope that this can be done in a business like way - efficiently
9 and effectively. The Postal Service management should not be primarily
10 motivated by profit, but by its desire to provide the very best service possible to
11 the American people: to people everywhere; people in all walks of life; and in
12 all circumstances. The Postal Reorganization Act which established the Postal
13 Service clearly states that this is the purpose of the Postal Service. I have
14 always felt that my responsibility as a member of the Postal Rate Commission
15 is to further these principles as defined by the Act. I believe that the Congress
16 was right in 1970. I would be deeply disappointed if the Congress were to
17 change the operation of the Postal Service in a way that compromised these
18 principles. If it is the intent of this committee to change the purpose of the

1 Postal Service, I hope that it would state what it believes the new purpose or
2 purposes of the Postal Service should be.

3 There is probably good reason to change certain particulars of the
4 current statute. The nature of communications and the character of American
5 society have changed dramatically in the past 25 years. But whatever changes
6 are made should be made in light of the principle of service to the American
7 people.

8 There has been a great deal of talk about the need for flexibility for the
9 Postal Service. I certainly understand the meaning of flexibility. However, I
10 only have a vague understanding of what it means to the Postal Service, other
11 than less oversight by the PRC. It is in the area of oversight that there needs to
12 be change in the statute. Presently, oversight is not simply divided among the
13 Governors, the PRC, and the Congress; it is fractured. Collectively, we know
14 less about the Postal Service and its operations than a good brokerage firm
15 knows about most of the major publicly traded corporations in America.

16 Effective oversight rests on information and the ability to influence
17 organizational behavior in response to information. Information, not only of
18 what has happened in the Postal Service, but of what its future plans are and
19 why. The Postal Service resists providing information that is essential for
20 oversight. This legislation recognizes this fact by providing the PRC with
21 limited subpoena powers. The lack of comprehensive oversight has cost the
22 nation dearly. Without ignoring positive changes of the past four years, it is

1 important to remember that the Postal Service has lost hundreds of millions of
2 dollars as a result of decisions to reorganize and down size, with the resulting
3 collapse of service in Washington, D.C., New York, Chicago, and elsewhere; as
4 a result of the ill-advised Postal Buddy experience; as a result of changing the
5 contracting rules for remote bar coding operations. I believe that effective
6 oversight may well have avoided much of this loss. The Board of Governors
7 approved these decisions. Had they had better information, plus some
8 analytical staff support independent of the Postal Service, their decisions may
9 well have been different. I see nothing in this legislation that would create
10 effective oversight that might preclude future disasters of similar magnitude. I
11 should remind everyone in considering this legislation that the Postal Service
12 resists the kind of oversight that I am recommending. They want less oversight
13 than they presently have. Are there no lessons to be learned from these past
14 four years? These past 25 years?

15 Unfortunately, I can find nothing in the proposed legislation that deals
16 with the above kinds of issues. I now turn to the particulars of your legislative
17 proposal. I have divided my comments into three areas: general; non-
18 competitive classes; and competitive classes.

19 **General:**

20 * This legislation is intended to provide the Postal Service increased
21 flexibility in adjusting rates and establishing new services to meet the
22 challenges of the 21st Century. They are to do this in a more efficient way

1 motivated by the possibilities of bonuses to come from profits. This purpose is
2 laudable. It has the strong sound of god, country, as well as motherhood and
3 capitalism at work. But there is no evidence that increased flexibility will
4 significantly increase hard copy market share, nor can we be confident that
5 bonuses will improve the productivity or efficiency of the Postal Service. We
6 must take this on faith. The poor financial performance of the Postal Service
7 over the past 25 years has less to do with inflexibility than with management
8 performance. I would note that tens of thousands of American companies, big
9 and small, declare bankruptcy every year. These bankruptcies have nothing to
10 do with a lack of corporate flexibility. I owned a business a number of years ago
11 that had to close its doors. Closing the doors of my business was an unhappy
12 event, but it had nothing to do with flexibility. Sadly, I had no "exigency"
13 clauses in my bank notes.

14 * This may seem to be a small matter, but I am disappointed with the
15 reasoning that justifies the elimination of the title of Postmaster General. For
16 two hundred years the Post Office and the Postmaster General have been
17 proud and important parts of the American heritage. Following the line of
18 reasoning that supports renaming the Postmaster General, it is important the
19 two new Inspector General positions created in this legislation be redesignated.
20 Perhaps additional legislation can be passed by the Congress to redesignate
21 the Attorney General as Chief Counsel of the United States; the Surgeon
22 General as the Chief Medical Officer of the United States. Both organizations

1 are widely known to be terribly militaristic. And maybe we should consider
2 redesignating the Commandant of the Marine Corps as the Chief Executive
3 Officer of the Marine Corps.

4 * I am deeply concerned that under this legislation the role of the
5 mailers in their capacity as intervenors in the rate making process will
6 effectively disappear. The intervenors (and the Office of Consumer Advocate)
7 have played a vital role in the rate making process. As users of the mail system
8 they understand its strengths and weaknesses very well. They have kept the
9 Postal Service accountable and in the process have educated both the Postal
10 Rate Commission and the Postal Service. Our Postal System will be poorer
11 without their input.

12 * I see no reason for establishing an Inspector Whatever for the Postal
13 Rate Commission. Our finances, all of which are handled by the appropriate
14 divisions of the Postal Service, are relatively small and straightforward. Our
15 decisions are transparent.

16 **Non-Competitive Products:**

17 * This is rate setting by formula. It is a process that is much less
18 sophisticated than the present process which, though arduous and deliberate,
19 carefully, and with meticulous attention to the concerns of the mailers,
20 examines and evaluates all aspects of establishing cost-based rates. This new
21 system does not address rates at the same level of detail. This permits abuse

1 of the monopoly classes through differential, unexamined discounts for various
2 rate categories to be established by the Postal Service on its own initiative.

3 * Is discovery to be permitted for the PRC's annual audit or only once
4 every five years during the hearing on the establishment of new adjustment
5 factors? Can the PRC require the Postal Service to conduct studies relevant to
6 the effective performance of the PRC's functions?

7 * What does the word "profit" mean to a government agency that has no
8 shareholders, and is by its very nature is a public service organization? Is there
9 to be any limit to "profit"? Who will decide?

10 **Competitive Classes:**

11 * Will the Postal Service be competing on a level playing field with
12 private industry? Will it pay state and federal taxes? Will it pay local property
13 taxes? Or will the Postal Service be a "specially advantaged" competitor?

14 **Conclusion:**

15 I realize that this proposed legislation and these hearings are only the
16 first step in a long process, both in the House and the Senate, that will end in
17 major changes in the Postal Statutes. This is the way it should be. It is
18 important that any changes to the present law be made only after all affected
19 parties have had their say. The parallel between the processes of Congress in
20 changing laws and those of the Postal Rate Commission in changing rates is
21 striking. The PRC, too, holds hearings for all interested parties and makes

1 decisions on the basis of evidence provided. I think that these involved drawn
2 out processes are the best way both for making laws and making postal rates.

3 Of all the issues raised in this statement, the most important concerns
4 oversight. I do not think it adequate now and unless it is increased in
5 conjunction with the new authorities granted the Postal Service, it will be even
6 less adequate in the future. Implicit in the increased flexibility is the
7 opportunity for the Postal Service to engage in discriminatory pricing. Under
8 this legislative proposal, it will be difficult to know when this occurs, and more
9 difficult to correct.

10 The Postal Service belongs to the American people. The American
11 people are entitled to a full accounting of the performance of the Postal Service.

Mr. MCHUGH. Thank you, Chairman Gleiman, for attempting to summarize your, I would say, very thoughtful and certainly very thorough statement.

Mr. GLEIMAN. If it's any comfort, sir, while you were reading our testimony over the Fourth of July weekend, we were writing it on the Fourth of July.

Mr. MCHUGH. You were also writing rewrites of the original, which I read, and I note that there were a few comments that you made in your summary today that weren't in either the first writing or the rewriting.

That's not a complaint. I think that it's simply illustrates what I certainly intend will be an ongoing process, because it took us 18 months, roughly, to put this bill together.

I do not expect anyone to fully absorb it and to criticize and/or to critique it in a matter of weeks, and we will continue to work with you.

And let me, in that regard, express appreciation of the entire subcommittee for yours and your staff's cooperation in our efforts to this point. They have been helpful.

Mr. GLEIMAN. Thank you.

Mr. MCHUGH. Let me ask you a couple of questions and then turn it over to the other members of the subcommittee, who have been enormously patient as well.

Let me make another comment first. I want to make certain that everyone understands that as I commented to the PMG today, when we propose to create an Inspector General's office that is different in that it is for the first time outside the Postal Service, that is not intended to criticize what has occurred prior to this point and certainly not intended to criticize any individual.

I would note as well that the changes we are proposing here today are not in any way intended to be a criticism of either the Postal Service or the PRC.

I think over the years the Commission and its members, those of whom I have had the opportunity to work with, have done a more than admirable job, given the challenge and the charge that has been placed before them.

What we are suggesting here is, as I've called it and others, a new paradigm that, by definition, would require a new structure and a new process.

None of it is intended as a criticism beyond the fact that the times, they are changing, and we are making a suggestion as one way that we could respond to that.

Mr. GLEIMAN. Mr. Chairman, I just want to tell you that I don't think any of us at the Rate Commission took the bill as a criticism of anything that we've done.

I appreciate the work and the thought that went into this. Quite frankly, I was astonished that you could produce a proposal that's as sweeping.

Questions, concerns, problems, disagreements notwithstanding, having worked up here, I can tell you that I'm just astounded that it could be pulled together, especially in such a contentious area.

Mr. Coughlin made a comment earlier, and I just want to second it. I think many of the staff at the Commission and Commissioners had the same experience.

Our first reading of the bill was against a backdrop of our years of experiencing working with the old paradigm, if you will, and we suddenly realized with, I might say, the help of some of your staff that we needed to step back and read it not against our experience but against the bill itself as a new starting point.

One last remark is that it is a little known fact that it was a one-time PRC employee and subsequent domestic policy advisor to President George Bush, a gentleman by the name of Jim Pinkerton, who I think we all owe the modern day use of the word "paradigm," but he was at the Rate Commission for a time.

Mr. MCHUGH. Well, I appreciate that. It's like a painting my grandmother had in her house when I was young. I noticed that wherever you went in the room the eyes would follow you.

And for the first number of years, it would really scare me, but after a while I kind of liked it. So maybe it will be like that painting, and let's keep staring at it and see if we can't like it a bit here.

Let's go back to the word "arbitrary." You commented on the Postmaster General's utilization of that word with respect to the six criteria that we set forth.

Without getting too deeply into the specifics, are you concerned that the six we have defined are indeed arbitrary?

Do you think we ought to look beyond those to try to—if we were to go this route, and let's, for the purposes of this discussion, assume we will, if we're going to go along this route, should we accept these six, or do you think there are others?

Have you had a chance to look at those in that light and be prepared to react?

Mr. GLEIMAN. We've had a chance to look at them, but I really haven't thought of the list in that light, whether it should be added to or subtracted from.

But again, I think the point here is that whatever you put in there, whether it's six factors or nine factors and whether there is overlap between the old and the new that the factors represent a requirement that somebody exercise some judgment, not that somebody be arbitrary. There is a serious distinction here I think is important to make.

Mr. MCHUGH. I appreciate that. In that regard, let me make the same request of you that I made of the panel made up of the Postal Service folks.

Could you please take a look at those and make suggestions on the assumption that that's the route we may take as to their efficacy or the need for expansion or deletion or however you would respond to them?

That would be helpful to us, and particularly, as we have the opportunity to interface them with what I hope the Postal Service will provide us in that regard as well.

Let me use your word about the implementation of judgment to ask my next question. You raised the question in our testimony and very appropriately about the question of costs as it fits into the process of determining what your new decisions will be on the rate-making.

We did not define that all costs should be recovered in that fashion for a couple of reasons, not the least of which is we felt if we

did that, in essence, what we would be doing is maintaining the current cost base ratemaking process.

It was our intention, rather, to have the Commission be in the position, when it is considering all the factors, to consider costs.

And if they felt, given, say, the 80 percent to 85 percent that you outlined in your testimony as personnel costs as being appropriate, to indeed allow it or any other costs.

We felt within the various standards that we set that the extension of that kind of opportunity to exercise judgment was a reasonable one.

Are you suggesting that we shouldn't allow that kind of flexibility within the PRC, or are you just saying this may be a problem?

Let's say you've got to choose right now. The Congress either has to strictly define, yes, you recover all costs or no, you don't, or we give you the power to determine that.

And by the way, I think it's important to note in that regard the X factor—we got to come up with a different name—but the X factor doesn't necessarily have to be a minus. It can be a plus.

And if personnel costs were considered by you in your judgment, the commission's judgment as a whole, to add, then the X factor would be a plus.

How would you come out on that question, flexibility or Congress?

Mr. GLEIMAN. Well, I think flexibility is appropriate, but I really do think that there needs to be some additional guidance.

The big question here is does Congress want to see under the new scheme postal rates increasing at faster than the rate of inflation.

Congress was silent in the Postal Reorganization Act on that issue, but Congress did say that rates should be set to allow the Postal Service to recover costs and break even.

We no longer have break even, and we can either allow them to recover costs—and if we are supposed to allow them to recover costs above and beyond the rate of inflation, sir, I would submit that you won't see too much increased efficiency in the Postal Service and, quite frankly, it raises a question in my mind about whether it makes any sense to make a big change like this.

I think the key here is whether the Congress really anticipates significant increased productivity from the Postal Service.

Mr. MCHUGH. It's a difficult challenge, because I think what we envision in this bill is a day where the Postal Service, in conjunction with the PRC is given heretofore nonexistent flexibility within certain bands.

But at the same time we certainly would imagine that most price increases as permitted—that doesn't necessarily mean that the Postal Service will exercise them—would be at or below the rate of inflation.

But who knows what tomorrow may bring? There may be extraordinary circumstances that we have not either experienced in the past or envisioned in the present that would, for some reason, dictate or at least strongly suggest a rate increase opportunity, and it is only an opportunity, that exceeds the cost of inflation.

Would you agree that that might happen?

Mr. GLEIMAN. Yes, sir. And maybe I can answer the question this way. If that's what you're saying, that you want to really let the Postal Rate Commission have that type of authority and that type of responsibility, then I would say I really appreciate your confidence in the Rate Commission, although it is a bit frightening.

Mr. MCHUGH. It's a bit—I'm sorry?

Mr. GLEIMAN. It's a bit frightening to me personally to have that much authority. I guess I could have taken the bureaucratic way out and said, "Sure, give it to me. I'll handle it."

But it's a lot of authority, and if that's what you intend, then I or folks who are at the Commission subsequent to my departure in a couple of years will, I'm sure, do their best to operate within our understanding of what Congress wanted.

Mr. MCHUGH. Well, I don't doubt for a moment that many particularly at L'Enfant Plaza might suggest, yes, giving you this power is frightening.

But I also think there are those who might say, and I may be amongst them, that the power you hold today truly over the entire process, particularly on a mandated break-even basis is not frightening but substantial.

And I'm not certain we're changing it, but I don't know as we're really elevating the level one way or another.

Mr. GLEIMAN. Let me just tell you very succinctly one difference that comes to mind between the current situation and the situation that would exist under the bill.

Under the bill, the Governors decide they need X dollars to operate the Postal Service next year, and they come into us and they give us an array of rates and volumes which, supposedly, will generate that much revenue.

Our ability to modify the revenue requirement of the Governors is very limited under current law. It has been adjudicated in the courts.

Under your bill, in effect, we would have substantial authority to decide whether we should give the Postal Service, the Directors of the Postal Service, what they may think they need to operate.

So it would be a substantial increase in authority for us in that regard, and I would hope that if the Postal Service thought it was frightening that they thought about it institutionally and not personally.

That's the difference, as I see it, that we really get to take a look at what is now conceptually the revenue requirement if you leave it with either a plus or a minus to the GDPPI.

Mr. MCHUGH. Well, we could have put a flat line CPR or GDPPI, but we did feel that the X factor, was a necessary variable to be realistic.

And it's not unprecedented either, as certainly you know and your testimony that you didn't speak about directly but you wrote about suggests.

This is if not the wave of the future, it's certainly that's coming into vogue. It doesn't necessarily mean it's right, but it's—

Mr. GLEIMAN. I didn't mean to convey that I thought it had to be one or the other. My point was that, as we read it, it could be one or the other, and there are consequences when you can have

it one or the other, different pressures that could be brought to bear.

I'm just suggesting to you that we need some affirmations of congressional intent in this regard. If the congressional intent is that we should exercise the discretion carefully and that you recognize that it could go either way, well, then, so be it.

Mr. MCHUGH. I thank you for those comments. We do have a vote again. We're told there will be several hours, but we do have some time, and I want to yield to the gentleman from New York, Mr. Owens, who has been very patient.

Mr. OWENS. Yes, Mr. Chairman. I came back to hear this testimony because I thought it was very important.

In view of the fact that this is the first of four hearings on this very sweeping piece of legislation, I want to try to get a base as to what the first and most important is all about, and that is the relationship between the revenue and the quality of service.

I am, like every other Member, constantly being approached by my constituents about the quality of service. I live in a borough of Brooklyn with 2½ million people, and the volume of service is such that whether you're talking about competitive or noncompetitive products or you're talking about the first basket or second basket and fourth basket, whatever, the volume in all those baskets in the competitive area and noncompetitive area is so great until you think that the revenue generated would finance first class service for us.

But we've come to the conclusion that we get some of the worse service in the country, and there is no relationship between what is being generated in terms of revenue and quality of the service.

My worry is if we go through the changes recommended by this legislation are we going to be better off or worse off in terms of the basic problem of enough revenue being generated to keep the service even at the present level?

Is the quality likely to go down if you get rid of the competitive products, for example, and a situation like are we going to go from products, mail costing \$3 or more now that's handled by private carriers are you going to drop that to \$2 so more private carriers—more mail will be handled by private carriers?

That revenue lost by the post office, will the loss of that function and that revenue improper the situation or make it worse?

If they don't have to worry about those pieces that are going to be taken by the private carriers, is that going to mean they'll have more time to handle the basic service and the quality of the basic service that costs less than \$2 is going to improve or not?

These are questions I have to wrestle with. I'm sure you don't have any easy answer, but any concern is what is really going to be the impact, in your opinion of removing large amounts of revenue from the revenue pot that you have now?

Is it inevitably going to mean that there is going to be less to work with and service is really going to go down in quality and decrease?

Mr. GLEIMAN. It's not altogether clear to me that this bill would cost the Postal Service the kind of revenue that the Postmaster General suggests it would.

Mr. OWENS. That's the next question I would ask. He says—

Mr. GLEIMAN. It's a predicate to answering your question about service. I would cast my vote with the chairman on this one that these are competitive services, and if the Postal Service can compete, then it's going to have the business and it's going to have the revenue.

And if it loses the business, theoretically, it ought to be able to shed what are called volume variable costs so that there shouldn't be as big an impact as you might think.

Mr. OWENS. You don't think \$4 billion will be lost?

Mr. GLEIMAN. I beg your pardon, sir? I'm sorry, how much?

Mr. OWENS. You don't agree with Mr. Runyon's statement that \$4 billion of our current business is at risk and the bill is likely to cost \$2 billion in the first year alone? You don't agree with that?

Mr. GLEIMAN. I heard those numbers for the first time today, and I tried to listen very carefully and understand how he was coming up with them.

And the answer is I don't think that they would be lost if, indeed, he can compete as he says he can with the private sector in those areas.

Mr. OWENS. Someone is making the assumption that they can't compete.

Mr. GLEIMAN. If they can't compete, then they'll lose the business in those areas, but if they lose the business in those areas, they won't have the costs associated with that business.

When you have a guy running around in a special vehicle delivering express mail, it costs money. And if you lose the express mail business, you don't have to have the gentleman driving around in an express mail delivery vehicle, so you can shed those costs.

Furthermore, I think that the bill attempts to establish a nexus between revenues and profits and performance. If postal managers and postal workers are to be rewarded—and I did read the bonus provision of the bill to cover everybody in the Postal Service except the Postal Rate Commission—

Mr. OWENS. You're likely to lose a large number of jobs—

Mr. GLEIMAN. But they're going to work harder to meet their service standards because service standards are going to be a consideration that we have to take into effect at the end of the year when we do the audit so that they can all get bonuses.

So I think that there is an attempt in the bill. I don't have a crystal ball. I don't know how things are going to work, but I think it's an attempt to move in the right direction.

And as I said in my statement, both my prepared and summary statement, I think one of the other factors that needs to be built in and may be the main factor and it would take care of your concern is that productivity gains should be a major consideration, because if you have productivity gains and you have to meet service standards, it won't matter what the profits look like. Those employees will work hard, and they will deliver the mail in your district.

Mr. OWENS. So if they can't compete, they're likely to lose a large amount of revenue, lose a large number of jobs. But if those jobs that remain focused on delivering basic service, they might do a better job? Is that what you're saying? It's possible?

Mr. GLEIMAN. Yes.

Mr. OWENS. Thank you.

Mr. MCHUGH. I thank the gentleman. We do need to—I'm getting older. You're not, I know, but I am, and I need the time to get over. There will be a 5-minute vote after this 15 minute vote.

So I'll say it again I'll try to be back in 15 minutes, and I appreciate your patience. Is that a possibility for you? I know you may have other commitments.

Mr. GLEIMAN. My only other commitment is to go home and have dinner with my wife and my children, but since my wife is sitting here in the audience, chances are I'm not going to get dinner until I get her home, anyway.

Mr. MCHUGH. Well, I was going to give her my wife's phone number, and they could get together. OK. Well, we'll be right back.

[Recess.]

Mr. MCHUGH. Why don't we begin again. Let's talk a minute about total factor productivity I believe is the way you described it in your testimony.

You're correct that technically, in the annual audits, there is not a direct provision for productivity as a consideration on the various factors.

There is, however, amongst the six factors that we've defined for the annual 5-year baseline, No. 3, in fact, one of the factors of consideration is productivity of the Postal Service in providing postal services.

The reasoning behind that was that productivity is not really something that effectively and fairly can be measured over a narrower term but really is something that has to be trended out.

And we felt that the 5-year look in that consideration was probably a more balanced way to approach the issue of productivity as a way of requiring the Postal Service to indeed be productive.

You, obviously, don't share that. So I'd like to hear your views as to beyond the 5-year why it is both necessary and, equally important, workable on a year-by-year basis.

Mr. GLEIMAN. Well, let me start by saying it's helpful to understand why it appears in one place and not in another, which is something that was not evident to me on reading the bill or the summary of the bill.

I will, after I leave here today, have to crank your comment that you just made, your explanation, into my thinking.

In looking at the audit, the year-end audit, which is what we're going to do to determine whether the Postal Service is in full compliance, which, in turn, is the determining factor in whether postal employees and officials can receive a bonus, we're asked to look at whether they've met their service standards.

We're asked to look at profits, and obviously, it's implicit, as you point out, since the factor is there for the 5-year trending under the adjustments.

It's in there in a removed sense. I think that it ought to be more explicit, and it ought to be given more importance.

The reason I think that it ought to be given more importance is that when you're dealing with price cap regulation, generally, you're dealing with firms that are for-profit firms.

And there is an incentive for the for-profit firms to do what is necessary to generate a profit for their stakeholders, stakeholders being stockholders.

Here we don't have stockholders, so we substitute postal employees and postal officials. And if you focus too much on profits, as opposed to productivity, when you've made this change, since you don't have real stakeholders as you would in a private company, I think there could be a tendency to game the system somewhat to look toward profits.

I pointed out the situation in the past couple of years. Last year the Postal Service had what they called their largest profit ever, a \$1.8 billion surplus.

This year they say that they're going to have a \$1 billion surplus. The year before, in 1994, they finished in the red, and my recollection is that after a number of accounting changes they only finished \$900 million in the red. The only difference between 1 year and the next, the minus \$9 and the plus \$1.8 and the plus \$1 that we're going to have this year is that they increase rates.

Now, I know there are competing interests. They're going to compete. They're going to try to capture market share, and that's going to be, you know, somewhat of a mollifying effect, have a mollifying effect on rates.

They aren't going to be able to do whatever they want, if they intend to go out and capture market share, but the bill does provide the Postal Service with that latitude.

They could go out and try to maximize profits in an area that was quasi-competitive, if you will, and they could realize substantial gains.

In the first year, maybe they're going to adjust rates. As I said, the baseline case gives an ample opportunity to pad the revenue requirement and possibly create a situation for—at least in the early years, under the scheme, you would have substantial profits based on nothing more than the facts that rates were increased.

I don't think people should be rewarded for raising prices when they have captive or a semi-captive audience. I think people should be rewarded for doing an increasingly better job, and that equates with increased productivity.

You've heard me say it before. I think we folks in the Government get paid to do a job, and we ought to try and do the best job we can and that, when we do a good job, it doesn't mean we get bonuses. It means we earned our salary.

Mr. MCHUGH. Yes, you have. And I don't necessarily disagree. I suppose it goes back to the central challenge of this entire effort; that is, trying to balance a variety of interests and a variety of directions.

When you talk about incentives for maximizing costs, to pad costs, revenues, rather, that goes back to the issue, well, do we mandate full recovery of costs.

Indeed, if we did, then leading up to the mother of all rate cases, then indeed there would be an undeniable incentive. So there is an argument against not doing what we discussed earlier.

Beyond that, you can point to times where, by their measures, productivity went up, and yet service, by most measurements, went down.

I'm not necessarily arguing with you, but I'm not sure there is a direct correlation.

Mr. GLEIMAN. Well, I don't know. And as I said at the outset, your explanation would cause me to go back and think through this again.

As it stands now, based on the thoughts I've had over the past 2 weeks since we first got the bill, I still feel pretty strongly that would be desirable to have productivity as a specific consideration in the year-end audit procedures. I might also point out that if you look at some of the literature in this area, while it does talk about having profit-based bonuses, it also has a more limited use of price caps and more areas where the Postal Service would have flexibility. I'll go back and think about it.

Mr. MCHUGH. Well, I appreciate it. That's all I not only can but all I should ask. Let's talk for a moment about the antitrust provisions.

Mr. GLEIMAN. Yes, sir.

Mr. MCHUGH. There is a decided skepticism in your testimony and your comments that the sanctions implicit in the antitrust laws, particularly the treble damages, are sufficient to cause the Board of Governors either individually or collectively if not to do the right thing then to not, I believe you described it, stretch the process to its limits.

If why do you think that's insufficient where others assume, and maybe incorrectly so, but others assume the application of it is sufficient in other regulatory structures, No. 1?

And No. 1, after that, what, if anything, do you think we could do in terms of sanctions against the Governors that might provide a greater incentive?

Because it seems to me if we agree that treble damages, the antitrust provisions, are insufficient there are two ways to fix it.

We can either give you more oversight, which I think the Postal Service would argue that is tantamount to less flexibility, which may be the only way to approach it, or we can beef up the sanctions against the Board of Governors to provide a sufficient incentive to act, if not correctly, more appropriately.

Mr. GLEIMAN. Well, inasmuch as I'd like to be on the Board of Governors one of these days, I'm not going to subject increased sanctions.

All kidding aside, I don't know that increased sanctions against the Governors, or Directors as they would be called under the new bill, is the key here.

I'm not an expert in antitrust. I know what I know from talking with some folks around the office who know more about it than I do.

My impression, from what I've heard, what I've read, is that antitrust cases can take a long, long time and be very expensive.

The Postal Service, as you pointed out, is a \$54- \$55 billion entity. Its pockets, whether it has got profits or not, are pretty deep on an ongoing basis.

It's not clear to me that—a private firm could go down the tubes long before any benefit of an antitrust suit was realized.

I would ask you to go back and take a look at my testimony, because I think I raised the issue of antitrust not being sufficient in the context of this problem that we're all wrestling with about products that are competitive but are in a noncompetitive basket.

And the example I used and what caused me to say that anti-trust might not be sufficient is that you can have, for example, saturation mail, which is a part of a subclass, enhanced carrier route subclass, where there can be averaging within that subclass.

You could lower those enhanced carrier route—excuse me. You could lower those saturation mail rates to well below cost and average in and still get the revenues you want out of the subclass as a whole without exceeding price caps.

This could hurt other people who compete with saturation mailers for advertising dollars. The recourse is that those parties could come to the Rate Commission, could ask the Rate Commission to consider proposing saturation mail be moved to the competitive arena where it would have to be priced above cost plus make a contribution to overhead.

But the Governors can simply reject that. Now, I don't know. Maybe the key here is that you need to have some review of the Governors' decision. That was a matter that bothered me.

It bothers me in this instance, and it bothers me in several other instances not because they can reject what the Rate Commission recommends but because their decision is final.

The alternative is for someone to come up here and ask you or other Members to introduce legislation, and although that the legislative process is time-consuming and difficult.

And another option is the antitrust suit against the Postal Governors for rejecting, but I'm not sure really that under your bill that rejection would be grounds for an antitrust suit.

I think there is kind of a catch-22 in there. So maybe the real answer is antitrust is OK. It may be enough. Again, I'm not an expert in this area.

But if there were some opportunity for review separate and apart from antitrust, whether it's an administrative review or a judicial review, it might be more acceptable and less likely to do damage.

Mr. MCHUGH. And that would tie, would it not, also into your concerns about the case that you theorize where a small business go bankrupt long before any of the relief provisions in the bill could be exercised?

So that review provision might be relief to them as well, yes?

Mr. GLEIMAN. Yes. I will tell you that I don't come at this from an academic standpoint or trying to think of problems.

There are problems that exist right now in the postal system. There is a situation that has existed for several years that you may be aware of with goods that are mailed out Third Class and a lot of which are returned because the proposed recipient rejects them.

And part of the business community has been trying to work this out with the Postal Service and doesn't seem to be able to come to accommodation for one reason or another.

I don't know exactly why, but in the meantime, these businesses, as I understand it from the trade press, are suffering considerably.

A similar situation could exist under the bill, and if you don't have postal management or directors who are responsive, you have a situation where many businesses, small- and medium-sized businesses could go down the drain.

Mr. MCHUGH. I think it's something we need to look at further. Let me ask you a specific question about something you just mentioned and then try to apply it on a broader level.

You mentioned saturation mail and the difficulties there, challenges there. To what extent does postal box exclusivity provide a problem for a true competitive field in Third Class saturation mail?

Mr. GLEIMAN. I'm afraid I have to operate on anecdotal information here. I have heard that one of the big problems is that for alternate delivery of advertising mail in a plastic bag is that people don't like it thrown down on their driveway or stuck on the front doorknob and that this has an impact on the extent to which alternative delivery businesses can line up participants.

But again, I've not really studied the issue, and what I know is anecdotal. The open mailbox issue is a tough issue. There just are no easy answers.

Do you want people just willy nilly being able to open your mailbox and put materials in there? Are you concerned about people—I know it's against the law right now for anybody but a postal employee to open your mailbox and put something in or take something out of it, but in point of fact, people do break the law.

I'm not sure that things would be any worse if the mailboxes were opened up except that you might have more advertising mail that someone didn't pay the Postal Service fee to have it put in your mailbox.

But on the other hand, things that can't happen now could happen that would be positive. The Cub Scout troop, for example, now as part of community activity is prohibited from delivering Christmas cards within its little area because of the mailbox rule.

If the mailbox were open, you could have service organizations like that providing services within a community.

It would impact the amount of material going in a mailbox, and it would, potentially, impact the amount of revenue going into Postal Service coffers.

But as you point out, there are other places where this is done, and it seems to work. I've wrestled more with the aspects of the bill that deal with ratemaking and haven't really focused on the other aspects too much.

Mr. MCHUGH. Fair enough. Let's segue into that. You talked about Third Class saturation as a product right now that is placed in the noncompetitive basket and therefore comes under the provisions of the bill that, on the sub subclasses within the subclasses, I guess what technically are called further rate categories, can be averaged so that the subclass meets its targets.

And your concern, as I understand it, is that certain of those further rate categories could be greatly damaged in order to help average out cuts or pricing decreases for others in these sub subclass.

Assuming and admitting, perhaps, that that may be a legitimate problem, how would another factor, for example, a 10 percent cap on differentials amongst the further rate categories, work to assuage your concerns so that you couldn't have a situation such as you cited in your testimony where one could see a 20 to 30 percent price to accommodate some kind of cut for another further rate category? Would that work for you?

Mr. GLEIMAN. I think that's a step in the right direction. And I don't want to sit here and play with numbers or have you play with numbers, but a lot would depend on the makeup of the subordinate unit that we would be dealing with within which the averaging could take place.

If the preponderance of items in there, pieces in there were in the subgroup that you wanted to lower the rate on, the 10 percent cap probably wouldn't make a difference.

Remember, these are noncompetitive arenas. They don't have to cover costs. They just can't go over the cap. So depending on the makeup of the subordinate unit, how it was weighted with different products or subproducts within that grouping, it might help. It might not help.

I'd be more than happy to try and sit down with some of the staff at the commission and/or with your staff and play around with some scenarios and see whether there is a percentage lid that would seem to make a big difference.

But the other side of the coin is the under-costing or under cost pricing, if you will, of the other products. We used saturation mail as the example.

I don't want to make the devil out of saturation mail. It's an important product, and I understand from the people who work in that industry, that a lot of folks who receive it like it.

I get it in my mailbox, and I look at it every week, take it up to the house and look at it to see what's in there every week when I get it.

But the question here has to deal with if you lower the prices or the rates for those products below cost regardless of whether you have a 10 percent cap on the other products, you still could be in a position where you're guilty of predatory pricing vis-a-vis the competitors for that insert type material.

That's one that really bothers me, and while I did not mention it, you know from my statement that there are postal officials who have indicated what their intentions have given the opportunity with respect to making the Postal Service the preeminent carrier and recipient of advertising dollars.

Mr. MCHUGH. Yes. I read the quote you included in your testimony.

Mr. GLEIMAN. And the Postmaster General has spoken here and in other places about his desire to increase market share. Well, that's about the same thing.

Mr. MCHUGH. We are on a very technical level here, and I'm certain that most people don't find this, perhaps, as compelling as I do and I suspect you do. So let me just ask—

Mr. GLEIMAN. I'm not sure what that says for either of us.

Mr. MCHUGH. Well, I won't respond for the record on that. Two quick questions, and then we have a whole raft of other technical questions that we'd like to submit to you in writing so that we can continue the process.

The first is I mentioned and I'm sure you heard the PMG talked about the six products that we move into the competitive area represents about 12 percent of their revenues.

You, however, recite 14 percent. Is that of importance to you, or do you think that's just how you cut the cake?

Mr. GLEIMAN. It's not of importance, but we're right. Just for brief explanatory purposes, we took the numbers out of the Postal Service's submission to the Rate Commission. I assume they submitted correct numbers to us.

Mr. MCHUGH. Well, if all we debated in Washington was 2 percentage points, we'd be far better off. I was just wondering if you felt there was a reason for that discrepancy beyond the obvious, which you just stated.

The last thing, again, making the assumption that what we're proposing to do here happens, you have on your staff now a total of about 53, 54 people?

Mr. GLEIMAN. We're actually down to—well, I think we have one new hire, so I think we're up to 50 people now.

Mr. MCHUGH. Fifty people?

Mr. GLEIMAN. Yeah, from a low of 49.

Mr. MCHUGH. OK. Do you think that's a sufficient personnel level to do everything we would ask you to do if implemented pretty much as has been proposed here, or would you need more people?

If so, have you had a chance to think about what that kick-up might mean?

Mr. GLEIMAN. We've thought about it a bit. I can't give you a number. I'm pretty sure that we would need a slightly different mix of people, but I can tell you that my philosophy is and has been since I got to the Commission to do more with less.

I don't believe in building bureaucracies. I believe in increasing productivity. So I could see, perhaps, the need for a handful of people, and maybe we could just supplement on a periodic basis with some consultants rather than hiring on full-time staff.

Mr. MCHUGH. But no huge changes one way or another on numbers at least?

Mr. GLEIMAN. The administrative officer told me this morning, she reminded me that we just signed a new lease on of offices that we've been in for the past 10 years, and I might say that we are paying less now than we were paying in the last year of our old lease, which I'm quite proud of.

But she said that we don't have space for a whole lot of people. So it doesn't matter what I think.

Mr. MCHUGH. OK. Well, speaking of not mattering what anyone thinks, I'm pleased now to say you'll be able to go to dinner with your wife.

And I'm sure if your marriage is like mine, it doesn't make any difference what you think, but let me thank you again for your time and for the patience of everyone in the room here today.

We, obviously, have a lot of ground left to cover before we even take in the initial comments and observations of the many interested parties and organizations that have been so helpful and so active in this process to this point.

We have three more hearings scheduled, and I suspect that is the tip of the iceberg. One will be convened next week.

For those of you who would like to join us, we'd love to have you. So again, chairman, thank you. Have a nice dinner. And everyone

else have a nice night, and we'll adjourn this meeting.

Mr. GLEIMAN. Thank you, sir.

[Whereupon, at 6:42 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]



**Statement of the Honorable Cardiss Collins
Ranking Minority Member,
Committee on Government Reform and Oversight
before the Subcommittee on the Postal Service**

Hearing on H.R. 3717, Postal Reform Act of 1996

Wednesday, July 10, 1996

Mr. Chairman, Ranking Minority Subcommittee Member, colleagues and guests, I am pleased to join you at the first in a series of hearings on the Postal Reform Act of 1996, introduced by Chairman McHugh. The Chairman must be commended for plowing through the many "voices calling for change", and out of uncertainty and disagreement on just what changes are needed, crafting a postal reform bill.

Let me state at the outset, that as a Member of Congress and of this Committee, my most important responsibility as we examine H.R. 3717, is to make absolutely sure that we do not in ANY WAY balance the books on the backs of ratepayers by increasing the cost of what it takes you and I and other consumers, to mail a first class letter! It remains our job as lawmakers to ensure an efficient, effective, productive and affordable mail delivery and service. Doubling or tripling first-class letters does not meet the test and cannot be done in the name of "postal reform"

H.R. 3717, does make a few technical changes, like renaming the top officials of the postal service and Board of Governors and permanently authorizing postal police officers. was pleased to note that the bill includes a raise for the Postal Board of Governors, a provision which I have supported from the very beginning and would very much like to see passed, whether in this bill or on its own.

Absent the technical and minor changes, H.R. 3717 proposes radical and far-reaching changes in a number of very important and frankly "sacred" areas. Such as: 1) Repeal of Congressional appropriations for the reduced rates for nonprofit mailers, the blind and the disabled; 2) allowing "generic" "privatized" personnel access to our mail and mailboxes; 3) altering the foundation of universal mail service -- the mail monopoly, and finally radically restructuring the rate setting process.

Going hand in hand with major rate restructuring, the measure also affects the ability of the Postal Rate Commission (PRC) to ensure that sound and fair rates are set. An initial reading of the bill shows that while the PRC is handed subpoena power to secure needed and necessary data, and responsibility for

audits and reports, it is rendered ineffective because it will no longer have authority to make adjustments or corrections. Again, we cannot promote reform on the backs of ratepayers.

I further note with great interest, the removal of the Postal Service from the "safety net" of the U.S. Treasury and its Federal Financing Bank. Allowing the Postal Service to have "sole" discretion to deposit its revenues in the Postal Service Fund or depositories for public funds would allow more flexibility with respect to the institution with which it places its deposits. However, the safety of those deposits in institutions other than the Treasury are by definition risky. On the other hand, if postal service revenues are not considered public funds, then the risk element is initially borne by the postal service, but you and I, the taxpayers might ultimately have to pay if severe losses are experienced as a result of "removing the U.S. Postal Service from the safety net". Again, Mr. Chairman, this most probably would be accomplished by raising rates on first class mail.

As a consumer, I have watched with interest the ability of the U.S. Postal Service to increase and improve the timely delivery of mail over the last few years. And while not perfect, there have been noticeable improvements in mail service, even in my own city of Chicago where on time/next day delivery has gone from a low of 71% in 1994 to a high of 86% in May of this year.

Mr. Chairman, I want to make sure that we maintain the highest standard and quality of universal service, protect the integrity and security of our mail and mailboxes and know just who is in charge of the post office. To that end, I look forward to learning how H.R. 3717 will impact mail service and delivery, postal revenue and rates for first class mail. I anxiously await the testimony of our panelists and would end by formally requesting that this Subcommittee invite the Postal Board of Governors to testify on this important postal reform measure.

Thank you.

WILLIAM F. CLINGER, JR., PENNSYLVANIA
Chairman

BENJAMIN A. GIULIANO, NEW YORK
DAN BURTON, INDIANA
J. DENNIS HEUSTLER, FLORIDA
CONSTANCE A. MCKELLAR, MARYLAND
CHRISTOPHER SHAYS, CONNECTICUT
"EVEN SOUFFE", NEW MEXICO
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ONE HUNDRED FOURTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6143

July 9, 1996

CARDISS COLLINS, ILLINOIS
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ROBERT E. TIBBETTS, JR., WEST VIRGINIA
MAURICE B. SWINEY, NEW YORK
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BERNARD SANDERS, VERMONT
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MAJORITY--(202) 225-6074
MINORITY--(202) 225-6061

Honorable John M. McHugh
Chairman
Subcommittee on the Postal Service
B-349 Rayburn HOB
Washington, DC 20515

Dear Mr. Chairman:

I am writing to formally request that the Postal Board of Governors be invited to appear before the Subcommittee on the Postal Service to present testimony on H.R. 3717, the Postal Reform Act of 1996.

As you know, this bill makes a number of sweeping changes, most particularly in the area of products and pricing. In addition, the Board of Governors is most concerned that for the first time, Antitrust laws will apply to the Postal Service. In short, given the changes presented in H.R. 3717, it is important the Board be provided an opportunity to present in person, their testimony so that it can be debated and weighed along with the other presentations.

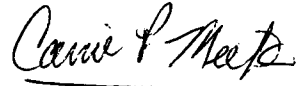
Thank you for your consideration of my request. I await your response.

Sincerely,



CARDISS COLLINS
Ranking Minority Member

CC/DW

A handwritten signature in cursive script, reading "Carrie P. Meek", is written in black ink. The signature is positioned above a thin horizontal line.

HON. CARRIE P. MEEK, M.C.
OPENING STATEMENT
Subcommittee on the Postal Service
July 10, 1996

I thank the Chairman for holding hearings on the "Postal Reform Act of 1996", which addresses several major issues facing the Postal Service.

The world around us has changed greatly in the past 25 years... In fact the world around us has changed greatly in the past five years. And, I believe that many of us in this room can surely agree, that the United States Postal Service needs the additional tools and greater flexibility to compete in this rapidly changing fast-paced world.

②

Our committee is faced with many challenges. The least among these is: 1) to ensure that we have a strong and healthy postal service able to offer its products and services at a fair and competitive price; 2) to ensure a strong and viable postal service which is able to maintain the universal delivery of mail in a timely manner; and 3) to ensure a postal service which is fair to its employees and which insures them the safe working conditions, equipment and support they need to do their jobs.

③

The Postal Reform Act we will be discussing today addresses many of these challenges. It gives the postal service many of the tools that it needs to compete in our rapidly changing world.

I am concerned however that outside of establishing a Presidentially appointed commission to study the Postal Services' long-standing labor-management problems, this bill does very little to actually resolve them. This labor-management standoff doesn't need a Presidential symposium--it needs ^{concrete} ~~concrete~~ results.

(4)

I am also concerned that in the process of making a profit, the Postal Service may close unprofitable Post Offices in inner cities and rural areas, and thereby reduce access to the Postal Service to millions of Americans. I am hopeful that, as this bill evolves, that the concerns that I have raised will be addressed.

Mr. Chairman, I look forward to hearing the testimony of the witnesses and to working with you to ensure that our Postal Service is the best in the world.

TIRSO DEL JUNCO, M.D.
 Chairman
 BOARD OF GOVERNORS



October 1, 1996

Honorable John M. McHugh
 Chairman, Subcommittee on the Postal Service
 Committee on Government Reform and Oversight
 House of Representatives
 Washington, DC 20515-6246

*Did we add these
 for the Record
 for the last
 four hearings?*

Dear Congressman McHugh:

On June 26, on receipt of your postal legislative package I advised you that the Board of Governors would provide comments following a review and analysis of H.R. 3717, the very comprehensive Postal Reform Act of 1996. We thank you for the time and effort that went into crafting this bill, and for your patience in allowing us time to absorb and understand the content and its likely impact. We would appreciate your adding these comments to the hearing record.

Immediately following the introduction of H.R. 3717, we began a detailed analysis of the bill in consultation with economists and other specialists (see attached), to develop a better understanding of its likely impact and, where appropriate, to develop suggestions for its improvement. We engaged three firms with extensive experience in regulatory ratesetting economics to review the bill and, working independently of one another, recommend a price cap system that would best fit the need and circumstances of the Postal Service. We then commissioned a panel of individuals with outstanding credentials in the field of regulatory economics to review the work of the consulting firms and advise us on the best elements of each. At the same time, we retained outside counsel to advise us on legal issues and price cap experience in telecommunications and on antitrust principles.

As one might expect with a subject as comprehensive and far reaching as H.R. 3717, the Board of Governors is not unanimous in its views. Although there is no consensus, the Board believes it is possible to adapt an appropriate ratesetting methodology to the Postal Service. We very much want to work with you, your staff and other interested parties to try to fashion a methodology that can serve the needs of the institution, its customers and employees. It is in this spirit that we offer suggestions for improvement in four critical areas of the bill—pricing flexibility, labor costs and the formulation of a price cap, governance, universal service and private express.

Pricing Flexibility

The Postal Service will require a significant degree of pricing flexibility if it is to survive in the increasingly competitive communications and package delivery markets. Indeed, the rapid development of electronic diversion and other alternatives to mail are steadily shrinking the number of postal products/services that might be considered "noncompetitive." Pricing flexibility can best be achieved, we believe, by reducing the number of baskets and price caps that apply to Postal products to one. Fewer baskets and price caps and greater flexibility are more the norm in regulated industries operating with price caps. A related and crucial factor is the ability to "rebalance" prices quickly and simply within or among product lines, in response to changes in

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costs or market conditions. We should be able, for example, to reward customers for performing additional sorting or transportation functions, without resorting to a classification case.

Particularly where competitive products are concerned, true pricing flexibility in today's markets requires freedom from time and notice constraints, to allow effective response to the pricing initiatives of nimble competitors. That situation is generally true with other price-cap regulated firms and it is appropriate for the Postal Service.

Rational, businesslike pricing also requires the use of a price floor based on the incremental cost of providing a service rather than the attributable costs. The list of "competitive" products should also reflect whether the Postal Service or some other firm is the market dominant provider of a type of service. It certainly should include all of our international service, which is now fully deregulated and highly competitive. Based on our research and consultation, we believe the elements we have put forward here are key to true pricing flexibility.

Labor Costs and the Formulation of Price Caps

The Postal Service must be able to operate on a sound financial basis under any price cap system that might be applied to Postal rates. Labor costs are 80% of total Postal costs and outside the control of the Board and management, in many respects. Therefore, the selection of an index is critical. That index must be suitable to a labor-intensive service industry such as the Postal Service rather than to a capital-intensive telephone company or utility. In fact, most price cap regulated firms are capital-intensive. Without the appropriate index there would always be the danger that a price cap geared to the index would generate revenues that would not cover the costs of Postal operations, even with the diligent management of costs. This would be a particular risk, if the legislation contained no specific "linkage" between the new price caps and the factors that so heavily impact postal labor costs, such as labor arbitration awards and statutory employment and benefit policies.

One approach might be to blend an index such as the GDPPI with another, like the Employment Cost Index (ECI) to reflect the true proportion of the different types of cost inputs to the Postal Service. Moreover, we firmly believe that any adjustment or "X" factor of the type that H.R. 3717 would build into its price caps should apply across the board and not vary among product lines, and it should be stated explicitly in the legislation itself. A good candidate for such an objective "X" factor might be the National Non-Farm Multifactor Productivity Index (NFMFPI). It would prevent artificial inflation of Postal rates and would constantly focus the energies of management on controlling costs and improving productivity, key features of any price cap regime.

Ideally, a further ("Z") factor should also be available to adjust the cap automatically for exogenous events, such as changes in accounting standards, or legislative changes in federal retirement or benefit laws, that would impose disproportionate or unforeseeable financial burdens on the Postal Service.

A price cap of this type, based on objective, accessible factors, would be neutral regarding the strategic pricing relationships among the various classes of mail and would preserve a maximum degree of flexibility for the Board of Governors of the Postal Service to respond to fluctuations in the level of Postal revenues, or the relative demand for various classes of Postal products.

GOVERNANCE

A fundamental principle underlying the Postal Reorganization Act of 1970 and the Kappel Commission Report that preceded it was that the control and authority to shape the direction of the Postal Service should be in the hands of those who bear the responsibility for the outcome of those plans. We believe that this fundamental principle is as applicable in today's competitive marketplace as it ever was. The responsibility for maintaining a financially viable, affordable and effective universal service lies with the Board of Governors, and we believe very strongly that the authority to determine the pace and nature of operational change, the pricing relationships among postal products, and the overall levels of postal revenues are critical to meeting that responsibility.

We also believe that the current level of oversight is sufficient and does not require the application of antitrust laws, or extension to new bodies such as the antitrust enforcement arms of the Federal Trade Commission and the Justice Department. A review of Congressional Hearing Records, GAO Reports, PRC Hearings, special studies, and countless informal meetings with Congressional members and staff over the past twenty-five years suggests that Postal issues receive extensive oversight and review. We see these as important issues and would like to meet with you and discuss them in more detail.

We do not believe that the additional coverage envisioned in H.R. 3717 is necessary or appropriate for a government agency or for postal products that will also be subject to regulatory pricing standards and administrative complaint proceedings at the Postal Rate Commission. There is a fundamental difference between the Postal Service and a private utility or other firm. The latter is managed on behalf of the economic interests of its stockholders and outside regulation balances the interest of the public with those of the stockholder to insure monopoly profits are not used to enrich stockholders at the expense of the public. The Postal Service, on the other hand, has no stockholders apart from its customers, the American people. "Profits" are used to their benefit, either through the restoration of public equity in the Postal Service or by controlling the pace and level of rate changes.

Universal Service and Private Express

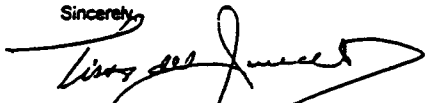
Preservation of affordable, universal service must be at the heart of any legislative reform. We believe that any changes in the postal ratesetting process and our basic statutory framework must protect the ability of the Postal Service to meet this obligation.

There is no doubt that the universal service requirement, the uniform letter rate and many of the other broad public service activities of the Postal Service are directly related to the Private Express Statutes and the mailbox restriction. Indeed a limited monopoly over the delivery of letter mail and exclusive access to mailboxes have generally been regarded as required to preserve the necessary financial underpinning for affordable universal service. With that in mind, we are opposed to any relaxation of the Private Express Statutes and to unrestricted access to the mailbox. We believe that these restrictions cannot be relaxed without serious threat to universal service.

Conclusion

Thank you for the opportunity to provide comments and suggestions on these key areas of H.R. 3717. As indicated earlier, there is a considerable amount of research and analytic work behind the comments we have offered here. I have attached a listing of the key resources used in this process, for your information. We want very much to continue working with you on this effort to prepare the Postal Service, legislatively, for the competitive environment of the 21st Century.

Sincerely,

A handwritten signature in black ink, appearing to read "Tirso del Junco", written over a large, stylized circular flourish.

Tirso del Junco, M.D.
Chairman

Attachment

cc: Board of Governors

MARVIN RUNYON
POSTMASTER GENERAL, CEO



November 18, 1996

Honorable John McHugh
Chairman
Subcommittee on the Postal Service
House of Representatives
Washington, DC 20515-6143

Dear Congressman McHugh:

In response to your August 8 request, attached are responses to the follow-up questions submitted for the hearing record following my July 10 appearance before the Subcommittee on the Postal Service.

If I can be of any further assistance, please let me know.

Best regards,

A handwritten signature in black ink that reads "Marvin Runyon". The signature is written in a cursive style and includes a horizontal line at the end.

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QUESTIONS FOR THE POSTMASTER GENERAL

1. On page 3 of your prepared text you state that "(e)xpanded PRC authority would overlap that of the Postal Service's Board of Governors in the area of service, productivity, finances, and overall performance." My intent in the bill is that the Governors will retain unilateral authority over service standards, productivity, performance – in essence, management of the organization. However, like any other monopoly or market dominant entity, the bill includes provisions for returning a rate rebate of sorts to the captive customers out of profit that is earned not in conformance with the ratesetting freedoms and flexibility. In light of this explanation, please elaborate on your cited statement.

ANSWER: If, as this question appears to imply, the Governors would not retain control over postal finances, they could not really be said to have authority over "management of the organization" in any true sense. Indeed, the lack of management control over finances was one of the problems which enactment of the Postal Reorganization Act was designed to remedy. Further, it is difficult to reconcile the concept of "unilateral authority" with the provisions of H.R. 3717 which direct the Postal Rate Commission to determine whether or not postal management has met its obligations with regard to service standards, productivity, and performance. In ordinary usage, the term "unilateral" suggests the absence of such outside authority. In a more general sense, the need for changes we perceive regarding H.R. 3717 might be summed up in one guiding principle – that the power to shape the direction of postal operations should be wedded to the responsibility for the outcome of those plans. Where the bill divorces power from responsibility, as in its shift of oversight authority from the Governors to the Commission, it falls short of its potential for reform.

2. Please explain your statement on page 3 of how the bill's "overlapping PRC complaint and antitrust provisions could inhibit new products and innovations."

ANSWER: The successful marketing of a new product typically requires a potential buyer to be satisfied that the seller, over time, will continue to be able to furnish the product. Complaint proceedings before the Commission and antitrust proceedings before a court are two potential hurdles that could be thrown up by competitors seeking to prevent the Postal Service from pursuing attractive commercial opportunities. The requirement to overcome such hurdles before interested buyers could be assured that the Postal Service would be allowed to furnish a new service could inhibit their willingness to commit to its purchase, or to make any necessary investments to place themselves in a position to take advantage of it. In this regard, moreover, H.R. 3717 would give our competitors an extremely open field of play, with no lines of demarcation between complaint cases and antitrust proceedings, and no provision whereby a successful defense against one type of action would necessarily serve as a bar to the other. Under these circumstances, it is not clear that the rewards of innovation would outweigh the risks of interminable litigation in the calculus of postal managers.

In addition, it should be noted that the antitrust laws ordinarily do not require a company – even one with monopoly power – to announce new products before they are released. Thus, a firm may keep its innovations secret from its competitors, forcing them to "catch up" through their own efforts after the new product is released, and may bring new products to market whenever and however it chooses. The Postal Service, however, must preannounce its new products in proceedings before the Postal Rate Commission. This already gives the Postal Service's competitors an advantage that they would not have under the antitrust laws – advance notice of new postal products and innovations. To give competitors, in addition, the ability to litigate under the antitrust laws would be superfluous, and could only inhibit innovation.

3. You state that the establishment of a \$2 price threshold for the Private Express Statutes would put more than \$4 billion of the USPS business at risk. How do you define "at risk?" Also, please provide detailed documentation of how you arrived at this figure of \$4 billion.

ANSWER: The "at risk" revenue is defined as First Class, Priority and third class revenue generated from the volume for which the revenue per piece is above the \$2.00 price threshold. The first year at risk revenue is \$3.9 billion.

The following analysis uses forecasted year 1996 as the basis for this estimate. All figures are in millions:

First Class & Priority

Total Revenue	\$36,087
Protected Revenue	\$32,260 (revenue generated from under \$2.00 revenue/piece)
At Risk Revenue	\$ 3,827

Third Class

Total Revenue	\$12,374
Protected Revenue	\$12,255 (revenue generated from under \$2.00 revenue/piece)
At Risk Revenue	\$ 120

The total "at risk" revenue is \$3,947 which is the sum of First Class, Priority, and third class.

- a. You have repeatedly called on Congress to grant the Postal Service the ability to compete; however, this implies a more level playing field for competition. For example, the Postal Service is currently airing a series of advertisements touting the price of the priority mail product vis-a-vis the competitors, despite the Service's requirement that competitors charge double the postage rate. Do you believe that a reduction in the scope of the monopoly helps level this playing field? Why or why not?

ANSWER: The Postal Service's public service mission includes uniform First Class rates, universal delivery obligation, and retail presence in every significant community across the nation. Our competitors, on the other hand, have no universal service or uniform rate obligation.

In fact, other factors demonstrate that the Postal Service is unique in satisfying the public service mission. For example:

- a. Our competitors do not always offer uniform rates for delivery to the non-contiguous states.
- b. At least one of our competitors does not offer daily service to rural areas.
- c. Some of our competitors are not easily accessible by individual mailers.
- d. At least one of our competitors charges a different rate based on whether the recipient is a business or a household.
- e. To effect delivery to certain locations, some of our competitors use the Postal Service to deliver their packages. They rely on Postal Service's universal service obligations to ensure that they can meet their customers' needs for delivery to every community and address, some or most of which would be too expensive for them to service on their own behalf.

The monopoly protection generates sufficient income to guarantee the continued provision of this public service obligation. While the exact funding requirement for provision of the universal service is not known, it is certain that the erosion of this monopoly protection will affect our ability to fulfill this obligation.

The pricing policies of our competitors are not always affected by the threshold price. For example, the General Services Administration contract with Federal Express is a case in point. At the same time, Federal Express charges a rate that is significantly higher than the monopoly threshold to individual customers.

The Postal Service, under the current legislation, could not have offered this type of contract discount without the approval of the Postal Rate Commission. In addition, the contract rates would have to be made available to similarly situated customers. The definition of similarly situated apparently would be under control of the Commission. Our competitors do not face such restrictions.

4. You mention the "likely" costs to the Service through the repeal of the appropriations and the establishment of the \$2 threshold for the monopoly, concluding that "the bill is likely to cost some \$2 billion in the first year alone." I would appreciate your providing detailed documentation on the costs cited on page 4 of your testimony to the Subcommittee, particularly these first year costs.

ANSWER: Estimated costs that will be borne by the Postal Service and ratepayers if the Bill is passed as written are as follows:

<u>Estimated Costs (\$ Millions)</u>	<u>Year 1 One Time</u>	<u>Year 1 Annual</u>	<u>Six Year Average</u>
Private Express Statutes	-	(891)	(1,490)
Inspector General	(26)	(44)	(44)
Customer Service and Satisfaction			
Measurement Systems	(8)	(179)	(213)
Other	-	(30)	(32)
Subtotal	<u>(34)</u>	<u>(1,144)</u>	<u>(1,779)</u>
Appropriation Loss (\$ Millions)	(602)	(104)	(106)
GRAND TOTAL	<u>(636)</u>	<u>(1,248)</u>	<u>(1,885)</u>

* Six Year Average Costs exclude one-time costs.

5. You state that the bill would extend limited pricing flexibility to only six postal products representing 12 percent of USPS business. What additional products would you recommend the Subcommittee consider placing in the competitive category? Would you recommend that the legislation require the consent of the users of such products when transferred from the noncompetitive to competitive category?

ANSWER: The Postal Service would recommend that Enhanced Carrier Route presort mail be included in the competitive category as it is defined in the Bill.

The Postal Service sees no need to require the consent of users of such products to transfer them from a noncompetitive to a competitive category. In any event, it is not clear what procedures would be used to measure consent of current users to determine whether such classification changes were favored. Please note the Postal Service, as a matter of normal business practice, takes into account the overall impact of any and all rate and classification changes. This would also be the case in determining whether a product is best classified as competitive or noncompetitive in future proceedings under the reformed procedures.

It must be noted that United States Postal Service International mail is currently de-regulated. International mail, both the single piece letters and parcels in Basket 1 and the remainder in the Competitive tier, has no monopoly protection and is subject to direct competition and, therefore, has no need to be regulated. All international mail should be outside the scope of legislation and assigned to neither the competitive nor the non-competitive tiers.

- a. In Chairman Gleiman's testimony, he states that the competitive category represents 14 percent of total revenue, instead of the 12 percent that you cite. Mr. Gleiman stated that these numbers were derived from the Postal Service's submission to the Rate Commission. Please explain how you define the 12 percent.

ANSWER: The 12 percent of total revenue figure is based on the FY 1995 Revenue, Pieces and Weight data and supplementary data on international revenues by product categories for FY 1995. Domestic competitive revenue is calculated by summing the revenues from domestic products that are designated as competitive. International competitive revenues are calculated by subtracting international surface letters/cards, air letters/cards, air parcels and other articles revenue from total international revenue. Total competitive revenue is calculated by summing the domestic competitive revenue and the international competitive revenue. The percent of total revenue is calculated by dividing the total competitive revenue by total revenue.

6. Last year, the Postal Service posted record profits of \$1.8 billion and now expects to repeat this performance with anticipated profit of almost \$1 billion this year. Labor relations, while sometimes acrimonious, have not resulted in strikes or serious disruptions of service. Given this scenario, why is legislative reform now needed for the Postal Service? How important to the Postal Service, its customers, employees, and general public is legislative reform?

ANSWER: In today's changing marketplace, it is not wise to extrapolate the future from the past. The postal world is no longer an unchanging fixture of the American scene, and significant adjustments in the ratemaking process will be needed in the coming years to allow the Postal Service to respond to the emergence of more intense competition across many of its product lines. Such reform is crucial to the long-term interests of the Postal Service, its customers, its employees, and the general public. Clearly, however, because such legislative reform will be expected to deal with problems in the long term, it is more important that it be done right than that it be done quickly.

7. H.R. 3717 would allow the Postal Service the flexibility to offer new products, without first obtaining Postal Rate Commission approval, through the use of the market test authority. Despite the extensive notice provisions and requirement that the Postal Service justify how the market test complies with statutory postal policy, some might still argue that such broad authority would allow the Postal Service to offer products inconsistent or outside of the scope of providing postal services. Should further safeguards be implemented to protect the private sector from unfair Postal Service competition? What safeguards currently exist? Should the Subcommittee place additional requirements and limitations for new postal products to be consistent with providing "postal service?"

ANSWER: In our view, the market itself should provide the necessary safeguards to prevent the Postal Service from operating beyond the test period with regard to any product that cannot be priced to allow a contribution to the recovery of institutional costs. Further legislative safeguards should not be necessary. We believe, in addition, that it would be unwise to attempt a legislative definition today of what might constitute "postal services" tomorrow. In 1970, when the Postal Reorganization Act was enacted, the basic categories of postal products were the same as they had previously been described by Congress in 1879. Because the 91st Congress did not "freeze" the definition of postal products, but gave the Postal Service the administrative power to change and create classes of mail and types of services, we have been able to respond to changes in our business environment that simply were not dreamed of twenty-six years ago. To survive, and serve the public well as we enter the next century, we will require no smaller degree of freedom.

8. H.R. 3717 establishes Presidential Postal Employee-Management Commission to review ways of improving labor and management relations in the Postal Service. What steps has the Postal Service taken to meet the challenges of the current labor-management relations climate? Would you recommend any specific changes in this section of the bill?

ANSWER: Shortly after the receipt of the GAO report in October 1994, we issued a call to a Labor Summit to be attended by the heads of all seven of the major postal organizations representing employees, supervisors and postmasters, for the purpose of discussing how we might go about implementing the GAO recommendations. It was only earlier this year that we received affirmative responses to this invitation from the three largest postal unions, the American Postal Workers Union, the National Association of Letter Carriers and the Mail Handlers Union. Efforts to have a summit are well underway, much advance interviewing has been conducted, and we expect a meeting in the not-too-distant future under the auspices of the Director of the Federal Mediation and Conciliation Service.

In addition, we have reached an agreement with the APWU to "Experiment" with a process called grievance mediation, in an effort to reduce grievance backlogs. In our view, this is a far too cautious and modest step toward converting a very adversarial grievance/arbitration process into one in which we conduct training in the field, and teach people how to learn to agree rather than to litigate with each other. We proposed, but were unable to secure the agreement of the APWU, that our representatives at the national level be jointly trained in the principles of mediation. Failing that agreement, we have engaged a consultant who has trained approximately 150 labor relations and operations managers in the principles of grievance mediation—learning how to agree, not how to battle. We will continue our efforts on this front.

Consistent with the GAO recommendation that we explore a rural carrier-type of evaluated route system for use in the city letter carrier craft, we have undertaken a brainstorming effort using *CustomerPerfect!* principles to look at the possible redesign of the way work is performed in the city delivery craft. We have been unable to interest the NALC in learning more about *CustomerPerfect!* techniques. Only within the past couple weeks have we persuaded national leadership to meet with our operations experts to hear about some of the models we would propose to pilot, and hear from the NALC what models which it would like to pilot in a joint effort, again following the GAO recommendations. This project has been underway for many months. For a variety of reasons, including the preoccupation during the summertime in their various conventions, we have been unable until recently to get any meaningful dialogue started.

We believe that the notion of a Commission to study labor relations and issue a final report within three years is a case of "too little, too late." It has been two years since the GAO's report and we've only recently been able to arrange meetings with the unions to address these issues. A Congressional pronouncement that the labor issues can await a three year study will undermine any sense of urgency to address the issues expeditiously.

9. Some claim that H.R. 3717 accords too much authority to the Governors to set rates and establish service standards, that we have ignored the trapped status of the average mailing consumer, and that we are peeling the death knell for newspapers. Based on your review of the bill, what thoughts do you have regarding these concerns?

ANSWER: The possible validity of each of these concerns must be addressed individually. With regard to the first, H.R. 3717 would appear to diminish – not enhance – the authority of the Governors, by removing their ability to determine the revenue requirements of the Postal Service for ratemaking purposes, and by subjecting their decisions regarding operational matters to a level of outside oversight that does not exist under current law. The concern regarding “too much authority” would accordingly appear invalid.

The interests of the average mailing consumer, who may have few practical alternatives at present to conducting correspondence and transactions by mail, would appear best served in the long run by a postal ratemaking structure which allowed the costs of maintaining a universal delivery network to be spread as thinly as possible. To the extent that H.R. 3717 would work against this objective, by diluting the Private Express Statutes or the exclusiveness of the mailbox, this second concern would appear to have some validity.

Finally, it should be noted that newspapers compete with the Postal Service for the delivery of hard-copy advertising. If the Postal Service is the low-cost provider of delivery for this material, there is no reason why the “average mailing consumer” should be deprived of its potential contribution to the recovery of institutional costs simply because the newspapers would prefer to keep that business for themselves. As a general proposition, we would suggest that Congress should allow the long-term action of the market to balance the relative interests of these two groups of postal customers, rather than attempt to select “winners” and “losers” by placing legislative constraints on postal pricing.

10. To what extent do you see the language in H.R. 3717 that provides flexibility for Postal Service banking, investment, and borrowing as actually achieving this objective?

ANSWER: The language in H.R. 3717 improves substantially the Postal Service's flexibility in banking, investment, and borrowing. The Postal Service believes, however, that flexibility can be enhanced further by changes to three sections of the legislation, each of which is discussed below.

Sec. 401. END OF TREASURY CONTROL OF POSTAL SERVICE BANKING.

This section increases Postal Service flexibility in banking, but contains reporting requirements that would cost resources without producing apparent benefits. The Postal Service has a 25-year track record as a large and innovative user of banking services. This year, more than \$80 billion will flow through the 5000 banks used to process Postal Service receipts. We believe the reporting requirements are unnecessary, and that they would waste government resources.

Sec. 402. POSTAL SERVICE INVESTMENTS.

This section increases Postal Service flexibility in the investment of cash on hand, by permitting investment in the market, in Treasury securities only. Most important, this section is silent regarding strategic equity investments (e.g., partial ownership of companies in postal related businesses). Postal Service management believes it must have authority to make strategic investments in and with other companies to gain full flexibility. Such authority may be granted through language empowering the Board of Governors to set investment policy, or through language which specifically permits equity investments in postal-related businesses.

Permitting the Postal Service complete flexibility to determine investments also would be consistent with present practice in the areas of real estate, buildings, technology, vehicles and other equipment. In each area, the Postal Service invests a significant amount of funds with appropriate Board of Governors oversight and decision making. As with these operational investments, the investment of Postal Service cash in Board-approved securities would be accomplished without disrupting markets and without harming any government agencies or private companies.

Sec. 404. ELIMINATION OF TREASURY PREEMPTION OF BORROWING BY THE POSTAL SERVICE.

This section improves greatly the Postal Service's flexibility in structuring its debt, but not in being able to react quickly to changing financial market conditions. At least one and possibly two changes to this section are necessary for the Postal Service to realize the full benefits of the flexibility available in the market.

The 15-day notification requirement, which dates back to the early 1970s, should be eliminated. It reduces substantially the Postal Service's flexibility while serving no apparent public policy purpose, and having no parallel in today's financial markets. It should be replaced with language comparable to that contained in the legislation which addresses other government sponsored enterprises (GSEs), such as Fannie Mae, Farm Credit, and Freddie Mac. Treasury itself realizes and has stated publicly that GSEs must be able to respond quickly to changing market conditions. Recently, it granted most GSEs more flexibility to time and size their borrowing transactions. The second potential problem is that the legislation is not clear regarding the Postal Service's ability to borrow in the market. Specifically, the language authorizing the Secretary to purchase our debt is not clear regarding our authority to issue debt in the market if the Secretary and Postal Service do not agree on a purchase transaction by the Secretary. Simply varying some of the language found in current law governing the Postal Service would address this potential problem: "If the Secretary does not purchase [Postal Service] obligations, the Postal Service may proceed to issue and sell them to a party or parties other than the Secretary . . ."

11. Who should make the determination whether prices for competitive products cover direct and indirect costs and make a reasonable contribution to overhead – the Postal Service or the Rate commission? What entity would be best in determining what costs are attributable and the costing methodology employed in the reporting and auditing process?

ANSWER: It seems clear that the Postal Service is better positioned to understand the behavior of postal costs. Given the vast array of postal operations, continual changes in the operating environment caused by technological improvements, and the size and complexity of postal data collection and budgeting systems, it would appear that only the Postal Service has the necessary perspective to analyze comprehensively the relationship between postal costs and postal products. The management of the Postal Service, moreover, like responsible managers of any multiproduct firm, fully recognizes the need to gain a full and accurate understanding of what drives postal costs, in order to direct operations efficiently and price products correctly. Accordingly, the Postal Service should be responsible for ensuring compensatory pricing for the full range of postal products – competitive or noncompetitive – including the selection of the most appropriate costing methodologies to be employed in its reporting and auditing functions.

The appropriate contribution to overhead to be gained from competitive products will ultimately be determined by the market. Obviously, however, at any particular time some assessment must be made as to what price levels will yield reasonable contributions in the short term, without risking the long-term viability of products by creating a gap between prices and costs that competitors can exploit. Failing to obtain a sufficient contribution from competitive products could trigger the need to propose a general rate increase, a step which the Postal Service has always tried to postpone as long as possible. Attempting, on the other hand, to obtain too much contribution would impede the objective of maximizing volumes for which the Postal Service is the least-cost provider. In pricing competitive products, the Postal Service thus considers the same opposing forces that any rational economic entity would have to balance, and we believe it is in the best position to make these decisions.

12. As agreed in the hearing, please explain why the Postal Service has only used Section 601(b) of Title 39 to narrow the monopoly? Is the official interpretation of the Postal Service that Title 29, Section 601(b) be used only to narrow the monopoly?

ANSWER: Section 601(b) provides that the Postal Service may suspend "any part of" section 601 where required by the public interest. Although modern suspensions have tended to relax enforcement of section 601, the Postal Service has considered that the plain language of the statute is broad enough to cover suspensions either to broaden or narrow the limited postal monopoly over the carriage of letter mail. The fact that Congress, from time to time, may have focused on one type of suspension does not limit the applicability of the language to the other.

It must also be recognized that all of the significant suspensions to the Private Express Statutes have been adopted only after the most thorough and participative public process, involving lengthy, open public rulemakings, and Congressional oversight hearings. In certain situations involving postal strikes and embargoes where its own service simply could not be provided at all, the Postal Service has adopted temporary suspensions without public rulemakings, but in these cases public notice was provided.

When Congress considered the Postal Reorganization Act in 1970, it was unsure whether the Private Express Statutes, most of them unchanged since the 19th century, should be revised. The decision embodied in section 7 of the Act, 39 U.S.C. 601 note, was to require the Board of Governors to undertake a study of the matter and to submit "recommendations for modernization" to the Congress and the President. This was done in the Board's report, Statutes Restricting Private Carriage of Mail and Their Administration: A Report by the Board of Governors to the

President and the Congress, Pursuant to Section 7 of the Postal Reorganization Act (1973). The Board recommended that modernizing changes in administration of the Statutes were needed, and that they should be made by administrative action, including suspensions under 39 U.S.C. 601(b), rather than by legislation.

The text of certain proposed suspensions was included in the report. The Postal Service then proceeded to air these proposals through a public rulemaking, first seeking comments, 39 F.R. 17,512 (July 2, 1973); then summarizing the comments and requesting further input, 39 F.R. 3,968 (January 31, 1974); and subsequently publishing the final regulations, including suspensions, 39 F.R. 33,209 (September 16, 1974). In the meantime, six days of Congressional hearings had considered the Board's report. While the hearing elicited extensive debate about the details of the proposed regulations and suspensions, the general approach recommended by the Board, to address needed reform or relaxation by administrative suspension under section 601 rather than through legislation, found broad support. The Private Express Statutes, Hearings Before the Subcommittee on Postal Service of the Committee on Post Office and Civil Service, House of Representatives, 93d Cong., 1st Sess., Serial No. 93-32 (1973).

Afterward, the growth of the expedited delivery business brought additional pressures to relax the reach of the Statutes, by law or by administrative suspension. The Postal Service initiated further public rulemaking proceedings, and new Congressional hearings focused on the matter. Most of the testimony favored further relaxation, either administratively or by suspension. Only one witness made the argument that 39 U.S.C. 601(b) authorizes suspension only in the direction of tightening, not relaxing, the statutory restraints. The Private Express Statutes, Hearings Before the Subcommittee on Postal Operations and Services of the Committee on Post Office and Civil Service, House of Representatives, 96th Cong., 1st Sess., Serial No. 96-39, p. 203 (1979) (testimony of James I. Campbell, Jr.). The Chairman of the House postal oversight subcommittee left no doubt that his oversight recommendation to the Postal Service was to resolve the matter administratively, by adopting a suspension relaxing the sweep of the monopoly. Status Report on the Operation of the United States Postal Service and the Postal Rate Commission, Hearings Before the Committee on Post Office and Civil Service, House of Representatives, 96th Cong., 1st Sess., Serial No. 96-21, pp. 45-47 (1979). That is what the Postal Service did.

The Private Express Statutes are very old laws, changed very infrequently, with roots antedating the Constitution. Like the Constitution, they have had to stand the test of over two centuries of the country's growth. While the Statutes have not performed perfectly, or fit perfectly every new development, they have proved adaptable in some respects. The suspension authority has helped meet that challenge, and its application as a safety valve to relax what becomes perceived as overreach of the monopoly in limited situations has been broadly accepted.

- a. H.R. 3717 amends Section 601(a) of Title 39 to allow private carriage of letters outside the Postal Service when the amount charged is at least \$2. The Chairman of the Rate commission suggested that by retaining current provisions of Section 601(b), the Postal Service could suspend and subsequently increase the \$2 minimum in selected service areas based on its assessment of what the public interest requires. He believes that the Postal Service may try to use this "escape hatch" to raise or repeal the \$2 minimum. Do you interpret the Postal Service's authority in these ways?

ANSWER: Such an approach would not be inconsistent with the plain language of the statute. Indeed, the use of the suspension authority to postpone the effective date of the minimum proposed in the statute, or to "phase" downward from the minimum that currently applies (\$3 or twice the First-Class postage, whichever is greater), might provide a remedy for a problem we perceive in H.R. 3717. That is, the significant imbalance in timing between the effective date of the proposed relaxation of the Private Express Statutes, and the date when the Postal Service might reasonably expect to begin to benefit from the authority to provide volume discounts, enter into service contracts with its customers, or exercise any significant degree of pricing flexibility.

13. As agreed in the hearing, please supplement the record with your thoughts on how, if at all, the six criteria listed in H.R. 3717 for the Commission to consider in establishing the adjustment factors could be more precisely defined.

ANSWER: A more precise definition of the six criteria will not resolve all the difficulties we perceive in this portion of the bill. The system created by the bill, with multiple baskets, a different adjustment factor for each basket, and scant opportunities for "rebalancing" prices within each basket, would undermine the basic rationale for a price cap regime, which is to provide flexibility in ratemaking. The bill's combination of too many baskets and a too-tight price cap is particularly detrimental, and could force the Postal Service to raise every price by the maximum permitted under the cap just to meet expenses.

In place of the bill's current provisions, we suggest that a necessary degree of pricing flexibility could be achieved by reducing the number of baskets and price caps to one. This would allow the "rebalancing" of prices within or among product lines, in response to changes in costs or market conditions. We would be able, for example, to reward customers for performing additional sorting or transportation functions without resorting to a mail classification proceeding.

We would also recommend the use of an index which is more suited to a labor-intensive service industry such as the Postal Service than a capital-intensive telecommunications firm. This will remove the possibility that a price cap geared to the index would not generate sufficient revenues to cover the actual costs of postal operations. A workable index might couple an index such as the GDPPI with the Employment Cost Index (ECI) to reflect the actual proportion of capital and labor cost inputs to the Postal Service. Any adjustment or "X" factor, moreover, should apply across the board, not vary among product lines, and be stated explicitly in the legislation. One choice for such an objective "X" factor would be the national Nonfarm Multifactor Productivity Index (NFMFPI). Ideally, an additional "Z" factor should also be available to adjust the cap automatically for external events, such as changes in accounting standards or changes in Federal retirement or benefit laws, that would otherwise impose a disproportionate or unforeseeable financial burden on the Postal Service. A price cap of this type, based on objective, accessible factors, would be neutral regarding the strategic pricing relationships among the various classes of mail, and would preserve a maximum degree of flexibility to respond to fluctuations in the level of postal revenue, or the relative demand for various classes of postal products.

- a. Do you believe any particular factor should be given greater weight in PRC deliberations? Should fairness and equity be a criterion? One factor the Commission is required to consider is "cost to the Postal Service of providing the product." Should the Commission set the adjustment factors to ensure that the Postal Service may recover all of its costs?

ANSWER: It is difficult to decide whether any one factor should be given greater weight, because the bill does not explain how the factors are to be applied. Four of the criteria, as an example, address the value, cost, service levels, and revenue associated with an individual "product", but would be used to set an adjustment factor for the whole "basket" of products. Many of the problems with this section are rooted in the fact that when it sets the adjustment factors, the Commission will essentially be attempting to do in one step what is currently done in two – setting an aggregate revenue requirement, and then allocating the required costs among the classes and subclasses of mail. From our point of view, it is clear that the adjustment factors should be set to enable the Postal Service to recover all of its costs. It is unclear, however, whether the Commission would be in a position to do that, since the bill does not require the Commission to consider a total revenue requirement in setting the four adjustment factors, or even to consider the likely combined effects of the factors it selects on the financial integrity of the Postal Service. The solution to this problem, we believe, is to continue to adhere to the basic principle of the Postal Reorganization Act, that the authority to determine the Postal Service's revenues should reside in the same body that bears the overall responsibility for postal operations – the Board of Governors. In the final analysis, the Governors need the authority to determine the pricing relationships among postal products, as well as to determine the pace and nature of operational changes, because they are responsible for maintaining an adequate level of postal revenue.

14. As stated in the hearing, please feel free to supplement the record regarding any other specific issues raised through your review of H.R. 3717.

ANSWER: We appreciate the opportunity to supplement the record and have provided as attachment I the October 1, 1996 letter to you from Tirso del Junco, M.D., Chairman of the Board of Governors. The letter describes suggestions for improving the bill in four critical areas—pricing flexibility, labor costs and the formulation of a price cap, governance, universal service and private express. We look forward to meeting with you and your staff and to discuss the areas of concern in greater detail.

15. H.R. 3717 creates a new responsibility for the Commission – annually reviewing the Postal Service's data and information to assure compliance with certain obligations under the law. Rate Commission Chairman Gleiman has put forth the suggestion that the Postal Service should have no basis for withholding or objecting to the availability of any and all data pertaining to Noncompetitive products since such information if disclosed could not, by definition, result in competitive harm. Do agree with this interpretation? If not, please elaborate.

ANSWER: It would be a serious mistake not to recognize that the Postal Service faces "competition" of one sort or another for all of its business. Much has been said, for example, of the growing threat of electronic diversion, against which the Private Express Statutes offer no protection whatsoever. Indeed, a large portion of electronic diversion will probably come from that portion of the mailstream that the proposed legislation terms "noncompetitive". Any suggestion, therefore, that the Postal Service has no proprietary interest in protecting information regarding its plans to respond to competitive challenges such as electronic diversion is clearly misguided. Under normal business practices, firms safeguard information, whether generated internally or obtained from external sources, which could benefit their competitors. We strongly disagree with the suggestion, from Chairman Gleiman or anyone else, that it is possible to prejudge the commercial sensitivity of information on the basis of broad-brush labels applied to a wide variety of products and services. Each case must be examined individually.

16. Section 3701 of H.R. 3717 requires the establishment of baseline rates and fees. This final rate case will establish the foundation for the application of price caps for Noncompetitive products. Chairman Gleiman suggested that the Postal Service would have an incentive to pad its revenue requirement in the final case establishing baseline rates and fees. Should the current law be changed which permits the Postal Service broad discretion in determining the revenue requirement?

ANSWER: We reject the suggestion that the Postal Service has an incentive to "pad" its revenue requirement. Under current law, and the law that would continue under H.R. 3717, those individuals appointed by the President to direct the powers of the Postal Service are appointed to "represent the public interest generally." In this respect, their incentives are no different than those of the individuals appointed to the Postal Rate Commission. Indeed, we should be able to expect that the Governors and the Commissioners would share a common concern for the continued financial health and stability of the Postal Service.

- a. Should the revenue requirement in this last case include amounts for contingencies and for prior years' losses? The PRC suggested that by inflating base rates over expected costs by hundreds of millions of dollars seems inconsistent with the new system contemplated by H.R. 3717 which is designed to limit rate increases to reflect an index of the economy as a whole.

ANSWER: The revenue requirement in any baseline rate case should continue to include a provision for contingencies, and a provision for the recovery of prior years' losses. The purpose of a baseline case will be to provide adequate rates for the Postal Service over the selected test period. Those rates should reflect both of the above elements. In particular, if there is no provision for recovery of prior years' losses, the Postal Service will lack any identified mechanism for the restoration of equity. The Commission itself has recognized the importance of the recovery of prior years' losses, although it has questioned whether or not the Postal Service has properly used the amounts included in the revenue requirement for that purpose. The Board of Governors last year adopted a resolution setting forth a new policy on this issue.

It may be important to recall that, under the new system contemplated by H.R. 3717, the applicable index and adjustment factors will determine only the maximum allowable rate increases, not the required rate increases. If applying the new factors to the baseline rates creates a situation in which the Postal Service does not need to raise rates to the ceiling amount to meet its financial obligations, the Postal Service, in accordance with its mandate to serve the public interest, will not raise its rates to that amount. Concern with the possible effects on future rate ceilings provides no valid basis to exclude legitimate revenue requirement elements in the baseline case.

- b. H.R. 3717 would rewrite the ratemaking criteria for this last omnibus case. The PRC suggested that this would raise uncertainties of interpretation and unnecessarily generate possible judicial appeals, thereby frustrating attempts to avoid administrative delays in establishing the new system. Do you share these sentiments?

ANSWER: Given the stakes involved for all concerned, it is difficult to envision a baseline case which would not be appealed by one party or another. Concern over potential appeals should not be a factor in deciding whether to enact otherwise desirable improvements in the statutory ratemaking criteria.

17. In the Noncompetitive product category, rates at the subclass level could not be averaged, but rates at lower levels, such as rate categories and discounts, could be averaged. Please refer to pages 14-17 of the Chairman of the Rate Commission's testimony regarding this flexibility. What do you think of his suggestion that this ability to average rates at this level would allow the Postal Service too much pricing flexibility?

ANSWER: We disagree with the Chairman's suggestion that H.R. 3717 would grant the Postal Service "too much" pricing flexibility, and believe that it provides an excellent justification for removing multiple adjustment or "X" factors from the ratemaking regime proposed in that legislation. Otherwise, as H.R. 3717 in its current form provides the Postal Service with no meaningful protection from an overly restrictive set of rate caps which might result from Commission-set adjustment factors, a Commission intent on squeezing "excess" pricing flexibility out of the system would be able to use the adjustment factors for that purpose. Indeed, it would be possible to set the adjustment factors in such a fashion that the Postal Service would have no choice but to raise every rate by the maximum extent possible merely to meet its financial obligations. This, we believe, would not be consistent with the underlying objectives of the legislation.

- a. Under H.R. 3717, the Postal Service may adjust rates, for both Competitive and Noncompetitive products, once a year following a 45-day advance notice publication in the Federal Register. Should the 45-day notice provision and annual limitation on rate adjustments be applied to pricing of products in the Competitive category? Why or why not?

ANSWER: The 45-day notice provision and the annual limitation on rate adjustments should not apply to products in the Competitive category. The Postal Service's competitors do not face such restrictions, and neither should the Postal Service. Instead, the same constraints imposed by the market, which restrain competitors from changing their rates too frequently or without sufficient notice to customers, should be trusted to likewise restrain the Postal Service. Like any rational competitor, the Postal Service will have no incentive to antagonize its customers in these markets, and would only implement rate changes on short notice or more frequently than annually if there were a compelling reason to do so, based on unusual circumstances. Were any such circumstances to arise, however, the Postal Service should have the flexibility to respond appropriately.

18. Do additional safeguards need to be enacted in order to assure the Postal Service will be competing fairly in the Competitive product category? For instance, antitrust statutes are made applicable, but will this sufficiently deter anti-competitive behavior? Should the Federal Government be removed as the ultimate guarantor for Postal Service debts? Should the Postal Service continue to exercise eminent domain? How often in the past has the Postal Service exercised this governmental prerogative?

ANSWER: Under H.R. 3717 as currently drafted, the Postal Service would still face numerous checks on its ability to compete. It would, for example, have to comply with restrictions on the frequency, timing, and notice of changes in the prices for competitive products that are far in excess of those that apply to its competitors. If the objective is fair competition, it is not additional constraints on the Postal Service that will be needed. If, as apparently contemplated in the legislation, "noncompetitive" products are not used to subsidize competitive ones, neither the relationship between the Postal Service and the Treasury, nor the potential application by the Postal Service of eminent domain (used on average less than once a year), are likely to have any meaningful impact on the ability of potential competitors to compete with the Postal Service.

Indeed, it has generally been recognized that such benefits as the Postal Service derives from its governmental status are necessary to support the many public policy duties performed by the Postal Service that do not apply to its private-sector competitors. Providing a universal service network, maintaining a uniform letter rate regardless of distance, maintaining post offices and ensuring maximum service levels in rural areas, and carrying mail free of charge or at reduced rates for favored types of mailers are but a few illustrations of these important social functions. In place of the question above, it might be appropriate to ask whether the private firms which compete with the Postal Service should be required to contribute financially to the achievement of these goals.

19. Some argue that volume discounting and negotiated service agreements will always result in discounted mail rates for large mailers at the expense of small volume mailers. How do you respond?

ANSWER: Volume discounting and negotiated service agreements would not necessarily be at the expense of small volume mailers. Based on market segmentation and customer analyses and resultant cost and demand factors, volume discounts and negotiated service agreements will be designed to provide incentives for increased volume from current customers and increased volume from new customers. As a result net revenue and contribution would increase. Increased contribution would in turn be to the benefit of all mail users.

- a. How much increased volume would you expect if the Postal Service could offer these options? Could the Postal Service recover its costs and even make a profit if these options were offered? Should the bill require an assessment of costs before discounts can be offered in the Noncompetitive area?

ANSWER: It is extremely difficult to predict with certainty what the volume effects would be from volume discounting and negotiated service agreements. A number of dynamic factors to be considered in such an analyses would include quality of service, value-added features, direct and indirect competitive response to postal pricing, and competitor response to the relaxation of the Private Express Statutes.

As regards Express, Priority and Parcel Post preliminary estimates, which include pricing by market segment and the effects of the relaxation of the Private Express Statutes, show total volume declining by about 5 percent overall. The pricing strategy underlying this scenario more closely tracks the cost and demand characteristics of each market segment within each product. The net financial impact in year 1 is an increase in contribution between \$200 million and \$250 million and a six year average increase in contribution between \$300 million and \$400 million.

Under the current cost-of-service regulatory scheme, the Postal Service lacks the ability to deaverage costs and develop customized rates based on market segment and customer-specific requirements. As has been practiced in the international business, volume discount pricing and contract pricing has been carefully designed to recover its costs and make a profit. In a similar manner the flexible pricing envisioned in the Bill, although limited, offers the Postal Service the opportunity to increase profit or "contribution".

We believe the bill should not require an assessment of costs before discounts can be offered in the noncompetitive area. Any discount offered in the noncompetitive area would certainly be designed so as to cover cost and make a profit. Otherwise, it would not be in the best interest of the Postal Service to offer any discounted rates. The incentive provisions in the Bill enhance management's concern for profitability. The Postal Service will certainly conduct an assessment of costs before offering any discounts. Any formal requirement to do so is unnecessary and would serve only to undermine the spirit of reform.

20. The bill grants the Postal Service the authority to offer new or modified products on an experimental basis. It limits the market tests to \$100 million per year in revenue. Chairman Gleiman testified that "(g)ross revenues of this magnitude, if achieved by the Postal Service relative to a single product or service, could seriously disrupt many existing markets."

- a. Some argue that many small businesses or even segments of whole industries would be placed at risk through the utilization of this authority. What safeguards should be implemented to protect vulnerable entities from potential unfair competition or inadvertent Postal Service business actions? Would this authority permit the Postal Service to crush small business competitors under the rubric of a test? Who will shoulder the financial burden if these market tests result in losses? On the other hand, should this dollar limitation be increased? If so, why?

ANSWER: Safeguards should exist to protect the integrity of the competitive market itself, not promote the well-being of particular competitors. If the Postal Service is or could be the least-cost provider of a service, and can or could generate net revenue from that service to the benefit of its existing customers, it should be free to conduct its business accordingly. If the Postal Service cannot compete successfully because it is not the least-cost provider of a service, even in a limited market niche, then it would do better by staying out of that market.

One of the primary advantages of market tests should be to allow the Postal Service to find out in which of these two positions it actually is relative to any potential new market. On the one hand, if the Postal Service ultimately cannot compete successfully, any disruptions or dislocations caused by its test activities would probably not enhance market efficiency. On the other hand, if the Postal Service can compete successfully because of an inherent cost advantage, the whole idea of competition is to replace higher-cost service providers with lower-cost ones. The Postal Service is cognizant of these concerns, and will remain so as it considers market tests. At this time, it would be pure speculation for the Postal Service to say that the \$100 million limit on market tests is too low, too high, or just right.

21. Should H.R. 3717 contain a provision for recourse or remedy should the Postal Service implement rates that unintentionally or unwittingly destroy small businesses, or even a whole segment of an industry?

ANSWER: Not necessarily. If the Postal Service is the least-cost provider of service, specific competitors may be harmed if they are pushed out of the market, but the integrity of the competitive process – and the public – would be net beneficiaries.

22. Some argue that H.R. 3717 provides no effective remedy in the complaint procedure. Should the Commission be empowered to direct the Postal Service to implement changes to bring rates into conformance with the standards of Title 39 should the Commission find that the Postal Service has implemented unlawful rates? Should there be some mechanism to allow those who are convinced that certain Postal Service rates are in direct violation of law to present their concern, and if their concern is valid, to obtain relief?

ANSWER: If disgruntled parties can file complaints with the Commission regarding rates set by the Postal Service, and the Commission in response can direct the Postal Service to implement rates specified by the Commission, any notion of pricing flexibility is lost. Not only would such a regime once again require the Postal Service to litigate its rates before the Commission, but, in addition, the Commission would have final ratemaking authority. Such a system could not be considered a true "price cap" regime in any recognized meaning of the term. If there is substantial concern that a price cap regime would allow the Postal Service to set unlawful rates, then retaining the existing system would be preferable to establishing one with the complaint mechanism implied by this question.

- a. To what extent, if at all, do you believe the antitrust provisions of H.R. 3717 would deter postal managers from behaving in an anti-competitive fashion?

ANSWER: In one sense, antitrust laws will "deter" anticompetitive behavior by postal managers in the same way that other criminal laws "deter" postal managers from engaging in armed robberies. The application of antitrust laws to postal managers should not be necessary, because as public officials seeking to advance the common good, postal managers should not be inclined to behave in an anticompetitive fashion.

In another sense, however, the antitrust provisions of H.R. 3717 could discourage postal managers from behaving in a vigorously competitive fashion. The principles of competition suggest that the least-cost provider should price close to that cost, and win the competitive contest to provide a particular service. Therefore, the Postal Service should vigorously pursue any opportunities in which it is (or could be) the least-cost provider, and any behavior inconsistent with that objective would be antithetical to the public policy goals of the antitrust laws. Needless to say, however, the threat of having to fend off wave after wave of antitrust lawsuits, filed by disgruntled competitors with easy access to the immense amount of product-specific financial and operating data that the Postal Service would be required to disclose and document on a routine basis, is unlikely to encourage postal managers to pursue competitive opportunities with the appropriate vigor. Rather than have to deal with antitrust litigation, postal managers would have an incentive to avoid any potentially controversial products, abandoning some markets to what might actually be higher-cost service providers.

23. H.R. 3717 amends Title 5, United States Code, by permitting the Postal Service the right to petition for judicial review certain decisions of the Merit Systems Protection Board to the U.S. Court of appeals for the Federal Circuit. The intent of this provision is for the Postal Service to be able to appeal an MSPB decision if the Service determines that the Board has erred in interpreting civil service provisions affecting personnel management and that the MSPB ruling will have a significant impact on civil service policies. Generally, it affords the MSPB an opportunity to correct any errors if, under reconsideration, it determines it ruled incorrectly. If the MSPB stands firm, then the Postal Service would have the right to appear before the Court of Appeals and the Courts would determine if there should be judicial review. In your view, how will this provision help the Postal Service?

ANSWER: The primary benefit of this bill would be to ensure that the Postal Service is able to obtain judicial review of an erroneous MSPB ruling that would have a significant impact on civil service laws, regulations, or policies of special importance to the Postal Service. Under the current law, there is no assurance that such a review will be obtained.

- a. To what extent, if at all, do you believe the antitrust provisions of H.R. 3717 would deter postal managers from behaving in an anti-competitive fashion?

ANSWER: This provision will neither expand nor shrink the protections and appeal rights that are currently available to veterans and other postal personnel who have MSPB appeal rights.

POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

EDWARD J. GLEIMAN
CHAIRMAN

December 23, 1996

The Honorable John M. McHugh
Chairman
Subcommittee on the Postal Service
Committee on Government Reform
and Oversight
Washington, D.C. 20515-3224

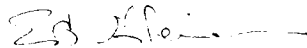
Dear Mr. Chairman:

Enclosed are my responses to the written questions submitted for my consideration following your hearings on H.R. 3717.

As always, the Commission appreciates any opportunity to be helpful to the Subcommittee.

Edward wishes for the new terms

Sincerely,



Edward J. Gleiman

Enclosure
EJG:jpm

cc: The Honorable Barbara-Rose Collins
Ranking Democratic Member
Subcommittee on the Postal Service

**Responses of Edward J. Gleiman, Chairman
Postal Rate Commission
to the Questions Submitted by the
Subcommittee on the Postal Service
Committee on Government Reform and Oversight
U.S. House of Representatives**

1. As agreed in the hearing, please supplement the record with your thoughts on how, if at all, the six criteria listed in H.R. 3717 for the Commission to consider in establishing the adjustment factors could be more precisely defined. Should other specific factors be enumerated?

Response:

During the July 10th hearing I suggested that the adjustment factors set out in the proposed section 3723(c) could be more specific. My particular concern was with factor 3, "productivity of the Postal Service in providing postal services." Many rough and inadequate measures of productivity have been used in the past by the Postal Service. I suggest that the concept of total factor productivity should be specified. If the total factor productivity of the Postal Service is declining, that is, the Postal Service has become less efficient, it could be argued that mailers should not be held responsible for supporting this Postal Service inefficiency. This is particularly so for mailers who have no alternative for obtaining delivery of a message.

Also, many of the current ratemaking factors identify considerations which could be viewed as relevant and material to the appropriate rate for services provided to citizens by a government sponsored monopoly. While the decision to specify rate policies properly rests with Congress, considerations such as the value of mail to recipients and the impact of rates on mail users should, in my view, remain part of the equation. Similarly, I think the Commission should be instructed to consider ways to avoid recommending rates which it considers unfair or inequitable. Finally, I suggest that factor 6, "such other considerations as the Postal Service and the Commission mutually agree to be appropriate" will be exceptionally difficult to administer. The Commission should have discretion to rely on clear and convincing evidence developed in its public proceedings. It will seriously undermine public participation if the Service can "withhold agreement" and thereby negate convincing mailer evidence on the importance of a consideration not specified in 3723(c).

a. You state in your testimony on page 8 that the concepts of "fairness and equity" receive "also ran" treatment under the legislation. How are these concepts applied in the current ratemaking procedure? How is "fairness and equity" measured? What weight is accorded these factors? Please provide examples of where these concepts affected current rates.

Response:

Current law directs the Commission to recommend rates in accordance with the policies of title 39, United States Code, and nine factors specifically enumerated in 39 U.S.C. §3622(b). The weight given to any particular public policy or enumerated factor varies depending on the specific factual situation. Over the years, "fairness and equity" considerations have often been extremely important. Fair and equitable considerations incorporate a variety of concepts which can be distilled into: is the Commission recommendation just, both as a whole, and as it applies to separate segments of the public?

Almost all current rates reflect the application of this consideration in the most recent omnibus rate case, Docket No. R94-1. Normally, rate increases are heavily influenced by the change in the cost of providing service to the different classes and subclasses of mail. However, in Docket No. R94-1, the Postal Service proposed that most rates should be increased by the same amount, regardless of the differing changes in the cost of providing service to different categories of mailers. Not surprisingly, this "across-the-board" proposal was supported by users of mail classes which had experienced above average-cost increases. In contrast, many First-Class mailers objected, since the costs of processing and delivering First Class had been quite stable. The Commission found that the justification for across the board increases failed to outweigh the equity of recommending rate increases which reflected cost changes, as well as appropriate contributions to overhead costs. Therefore the Commission determined it was more equitable to recommend a below average increase for First-Class Mail in recognition of the below average cost increases reported for that mail.

The concepts of fairness and equity often are applied to moderate the impact of other factors. For example, the Commission often decides to "phase in" substantial rate increases, which otherwise would result from classification recommendations or the recognition of new data collection or cost allocation methods. This consideration also influences the rates recommended in the classification reform cases. The Commission has found that fairness and equity support a policy of passing through to mailers in rate discounts, 100 percent of the savings to the Postal Service which result from mailer worksharing. The Commission has determined that discounts of more than 100 percent of identifiable savings were too large, and discounts of less than 100 percent of identifiable savings were too small.

2. Proposed section 3723 establishes "*productivity* of the Postal Service in providing postal services" as one of six enumerated factors for the Commission to utilize in setting the adjustment factor. As agreed in the hearing, please supplement the record with your thoughts, if any, regarding the idea that productivity is a preferable factor for the five-year review as opposed to the annual audit because a review of productivity over a five-year period may be more balanced, fair, and workable when assessing productivity trends over a period of time rather than one year increments. I should note that to the extent productivity targets are part of the Postal Service's

annual performance plans and reports, productivity would be part of the annual audit under the current legislative language.

Response:

Annual productivity figures are an important indicator of an entity's performance for that time period. While a longer period might provide even more perspective, the Postal Service's annual productivity figures are meaningful measures of how effectively management has used its resources. The Postal Service's total factor productivity (TFP) measure is a sophisticated gauge of performance which takes into account the type of mail handled, the capital resources deployed, and the skill level of the work force for the period being measured. The calculation of annual TFP reflects changes in these various factors for the year under consideration. Therefore, it provides a consistent basis for comparing current performance with past performance. Moreover, annual reporting is the standard and accepted data reporting period for the Service, as it is for most enterprises, although some Postal Service information is presented on an even more frequent basis. In addition, the level of postal activity varies by season of the year. An annual reporting period encompasses both the lows and the highs, thereby presenting a complete picture for one annual cycle.

In any event, productivity is the best available annual measure of the efficiency of resource utilization. Focusing only on the amount of profit or loss for any year can be misleading because the presence or absence of rate increases, accounting changes, and extraneous events can have a profound impact on this measure. TFP is a more stable measure than the bottom line net income. I am not aware of any other overall annual measure that would address the issue of how effectively resources are utilized.

Thus, annual productivity measurements are meaningful. Moreover, the underlying details of the calculations can provide insights into the reasons that particular results have occurred. For example, labor productivity is derivable from the underlying TFP data and provides important useful information. All of this annual information, along with service standard attainment results and other data, provide indispensable information for evaluating performance.

3. You note that the bill does not index the \$2.00 minimum established for private carriage of mail. Do you feel that an inflation adjustment index should be added, and if so, why?

Response:

The issue here is whether the postal monopoly should be phased out slowly but automatically, or whether future action by the Congress should be required to change its scope. For example, today the \$2.00 threshold would exclude from the postal monopoly First-Class letters weighing nine ounces or more, since the rate for a nine ounce letter is \$2.16 (\$0.32 for the first ounce, plus \$0.23 for each additional ounce). If the \$2.00

threshold is not indexed in some manner, as rates increase over time more mail will be excluded from the monopoly. For example, if in 1998 the first ounce rate increases to \$0.35, and the additional ounce rate increases to \$0.25, the \$2.00 threshold would exclude First-Class letters weighing 8 ounces or more from the monopoly. This would increase the amount of mail which is not monopoly protected. Eventually, more and more mail would lose its monopoly protection.

Many believe some monopoly protection is essential to maintain universal service at reasonable rates. I believe it is prudent to require future action by the Congress to change the scope of the monopoly, as opposed to putting its demise, essentially, on automatic pilot.

4. Your views on the contingency reserves and the prior years' losses in the baseline case are solicited. What are your views on inclusion of the contingency reserves in a baseline case in light of the fact that the bill proposes to shift the balance of the costs of revenue forgone and transitional appropriations to the Service. Should the Postal Service be allowed a contingency to cover those costs or would you propose a different way of addressing those costs?

Response:

Reasonable amounts for contingencies, under existing law, are included in Postal Service "total estimated costs" when rates are set (39 U.S.C. §3621). The provision for contingencies reflects the fact that future costs and revenues cannot be estimated with certainty, and unforeseen and unanticipated events do occur.

If H.R. 3717 is enacted, the new costs which it shifts to the Postal Service related to revenue forgone and transitional appropriations would be foreseen and anticipated. While these costs should be taken into account as Congress presumably would know that it was shifting the costs from taxpayers to postal ratepayers, I do not believe they are appropriate for inclusion in the contingency provision.

A contingency amount should not be necessary to keep the Postal Service viable in the event of serious adverse unforeseen events, since H.R. 3717 gives the Postal Service the ability to obtain relief from "severe financial exigencies." If a contingency amount is provided as insurance against events of lesser consequence and such events do not occur (or, put another way, if things simply turn out as expected), the unneeded contingency amounts would become profits to be distributed among managers and employees — in essence, an incentive bonus for doing no better than expected. This hardly seems appropriate. Thus, as I stated on page 12 of my prepared testimony, "it seems inappropriate to include an amount for contingencies in the baseline case."

- a. In regard to your discussion of the revenue requirement on pages 12 and 13 of your testimony, one view of this issue could be that even if the incentive exists to "pad" revenue for the baseline rates, the Rate Commission then has the final authority when setting the adjustment

factors *before* this new regime takes effect. If the Commission determines that the revenue was “padded” then it could take appropriate action by setting a stringent adjustment factor rather than changing the existing process for determining the Postal Service’s revenue requirement. What are your thoughts regarding this view of the matter?

Response:

The type of “padding” I am talking about is inappropriately inflating costs or understating revenues to improve the bottom line resulting from rates established in the baseline case. If the record in the baseline case shows such padding has occurred, the Commission should be able to adjust the revenue requirement to reflect that fact. Waiting until a later adjustment factor proceeding to try to address the situation would be ineffective for several reasons.

Under section 3723, the Commission’s authority in determining adjustment factors is fairly limited. First, it appears (although this is not altogether clear) that a negative adjustment factor is not intended to exceed the change in the GDPPI. Second, adjustment factors come into play only with respect to rates for Noncompetitive products. Third, the five factors the Commission may consider in determining adjustment factors are very specifically set forth. Fourth, under proposed section 3723 Commission adjustment factor determinations must be based “on the record” and the record in such a case will almost certainly not fully replicate the record for the earlier baseline case upon which the “padded” revenue requirement was based. Finally, in my testimony I was not suggesting “changing the existing *process* for determining the Postal Service’s revenue requirement.” I was suggesting that it may be prudent to authorize the Commission to revise the Postal Service’s revenue requirement estimate if the Commission determines the record justifies such an action.

b. The Postal Service currently is mandated to receive a contingency amount, and under the current language of H.R. 3717, that amount would continue in the baseline case. To what extent, if at all, has the Commission considered ending the regulatory (as opposed to statutory) provision for prior years’ losses.

Response:

The Commission has repeatedly expressed its concern over the Postal Service’s use of funds intended for the recovery of prior years’ losses (RPLYL). Most recently, in Docket No. R94-1, the Commission stated: “The Postal Service’s cavalier treatment of the RPLYL component of the revenue requirement does not facilitate the Commission’s performance of its ratemaking obligations. It is treating RPLYL — a component not explicitly authorized in the Postal Reorganization Act, and one originally recommended solely to accomplish a short-term restoration of the Service’s initial equity — as a multi-purpose revenue supplement available to postal management to use at its own discretion, without accountability to anyone.” (Docket No. 94-1, para. 2065).

To its credit, the Postal Service Board of Governors last year adopted a resolution directing management, in effect, to apply amounts provided for RPYL to restore equity. As a result the Service's negative equity situation has improved substantially.

5. On page 15 of your prepared text, you contend that proposed section 3721 sets forth a complicated classification mechanism, consisting of "subordinate units" and "further subordinate units." Please expand on your concern that the use of this terminology "raises new questions."

Response:

Perhaps I should have said "focuses the debate on what is the appropriate degree of flexibility for the Postal Service." The subordinate unit/further subordinate unit framework appears to be an attempt to bring some order to an admittedly disorderly system of classes, subclasses, rate categories, discounts, and rate cells. The resulting framework should facilitate the application of price caps. The framework, however, coupled with the freedom to average prices within product baskets for purposes of determining compliance with price caps, affords substantial pricing flexibility to the Postal Service. The succeeding pages of my prepared testimony describe the extent of this flexibility and point out, for example, that under the bill the Postal Service would be free unilaterally to implement proposals which were previously heavily litigated and rejected by the Commission.

6. In your testimony you raised questions regarding the division of postal services into the Competitive and Noncompetitive categories. For instance, you question the placement of enhanced carrier route saturation mail in the Noncompetitive category. Do you feel it should be moved to the Competitive category? How would the mailbox exclusivity rule affect this product's "competitiveness?" Secondly, are there other products or service offerings you feel would be better placed in the Competitive category initially? Conversely, what products do you feel would be better placed in the Noncompetitive category — and why?

Response:

It would be appropriate to place the saturation portion of enhanced carrier route mail in the Competitive category. Saturation mail is in direct competition with newspaper insert advertising. This competition includes both small local or regional papers and large daily papers. In addition, shoppers guides and circular advertising by local firms are sometimes delivered door-to-door in specific local areas. Without a doubt, the mailbox exclusivity rule provides a competitive advantage for all advertising mail over other forms of hard copy delivery. This advantage results from both the ease of delivery and the possible perceived importance by the recipient of advertising mail relative to items left at or on the door or in a driveway.

Another likely Competitive service is heavier weight, more than two pound, Priority Mail. This mail competes with two-day services, such as that provided by UPS and others, and also competes to some extent with slower service offerings by the same firms.

The proposed legislation places special services in the Competitive category. However, many special services are provided in association with a host mail subclass. Special services that are restricted to particular mail subclasses should be grouped with those subclasses. For example, registry can only be used with First Class, a Noncompetitive service. However, many special services can be used in conjunction with several classes, both Competitive and Noncompetitive. In that case it might be appropriate to group the special service with the subclass with which it is most often associated.

7. Please elaborate on your concerns on page 17 of your testimony regarding how classification changes will be handled under the bill, recognizing that it was anticipated the procedures were to remain the same; thus, the Mail Classification Schedule is intended to be controlling and interpretation and application would be carried out in the same manner.

Response:

The classification of mail is essentially a means to an end; specifically, mail is classified into groups which enable the Postal Service and the Commission to develop reasonable rates. Mail is currently classified into classes and subclasses, which combine mail with similar attributes that are considered important for setting rates pursuant to current section 3622. Mail is further subdivided into categories to allow for more precise (generally cost-based) rate distinctions. H.R. 3717 provides that at least initially, the existing classification distinctions are to be honored. However, serious questions might soon arise as to whether distinctions developed to recognize factors specified in existing section 3622, which are not stated in proposed section 3723, are still appropriate. Factors such as the value of mail to recipients; the impact of rate increases on mail users; the impact of mail rates on private business; the existence of alternative means of sending and receiving letters; mailer worksharing; whether rates are logical and understandable; the informational value of mail; and whether rates of postage, either individually or collectively, are fair and equitable are eliminated from the law.

For example, in early Commission proceedings there was general agreement that the Act contemplated distinguishing between a book and a brick and between a magazine and a catalog when setting postal rates. One could easily conclude that H.R. 3717 requires those items to be considered indistinguishable. I suggested in my July 10 testimony that consideration should be given to clarifying whether Congress intended that distinctions developed to recognize these considerations should be eliminated.

8

8. On page 6 of your testimony you state that the 'Governors' 42 days per year statutory limitation may be not enough under this bill. Given that section 202(a) of Title 39 only limits their per diem to 42 days but expressly states that it does not limit them to meeting more than that, are you suggesting that the per diem limitation be increased?

Response:

Since I testified last July, the Governors' salary has been increased from \$10,000 to \$30,000 per year. So my concern here is somewhat lessened. I do, however, think the responsibilities H.R. 3717 places on a conscientious Governor would require the devotion of more time, on average, than 3 and 1/2 days per month.

9. As discussed in the hearing, please elaborate regarding possible solutions for controlling potentially detrimental rate changes below the subclass level. As currently drafted, H.R. 3717 would allow such rate changes to be averaged to total the subclass's maximum rate. One suggestion would be to limit the amount of any increase in these lower levels in any single year to, say, double the amount otherwise allowed, or a total number of 10 percent, whatever is higher. Could you please comment on this or other possible suggestions?

Response:

In my July 10, 1996, testimony, I pointed to the possibility of potentially detrimental rate changes in the context of the increased flexibility H.R. 3717 would give Postal Service management in pricing postal products. The possibility that rate increases can have unintended and/or unexpectedly harmful impacts on categories of mailers can easily be reduced; however, reducing the potential for unintended negative results involves reducing the flexibility inherent in allowing management latitude to make rate adjustments whenever it sees fit. The current system assures mailers and affected third parties have the opportunity to comment before rates are changed. Additionally, the Postal Service must explain why rate changes are consistent with the policies of Title 39. The fact that justifications must be provided which are reviewed by a neutral third party prevents management from implementing rate changes which have not been carefully considered.

Clearly, setting a maximum amount any rate could increase would limit potential harm, however, it would do so by limiting the flexibility of management to increase rates. Even allowing management to raise rates up to twice the allowable average annual increase could have a substantial impact on categories of mailers over the course of a five year rate cycle.

a. Although the Commission can always initiate a classification case to rearrange the four baskets in the Noncompetitive category, is there a better way to arrange the baskets in order to create an initial structure in which the products would be so similar that these concerns related to rate change averaging would be eliminated? If so, how should this be done?

Response:

It is important to remember that although the Commission may "initiate" a classification case, active and complete participation in that case by the Postal Service is essential. It has the data and information necessary for informed decision-making. In response to question 12, below, I discuss what I perceive as a Postal Service "litigation strategy" which involves withholding or obscuring information not supportive of Postal Service policy positions, and the adverse effects of such a strategy on intervenors and the decision maker. The same concerns apply here.

Creating a larger number of baskets would allow for more homogeneous groups of mail and reduce the potential for intra-group cross-subsidization. For example, basket 4 appears to contain seven products and approximately 25 subordinate units. See Attachment C to my July 10 testimony. Many of those subordinate units have substantial numbers of further subordinate units. This situation provides many opportunities to charge below cost rates for some favored subordinate units and to make up the difference by charging higher rates to others. However, establishing an excessive number of baskets could be confusing and might bring unnecessary rigidity to the Domestic Mail Classification Schedule.

The four baskets described in H.R. 3717 establish a basket for mail sent by individuals and otherwise reflect current classes. I see no way better to arrange the four broad baskets.

10. On page 11 of your testimony, you advocate that the Commission should determine what constitutes "a reasonable contribution to overhead" with respect to rates applied to competitive products. You further state that "reasonableness" for a private sector competitor means recovery of all costs. Please explain this statement.

Response:

A private sector firm must recover all of its costs, direct and overhead, through the prices it charges for its products. Total revenues have to equal or exceed total costs, if the firm is to remain a viable enterprise. Within this constraint, and subject to customer pressure for the lowest prices among competitors, a firm can vary the overhead burden among products, and even price below direct costs for some products. However, private sector firms do not have the luxury of being able to charge the preponderance of their overhead to products that enjoy a legal monopoly. Rather, these firms must recover overhead from competitive products.

- a. Some have suggested that, if the Commission is given final authority over deciding what is a reasonable contribution to overhead for each product, we would be defeating the purpose of providing flexibility to the Postal Service in the Competitive category thereby returning to the

cost-of-service regulatory approach. Building upon your private sector comparison, one approach that has been suggested would have the Commission establish the overall percentage or amount that the Competitive category must contribute to overhead, and then allow the Postal Service to allocate overhead among all competitive products as it deemed appropriate — as long as the annual audit confirms that no competitive product is priced below cost and that the correct percentage or amount has been contributed to overhead from the entire Competitive category. What are your thoughts on this approach, particularly its strengths and weaknesses?

Response:

This suggestion appears to go in the right direction because it does not allow the Postal Service to charge an unreasonably small amount of overhead to competitive products as a whole (although it could charge what might be viewed as an unreasonably small mark up on any individual product). It would force the Postal Service to allocate a fixed overhead burden to its competitive products, just as private sector firms must do. It would also mean that private sector firms would not be put in the awkward position of competing against a firm which does not have to include a realistic amount of overhead in its pricing structure.

Under the suggested approach, competitors and monopoly customers may well argue that the collective markup on the competitive products should be equal to the collective markup on the monopoly products (i.e., the system-wide average). If the collective markup is set too low, competitors would cry unfair competition. Monopoly customers might say there is too little payoff in competitive products and that the Service should not waste its energies in the competitive areas. Giving the Commission authority to adjust this level, instead of setting a specific statutory amount, would allow for the recognition of exigent circumstances.

11. At the Postal Service's 25th anniversary symposium, former Postmaster General Anthony Frank stated that the Rate Commission gave a monopoly in the parcel business to the United Parcel Service. Could you comment on this statement?

Response:

Former Postmaster General Frank either misspoke or was misinformed. It is generally accepted throughout the postal community that several factors, other than price, have contributed to the decline in parcel post volume. These include service features (such as lack of parcel tracking, a feature that most competitors provide), inability of the Postal Service to meet parcel post service standards, delivery of damaged parcels, and strong price and service competition.

The decline in parcel post volume started long before the Commission was established. As the attached table and graph show, in the 20 years before postal reorganization (1950-70), parcel post volume declined about 440 million pieces, or 44

percent. This decline in parcel post volume continued after the 1970-71 reorganization. From 1971 to 1989, parcel post volume fell by another 420 million pieces. In the past five years (1990-95), however, parcel post volume grew by 70 percent. This recent volume increase occurred even though there were rate increases in 1991 and 1995. A major contributor to this recent volume spurt is the existence of new service offerings with associated lower rates, such as destination BMC parcels dropped off by mailers. These types of worksharing services have been encouraged by the Commission for parcel post and for other mail classes.

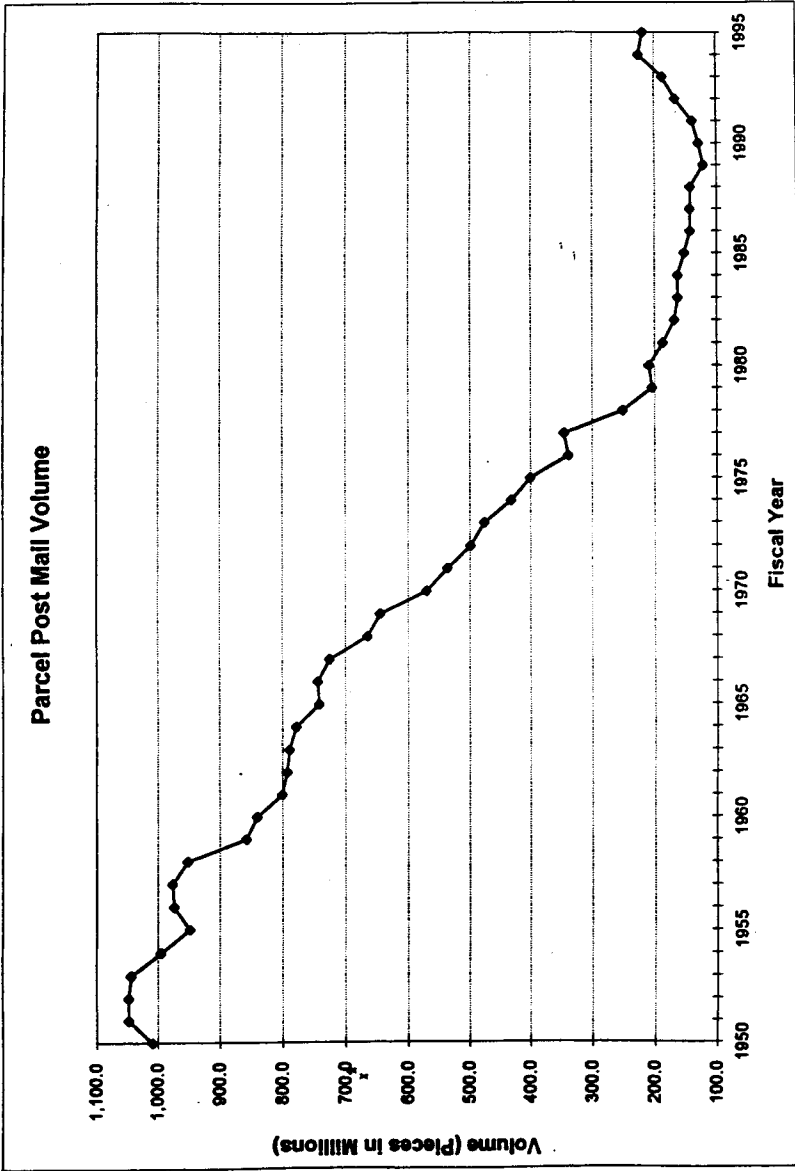
Every rate proceeding includes pleas for moderation and demands for large increases in parcel post rates by the various parties. In its opinion and recommended decision, the Commission has to evaluate these proposals in light of the ratemaking criteria set out in the Reorganization Act. In this regard, each subclass of mail is required to have rates set high enough to cover its causally related or attributable costs, plus make a reasonable contribution to overhead or institutional costs. A standard measure of the relative overhead burden assigned to the different subclasses and services is the cost coverage, calculated by dividing total category revenue by category attributable cost. The Commission's recommendations have consistently assigned a low cost coverage, or overhead burden, to parcel post. Commission-recommended cost coverages for parcel post, and the recommended overall average cost coverages (the system-wide coverage) for all subclasses and services, are shown below.

**Comparison of Cost Coverages
Commission Recommended Decisions**

	<u>Parcel Post</u>	<u>Systemwide Average</u>
R94-1	108%	157%
R90-1	111	150
R87-1	112	148
R84-1	116	152
R80-1	106	127
R77-1	103	124
R76-1	121	152
R74-1	141	169

Parcel Post

Year	Volume (Millions)	Annual Growth
1949	1,049.0	
1950	1,009.0	-3.81%
1951	1,047.0	3.77%
1952	1,047.0	0.00%
1953	1,043.0	-0.38%
1954	995.0	-4.60%
1955	948.0	-4.72%
1956	973.0	2.64%
1957	976.0	0.31%
1958	951.0	-2.56%
1959	857.0	-9.88%
1960	840.0	-1.98%
1961	800.0	-4.76%
1962	792.0	-1.00%
1963	789.0	-0.38%
1964	778.0	-1.39%
1965	742.0	-4.63%
1966	744.0	0.27%
1967	725.0	-2.55%
1968	664.0	-8.41%
1969	643.6	-3.07%
1970	569.7	-11.49%
1971	536.0	-5.91%
1972	498.3	-7.03%
1973	475.4	-4.60%
1974	431.2	-9.29%
1975	399.6	-7.34%
1976	338.4	-15.30%
1977	345.1	1.98%
1978	250.2	-27.49%
1979	203.6	-18.63%
1980	208.5	2.39%
1981	186.3	-10.67%
1982	168.0	-9.82%
1983	162.7	-3.15%
1984	162.1	-0.38%
1985	151.5	-6.48%
1986	142.5	-5.94%
1987	143.0	0.29%
1988	142.0	-0.68%
1989	121.1	-14.74%
1990	128.1	5.84%
1991	138.5	8.09%
1992	165.4	19.43%
1993	186.8	12.96%
1994	224.3	20.06%
1995	218.1	-2.80%



12. As requested in your testimony, please feel free to provide additional thoughts on H.R. 3717.

Response:

Judicial Review of Classification Decisions

Under the bill, the Postal Service, users of the mails, or the Commission may initiate a classification proceeding seeking the transfer of one or more products in the noncompetitive category of mail to the competitive category (section 3743(a)). Such a proceeding is conducted in conformity with sections 3624 and 3625. Under those sections, any Commission-recommended decision is submitted to the Directors of the Postal Service who "may approve, allow under protest, reject, or modify" that decision. But, under section 3628, only decisions of the Directors to "approve, allow under protest, or modify the recommended decision of the Postal Rate Commission may be appealed" to the Federal courts. A decision to *reject* a Commission decision is not subject to judicial review. This is an anomaly in existing law which definitely should not be continued under the classification and ratesetting regime envisioned by H.R. 3717.

The Postal Service's "Litigation Strategy"

I am often asked what can be done to reduce the time and expense required by rate and classification proceedings. Of course, if Administrative Procedure Act hearings are required, the hearing schedule must provide sufficient time for notice and opportunity to be heard.

In our proceedings, however, a substantial amount of time and expense is devoted to motion practice engaged in for two purposes: (1) to pry data and information out of the Postal Service; and (2) to understand the data and information that the Postal Service has provided for the record.

The Postal Service, of course, controls the vast majority of data and information upon which rates are based. It often seems that it pursues a litigation strategy that is adversarial in the extreme. It appears to me that the Postal Service generally fights tooth and nail to exclude from the record data and information other than that which it is confident will support the policy positions it has taken. I think this is unfortunate. As a Government entity, the Postal Service should ensure that the record is complete, even if certain information it supplies does not support the positions it takes.

I do not know how to legislate a solution to this problem. Subpoena authority and clarifying that Postal Service data is to be submitted in conformance with Commission-approved methodologies, such as established cost attribution principles, will help, but they probably will not be enough. The data study which you have encouraged should also be helpful.

Appropriate New Product Efforts by the Postal Service: Postal versus Nonpostal

Under the Postal Reorganization Act, the Postal Rate Commission recommends rates and fees only for products or services which are determined to be "postal" in character (*Associated Third Class Mail Users v. Postal Service*, 405 F.Supp 1109 (D.D.C. 1975); *National Association of Greeting Card Publishers v. Postal Service*, 569 F.2d 570 (D.C. Cir. 1976)). With respect to nonpostal products, e.g., philatelic products, novelty products and clothing items, the Postal Service is free to set rates and fees as it deems appropriate. This distinction between "postal" and "nonpostal" was the sole issue in the Commission's Docket No. C96-1, Complaint of the Coalition Against Unfair USPS Competition. In that complaint case a coalition of commercial mail receiving agencies challenged the Postal Service's authority to offer a "Pack & Send" service, arguing that the Postal Service had failed to submit its schedule of variable fees for this "postal" service to the Commission for mail classification and rate consideration. The Commission agreed in Order 1145 (December 16, 1996) finding the Pack & Send service to be a postal service subject to its jurisdiction, and holding further proceedings in abeyance until the Postal Service Governors file either (1) a request for establishment of Pack & Send as a mail classification and for the recommendation of rates for that service, or (2) a notice to the effect that Pack & Send has been discontinued.

H.R. 3717 establishes two sets of products ("competitive" and "noncompetitive"), which would be subject, in differing degrees, to Postal Rate Commission regulation. Noncompetitive products are specified in section 3723(a). Competitive products are specified in section 3741. These sets of products appear to encompass only "postal" products or services, i.e. those for which the Postal Rate Commission, on the date of enactment of the bill, recommends rates or fees. Section 3743 provides a mechanism through which existing products may be transferred from the noncompetitive category to the competitive category. Subchapter IV authorizes, with certain limitations, the introduction of "experimental products." Such products, eventually, may be converted to permanent products and placed in either the competitive or noncompetitive category (section 3743(g)). "Experimental product" is undefined. However, 39 U.S.C. §3623(3)(2)(C), as added by H.R. 3717, provides that "[a] new product may not be made available to the public before it has been placed in — (I) either the competitive or noncompetitive category of mail; and (II) if placed in the noncompetitive category of mail, the appropriate basket thereof." It appears that the introduction of any new product would be subject to experimental product procedures, although this is not completely clear.

I have two underlying concerns and one overriding concern. First, what is, and what should be, the status of existing "nonpostal" products and services? Should they continue to be unregulated? If so, how should their costs and revenues be taken into account. The bill does not address this question. Second, if existing nonpostal products are to be unregulated, should a "postal/nonpostal" distinction apply to new experimental products? By requiring that new products be placed in either the competitive or noncompetitive category the bill suggests that all new products will be regulated to some degree.

Finally, my overriding concern is that the bill gives no guidance, and sets no limits, as to what are appropriate nonpostal activities for the United States Postal Service. From published reports we know Postal Service management is aggressively developing new services (which may be postal or nonpostal) — Postal Service sponsored phone cards; Fastnet; electronic “postmarking” to time and date stamp, authenticate, and archive e-mail; Global ePOST (e-mail to hardcopy for next day worldwide delivery); NetPost; “Deliver America” catalog kiosks; WINGS (a World-wide Web Interactive Network for Government Services); retail sales of novelty and clothing merchandise in Postal Service specialty shops; and Pack & Send. Should the Postal Service be permitted or even encouraged to enter nonpostal markets such as financial services, for example?

Testimony given to the Subcommittee last September argued forcefully that the Postal Service should mind its own business:

. . . if private companies can now do some jobs better than the Postal Service, why not let them do so without government interference? Government participation in a competitive market is always disruptive. A government “corporation” — which does not need to make a profit, does not answer to shareholders, loads its fixed costs on a legal monopoly, and cannot go out of business — behaves so differently from private competitors that it distorts the entire market. All things being equal, the only good reason for government enterprise is to provide necessary services that would otherwise be unavailable from private companies. Yet, by definition, the Postal Service will not be providing unique public services if it is participating in competitive markets.

Of course, this was the testimony of Frederick W. Smith, President of Federal Express, who is hardly a disinterested observer. But, this issue needs further congressional consideration.

Authority to Conduct Experiments

As discussed above, H.R. 3717 appears to require any new postal service or product to be introduced through the experimental procedures it establishes, thereby triggering Commission involvement in each case. Clear congressional direction on this point is important. Under existing law the authority of the Postal Service to “experiment” is unclear as was demonstrated by two recent experimental proposals.

On December 13, 1996, the Postal Service filed a request with the Commission for new classifications and fees for nonletter-size Business Reply Mail (BRM) *on an experimental basis*. The Service proposes that these experimental BRM categories be put into effect for two years in order to assess the costs associated with providing them and their administrative feasibility.

As a result of discovery in a pending case (Docket No. MC96-3, Special Services Reform, 1996) and public reports (*see e.g. Business Mailers Review*, December 16, 1996, p. 3) the Commission is aware of a similar 18-month experiment involving prepaid courtesy

reply mail conducted by the Postal Service. The Postal Service filed no request for this courtesy reply mail experiment with the Commission. The authority of the Postal Service and the role of the Commission in this regard should be clarified.

H.R. 3717, THE POSTAL REFORM ACT OF 1996

THURSDAY, JULY 18, 1996

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE POSTAL SERVICE,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 2 p.m., in room 2247, Rayburn House Office Building, Hon. John M. McHugh (chairman of the subcommittee) presiding.

Present: Representatives McHugh, Sanford, Ehrlich, Collins, Owens, and Green.

Staff present: Dan Blair, staff director; Jane Hatcherson, Robert Taub, Heea Vazirani-Fales, and Steve Williams, professional staff members; and Jennifer Tracey, clerk.

Mr. MCHUGH. We obviously have just finished a vote. The minority has agreed that I can read my opening statement, and then we can get to the more substantive part of this afternoon's hearing.

First of all, let me welcome you all here today and call the subcommittee to order. As I am sure most of us are aware, this is the second in a planned schedule of four hearings on H.R. 3717, the Postal Reform Act of 1996. Last week, we were honored to hear what I thought was very constructive and valuable comments both from the Postmaster General of the United States, Mr. Marvin Runyon, and also the chairman of the Postal Rate Commission, Ed Gleiman.

This afternoon, the subcommittee looks forward to receiving testimony from postal labor and management groups. As we proceed today, I look forward to our continuing positive exchange of views with our witnesses who really represent the backbone of our postal system—that is, of course, its employees.

Today's hearing is vitally important in addressing the issues raised by H.R. 3717 as it impacts postal employees. From the outset, I want the record to show that I strongly intend to work with the groups represented here today in finding common ground on which this legislation can progress further.

H.R. 3717 is omnibus legislation, and it changes the way in which the Postal Service does business. I would urge those here today to recognize, however, that this proposal is as important for both what it does and what it does not contain. The bill is intended to create incentives for the Postal Service to better serve its customers to operate in a business-like manner. The preservation of universal service is the foundation of this legislation, and no provisions exist in the bill that either alters the current collective bargaining process or calls for fewer postal employees.

H.R. 3717 is intended to strengthen the Postal Service so that it may continue to maintain a critical public service while providing a source of solid employment for its workforce well into the years to come.

Our first panel this afternoon includes some very distinguished witnesses who will testify on behalf of postal labor organizations, and I want to certainly welcome President Moe Biller of the APWU, American Postal Workers Union; welcome, President Vince Sombrotto of the National Association of Letter Carriers, welcome as well; President Wayne Quinn of the National Postal Mail Handlers Union; President Scottie Hicks of the National Rural Letter Carriers Association; and President John Pesa of the National Labor Council, Fraternal Order of Police.

Gentlemen, thank you for being here. Collectively, these individuals represent a significant majority of postal employees. Without the support and the commitment of its employees, a reformed postal system will, for whatever other attributes it may contain, be destined for troubles.

During last year's oversight hearing, many of these witnesses testified regarding the lack of trust and cooperation between postal labor and management. Title III of H.R. 3717 attempts to address this long-entrenched impasse. We suggest in this legislation that an objective, unbiased commission be appointed by the President to review postal labor and management relations.

However, I recognize that the Postmaster General has reissued his call for a labor-management summit to address many of the same problems the commission would hopefully consider. I hope our witnesses can, and I know they will, comment on the status of their organizations' response to Mr. Runyon's invitation and what impact a successful summit might have on the need for a central commission, as called for in this bill.

Our second panel represents postal management groups. Both Mr. Palladino, president of the National Association of Postal Supervisors, and Mr. Brennan, president of the National League of Postmasters, testified before the subcommittee last year. This afternoon, we welcome Mr. Hugh Bates, president of the National Association of the Postmasters of the United States, for his first appearance before the subcommittee.

In reviewing all of your testimony, I note a common theme regarding the need to maintain and strengthen the Postal Service's commitment to providing universal mail service. And H.R. 3717 is premised on this commitment and is intended toward establishing a financially viable postal system which is responsive to the interests of all its stakeholders.

I believe H.R. 3717 represents a concerted, balanced approach aimed at addressing the problems of the current system. While I recognize the Postal Reorganization Act of 1970 has proven largely successful, it is showing signs of age. One tenet of that initiative was a mandate that the Postal Service run in a business-like manner. And any private sector business which still operates under a corporate structure unchanged for the last quarter century would surely find itself at a competitive disadvantage.

This bill attempts to recognize the market changes which have taken place since 1970, and attempts as well to provide the needed

flexibility and tools for the Postal Service to operate viably well into the 21st Century.

We all approach the concerns and the uncertainty that the prospects of significant change may bring; however, I fear that if our current Postal Service does not evolve to reflect the competitive marketplace, future changes may prove markedly less balanced than those contained in this bill.

In last year's oversight hearing, the witnesses collectively criticized the specter of privatization. I share those sentiments. However, should needed changes in the current system fail to take place at this critical juncture in time, I submit that we risk leaving the Postal Service dangerously ill equipped to address the competitive marketplace wrought by the advancing communications technology.

Last year, President Palladino of the Postal Supervisors testified that postal workers are often derided here on Capitol Hill. Let this hearing record show I have complete faith in the ability of the employees of the Postal Service to compete effectively with any group of private sector workers anywhere. It is not the employees holding the Postal Service back; in my opinion, it is the system, and that is where H.R. 3717 is intended to look and intended to yield and impart corrections.

With that, I would enter my more full—it is hard to believe I have a longer statement that I did not read—I would ask unanimous consent to have that full statement entered into the record without objection. And at this time I would be pleased to yield to my colleague, the gentleman from New York, Major Owens, representing the minority, for any comments that he may wish to make at this time. Congressman Owens.

[The prepared statement of Hon. John M. McHugh follows:]

Statement of the Honorable John M. McHugh, Chairman
Subcommittee on the Postal Service
Hearing on H.R. 3717
July 18, 1996

Good afternoon and the Subcommittee will come to order. I want to welcome everyone here this afternoon as the Subcommittee proceeds with its second hearing on H.R. 3717, the Postal Reform Act of 1996. Last week, we heard constructive and valuable comments from Postmaster General Marvin Runyon and Postal Rate Commission Chairman Ed Gleiman. This afternoon, the Subcommittee will take testimony from postal labor and management groups. As we proceed today, I look forward to a positive exchange of views with our witnesses who represent the backbone of the Postal Service - its employees.

Today's hearing is vitally important in addressing the issues raised by H.R. 3717 as it impacts postal employees. From the outset, I want the record to show that I strongly intend to work with the groups represented here today in finding common ground on which this legislation can progress further.

H.R. 3717 is omnibus legislation and changes the way the Postal Service does business. I would urge those here today to recognize, however, that this proposal is important for both what it does - *and does not* - contain. The bill is intended to create incentives for the Postal Service to better operate in a business-like manner. The preservation of universal service is the foundation of the legislation. And no provisions exist in this bill that either alters the current collective bargaining process or calls for fewer postal employees. H.R. 3717 is intended to strengthen the Postal Service so that it may continue to maintain a critical public service while providing a source of solid employment for its workforce well into the years to come.

Our first panel this afternoon includes witnesses testifying on behalf of postal labor organizations. I want to welcome -

- *President Mo Biller of the American Postal Workers Union,
- *President Vince Sombrotto of the National Association of Letter Carriers,
- *President William Quinn of the National Postal Mail Handlers Union,
- *President Scottie Hicks of the National Rural Letter Carriers Association, and
- *President John Pesa of the National Labor Council of the Fraternal Order of Police.

Collectively, these gentlemen represent a significant majority of postal employees. Without the support and commitment of its employees, a reformed postal system would be destined for troubles.

During last year's oversight hearing, many of these witnesses testified regarding the lack of trust and cooperation between postal labor and management. Title III of H.R. 3717 attempts to address this long-entrenched impasse. We suggest in this legislation that an objective, unbiased commission be appointed by the President to review postal labor and management relations. However, I recognize that the Postmaster General has reissued his call for a labor-management summit to address many of the same problems the commission would consider. I hope our witnesses can comment on the status of their organization's response to Mr. Runyon's invitation and what impact a successful summit might have on the need for such a commission.

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In reviewing all your testimony, I note a common theme regarding the need to maintain and strengthen the Postal Service's commitment to providing universal mail service. H.R. 3717 is premised on this commitment and is intended toward establishing a financially viable postal system which is responsive to the interests of all its stakeholders.

I believe H.R. 3717 represents a concerted, balanced approach aimed at addressing the problems of the current postal system. While I believe the Postal Reorganization Act of 1970 has proven largely successful, it is showing signs of age. One tenet of that initiative was a mandate that the Postal Service run in a business-like manner. Yet any private sector business which still operates under a corporate structure unchanged for the last quarter century would surely find itself at a competitive disadvantage. This bill recognizes the market changes which have taken place since 1970 and attempts to provide the needed flexibility and tools for the Postal Service to operate viably well into the 21st century.

By empowering the Postal Service with these new authorities and responsibilities, balance must be maintained. One aspect of this critical balance is the establishment of an independent office of Inspector General. As I said at last week's hearing, separating the functions of Inspector General from that of the Inspection Service is not a reflection on the current Chief Postal Inspector. However, it does correct a systemic flaw in the current system which permits the watchdog of internal management functions to be an integral member of the management team.

Some have voiced concern that a Presidentially-appointed Inspector General could politicize a currently apolitical postal system. Under the constructs of the bill,

such criticisms would be unfounded. I ask unanimous consent to insert in the hearing record the qualifications for appointment of Inspector General. The Inspector General Act requires the appointment to be made "without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations." In addition, this position requires confirmation by the Senate.

I well appreciate the concerns and uncertainty that the prospects of significant change may bring. However, I fear that, if our current Postal Service does not evolve to reflect the competitive marketplace, future changes may prove markedly less balanced than those contained in H.R. 3717. In last year's oversight hearing, the witnesses collectively criticized the specter of privatization. I share those sentiments. However, should needed changes in the current system fail to take place at this critical juncture in time, I submit that we risk leaving the Postal Service dangerously ill-equipped to address the competitive marketplace wrought by the advancing communications technology.

Last year, President Palladino of the Postal Supervisors testified that postal workers are often derided here on Capitol Hill. Let this hearing record show I have complete faith in the ability of the employees of the Postal Service to compete effectively with any group of private sector workers. It's not the employees holding the Postal Service back; it's the system. And that is what H.R. 3717 is intended to correct.

At this time I yield to my colleague _____ for an opening statement. (Following all opening statements, remember to administer oath to witnesses.)

Mr. OWENS. Mr. Chairman, I do not have an extensive opening statement. I would just like to say this is very serious business. This bill proposes sweeping reforms, and I am not certain that the reforms are focused where they ought to be focused, and that is on ways to deliver better postal service to the American people.

I think there has been a great deal of emphasis here on privatization, contracting out, and outsourcing, looking to solutions from one end without looking at the delivery end in terms of how are we going to get better mail service delivery out there. And the most basic functions of the post office—how will it do a better job?—that has been given very short shrift here.

I would very much like to see us look more in the effort to reform the management practices of the Postal Service, the management practices and the various structures for management.

We have a situation, I repeat, where Brooklyn has 2½ million people, and it does not have a Postmaster; it does not have a post office that is open past 8 o'clock—a city of 2½ million people. That kind of distorted structure, which also, I might say, is exploitive because we are exploited in the area of Brooklyn where you have a very dense population. A lot of mail goes through there, and I am sure we make a great profit, the Postal Service makes a great profit there, yet we get the worst service. They have better service in many other areas where you have smaller populations. Smaller cities get better service.

There are a lot of things that I would like to see covered in a deal that is going to make reforms that are not covered here, and I think that the people we are talking to today might have some good ideas about how to do that. I think that some people have not been talked to, and that is the large numbers of recipients of the service out there—my constituents, your constituents, constituents certainly in all the big cities where we have very poor postal service. They have not been represented at any of these hearings to the degree that they ought to be represented; and if we are going to have reform, they ought to be heard from.

We ought to hear the kinds of things they have to go through as they stand in long lines in post offices in my district, the kinds of things they have to go through as they deal with casual, inexperienced people of various kinds that are hired to deliver mail. That is the most basic function of the Postal Service, to deliver mail, and we have people out there who are hired off the street, not given any training, and they cannot even read street numbers well.

It is a mundane consideration, you might say, but it is basic. It is what we are all about. Whatever else we do, we ought to make certain that we get good, basic postal service, and this legislation does not deal with that enough, but I hope it will make some changes to come to grips with that. And I think the people here today will help us deal with that in terms of they are on the firing line, they are out there, and they deal directly with the constituents, and I would like to go on and hear that testimony. Thank you.

Mr. MCHUGH. All right. I thank the gentleman for his comments, particularly those on his interest in making this legislation as good as it can be—better, hopefully. That is our collective intent here today. And I agree with the gentleman, we are looking forward to

the testimony of these distinguished gentlemen to help us step forward in that regard.

As most of you are aware, being veterans of the process, committee rules require that we administer an oath of office to anyone who appears before the subcommittee to present testimony, so if you gentlemen would rise and please raise your right hand.

[Witnesses sworn.]

Mr. MCHUGH. The record will show that all of the members of the first panel responded to the oath in the affirmative. And with that, we will waste no further time and immediately go to President Moe Biller for his comments. And, again, Mr. President, welcome. Glad to see you here, and we are looking forward to your testimony.

STATEMENTS OF MOE BILLER, PRESIDENT, AMERICAN POSTAL WORKERS UNION, AFL-CIO; VINCENT SOMBROTTO, PRESIDENT, NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO; SCOTTIE HICKS, PRESIDENT, NATIONAL RURAL LETTER CARRIERS ASSOCIATION; WILLIAM QUINN, PRESIDENT, NATIONAL POSTAL MAIL HANDLERS UNION, LIUNA, AFL-CIO; AND JOHN PESA, PRESIDENT, NATIONAL LABOR COUNCIL, FRATERNAL ORDER OF POLICE

Mr. BILLER. Thank you, Mr. Chairman. Members of the subcommittee, I am pleased to represent the 365,000 members of the American Postal Workers Union, AFL-CIO. I also appreciate the hand of friendship that you have extended. I hope that the word "reform" means, in the positive sense, strengthening the ability of the Postal Service to compete and to meet the challenges of the future to enter new markets and to increase its share in existing ones.

Postal reform must not become a negative process. Postal reform must not mean postal dismantling or postal crippling or postal privatization. I urge you to resist the agents of greed or radical ideology. They must not be allowed to creep into the process.

Universal postal service at uniform and reasonable prices is an important part of the American way of life. It must be preserved and strengthened. I, on behalf of the American Postal Workers Union, pledge the full cooperation of our union with your committee, with the Postmaster General, with the Board of Governors, with the mailers, the Rate Commission, and other postal unions and associations as long as this process continues to strengthen the Postal Service for the future in a positive manner.

In this spirit, may I make a friendly suggestion—of course, I am not a Congressman, as you know—that you consider renaming the legislation "the U.S. Postal Service Competitiveness and Universal Services Act"?

As a result of our initial review, we support competitive mail, we support the changes in U.S. Postal Service financing, and we support improvements in law enforcement. The U.S. Postal Service needs to enter new markets and to increase its share in existing markets. Technology has created alternatives to communication by mail. The U.S. Postal Service can in the future enter some of the markets for some of those alternatives or develop other products demanded by the changes in technology.

Your bill starts this process by emphasizing the need for the USPS to compete in those product markets that it now serves and are expected to experience strong growth in the future. One of the products defined in the bill as competitive mail is parcel post. It is ironic that at the recent USPS celebration of the 25th anniversary of the Postal Reorganization Act, every past Postmaster General in attendance lamented the fact that they had not acted to stem the huge erosion of the USPS share of the package market and of expedited mail.

We support a legislative provision giving the Postal Service more pricing flexibility, but the labor requirements for both competitive and noncompetitive mail must not be contracted out. The U.S. Postal Service needs to utilize its automation system to the fullest capacity to achieve its greatest efficiencies and economies of scale and to retain its world markets ranking with Canada as the lowest-cost provider of postal services despite the large geographical area over which the USPS provides universal service.

We recommend that you include legislative language in H.R. 3717 that prevents outsourcing of work related to both new and existing technologies used in both the "competitive" and "noncompetitive" mail categories. A current prime example of why there should be prohibitions against contracting out: the remote bar-coding system.

The adoption of these technologies in other industries has included utilizing low-cost labor in underdeveloped countries. American laborers should not have to compete for these jobs with foreign or domestic workers in unregulated sweatshops at cut-rate wages. Experience shows that USPS customers want consistently high-quality service. To achieve that in our country requires that employees be paid a good wage with decent benefits, job security, decent working conditions, and have opportunities in new product and technology areas.

Automation effectiveness necessarily for productivity improvements will only be realized if postal workers have access to jobs created by new technologies. We support those provisions in your bill. However, the APWU must oppose provisions that we believe undermines postal service financing or violate the sanctity of the mail.

We do not believe that the private sector incursions on the Postal Service monopoly should be broadened any further. Limiting the private express statutes to \$2 would allow private carriers to skim away more and more of the profitable, easy-to-serve areas of letter delivery and leave unprofitable areas for the Postal Service.

Permitting profitmaking companies to skim the postal market would have an immediate effect on postal finances and the financial viability of the Postal Service. This would be tantamount to piecemeal privatization.

We have a number of fundamental objections, if you please, to the proposal to cap price increases for the mail categories designated as "noncompetitive mail." Price-cap regulation is a step backward and not a step forward. The Postal Service should be given greater and faster adaptive capability to compete in the marketplace. This legislation takes that authority away from the Postal Service and gives it to the Rate Commission.

Make no mistake about it, the price-cap provision gives the Postal Rate Commission more authority to thwart the Postal Service's ability to compete and not less. The bill provides that the PRC, Postal Rate Commission, can control the entire rate process by establishing an adjustment factor. As the committee discussed with Chairman Gleiman of the Rate Commission, such an adjustment factor would introduce arbitrariness in setting general revenue requirements. And such arbitrariness is not limited only to the sphere of setting different rates for different classes of mail.

As clearly pointed out in the testimony of the chairman of the Postal Rate Commission, the newly empowered commission would be faced with the dilemma of either allowing noncompetitive postal rates to increase faster than inflation by having the positive adjustment factor or perhaps indirectly bringing substantial pressure to bear on the collective bargaining process by applying a negative adjustment factor.

Regardless of whether the adjustment factor would be added or subtracted from the Gross Domestic Product Price Index, such a proposal would threaten to undermine the principles of collective bargaining directly between labor and management and would add further to the power this bill gives to the PRC.

Twenty-six years ago, Congress recognized that effective collective bargaining is essential for labor peace and that labor peace is essential for the Postal Service. That lesson should not be forgotten. The APWU does not intend to tolerate substandard wages and benefits or working conditions. Twenty-six years ago, postal workers were on welfare, and they went on strike to get free collective bargaining. We have no intention of either going back on welfare or giving up our jobs to low-wage contract workers.

Allowing nonpostal carriers access to postal mail boxes is unacceptable. It would violate the sanctity and security of the mail, and in our basis constitutional protections is the right to privacy. Americans have come to expect a standard and security in their personal communications that exceeds the standards of most other nations.

Another major consequence is that opening mail boxes would provide opportunities to cream-skim the delivery of mail. This is how numerous private companies have tried in the past to take unfair advantage of the Postal Service's universal service requirement for their own private profit and building a market share. This, too, would lead to the piecemeal privatization of the U.S. Postal Service.

We have three additional concerns that I discuss in more detail in the written testimony: One, further protection from budget reconciliation; two, the proposed employee management commission; and, three, the Inspector General proposal. We would like to work with you to add language to Title V that would provide additional protection against annual raids by the Congress on the Postal Service bottom line in the name of general Government deficit reduction.

It is wholly inappropriate for Congress to use the Postal Service as a cash cow, and for postal rate payers to pay for the general operations of the Federal Government. As a matter of fact, I believe since 1986 the Postal Service has had to cough up almost \$14 billion to the U.S. Treasury, and I think that gives a distorted view

of not only what the workers can do but what the Postal Service really does. It probably would mean a stamp would cost about 8 or 9 cents less if we did not have that raid.

We understand our labor-management issues will not be dealt with in your bill, and we agree that this bill is not about labor relations. Whether there is a labor-management commission or not, what is needed is the right to strike in the agency shops and the Postal Service. I think that would remove a lot of frustrations. I am not sure we would have a strike every other week.

A Republican American president with traditional conservative views, President Richard M. Nixon, approved collective bargaining in the Postal Reorganization Act of 1970. Perhaps now, after 26 years, it is time for this Republican-led Congress to pass legislation allowing postal workers a fundamental, conservative right enjoyed by other citizens in this country, and that is the right to withhold their labor; in other words, the right to strike.

In addition, Congress should eliminate free riders from the collective bargaining process by authorizing the agency shop representation by postal unions in those States where the law permits.

We question the need for the new Inspector General post.

The Postal Service is an independent Federal establishment with considerable oversight responsibilities vested in an independent Board of Governors and the committees of jurisdiction in the Congress of the United States. Too much bureaucracy, too many regulators, too many investigators, possibly with their own self-interest and agendas—in short, a mismatch between vested authority and responsibility means that no one has enough authority and no one has real responsibility or accountability.

In summary, let us give the Postmaster General the flexibility of the competitive mail category so that the Postal Service can compete in the growth markets of the future. Two, let us ensure that he has a productive, high-quality workforce the Postal Service needs to compete effectively by legislating that the work of the U.S. Postal Service will be done by postal employees, and that is no outsourcing. Three, let us ensure that the Postal Rate Commission does not further thwart USPS efforts to compete by limiting its objective arbitrariness to areas of responsibility that are no greater than those it already has.

And, very importantly, in making the Postal Service more competitive, let us give the Board of Governors the authority and resources it needs for proper oversight in a competitive environment.

This concludes my oral testimony, Mr. Chairman, and the rest of it, of course, is in the official document. And I thank you once again and just to let you know that May 8, 1997—watch that date—will be 60 years since I entered the Postal Service. Thank you.

[The prepared statement of Mr. Biller follows:]

TESTIMONY OF
MOE BILLER, PRESIDENT

AMERICAN POSTAL WORKERS UNION, AFL-CIO

Mr. Chairman and Members of the Subcommittee. I am pleased to appear before you today to represent the views of the 365,000 members of the American Postal Workers Union on the very important subject of postal reform.

Mr. Chairman, I personally want to say that I appreciate the hand of friendship you and your staff have extended so far as you have developed this legislation. I hope that, in using the word "reform," you mean it in the positive sense -- strengthening the ability of the Postal Service to compete and to meet the challenges of the future, to enter new markets and to increase its share in existing ones. Only by maintaining the current strengths of the Postal Service, and by making it stronger, can the federal government guarantee that this country is bound together by universal service, at reasonable rates to all its citizens, regardless of social or economic status.

This is sensitive legislation. The Postal Service is too important to every one of our citizens to allow postal "reform" to mean postal "dismantling" or postal "crippling" or postal "privatization." Postal reform must not become a negative process. I urge you to resist the agents of greed or radical ideology; they must not be allowed to creep into the process.

A central focus of this reform effort must be the fact that the foundations of our current U.S. Postal Service originate in the Constitution and our American way of life. Universal postal service at uniform and reasonable prices is an important part of that way of life that is relied upon by the American people. Regardless of changes in communications technology, the broad range of fundamental postal services will continue, for decades into the future, to be a backbone of communications and information exchange in our democratic society.

You have asked for our help and cooperation. I will continue to pledge the full cooperation of the American Postal Workers Union as long as this process continues to strengthen the Postal Service for the future and to build on its basic foundations. In this spirit, I suggest that you consider renaming the legislation the "United States Postal Service Competitiveness and Universal Services Act."

We also pledge to work on this reform legislation closely, and in a positive spirit, with you and your subcommittee, the Postmaster General (PMG), members of the Board of Governors, mailers, the Postal Rate Commission (PRC), and, of course, our sisters and brothers in other postal unions.

We have made our initial review of H.R. 3717, the Postal Reform Act of 1996. We are willing to support some of the changes you propose in the legislation. For example, under certain circumstances, we would be willing to support pricing flexibility for "competitive mail." We also do not have any objections at this time to the provisions in Title IV - Finance, and we strongly support the Title IX - Law Enforcement provisions. There are changes embodied in the proposed legislation, however, that we believe are ill advised and that we cannot support.

PROVISIONS WE SUPPORT

In keeping with the positive spirit to which we are committed, I will start with three important provisions in your bill that we support: competitive mail, changes in USPS financing, and improvements in law enforcement.

COMPETITIVE MAIL

The APWU has consistently supported USPS initiatives to enter new markets and to increase share in existing markets. We recognize that technology has created alternatives to communication by mail. These alternatives are so different that the USPS cannot compete with them on any cost and price basis. Perhaps the USPS can, in the future, enter some of the markets for some of these alternatives, or develop other products demanded by the changes in technology. This bill starts this process by emphasizing the need for the USPS to compete in those product markets it now serves that are expected to experience strong growth in the future.

Those kinds of products are defined in the bill as "competitive mail." One of them is parcel post. It is ironic that at the recent USPS celebration of the 25th anniversary of the PRA, every past PMG in attendance lamented the fact that they had not acted to stem the huge erosion of the USPS share of the package market. The other present mail products designated in the bill as competitive mail include: (a) Priority Mail, (b) Expedited Mail, (c) Mailgrams, (d) International Mail, and (e) Special Services.

We are prepared to support a legislative provision giving the Postal Service more pricing flexibility, provided that the labor requirements for both "competitive" and "noncompetitive" mail not be contracted out. Pricing flexibility in these "competitive mail" categories should not be an excuse for piecemeal privatization of these important services provided by the Postal Service, either by outsourcing or by turning over the business to private competitors. The USPS needs to utilize its automation system to the fullest capacity to achieve its greatest efficiencies and economies of scale, and retain its world ranking (with Canada) as the lowest cost provider of postal services, despite the large geographical area over which the USPS provides universal service.

We have supported these needs for over a decade by intervening in rate cases to oppose subsidies to mailers that discouraged use of USPS automated equipment and by participating with mailers in the process that led to the much needed rate reclassification process. We have done this to contribute to the long term viability of the USPS and not to see our jobs contracted out.

We recommend that you include legislative language in H.R. 3717 that prevents outsourcing of work related to new technologies and to other positions in both the "competitive" and "noncompetitive mail" categories.

**American Workers and American Control over American Mail:
No Outsourcing and No Sweatshops**

Since I have raised the issue of new technologies and contracting out, I would like to discuss a current prime example of why there should be prohibitions against contracting out: the remote bar-coding system.

Some of the newest technologies being installed by the Postal Service to increase productivity use remote bar-coding, imaging and satellite linkage of sorting equipment and workers. The adoption of these technologies in other industries has included utilizing low-cost labor in underdeveloped countries to provide the human input. Although assurances have been given that these functions in the Postal Service will not be moved outside the country, we believe that any postal reform legislation should address these concerns. American laborers should not have to compete for these jobs with foreign or domestic workers in unregulated sweatshops at cut-rate wages. The morale of a quality workforce for the processing and delivery of mail in our country requires that they be paid a good wage with decent benefits in decent working conditions and have opportunities in new product and technology areas.

POSTAL FINANCE

Although we do not claim any particular expertise in the Postal Service's arrangements with the Treasury and the Federal Financing Bank, we know that the Postal Service has long sought the changes you have included and argued that they provide efficiencies and cost savings. We have no objection to these changes and want to fully support these financial reforms.

LAW ENFORCEMENT PROVISIONS

We support the postal law enforcement provisions in your bill. In addition, we have long urged postal management to commit the necessary additional resources to improve security and safety of the mail and in postal facilities. We appreciate your concern for the safety of our members and the public.

PROVISIONS WE MUST OPPOSE

We support some provisions in your bill, and appreciate your efforts to address the future of the Postal Service in an increasingly competitive communications marketplace. The APWU, however, must oppose provisions that would seriously undermine the financing of the Postal Service that now makes possible universal service at reasonable and uniform prices, or that would violate the sanctity of the mail.

PRIVATE CARRIAGE OF LETTERS: LIMITING POSTAL MONOPOLY TO \$2

Section 703 of the bill would modify the Private Express Statutes to allow private carriage of letters outside the Postal Service when the amount charged is at least \$2.

The Private Express Statutes are the foundation of our universal mail service. Without these statutes the Postal Service could not have achieved the goals of universal service at reasonable and uniform prices. We do not believe that the Postal Service monopoly should be narrowed any further. Over time, this \$2 cap would allow private carriers to skim away more and more of the profitable, easy-to-serve areas of letter delivery and leave unprofitable areas for the Postal Service.

As both the Postmaster General and the Postal Rate Commission Chairman noted last week, this narrowing of the postal monopoly would have an immediate effect on postal finances. Over time, it would have a significant effect on the financial viability of the Postal Service and its ability to provide universal service at reasonable and uniform prices. The \$2 minimum is not indexed against the impact of inflation, therefore more mail would qualify for private carriage as postal rates increase to offset inflation. As the Postal Rate Commission Chairman pointed out last week, at current first-class rates, the \$2 minimum would allow private carriage of any letter weighing more than 8 ounces. If personal and private letter mail products change -- if, for example, there is an increasing use of the mail for delivering pharmaceuticals directly to patients -- the letter monopoly would be increasingly undermined.

This provision would undermine the finances of the Postal Service and its ability to provide universal service at uniform prices. It would also be an unacceptable step toward piecemeal privatization.

CAP ON RATES FOR NONCOMPETITIVE MONOPOLY MAIL

We have a number of fundamental objections to the proposal in Section 1001 to cap the Postal Service's average price increases for the mail categories designated as "noncompetitive mail." Most of these mail categories, such as first class mail, would be those covered by the Private Express Statutes.

We see price cap regulation as a step backward, not forward, in giving the USPS greater and faster adaptive capability to compete in the marketplace. Currently, the USPS, not the PRC, determines the revenue required to operate our postal system. As now written, this legislation takes that authority away from the USPS and gives it to the PRC, which has never before had that power. As you know, the Rate Commission's current authority is largely to set rates of various mail classes and categories subject to the requirement that those rates generate the revenue the USPS needs to operate. Make no mistake about it; the price cap provision gives the PRC more authority to thwart the USPS' ability to compete, not less.

We also believe that establishing revenue requirements by price caps would be a major intrusion into collective bargaining. Setting revenue in this way sets wages. It does not, despite the intention of this Committee to do so, break the link between cost and price.

Not only does this bill tie wages to prices, but it does so by using a price index that is far too general. The USPS itself uses the Consumer Price Index (CPI) as its pricing target for postal rates, and we are pleased to be part of the team that has met that target. As the Postmaster General (PMG) said at the recent celebration of the 25th anniversary of postal reorganization, adjusted for inflation, a first-class stamp costs the same as it did in 1971 -- 8 cents. If the proper comparator index were used to make that calculation -- the CPI for services because the USPS is a service provider - today's inflation adjusted price would be 7 cents.

The bill provides that the PRC can intrude even further by establishing an adjustment factor. Such an adjustment factor introduces PRC arbitrariness in setting general revenue requirements. As noted earlier, such PRC arbitrariness is now limited only to the sphere of setting different rates for different classes of mail. Our first reading of the bill suggested that this adjustment factor could only be subtracted from the Gross Domestic Product (GDP) Price Index specified in the current bill. We have since learned that the adjustment factor could be added as well as subtracted from the GDP Price Index measure. This clarifies your intent for us somewhat. However, this is little consolation because, as clearly pointed out in the testimony of the Chairman of the Postal Rate Commission, the newly empowered Commission would be faced with the dilemma of either allowing noncompetitive postal rates to increase faster than inflation by having a positive adjustment factor or "perhaps, indirectly, bringing substantial pressure to bear on the collective-bargaining process" by applying a negative adjustment factor. Regardless of whether the adjustment factor would be added or subtracted from the GDP Price Index, such a proposal would undermine the principles of collective bargaining directly between labor and management and add further to the power this bill gives to the PRC.

MAILBOX DEMONSTRATION PROJECT

Section 704 of the bill would establish a three-year demonstration project in a suburban, a rural and an urban area to allow non-postal carriers access to postal mailboxes. This project is unacceptable. It would violate the sanctity and security of the mail. The Postal Service has spent a long time developing the current network of mailboxes to match the mail security and privacy needs of postal customers. Only the customers and uniformed official postal employees are authorized to have access. Postal customers have always been able to supply the additional facilities for receiving additional deliveries they want. Opening up mailboxes will lead to a glut of unwanted materials and destroy the security and sanctity of the mail. Embedded in our basic Constitutional protections is a right to privacy. Americans have come to expect a standard of privacy in their personal communications that exceeds the standards of most other nations. This provision would be a serious step in removing this shield of protection, and we strongly oppose its inclusion in postal reform.

Any project that could eventually lead to the opening of mail boxes all over America could have other consequences as well. Another major consequence is that opening mail boxes would provide opportunities to "cream skim" the delivery of mail, particularly advertising mail. A company

could offer to deliver advertising mail and then choose to deliver it only on routes where the density was high, i.e., the advertising was intended for a large percentage of households in the area. The company could deposit in the USPS mail stream that mail slated for delivery on lower-density, higher-cost routes. This is how numerous private companies have tried in the past to take unfair advantage of the Postal Service's universal service requirement for their own private profit and building of market share. This, too, would lead to the piecemeal privatization of the USPS.

OTHER CONCERNS

We have three additional concerns we would like to raise in today's testimony: further protection from budget reconciliation, the proposed employee-management commission and the Inspector General proposal.

FURTHER INDEPENDENCE/OFF-BUDGET PROTECTIONS

We note that you included a Title in the bill on the Budget and Appropriations Process. In it, you included sections that would eliminate various annual appropriation reimbursement payments to the Postal Service. We share the Postal Service's concerns that eliminating these payments would shift the burden permanently to Postal ratepayers. We note that if Congress had not shifted some costs to the USPS in the past, the current All-Items-CPI, inflation-adjusted stamp price would be even less than 8 cents -- the 1971 price.

We believe that an additional important provision is missing from this Title V. Over the last ten years, through the Budget Reconciliation process, Congress has used the Postal Service as a "cash cow" to fund additional deficit reduction. These mandated "cash cow" payments have disrupted postal operations and affected postal rates. We would like to work with you to add language to Title V that would provide additional protection against annual raids by the Congress on the Postal Service's bottom line in the name of general government deficit reduction. It is wholly inappropriate for postal ratepayers to pay for the general operations of the federal government. Language could be developed drawing upon parallels with the additional budget and appropriations protections built into the structure of the Board of Governors of the Federal Reserve or the various Government Sponsored Enterprises (GSEs).

PRESIDENTIAL POSTAL EMPLOYEE- MANAGEMENT COMMISSION

Section 301 of the bill would establish a three-year commission to look at labor-management relations in the Postal Service. We are dubious about the usefulness of this proposed commission, especially since it would not include representatives from postal unions or postal management. What is needed, whether there is a commission or not, is the right to strike and agency shops in the Postal Service.

Right to Strike/Agency Shop

We understand that labor-management issues would not be dealt with in your bill and we agree that this bill is not about labor relations. There were two omissions in the original Postal Reorganization Act, however, that would greatly improve the current shortcomings of mandatory arbitration and labor-management relations -- provisions granting the right to strike and "agency shops."

A Republican American President with traditional conservative views, President Richard M. Nixon, approved collective bargaining in the Postal Reorganization Act of 1970. Perhaps now, after 26 years, it is time for this Republican-led Congress to pass legislation allowing postal workers a fundamental conservative right enjoyed by other citizens -- the right to withhold their labor, in other words the right to strike. In addition, Congress should eliminate "free riders" from the collective bargaining process by authorizing "agency shop" representation by postal unions.

INSPECTOR GENERAL FOR THE POSTAL SERVICE

Section 104 would create new Inspectors General for the Postal Service and the Postal Rate Commission and remove those functions from the Chief Inspector of the Postal Service.

We question the need for these new posts. The Postal Service is an independent federal establishment with considerable oversight responsibilities vested in the independent Board of Governors and the committees of jurisdiction in the Congress. Additional layers of bureaucratic oversight would mean less effective oversight.

Postal Governor LeGree S. Daniels was kind enough to share with me her views recently on your legislation. She raised another issue -- the introduction of more politics into management of the Postal Service. I agree with her completely when she wrote to you:

"A major reason for the Postal Reorganization Act of 1970 was to isolate the Postal Service from political pressures. To now introduce a politically appointed Inspector General flies in the face of the strong bi-partisan support that passed the Act."

Unfortunately, in the same legislation, authority is being taken away from the Board of Governors. Governor Daniels also wrote to you:

"... the bill tears at the heart of the Board of Governors. Some could well say that it 'guts' the Board of Governors. Rather than weaken the Board, Congress should take steps to strengthen the Board such as, for the General Counsel, the Judicial Officer, the Chief Postal Inspector and the Secretary of the Board of Governors be appointed by and serve at the pleasure of the Governors."

I wholeheartedly agree with Governor Daniels and endorse her recommendations. Too much bureaucracy; too many regulators; too many investigators, possibly with their own self-interested

agendas -- in short, a mismatch between vested authority and responsibility -- means no one has enough authority and no one has real responsibility.

This whole debate reminds me of a quote about responsibility made famous in a different context by former Senate Finance Committee Chairman Russell Long that I would like to paraphrase:

“Don’t blame him, don’t blame me, blame that guy behind the tree!”

SUMMARY CONCLUSIONS

Let’s give the PMG the flexibility of the “competitive mail” category so that the Postal Service can compete in the growth markets of the future.

Let’s assure that he has the productive, high-quality workforce the Postal Service needs to compete effectively by legislating that the work of the U.S. Postal Service will be done by U.S. postal employees.

Let’s insure that the Rate Commission does not further thwart USPS efforts to compete by limiting its subjective arbitrariness to areas of responsibility that are no greater than those it already has.

And, very importantly, in making the Postal Service more competitive, let’s give the Board of Governors the authority and resources it needs for proper oversight in this newly to be created competitive environment.

This concludes the issues I wanted to raise in testimony today. As we study the bill more thoroughly and learn more about its implications, we will have additional views we will want to share with you. We look forward to continuing to work with you. Again, I want to thank you for conducting an open process and for your consideration of the views of the dedicated workforce which staffs the Postal Service and moves the mail on which the American people depend.

Mr. MCHUGH. As always, Mr. Biller, thank you for your comments. And we agree: Where is Dick Nixon when you need him? We are honored to have join us the ranking member of the subcommittee, the gentlelady from Michigan, Barbara Rose Collins.

Miss COLLINS. Thank you. Mr. Chairman, I would like permission to put my remarks in for the record.

Mr. MCHUGH. Without objection, so ordered. With that, we will continue to move down the line and next go to President Vincent Sombrotto. Welcome.

[The prepared statement of Hon. Barbara-Rose Collins follows:]

**STATEMENT OF
THE HONORABLE BARBARA-ROSE COLLINS
BEFORE THE POSTAL SUBCOMMITTEE
ON H.R. 3717, THE POSTAL REFORM ACT OF 1996**

MR. CHAIRMAN, THANK YOU FOR CONVENING THE SECOND IN A SERIES OF FOUR HEARINGS ON H.R. 3717, THE POSTAL REFORM ACT OF 1996. I APPRECIATE THE CHAIRMAN'S EFFORTS IN CONVENING THESE HEARINGS, AS IT ALLOWS INVOLVED PARTIES THE OPPORTUNITY TO VOICE THEIR VIEWS ON THIS PROPOSED LEGISLATION TO REFORM THE POSTAL SERVICE.

WHEN WE LAST CONVENED, TESTIMONY WAS GIVEN BY POSTMASTER GENERAL RUNYON AND POSTAL RATE COMMISSION CHAIRMAN ED GLEIMAN, OUTLINING THEIR CONCERNS AND THE POSSIBLE IMPACT THIS PROPOSED LEGISLATION WILL HAVE ON THE POSTAL SERVICE AS A BUSINESS. SEVERAL AREAS OF CONCERN SURFACED INCLUDING: THE COMPLEXITY OF THE RATE SETTING PROVISION, THE MAILBOX DEMONSTRATION PROJECT AND OTHER AREAS AFFECTING THE POSTAL SERVICE'S BOTTOM LINE. I MUST SAY THAT I DID NOT HEAR MUCH TESTIMONY ON HOW THIS LEGISLATION WILL EFFECT THE MOST IMPORTANT GROUP, POSTAL WORKERS.

TODAY, WE WILL HEAR TESTIMONY FROM EIGHT UNIONS REPRESENTING OVER 800,000 EMPLOYEES. IT IS MY VIEW THAT ANY CONCERNS OR RECOMMENDATIONS CONVEYED BY THESE GROUPS SHOULD BE GIVEN CAREFUL CONSIDERATION AND ULTIMATELY SET THE TONE FOR DEBATE BEFORE THIS SUBCOMMITTEE. THE MANY INDIVIDUALS REPRESENTED BY THESE ORGANIZATIONS WILL BE THE ONE'S EFFECTED, IF PROPOSED REFORM LEGISLATION LEAVES TOO MUCH DISCRETION TO THOSE WHO ARE ONLY LOOKING AT THE BOTTOM LINE, OR TO NEGOTIATE PLATINUM PARACHUTES.

CURRENT DELIVERY FIGURES FOR MY CITY OF DETROIT INDICATE A SLIGHT INCREASE IN SERVICE PERFORMANCE. ON TIME DELIVERY ROSE FROM EIGHTY-FOUR PERCENT LAST QUARTER, TO EIGHTY-FIVE PERCENT IN THE SECOND QUARTER. THIS COMPARES WITH LAST YEAR'S LOW RATE OF EIGHTY PERCENT. AT A TIME WHEN THE POSTAL SERVICE IS ENJOYING INCREASED NUMBERS IN THE AREA OF SERVICE PERFORMANCE, I WOULD HAVE RATHER HEARD TESTIMONY, SPECIFICALLY FROM MR. RUNYON, REFLECTING HOW ANY CHANGE IN CURRENT LAW WILL EFFECT THE POSTAL SERVICE'S ABILITY TO MAINTAIN IMPROVED DELIVERY SERVICE AND GUARANTEE AFFORDABLE RATES FOR MY CONSTITUENTS, AS WELL AS ALL AMERICANS.

LAST WEEK, THE WASHINGTON POST SUGGESTED THAT I TOOK A "NOT SO SUBTLE" APPROACH IN CONVEYING MY CONCERNS WITH THIS LEGISLATION. I ASK, HOW CAN I BE SUBTLE, WHEN SO MUCH IS AT STAKE FOR SO MANY PEOPLE IF WE, AS MEMBERS OF CONGRESS, FALL SHORT OF OUR COMMITMENT TO MAINTAIN A POSTAL SERVICE THAT ENSURES UNIVERSAL SERVICE AT AFFORDABLE RATES.

TO THAT END, I WOULD LIKE TO WELCOME EACH OUR PANELISTS. I LOOK FORWARD TO HEARING YOUR TESTIMONY AND LEARNING YOUR VIEWS ON THE IMPACT OF THIS PROPOSED LEGISLATION.

THANK YOU, MR. CHAIRMAN.

Mr. SOMBROTTO. Thank you, Mr. Chairman. Thank you for providing me the opportunity to comment on your landmark bill, H.R. 3717.

Mr. MCHUGH. While you are doing that, let me apologize. I also, of course, want to recognize the gentleman from Texas, who has been one of the more loyal members of the subcommittee, Gene Green. Thank you for being here.

Mr. GREEN. Thank you. I have a statement I would like to submit for the record.

Mr. MCHUGH. Without objection, so ordered. Yes.

[The prepared statement of Hon. Carrie P. Meek follows:]

Carrie P. MEEK

HON. CARRIE P. MEEK, M.C.
OPENING STATEMENT
Subcommittee on the Postal Service
July 18, 1996

I thank the Chairman for continuing to hold hearings on this important bill -- "the Postal Reform Act of 1996", and for inviting representatives of the postal employee organizations to offer their insights.

As the world around us continues to change, I believe the United States Postal Service must have the additional tools and greater flexibility it needs to compete in this rapidly changing fast-paced world.

As we take steps to ensure that our Postal Service remains a strong and healthy unit, able to offer its products and services at a fair and competitive price, we must also ensure that we have a viable postal service which is fair to its employees and insures them the safe working conditions, equipment and support they need to do their jobs.

That's why I am pleased to welcome the heads of the major postal unions. Together, they have played a lead role in fostering innovation and improving services.

They have been at the forefront of solving the postal services labor-management problems and have actively sought solutions to the many long standing problems.

The Postal Reform Act we will be discussing today gives the postal service many of the tools that it needs to compete in our rapidly changing world. However, I am concerned that it does very little to address the long-standing "Hatfield-McCoy" style labor-management problems which currently exists at the Postal Service.

This bill offers a Presidentially appointed commission to look at this critical problem. This dispute doesn't need a Presidential symposium--it needs concrete results!

I am hopeful that, as this bill evolves, that we will take a stronger stand on resolving this severe labor-management dispute.

Mr. Chairman, I look forward to hearing the testimony of the witnesses and to working with you to ensure that our Postal Service is the best in the world.

Mr. SOMBROTTO. Mr. Chairman, thank you for providing me the opportunity to comment on your landmark bill, H.R. 3717, the Postal Reform Act of 1996. On behalf of the 318,000 actively employed and retired members of the National Association of Letter Carriers, I wish to congratulate your perseverance and thoughtfulness in introducing this comprehensive piece of legislation.

And I might add that I am just going to make a few brief comments, and then I want to talk extemporaneously about some matters that I think are of critical importance that may not be directly covered by the bill. I would also like to compliment your subcommittee staff, individually and as a group, for their diligence and accessibility, too, and the expert guidance they continue to provide the members of my staff.

At the outset, let me state unequivocally that the letter carriers desire what you desire. The U.S. Postal Service must provide the best possible mail service to every postal customer in the country at affordable rates. The question for each and every member of this subcommittee is: Does H.R. 3717 accomplish this goal? To be quite honest, the breadth and complexity of this legislation precludes a complete answer at this time.

I have read accounts of what others think we will or should say today, but let me assure you that only letter carriers speak for letter carriers. No mailers' group, postal competitor, or political party will define the NALC's position in this vital matter.

The well-trained and dedicated employees of the U.S. Postal Service are the most important stakeholders in this agency. While others wish to make claim, craft employees make a larger investment in the quality of mail service than anyone else in the postal community.

Ninety-five percent of the letter carriers spend their entire careers working for the Postal Service which delivers mail to every postal address in this Nation. Postal customers greet their letter carriers 6 days a week. As a result, letter carriers are the most visible representatives of this Government. Therefore, it is in our interest to see the Postal Service not only succeed, but to thrive. No other member of the postal community can make that claim.

It is understandable that mailers use the Postal Service when it meets their business interests. If they think it is more desirable to use alternative delivery methods, they will do so. The Postmaster General and the rest of his management team come and go. Too often, self-preservation, peddling resumes, or even negotiating "platinum parachutes" became their highest priorities.

Letter carriers are often put in the position of being the sole guardians of the integrity of the Nation's massive mail-delivery network. However, it is reassuring to learn, and to know, that letter carriers have a strong and committed ally in the chair of this subcommittee.

The NALC strongly endorses your desire to enable the Postal Service to operate more successfully in the communications marketplace. And I will end at that point because I think that the rest of my prepared statement will be entered in the record.

Mr. McHUGH. Certainly. Without objection.

Mr. SOMBROTTO. I want to tell you about something else that is troublesome because no matter all your good work, all your good

efforts to try to make the Postal Service more self-sustaining, more competitive, which we all agree with, will be for naught because of postal practices that are being engaged in at the present time.

The Postal Service and its management have engaged in a rein of terror on its employees. Now, I can only speak for letter carriers and I can only document what I am about to say on behalf of letter carriers. Others can speak for themselves.

What I want to point out, first of all, is that if the Postal Service and its management team wish to get the most dedicated workers and want to keep that dedication and build the morale of employees, you do not do it be continually engaging in the mantra that Postal Service employees are 30 percent overpaid and they are underworked.

That does not engage the members that work in the Postal Service or the employees of the Postal Service, does not allow them to feel that they are appreciated and are going to give their best effort. And, in spite of that, we still continue to do a good job. But it becomes increasingly more difficult.

Now, here is what has been happening in the Postal Service, and a lot of evidence that I want to enter into the record for your perusal and information. In the last, just in the last year—well, let me get back to that issue that I want to talk about, labor relations.

You are the primary force to try to get a labor summit together so that we could try to find out how we could have better labor relations within the Postal Service. We received a letter. Before we were in contract negotiations, we said that, well, that is not a time to get into that type of a summit because we are at collective bargaining, and that is an adversarial relationship; it makes it difficult.

At the immediate conclusion of negotiations, when the arbitration was finally concluded and we had a contract, the Postmaster General sent me a letter on January 31 saying, was I interested in having a summit for labor. I responded in the affirmative on February 8.

I spoke to the director of FMCS, John Calhoun Wells, by telephone on March 22, 29, and 27, 1996 to talk to him about how that could be set up. I met with someone hired by the Postal Service, John Stepp, of the Restructuring Association, on May 1.

To this date, I have heard nothing more about a labor summit. All I hear is a continuing deterioration of labor relations all throughout the entire Postal Service. Now, what has happened is that—and I want to read a quote from a book, "Fat and Mean." It is an interesting book, and I would recommend to anybody that is interested in labor relations and what is happening in our country in terms of workers and management in corporations to read that book.

It is written by David Gordon. The standard economic theory has masked the most important reason for the stagnating incomes and the rising inequity of income levels that have plagued this Nation for nearly 25 years. According to standard theory, the main culprits are low-wage, foreign labor, global competition, not enough improvement in productivity, and the abundance of unskilled Americans in an age of high technology that requires workers with an even greater aptitude and education.

But the real malefactor, Gordon argues, is corporate America's approach to management. Rather than relying on a cooperative approach featuring raises and bonuses as carrots, American corporations deploy a huge bureaucracy of bosses.

The bureaucracy embraces what Gordon calls the stick strategy, issuing commands threatening dismissal for failure to obey and in wielding its power to hold back wages for tens of millions of non-supervisory workers. And the more wages are held down, the less incentive for workers and the greater need for a supervisor to sustain that performance.

And let me give you some evidence of how that works in the Postal Service. In the last year alone, grievances in our union have risen from 1995 to 1996 in the same time period of a year from 16,736 to 25,070, an increase of almost 40 percent more grievances. Now, we do not think there should be any grievances. We think we should have a relationship where we can work out all our disputes without having grievances. That is good labor relations.

But I want to give you some illustrations of what I am talking about. There are two cases, one a woman, a female letter carrier working 14 years in the Postal Service, who injures herself on the job. No argument about that; everybody confirms that that is the case. And now she is put in a situation where management continuously harasses her because she cannot work.

She is on limited duty and cannot perform up to the standard that they want her to because they are pushing for more productivity, and they think that the only way that you can get it is by beating up people.

There is a case of a letter carrier that is in an accident. The police department reports no fault of the letter carrier. A woman's child was hurt. The woman says it was no fault of the letter carrier, yet this letter carrier is removed from the Postal Service because he has had an accident, an unavoidable accident. I have chapter and verse about the most innocuous offenses, the most trivial offenses where people are being removed, issues a letter of removal.

This is not only outrageous; it is cruel because people are put in a position where they do not know if they are going to have a job, if they can support their families. They cannot wait for 6 or 7 or 9 months for a case to be adjudicated while they are in a nonpay status. Many of them concede to taking a suspension, notwithstanding the fact that they are totally innocent of what they are charged with.

Now, this is unacceptable behavior, and this committee ought to take a look at what is going on because if this continues, there will be a total breakdown within the Postal Service if they continue this kind of managerial practices. And I do not want to hear a thing about the top people. You know, it is reminiscent of the piano player in the house of ill repute.

He knew what he was playing downstairs, but he did not know what was going on upstairs. Well, the Postmaster General cannot say that he does not know what is going on in the post office in this record that is being established here. And I must tell you, we will not stand for it.

We are going to come to you with more and more evidence. We want you to use your good auspices, the auspices of this committee, to put the pressure on. We want good labor relations. We want employees to give a fair day's work for a fair day's pay.

The Postal Service is entitled to that, the American public is entitled to that, and the workers are committed to that. Letter carriers are committed to giving a fair day's work for a fair day's pay, but they do not want to come to work and be harassed and be intimidated and be coerced so that they have no enjoyment out of life. That is not the way we should conduct an agency like the U.S. Postal Service.

And so I want to thank you for having these hearings. I recognize that only a small part of this bill—in fact, a very small part, if any, deals with labor relations. But even if we are successful in passing comprehensive legislative reform—and our testimony speaks to those parts that we can support very strongly and those that we have some concerns about and some that we cannot support.

But even if all our efforts are successful, all of our joint efforts are successful, they will come to naught if the Postal Service continues on this mad quest, with this reign of terror, against postal employees, craft workers.

And so I would submit to you that we, members of the National Association of Letter Carriers—and, incidentally, I want to enter all these things in the record. What we talked about, what Congressman Owens spoke about, improving services, we had a picket on March 19.

We had tens of thousands of letter carriers all over the country that picketed, tens of thousands. The count is up to 40-some-odd-thousand now. We are still calculating how many carriers actually picketed on that 1 day.

What were we picketing for? We were picketing that the American public is entitled to better service. We were not picketing for more wages; we were not picketing for more benefits; we were saying that the American public deserves better service, and we ought to be able to give it to them. That is what we were picketing for, and I want to say that the men and women that carry America's mail are committed to a better Postal Service to serve the American public. And thank you for the opportunity to speak on their behalf.

[The prepared statement of Mr. Sombrotto follows:]

VINCENT R. SOMBROTTO, PRESIDENT

Mr. Chairman, thank you for providing me the opportunity to comment on your landmark bill, H.R. 3717, the Postal Reform Act of 1996. On behalf of the 318,000 actively employed and retired members of the National Association of Letter Carriers, I wish to congratulate your perseverance and thoughtfulness in introducing this comprehensive piece of legislation. I also would like to compliment your subcommittee staff, individually and as a group, for their diligence, accessibility, and the expert guidance they continue to provide members of my staff.

At the outset, let me state unequivocally that letter carriers desire what you desire. The U.S. Postal Service must provide the best possible mail service to every postal customer in this country at an affordable price. The question for each and every Member of this Subcommittee is: Does H.R. 3717 accomplish this goal? To be quite honest, the breadth and complexity of the legislation precludes a complete answer at this time.

I have read accounts of what others think we will, or should, say today. But let me assure you that only letter carriers speak for letter carriers. No mailers' group, postal competitor or political party will define the NALC's position in this vital matter.

The well-trained and dedicated employees of the U.S. Postal Service are the most important stake holders in this agency. While others wish to make that claim, craft employees make a larger investment in the quality of mail service than anyone else in the postal community. Ninety-five percent of letter carriers spend their entire careers working for the Postal Service, which delivers mail to every postal address in this nation. Postal customers greet their letter carriers six days a week. As a result, letter carriers are the most visible representatives of this government. Therefore, it is in our interest to see the Postal Service not only succeed, but to thrive. No other member of the postal community can make that claim.

It's understandable that mailers use the Postal Service when it meets their business interests. If they think it's more desirable to use alternative delivery methods, they do and will.

The Postmaster General and the rest of his management team come and go. Too often, self-preservation, peddling resumes, or even negotiating "platinum parachutes" became their highest priorities.

Letter carriers are often put in the position of being the sole guardians of the integrity of the nation's massive mail delivery network. However, it is reassuring to know that letter carriers have a strong and committed ally in the Chair of this Subcommittee.

The NALC strongly endorses your desire to enable the Postal Service to operate more successfully in the communications marketplace. Volume discounts, streamlined rate proceedings, eliminating the so-called test year, providing greater opportunities to market new product lines, are all proposals that letter carriers enthusiastically endorse. We believe that such postal reforms will not only make the Postal Service more competitive, but will also help to enhance its ability to support its infrastructure, ensure continued availability of universal service, and maintain six-day delivery at affordable rates.

Letter carriers are also encouraged by your recognition that labor-management relations continue to be extremely tense. Your proposal to create a temporary presidential commission to recommend improvements in this relationship approaches the problem in a novel way. Chairman Clinger remarked at last week's hearing, however, that such a Commission could supplant productive discussions between labor and headquarters personnel. Letter carriers continue to anticipate the beginning of the so-called Labor Summit. It was, therefore, interesting that the Postmaster General, in response to a question posed by Chairman Clinger, implied that the Labor Summit could be compromised by the creation of the White House commission. In fact, the Summit could very well reduce the necessity of creating this White House commission. In any case, the only way to solve many of the day-to-day problems that confront letter carriers is through face-to-face meetings between labor and management, not through the creation of a commission.

Notwithstanding my qualified optimism that the Postal Service will sit down with its employees, letter carriers were greatly disappointed by the Postmaster General's unilateral decision to terminate the Employee Involvement program. As you know, this program was designed to enable letter carriers and managers jointly to improve mail delivery. Letter carriers truly appreciated your continued behind-the-scene efforts to get labor and management together to make these improvements.

The American public also wants assurances of improved mail service. One area of the bill which may impact service quality and customer expectations, particularly residential patrons, is the possible repeal of the "mail box rule." Obviously, H.R. 3717 proposes only to test this idea. However, letter carriers wonder: What would constitute success or failure of the test? Additionally, I understand that the Subcommittee has explored the experience of foreign postal authorities with a mail-box rule. But unlike the limited expectation of privacy characteristic of foreign nations, U.S. citizens enjoy a high expectation of privacy. Americans are secure in knowing that the only hands entering their private mail box are their own and those of their letter carriers. Negotiable matter is routinely deposited in U.S. mail boxes. This is not the case overseas. Letter carriers strongly believe that opening the mail box to non-postal delivery operations would needlessly subject items such as social security

checks, credit cards, and banking documents to criminal exposure. Theft of mailed matter would irrevocably undermine the confidence that the U.S. public has for the sanctity of our mail system. In addition, mailing pornographic material, including child pornography, is currently against federal law. Opening mail boxes to fly-by-night delivery operations would expose the mail box to limitless smut. I believe that even a limited number of incidents could jeopardize the confidence the American public has in the mail box. As a result, we respectfully request that you revisit the issue of the mail box test.

Letter carriers are also concerned about the possibility of significant mail diversion that could occur under H.R. 3717. As you know, aggregate mail revenue helps to underwrite the infrastructure that promotes universal delivery. Last week, the Postmaster General raised a concern that moving "priority mail" into a competitive market could divert substantial revenue -- approximately \$4 billion -- away from the Postal Service. I understand that H.R. 3717's goal is to make the Postal Service more like a business. But, last year, the Congressional Research Service observed that the Postal Service's public service mandate may be incompatible with its making a profit. For example, while the competition may pick and choose among only the most lucrative services and profitable areas, the Postal Service must continue to operate in all markets, both profitable and unprofitable. This difference between a public service and a for-profit business is stark. Price flexibility in competitive classes would be an illusory victory if the USPS had to carry the burden of providing universal service all by itself.

Clearly, our competitors covet the periodic opportunity to intervene in postal rate setting. Shadow pricing and attempts to force the Postal Rate Commission to overprice competitive classes of mail have long characterized PRC deliberations. Letter carriers support your efforts to streamline the rate-setting process and permit annual postage adjustments without initiating a protracted rate case. Furthermore, letter carriers appreciate the fact that the adjustment factor can decrease, as well as increase. However, PRC Chairman Gleiman raised an important issue regarding the adjustment factor that could impact my members. Chairman Gleiman suggested that the adjustment factor could be used to restrict the financial component of our collective-bargaining agreements. We believe that the adjustment factor should reflect the results of collective bargaining, not dictate them. Additionally, letter carriers believe that any decision regarding the disposition of Postal Service profits should be negotiated as part of collective bargaining.

Mr. Chairman, as I indicated at the beginning of my statement, your hard work in crafting this bill demonstrates your commitment to improving the Postal Service. For me, H.R. 3717 is like a kaleidoscope. Different people and assorted interests, some who want to see the Postal Service improve and some who would like it to deteriorate, see distinctive aspects of this

multi-faceted bill in dissimilar ways. For this reason, the NALC will continue to analyze the bill's impact on letter carriers, the Postal Service, and the American public. We look forward to continue working with your staff as you endeavor to perfect the Postal Reform Act.

Thank you.

Mr. MCHUGH. Thank you, President Sombrotto. And as I feel certain you are aware, virtually every member of this subcommittee shares your interest in ensuring that that is, indeed, the outcome of any process, this member included; that is that the maximization of the quality of service is provided to the citizens of this country vis-a-vis the mails.

And I will always believe, and I know the other members do as well, and as I mentioned in my opening statement, that is directly equatable with the job that the postal workers are able to do, and it ties in, obviously, to the work conditions that are of concern to us.

And we look forward to working with you in that, as you said, admittedly rather small area that the bill does dedicate toward those questions, and we look forward to that.

Mr. SOMBROTTO. If I may—

Mr. MCHUGH. Certainly.

Mr. SOMBROTTO [continuing]. I want to make it clear. I want to enter these documents into the record.

Mr. MCHUGH. We will accept that and have them made a part of the record.

Mr. SOMBROTTO. If I may impose upon the committee, hoping that the record will be open in case we want to make not this kind of testimony, in case we want to make testimony on other parts of the—we have made some of our position very clear; but in the event that we have more things to say, we would like to have an opportunity to present to the committee.

Mr. MCHUGH. Absolutely. And you raise a good point, and I do not think I formally said that after last week's hearing. We do want to keep this record open, both from the procedural perspective because it is important to have as full and as complete a hearing record as we possibly can.

But as I did mention last week—and I want to make clear here today—we certainly intend to continue a dialog amongst ourselves and all of the groups, you gentlemen included, so that we can pursue this issue. This is not the end; it is the beginning. So we will receive those documents and make them part of the hearing record, and the record will remain open. Thank you for your comments.

We will move right along to President Scottie Hicks. All of these presidents. I feel like I am at the U.N.

Mr. HICKS. Good afternoon, Mr. Chairman and members of the committee. I am Scottie Hicks, president of the 93,000-member National Rural Letter Carriers Association. I would like to mention that this year marks our 100th anniversary of Rural Free Delivery, which will be celebrated with the issuance of a commemorative stamp in Charleston, WV.

Rural letter carriers serve as a post office on wheels as we travel more than 2.8 million miles each day, serving more than 25 million customers each day on 57,000 rural routes. I want to thank you for the opportunity to present our views on H.R. 3717, the Postal Reform Act of 1996.

In the late-1960's, the Post Office Department was in a crisis concerning the quality of mail service. The crisis was highly visible, as Postmaster General O'Brien formed a special task force, and President Johnson appointed the Kappel Commission. Congress en-

acted the Postal Reform Act, and for 25 years it has worked exceptionally well.

Today, the U.S. Postal Service faces a new crisis. It is not as readily visible as it was in the late-sixties. Presently, the Postal Service has competition, and businesses have many and multiplying alternatives to the U.S. mail.

In 1970, there were no personal computers, no fax machines, and no Internet. Your exhaustive set of hearings highlighted these facts; so you and your excellent staff set about diligently crafting a new flexibility and responsibility for the Postal Service and the Postal Rate Commission.

Mr. Chairman, we believe you have crafted an extraordinary, comprehensive change in the postal universe. With some fine tuning and some amendments here and there, we believe that you could see the majority of your concepts introduced by this legislation enacted into law.

So we applaud you, Mr. Chairman, for your diligence, for your insight, and for your wisdom. With some constructive changes, the NRLCA is prepared to endorse your bill.

I would like to talk a moment about Title III, the Presidentially Appointed Management Commission. We do not believe this section is needed because the NRLCA believes postal labor and management are capable of solving our own problems. We currently have a procedure to accomplish this task. The Postal Service has called for a labor and management summit.

In November 1994, while testifying before the Senate Post Office Subcommittee, the Postmaster General issued a call for a labor-management summit. The NRLCA was the first union to accept the PMG's call for a summit.

Now, all have agreed, and the organizations are awaiting the Postmaster General's convening of the summit with the assistance of the Federal Mediation and Conciliation Service. We urge the Postmaster General to convene this summit immediately.

We do believe that there are several changes that may be needed which would improve this section significantly. The first change to this section would recognize the Postal Service summit opportunity for problem resolution. The Presidential Commission should only be triggered if the Postal Service summit deadlocks. Therefore, a prospective date should be put on the creation of an appointment of a Presidential Commission, and the Commission should only come into existence when triggered by a failure of the parties to resolve the issues.

We have a concern, furthermore, about the Commission's composition. The NRLCA believes our competitors, or people who have a substantial financial relationship with our competition, should not serve on the Commission.

Furthermore, the Commission should sunset after 12 months. The Kappel Commission analyzed the entire Postal Service and issued a report in 12 months.

The NRLCA recommends these changes to improve this section, but expects postal labor and management to be the most capable of coming up with their own solution, so this section will not need to be utilized.

Title VII, Section 703, the Private Carriage of Letters. And I apologize because our outside economists have not had time to do a complete analysis of this legislation, so the statements I am going to offer are not documented by outside economists.

We do believe that the rate per letters could be phased in over years from its current rate, and the floor rate should be indexed higher than the \$2 in your proposal.

The bill language makes a substantial change from the current law's "urgent letter" to simply "letter." There remains the commitment to provide universal service for everyone, everywhere, every day. Universal service and uniform prices are essential to customers, especially in rural America. Considering that obligation, Postmaster General Runyon has testified that the \$2 rate would put \$4 billion of our current business at risk.

The NRLCA believes by phasing down the prices over the years, the Postal Service will indeed keep the business and would grow some more. The baseline rate case will probably take 18 to 24 months before it is completed, but why not allow several years before the baseline rate on letters is achieved also?

The NRLCA believes that the rate should not go below \$3, and that amount should be indexed for inflation. Any amount fixed without an inflation adjustor over time, loses its value. So if it is another 25 years before the McHugh act is rewritten, then the \$3 rate would be deflated to almost zero.

Based on this, we hope you will raise the base rate, index it, and phase it in over years.

Title VII, Section 704, the Mailbox Demonstration Project; we do not need this section. It should be stripped from the bill.

The United States is not the same as some foreign countries which do not have a sanctity-of-the-mailbox rule. In many of those countries, it is customary to pay your bills other than through the mail.

In the United States, millions of dollars of financial transactions are conducted daily through the mail, and, therefore, it would see rather foolish to place all of those items at risk by allowing people other than Postal Service employees to have access to the mailbox.

The sanctity and security of the mail in a mailbox is something the American people and American businesses rely on heavily. We do not believe that you need a demonstration project to prove that conclusively.

Title IX, Section 912, the Nonmailability of Controlled Substances; we are pleased that the section permits the Postal Service to continue to prescribe rules and regulations for the mailing of controlled substances. The Rural Carrier Benefit Plan has a mail order prescription drug program. As a part of the FEHB plan, Caremark, our pharmacy benefit management company, worked closely with the Postal Service to develop regulations permitting the mailing of FDA-approved, controlled substances in the mail.

Title X, the New System relating to Postal Rates, Classes, and Services; the new rate mechanism in Title X is a creative approach, allowing the Postal Service to operate more like a business. Section 3783 specifically allows the Postal Service to make a profit. That is good. And Section 504 preserves congressional oversight to ensure the organization adheres to the criterion of service.

The NRLCA applauds Section 3783 (e)(2)(a), which states that bonuses paid to officers and employees shall be fair and equitable. That is critical. The Postal Service's employees are its greatest asset. It is the only asset that can think. Rule carriers' evaluated system is the best system within the Postal Service. Our system is an incentive for rural carriers to work faster and smarter.

The GAO report notes that rural carriers have more independence to carry out their daily work. Only 10 percent of management's time is used in monitoring and managing rural carriers' time. The Postal Service Employee Opinion Survey and the General Accounting Office report show rural carriers to be the most positive and innovative workforce in the entire U.S. Postal Service. But "profit bonuses" must reflect that fact. We applaud the legislation for the legal language guaranteeing our fair and equitable share of any bonuses.

Volume discounts in Section 604 and new market tests in 3761 allow the Postal Service new freedoms they have long requested, and we support that effort.

We have some remaining questions about almost every section of the bill, but I do not have a crystal ball to foretell how legislation will ultimately be put in place. It is now an unknown how the rate cap and adjustment factors will effect postal revenues. We have several questions relating to the rate cap and adjustment factors which we will submit to the committee for their deliberation as the bill progresses.

The NRLCA hopes that Title X grants the flexibility and latitude to see the Postal Service and the Postal Rate Commission move into the 21st Century. Our members are depending upon it.

Mr. Chairman, we would like to thank you for all of the work that you and your staff have put into this significant piece of legislation. I would be pleased to answer any questions that you may have at this time.

[The prepared statement of Mr. Hicks follows:]

Good afternoon, Mr. Chairman and Members of the Committee. I am Scottie Hicks, President of the 93,000 member National Rural Letter Carriers' Association. I would like to mention that this year marks the 100th anniversary of Rural Free Delivery, which will be celebrated with a special stamp ceremony on August 7 in Charleston, West Virginia during our national convention.

Rural letter carriers serve as a Post Office on Wheels, as we travel more than 2.8 million miles per day serving more than 25.4 million customers on 57,000 rural routes. Thank you for this opportunity to present our views on HR 3717, The Postal Reform Act of 1996.

In the late 1960's, the Post Office Department was in crisis concerning the quality of mail service. The crisis was highly visible so Postmaster General O'Brien formed a special task force, and President Johnson appointed the Kappel Commission. Congress enacted the Postal Reform Act, and for 25 years, it has worked exceptionally well.

Today, the United States Postal Service faces a new crisis. It is not as readily visible as it was in the late 60's.

Presently, the Postal Service has competition and businesses have many, and multiplying, alternatives to the U.S. Postal Service. In 1970, there were no personal computers, no fax machines and no internet. Your exhaustive set of hearings highlighted these facts; so you and your excellent staff set about diligently crafting a new flexibility and responsibility for the Postal Service and its regulator, the Postal Rate Commission.

Mr. Chairman, we believe you have crafted an extraordinarily comprehensive change in the postal universe. With some fine tuning and some amendments here and there, we believe that you could see the majority of the concepts introduced by this legislation enacted into law. So we applaud you, Mr. Chairman, for your diligence, for your insight, and for your wisdom. With some constructive changes, the NRLCA is prepared to endorse your bill.

Title III

Presidential Postal Employee-Management Commission

We don't believe this section is needed because the NRLCA believes postal labor and management are capable of solving our own problems. We currently have a procedure to accomplish this task. The Postal Service has called for a labor-management summit.

On November 30, 1994, while testifying before the Senate Post Office Subcommittee, the Postmaster General issued a call for a labor-management summit. The NRLCA was the first union to accept the Postmaster General's call for a summit. At that time, the other unions were in collective bargaining negotiations with the Postal Service, and therefore, did not immediately accept the summit call. However, now all have agreed, and the organizations are awaiting the Postmaster General's convening of the summit with the

assistance of the Federal Mediation and Conciliation Service (FMCS).

We urge the Postmaster General to convene the summit immediately.

We believe there are several changes needed which would improve this section significantly.

The first change to this section should recognize the Postal Service summit's opportunity for problem resolution. The Presidential Commission should only be triggered if the Postal Service summit deadlocks. Therefore, a prospective date should be put on the creation and appointments to a Presidential Commission, and the Commission should only come into existence when triggered by failure of the parties to resolve the issues.

We have a concern about the Commission's composition. The NRLCA believes our competitors, or people who have a substantial financial relationship with our competition, should not serve on the Commission.

Furthermore, the Commission should sunset after 12 months. The Kappel Commission analyzed the entire Postal Service and issued a report in 12 months.

The NRLCA recommends these changes to improve this section, but expects postal labor and management to be the most capable of coming up with our own solutions, so the section will not need to be utilized.

Title VII

Section 703

Private Carriage of Letters

Mr. Chairman, I apologize, our outside economist has not completed his analysis of your legislation, so we are not able to offer documentation for our next statement.

The NRLCA believes the rate for letters could be phased down over years from its current rate, and the floor rate should be indexed and higher than your \$2.00 proposal.

The bill language makes a substantial change from the current law's "urgent letter" to simply "letter." There remains the commitment to provide universal service for everyone, every where, every day. Universal service at uniform prices are essential to customers, especially in rural America. Considering that obligation, Postmaster General Runyon testified that a \$2.00 rate would put \$4 billion of our current business at risk.

Mr. Chairman, you responded to the Postmaster General that "at risk doesn't mean the USPS will necessarily lose business." The NRLCA believes by phasing down the price

over years, the Postal Service will indeed keep the business and grow some more. The "baseline" rate case will take 18-24 months before it is completed. Why not allow several years before the baseline rate on letters is achieved?

The NRLCA believes the rate should not go below \$3.00 and that amount should be indexed for inflation. Any amount fixed without an inflation adjustor over time, loses its value. If it is another 25 years before the McHugh Act is rewritten, then \$3.00 would be deflated to almost zero.

Postal Rate Commission Chairman Gleiman pointed out that the 1992 GAO report (*U.S. Postal Service: Priority Mail at Risk to Competition if Double Postage Rule is Suspended*, GAO/GGD 92-68, May 92) said priority mail would be at risk if the doubled postage rule were suspended.

Based on this, we hope you will raise the base rate, index it, and phase it in over years.

Title VII
Section 704

The Mailbox Demonstration Project

We do not need this section. It should be stripped from the bill.

The United States is not the same as some foreign countries which do not have a sanctity of the mailbox rule. In many of those countries, it is customary to pay your bills other than through the mail. In the United States, millions of dollars of financial transactions are conducted daily through the mail; and therefore, it would seem rather foolish to place all of those items at risk by allowing people other than Postal Service employees to have access to the mailbox. The sanctity and security of the mail in a mailbox is something the American people and American business rely on heavily. We don't believe that you need a demonstration project to prove that conclusively.

Title IX
Section 912

Nonmailability of Controlled Substances

The NRLCA is pleased this section permits the USPS to continue to prescribe rules and regulations for the mailing of controlled substances. The Rural Carrier Benefit Plan has a mail order prescription drug program. As part of its FEHB plan, Caremark, our pharmacy benefit management company, worked closely with the USPS to develop regulations permitting the mailing of FDA approved controlled substances.

Title X**New System Relating to Postal Rates, Classes and Services**

The new rate mechanism in Title X is a creative approach allowing the Postal Service to operate more like a business. Section 3783 specifically allows the Postal Service to make a profit. That is good, and section 5C4 preserves Congressional oversight to ensure the organization adheres to the criterion of service first.

The NRLCA applauds section 3783 (e)(2)(a), which states that bonuses paid to officers and employees shall be fair and equitable. That is critical! The Postal Service's employees are its greatest asset. Rural carriers' evaluated system is the best system within the Postal Service. Our system is an incentive for rural carriers to work faster and smarter.

The GAO report (GAO-GGD94-201A) notes that rural carriers have more independence to carry out their daily work. Only 10% of managements' time is used monitoring and managing rural carriers' time. The Postal Service Employee Opinion Survey and the GAO report show rural carriers to be the most content, positive workforce in the U.S. Postal Service. So "Profit Bonuses" must reflect that fact. We applaud the legislation for the legal language guaranteeing our fair and equitable share of bonuses.

Volume discounts, section 604, and new market tests, section 3761, allow the USPS new freedoms they have long requested, and we support that effort.

We have some remaining questions about almost every section of the bill. I do not have a crystal ball to foretell how legislation will be put in to practice. It is now an unknown how the rate cap and adjustment factor will effect postal revenues. We have several questions relating to the rate cap and adjustment factor.

How will the Postal Rate Commission set the X factor?

When will the fiscal soundness factor be utilized?

If a hurricane and crippling blizzard occur in a six month period, will the Board of Governors request the Postal Rate Commission to change the X factor to restore fiscal soundness?

If Congress raids the USPS Treasury again, will the Governors request a change?

If the Postal Service needs urgent capital development, will the Governors request a change?

If managment and labor agree to a new contract, will the Governors request a change?

If arbitration settles a new contract, will the Governors request a change?

What if the Postal Rate Commission denies the request?

When would the Postal Rate Commission give the X factor a plus?

What if the Postal Rate Commission set Aunt Minnie's Basket "X" at a minus and Baskets two, three and four at a plus?

The NFLCA hopes Title X grants latitude and flexibility to see the Postal Service and the Postal Rate Commission into the 21st Century. Our members are depending on it.

Mr. Chairman, we would like to thank you for all of the work you and your staff have put into this significant bill. I would be pleased to answer any questions you may have at this time.

Mr. MCHUGH. Thank you, Scottie. We appreciate your comments, as always. Continuing down now, we would be pleased to hear the comments and the chief statement of William Quinn, who is the president of the National Postal Mail Handlers Union. President Quinn, thank you for being here.

Mr. QUINN. Thank you, Mr. Chairman. Mr. Chairman and Members of the subcommittee, my name is William H. Quinn, and I am president of the National Postal Mail Handlers Union. The Mail Handlers Union represents more than 58,000 active mail handlers employed by the Postal Service.

I appreciate the opportunity to testify about H.R. 3717, the Postal Reform Act of 1996. The chairman is to be congratulated on producing a comprehensive piece of legislation in an extremely complicated area. Although we have had only a limited period of time in which to analyze all of the complex issues raised by the bill's unique provisions, I do want to touch upon a few of our concerns.

First, with regard to the seven-member Presidential Commission that is supposed to study and make recommendations on how employee-management relations within the Postal Service might be improved, we have serious concerns, both about the composition of the commission and the need for the commission.

As proposed, two members of the Commission would represent nonpostal labor, two would represent nonpostal management, and three would be experts in employee-management relations, labor mediation, and collective bargaining.

Notably absent from this Commission is any representation from the major postal unions or even from postal management. If the members of such a commission truly were expert in and concerned about employee-management relations in the Postal Service, they would refuse from the outset to serve on a commission that did not represent the views of postal labor and postal management, which, after all, are the two key constituencies that will determine the future of postal labor relations.

Moreover, a good argument could be made that the mere establishment of such an outside commission is directly contrary to the fundamental goal of developing a productive relationship between postal labor and postal management. The primary purpose of collective bargaining is to allow the parties directly affected by the terms and conditions of employment to negotiate over such issues without outside interference.

The members of this Commission, like any outside parties, will be less familiar with the intricate workings of the Postal Service and its major unions, and, therefore, would be prone to simplistic solutions for extremely complex problems.

Thus, it is our initial view that the proposed commission, which would be controlled by outsiders, should have no role whatsoever to play in determining the future of labor-management relations in the Postal Service.

Two; another area in which the bill as proposed might unnecessarily interfere with collective bargaining is the proposal that would allow the Postal Rate Commission to establish caps on rates for noncompetitive mail. This proposal could have disastrous consequences for collective bargaining by improperly inserting the views of the PRC into that process.

One only needs to read last week's testimony by Commission Chairman Gleiman to see that the PRC might try to use its new-found authority to cap rates by adopting an adjustment factor that is below the rate of growth in the general economy. Because the Postal Service is a labor-intensive industry, this would be a back-handed means of reducing the real wages and, therefore, the standard of living of postal employees.

This makes no sense to me or my members, when it is the collective bargaining process between labor and management that should control postal wages. Indeed, we believe that the bill should be amended to retain the PRA's current requirement that the Postal Rate Commission set rates to ensure that the Postal Service will break even after the full impact of labor costs are taken into account.

Three; in previous testimony, I have noted that virtually every time that Congress takes a look inside the Postal Service, it acts like the proverbial kid in a candy store and finds another way to confiscate money from the Postal Service to help balance the Federal deficit on the backs of postal ratepayers and postal employees.

On this point, the Postal Reform Act of 1996 is no different from prior legislation. According to the figures I have seen, although the bill could add about \$400 million to postal revenues, it simultaneously would cost the Postal Service billions of dollars in revenues and congressional appropriations.

In his testimony last week, the Postmaster General identified some of these negative financial consequences, including the elimination of \$1 billion in debt that the U.S. Government owes to the Postal Service, the termination of \$60 million per year that Congress should pay for free mail service for the blind, and the imposition of \$240 million in workers' compensation payments.

Although I rarely have the opportunity to say this publicly, on these particular issues, I agree wholeheartedly with the Postmaster General. The imbalance between revenues and costs that is included in this bill is simply another way for Congress to treat the Postal Service as a cash cow for further deficit reduction. These provisions should be changed.

Four; the Mail Handlers Union is generally pleased with those aspects of the bill that would enlarge civil and criminal penalties for improperly transporting hazardous materials through the mail and for assaulting or stalking postal employees. And we appreciate the chairman's inclusions of these provisions in the draft bill.

Five; finally, we are extremely wary of certain provisions in the draft bill, such as the Mailbox Demonstration Project and limitations on the postal monopoly, that threaten the universal mail service currently provided by career postal employees. We remain vehemently opposed to privatization of the postal service if such privatization means the elimination of postal jobs held by postal employees.

Once again, I want to commend the chairman and the subcommittee for the obvious hard work that you have put into the drafting of this bill.

We look forward to working with you during the coming months

in an effort to improve the bill, especially in the area of labor-management relations, and to minimize the bill's interference in the collective bargaining process. I will be glad to answer any questions.

[The prepared statement of Mr. Quinn follows:]

Mr. Chairman and Members of the Subcommittee. My name is William H. Quinn, and I am President of the National Postal Mail Handlers Union. The Mail Handlers Union represents more than 58,000 active mail handlers employed by the United States Postal Service. Most of our members work in the large mail processing and distribution plants run by the Postal Service. In simple terms, we move and sort the mail, making sure that more than 180 billion pieces of mail that are collected and delivered each year are loaded, unloaded, and processed in a timely and efficient manner.

On behalf of our members, I appreciate the opportunity to testify about H.R. 3717, the Postal Reform Act of 1996, which recently was introduced by Chairman McHugh. The Chairman is to be congratulated on producing, in a relatively short period of time, a comprehensive piece of legislation in an extremely complicated area. We understand, moreover, that the bill is just an initial draft of a lengthy work in progress, and we look forward to working with this Subcommittee as updated drafts are produced.

The Mail Handlers Union has had only a limited period of time in which to digest and analyze all of the complex issues raised by many of the bill's unique provisions. Nonetheless, in these initial observations, I will touch upon a few of the primary concerns of our Union. To be blunt, I am compelled to

- 2 -

say that, from our point of view, the bill as currently drafted has several serious deficiencies.

1. The bill proposes to create a seven-member Presidential Postal Employee-Management Commission, which is supposed to study and make recommendations on how employee-management relations within the Postal Service might be improved. All seven members of the Commission, as proposed, would be appointed by the President, with two (2) representing nonpostal labor, two (2) representing nonpostal management, and three (3) having supposed expertise in employee-management relations, labor mediation, and collective bargaining. Notably absent from this Commission, however, is any representation from the major postal unions, or even from postal management. If the members of such a Commission truly were expert in, and concerned about, employee-management relations in the Postal Service, they would refuse from the outset to serve on a Commission that did not represent the views of postal labor and postal management, which, after all, are the two key constituencies that will determine the future of postal labor relations.

Perhaps of greater importance, a good argument could be made that the mere establishment of such an outside Commission is directly contrary to one of the fundamental premises of collective bargaining in the Postal Service and the development

- 3 -

of a productive relationship between postal labor and postal management. It hardly can be disputed that a primary purpose of collective bargaining is to allow the parties directly affected by the terms and conditions of employment to negotiate over such issues without outside interference. Outside parties, such as those proposed for this Commission, will be less familiar with the intricate workings of the Postal Service and its major unions, and therefore would be prone to simplistic solutions for extremely complex problems. Thus, it is the initial view of the Mail Handlers Union that the proposed Commission -- which as currently proposed would be controlled by outsiders -- should have no role whatsoever to play in determining the future of labor-management relations in the Postal Service.

Just one year ago, in June 1995, I testified before this Subcommittee about the state of labor relations in the Postal Service, and urged the Congress to stay out of disputes between labor and management. I believe my words of June 1995 are equally applicable today:

Sometime after November 1994, Postmaster General Runyon suddenly decided that it is the process of collective bargaining -- a process . . . that has successfully directed America's private economy for the past sixty years, and that has successfully governed the Postal Service for the past twenty-five years -- that is to blame for the woes of the Postal Service. Indeed, in his . . . speech to the National Postal

Forum, Runyon claimed that "collective bargaining produces accusations instead of agreements."

I have a message for the Postmaster General, however, that also should be heard by this Subcommittee. There is nothing wrong with the Postal Reorganization Act, and Congress should leave the Act alone. There is nothing wrong with collective bargaining in the Postal Service that could not be fixed by postal management's willingness to introduce serious economic proposals at the bargaining table. There is nothing wrong with labor relations in the Postal Service that could not be fixed by a little rational thinking on the part of postal management. For the Postal Service to blame the Postal Reorganization Act for its own inability to reach bargaining agreements with the major postal unions is laughable; if not downright pitiful.

When all is said and done, I believe that the process of collective bargaining in the Postal Service has served us well. As I noted earlier . . . , it has produced a Postal Service that is second to none in terms of extremely high service at an extremely low cost. To be sure, when one or both parties do not put reasonable proposals on the bargaining table, the Postal Reorganization Act directs that a neutral arbitrator will set the terms of employment for the next few years, and that is how the current impasse is likely to be resolved. Congress should not be fooled into believing, however, that the Postal Reorganization Act is broken and needs to be fixed, when the only thing that is broken is postal management.

Of most importance, since implementation of the Postal Reorganization Act more than twenty-five years ago, the Postal Service has operated under generally peaceful labor relations, without any major service disruptions. Indeed, on many levels the Postal Service is today booming with success. It is operating at record profits; mail volume continues to increase; delays in processing and delivery have been reduced greatly; and

- 5 -

customer satisfaction remains at extremely high levels. This success is a tribute to all 800,000 postal employees, including the unionized crafts workers that I have the honor to represent.

What other industry could boast of such a record for the past quarter century? The answer to this essentially rhetorical question is that no other industry can match the record of labor peace achieved by the Postal Service, and therefore -- even if questions about the proper composition of a Presidential Postal Employee-Management Commission could be resolved -- I have serious doubts about the need for, or the wisdom of, such a Commission.

2. Another area in which the bill might unnecessarily interfere with collective bargaining is the proposal that would allow the Postal Rate Commission to establish caps on rates for noncompetitive mail. This proposal could have disastrous consequences for collective bargaining between postal labor and postal management by improperly inserting the views of the Postal Rate Commission into that process. One only needs to read last week's testimony by Commission Chairman Gleiman to see that the PRC might try to use its new-found authority to cap rates by adopting an adjustment factor that is below the rate of growth in the general economy. Because the Postal Service is a labor-intensive industry, this would be nothing more than a backhanded

means of reducing the real wages, and therefore the standard of living, of postal employees. This makes no sense to the Mail Handlers Union, when it is the collective bargaining process between labor and management that should control postal wages. Indeed, we believe that the bill should be amended to retain the PRA's current requirement that the Postal Rate Commission set rates so that the Postal Service will "break even" after the full impact of labor costs are taken into account.

3. In previous testimony, I have noted an additional reason that Congress should not seek to legislate wholesale changes in the Postal Reorganization Act -- namely, that virtually every time that Congress takes a look inside the Postal Service, it acts like the proverbial kid in a candy shop, and finds another way to confiscate additional money from the Postal Service without any apparent reason other than to help balance the federal deficit on the backs of postal ratepayers and postal employees. The Postal Reform Act of 1996 is no different from prior legislation in this regard. According to the figures I have seen, although the bill could add about \$400 million to postal revenues, it simultaneously would cost the Postal Service billions of dollars in revenues and congressional appropriations. In his testimony last week, the Postmaster General identified some of the negative financial consequences of the bill as

- 7 -

proposed, including the elimination of \$1 billion in debt that the U.S. Government owes to the Postal Service; the termination of \$60 million per year that Congress should pay for free mail service for the blind; and the imposition of \$240 million in workers' compensation payments for employees who retired under the old Post Office Department. Although I rarely have the opportunity to say this publicly, on these particular financial issues I agree wholeheartedly with the Postmaster General. The imbalance between revenues and costs that is included in this bill is simply another way for Congress to treat the Postal Service as a "cash cow" for further deficit reduction. These provisions should be changed.

4. The provisions of the bill that would establish a new Inspector General for the Postal Service also are of concern to the Mail Handlers Union. We question the underlying need for such a position, when the Postal Service already has its own Inspection Service to perform audits and program reviews. Even if these provisions were retained in the bill, we would suggest explicit restrictions on the Inspector General in the area of labor relations, especially with regard to investigations that may affect individual postal employees.

5. The Mail Handlers Union is generally pleased with those aspects of the bill that would enlarge civil and criminal

penalties for improperly transporting hazardous materials through the mail, for assaulting postal employees, and for stalking postal employees. These issues present long-term problems for the thousands of mail handlers working each day on the workroom floor, and we appreciate the Chairman's inclusion of these provisions in the draft bill.

6. Finally, we must be extremely wary of provisions in the draft bill, such as the mailbox demonstration project and the proposed limitations on the postal monopoly, that threaten the universal mail service currently provided by career postal employees. We remain vehemently opposed to privatization of the Postal Service if such privatization means the elimination of postal jobs held by postal employees.

Once again, I want to commend the Chairman and the other members of the Subcommittee for the obvious hard work that you have put into the drafting of this bill. We look forward to working with you during the coming months and years in an effort to improve the bill, especially in the area of labor-management relations, and to minimize the bill's interference in the collective bargaining process.

I appreciate your invitation to present the views of the Mail Handlers Union, and I will be glad to answer any questions that you may have.

Mr. MCHUGH. Thank you very much, Mr. Quinn. We appreciate your comments. Before we proceed to our last presenter, I want to acknowledge the subcommittee as having been joined by the vice chairman, the gentleman from South Carolina, Mr. Mark Sanford.

And we will now continue, last, certainly not least, to see John Pesa, who is the national president for the Fraternal Order of Police. Welcome, sir. We are looking forward to your comments.

Mr. PESA. Thank you, Mr. Chairman. Good afternoon to you and the esteemed members of the Subcommittee on the Postal Service. My name is John Pesa, and I am a U.S. postal police officer currently serving as national president of the Fraternal Order of Police, National Labor Council No. 2.

Our organization represents the 1,200 police officers protecting the Postal Service throughout the United States. I appreciate this opportunity to appear before you today and to share with you some thoughts and concerns of our bargaining unit.

We salute this distinguished subcommittee's initiative in attempting to reform the Postal Service. You have our full support for many of these initiatives, but there are a few proposals we believe may warrant some more careful consideration by the subcommittee.

With respect to Title I, Section 104 of the proposed legislation, the postal police force hails the proposed appointment of an independent Inspector General to the Postal Service, particularly with regard to the oversight provisions designated for the Postal Inspection Service.

We believe that the Service has lost its primary mission, which is to protect the postal employees and patrons of the U.S. mails. The subcommittee has exhibited great concern about violence within the postal environment.

Mail thefts are out of control, damage to postal property, vehicles, and equipment can at best only be estimated. The American public lacks confidence in the Postal Service's ability to provide adequate security for the mail.

Despite this, the Inspection Service has maintained a high vacancy rate year after year in authorized postal police complements and has closed more than 17 postal police operations at postal facilities nationwide. Postal police officers are able to perform law enforcement functions involving the protection of U.S. mails, postal employees, and customers.

Officers can prevent, detect, and conduct preliminary investigations into violations of postal regulations and laws. Postal police officers can respond to emergencies and greatly enhance the security posture when they are employed.

Officers perform patrol assignments, both on foot and with well-marked, highly visible law enforcement vehicles to maintain order and safeguard postal facilities. Postal police officers frequently interact with other police agencies and have become an integral part of overall enforcement efforts.

One of the problems we perceive with Title I is the lack of clear distinction that the reform act makes concerning postal police officers. Postal inspectors are the investigative branch of the Postal Service.

Postal police officers are the uniformed, law enforcement branch of the Inspection Service. We are all of one purpose and one mission: the prevention, detection and investigation of postal-related crime.

I would like to propose some suggestions that I hope will be able to help you during your consideration of the Postal Reform Act. I believe an independent police commissioner with reporting authority directly to the Inspector General would be a necessary element in assessing and analyzing the genuine security needs of the Postal Service.

We believe a study of Inspection Service policies and the administration of the postal police force would require a 1- to 2-year time-frame during which the role of a police commissioner could be formulated.

The Fraternal Order of Police and I stand ready to assist in this endeavor. We are dedicated to the principles of true law enforcement for the Postal Service and believe we can provide several solutions to its inadequate security posture.

From language in Section 201 of Title II, it appears the oversights in previous legislation and funding for our particular law enforcement roles are being addressed. Our role is similar to that of any institutional police force and much like that in any community, considering the Postal Service like a community unto itself.

We are, or should be, the first line of communication with the enforcement of postal laws for that community, including postal customers and employees alike. The Postal Reorganization Act of 1970 has several inadvertent oversights with regard to the postal police force. As you know, we were attached by a separate rider to the Treasury Appropriations Act as an afterthought in order to be granted our authority. It is noteworthy that this subcommittee has acknowledged the 1970 oversight and is attempting to rectify the mistake by empowering the Postal Service to employ its own postal police. This is essential if postal and Federal laws and regulations are to be fully enforced.

Another oversight permitted by the Reorganization Act was that by attaching us to the Treasury Appropriations Act, postal police officers became confined to Postal Service-owned or leased property.

This was to the detriment of thousands of postal employees whose duties take them into high-risk, drug-infested, crime-ridden neighborhoods across the country.

This, too, can be easily remedied by this subcommittee with language added to the Postal Reform Act of 1996 that would expand the jurisdiction of postal police officers to any postal-related activity anywhere without regard to geographical location.

We believe postal police officers should have full inclusion under the provisions of Title I of the Postal Reform Act of 1996. Due to this, we have some problems with the seeming intent of Title II of this act. Title II would authorize the Postal Service to retain guards upon whom would be conferred the powers of special police.

This language, in our view, is ambiguous, in that it fails to identify exactly who will serve as these guards. It further fails to identify the actual powers of these special postal police. If these powers are intended to be similar to those of constables and sheriffs, as re-

ferred to in Title 40, Section 318, we believe these special powers should be clearly described.

We believe the term "guard" and "security force," when referring to postal police officers, is inappropriate in that it does not accurately depict who we are, what we do, and what we have thus far been legislatively empowered to do.

Additionally, we are concerned that privately contracted guards might be conferred these postal police powers. We do not believe employing contract personnel in this capacity, outside the jurisdiction and control of the Inspection Service, is cost effective.

The process of providing the required law enforcement personnel background and security checks for the high turnover of contract employees will force a relaxed screening. Potentially undesirable elements employed by contractors would themselves become a security risk.

I would like to stress to the subcommittee that many of our postal police officers are veterans who have served their country well. This background has enhanced their ability as law enforcement officers, and we believe that they, as well as all of our officers, deserve the respect of our agency.

In large part, the position of postal police officer was created with the veterans in mind, and this position is filled with this context by the Postal Service, in compliance with the Veterans Preference Act. This is why the Fraternal Order of Police, National Labor Council No. 2, plus the Police Officers Association opposes the provisions of Title VIII of the Reform Act.

The Merit Systems Protection Board accords our veterans with an appeal process that is expedited when compared to the grievance arbitration process. To prevail under the auspices of MSPB should be sufficient, and the Postal Service should be required to accede to such decisions.

Last, I would like to say that our organization wholeheartedly supports the provisions of Title IX of the Reform Act. We most strenuously advocate increased criminal penalties for anyone who would stalk postal and Federal employees, burglarize postal facilities, or distribute controlled substances by use of the U.S. mail.

There can never be too harsh a sentence for offenses of such nature. With the requested expansion of postal police authority, we can do a large part toward ensuring the proper enforcement of this proposed legislation. We will defer the address of the other titles proposed by this act to the appropriate bargaining units and their unions, as it appears they will be more greatly impacted.

I would now like to ask that my written testimony, which treats the matters I have briefly addressed here in greater detail, be submitted for the record.

Once again, I want to thank you, Mr. Chairman, and all the members of this subcommittee for the opportunity to speak to you about this very important and expansive Postal Reform Act of 1996. Thank you.

[The prepared statement of Mr. Pesa follows:]

Honorable John McHugh, Chairman

Esteemed Members of the Subcommittee on the Postal Service

Mr. Chairman, members of this esteemed Committee, my name is C. John Pesa. I am a US Postal Police Officer, and I serve as National President of the Fraternal Order of Police, National Labor Council 2. Our organization represents the 1,193 Postal Police Officers protecting the Postal Service throughout the United States. I appreciate this opportunity to appear before you today, and to share with you some thoughts and concerns of our bargaining unit.

We salute this distinguished Committee's initiative in attempting to reform the Postal Service. We believe many of the proposed changes will enable the Postal Service to better serve the ever-growing, ever-changing needs of the American people. You have our full support for many of these initiatives, but there are a few proposals we believe may warrant somewhat more careful consideration by the Committee.

With respect to Title I, The Postal Police Force hails the

proposed appointment of an independent Inspector General to the Postal Service, particularly with regard to the oversight provisions designated for the Postal Inspection Service. We believe that the Inspection Service has lost sight of its primary mission, which is the protection of postal employees, patrons, and the US Mails.

There is no need for me to expound upon the violence that has plagued the Postal Service over the past two decades. It is a widely-known fact that at least 47 postal employees have met with terrible, tragic deaths in the last 16 years, due to work place and work-related violence. The number of assaults against postal employees has had a devastating effect on the work force across the nation. The enormous loss of workhours by employees whose lives have been irreversibly jarred by violence perpetrated against themselves and their coworkers is staggering.

Additionally, mail thefts are out of control. Damage to postal property, vehicles, and equipment at best, can only be estimated. Mail delivery and other services being offered by the Postal Service are shrouded by an ever-growing consumer apprehension for safety and satisfaction. The eroding confidence of the American public in the Postal Service's ability to control and remedy these escalating problems is a grave concern to everyone.

While postal violence is universally known, what is not widely known is the Postal Inspection Service's on-going, deliberate efforts to provide less protection to postal workers by Postal Police Officers. Since 1983, the Inspection Service has shut down Postal Police Forces at more than 17 facilities across the nation. At many of these same facilities, these highly-trained police officers have been replaced with privately-contracted, unarmed security guards. The surrounding postal stations to these facilities have been deprived of the Postal Police patrol functions that once ensured the safety of both postal employees, postal patrons, and the Mail.

Postal Police Officers are highly-specialized professionals, and their training and qualifications are worth mentioning:

DUTIES AND RESPONSIBILITIES OF US POSTAL POLICE OFFICERS

Postal Police Officers perform law enforcement work involved in the protection of the US Mail, and the protection of life, property and civil rights of persons within their jurisdiction.

Postal Police Officers maintain law and order; prevent, detect, and conduct preliminary investigations of violations of postal regulations and laws; and preserve the peace. The protection afforded by Postal Police Officers is against criminal and non-

criminal acts that are both willful and inadvertent. Postal Police Officers make arrests, conduct searches and seizures, and testify in local and federal courts about law violations.

Postal Police Officers respond to emergencies which may involve the necessity for physical suppression of other persons. They are armed with .9MM Baretta Model 92 D Centurion weapons, which use standard agency-issue Black Talon Federal Law Enforcement ammunition. Postal Police Officers are required to qualify with their weapons, as well as with Remington 12-gauge, pump-action shotguns twice-yearly under rigorous, closely monitored conditions. Failure to qualify results in termination from the Force.

Postal Police Officers perform patrol assignments, both on foot and with highly-marked law enforcement vehicles, to maintain order and safeguard postal facilities, property, employees, patrons, and the US Mails.

Postal Police Officers frequently interact with other police departments during the commission of crimes, and respond to duress alarms, armed robberies, burglaries, and assaults against postal employees, and patrons on postal property.

GENERAL PHYSICAL CONDITION

Postal Police Officers are required to be in excellent physical condition with no defects which would interfere with the use of their firearms, or participation in arrests, dangerous assignments, defensive tactics, or prolonged periods of duty. They require agility of movement to enable performance of inspections in cramped spaces. Heavy lifting, prolonged standing and walking, stair climbing and running, as well as prolonged exposure to all kinds of weather are required. They can have no defects which may prevent or impede the efficient performance of their duties in any manner.

Physical and visual conditions are ascertained through rigid physical examinations conducted at examining facilities selected by the US Postal Inspection Service.

TRAINING OF US POSTAL POLICE OFFICERS

US Postal Police Officers are trained at the Federal Law Enforcement Training Center (FLETC) in Glynco, GA--the most highly respected law enforcement training academy in the nation. They attend FLETC for a rigorous eight-week course. Officers are selected by high score of a difficult written test developed with the assistance of the Office of Personnel Management, and issued by the US Postal Inspection Service.

Postal Police Officers train in the following categories:

1. Explosives
2. Disguised Weapons
3. Hostage Situations
4. Terrorism
5. Preliminary Police Investigation
6. Fingerprinting
7. Crime Scene Sketching
8. Drugs of Abuse
9. Critical Incident Response
10. Bomb Threats
11. Obstruction of Justice
12. Theft, Embezzlement and Conversion
13. Mail Fraud and False Statements
14. Federal Law - US Code
15. False Identification
16. Entrapment
17. Court Testimony
18. Conspiracy and Parties to Criminal Offenses
19. Bribery of Public Officials and Witnesses
20. Assaults
21. Legal Text
22. Radio Communications
23. Vehicle Stops

24. Firearms and Off-Range Safety
25. Physical Efficiency Battery
26. Driver Training
27. Victimology
28. Handling Abnormal Persons
29. Behavioral Science
30. Trauma Management and First Aid
31. Ethical Behavior
32. Stress
33. Communications and Interviewing
34. VIP Bodyguard Protection
35. Crowd Control
36. Federal Firearms Violations
37. Violent Gangs
38. Report Writing
39. Freedom of Information Act and Privacy Act Requests

AUTHORITY OF US POSTAL POLICE OFFICERS
RECOGNITION OF US POSTAL POLICE OFFICERS

Currently, Postal Police Officers receive their statutory authority and police powers from Title 40 USC § 318. This was made applicable to the US Postal Service by the Treasury, Postal Service, and General Appropriations Act of 1973, Public Law

92-351, and subsequent annual appropriations acts. This was granted to the Force by Title 39, Code of Federal Regulations, part 232.1(q)(1) (1995).

Postal Police Officers are protected against assaults, including murder and attempted murder, by the Protection of Officers and Employees of the United States statute contained in Title 18 USC § 1114. This statute attaches penalties under Sections 1111 and 1112 of that Title.

Postal Police Officers are entitled to death benefits payable to public safety officers under 42 USC, § 3976-3976c, based on their authority under Title 40 USC § 318.

The Postal Service has committed to printing all documents depicting a Postal Police Officer's badge by inscribing the badge with the number "3972"--the badge number of US Postal Police Officer Michael Healy, who was killed in the line of duty in Chicago, IL, in 1982. Officer Healy's name is engraved on the law enforcement memorial wall in Washington, DC, which is dedicated to all police officers slain during the performance of their duties.

US Postal Police Officer Carlos Acosta, of the New York Division, was a highly-decorated officer single-handedly responsible for .

the capture of the infamous terrorist Nosair, the assassin of Rabbi Meir Kahani in New York City, in 1990. Nosair's capture led to the discovery of the terrorist ring responsible for the World Trade Center bombing in New York City in 1993, operating under the direction of Sheik Rahman. Postal Police Officers assisted in the bombing investigation by researching mailing addresses of suspected terrorists. Their efforts aided federal investigators in the eventual capture and prosecution of numerous terrorists involved in the bomb plot.

Postal Police Officers have been conferred peace officer status in approximately seven US states, and serve in 20 states, as well as the Commonwealth of Puerto Rico, and the District of Columbia. They serve 56 distinct work sites, and are domiciled in 28 separate facilities across the nation.

Postal Police Officers have served on numerous special details and task forces with Postal Inspectors and other law enforcement agencies in the United States, its territories, and foreign countries. Officers helped provide security protection for Postal Service employees and exhibits at the Special Olympics in Hartford, CT, in 1995, and at the World Expo held in Spain in 1992. Officers provided protection of US Mails and postal stations in St. Croix, when devastating Hurricane Hugo struck the island in or about 1990.

Despite the high quality of our police force, the Inspection Service has chosen to deliberately underutilize its uniformed law enforcement officers in recent years. For example, last year in Brooklyn, NY, Postal Police were dispatched to a station calling for help with persons attempting to cash stolen money orders. While enroute, the officers were ordered by an inspector to abort their response. The officers reported back that they had arrived at the scene. They were ordered to take no action other than to record the license plate of the get-away vehicle. The suspects escaped.

This year, at a postal station in the Bronx, NY, a supervisor called for help, alleging he was being threatened by a knife-wielding employee. Under newly enacted procedures requiring Postal Police Officers to first contact Postal Inspectors in such events, Inspectors were notified, and immediately ordered Postal Police not to respond. A few minutes later, the postal supervisor called again, pleading for help. Again, Postal Police were ordered to stay put. Inspectors arrived forty-five minutes later, according to the supervisor, by which time the supervisor had disarmed the employee and taken control of the situation himself. He was bitter and infuriated with Postal Police, and later filed an official complaint. It is unknown to us what response, if any, he received.

Since about 1993, the Inspection Service has visited every postal station in New York City, and has distributed flyers instructing managers and employees to contact "911", then Inspectors in the event of a serious incident. Postal Police were not to be directly contacted. This has resulted in a 30 to 40% decrease in both our responses and our activity reports.

New York Division Postal Inspectors continually advise local law enforcement agencies that we have no arrest powers. Nothing could be further from the truth.

Members of the Committee, there are hundreds of examples like this I could provide you that would describe the problems Postal Police Officers face while working for the Inspection Service, and I am prepared to do so. However, the real question that is begged here is "why?" With so much expense dedicated to the training and development of such a professional police force, why does the Inspection Service maintain such a nefarious policy?

There are victims of this unscrupulousness--the postal employees who are deliberately deprived of the protection they desperately need, and surely deserve. This is what is kept hidden from

the US Congress, the judicial courts, the Postal Service, and the American public. It is time for such secrets to be known.

The Inspection Service has endeavored, and is succeeding in duping the nation into believing Postal Police Officers are nothing more than ignorant security guards without true law enforcement authority. Why?

We believe the appointment of an Inspector General will go a long way towards alleviating this perplexing and disturbing dilemma, and will help bring about positive reform within the Inspection Service. Up to now, there has been an inordinate lack of accountability by the Postal Inspection Service to anyone with oversight authority. This has compounded the deleterious effects that their inane policies and practices have on postal workers everywhere. Postal workers and customers are truly victims of a law enforcement agency that seemingly has only its own self-serving interests at heart.

One of the problems we perceive with Title I is the distinction that the Reform Act makes between Postal Inspectors and Postal Police Officers. Postal Inspectors are the investigative branch of the Postal Service. Postal Police Officers are the uniformed law enforcement branch of the Inspection Service. We are all of one purpose, one mission--the prevention, detection, and

investigation of postal-related crimes. Postal Police Officers are adequately trained for this mission, but they are intentionally locked out from real participation, by their own employer-the US Postal Inspection Service.

I would like to propose some suggestions that I hope will be of help during your consideration of the Postal Reform Act of 1996. I believe an independent Police Commissioner with reporting authority directly to the Inspector General would be of enormous benefit in assessing and analyzing the genuine security needs of the Postal Service.

We believe a study of the Inspection Service policies and administration of the Postal Police Force would require a one to two-year time frame, during which the Police Commissioner can evaluate current policies, and recommend reform of the Force. I and the Fraternal Order of Police stand ready to assist with this endeavor. We are dedicated to the principles of true law enforcement for the Postal Service, and we believe we can provide solutions for its growing security needs.

The Postal Reorganization Act of 1970 had several inadvertent oversights with regard to the Postal Police Force. As you know, we were attached by a separate rider to the Treasury Appropriations Act as an afterthought, in order to be granted

our authority. It is noteworthy that this Committee has acknowledged the 1970 oversight, and is attempting to rectify the mistake by empowering the Postal Service to employ its own police. This is essential, if postal and federal laws and regulations are to be fully enforced.

We have identified what we believe to have been another oversight of the Reorganization Act of 1970--the requirement that all postal employees be compared only to private-sector workers for salary negotiations. This was an unfortunate error for the Postal Police Force, because as far as I am aware, there actually is no such thing as a private-sector police force. Because of this, our Force has been forced to compare itself with private-sector security guards for purposes of collective bargaining. The disadvantages to this are obvious. We believe that this can be easily remedied by this Committee, by including special language enabling Postal Police Officers to be equated to other federal law enforcement officers for collective bargaining purposes.

Additionally, we are unique to all other postal workers because of our law enforcement function, which is much more closely related to that of the US Capitol Police, White House Police, Treasury Police, and Secret Service Police, in terms of our job description, duties and responsibilities.

Another oversight committed by the Reorganization Act of 1970 was that, by attaching us to the Treasury Appropriations Act, Postal Police Officers became confined to postal service-owned or leased property. This was to the detriment of hundreds of thousands of postal employees whose duties take them into the streets of villages, towns and cities across the nation.

These employees, primarily letter carriers, mail collection drivers, chauffer carriers, and contract-personnel, were deprived of the protection they would otherwise have enjoyed for the past twenty-five years. This, too, can be easily remedied by this Committee, with language added to the Postal Reform Act of 1996 that would expand the jurisdiction of Postal Police Officers to any postal-related activity anywhere, without regard for geographical location.

Another area easily remedied by this Committee would be language re-titling the Postal Security Force as the Postal Police Force. This has no financial cost attached to it, and would alleviate a myriad of problems Postal Police Officers now face. The negative stigma attached to the terms "guard" and "security force" have caused significant difficulties for our officers during the performance of their duties, particularly with postal workers we must direct, and sometimes control. An added benefit would be to postal workers themselves, who would enjoy the enhanced

- 16 -

peace of mind knowing that genuine police officers are looking out for their welfare, and have the power to take any action necessary to assure their safety.

Twenty-six year old Bronx, NY, postal worker Guillermo Gonzalez is a prime example of what Postal Police could have done, and what the Inspection Service failed to do. Between July and December, 1992, Mr. Gonzalez was being followed on his route, wherein he collected the postal service's daily revenue. He filed at least four reports, describing five incidents that gravely concerned him. He described the individuals, their actions, their dress, their vehicle, and he provided their license plate to the Postal Police. He begged for protection.

The Inspection Service ignored his pleas, and Postal Police were never assigned to accompany him through his route. On January 21, 1993, Mr. Gonzalez was abducted from his route in his postal truck, driven to a secluded area in New Jersey, and found shot through the head on the floor of his truck.

Because of his keen observations and reports, Mr. Gonzalez eventually assisted in solving his own murder. Ironically, the Postal Inspector who retrieved the revenue back to New York the next day, a trained federal law enforcement agent with an official service-issued weapon, demanded the escort of Postal Police Officers in a highly-marked police vehicle.

The true question is really this: if Postal Police Officers can protect the mail and property of the Postal Service in St. Croix, if they can provide security and protection at the World Expo in Spain, if they can work along side Postal Inspectors on an investigation in Alaska, why is it that now Postal Police Officers are not permitted to cross the street to aid a carrier in trouble in New York City? Or Chicago? Or Los Angeles? The Postal Police are losing their identity, and have little understanding of their purpose, or their mission. We desperately turn to this Committee for help.

We believe the only way to end the increasingly deteriorating relationship between Postal Inspectors and Postal Police Officers is for them to be permanently merged, by law, into the same agency. Postal Police Officers do not need to become Postal Inspectors, but they need to become a part of the Inspection Service as full-fledged law enforcement officers, with the authority to work side by side with Postal Inspectors as one team, with one purpose, with one mission.

We believe Postal Police Officers should have full inclusion under the provisions of Title I of the Postal Reform Act of 1996. Due to this, we have some problems with the seeming intent of Title II of this Act. Title II would authorize the Postal Service to retain "guards", upon whom would be conferred the

powers of "special police". This language, in our view, is not clearly defined, in that it fails to identify who exactly will serve as these "guards". It further fails to identify the actual powers of these special police. If these powers are intended to be similar to those of constables and sheriffs as referenced in Title 40, USC § 318, we believe these specific powers should be clearly described. We believe the term "guards" and "security force", when referencing Postal Police Officers, is inappropriate, in that it does not accurately depict who we are, what we do, and what we thus far have been legislatively empowered to do.

Additionally, we are concerned that privately-contracted guards might be conferred these police powers, despite their lack of training and education. We believe this would have disastrous effects on the Postal Service, where liability issues are concerned. We believe it would be most unwise to leave the enforcement of Postal and federal laws and regulations, as well as many local ordinances, in the hands of unqualified personnel. With the growing number of private guards being contracted by the Postal Service now, we believe our fears are well-founded, and deserve closer scrutiny. Pinkerton guards simply can not match the professional qualifications needed for this type of law enforcement work, nor should they be so empowered by this Committee, in our view.

There are added benefits to including Postal Police Officers within the context of Title I--not only will Postal Police Officers have greater law enforcement authority off-property, they will have greater powers off-duty. Currently, even though Postal Police Officers train in an identical manner, under identical requirements with identical firearms as those of Postal Inspectors, our officers are forbidden by the Inspection Service to carry off-duty, even for their own protection. We believe this is to the great disadvantage of our officers, as well as to the deprivation of the American public.

In 1992, New York Division Postal Police Officer Franklin Dockery was on his way home from work in a subway. A fellow passenger was suddenly held-up on the train. Officer Dockery could not intervene during the commission of this crime, because he was unarmed. That was not the worst of this situation. The attacker suddenly turned on Officer Dockery, and stabbed him twice in the chest, causing one of his lungs to collapse. Despite his wounds, Officer Dockery was able to stumble to the conductor and call for police assistance before blacking out.

Gratefully, Officer Dockery survived his wounds, and has returned to duty. But the question looms--why is it that highly-trained law enforcement officers are deprived by their own agency from the ability to protect themselves, and innocent third parties?

Ironically, in New York State, Postal Police Officers have full peace officer status. This status permits our officers to carry off-duty, and waives the requirement of our officers to apply for weapons permits. The Inspection Service, however, has gone to great lengths to ensure that its officers can not legally carry their personally-owned weapons, by advising New York City Licensing they are forbidden to carry off-duty. This has effectively prevented our officers from legally purchasing and owning weapons, even for self-protection, or for practicing off-duty to enhance their weapons handling and firing efficiency.

We truly fail to understand what motivates this agency to treat its officers in such a cruel and demeaning manner. Needless to say, the morale of our police officers is nearly non-existent. In a day and age when most workers are complaining about their work load, Postal Police Officers are begging to do more. It is ironic to think that we may very well work for the one employer in the country who will not take us up on such an offer.

There is some concern to us about Title III. We are familiar with the General Accounting Office report of September 29, 1994, regarding Labor Management problems. Like every other postal union, our bargaining unit is plagued with issues we have long deemed to be at impasse. Grievances are backlogged, information is not being provided to process these grievances, the National

Labor Relations Act and other federal labor laws are routinely violated by the agency. The due process rights of our officers are obstructed at every opportunity, and at considerable cost to our Union. The impact on morale because of this is severe. We have long wished for alternative options to the current grievance/arbitration procedure, which we believe is beyond repair.

One of the reasons for this with respect to our bargaining unit is the extreme lack of education of the Postal Police managers who administer our contract. Violations extend to the Privacy Act and the Freedom of Information Act, and the Inspection Service has shown an undisguised contempt for the entire grievance procedure. They simply are not committed to the principles of collective bargaining.

So long as there is no accountability by the Inspection Service, we believe that this situation will never obtain relief. Our financial resources are at the breaking point, and we strongly suspect union-busting activity. The unfair labor practices and systemic delays of the grievance/arbitration procedure are overwhelming us. If we are ever to survive this attack, it will only be by an Act of Congress.

Another area of concern has to do with opportunities for career advancement for our officers. As you know, Public Law 91-375 mandated the Postal Service to place particular emphasis in this area. Postal Police Officers have nearly no opportunity for advancement beyond the Employee and Administrative Schedule level. There are several reasons for this.

The Inspection Service has imposed an educational requirement that discounts on-the-job training, tenure, and experience of our officers. Moreover, Postal Inspectors enjoy a twenty-year retirement, which Postal Police Officers do not have. This activates an age bar to our officers at 37½ years of age. Many of our officers are hired well after that age.

An odd thing happens when a postal employee becomes a Postal Police Officer. As I understand it, the employee must resign from the Postal Service in order to join the Inspection Service. Conversely, if a Postal Police Officer wishes to go into the Postal Service, that officer must resign from the Inspection Service. This makes it exceedingly difficult for Postal Police Officers to compete for positions within the Postal Service, and outside of their own restricted agency. Perhaps inclusion under Title I of the Postal Reform Act of 1996 will help to alleviate the paucity of career advancement opportunities currently restricting our officers.

It should be noted that Postal Police Officers have the ability to perform the exact same work as Postal Inspectors, with formal training from the agency. The difference is, Postal Police Officers can do this work for one-third to one-half the salary of a Postal Inspector. Oddly, there are nearly twice as many Postal Inspectors as there are Postal Police Officers. We have always been highly critical of this top-heavy structure, and we believe the cost of maintaining Postal Inspectors at their numbers and wages is prohibitive to the Postal Service. Clearly, Postal Inspectors performing audit functions are unnecessary, and raise questions as to their qualification for a 20-year law enforcement retirement, since these Inspectors have performed few, if any investigations.

I would like to stress to the Committee that many of our Postal Police Officers are veterans who have served their country well. This background has enhanced their abilities as law enforcement officers, and we believe that they, as well as all of our officers, deserve the respect of our agency that is so direly lacking. In large part, the position of Postal Police Officer was created with Veterans in mind, and this position is carried within this context by the Postal Service, the Veterans Preference Act, and the Office of Personnel Management.

This is why the Fraternal Order of Police, National Labor Council Two opposes the provisions of Title VIII of the Reform Act. The Merit Systems Protection Board (MSPB) accords our veterans an appeal process that is rapidly expedited when compared to the grievance/arbitration process. To prevail under the auspices of MSPB should be sufficient, and the Postal Service should be required to accede to such decisions.

This is not to say that the Postal Service should never appeal any decision of the Board, but the Office of Personnel Management lends a layer of review that we believe should be retained, in order to prevent unwarranted appeals by the Postal Service that will be too costly for most individual employees to protect against, and that may further drain precious Union funds.

If it can be assured by this Committee that the Postal Service cannot appeal MSPB decisions favorable to individual officers, then we would lend guarded support for this measure, pending review of the actual language, and the safeguards contained therein.

Lastly, I would like to say that our organization wholeheartedly supports the provisions of Title IX of the Reform Act. We most strenuously advocate increased criminal penalties for anyone who would stalk postal and federal employees, burglarize postal

facilities, or distribute controlled substances by use of the US Mails. There can never be too harsh a sentence for offenses of such nature. With the requested expansion of Postal Police authority, we can do a large part toward ensuring the proper enforcement of this proposed legislation.

We will defer the redress of other Titles proposed by this Act to the appropriate bargaining units and their Unions, as it appears they will be more greatly impacted than will we. Once again, I thank you for this opportunity to speak to you about this very important and expansive Postal Reform Act of 1996. I will be happy to answer any questions the Committee may have.

Thank you.

Mr. MCHUGH. Thank you, Mr. Pesa. As I have noted earlier, all of the presenters' testimony will be entered into the record in its entirety. And, again, we appreciate you all being here.

Let me, before we get to some of the specifics of the various presentations, let me just start with a very general question, because those of us who have spent a lot of time on this process, as happens in any such endeavor, we sometimes ask ourselves what are we doing here.

How important is it in your either collective or individual judgments that we even undertake this exercise? Let me rephrase that in a different way. How important is it that we do something as a Congress at this point in time to provide the Postal Service with the kind of administrative and pricing flexibilities, product introduction, the kinds of things we have been talking about from day one? Or is it, do you think, just as effective to continue the way the service has been and preserve in its entirety the original 1970 act?

Mr. BILLER. Well, I would agree that 25 years is time to review what has happened. That is a long time. A lot of things have happened, and as I pointed out in my testimony, there are things that we can agree with, and there are things that we have to take strong opposition to.

What is important—again, I have to speak for the American Postal Workers Union—what is important is that at this juncture, having begun a process of reviewing and examining not only the past 25 years, but where do we go in the future, I think it is appropriate, certainly for my union. And I am sure the others can speak for themselves, associations, to see what we could do in conjunction both with this committee, the Postmaster General, and the Board of Governors.

Somebody raised a question about the summit. Well, you recall we thought it was a nice public relations gimmick when that was thrown at this committee without any discussion with the unions or negotiations at the time or arbitration.

And since, as my brothers here have attested to, the Postal Service had asked after the fact whether we were all interested in a summit; and, to my knowledge, the response has been unanimously yes, yet we—a long time in examining it. We were interviewed by an individual working for a company that supposedly will handle it.

So I think you are on the right track at least in examining not only the history under the Postal Reorganization Act, but where do we go in the future; and I think it is appropriate at this time. Twenty-five years is a long time, but only a small portion of my lifetime. Thank you.

Mr. MCHUGH. You have got an age thing today, Moe.

Mr. BILLER. Yes.

Mr. MCHUGH. I appreciate that, and let me just clarify that this is not meant to be a trick question. I am not trying to suggest if you say we ought to be doing this, that means you sign on to everything. I am just generally interested if there is an overriding opinion that maybe this is better—

Mr. BILLER. As I pointed out, we do not sign on to everything. There are areas that we have great concern.

Mr. MCHUGH. I understand.

Mr. BILLER. The price capsule rate commission, the additional authority given to the Rate Commission, some things we think the Board of Governors should have an authority, and certainly the privacy of the mail. I know there were statements made about what happens in other countries.

I think, with all due respect for ourselves and the pride in our country, I think the laws on privacy and sanctity of the mails have been more strong and, I think, very appropriate.

Mr. MCHUGH. Thank you, Moe. Vince.

Mr. SOMBROTTO. Well, almost in your opening statement you say you want to provide a better service. This is what this is designed to do, to make the Postal Service more efficient, to provide better service at the lowest possible cost. We are all in agreement with that, but using the first oath that a doctor took 2,000 years ago, the first objective is to do no harm.

And so we have to review what we are trying to reform and why we are trying to reform it, and as we have all pointed out in some respects—and some of us disagree, actually, on this panel of what is the right way to go—the fact of the matter is that there are a lot of things that you are proposing in this legislation that could be very positive for the Postal Service, some we think that could be very negative, and some disastrous.

So if we can wade and work our way without the question of quid pro quos that we have to do this to get that, then we have to be careful about that because we may give much more than we receive. And so in that kind of a situation, we may be better served if we did not do anything.

I am not suggesting that, because I would point out that almost 2 years ago I was the first one to raise his voice in the whole postal community about that we should look at postal reorganization, too. That is what I called it. You now call it H.R. 3717, which is the McHugh bill. And I hope your bill is going to be as successful as the first postal reorganization bill was.

Mr. MCHUGH. The McHugh bill if it passes; if it does not, it is the Blair bill. It will retain the prerogative of the Chair. Well, I appreciate that. Thank you. Any other gentlemen? Scottie.

Mr. HICKS. The Postal Service must have flexibility in dealing with what is going on in today's marketplace. We are not dealing in the 1970 era. It must have flexibility to operate in a more competitive market that we are in out there, so we need to change our world as it is and look at the universe the way it needs to be changed because it is a changing world we live in.

And I think 25 years later—and I commend you, Mr. Chairman and the members of the committee, for taking on this task because it is critical to our survival, providing service, universal service, uniform rates to the American public. I commend you for it.

Mr. MCHUGH. Thank you. Mr. Quinn.

Mr. QUINN. Well, far be it from me, Mr. Chairman, to rain on your parade, but when I testified before this committee in June 1995, I stated that there was nothing wrong with the Postal Reorganization Act and that Congress should leave the act alone.

The fact is, is right now the Postal Service is operating at record profits and volume, delays in mail delivery have been greatly re-

duced, customer satisfaction remains at extremely high levels, et cetera, and I do not think any legislation is absolutely necessary.

The fact is you had better be careful of what you ask for, because you just might get it; and I suppose while I am throwing bromides around, I might as well say, "If it ain't broke, don't fix it." Thank you, Mr. Chairman.

Mr. MCHUGH. The record will note a refreshing change from a year ago where there was a plethora of movie references that came—

Mr. QUINN. Versatility is the key to re-election.

Mr. MCHUGH. Scottie Hicks and I, both of whom are standing for re-election as well, we will take that under advisement, all of us. I appreciate that, and consistency is a virtue; and you have maintained it over the past 12 months, and I thank you for that. President Pesa.

Mr. PESA. My organization welcomes any involvement of your committee in the affairs of the Postal Service, especially with regard to our special needs in the Inspection Service.

Mr. MCHUGH. Right. I thank you. I just want to set the stage because we do have at least one opinion here that "if it ain't broke, don't fix it," and I respect that. I truly do, and there is no pride of authorship here beyond the fact that a lot of work went into it, but a lot of work goes into a lot of things that do not always grow to the extent that some would like. And if that is what happens here, that is fine.

Let me, with that—and I have got a lot of specific questions, but my colleagues have been very patient—let me defer to them for any questions they might have, and certainly I would defer first off to the gentlelady ranking member, Miss Collins.

Miss COLLINS. Thank you, Mr. Chairman. First of all, I think that it does not hurt to look at the Reorganization Act, and I commend you for taking on such a monumental task. The only thing I would caution you is not to rush.

An organization as big as the U.S. Postal Service, with the thousands and thousands of employees, I think really mandates that we move in a very deliberate manner, and our actions—you know, what amazes me about the Congress is one little word can change things for millions of people the world over.

So I would hope that you would not try to pass this legislation this year unless we really have time to go through it with a fine-toothed comb, line by line.

Mr. Biller, as this legislation stands, what would it mean to over 300,000 postal workers represented by the American Postal Workers Union, as it stands?

Mr. BILLER. The proposed legislation?

Miss COLLINS. Yes.

Mr. BILLER. Well, I think I pointed out in my testimony, first, we have very strong objections to access to the mails, and I have detailed and outlined what it would do. We are concerned about the additional authority given to the rate commission; we do not think that is necessary.

As a matter of fact, I believe the Postal Service has found that it is sometimes a pain to be dealing over the 10-month period. You could have a baby and more by then and sometimes more, I guess.

Miss COLLINS. Mr. Biller—

Mr. BILLER. Yes. Sorry.

Miss COLLINS [continuing]. Do you think that this is an attempt to privatize the Postal Service?

Mr. BILLER. Do I think this is? I hope not. That is not what I heard from the chairman of the committee. He made it very, very clear, I thought—and if it needs underlining, I will let him restate his case—he stated at the outset he was against privatization; and if I am wrong, he will correct me.

Miss COLLINS. I yield to the chairman.

Mr. MCHUGH. I am happy to respond to the gentlelady. It is anything but. It is everything but. I have to be very honest with you. I think there is—and I am sure this is one of the major motivators of the gentlelady's concern—a real interest in full and total privatization.

And what the intent of this legislation is, is to effect the kinds of changes that keeps the structure of the U.S. Postal Service, as most of us on this subcommittee not just admire and respect, but cherish in a very real way, so that we can deflect the kind of criticisms where they are unjust or just and continue to have it be what it has always been: the greatest handler and deliverer of mail anywhere in the world.

Miss COLLINS. Thank you. Mr. Chairman, may I reclaim my time? Mr. Sombrotto, you spoke against negotiating a platinum parachute, and recently I learned that the Board of Governors were considering a \$1½ million retirement package for Mr. Runyon.

Under H.R. 3717, bonuses in any amount can be approved if the Postal Service makes a profit. What do you think we can do to ensure that bonuses will not just become platinum parachutes for top management?

Mr. SOMBROTTO. Well, I am certainly against those kind of deals that could be made with the Board of Governors to provide platinum parachutes. But let me say about bonuses. I want to make that clear. My union stands dead against bonuses.

We are not interested in bonuses. What we are interested in is wage increases. We work hard. If we produce a profit for the Postal Service, we should share in that profit by wage increases, not by bonuses. The bonus system is what is going to destroy the Postal Service.

The postal supervisors and the Postmasters have now been intimidated into accepting agreements that are dealing with a large portion of their income is going to be on bonuses. They did not want it, and I guess that is what the Postmaster General talks about when he says that collective bargaining is broken.

The Postmaster General seems to think that collective bargaining works like this. He knows what is best for the workers. He knows what is best for the people that are employed by the Postal Service. So when he makes a proposal, we are supposed to say, "Good" and "Thank you very much for your proposal." He does not think that we have a role to make a decision as to what we think is our share, is our right, for our efforts.

And so he enjoys it because he can do that to the postal supervisor, he can do that to the postal managers. He can say, "Look, you have got to take this or else, or it is going to be."

So that is what he would like to do to us, and he is not going to get away with that. We are not going to allow him to, and we hope that you prevent him from doing that and you do not pass any legislation that would give him that authority.

So we do not want bonuses. Every carrier I represent wants to get paid for what they do commensurate with what they give to the Postal Service; they are not interested in bonuses. That is why we have this reign of terror in the Postal Service now.

That is why I was talking about the piano player in the house of ill repute. The people have to carry out their program, their policy, and if my only way of getting a raise is to push people, even if it is wrong, I am going to do it.

I mean, that is what is happening. They are creating tensions in the workplace that are unconscionable. I said it is cruel. It is more than cruel. And so we have to find a way to stop that; and this idea of getting a piece of broken chocolate or a candy bar because you are a good boy, they are going to patronize us with bonuses and make us feel good, that is not what we are about. We do a good day's work, we should get a good day's pay.

Miss COLLINS. One final question, Mr. Chairman. Mr. Pesa, why on earth do you think the inspectors prevented the police from intervening when a supervisor's life was in danger?

Mr. PESA. Under the present policy of the Inspection Service, we have been taken out of the direct process of being contacted by employees or managers, and there are many cases like that.

Miss COLLINS. So, Mr. Pesa, does that mean, then, you are not postal police anymore; now you are just security guards?

Mr. PESA. No. They cannot change our legislative powers. They are just making us act as security guards and curtailing our duties as police officers.

Miss COLLINS. Well, that is what I mean.

Mr. PESA. Yes.

Miss COLLINS. In effect, that is what they are doing.

Mr. PESA. Yes. There was another case where our officers were right in front of a post office where a man was passing stolen money orders. They were ordered not to go in, just to take the license plate number, and then watched the man escape in his car. They were told not to intervene. I have no idea why.

Miss COLLINS. Thank you, Mr. Chairman.

Mr. MCHUGH. Obviously, we are being called for a vote. And I think this would be a good place to take that break. If I could impose upon you good gentleman to stand in recess, and we will try to get back as soon as we can. In fact, we will be back—I will be back in 12 minutes. So we will stand in recess.

[Recess.]

Mr. MCHUGH. Thank you for your patience and staying with us. Let us get right back into it, and I would be happy to yield to the gentleman from New York, Mr. Owens, if he has any questions for the panelists.

Mr. OWENS. I would like to explore the privatization angle a little more. I think we can assume that the Postal Service can go ahead with privatization without this legislation in a number of areas. In fact, I think that it has been noted considering privatizing

priority mail and that there is already a prototype for priority mail in the Bronx not too far from my district.

The Bronx Priority Mail Processing Center is running right now, but they are using postal workers to do it. The question is, Why do you need to consider prioritizing if you are operating it already, and it is still a good job? Do you know anything about that, Mr. Biller?

Mr. BILLER. Oh, sure. I wish I had brought the documentation. I have to mimic my friend here. Actually, I have read a number of the Postal Service's newsletters, particularly one from the Southwest Region—Oklahoma, Kansas, that area—and releases from the Postal Service telling us what a great job we are doing. He has got now the best record, 90 percent overnight delivery of mail—those are his figures—and yet he is looking to outsource and contract out.

As a matter of fact, in these priority mail centers they called us together in January of this year and said they were going to get, I think, 52 new priority mail centers, and they were starting privatizing one on an experimental basis in Jacksonville, FL, picking a low-wage area. And they wanted everybody to cheer, and we said we would wait.

Now, for the last 4 months all that they are talking is privatizing this priority mail, et cetera, and I just wonder if we are doing such a great job and you are getting better overnight delivery than ever before.

And I will ask you now to give me your permission later to enter it into the record when I bring the official documents here. Well, it is clearly the purpose—I suspect that when provision comes, it will not be here at one shot, probably piecemeal at a time.

They have given this stuff away over the years. As I say, I have watched 18 Postmaster Generals, and I am going to be kind enough to send you and the chairman a 60-second cassette that Larry King did on me because he said I point out 18 of them.

I am still here. So let me just tell you, every one of them comes in and tells you we know there is a quasi-military culture in the Postal Service and we are going to change it because it should change. The players change, but nothing else has changed.

And I told you May 8, 1997 will have been 60 years—where were any of you guys then—OK—since I entered the Postal Service. Maybe it is time for people to tell me to go, but they get coopted by the bureaucracy no matter who they are, and nothing changes.

Now, Vinnie gave you the story about the guy playing the piano, and I do not want to go into—he was polite, saying it is a house of ill repute, whatever. I do not know what they were doing upstairs or downstairs—it is not my business—but that is all they are talking about.

On the one hand, they call us in to cheer in January—three cheers; we are doing priority mail; you are going to make it big—talking about contracting out. When I discussed it with the Postmaster General, I said, "How can you have us in the cheering squad when you want to give our jobs away and all that stuff?"

He says, "Well, we are just saying that it is all out on the table;" but I said, "We are not on the other side of the table," so I do not know who he is negotiating with. But I tell you, you have got to watch it because very shortly—I am trying to document it now—

I do not have it all, and I hope it is not the way I see it, but you folks may be shocked out of your wits as to what I hear is going on.

But I do not want anything just on hearsay. I will investigate it myself; and if it is so, it will be brought before this committee record time, believe me.

Mr. SOMBROTTO. Well, if I may add something to what Moe said.

Mr. MCHUGH. Sure.

Mr. SOMBROTTO. I look at it in a somewhat different way. I think that the Postmaster General does what thugs do when they say, "If you do not do it my way, you are going to have to do it anyway."

And so if we do not agree to their conditions they set up for collective bargaining, they use the idea that they are going to privatize their outsource as a stick against us. Now, either you cave in or we are going to take your jobs away from you in another way.

I think that is a dangerous way to do business. I think it is not only dangerous for the men and women that work in the Postal Service; it is dangerous for the institution itself.

As I said, this Postal Service has a limited time. Moe likes to talk about it—and he is right—he has been 60 years; I have been over 50 years in the Postal Service. I am much younger than him, and he is 35 years older than I am.

Mr. BILLER. That is true.

Mr. SOMBROTTO. But the fact of the matter is that you can privatize the Postal Service incrementally by doing what he is doing, by giving away the best parts and the most productive parts of your business. We did it with express mail.

We gave away express mail, which was a very productive product that the Postal Service invented. The idea of overnight delivery was ours and then we gave it away to the private sector by writing a letter in the Federal Register. Then-Postmaster General Bolger did that.

Now, the question of priority mail is a very, very profitable line of postal business. A lot of people would like to get their hands on it, and so he now is trying to make it easy, easy for us—for him to intimidate the workers to agree to his views of what the future is—

Mr. OWENS. Well, maybe I should put my question another way. Do we need a different kind of legislation maybe to protect the Postal Service from reckless, too-rapid prioritization?

Mr. BILLER. May I interject? That is what I requested in my testimony, that you put in legislation to prevent them from outsourcing because it goes further than that. You are going to find that doing remote bar coding now—check New York Life Insurance Co. They do their claims and remote encoding in Northern Ireland overseas. Other than they had made a statement sometime back that they would not do that, that is it.

They can do this work overseas, and we will have to compete with Bangladesh for 50 cents a week. We are just not going to do that. And I think that it is important that you have legislation to prevent outsourcing, yes.

Mr. OWENS. Do you think we need a buy-American provision in the Postal Service legislation?

Mr. BILLER. I will give you my card, Congressman Owens. All of you—then you will have it. On the way out, I will give it to you. Thank you.

Mr. OWENS. Privatization and outsourcing, they are waves of the future, but it can be done in a reckless way; it can be done in a ridiculous way. To have our Postal Service outsourcing to foreign countries would be the most ridiculous thing I could imagine while our folks go without jobs. That would really be going much too far.

So are there any things you think legislation could do to remedy some of the problems you have encountered? Mr. Quinn, you said just leave things the way they are; and it is not broken, so do not fix it.

So, obviously, your answer is, no, just leave it alone. At this point in history, we do not need anything done that you do not see in this present legislation that is important to workers and important to constituents out there who are receiving mail.

I notice most of you say that there is a high level of customer satisfaction. Evidently, if it is 75 percent improved in the rest of the country, then Brooklyn is a unique place because right across Brooklyn—and I do not mean just my district, we have four or five congressional districts.

That is 2½ million people, and everybody complains the same way. It gets worse all the time instead of getting better. So the rest of the country is getting great mail service, obviously, but we are certainly not in Brooklyn.

Mr. BILLER. Well, Mr. Owens, I am not saying that everything is perfect. What my trepidation is, is that the Congress will not be selective in curing the ills that may be in existence, and they are going to get involved in other things when they really have no idea what the long-term ramifications of the legislation may be.

And some of the things that I pointed out in my testimony focus in on that, that some of the things on the surface sound good; but after perusal, you realize that there are problems, serious problems underlying some of the proposals, albeit good and perhaps well-meant proposals.

Mr. OWENS. Well, I think our chairman has done a very Herculean job and been quite thorough, probably set a record in terms of the number of hearings he has held, and the legislation is quite thorough.

I am just afraid I am going to make a few headaches for him because I am working on a package of amendments, and I was just wondering if there was anybody who wanted to add anything to my package of amendments.

Mr. SOMBROTTO. Well, again, I must say this, because, again, as a union, we are not in the business of trying to take jobs away from people.

We are trying to help produce productive jobs where people make a contribution and are able to earn a living to support their families and make a contribution to the general welfare of society by paying their taxes and doing all the right things.

But I must advise that a Postmaster General holds enormous powers and can do a lot of things, good or bad. And then they do not stay around too long. I mean, if you look at the tenure of Post-

master Generals just in the last 20 years, you see that the time that they spend on the job is very limited.

And so whatever he starts to do now, whether it is like the idea, the silly, odd notion of privatizing this priority mail, then he leaves.

He maybe leaves next year; and if he is successful in getting his platinum parachute, unless we shoot it full of holes, he is able to leave and say, "Well, that is it," and then everybody else is left with the stink that he left behind. That is why there is an oversight committee.

And I must say this. It is not toadying up, but this is a unique hearing, and I want to commend the chairman because he is giving us a chance to say the things we want to say and say them how we want to say them because each one of us, in our own way, really loves the Postal Service, loves what it does for the people, loves what it does for the society, and we want to see it healthy, progressing, and get even better. That is our goal. And so we do not have any differences.

You know, you stated that in your statement, and we confirm what you are saying, and we are delighted that at least we are holding these kind of open hearings. But, again, you can understand our trepidations, as Brother Quinn said, about certain elements of the proposed legislation that we see may have an effect that you do not see from the standpoint of how it can harm the Postal Service.

That is not to say you have not done great staff work and all the rest, but there is always an effort to try to fashion an agreement to get as much support as you can get and to try to have something that can be positive, and sometimes in making those compromises, things do not work out the way we would have wished.

So we are very cautious about the idea, but we welcome the fact that you are holding these hearings.

Mr. OWENS. Thank you.

Mr. MCHUGH. I thank the gentleman. I thank you, too, Mr. Sombrotto, for your comments. I have said in a previous hearing this bill is really a proposal of the possible and not the ideal.

It is without question one that has balances and counterbalances, and it was done in a way that fully recognized that some of the things we were proposing would be eminently suitable to some while other things would be less so.

And you could reverse it. Because if there is one thing I have learned—and maybe I have learned it incorrectly, but I think I make an accurate observation when I note that there are a number of forces that have a very direct and a very real impact on the process of the Postal Service. And when it comes to legislative exercise, virtually any one of them—not in combination, two, three, or even a plurality—any one of them can in all likelihood hold up the passage of a bill.

And I respect what Mr. Quinn is saying, but I see the future as being one of great danger if we continue the way we are. The trend lines for First Class Mail, which is where many would have you be only, are not good; and I think we have to do some things that allows you to go after some of that volume that you have lost for a variety of reasons, some of which Mr. Sombrotto has outlined, oth-

ers of which are known to us all, and to compete for this new volume of communications.

And this bill is one way that we propose to do that. And in that regard, let me just follow on with a couple of questions. Obviously, one of the major theories behind this is that we are providing a new paradigm—and I am dredging up the word that we beat to death last week, but this is the first time we have used it today; I will try to make it the last—to do away with that requirement that the Postal Service break even.

We provide for a profit. We provide the opportunity for the Postal Service to do that which it has been unable to do—and perhaps we are doing the wrong thing—but do what it is unable to have done in the past: to create a profit. During your comments, Mr. Quinn, you said that you think we should retain that current situation where you have to cover your costs. I assume that means that you do not support the initiative contained in this bill that provides for a profit. Is that a correct assumption? I do not see how you can have it both ways.

Mr. QUINN. Well, when you have to go so far to break even, it is a little bit ludicrous to start talking about what you are going to do with your newfound profits. But, obviously, I have no reservations.

If the company were to turn a profit, certainly from a union perspective, you would like to deal with an employer who is solvent at negotiations. But for a host of reasons, over the years, the Postal Service has always run at a deficit.

What I am, quite frankly, afraid of is that some of the provisions of this legislation could exacerbate that situation and some things that could, quite frankly, could be artificially tinkered with. Presumably, some of that language dealing with the Postal Rate Commission, as I said in my testimony, could have disastrous effects on that.

Mr. MCHUGH. Well, I appreciate what you are saying. I will refer you back to what you noted, though. The Postal Service right now is making record profits. That was your observation, not mine, although I will say it is an accurate one. You did say that. True?

Mr. QUINN. But it was making record profits for, you know, the last 18 months or so, you know, which, hopefully, of course, will be a trend that would continue. But, I mean, of course, you have to balance that over the long term. Presumably, since the passage of the Reorganization Act some 26 years ago, the fact is, is that there is a significant deficit that has been accumulated by the Postal Service; but, of course, as I also pointed out in my testimony, I dump a lot of that blame right here at the doorstep of Congress.

If Congress had not passed the kinds of legislation that were injurious to the Postal Service's long-term financial interests, the fact of the matter is, is that the Postal Service would be in marvelous financial shape.

I think Congress has taken temerity to an art form to put in legislation that cost the Postal Service \$14 billion and then comes back and says, Now that we have new legislation, that we are going to do even more for you. I find that argument somewhat incongruous.

Mr. McHUGH. Well, I would be the first to agree that beyond debate, I believe, the Postal Service has been a cash cow. I mean, we are talking \$14 billion.

I am proud of the fact that we resisted the very heavy temptation to go on prefunding for health insurance that would have hit you for another, depending on whose calculations you use, \$9 to \$11 billion. And I would prefer not to see that kind of thing continue in the future.

I think Moe Biller made some interesting statements in his testimony as to how some of the things we are proposing to do might invite more rather than less of that in the future.

And I think, while I am not prepared to say we are going to accept his remedies necessarily or reject them, but I think that is something we have to take a look at.

But in the context of this bill, it is very important that we say we are going to take on a new approach that allows a profit or if we are going to continue the PRC as it is today. That is a very fundamental thing.

Mr. SOMBROTTO. But there is an inherent danger to the concept of making the profit. And I think that what Brother Quinn said is right on target: \$14 billion has been taken out of the Postal Service. They have lost about \$8 billion in equity over the 25 years. If they did not have to pay that \$14 billion to the Postal Service, they would have still a \$6 billion excess as we speak today.

But the danger is when you start to talk only in terms of business, then you forget about service; and this is to be a service-oriented institution. We deliver the same product to the same people for the same price, no matter where they live in this country.

And so some of it, by nature of the fact of the demographics of our society, the geography of our society, lends itself to not making a profit. So if you talk about profit, so then you would eliminate rural delivery. Why do you need rural delivery? There might not be a profit in rural delivery.

If you wanted to do it on a cost-account basis, there may not be. And so if you really are a business, you would do what United Parcel does and say, Well, we do not want to deliver to Alaska because that is a negative loss to us, and we are not in the service business; we are in the profit business.

So the idea that we could make profits is not inconsistent with what the Postal Service could do, but they should not do it to the detriment of the service. We must contain that element of our business that requires for us to provide the best possible service, and so when there is a competition between service and profits, in the business world service always winds up getting the short end of the stick.

So while we are not philosophically against the idea, and I think we can demonstrate that over the past 25 years the Postal Service has really operated on a profit basis, we do not want to eliminate the idea that this is still a public service.

Mr. McHUGH. And I appreciate that. And that is why in the bill we try to take a very carefully crafted approach with regard to the competitive area where you can make the profit because, in theory, you will be out there, as the word suggests, competing against certain segments of the private sector. And you have the noncompeti-

tive basket, as we put it, where you continued to place the emphasis on service, on the monopoly mail, on the First Class Mail, et cetera. And I think you are right. I think there is an important distinction.

And the last thing we are seeking to do in this bill is to put the issue of profits into that basic service, whether it be in Alaska or whether it be in Congressman Owens's district because that is, as I said in my opening comments, the core principle of this bill, to continue that universal service not just as a requirement, but the ability to provide it, hopefully better. And that is the intent of that.

Mr. Biller, you made some comments in your opening statement and then later in discussions with Congressman Owens about contracting out. Obviously, this is something that is important to your people, and it is important, I think, to the entire process.

Is there anything that is contained in any of your individual bargaining agreements that in any way addresses these issues at the moment?

The impression I got from your discussions with Congressman Owens is that the PMG is pretty much free to do what he will.

Mr. BILLER. That has always been the weakest part of our contract, and it is with many other contracts. Nevertheless, for example, when it came to this remote encoding, the previous Postmaster General had been determined to contract it out. Very limited restrictions on him. In any event, ultimately, the new Postmaster General came in, and he decided not to contract out.

There is not too much that could stop him, in my opinion. It is kind of a sketchy thing, and I believe that legislation is essential in that area because I told you what is even more dangerous today is that the work can be done overseas.

And, today, it may seem that I am talking kind of smug or something or whatever, but the realities are that we may wake up some day and find out that that is what is really happening, and I hope you folks get it before I do. But if not, that is what we will have to bring to you.

I think it is a very serious bid for our mail to be handled that way. As a matter of fact, in a remote-encoding bid, you do not even touch the mail; all you get is images across a screen.

Mr. MCHUGH. Thank you. Would any other of the presidents like to comment on that?

Mr. BILLER. Just one point, if I may, some ancient history. Vinnie addressed the urgent-letter bid. That was relaxed in 1979 and permitted Fed Ex to become international. That is not a different history than the parcel post business.

The Postal Service at one time had probably 90 to 95 percent of parcel post business until probably 40 years ago. United Parcel was a lot smaller and did not deliver into outlying areas.

For example, if they had to go to Podunk, IA, they would deliver that parcel to Des Moines, a metropolitan area, and then drop it in the Postal Service, kind of an indirect subsidy that got them to where they were and ultimately took over the business, for all intents and purposes, almost a monopoly.

So that the noncompetitive areas have to be regulated, and the Postal Service has to have freedom, particularly with new technology in the areas that they can compete. Congressman Owens

should know. I do not know how many mail deliveries you would get a week in Brooklyn, in many areas of Brooklyn—Bedford Stuyvesant and other areas—if it were privatized and what the prices would be.

So the greatest about our service is the universal mail service. You can take a letter and mail it in Puerto Rico to Guam to Alaska for the same 32 cents. I think that is something we have got to watch.

But if you look overall—I say without being a cash cow—we have managed. But I am interested because technology is changing. I think the noncompetitive areas still have to be reviewed by oversight of some sort. And I say I thought that the Governors should have a right to do some of the things that they have to do.

I think where we are at, I think that it is a golden opportunity that you have given to all of us. Ultimately, the decision is up to the Congress of the United States. What we are seeking may shock some of our friends, seeking common ground with both the Congress of the United States, the Postmaster General, and the Board of Governors and the American people and hoping—as Vinnie said, there is always room for improvement.

Nothing is perfect, including our system. It is great. We want to make it better, and we would like to help along and be part of that process.

And I think if we are all part of a process, we have got the same responsibility and accountability, but we have got to be part of a process.

Mr. MCHUGH. Thank you.

Mr. HICKS. If I may make a comment, Mr. Chairman, I do not think any of us is totally satisfied with the contractual language regarding outsourcing, contracting out, whatever; but basically our contract says—and probably others, to some degree—that the employer will not expand their current practices or policies regarding that aspect of it.

So, yes, we would like to have stronger language, but in this stage in life we have not had any problems with that that have been of any significance. They seem to not have been able to have expanded their policies or practices in that area with us.

And we are still growing at a record pace over the last few years, gaining 2 to 3,000 new routes each year, and it seemed not to be that big a problem.

But we would like to have stronger language, sure, but the profit aspect, I think, again, that we are looking here—we are here, all of us, trying to create our future to ensure into the next century and beyond how we operate, that we do provide the universal service at uniform rates.

I still admire you for your efforts in trying to create our futures together here with all of the players in this game. And the profit motive is there for discussion and debate, creating what is good or bad; but, again, I agree with my colleagues: We are always dead set against bonuses. We would like to have basic salary structure increases; but, again, when managers also have those incentives in their system—beginning level, mid-level, high level—as they range through the process of tenure in the Postal Service, we want that tenure also.

But, also, if there are profit motives and profit initiatives, then we are willing to work them as long as there are fair, reasonable, and equitable bargaining units.

Mr. MCHUGH. I appreciate that. I wanted to just very briefly on the bonuses, because, in my reading of your testimony, I do not believe that any of the prepared testimony dwelled on this issue.

And we do provide the opportunity, as is now extended to certain management-level employees in the Postal Service, to share in the newly created pool of profits, presumably, with all workers. And Mr. Sombrotto said that—you want wages, I understand, and I would like to—

Mr. BILLER. I agree with Mr. Sombrotto. We have both rejected bonuses. We are not, I think, going to get into it now. We are not dealing with labor relations. I will speak for myself—he has already stated—we object to the bonus system. It has to be bargained collectively, and we have rejected it before because it does not work. We do not think it works to anybody's benefit.

Mr. MCHUGH. May I interrupt you?

Mr. BILLER. Sure. You are the chairman.

Mr. MCHUGH. I appreciate that. I just want to ask you to do something—

Mr. BILLER. Sure.

Mr. MCHUGH [continuing]. Because I think one of the things that came through last week in the hearing was that we are all having a bit of a problem looking at the new provisions of this bill from the perspective of the world in which all of you have lived for the past 26 years. And, believe me, I have sat at negotiations tables when I was in local government.

I understand the difficulty of bargaining a wage package when bonuses are used in lieu of a percentage to your base pay. I understand that. But if you want to respond, fine, but I am not asking you to respond.

What I would like you to do is to go back and look at the bonus provisions as it is contained in this bill, and maybe we can talk about. Intent is one thing I understand. The intent was not to expose you or anyone to that kind of pressure.

I do not disagree with a word you are saying. It is, rather, to accommodate the creation of a profit pool that will come about through your labors and a profit pool that in this structure has never existed before because of the break-even requirement.

So it is a little bit different, and I would really appreciate it if you could go back and take a different look at it because what you are saying as to why and how you get to the table now, I recognize; I do not take exception to it. But we have got a little bit different—I will not say “paradigm,” but we have got a little bit different structure here. So if you would just take another look at that in that context, I would appreciate it.

Mr. BILLER. We will be delighted to look at it, particularly if you legislate the prohibition on outsourcing.

Mr. MCHUGH. The prohibition on what?

Mr. BILLER. Outsourcing.

Mr. MCHUGH. Oh, then we will talk. You go look, and we will talk.

Mr. BILLER. As long as we talk, we are OK.

Mr. MCHUGH. Let me acknowledge the presence of the gentleman from Maryland, Mr. Ehrlich, who has joined us. Any questions or comments at this time?

Mr. EHRLICH. Yes. I have a couple of questions with respect to the postal police—I have met with a bunch of your folks in my year and a half in public office. They have brought some interesting stories to me.

Can you describe for me generally your relationship with the Inspection Service and what problems you all are having right now? Obviously, I can read your testimony, and as I have told you, I have received anecdotal evidence from personal meetings with my constituents. But describe for me what is going on.

Mr. PESA. Basically, it is a complicated issue. We believe that the Inspection Service has some sort of a plan to do away with our force gradually over time, and we do not know how or why they are doing this or what their plan is.

Mr. EHRLICH. A slow, gradual chipping away at your jurisdiction and what you all do.

Mr. PESA. Yes, sir.

Mr. EHRLICH. Can you give me examples?

Mr. PESA. Recently, in the last 3 years, they have reduced our responses to incidents where we almost do not go to any of them anymore unless an inspector authorizes it, and that is only done through a complicated process.

Mr. EHRLICH. Right. And in that way they are chipping away your jurisdiction.

Mr. PESA. Yes.

Mr. EHRLICH. Now, you believe yourself that you are qualified to be law enforcement officers. Correct?

Mr. PESA. Yes, sir. We believe the statutes give us that authority.

Mr. EHRLICH. And I do not disagree with you. Where are they coming from with respect to that issue? They obviously do not share that conclusion. And what, playing devil's advocate, what grounds do they cite to deny you that status?

Mr. PESA. Well, as far as I understand it, their position is that we have no authority off the property, but yet we are made to do things off of the property as police officers, such as following postal revenue trucks with shotguns and unarmored cars and trucks with bullet-proof vests, and our duties are to respond to any threat against that vehicle or the money or the driver's life as police officers.

But yet we are told we have no authority off the property, and on the property we are not made to respond, and we are never allowed to take the arrests that we believe we are making against perpetrators or people who assault postal workers.

They are given to local law enforcement many times, which in New York State has been deemed to be unlawful. The New York State Supreme Court ruled that any arrest that is given from one officer to another is a turnover arrest, and any testimony by that officer is tantamount to perjury.

And whenever we apprehend somebody, even on postal property, I have personally been involved with inspectors practically begging

the local law enforcement to take the arrest because they do not want us to have it. And many times they have done that.

So it is very complicated. It is going on in many places.

Mr. EHRLICH. And, of course, local law enforcement is indifferent. They want to do their job——

Mr. PESA. Well, they want to do their job——

Mr. EHRLICH. They have got to be confused somewhat. Correct?

Mr. PESA. Yes. They are very confused. And one time it took two attempts to get local law enforcement detectives on the NYPD to come and take an arrest from our officers, and they did it quite reluctantly.

Mr. EHRLICH. Now, as I have said, I have had anecdotal evidence, I have read your testimony some, and we have looked into this issue a little bit. It seems as though your duty to conduct preliminary investigation would, by necessity, take you off property.

Mr. PESA. That is correct.

Mr. EHRLICH. And it seems to me that fulfilling your duty pursuant to something you are supposed to do, conduct preliminary investigations, which takes you off property, you are now in no-man's land under the present state of the law. Is that correct?

Mr. PESA. Yes. To give another anecdote, I, myself, was one day one block away from a letter carrier who was being robbed at gunpoint, but because of the new Inspection Service procedures, the carrier, when he went into a neighbor's house to report it moments after he was robbed at gunpoint, he called his supervisor, who could not call our people as he had done in the past.

He had to call New York, our control center, who then had to get an inspector on the phone to ask if our people could respond to the carrier who had just gotten robbed.

And by the time I was told to go, I was about 7 miles away from Glendale, Queens, where it had taken place; and I was only a block away from the carrier, on a patrol, that I really do not know why I am patrolling——

Mr. EHRLICH. Right.

Mr. PESA [continuing]. Because I am told to go out every day and patrol, but I have many examples to give you that are more ludicrous than the last.

Mr. EHRLICH. Well, that is pretty bad. Mr. Chairman, I hope we look into this, because I think it is a very important issue.

Mr. MCHUGH. And I agree with the gentleman. Frankly, one of the reasons we wanted to have President Pesa here is to begin to open up the process of considering the kinds of issues that you and he have probed here today and that I know are of concern, and the entire issue of providing security into the Postal Service.

Mr. EHRLICH. And, obviously, the chairman has done a great job on this, and I appreciate the chairman's comments. And the chairman's comments just lead me to one final question for you, sir.

What statutory changes in the law, either to this bill or another piece of legislation or existing laws would you deem appropriate in order to fulfill your mission, which is the protection of personnel on the job?

Mr. PESA. I believe that if we came under Title 18, which gives statutory authority of property, we would be able to deal with these issues. And if I might expound on another question you had as to

the motives of why this is being done, I think the nature of postal crime is changing.

It is no longer somebody ripping open envelopes on the work floor to get some lunch money out of a contribution envelope. It seems to be open season on—

Mr. EHRLICH. That is a terrible thought, Mr. Chairman.

Mr. PESA. Well, I mean, like, religious contributions, like St. Jude's. I think that the criminal element realizes there is money out there. The checks are being stolen.

Mr. EHRLICH. Much more sophisticated crime.

Mr. PESA. Yes. Well, to give you another example, relay boxes were being broken into in the Bronx a few years ago, and a group of elderly people had been concerned, and they contacted the Inspection Service, and I had met with them as a union person extemporaneously about it.

They were told by the Inspection Service to form a watch committee so that they could call the local PD if they saw the relay boxes being broken into because postal police could not help them out with the problem, even though they said they saw us every day driving around the area.

So I think the Inspection Service's bent is more on the crime within the Postal Service, and I think the crime outside the Postal Service is being totally ignored.

Mr. EHRLICH. Well, sir, I have been given, as I said earlier, anecdotal evidence along the lines of instances that you cited. I think you will find a sympathetic ear on this committee to your problem. I look forward to working with you and the chairman and other members of the committee to give you some relief. Thank you for your testimony.

Mr. PESA. We appreciate your efforts and the chairman's efforts and the committee's efforts to do anything you can to at least look into these problems that we are having so that we could also know what our duties are, because we want to serve.

Mr. EHRLICH. At the very least, you should know the extent of your jurisdiction.

Mr. PESA. Yes, sir.

Mr. EHRLICH. That seems to be pretty fair.

Mr. PESA. Thank you.

Mr. MCHUGH. The gentleman makes an excellent point, and I thank him for his comments. Gentlemen, you have been here a long time. I have to be on an airplane sometime before midnight tonight, and we have three other gentlemen who have been very patient.

Thank you so much for your time and for your input. We look forward to a continuing dialog, as I said; and with your permission, we would like to submit to you some written questions which perhaps you could respond in kind to, and we will be in touch.

Mr. SOMBROTTO. We want to thank you. I speak for myself, and I am sure for my other colleagues here, we want to thank you for a real in-depth hearing. We appreciate your forbearance and your

ability to stay here this long with us. If we had our way, we would stay another 4 hours just to keep these blokes that are coming up next sitting out there, but——

Mr. MCHUGH. Democracy can be tough. Thank you, gentlemen.
[Followup questions and responses follow:]



American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Moe Biller, President
(202) 842-4246

September 13, 1996

The Honorable John McHugh
Chairman
Subcommittee on the Postal Service
Committee on Government Reform and Oversight
416 Cannon House Office Building
Washington, D.C. 20515

National Executive Board
Moe Biller
President
William Burrus
Executive Vice President
Douglas C. Hubbrook
Secretary-Treasurer
Thomas A. Neff
Industrial Relations Director
Robert L. Tunstall
Director, Clerk Division
James W. Lingberg
Director, Maintenance Division
Donald A. Ross
Director, MVS Division
George N. McKenzie
Director, SDM Division

Dear Mr. Chairman:

Enclosed are my responses to your written questions from
the July 18, 1996 hearing.

Sincerely,

Moe Biller
President

Regional Coordinators
James P. Williams
Central Region
Jim Burke
Eastern Region
Elizabeth L. Powell
Northeast Region
Terry Stapleton
Southern Region
Raydel R. Moore
Western Region

Enclosure

Written responses for July 18, 1996 hearing:

Responses by Moe Biller, President, American Postal Workers Union to Questions Submitted in Writing by the Honorable John M. McHugh

1. **Question:** In your testimony, you question the need for the establishment of an independent Office of Inspector General as contained in H.R. 3717. As you know, Members of Congress receive numerous inquiries from postal employees complaining about allegations of waste, fraud or abuse within the USPS. Yet these same employees express concern about the Inspection Service - an integral part of postal management - conducting investigations into their allegations. Would not an independent Inspector General provide the objectivity necessary to reassure your members that their allegations would be taken seriously?

Response: The APWU is open to further discussion on the issue of creating a new post of Inspector General for the Postal Service. However we believe that the concept of an "independent" Postal Service, answerable first and primarily to an "independent" Board of Governors, and then to Congress, should be maintained and strengthened. The Board of Governors is given responsibility by the Postal Reorganization Act for the "exercise of the power of the Postal Service," and yet this part-time Board has few resources under its direct authority to assure the best exercise of this power. The Subcommittee should consider strengthening the Board by requiring that the General Counsel, the Judicial Officer, the Chief Postal Inspector and the Secretary of the Board of Governors be appointed by and serve at the pleasure of the Board.

Under the proposal in H.R. 3717, I am concerned that creating another separate, independent entity with oversight and investigative responsibilities would further fragment authority and responsibility for postal operations. It would also potentially politicize the Postal Service.

Currently Congress has considerable investigative powers and resources. The Government Reform and Oversight Committee in the House and the Governmental Affairs Committee in the Senate have investigative staff, have the power to call hearings, subpoena witnesses and obtain information, and can call upon Congress's investigative arm, the General Accounting Office. The General Accounting Office also has numerous staffs for audit and program review and various hotline and "fraudnet" capabilities for receiving, investigating, and referring complaints about alleged waste, fraud and abuse. Law enforcement agencies of the federal executive branch, and state and local governments also have authority and resources to investigate illegal activities affecting the Postal Service.

The Postmaster General has considerable resources through the Postal Service's management structure to investigate allegations of mismanagement or wasteful activity.

I would encourage you to take steps to achieve a better match of resources and responsibility, and accountability, by strengthening the Board.

2. **Question:** The Inspector General Act amendments of 1988 established an Inspector General for the Postal Service. Since this time, what impact, if any, has the establishment of an office of Inspector General had on labor relations or the collective bargaining process?

Response: The Chief Postal Inspector serves as the Inspector General for the Postal Service. The Chief Postal Inspector had responsibilities well before the 1988 act to perform virtually all of the functions of an Inspector General of the Postal Service, including financial and program audits, and reviewing complaints about alleged fraud, waste and abuse. Passage of the Inspector General Act amendments of 1988 has meant few, if any, changes in labor relations or collective bargaining.

The American Postal Workers Union has long felt unease with the potential for Postal Inspectors, Postal Police and postal management to mix personnel management with law enforcement responsibilities. This matter was of sufficient concern that it became the subject of a memorandum of understanding negotiated by the APWU and the Postal Service during 1994 contract negotiations. I appreciate your concern for this issue as illustrated by your first question above. However, the best way to address this problem may be to move all of the Postal Inspection Service audit and law enforcement functions over to the Board of Governors.

3. **Question:** Postmaster General Runyon has stated his intent to keep postal rates stable until 2000. Arguably, this decision to forgo future rate increases would impact on ability of the Service to fund future wage increases. H.R. 3717 would end this "feast or famine" rate cycle by allowing the Postal Board of Governors (Directors) the opportunity to increase rates on a yearly basis and divide profits fairly and equitably among all postal employees. Why do you view this proposed structure as a step backward and an intrusion into the collective bargaining process?

Response: The Postmaster General's goal of keeping postal rates stable through 2000 may or may not be a deciding factor in the ability of the Postal Service to fund future postal wage increases. Rates were stable for a record four years from early 1991 to early 1995, despite increases in the various cost components of USPS operations. With that experience, it is not unrealistic for management to set a goal of extending rate stability from four years to five years. However, we do not accept the premise that wages will have to be restrained in order to keep postal rates stable.

As I stated in my testimony, we would be willing to support allowing the Postal Service to set rates for "competitive" mail if we also receive improved job security through a prohibition on contracting out. Setting rates for "noncompetitive" mail in the entirely new way proposed in H.R. 3717, however, raises some complex, interrelated and formidable issues. Our initial, primary objections are threefold:

First, having the Postal Rate Commission set an "x" adjustment factor to a standard inflation index is not workable. The "x" factor incorporates a substantial element of arbitrariness into the process. Congress, the proposed new PRC, and other players external to the collective bargaining process will invariably try to link the "x" factor to profits. The APWU is very reluctant to negotiate postal workers' compensation based on uncertain estimates of sharing future "profits." As a break even, nonprofit entity, the Postal Service does not have any basis on which to estimate "profits." "Profits" in the context of the Postal Service would be a very nebulous concept, since management or the Rate Commission would control the definition and could define them away. There is no standard for defining or measuring profits. There

would also be little protection from Congressional intervention to use any stated "profits" to subsidize other federal spending.

Second, H.R. 3717 would lock in for five years, with no chance for adjustment, the relative price of all noncompetitive products. This would make the Postal Service not more, but less flexible to respond to changes in market conditions for mail products that fall into the noncompetitive category.

Third, by giving the Postal Rate Commission the power to put arbitrary limits on the overall increase in those rates, H.R. 3717 would take away virtually all the power of the Postmaster General and the Board of Governors to affect those rates. The union would then be negotiating its labor contract with a management that does not have a role in affecting its revenue from noncompetitive services. The Postal Rate Commission would be an invisible force in collective bargaining that would never have to come to the bargaining table. That would be an impossible situation, and a setback for collective bargaining.

Changing the method of setting noncompetitive rates opens a formidable number of issues. By accepting your offer to consider adding prohibitions to contracting out in exchange for other considerations, I wanted to convey my belief that it may be possible, despite the formidable issues involved, to find a combination of reforms that would truly strengthen the Postal Service and make it more competitive for the future. I continue to hope that can be done.

4. **Question:** Have you, your staff or any member of your organization been contacted, in person or in writing, by any official of the Postal Inspection Service regarding H.R. 3717? If so, please provide for the Subcommittee the names, dates, and circumstances surrounding the exchange and the name of the PIS official and copies of any written communications.

Response: To my knowledge, no official of the Postal Inspection Service has initiated any contact, in person or in writing, with any staff or member of the American Postal Workers Union, or anyone directly associated with the Union.

Questions Submitted in Writing by The Honorable John M. McHugh to
Vince Sombrotto, President, National Association of Letter Carriers

1. In its report to Congress two years ago, the GAO called for a labor and management summit to address the difficult issues of labor relations within the Postal Service. I understand the Postmaster General has reissued his call for this summit. What is the status of this summit and are you pleased with the progress the Postal Service has made in planning for this event? In your testimony you voice concern regarding the provision establishing a Presidential Postal Labor Management Commission. Would you be supportive of this commission if the proposed labor management summit proves unsuccessful in addressing problems on the workroom
2. During the hearing, some witnesses repeated the Postmaster General's claim that H.R. 3717 places as much as \$4 billion in postal revenues at risk. I had an exchange with Mr. Runyon which clarified that "at risk" does not mean "lost". Do you believe that placing \$4 billion in postal revenues at risk is tantamount to losing such revenue? What does this interpretation say about the Postal Service's ability to compete?
3. In your testimony, you question the need for the establishment of an independent Office of Inspector General as contained in H.R. 3717. As you know, Members of Congress receive numerous inquiries from postal employees complaining about allegations of waste, fraud or abuse within the USPS. Yet these same employees express concern about the Inspection Service - an integral part of postal management - conducting investigations into their allegations. Would not an independent Inspector General provide the objectivity necessary to reassure your members that their allegations would be taken seriously?
 - A. The Inspector General Act amendments of 1988 established an Inspector General for the Postal Service. Since this time, has the establishment of an office of Inspector General impacted on labor relations or the collective bargaining process?
 - B. Have you, your staff or any member of your organization been contacted, in person or in writing, by any official of the Postal Inspection Service regarding H.R. 3717? If so, please provide for the Subcommittee the names, dates, and circumstances surrounding the exchange and the name of the PIS official and copies of any written communications.

Answers to Questions Submitted by the Honorable John McHugh to
Vincent R. Sombrotto

1. The NALC remains committed to participate in face-to-face discussions with the Postmaster General over the status of labor-management relations. Unfortunately, the Postal Service continues to drag its feet in engaging in such discussions. Even with the facilitation of the Federal Mediation and Conciliation Service, the movement towards a productive meeting with the Postmaster General or his representative(s) has been at a snail's pace.

The NALC continues to believe that the only meaningful, constructive, and successful labor-management deliberations can be conducted among the principals (i.e. the postal unions and postal management). A presidential commission cannot be a surrogate for productive discussions and would be doomed to failure.

2. The NALC believes that the potential to divert \$4 billion in postal revenue, as the result of undermining the double-postage rule, will erode the Postal Service's public service obligation. The issue is not competition. It is whether compromising the "first class mail" monopoly, including first class mail over 11 ounces (aka priority mail), will undermine the USPS' ability to underwrite the institutional costs associated with universal delivery at affordable, universal rates. The NALC strongly believes that any postal reform legislation cannot whittle away at the private express statutes, diverting mail from the Postal Service.

3. The NALC does not object to a truly independent Inspector General. To the best of my knowledge, the NALC has not been contacted by the Postal Inspection Service regarding HR 3717.



NATIONAL RURAL LETTER CARRIERS' ASSOCIATION

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December 23, 1996

Hon. John McHugh
 Chairman, Subcommittee on
 the Postal Service
 B-349C Rayburn HOB
 Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your questionnaire which was faxed to me on December 18, 1996.

1. The Postmaster General testified that lowering it to \$2 could put \$4 billion at risk. The NRLCA does not maintain an in house economist, nor do we have a computer with economic modeling. We believe it may be more appropriate to check with the USPS or the PRC, both of whom have substantial economic analysis capability. Indexing could be on the past history of inflation rate for postal rates.

2. Good idea, especially since it is now the law.

A. The inspection service has conducted studies, investigations, and issued reports that have been the basis for management to utilize against the rural craft.

B. No

I am happy to be of assistance. I look forward to working with you on postal reform issues in the 105th Congress.

Sincerely,

Scottie B. Hicks

Scottie B. Hicks
 President, NRLCA



National Postal Mail Handlers Union

William H. Quinn
National President

Mark A. Gardner
Secretary-Treasurer

Hardy Williams
Vice President
Central Region

Samuel C. D'Ambrosio
Vice President
Eastern Region

John F. Hegarty
Vice President
Northeastern Region

James C. Terrell
Vice President
Southern Region

Lou Kuchensrter
Vice President
Western Region

March 6, 1997

The Honorable John M. McHugh
Chairman, Subcommittee on the Postal Service
2157 Rayburn House Office Building
Washington DC 20515-6143

Dear Chairman McHugh:

I am writing on behalf of the National Postal Mail Handlers Union, and more than 57,000 mail handlers employed by the U.S. Postal Service, in response to the questions posed by your letter of August 6, 1996. I had not responded earlier because of the intervening enactment of legislation establishing an Inspector General for the Postal Service. Nonetheless, your staff has suggested that the Subcommittee would like the views of the NPMHU on the record of the hearing. Hence, this letter is being sent now.

1. Your first question concerned the views of the NPMHU on the relationship, if any, between the Postal Inspection Service or an independent office of the Inspector General and labor relations within the Postal Service. The primary concern of the NPMHU always has been to prevent interference in labor-management relations between the NPMHU and the Postal Service by outsiders to the process, including (but certainly not limited to) interference by the Postal Inspection Service and the office of Inspector General.

With regard to the Postal Inspection Service, I am pleased to report that the NPMHU and the Postal Service recently signed a Memorandum of Understanding to govern the role of the Inspection Service in labor relations matters. This memorandum, a copy of which is attached for your easy reference, should go a long way toward preventing the Postal Service's misuse of the Inspection Service in labor-related matters.

National Headquarters: One Thomas Circle, NW, Suite 525, Washington, D.C. 20005
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Similarly, when the 104th Congress created the new position of Inspector General of the U.S. Postal Service, it specifically recognized that the Inspector General should not be involved in labor-management issues. During testimony last year on postal reform, the NPMHU noted its concerns about the provisions of the so-called postal reform bill that were aimed at establishing an Inspector General, and urged Congress to exercise extreme caution in this area. In particular, I testified that, "if these provisions are retained in the bill, we recommend tight restrictions in the area of labor relations, especially with regard to investigations that may affect individual postal employees." As you undoubtedly know, the new law's provisions, while creating an Inspector General, also guarantee that the new position will not adversely affect any rights or benefits enjoyed by postal employees. The language contained in the law specifically provides that "[n]othing in this Act shall restrict, eliminate, or otherwise adversely affect any of the rights, privileges, or benefits of either employees of the United States Postal Service, or labor organizations representing employees of the [USPS], under chapter 12 of title 39, United States Code [the Postal Reorganization Act], the National Labor Relations Act, any handbook or manual affecting employee labor relations with the [USPS], or any collective bargaining agreement." The efforts that you and other members of the subcommittee made to ensure the inclusion of this statutory language did not go unnoticed, and are much appreciated.

In short, the views of the NPMHU in this area have remained consistent throughout the past few years. When the NPMHU suggested in 1994 that Congress create an independent Inspector General as a means of eliminating the abuse inflicted upon Postal employees by the Postal Inspection Service, the Union was hoping that an independent Inspector General would serve as a substitute for, and hence substantially curtail if not completely eliminate, the Postal Inspection Service. Put bluntly, an independent Inspector General was seen as preferable to the then-existing Postal Inspection Service because it was believed that an independent Inspector General would have less reason to be concerned with employee relations.

2. Your second question asked whether the Inspector General for the Postal Service, established in 1988, had an impact on labor relations. As you know, the 1988 Act allowed

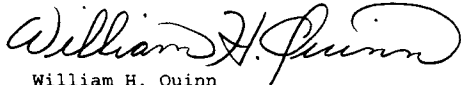
the Chief Postal Inspector to be named Inspector General for the Postal Service, and thus to my knowledge the passage of that Act, considered by itself, had little effect on labor relations. On the other hand, I do not have any reason to believe that the 1988 creation of this Inspector General for the Postal Service, under the direct control of the Board of Governors, did anything to eliminate or reduce the inappropriate activities of the Postal Inspection Service.

3. Finally, in response to your last question, to my knowledge no officer or employee of the NPMHU was contacted by the Postal Inspection Service with regard to H.R. 3717.

As always, I appreciate the opportunity to provide you and other Members of the Subcommittee with the views of the NPMHU.

Thank you for your attention and consideration to these matters.

Very truly yours,

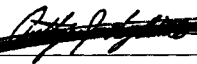
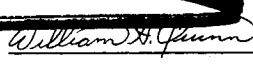
A handwritten signature in cursive script that reads "William H. Quinn". The signature is written in dark ink and is positioned above the printed name and title.

William H. Quinn
National President

Postal Inspection Service policy does not condone disrespect by inspectors in dealing with employees. The Postal Inspection Service has a long-standing obligation to comply fully with the letter and spirit of the National Agreement between the United States Postal Service and the National Postal Mail Handlers Union, and will not interfere in the grievance resolution process as it relates to Articles 15 and 16.

The parties further acknowledged that management is responsible for the facts by management prior to the issuance of disciplinary action, emergency procedures, indefinite suspension, and other administrative actions. Inspectors will not make recommendations, provide opinions, or attempt to influence management personnel regarding a particular disciplinary action as discussed above.

Nothing in this document is meant to preclude or limit Postal Service management from reviewing Inspection Service documents in deciding to issue discipline.

	
Anthony J. Veghante Manager General Administration CPWU/NPMHU U.S. Postal Service	William D. Quinn National President National Postal Mail Handlers Union, A Division of Laborers' International Union of North America, AFL-CIO

**MEMORANDUM OF UNDERSTANDING
COMMITTEE ON BENEFITS**

It is hereby recognized and acknowledged by the United States Postal Service and the National Postal Mail Handlers Union, a Division of the Laborers' International Union of North America, AFL-CIO, that the benefits structure in many industries in the private sector is changing and evolving. In keeping with these circumstances, the parties agree to the establishment of a national level committee to study the current benefits structure as set forth in Article 21 of the 1994 Mail Handler National Agreement. As a part of this study, the parties will also consider the feasibility of other benefit plans such as:

- (a) Child care;
- (b) Group legal services; and

(c) Long-term and short-term disability insurance.

During the term of the 1994 Mail Handler National Agreement, the Committee on Benefits will meet to study and discuss these subjects and, if mutual agreement is reached by the parties on any changes concerning the current benefit structure, appropriate amendments to Article 21 could be negotiated. It is understood such implementation could take the form of pilot or test sites at mutually agreed upon installations or Districts where a modified benefits structure could be further assessed.

The parties understand and agree that benefit plans which are currently mandated by statute will not be discussed by this committee.

Anthony J. Vegliante
Manager
Contract Administration
APWU/NPMHU
U.S. Postal Service

William H. Quinn
National President
National Postal Mail
Handlers Union, A Division of
Laborers' International Union
of North America, AFL-CIO

MEMORANDUM OF UNDERSTANDING

ON THE SUBJECT OF INSTRUCTORS COMPENSATION

The U.S. Postal Service and the National Postal Mail Handlers Union, a Division of the Laborers' International Union of North America, AFL-CIO, have agreed that employees in the mail handler craft who are assigned by the PEDC to act as on-the-job instructors will be compensated at the MU 5 while performing in that capacity.

Anthony J. Vegliante
Contract Administration
APWU/NPMHU
U.S. Postal Service

William H. Quinn
National President
National Postal Mail
Handlers Union, A Division of
Laborers' International Union
of North America, AFL-CIO

JAMES G. OBER, JR., PENNSYLVANIA
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ONE HUNDRED FOURTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
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August 6, 1996

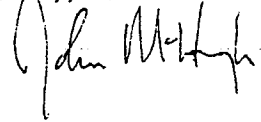
Mr. John Pesa
President, National Labor Council
National Fraternal Order of Police
309 Massachusetts Avenue, NE
Washington, D.C. 20002

Dear Mr. Pesa:

I again want to thank you for your appearance before the Subcommittee on the Postal Service on July 18. We would be appreciative of having your thoughts on the attached questions. Your responses will enable us to compile a comprehensive hearing record.

Again you have my thanks. With best wishes.

Sincerely yours,



John M. McHugh
Chairman
Subcommittee on the Postal Service

Enclosure

FROM : J. T. Clark/CCN Services/IGD PHONE NO. : 6195660525 AUG. 15 1996 12:06PM F01
 AUG 14 '96 10:31 AM TO : 6195660525 P.03

Questions Submitted in Writing by The Honorable John M. McHugh to
 John Pesa, Fraternal Order of Police, Postal Police Officers (PPOs)

1. As the only group before us today that works with the Postal Inspection Service every day of the week, I find it intriguing (and a confirmation of what we hear from the other unions' employees) that you support the creation of a Presidentially-appointed IG that is separate from the Inspection Service. For example, on page 12 of your prepared testimony you state:

"Up to now, there has been an inordinate lack of accountability by the Postal Inspection Service to anyone with oversight authority. This has compounded the deleterious effects that their inane policies and practices have on postal workers everywhere. Postal workers and customers are truly victims of a law enforcement agency that seemingly has only its own self-serving interests at heart."

How do you respond to the other panel members who raise concerns regarding the creation of an independent office of Inspector General?

2. In your prepared text you say that since 1983 Postal Police forces have been removed at more than 17 facilities and that many were replaced with contracted guards. Approximately how many of these 17 facilities had their security force contracted out?
3. You testified regarding the confusion on the extent of your arrest powers. What is your understanding of the arrest powers of a Postal Police Officers? How do your duties, responsibilities and powers compare to the uniformed officers serving the government through the General Services Administration?
4. On page 20 of your prepared text you state that in the State of New York Postal Police Officers are accorded "full peace officer's status." Could you explain the nature and extent of this authority and how it differs from the authority accorded Postal Police Officers by the Postal Service? Does PPO authority vary state by state? If so, what effect do these variations have on the performance of PPO duties?
5. On page 21 of your submitted statement, you mention the "extreme lack of education of the Postal Police Managers". In what ways do Postal Police Managers lack education and training? How are managers able to assume those positions without the training you describe that regular PPO's receive?
6. Are you aware of any trainees at the Federal Law Enforcement Training Center (FLETC), Glynco, GA who were not placed in police or law enforcement positions when such trainees returned to the entity that sponsored them? Do private security police/guards, under contract to the Postal Service, ever receive training at the Glynco facility? What does it cost the Postal Service to train each person at the Federal Law Enforcement Training Center? Do Postal Police and Postal Inspection Service personnel get the same training at Glynco? How, if at all, does the training differ?



FRATERNAL ORDER OF POLICE*

NATIONAL LABOR COUNCIL 2

August 22, 1996

The Honorable John M. McHugh, Chairman
Subcommittee on the Postal Service
US House of Representatives
2157 Rayburn House Office Building
Washington DC 20515-6143

Dear Congressman McHugh:

I would like to thank you for the opportunity you afforded the US Postal Police to appear before you and your subcommittee on July 18, 1996. On August 6, 1996, you generated several written questions regarding our prepared testimony. Please find attached the answers to your questions. I hope they will prove helpful to you.

Please let me know if I can be of any further assistance to you or your committee. Thank you for your interest in the US Postal Police Force.

Sincerely,

A handwritten signature in black ink, appearing to read "C. John Pesa". The signature is written in a cursive style with a long horizontal stroke at the end.

C. John Pesa
National President
Fraternal Order of Police
National Labor Council 2
PO Box 1764
Bronx, New York 10451-1764

On August 12, 1970, Public Law 91-375 was enacted by Congress, creating the United States Postal Service, and amending Title 39 USC, now referred to as the Postal Reorganization Act of 1970 (the Act). The enactment of Pub. L. 91-375 transferred over from the previous Post Office Department to the Postal Service all existing agencies, departments and operations, along with their orders, determinations, rules, regulations, etc, that had been issued, granted, or allowed to be effective.

The Act established a Board of Governors of eleven members, nine of which were to be appointed by the President with the advice and consent of the Senate (39 USC 202). Under the provisions of section 402, the Board of Governors was empowered to delegate the authority vested in it to the Postmaster General, including redelegation, as it deemed desirable.

The Postal Service was empowered to establish laws, rules and regulations, and to affix and attach penalties for violations thereto. Section 404 (7) of the Act granted specific powers to the Postal Service to investigate postal offenses and civil matters relating to the Postal Service. Section 410 (b)(6) of the Act imposed the provisions of section 8F of the Inspector General Act of 1978, and apparently appointed the Chief Postal Inspector as the Inspector General of the Postal Service. The Act also enacted sections 1735 to 1737 of Title 18 USC, Crimes and Criminal Procedure, to the Postal Service, for the investigative functions of criminal matters relating to the Service.

Postal Inspectors derive their authority from 18 USC 3061, "Powers of Postal Personnel", which states "officers and employees of the Postal Service performing duties related to the inspection of postal matters may, to the extent authorized by the Board of Governors, serve warrants and subpoenas, make arrests without warrant for offenses against the United States committed in their presence, and make arrests without warrant for felonies cognizable under the laws of the United States based on reasonable suspicion."-(see attachment 1)

It would appear that the Inspection Service has redelegation authority to empower its police force to respond and participate in off-property incidents at will. In this regard, there does not appear to be any legislative delineation between the powers of postal inspectors and postal police officers, except that which the Inspection Service chooses to impose on its uniformed police officers.

The connection of postal inspectors to the Act appears to be derived from 39 USC 1010, as inspectors claim to have been authorized to administer and certify oaths in any matter coming before them relating to their official duties (Pub. Law 91-375, August 12, 1970, 84 Stat. 733). It is unclear if this author-

ization is limited strictly to postal inspectors, or if postal police officers also have this privilege. For example, the exact same reference is attached to section 1201 (2), which authorizes security guards to have primary duties to include the exercise of authority to enforce rules to protect the safety of property, mail, or persons on the premises. Further research would be needed to ascertain the specific application this legislative section has upon postal police officers. It would appear that the Board of Governors Resolution Number 71-9 would be the most revealing source for this answer. We have thus far been unable to locate and retrieve this Resolution.

Postal Inspectors and Postal Police Officers appear to have the same general arrest authority under 18 USC 3062, which authorizes any law enforcement officer authorized to arrest for an offense committed in his presence, to arrest a person released pursuant to chapter 207 on reasonable suspicion if the person is violating a condition of release under 18 USC 3731, Release and Detention Pending Judicial Proceedings.- (see attachment 1)

In December, 1970, the Postal Service established its first Postal Police Security Force in Philadelphia, PA. On January 18, 1971, the Postmaster General transferred the administrative and functional responsibility of the Postal Police to the Chief Postal Inspector.

Original plans of the Postal Service were to establish a national police force of 5,000 to 6,000 officers. However, the force never expanded beyond 2,800 officers, peaking during the late 1970's and early 1980's. In the mid 1980's, postal police facility closures began in earnest.

As far as we have been able to determine, postal police officers began as security technician positions in the Post Office Department in September, 1970. Immediately upon enactment of the Act, a position description was created in which postal police officer duties were to perform or supervise the performance of law enforcement work relating to the security of mails and the protection of life, property and civil rights. This included maintenance of law and order, prevention, detection, and investigation of violations of postal regulations and laws, and the preservation of the peace.-(see attachment 2).

These officers were required to demonstrate proficiency with firearms, and were required to possess prior general experience in some type of protective services, with a knowledge of general law enforcement methods and techniques that could be applied to the performance of their patrolmen functions.

These officers were also required to have specialized experience that included a broad knowledge of police operations, practices, and techniques, which included preventing and investigating criminal acts-(see attachment 2). It was designed that there

would be a minimum of eleven grade levels available to these patrolmen through six or more years of general and specialized experience. It would appear that this was what the Board of Governors approved as requirements and terms and conditions for postal police officers. Given this, there is essentially no difference between postal police officers and postal inspectors. We know that investigative authority was intended and granted postal police officers by the Postal Service, at least as of 1970.

In 1962, the Post Office began to lease a great deal of its property. Facilities purchased or leased after 1962 somehow entered into a proprietary jurisdiction, which conveyed upon state and local police the same rights to enforce their laws as on any private property. This trend continued until about the mid-1980's, where it appears the trend reversed itself, and the Postal Service began to purchase properties, and construct its own facilities, or renovate existing buildings on newly purchased property. Between 1962 and the mid-1980's, policing authority of postal police officers apparently became more proprietary than exclusive or concurrent.

Curiously, however, it appears that when the Postal Service was in a tenancy phase, it retained for itself a greater police force than when it owned real property. If postal police had proprietary jurisdiction then, it seems reasonable that they would have exclusive, or at least concurrent jurisdiction on real property owned outright by the Postal Service today. Moreover, crime is far worse today than in the 1960's and 1970's, yet there are fewer postal police officers today than ever before in the Postal Service's history. The Postal Service has engaged two crucial areas in its latest trend of security measures-- 1) having local police respond to major incidents of crime, and 2) retaining private security guards with no specific or general authority to enforce laws, rules and regulations, or make arrests for crimes against the Service.

It appears that the Board of Governors has enormous authority to designate as it chooses any officer or employee to perform "duties related to the inspection of postal matters". It does not appear in the best interest of the Postal Service that postal police officers should be restricted from performing such duties, and there is nothing we have seen so far indicating that postal police officers can not perform such duties. Indeed, we would be surprised to learn that we were not granted such authority by the Board.

In fact, we believe that by the Board's authority, the Inspection Service has redelegation authority to the Postal Police Force to investigate all criminal matters related to the Postal Service and the US Mails, by virtue of 18 USC 3061(a). In a formal opinion handed down by the New York State Attorney General, for example, the law makes no distinction between the police powers of postal police officers and postal inspectors.--(see

attachment 3--Formal Opinion No. 94-F3, Apr 11, 1994, G. Oliver Koppell, Attorney General, Dept. of Law, State of New York)

Moreover, the Postal Service itself filed a Memorandum of Law in a case in Chicago, IL, reviewing the police powers of postal police officers, concluding that postal police have the police powers to issue penal citations--(see attachment 4--John J. Daley, Jr., Asst. Regl. Counsel, US Postal Service, Dec. 12, 1985, Chicago, IL)

We believe it would be very enlightening if we could obtain the application made by the Inspection Service for its police officers to be enrolled at the Federal Law Enforcement Training Center (FLETC). We believe that the Inspection Service had to certify its police officers as law enforcement personnel in order for them to be accepted into the FLETC program. To our knowledge, FLETC does not accept or train security guards. Enrollment is limited, as we understand it, to police officers of "083" and "084" status, firefighter police and investigators, and federally certified law enforcement officers. Just how the Inspection Service depicted postal police officers is unknown. We expect the Service will deny us access to these documents, and we appeal to Congress for assistance in this matter.

With regard to property restrictions, research has revealed that original language contained in 40 USC 318 contained a proviso that excluded the jurisdiction and policing powers of special policemen from the service of civil process, and restricted them to Federal property over which the United States had acquired exclusive or concurrent jurisdiction (June 1, 1948, ch. 359, title 1, 62 Stat. 281; and June 30, 1949, ch. 288, title 1, 103, 63 Stat. 380).

The Treasury, Postal Service, and General Government Appropriation Act, 1973 (Pub. L. 92-351; 86 Stat. 471 (1972); Section 610 of Pub. L. 96-74, 93 Stat. 559 (1979); Pub. L. 98-151, 97 Stat. 96 (1983); Pub. L. 98-441, 98 Stat. 1699 (1984); Pub. L. 99-103, 99 Stat. 471 (1985), struck out the restriction to certain Federal property over which the United States had acquired exclusive or concurrent jurisdiction.--(Pub. L. 100-678, § 8(b)(2).

Under 40 USC 318(b), Powers (of Special Police), these police were restricted in jurisdiction to property under their jurisdiction. However, an amendment introduced as Pub. L. 100-678, 8(b) struck out the provision in subsection (b) of 40 USC 318 which restricted the jurisdiction and policing powers to Federal property over which the United States has acquired exclusive or concurrent criminal jurisdiction (Nov. 17, 1988, Pub. L. 100-678, 8(a), (b), 102 Stat. 4052, 4053). It appears that this is repeated in Pub. L. 93-143, 87 Stat. 510, Title VI, Section 610, as well as Treasury, Postal Service, and General Appropriation Act, 1973, Pub. L. 92-351, 86 Stat. 471 (1972).

For reasons unknown to the FOP, the language of the annual Postal Service Appropriations Act appears to have changed to restrict authority to Postal Service property, by rider that had formerly eased the restriction of postal police to property-(Treasury, Postal Service and General Government Appropriations Act, 1994, Publ. L. 103-123, changed the word "authority" to "property", and deleted the language which had lifted restriction to Federal property.)

Extensive research into these matters is required to understand the intent of these amendments and their application to postal police officers. We have been unable to conduct more effective research into this matter. The assistance of a Congressional legal researcher would be of enormous value to all of us in understanding this complex issue. In any event, the effect of all of this has been to reduce the territorial jurisdiction of postal police officers while criminal activity against the Service continues to escalate against US Mail and postal employees off Postal Service property.

The legislative history of 40 USC 318 (a), (b), a, b, c, and d, indicates that Congress intended all federal special police to "have the same powers as sheriffs and constables upon Federal property, and to "possess the same powers and authority as the Metropolitan [Police] and [United States] Park Police of the City of Washington",-(see attachment 5--S. Rep. No. 1176, 80th Cong., 2nd Sess, reprinted in 1948 US Code Cong. & Admin. News 1627, 1628-1629 [letter of Phillip B. Fleming--attachment C]).

Not only did this confer site-specific peace officer status upon postal police officers, but it further extended their law enforcement powers off property, when authorized, presumably by the Inspection Service through the redelegation authority received from the Board of Governors and the Postmaster General. With that in mind, it is interesting to note that only postal police officers were authorized to enforce Title 39 laws and regulations. Only in very recent years were postal inspectors granted that additional enforcement authority.

It appears to have been well recognized by Congress that even with the authority to make and promulgate rules and regulations, and provide for their enforcement, Federal agencies frequently lacked sufficient statutes for all types of violations committed on Federally regulated property. To compensate, Congress enacted the "Assimilative Crime Statute" under 18 USC 13, (June 25, 1948, C. 645, 62 Stat. 686). This legislation absorbed and applied the exact same statutes of the state, territory or district surrounding the Federal property to the Federal property itself. It further authorized federal law officers to enforce these laws and arrest for crimes against them when committed on Federal property, even though such laws were not enacted by Congress or the controlling Federal agency.

In acknowledgement of this, and by virtue of their redelegation authority, the Postal Inspection Service issued in its internal Postal Police Officer Manual, Handbook IS-702 (1983) the mandate to postal police officers to "enforce all laws (including local ordinances) enacted for the protection of persons and property on Postal Service controlled property."-(section 143 b). The jurisdiction and policing powers of postal police officers did not "normally" extend to the service of civil process, and were restricted to Postal Service controlled property (as of the last printing, which was 1983). Exceptions to this were "hot pursuit" and "citizens arrests".

Section 234 of the IS-702 recognizes that postal police officers could find it necessary to place persons under arrest for violations of law not occurring on postal property, but cautioned that in such instances postal police officers would "generally [be] making the arrest as a private citizen" [absent actual consent of the Inspection Service during the specific situation, and which is still questionable with regard to implied consent] except in cases of "hot pursuit". Officers were instructed to be guided by the state laws in such instances, because some states do not recognize citizens arrests. To our knowledge, however, all states recognize federal peace officer status, as has been conferred by Congress since 1948.

In those states where postal police officers have been granted "peace officer status", this problem is essentially a non-issue. For this reason, IS-702, section 212 c, requires postal police officers "to be familiar with all laws, statutes, and regulations (local, state, and federal), which pertain to their duties and responsibilities".

The legal requirement for those eligible for 20-year law enforcement retirement is that 51% or more of a law enforcer's work must be spent in the performance of arrests, detentions, or investigations. It is in these areas, and only these areas, that postal police officers are prohibited from any activity. This is by mandate of the Postal Inspection Service. If we are to speculate as to why postal inspectors prevent us from doing our jobs, our eligibility for a 20-year retirement has to be considered a significant factor.

Since October, 1994, the New York Division postal police officers have been requesting a written arrest policy from Inspector in Charge Lee R. Heath. The reason for this request is that the arrest "practice" in place in this division appears to be in conflict with the national policy, and all published regulations governing this specific issue. Mr. Heath has consistently refused to provide such a document. Arrests are one of the most essential and integral duties required of our officers.

We believe that Mr. Heath has refused to provide us this policy because the current policy in place in New York is illegal, and he cannot reduce it to writing. The real practice in New

York is that postal police officers are strictly prohibited from making any arrests. They are verbally instructed to "turn over" their arrests to either local police, or to postal inspectors. Mr. Heath is unauthorized to mirror anything dramatically different from National policy. Therefore, we have serious questions as to where this effort is truly being spearheaded, and why.

By turning over arrests to local police, subjects are obstructed from exercising their due process rights guaranteed by the United States Constitution. The New York State Supreme Court has ruled that "turn over arrests" are hearsay, and therefore are illegal.

By turning over arrests to postal inspectors, those inspectors receive merit increases for the arrests. Previously, inspectors received bonuses known as "collars for dollars". Because of the scandalous abuses that occurred by way of that bonus practice, an outraged Congressional House Post Office Committee introduced HR 4400 in July, 1994, to place the Inspection Service under the Inspector General Act of 1978. As I understand it, HR 4400 passed the House, but had no companion bill in the Senate, and eventually died.

Mr. Heath has indicated that a "detainment policy" will be issued on or about October 1, 1996. This will cause great controversy among postal police officers, because such a policy will act to further dilute our Congressional authority. This is truly a matter about which we believe Congress should be concerned, and is another reason to appoint an Inspector General.

Postal Police Officers languish both without credit for their arrests, and with enormous liability potential for violating arrested subjects' rights. Yet, this practice continues, despite our objections and pleas.

If the Congress is looking for justification to place the Postal Inspection Service under the Inspector General Act, it should consider the Inspection Service's continual practice of violating the law, and flaunting Congress' intent. This is a dangerous practice that must not be allowed to happen in America. Without oversight, the Postal Inspection Service will continue to vacate its obligations, and violate its authority under the law. Except by appointment of an Inspector General, we see no other way to bring the Postal Inspection Service under control. Permit me to offer you some examples of why this is our belief:

By now you are probably aware of the Cleveland Drug Fiasco, as it has become known to us. Postal inspectors were using confidential informants (CIs) to infiltrate the workforce and "set up" postal employees with the lure of drugs. Much testimony was submitted in 1994 before the House Post Office and Civil Service Committee. I am enclosing extensive information on that matter, as well as the Minneapolis fiasco-(see attachments 6, 7).

What was so tragic about the Cleveland incident was that innocent postal employees were "set up" by unreliable CIs who falsely reported them. Their lives were destroyed; they lost their jobs, they had arrest records, they lost homes and families. This testimony so angered the House Post Office Committee that the Committee included in HR 4400 provisions restricting the use of confidential informants to Postal Inspectors, in addition to placing them under the oversight of an Inspector General.

Another less known, but equally egregious operation set up by Postal Inspectors took place in Hawaii. This matter involved the use of video surveillance in break rooms of postal employees. More than 1,200 hours of activity were recorded, to investigate an alleged gambling ring. All that was learned from their surveillance was that some employees ran a football pool. To save their efforts from being a total waste, one postal supervisor was fired. He appealed to the Merit Systems Protection Board (MSPB). MSPB overturned the firing, and criticized the Postal Inspection Service for violating employees' rights. MSPB also threw out the video evidence as unconstitutionally acquired.

On appeal by the state, a state district court backed the MSPB ruling. The court also upheld the dismissal of the evidence as unconstitutional search and seizure. The state took the case to the Hawaii Supreme Court, which lambasted the Inspection Service, stating, "Indiscriminate video surveillance provokes an immediate negative visceral reaction and raises the specter of the Orwellian state." Inspectors insisted they had consented to the surveillance. To this the court replied, "We have never held that an employer may consent to the search of an employee's person, and we reject such a notion as utterly repugnant to the constitutional right against unreasonable searches, seizures and invasions of privacy."-(see attachment 8--Hawaii vs Edwin Bonnel, Jr., No. 16031 to 16036, Supreme Court of Hawaii, Aug. 17, 1993)

In Milwaukee, WI, postal inspectors subjected students on a college campus to taped interrogations, forcing them to sign waivers of their rights, and taping them even if they did not waive their rights, to investigate a report about a mail bomb. Some students became worried, and brought in a lawyer. The inspectors dropped the investigation upon the arrival of the lawyer.

In Nebraska, postal inspectors set up 56-year old private citizen and former veteran Keith Jacobson, by enticing him to order a pornographic magazine they subsequently delivered. Their activities were ruled as entrapment by the US Supreme Court on April 6, 1992, and the case was thrown out, but not before the poor citizen lost his "private citizen" status--his name and photo appeared in newspapers across America. The Court ruled, "In their zeal to enforce the law, Government agents may not originate a criminal design, implant in an innocent

person's mind the disposition to commit a criminal act, and then induce commission of the crime so that the Government may prosecute."-(see attachment 9)

Even when investigating a postal police officer for a serious crime in New York, evidence seized by inspectors from his work locker was suppressed, because it was obtained illegally. The inspector took the stand during trial, and attested to the fact that he had the authority to search the locker because the Postal Employee Labor Relations Manual said he could. The judge blasted the inspector, stating that a Postal Service manual does not supersede the laws of either the state of New York or the United States.-(see attachment 10--People vs John Postell, Supreme Court, Criminal Term, Part 29, Justice M. Juviler, p. 34, col. 5, Jan. 21, 1992)

In or about 1991, New York Division postal inspectors shot and killed their own confidential informant during a bust that they themselves blew. All evidence was immediately removed from the scene, and local authorities could not conduct a proper investigation. This matter never received public attention or government review, to our knowledge.

On April 3, 1994, a postal inspector went to a family cookout. He was carrying his authorized weapon, which is in violation of inspection service policy (postal inspectors may only carry their firearms while in an official capacity). A friend grabbed the weapon while the inspector was unloading it, placed the gun to his head and mortally shot himself. The inspector was initially arrested by local authorities. A judge later dismissed the case.

The inspector was never disciplined by his agency, even though he failed to follow the most stringent and strictly enforced internal regulations of his position regarding the handling of firearms. A New York Division postal police officer whose service weapon had become cocked accidentally, tried to uncock the gun and caused an accidental discharge. There were no injuries, no property damage, and certainly no deaths. Yet he was issued a 14-day suspension without pay. This officer was held to a police officer's "higher standard", while an inspector who was negligent, who had disregarded agency policy, and who had contributed to a man's death was never disciplined. This incident never received public attention or government review, as best as we can determine.

The problem with all of these scenarios is that postal inspectors investigate themselves. It is extremely doubtful that any inspector will declare himself, or a fellow inspector, to be culpable of anything, much less negligent homicide. What is worse, the Inspection Service is mandated by the Postal Service's Administrative Support Manual, Section 339.1, to "provide information about the enforcement of postal laws to the

public."--see attachment 11. The Inspection Service has safely shielded itself from this type of "negative" reporting.

Can the Congress help but wonder if the Waco, TX, incident of 1994 would have been reported at all, had it occurred with the Postal Inspection Service instead of the Bureau of Alcohol, Tobacco, and Firearms? What accountability would there have been in such a case? How accurately would the facts have been reported? We can answer that question--there would have been nothing more than a cover-up. There is only one way we can see that might help end this reign of tyranny--a presidentially appointed independent Inspector General.

From the examples listed above, it is clear that the Inspection Service is neither salient nor motivated in legal or even moral issues. Yet they continue to practice as a federal law enforcement agency. The Honorable Ms. Norton of the District of Columbia, House Post Office Committee, on June 27, 1994, probably said it best: "The Postal Service has a postal inspector. His job is to secure the mail and the personnel who deliver the mail. The job of an inspector general is to investigate the internal operations of an agency itself. Otherwise, the agency is left to policing itself, and we have learned long ago that that is insufficient."

Ms. Norton was absolutely correct--the job of postal inspectors is to protect employees and the mail. The Inspection Service has abandoned its mission, and has entered into the lucrative market offered by the asset forfeiture program. It certainly appears that they have gone into business for themselves. Assets received are not being pumped back for the increase of the postal police force and protection of employees. What they are doing with forfeiture assets is something to which we are not privy.

The Postal Inspection Service has been policing itself for far too long, with accountability to no one. Their actions are proving how harmful this can be, not only for postal employees and patrons, but for every American citizen. I am fond of the wonderful quote of Baron Montesquieu, noted French lawyer and political philosopher, who said in 1752, "There is no greater tyranny than that which is practiced under the guise of the law, and in the name of justice." In a single sentence, there lies the perfect description of the Postal Inspection Service.

We believe that the Inspection Service deliberately underutilizes the postal police force for several reasons:

1. Inspectors do not want crime to be prevented. This would result in fewer investigation and less need for the number of inspectors in existence.
2. The Postal Police Force is invaluable for balancing any minority group requirements needed to be met.

3. The Postal Police are genuinely well-liked by the Postal Service employees, because they are a known and easily recognized presence that protects employees and makes them feel safer. The demand for postal police is high throughout the country, but the provision of postal police is funded through the Inspection Service budget. This generates a clear conflict of interest, in our view, because the Inspection Service is left to decide whether it spends its monies on itself, or on the protection of employees and the US Mail by postal police officers.
4. Postal Police provide great arrest and assault statistics that inspectors report as their own, particularly to the Federal Bureau of Investigation. High-profile arrests taken from postal police officers boost merit increases for inspectors, and were actually utilized by inspectors for the purpose of obtaining their own 20-year retirement.

Part 232, 39 Code of Federal Regulations (CFR), Conduct on Postal Property, was authorized by 39 USC §410, 4039b(3), 404(a)(7); 40 USC §318a, 318b, 318c, sec. 613, Treasury, Postal Service and General Government Appropriations Act, 1992, Pub. L. 102-141 (the authority of Postal Police Officers), and 18 USC Ch. 13, 3061 (Postal Inspector authority); and 21 USC 802, 844. This establishes jurisdiction for enforcement of postal rules and regulations by postal inspectors and postal police officers. Section 232.1 (a) of 39 CFR requires that the entire section shall be posted and kept posted at a conspicuous place on all Postal Service controlled property. This became what is known universally to postal employees as "Poster 7" (see attachment 6). Poster 7 expressly states: "Enforcement-- Members of the USPS Security Force (postal police) will exercise the powers of special policemen provided by 40 USC 318 and are responsible for enforcing the regulations in this notice in a manner that will protect USPS property. Postal Inspectors may also enforce regulations in this notice." (May, 1995-see attachment 12.)

Section 232.1(q)(2) authorizes local postmasters, "pursuant to 40 USC 318b, with the approval of the Chief Postal Inspector to enter into agreements with State and local law enforcement agencies to insure that the rules of 39 CFR 232 are enforced in a manner that will protect Postal Service property." (39 CFR, July 1, 1995--emphasis added.) However, nothing contained in the legal statutes appears to authorize the enforcement of USPS rules by private citizen contract guards. From what we can deduce, the Inspection Service and the Postal Service are conferring police powers on ordinary, untrained citizens. It does not appear to us that they have the authority to confer such powers, particularly since Congress conferred these powers upon federal special police officers.

The subcontracting issue is a complex one for our bargaining unit. Our history indicates that subcontracting rights were obtained by the Postal Service with the bargaining participation

and consent of the former postal police officers' union, the Federation of Postal Police Officers, in 1987. This was done five years prior to the certification of the Fraternal Order of Police National Labor Council, USPS 2--the current bargaining unit representative of postal police officers whose certification took place in October, 1992.

We believe that the matter of subcontracting was not a bargaining issue, since all the legislation we have researched indicates our powers are conferred directly by Congress. Congressional law is not a bargaining issue, and so we believe that this part of our agreement may be invalid.

We intend to challenge this provision of our contract through the arbitration process. What is actually the sticking point is whether the Inspection Service can "deputize" private citizen contract guards with the powers of special police as provided by Congress. With their redelegation authority, and with the approval of the Board of Governors, it may not be such an unlikely possibility.

Because we are such a small bargaining unit, we have desired, but have been unable to pursue these issues in a legal arena, as our funds could not accommodate a matter of such magnitude with respect to legal costs. Therefore, we have turned to the only other institution who can assist us--the United States Congress. We believe the intent of Congress will be the deciding factor in this issue. With the help of a Congressional aide, we may all be able to learn once and for all what that truly is.

I hope that this material proves helpful to you. I will now try to address your remaining questions from your August 6, 1996 inquiry. Please know that all material in this document was researched and provided by Ms. Michele Readinger, our FOP national representative of the Northeast Area. Ms. Readinger has my permission to maintain correspondence with the Subcommittee directly, in order to establish continuity between the your committee and the FOP, NLC 2. Ms. Readinger's information is:

Ms. Michele Readinger
National Representative
Fraternal Order of Police, NLC 2
55 Ketch Road
Morristown NJ 07960-2604
Phone: (Bus 718-402-8981)
(Res 201-267-9775)

Please let me know if I can be of any further assistance to you. Let me take this opportunity to thank you for taking an interest in the US Postal Police Force. I am at your disposal in any matter you believe relates to the safe and effective operation of the US Postal Service.

Response to written inquiries of the Honorable John M. McHugh, Chairman, US House Subcommittee on the Postal Service, dated August 6, 1996.

Question 1

"As the only group before us today that works with the Postal Inspection Service every day of the week, I find it intriguing (and a confirmation of what we hear from the other unions' employees) that you support the creation of a Presidentially-appointed IG that is separate from the Inspection Service. For example, on page 12 of your prepared testimony you state:

"Up to now, there has been an inordinate lack of accountability by the Postal Inspection Service to anyone with oversight authority. This has compounded the deleterious effects that their inance policies and practices have on postal workers everywhere. Postal workers and customers are truly victims of a law enforcement agency that seemingly has only its own self-serving interests at heart."

How do you respond to the other panel members who raise concerns regarding the creation of an independent office of Inspector General?"

Answer to Question 1

It is difficult to respond to the other unions concerns, since I am uncertain what their concerns actually are. I do know that in 1994, when legislation was proposed by the House Civil Service and Post Office Committee as HR 4400, which would have placed the Inspection Service under the Inspector General Act of 1978, at least one major union, ie, Mailhandlers, had given broad support to this effort, along with major mailer groups.

What is different with proposed legislation HR 3717 is that an Inspector General would be appointed over the entire Postal Service, not just the Inspection Service. This might pose problems for the major postal unions, since they would be uncertain what they would be dealing with. They may feel it is better to deal with the "monster" they have already, rather than face a new or different "monster".

I believe I can say with some certainty that the postal unions do not always reflect what their members desire, and I concur with you that rank-and-file postal employees would like to see more control over the Postal Service, rather than less. Additionally, postal workers currently are not covered by any type of whistleblower activities. It is hoped that if HR 3717 is enacted into law, such protection will be offered to employees.

There is little question that the major unions now are the only entities with any protection of this nature. Perhaps weakening

this power discourages the unions from backing the legislation, as they perceive a weakening of their own political power over all with the employees.

Additionally, the major unions apparently have a great deal of say as to how postal operations are conducted. An Inspector General may be perceived as a threat to their functional role. I do not doubt for a moment that the unions are clearly aware of the atrocities perpetrated by postal inspectors against their employees. Appointing an Inspector General over the Inspection Service is an entirely different matter than appointing one over the entire Postal Service.

Question 2

"In your prepared text you say that since 1983 Postal Police forces have been removed at more than 17 facilities and that many were replaced with contract guards. Approximately how many of these 17 facilities had their security force contracted out?"

Answer to Question 2

Based on facts obtained by Officer Mark Wilson, National Representative of the Western Area, the following is a list of postal police facility closures:

- 1974/1975 - 10 court facilities closed
- 1976/1978 - 9 facilities (mostly court) closed
- 1978/1981 - 1 main post office and 2 court closed
- 1981/1984 - 2 bulk mail centers and 2 court closed
- 1981/1984 - 1 postal sectional center closed
- 1984/1987 - 6 postal mail centers and 1 court closed
- 1987/1991 - 5 postal mail centers and 1 court closed
- 1994 - 1 postal mail center closed

More major postal police facilities closed between 1984 and 1991 than in all previous years combined. Hiring and training of postal police officers came to a virtual standstill. Of those closed, I am aware of at least six that have replaced postal police with private guards, both armed and unarmed. The following is a list of facilities where postal police once were assigned, and no longer exist:

- Gary, IN; Indianapolis, IN; St. Paul, MN; Des Moines, IA; Milwaukee, WI; Kansas City, MI; Topeka, KS; Scranton, PA; Norfolk, VA; Syracuse, NY; Rochester, NY; Biloxi,

MS; Memphis, TN; Tulsa, OK; Greensboro, NC; New Haven, CT; Providence, RI; Springfield, MA; San Diego, CA.

Private guards or limited duty mailhandlers are now in the following facilities where postal police were once assigned:

Springfield, MA; Norfolk, VA; Syracuse, NY; Rochester, NY; Westchester, NY; New Haven, CT; San Diego, CA; Gary, IN; Indianapolis, IN; Miami, FL.

Additionally, private guards are in numerous other postal installations throughout the country. A new national contract was awarded by the Postal Service to the American Protective Services Co., on July 1, 1996, valued at \$3,000,000. This exclusive contract permits the sub-subcontracting of private guards at postal installations throughout the United States. Of those installations, the following have been earmarked, and either already have private guards in place, or have a mix of both private guards and postal police working the same installation:

New Orleans, LA - currently has a postal police force and now has contract guards;

Houston, TX - currently has a postal police force and now has contract guards;

Selma, CA - no postal police--currently has contract guards;

Paterson, NJ - no postal police--currently has contract guards; shooting of postal supervisor by employee occurred on August 15, 1996--no mortalities;

San Mateo, CA - no postal police--currently has contract guards;

St. Louis, MI - currently has postal police and contract guards;

San Francisco, CA - currently has postal police and contract guards;

Atlanta, GA - currently has postal police and contract guards;

Palatine, IL - currently has postal police assigned off-site at Chicago, and contract guards; mortal shooting occurred here in 1994;

Chicago, IL - currently has postal police and contract guards;

Riverside, CA - no postal police; currently has contract guards;

Van Nuys, CA - no postal police; currently has contract guards;

Indianapolis, IN - formerly had postal police, currently has contract guards;

Oakland, CA - currently has postal police and contract guards;

San Francisco, CA - currently has postal police and contract guards;

Los Angeles, CA - currently has postal police and contract guards;

San Jose, CA - no postal police; currently has contract guards;

Gary, IN - formerly had postal police; currently has contract guards;

Paterson, NJ - no postal police; currently has contract guards; non-mortal shooting of supervisor by employee occurred on August 15, 1996;

Norfolk, VA - formerly had postal police; currently has contract guards;

St. Petersburg, FL - no postal police; currently has contract guards;

Jacksonville, FL - formerly had postal police; currently has contract guards.

The following is a list of pending locations identified to be included under the American Protective Services Co. contract:

Richmond, VA - currently has postal police;

Washington, DC - currently has postal police;

Baltimore, MD - currently has postal police and contract guards;

Cincinnati, OH - currently has postal police;

Springfield, MA - formerly had postal police;

New York, NY - currently has postal police;

Norfolk, VA - formerly had postal police; currently

has contract guards;

Dayton, OH - pending contract guards.

The American Protective Services, Co., contract provides for both armed and unarmed guards, and also provides for mobile patrol functions. It provides for arrest authority only to the extent provided by state statute as "citizen's arrest".

Question 3

"You testified regarding the confusion on the extent of your arrest powers. What is your understanding of the arrest powers of a Postal Police Officers? [sic] How do your duties, responsibilities and powers compare to the uniformed officers serving the government through the General Services Administration?"

Answer to Question 3

Our understanding of our arrest powers is explained at length in the attached letter researching our historical formulation, and legislative history and intent.

The General Services Administration appears to originate from the same legislation, and so I can only presume that they are guided in a similar fashion. I am aware that their arrests are processed through the Federal Magistrate Program, which is also mandated by legislation for the Postal Service. However, some divisions are not actively participating in this program, by Inspection Service directive.

This is in direct contradiction to Poster 7--Rules and Regulations Governing Conduct on Postal Property--which mandates that all persons violating Postal laws, rules and regulations must be processed in either a Federal District Court, or by a Federal Magistrate (39 CFR 232.1(p)(1); 39 USC 401, 403(b)(3), 404(a)(7); 40 USC 318, 318a, 318b, 318c, sec. 613, Treasury, Postal Service, and General Government Appropriations Act, 1992, Pub. L. 102-141, 18 USC 13, 3061; 21 USC 802, 844).

Question 4

"On page 20 of your prepared text you state that in the State of New York Postal Police Officers are accorded "full peace officer's status." Could you explain the nature and extent of this authority and how it differs from the authority accorded Postal Police Officers by the Postal Service? Does PPO authority vary state by state? If so, what effect do these variations have on the performance of PPO duties?"

Answer to Question 4

According to statistics dated December 27, 1991, submitted by Chief Postal Inspector CR Clauson to the House Post Office and Civil Service Committee, postal police have been granted peace officer status in five states: New York, Georgia, Tennessee, Pennsylvania, and the District of Columbia. This status is granted to postal police because of their federal authority as special police.

On April 26, 1982, the State of New York enacted Senate bill S. 9376, and Assembly bill A. 12394 (The Calandra-Lipschutz Bill), amending the criminal procedure law by adding a new section 2.15, conferring the powers of 1, 2, 3, and 8 of section 2.20 of the New York Penal Code to federal law enforcement investigators. It is noteworthy to mention that New York State made no distinction between postal inspectors and postal police officers in attaching them to this legislation, for the purpose of facilitating them to carry out their federal functions within the state.

According to a report issued by the Federal Law Enforcement Officers Association (FLEO) after passage of the legislation, the bill "encourages federal officers to intervene in state felony crimes committed in their presence by providing them statutory immunity from liability." The bill was designed to eliminate confusion over whether federal officers could, or should intervene to halt state felony crimes. The bill was signed into law by then-governor Hugh Carey, and granted limited peace officer status [to felonies committed in their presence] to federal law enforcers and criminal investigators in New York state.

According to a memorandum issued by the Commonwealth of Virginia on October 11, 1991, only those law enforcement officers and police officers having the powers of arrest for any law are considered to have peace officer status there. This appears to exempt postal inspectors and postal police officers, who are limited to the enforcement of only postal laws. Therefore, peace officer status does differ from state to state with respect to postal police officers.

This difference between the states can cause problems for postal police officers, because if a felony is committed in an officer's presence off property, and that officer lacks peace officer status in that state, then the officer can only intervene as a private citizen. The liability risks become mountainous to an officer in that situation. For example, if a carrier is attacked across the street from a postal installation, in full view of a postal police officer, while the moral obligation requires intervention, the civil obligation falls entirely upon the officer if any state legal impropriety occurs during the course of the officer's intervention.

Question 5

"On page 21 of your submitted statement, you mention the "extreme lack of education of Postal Police Managers." In what ways do Postal Police Managers lack education and training. How are managers able to assume those positions without the training you describe that regular PPO's receive?"

Answer to Question 5

Postal police managers are promoted through the ranks. There is no educational requirement for either postal police officers or any promotional level of the uniformed branch of the Service beyond a high school education.

Postal police officers have only attended FLETC since summer, 1994. Therefore, none of these officers have yet broken into the supervisory ranks, to my knowledge. While there are a scant few managers with college degrees, even these do not possess degrees in police science or administration. Worse, the vast majority of postal police officers were formerly postal clerks, mailhandlers, and carriers--none of them possessing a law enforcement background. These are the officers that are eventually promoted to positions of sergeant, lieutenant, captain and colonel (the highest uniformed rank).

We are now at a difficult crossroad, because our current managers possess less job knowledge than the officers returning from FLETC. Current managers have never been schooled in law enforcement training, particularly training in laws they are required to enforce. They have been trained at the Inspection Service training center, but the emphasis was never on arrests or police procedures, or laws or statutes.

It appears that the only interest of a police manager is to enforce interdepartmental rules and regulations among his or her officers. Due to this, the entire agency has lost sight of its mission, and its managers can not properly direct police officers in their duties and responsibilities as law enforcement officers. Sadly, they do not know how. This is creating severe morale problems within the Force, and the Inspection Service has turned a deaf ear to our pleas for help. Indeed, it would appear that this is precisely what the Inspection Service desires for its uniformed officers.

Managers are promoted through a process which is part interview, and part past job performance. At least that is the official process. Ask any officer, however, and he or she will tell you that promotion is according to who you are, and how well you are liked by the Inspection Service. When the FOP introduced a contract offer to instate written tests for supervisors, this proposal was fiercely resisted by the Inspection Service. Essentially, the "good old boy" network is alive and well and thriving in the Inspection Service.

Question 6

"Are you aware of any trainees at the Federal Law Enforcement Training Center (FLETC), Glynco, GA who were not placed in police or law enforcement positions when such trainees returned to the entity that sponsored them? Do private security police/guards, under contract to the Postal Service, ever receive training at the Glynco facility? What does it cost the Postal Service to train each person at the Federal Law Enforcement Training Center? Do Postal Police and Postal Inspection Service personnel get the same training at Glynco? How, if at all, does the training differ?"

Answer to Question 6

This question brings a smile to my face. Ms. Eleanor Holmes Norton once blasted postal inspectors as "the Keystone Cops" from her Congressional seat! To this day, postal inspectors do not attend FLETC. Postal inspectors are primarily recruited from college campuses where they then attend about a thirteen week training course given by inspectors at the Postal Service Management Academy in Maryland.

This is one of our biggest difficulties with inspectors--they are not trained in a police academy, never don a police uniform, and have no knowledge of police operations. Despite this appalling lack of knowledge, they are left to administer our police force, and their ineptitude has contributed to all of our problems today.

Approximately 72 federal law enforcement agencies participate in FLETC training. Generally, these agencies engage in extensive on-the-job training once their officers graduate from the FLETC academy, to streamline what they learned in practical application for their respective agency. Postal police receive no other agency training upon graduation.

I know of no other agency that does not place their officers into law enforcement positions upon graduation from FLETC. To do otherwise would defy the purpose of sending these recruits to FLETC to begin with. Agencies invest heavily recruiting their prospective candidates, including extensive background checks. They then must pay their candidates during training, and must provide health care and other coverage, uniforms and equipment, travel expenses, etc.

Private security guards under contract to the Postal Service are not required to have any formal training of any kind. It is left up to the contractor to provide any minimum training requirements established by a particular state for their certification and operation, if any such requirements exist. I know of no private security guards, or any other type of security guards being accepted into FLETC.

It costs the Postal Service approximately \$4,500 to train each candidate at FLETC, not including wages, transportation, and uniforms and equipment. Curiously, it used to cost the Postal Service \$25,000 for this training at the Inspection Service center, which was only a four week course, and which could not measure up in any way to the training given at FLETC. Postal police officers now receive eight weeks of training at FLETC.

I hope this answers all of your questions. If you still have questions, please feel free to contact me as below. Once again, I'd like to reiterate our thanks for your interest in the Postal Police Force. Please be assured that I am at your disposal should you wish to pursue any further matters regarding the US Postal Police.

Thank you for this opportunity to participate in the matters before Congress regarding the US Postal Service.

Respectfully submitted,



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ENC

appropriate United States district court after a finding that extraordinary circumstances exist, and that the delay of the preliminary hearing is indispensable to the interests of justice.

(d) Except as provided by subsection (e) of this section, an arrested person who has not been accorded the preliminary examination required by subsection (a) within the period of time fixed by the judge or magistrate in compliance with subsections (b) and (c), shall be discharged from custody or from the requirement of bail or any other condition of release, without prejudice, however, to the institution of further criminal proceedings against him upon the charge upon which he was arrested.

(e) No preliminary examination in compliance with subsection (a) of this section shall be required to be accorded an arrested person, nor shall such arrested person be discharged from custody or from the requirement of bail or any other condition of release pursuant to subsection (d), if at any time subsequent to the initial appearance of such person before a judge or magistrate and prior to the date fixed for the preliminary examination pursuant to subsections (b) and (c) an indictment is returned or, in appropriate cases, an information is filed against such person in a court of the United States.

(f) Proceedings before United States magistrates under this section shall be taken down by a court reporter or recorded by suitable sound recording equipment. A copy of the record of such proceeding shall be made available at the expense of the United States to a person who makes affidavit that he is unable to pay or give security therefor, and the expense of such copy shall be paid by the Director of the Administrative Office of the United States Courts.

(As amended Oct. 17, 1968, Pub.L. 90-578, Title III, § 303(a), 82 Stat. 1117.)

(a) Subject to subsection (b) of this section, officers and employees of the Postal Service performing duties related to the inspection of postal matters may, to the extent authorized by the Board of Governors—

- (1) serve warrants and subpoenas issued under the authority of the United States;
- (2) make arrests without warrant for offenses against the United States committed in their presence; and
- (3) make arrests without warrant for felonies cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a felony.

(b) The powers granted by subsection (a) of this section shall be exercised only in the enforcement of laws regarding property of the United States in the custody of the Postal Service, including property of the Postal Service, the use of the mails, and other postal offenses.

(Added Pub.L. 90-560, § 5(a), Oct. 12, 1968, 82 Stat. 998, and amended Pub.L. 91-375, § 6(j)(38)(A), Aug. 12, 1970, 84 Stat. 781.)

§ 3062. ~~Investigative authority for violation of~~ ~~of~~ ~~conditions~~

A law enforcement officer, who is authorized to arrest for an offense committed in his presence, may arrest a person who is released pursuant to chapter 207 if the officer has reasonable grounds to believe that the person is violating, in his presence, a condition imposed on the person pursuant to section 3142(c)(2)(D), (c)(2)(E), (c)(2)(H), (c)(2)(I), or (c)(2)(M), or, if the violation involves a failure to remain in a specified institution as required, a condition imposed pursuant to section 3142(c)(2)(J).

(Added Pub.L. 98-473, Title II, § 204(d), Oct. 12, 1984, 98 Stat. 1986.)

CHAPTER 204—REWARDS FOR INFORMATION CONCERNING TERRORIST ACTS

Sec.

3071. Information for which rewards authorized.
 3072. Determination of entitlement; maximum amount; Presidential approval; conclusiveness.
 3073. Protection of identity.
 3074. Exception of governmental officials.
 3075. Authorization for appropriations.
 3076. Eligibility for witness security program.
 3077. Definitions.

§ 3071. Information for which rewards authorized

With respect to acts of terrorism primarily within the territorial jurisdiction of the United States, the Attorney General may reward any individual who furnishes information—

- (1) leading to the arrest or conviction, in any country, of any individual or individuals for the commission of an act of terrorism against a United States person or United States property; or
- (2) leading to the arrest or conviction, in any country, of any individual or individuals for conspiring or attempting to commit an act of terrorism against a United States person or property; or

POSTAL FIELD SERVICE QUALIFICATION STANDARDS

Code: 2335*
(p. 1)

POST OFFICE DEPARTMENT

Security Technician Positions, PFS-5/15

Description of work

*Performs or supervises the performance of law enforcement work involved in the security of mails and the protection of life, property, and civil rights in an assigned area.

Enforcement, detection, and investigation of violations of laws; and the preservation of peace. This protection is against criminal and noncriminal acts, both willful and inadvertent, and may involve making arrests.*

Experience, training, and other requirements

Applicants must have had the length and type of experience indicated below and, in addition, must have demonstrated ability to meet and deal with the public in a courteous and tactful manner, and the ability to work in stress situations. Applicants must also have demonstrated proficiency in the use of firearms, first aid techniques, and fire protection measures; and possess qualities of alertness, discretion and good judgment.

*Except for the substitutions provided below, applicants must have had experience as follows:

Grade	General experience (years)	Specialized experience (years)	Total experience (years)
PFS-3.....	1	1	2
PFS-5.....	1	2	3
PFS-7.....	1	2½	3½
PFS-9.....	1	3	4
PFS-9.....	1	3½	4½
PFS-10.....	1	4	5
PFS-11.....	1	4½	5½
PFS-12 and above.....	1	5	6

General experience

*This includes any type of protective services experience which clearly demonstrates that the applicant possesses a knowledge of general law enforcement methods and techniques that could be applied in the performance of security patrolmen functions. This experience must have included protecting property, equipment or material; and enforcing various rules and

regulations. Examples of acceptable general experience are: — — —

- (1) As a regular member of a guard or comparable protective services force if the applicant actually had experience in the use of firearms, had frequent personal contact with the public, and performed various law enforcement duties involved in the protection of property, material, equipment, data or information.
- (2) As a private detective or policeman responsible for performing routine investigational duties such as shadowing or checking on private property, etc.*

Specialized experience

*This type of experience must have been of such a nature as to have given the applicant a broad knowledge of police operations, practices, and techniques. **This experience must have included protecting life and property, maintaining law and order, preventing and investigating criminal acts, and preserving the peace.** Examples of acceptable specialized experience are:

- (1) As an active and regular member of an organized Federal, State, county, or municipal police type organization responsible for furnishing complete police protection or service for a community, airport, park, or similar area.
- (2) As an active and regular civilian member of a police force in a Federal or industrial establishment or comparable institution, provided the experience included protection of life and making arrests for violations of Federal, State, municipal, or local laws, rules, and regulations.
- (3) Experience in the full-time performance of military police duties as an active and regular member of the United States Army, Air Force, Navy, Marine Corps, or Coast Guard.
- (4) As a detective or investigator with a military, town, county, State, or Federal police organization, performing investigational, and crime prevention and detection duties, and related report work.

POSTAL FIELD SERVICE QUALIFICATION STANDARDS

any time-equivalent combination of 1, 2, 3, and 4 above.*

qualifying experience

Experience as a prison, jail, or building guard; night watchman, military guard or sentry; or other similar positions the duties of which did not provide knowledges and skills in general law enforcement methods and techniques that could be applied in the performance of police functions, will not be considered as qualifying general or specialized experience.*

Substitutions

1. Successful completion of a reserve-police training course as a Reserve Policeman which included a minimum of 36 hours of actual lecture or training in police department procedures and methods, and local laws and regulations; and which led to the award of a certificate of proficiency or issuance of a badge, may be substituted for 6 months of the *general* experience.

2. Successful completion of 2 years of study in a resident school above high school level may be substituted for 6 months of *general* experience, provided that at least 12 semester hours or 18 quarter hours were in one or more of the following subjects: police administration, police law and evidence, police investigation, criminology, law enforcement, general law, or similar subjects pertinent to law enforcement work.

3. Training of the type given a rookie or recruit in a large civilian police force, in a police academy or school, not already credited, may be substituted month for month, up to a maximum of 6 months of *specialized* experience.

4. Successful completion of a full 4-year course of study required for a B.S. degree in Police Science from a resident school above high-school may be substituted in full for the PFS-5 requirements.*

Basis of rating

*An evaluation of experience and training. Candidates must present evidence of ability to discharge the duties of the position. Information for evaluating experience and training will be taken from the application form and any

additional information obtained through confidential inquiries to supervisors, teachers, and other references.*

Level of experience

*For appointment or promotion to positions at PFS-6 and above, at least 6 months of specialized experience must have been at a level of difficulty comparable to the next lower grade in the Postal Field Service, or at least 1 year comparable to the second lower grade.

For all supervisory positions except at the first level of supervision, the experience must have included at least 6 months of supervisory experience, which provided a thorough knowledge of the methods of supervision of employees engaged in law enforcement work. Applicants for supervisory positions at PFS-10 and above must show that their supervisory experience has included responsibility for the preparation of new, or the amendment of existing, rules and regulations, as well as the initial drafting or revision of internal operating procedures related to security enforcement activities.*

Motor vehicle operator qualifications

For those positions requiring the operation of a Government-owned vehicle, applicants will be required to pass a practical road test driving the appropriate type vehicle supplied by the Post Office Department. Also, applicants cannot be permitted to operate Government-owned vehicles unless they possess a valid State or territory driver's permit. They may be required to have such a permit or to obtain one within 30 days after entry on duty. Applicants must have a satisfactory safe driving record. Applicants whose traffic records show that they are not safe drivers will be disqualified.

Age limits

Persons appointed to police positions must be at least 21 years of age. This requirement may be waived only for veterans. Persons between the ages of 20 and 21 may file applications for examination. Such persons will be examined but only veterans may enter on duty prior to attaining the age of 21 years.

POSTAL FIELD SERVICE QUALIFICATION STANDARDS

Code: 2335*
(p. 3)*Physical requirements*

*Applicants for Security Patrolmen must measure at least 66 inches in height, barefoot, and must be of proportioned weight. They must weigh at least 130 pounds, without clothes, at the time of appointment.

Applicants must be physically able to perform efficiently the duties of the position which are described elsewhere in this standard. They must have good distant vision in each eye to qualify for appointment. Ability to distinguish basic colors is essential. Ability to hear the conversational voice, without the use of a hearing aid, is required. Persons with an amputation of

arm, hand, leg or foot should not apply. Applicants must possess emotional and mental stability. Any physical condition which would cause the applicant to be hazard to himself or to others will disqualify for appointment.*

Other requirements

All candidates are subject to investigation to secure evidence of their honesty, integrity, and general character. Evidence of habitual use of intoxicants to excess, moral turpitude, disrespect for law, unethical dealings, or material misstatement of fact on the application will be considered sufficient grounds for disqualification.



STATE OF NEW YORK
DEPARTMENT OF LAW
ALBANY 12224

G. OLIVER KOPPELL
ATTORNEY GENERAL

April 11, 1994

Hon. Henry J. Bauman
Counsel
Office of Chief Inspector
United States Postal Service
Room 3100
475 L'Enfant Plaza SW
Washington, DC 20260-2100

Formal Opinion
No. 94-F3

RECEIVED

APR 14 1994

Counsel
Office of the Chief Inspector

Dear Mr. Bauman:

You have requested an opinion of the Attorney General concerning the powers of United States postal police officers employed in the State of New York. You have indicated that these officers derive their Federal authority under 40 USC § 318 which empowers them to perform certain law enforcement and security functions on United States postal service controlled property. They enforce postal service rules and regulations; enforce all laws, including local ordinances, enacted for the protection of persons and property; prevent breaches of the peace; and control unlawful assemblies.

In 1982 (L 1982, ch 474), the New York State Legislature enacted section 2.15 of the Criminal Procedure Law which granted designated Federal officers, including postal police officers, specific peace officer powers. You have asked whether postal police officers, through section 2.15 of the Criminal Procedure Law, are authorized to purchase and own firearms for personal off-duty use or to carry concealed, without obtaining a license under section 400.00 of the New York State Penal Law. If a postal police officer is required to obtain a license in order to possess a firearm when off duty, you inquire whether he is entitled to a "full carry permit" as described in section 400.00 of the Penal Law. Finally, you have inquired as to the penalty for unlawful possession of a firearm.

You have informed us that postal police officers are authorized to carry an Inspection Service issued firearm only while on duty and are issued a Federal firearms permit for this purpose. They are not given custody of this weapon when off duty.

Sections 265.01, et seq. of the Penal Law establish various degrees of penalties for possession of a firearm. (Section 265.01, criminal possession of a weapon in the fourth degree--class A misdemeanor; section 265.02, criminal possession of a weapon in the third degree--class D felony; section 265.03, criminal possession of a weapon in the second degree--class C felony.) The Penal Law establishes exemptions from these provisions for delineated persons and officers such as police officers and peace officers and including "[p]ersons in the military or other service of the United States, in pursuit of official duty or when duly authorized by federal law, regulation or order to possess the same." Penal Law § 265.20(a)(1)(d). The scope of the above-quoted exemption for Federal employees and officers is limited to when they are pursuing their official duties or when duly authorized by Federal law, regulation or order. You have indicated that United States postal police officers are authorized only to carry Inspection Service issued firearms while on duty and as permitted by a Federal firearms permit. Off duty use of this weapon is prohibited. Thus, under the above-quoted portion of section 265.20 of the Penal Law, the scope of the exemption from State crimes for unlawful possession of firearms for United States postal service police officers is limited to those times when the officer carries his issued firearm while on duty in accordance with the Federal firearms permit.

You have inquired, however, whether section 2.15 of the Criminal Procedure Law provides a broader exemption. Section 2.15 grants specific powers of peace officers to various Federal officers, including United States postal service police officers and inspectors. Criminal Procedure Law § 2.15(8). These Federal officers are authorized to make warrantless arrests for offenses when there is reasonable cause to believe that the offense was committed in the officer's presence; use physical and deadly physical force in making an arrest or in preventing an escape; carry out constitutionally permitted warrantless searches when making these arrests; and to take possession of a third person's firearms for lawful purposes. While this provision grants certain peace officer powers to these Federal officers, it "does not confer peace officer status as such". Practice Commentaries, Peter Preiser, McKinney's Criminal Procedure Law § 2.15 (main volume, 1992). The intention of this provision was to grant to designated Federal officers specified powers to enforce New York law and to extend those powers to locations beyond Federal property. Ibid. In the absence of this section, these officers would have no greater power than citizens with respect to offenses committed beyond Federal premises. Ibid.

In that postal police officers are not given the status of peace officers under section 2.15 of the Criminal Procedure Law, they do not fall within the exemptions from unlawful possession

of firearms afforded peace officers by section 265.20 of the Penal Law. Nor does section 2.15 grant to postal police officers the specific authority to carry a firearm while off duty without a license. Like others, a postal police officer would have to make application for a license in accordance with section 400.00 of the Penal Law.

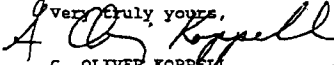
You have asked whether postal police officers would be entitled to a full carry license under section 400.00 of the Penal Law. As indicated above, possession of a firearm is a crime unless the individual is licensed or unless possession falls within a specific statutory exemption. Section 400.00(2) of the Penal Law lists the types of licenses which may be issued. The categories include gunsmith and dealer licenses (§ 400.00[2]); premises licenses which include a license to have and possess a pistol or a revolver by a householder in his dwelling or by a merchant or storekeeper in his place of business (§ 400.00[2][a] and [b]); employment licenses which are issued to persons to have and carry concealed while so employed in enumerated occupations or holding specific public offices (§ 400.00[2][c], [d] and [e]); carry licenses issued upon a showing of proper cause without regard to employment or place of possession (§ 400.00[2][f]); and antique firearm licenses to have, possess, collect and carry antique pistols (§ 400.00[2][g]). The determination whether to issue a firearms license is completely within the discretion of the licensing officer. ¹ See, Matter of Fromson v. Nelson, 178 AD2d 479 (2d Dept 1991); Matter of Moore v. Gallup, 267 App Div 64 (3d Dept 1943), affd, 293 NY 846 (1944). A firearms license is not a property right. Possession and use of a pistol is not a vested right but a privilege which can be granted by firearms licensing officers in their discretion. Matter of Moore, supra, at p 68. A license covers a specific firearm identified by serial number and firearms can only be added and deleted by an amendment of the license. Penal Law § 400.00(7), (9).

¹"Licensing officer' means in the city of New York the police commissioner of that city; in the county of Nassau the commissioner of police of that county; in the county of Suffolk the sheriff of that county except in the towns of Babylon, Brookhaven, Huntington, Islip and Smithtown, the commissioner of police of that county; and elsewhere in the state a judge or justice of a court of record having his office in the county of issuance."

Penal Law § 265.00(10).

Thus, in order for a United States postal police officer to obtain a full carry license he must show proper cause as determined in the discretion of the licensing officer.

We conclude that United States postal police officers may not purchase and possess a firearm for off-duty use unless licensed in accordance with section 400.00 of the Penal Law. Licensing is completely within the discretion of the licensing officer.

Very truly yours,

G. OLIVER KOPPELL
Attorney General



(312) 765-5230
 UNITED STATES POSTAL SERVICE
 Central Regional Office
 Chicago, IL 60699

December 12, 1985

EXPRESS MAIL

*SO
12/13/85*

Hon. Anton R. Valukas
 United States Attorney
 Northern District of Illinois
 United States Courthouse
 219 South Dearborn Street
 Chicago, IL 60604-1702

ATTN: Sharon E. Jones, Esq.
Assistant United States Attorney

RE: Validity of Postal Service Regulations
Citations for Violations of Regulations for Conduct on Postal Property
(Our File No.: 596-86-128)

Dear Sharon:

This will acknowledge and respond to your letter of December 2, 1985 in which you advise that Magistrate Weisberg questions the authority of duly authorized Postal employees to issue citations to which penal consequences attach. You note that the General Services Administration and the Veterans Administration have specific statutory authority to charge individuals with criminal misdemeanors for violations of their regulations. 40 U.S.C. Sections 318, 318(c), 38 U.S.C. Section 218. The Magistrate suggested that the United States Postal Service has no such authority. His point is well taken.

In your argument to the Court, you properly cited the general rule-making authority of the Postal Service. 39 U.S.C. Section 401. Understandably, the Magistrate did not accept your argument and dismissed one Postal Service case. You called this office for advice and we reaffirmed your position that Section 401 was the general rule-making authority of the Postal Service. We regret and apologize that our advice was less than correct with regard to the particular matter at issue. In the past, we have had occasion to deal with the issue of the authority of our guards as special policemen, but the question of the validity of our regulations relative to the imposing of penal consequences had not come to our attention. We knew about the authority granted by certain appropriation bills, but never put it into the context of the question of authority to promulgate regulations imposing penal sanctions. Hopefully, the enclosed Memorandum of Law will convince the Magistrate that the United States Postal Service does, indeed, have authority to issue regulations imposing penal consequences. As the Memorandum notes, we have not shown an unbroken chain of authority to the 1972 Appropriations Bill. Our Law Department in Washington assured us that with considerable effort the linkage to the 1972 Bill can be made. We, and they (Washington attorneys), would hope that the Court will

By: Anton R. Valukas
 Attn: Sharon E. Jones, Esq.
 December 12, 1985
 Page 2 of 2

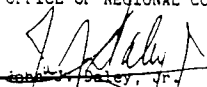
accept our argument without having to track the authority back to 1979 (the latest Appropriation Bill granting authority to the Postmaster General to issue regulations with criminal sanctions). If it has to be done, we will, of course, do it.

At this juncture, we're sure you're asking why are we proceeding in this rather awkward manner with appropriation bills and Continuing Joint Resolutions. Actually, we realize this is an awkward situation and in a number of instances permanent legislation was proposed; for policy reasons, it was not introduced through the legislative process. For your information, you should know that permanent legislation is on our agenda and may be introduced sometime in the future.

As our counsel, you should also know, that operating in the present manner is not without some problems. In the appropriation process, it is possible for any member of the Congress to raise a "point of order" that could, and has in the past, affected our grant of authority relative to promulgating regulations imposing penal sanctions. At this time, we perceive no impairment of our authority, but in some future fiscal year there may be such an impairment unless permanent legislation is enacted and approved.

We believe our Memorandum of Law is legally sound. However, should you have any questions concerning the matter contained therein, please call me at 765-5230.

OFFICE OF REGIONAL COUNSEL


~~John W. Soley, Jr.~~
 Assistant Regional Counsel

JJD:reg:60699-0120

Enclosures

cc: Inspector J. Dupilka
 Assistant Inspector-in-Charge
 Inspection Service - Chicago Division
 United States Postal Service
 433 W. Van Buren St. - Room 642
 Chicago, IL 60607-2201
 (w/Enclosure: Memorandum of Law)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
Plaintiff)	
)	
vs.)	No. Criminal _____
)	
JOHN DOE,)	
Defendant)	MEMORANDUM OF LAW

FACTS

In the course of providing protection for real and personal property under the jurisdiction and control of the United States of America, and/or the United States Postal Service¹, the U.S. Postal Security Force or others who have been appropriately delegated authority² issues citations for violations of rules and regulations for conduct on "Postal" property³. Citations issued pursuant to regulations impose penal consequences⁴.

On November 26, 1985, hearings were held on an unknown number of violations for which citations were issued. The Court questioned the statutory authority of the United States Postal Service to issue citations to which attached penal consequences. The first violation heard was dismissed by the Court, and the Assistant United States Attorney responsible for the prosecutions, Sharon E.

-
1. Postal facilities are located in buildings owned by or leased by the United States Postal Service. 19 U.S. Code 401(5) and 401(6). Also, under agreement with the General Services Administration, protection is provided by the Postal Service for buildings owned by the United States of America.
 2. 39 CFR 232.1(p)(1), (2); 39 CFR 232.1(q)(1), (2), (1985).
 3. 39 CFR, Part 232 (1985).
 4. 39 CFR 232.1(p)(2).

... moved to continue all of the other Postal cases until the issue of the United States Postal Service's authority had been determined.

ARGUMENT

I.

AUTHORITY

Citations for violations of prescribed conduct on Postal property are issued pursuant to regulations promulgated at the direction of the Postmaster General of the United States Postal Service.⁵ The Postmaster General derives his authority to promulgate regulations which have the force and effect of law generally from 39 U.S. Code, Section 401. Admittedly, it may be argued that under the statute, the Postmaster General has no authority to issue regulations to which attach penal consequences.

To rectify an apparent omission in the Postal Reorganization Act, Pub. L. 91-375, August 12, 1970, 84 Stat. 719, in 1972 the Congress in an appropriation bill added specific language which gave U.S. Postal Service Security Force guards the powers of special policemen and the Postmaster General the authority to issue regulations to which attached penal consequences.⁶ The language provides:

"... Provided further, that this appropriation and the 'Building Management Fund' (40 U.S.C. 490(f)), and the 'Postal Service Fund' (39 U.S.C. 2003), shall be available for the employment of guards for all buildings and areas

5. 39 CFR 232.1(p)(1), Id. see Exhibit "A."

6. Treasury, Postal Service, and General Government Appropriation Act, 1973 P.L. L. 92-351; 86 Stat. 471 (1972). See Exhibit "B."

owned or occupied by the United States for the Postal Service and under the charge and control of the General Services Administration or the Postal Service, and such guards shall have with respect to such authority the power of special policemen provided by the first section of the Act of June 1, 1948 (62 Stat. 281; 40 U.S.C. 318), but shall not be restricted to certain Federal property or otherwise required by the proviso contained in said section, and as to property owned and occupied by the Postal Service, the Postmaster General may take the same actions as the Administrator of General Services may take under the provisions of sections 2 and 3 of the Act of June 1, 1948 (62 Stat. 281; 40 U.S.C. 318a, 318b) attaching thereto penal consequences under the authority and within the limits provided in section 4 of the Act of June 1, 1968 (62 Stat. 281; 40 U.S.C. 318c)...." (Emphasis added.)

This language and authority has been carried forward each fiscal year either by specific enactments in appropriation bills⁷ or by continuing joint resolution passed by the Congress and approved by the President⁸.

Admittedly, this memorandum has not linked the enabling legislative authority by an unbroken chain of continuing joint resolutions. However, since the United States Postal Service is most mindful of the basic lack of statutory authority which the Court has quite properly pointed out, we wish to assure the Court that such linkage does exist and with extensive research, if the Court requires, such linkage can be established. It is respectfully submitted, however, that since the statutory authority which the Court suggested was missing has been set forth in two appropriation bills, we pray that the Court

7. Section 610 of Pub. L. 96-74, 93 Stat. 559 (1979), see Exhibit "C."

8. Pub. L. 98-151, 97 Stat. 92-1723, see Exhibit "D," Pub. L. 98-441, 98 Stat. 1599, (1984), see Exhibit "E," Pub. L. 99-103, 99 Stat. 471, (1985), see Exhibit "F."

will assume that the United States Postal Service by appropriate petitions to the Congress has not, and will not, let such authority lapse.

II.

CONCLUSION

Under the general grant of authority to issue regulations, the Postmaster General may not have authority to issue regulations to which attach penal consequences. This absence of authority, if indeed, it exists, has been provided for in various appropriation bills and continuing joint resolutions. Thus, citations issued by duly authorized Postal personnel for violations of conduct on Postal property are valid, and if the person to whom the citation is issued is found guilty of the violation for which the citation was issued, penal sanctions may be imposed in accordance with appropriately issued regulations which have the force and effect of law.

Respectfully submitted,

ANTON R. VALUKAS
United States Attorney

By:

SHARON E. JONES
Assistant United States Attorney
219 South Dearborn Street
Chicago, Illinois 60604

SPECIAL POLICEMEN—DUTY ON FEDERAL PROPERTY

SPECIAL POLICEMEN—DUTY ON FEDERAL PROPERTY

For text of Act see p. 295

Senate Report No. 1176, Apr. 30, 1948 [To accompany H.R. 3219]

House Report No. 582, June 12, 1947 [To accompany H.R. 3219]

The Senate Report repeats in substance the House Report

Senate Report No. 1176

THE Committee on Public Works, to whom was referred the bill (H. R. 3219) to authorize the Federal Works Administrator or officials of the Federal Works Agency duly authorized by him to appoint special policemen for duty upon Federal property under the jurisdiction of the Federal Works Agency, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill, as amended, do pass.

GENERAL STATEMENT

The purpose of the bill is to authorize the appointment of uniformed guards of the Federal Works Agency as special policemen with power of arrest without additional compensation for duty upon Federal property under the jurisdiction of the Federal Works Agency, or upon Federal property under the jurisdiction of any other department or agency, upon the application of the head of such department or agency, and over which Federal property the United States has acquired exclusive or concurrent criminal jurisdiction.

It appears from statements made by the Administrator and other officials of the Federal Works Agency that the Federal Works Agency maintains properties throughout the various States. In many instances such properties are in isolated localities where local or State police authorities are not available. Without such legislation as is proposed in H. R. 3219, the Federal Works Agency will be seriously handicapped in protecting Federal property and the public.

Provision is made for the making of needful rules and regulations for the government of such Federal properties and to annex to such rules and regulations reasonable penalties within the limits prescribed in the bill, namely, a fine of not more than \$50, imprisonment for not more than 30 days, or both.

The uniformed guards of the Federal Works Agency whose appointment as special policemen without additional compensation is authorized by the proposed legislation are carefully selected, most of them being veterans of World Wars I and II. They are given a thorough course of instruction at the beginning of their service and refresher courses at intervals thereafter.

AMENDMENTS

H. R. 3219 is amended in line 5, page 1, so as to make it clear that only uniformed guards are to be appointed as special policemen, since they are the ones who are carefully selected and trained for police serv-

LEGISLATIVE HISTORY

ice. Language is inserted in line 19, page 2, to make it clear that the penalty for the violation of any rule or regulation shall be within the limits prescribed in section 4. A proviso is added at the end of section 2 which requires that rules and regulations shall be posted and kept posted in a conspicuous place on the particular Federal property. The other amendments do not make any changes in substance and are made to eliminate unnecessary words or for the purpose of clarity. All of these amendments have been approved by interested officials of the Federal Works Agency.

The amendments are indicated in the bill, as reported, by line type and italic.

AGENCY REPORTS

The Federal Works Agency urges the legislation, as the act of Congress approved May 26, 1942 (56 Stat. 1000), will expire June 30, 1948. The Bureau of the Budget has no objection. There follows a letter of Maj. Gen. Philip B. Fleming, Administrator of the Federal Works Agency, dated April 18, 1947, in which the reasons for the legislation are fully set forth:

FEDERAL WORKS AGENCY,
OFFICE OF THE ADMINISTRATOR,
Washington, April 18, 1947.

HON. CHAPMAN REVERCOWB,
Chairman, Committee on Public Works,
United States Senate, Washington, D. C.

MY DEAR MR. REVERCOWB: There is transmitted herewith a draft of a proposed bill entitled "A bill to authorize the Federal Works Administrator or officials of the Federal Works Agency duly authorized by him to appoint special policemen for duty upon Federal property under the jurisdiction of the Federal Works Agency, and for other purposes."

This proposed legislation would authorize the Federal Works Administrator or officials of the Federal Works Agency duly authorized by him to appoint employees as special policemen without additional compensation for duty in connection with the policing of public buildings, public roads, and other areas under their jurisdiction, such special policemen to have the same powers as sheriffs and constables upon the Federal property, except for the service of civil process and for the collection of strictly private debts, to enforce the laws enacted for the protection of persons, property, health, and morals, to prevent breaches of peace, to suppress affrays or unlawful assemblies, and to enforce any rules and regulations made and promulgated by the Administrator or officials of the Federal Works Agency duly authorized by him. The proposed legislation would further authorize the making of all needful rules and regulations for the government of the Federal property under the jurisdiction of this Agency and to annex to such rules and regulations such reasonable penalties as would insure their enforcement. Upon request of other agencies, this proposed legislation would permit the detailing of guards and the extension of the regulations of this Agency for the protection of Federal property not under our jurisdiction and would authorize, in instances where it would be deemed advisable, the utilization of Federal and local law-enforcement agencies in the protection of property under our jurisdiction.

This Agency maintains and operates properties throughout the various States. In many instances such properties are in isolated localities where local or State police authority is not available, or were acquired in such a manner as to eliminate all State and local jurisdiction thereon. Frequently the nearest United States marshal is located a number of miles distant from the Federal property.

SPECIAL POLICEMEN—DUTY ON FEDERAL PROPERTY

In many locations throughout the various States, personnel has been appointed to protect the Government's interests. However, these guards, in the absence of specific authority, are not police officers and hence are not authorized to make arrests in the preservation of law and order generally, nor are they recognized in many of the courts as arresting officers.

The guards of the Public Buildings Administration of this Agency who are stationed in the District of Columbia have been appointed policemen in accordance with the provisions of the act of Congress approved May 27, 1924 (43 Stat. 176), and, as such, possess the same powers and authority as the Metropolitan and Park Police of the city of Washington, as long as they are in the Federal buildings and grounds thereof. In accordance with the provisions of the act of Congress approved May 26, 1942 (56 Stat. 1000), the Commissioner of Public Buildings during the continuance of the national emergency is authorized to appoint employees as special policemen without compensation for duty in connection with the policing of the public property and buildings of the United States outside the District of Columbia and under the jurisdiction of the Public Buildings Administration. This authority, however, will expire with the termination of the national emergency, and the Federal buildings outside the District of Columbia, including the nearby buildings at Suitland, Md., and in Arlington County, Va., occupied by thousands of Government employees and containing valuable Government property, will be without immediate and direct Federal police protection. The Public Roads Administration and the Bureau of Community Facilities of this Agency, which at the present time are without authority to appoint policemen, from past experience conclude that the possession of such authority in many instances will facilitate the execution of their functions.

The satisfactory operation of Federal property usually necessitates the administrative promulgation of rules and regulations, since many objectionable practices, usually in the nature of misdemeanors which occur upon the public property, such as soliciting and vending, are not provided for by existing laws. In order to insure the enforcement of rules and regulations, it is necessary not only to obtain statutory authority to make the rules and regulations but also additional authority to prescribe penalties for the violation thereof. Violators of such rules and regulations could be taken before the nearest United States Commissioner for trial or for commitment to the United States district court in accordance with section 576 of title 18 of the United States Code.

Therefore, in order to adequately safeguard the Federal areas and the property and persons located thereon by the appointment of guards as policemen and the promulgation of necessary rules and regulations with penalties to insure their enforcement, it is respectfully requested that the proposed bill be placed before the United States Senate for appropriate action.

This bill has been referred to the Bureau of the Budget, and that Bureau has advised that there would be no objection to its submission to your committee.

Sincerely yours,

PHILIP B. FLEMING,
Major General, United States Army,
Administrator.

TWIN CITIES Reader

**CHECKING OUT
CHECCHI**
Final Half-Century's About
Northwest Airlines
PAGE 4

**TELL IT TO THE
REVEREND**
Police Officers Must
Smooth Race Relations
PAGE 7

**BATMAN RETURNS
SORROW**
The Crime Writer's Strange
In His Own Sequel
PAGE 13

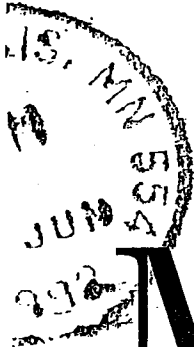


RETURN TO SENDER

BY
DAVID
CARR

**FORMER DRUG DEALER JIM FRYE MAY
HAVE BEEN NO ANGEL, BUT U.S.
POSTAL INSPECTORS FOUND HIM
MADE TO ORDER TO LEAD A \$100,000,
14-MONTH UNDERCOVER DRUG
PROBE THAT NETTED A GRAND TOTAL
OF 13 POT SMOKERS. PAGE 8**

RETURN TO SENDER



**THIEF, DRUNK DRIVER, AND DRUG DEALER
JIM FRYE WAS MADE TO ORDER FOR U.S.
POSTAL INSPECTORS. WHEN HIS WORK AS
AN INFORMANT WAS DONE, 13 POSTAL
WORKERS LOST THEIR CAREERS — AND
HIS HAD JUST BEGUN.** BY DAVID CARR

M

ET JIM FRYE, FIFTY THREE, FORMER COKE DEALER, AND POSTAL WORKER, JAMES JOSEPH FRYE, 38, HAS HAD THREE DWIS, TWO STOPPING ARRESTS, AND A LONG ROMANCE WITH A VIOLENCE OF ILLEGAL DRUGS. WHILE FRYE IS EXACTLY THE KIND OF GUY YOU'D EXPECT TO SEE ON THE "MOST WANTED" WALL OF THE POST OFFICE, HE'S NOT WHO YOU'D EXPECT TO SEE BEHIND THE COUNTER THERE, EITHER. MORE TO THE POINT, HE'S CERTAINLY NOT THE KIND OF HUMAN BEING MOST OF US WOULD EXPECT TO BE LEADING AN EXTENSIVE UNDERCOVER DRUG INVESTIGATION.

Meet Jim Frye's handiwork. Thirteen career postal workers, all with devout work records and no significant criminal history. They were hoisted out of postal service and into federal court because they got tangled up with confidential informant Jim Frye.

The bust made for great slow business. On April 3, 1991, reporters and their camera crews fanned out to note the steps of the Minneapolis postal building and got cruddy. The close-up, courtesy of postal management and inspectors, was impeccable. Timed perfectly for the 10 o'clock news, 13 postal employees were led out into the night — a conga line of handcuffs that graphically manifested the Postal Service's intolerance of drugs in the workplace. Nationally, CNN picked up the lead about the "post office drug ring," and by early, the *Star Tribune* editorial page harangued about how awful it was that postal workers were selling more than stamps at the post office.

"You'd have thought they hunted the Alcatraz cartel," says Mike Telle, president of local 223 of the Postal Mail Unions of Minneapolis. Not quite. The postal inspectors located 12 mail loaders and a postal clerk for selling mostly minor amounts of narcotics — one unucky worker was charged for selling just four grams of pot (28 grams make an ounce). Most of the rest of the transactions were in the range of an ounce, although one person pleaded guilty to possessing 262 grams of pot. Among other allegations were the sale of less than a gram of cocaine on one occasion and less than a gram of marijuana during one another. Postal officials put the value of all the drugs dealt at "less than \$50,000." It was, in fact, probably less than \$5,000.

Mc Carley

J. Carr

JUNE 24 - 22, 1992



AFTER 14 MONTHS OF INVESTIGATION and costs in excess of \$100,000, the postal inspectors were able to establish that out of the 3,500 postal workers in Minneapolis, 13 were not on their line off and — unfortunately for them — were willing to get some for a job. There was no evidence that the workers used the mail, their positions, or their workplace to further some criminal conspiracy. It seems flat, at worst, they were just some patients who were willing to score some grass for a pretty, persistent cow-herd: Jim Frye.

The Minneapolis post office sting was not the only recent instance in which the U.S. Postal Inspection Service seemed to be in the business of creating, as opposed to uncovering, crime.

Last month, in *Jarosh v. United States*, the U.S. Supreme Court overturned the conviction of a Nebraska farmer who purchased magazines that contained nude photographs of young boys. According to the decision, the Postal Service, over the course of two years, mailed a number of solicitations from three fictitious organizations to the Nebraska man. When the

farmer finally decided to order two magazines, he was promptly arrested. The court held that "Congress had not intended that the detection and enforcement processes... should include investigation by government officials of an act on the part of persons otherwise innocent in order to lure them to its commission and to punish them."

Soon after, on May 15, defense attorney Peter Weid made almost exactly the same argument before the Eighth Circuit in appealing the conviction of postal worker Paul Van Slyke for selling Jim Frye less than an ounce of pot. "This guy [Frye] created crime," Weid argued. "The government created the predisposition, the government created the monster. That's the real crime of what happened over there."

Another defense lawyer, Phil Resnick, doesn't really see how the greater good is served by tying up the federal courts with a bunch of pot smokers.

"It would have been one thing if they used this dirtball [Frye] to find out who was using drugs and then ordered everybody into treatment, but to go to the time and expense — charging these people in federal court was far ridiculous," says Resnick.

Although 10 of the defendants pleaded guilty to federal felonies, only one of those charged — Paul Van Slyke — served any time (three months). His conviction is expected to be overturned on appeal because of the *Jarosh* Supreme Court decision. The two others who went to trial were acquitted, in part because the entrapment issues raised by the methods of and execution of the investigation. Confronting that three police agencies, hundreds of investigation hours, and more than \$100,000 were involved, the result seems like a pretty slim harvest of criminals.

Minneapolis Postmaster William Brown feared the *Reader's* questions about the investigation to the Postal Inspection Service, which during pending litigation, agreed to respond to written questions with answers. His response, Postal Inspector John Callin explained the zealousness of their endeavor: "The Postal Inspection Service is clear, strong mandate from the President of the United States, through the Department of Justice, through the Postmaster General, in the Federal workplace, a safe, drug free environment."

At a press conference after the bust, he explained, "People will say that, well, you walk off with a great amount of drugs. Let's point that out. That's not the purpose. The purpose is to send a clear message that drugs in the workplace are not acceptable."

It's called zero tolerance. Zero tolerance is the established Postal Service policy of allowing any drug use of any kind anywhere unless, of course, you work undercover for postal inspectors.

Although Jim Frye never had to take a test to obtain career employment with the office, he did take one in connection with investigation, and it came up dirty for coca And Frye had other problems with the ethics of life. He lied to his postal inspectors and, later, to defense attorneys at his drug use during his stint as a paid informant. Court records show Frye lied about identity when a traffic cop pulled him over. Frye lied no license. (Frye later argued that it was OK to lie to the cop because wasn't under oath at the time.) Frye falsified income tax returns by failing to declare money he received for his work as a confidential informant. He also lied on his employment

application about his criminal history. And it goes without saying that he lived a lie around the co-workers from whom he bought drugs at the Post Office. But that, of course, was in the line of duty.

It was this last set of lies, paid for by the government, that were the most profitable to Frye. Beyond what he was paid for an informant, Frye was able to engineer a career appointment to the Postal Service, which gave him full civil service benefits and job security. He currently works as a mail handler at the airport mail handling facility. Not bad for a guy who pulled into Minneapolis with no job, no future, and a pocket full of debts from his tenure as a cocaine dealer while a student at St. Cloud State University.

By any objective standard, Jimmy Frye was one certified piece of work, probably not the man to serve as the fulcrum for a major undercover drug operation. Although Inspector Callinan declined to answer even written questions about Frye "because we have a number of criminal and administrative cases unresolved," he did suggest that a guy with Frye's dubious history goes with the territory. "An informant must have the background and experience to make contacts with criminals," Callinan said.

Kathy Forbes, president of the Minneapolis Area Local of the American Postal Workers Union, thinks that given the Postal Service's stated devotion to "zero tolerance," Frye's continued employment is indefensible.

"I think it is just outrageous that they are able to put someone in there who is a known druggie, let him get rid of a bunch of people on minor offenses, and reward him handsomely with a career appointment. I suppose the next step is putting him on a stamp," Forbes says.

"HE WAS THE ONE WITH THE CRIMINAL RECORD, THE HISTORY OF HARD DRUG USE, AND HE IS THE ONE WHO GOT THINGS STARTED," SAYS POSTAL WORKER MAURY KNUTSON. "YOU NEVER HEARD ANYBODY TALKING ABOUT SMOKING GRASS AROUND THE POST OFFICE UNTIL JIMMY FRYE CAME AROUND."

FRYE TOLD DEFENSE ATTORNEYS THAT HE began working on behalf of the government because he wanted to turn his life around. He had a friend who became a confidential informant, and the friend suggested that Frye could do the same thing. "In 1988, I bottomed out dealing drugs and I needed to make a change in my life," Frye explained during cross-examination by defense attorney Peter Wold. In testimony, Frye also mentioned that at the time he decided to change his life, he owed somebody named "Reuben the Cuban" \$2,000 and Reuben was very anxious to get his money back.

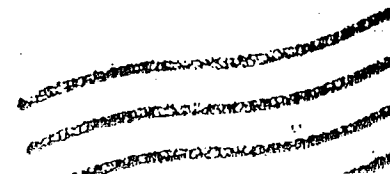
Whether out of concern for his economic future, fear of jail, or simply as an executive citizenship, Frye contacted the U.S. Drug Enforcement Agency (DEA) and was in turn referred to Sgt. Bill Hansen of the Minneapolis

Police Department. Postal Inspection Service agents said that when they came shopping for a confidential informant, the Minneapolis Police Department referred them to Frye.

In October of 1989, Frye received what is termed a casual appointment to the Postal Service for 90 days. Frye says he received a second casual appointment before postal inspectors conducted a test of him, slipped the routine background check, and made him a career employee. For a year and a half, Frye remained the workhorse and the tavern frequenter by post-employees. It being anybody who would listen that he was interested in buying drugs. For his outrageous behavior, U.S. Postal Service authorities paid Frye between \$200 and \$300 a month, plus money for beer and pizza so he could come off like a regular guy. Receipts signed by Frye indicate he grossed more than \$9,000 for his work on behalf of the inspectors beyond his pay as a mail handler.

According to the testimony of Frye and others, Frye was able to generate some degree of goodwill as a former stoner by partaking in marijuana whenever the occasion presented itself. Fellow workers say Frye frequently drank while he was out working connections at the bars, although the inspectors specifically instructed him not to get intoxicated. Co-workers say that while his efforts to attempt to be more relaxed surprised them, his behavior was so out of pocket that co-workers eventually became convinced that he couldn't possibly be an undercover informant.

"Three things lulled people to sleep," says



"I THINK IT IS JUST OUTRAGEOUS THAT THEY ARE ABLE TO PUT SOMEONE IN THERE WHO IS A KNOWN DRUGGIE, LET HIM GET RID OF A BUNCH OF PEOPLE ON MINOR OFFENSES, AND REWARD HIM HANDSOMELY WITH A CAREER APPOINTMENT," SAYS THE POSTAL UNION'S KATHY FORBES. "I SUPPOSE THE NEXT STEP IS PUTTING HIM ON A STAMP."

al record, the history of hard drug use, and he is the one who got things started. You never heard anybody talking about smoking grass around the post office until Jimmy Frye came around."

That Reuben represented James French, one of the postal workers who pleaded guilty to federal charges of buying marijuana.

"My guy was the big guy, supposedly, and he had what? A half a pound," Resnick says. "What did this investigation actually reveal? I certainly didn't know that there were bunches of people floating around high and snorting the mail. And it didn't reveal that people were using the mail to transport drugs. It showed that for a certain small number of people in a very large organization, the drug of choice was marijuana, and even then, it wasn't people who were using the job. It certainly didn't justify the kind of front page news they made it out to be."

There was no doubt that the emphasis was on the dog and pony show as opposed to executing a bust. Some of the suspects, who were all shift, were called downtown — allegedly for questioning. Once all the suspects were assembled, they were led not to the front of cameras from all four television stations. Knutson says the joke around the shop was that diminutive Post Master William Brown wore cigarette slouches that day so he would stand tall for the media opportunity.

"I think it's fairly understandable how things went," Knutson says. "The postal inspectors needed to justify their existence and the postmaster needs to justify his career. And of course, there is a whole bunch of social control and intimidation that goes with parading these people in front of the cameras."

In his written response, Postal Inspector John Callinan explained, "It is impossible to arrest 13 Postal employees from a metro-cream Post Office without media coverage. Excluding the media only causes rumor and innuendo among employees and the public. The press coverage does communicate a message and provide a deterrent effect."

Postal workers say that the Postal Service's willingness to sacrifice their own for a media opportunity to send a message (and a powerful damaging effect on morale) throughout the union supports a drug free workplace. It was common knowledge that the workers arrested were not the biggest drug dealers they were made out to be in the night of the bust.

Peter Wold represents Paul Van Slyke, who

was twice videotaped snorting pot to Frye. "My client was not a civic leader, but he was hardly a drug dealer," Wold says. "Not as someone who could get drug cases. I asked him for over a year to get him into before he finally broke down and get him into the name."

Frye excused part of this cover fairly convincingly. He was the one who would set up the date, time, and place of the bust. Postal inspectors provided him with a pager. And what things didn't go well, Frye could even talk like drug dealer. "I don't stand up no like the Ice Cube, or I'll kill you, man," he said, somewhat liberally, to Van Slyke after Van Slyke showed up without a promised bag of drug.

"It was a mixture of begging and cajoling, but he would work on people," Van Slyke said. "Wold suggests that Mr. Frye's demeanor constituted an enticement case waiting to happen. My client was working away at the job he over had and Jim Frye came into his life and everything changed." Wold says Frye "has his own admission, was a drug dealer. He got career appointment for his work. My client who had no history of dealing drugs, just got in and was humiliated on the 10 o'clock news."

Van Slyke was found not guilty of the first two sales to Frye, but the jury ruled somewhat obviously that he had developed a pre-disposition for the third deal. Frye alleged that the first deal he made with Van Slyke was cocaine.

The validity of that cocaine bust, which was the only one in the 14-month investigation, suspect for a number of reasons. Frye said a pinch \$120 for a gram of coke from Van Slyke but he turned over only half a gram of coke to authorities as evidence. Frye generally would make the first purchase from a target on his own; subsequent deals were set up for surveillance cameras.

Frye knew that he was unauthorized when the alleged coke deal went down. Frye acknowledged he was at the end of his second casual day appointment to the Postal Service and his investigation bosses were very anxious for him to begin showing results. He told his superior that Elizabeth Holland, a professional nurse who had been the first purchase from Van Slyke, testified that she had no knowledge of his informant. Surveillance tapes show only that Van Slyke twice sold pot to Frye — each in quantity of less than an ounce.

(Continued on next page)

**...AND DWI CONVICTION WHILE
...ING UNDERCOVER. A WORK
... SENTENCE PUT HIM IN THE STRANGE
... OF HEADING BACK TO THE
... HOUSE AFTER A HARD DAY OF
...ING OUT DRUG ABUSE AND DEALING.**

(continued from previous page)

member of postal employees say of the fact that Frye did make some deals for him, but that he was never able to bring the evidence long enough for anyone to touch.

FEDERAL POSTAL INSPECTOR SERVICE knew that it was dealing with someone who was using drugs. In fact, on April 18, just 13 days after the bust, Frye came up dirty once on a urinalysis. When he was told Frye had admitted that he had used "wads" some of the defendants. After some concern with his postal inspector sponsor, he decided that a test one month later might give some time to clear. Before he came up clean on that test, the postal system gave him a lump sum payment of \$10,000 because they didn't want to be in the "crash" position of paying the state witness fee for the trial.

When defense attorneys finally got a crack in Frye on May 29 in an interview at the trial court building, he looked them right in the eye and had faced him about his use of postal inspectors and a U.S. attorney said could nothing even though they had been being untruthful.

In response would have been on the stand, but the U.S. attorney objected to the presence of a court reporter. Defense attorney said that Frye's responses should be on the stand and took the matter before Federal District Judge Hollie. After considering the law, Hollie reminded the U.S. attorney that as representing the people of the United States, not Frye. The judge wondered about what he did and the need has been so powerful for someone appropriate advice that U.S. attorneys gave Frye to avoid talking on the stand. He was right to be concerned. Frye got the OK and refused to answer any questions with a shrug after present.

During his summation in defense of Paul S. Wyke, Wald pointed out that Frye's lawyer, having acquaintance with the truth was untruthful.

"What Mr. Frye... appeared for investigation, he barely lied to defense attorneys on his history with drugs. Two postal inspectors and a U.S. attorney say he and didn't even a finger. It's no wonder that Mr. Frye has walked outside about the truth."

In one instance, Frye admitted to supplying drugs to a postal worker. During a ride to the workplace, when he was serving time on work release for a DWI, he admitted he had given a driver — a controlled substance for which he had a prescription — in an car worker Mary Delatorre in November of 1990. Before the case went to trial, Delatorre was brought into a room with postal inspector and a U.S. attorney and was asked to sign a statement promising she would not testify in the event. She refused and Frye apparently found out, because he contacted Delatorre in June at the postal court union and screamed obscenities at her. Another postal worker, Cathy Thomsen, testified that when Frye gave her a ride home, he produced a pair of flares to show.

That Frye took a number of flares over the course of the investigation, including drug use around when his license had been suspended, is not surprising. His entire relationship with the Postal Service was built on lies, beginning with his application for employment, which he filled out with the help of the postal inspectors for whom he was working. He was aided by Assistant United States Attorney James Graham about his application for employment.

"Now in that application process, did they ask you whether you had been convicted of any crime?"

"Yes, they did," answered Frye. "I — well, I was — I had no record at all, but I was instructed to do so." Those instructions came from the Postal Inspection Service.

Although the job of the postal clerk and carrier for his undercover work gave Frye a margin of comfort for probably had never experienced before, his life style did not reflect a new stability. Frye was invited for random driving this third DWI conviction while he was working undercover. A work release restriction for the DWI put Frye in the strange position of heading back to the workplace after a hard day of kicking out drug abuse and dealing. There in August 1991, while Frye was serving as a witness in the federal trial of the people he busted, he was arrested for stealing meat, cheese, and cigarettes from a Rainbow Foods store in Rahibahside.

At a hearing where he entered a guilty plea last October, Judge Jerry Group asked him where he was kept.

"Yes, I work for the Postal Service."

"You mean our post office," asked the judge.

"Yeah, I did a stupid thing."
"Which post office are you working in, which branch?" Group continued.
"The six post office office."
"All right. All right, this is going to probably affect your employment," the judge said.
"I'm sorry, your honor."

"Especially working in a job of trust."
While the judge was correct in assuming that the post office has a code of ethics that takes a different view of illegal off duty activities, he was wrong about the conviction affecting Frye's employment. Frye remained employed even as the same code was used to fire the people he figured while he was working downtown. The reason he was displaced for the benefit of Justice Group was nowhere in sight last January 26 during another identifying incident. Frye was sleeping at the New Market store on Lake Street when he apparently had an irresistible urge to stuff a Papa's cheese pizza down his pants. "He was apprehended and the pizza was recovered from his pants," concluded the police report.

AFTER THEIR PROBLEMATICS EXPERIENCE WITH Frye, the postal inspectors apparently were looking to take a step up in terms of the quality of their informants. That's what they turned to Cecil Abney. Abney had worked for the post office for a number of years, had a decent work record, and was looking to get back into the Minneapolis office after a release from California state work out. John Callahan of the Postal Inspection Service came calling. "He [Callahan] told me that Jimmy Frye made them look bad in court," Abney told the Reader. "They knew he was trouble and they would somebody who had enough of a good record to be a good witness. He told me I could be waiting two years to get back in, but that he could get me back in a lot quicker if I was willing to do them some favors. That favor was to give them information on a number of people."

It is hard to imagine that a stone had been laid out after Frye had spent 14 months asking anybody who would listen for drugs, but the Postal Inspection Service was determined to get Abney in position. After he failed to test as a mail handler, they simply took his name from his clerk test and tried that to get him into the craft.

Abney balked at the idea of facing his test. "I told them if there was any falsifying to do, they were going to have to do it."

"Within two weeks I got a letter saying I had been accepted as a mail handler," Abney says. What happened after he is the subject of some debate, but it's clear that after Abney was named as an informant, he failed to produce enough suspects and he was innocently dismissed. In response to inquiries by Sen. Dave Durenberger and Rep. Gerry Sikorski, who were contacted by Abney, the Postal Inspection Service said that Abney had blown his cover. Abney maintains that because his status as an

informant was well known to a number of supervisors, his co-workers inevitably found out, so he never had an opportunity to pursue his undercover assignment in earnest — which he fully intended to do.

"I could have been great at this job," he says. "I just lost a better position to drugs. But according to me that we had two different agreements. I was willing to help them go after drug dealers, but they just wanted me to go out and strap anybody."

On February 5 of this year, through his union, Abney sent the postal inspectors a letter saying he had resigned as a civilian inspector and that he just wanted to continue in his career as a mail handler.

On May 5, two inspectors walked up to Abney and said they wanted to talk. They gave him a letter saying that his work as an informant had been unsatisfactory.

"They took my security badge and escorted me to the front door and that was it," Abney says.

Now the mail handler's union finds itself in the rather odd position of representing Abney as he fights to get his job back, even after it became clear to them that Abney came into their union under the sponsorship of management. The issue of covert placement of informants in an employee union is a troubling one, according to Gene Carly, vice president of Local 323 of the Mail Handler's Union.

"Even apart from the employee's right to be free from harassment and entrapment at their work site, it is a fundamental violation of our right to organize without being infiltrated by informers from management. These people have been accepted into our union and they could forcefully try to union office," Carly said in a phone interview.

La Mout "I'm Kozzoff It is a union steward." The informant's allegiance to the United States postal inspectors and not to the Mail Handler's Union, says Kozzoff. "They should be in a management union, not our union."

Kozzoff says there are detrimental effects beyond showing union dynamism.

"Under these kind of conditions, you can't build a relationship with fellow employees. Who can you trust? It hurts me that people stood out in the cold to take the test to get jobs and the Postal Inspection Service can have people without the benefit of a union test, without any kind of background check."

Attorney John Sheely is representing some of the workers who are trying to get their jobs back. An agreement he made prohibits him from speaking specifically about individual cases, but he has some questions about the post office's tactics in general.

"There was no investigative work — that is the most striking part of what happened here. All they did was allow an admitted drug dealer and a habitual offender of DWI laws to go on and see how many people he could talk, but doing anything wrong. It looks to me like tremendous waste of the government's time and resources."

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CONGRESSIONAL RECORD—HOUSE

H 5085

**POSTAL INSPECTION SERVICE AND
INSPECTOR GENERAL ACT**

Miss COLLINS of Michigan. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4400). To amend title 39, United States Code, to prevent the use of paid confidential informants by the US Postal Service, in certain narcotics investigations; to require that the appointment of the inspector general of the U.S. Postal Service be made by the President, with the advice and consent of the Senate; and for other purposes, as amended.

The Clerk read as follows:

H.R. 400

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SECTION. 1. SHORT TITLE.

This Act may be cited as the "Postal Inspection Service and Inspector General Act".

SEC. 2. RESTRICTION ON THE USE OF PAID CONFIDENTIAL INFORMANTS BY THE POSTAL SERVICE.

(a) CONFIDENTIAL INFORMANTS.—

(1) RESTRICTION.—Section 404 of title 39, United States Code, is amended by adding at the end the following:

(c)(1) The Postal Service may not retain the services of a paid confidential informant for purposes of any investigation concerning the possible violation of any law relating to controlled substances, unless the unlawful use of the mails is involved.

(2) The Postal Service shall render a semiannual report to the Congress concerning any investigation.

(A) in which the Postal Service retains the services of a paid confidential informant; and

(B) which results in the arrest of 1 or more individuals for violating any law relating to controlled substances.

(3) For the purpose of this subsection—

(A) the term "controlled substance" has the meaning given such term by section 1024(b) of the Controlled Drug Abuse Prevention and Control Act of 1970; and

(B) a confidential informant shall be considered to be "paid" if such informant receives, or is to receive, a monetary or nonmonetary benefit (including any forbearance from a civil or criminal action) for the services involved.

(2) APPLICABILITY.—The amendment made by paragraph (1) shall apply with respect to any investigation commencing on or after the date of the enactment of this Act.

(b) OFFICERS.—

(1) IN GENERAL.—Section 204 of title 39, United States Code, is amended—

(A) by amending the section heading to read as follows:

"204. Assistant Postmasters General; General Counsel; Judicial Officer; Chief Postal Inspector";

(B) in the first sentence by striking "and a Judicial Officer"; and inserting "a Judicial Officer, and a Chief Postal Inspector"; and

(C) in the second sentence by striking "and the Judicial Officer" and inserting "the Judicial Officer, and the Chief Postal Inspector".

(2) CONFORMING AMENDMENT.—The table of sections for chapter 2 of title 39, United States Code, is amended by striking the item relating to section 204 and inserting the following:

"204. Assistant Postmasters General; General Counsel; Judicial Officer; Chief Postal Inspector."

SEC. 3. INSPECTOR GENERAL OF THE UNITED STATES POSTAL SERVICE.

(a) DEFINITION.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in section 11(1) by inserting "the Postmaster General," after "the Attorney General"; and

(2) in paragraph (3) by inserting "the United States Postal Service," after "Treasury";

(b) TRANSFER OF FUNCTIONS.—Section 301 of the Inspector General Act of 1978, as amended by section 203(a)(3)(A) of the National and Community Service Trust Act of 1993 (Public Law 103-62, 107 Stat. 860), is amended—

(1) in paragraph (1)—

(A) in subparagraph (U) by striking "and" after the semicolon; and

(B) by adding at the end the following:

"(W) of the United States Postal Service, that portion of the Postal Inspection Service that is engaged in internal audit and program review activities; and"; and

(2) in paragraph (2) by inserting "or, in the case of the United States Postal Service, the Postmaster General, in consultation with the Board of Governors" after "head of the establishment involved";

(c) SPECIAL PROVISIONS.—The Inspector General Act of 1978 is amended—

(1) by redesignating the first section designated as section 80 as section 81;

(2) by redesignating the second section designated as section 80 as section 82; and

(3) by inserting after section 82 the following:

"SPECIAL PROVISIONS CONCERNING THE UNITED STATES POSTAL SERVICE

"SEC. 80. (a) In carrying out the duties and responsibilities specified in this Act, the Inspector General of the United States Postal Service shall have oversight responsibility for all activities of the Postal Inspection Service, including any internal investigation performed thereby. The Chief Postal Inspector shall promptly report the significant activities being carried out by the Postal Inspection Service to such Inspector General.

(b) Nothing in this Act shall restrict, eliminate, or otherwise adversely affect any of the rights, privileges, or benefits of either employees of the United States Postal Service, the National Labor Relations Act, any handbook or manual affecting employee labor relations with the United States Postal Service, or any collective bargaining agreement."

(d) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) RELATING TO THE INSPECTOR GENERAL ACT OF 1978.—Section 82 of the Inspector General Act of 1978 (as so redesignated by subsection (c)(1)) is amended—

(A) in subsection (a)(2) by striking "Tennessee Valley Authority," and all that follows through the semicolon and inserting "Tennessee Valley Authority, and the United States International Trade Commission"; and

(B)(1) by striking subsection (f), and redesignating subsections (g) and (h) as subsections (f) and (g), respectively;

(2) in paragraphs (3) and (4) of subsection (a) by striking "(b)(1)" and inserting "(g)(1)"; and

(3) in subsection (c) by striking "Except as provided under subsection (f) of this section, the" and inserting "The".

(2) RELATING TO TITLE 39, UNITED STATES CODE.—Section 410(b) of title 39, United States Code, is amended—

(A) by striking "and" at the end of paragraph (9); and

(B) by amending paragraph (10) to read as follows:

"(10) the Inspector General Act of 1978, and";

(c) EFFECTIVE DATE; INTERIM SERVICE.—

(1) EFFECTIVE DATE.—This section shall have effect upon the expiration of the 3-month period beginning on the date of the enactment of this Act.

(2) INTERIM SERVICE.—The individual serving as Inspector General of the United States Postal Service on the day before this section takes effect may continue to serve in that capacity until—

(A) a successor has taken office; or

(B) such individual ceases to be the Chief Postal Inspector of the United States Postal Service.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Michigan (Miss COLLINS) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. PETRI) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Michigan (Miss COLLINS).

Miss COLLINS of Michigan. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 400 creates an independent inspector general for the Postal Service to be appointed by the President, with the advice and consent of the Senate. Currently, the chief postal inspector is the inspector general for the Postal Service and is appointed by the Postmaster General.

Mr. Speaker, H.R. 400 will also limit the U.S. Postal Service from hiring paid confidential informants during the course of investigations relating to controlled substances.

Finally, Mr. Speaker, H.R. 400 has received the support and endorsement of several major mailers and Postal Unions such as the National Postal Mail Handlers Union, Alliance of Non-profit Mailers and Advertising Mail Marketing Association.

Therefore, Mr. Speaker, I enthusiastically urge my colleagues to support the measure.

Mr. Speaker, I reserve the balance of my time.

Mr. PETRI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in support of H.R. 400, the Postal Inspection Service and Inspector General Act, and I want to commend Chairman CLAY for bringing this important legislation to the floor.

Since the Postal Service continues to be plagued by a variety of problems, it is of vital interest to postal management, employees and customers alike that we establish an independent inspector general for the Postal Service, as this bill does. Only with an independent IG in place, will sound, independent audits and reviews of Postal Service programs be possible.

Clearly, the chief postal inspector, who currently serves as IG and has broad responsibility for the security of postal personnel and facilities and the investigation of postal crimes, has been hard pressed to review his own organization objectively. And the lack of independent review coming from the Postal Inspection Service has proven costly to mailers, postal employees, and the public.

Furthermore, this bill prevents further travesties of justice like those the committee learned of in Cleveland, West Palm Beach, Los Angeles, Minneapolis, and elsewhere.

By preventing the Postal Service from using paid confidential informants in drug investigations, this legislation should ensure that no more innocent postal employees are entrapped by overly zealous postal inspectors.

June 27, 1994

CONGRESSIONAL RECORD—HOUSE

H 5087

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Miss COLLINS of Michigan. Mr. Speaker, I yield 3 minutes and 30 seconds to the gentleman from the District of Columbia (Ms. NORTON).

(Ms. NORTON asked and was given permission to revise and extend her remarks.)

Ms. NORTON. Mr. Speaker, I very much thank the chairwoman of the subcommittee for yielding time to me and congratulate her on her work in bringing forward this very significant reform.

Mr. Speaker, the Post Office and Civil Service Committee discovered through its own investigations and hearings that the Postal Service was retaining crooks who remained crooks to find crooks. Even without these investigations, Mr. Speaker, the Postal Service should not have been exempt from the requirement to have an independent inspector general like every other federally funded agency. Perhaps because of the Postal Service's special status, it fell between the cracks. Those cracks have become an embarrassingly large hole.

The Postal Service has a postal inspector. His job is to secure the mail and the personnel who deliver the mail. The job of an inspector general is to investigate the internal operations of an agency itself. Otherwise, the agency is left to self-police, and we have learned long ago that that is insufficient.

Matters like narcotics enforcement, where revelations came forward in our hearings, are too important to be left to amateurs and crooks.

Federal law enforcement, of course, generally has a good reputation for professionalism. Who would have thought that within any Federal agency we could have had the notion of "dollars for collars" or convicted felons as confidential informants. No wonder the Postal Service lacks professionalism, however. It had no consultation with professional law enforcement agencies like the FBI, the Justice Department, and many others. No training was given to personnel in professional law enforcement work. The Postal Service was out there doing its thing on a lark on its own. The Service's activities became more than embarrassing; they destroyed lives, and we heard about those lives in graphic detail in the committee.

The Postal Service fought the rehiring of people who were clearly innocent. Ultimately, the crooks outsmarted the Postal Service. They implicated innocent employees and pocketed the money. They vs. some on drugs during the stings. One asked a postal employee to buy him drugs as a favor.

It should not take evidence of renege operations or bogus criminal charges or dismissal of innocent employees to get an inspector general. An independent inspector general is now

considered as vital to a Federal agency as the agency head herself. Lacking an inspector general, the Postal Service got stung by its own sting.

It is too late to undo the damage done to me, but we are in time to prevent more damage to others.

I strongly support the passage of H.R. 4400 and ask my colleagues to do the same.

Miss COLLINS of Michigan. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Ohio (Mr. STOKES).

□ 1350

Mr. STOKES. Mr. Speaker, I thank the distinguished gentleman from Michigan for yielding time to me.

Mr. Speaker, I rise in strong support of H.R. 4400, the Postal Inspection Service and Inspector General Act. This measure will prevent the use of paid confidential informants by the U.S. Postal Service in certain narcotics investigations and will require the appointment of the inspector general of the U.S. Postal Service. As an original cosponsor of H.R. 4400 I want to take this opportunity to commend my distinguished colleague, the gentleman from Missouri, Chairman CLAY, for his leadership in crafting this intelligent and thoughtful legislation, and expeditiously bringing it before the House for consideration.

Mr. Speaker, I would like to take a moment to share how my office became involved in this issue initially. Last year my office was approached individually by several Postal employees who wanted me to inquire into their removal from the Postal Service. In each case, these individuals had been removed for alleged misconduct relating to illegal drug activity.

After talking amongst ourselves, and realizing they all had the same problem and all has the same information used against them provided by the same U.S. Government paid informant, a group of these same individuals came to my office wanting, to file a class action suit and seeking my advice on the matter. Upon my direction, my staff began to collect statements from each of these individuals. Upon receipt of these statements I forwarded these documents to our colleague, and chairman of the Post Office and Civil Service Committee, Mr. CLAY, who has congressional oversight over such matters. What we learned, as the sordid details of the illegal sting operation have come out, has the distasteful makings of some script that one might expect to see utilized for television or a movie: The Postal inspectors hire informants to solicit supposed drug trafficking suspects; the informants run a scam on the Postal inspectors by implicating innocent employees, and the Government pays huge sums of money for bogus information.

It is a sad commentary that this matter is not only a real life situation, but that it involves the U.S. Post Office—a Federal Government entity and

an institution supported by the American taxpayers. Moreover, the entire operation was conducted with the complete knowledge and control of top Post Office officials. In fact, as more and more information emerged, it became clear that this type of activity is not the first instance in which such an ill-conceived operation was carried out.

In addition, Mr. Speaker, the real travesty of this entire case is that this illegal and ill-advised operation has damaged the characters and reputations of many innocent individuals. For many of these persons, jobs were lost. As a result of this deprivation of income, private property and investments such as homes and automobiles were lost as well. Moreover, entire families have been placed under unnecessary and undue stress and censure. All apparently because of some conviction hungry and vindictive Postal inspectors. The events uncovered in this case show a complete disregard for due process.

Mr. Speaker, I was also disturbed to discover that this case has some serious racial implications. It became clear that all of the affected Postal employees whose rights had been compromised were African-American. Furthermore, had it not been for the persistence of many on the Post Office and Civil Service Committee, I am almost afraid to guess how long it would have been—if at all—before these activities were uncovered. I was also shocked to discover that even after the involvement of my office and the Post Office and Civil Service Committee, there was still a lack of cooperation and willingness by the Postal Inspection Service to provide complete and accurate facts.

That is why this bill being considered today, H.R. 4400, the Postal Inspection Service and Inspector General Act is an essential piece of legislation. With its enactment, the abuses I have already discussed will be prevented. Illegal and racially motivated sting operations conducted by federal agencies cannot be tolerated.

Mr. Speaker, in closing, I want to recognize all of those individuals who had the courage to approach me in the first place and those countless other innocent people who may have also been persecuted unfairly. H.R. 4400 is a fair and just bill which will help protect other citizens from unfair prosecution. I strongly urge all my colleagues to take a stand for preventing the egregious abuse of Government power, and vote for passage of H.R. 4400.

Mr. CLAY. Mr. Speaker, H.R. 4400, the Postal Inspection Service and Inspector General Act's primary purpose is the establishment of an independent inspector general for the Postal Service. Today, the Postal Service lacks such an independent inspector general. Currently, the chief inspector of the Postal Service, its chief law enforcement officer whose primary responsibility is security of personnel, facilities and the investigation of postal crimes, is given the additional role of performing inspector general functions. Although he performs inspector general duties he is the

H 5088

CONGRESSIONAL RECORD—HOUSE

June 27, 1994

chief inspector not an inspector general. As a result of this unique situation, this agency's investigative responsibility is much broader than that of any other person who is an inspector general.

An independent IG is mandated to conduct independent audits and review. There is no independent review of Postal Service programs. The Postal Service reviews itself. An independent IG at the Postal Service would have found the systematic problems with the inspection service's drug enforcement program where felons paid by the inspection service have been allowed to ruin the lives of innocent postal employees for the past 10 years. The problems with the Postal Service's contracting procedures may have been uncovered by an independent IG. The Postal Service may have avoided an injunction on the billion dollar air contract. It may have avoided the embarrassment of having paid an outrageous \$7.5 million profit to a St. Louis real estate company which eventually was convicted of fraud in that transaction. The Postal Service may never have purchased a virtually useless and expensive piece of land in Queens, NY, if an independent IG had reviewed the procurement process. In Chicago, an IG could have prevented the disastrous service failure 10 years earlier. He or she could have prevented a single manager from requesting and approving a \$200,000 private office renovation.

An independent IG would have advised the Postmaster General and the Board of Governors that its automation program wasn't being properly implemented nor producing the expected savings. An independent IG may have determined that the PWG's restructuring would harm the automation program. Lack of independent review has proven costly to Mails and Postal employees.

H.R. 4400 prevents the Postal Service from using paid confidential informants in drug investigations. The committee found that Postal inspectors are not equipped to oversee these investigations. Experts at DEA should run these investigations, if they are needed at all.

The Postal Service is the second largest agency in the Government. The only one without an IG. Its management, employees and customers deserve an independent review of its programs. The current inspection Service framework cannot provide that review because it is not independent of management. This bill provides that review in the Postal Service just like every other Federal agency. Postal Service management will have greater accountability under H.R. 4400 which will benefit the Postal Service and the public it serves.

I urge my colleagues to support H.R. 4400. Miss COLLINS of Michigan. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan [Miss COLLINS] that the House suspend the rules and pass the bill, H.R. 4400, as amended.

The question was taken; and two-thirds having voted in favor thereof, the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Miss COLLINS of Michigan. Mr. Speaker, I ask unanimous consent all Members may have 5 legislative days in which to revise and extend their remarks, and include extraneous matter, on the bills, H.R. 4595, H.R. 4596, and H.R. 4400.

The SPEAKER pro tempore (Mr. MONTGOMERY). Is there objection to the request of the gentleman from Michigan?

There was no objection.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Halleck, one of its clerks, announced that the Senate has passed with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 3567. An act to amend the John F. Kennedy Center Act to transfer operating responsibilities to the Board of Trustees of the John F. Kennedy Center for the Performing Arts, and for other purposes.

The message also announced that the Senate had passed a bill and joint resolutions of the following titles, in which the concurrence of the House is requested:

S. 1223. An act to resolve the status of certain lands in Arizona that are subject to a claim as a grant of public lands for railroad purposes, and for other purposes;

S.J. Res. 183. Joint resolution to designate the week beginning on November 21, 1993 and ending on November 27, 1993, and the week beginning on November 20, 1994 and ending on November 26, 1994, as "National Family Caregivers Week";

S.J. Res. 172. Joint resolution designating May 20, 1994, through June 6, 1994, as a "Time for the National Observance of the Fiftieth Anniversary of World War II";

S.J. Res. 178. Joint resolution to proclaim the week of October 16 through October 22, 1994, as "National Character Counts Week"; and

S.J. Res. 187. Joint resolution designating July 16 through July 24, 1994, as "National Apollo Anniversary Observance."

RICHARD BOLLING FEDERAL BUILDING

Mr. TRAFICANT. Mr. Speaker, I move to suspend the rules and concur in the Senate amendments to the bill (H.R. 2559) to designate the Federal building located at 601 East 12th Street in Kansas City, MO, as the "Richard Bolling Federal Building."

The Clerk read as follows:

Senate amendments:

Page 2, after line 5, insert:

SEC. 1. DESIGNATION.

The United States Courthouse located at North and Locust Streets in Kansas City, Missouri, shall be known and designated as the "Charles Evans Whitaker United States Courthouse."

SEC. 2. REFERENCES.

Any reference in a law, map, resolution, document, paper, or other record of the United States to the courthouse referred to in section 1 shall be deemed to be a reference to the "Charles Evans Whitaker United States Courthouse."

The SPEAKER pro tempore (Mr. COLEMAN). Pursuant to the rule, the gentleman from Ohio (Mr. TRAFICANT) will be recognized for 30 minutes, and the gentleman from Tennessee (Mr. DUNCAN) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Ohio (Mr. TRAFICANT).

Mr. TRAFICANT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, on November 15, 1993, the House passed H.R. 2559, a bill to honor our esteemed, distinguished colleague, Richard Bolling, by designating the Federal building at 601 East 12th Street in Kansas City, MO, as the "Richard Bolling Federal Building." As we all know, Richard Bolling served in Congress for 34 years—34 years of notable, enlightened participation and leadership in public service. In addition to his intelligence and insights into reforming the legislative and budgetary operations of the House, he was instrumental in the successful fight for passage of the 1987 civil rights legislation. In addition, Congressman Bolling chaired the Rules Committee, and the Joint Economic Committee, and was a member of the Democratic Steering and Policy Committee.

I am very proud to be associated with this bill. The Senate amendment, to which the committee has no objection, would designate the U.S. courthouse located at Ninth and Locust Streets in Kansas City, MO, as the "Charles Evans Whitaker United States Courthouse." Judge Whitaker served as president of the Missouri Bar Association, and was a judge for the U.S. District Court for the Western District from 1954 to 1956. In 1957, President Eisenhower nominated Judge Whitaker for the Supreme Court. He resigned from the Court in 1962.

Mr. Speaker, I reserve the balance of my time.

Mr. DUNCAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, at the outset I would like to say it has been a pleasure to work with Chairman TRAFICANT on the naming bills before us today.

The gentleman from Ohio, Chairman TRAFICANT, is a good friend and an outstanding chairman of our Public Building and Grounds Subcommittee.

Mr. Speaker, I rise in support of H.R. 2559, as amended, an act to name the Federal building in Kansas City, MO, as the "Richard Bolling Federal Building, and the U.S. courthouse to be constructed in Kansas City, MO, as the "Charles Evans Whitaker United States Courthouse."

On September 13, 1993, the House of Representatives passed H.R. 2559, to name the existing Federal building in honor of our distinguished former colleague, Mr. Bolling, who served in this body with distinction from 1949 until his retirement in 1982. During his service, Mr. Bolling was chairman of the Rules Committee, chairman of the Joint Economic Committee, and au-

Video Cameras Ruled Invasion

of Privacy

EDWIN S. BROWN / COURT REPORTER
November 22, 1993 / FEDERAL TIMES 17

By Ed Winston
Federal Times Staff Writer

Postal employees do have protections from video surveillance in break rooms, according to the Hawaii Supreme Court.

More than the permission of postal inspectors was needed, before a civilian police force could undertake the video operation, the court said.

The ruling came on an appeal brought by the state in connection with a gambling investigation in a Maui post office.

The Maui police department, with the consent of a postal inspector, installed four video cameras in the post office in Lahaina.

The cameras, including one in the employee break room, recorded more than 1,200 hours of employee activity.

Maui police had received several anonymous tips about a gambling ring involving postal employees. But the only activity recorded was of several employees participating in football pools.

As a result, postal supervisor Frank Sylva was fired in March 1992.

Last fall, a Maui Systems Protection Board administrative judge overturned Sylva's firing, and the

room, they had an actual and objectively reasonable expectation of privacy against being videotaped."

Society's expectations also must be considered, the court said. "To discriminate video surveillance networks an immediate negative personal reaction and raises the

pector of the Orwellian state. "Privacy is violated by the continuous search and the camera being aimed at the employee," the court said.

As for consent, the postal inspectors here, "we have never heard that an employee consented to surveillance."

search of an employee's person, and we reject such a notion as utterly repugnant to the constitutional right against unreasonable searches, seizures and invasions of privacy," the court said.

The court also rejected state officials' claim for confusing the presence of the surveillance cameras with a search of work-related employees' conduct.

It was further a search for evidence of criminal conduct.

Hawaii vs. Edwin Bonnell
No. 16001-1-93
Court of Hawaii, Aug 17/1993

'Indiscriminate video surveillance . . . raises the specter of the Orwellian state.'

Hawaii Supreme Court

Judge criticized the Postal Inspection Service for disregarding employees' rights in prosecuting the case.

A state district court backed the administrative judge, throwing out evidence gained through videotaping employees in the break room. The state then appealed.

In deciding against the state, Hawaii's highest court said, "We affirm the district court's findings of fact, conclusions of law, and suppression orders."

Evidence obtained from the surveillance "must be suppressed as fruits of the poisonous tree," the ruling said.

At all court levels, judges have pointed out the continual, year-long video investigation was too much and too long, and privacy was abused because no warrant ever was obtained.

"The silent, unblinking lens of the camera was intrusive in a way that no temporary search of the office could have been," Hawaii's high court said.

"The basic purpose of these constitutional provisions is to safeguard the privacy and security of individuals against arbitrary invasions by government officials."

"Whatever the general privacy interest the defendants may or may not have had in the break

Excerpts From Court Ruling in Entrapment Case

Special to The New York Times

WASHINGTON, April 6 — Following are excerpts from the Supreme Court's decision today in *Jacobson v. United States*, holding that the Government violated a Nebraska farmer's rights by ordering the law officer child pornography, Justice Byron R. White wrote the majority opinion, joined by Justices Harry A. Blackmun, John Paul Stevens, David H. Souter and Clarence Thomas. Justice Sandra Day O'Connor's dissenting opinion was joined by Chief Justice William H. Rehnquist and by Justices Anthony M. Kennedy and Antonin Scalia.

FROM THE DECISION By Justice White

On Sept. 24, 1987, petitioner Keith Jacobson was indicted for violating a provision of the Child Protection Act of 1984, which criminalizes the knowing receipt through the mails of a "visual depiction (that) involves the use of a minor engaging in sexually explicit conduct." Petitioner defended on the ground that the Government entrapped him into committing the crime through a series of communications from undercover agents that spanned the 26 months preceding his arrest.

Petitioner was found guilty after a jury trial. The Court of Appeals affirmed his conviction, holding that the Government had carried its burden of proving beyond reasonable doubt that petitioner was predisposed to break the law and hence was not entrapped.

Because the Government overstepped the line between setting a trap for the "unwary innocent" and the "unwary criminal," *Sherman v. United States*, and as a matter of law

failed to establish that petitioner was independently predisposed to commit the crime for which he was arrested, we reverse the Court of Appeals judgment affirming his conviction.

In February 1984, petitioner, a 56-year-old veteran-turned-farmer who supported his elderly father in Nebraska, ordered two magazines and a brochure from a California adult bookstore. The magazines, entitled *Bare Boys I* and *Bare Boys II*, contained photographs of nude pre-teen and teen-age boys. The contents of the magazines startled petitioner, who testified that he had expected to receive photographs of "young men 18 years or older."

The young men depicted in the magazines were not engaged in sexual activity, and petitioner's receipt of the magazines was legal under both Federal and Nebraska law. Within three months the law with respect to child pornography changed; Congress passed the act illegalizing the receipt through the mails of sexually explicit depictions of children.

In the very month that the new provision became law, postal inspectors found petitioner's name on the mailing list of the California bookstore that had mailed him *Bare Boys I* and *II*. There followed, over the next two years, repeated efforts by two Government agencies, through five fictitious organizations and a bogus pen pal, to explore petitioner's willingness to break the new law by ordering sexually explicit photographs of children through the mail.

The Government began its efforts in January 1985 when a postal inspector sent petitioner a letter supposedly from the American Hedonist Society, which in fact was a fictitious organization. The letter included a membership application. . . .

Petitioner enrolled in the organiza-

tion and returned a sexual attitude questionnaire that asked him to rate on a scale of one to four his enjoyment of various sexual material with one being "really enjoy," tv being "enjoy," three being "somewhat enjoy," and four being "do not enjoy." Petitioner ranked the entire "[p]re-teen sex" as a two, but indicated he was opposed to pedophilia.

For a time, the Government let petitioner alone. But then a new "prohibited mail specialist" in the Post Service found petitioner's name in a file, and in May 1986 petitioner received a solicitation from a second fictitious consumer research company, "Midlands Data Research."

Petitioner responded: "Please feel free to send me more information, am interested in teen-age sexuality. Please keep my name confidential."

Petitioner then heard from yet another Government creation, "Hearland Institute for a New Tomorrow" (HINT), which proclaimed that it was "an organization founded to protect and promote sexual freedom and freedom of choice. We believe the arbitrarily imposed legislative sanctions restricting your sexual freedom should be rescinded through the legislative process." The letter also enclosed a second survey. Petitioner indicated that his interest in "[p]re-teen sex-homosexual" material was above average, but not high. . . .

Potential 'Pen Pals'

HINT also provided computer matching of group members with similar survey responses; although petitioner was supplied with a list of potential "pen pals," he did not initiate any correspondence.

Nevertheless, the Government's "prohibited mail specialist" began writing to petitioner, using the pseudonym "Carl Long." The letters employed a tactic known as "mirror-

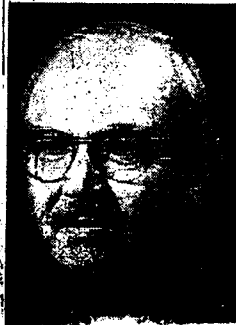
Justices Cast Unusual Vote in an Entrapment Case

Continued From Page A1

votes were once common, the conservative bloc has established such dominance that the current Court is no longer closely divided on many issues.

With only Justice White and Justice O'Connor writing opinions today, there was no way of knowing why the other Justices lined up as they did, or why Justice Thomas and Justice Scalia parted company for only the second time.

The case, *Jacobson v. United States*, No. 86-1124, was an appeal by a Nebraska man — a veteran-turned-farmer — who Justice White described him — who at the age of 56 was convicted of violating the Child Protection Act, a Federal



arrested by Federal agents; they found no other child pornography in his home.

A Question of Predisposition

Stressing the facts of the case, Justice White said the Government had failed to show beyond a reasonable doubt that Mr. Jacobson was predisposed to violate the law "prior to first being approached by Government agents."

"In their zeal to enforce the law," Justice White said, "Government agents may not originate a criminal design, implant in an innocent person's mind the disposition to commit a criminal act, and then induce commission of the crime so that the Government may prosecute."

Entrapment Case

ing," which the inspector described as "reflect(ing) whatever the interests are of the person we are writing to." Petitioner responded at first, indicating that his interest was primarily in "male-male items."

Petitioner's letters to "Long" made no reference to child pornography. After writing two letters, petitioner discontinued the correspondence.

By March 1987, 34 months had passed since the Government obtained petitioner's name from the mailing list of the California bookstore, and 26 months had passed since the Postal Service had commenced its mailings to petitioner. Although petitioner had responded to surveys and letters, the Government had no evidence that petitioner had ever intentionally possessed or been exposed to child pornography.

Petitioner responded. A catalogue was sent and petitioner ordered Boys Who Love Boys, a pornographic magazine depicting young boys engaged in various sexual activities. Petitioner was arrested after a controlled delivery of a photocopy of the magazine.

Petitioner's Explanation

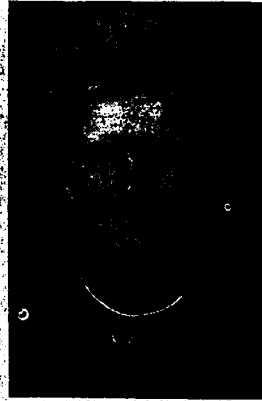
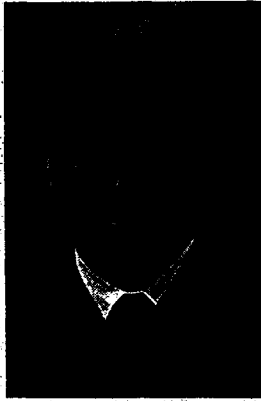
When petitioner was asked at trial why he placed such an order, he explained that the Government had succeeded in piquing his curiosity...

In petitioner's home, the Government found the Bare Boys magazines and materials that the Government had sent to him in the course of its protracted investigation, but no other materials that would indicate that petitioner collected or was actively interested in child pornography...

There can be no dispute about the evils of child pornography or the difficulties that laws and law enforcement have encountered in eliminating it. Likewise, there can be no dispute that the Government may use undercover agents to enforce the law.

"In their zeal to enforce the law, however, Government agents may not originate a criminal design, implant in an innocent person's mind the disposition to commit a criminal act, and then induce commission of the crime so that the Government may prosecute. Where the Government has induced an individual to break the law and the defense of entrapment is at issue, as it was in this case, the prosecution must prove beyond reasonable doubt that the defendant was disposed to commit the criminal act prior to first being approached by Government agents.

When the Government induces or implants in an innocent person's mind the disposition to commit a criminal act, and then induces commission of the crime so that the Government may prosecute, the defense of entrapment is at issue, and the prosecution must prove beyond reasonable doubt that the defendant was disposed to commit the criminal act prior to first being approached by Government agents.



Photographs by The New York Times

Justice Byron R. White wrote the majority opinion in the Supreme Court's decision holding that the Government entrapped a Nebraska farmer into violating the law against child pornography. Justice Sandra Day O'Connor wrote the dissenting opinion.

who, if left to his own devices, likely would have never broken the law, the courts should intervene.

Because we conclude that this is such a case and that the prosecution failed, as a matter of law, to adduce evidence to support the jury verdict that petitioner was predisposed, independent of the Government's acts and beyond a reasonable doubt, to violate the law by receiving child pornography through the mails, we reverse the Court of Appeals judgment affirming the conviction of Keith Jacobson.

FROM THE DISSENT By Justice O'Connor

This Court has held previously that a defendant's predisposition is to be assessed as of the time the Government agent first suggested the crime, not when the Government agent first became involved. Until the Government actually makes a suggestion of criminal conduct, it could not be said to have "implanted" in the mind of an innocent person the disposition to commit the alleged offense and induce its commission."

Today the Court holds that Government conduct may be considered to create a predisposition to commit a crime, even before any Government action to induce the commission of the crime. In my view, this holding changes entrapment doctrine.

Generally, the inquiry is whether a suspect is predisposed before the Government induces the commission of the crime, not before the Government makes initial contact with him. There is no dispute here that the

Government's questionnaires and letters were not sufficient to establish inducement; they did not even suggest that Mr. Jacobson should engage in any illegal activity. If all the Government had done was to send these materials, Mr. Jacobson's entrapment defense would fail.

Yet, the Court holds that the Government must prove not only that a suspect was predisposed to commit the crime before the opportunity to commit it arose, but also before the Government came on the scene.

The rule that preliminary Government contact can create a predisposition has the potential to be misread by lower courts as well as criminal investigators as requiring that the Government must have sufficient evidence of a defendant's predisposition before it ever seeks to contact him. Surely, the Court cannot intend to impose such a requirement, for it would mean that the Government must have a reasonable suspicion of criminal activity before it begins an investigation, a condition that we have never before imposed.

The Court denies that its new rule will affect run-of-the-mill sting operations, and one hopes that it means what it says. Nonetheless, after this case, every defendant will claim that something the Government agent did before soliciting the crime "created" a predisposition that was not there before...

The Court's rule is all the more troubling because it does not distinguish between Government conduct that merely highlights the temptation of the crime and Government conduct that actively induces the crime. The latter, of course, leads a suspect to believe that he has no choice but to commit the crime.

Justices Cast Unusual Vote in an Entrapment Case

Continued From Page A1

votes were once common, the conservative bloc has established such dominance that the current Court is no longer closely divided on many issues.

With only Justice White and Justice O'Connor writing opinions today, there was no way of knowing why the other Justices lined up as they did, or why Justice Thomas and Justice Scalia parted company for only the second time.

The case, *Jacobson v. United States*, No. 90-1124, was an appeal by a Nebraska man — a "veteran-turned-farmer," as Justice White described him — who at the age of 58 was convicted of violating the Child Protection Act, a Federal law that makes it a crime to receive sexually explicit photographs of children through the mail. The man, Keith Jacobson, initially won an appeal on the ground of entrapment before a panel of the United States Court of Appeals for the Eighth Circuit, in St. Louis. But the full Eighth Circuit upheld his conviction in October 1990.

Details of the Case

As Justice White's opinion today recounted in detail, Mr. Jacobson, who had no criminal record, first came to the Government's attention in 1984 after he ordered by mail from a California bookstore two magazines containing photographs of nude pre-teen and teen-aged boys. The photographs did not depict sexual activity and did not violate the law at the time.

Congress changed the law a few months later, broadening the definition of child pornography to include the type of material Mr. Jacobson had bought. Two agencies, the Postal Service and the Customs Service, began to enforce the new law. Over the next two and a half years these agencies set up five fictional organizations, with such names as the American Hedonist Society and the Heartland Institute for a New Tomorrow.



Keith Jacobson, whose conviction on child pornography charges was overruled yesterday.

The Supreme Court refused to hear a constitutional challenge from the former chairman of the failed Columbia Savings and Loan Association of Beverly Hills, Calif. *Business Day*, page D1.

Postal inspectors found Mr. Jacobson's name on the California bookstore's mailing list and sent him numerous surveys and solicitations to fight restrictive pornography laws by ordering "items which we believe you will find to be both interesting and stimulating." One postal inspector, using a pseudonym, became Mr. Jacobson's "pen pal" for a time.

Finally, Mr. Jacobson ordered a magazine containing child pornography from a fictitious company, the Far Eastern Trading Company Ltd. When the magazine was delivered, he was

arrested by Federal agents; they found no other child pornography in his home.

A Question of Predisposition

Stressing the facts of the case, Justice White said the Government had failed to show beyond a reasonable doubt that Mr. Jacobson was predisposed to violate the law "prior to first being approached by Government agents."

"In their zeal to enforce the law," Justice White said, "Government agents may not originate a criminal design, implant in an innocent person's mind the disposition to commit a criminal act, and then induce commission of the crime so that the Government may prosecute."

In her dissenting opinion, Justice O'Connor said the Court had expanded the entrapment defense by making it harder for the Government to show the required "predisposition." In previous cases, she said, the Court had required proof of predisposition only at "the time the Government agent first suggested the crime, not when the Government agent first became involved."

The majority opinion vigorously disputed this assertion. Justice White said the Court had established 60 years ago that predisposition must be shown to have existed "prior to contact with law-enforcement officers."

The Court rejected a broader argument that Mr. Jacobson's lawyers had put forward, under which an entrapment defense would be established if the Government failed to show that it had a "reasonable suspicion" for singling out an individual for investigation in the first place.

Under the test the Court applied today, the Government need not show predisposition before starting an investigation. Rather, predisposition would be adequately established after the fact if a suspect, unlike Mr. Jacobson, "promptly availed himself" of an opportunity presented by Government agents to commit a crime.

Arizona Conducts First E

Tuesday, January 21, 1992

COUR

SUMMARY Kings County

4

Search of Postal Officer's Locker Is Suppressed as Unreasonable

DEFENDANT POSTAL police officer was charged with murder and moved to suppress, inter alia, evidence recovered from a warrantless search of his locker. The court rejected the prosecution's position that the search was proper under Post Office regulations and granted the suppression motion. It held that the defendant had a reasonable expectation of privacy in the locker even though he was a public employee, and that the search was unreasonable under the circumstances.

★ *People v. John Postall, Supreme Court, Criminal Term, Part 29, Justice M. Juviler (p. 34, col. 5).*

SUMMARY Queens County

6

Suppression of Evidence Is Denied

CRIMINAL TERM, PART 29

Justice Juviler

* PEOPLE v. JOHN POSTAL—

1. The Issues

This is a written version of an oral decision rendered after a hearing on a motion to suppress statements by the defendant, identifications of the defendant at a lineup, and property seized from the defendant's employment locker. The main issue is the reasonableness of the warrantless search of the defendant's locker at the post office where he worked as a U.S. Postal Service police officer. The motion calls into question the scope and effect of a U.S. Postal Service regulation purporting to authorize the search, and the applicability of the federal and state constitutional provisions against "unreasonable searches and seizures" to the search of a public employee's locker or desk. See U.S. Const. amend. IV; N.Y. Const. Art. 1, sec. 12. These issues have rarely, if ever, been treated in reported New York cases.

The defendant had been indicted for murder in the second degree. He is alleged to have shot to death Robert Brown on a street immediately outside of the main post office in Downtown Brooklyn, where the defendant was employed.

The defendant contends that his statements shortly after the shooting were obtained when he was in custody and no Miranda warnings were given, and that his disturbed state of mind precluded voluntariness; that the appearance of the lineup conducted later that night was unnecessarily suggestive, because only the defendant and two of the five fillers wore beards; and that the defendant had a reasonable expectation of privacy in his locker, and no search warrant or consent to search had been obtained.

The People have the burden of going forward with evidence to show the lawfulness of the seizure of the property and the lack of suggestiveness of the lineup. Then it becomes the defendant's burden to show an unlawful seizure (People v. Pettinato, 69 N.Y. 2d 653) and an unnecessarily suggestive lineup. People v. Chipp, 75 N.Y. 2d 327. The burden is on the People to prove the voluntariness of the defendant's statements beyond a reasonable doubt. People v. Anderson, 42 N.Y. 2d 35. On the basis of the credible testimony and the exhibits I make these findings of fact and mixed findings of fact and law:

2. The Shooting and the Defendant's Statements

On the evening of June 28, 1990, Postal Police Officer Kenneth Ashworth heard shots coming from Johnson Street outside the main post office in Downtown Brooklyn. When he arrived at the scene, he saw the defendant, who was in uniform, and recognized him as a colleague in the Postal Police Service. He also saw a man lying on the street.

Because Ashworth had heard shots he had drawn his own gun, but he did not point it at the defendant. He asked the defendant what had happened. The defendant said that the man (later identified as Robert Brown) had tried to take the woman's purse and had grabbed the defendant, reached behind his back, and threatened to kill the defendant.

Ashworth asked the defendant whether he had shot the man, and the defendant said yes. The defendant was dazed, apparently from the effect of shooting someone while on duty.

At about the same time, Postal Inspector Biegelman came upon the scene. He too recognized the defendant as a colleague.

He asked the defendant what had happened. The defendant answered, "I shot him." Biegelman asked, "Why?" The defendant's answer was similar to that given Ashworth.

Biegelman asked whether the man had a weapon; the defendant stared at Biegelman as if in shock and did not answer the question.

Inspector Biegelman saw that there was no weapon near the body of Kenneth Brown, and that the woman had left the scene. He and Officer Ashworth ran after her and caught up with her. She identified herself as Michelle Green and confirmed the defendant's statements about what had happened.

On-the-spot examination of the defendant's service firearm showed that it contained six spent shells.

Biegelman found two civilian witnesses who said that they had seen the shooting.

Because the defendant was in mental trauma from the shooting he was put in an ambulance to go to Long Island College Hospital.

New York City Police Officer Orquinto joined the defendant in the ambulance. He noticed that the defendant was "shaken up" and very nervous. He concluded that the defendant had done a "good shooting," meaning that the defendant had used justifiable deadly physical force as a police officer. The defendant was not handcuffed and had his gun. The defendant was smoking a cigarette. The ambulance was still at the scene.

Orquinto told the defendant that he didn't have to talk but asked whether he wanted to say what had happened. The defendant's response was in substance the same as before.

The defendant was taken to Long Island College Hospital. There, Postal Police Sergeant Hansen found the defendant in a room in the company of Postal Police Officer Ashworth and two New York City Police officers. They left Hansen alone with the defendant.

Hansen asked the defendant how the shooting had happened. The defendant said that he had seen the woman in a confrontation with the man and that he had intervened. The man had grabbed for the defendant's throat, and the defendant had pushed his arms up and broken the hold. The man had threatened to kill the defendant and made a motion to the right side of

his back. The defendant had shot him.

When asked by Sergeant Hansen whether he had seen a weapon, the defendant shook his head in the negative. The defendant also said that the man had motioned to him from across the street several times.

I find that the defendant was not in custody when any of these statements was made. The statements to Ashworth and Biegelman were given in response to routine on-the-scene questioning about an apparent justifiable shooting by a police officer in defense of a citizen. Therefore, Miranda warnings were not required. People v. Huffman, 41 N.Y. 2d 29; People v. Smith, 150 A.D. 2d 738.

The same conclusion applies to Officer Orquinto's questions of the defendant in the ambulance.

The situation that comes closest to custody happened later at the hospital. But I find from the totality of the circumstances that a reasonable innocent person in the defendant's position at the hospital would have known that he was not in custody (see People v. Yukl, 25 N.Y. 2d 585; cert. denied, 400 U.S. 851; People v. Arcese, 148 A.D. 2d 460) and that this was merely a routine police inquiry into a shooting by a colleague in law enforcement. The tone of the questioning was investigative, not accusatory. The defendant was not restrained in any way, and he was allowed to keep his gun.

Although the defendant was in mental shock while he was making these four statements, that does not preclude voluntariness. People v. Bostick, 124 A.D. 2d 811. I find that his statements were voluntary beyond a reasonable doubt. The defendant was a police officer. The statements were exculpatory. They were coherent. And the defendant's mental state was not deliberately exploited by any of the officers who questioned him.

3. The Lineup

At 9:30 that night the defendant was placed under arrest, apparently because of information provided by the two civilian eyewitnesses.

Later that night the two witnesses separately viewed a lineup combining the defendant and five fillers. Neither witness was told anything suggestive. Each identified the defendant as the shooter.

The photographs of the lineup, in evidence at the hearing, show that the defendant and two other persons in the lineup had beards. The photographs do not show clearly the faces of the three other fillers, and the burden of going forward with evidence of lack of suggestion rests on the People, so I find that three fillers did not have beards.

Nevertheless, the appearance of the lineup was not suggestive. There was no requirement that all six persons in the lineup have beards for the lineup to be fair. People v. Clark, 155 A.D. 2d 548 (lineup not unduly suggestive although only the defendant and two of five fillers had beards).

4. The Search of the Locker

About one hour after the incident on the street, and while the defendant was at Long Island College Hospital, Postal Inspector Biegelman, in the company of other postal inspectors, broke open the defendant's locked employee's locker in the employees' section of the main post office. In the defendant's locker were three photographs of Michelle Greene, a letter addressed to her, a prescription container-bearing her name, and her own Postal Service identification card.

This revealed to the investigators something that neither the defendant nor Michelle Greene had disclosed—that at least two of the persons involved in the incident had known each other.

That property must be suppressed because the People have not met their burden of coming forward with evidence or authority to justify the search of the locker.

There was no search warrant, and the inspector had not sought the defendant's permission to break open or search his locker.

There was no probable cause or reasonable suspicion on which to base a search of the locker. Inspector Biegelman based his decision to search having stared at him when asked whether the person shot had been armed and upon the defendant's not answering other questions while he was in the dazed condition.

When asked at the hearing what he expected to find in the locker, Biegelman answered, "I didn't know." He testified that he was not investigating whether a crime had occurred, and that "I considered myself investigating whether . . . there there was a shooting and what kind of shooting it was by a postal employee."

The supposed authority for this search was stated by Inspector Biegelman at the hearing: "Postal inspectors have the authority to open up the lockers of employees . . . It is in our regulations and requirements." "I disagree."

The defendant had a reasonable expectation of privacy in the locker, even though he was a public employee. In *O'Connor v. Ortega*, 480 U.S. 709, the Supreme Court of the United States held that a doctor employed in a public hospital had a reasonable expectation of privacy in his desk and file cabinets; neither a search warrant nor probable cause was needed to search those places, but the search still had to be justified by "reasonableness." As the Court said in the plurality opinion: "Individuals do not lose Fourth Amendment rights merely because they work for the government instead of a private employer." *Id.* at 717. A search of a public employee's possessions at the employee's place of employment must be "reasonably related in scope to the circumstances which justified the interference in the first place . . ." The search will be permissible in its scope when "the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the nature of the [misconduct]." *Id.* at 726.

Similarly, *United States v. Blok*, 188 F.2d 1019 (D.C. Cir.), held that a search of a government worker's desk is governed by the Fourth Amendment and requires some showing of connection between the employee's job and the purpose of the search. Thus, a government employee's superiors "could not reasonably search the desk for her purse, her personal letters, or anything else that did not belong to the government and had no connection with the work of the office." *Id.* at 1021.

The search of the defendant's locker, based purely on an inspector's hunch and his belief that according to "regulations" he could search lockers at will, was not justified under these principles. There was no apparent connection between the street shooting and the defendant's locker, and the People have not shown any other facts to make the search "reasonable" according to federal law.

Although it seems that the New York

courts have not addressed the warrantless search of a government employee's locker, the New York Court of Appeals has clarified the Fourth Amendment rights of public employees in another context. In *Patchoque-Medford Congress of Teachers v. Board of Education*, 70 N.Y. 2d 57, the Court held that the Fourth Amendment and N.Y. Const. Art. 1, sec. 12, protect public employees against unreasonable searches; specifically, probationary teachers could not be required to undergo urinalysis to test for drugs—a form of "search"—without "reasonable suspicion."

Caruso v. Ward, 72 N.Y. 2d 432, involved periodic random urinalysis drug-testing of members of the New York City Police in reliance on *O'Connor v. Ortega*, held that this search "should be judged by the standard of reasonableness under all the circumstances" as to "both the inception and the scope of the [government] intrusion." The Court, quoting *O'Connor v. Ortega*, noted that a search by a public employer may be justified at its inception "when there are reasonable grounds for suspecting that the search will turn up evidence that the employee is guilty of work-related misconduct, or that the search is necessary for a non-investigatory work-related purpose." 72 N.Y. 2d at 437 (emphasis supplied). See also *People v. Overton*, 20 N.Y. 2d 360, 361 (student's locker in a public high school "is safeguarded from unreasonable searches for evidence of a crime, and warrantless search requires valid consent").

I find on the present record, as a fact and as a mixed finding of fact and law, that the search of the defendant's locker does not pass the New York test of "reasonableness." Perhaps "reasonable suspicion" was not required, if the search of a locker be considered less invasive of privacy than urinalysis. It is not necessary to decide that issue here. But some connection was needed. For example, if Inspector Biegelman had concluded and testified that the defendant's appearance and demeanor indicated that he might have been under the influence of drugs when he shot Robert Brown, that might have justified a search of the defendant's locker.

Inspector Biegelman did not seek to connect the search of the locker to any articulable fact showing reasonableness under the federal or state constitution; instead, he justified it by a regulation that he interpreted as across-the-board authority. The parties have agreed that the regulation is Section 612.242 of the Employee Relations Manual of the U. S. Postal Service (People's Exhibit 2), which provides: "Employee lockers are subject to inspection by authorized personnel. Provisions governing locker inspections are provided in applicable collective bargaining agreements."

The parties have stipulated that the search was neither supported nor determined by any provision in any collective bargaining agreement. Therefore, on the present record, the reference in Section 612.242 to "applicable collective bargaining agreements" is not pertinent to this case, and cannot be used to justify the search.

An administrative regulation cannot, supercede the Fourth Amendment. Therefore, the requirement of "reasonableness" must be read into Section 612.242, as the cases cited above establish. This regulation, interpreted in that light, does not justify the search of the defendant's locker.

The broad authority envisioned by Inspector Biegelman is further contradicted by a defense exhibit at the hearing, a portion of the U.S. Postal Service Inspection Service Manual, which is used as a guide for postal inspectors' professional conduct. Section 461.33 deals with warrantless searches of postal employees' lockers. Section 461.33 is similar to Section 612.242 of the Employee Relations Manual, but limits its broad language:

"461.33 Warrantless Searches of Postal Employees Lockers. ASM 724.12 provides that all postal owned or furnished property is subject to examination and inspection by postal officials in the discharge of their official duties. Thus in a criminal investigation an inspector may search an employee's postal locker for evidence of fruits of a crime or contraband. Searches of this type have been upheld when limited to property furnished by the government. United States v. Collins, 349 F.2d 963 (2d Cir. 1965), cert. denied, 383 U.S. 960 (1966); United States v. Donato, 379 F.2d 88 (3d Cir. 1967); United States v. Bunkers, 521 F.2d 1217 (9th Cir. 1975), cert. denied, 423 U.S. 989 (1975). American Postal Workers Union v. United States Postal Service, C.A. No. C-2-83-0195 (S.D., Ohio, decided October 8, 1987). Such a search is invaluable if the situation demands immediate action (emphasis supplied).

This section cites a regulation that has not been provided to the Court by the parties, and that reference remains unexplained. I will assume for the sake of discussion that it is a reference to a provision similar to Section 612.242 of the Employee Relations Manual. In any event, Section 461.33 provides an administrative gloss on Section 612.242, and in the portions italicized above amounts to a limitation on the latter provision—a limitation ignored by Inspector Biegelman.

Also in conflict with Biegelman's broad interpretation of his power to search a locker are the cases cited in the Inspectors' manual. They either hold or imply that there must be a basis for a search of a locker, consisting of some connection between the employee's work, the search, and the locker. The cases involve searches of postal or customs employees' lockers for missing or stolen mail or, in Donato, the search of a locker of an employee of the U. S. Mint for explosives after an explosion at the job site.

United States v. Bunkers dealt with the search of a postal employee's locker to find stolen mail. The Court specifically noted that it was dealing only with the seizure of the fruits of a postal crime connected with the employee's performance of her employment at the post office. Said the Court: "We express no view or opinion upon the reasonableness of a search of a postal employee's employment connected locker for the fruits of a crime not work connected." *Id.* at 1220, n. 1.

United States v. Collins involved the search of a customs employee's work jacket. The Court pointed out that it was not concerned with an investigation of a crime unconnected with the performance of the defendant's duties as a customs employee. Customs and postal agents were entitled to broad authority to search the publicly owned areas of government buildings to retrieve missing mail.

In the present case, by contrast, there was no connection between the defendant's locker and any lost or stolen mail, fruits of the extortion of a postal employee, or similar fruits of a crime connected with the defendant's employment, and no apparent connection (until after the search) with the shooting of Robert Brown.

Inspector Biegelman's testimony, and the U.S. Postal Service Employee Relations Manual, also conflict with New York statutory law. CPL Section 2.20(1)(c) provides that U.S. Postal Service police officers and inspectors have the "power to carry out

warrantless searches whenever such searches are constitutionally permissible and acting pursuant to their special duties" (emphasis supplied). The cases discussed in this opinion show that the inspectors power to carry out warrantless searches is restricted by the Fourth Amendment and the comparable provision in the New York Constitution (Art. 1, sec. 12).¹

The People have also contended that the regulation, Section 612.242, establishes "consent" by the defendant to the search. The People have a "heavy burden" of establishing an "unequivocal" consent to a search. *People v. Gonzalez*, 39 N.Y. 2d 122, 128. A People's witness at the hearing with broader jurisdiction and familiarity with Postal Service rules than Inspector Biegelman, Postal Inspector Long, testified without contradiction that employees are instructed that they are subject to the provisions of Section 612.242, and that postal police officers would be included in that group. But the regulation is ambiguous. "Subject to search" can mean "always," or it can mean "under appropriate circumstances." This vague provision cannot be used as evidence of "unequivocal" blanket consent by all postal employees to otherwise baseless searches of their private lockers. Nor is there evidence that the defendant signed a consent or waiver form when he accepted his job with the Postal Service.

Conclusion

The property seized from the locker is suppressed. The motions to suppress identification evidence and the defendant's statements are denied.

(1) This lack of response will not be admissible during the People's direct case at the trial, because the defendant had no obligation to answer the question. See *People v. Gluckowski*, — A.D. 2d —, N.Y.L.J. July 3, 1991, p. 27.

(2) The People have not argued that the Postal Service regulation, if read as a complete authority to search all lockers, is binding on this state court and has supremacy over the CPL under the Supremacy Clause of the U. S. Constitution (Art. VI, sec. 2). This Court has therefore applied New York law of search and seizure to the admissibility of evidence in this New York State Court. Moreover, even federal law voids the search in this case.

prominent place in the lobby of the building, preferably above the post office boxes.

338.4 **Legislation**

All inquiries about the status of legislation pending before the U.S. Congress, the official Postal Service position on a given bill, or the impact of a bill on postal policies and procedures must be referred to the vice president of Legislative Affairs.

338.5 **Release of Information**

The release of information to government officials must be consistent with the policies in 35 and the *Domestic Mail Manual*.

339 **Inspection Service**

339.1 **Policy**

The Postal Inspection Service has a responsibility to provide information about the enforcement of postal laws to the public.

339.2 **Responsibility**

339.21 **Headquarters**

The manager of Congressional and Public Affairs, Inspection Service, is responsible for the Inspection Service's public communications policies, programs, and functions. Reporting to the deputy chief inspector of Operations Support, and in coordination with Postal Service Corporate Relations, the manager of Congressional and Public Affairs ensures that staff members:

- a. Respond to news media inquiries and provide information about the Inspection Service to the public.
- b. Plan, approve, and manage the Inspection Service public affairs effort.
- c. Advise the chief postal inspector and deputy chiefs on actions necessary to keep the public well informed on Inspection Service policies and programs.

339.22 **Spokespersons**

The inspector in charge or designated public information officer is the principal spokesperson in matters of law enforcement. When situations arise that involve law enforcement and corporate issues, the Inspection Service spokesperson is to coordinate with the manager of the Corporate Relations center and the postmaster or other facility manager. Inspection Service Congressional and Public Affairs coordinates with Postal Service Corporate Relations to provide functional communications guidance to the field.



Rules and Regulations Governing Conduct on Postal Property

APPLICABILITY

These rules and regulations apply to all real property under the charge and control of the USPS, to all tenant agencies, and to all persons entering in or on such property. These rules and regulations must be posted and kept posted at a conspicuous place on all such property.

RECORDING PRESENCE

Except as otherwise ordered, properties must be closed to the public after normal business hours. Properties also may be closed to the public in emergency situations and at such times as may be necessary for the orderly conduct of business. Admission to properties when closed to the public may be limited to authorized individuals who may be required to sign the register and display identification when requested by security force personnel or other authorized individuals.

GENERAL RESTRICTIONS

Preservation of Property

Litering, spitting, creating any hazard to persons or things, throwing articles of any kind from a building, climbing upon the roof or any part of the building, or willfully destroying, damaging, or removing any property or any part thereof, is prohibited.

Conformity with Signs and Directions

All persons in and on property shall comply with official signs of a prohibitory or directory nature, and with the directions of Security Force personnel or other authorized individuals.

Inspection

Purses, briefcases, and other containers brought into, while on, or being removed from the property are subject to inspection. However, items brought directly to a postal facility's customer making acceptance area and deposited in the mail are not subject to inspection, except as provided by the *Administrative Support Manual*, section 276. A person arrested for violation of this section may be searched incident to that arrest.

SPECIFIC RESTRICTIONS

Disturbance

Disorderly conduct, or conduct which creates loud and unusual noise, or which obstructs the usual use of entrances, foyers, corridors, offices, elevators, stairways, and parking lots, or which otherwise tends to impede or disturb the public employees in the performance of their duties, or which otherwise impedes or disturbs the general public in transacting business or obtaining the services provided on property, is prohibited.

Gambling

Participating in games for money or other personal property, the operation of gambling devices, the conduct of a lottery or pool, or the selling or purchasing of lottery tickets, is prohibited on postal premises. This does not apply to state lottery tickets at vending facilities operated by licensed blind persons where such lotteries are authorized by state law.

Alcoholic Beverages and Drugs

Anyone under the influence of alcohol or any drug which has been defined as a "controlled substance" may not enter postal property or operate a motor vehicle on postal property. The possession, sale, or use of any "controlled substance" (except when permitted by law) or the sale or use of any alcoholic beverage (except as authorized by the Postmaster General or designee) on postal premises is prohibited. The term "controlled substance" is defined in section 802 of title 21 U.S.C.

Soliciting, Electioneering, Collecting Debts, Vending, and Advertising

Soliciting aims and contributions, campaigning for election to any public office, collecting private debts, commercial soliciting and vending, and the display or distribution of commercial advertising on postal premises are prohibited. This does not apply to:

- Commercial activities performed under contract with the USPS or pursuant to the provisions of the Randolph Sheppard Act;
- Posting notices on bulletin boards as authorized in *Postal Operations Manual* 221.525;
- The solicitation of USPS and other federal military or civilian personnel for contributions by recognized agencies by the *Manual on Fund Raising Within Federal Service*, issued under Executive Order 10927, 3/13/61.

Depositing Literature

Depositing or posting of handbills, flyers, pamphlets, signs, posters, placards, or other literature except official postal and other governmental notices and announcements, on the grounds, walks, driveways, parking and maneuvering areas, exteriors of buildings and other structures, or on the floors, walls, stairs, racks, counters, desks, writing tables, window ledges, or furnishings, in interior public areas on postal premises is prohibited. This does not apply to:

- Posting notices on bulletin boards as authorized in *Postal Operations Manual* 221.525.
- Interior space assigned to tenants for their exclusive use.

Photographs for News, Advertising, or Commercial Purposes

Photographs for news purposes may be taken in entrances, lobbies, foyers, corridors or auditoriums when used for public meetings except where prohibited by official signs or Security Force personnel or other authorized personnel, or a Federal court order or rule. Other photographs may be taken only with the permission of the local postmaster or installation head.

Dogs and Other Animals

Dogs, except guide dogs, and other animals, must not be brought on postal property for other than official purposes.

Vehicular and Pedestrian Traffic

Drivers of all vehicles in or on postal premises shall drive in a careful and safe manner at all times and must comply with signals and directions of Security Force personnel, other authorized individuals, and all posted traffic signs.

Blocking of entrances, driveways, walks, loading platforms or fire hydrants is prohibited.

Parking without authority, parking in unauthorized locations or in reserved locations, or continuously in excess of 18 hours without permission, or contrary to the direction of posted signs is prohibited. Supplemental specific traffic directives may be issued by the postmaster or installation head. When issued and posted, such directives shall have the same force and effect as if made a part hereof.

Weapons and Explosives

No person while on postal property shall carry firearms, other dangerous or deadly weapons, or explosives, either openly or concealed, except for official purposes.

NONDISCRIMINATION

There must be no discrimination by segregation or otherwise against any person or persons because of race, religion, national origin, sex, age (persons 40 years of age or older are protected), reprisal (discrimination against a person for having filed or participating in the processing of an EEO complaint — 29 CFR 1613.261-262), or physical or mental disability, in furnishing, or by refusing to furnish to such person or persons the use of any facility of a public nature, including all services, privileges, accommodations, and activities provided on postal property.

PENALTIES AND OTHER LAW

Alleged violations of these rules and regulations are heard, and the penalties prescribed herein are imposed, either in a Federal District Court or by a Federal Magistrate in accordance with applicable court rules. Questions regarding such rules must be directed to the regional counsel for the region involved.

Individuals found guilty of violating these rules and regulations are subject to fine of not more than \$50 or imprisonment of not more than 30 days, or both. Nothing contained in these rules and regulations shall be construed to abrogate any other Federal laws or regulations or any state or local laws and regulations applicable to any area in which the property is situated.

ENFORCEMENT

Members of the USPS Security Force will exercise the powers of special policemen provided by 40 U.S.C. 318 and are responsible for enforcing the regulations in this notice in a manner that will protect USPS property. Postal Inspectors may also enforce regulations in this notice.

Mr. MCHUGH. Our next panel is comprised of Mr. Hugh Bates, who is president of the National Association of Postmasters of the United States; Bill Brennan, president of the National League of Postmasters; and Vincent Palladino, president of the National Association of Postal Supervisors.

Gentlemen, before we all get too comfortable, why don't we rise and raise our right hands?

[Witnesses sworn.]

Mr. MCHUGH. Thank you. The record will show all three witnesses affirmed me the oath in the positive.

Gentlemen, most of all, thank you for your patience here today. We deeply appreciate your standing by as we went through these issues with our distinguished first panel.

And we also, of course, equally important, appreciate your willingness to join us and to share your perspectives with us with respect to this particular panel.

Let me just, as we proceeded on the prior panel, begin with President Bates, and present your testimony, sir, and then we will continue down the line with Mr. Brennan and Mr. Palladino. So the floor is yours, and thank you and welcome.

STATEMENTS OF HUGH BATES, PRESIDENT, NATIONAL ASSOCIATION OF POSTMASTERS OF THE UNITED STATES; BILL BRENNAN, PRESIDENT, NATIONAL LEAGUE OF POSTMASTERS; AND VINCENT PALLADINO, PRESIDENT, NATIONAL ASSOCIATION OF POSTAL SUPERVISORS

Mr. BATES. Thank you, Chairman McHugh and members of the subcommittee, and thank you for giving me the opportunity to comment on H.R. 3717, the Postal Reform Act of 1996.

My name is Hugh Bates. I am the Postmaster at Clanton, AL. At the present time, I am on a 2-year leave of absence, serving here in the Washington area as president of the National Association of Postmasters. After that, I will go back home being Postmaster there. So I am one of these people that cannot be re-elected.

I would like to congratulate you, Mr. Chairman, for the work that you and your staff have put into the development of this bill, and we appreciate the effort you have made to deal with a number of complicated and controversial issues. Your bill frees the Postal Service from some of the restraints that have allowed competitors to take away business that we could have handled if we had been legally able to do so.

We have heard the Postmaster General's comments regarding the loss of mail volume to other carriers; and, believe me, no Postmaster wants to see business go out his front door.

The Postal Service revenue and where the bill provides a way for the Postal Service to increase its share of the mail volume and thus increase its revenue, we support that part of the bill.

In particular, we support the provisions which allow the Postal Service to set its own prices and make negotiated agreements in the competitive products and to offer volume discounts to market-test products. We appreciate the opportunity to earn new revenue and believe that these freedoms will allow us to better serve our customers.

Mr. Chairman, you and I both are supporters of rural America. I know that because I have heard you say it. NAPUS, our organization, has always maintained that rural communities have the same right to be served just as well as the metropolitan areas of this country.

In other words, universal mail service, the same quality of service to every American regardless of where they live or their status of life.

For that reason, we particularly appreciate your public statement supporting small post offices. And I thank you for including in your bill a provision supporting small post offices and a provision mandating that appeals of such post office closings will be made and will be heard if the appeal is postmarked, rather than received, before the end of the 30-day appeal period.

This provision will ensure that citizens of rural communities do not lose their post office as a result of a legal technicality.

On behalf of our Postmasters, I also want to express our gratitude for the provisions creating criminal penalties for assaulting or stalking postal employees and for enhancing the penalties for mail theft, postal robbery, and for the mailing of hazardous or controlled substances. As you know, Mr. Chairman, the Postmasters and other employees are vulnerable to crime because they handle money and checks.

Just a month ago, I know all of you are aware, that a Postmaster, a young lady 32 years old, was stabbed to death in her post office in rural Alaska. Here in Washington, DC, last month, we had a city carrier who was shot while he was delivering mail out on the route.

It is important for postal employees who must deal with the public every day as they go about their duties to know that they are protected from physical harm.

It is also important for criminals to understand that they cannot steal from the Postal Service or use it to transport illegal substances without incurring the full wrath of the Federal Government. So we fully support you in these provisions.

In the statement you made as you introduced this bill, you mentioned your commitment to the maintenance of a universal postal system. We are also committed to a universal postal service.

And let me emphasize the word "service." Although I have no quarrel with the view that the Postal Service should be better able to compete in the business world, it is not, and should not be, a business.

You can call me old-fashioned, if you want to, but when I came out of the Marine Corps and came into the Post Office Department, it was committed to a service. In 1971, I was a Postmaster. I lobbied Congress to change it to the U.S. Postal Service from the Post Office Department. So we are committed to the word "service."

Therefore, I would like to suggest to you that you retain the traditional titles of Postmaster General, Deputy Postmaster General, and the Board of Governors. Benjamin Franklin, who happened to be our first Postmaster General, to me, was a great American; and personally I see no shame in anyone assuming the same title that Benjamin Franklin had.

If the Postal Service management is too authoritarian, then management practices need to be changed, not the titles of top management. There are some other specific provisions in the bill which we would like to see revised.

One is the proposal to change the urgent-letter rule to allow letters of \$2 or more to be sent outside the Postal Service without violating the Private Express Statutes.

We believe that this provision not only reduces the price for urgent letters, but expands the definition of materials that can be sent outside the mail, and far more volume will be lost as a result of this change than the potential 20 percent that the subcommittee has predicted.

In his July 10 testimony, the Postmaster General said that \$4 billion could be lost as a result of this change. While we realize you are only proposing a demonstration project, we are also very concerned about the provision to test open access to the mailbox.

NAPUS has always opposed the opening of the mailbox to individuals outside the Postal Service. People send and receive checks and other items which have financial or personal value to them. If several individuals have legal access to the mailbox, it will be more difficult to protect the mail from theft.

Mr. Chairman, in 1986 and 1987, I served in this same capacity as president of this association. During that time, I started a series of tours overseas studying the postal services of other countries.

During that time, at no cost to the Postal Service and no cost to the Federal Government, I served as chairman of these committees and went to the foreign countries to study what is going on in their postal service.

On each of these trips that we made, there were Postmasters, there were sectional center managers, there were other postal employees, and each one of these trips were anywhere from 2 to 3 weeks.

And, again, I say each person must take their annual leave or their vacation time. During that time, the following countries, we visited and studied their postal service. We compiled a journal day by day, and the journal we compiled usually was about an inch thick when we finished because we kept up with it day by day.

We went through the following countries. We went to China, Hong Kong, Australia, New Zealand, Switzerland, Hungary, Austria, Czechoslovakia, East and West Germany; and just last year, to England, Scotland, and Ireland.

And when you want to compare the postal services of these countries to the U.S. Postal Service, we may as well be comparing the size of a peanut to a coconut. There is just no comparison in the size of the countries or the service that they provide.

A prime example is New Zealand. I am not sure of the size of New Zealand, but I do not think it is much bigger than the State of New York. I am not sure of that. But I want to tell you what I found over there and my people who went with me, which was 30 different people.

They reduced rural service first from 6 days a week to 3 days a week. They made a surcharge on anyone who lived on a rural route, and right now there is a minimum charge of \$30 per house-

hold to receive their mail on a rural route. The surcharge was assessed on each and every rural box.

There is no free rural delivery in New Zealand as we enjoy today, and we have enjoyed it for 100 years. We have got rural free delivery. They do not have it in New Zealand, regardless of what profit they talk about that they make.

Everyone is allowed to have access to any mailbox in New Zealand. I personally traveled with a rural carrier in China, New Zealand, and just last year, with a carrier in England. I will tell you some of the things that we found where they deposited mail.

I saw abandoned automobiles left out there, and that is where they would put their mail in or whoever wanted to leave anything else there. I saw abandoned refrigerators. I saw oil drums left out there, and they used those for receptacles.

We urge you, Mr. Chairman and this committee, not to open access to the private mailbox. In the same title of this bill, an independent Inspector General is created. Our organization is opposed to the creation of a Presidentially appointed Inspector General because it would bring partisan politics back in the Postal Service areas.

We are also concerned about the cost that the creation of a new position would place on postal customers. I have seen estimates of a startup cost of as much as \$26 million. We just do not see how this would add up to the efficiency of the Postal Service. Where we have got an inspector out there doing an audit in an office and a criminal matter happens in another office somewhere nearby, his boss can call him and send him off to investigate that. If we have another Inspector General who is doing the audit work or doing the criminal investigation, the people do not know who to call.

The people out in America respect the title of Postmaster General. They know what a postal inspector is, and they respect his authority. But if we change it and have two different branches of the Inspection Service, I am afraid we will not retain that.

Mr. Chairman, again, I would like to commend you for taking on such a difficult task. Since you have taken over the chairmanship of this subcommittee, you have been diligent in your study of the issues coming before you.

Your door has always been open, and you have been willing to listen to all sides of any question. We trust your judgment and look forward to working with you further on the final wording of this bill. I thank you for providing me the time to express the views of the National Association of Postmasters, and if at any time during this period that I could answer a question, I would be glad to try to do so. Thank you, sir.

[The prepared statement of Mr. Bates follows:]

Chairman McHugh, Members of the Subcommittee, thank you for giving me this opportunity to comment on H.R. 3717, the Postal Reform Act of 1996. My name is Hugh Bates. I am postmaster of Clanton, AL and I am serving as the President of the National Association of Postmasters of the U.S. (NAPUS) while on a two-year leave of absence. NAPUS represents more than 43,000 active and retired postmasters throughout the United States.

I want to congratulate you, Mr. Chairman, for the work you and your staff have put into the development of this bill. We appreciate the effort you have made to deal with a number of complicated and controversial issues. Your bill frees the Postal Service from some of the restraints that have allowed competitors to take away business that we could have handled, if we had been legally able to do so. We have heard the Postmaster General's comments regarding the loss of mail volume to other carriers and, believe me, no postmaster wants to see businesses walk out of our door unserved. Our livelihood is closely tied to the Postal Service's revenue, and where this bill provides a way for the Postal Service to increase its share of mail volume -- and thus increase its revenue -- we support it.

In particular, we support the provisions which allow the Postal Service to set its own prices and make negotiated agreements in the "Competitive" products, to offer volume discounts and to market test products. We appreciate the opportunity to earn new revenue and believe that these freedoms will allow us to better serve our business customers. And removing Treasury control over USPS funds will help us make better use of the new revenue we generate.

Although this Subcommittee is not involved in making such judgements, we believe

that a good use for any additional Postal Service revenue earned would be capital improvements. As a result of previous budget cuts, a number of postmasters are working in facilities that are not really adequate. Many of the smaller facilities lack toilets, for example. Some facilities, particularly in fast-growing suburbs, need to expand to accommodate additional customers. Both postal employees and postal customers would benefit from some new capital investment.

Mr. Chairman, you and I are both supporters of rural America. NAPUS has always maintained that rural communities have the right to be served just as well as those Americans who live in the cities. For that reason, we particularly appreciate your public statements supporting small post offices. Thank you for including in your bill a provision mandating that appeals of post office closings will be heard if the appeal is postmarked, rather than received, before the end of the 30 day appeal period. This provision will help insure that citizens of rural communities do not lose their post office as a result of a legal technicality.

On behalf of our postmasters, I also want to express our gratitude for the provisions creating criminal penalties for assaulting or stalking postal employees and for enhancing penalties for mail theft, postal robbery and for the mailing of hazardous or controlled substances. As you know, postmasters and other employees are vulnerable to crime because they handle money and checks. Just a month ago, a postmaster was stabbed to death during a robbery in her Alaska post office and a letter carrier right here in Washington, DC was shot and killed while he was delivering mail on his route. It is important for postal employees, who must deal with the public every day as they go about their duties, to know that they are protected from physical harm. It is also important for criminals to understand that they

cannot steal from the Postal Service or use it to transport illegal substances without incurring the full wrath of the federal government. So we fully support you in these provisions.

In the statement you made as you introduced this bill, you mentioned your commitment to the maintenance of a universal postal system. We are also committed to a universal postal service. And let me emphasize the word *service*. Although I have no quarrel with the view that the Postal Service should be better able to compete in the business world, it is not and should not be a business. Call me old-fashioned but, when I left the Marine Corps, I came to work for the Post Office Department. In 1971, it changed to the U.S. Postal Service, not the Company.

Therefore, I would like to suggest that you retain the traditional titles of Postmaster General, Deputy Postmaster General, and Board of Governors. Benjamin Franklin was our first Postmaster General and I see no shame in assuming the same title as that held by such a great American. If the Postal Service's management is too authoritarian, then management practices need to be changed, not the titles of the top management.

There are some other specific provisions in the bill which we would like to see revised. One is the proposal to change the urgent letter rule to allow letters of \$2.00 or more to be sent outside of the Postal Service without violating the Private Express Statutes. We believe that this provision not only reduces the price for "urgent letters" but expands the definition of materials that can be sent outside the mail and that far more volume will be lost as a result of this change than the potential 20% that the Subcommittee has predicted. In his July 10 testimony, the Postmaster General said that \$4 billion could be lost as a result of the change.

While we realize you are only proposing a demonstration project, we are also very concerned about the provision to test open access to the mailbox. NAPUS has always opposed opening the mailbox to individuals outside the Postal Service. People send and receive checks and other items which have financial or personal value to them. If several individuals have legal access to the mailbox, it will be more difficult to protect the mail from theft. How could you prove that one of the people who opened the box during any given day did not take material out, instead of putting it into the box? Our carriers have passed a rigorous screening before they are hired by the Postal Service to ensure that they do not have a criminal record, but other businesses could hire people without doing background checks. We also believe that Americans place a high value on their personal privacy and that their privacy rights would be threatened by open access to the mailbox.

Mr. Chairman, I served NAPUS as National President in 1986 and 1987. In 1987 I started a series of visits to foreign countries to study their mail service. On each of these visits, I served as the leader of a delegation composed of postmasters, managers of sectional centers, and other postal employees. These trips were made at no expense to the United States Postal Service or the federal government.

Each of these trips was of either two or three weeks duration. Our groups were coordinated by the Citizens' Ambassador Group founded by the late President, Dwight D. Eisenhower. The postal services of the following countries were studied extensively and a day by day journal maintained: China, Hong Kong, Australia, New Zealand, Switzerland, Hungary, Austria, Czechoslovakia, East and West Germany, England, Scotland and Ireland. When comparing the postal services of these countries to the United States Postal Service, we

may as well compare the size of a peanut to a coconut. There is no comparison.

A prime example is New Zealand. Although not the geographical size of your state of New York, Mr. Chairman, they reduced almost all rural delivery from six days to three days each week. A surcharge was assessed on each rural mail box. There was no free rural mail delivery such as we enjoy on our 100th year of rural free delivery (RFD) this year.

Any and everyone is allowed to have access to private mail receptacles. I personally traveled with a rural carrier in China, New Zealand, and just last year, with carrier in England. There is no standard mail receptacle. I saw abandoned automobiles, refrigerators, and oil drums used as mail receptacles. We urge you not to open access to the private mail box.

Another provision which concerns us is the requirement that the Postal Service continue to offer reduced rates for non-profits without obligating Congress to appropriate the funds to cover those reduced rates. The bill also directly prevents the Postal Service from passing along those costs to other mailers. Three years ago, Congress approved an agreement between the Postal Service and the mailing community that phased out revenue forgone. The mailers agreed to take on a portion of the additional costs. Congress agreed to continue some transitional payments to the Postal Service to cover the rest of the costs the USPS incurred by offering these reduced rates. This provision would, in effect, wipe out that agreement. Congress would be requiring the Postal Service to offer services for which it was not willing to pay, clearly working against the goal of making the Postal Service more business-like. Right now, Congress has an incentive to keep the number of groups receiving non-profit rates small because there is a cost, in the form of appropriations, for that reduced

rate. If no money had to be appropriated, reduced rates might begin to seem like a free gift that could be bestowed by Congress.

We also oppose the provision that requires the Postal Service to forward Commercial Mail Receiving Agency (CMRA) mail . Mail sent to a CMRA is all delivered in bulk to one address – that of the CMRA. The employees there sort the mail to each individual box. For the Postal Service to forward that mail, a postal employee would have to sort through all similarly addressed mail to find the pieces that needed forwarding. In small offices, the postmaster would have that duty. That could amount to extra handling of hundreds or even thousands of pieces of mail each month, depending on the size and nature of the local population. Can you imagine the problem that would create in a resort community, for example, where mail has to be forwarded for many inhabitants each year? The CMRA charges its customers for the service it provides and should provide forwarding to those customers.

There are several other provisions where we would like to see some clarification. H.R. 3717 places the Postal Service under the oversight of the Federal Trade Commission (FTC). Our understanding is that this means the Postal Service could be subject to an antitrust lawsuit. Since the Postal Service derives its income from the postal customers, doesn't that mean that the customers would eventually pay for any judgement levied against the Postal Service? I have also been told that the Board of Governors could be held personally liable in such a lawsuit. I serve on a number of Boards myself and I believe that it would be difficult to find people willing to accept an appointment to the USPS Board under those circumstances.

In that same title of the bill, an independent Inspector General position is created. We oppose the creation of a Presidentially appointed Inspector General because it would bring partisan politics back into Postal Service affairs.

We are also concerned about the cost that the creation of this new position would place on postal customers. I have seen estimates of a start-up cost of \$26 million, with recurring annual costs of about \$44 million. These are personnel costs over and above the cost of running the Inspection Service. In addition to personnel costs, the IG would require separate space, furniture, vehicles, and computer equipment to maintain independence.

We just don't see how this would add to the efficiency of the Postal Service. Instead of one set of postal inspectors, now there would be two. Unless you hire double the number of inspectors, which would not be consistent with the Postal Service's goals, you would have fewer people available to respond to postal crimes and emergencies and fewer people to handle major audit functions. The Inspection Service is meeting its responsibilities without this additional level of bureaucracy and expense. Why change something that works well right now?

We also note the increased responsibility given to the Postal Rate Commission (PRC) under the bill. NAPUS has always supported the continuation of an independent commission and we are pleased to see that you are giving them additional tools, such as subpoena power, so that they can better perform their duties. However, we would like some additional information on the extent to which the Subcommittee is empowering the Commission. In Title X, Section 3783 of the bill, the PRC is required to make a determination about whether the USPS has met its performance goals and service standards as well as whether the rates in

effect complied with the law. This provision gives the PRC oversight over operational aspects of the postal service, as well as ratemaking and classification. We are concerned that this section could have far-reaching, and potentially unintended, influence on such factors as postmasters' pay. I say this because postmasters are evaluated on whether they have reached certain performance goals, such as service standards.

PRC Chairman Gleiman also pointed another potential manner in which the PRC could have an influence over employees' salaries. Because the adjustment factor can be negative as well as positive, and because labor costs have grown faster than the GDPPI over the last twenty years, a negative adjustment could put significant pressure on the Postal Service during negotiations. While unions are protected by collective bargaining, postmasters do not have any such rights. If the PRC gave the Postal Service a negative adjustment factor in a year during which the employee groups were negotiating over salary and benefit increases, it is conceivable that an arbitrator could require the Postal Service to give union members a salary increase that would leave almost nothing available for an increase in postmasters' pay.

We would also like to see a clarification of the intent of the provision which allows the USPS to represent itself in federal appeals of Merit System Protection Board (MSPB) decisions. The wording of the provision seems to show that there must be a serious question of law, rather than a disagreement regarding an individual decision. However, we remain concerned that the Postal Service might use the provision to support more aggressive federal court appeals of adverse MSPB decisions than are allowed under current law. We do not support any changes in the law regarding employee adverse action MSPB appeals.

NAPUS also encourages the Chairman to reconsider the make-up of the proposed Postal Employee-Management Commission. As currently written, it specifically excludes individuals or representatives of Postal Service employee groups. While a different perspective is important in looking at problems, the lack of substantive postal knowledge could result in recommendations that are harmful to employees. There should be a strong voice on the Commission with real, practical knowledge of how the system currently works. Of course, I would argue that the presence of a postmaster, supervisor and craft employee would strengthen this proposed Commission.

Finally, I would just like to note that your bill make sweeping changes in the ratemaking process. While NAPUS has no comment on the particulars of those changes, we would like to remind you that it is our members who will be responsible for implementation of those changes on a day-to-day basis. We will need a great deal of time to prepare for these changes and so will the supervisors, clerks and carriers who will handle the mail. We do not want to see service deteriorate because too little time was allowed for implementation, planning and training.

Mr. Chairman, I again commend you for taking on such a difficult task. Since you have taken over the Chairmanship of this Subcommittee, you have been diligent in your study of the issues coming before you. Your door has always been open and you have been willing to listen to all sides of any question. We trust your judgement and look forward to working with you further on the final wording of this bill.

Thank you for providing me with this opportunity to present my views. I am ready to answer any questions you may have.

Mr. MCHUGH. Thank you, Mr. Bates. I appreciate it, as always. We will move right along to President Brennan. Welcome.

Mr. BRENNAN. Good afternoon, Mr. Chairman, members of the committee in absentia. My name is Bill Brennan, and I am privileged to serve as president of the National League of Postmasters and appear today on behalf of the Nation's Postmasters.

I, too, want to commend you, Mr. Chairman, and thank you for introducing this legislation and for scheduling these hearings. We appreciate the hard work involved with many months of investigation and study which were necessary to produce this comprehensive document.

I have submitted the lead statement for the record and at this time would like to summarize it as it relates to the proposed legislation.

Mr. MCHUGH. Please do, and as was applicable with the first panel, all of the witnesses' full testimony will be submitted in their entirety for the record.

Mr. BRENNAN. Thank you, Mr. Chairman. Twenty-five years ago, the U.S. Postal Service was given a mandate to provide a universal postal service at uniform rates in a prompt and efficient manner to the American public. It has, for the most part, I believe, carried out its mission; and it has done that without taxpayer subsidy since 1983. As was brought out a little earlier, we have become a cash cow. We have returned to the Federal Treasury approximately \$14 billion.

Our primary concern is that the Postal Service remain strong, viable, and continue to provide superior service all over America, even in those places which are not profitable. Your proposed legislation will in some measure correct the law and permit the Postal Service to compete. Your bill provides the Postal Service additional freedoms which will result in much-needed financial flexibility and, hopefully, rate stability.

The ability to offer volume discounts, make a profit, and to have more flexible rate-setting capabilities provide tools which, if used judiciously, can offer the Postal Service more financial security and provide our customers the services that they require.

We support your proposal that we be allowed to introduce and test experimental products or services in a timely manner. For years, the League has requested that monopoly and nonmonopoly mail be treated differently, allowing for more flexibility to set rates in the competitive area to reflect the current market forces.

I must withhold at this time, Mr. Chairman, my comments on the proposed formulas that would be used in setting of the non-competitive rate. I was not good in algebra and such, and the X factor and all of those would take a lot of study to fully explain.

However, all of these new flexible rates must be sufficient to support a network of small post offices, which is what I believe Ed Gleiman, chairman of the Postal Rate Commission, referred to during his testimony before this committee last week.

The continuance of post offices in spite of the fact that many of them may not contribute to a positive revenue expense ratio cannot be the driving factor. Profit is good, but the profit motive must not control the service.

Mr. Chairman, we share your concerns, as expressed in your introduction of this bill, regarding the continuance of rural post offices. This issue is of primary concern to the League, which has been the voice of the small, rural post office for more than a century.

And the League believes that the process to close or consolidate a post office should be difficult and that every effort should be made to address the concerns of citizens affected by the closing or consolidation under consideration.

We support the proposed use of the postmark as the official date of receipt of a written appeal to the closing of the post office. We would hope that there would be other actions forthcoming that would also support the rights of small-town post offices.

An area of particular interest in this bill deals with the use of profits and bonuses. The first panel talked on this just a little bit. I am at this time unclear as to who these bonuses would apply to of what is meant by "fair and equitable distribution" and who would make these determinations.

We agree that the subpoena power for the Postal Rate Commission could be a useful tool, if it would enhance their ability to render a decision in a timely manner; but would ask that the rate-setting process not become more complicated than it already is.

We question the need for establishing a Presidentially appointed Inspector General for the Postal Service. We know of evidence of abuse by any Inspector General that warrants the splitting or changing the duties and/or the authority of the chief postal inspector, and we would ask that the committee delete this section from the bill.

Regarding the Presidential Postal Employee Management Commission, the League supports improving the relationship between employees and management. We support the concept of the upcoming summit that the Postmaster General spoke of when he testified here last week, just as we did almost 2 years ago when it was first proposed.

The League feels that lasting solutions can be found through internal cooperation and commitment. We are not convinced of the necessity for the creation of an external commission and would, therefore, ask the committee to delete this section.

However, if it is determined that a postal employee-management commission is needed, the League proposes that this commission should include other voices. An essential voice to serve on such a commission is the voice of the postal employee, and this voice should include actual employees who represent labor and management at various levels and functions within the Postal Service.

Another of those voices should be the voice of public service. This voice should include a high-ranking civil servant, either Federal or State, and this voice should understand the need for and represent the service side of the Postal Service.

Most importantly, all of these voices should understand and represent the needs of the employees and the customers that they serve.

On the issue of access to the mailbox, the League is strongly opposed to allowing nonpostal access to individual, private mailboxes. The basic concept of sanctity of the mail is at stake. Even allowing

a test invites the risk that in the public mind the sanctity of these boxes and their contents could be lost. I also question how one would determine the success or failure of such a test.

The proposed change that would allow for the private carriage of any letter costing \$2 or more concerns us. This reduction from the current level would offer a great risk of revenue loss to the Postal Service, which could then threaten the stability of rates and of the service.

Having led the campaign to obtain civil service protections for small-office Postmasters in the early part of this century and to win Merit Systems Protection Board rights for all nonveteran Postmasters in 1987, the League is acutely interested in any proposed changes to these protections.

Our attorneys tell me that the Office of Personnel Management has denied the Postal Service authority to appeal to the U.S. Court of Appeals in fewer than six cases in the last 10 years.

To now give the Postal Service the unrestricted right to appeal cases directly to the Federal Circuit Court would mean that they would have the ability to prolong litigation and thereby increasing the expense and frustration to an appellant for whom a ruling had already been made and who does not have the access to the almost unlimited resources available to the Postal Service.

Mr. Chairman, if it is the intent of Title VIII to allow the Postal Service authority to appeal individual cases brought by Postmasters to the courts, then the League is adamantly opposed. We would be willing, and are willing to, to provide you with any additional background specific to appeals as a followup of this hearing should you request. We would ask that you would remove that statute.

And, last, I would ask that before considering a change in the titles of our postal leaders, for you to consider this. The Postal Service is unique. It is one of a kind. It does not compare to any other business or utility in this country, and we are leery of suggestions that we should copy postal operations in other countries.

We are very proud of the fact that we process and deliver over 180 billion pieces of mail annually to approximately 180 million addresses. This pride is one of the reasons Postmasters believe that the head of the Postal Service should retain a postal designation which labels him or her as their leader and the leader of an organization which is like no other.

This traditional title dates back to the founding of our Nation and our first Postmaster General, Benjamin Franklin, and all of his successors. "Postmaster General" and "Postmaster" are respected titles that mean something to both the public and the postal employee. The title "Postmaster General" is a designation specific to only one organization, the U.S. Postal Service. The title "CEO" could refer to any and all corporations.

The League and, I believe, the Nation's Postmasters, even in this modern, fast-paced world, believe that a little tradition should continue. Postmasters of America ask you to continue the title of Postmaster General within the U.S. Postal Service.

Mr. Chairman, I thank you for this opportunity for the League

to share our views. We offer you our expertise in all areas as you work to refine this legislation. I would ask that you do not hesitate to use as a resource. We would be proud to work further with you in strengthening the Postal Service. Thank you, Mr. Chairman.

[The prepared statement of Mr. Brennan follows:]

Good afternoon, Mr. Chairman and Members of the Committee. My name is Bill Brennan and I am privileged to serve as President of the National League of Postmasters.

I want to commend you, Mr. Chairman, and thank you for introducing this legislation and for scheduling these hearings. You have taken on a monumental task. We appreciate the hard work involved with months of hearings, investigation, and study which were necessary to produce this comprehensive document.

Twenty-five years ago the U.S. Postal Service was given a mandate to provide a universal Postal Service at uniform rates in a prompt and efficient manner to the American public. Further, it was to perform in a business-like manner, but **not allowed** to make a profit. For this, it was to be rewarded with continuity of management and self-authority to manage its affairs.

In spite of continued external interference that has made its task difficult at best, it has, for the most part, carried out its mission.

This task has been accomplished while reducing taxpayers' costs from 25 percent of operations in 1971 to zero in 1983. Since then it has not even received the annual public service subsidy to which it is entitled under law.

On the other hand, the Postal Service has contributed billions of dollars toward reducing the Nation's financial deficit which has resulted in inflated rate increases.

Our primary concern is that the Postal Service remain strong and viable and continue to provide top service all over America, even in the places which are not profitable. This is part of our mandate to provide universal service. After preliminary scrutiny of the bill, I feel that this is your intent also.

Your proposed legislation will in some measure correct these laws permitting the Postal Service to compete. Your bill provides the Postal Service additional freedoms which will result in much needed financial flexibility and, hopefully, rate stability.

We support your effort to allow the Postal Service to become more competitive and to have more rate-setting flexibility in the areas of non-competitive mail.

The Postal Service needs this increased freedom to continue as a force which will continue to provide universal service at uniform affordable rates well into the 21st Century.

The ability to offer volume discounts, make a profit, and to have more flexible rate-setting capability provide tools which, if used judiciously, can offer the Postal Service more financial security.

While we have not fully analyzed the proposed rate setting rules, we support the concept and the additional flexibility it provides. The Postal Service needs this ability to compete if there is to be a universal Postal Service in the future. For years, the LEAGUE has requested that monopoly and non-monopoly mail be treated differently, allowing for more flexibility to set rates in the competitive area to reflect market forces.

We also support the authority to introduce and test experimental products or services in a timely manner.

Mr. Chairman, it will take quite a bit more study before we fully understand the formulas that would be used in setting rates.

However, all of these new flexible rates must be sufficient to support the network of small Post Offices and to appropriately compensate the employees.

Our mandate to deliver non-competitive mail goes hand-in-hand with our responsibility to continue top rate universal service. For that reason, we support the interpretation of Title X by Ed Gleiman, Chairman of the Postal Rate Commission, during his testimony before this Committee. Mr. Gleiman noted that "proposed Section 3723(c) also requires the Commission to take into account other 'policies of this Title' in determining adjustment factors. I expect this is intended to include policies such as:" Then he cites paragraphs in 39 U.S.C., Section 101 which state, "...No small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities" (b); and "As an employer, the Postal Service shall achieve and maintain compensation for its officers and employees comparable to the rates and types of compensation paid in the private sector of the economy of the United States" (c).

An area of particular interest in this section deals with the use of profits and the authority to give bonuses. At this time I am unclear as to who these bonuses would apply or what is meant by fair and equitable distribution.

Mr. Chairman, we share your concerns regarding the continuance of small post offices. This issue is of primary concern to the LEAGUE which has been the voice of the small, rural Post Offices for more than a century. During that century, over 40,000 small Post Offices have been closed. For example, in 1904, there were a total of 71,131 Post Offices. Today, there are approximately 28,000 Post Offices.

The LEAGUE believes that the process to close or consolidate a Post Office should be difficult and that every effort should be made to address the concerns of citizens affected by the closing or consolidation under consideration.

We support the proposed use of the Postmark as the official date of receipt of a written appeal to the closing of a Post Office. This is one positive step forward and gives citizens a more clearly defined window of time for taking action necessary to save their threatened Post Offices.

The LEAGUE is extremely pleased with proposed measures to create a safer environment for Postal employees and to strengthen the law enforcement capabilities of the Postal Service. The authorization of a permanent Police Force certainly would enhance security and the morale of employees.

We agree that subpoena power for the Postal Rate Commission could be a useful tool if it would enhance their ability to render a decision in a timely manner. However, we are not overly supportive of expanding a process which, to the general public, already appears to be extremely cumbersome.

We oppose the establishing of a Presidentially appointed Inspector General. We know of no evidence or abuse by any Postmaster General that warrants the splitting or changing the duties and/or authority of the Chief Postal Inspector. It would also increase Postal expenses. We would ask the Committee to delete this section from the bill.

PRESIDENTIAL POSTAL EMPLOYEE-MANAGEMENT COMMISSION:

The LEAGUE supports improving the relationship between employees and management. As Postmaster General Marvin Runyon announced before this Committee, he is planning a summit with all employee organizations after all

pay talks are concluded. We support the concept of the upcoming summit as we did almost two years ago when it was first proposed. The parties within the Postal Service realize where the problems lie. The LEAGUE feels that the solutions will be found through internal commitment and cooperation.

We fail to see the necessity for such a Commission and would, therefore, ask the Committee to consider deleting Section 301.

However, if it is determined that a Postal Employee-Management Commission is needed, we would suggest changes in the composition of that Commission to more represent the purpose and mission of the Postal Service. The LEAGUE proposes that this commission should hear other voices.

An essential voice to serve on such a commission is the "voice of the Postal employee." This voice should include actual employees who represent labor and management at various levels and functions within the Postal Service.

Another of those voices should be the "voice of public service." This voice should include a high ranking civil servant, either federal or state, and/or a well-respected expert in the field of public administration. This voice should

understand the need for and represent the "service" side of the Postal Service. Most importantly, this voice should understand, defend and represent the needs of small town and rural America.

The LEAGUE is strongly opposed to allowing non-Postal access to individual, private mailboxes. The basic concept of sanctity of the mail is at stake. Even allowing a test invites the risk that in the public mind, the sanctity of those boxes and their content, could be lost. I also question how one would determine the success or failure of such a test.

The proposed change that would allow for the private carriage of any letter costing \$2.00 or more concerns us. This reduction from the current \$6.00 level would offer a great risk of revenue loss to the Postal Service, which could threaten the stability of rates and service and ultimately even the letter monopoly.

Having led the campaign to get civil service protections for third and fourth class Postmasters in the early part of this century and to win the Merit Systems Protection Board rights for all non-veteran Postmasters in 1987, the LEAGUE is acutely interested in any changes to those protections.

The Postal Service wins approximately 87% of all MSPB appeals nationwide even after approximately 50% of all appeals to them are summarily dismissed.

The Office of Personnel Management was not able to give us exact numbers, however they offered the following expert estimate that the Postal Service has requested and received authority to appeal six to nine cases to the U.S. Court of Appeals and may have been denied three or four times in the past nine years.

Giving the Postal Service the unrestricted right to appeal these cases directly to the Federal Circuit Court means that they will have the ability to prolong litigation, thereby increasing the expense and frustration to appellants who do not have access to the almost unlimited resources available to the Postal Service.

Mr. Chairman, if the intent of Title VIII is to allow the Postal Service authority to appeal "individual" cases won by Postmasters to the Courts, then the LEAGUE is adamantly opposed.

The LEAGUE requests that you remove this section. We are also willing to provide you with additional expert background on this subject as follow-up to this hearing.

Before considering a change in the titles of our Postal leaders, please consider this: The Postal Service is unique. Because of its size, its mission, its universality and its comprehensive network, it is one of a kind. It does not compare to any other business or utility in this country and we are leery of suggestions that we should copy Postal operations in other countries with less population and/or less land mass, with immensely smaller volumes of business handled by disproportionately more employees. However, we are very proud of the fact that we process and deliver over 180 billion pieces of mail annually to approximately 128 million addresses.

This is one reason Postmasters believe that the head of the Postal Service should retain a postal designation, which labels him or her as their leader and the leader of an organization which is like no other. This traditional title dates back to the founding of our nation and our first Postmaster General, Benjamin Franklin. This is a respected title that means something to both the public and the Postal employee. While the title Postmaster General is a designation

specific to only one organization, a CEO can be related to each and every corporation. The LEAGUE thinks that a little tradition should be okay. The Postmasters of America ask that we continue the title of Postmaster General.

Thank you for this opportunity to share our views. We offer you our expertise in all areas, as you work to refine this legislation. Please don't hesitate to use the LEAGUE as a resource. We would be proud to work further with you in strengthening the Postal Service.

Thank you.

Mr. MCHUGH. Thank you, President Brennan. I appreciate your comments, and I am looking forward to working with all of you.

Next, Vince Palladino, president of the National Association of Postal Supervisors. Welcome.

Mr. PALLADINO. Thank you, Mr. Chairman. How are you doing?

Mr. MCHUGH. Good.

Mr. PALLADINO. Mr. Chairman—and I was going to say “members of the subcommittee”—my name is Vincent Palladino, and I am president of the 37,000-member National Association of Postal Supervisors.

I appreciate very much the opportunity to share with you today some of our thoughts regarding the Postal Reform Act of 1996. With your indulgence, Mr. Chairman, since you already have the complete text of our prepared remarks, I will keep my remarks brief. And it is very late, I know you will agree.

Because of the enormity of the provisions in the bill and the short period of time, my remarks may not be complete either, but we enthusiastically support those provisions of the bill that would free the Postal Service from the constraints that have prevented the agency from being as responsive and competitive in today's communication marketplace as it has the potential to be.

We also agree with Postmaster General Marvin Runyon, and you, Mr. Chairman, that changes are needed and needed soon to ensure that the Postal Service remains a viable public service well into the next century.

NAPS supports the provisions of the bills that, one, would establish a new rate-setting process that would permit the Postal Service to act more quickly in introducing and pricing new products and services in the marketplace; two, to preserve the Private Express Statutes while ensuring that postage prices are just, reasonable, and nondiscriminatory; and, three, grant the Postal Service the freedom to offer volume discounts but without requiring any kind of feasibility test.

We commend you for your foresight, Mr. Chairman, in ensuring the bill would also permanently authorize the employment of uniformed, postal police officers, many of whom we are proud to call our members. We especially applaud the subcommittee for increasing the criminal penalties for anyone who sends unsolicited, sexually oriented advertising, hazardous or controlled substances via the mail.

It is also commendable that the bill increases the penalties for robbery or burglary of postal property and makes the stalking of postal and Federal employees a felony. Having said all that, there are other provisions of the bill that we simply do not like or do not understand.

I am specifically referring to such provisions that, one, would set up a Presidentially appointed management committee to deal with labor-management problems “unique to the Postal Service.” The Postal Service is not unique in having workplace problems. They are the same kinds of problems as those faced by any other Government agency or corporation. We would much prefer to see the Postal Service itself convene a high-level summit where labor and management from within the agency would work together with outside professional counselors, if necessary, to develop an effective

mechanism for promoting a more harmonious workplace environment.

We strongly oppose the proposal to permit non-Postal Service access to citizens' private mailboxes, ostensibly for the purpose of depositing so-called—and that is a quote—"nonpostage items." There is no reason to test the viability of such a proposal, Mr. Chairman, because the reasons against the mailbox-access question are overwhelming.

We have various serious concerns about privacy and the sanctity of the mail and the growing potential for fraud. You can save the Postal Service the cost and the loss of time of a demonstration test that we can almost assure you is doomed for failure.

We have serious questions concerning provisions that would grant the Postal Service the right to petition for a judicial review in the U.S. Court of Appeals to the Federal Circuit of "certain decisions of the Merit Systems Protection Board." We do not oppose the Postal Service having its day in court over broad civil matters, such as a RIF, but if this provision could be interpreted as giving the Postal Service the right to Federal court appeal of MSPB decisions against the agency in the matter of employee adverse action, then we are in firm opposition.

NAPS does not believe the Postal Service should be saddled with the cost of providing what formerly was known as "revenue-foregone appropriations." It is our belief that if Congress wants to favor certain organizations and classes with reduced postage rates, then Congress should pay for it. It is improper, in our view, for Congress to impose such costs on other mail users. It is both a matter of money and principle. That would also go for relieving the Government of paying what they owe the Postal Service also.

There are other provisions of the bill for which we simply do not understand the rationale. An example is the provision that would require the Postal Service to "forward in the same manner mail that is delivered to a commercial mail receiving agency, or CMRA, such as Mailbox, Etc." If, however, the Postal Service can collect a fee for providing mail-forwarding service for the CMRA, we have no objection.

We also do not understand why it is necessary to change the titles of Postmaster General, Deputy Postmaster General, Board of Governors to CEO, Deputy CEO, and Board of Directors. NAPS does not understand how merely changing these titles will suddenly and dramatically improve the culture of the Postal Service.

The U.S. Postal Service is not a corporation but a public service, and, as such, it is not answerable to a group of shareholders but, rather, to Congress, the mailers, and the American people, our customers.

NAPS does not support the creation of a new Inspector General for the Postal Service. We strongly believe, Mr. Chairman, that the Postal Inspection Service is providing excellent service to the American people. The appointment of an Inspector General would create millions of dollars in additional cost, divide already limited resources, and create confusion over who would handle what responsibilities, the Postal Inspection Service or the new IG. Most importantly, there would be no apparent significant benefit to postal customers of such an appointment.

Last, we would like to propose a modest change to the provision that would sever the access of the Postal Service to the Federal Financing Bank, "thereby requiring the Postal Service to take advantage of the speed, flexibility, innovations, and requirements of the open market to serve its financial needs." Why not simply give the Postal Service the option of going elsewhere instead of requiring it to do so. In certain economic circumstances, the Federal Financing Bank could be our best resource.

Mr. Chairman, in your June 24 letter to me, which was accompanied by a copy of your bill, you wrote in the margin, "Together we can do some good things." I like that sentiment. It is simple and direct. If all of us were to take that sentiment to heart as we endeavor over the coming weeks and months to create the Postal Service of the next century, we, too, believe that good things are indeed possible.

Thank you, Mr. Chairman and Members. That concludes my remarks. I would be happy to take any questions.

[The prepared statement of Mr. Palladino follows:]

Mr. Chairman and members of the subcommittee, my name is Vincent Palladino. I am President of the National Association of Postal Supervisors. NAPS represents 37,000 active and retired postal supervisors, who are, as you know, the Postal Service's managers from first-line up. I appreciate the opportunity today to testify on H.R. 3717, the "Postal Reform Act of 1996."

NAPS enthusiastically supports those provisions of the bill that would free the Postal Service from the constraints that have prevented the agency from being as responsive and competitive in today's communications marketplace as it has the potential for being. While the Postal Reorganization Act of 1970 has, for the most part, served us well for the past quarter of a century, we wholeheartedly agree with Postmaster General Marvin Runyon and you, Mr. Chairman, that changes are needed--and needed soon--to ensure that the Postal Service remains a viable public service well into the next century.

NAPS generally supports those provisions of the bill that would:

One, establish a new rate-setting process that would permit the Postal Service to act more quickly in introducing and pricing new products in the marketplace;

Two, preserve the Private Express Statutes, while ensuring that postage prices are—to quote from the bill—“just, reasonable and nondiscriminatory,” and

Three, grant the Postal Service the freedom to offer volume discounts, but without the requirement for any kind of tests. If we’re going to say it’s okay for the Postal Service to offer volume discounts, then let’s just say so. There’s no reason for a test.

NAPS commends you for your foresight, Mr. Chairman, in ensuring that the bill would also permanently authorize the employment of uniformed postal police officers, many of whom we’re proud to call our members. These dedicated men and women provide security at postal facilities where risk, vulnerability and history have demonstrated the need for their presence. Postal police officers at postal facility control centers also monitor robbery and burglar alarms at postal units and escort high-value shipments, such as registered mail, postal remittances and security containers.

We especially applaud the subcommittee for increasing the criminal penalties for anyone who sends unsolicited sexually oriented advertising, hazardous or controlled substances via the mail. It is also commendable that

the bill increases the penalties for robbery or burglary of postal property, and makes the stalking of postal and federal employees a felony.

Postal supervisors deeply regret the fact that labor-management relations in the Postal Service have deteriorated to such an extent that Congress feels compelled to seek the intervention of an outside commission to help the Postal Service put its house in order. Mr. Chairman, we would much prefer to see the Postal Service itself convene a high-level summit where labor and management from within the agency would work together--with outside professional counselors, as necessary--to develop an effective mechanism for promoting a more harmonious workplace environment.

Absent such a development, Mr. Chairman, NAPS would support, with qualification, the provision of the bill to establish a Presidential Postal-Management Commission to deal with the labor-management difficulties the Postal Service faces. While we are seeing some improvements in the field at the lower levels, clearly, we must work harder to further change the status quo.

Our support of this new commission is conditional, Mr. Chairman, primarily because of our concerns regarding its makeup. We have noted that no individual or organization representing the Postal Service's management

team, let alone its first-line postal supervisors/ managers, would sit on the commission. Without hearing first-hand the views of supervisors and other postal managers—the individuals who are responsible for the day-to-day management of the organization “where the rubber hits the road,” so to speak—how can a temporarily convened commission ever come to a clear understanding of the unique labor-management problems besetting the world’s largest non-military employer?

We note that the legislation allows the Postal Service the right to petition for judicial review in the US Court of Appeals for the Federal Circuit of—quote—“certain decisions” of the Merit Systems Protection Board. If, by “certain decisions,” we’re talking about broad civil policy issues, such as the RIF, we have no objection to the Postal Service being permitted to appeal an MSPB decision. If, on the other hand, we’re talking about granting the Postal Service the right to federal court appeal of MSPB decisions against the agency in the matter of employee adverse actions, then we are in firm opposition.

We strongly oppose opening up the mailbox to permit non-Postal Service access to citizens’ private mailboxes, ostensibly for the purpose of depositing so-called—quote—“non-postage items.” There’s no reason to test

the viability of such a proposal, Mr. Chairman, because the reasons against the mailbox access question are overwhelming. For example, we have very serious concerns about privacy, the sanctity of the mail and the growing potential for fraud.

The bill thoughtfully provides a way of notifying non-USPS access providers if a private citizen decides to “opt-out” of the mailbox demonstration project. Yet, while it may be feasible to notify larger access providers of the names of those who opt-out, how are you going to notify every potential non-USPS access provider? It would be a logistical nightmare, if it were possible at all. You can save the USPS the cost and lost time of a demonstration test that we can almost assure you is doomed to failure.

On another matter, we don’t believe the Postal Service should be saddled with the cost of providing what formerly was known as revenue forgone appropriations. It is our belief that if Congress wants to favor certain organizations and classes with reduced postal rates, then Congress should pay for it. It is improper, in our view, for Congress to impose such costs upon other mail users. It’s both a matter of money, Mr. Chairman, and principle.

There are some provisions of the bill, Mr. Chairman, for which we do not understand the rationale. An example is the provision that would require

the Postal Service to—quote—“forward in the same manner” mail that is delivered to a commercial mail receiving agency (CMRA), such as Mailboxes, Etc. If a customer using such a facility changes his or her address, why must the Postal Service be “authorized” to forward the mail and not the CMRA, which received box rent from the customer?

If, by “authorized,” the bill means the Postal Service can collect a fee for providing mail-forwarding services for a CMRA, that’s fine. But, please, don’t ask the Postal Service to pay for costs that should properly be borne by the CMRAs, which, as you’re well aware, Mr. Chairman, are competitors of the Postal Service.

We also do not understand why it is necessary to change the titles of the Postmaster General, Deputy Postmaster General and Board of Governors to CEO, Deputy CEO and Board of Directors. The new titles would, the legislation notes, “convey the experience, professionalism and business acumen expected of the individuals that hold these positions...” Excuse me, Mr. Chairman, but NAPS does not understand how merely changing these titles will suddenly and dramatically improve the culture of the Postal Service.

We all know full well that the United States Postal Service is not a corporation, but a public service. As such, it is not answerable to a group of

shareholders, but rather to Congress, the mailers and the American people, our customers. I don't think we should lose sight of that fact.

NAPS does not support the creation of a new Inspector General for the Postal Service. Apart from the fact that the appointment would create millions of dollars in additional costs, divide already limited resources, and create confusion over who would handle what responsibilities--the Postal Inspection Service or the new IG--we have to wonder why any change is necessary at all. NAPS believes strongly that the Postal Inspection Service is providing excellent service to the American people.

The appointment of an Inspector General by the President would also raise the possibility of partisan politics being introduced in the agency, such as existed prior to enactment of the Postal Reorganization Act of 1970. Perhaps most importantly, there would be no apparent significant benefit to postal customers of such an appointment.

We would like to propose a modest change to Section 403, "Exclusions from Federal Financing Bank." This section would sever the access of the Postal Service to the Federal Financing Bank--and I quote-- "thereby *requiring* the Postal Service to take advantage of the speed, flexibility, innovations, and requirements of the open market to serve its

financial needs.” End quote. We submit, Mr. Chairman, that, since there may be instances when it is financially prudent for the Postal Service to go the Federal Financing Bank, why not simply give the Postal Service the *option* of going elsewhere instead of requiring it to do so.

Mr. Chairman, in your June 24, 1996, letter to me, which was accompanied by a copy of your bill, you wrote in the margin, “Together we can do some good things.” I like that sentiment. It’s simple and direct. If all of us were to take that sentiment to heart as we endeavor over the coming weeks and months to create the Postal Service of the next century, we, too, believe that “good things” are, indeed, possible.

Thank you again for inviting NAPS to offer its comments on your proposals. I would be happy to take any questions that you or members of the subcommittee may have.

Mr. McHUGH. Let me make a few comments. Vince, I think you make an excellent point: A lot of things, you do not understand; a lot of things, you outright oppose. And I think that is not only natural; it is understandable.

At the risk of sounding like we are exercising in self-aggrandizement here, this is a very complex piece of legislation, and it is going to take time for all of us to work through this. But the gentlelady from Michigan made a very reasonable request that I did not exactly respond to this week, and that is that we at least go ahead deliberately and cautiously, and we are going to do that.

And we want to take the opportunity to work through those areas of concern where you oppose, to make sure that the opposition is based upon the premises that you are perceiving, and also to help you understand those areas that you may not fully understand, and, at the same time, so we can better understand your views.

But let me make a couple of comments. Mr. Bates, you said in your testimony that the subcommittee in its material predicted that by decreasing the mail monopoly to \$2, it would result in a 20 percent loss of revenue to the Postal Service. What we intended to convey—and maybe we did not do it as clearly as we might have—what we intended to convey was that by moving that figure to \$2, down to \$2, it would bring into play no more than 20 percent of the total revenues currently earned by the Postal Service, not produce necessarily a loss.

And, in fact, I can tell you that by maintaining a \$2 limit, 90 percent of all the revenues currently earned by the Postal Service would still be fully protected under the letter mail monopoly. So it is really 10 percent, and of that 10 percent I would like to believe that you would not lose a cent of it because that 10 percent would thereafter be competitive, whereas now it is protected by a mail monopoly.

And the good news in that kind of shift, I would argue, is that the 10 percent tradeoff is accompanied by, I am sure you recognize, a host of other things that allows the Postal Service really unprecedented flexibility to compete: volume discounts. It allows it to introduce, as you noted in your testimony, new products in an expedited fashion that is unavailable now. It provides them flexing priceability. They can earn a profit on the competitive market basket.

So that is what was discussed, and as a related issue, when the Inspector General talked about \$4 billion, which he did and you noted, he was referring to the amount of current revenues that the Postal Service earns that would, in his words, put at risk. So, in other words, \$4 billion of the total revenues, which is less than 10 percent, would now be competitive. He then, in response to my question about how much would be at competition by moving to due dollars, said \$1.5 to \$2 billion rather than \$4 billion.

So, just as a matter of clarification, we never intended to suggest that this initiative would result in a 20 percent loss of revenues to the Postal Service. I would not even begin to entertain something that did that kind of thing.

So as we are going forward and as you have an opportunity to sit down with your folks, as I know you will in the days and weeks ahead, I think it is important that you recognize that factor.

Let me ask you, gentlemen, with respect to the Presidential Commission—you heard me ask this of the first panel, and we got a few different answers. I understood Vince Sombrotto to say pretty much he has not heard anything about the postal summit that I believe should go forward as quickly as possible, whereas Moe Biller, I thought, suggested he heard some things and he understands it being set up. What is your understanding of the status of the summit? Have you had any contact or anything at all?

Mr. BRENNAN. The facilitator, I believe, was the one who made contact regarding what we thought might happen on this. I heard the Postmaster General testify last week that it was coming early, perhaps next month. I would guess that it would not be next month because of our own reorganization schedules plus some of the labor organizations' convention schedules and such.

It has been something that has been put on the back burner all during the pay discussions, as either Mr. Sombrotto or Mr. Biller referred to. We, as Postmasters, are still in our pay discussion, and that will come to fruition sometime in the next few weeks. But that is really where we are at. We really do not know. There has been no certain date put on any of this.

Mr. PALLADINO. Yes. I believe that the pay talks is what is holding it up.

Mr. MCHUGH. I am sorry. Who is?

Mr. PALLADINO. The pay talks, because their issues are not resolved yet. I think they made the initial appointment with, I guess, the outside consultant that is going to help. And I believe that once their package is in, that we will have a date and we will get with to it. I think, listening to Vince Sombrotto today, I think it becomes more and more important that we do sit down together because I would certainly like to discuss some of the things that he brought up here amongst ourselves before we give them to you, not that I do not—

Mr. MCHUGH. No, no. I want you to do that, too.

Mr. PALLADINO. Not that I do not trust you; it is just I think we know more about what to do with our problems than you all do. And if we do not, then you can come along with the Commission. But I sure would like to have a shot at it, and I am in a quandary because we seem to be stuck here in the middle, as postal supervisors. I think some of the things that Vinnie said—"reign of terror"—I do not believe we have a reign of terror, but I believe that the outsourcing is a problem.

I am very concerned about that outsourcing as much as they are, but I think it is a game here. I think it is a game of we need higher productivity. Can you give us higher productivity? If you do not, we are going to outsource. I do not think that is it. I think there is a way that we can negotiate and get things done through the summit, at least.

I mean, if after we meet and we cannot do it, I will be back here saying, Well, bring on your commission. But I would like to have a shot at that, and I do not appreciate the outsourcing bid, and I have asked to be put on the committee, which I am going to meet with next Monday, to discuss the situation.

Mr. BATES. And I would like to comment on it. Before I do, there are two things that I would like to say, that I really do not go along

with the Postal Service on it. When they are using the word "outsourcing," it appears to me they are trying to use the word "outsourcing" to downgrade what they really mean when they say "contracting out," and I brought this out at the 24 States that I visited this year, and I have asked the people at headquarters this. Why don't you just use the word "contracting out" rather than using the word "outsourcing" that you might be talking above someone's head about it?

Another thing that started within the last year that leads me to think that somebody may have in their mind somewhere along the word "privatization." When you quit saying the word "U.S. Postal Service," which was created by Congress in 1971—and that is where we are at the present time—that the people from headquarters and the people under them continually want to use the word "company." I personally refuse to use the word "company" until you people from Congress change it from "the U.S. Postal Service" to "the company."

Now, getting back to what you were talking about on the summit, yes, last March I was interviewed by an outside person at the Postal Service. He came to my office, and I guess we spent at least an hour talking about different things, and I was told that the questions I gave him would be the questions and answers that would be used for a summit later on this summer.

Since that time, I have not heard anything about it, but I did give him an hour of my thoughts on it. But I would welcome a summit, and I think it is needed.

Mr. MCHUGH. I appreciate that. Vince, you said you would want a crack at it, and I want you to have a crack at it, too. And, Scottie Hicks, I do not know if he spelled it out specifically in his spoken testimony today. I think he alluded to it but said in his written testimony maybe we ought to talk about a commission of some sort only in the event that the summit proved unproductive.

I am not sure how we would write that, but, in theory, I have no problem with that. I would be greatly relieved if you all were able to come together and to begin to iron these issues out. I think that is a far more appropriate way.

But, again, as a matter of information, let me just tell you the thought behind the commission. And you have all, the first panel and you have all correctly noted that there is no labor worker representation on the proposed Commission, just as there are no slots that are dedicated to management. And that was done purposely.

The theory behind it was, No. 1, on the hope that the summit would continue—and I still have that hope—where, obviously, that is something that will be done internally; No. 2, perhaps there would be some usefulness in having people who are totally outside the system who admittedly have no understanding or expertise in the intricacies of the Postal Service but are labor/management experts and people who have experiences sitting at negotiations at a bargaining table and breaking through.

It used to be in the military if a weapons system was not working, they would bring in someone who knew nothing about it and look at it, and it did on occasion happen those people came up with the answer of why it was not working because they were not bound by the world view that everybody else is operating under. Some-

times when you are not used to looking at something, you see it in a very different way.

And whatever came out of the commission would only be advisory, and, obviously, would have to be followed on. There was no attempt, sinister or otherwise, to try to cut out workers or management, for that matter; we just thought that perhaps it would be useful to have an opportunity to get the opinions and the perspective of those who had expertise in the process generally but not expertise in this system. And you can argue that that is unnecessary, perhaps ludicrous, but I want to ensure you that the intent was, I believe, very honorable.

And I think, clearly, regardless of this bill and the disposition of it, this summit is important, and we hope it can go forward.

Mr. PALLADINO. Mr. Chairman.

Mr. MCHUGH. Yes.

Mr. PALLADINO. On that committee, we noticed that it was management and then some labor, but there was really—and since you have mentioned the military, we think it might be Postmaster Generals or maybe even down to a captain, but no sergeants on that commission, who really run the army. I do not know if you know that.

Mr. MCHUGH. I take it, you were a sergeant?

Mr. PALLADINO. There was no provision for first-line supervision on that Commission. I think it would be top management and labor, and I think that is what has been missing at the pay talks here. That is probably why the summit would be helpful, because when you put the first-line management into the equation, you get what really happens on the work room floor; you do not get the top, who really does not know, and the bottom one, who has another issue. Do you know what I am saying?

Mr. MCHUGH. Yes. I understand. It is a point well taken. Let me, particularly to Presidents Bates and Brennan, we have heard here on the subcommittee complaints from a number of Postmasters regarding alleged failure by the Postal Service to grant paid leave to those individuals to attend their respective organizations' conventions and activities. Has this been a problem for you people?

Mr. BRENNON. Mr. Chairman, this is not a particular problem today, i.e., we are still, through 1996, operating under the old proposal or the old premise that Postmasters would receive up to 10 days a year for convention leave, which would cover State and national conventions and travel to and from those conventions.

What they may be referring to is there is a provision in the pay talks that we have—and we do not negotiate; since we are part of management, we consult; and, therefore, it also means that we have no authority to compel agreement when we reach impasses—we are at a proposal where they have proposed and taken a final position, to my knowledge, that they will reduce that to 5 days, beginning in 1997. That may be where this issue is coming from.

Mr. BATES. I would like to comment on that also. In 1936, the Federal Government, which operated the Post Office Department at that time, granted Postmasters 10 days' convention leave. The Postmaster General at that time was Mr. Farley, who served a number of years. And I have his quotes—not with me, but I do have them at the office—on how great an advantage that was. We

have maintained that with the fringe benefits that Postmasters were entitled to for the last 60 years, that fringe benefits were in lieu of other entitlements that other organizations in the Postal Service have.

Under the Postal Reorganization Act of 1971, it says under there that we will retain the same fringe benefits that we had before the Reorganization Act. We have had that since 1936. Now, the Postal Service wants to come along arbitrarily and say that is not a fringe benefit and that you are not entitled to it, and that we do propose to—the fact is, they started with nothing, and now they have come back up to say, We may give you give days. We are in the pay negotiations now. This is 11 months behind.

Last year, we did not sign a pay agreement until December; we were 15 months behind with the Postal Service ever coming to an agreement. To me, that is bad when its managers out there in the front line cannot agree with headquarters or they cannot agree with us. Now, we are 11 months behind. We had another meeting just this week. I do not think we will be able to sign it; and if we do not sign it, they are going to push it down our throat anyway and tell you this is it. We cannot go to arbitration on it.

I think there is something wrong in headquarters when they have got 30,000 Postmasters out in the field that think they are not being treated right and that fringe benefits are being taken away from them arbitrarily. That is the concern of the Postmasters in the field.

Mr. MCHUGH. So you are 5 days in negotiations now?

Mr. BATES. Sir?

Mr. MCHUGH. You are at 5 days—offer on the table?

Mr. BATES. It is a one-sided negotiation. That is what they proposed. We are still asking for the 10 that we have had since 1936.

Mr. MCHUGH. Forgive me. I did not phrase that well, but that is what the Postal Service has put on the table.

Mr. BATES. Yes.

Mr. MCHUGH. OK. When I was back in college, I took my Russian history final, and it was three questions we were told before the test, and you had to choose two out of three. And I thought I was a very busy guy, and Peter The Great took up a lot of time, so I eliminated Peter, thinking that I still could answer two out of the three questions. Well, all three were on Peter The Great.

So I learned a little bit about Peter after the test, and one of the things he did, he was one of the first behaviorialists in recorded history. He took all of his rulers in court, shaved them and made them dress and act like Europeans, because he wanted to change the way in which they behaved, and the structure governmentally and militarily in the country.

I guess that is a long way of going around the bush to say, you know, any time you are running and redesigning an organization, you do substantive things and you do cosmetic things in the hope that they come together collectively and have an impact. And I would be the first to admit to you that the proposed change of some of the titles of the Postmaster General, et cetera, were intended if not to reflect Peter The Great's theory but to play into that kind of thing. We have heard time and time again about the military attitude of the management in the postal system, postal service, how

that autocratic management style is translated into difficulties on the work room floor. Whether you accept that or not, we wanted to reflect what we hoped would be a part of a larger restructuring that said to the world this postal service is different than it was in good ways, that it is going to compete, that it is going to provide services in the best sense of the word in 1996, as we approach the 21st century.

That, obviously, is not critical to this bill. And we have heard a lot about how folks such as yourselves are concerned about it, and that is why we have these hearings. And, you know, those kinds of things, we are going to revisit, certainly. But I do think there are some things that are less cosmetic and are very important to the structure of the organization.

Now, you good folks, and others have as well, have expressed concerns about our proposal to take the IG technically out of the Postal Service and make it independent. During the hearing last week, I tried to make a couple of points. The first is I want to assure you—and at the risk of repeating myself, I think it is an important point to make, and I will go through it again—this is in no way intended to reflect upon the credibility, the honor, the dedication, the service of the current IG. He has, through his years of service to this great organization, really compiled an outstanding, even exemplary, record.

It is, however, an attempt to say some things about where we think the Postal Service ought to go as a \$54, \$55, \$56 billion-a-year undertaking, one that in our proposal is being restructured to receive some unprecedented flexibility, that the IG should be above suspicion as being a tool of management.

To my knowledge, the current IG, as it is structured internally as part of management in the Postal Service, is the only Federal agency of its size that has that circumstance. Virtually every other IG is operated independently, and, if nothing else, avoids those kinds of possible accusations.

It is interesting to me that some employee representatives are now voicing concern about it when, indeed, we have heard from employees time and time again that they do not trust the current IG system; they think it is a tool of management. We asked, for example, that Mr. Hunter take his team out into southern California, where I know you folks are very aware there were some very disturbing and repetitive instances of strife in the work place; and we wanted some answers for the benefit of the employees.

And what we get back our fliers handed out by the employee organizations saying, "Beware: The inspectors are coming," and urging—

Mr. PALLADINO. Can I—

Mr. MCHUGH. Sure.

Mr. PALLADINO. I would like to speak on that. I mean—

Mr. MCHUGH. Let me just—and I am not trying to censor anybody, but I just want to lay this open to you and let you know where I am coming from. I will tell you, I feel as strongly about this as anything in the bill because I think it is critical.

But having that kind of thing. And I am not in any way saying this is wrong or accusing the authors of this of being in any way irresponsible. What I am saying is that is the perception that is un-

deniable. And let me read you the report that we got from the IG on this very situation.

And it goes through and defines very clearly how huge numbers of the employees objected to this investigation because of the structure of the IG; and, in fact, unfortunately, more than half of the union officials declined to be interviewed. And, indeed, there was a grievance, I believe, an unfair labor practice charge filed because of that.

So, for that reason alone, I would suggest we have got to do something to create an entity where workers can go and feel that they can make revelations of fraud and abuse or can go and register complaints of mismanagement without the fear that the IG is part of the problem. And, from my experience, they view that now. And, beyond that, when you have got a \$56 billion industry, it is unconscionable to have the IG function as a tool of management, unconscionable. And, as I said, I feel very strongly about that, just so we know where everybody is coming from, folks. President Palladino.

Mr. PALLADINO. Yes. Well, unfortunately, I know very much about that place, the place where they went to visit; and, to me, if we do have a problem, that was not the place to get it corrected because there was a case where Postmasters and supervisors got together to reduce the amount of overtime in that station, in that post office, which they were taking.

Now, they had a long period of overtime, and after people have a long period of overtime, they begin to think it is their right, and they make it part of their salary. And when you move in to reduce it, it becomes harassment and a reign of terror. That is exactly what went on in that Postal Service, and that is exactly why they said the inspectors are coming because they were trying to elongate their routes and trying to maintain the amount of overtime that they have done in the past.

We constantly, as a management organization, want to make the Postal Service better, but every time we want to reduce overtime or get somebody to do a fair day's work, we get complaints, and they know that people are listening. We had that internal problem. We had managers and supervisors move because the shop steward or somebody else came and said, "Oh, they are being nasty today," which means the supervisor had the audacity to ask them to do a day's work. I know that post office.

Mr. MCHUGH. I understand it, but I am sorry I did not make this clear because I am getting the very direct indication from you that I am judging who is right and who is wrong. I am not. Believe me, I am not. I have no idea, and that is part of the problem, too.

Mr. PALLADINO. Well, it is a shame that that incident up there makes everybody on the Hill think that we need an outside—

Mr. MCHUGH. Well, but with all due respect, I think you are making my point. Don't you think, without ascribing as to who is right and who is wrong, that we ought to have a system that allows an independent body to come in and to have the opportunity to have both sides go to them with confidence and discuss the matter openly?

Mr. PALLADINO. Well, I thought you, this committee, and the GAO were other alternatives.

Mr. MCHUGH. But we, this committee, has neither the authority nor the resources—

Mr. PALLADINO [continuing]. You can send to GAO.

Mr. MCHUGH. I hate to tell you, the GAO turned us down. We had no power to send them either. We try to use those resources as we can, but, as I said, it is unprecedented in the Federal Government, I feel very strongly. Let me ask you a question. Has Mr. Hunter or anyone in his organization talked to you about this provision in the bill?

Mr. BATES. Yes, sir.

Mr. MCHUGH. He has? Mr. Hunter himself?

Mr. BATES. We discussed it while we were in Texas. He and I were both at the convention at the same time. He asked me had I read the bill, and I told him that I had.

Mr. MCHUGH. So he lobbied you to oppose this provision of the bill?

Mr. BATES. No, sir.

Mr. MCHUGH. Did he ask you to oppose it?

Mr. BATES. No, sir.

Mr. MCHUGH. What did he ask you?

Mr. BATES. He did not ask me any question, except he asked me had I read the bill, and I told him that I had.

Mr. MCHUGH. He did not ask you what your thoughts were?

Mr. BATES. Yes, he did ask me; but I did not tell him what my thoughts were. He said, Do you have any concrete thoughts on it? I believe those were the words he used.

Mr. MCHUGH. Mr. Brennan.

Mr. BRENNAN. When this proposal came out some years ago—and I do not know exactly when it was included in a previous bill—we took the position at that time that we were opposed to the creation of an independent postal IG from the current system that we currently have.

And our members, I think, are probably fairly reflective of our labor craft members. We also, if an investigation or an inquiry is focused on a Postmaster with an adverse-action result coming out of it, we also tell our people be professional, do not answer questions, do not sign things, seek legal counsel.

Now, when investigations are general in nature regarding an office or an employee or something like that, our people cooperate fully. And whether we have advised them not to cooperate for personal purposes, I have to say that I believe that the Inspection Service has been very, very professional in their dealings and duty.

Mr. MCHUGH. I did not say they were not. I will repeat that. Whatever thoughts I had in that regard, I have shared it with no one publicly.

Mr. BRENNAN. And I have had differences with Inspector Hunter, but we work through those.

Mr. MCHUGH. This is really a matter of propriety, of process, of unprecedented intermingling of Inspector General services with postal management, management of any kind. As I said, I feel very strongly about it; and if I thought this were in any way to infringe upon the opportunity for the workers of this system to operate freely, I would run away from it in a minute.

But, quite frankly, I think that it is just the opposite. I think it is sad that at least some workers are not able, and management folks as well out in the field, do not feel comfortable talking to these people for the simple reason that because of how they are structured—not that they are bad people, but because of how they are structured, they are part of management. And an IG function should be totally separate from the functions of management, at least where I went to school. So, in any event—

Mr. PALLADINO. Mr. Chairman.

Mr. MCHUGH. Certainly.

Mr. PALLADINO. On that issue, I mean, they are not always considered friendly to us. I think, if I could make the analogy, it is like the internal affairs person to a cop. I mean, they do not particularly like what they do, but, I mean, they are cops nevertheless, and they take care of internal affairs. That is what the Inspection Service is to us. But they also can help us, and they can be a danger if you are doing something wrong. I mean, we know that.

Mr. MCHUGH. I understand that. And, again, I will repeat: I am not questioning their integrity or their ability; I am questioning the structure, and I am questioning—can you deny they are part of management? I mean, you cannot, can you?

Mr. PALLADINO. Well, to some of our people who have been fired, I think they might. They might say they cannot be part of management; they caught me doing something wrong, and I am gone.

Mr. MCHUGH. Well, I did not say they are unrelenting dupes and tools of management; I said they are structurally management, and that is my problem, and it is a serious one. And, as I said, I am willing to talk about this, but I feel as strongly about this as anything in this bill. And the next time you are talking to Mr. Hunter, you can tell him that I feel that way. I have got some real concrete thoughts on it, in case you did not get the impression.

Gentlemen, truly, let me thank you for your patience and being here today. I had the opportunity to read through your testimony, and we really are going to continue to try to do this in both a formal and informal way, and I very much want your input as we go along; and I trust you will continue to work with our staff and see where we end up after that.

We are very early in the process, as I said, and, hopefully, we can do some things. If we do not, we have all got lives to lead, and you are going back home. Maybe we will all go back home. But I think there is a real need and a challenge here to make this Postal Service, as the Army says, the best it can be so it can continue to serve America as it has so tremendously these hundreds of years. And that is in no small part because of the contribution that you, as individuals, and, of course, your membership makes each and every day, and I want to thank you for that most particularly.

So, with that, let us adjourn the subcommittee subject to recall of the chair. Yes. We will be submitting some written questions to you gentlemen, as I know you are familiar with the process in the past, and we deeply appreciate your responding to us at your earliest convenience. So thank you all for being here.

[Whereupon, at 6:15 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]



HUGH BATES
NATIONAL PRESIDENT

NATIONAL ASSOCIATION OF POSTMASTERS
OF THE UNITED STATES
8 HERBERT STREET
ALEXANDRIA VA 22305-2600

September 3, 1996

The Honorable John McHugh
Chairman, Subcommittee on the Postal Service
House Government Reform and Oversight Committee
B-349C Rayburn House Office Building
Washington, DC 20515

Dear Chairman McHugh:

Enclosed is a copy of the answers to the follow-up questions you sent regarding my testimony on July 17. I hope this material is helpful in completing the hearing record.

I look forward to working with you further on postal reform. Best wishes.

Sincerely,

Hugh Bates
Hugh Bates

(703) 683-9027
FAX: (703) 683-6820

RESPONSES OF NAPUS PRESIDENT HUGH BATES
TO THE QUESTIONS SUBMITTED IN WRITING
BY THE HONORABLE JOHN MCHUGH
CHAIRMAN OF THE HOUSE SUBCOMMITTEE ON THE POST OFFICE

1. The Postal Governors and the Commissioners rarely deal with individual postal employees. However, I presume that a presidentially appointed Inspector General would be dealing with postal employees. Since many of these employees are becoming more politically active now that Hatch Act Reform regulations are in place, the presence of a politically partisan Inspector General might discourage postal employees from involving themselves in activities supporting the party that is not currently in power.

1.(A) These estimates were figures provided by the Public Information Office of the Postal Inspection Service at USPS headquarters.

1.(B) My testimony was based simply on the belief that the current system seems to be working. I am not an expert on the activities of other federal agencies. I only have experience with the Postal Service, where the two functions are combined. Therefore, I really do not know enough about the separate activities of the Inspector General versus those of the Chief Postal Inspector to provide you with a detailed answer.

1.(C) As you know, we are a management association so we do not have access to collective bargaining. I cannot speak for any of the other organizations but I am not aware of any impact on labor relations as a result of the establishment of an office of Inspector General.

1.(D) I personally saw Ken Hunter, Chief Postal Inspector, briefly at the celebration of the 25th Anniversary of the Postal Reorganization Act on July 2. We may have casually discussed the bill as part of our social conversation but not in any detail. On July 3, I had a meeting at postal headquarters with some officials in the Labor Relations Department. After that meeting, I went by Ken Hunter's office to give him some information on what I believed were FLSA Act violations by District Managers. We again briefly discussed H.R. 3717. I received a sheet of information regarding the Inspector General provision. I no longer have a copy of that original sheet but have attached a revised version received in our office later.

During the spring and early summer, NAPUS state chapters hold their conventions and, as NAPUS President, I spend a great deal of time on the speaking circuit. Chief Inspector Ken Hunter is also a speaker at a number of these events. I saw the Inspector at the Texas NAPUS convention on July 6-7, 1996. He asked me if I had seen the bill [H.R. 3717]. I replied that a copy had been sent to me but that I had not had time to review it. We saw each other again in Minneapolis, MN at the 15 states meeting. That meeting includes the officers of 15 states in the old central region. There we discussed various matters, including a shooting in Alabama. I do not recall any particular reference to the McHugh bill.

Responses of NAPUS President Hugh Bates
Page 2

NAPUS Director of Government Relations, Teena Cregan, had two contacts with Inspection Service officials regarding H.R. 3717. The first was a casual conversation with Chief Postal Inspector Ken Hunter at the postal reform panel sessions put on by the USPS as part of their celebration of the 25 years of postal reorganization on July 2, 1996. That conversation consisted of an inquiry as to whether NAPUS had formed positions on H.R. 3717. Ms. Cregan told the Chief Inspector that she and I had not yet conferred on the bill.

On July 9, 1996, Ms. Cregan spoke with Dan Mihalko, the Inspection Service's Manager of Congressional and Public Affairs. She requested further information on the effect of the IG provision on the Postal Inspection Service's current operations. A copy of the material provided by Mr. Mihalko is attached to this response.

2. I am not aware that any significant number of contract employees work in positions where they have mailbox access. The NALC may be better able to respond to that question. In regard to your second question, yes, I believe that a bonding or licensing requirement would be helpful in reassuring customers that their property was being protected.

3. No, not necessarily. We could have chosen a better word than "lost" in our written statement. I appreciated the Chairman's discussion on this issue at the July 18 hearing. To restate what I was trying to say, NAPUS' concern is this provision appears to open up a significant portion of the Postal Service's letter mail to competition immediately. The price is reduced from \$6.00 to \$2.00 and the word "urgent" is dropped from the definition.

I do not mean to imply that the Postal Service cannot withstand competition. However, my experience with the Marines taught me that it takes a long time for a large organization to effect change. Assuming that you want the Postal Service to thrive, and I believe you do, there is a need for more gradual change. I used the Postmaster General's \$4 million figure because that was the only one publicly available. NAPUS does not employ an economist and has no way to independently verify any numbers on revenue or costs for postal operations.

IMPACT OF PROPOSED INSPECTOR GENERAL CHANGES ON THE UNITED STATES POSTAL SERVICE

Under H.R. 3717, the Postal Reform Act of 1996, the Inspector General will be appointed by the President, not the CEO or Board of Directors. This increases the likelihood of partisan politics, which is inconsistent with the intent of the Postal Reorganization Act. The operations of this Inspector General becomes a separate item in the annual budget.

The creation of a separate Inspector General would add costs to postal operations, those costs ultimately to be borne by the postal customers with no demonstrable benefit. This appears to be inconsistent with the intent of the bill. The creation of a separate Office of the Inspector General would result in an estimated one-time cost of \$26 million, with recurring annual costs estimated to be \$44 million. These are personnel and non-personnel costs over and above the cost of running the Inspection Service. In addition to personnel costs, the IG will require separate space, furniture, vehicles, and computer equipment, etc., to maintain independence. These costs will be passed on to postal customers.

This estimate is based on the legislative language and the following assumptions. The Inspection Service functions and positions now dedicated to performing internal audit and program review functions would be transferred to the IG. They include internal audit (Financial Audits, Opinion Audits, Contract Audits, and Capital Investment Audits) and program review (Performance Audits, Service Investigations and Developmental Audits).

Efficiency and effectiveness will be impacted. Investigations, now efficiently handled by one organization, would now be fragmented with pieces handled by two organizations. With two organizations performing similar duties, confusion could occur with postal employees and customers. Duplicative efforts would not result in more efficient oversight of the USPS.

In addition, the split of resources would mean fewer Inspectors available to respond to postal crimes and emergencies, such as violent crimes, natural disasters and civil disorders. The Inspection Service functions and positions transferred to the IG would not have statutory authority or be trained to perform these response functions. The split would also restrict the ability to perform major audit initiatives, such as observations of mail handling and national audits.

The Inspection Service, working with the external auditors and the Board of Governors Audit Committee, currently meets its Inspector General responsibility of conducting internal audits and program reviews. In addition, it performs its criminal and civil investigative obligations with a high degree of success. The manner in which the Inspection Service/Inspector General operates is consistent with the best practices recommended by the National Performance Review.

In summary, the answer is not to tear apart a well-run organization to create a costly bureaucracy that postal customers would end up funding.

Revised July 8, 1996



NATIONAL LEAGUE OF POSTMASTERS OF THE UNITED STATES

1023 North Royal Street, Alexandria, VA 22314-1569 • Telephone—(703) 548-5922 • FAX—(703) 836-8937

September 11, 1996

Honorable John M. McHugh
Chairman
House Subcommittee on the
Postal Service
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Chairman McHugh:

The following are my responses to your letter requesting my thoughts on the questions you raised:

1. The nine Postal Governors and five Rate Commission members are presidentially appointed with consideration given to the two major political parties. As with any presidentially appointed group, partisan politics can impact findings or decisions of the body. However, to date, I do not believe that either the Governors nor the Rate Commission members have engaged in partisan politics.
 - A. The combined Inspector General/Chief Postal Inspector position, which is unique to the Postal Service, has performed both the internal and external functions of the combined positions. To my knowledge, the persons who have held the position of Chief Inspector have not deferred or circumvented any investigation or audit that might ultimately result in a senior Postal official or Governor being identified as having been involved in questionable or illegal activities.
 - B. To my knowledge, the Inspector General Act amendments of 1988 which established an Inspector General for the Postal Service has had no negative or positive impact on labor relations or the collective bargaining process.

Honorable John M. McHugh
September 11, 1996
Page 2

- C. Both I, as President of the National League of Postmasters, and members of my staff have ongoing contact with the Inspection Service on matters dealing with Postmasters. We are also in contact with each other at Postal and League meetings as well as social functions.

To the best of my recollection, the first interchange regarding H.R. 3717 was at the 25th Anniversary Celebration of the Postal Service on July 2nd. Inspector Hunter and I talked during a morning coffee break. My general comments were on the various components of the bill.

On July 3rd I attended a previously scheduled meeting at Postal Headquarters with Chief Postal Inspector Hunter, Deputy Chief Inspector Ken Weaver, Congressional and Public Affairs Manager Dan Mihalko, and Inspection Service Attorney Henry Bauman. During this meeting we discussed a number of continuing items and very briefly H.R. 3717.

Regarding H.R. 3717, during the course of this part of the conversation, I was asked if the League was supporting or opposing the Inspector General section. My response, as I remember, was that I had not studied the proposal in detail, but that when the subject had come up before (in previously proposed legislation) the League had opposed any change and that unless there was some good reason for us to change our position this time, we would probably oppose it again. I said that I needed background materials on the subject to form an updated opinion. I was told that the Inspection Service had developed an internal paper that shows the impact of a separate Inspector General, from the Inspection Service's perspective, which they would share with me. Enclosed is a copy of that paper.

Honorable John M. McHugh
September 11, 1996
Page 3

2. I did not understand your statement that "currently, non-Postal employees, including those employees operating under contract to the Postal Service, have access to the mailbox everyday." At present, the only persons who have "legal" access to the mailbox are the customer and the people who the Postal Service authorize to have access (carriers, supervisors, etc.). Given these known restrictions, the Postal customer, their neighbors, law enforcement personnel, etc. know that if anyone else is seen opening a mailbox, it is unauthorized and that some action would be taken to report or investigate this activity. This limited access is what allows the current system to work without having a lock on every mailbox on a route. The Highway Contract Carrier (contract employee) is viewed by the customer as being a Postal employee and is held to the same standard as all other Postal employees.

If a demonstration project were approved, that would allow non-Postal access, I have no pre-conceived concept as to what the requirements should be.

3. I believe that the proposal to reduce the dollar level at which letter mail may be carried outside the Postal system does put that revenue at risk and that a substantial portion of that revenue would be lost because the competing private services would concentrate their sales efforts in the high volume metro areas and would offer substantial volume discounts to secure that business. The Postal Service could not compete on an equal basis because of our universal service and pricing mandates.
4. Under the current regulations, an individual can appeal a major adverse action (removal, demotion, extended suspension, etc.) issued by the Postal Service to the Merit Systems Protection Board (MSPB). Our League attorneys tell me that more than 50 percent of the appeal requests are rejected by MSPB and that the ones that are heard, the Postal Service's original decision has been upheld in 87 percent of the cases.

Honorable John M. McHugh
September 11, 1996
Page 4

In those cases where the Postal Service has prevailed, the employee can file an appeal in Federal Court, but in most cases they do not because of the cost and realization that the Court of Appeals overturns even fewer cases than does MSPB.

At present, the Postal Service cannot go to the Court of Appeals without approval from the Justice Department. Where they have made their case to Justice, their appeals have been filed.

To change the system and allow the Postal Service to appeal each and every MSPB case they lose, would destroy the "legal system" for Postal employees. The employee could have "won" their case at MSPB and yet because of the proposed appeal process, be in effect tried for the same crime or infraction again. This potential "double jeopardy" does not exist in other sectors of our legal system and should not exist in the Postal Service.

As for the risk of establishing case law adverse to its interests, the possibility of establishing case law favorable to its interests, would make the risk level acceptable to far too many within the Postal Service.

If you would like, I would be available to discuss my responses and also any other provisions of H.R. 3717.

Sincerely,



William P. Brennan
President

:rb

IMPACT OF PROPOSED INSPECTOR GENERAL CHANGES ON THE UNITED STATES POSTAL SERVICE

Under H.R. 3717, the Postal Reform Act of 1996, the Presidentially appointed Inspector General will report directly to Congress; not to the CEO or Board of Directors. This increases the likelihood of partisan politics, which is inconsistent with the intent of the Postal Reorganization Act. The operations of this Inspector General becomes a separate item in the annual budget.

The creation of a separate Inspector General would add costs to postal operations, those costs ultimately to be borne by the postal customers with no demonstrable benefit. This appears to be inconsistent with the intent of the bill. The creation of a separate Office of the Inspector General would result in an estimated one-time cost of \$26 million, with recurring annual costs estimated to be \$44 million. These are personnel and non-personnel costs over and above the cost of running the Inspection Service. In addition to personnel costs, the IG will require separate space, furniture, vehicles, and computer equipment, etc., to maintain independence. These costs will be passed on to postal customers.

This estimate is based on the legislative language and the following assumptions. The Inspection Service functions and positions now dedicated to performing internal audit and program review functions would be transferred to the IG. They include internal audit (Financial Audits, Opinion Audits, Contract Audits, and Capital Investment Audits) and program review (Performance Audits, Service Investigations and Developmental Audits).

Efficiency and effectiveness will be impacted. Investigations, now efficiently handled by one organization, would now be fragmented with pieces handled by two organizations. With two organizations performing similar duties, confusion could occur with postal employees and customers. Duplicative efforts would not result in more efficient oversight of the USPS.

In addition, the split of resources would mean fewer Inspectors capable of responding to postal crimes and emergencies, such as violent crimes, natural disasters and civil disorders. The Inspection Service functions and positions transferred to the IG would not be cross-trained to perform these response functions.

The Inspection Service, working with the external auditors and the Board of Governors Audit Committee, currently meets its Inspector General responsibility of conducting internal audits and program reviews. In addition, it performs its criminal and civil investigative obligations with a high degree of success. The manner in which the Inspection Service/Inspector General operates is consistent with the best practices recommended by the National Performance Review.

In summary, the answer is not to tear apart a well-run organization to create a costly bureaucracy that postal customers would end up funding.



NATIONAL ASSOCIATION OF POSTAL SUPERVISORS

National Headquarters
 1727 KING STREET, SUITE 400
 ALEXANDRIA, VA 22314-2753
 (703) 838-8660

September 4, 1996

Honorable John M. McHugh
 Chairman, Subcommittee on the
 Postal Service
 2157 Rayburn House Office Building
 Washington, DC 20515-6143

Dear Chairman McHugh: 

I am writing in response to your August 6 letter requesting that I answer certain questions that will help enable you to compile a comprehensive hearing record on H.R. 3717.

Question #1A

Whether or not this single presidential appointment would bring about the return of partisan politics to the Postal Service is not our major concern. We oppose the appointment largely because it would create additional—and, in our opinion, unnecessary—staff and expenses. Moreover, we are unaware of any shortcomings—either perceived or actual—in current inspection procedures.

We believe the current situation allowing the Chief Postal Inspector to serve as the Inspector General has served us well, and will continue to do so in the future. The Inspector General in the U.S. Army is Army, Internal Affairs investigators (IGs) for city police forces are, themselves, policemen. Many individuals perform two functions in their service to the American public.

Question #1B

I cannot speak as to whether or not the Inspector General Act amendments of 1988 have impacted collective bargaining, but I can say that the amendments have had no effect on labor relations for postal supervisors. Indeed, labor relations have improved for NAPS-member police sergeants and lieutenants who work for the Postal Inspection Service.

Question #1C

No one from the Postal Inspection Service has contacted us on this question. We, in fact, contacted the Service early on to solicit inspectors' thoughts as to why this change might be necessary.

Question #2

I don't know of any contract employees who have access to the mailbox every day. If they did, we would have complete control of the hiring and firing of such individuals. This is a totally different situation from allowing private carriers to access private mailboxes.

Question #3

I believe the Postmaster General was giving you a "worst-case" scenario. Neither the PMG, nor I, believes there would be a \$4 billion loss. Rather, we both believe that if Congress would level the playing field a bit, the Postal Service can and will compete. Our competitors' lobbyists are on Capitol Hill every day, trying to prevent the Postal Service from competing. We have a dual mission—to provide universal service at a fair price, and to compete on level ground in situations where the Private Express Statutes are not applicable and competition exists.

I hope my responses will be of help to you. Please feel free to contact me if I can provide further information or clarification.

Sincerely,



Vincent Palladino
President

VP:met

cc: NAPS Executive Board
Kenneth J. Hunter

Good afternoon, Mr. Chairman and distinguished members of the Subcommittee on the Postal Service. My name is Gilbert G. Gallegos, National President of the Fraternal Order of Police, the largest law enforcement organization in the United States, with over 270,000 members. I am retired from the Albuquerque Police Department, but remain an active law enforcement officer as the head of a regional drug task force in the Southwest region. I am a very frequent visitor to Capitol Hill.

I am here today to assist our labor union members--the officers of the United States Postal Police, Fraternal Order of Police, National Labor Council, Local Union #2. The Fraternal Order of Police has been privileged to serve as the national labor organization of the United States Postal Police officers for more than 5 years. Though I am not an expert on Postal Police matters, I am an experienced law enforcement officer and labor union representative who knows when something is wrong with the structure and authority of a government policing agency. Mr. Chairman, your Postal Reform Legislation is badly needed as far as the law enforcement activities of the Postal Service is concerned; but I have to defer to other experts as the appropriateness of other sections of the bill.

Our 1,200 Postal police officers in the United States need your help. The employees, and the public, which is served by the United States Postal police, need your help. We urge "do pass" of most of the proposed legislation in the "1996 Postal Reform Act". We ask that you expand the language in some areas and reject a few concepts in other areas. Specifically:

Title I

The United States Postal Police Union, FOP-NLC Local #2, fully supports the concept of two Inspectors General from outside the agency. We are all aware of the pitfalls a lack of accountability creates for an agency. The current twice a year report from the Chief Postal Inspector to the Department of Justice is inadequate. This unfortunate lack of accountability has been allowed to go on too long within the United States Postal Service, and has adversely affected Postal police officers and the performance of their law enforcement duties. It has also negatively affected the labor-management relationship.

Why is Title I of your legislation so important to law enforcement? Because the activities of law enforcement in the postal service are slowly being reduced to mere "security" status in the face of growing crime from within, and without, the United States Postal Service. Already recognized as a top stress job in government, United States Postal Service employees are victims of a high rate of employee injury due to crime as compared to other government employees. The USPS management response to such crime exposure is to reduce the police force, eliminate police jobs, initiate private security contracts, and reduce training--all of which negatively affects the morale of the officers. An independent Inspector General could report to the President and the Congress the negative consequences which are the result of this failed management policy. Right now, management regulates themselves and this lack of accountability is greatly decreasing the effectiveness of the U.S. Postal Police.

Additionally, U.S. Postal Service management is "stone-walling" the collective bargaining process by refusing to follow the letter and spirit of the Police Union/USPS collective bargaining

agreement in the handling of grievances and discipline. This also contributes to the lack of positive employee relations within the service. A independent Inspector General, and an effective postal commission, can eliminate these additional causes of employee stress and insure a real collective bargaining agreement.

Title II

Mr. Chairman, the men and women of the United States Postal Police Service are 083 law enforcement officers under the federal system; they are *not* guards or security personnel as stated in your Committee bill synopsis. They are the agencies first line of defense against internal and external crime. The problem of task and authority of the postal police is from management's misuse and their attempts to relegate federal law enforcement personnel to that of a guard or security force. Police officers want, and the public demands, that federal law enforcement officers be used for the purpose for which they are intended: to protect the lives of citizens using postal facilities, to protect employees, to protect the facility, to enforce postal law, and to enforce traditional law on postal property or crimes against postal employees, wherever their workplace may be. The U.S. Postal Police force should never be privatized! For example, Mr. Chairman, under the guise of efficiency, Postal management eliminated the postal police force in an Indianapolis facility, waited two years, and then, at that same facility, hired inefficient private security guards who were inadequately trained to protect the public, the employees, and the facility.

Mr. Chairman, if you can imagine this, the United States Postal Police officer does not have police power, nor has there been any attempt by management to give these law enforcement

officers police power, nor does management want to extend police power to postal police in order to protect mail carriers on their routes, outside the confines of the postal property. The officers are acting simply as private citizens when they go on patrol to protect carriers in high crime areas.

We want the authority of the Postal police officer to be expanded so that they are able to arrest for probable cause any person who attacks or otherwise interferes with a postal employee in the performance of their duty while that employee is away from the postal property. Postal police must be increasingly trained so that they can be effective with this expanded authority. They must have the ability to process arrests, book people into jail, and do the job which postal management is pushing onto the local law enforcement authorities--putting undue stress on local, non-federal resources. Postal police must also be given the authority to carry firearms, not only on-duty, but off-duty as well. The postal police absolutely need the review of an independent police commission, not a civilian review board, but a panel of law enforcement experts who will evaluate management performance and policy in their administration of the postal police task. This independent police commission could be created in this bill and placed under the authority of the Inspector General.

We want postal management to realize that the postal police officer is an integral part of the public's right to be protected from crime. We want postal management to accept the responsibility of guaranteeing to its employees and the public, the existence of a highly trained and effective police force, which was the intent of this Congress in the enabling the legislation. Postal police salaries need to be competitive with other law enforcement officers within the

federal government who have similar job descriptions and duties. Postal management builds negative barriers in the collective bargaining process in comparison with other salaries.

Title III

The Fraternal Order of Police supports the concept of a temporary Presidential Postal Employee-Management Commission to evaluate the work place difficulties facing the Service. That Commission will find ongoing attempts by management to destroy the very fabric of employee rights within a collective bargaining agreement.

Title IV

The Fraternal Order of Police opposes this Title's provision to allow a study to allow private access to mailboxes. Such an opportunity would increase the chance for violation of law, and seriously inhibit the ability of law enforcement to monitor the U.S. mail, prevent the occurrence of crime, and apprehend violators.

Title VIII

The Fraternal Order of Police opposes the poisoning of the authority traditionally possessed by the Merit System Protection Board to give employees effective appeal procedures to which they are entitled. Giving management the ability to appeal MSPB decisions into Federal court, only makes a difficult labor situation worse, since management may use the opportunity to force unions to spend untold time and money in protecting their members from an agency who has a full time stable of labor lawyers using the people's money in an attempt to break the union. The Congress has but to look at the grievance record of management to see that "one more appeal" is

not needed.

Title IX

Being law enforcement professionals, the Fraternal Order of Police supports the strengthening of criminal penalty within the postal statutes. The expanded authority of the postal police officer would be very appropriate in these sections.

Mr. Chairman, I appreciate the opportunity to submit this testimony in support of the fine men and women of the United States Postal Police Service. I believe the testimony you will hear from John Pesa, President of the National Labor Council, United States Postal Service #2, will give you the technical facts and the rank-and-file perspective you need to craft effective legislation. We are all available to you, through our Washington office and staff, to assist the committee in any way possible.

Thank you.



National Labor Council
United States Postal Service No. 2

October 3, 1996

Representative John McHugh
United States House of Representatives
416 Cannon House Office Building
Washington, DC 20515-3224

Congressman McHugh,

In view of the recent passage of the bill which included a requirement for an independent Inspector General for the Postal Service, I felt that now would be a good time to thank you for your strong support of something that has been needed for a long time.

Effective September 1st, I took over as new National President for the Fraternal Order of Police, National Labor Council #2 (the Organization representing Postal Police Officers). Past-President John Pesa, who testified before you during the hearing on HR 3717 in July, has taken over as Vice President. I have long been a supporter of an Independent Inspector General, and intend to continue where John left off.

From various stories in the press, and a press release put out by your office on September 25th, we were made aware of your belief that the Inspector General System as it has existed in the Postal Service is an improper application of the intent and purpose of Congress when they passed the Inspector General Act of 1978, and creates obvious conflicts of interest. It has been obvious to us for some time that the system was severely flawed.

Now that the Independent Inspector General is to become a reality, we were hoping that you may be able to address some concerns our organization has regarding the implementation of the law, specifically the selection of the IG.

As it became obvious that the bill would pass, and through today, we continue to get reports that the Inspection Service is jockeying to play a major role in both the selection of the IG, and policies to be established by the Board of Governors as to

(Page 2 of Congressman McHugh Letter, 10-3-96)

just how the Office of Inspector General will operate. We have been advised that there have been numerous meetings across the country regarding the law, all of which excluded us, and we have documentation regarding their strategy as to how they intend to deal with the "IG situation".

We have heard names of possible candidates tossed around, including current and past Inspectors. These included Ken Weaver, a current employee of the Board of Governors, who only recently transferred from a high level position in the Postal Inspection Service. Our primary concern here is that we believe that a current/former Postal Inspector should not be considered for the position of Inspector General. We believe that this could create a situation where the Inspector General acts or creates the appearance to Postal employees as being just an extension of the Inspection Service, rather than as a fully independent organization.

Our membership, particularly our officers in New York who have been subjected to an extremely hostile and adversarial labor relations climate for many years, are very concerned that an Inspection Service "recruit" for IG could simply maintain the status quo.

I have included an electronic message from an Inspector in Charge to his Inspectors (dated 10-2-96) which details a conversation he had with Chief Postal Inspector Ken Hunter. It addresses many issues regarding the Inspection Service position on the new Inspector General legislation, and includes some statements that we believe justify our concern regarding IG selection and implementation.

We believe that one of these statements on page two raises questions about the implementation of the IG. It refers to a Human Resource Team, and states:

"The team will be working with groups outside the Inspection Service to assist the Board of Governors in the decisions they have to make concerning the new legislation and it's implementation."

As we are generally not included in strategic planning, we do not know who these outside groups are, and to what extent the Inspection Service intends to assist the Board in it's decisions. What we do know is that from our experience, the Inspection Service has rarely dealt with us in an above-board manner, and we have always had serious doubts about the integrity of upper Inspection Service management.

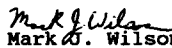
On page 3 of the electronic message, it refers to many phone calls from Inspectors to Tom Koerber, and Ken Weaver of the Board of Governors. It advises Inspectors to stop calling them,

(Page 3 of Congressman McHugh Letter, 10-3-96)

because it "can only serve to create a wrong impression". We agree, it does create the wrong impression, but again, based on our past experiences, does not surprise us. We would greatly appreciate it if you could look into these issues, and use your influence to ensure that Postal Employees, and the American Public, have a truly independent Postal Service IG.

Again, we want to sincerely thank you for your strong support of the Independent IG concept, and we hope your very positive efforts on behalf of the Postal Service, and the public, will continue long into the future.

Sincerely,


Mark D. Wilson
National President
Fraternal Order of Police
National Labor Council #2

cc: FOP-NLC #2 Executive Board

U S P O S T A L I N S P E C T I O N S E R V I C E
E L E C T R O N I C M E S S A G E

Date: 02-Oct-1996 08:20pm EDT
From: Paulette E Poulsen
IS9045
Office: Seattle Division
Phone: 206-442-6302

TO: 103 addressees

Subject: TELECON WITH THE CHIEF INSPECTOR, WASHINGTON DC

FROM: G. A. MIERA
INSPECTOR IN CHARGE
SEATTLE DIVISION

As you all know by now, I had a scheduled telecon with the Chief Inspector today at 2:00 pm PDT.

Rather than try to provide you with a line-by-line version I am only going to share the headlines. This is by no means meant to screen any information that was provided but rather to get that information to you as quickly as possible. If what I provide raises questions, I would ask that you call me for clarification and not anyone else. This is very important - YOU ASK ME IF YOU HAVE QUESTIONS. If I don't know the answer I will get it for you.

Rumors:

Mr. Hunter was adamant about our fueling rumors. Especially those that become destructive and/or harm our employees or the organization.

The rumor that the Chief Inspector is being fired is NOT true.

To help stop the rumor mill the Chief Inspector is setting up a Bulletin Board for all PCES to retrieve information and provide access to pose questions. Soooo, if you have any questions, ask me and I will get the answers for you.

Implementation Team:

Mr. Hunter has set up a team to begin working on identifying issues that are important in carrying out the new legislation. This team consists of T. Dagley, M. Boswell, D. Wright, J. DuPiika, D. Sparks, and A. Kiel.

Information:

For the time being, we will suspend activities in the following areas:

1. Recruitment
2. Bringing on new hires from other agencies outside the Inspection Service
3. Promotions, relocations, vacancy announcements
4. "Catchball" process regarding additional resources.

Please do not attempt to read anything into these actions. At the present time we do not know just what the Service is going to be and it would be unfair to new recruits, etc.

It is more important now than ever to remain focused on our work (subgoals). This serves as an advertisement, so to speak, of the value we add to the Postal Service.

The Chief Inspector is establishing a Human Resource Team to look at these issues:

- The team will be working with groups outside the Inspection Service to assist the Board of Governors in the decisions they have to make concerning the new legislation and its implementation.
- Working on the strategic plan as called for in the bill.
- Research/gather information to identify issues and make recommendations to carry out the mandate regarding the following:
 - a) Communication
 - b) Timelines/schedules
 - c) Organizational charts/staffing
 - d) Functions
 - e) Strategic plan
 - f) Finance and budget
 - g) Continuation of operations
 - h) Inspection Service/Inspector General focus
 - i) Human resources concerns/procedures

Note: The areas related to the above are not all inclusive.

It is hoped that the Bulletin Board will provide the information to the field and dispel the rumors. Rumors are counterproductive. A system similar to the Bulletin Board will be put into place for all field personnel as soon as information concerning the legislation becomes clearer.

The Chief Inspector is committed to working earnestly to ensure we have two very successful organizations. He will work diligently to minimize any impact on our employees.

- 3 -

The meeting he had with the Postmaster General today was a regularly scheduled meeting and items on the agenda concerned the day-to-day operations of the Inspection Service.

The Chief Inspector mentioned that Tom Koerber and Ken Weaver have been absolutely deluged with telephone calls. This must stop! It neutralizes their effectiveness. They know our Service and continuous telephone calls from Inspection Service personnel can only serve to create a wrong impression. Do not telephone either one of them.

The Chief Inspector may be coming to the field for assistance in gathering information/facts/data, etc. He is committed to minimizing any adverse actions to the employees of the Inspection Service. On the flip side, we must remain focused and not become distracted by the recent events. It is so important that we work together and continue to function as a team with the same end goal - for the good of the Service.

Again, any questions should come to me so I can pass it on to Headquarters for a response via the Bulletin Board.

Remember, this is not a line-by-line version of the telecon but rather only the headlines. If you hear anything different than what I have provided above, "ask me". It is quite possible I may have misunderstood or misinterpreted some of the information provided.

I'll continue to get the information to you as soon as I can.

Thanks.

H.R. 3717, THE POSTAL REFORM ACT OF 1996

TUESDAY, SEPTEMBER 17, 1996

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE POSTAL SERVICE,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 1 p.m., in room 311, Cannon House Office Building, Hon. John M. McHugh (chairman of the subcommittee) presiding.

Present: Representatives McHugh, Gilman, Owens, and Green.

Staff present: Dan Blair, staff director; Jane Hatcherson, Robert Taub, Heea Vazirani-Fales, and Steve Williams, professional staff members; Jennifer Tracey, clerk; and Kimberly Williams and Denise Wilson, minority professional staff members.

Mr. MCHUGH. If we could bring the hearing to order, we have three panels today comprised of some very knowledgeable people associated with the Postal Service and the postal industry and we want to provide them the time rather than listen to ourselves. I would ask that my full statement be entered in the record and I will try to keep my other comments somewhat brief.

Today's hearing, as I am certain most of you are aware, marks the third in a series for H.R. 3717, the Postal Reform Act of 1996. Twenty-five years ago, Congress took steps to provide the Postal Service with the tools necessary to perform its mission. However, in the eyes of many, the statutory structure has become outdated in the ensuing quarter century.

The purpose of today's session is to hear from postal customers regarding their views on the reforms contained in H.R. 3717, and to consider their comments in the context of preparing the Postal Service to continue providing high quality service at reasonable rates to all postal customers well into the next century.

The first panel of witnesses today represents major commercial mailers. I extend the subcommittee's welcome to Jerry Cerasale, senior vice president for the Direct Marketing Association; Ian Volner, general counsel for the Advertising Mail Marketing Association; Tim May, general counsel for the Parcel Shippers Association; and David Todd, counsel for the Mail Order Association of America. Gentlemen, welcome.

This panel is comprised of parcel and standard class representatives from business with a substantial stake in a healthy and financially solid service oriented Postal Service.

In the past we have heard from these witnesses regarding the need to control future postal rate hikes while ensuring a high level of service. H.R. 3717 attempts to address these concerns by estab-

lishing a new ratemaking regime which employs price caps for rate hikes, disengaging the direct link between increasing potential costs and rates charged for postal service.

Our second panel of witnesses represents nonprofit mailers. I am pleased to welcome Mark Silbergeld, who is president of the Alliance of Nonprofit Mailers and Mr. Lee Cassidy, who is the executive director for the National Federation of Nonprofits.

The nonprofit mailing community has seen substantial changes in the past few years. Having just emerged from the reclassification process, it is midway in the process now of phasing in institutional costs to be borne by nonprofit mailers.

I want to assure these folks and others that I have attempted and will continue to try to be sensitive to the concerns put forth by nonprofit mailers, and those concerns I believe are reflected in H.R. 3717 as well. For example, under the legislation, nonprofit mailers are protected from any rate increases under the price cap regime which would exceed those envisioned by the Revenue Foregone Act of 1993. Frankly this "best of both worlds" approach reflects my intent to strengthen the public policy Congress has enshrined in granting nonprofit mailers preferred rate status.

The final panel of witnesses represents publishing organizations. I welcome Chris Little of the Magazine Publishers of America; fellow New Yorker, Steve Waters, testifying on behalf of the National New York Association; and John Sturm of the Newspaper Association of America; finally, Steve Bair testifying on behalf of the Association of American Publishers.

I note that last spring Mr. Waters met with my staff to outline his organization's views regarding postal reform and I would like the record to show this legislation attempts to address those concerns. Mr. Waters, for example, emphasized the importance of universal service. H.R. 3717 is grounded on this principle by ensuring a future healthy and viable Postal Service, well equipped to handle the substantial demands required by its public service mandates.

Some query whether postal reform is really necessary given the recent financial health the service had reported. They argue that the Postal Service is inherently incapable of providing competitive services and that those areas of business should be shed, leaving the Postal Service to perform its so-called core functions.

In my opinion, this argument ignores the detrimental impact on universal service that such a restructuring would require. Rather than risk the twin specters of rising rates and deteriorating service, H.R. 3717 is intended to provide the Postal Service with the necessary tools to control costs while maintaining a high quality in cost-effective services.

The fact is that, at least in my opinion, postal reform is inevitable whether it takes place today or a few years down the road. The question is what shape those reforms will take and under what conditions they will be considered. Postal reform considered under crises conditions cannot ensure that provision of universal mail service at reasonable rates will be of primary importance in the solution.

I hope we don't have to wait for a crisis to generate such attention. Such an atmosphere benefits no one except those whose agenda may seek a substantially weakened Postal Service and erects a

structure lacking the tools to perform its public service mission. An active reform in today's climate would benefit all postal customers and should be championed by those committed to the principle of universal mail service at reasonable rates.

Believe it or not, that was an abbreviated version, and as I said, I would like to place the full statement in the record.

I am pleased to recognize the gentleman from New York, Mr. Gilman, one of the more senior members on the committee, a man to whom we all look for guidance in a lot of areas but certainly the Postal Service as well, and I would be happy to yield to the gentlemen for any comments he might have at this time.

Mr. GILMAN. Thank you, Mr. Chairman. Thank you for yielding.

I want to thank you for calling this hearing to discuss H.R. 3717, our Postal Reform Act of 1996, and I want to commend you and the staff for the hard work you put forth in your efforts to ensure the continuing good health of our Postal Service in the years ahead.

In addressing the issues that the Postal Service is going to have to confront in the coming years, I endorse efforts to enable the Postal Service to effectively compete in this changing communications environment by allowing the Postal Service to efficiently set prices and introduce new communications products.

This hearing and this bill provides us with another opportunity to engage in a constructive dialog to improve the efficiency and customer service of this indispensable agency, and I hope that we can embark on these efforts while keeping service intact, maintaining universal service and honoring the commitments we have made to our postal employees.

I want to join with you in welcoming the panelists in the subcommittee, and we look forward to hearing their testimony.

Thank you, Mr. Chairman.

[The prepared statement of Hon. Benjamin A. Gilman follows:]

Opening Remarks
September 17, 1996

MR CHAIRMAN I THANK YOU FOR CALLING THE THIS HEARING TO DISCUSS H.R. 3717, THE POSTAL REFORM ACT OF 1996 AND I COMMEND THE HARD WORK THAT YOU AND YOUR STAFF PUT FORTH IN YOUR EFFORTS TO ENSURE THE CONTINUED HEALTH OF THE POSTAL SERVICE FOR YEARS TO COME.

IN ADDRESSING THE ISSUES THAT THE POSTAL SERVICE MUST CONFRONT IN THE COMING YEARS I ENDORSE EFFORTS TO ENABLE THE POSTAL SERVICE TO EFFECTIVELY COMPETE IN THIS CHANGING COMMUNICATIONS ENVIRONMENT BY ALLOWING THE POSTAL SERVICE TO EFFICIENTLY SET PRICES AND INTRODUCE NEW COMMUNICATIONS PRODUCTS.

THIS HEARING AND THIS BILL PROVIDES US WITH AN-
OTHER OPPORTUNITY TO ENGAGE IN A CONSTRUCTIVE
DIALOGUE TO IMPROVE THE EFFICIENCY AND CUSTOMER
SERVICE OF THIS INDISPENSABLE AGENCY . I HOPE THAT WE
CAN EMBARK ON THESE EFFORTS WHILE KEEPING SERVICE
INTACT, MAINTAINING UNIVERSAL SERVICE AND HONORING
THE COMMITMENTS WE HAVE MADE TO OUR POSTAL
EMPLOYEES.

I WELCOME THE PANELISTS TO THE SUBCOMMITTEE AND I
LOOK FORWARD TO HEARING THEIR TESTIMONY. THANK YOU
MR. CHAIRMAN.

Mr. MCHUGH. I thank the gentleman for his comments and, as I mentioned earlier, for his participation in this process.

[The prepared statements of Hon. Barbara-Rose Collins and Hon. Cardiss Collins follow:]

Statement of the Honorable Barbara-Rose Collins
Ranking Minority Member
Subcommittee on the Postal Service
Hearing on H.R. 3717, the Postal Reform Act of 1966
September 17, 1996

Mr. Chairman, distinguished panel members, and colleagues, I join in welcoming the witnesses to the third hearing on the Postal Reform Act. We have heard from the Postmaster General Marvin Runyon and Postal Labor Unions and organizations. Today we will discuss the impact H.R. 3717 will have on the mailers, magazine and newspaper industries and nonprofit organizations.

Let me take this opportunity to thank today's witnesses for their very detailed analysis of H.R. 3717.

Obviously, you have had the time to really examine and determine the impact this reform measure will have on your businesses.

Mr. Chairman, before you begin, I would like to recognize Mr. Jerry Cerasale, Senior Vice President for the Direct Marketing Association. Jerry was the former Deputy Counsel for the former House Committee on Post Office and Civil Service. In that capacity, he worked very closely with the Subcommittee that I chaired and always provided excellent advice and direction. Welcome Jerry!

Thank you.

**Statement of the Honorable Cardiss Collins
Ranking Minority Member
before the Subcommittee on the Postal Service
Hearing on H.R. 3717, Postal Reform Act of 1996
September 17, 1996**

Mr. Chairman, I am pleased to join my colleagues on the third of four hearings on H.R. 3717, the Postal Reform Act of 1996. Members of the mailing, advertising, nonprofit and newspaper industries are an important source of revenue for the United States Postal Service and as such their views on how the postal reform measure would impact their business and operations is critical.

This particular group of witnesses has had the advantage of having ample amount of time in which to

analyze the impact of H.R. 3717. To that end, I am most interested in your views on the Mailbox Demonstration Project, Inspector General positions for the postal service and Postal Rate Commission (PRC), the enhanced “oversight” responsibilities of the PRC and the sweeping rate-setting changes proposed in Title X of the bill.

With that outlined, I would like to welcome our panelists. I look forward to your presentations and commend you for your very thorough and detailed testimony. Thank you.

Mr. MCHUGH. Gentlemen, as you are all aware being veterans of this process, the full committee rules require that anyone presenting testimony before the subcommittee or full committee must attest to the veracity of their statement, so if you would kindly stand and raise your right hand.

[Witnesses sworn.]

Mr. MCHUGH. The record will show that all of the panelists responded to the oath in the affirmative.

Before we begin, before we even get to sit down, I would like to welcome the gentleman from Texas, Mr. Green, for any comments he might have at this time.

Mr. GREEN. Thank you, Mr. Chairman. I just look forward to the hearing. I have some prepared remarks I would like to submit. I look forward to the hearing.

Mr. MCHUGH. I thank the gentleman.

[The prepared statements of Hon. Gene Green and Hon. Carrie P. Meek follow:]

Opening Statement Congressman Gene Green

September 17, 1996

Postal Subcommittee Hearing

Good afternoon ladies and gentleman, I am looking forward to hearing from all of the mailers today on the areas they feel could be improved by this bill and also on the portions that they feel would make the postal service a more competitive organization. Thus far the major concerns have been with the X-factor and the postal service setting their own rates and also with The mail box demonstration project, The Presidential Management Commission, and giving a greater role to the rate commission. The testimony that we have heard so far has raised several questions which demonstrated that H.R. 3717 is a foundation that we

can build upon.

I look forward to hearing the ideas and suggestions that will be brought up today by the mailer associations and groups on H.R.3717.

I would like to again commend Chairman McHugh for having the insight to put forth a bill that will provide us with a solid foundation to build upon.

Thank you Mr. Chairman.

OPENING STATEMENT
BY
US REP CARRIE MEEK
SUBCOMMITTEE ON POSTAL SERVICE
HEARING
SEPTEMBER 17, 1996

I thank the Chairman for continuing to hold hearings on the "Postal Reform Act of 1996".

As the world around us continues to change at a rapid pace, so must the U.S. Postal Service change to meet the needs of its many customers who depend on hard copy delivery.

Many of us in this room can surely agree, that the United States Postal Service needs additional tools and greater flexibility to compete in this rapidly changing fast-paced world .

I look forward to today's hearing and the testimony of representatives of the major mailer associations, representatives of business and industry who comprise more than 88 percent of the U.S. Postal Service's mail volume.

I also look forward to hearing from representatives of America's newspapers and magazines who will offer their perspective on ways to improve the Postal Service.

Mr. Chairman, I look forward to hearing the testimony of the witnesses and to working with you to ensure that our Postal Service is the best in the world.

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Mr. MCHUGH. We have no set order, so unless there is some interest on the panel in doing it in any particular way, which I would be happy to defer to, I would suggest we start at David Todd's end of the table and work our way down signifying nothing other than that is how you are seated.

Mr. Todd, welcome.

STATEMENTS OF DAVID TODD, COUNSEL, MAIL ORDER ASSOCIATION OF AMERICA; TIMOTHY MAY, GENERAL COUNSEL, PARCEL SHIPPERS ASSOCIATION; IAN D. VOLNER, GENERAL COUNSEL, ADVERTISING MAIL MARKETING ASSOCIATION; AND JERRY CERASALE, SENIOR VICE PRESIDENT, DIRECT MARKETING ASSOCIATION

Mr. TODD. Thank you, Mr. Chairman. Thank you for inviting us to participate in this hearing.

The members of MOAA do have a vital interest in the Postal Service. They are mailers of primarily catalogs in the standard mail class; however, they are equally interested in First Class Mail and that accounts for an enormous proportion of their overall mail volume. I think it is fair to state that generally they are concerned with the entirety of the Postal Service, and its continued vitality is essential to the well-being of their businesses in the future.

I would certainly associate myself and the association with your opening remarks. I am particularly in agreement with you that we are not in crisis and this is the time to address the problem. There are those who have said that only through crisis will we ever think about significant change and that the only reason that the 1970 act was possible was because of the very evident crisis that existed at that time.

I hope they are wrong. I know you are determined to prove them to be wrong, and we certainly want to assist you in that effort.

Mr. Chairman, MOAA regards this as a good bill. It addresses the right issues. We have no doubt that its adoption would enhance the ability of the Postal Service to meet the existing situation and the changes which are most assuredly coming. Indeed, we think it essential that the changes be adopted if the Postal Service is to remain healthy.

Equally important is the price cap portion of this, and as you have said this morning, unlinking the direct link between cost and postal rates and giving the incentives and the structure necessary to make it clear to the Postal Service that in the future they will have to operate in a manner in which their costs are linked to the inflationary rate and no more.

Those are clearly the two thrusts of this bill. There are many less sweeping changes in the bill, virtually all of which we support. There may be some small nuances of disagreement with these. Nonetheless, MOAA believes that the comprehensiveness of the bill and the way it address these issues is commendable. It would cure not only big problems but a host of lesser problems in a reasonable and efficient fashion.

I will keep my remarks brief and request that the entirety of my remarks be included in the record.

I would say the most fateful decision to be made by this bill is the structure of the relationship between the U.S. Postal Service

and the Postal Rate Commission. It was a fateful decision that was made in the 1970 act and, one, that in retrospect and perhaps rather quickly in retrospect after the passage of this act seems to me to have been a mistake. It will be one of the most fateful decisions to be made in this legislation.

As I have stated in the prepared testimony, the Senate report recognized that if a bureaucratic struggle developed between the Postal Rate Commission and the Postal Service, this experiment would have failed and the issue would have to be revisited.

It is clear that the bureaucratic struggle has developed. It is clear that the issue needs to be revisited, and what I would urge is that there be further thought about this relationship between the two organizations.

MOAA is particularly concerned about the audit function. We believe that it is an invitation for a continuation of the struggle as now structured rather than solving the problem. MOAA has recognized and supports the proposition that so long as the Postal Service is a monopoly service there will need to be an independent review of rates. We are not convinced that there needs to be a PRC role in essentially a quality control auditing function.

Perhaps I should say we have supported you in the portions of the bill calling for the Inspector General, and perhaps to be the Doberman pinscher. We think the PRC should be more of a sheepdog rounding up the strays and watching over the flock, but we do not believe the PRC should have this role, which we believe is a clear invitation to a continuation of an institutional struggle which already exists.

In conclusion, Mr. Chairman, and members of the committee, again we support the bill. We think with relatively minor changes it can be a bill that accomplishes all that is needed for mailers, whether they be MOAA members or other members, as well as the overall needs of the American public.

Thank you.

Mr. MCHUGH. Thank you. And in response to your request, the record should note that all of the written statements by all of the witnesses on all three panels will be entered in their entirety.

[The prepared statement of Mr. Todd follows:]

**STATEMENT OF DAVID C. TODD
ON BEHALF OF
THE MAIL ORDER ASSOCIATION OF AMERICA
BEFORE THE COMMITTEE ON POST OFFICE AND CIVIL SERVICE
UNITED STATES HOUSE OF REPRESENTATIVES**

**POSTAL REFORM ACT OF 1996
H.R. No. 3717**

September 18, 1996

Mr. Chairman, members of the Committee, my name is David Todd. I am counsel to the Mail Order Association of America and am here today to present the Association's position on H.R. 3717.

MOAA shares your belief, Mr. Chairman, that the time has come to make significant changes in the way in which the Postal Service is regulated, its products structured and its prices established. At an earlier hearing you expressed the view that the Postal Service is not in crisis currently and that we should take advantage of that by making changes necessary to minimize the difficulties which certainly are on the horizon. MOAA concurs in that approach.

Most observers agree that the Postal Service has performed reasonably well over the last few years. Certainly, Postal Service prices have risen far less than the staggering increases for many types of mail which characterized the Postal Service only a few years ago. Nevertheless, there are troubling signs. The Postal Service continues to lag in productivity and the containment of costs generally. There also has been a continuing failure of the Postal Service to reap the anticipated benefits from the massive sums spent on automation. Additionally, current Postal Service volumes for both First-class and Standard Mail lag behind anticipated levels.

Cost containment, the first issue, needs to be addressed and certainly can be addressed. The second issue, lagging volume growth, is ultimately more troubling and it is unclear whether there are long-term solutions. Substantial amounts of "mail" have already been diverted to various electronic alternatives, particularly within First-class Mail. Given the nature of the electronic media, specifically rapid growth and continuing ability to provide more services at greater speed and less cost, it is only prudent to assume that this electronic diversion will continue. Further, there is every reason to believe that the diversion will spread to all types of message mail, including business or Standard Mail.

It is neither feasible nor wise to attempt to stem the growth of such electronic alternatives. Ultimately, the country, including mailers, will be best served by permitting the continued development of a marketplace in which the transmission of data, whether in the form of letters, invoices, or advertising materials will be accomplished by media which best serves those needs at the highest level of service and the lowest possible cost.

Nevertheless, MOAA believes that there will be a need for an efficient and reasonably priced Postal Service to deliver hard copy for the foreseeable future. Such service is vital to the well-being of the entire nation, including business mailers such as the members of MOAA whose businesses remain in large part dependent upon the ability to deliver advertising catalogs to their customers reliably and at reasonable cost. MOAA concurs in your objective of assuring the American public "a viable Postal Service providing universal service at reasonable rates well into the 21st century." Again, therefore, MOAA believes that now is the time to make necessary

changes in the Postal Reorganization Act and expresses its gratitude to you, Mr. Chairman, for taking the lead in this effort.

Mr. Chairman, MOAA generally endorses this bill. It is responsive to the concerns of mailers and its adoption would result in a major improvement in the functioning of the Postal Service and the establishment of rates and fees. The "price caps" and employee bonus provisions would give major incentives for cost containment. Of equal importance, the proposed factors and order of priority to be used to establish baseline rates, and the grouping of mail into "baskets" that separate large volume and single piece mail, would bring about a far more rational rate structure than exists currently.

MOAA also supports most of the other provisions of the bill. Without attempting to recite them all, MOAA supports the deregulation of the competitive mail categories; establishment of an Inspector General; a Postal-Employee-Management Commission (although it might be appropriate to better define the make-up and mandate of that Commission); allowing the Postal Service to deposit funds and borrow as it sees fit (but also does not believe that access to the Federal Financial Bank or the Treasury Department should be denied to the Service); establishment of volume discounts; negotiated rates for competitive services (although MOAA also supports negotiated rates for the "noncompetitive" services); market tests, and most of the other provisions.

In this testimony, MOAA wants to discuss those parts of the bill which address the two overwhelming needs that are not adequately met by the existing regulatory framework. First, the Postal Service needs to be able to exercise greater flexibility in the structuring and pricing of its

services. Second, incentives need to be put in place to bring about a more cost-efficient Postal Service, incentives that must be effective regardless of whether Postal Service volumes grow, remain stagnant, or even decline. MOAA believes that the bill is headed in the right direction, but that some changes would help meet those two overarching objectives.

As an initial matter, MOAA is concerned about the overall structure as it pertains to the relationship between the Postal Service and the Postal Rate Commission. In earlier testimony before this Committee, MOAA noted that the Senate Report on the Postal Reorganization Act of 1970 observed that if a "bureaucratic struggle" developed between the Postal Service and the PRC, it would be necessary to revise the system. We stated then and reiterate here that such a bureaucratic struggle has, in fact, developed. More important, it is not clear that the structure which is contained in H.R.3717 will solve that bureaucratic struggle. We fear that in some ways it may make the struggle worse.

With that background, we now address some of the areas in which we believe modifications to H.R. 3717 should be made.

Baseline Case.

MOAA supports the provisions providing for an omnibus rate case, under new rate criteria, before applying the other rate provisions of the act. We oppose, however, the provisions that would eliminate that case if new rates take effect under the existing criteria during the 18 month period after enactment. There is a strong possibility that the Postal Service will file an omnibus rate case prior to the enactment of this bill. Permitting those rates,

established under existing rate criteria, to serve as "baseline rates" would undercut much of the rationale of the new rate mechanisms. Therefore, the rate setting provisions of the act should become effective only after baseline rates have been established under revised criteria.

Indexed Rates and the Adjustment Factor.

MOAA supports the provisions providing for the limitation of rate increases by application of the GDPPI. MOAA, however, is concerned about the provisions governing the establishment of an "adjustment factor" as set forth in Section 3723. MOAA believes that these provisions provide too much latitude to the PRC to establish adjustment factors. Despite the authority reserved to the Postal Service Directors, MOAA is concerned that the factors could be set in a manner that would tend to undo the overall thrust of the Act, which is to give to the Postal Service greater ability to respond to market conditions and incentives to control costs.

MOAA believes that a better approach would be to limit rate increases after the establishment of baseline rates to the GDPPI factor by established "subordinate products." MOAA fears that the manipulation of the adjustment factors under the bill could lead to the same market insensitive pricing decisions which have too often characterized rate decisions in the past.

Generally, MOAA believes that there is merit to Postmaster General Runyon's suggestion in his July 10, 1996 testimony before this Committee, to set "pricing guidelines that are clear from the start -- that everyone can see, anticipate, and budget for."

Further, MOAA is concerned with the provisions of section 3723(f) "exigent circumstances." Our concerns are twofold. First, although MOAA recognizes the need to permit

the Postal Service to recover its costs in the face of unanticipated financial circumstances, we believe that the applicable circumstances should be set forth in the legislation rather than left vague. The Postal Service ought not to be able to increase its prices beyond the GDPPI except to the extent that certain specified contingencies arise. As written, the loophole that would allow the Postal Service not to be bound by the GDPPI is simply too large and is open to a greater degree of discretion than is appropriate. Second, for the same reasons we object to the establishment of the adjustment factors, we question the PRC's role under the exigent provisions. Specifically, the PRC is given greater discretion than we think wise.

Finally, because costs do not necessarily increase (or decrease) uniformly for all postal products, and because product characteristics change, it probably would be necessary to revisit baseline rates from time to time. That could be done on a fixed schedule, *e.g.* every five years, or upon a determination by the Postal Service that rates and costs by postal product had become too far out of line.

Cost-Based Rates.

As MOAA understands H.R. 3717, products within the noncompetitive services would no longer be required to meet their direct and indirect costs. A bedrock principle of the current postal ratemaking criteria is that products must meet such costs. That principle is sound, is accepted by virtually all mailers, and should be continued. Regardless of whether particular postal services are competitive or noncompetitive, MOAA believes that it is sound economics and sound regulatory practice to ensure that they meet their direct and indirect costs.

Mr. Chairman, MOAA recognizes your desire to do away with the current "cost of service" approach in order to "break the link between cost and price." MOAA submits, however, that "price caps" and minimum cost recovery are not incompatible.

Classification.

As MOAA understands § 1002, the current authority of the PRC over the establishment of new products or classes remains unchanged. MOAA believes that there are no reasons why the PRC should continue to be involved in this process. MOAA accepts and supports the concept that so long as the Postal Service retains monopoly authority it is essential that there be an independent review of rates on a periodic basis. The Postal Service, however, should be permitted to establish classifications for both competitive and noncompetitive services as it sees fit, subject only to the requirement that the rates for such services cover direct and indirect costs and be submitted to and approved by the PRC within an established period of time.

Reporting to the PRC.

Subchapter V gives broad authority to the PRC to "audit" the Postal Service. MOAA is concerned that the provisions would perpetuate the bureaucratic struggle between the USPS and the PRC which has already developed. In the view of MOAA, the Inspector General provisions combined with the requirement that there be periodic revisiting of rates subject to PRC jurisdiction is all that should be required by way of ensuring that postal rates and fees are in compliance with statutory requirements. Additionally, under current procedures, a party believing that rates are not in compliance with the Act can file a complaint before the PRC. We

believe those mechanisms are all that is required to ensure Postal Service compliance with the Act and that the elaborate PRC auditing authority set forth in the bill is unnecessary.

PRC Subpoena Power.

MOAA agrees that the PRC should be given the authority to obtain necessary data from the Postal Service. MOAA also believes, however, that that authority should be allowed only to obtain data necessary to carry out its rate oversight responsibilities and that there is no need for that subpoena power to be allowed with respect to private parties. The mechanisms currently in place are sufficient, we believe, to ensure that the PRC will obtain such data as may be necessary from private parties. Specifically, the PRC has the authority to strike testimony submitted by private parties if that party refuses to provide the necessary data to test the validity of that testimony. No further PRC authority is necessary.

Appropriations.

MOAA is concerned that the bill would repeal the authorization for making public service and other appropriations to the Postal Service. Under the amendments to the Postal Reorganization Act adopted in 1993, for-profit mailers are already being required to bear the costs of nonprofit mail which fails to meet its full cost burden. As a part of that "bargain," it was agreed that the Postal Service would receive, over a period of years, the amount of public service appropriation costs which had been incurred by the Postal Service prior to the adoption of the new amendments, but never appropriated by Congress. As stated by PMG Runyon on July 10, H. R. 3717 "would wipe out the \$1 billion debt the government owes America's postage

ratepayers." Further, the repeal invites a further enlargement of the nonprofit classes which would impose additional burdens upon full rate mailers.

Finally, MOAA believes that there is no valid policy reason for requiring the Postal Service to fund the costs of the benefits that were incurred by Postal employees under the former Post Office Department.

At the very least, the bill should be amended to ensure that the Postal Service would not be required to immediately "book" any loss of future appropriations, a step that would almost certainly require immediate rate increases.

Conclusion.

Mr. Chairman, that concludes my statement. Again, we appreciate the determination that you have shown to bring about necessary reforms and look forward to continuing to work with you and the members and staff of this Committee to ensure that the best possible bill is ultimately adopted by the Congress.

Mr. MCHUGH. We will just go right down the line with Mr. Timothy May.

Mr. MAY. Thank you, Mr. Chairman.

The Parcel Shippers Association, for the record, is a group of approximately 200 large and small mail order companies, and the focus of their main concern is the delivery of their merchandise, their parcels, which they accomplish largely through the United Parcel Service and Parcel Post Service of the Postal Service and as well as a substantial amount of Third Class parcels. They are also major mailers of Third Class Mail, First Class Mail, what have you, so they have a stake in the viability of the entire system, but their focus is parcels.

When the Postmaster General [PMG] appeared here, he did congratulate you on the work of this committee and we would, too. We think this is not the usual halfhearted measure we have been accustomed to for many, many years.

This is a very thorough bill, a very comprehensive bill, and from our point of view it is quite ground breaking in the fact that, No. 1, it deregulates the competitive products, the products that it has determined in advance are competed for in the marketplace. Parcels being the prime example of that.

There are—there is the Goliath of the United Parcel Service as well as others to handle both regular delivery parcels and expedited parcels. So the public does not need to be protected against the Postal Service the way it does in some other monopoly classes.

So we have for years urged the deregulation of this kind of mail and this bill does it. It has long been unnecessary for the Postal Service to be hobbled by what its banking, borrowing, and investment authorizations are. This bill liberalizes those and permits the Postal Service some of the freedoms of the private sector. It makes clear that volume discounts are OK if they are done reasonably, and at long last gives the post office the market testing authority that any business has to have if it's going to introduce new products without running the labor, rents, and procedures that the Postal Rate Commission does, which is the death of any new products.

It is absolutely a tremendous amount of change occurring in the whole ratemaking procedure. It does appear to create incentives for employees at the Postal Service to contain costs and be a direct beneficiary of those efforts through the possibility of bonuses, all the way from the highest ranking officer in the Postal Service to the lowest ranking.

It gives the Postal Service some pricing flexibility that it should have, that anybody in the market should have, and it does attempt to contain rate increases to what—to the general increases in inflation in the economy. Last, it does do away with some arcane restrictions on their purchase of international air transportation.

These are really ground breaking. They in their major elements contain everything that our association for years has asked the Congress to look at and to do, and you have wrapped them all into one bill and for that we think that we at long last have a vehicle that really can be the architecture of a modern Postal Service.

Our particular focus is in Title X, the ratemaking provisions, and in that title the part that deals with deregulation is of most inter-

est to us. We do find certain problems in some of these provisions and we think they are easily fixed and we do want to identify them.

The first problem we have is in the deregulation of the competitive products. Your bill rightly provides that these products, at a minimum, have to recover their direct and indirect costs and establishes the Rate Commission as the policeman to make sure they are recovering the direct and indirect costs. And we have no quarrel with that requirement or that the PRC would be the policing body.

However, the bill also says that these competitive products must return a, "reasonable share of the overhead of the Postal Service," or the so-called nonattributable cost.

The problem, Mr. Chairman, there is no definition nor has there ever been any definition, of what a reasonable share of overhead is, and you have invested—the bill invests the Postal Rate Commission with that power, that complete, full power to decide what a reasonable share of overhead is every year.

So, as long as they have that power, in fact, rather than deregulating these competitive products, the bill subjects them to greater regulation than now exists. Because right now the only thing that has to happen is the Postal Service has to convince the Postal Rate Commission that these competitive products are contributing, "a reasonable amount to overhead," in the test year, and that has on average been one out of every 3 or 4 years.

Under this test, every year you have a Rate Commission exercising its untrammled power to come in and second guess the post office and say, "no," we think a reasonable contribution to overhead is this much. And there is no objective standard and there never has been. There is nothing in the statute currently. There is nothing in the decisions of law that would aid anyone in determining an objective test of what a reasonable contribution is.

Frankly, we see no solution to that other than to do away with the requirement. In fact, there have been times in the past when the Commission that has allowed parcel post, for example, to contribute only 2 or 3 percent of its costs to overhead and be deemed to be reasonable. On the other hand, for other classes of mail the Commission has said they should contribute 100 percent of their direct cost over again to pay for overhead.

There simply is no objective test and, consequently, if you give to the Rate Commission the power to second guess, on an annual basis, what the Postal Service has charged and saying, well, now you didn't make a reasonable contribution to overhead, then you have defeated the very purpose.

I know what the intention of this provision is. I am not imagining things. When the chairman of the Postal Rate Commission testified here, he kind of sent a chill down everyone's spine when he said, "well, in the private sector a reasonable amount of overhead is 100 percent." Now if that is a glimpse into what we are looking at from a Rate Commission administering this provision, I can guarantee you that is the defeat of your efforts and our efforts to try to empower the post office with the ability to go out in the marketplace and compete where they have direct competition. We hope that that can be—and it can be easily fixed.

Some of the other problems with the ratemaking mechanisms have to do, I think, with complexity and the nomenclature. Some of us, even lawyers smarter than I, are somewhat baffled by what some of these terms mean. There are further subordinated units, then further subordinated units of the further subordinated units. We think that can be tightened up so that there is not a lot of misunderstanding about just what we are trying to get done.

As I say, we hope that indeed you will remove from the Postal Rate Commission the authority to determine whether a reasonable amount has been made for overhead for the competitive classes. We also agree with the MOAA that the PRC should not be given this power to conduct a management audit of the Postal Service. No. 1, they are incompetent, manifestly incompetent to tell anybody how a major business should be run. Does that mean, however, that the Postal Service should be free from criticism? No, we don't think so. We think most major businesses in this country are subjected to management audits, but it is done by competent authorities.

No. 2, the Postal Rate Commission would—it would be incapable of being objective in its review. Why? Because the very rates, the very adjustment factors that they decree that the post office has to use may be the very things that cause management to fail in a given year. I really don't expect that the Postal Rate Commission would indict themselves as the reason for the post office's management failure. So, by definition, they are an intrinsic party to this whole postal operation equation, and they cannot be put in the position of then coming back and making judgments about whether the post office has performed its national mission.

Perhaps the General Accounting Office would be a suitable substitute. They are accustomed to do those kinds of audits—they have a great deal of competence. They have people that—that is, their whole careers are built upon management analysis of operations. And, indeed, they are detached and objective. And moreover, they report to the Congress and it is the Congress, after all, who has the ultimate oversight responsibility to make sure the Postal Service does carry out its mission.

Finally, we are concerned about this plenary grant of subpoena power to the Rate Commission. As far as we are concerned, it is fine to give it to the Rate Commission over the Postal Service. We don't think they should have the power, or no other Government regulatory agency has such subpoena power over those not regulated.

This presumably is the way it reads: any citizen walking down the street could be seized and forced to disgorge any kinds of information that the PRC deems to be relevant. That is ridiculous to go to that extreme. I don't believe the staff intended that, but we don't believe that in fact mailers should be subject to PRC subpoena authority either.

Right now the Commission has perfect discipline over participants in proceedings by sanctioning them if they fail to disclose information. And consequently we think that the only improvement that is needed is the empowerment of the commission to get information from the Postal Service that they have not been able to get in the past to do their job, and we would support that as long as it's carefully delineated and limited to two things: One, the infor-

mation they need to acquit themselves of the responsibilities of determining that the competitive products meet all of their direct and indirect costs and; two, that the post office has not abused the application of the adjustment factors on an annual basis; and, three, in any proceeding on the record under the Administrative Procedure Act, where testimony and evidence is being adduced, they would have subpoena power over the Postal Service under those circumstances as well.

Finally, just one final note, we know of no justification for changes in the monopoly law to exempt products that cost \$2 to ship by private transportation. We know of no—we have heard of no reasons why the present system which exists—products that pay three times as much as the Postal Service would charge could be exempt.

We are not aware of what the problem is to make such a change in monopoly provisions that are over 150 years old and have remained unchanged all that period of time and served the post office well. We think those are not serious changes to what is really a breathtaking, in its scope, piece of legislation, and with some minor adjustments we think that H.R. 3717 could equip the Postal Service to be a viable competitor and universal service provider well into the next century.

Thank you, Mr. Chairman.

Mr. MCHUGH. Thank you.

See, that is why we are here, to learn things. I learned two things already. I learned, No. 1, that there is a problem on the writing of the subpoena power. You are right. We never intended those kinds of things to apply. We also learned that. And we learned that there is actually a lawyer smarter than you, by your own admission.

In all seriousness, we do thank the gentleman for his comments. [The prepared statement of Mr. May follows:]

**STATEMENT OF TIMOTHY J. MAY
GENERAL COUNSEL OF THE
PARCEL SHIPPERS ASSOCIATION
BEFORE THE
SUBCOMMITTEE ON THE POSTAL SERVICE
TUESDAY, SEPTEMBER 17, 1996**

My name is Timothy J. May; I am General Counsel of The Parcel Shippers Association, a group of approximately 200 businesses which utilize the United States Postal Service and other carriers to ship parcels in interstate commerce. Our members are heavily reliant upon the Postal Service as the principal means for soliciting their customers through third class mailings; and these customers in turn use the Postal Service to place orders for merchandise, and to pay for that merchandise.

We are pleased to have this opportunity to present our views on H.R. 3717, the Postal Reform Act of 1996.

INTRODUCTION

In his testimony before this Committee last July, the Postmaster General took note of the fact that the Postal Service had just celebrated its 25th Birthday. He took that occasion to congratulate you and this Committee for the work you had done over the last year and a half to craft legislation that would enable the Postal Service successfully to negotiate the rapids of the next twenty-five years. We at PSA add our voices to those congratulations. We believe that your legislation is ground breaking and enormously positive in a number of respects: the grant of new pricing and negotiating latitude to the Service; new banking, borrowing, and investment freedoms for the Service; approval of volume discounts and new market testing authority; deregulation of international air transportation; a radically changed rate setting procedure for

noncompetitive classes of mail, which create incentives for the Postal Service to contain costs, and to share fruits of those savings with their employees who create those savings; a process designed to keep postal rate increases aligned with cost increases in the general economy; and, most importantly, from the point of view of our Association, a deregulation of parcel post and other competitive postal products, those for which there is ample competition in the private sector.

This bill embodies in its most important elements all of the major changes which our Association has long advocated to this and predecessor committees.

A recent report in the AMMA Bulletin should remind us why, despite the current good health of the Postal Service, the future will not be easy and a modern regulatory and statutory scheme needs to be put in place for that future. The Bulletin reported that an eight year old gift catalog with annual revenue of \$8 million just sent its last 250,000 piece mailing. The company made a decision, instead, to focus all future merchandising and marketing efforts via its worldwide web site. The company cited postage and paper increases as the predominant reasons it abandoned its printed catalog and chose to operate solely on the internet. This is a company that had been mailing approximately 4 million catalogs annually. We do not expect there to be a rush to the internet and an abandonment of the mails by mail order companies. However, it is clearly coming and when a new generation of buyers, completely comfortable with buying, ordering, paying, and conversing through the internet arrives on the scene what is now a trickle will become a flood. Each loss of a customer will weaken the Service a bit, and render the Service less efficient and more costly for the customers that remain. Legislation like H.R. 3717

can enable the Postal Service to remain a viable communications and distribution partner far into the future.

I. DEREGULATION OF COMPETITIVE PRODUCTS

As an Association of mailers primarily concerned with the transportation and delivery of parcels to its customers, PSA is naturally most interested in Title X, the rate making provisions of H.R. 3717, and specifically Section 3741(2), whereunder parcel post, expedited mail, and priority mail, among others, are defined to be "products" in the competitive category of mail. Section 3742 provides that the directors of the Postal Service, not the Postal Rate Commission, will establish the rates for parcel post and other products in the competitive category of mail. This is exactly what this Association asked the Subcommittee to do in its appearance last year. This provision recognizes that there is more than adequate competition to the Postal Service for the delivery of parcels, both regular and expedited delivery, and that the constraints in both its rates and services imposed by regulation have seriously hampered the ability of the Service to compete in a very competitive marketplace. The requirement of Subsection (b) that each competitive category product have a rate that bears the direct and indirect postal costs attributable to that product ensures that the Service will not use predatory pricing of parcels to undercut the competition unfairly.

There is, however, a fundamental flaw in this provision. The competitive products are also required to make a "reasonable contribution" to overhead costs, and the PRC, under the audit powers granted to it, is empowered to judge what is "reasonable." Under this arrangement, there would be no deregulation of the competitive services. In fact, the Postal Rate Commission would be vested with even more power than it currently has over rates in the competitive

category. At least now, the Postal Service does not have to satisfy the Postal Rate Commission that each and every year the rates for these products make a "reasonable" contribution to overhead, but only during the projected test year used in a general rate case. We are sure that this is not the intention of the legislation's authors. However, there is no mistake that at least the Postal Rate Commission reads this language as we do. The PRC Chairman's testimony makes that clear: "Similarly, the Commission would be expected to exercise independent, unbiased judgment to determine that a product made a 'reasonable' contribution to other postal costs." Even more ominously, the Chairman offers his opinion that in the private sector a "reasonable" contribution to overhead is 100% of the overhead. This conjures up a frightening specter of the PRC, with a proven inability to fashion a rational basis for doing mark ups over attributable costs, struggling with the assignment of determining what will be "100% of the overhead," *i.e.*, nonattributable costs, of competitive products.

Subchapter 5 of Title X (Section 3782) also empowers the Postal Rate Commission to audit whether the rates in the competitive services are bearing their direct and indirect share of costs. While we have some difficulties with other parts of that auditing procedure, we accept the necessity that there be an agency that ensures that the Postal Service's rates cover attributable costs for the competitive category. However, we urge the Committee to amend this section to make it clear it does not intend to empower the Commission to make judgments as to what is or is not a "reasonable" contribution by competitive products to all overhead. If the Commission has such power then that would eviscerate the independence of the Postal Service and its ability to react to the marketplace; it would give the Commission control over the prices of the

competitive category because there is no objective test of what a "reasonable" contribution to overhead is.

Another concern we have relates to the provision that, notwithstanding the fairness and equity strictures of Section 403, allows volume discounts in both competitive and noncompetitive categories. Our difficulty is that Section 604(b) provides for a demonstration project "the purpose of which shall be to determine the feasibility and desirability of affording volume discounts to mailers on a negotiated basis," and which project is limited to products in the competitive category. This appears to be a serious qualification on the Service's power to compete in the marketplace. As we understand these demonstration projects, within a year after their conclusion the Controller General is supposed to submit to each House of Congress a written evaluation of the project with a recommendation as to whether or not the Postal Service should be permanently authorized to perform such actions, in this case, negotiate volume discounts with its customers, a standard industry practice, the denial of which to the Postal Service will severely handicap its attempts to meet the market. Since there is an overall stricture that the competitive products must have rates which cover their costs, we see little reason to deny the Postal Service the ability to negotiate volume discounts with its customers for competitive products without the laborious process of a demonstration project, with all of its limitations, and a final run of the gauntlet through the Controller General to each House of Congress which will have to enact further legislation in order to make such discounting permanent.

We strongly urge the Committee to reconsider these very serious limits on the Service's ability to compete.

II. OTHER RATE MAKING PROVISIONS

In addition to shipping parcels, the members of our Association are also extensive users of other postal products and services and therefore are keenly interested in the proposed changes in the rate making provisions that would be applicable to the noncompetitive categories, most particularly standard mail, or products that would be grouped in basket number 4. Our Association strongly endorses your introduction of capped rates. This is a most promising development to create incentives for the Postal Service to constrain costs. Additionally, we strongly support these other proposed changes:

1. The establishment of an order of priority for the factors used by the Commission to determine adjustment factors and to establish the baseline rates; these factors emphasize cost, demand, and quality of service, things that can be objectively measured (Section 3701 (c)).
2. The grouping of all postal products into one of four baskets. Under this proposal, at long last, single piece first class mail will not be commingled with volume bulk first class mail for rate making purposes. These two categories of mail are handled in very dissimilar fashion and certainly the mailers themselves are quite distinct as a group.
3. Allowing the Postal Service to seek an interim change in the adjustment factors. That protects the Postal Service and allows it to react to changed circumstances. On the other hand, in order to seek an adjustment, the directors must certify that the Postal Service faces severe financial exigencies and that the change is needed in order to restore fiscal soundness. We think this helps ensure that the Postal Service will not

frivolously seek to change the adjustment factors because it requires a very visible admission by the Postal Service that it has not been able to manage its affairs without risking financial ruin.

4. Allowing the Postal Service, under certain conditions, to apply a non-uniform adjustment to the products that are subunits, so-called "further subordinate units."
5. Providing for the supply of the necessary information to the Postal Rate Commission so that it can determine whether the Postal Service's annual rate adjustments have complied with the provisions of the new rate flexibility.

We do believe that the Committee may wish to consider, however, some of the problems that accompany the changes proposed, problems which we think can be readily dealt with so that the very positive features of the new rate making provisions will not be diluted. I would summarize those problems as follows:

1. The entire rate making process may simply be too complex for comfortable understanding by those affected, that is, the customers of the Postal Service. Several examples of that complexity would be:

- (a) The ground rules under which the Postal Service is allowed an exception to the otherwise general requirement that adjustment factors be uniformly applied to each product within the basket;

- (b) the imprecision of the nomenclature for the product subgroupings themselves, that is, "subordinate units," and "further subordinate units." (For example, Section 3724 (d) (3) (C))

actually contemplates that there could be "two or more levels of further subordinate units." This confusion is unnecessary.)

2. The power of the Postal Service to make a nonuniform application of the adjustment factor is limited to baskets 2, 3, and 4. It is not evident as to why the Postal Service may not also have a nonuniform application among further subordinate units in basket 1.

3. Since the Postal Service's adjustments are made final and nonreviewable, the language granting the Service this flexibility should be clearer and more precise.

4. Probably the flaw which we find most serious, and which we believe the Committee should above all else reconsider, is the scheme under which there is one final rate proceeding to establish the baseline rates. All adjustments in the future will be made off of the baseline rates established in that one proceeding. While it is true that the Commission every five years will establish new adjustment factors which allow the Postal Service to deviate up or down from those baseline rates, the time will surely come in the not too distant future when the baseline rates themselves are so distorted in their relationship to each other, because of changes in operating methodologies and the costs of performing different kinds of services for different kinds of products, that the whole process will seem irrational. It would conceivably take very disparate adjustment factors for each basket, and then radically nonuniform application of adjustment factors to further subordinate units within the baskets in order to track the real world experience of change over time.

In our view, new baseline rates should be established periodically, so that the adjustment factors that are established can be utilized for their intended purpose, which is to reflect subtle

changes that have occurred from year to year which would dictate that a particular product's rate should have more or less of an adjustment than dictated by GDPPI.

III. SUBCHAPTER V OF TITLE X - REPORTING

Section 3782 provides for a detailed reporting system by the Postal Service to the Postal Rate Commission. As we have previously indicated we believe this is helpful insofar as it provides the Commission with the information it will require to ensure that the Postal Service has fully complied with the new rate making mechanisms provided for, as well as to monitor the Service's compliance with the rates it establishes for the competitive category. However, this Section goes far beyond that kind of information and requires the Service to supply to the Commission the most detailed operating and performance data, for example, data on speed, reliability, and customer satisfaction.

The obvious intention of this section is to empower the PRC to perform a management audit, and to determine whether the Postal Service is operating efficiently and meeting the service needs of the country. The current law vests that function in the Governors and the Oversight Committees of Congress. It probably was naive to believe that the Governors would be able to be an objective reviewer of their own stewardship; and it is too much to expect that members of Congress and their Staffs would be sufficiently trained to do the task either, except in the broadest sense, which the Committees have in fact been doing. However, we do not believe that the Postal Rate Commission is competent to perform a management audit and we do not believe they should be given this power. There is no evidence that the PRC has any competence to run a business.

Section 3783 provides that the Postal Service can use profits to pay bonuses to officers and employees, including bonuses to top management even though that could raise their compensation in excess of a Level 1 Executive Branch Official. That is a significant improvement and we applaud it. However, the catch is that those bonuses cannot be granted if the Postal Rate Commission issues a report of noncompliance after it has conducted its audits. We can only imagine the state of the relations between these two agencies if and when the Commission decides that no bonuses can be granted because they, the Commission, have determined that the Postal Service has failed to meet its annual performance goals that it established under 2803 and 2804, or that they were not meeting established service standards.

The Postmaster General has strenuously objected to the reporting provisions of the bill and the regulatory role given to the Postal Rate Commission to audit the management performance of the Service. Currently, there is no entity, except, of course, the Congress itself, that monitors the performance of management and its success in meeting goals, and no one has been given any authority to do that. To the extent that the Postmaster General's concerns are that this role is given to the Rate Commission, we agree with the PMG. While we readily agree that the PRC is the appropriate agency to determine whether the Postal Service is properly administering the rate provisions of this legislation, they are manifestly not competent to carry out the rest of the tasks assigned under this Section. Does that mean we believe that the Postal Service should continue to be free from the scrutiny of its success or failure to perform its basic missions as it has largely been in the past? No. As is the case with most of the large businesses in corporate America, the Service should be subject to a management audit by a competent entity. The Commission is without the competence to conduct such an audit; it would be a pure

accident if any of its personnel had the vaguest idea of how a major business can and should be run. Perhaps this management audit can be placed in the hands of the General Accounting office, an agency that is already an arm of Congress, which does have oversight responsibility. The GAO has familiarity with Postal Service operations and the competence to conduct proper management audits. Nevertheless, the limits of their audit should be very narrowly defined.

IV. OTHER IMPORTANT PROVISIONS OF THE LEGISLATION

As we have indicated, so far as our Association is concerned, Title X of your legislation goes to the heart of the matters about which we are most concerned, and that can have the most to do with the future success or failure of the Postal Service. However, there are a number of other provisions in your legislation which are important to the future of the Postal Service, some of which we would like to comment on.

1. **TITLE IV.** Title IV of the bill grants the Service more latitude to go to the financial markets to borrow and to invest; we strongly support this wise change in policy. However, that provision also denies to the Postal Service the opportunity to seek financing from the Federal Financing Bank. We encourage you to change this provision to allow the Postal Service the option of seeking to borrow from the financial markets or the FFB. Clearly, there could be times when it would be to the financial advantage of the Postal Service to use the FFB, and that option should be available.

2. **TITLE V.** This bill removes all authorizations for appropriations from Congress to the Postal Service thereby shifting officially the obligations heretofore borne by the Treasury to the Postal Service, including "revenue foregone" appropriations that were supposed to pay for the congressionally-mandated lower rates for certain nonprofits and other preferred mailers. I can

only express our Association's disappointment with the provision of this bill that totally cuts off in the future any appropriations from the Congress to the Postal Service, yet at the same time requires the Postal Service to charge lower rates to nonprofit mail to be made up for by higher rates paid by the rest of the users. Additionally, the bill wipes out a billion dollars the Congress agreed that it owed the Postal Service for past failures to appropriate moneys to cover nonprofits and which were scheduled to be repaid over time. On top of that the legislation would wipe out an obligation of the Congress to fund a portion of workers compensation payments for labor that retired under the Old Post Office Department. In the real world, given the certainty that the Congress has no intention of ever giving the Post Office any money in the future, more serious is that the elimination of these congressional responsibilities would require the Post Office, under accounting principles, to book a loss up front, artificially creating a \$1.5 to \$1.6 billion loss in the year in which the bill is enacted, thereby greatly accelerating the time of the next general rate increase. At the very least, we believe that the legislation should be amended to specifically provide that the Postal Service would not be required, under generally accepted accounting principles, to book this loss in one year, but rather to reflect the loss on its books during the years in which the appropriation would have been authorized but for this change.

In principle, we disagree as well with the transfer of these financial obligations. In our view it is a breach of faith and a breach of agreement between the government and mail users, particularly where this legislation would now saddle future rate payers with the obligation that the Treasury incurred before there was even a modern Postal Service.

Realistically, however, we have come to accept the fact that the Congress, as well as several White Houses, have gotten into the habit of renegeing on commitments to the Postal

Service. We therefore do not expect that this language would change since it merely recognizes what is the current reality. Frankly, we believe all mailers would settle for a neutrality pact; we agree that the Congress and the Treasury do not have to give the Postal Service any more money, so long as the Treasury and Congress will stop taking it away from the Postal Service.

3. TITLE VI. This section of the bill contains several troubling provisions. We have already discussed objections to requiring demonstration projects before the Postal Service is given authority to negotiate service agreements for competitive mail.

1. This Title also creates new preferred rate categories without any provision for funding. Once again Congress is singling out a particular group that it thinks should be subsidized by the rest of the mailers. We accept the fact that we cannot practically do anything about the unfairness of subsidizing the current vast array of nonprofit and other preferred rate mailers, but it is unconscionable to add to that group, thereby increasing the burden upon mailers. This is a classic unfunded mandate of the type which this Congress has so roundly condemned.

2. Section 603 of the legislation appears to grant subpoena power to the Postal Rate Commission over everyone within the reach of U.S. federal jurisdiction. In other words, it is not limited to the Postal Service; it is not limited to intervenors before the Postal Rate Commission in a particular case; nor is it even limited to mailers as a group. So far as we can tell any human being within the reach of the law can be ordered by the Postal Rate Commission to produce a wide variety of information. We assume this is simply a mistake in drafting, and that the true objects of the subpoena power would be the Postal Service, those who are involved in PRC proceedings, or at the very least those who are large mailers. In any event, we object

most strenuously to this unwarranted grant of power to the Commission over those whom it has no jurisdiction. Right now, under PRC regulations, parties who wish to participate in rate cases are fully subject to the power of the Commission to compel disclosure of relevant information. There is no legitimate governmental purpose served by granting this obscure Commission the unheard of power to compel parties totally unrelated to PRC actions and proceedings to disgorge all kinds of information which could be of the most sensitive nature.

While our Association does agree that it could be useful for the Postal Rate Commission to have subpoena authority over the Postal Service, we believe even that should be limited to subpoenas issued in the context of proceedings conducted on the record before the Commission, and the Commission's efforts to determine Postal Service compliance with the rate requirements for the competitive category of products.

4. **TITLE VII.** Under this provision of the bill, among other things, the legislation narrows the postal letter mail monopoly by defining mail that costs \$2 or more to transport by private hands not to be a "letter," and therefore not protected by the monopoly. We know of no legislative record that testifies to what is wrong with the current postal regulation which exempts from the postal monopoly materials for which the cost of private carriage is twice the amount of the requisite postage. The \$2 exclusion from the monopoly, since it would not be adjusted for inflation, could eventually have a real impact on the protection of mail that Congress has always intended be covered by the monopoly. Its immediate effect would probably be negligible. There is not a lot of competition out there to provide expedited service for anything at the price of \$2 per item. But it could be very troubling in future times and, in principle, we see no justification for this incursion into the monopoly.

Title VII also removes some of the current arcane and noncompetitive provisions relating to the ability of the Postal Service to contract for transportation. We support this wholeheartedly.

CONCLUSION

It is the view of our Association, Mr. Chairman, that this legislation has the makings of a bill that could truly modernize the Postal Service and make it more competitive as it faces the future. The items which we have criticized and which we think should be changed we do not believe are essentially related to the important parts of the bill. The major parts of this bill we fully support, and we hope to be able to work with the Committee to fix the relatively minor matters that we think can be readily fixed.

Mr. MCHUGH. Next to testify, Mr. Volner. Welcome, sir.

Mr. VOLNER. Mr. Chairman, I am a lawyer but I am not going to claim that title.

On behalf of the Advertising Mail Marketing Association, we thank you very much not merely for inviting us to this hearing but having this hearing and introducing this bill. H.R. 3717, in our view, is not merely a good bill. It is an excellent critical first step to make the Postal Service serve the American public better than it ever has and, as Mr. May pointed out, to thrive into the next century and beyond.

We have a prepared statement. I am not going to bore you with the repetition.

There are two things I want to talk about. You will find I think as you review these statements that many of the commercial mailing associations are in agreement on some of these points. We come at the conclusion from a slightly different route, but the question of subpoena power is universally of concern to all of us.

The question of the postal services or who conducts the service quality audits is of concern to all of us. In that case, our concern is that the Rate Commission should be adjudicative and not investigative. When you start melding those two functions, you do create a serious problem as to confusion of role and confusion or credibility of results.

We suggest this although we did not say this in the prepared statement, it was brought to my attention by my colleague, a former member of this committee, that I hadn't said who ought to do it. We have a thought. And that is that these quality of service audits should be done by a private sector company. Put out the bids jointly by the Rate Commission and the Postal Service. The Postal Service is notoriously reluctant to do this sort of work itself or to disclose information; therefore, there needs to be a third party and it needs to be completely independent of the decider and of the Postal Service. The solution might well be—a cost-effective solution might well be to put it in the hands of a private sector company.

There are several other points that we have concerns about the bill, all of which are readily fixable, that I want to briefly mention, but I also want to talk more broadly about and answer, what we believe to be unfounded and cynical and skeptical views about this bill.

We believe that the price cap mechanism is the heart and soul of the bill. We believe, however, that you should consider eliminating the plus or minus adjustment factor. Mr. May has pointed out the problems with subjectivity under the existing system. The plus adjustment factor is going to be inevitably subjective and there is a grave danger that we will simply be pouring old wine into new bottles and that will not produce the results that this bill was intended to produce.

There is no earthly reason why the Postal Service cannot operate under a straight, inflation price cap and whether that be GDPPI, as we believe it should be, or CPI or one of the other objective indicators, is something that needs to be talked through. The point is that you remove subjectivity by removing the plus or minus adjustment factor.

The other point we wish to stress is the need to make the exigent circumstances procedures much more stringent than they are. We reluctantly recognize that any price cap system may at some point run into trouble. Either because mistakes are made by the Postal Service or because of just a profound change in the world. As my father used to say, mistakes will happen, that is why they put erasers on pencils.

We reluctantly accept the notion that there needs to be some mechanism for the Postal Service to go back to the rate commission and get more money. We believe, however, the bill makes it altogether too easy for them to do so, to virtually guarantee themselves the rewards that the profit incentive creates by simply going back and readjusting the adjustment factors until they lock themselves into a guaranteed profit.

That is not the way price cap regulation is supposed to work. There are, indeed, incentives and they are very, very important, but there needs to be disincentives and those are equally important.

It has to be hard for the Postal Service to go back and say we screwed up. And if they do have to go back and say we screwed up then we all, the world, needs to know how they screwed up, what they propose to fix it, and why and how much we are going to have to pay for it. We have suggested a number of measures to make the exigent circumstances exceptional or the default procedure, if you will, more stringent.

Finally, we believe that a baseline case should be made mandatory of all circumstances. The danger is if you use the old criteria of the 1970 act and the ratemaking accounting conventions that were necessarily developed under that act, you run into a twin danger. Either the Postal Service's rates will be insufficient to enable it to achieve break even, which defeats the whole price cap mechanism, or the rates will be inflated guaranteeing them a profit. And the point of this exercise is to not guarantee them with a profit, it is to provide them with the incentives, and when I say "they," I mean all of them. The incentive has to achieve the rewards that price cap regulation can bring with it.

Let me talk a few moments about what I expect to be the arguments in opposition to this bill. First, it will be said that price cap regulation and universal service are utterly inconsistent, and it will be said that some of us are not interested in universal service.

Both propositions are completely false. Universal service is as important to standard class mailers of catalogs, fliers, and the like as it is to every American. We need to be able to reach our customers and our customers need to be able to reach us through the mail.

There is no inconsistency between price cap regulation and universal service. We all recognize that universal service carries a cost and that cost must be borne by all mailers, including us. The solution to that is to set the baseline rates appropriately because there is no evidence and no reason to believe that the cost of universal service exceeds the rate of inflation. If the baseline rates are set correctly, the problem of universal service is solved and there is no inconsistency between price cap type increases and universal service.

The second argument will be made and it was made delicately by the chairman of the Rate Commission in his testimony that price cap regulation is essentially anti-labor. He said, "it will force a downward spiral of wages and benefits."

There is no truth to that proposition. It is absolutely not true. We have seen it in the electronic field. We have seen it in the telecommunications field, that price cap regulation requires a much higher level of cooperation from all three of the triad, as I like to call them, that constitute the postal system. It will require labor and management to work much more closely than they ever have in the past. It will require mailers to work much more closely with management than has happened in the past. And it will also require management to work much more closely with its customers, and it will require common understandings and common solutions to common problems. But the nice thing about price cap regulation is that it is a win-win proposition for all three parts of the triad. And this anti-labor argument is just without foundation.

The third argument that you are going to hear is from the cynics who say it can't work and they will say it can't work because the Postal Service has never had a profit except for the past 2 years, and that is a fluke.

The fact of the matter is price cap regulation is working. It works in other industries and it works in other countries. It will be said, because it has been said over the years, that all of us have been urging the Congress to do what you have done, it will be said the U.S. Postal Service is so unique, it is something unto itself that there is no possible analogies.

I suggest to you it is true enough that the Postal Service is labor intensive and that the electronic and telecommunications fields are capital intensive, but in the last analysis what price cap regulation is about is people. And the people who work for the American Postal Service are no less committed, no less motivated, no less able than the people who work for AT&T or MCI or whomever you want to name in the fields where price cap regulation has proved to be a great success. People are people. If you provide them with incentives and get rid of shackles they will respond, and we believe that will work here and it can work here.

The last argument concerns me most and I was glad to see that the chairman addressed it in his opening remarks. It is going to be said we don't need it. This is, after all, the best postal system in the world, and it is. It will be said that there is no crisis and what are we worried about?

There are two things that we are worried about. The 1970 act was a remarkable accomplishment for its time but the time has come and gone. The world has changed. The standards or criteria and methods of conducting business under that act and the methods of setting rates under that act no longer fit the world in which we live.

The second answer that I have is because I watched it and was not involved and it was fascinating to me. In the early 1950's, the best transmission of information system in the world was a company called Western Union. And by 1976 it was bankrupt. And if you go back and look and see what happened, two things happened: The regulatory system choked it to death and its management

failed to do anything about it and simply watched the business fritter away. We cannot have that happen to the U.S. Postal Service, and now when there is no crisis is the time to deal with these problems.

Mr. Chairman, I am aware and all of the AMMA members are aware, as Yogi Berra has said, it ain't over until it's over. We look forward very much to working with the subcommittee, to complete the task for which you have given us such a tremendous start. The Postal Service can serve the American public better than it does now. It can thrive in the decades ahead, and we believe that H.R. 3717 is the launchpad to achieve that result.

Thank you.

Mr. MCHUGH. Thank you. I appreciate your comments.

[The prepared statement of Mr. Volner follows:]

**TESTIMONY OF
ADVERTISING MAIL MARKETING ASSOCIATION
ON H.R. 3717**

Mr. Chairman and Members of the Subcommittee:

The Advertising Mail Marketing Association ("AMMA") welcomes this opportunity to share with the Subcommittee its views on H.R. 3717, a Bill which would fundamentally alter the laws that govern the operations of the United States Postal Service.

Mr. Chairman, you, the members of your Subcommittee and your able and hard-working staff deserve the highest accolades for the introduction of this Bill. We believe the Bill can be made stronger, more effective and thereby better for the Postal Service, its employees, mailers and the American public. But, our suggestions for improvement should not be considered to diminish the remarkable accomplishments of the Subcommittee, under your leadership, in the past two years. You have heard our pleas for legislative change to enable the Postal Service to serve the needs of the American public more efficiently, more effectively and more responsively than it does today. H.R. 3717 is a major -- indeed the crucial -- first step towards that goal.

EXECUTIVE SUMMARY

Our comments today will focus principally, although not exclusively, on Chapter X of the Bill which would -- as the Chairman of the Postal Rate Commission has correctly observed -- indeed revolutionize the way postal rates

are set. These are the matters that most intimately affect AMMA's members and, in our view, lie at the heart of postal reform. AMMA believes that the core principles underlying this chapter are sound. We offer the following suggestions to strengthen and refine this new ratemaking process:

* AMMA believes that the "plus" adjustment factor should be eliminated from the price cap equation established by H.R. 3717. A price cap limitation based strictly on GDPPI would benefit all mailers, eliminate subjective - and economically irrational -- rate setting considerations, and enable the Postal Service and its employees to earn the rewards that price cap regulation is designed to yield.

* We believe that the "exigent circumstance" procedures should be made more stringent. The incentives and rewards that the Bill grants the Postal Service for success must be matched by disincentive for failure to act responsibly under a price cap regime. If the Postal Service seeks rate relief because of financial exigencies, it should be required to file new baseline rates for all classes of mail under procedures which limit the maximum overall revenue requirement and mandate that rates be set to achieve break even based on historic rather than forward looking costs. The Postal Service should also be prohibited from distributing profits for a period of years after the conclusion of such a rate case. It is our hope that the default procedures for severe financial exigencies will never become necessary. But, it is reasonable and only fair that the Postal Service pay a substantial price for failure.

* The law should mandate a baseline rate proceeding before the implementation of price cap rate increases. If rates established under the 1970 Act are used as baseline rates, there is a grave danger that the resultant price cap rates will be either artificially inflated or insufficient for the Postal Service to meet its revenue needs in the price cap. To avoid this, the rate setting criteria embodied in H.R. 3717 should be used to set baseline rates which reflect historic rather than forward looking costs and which eliminate the contingency reserve and prior year losses from the revenue requirement.

* The Postal Service's authority to enter into negotiated service arrangements should be expanded to include non-competitive categories of mail. These types of arrangements have proven entirely successful in a broad array of regulated industries and, under appropriate safeguards, can and should be implemented in the postal context.

There are two elements of the Bill relating to the question of service that warrant refinement:

* The sections of the Bill providing for annual audits of the Postal Service's performance under its service standards should be strengthened. The Rate Commission is not fundamentally designed nor is it equipped to conduct independent audits of actual service performance and it would be best to assign this responsibility to an independent third party that is equipped to make these kinds of field investigations. Close scrutiny of actual service performance is necessary to prevent the Postal Service from seeking to maximize the profit

opportunities afforded by the Bill by the simple expedient of curtailing the quality of service it offers.

* The procedures regarding market tests for experimental products need refinement. If it is to be competitive, the Postal Service must have some latitude to test new products and services before they are offered to the public. However, the Bill would grant the Postal Service virtually unfettered authority to engage in experimentation. Some form of expedited regulatory pre-clearance is needed to protect the interests of mailers.

Lastly, in this testimony we deal with two transitional and procedural provisions of H.R. 3717. First, AMMA believes that it is unwise and unfair to deny the Postal Service transitional appropriations to fund liabilities of the old Post Office Department and to reimburse the Postal Service for revenue deficiencies imposed upon it prior to the Revenue Forgone Reform Act. Secondly, although we support the principle that the Rate Commission should be empowered to compel testimony in proceedings before it, we offer suggestions to more clearly define the scope of the subpoena power. It is necessary to strike the balance between the need for access to information uniquely within the possession of the Postal Service and the equally compelling need for the Postal Service to freely and openly communicate with its customers.

AMMA views H.R. 3717 as a remarkable start to a critically important task. We believe that, under the leadership of this Subcommittee and with the goodwill of all interested parties, this Bill can be honed into the instrument that enables

the Postal Service not merely to survive but to prevail as one of the principal forms of information distribution systems in the 21st Century.

**THE RATE SETTING PROVISIONS OF
CHAPTER X CAN AND SHOULD BE STRENGTHENED**

AMMA absolutely and unequivocally endorses the core precepts that underlie Chapter X. The central economic principle of that chapter is that, for the non-competitive classes, benchmark or price cap rate regulation should determine maximum permissible rates and that, at all levels, Postal Service personnel should be rewarded, through profit-sharing, for their success in maintaining rates for all of the non-competitive classes and subclasses at levels which do not exceed the prescribed caps. We also endorse the principle reflected in Chapter X that there should be different systems of rate regulation for classes of service that are determined to be competitive. The principles which underlie Chapter X have been carefully and thoughtfully adapted from rate setting mechanisms used in other regulated industries and by foreign postal administrations. Our concerns are not with the principles but with their specific adaptation and application:

A. *The Adjustment Factor Needs to be Made More Stringent.*

Under H.R. 3717, the Postal Service would be permitted to unilaterally adjust rates (on an annual basis) to reflect changes in the GDPPI "plus or minus" an "adjustment factor"; the adjustment factor is to be set periodically by the Postal

Rate Commission. Although AMMA would prefer a structure which requires the establishment of only a negative adjustment factor, we urge the Subcommittee to consider, at the least, elimination of the adjustment factor altogether.

There are several reasons for this. First, the central theory of price cap regulation is that revenues should drive expenditures, rather than the other way around and that the reward for maintaining rates at or below the cap is the profit incentive. Price cap regulation is not, however, designed to guarantee the regulated company a profit or reasonable rate of return; rather price cap regulation replicates the operations of the competitive marketplace by providing risks as well as rewards. The law should not be written to allow the Postal Service, through a plus adjustment factor, to guarantee itself the rewards of profit.

Secondly, price cap regulation takes the view that -- once baseline rates are set -- rate increases for all classes and subclasses of mail that do not exceed the general rate of inflation are, by definition, fair and equitable and that there is no need for the application of non-cost, judgmental factors to arrive at just and reasonable rates. A plus adjustment factor would, inevitably, be applied subjectively.

Third, elimination of the plus or minus adjustment factor would simplify the structure of the Bill itself. The Bill creates "baskets" into which various classes, subclasses or, in some cases, rate elements of mail are placed, apparently to enable application of differing adjustment factors. The baskets themselves are problematic. They encompass disparate categories of mail. If the adjustment

factor is eliminated as we propose, the baskets become unnecessary. The price cap limitation would apply -- where it should -- to the appropriate class or subclass of mail. Under our approach, the Postal Service would retain the power, as Chapter X already provides, to make adjustments above or below the rate of inflation within each subclass, so long as the increase for the subclass as a whole does not exceed the increase in the rate of inflation.

There are those who will say that our approach is too stringent. We do not agree. It is certainly true that 80% (or more) of total Postal Service costs are labor costs and benefits. However, the skeptics who say that the downward pressure on costs exerted under price cap regulation inevitably translates into lower compensation and lesser benefits for rank and file employees are simply wrong. This view misapprehends, at the least, the dynamics that price cap regulation produces. Certainly, the rewards of price cap regulation -- profits -- must be shared fairly with all employees; and management and labor must work closely and creatively to find common solutions to common problems, including problems associated with productivity. Certainly, the Postal Service must establish user friendly practices and procedures regarding the acceptance and preparation of mail; and Postal Service management must find means of attracting and maintaining mail volume. Certainly, if price cap regulation is to succeed, mailers must make it easier for the Postal Service to capture cost savings through such things as improved list hygiene, and other mailing practices. Thus, all three elements of the postal triad -- management, labor and mailers -- must be part of the solution under price cap regulation if they are not to

be a part of the problem. But the notion that price cap regulation is aimed at -- and solely aimed at -- labor is simply wrong. All three components of the triad can benefit.

There are also those who will say our advocacy of a straight GDPPI price cap approach will make it impossible for the Postal Service to maintain universal service to all 261 million American households that it serves six days a week. These critics will suggest that mailers of advertising, marketing and promotional materials are indifferent to the needs of rural and inner city Americans. These claims are equally baseless. The preservation of universal service at reasonable rates is as important to AMMA members as it is to all Americans; and AMMA's members are aware that universal service carries a cost that must be shared by all mailers. However, there is no evidence and no reason to believe that the cost of universal service grows at a rate greater than the rate of inflation. Preservation of universal service and the recovery of costs associated with it lies in the proper establishment of baseline rates, not in the price cap mechanism.

AMMA has performed some simulation tests to compare the relationship of rate changes with the changes in the rate of inflation over the past fourteen years. These studies show that, if price cap regulation had been introduced in the early 1980's, no class of mail -- including, most specially, residential and small business users -- would experience rates higher than those in effect today. The studies also show that the rate for several categories of mail -- notably those that are most price elastic and therefore susceptible to diversion or loss -- would have rates notably lower than they are today. If postal reform is truly to succeed

in enabling the Postal Service to meet the challenges that it faces today and surely will face over the coming decades, postal reform must involve more than pouring old wine in new bottles. That is why we believe that the plus adjustment factor should be eliminated from the price cap equation embodied in H.R. 3717.

B. *The Exigent Circumstance Exception Should Be Made More Stringent.* Under Section 3723 of the Bill, the Postal Service, with the concurrence of its Board of Directors, may seek an adjustment of previously established rates upon a claim of "severe financial exigencies." In AMMA's view, this the provision is too broad. We reluctantly accept the principle that there may be need for a default mechanism, against the possibility that the Postal Service for, some legitimate reason, simply cannot maintain rates within the rate of inflation of the economy at large. AMMA believes, however, that a far more stringent system of rate regulation than specified in H.R. 3717 should apply if the Postal Service needs to adjust rates beyond levels established by the cap, and that other safeguards to prevent abuse of the default procedures must be imposed.

The core difficulty is that the term "severe financial exigencies" is not and cannot really practicably be defined. We are confident that the Postal Service and its Board of Directors would refrain from invoking the exigent circumstance mechanism unless they were persuaded that such a filing were truly necessary. The fact of the matter is that the existence or non-existence of severe financial exigencies is quite literally incapable of objective evaluation by those, including the Rate Commission and mailers, who would be affected by it.

We believe that the incentives and rewards that the Bill grants the Postal Service for success must be matched by disincentives if the Postal Service fails to act responsibly under the price cap regime. If severe financial exigencies arise it can only mean that either that the Postal Service has allowed rates to become seriously misaligned with cost causing factors, or has made imprudent investments, conducted ill advised service experiments, or has failed to otherwise control its costs. The price for failure should entail exacting regulatory scrutiny of the causes of failure, including a close and rigorous examination of the Postal Service's revenue needs and a realignment of the baseline rates for all classes, competitive and non-competitive alike. In short, if the Postal Service seeks rate relief because of financial exigencies it should be required to file a baseline rate case justifying in detail its claimed additional revenue needs and its cost of service allocations to the various classes and subclasses.

Further, AMMA believes that, in any such baseline rate case, the *overall* revenue requirement should be limited in some fashion. One approach would be to limit the overall revenue requirement to the rate of inflation -- perhaps using CPI-U rather than GDPPI for this purpose -- plus "external costs", those which the Postal Service truly cannot control. Other forms of revenue limitations exist. In any case, we propose that in such a default case, the baseline rates for all classes would be adjusted to meet break even on a historic rather than forward looking basis.

In addition, we believe the Subcommittee should consider legislative provisions prohibiting profit-sharing for a period of years after the conclusion of

such an exigent circumstance rate case. For so long as the Postal Service keeps rates for all subclasses within the bounds of inflation, we are not concerned about the magnitude of potential profits. We hope and trust that the Postal Service will act prudently -- and fairly -- in its distribution of profits during such years. If, however, the Postal Service fails to stay within price cap constraints, it should not be permitted to reward itself for failure.

We realize that this is strong medicine. It is meant to be. It is our hope that the default procedures for severe financial exigencies will never, or almost never, become necessary. If, however, those procedures are invoked, then it is clear that there has been a system failure or that the world has otherwise so changed as to require a fundamental and searching re-examination of the Postal Service's revenue requirement and a basic realignment of revenues, costs and rates for all classes.

C. ***A Baseline Rate Proceeding Should Be Mandatory.*** H.R. 3717 requires a rate proceeding to establish baseline rates only under certain conditions. We believe this to be a mistake. It is an arithmetic truism that base rates -- the starting point for price cap increases -- determine the absolute magnitude of subsequent rate increases regardless of the rate of inflation in future years. Our simulation models confirm this. Unless, therefore, base rates are determined under sound economic principles, there is a very grave danger that the resultant price cap regulation rates will be either artificially inflated or insufficient for the Postal Service to meet its revenue needs within the price cap.

The use of rates established under the 1970 Act as the base for the implementation of price cap rate increases is unsound for two reasons. First, Section 3701(c) of the Bill establishes rate setting criteria and an order of priority that is very different from the criteria embodied in the 1970 Act as it has been construed by the Postal Rate Commission. The rate setting criteria embodied in Section 3701(c) incorporate the very considerable advances in our understanding of cost causation in the postal system that have developed -- under the leadership of the Rate Commission -- over the past 25 years; at the same time, those criteria reflect, in a way that the 1970 Act does not, the very considerable changes in the competitive environment confronting the Postal Service. These priorities should be used to set baseline rates.

Secondly, in order to effectively implement the 1970 Act, the Postal Service and Rate Commission have developed certain accounting contrivances that are inapplicable in a price cap environment and that should be eliminated in determining the revenue requirement for baseline rates. Under the 1970 Act, rates are predicated on a forward-looking test year. The forecasts that the Postal Service and Rate Commission use in developing these rates include an adjustment for expected inflation increases. In addition to the inflation forecast, the Postal Service's revenue requirement includes a "contingency reserve" against the possibility of forecast error, and an amortization of "prior year losses". In short, the existing theory of ratemaking explicitly contemplates a feast and then famine cycle under which the Postal Service achieves surpluses in the early years after rates are adjusted, offset by losses in later years. If price cap

regulation is introduced at the start of a rate cycle, then the Postal Service will, in effect, be able to double count inflation and earn windfall profits from the contingency and prior year loss add ons; if, on the other hand, we happen to be at the end of a rate cycle when price cap regulation takes effect, then there is some possibility that the Postal Service will be locked into a loss position from the onset of the new rate setting program .

These problems can be readily avoided if the Bill were to require a baseline proceeding in all circumstances. In such a proceeding, the Postal Service and Rate Commission should be directed to use an historic, rather than forward looking test year, to exclude from the revenue requirement both the contingency reserve and prior year loss, and to apply the criteria of 3701(c) in setting rates. This assures economically rational baseline rates. It also assures that the Postal Service is starting from a break-even standpoint so that it has both the ability and the incentive -- through superior cost management, increased productivity and prudent decision-making -- to earn the rewards that price cap regulation offers.

D. *The Authority to Enter Into Negotiated Service Arrangements Should Be Expanded.* Section 604(a) of the Bill specifically authorizes volume discounts and subsection (b) of that section provides for a "demonstration project" for such discount arrived at on a "negotiated basis." However, the demonstration project is confined only to products in the competitive categories of mail. AMMA believes, that at the very least, the Postal Service's authority to enter into negotiated service arrangements should be extended to include the

non-competitive classes of mail. We also question whether there is really need for a demonstration project to prove that this type of ratemaking will benefit all Americans.

Negotiated service arrangements, or their equivalents, are widespread in a variety of rate regulated industries, including telecommunications, electric utilities and even municipal water systems. Such arrangements yield benefits that go beyond the immediate discounts to the customer who has entered into the service arrangement. While volume may be one criteria of eligibility to enter into negotiated service arrangements, it is by no means the only test. Rather, negotiated service arrangements will permit the Postal Service to creatively structure its relationships with regular customers in order to maximize the most efficient use of the system, thereby reducing overall cost -- including overhead costs -- in ways which benefit all mailers, large and small.

There is no reason to confine the authority to negotiate arrangements to the competitive classes. Rather, the Bill should require that, in the non-competitive classes, the arrangement must be approved by the Postal Rate Commission to assure that the negotiated rate covers direct costs and makes an appropriate contribution to the postal system's overhead. The law should further provide that any such arrangement, once approved by the Commission, must be made available on the same terms and conditions to all other similarly situated mailers.

This is not an issue of first impression. For almost a decade, mailers, and more recently the Postal Service, have been urging the Rate Commission to

adopt rules that would allow negotiated service arrangements. For a variety of reasons the Rate Commission has been unwilling to even entertain this proposal on its merits. In part, we believe that this resistance stems from the confusion that apparently exists between volume discounts and the enhanced value that mailers would be required to provide to the postal system under negotiated service arrangements. In part, the opposition to negotiated service arrangements seems to proceed from the view that an arrangement benefiting large mailers must definitionally be harmful to smaller mailers; and that view is myopic, to say the least. In any event, there has been no significant progress toward the implementation of negotiated service arrangement despite the abundance of evidence that these types of arrangements have worked extremely well in other industries and are, with appropriate safeguards, certain to be successful in the postal context.

AMMA believes that the Postal Service should be explicitly authorized, under appropriate safeguards in the case of the non-competitive classes, to institute negotiated service arrangements. At the very least, the demonstration project provided for in Section 604(b) with respect to negotiated rates should be expanded to include the non-competitive classes.

THE PROVISIONS OF H.R. 3717 DEALING WITH QUALITY OF SERVICE AND MARKET TESTS REQUIRE REFINEMENT

There are two elements of the Bill that relate directly to the question of service provided by the Postal Service that warrant refinement.

A. ***There is need for careful scrutiny of the Postal Service's Service Performance.*** Sections 3782 and 3783 of the Bill recognize that the introduction of a profit incentive in an enterprise which will fundamentally maintain its monopoly position over large amounts of mail raises the possibility that the Postal Service may seek to maximize its profit opportunity by the simple expedient of curtailing the quality of service it offers. The Bill seeks to guard against this possibility through the use of the annual audit procedure embodied in Section 3782 and through the limitation on the allocation of profit specified in Section 3783. AMMA believes that these safeguards require refinement.

In the first instance, we are inclined to believe that these service audits should be conducted by an independent third party. The "service standard" to which reference is made in Section 3783 are very general. The Postal Service has shown itself to be notoriously reluctant to allow data regarding actual delivery performance to be measured independently and objectively. The Postal Rate Commission is not fundamentally designed nor is it equipped to conduct independent audits of actual performance. Its function should be adjudicative, not investigative. To the extent that the Commission's determinations are to be made, as Section 3783 evidently contemplates, on the basis of data provided by the Postal Service, there is both the opportunity for conflict between the Rate Commission and the Postal Service and results which are, at best, unsatisfactory. Further, the service review proceedings contemplated by the Bill essentially foreclose mailer input and participation; and this, too, poses a

potential for controversy -- and possibly complaint proceedings -- that can and should be avoided.

B. ***The Procedures Regarding Market Tests for Experimental Products Require Re-Examination and Refinement.*** Subchapter IV of the Bill would grant the Postal Service virtually unfettered authority to conduct market tests of "experimental products." AMMA has long accepted the view that, if it is to be competitive, the Postal Service must have some latitude to test new products and services before offering them to the general public. However, the only limits imposed upon the Postal Service's power to experiment under Subchapter IV are the requirements that a test may not exceed three years and that any individual test must not involve "anticipated" annual revenues of more than \$100 million. We are concerned with the latitude for experimentation conferred upon the Postal Service under the Bill.

The \$100 million restriction on the Postal Service's market test power does not meaningfully constrain the potential for imprudent and unfair use of the experimental authority. The limitation applies to each individual test so that, cumulatively, the Postal Service could at any time have ongoing experiments running into the Billions of dollars. Effectively, any and all experimental offerings will be funded, at least during start up periods, from revenues received by the Postal Service from its customers. We do not believe that mailers should be asked to write a blank check for postal experiments.

This is particularly true because the term "experimental products" is somewhat ambiguous. It is not clear whether the Bill intends to allow the Postal

Service to make "experimental" changes to existing service offerings or whether the experimental authority is limited only to entirely new products, or whether it applies to both. Further, while the Bill contemplates a proceeding at the conclusion of the experiment (assuming the Postal Service decides to offer service generally) to determine whether the new product or service should be classified as competitive or non-competitive, there is no procedure to set the baseline rate for the new offering. Finally, the Bill expressly preserves the restriction upon the Postal Service's entry into the list business, but the extent to which the Postal Service may engage in non-postal experiments -- or experiments which bear only a tenuous relationship to the processing and delivery of mail and which may put the Postal Service into competition with mailers -- is unclear.

Within the last two years, the Postal Rate Commission, at the urging of the Postal Service and with the support of many mailers or mail organizations, including AMMA, has adopted regulations providing for expedited review of Postal Service experimental offerings. One experiment, processed under these rules, is now being carried out. These procedures may not be the entire solution to the question of market tests, but they do deserve careful study in the framing of legislation. At the very least, the experimental authority should involve some form of regulatory pre-clearance, in which the views of affected parties -- including mailers -- as to value and merits of a particular experiment are considered.

**CERTAIN OF THE TRANSITIONAL AND PROCEDURAL PROVISIONS OF
H.R. 3717 CAN AND SHOULD BE CLARIFIED**

There are two provisions of the Bill relating indirectly to ratemaking and classification matters that AMMA believes should be revisited. First, Sections 501 and 502 would repeal the authority for transitional appropriation used to fund worker compensation liabilities of the old Post Office Department which was abolished by the Postal Reorganization Act of 1970 and transfer these liabilities to the Postal Service. Proposed Section 503 would repeal the public service authorization and the transitional appropriation underlying the Revenue Foregone Reform Act. We think that public service appropriation should be repealed -- it has not been funded since 1981 in any case. However, we believe strongly that it would be a mistake, and fundamentally unfair, to transfer the worker compensation liability costs of the Post Office Department employees to current and future mailers and to abrogate the commitment that Congress made in its enactment of the Revenue Foregone Reform Act to reimburse the Postal Service for revenue deficiencies that it was required to incur by law in earlier years.

AMMA is entirely sympathetic to the budgetary considerations that may have led to the inclusion of Section 501-503. However, changing budgetary rules in the middle of the game is not fair to current and future mailers. The compacts which Congress, the Postal Service and the public made in the enactment of the Postal Reorganization Act and Revenue Foregone Reform Act should be preserved.

Secondly, AMMA supports the principle that the Rate Commission should be empowered to compel testimony in certain carefully defined and precisely described circumstances, but we believe that Section 603, which confers subpoena power on the Rate Commission, needs revision.

The power should be limited only to subpoenas, issued upon request of participants in Commission proceedings, directed to the United States Postal Service. The power should subsist only during the pendency of on-the-record proceedings. The confidentiality provisions should be modeled after the Freedom of Information Act, which specifically exempts from disclosure trade secrets and commercial or financial information that is made available to an agency under a claim of confidentiality or privilege. Lastly, the provision should be revised to make clear that the Postal Service's obligation to respond to a subpoena is satisfied by the production of documents and studies that are in existence and that the Postal Service has no obligation to create, compile, reformat or collect information that is not in existence at the time the subpoena is issued.

These modifications to the subpoena power provisions are, we believe, necessary to strike the proper balance between the need for access to information uniquely within the possession of the Postal Service and the equally compelling need for the Postal Service to freely and openly exchange information and ideas with customers, without exposing itself and its customers to the necessity of conducting business in a fishbowl. We are concerned that, as the provision is written, the exchange of information between the Postal Service

and customers will be circumscribed and that the subpoena power may become a form of roving commission for inquiry into matters that bear not at all, or at best only tangentially, on the important responsibilities conferred upon the Rate Commission by the Bill.

CONCLUSION

Mr. Chairman, members of the Subcommittee, AMMA views H.R. 3717 as a work in progress. It is our profound desire to assist the Subcommittee in any way that we possibly can to complete the task of achieving fair and balanced legislation that is reflective of the environment in which the Postal Service operates today and will have to operate tomorrow. Under your leadership, and with the cooperation of all affected interests, we believe that H.R. 3717 can be honed into the instrument that enables the Postal Service not merely to survive but to prevail as one of the principal forms of information distribution systems in the 21st Century.

Mr. MCHUGH. I would like to acknowledge the gentleman from New York, Major Owens has joined us. Welcome.

Do you have any opening comments?

Mr. OWENS. Not at this time.

Mr. MCHUGH. With that, we will continue with the final presenter on the first panel who has been sitting there very patiently. Mr. Cerasale, welcome, and we look forward to your comments.

Mr. CERASALE. Thank you, Mr. Chairman and members of the subcommittee. It is really an honor to be here to talk about postal reform generally and specifically H.R. 3717. We are encouraged by your efforts to move the Postal Service to the 21st century. We want to work with you on that goal to bring postal reform to fruition. It is something that we have failed to do for the past 10 years.

Let me tell you a little bit about the Direct Marketing Association [DMA]. We have about 3,600 members, both domestically and internationally. The Postal Service is one of the main means to communicate with our customers. The business represents about \$1.1 trillion employing 19 million Americans. It is very important for us to have a viable Postal Service in the 21st century.

Attached to my testimony is a section-by-section analysis with DMA's comments on H.R. 3717, and I hope that this will be included in the record along with my testimony.

DMA agrees with the creation of an independent Inspector General for the Postal Service. Our agreement is twofold: First, mailers pay for the law enforcement function of the Postal Service. No other communications medium does that. As we go to the 21st century, as we go to a point where we want the Postal Service to compete and survive, we need to not burden it with additional costs. We think that the Federal, local, and State law enforcement agencies do similar functions and that these law enforcement functions of the Postal Service be transferred to them and thereby reducing the costs to mailers.

Second, under the current structure the inspection service performs both a postal Inspector General and law enforcement function, and there is an inherent conflict between those two functions in setting up priorities.

We found that there was not an Inspector General review of postal automation, one of the biggest programs to improve productivity and bring the Postal Service into the 21st century for many, many years. There was a concentration from the inspection service to law enforcement.

An independent Inspector General without the law enforcement requirements would set the priorities correctly and perform the IG functions and hopefully help review programs and reduce costs for the Postal Service and therefore for mailers.

With regard to appropriations, there is one area and one section of the bill that DMA strongly opposes and that is the section to remove the authorization for appropriations for workers' compensation for pre-1971 employees, the employees of the old Post Office Department. Mailers have been asked to pick up costs not envisioned in the Postal Reorganization Act of 1970, but all of those additional costs from all the Omnibus Budget Reconciliation Acts

have been for costs incurred by the Postal Service and its employees, not by the old Post Office Department.

There has been a fire wall that has been set up and it's never been broken. The provision would be the first time that that fire wall would be broken and that current ratepayers would be asked to pay for costs incurred by the old cabinet level Post Office Department. And we ask that the fire wall remain intact.

DMA also supports the Revenue Foregone Reform Act, also known as the Clay compromise. The act was designed to continue reduced rates for nonprofit mail without the need for appropriations. The costs to pick up the loss of appropriations are split between nonprofit mailers and commercial mailers. The appropriations that were part of the Clay compromise would pay for past reduced rates and the congressionally mandated phase-in of new nonprofit rates, and we ask that you not destroy that Clay compromise and that mailers not be asked to pick up a requirement to pay for more public policy decisions.

With regard to the mailbox demonstration project, DMA supports that. Increased flexibility to the Postal Service and giving it an ability to compete requires that competitors also be given a greater ability to compete in areas where the Postal Service holds the stranglehold. The mailbox is one of those areas where competitors are at a disadvantage because they cannot bring their hard copy delivery to the mailbox.

In order to—we think that the mailbox project is a good means to test the Postal Service's ability to compete. However, in order to accurately assess those results, we think that all delivery points within the test geographical area must be included. We can't have this opt out provision. It will create a biased test upon which you have to make a very important policy decision in the future. We also think that the test should be expanded to include more delivery points so that we can get more information.

And finally we are concerned with opening up the mailbox and we think that there should be some ability of the Postal Service to require some licensing. We think that the way that the bill is written that potentially the Postal Service has that authority already, but we think it would be good to have it included as in the bill, that the Postal Service does have the authority to require some form of licensing for people allowed to enter the mailbox that will still keep some control and some security on the mailbox.

With regard to the \$2 threshold for private express—for the private carriage of letters, we think that it may be too great a change too soon. We agree with parcel shippers that we want some more explanation in the bill for the reason to go down to \$2, and Congress should really consider potentially phasing in the reduction to \$2.

Finally, to the heart of the bill, ratemaking reform. Without it, there really is no postal reform. We support the price cap ratemaking that is the heart of your bill. We believe, however, that rates, with the price cap, should be held below the rate of inflation.

With changes in the ratemaking process, all of the automation in investment and work sharing investment by mailers, holding rates for noncompetitive classes below inflation is a reasonable expectation. Thus, the adjustment case that the bill provides should have

in it a requirement that the adjustment factor be no greater or less than one—excuse me, should be less than one, meaning that the rates and the price caps should always be below inflation in whatever index that you deem is best.

The Postal Service should not have a unilateral discretion to adjust differentially the rates for the several types of mail in each rate basket. We think that the Rate Commission could set different adjustment factors for each rate basket based upon the factors set out in the bill. But once those adjustment factors are set within each rate basket, the Postal Service should change rates uniformly at the same percentage within the rate basket and not have the unilateral discretion to adjust themselves.

Now in the event the Postal Service needs additional funds because their rates would be held at a price cap of inflation or below, we think that the Postal Service should be required to file an omnibus rate case with the Rate Commission. There has to be a cost for not holding your expenses below inflation, and the cost is you lose the flexibility. You have to go back to the Rate Commission and ask for an adjustment in rates. That would include the competitive classes.

Finally, DMA believes that the 5-year time span for the adjustment factor is too long. Many events change over 5 years, and we think that the adjustment factor should be limited to a 3-year period. The bill requires that a base case be filed within 18 months. We think that a base case should be filed whenever the Postal Service determines that it needs more revenue, which may be beyond 18 months. We think that you shouldn't require the Postal Service to file sooner than it would have filed in—when it needs new revenues.

We are also concerned that there is only one base case in the bill. We think that costs and events over time will change and likely future base cases are needed to adjust costs and adjust the relationships of the classes of mail. DMA would propose that every 6 years there would be a base case filed by the Postal Service so that we can adjust for costs that the price cap does not allow for.

DMA further recommends the committee consider adding a mechanism to appeal a Postal Rate Commission decision back to the Commission. Right now and as you look at what happens in the bill, once the Postal Rate Commission releases its case, it has—there is no chance for the Rate Commission to correct any errors.

We think a very quick mechanism allowing for some briefs and to allow the Postal Rate Commission a very short period of time to come forward with a final decision to potentially correct some errors would be an improvement.

As we move to the Employee Management Commission, DMA supports it. It is a good step to try and jump start some corrections in labor/management relations, which are very important to the Postal Service and its customers.

It's been 25 years and there are still significant labor/management problems. We think, however, that the commission should be required to give a decision within 12 months. We think 3 years is too long. We also think that employees or those representing employees of competitors of the Postal Service should also be barred from being members of this commission. Right now you have mem-

bers of the Postal Service who shouldn't be on it. We don't think competitors or their employees or people representing them should be on the commission either.

The bonus provisions of the bill we really like. DMA strongly supports the bonuses but thinks that they should not be based on profits. They should be based on productivity increases. Profits too often are—can be affected by accounting adjustments and don't really show the underlying improvement or slippage in the Postal Service. If there is no productivity increase, there should be no bonus.

We also think if rates increase above the rate of inflation during the period, there should be no bonus. We think that if there is a significant diminution of service during the period, there should be no bonuses.

So we look at bonuses in three ways: Productivity increases, below the rate of inflation rate increases, and no slippage in service. And with those, we think we have a good incentive package for all postal employees.

Finally, DMA commends you for this hearing and the bill. We think it is a wonderful first step. We think it takes a lot of courage to go forth and try to tackle the monster of the Postal Service. We want to work with you for improvements and any changes, and I stand ready for any questions.

Thank you.

Mr. MCHUGH. I thank the gentleman.

[The prepared statement of Mr. Cerasale follows:]


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JERRY CERASALE
SENIOR VICE PRESIDENT, GOVERNMENT AFFAIRS

September 19, 1996

The Honorable John McHugh
Chairman
Subcommittee on Postal Service
Committee on Government Reform and Oversight
U. S. House of Representatives
B-349C Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman McHugh:

I thank you for having Direct Marketing Association appear at your postal reform hearing on September 17, 1996. I would like to take this opportunity to expand and clarify one portion of DMA's testimony and request that this letter be included in the record, preferably immediately following my testimony, or as an addendum to it.

H.R. 3717 removes authorization for all appropriations to the Postal Service thereby requiring mailers to fund nonprofit mail phased rates and old Post Office Department workers' compensation liabilities. DMA's testimony points out that mailers currently and since 1971 have funded the law enforcement activities of the Postal Inspection Service. No Postal Service competitor is required to fund a separate law enforcement organization. As we move to the 21st century with greater competition for the Postal Service, funding the Inspection Service which performs excellent police service to the public will put the Service at a cost disadvantage.

The anti-fraud work of the Postal Inspection Service is of critical benefit to the entire public and all mailers, including the direct marketing industry. Its efforts go beyond the mail into other media. DMA has worked closely with the Inspection Service in fraud matters over the telephone. This anti-fraud work should continue and, in fact, expand in the future.

Congress should consider a means to reimburse the Postal Service for these important law enforcement functions. Otherwise in a competitive environment the Postal Service may be forced to limit these functions. If some or all of the Inspection Service's law enforcement

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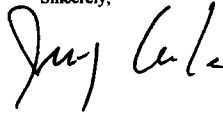
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functions are transferred to other agencies in order to reduce Postal Service costs, those agencies must be required to fund and continue these functions at the same or greater level than the Inspection Service. However, the most desirable approach is to have the Postal Service reimbursed for its general law enforcement functions.

I appreciate this opportunity to expand on DMA's comments on your bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay C. Lee". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

cc: Jonah Gitlitz

TESTIMONY OF
JERRY CERASALE
on Behalf of
DIRECT MARKETING ASSOCIATION
Before the
SUBCOMMITTEE ON POSTAL SERVICE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
September 17, 1996

Good afternoon, Chairman McHugh and members of the Subcommittee. It is an honor to be asked to testify today on behalf of the Direct Marketing Association concerning Postal Service reform, generally, and H.R. 3717, specifically. DMA is encouraged by your efforts to address a Postal Service for the 21st century. We commend you for taking this excellent step toward bringing postal reform to fruition--a goal that we have not been able to attain for the past 10 years.

I am Jerry Cerasale, Senior Vice President, Government Affairs, DMA. DMA represents over 3,600 corporate members who are direct marketers, both domestic and international, their suppliers and support services. The economic impact of this industry on the American economy is quite large. The independent WEFA Group has found that direct marketing has an \$1.1 **trillion** annual impact and employs over 19 million Americans. A strong, financially viable Postal Service is important to our members and those 19 million employees; it is a major means to communicate with our customers and our potential customers. Without it our industry would be smaller with fewer Americans employed. We want a Postal Service for the 21st century.

Attached to my testimony are DMA's section-by-section comments on H.R. 3717. I will not repeat them here but request that the attachment be included in the record of this hearing. I will discuss a few highlights for DMA.

DMA agrees with the creation of an independent Inspector General for the Postal Service. Our support is two-fold. First, since postal reorganization in 1970, the legislative policy has been that postal ratepayers pay for the costs of the Postal Service (sections 501 and 502 of this bill, which DMA opposes, would extend that policy to costs of the former Post Office Department). The Postal Inspection Service performs both inspector general and law enforcement functions. Those law enforcement functions should not be funded solely by postal ratepayers. Those functions, which are duplicative of federal, state and local law enforcement functions, should be handed to the Departments of Justice, Treasury and Commerce, the states and localities. Only then would the Postal Service be on a level playing field with its competitors and other media. If law enforcement functions are transferred, an independent Inspector General must be established for the Postal Service. Second, under the current structure it appears that law enforcement has priority over inspector general functions. Revenue protection, review of delivery service performance of all classes of mail and review of automation have been lax. This is unhealthy for the Postal Service and has delayed corrective action to increase revenues and increase productivity--thus delaying cost reductions. An independent Inspector General who would not have any law enforcement authority would not shunt aside critical reviews of postage collection and verification and a multi-billion dollar automation program.

In regard to appropriations, DMA strongly supports continued appropriations for pre-1971 workers' compensation costs. The obligation for those costs were incurred by the old Post Office Department. The Postal Reorganization Act of 1970, which created the Postal Service and abolished the Post Office Department, established that postal ratepayers would be

responsible for the costs of running the Postal Service and that taxpayers would remain responsible for the costs incurred by the Post Office Department. That firewall has never been broken in the 25 year existence of the Postal Service. It should remain intact. Current and future postal ratepayers should not be asked to carry the burdens of the old Post Office Department. These ratepayers already are shouldering the burdens of costs from 1971 which they were never intended to pay as a result of postal reorganization--retiree COLAs and health benefits **plus interest**. Those 1971 bills and interest became postal ratepayer obligations after 1985--long after incurred and 14-plus years after reorganization. Sections 501 and 502 of this bill break the contract made in 1970 that mailers carry the costs of the Postal Service--not the old Post Office Department.

DMA also supports the Revenue Forgone Reform Act, known as the Clay Compromise. That Act was designed to continue reduced rates for nonprofit mail without the need for appropriations. Thereby commercial mailers would contribute through higher rates to keep lower rates for nonprofit mailers. The appropriations authorized in the Act reimburse the Postal Service for **past** reduced rates and for Congressional mandated phased nonprofit rates, which will end in 1998. Commercial mailers must not be asked to pay more for this public policy decision. Do not destroy the Clay Compromise.

The Postal Service in the 21st century must have flexibility to meet competition and to provide quickly the new services customers need. However, increased ratemaking flexibility cannot be allowed without granting competitors greater opportunities to compete with the Postal Service. Therefore, DMA supports the limited mail box demonstration project. This is a very important project because it tests Postal Service ability to compete **within its current**

technological area--not against a new technology. It is a battle the Postal Service must "win" or, at least, survive in order to be viable in the next century. However, in order to accurately assess the results of the project, all delivery points within any test geographical area must be included. The opt-out provision in the bill would insure no accurate assessment of the project. We also believe that the project should extend for five years and to a much larger number of test sites for more complete assessment of the project. The project raises important policy matters and any further decision should be based on a complete, unbiased test. Finally, the bill allows the Postal Service to establish the parameters of the test. DMA believes that one of the parameters of the test should be the licensing of groups given access to the mailbox. The bill specifically should allow the Postal Service to create a licensing requirement to participate in the project.

DMA looks forward to greater competition for hard-copy delivery, but the \$2.00 threshold for private carriage of letter mail in section 703 is too great a change in too short a time. Congress should consider phasing in the reduction of the threshold.

Without ratemaking reform, any postal reform is meaningless. DMA supports the "price-cap" ratemaking reform which is at the heart of this bill. We do believe, however, that rates should be held below the rate of inflation. With changes in the ratesetting process and all the automation investment and worksharing investment by the mailers, holding rates for noncompetitive classes below inflation is a reasonable expectation. Moreover, the bill changes the ratesetting process for noncompetitive postal classes of mail. Thus, for the "adjustment" case in the bill, the adjustment factor established by the Postal Rate Commission should be less than 1.00.

The Postal Service should not have unilateral discretion to adjust differentially the rates for the several types of mail in each rate basket. Any rate adjustments within each rate basket for the noncompetitive classes of mail should be at a uniform percentage. Thus, the rates adjustments among the various rate baskets may differ, but within the rate baskets they should not differ.

In the event that the Postal Service requires additional funds (i.e., its costs rose faster than inflation), the Postal Service should be required to file an "omnibus" rate case with the Postal Rate Commission. Thus, through an administrative hearing, the Postal Service must establish its revenue needs and the rates for all classes of mail--insuring that all rates cover costs and a contribution to institutional costs. In essence if the Postal Service cannot live within inflation, it should lose some of its rate flexibility.

DMA believes that having the adjustment factors established by the Commission effective for five years is too long a period of time. Economic changes in the country and within the Postal Service can occur rapidly. In the fifth year an adjustment factor, which was reasonable in year one, could be unconscionable. DMA proposes that the cycle for any adjustment factor be three years.

The new ratemaking structure in the bill requires the Postal Service to file an omnibus rate case with the Postal Rate Commission within 18 months. This rate case would serve as the base for all future rate adjustments. First, DMA suggests that the base rate case be filed by the Postal Service whenever it believes it requires more revenue, which, given the current financial performance of the Postal Service, could be more than 18 months after enactment. The bill should not force a rate filing earlier than necessary. DMA also is concerned that one base rate

proceeding in 1998 or 1999 will be the foundation for all postal rates until the next round of postal reform, whenever that takes place. We believe that there should be periodic "base" rate cases filed with the Postal Rate Commission. In this way, changes in cost relationships among the classes of mail could be reflected in a new base or foundation for postal rates. For example, if the automation program reduces costs for processing one class of mail by 10% and another class by 20%, the original base case for rates would not reflect the new cost relationship of these two classes. A new base case would be needed. In conjunction with our recommendation that the rate adjustment factors have a three year life, DMA proposes that the Postal Service file a new base case every six years.

DMA recommends that the Committee consider adding a mechanism to appeal a Postal Rate Commission decision to the Commission. Currently, once the Commission renders its decision, it has no means to even correct an error. DMA recommends that the Commission issue an initial decision, followed by a briefing period by all interested parties, including the Postal Service, followed by a final decision. In this way, the Commission has the ability to respond to the comments of the parties and to correct any errors in the initial decision.

DMA supports the Employee-Management Commission to review Postal Service labor/management relations. Both GAO and Congressional studies indicate the combative and sometimes counterproductive labor/management relations in the Postal Service. Twenty-five years of effort between labor and management have not cured the relationship. The Commission is an excellent attempt to jump start corrective action. DMA does propose that the Commission be given only 12 months to render its initial recommendations. Three years is too long a time

period. Employees or those representing employees of competitors of the Postal Service should not be permitted membership on the Commission.

The bonus provisions of the bill are an excellent advancement. DMA strongly suggests that the bonus provisions be based not on "profits", but on productivity increases. Profits can be affected, both positively and negatively, by accounting adjustments to workers' compensation provisions and the like. Only with productivity increases can the Postal Service survive in the 21st century. The bonuses should be based upon them not profits--no productivity increase-no bonus. Moreover, if postage rates rise higher than inflation, there should be no bonuses. In addition, if there is a diminution of service offered by the Postal Service, there should be no bonuses that year. Service measurement, therefore, is important in both the bonus area and the inflation adjustments for rates. DMA is concerned that the Postal Service is moving away from independent measurement of the service it provides its customers. It has announced that it is abolishing the external third-class measurement system without offering any alternative to replace it. Finally, for management level bonuses we believe there should be individual goals established by a compensation board within the Postal Service which are used to determine any bonus for the individual.

DMA supports the expanded role of the Postal Rate Commission to audit Postal Service finances, service performance, and, DMA would add, productivity changes. The Postal Service remains a monopoly in this bill, and independent review of these performances is needed. The Postal Rate Commission is capable of performing those additional tasks.

Again, DMA commends you for this hearing and this bill. We pledge to work with you to enact meaningful postal reform so that our members can be large and prosperous customers of

the Postal Service for many years to come. Thank you and I am prepared to answer any questions on my testimony and the attachment.

Attachment
Testimony of Jerry Cerasale
Before Subcommittee on Postal Service
September 17, 1996

H.R. 3717
DIRECT MARKETING ASSOCIATION, INC.
SECTION-BY-SECTION COMMENTS

Sections 101, 102 - Resignations of Board and Top Management.

DMA takes no position on changing the titles of top postal officials; however, if any names are changed, there should be no reduction in Congressional oversight, which is reaffirmed in other sections of H.R. 3717. Given the proposed increases in the functions to be performed by the Postal Rate Commission, Congress should consider changing the name of the Commission. "Postal Oversight Commission" would be a more appropriate name.

Section 103 - Change in Salary of Directors.

DMA supports the proposed increase in the annual remuneration of the USPS directors.

Section 104 - Establishment of an Office of Inspector General Within the USPS.

DMA supports the establishment of an independent Office of Inspector General within the USPS. At present, the Postal Inspection Service performs two separate functions, a law enforcement or "police" function, and a monitor of internal

operations or "auditor" function. The "police" functions performed by the Inspection Service are duplicative of those of other law enforcement agencies, such as the Department of Justice, the FBI and local police, and this duality has often resulted in the failure of the Inspection Service to perform its "auditor" function properly. For example, a recent GAO report details how the Inspection Service has failed to give proper priority to the collection of postage. Also, the Inspection Service failed to detect over a long period of time problems with the efficacy of the Postal Service's automation program. Proper attention to both the "police" and "auditor" functions can be attained only through the establishment of two separate offices.

Moreover, mailers should not be forced to pay for the normal types of law enforcement or police functions, as they do now to the extent that the Inspection Service performs such functions. H.R. 3717 should make clear that the cost of performing law enforcement functions should be borne by the Treasury.

Finally, DMA notes that in private industry a company's internal auditor typically reports to the board of directors or a committee of the board, not to the chief executive. Accordingly, DMA suggests that the internal postal inspection service report to the USPS Board, as well as to Congress.

Section 201 - Employment of Postal Police Officers.

DMA takes no position on this provision.

Section 202 - Date of Postmark to be Treated as Date of Appeal.

DMA supports proposed Section 202, which would establish the date of postmark, as opposed to the date of receipt by the Postal Rate Commission, as the date of reference for determining compliance with the deadline for filing appeals in connection with proposed post office closings. This principle is similar to the one applied in judicial proceedings.

Section 301 - Presidential Postal Employee-Management Commission.

DMA supports the establishment of an employee-management commission as the best option currently feasible for solving the Postal Service's employee-management difficulties. As has been verified on many occasions over its 25-year history, the Postal Service is beset by serious employee-management difficulties. They require immediate attention. We understand that the Postmaster General is convening a labor summit to address these problems. DMA supports any attempts to improve the Postal Service's employee-management situation. It is doubtful, however, given past history, that the necessary changes can be agreed upon without a major effort supported by all parties concerned. Presumably, the commission to be established pursuant to Section 301 would be composed of individuals of sufficient stature that their recommendations would be both carefully crafted and able to attract the broad support needed to produce the necessary results.

DMA would propose several modifications to Section 301. First, 18 months appear to be an unnecessarily long period of time for the commission to issue its initial report. DMA recommends that the time for the initial report (containing the commission's recommendations) be set at 12 months, with two subsequent (update) reports, 12 and 24 months thereafter. Second, DMA would support a limitation on the membership of the commission prohibiting membership of individuals who are, or unions representing, employees of Postal Service competitors. Third, DMA would support language requiring that the members have certain specified experience that would qualify them to serve on the commission, such as some experience with the Postal Service.

Fourth, DMA urges the deletion of the requirement that the two members from management ranks have experience in similar-sized private corporations. There are few, if any, private corporations with a labor force or with gross revenues as large as the USPS. This restriction is unnecessary and would unreasonably limit the number of available management candidates.

Finally, DMA believes that the proposed commission should be created even if legislation is not passed. There is no reason why the commission could not come into existence through Presidential appointment, as did the Kappel Commission.

Sections 401-405 - USPS Finances.

DMA supports Title 4 of H.R. 3717. The Postal Service deserves increased independence in financial matters, including the ability to use its own expertise in financial markets to maximize the benefits and minimize the costs of its financial operations.

Sections 501, 502 - Funding of Expenses Relating to Pre-1971 Employees.

DMA strongly supports the continuation of Congressional appropriations to cover workers compensation liabilities of pre-1971, former Post Office Department employees. The provisions of Sections 501 and 502 would establish the liability of the United States Postal Service to pay for retirement and other obligations relating to pre-1971 postal operations and, at the same time, would eliminate Congressional appropriations to cover workers compensation liabilities. These provisions amount to nothing less than a "raid" on the U.S. Postal Service. Congress needs to maintain a strong "firewall" between pre-1971 postal operations, which were funded by the U.S. Treasury, and post-1971 operations, which are properly attributable to the current United States Postal Service. Sections 501 and 502, as proposed, would constitute a serious breach in this important principle and should be eliminated from the legislation.

Section 503 - Repeal of Authorizations for Revenue Foregone and Other Appropriations.

DMA vigorously supports continuation of the "Clay Compromise" and therefore opposes Section 503 of H.R. 3717.

Many of the technical changes included in this section involve modifications to appropriation provisions that are, as a practical matter, obsolete. These changes, therefore, do no real harm. However, among the changes included in Section 503 is the elimination of the appropriations contained in the "Revenue Foregone Reform Act," which form an important part of what has become to be known as the "Clay Compromise." Therefore, this section abrogates previous compromises and understandings with the Postal Service and members of the mailing community concerning the responsibility for funding low rates for preferred classes of mail, which are based on public policy considerations. These understandings are set forth, among other places, in the Sense of Congress provision of Public Law 103-123, which states that any expansion of eligibility for reduced rate mail should be accompanied by off-setting increases in public funding. 107 Stat. 1272.

DMA strongly opposes the breach of faith represented by Section 503.

Section 504 - Preservation of Congressional Oversight.

DMA strongly supports Section 504, which would maintain the important Congressional oversight function performed by the House and Senate since the creation of the Postal Service in 1971.

Section 601 - Change-of-Address Involving a Commercial Mail Receiving Agency.

DMA supports Section 601, which would have the effect of including in the USPS change-of-address system changes of address from Commercial Mail Receiving Agencies to other addresses.

Section 602 - Reduced Rates for Certain Nonprofit Organizations.

As stated above, DMA supports the "Clay Compromise." In particular, DMA firmly believes that each grouping of mail should pay its own costs plus a reasonable portion of the USPS institutional costs. If Congress wishes to create any exception to this principle, or to expand the type of mail that currently qualifies for preferred-rate treatment, it should provide a way to fund the revenues lost to the Postal Service as a result. The revenue burden of these policy-driven decisions should not fall on the non-preferred mailers, who are already paying their own way and much more.

In this connection, DMA would point out that nonprofit organizations pay the same telephone rates as other telephone customers. There is no obvious reason why nonprofit organizations should pay lower postal rates than similarly situated personal or

commercial mailers. DMA is not suggesting that the current system, reflected in the Clay Compromise, should be changed. On the other hand, Congress should not increase the financial burden on commercial mailers above that reflected in the Clay Compromise.

Section 603 - Subpoena Power for the Postal Rate Commission.

DMA supports expanding the authority of the Postal Rate Commission to include the authority to compel by subpoena the production of documents and testimony from the Postal Service. As currently drafted, however, H.R. 3717 would give the Postal Rate Commission authority to subpoena relevant documents or testimony from any person. Given the breadth of the matters that are arguably "relevant" to PRC proceedings, this provision amounts to authority to compel privileged, confidential information from virtually every business or individual in the United States. This authority is much too broad. It should be restricted to evidence within the possession or control of the Postal Service only.

Sections 604 - Volume Discounts.

DMA supports the concept of volume discounts determined on the basis of cost differentials. If the Postal Service is to compete successfully, it needs to be able to offer volume discounts, in a manner similar to that used by its competitors, so as to

maximize the benefits to both the mailer and the Postal Service of the economies of scale permitted in connection with the handling of large volumes of mail.

However, volume discounts should be linked to other factors that provide maximum assurance that the USPS will realize substantial benefits from the arrangement. For example, volume discounts could be conditioned upon such factors as volume guarantees or mutually agreeable arrangements concerning the timing of mail entry into the system, thereby increasing USPS ability to plan and promoting USPS productivity.

Finally, DMA believes that the 3-year limit for the proposed demonstration is too short. A 5-year period is required to gauge adequately the impact of the program.

Sections 701, 702.

DMA supports giving the Postal Service flexibility to handle its own transportation arrangements.

Section 703 - Private Carriage of Letters.

DMA supports the proposed loosening of the Private Express Statutes. As Congress gives the Postal Service additional operational and pricing flexibility, it needs to loosen the Postal Service's grip on the postal monopoly. The approach reflected in section 703 is a meaningful, but appropriately cautious, step in that direction. However,

DMA does not understand the reasons underlying the choice of the \$2.00 figure. In order to receive broad support, the reasons for imposing the \$2.00 level require explication. Moreover, DMA suggests that, if the \$2.00 figure is retained, a phasing schedule should be created to permit all concerned to adjust to the change.

Section 704 - Mail Box Demonstration Project.

DMA supports an open mail box; therefore, DMA supports the, perhaps overly cautious, step reflected in Section 704. However, DMA believes that the opt-out provision of the bill is misguided. If Congress and the Postal Service want, as they should, a statistically reliable, unbiased test, the opt-out provision should be eliminated. Further, the number of test sites should be expanded and the test period should be extended to 5 years. Congress should also specify various factors that the test should consider, including the extent to which competition is encouraged and the delivery of mail impeded. Finally, in order to maintain important delivery other standards, the bill should specifically authorize the Postal Service to consider, as part of this project, giving mailbox access only to delivery services licensed by the Postal Service.

Section 801 - Direct Appeal of Decisions of the Merit Systems Protection Board.

DMA takes no position on Section 801. Congress may wish to direct the commission to be established under Section 301 to review this proposal.

Sections 901, 902 - Federal Assault Statutes: Sexually Oriented Advertising.

DMA supports the provisions of Sections 901 and 902.

Section 903 - Retention of Asset Forfeiture Recoveries.

Consistent with DMA's position stated above, concerning the proper jurisdiction of the FBI and the Attorney General over USPS-related law enforcement functions, the matter addressed in Section 903 of H.R. 3717 is moot.

Sections 904, 911-915 - Hazardous Matter and Other Provisions.

DMA supports these provisions.

Section 1001 - New Postal Rate-Making System.

DMA supports the Committee's attempt to revise the current postal rate-making system, which, in DMA's view, has significant drawbacks. Any new system should provide meaningful incentives (1) to increase postal productivity and (2) to keep future postal rate increases below the rate of inflation. A new system should also be less cumbersome, less expensive, and increase the predictability or "know-ability" of future increases, both the timing and the amount thereof.

Moreover, any new system should resolve another major shortcoming of the current arrangement: the lack of a meaningful appeal from PRC decisions. The current law creates several problems. First, if the Commission makes a simple mistake

in its Recommended Decision, there is no practical mechanism through which it can be fixed. Without going through a complicated process, the Governors have to make a "lock-stock-and-barrel" decision on the results of the PRC's work. They are prohibited by the statutes from "modifying" it, even if errors are detected. Something should be done to correct this situation.

Second, the PRC's determinations are, as a practical matter, insulated from all appeals by affected mailers, either to the Governors or the courts. The statute is arranged in such a way that neither the Governors nor the judiciary has meaningful power to question the PRC's decisions. The Governor's authority is explicitly limited by statute, and the discretion given the Commission is so broad that courts have reversed a PRC "recommendation" only in the most extreme instances of violations of due process rights. The checks and balances that Congress created in 1970 do not work as intended. The statute should be amended to provide a more meaningful appeal.

One way to redress the current imbalance would be to make the statutory rate-making principles more concrete, thereby relying less on the Commission's "discretion." Section 3701(c) of H.R. 3717 takes one positive step in this direction by amending current Section 3622(b) to provide an order of priority for the consideration of the various rate-making factors.

As a second alternative, Congress should consider a system in which the PRC issues an initial decision, followed by briefing, before making its (final)

recommended decision. This system was tried in the first two omnibus cases under the Act, R71-1 and R74-1. The result was to delay the issuance of the recommended decision. However, given the more limited scope of the PRC proceedings proposed by H.R. 3717, it may be possible to use an initial-decision approach and still meet relevant time constraints.

The new, "price-cap" system proposed by H.R. 3717 has some significant advantages over the current system. However, it raises many important questions that it does not answer, and it has one substantial flaw.

The Adjustment Factors Should Be Less Than 1.00. Any new system involving "adjustment factors" should limit these factors so that all increases under the new, more flexible system, are below the rate of inflation. Thus, DMA strongly opposes the portion of H.R. 3717 that would permit the "adjustment factors" to be greater than 1.00. While DMA admits that the new system should contain a mechanism to handle increases in postal costs greater than the rate of inflation, this eventuality should be treated as an unusual, "emergency" event that would call for extraordinary remedies. H.R. 3717 would treat it as being part of the "ordinary course."

Beyond this fundamental flaw, H.R. 3717, as currently drafted, raises a number of questions, the most important of which are discussed below.

Purpose of Rate Baskets. The purpose of dividing the noncompetitive postal classes into four "baskets" is not clear. The proposed legislation envisions that the Commission will determine a different adjustment factor for each basket, taking into account a number of considerations. The purpose, or goal, of this process is unclear, however. Is it to readjust for changes that may occur in the factors underlying the "base" case rates? Is it to permit the Commission to modify the "base" case pricing decisions based on costs, market realities, changed USPS operations, or some combination of the above? Lack of clarity on this subject will lead to confusion and litigation. Congress should make clear the goal of separate treatment for the four baskets.

Moreover, the Postal Service should spread its rate increases (within the adjusted index ceiling) as equally as possible among the several rate baskets. For example, if the most recently approved adjustment factor for each rate basket is -0.5%, if the index is +4%, and if USPS costs increase at a 2% rate, the Postal Service would have a 1.5% spread between its ceiling (+3.5%) and its costs (+2.0%). The Postal Service would need to raise revenues (by an average of 2%). Should the Postal Service be able to raise the average revenues from one basket by 3.5% and from another basket by 0.5%. DMA thinks not. The Postal Service should set rates that reflect, as nearly as practicable, changes that are proportional to the adjusted index ceiling.

Impact of Cost and Other Changes Within Each Basket. H.R. 3717 does not provide a mechanism for modifying the intra-basket rate relationships, other than

pursuant to authority given to the Postal Service. This authority appears to be unlimited, subject only to the caveat that average rate increases within each basket shall equal the adjustment factor assigned to it. Is it intended that the discretion of the Postal Service in this respect be totally unfettered? Is it intended that the role of the Postal Rate Commission to modify intra-basket relationships be eliminated? Moreover, there is no provision in the legislation, as there needs to be, that sets forth how "average" increases are to be computed. Presumably, some sort of volume-weighted approach would be appropriate.

Given the importance of having postage rates for all mailers be based solidly on actual costs, DMA believes that the intra-basket cost relationships and other rate-making factors should be re-examined periodically. DMA suggests, therefore, that the Postal Service be directed to implement uniform across-the-board intra-basket rate changes with the proviso that it may implement non-uniform intra-basket changes upon filing a complete justification with the Commission.

Ability to Respond to Long-Term Changes in Costs and Other Rate-Making Factors. DMA supports the concept, which is the centerpiece of the current rate-making system, that each type of mail bear its own costs and make a "reasonable" contribution to institutional costs. Therefore, DMA is concerned that the system

reflected in H.R. 3717 may drift away from cost-based rates over time without a mechanism being in place to bring them back to cost-based levels.

Accordingly, DMA recommends that a "base" case, as described in H.R. 3717, be mandated after an interval that is longer than the current 3-year average, but short enough to guard against large deviations from costs. Although there is no reliable way to judge the length of time that can elapse before there is a substantial risk of significant rate/cost deviations, DMA suggests that 6 years is "in the ballpark." Accordingly, DMA recommends that the "adjustment factor" case be held 3 years after a "base" case, and that a "base" case be held no later than 6 years following the filing of the most recent "base" case.

In this connection, DMA sees no reason for Congress to hasten the filing of the next omnibus rate case. Accordingly, DMA suggests that H.R. 3717 be amended to delete the provision calling for a "base" case within 18 months. The bill should simply treat the next omnibus case as the first "base" case, which would set the foundation for the first indexed postal rate increases.

"Emergency" Authority to Raise Rates. If, as DMA advocates, the normal adjustment factor to the inflation index is kept below 1.00, what sort of system should be established to provide the Postal Service with the ability to raise needed revenue in the event that its costs exceed the rate of inflation? Clearly, such a system should be viewed as extraordinary and should be restricted to unusual circumstances. One possible model

for such a system already exists in the Postal Reorganization Act -- the ability of the Governors to "modify" PRC Recommended Decisions upon a unanimous finding of insufficient revenue.

A new system might authorize the establishment of rates using an adjustment factor of 1.00 or greater in the event that the USPS Board unanimously requests, and the PRC unanimously recommends, an adjustment factor in excess of 1.00, but only pursuant to a full-blown "base" case.

Productivity Incentives. As currently drafted, H.R. 3717 attempts to provide incentives for postal productivity (for both management and employees) by means of a "bonus" system in which USPS "profits" would be distributed among all employees. The proposed system has numerous flaws, and should be reconsidered. For one thing, the incentives should be related to increases in productivity, rather than increases in USPS net revenues.

As an alternative, the PRC, as part of its proposed audit function, could be authorized to create and apply a formula for measuring USPS productivity. Bonuses could be established based on a sliding scale depending on improvements in productivity as compared with a benchmark. The larger the productivity improvement, the greater the proportion of USPS net revenues that would be distributed. However, in any year in which a rate increase exceeds the inflation index, no bonuses would be paid.

In addition, bonuses should be conditioned on the existence of each of several factors, including at a minimum: (1) the absence of any diminution in the level of service provided to any class of mail; and (2) rate increases lower than the index over the preceding year.

Finally, in addition to meeting these USPS-wide threshold requirements, bonuses for management officials should be conditioned upon meeting individual goals that should be established by a compensation committee of the Board.

Classification Authority. DMA supports the PRC retaining authority to approve classification changes. A major question exists, however. Under the proposed system, how would rates for any new classification or modified class be established? For example, would it be necessary to do a complete re-valuation of the costs of the entire basket within which the classification changes were to be established?

Market Tests. DMA supports the provisions of H.R. 3717 that authorize the Postal Service to conduct market tests of experimental products or services for a period up to 3 years.

Representation in Antitrust Proceedings. DMA supports the provisions of Section 1001(b) that would permit the Postal Service to represent itself in antitrust litigation.

Reduced-Rate Classes. The legislative language provides that reduced-rate classes are to be maintained. However, what is the relationship between (a) the current "Clay Compromise" rate-setting method, and (b) the new "adjustment-factor" method? Will it be adequate simply to maintain the current 50% cost coverage?

Mr. McHUGH. Let me say to the entire panel and to all three panel members, I read the testimony over the weekend and last night and all of you have really presented well-thought-out comments. I want to note that as I am conversing here, it is not that I am uninterested in what you are saying, I am not trying to be rude, although I suppose it is in a way, but I am telling staff, as you are speaking, that there are points we need to look at further.

I am probably about to get myself in trouble because I didn't have a chance to discuss this part too extensively with the staff, but I think there may be a misunderstanding and I would like to at least get on the record what I would hope would be the first step in resolving that.

It is my understanding that when the Postal Service under this new regime comes and requests an emergency rate increase in an exigency case that, indeed, there is a PRC full blown hearing. One difference that we have right now is that we require rather than the 10-month timeframe that a decision be made on it within 6 months. The presumption and we will revisit the language is it would include the opportunity for interveners to talk about it, and there was no intent to make the very fact that the Postal Service makes the request the outcome a foregone conclusion. We I think have to prove a very clear, definitive need, the ultimate decision for or against the request is, of course, by the PRC.

Let me take everybody in reverse order just because I can; I guess no other reason.

Jerry, you talk about the mailbox demonstration project. I know you are aware this is a pretty controversial proposal, but that is OK. That is why we are in this business.

You talk about, and I understand your intent filling out the test area because we do provide for the opportunity of exemptions from the test, and your concern is, one, that obviously you can't get a clear picture of what is happening. There is some practical concerns that I am just wondering if you have thought there was a way around or you just accept them and open up everything else like cluster boxes, apartment houses, those businesses that are under lock and key on their mailbox? I don't see how we can get around those. Do you have a thought on that or were you just intending to mean every one but them?

Mr. CERASALE. I think the thought is—that is, our licensing provision is—I think if we can work a test with someone licensing, there is some possibility of giving the key to a licensed vendor, could be bonded or whatever. That is the idea.

I think that locked apartment houses, cluster boxes, do create a problem. They create a problem with opening up the mailbox. In general, many of us think of the mailbox as the curbside rural delivery box you can open up and put something in. That is the easy thought. But a significant number of Americans live in cities with apartment boxes and the new developments have cluster boxes. So that is why we looked at the licensing. We think through that there is a way to include more of the delivery points within the test.

I also think we read it a little bit differently. We read it where I, Jerry Cerasale, may decide I don't want anyone—I want to opt out of the test, just my little rural mailbox you can't come to. So as you go down the street, a carrier goes down the street with 20

boxes on it, maybe 5 of them are in the test and 15 of them are not and so forth. The results I think would be useless to make a policy decision on opening the mailbox.

But I think that we can explore and should explore the licensing aspects as a means to try to overcome the problems that lock—that lock boxes and cluster boxes create for us.

Mr. MCHUGH. You read it right. That was the opt out—the intent behind the opt-out provision was to, in fact, allow one household to opt out if they chose to.

It seems that in your comment meant that opt out would be taken away. A practical concern I had was, as I mentioned, where there is a locked mailbox in a cluster, but you have answered that so licensing would be the way you would go about that.

Obviously—let me ask it a different way. If you are on a rural route and you have a mailbox that is not locked then does licensing still apply? Are we limiting mailbox testing access in some areas where there is a lock box but we are allowing in rural areas or at your home in a suburban area to be accessed by anyone?

Mr. CERASALE. It clearly is easy to access the rural box but we still think that the licensing makes sense because there is some security in the box. Right now I know that there is only the mail that is in the box, and who can legally open the box and put things in?

Clearly, you get other things that come in the box sometimes. If you get there before the carrier does, you receive them. We think that to keep the thought of the security of the mailbox, licensing, including the rural areas should apply. I think the only place where it really wouldn't apply is the door slot which now really has no real protection with a mailbox rule in itself now.

But I think the licensing would also apply with what we think of as the rural letter box on the box and on the side of the house where a carrier could just open up and put the mail in. We think it should apply there to try to limit the number of people that go into the box.

Mr. MCHUGH. OK. Thank you.

Mr. Volner, in your testimony, as others, you have talked about, I think the word you used was problematic nature of the market baskets that we have constructed and amongst the various classes. And you talk about why you think they become unnecessary if we eliminate the adjustment factor.

Mr. VOLNER. Because at that point—there are two things I wanted to speak to you about. At this point, Mr. Chairman, if you limit the adjustment factor you don't need any differentiation inside the baskets to accomplish your objective of automatically fair and equitable rates. Price cap applies where it should apply: To the subclass.

As a result of reclassification, with some warts, mail is much more closely organized in homogeneous groups than was prior to reclassification. The reason that you had to penetrate the baskets, in creating the bill was because the baskets with the arguable exception of the second basket, do not involve homogeneous mail. You have put together standard Third Class Mail and some of the parcel classes, those which are not regulated—those which are non-competitive rather—their demand characteristics are very, very different. Their cost characteristics are very, very different. To try to

do a markup of that basket wouldn't work so you penetrated baskets. You don't need the basket to get the markup down to the CPI cap or whatever the cap is down to where it belongs, which is at the subclass level.

I would also like, if I might take 1 second to respond to your comment that the exigent circumstance does involve a full blown rate case. In a sense as we read the bill it does. It requires a readjustment of the previously set adjustment. That is not a full blown rate case the way we think about it. If something goes wrong, it is because the Postal Service that has lost control of its cost or—and this may not be entirely their fault—costs have gotten misaligned with volumes or rates or rate categories.

In order to do a full blown rate case, in order to get things back on an even keel, you have to do a cost of service rate case not simply a readjustment of an adjustment factor. We call it a baseline rate case, in our testimony. And we suggest also that it be done not on a forward looking basis as it is done now but on the historic test year immediately preceding the financial circumstance.

As Mr. Cerasale said, we are trying to make it hard. We are also trying to understand precisely what it is that caused the failure so we don't have a repetition, and the adjustment—the readjustment to the adjustment doesn't accomplish that in our view.

Mr. MCHUGH. I see. Well, I appreciate that. It is an interesting and certainly an important distinction and we will revisit that.

Mr. May, you talk about, the others have as well, the word "reasonable contribution," as did Mr. Gleiman, reasonable man—he might not be able to be reasonable in this area, I have a feeling. Do you think we need to just take that kind of consideration out or do we need to better define "reasonable"?

I listened carefully to your statements and I understand your overall concerns, but I am wondering what you would suggest? Mr. Gleiman suggested that in the private sector 100 percent of recaptured cost is reasonable. Do we need to put a percentage cap on it to give comfort or do you think maybe we had better pull that card right out of the deck and not worry about it?

Mr. MAY. I would remove it. And the fact is that it is not a classic subsidy. If something pays all of its direct and indirect cost, it is not being subsidized. We have to remember that overhead cost is defined both in the current law and by Postal Rate Commission decisions and by court decisions as costs which have not been shown to be caused by a particular kind of mail. So those are not costs that—let's say, parcel post caused. The question is should parcel post have to in this new regime pay for some costs that it didn't cause? We would argue, no, it does not have to. I would think that—which is true in the private sector. No one goes for any length of time unless—through a variety of its products in sum total recovers all of its costs, but clearly every modern business that has a variety of products requires different amounts of the overhead in those products depending upon market conditions. And it is, indeed, in the marketplace, contrary to what the PRC chairman testified, perfectly reasonable for a particular product in a multiproduct company to recover zero of the overhead as long as it recovers all of its own direct and indirect costs. So depending on

what market circumstances are, it is perfectly reasonable to recover zero overhead out of that product.

And therein lies the problem if you are going to permit the post office to compete in the marketplace, which is the stated objective of freeing the competitive product. It is what we have asked for for years, then you have to actually do it. You cannot invest a bureaucracy laden with a decade's—several decade's long history of bad decisions about what "reasonable" is, to second guess every year what the post office felt it had to do in the marketplace. And we see no solution to that other than to eliminate the requirement that a reasonable amount of overhead also be recovered by these competitive products.

Mr. MCHUGH. Which leads rather indirectly, it leads into my conversation with your fellow panelists a moment ago. Would it be your opinion if we did away with the differences in each basket, the subclasses, that while we would be taking away postal flexibility we kind of do away with that indeterminate fluctuation, that imprecise fluctuation based on PRC findings that may not be as subjective as some would like?

Mr. MAY. I don't have the same problems that some of my colleagues have with your ratemaking provisions. I think with a little tightening up—I—the way I see—you have done—you see there are some serious faults with the current ratemaking mechanism. One of them is that because of the cost of a rate case you cannot have annual rate adjustments. Everybody can't go through a massive giant 10-month rate case every year and therefore rates have had to be set for 3- and 4-year cycles. That necessarily means that they are going to have to charge more in the earlier years to cover the losses in the later years. Your legislation does away with that problem and it says, look, you can make an adjustment every year.

So, No. 1, you don't have to have the grossly inflated rates and we don't all have to cross our fingers and pretend that we really are in a test year going to spend the ridiculous amounts of money the post office asks for when everybody knows they are going to run multibillion-dollar surpluses in the first years. And we all wink at that because we know they are going to need the money 3 years later.

Under your system you have done away with that problem. And that is a serious problem that you deal with because by forcing artificially high rates in the early years, you kill volume, you distort the cost from the price as the out years come in, and you also make it harder for businesses to absorb because they increase when they become larger. Your bill does away with those problems.

Second, yes, it does keep the Rate Commission in the act. Those who have had bad rate decisions don't like the Rate Commission. Over the years I've had good ones and bad ones. I don't want to see them go away. I think you have to have an umpire.

I think what your bill also does, however, is put a little more reality in the factors that they use to fix rates rather than just being floating in the ether; you have reordered the rate factors. You have, for example, given demand a prior—a prime place in the factors for deciding what the adjustment factor should be. And we have a Rate Commission that pretends it is not important. Whereas, indeed, it is probably the most important thing that most private businesses

ever deal with, that is how much of a demand we have. You have now given that proper recognition. You still have a commission, though, that has to exercise some judgment, and I don't see any-way around that.

So I think you have to take the pluses and the minuses, and then you also have created the possibility that doesn't exist now, the possibility that all of the employees from the top to the bottom will see in this a chance of benefiting themselves, as well as the whole system, by containing costs.

Why? Because they may get something out of it. You have created a system, substituted that for a current system where the incentive is the more you spend, the more you can prove to the rate commission you need higher rates. That is lunatic.

Your bill has a system that says, look, here is a chance. First place, we are not going to let you get too far out of control because we have these caps; but you are also giving them a chance; if you all work together and use your heads and everybody pitches in you have a chance to put a little bit more money in your own pocket, which is the success of private businesses.

So I don't have all of the problems that my colleagues have. I hear what they are talking about, but from my view the pluses in your bill so far outweigh those minuses that I think with a little fixing we have something we can work with.

Mr. MCHUGH. Thank you. Good answer.

Before I turn my attentions to Mr. Todd, I have been hogging the time, I would be happy to yield to the gentleman from New York, if he has any questions at this moment.

OK. I will turn my attentions to Mr. Todd.

David, you spoke in your testimony about the bureaucratic struggle that you perceive exists, I can certainly see without some foundation, between the Postal Service and the PRC. At the risk of asking the obvious, would you consider our proposal to give audit management, audit functions to the PRC as one of those points you talk about when you are concerned that the bill may increase that bureaucratic struggle?

Mr. TODD. It is the key concern. It is that which I think would introduce a level of authority by the PRC which is far greater than they have today, and I think Mr. Volner expressed the point well, that it is a confusion of functions.

I believe everyone recognizes that in a monopoly service we need a Postal Rate Commission—we need someone outside of the Service to make certain that these rates are being established in accordance with the law. But I think confusing that function with the audit function is guaranteed to, as I have said in my testimony, not only not solve the bureaucratic struggle, but in some ways to make it worse because it introduces an entirely new role.

One of the things I have been critical about before this committee and directly before the Commission is that it has not confined itself to its function, which is to ensure that rates comply with the law. I might disagree with those decisions, but nonetheless that is its function, and all too often both collectively and in some cases by individual members of the Commission it has thought of itself as a general ombudsman explaining to the world why it is that the Postal Service is doing such a lousy job. The fact is that somebody

has got to play that kind of a role and it is valuable. However, I don't think it is the Commission's role.

I would also suggest, and it was not in our testimony, the possibility—it is certainly well worth exploring—that the auditing function as you envision for the PRC be something that is done by the private sector. I have understood that one of the reasons for not having the GAO perform this function is the concern with, the overall concern within the Government of budgeting functions and if we put it within the system, it is the ratepayer that pays for it, not the taxpayer. That may well be fair enough.

I believe an idea well worth exploring is can this be done in the private sector? That function, if performed independently but by someone who is not otherwise involved in the process with an axe to grind which may be inconsistent with the proper role of the auditor, you would have quality control.

Mr. MCHUGH. Can I assume that if someone were to suggest that, assuming even further that we were to create an independent IG, that that would not be an appropriate role for that new office because it may be, in fact, as you put it an axe to grind for no other reason than it is involved in the system?

Mr. TODD. I am not sure, frankly, where we would come out on that. I think using the IG for that role is something well worth exploring. Whether that is incompatible or not, I don't have a firm position on it. I think it may not be incompatible.

Again, the whole purpose, as I understand your objectives in creating an IG, is a truly independent person more independent than the current arrangement, Presidentially appointed and someone who truly is independent. I don't see any necessary conflict between that role and an auditing role.

Mr. MCHUGH. Any thoughts from the other gentlemen who were concerned about the management audit?

Mr. Volner.

Mr. VOLNER. Mr. Chairman, I did not mean to rule out the possibility of the IG doing it. It is not something that we have—these options deserve further exploration. Our primary concern was that when you muddle adjudication and investigation you get precisely the kind of bureaucratic conflict that Mr. Todd has spoken of and you get a loss of credibility of the result. I can't tell when the Rate Commission said they did a good job what the Rate Commission's agenda is.

The Rate Commission really should be an umpire in base line cases and in these quality checks that are necessary under a price cap regime. But they should be getting their evidence from outside and basing the decision on the evidence that is put to them.

Mr. MAY. Mr. Chairman, certainly giving that function to this Inspector General would be totally at odds with the functions currently performed under the Inspector General's Act and it would be alien to the whole purpose of Inspector Generals. And I don't understand why that has to be referred to the General Accounting Office, which already has a very experienced staff.

You need a lot of the right kind of people to conduct a management audit. I wasn't just being nasty when I derided the competence of the Postal Rate Commission to do this. They don't have people over there who are supposed to be doing that. They have a

different kind of expert over there and so you have to really get quite a complement of expertise under an Inspector General and it would be quite an unusual kind of function for an IG to perform. Although anything can be invented, although I don't know why you need to invent one if you already have a Comptroller General, particularly if the taxpayers will pay for it.

Mr. MCHUGH. Your point is well taken. I don't know if there is any reason I assume an IG would be favored. Just as you brought up the issues in your presentations I thought that to just put it out there. I am happy to have your responses.

Mr. TODD. Mr. Chairman, if I may just say one more word, I hate to say this to make this suggestion, but if it's ultimately determined that the GAO is the right place for the function, there is nothing to prevent the GAO from being paid for its services from the rate-paying base.

Mr. MCHUGH. Did you get that down? We are approaching an hour and a half, and as I mentioned in our opening, we have two other panels who are patiently waiting and I don't want to take any more of their or your time.

Gentlemen, again, at the risk of repeating myself I truly do appreciate your presentations and we are going to carefully consider the points. I think you will see some changes in the bill. Based on what you told us here today, we will continue to work with you and thank you for being here.

[Followup questions and responses follow:]

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December 5, 1996


The Hon. John M. McHugh
Chairman, Subcommittee on the Postal Service
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Mr. McHugh:

Enclosed are the responses of the Mail Order Association of America to the "Questions for the Record" enclosed with your letter of October 22, 1996.

We appreciate this opportunity to further comment on the issues pertinent to postal reform.

Sincerely yours,



David C. Todd

QUESTIONS FOR THE RECORD
FOR THE MAIL ORDER ASSOCIATION OF AMERICA

QUESTION 1. We have heard from some organizations opposed to many of the products and services which the Postal Service offers that directly or indirectly compete against similar offerings in the private sector. In my view, we have to allow the Postal Service some latitude in this area by which they can earn revenues that, in turn, can be used to support universal service. I want to insure that the private sector is protected from unfair competition, which is why I included the anti-trust language, an independent Inspector General and PRC reviews, among other provisions. What are your thoughts on the issue of postal service competition with the private sector? How do you believe universal service will be provided if we limit the markets or products the Postal Service can enter?

ANSWER: MOAA agrees that the Postal Service must be allowed to compete against "similar services" offered in the private sector. As a background to this question, it is important to recognize that, for the most part, the services which it is now suggested the Postal Service should be prohibited from offering were pioneered by the Postal Service. Most notably, the Postal Service, through parcel post, offered a universal small parcel service at a time when such service was not otherwise available. Additionally, the Postal Service has long carried expedited parcels as first-class mail and again was doing so prior to any competition from the private sector.

Upon entering the market, the private sector was able to use the parcel post rate umbrella to offer better prices to the business segment of the market. Further, the private sector structured their services in a way that, as a practical matter, precluded household or individual use. The net result was that the Postal Service was left with the highest cost "Aunt Minnie" parcels. This problem was compounded by the fact that the large cost differences between high volume parcels originated by businesses, and household parcels, was not recognized within parcel post. In recent years, the Postal Service has been able to improve its competitive position slightly because of a more enlightened approach to classification and pricing, but the service still lacks the pricing flexibility which it needs in order to be able to compete effectively.

If the Postal Service is unable to compete effectively across the board, whether or not offered within the private sector, it will be faced with diminishing volumes and a need for ever-increasing prices to the detriment of all mailers which will threaten universal service.

QUESTION 2. As discussed in the hearing, what additional thoughts do you have regarding the most appropriate entity for carrying out the annual audit provisions of Section 3782, particularly in light of the fact that this section already requires the Postal Rate Commission to review an audit conducted by "an independent professional accounting organization (from outside of government)," rather than the PRC actually conducting the audit itself?

ANSWER: MOAA continues to be concerned about any auditing role for the PRC. MOAA agrees that an independent audit would be valuable, but believes that the PRC should not have any role in overseeing the overall functioning of the Postal Service. As was stated at the hearing, this would represent a confusion in roles. The PRC's function should be limited to ensuring that the pricing of the postal services is carried out in accordance with the Act.

MOAA also suggests that the GAO might be the most appropriate agency to carry out this function. It would be appropriate for the costs thereof to be borne generally from tax revenues. The Postal Service, after all remains an agency of the federal government. If, because of budget constraints, it is determined that this is not feasible, there is no reason why the cost of the GAO auditing function could not be borne by the Postal Service.

QUESTION 3. On page 2 of your prepared testimony you say that it is not wise to "stem" the growth of electronic alternatives to the Postal Service. Let me ask you this in another fashion: how wise is it and to what degree should the Postal Service be allowed to join in offering or taking part in these alternatives?

ANSWER: MOAA continues to have substantial reservations about the Postal Service making extensive incursions into electronic alternatives. The Postal Service's interests and the interests of the mailers will best be served if the Postal Service concentrates its attentions on its traditional role of delivering hard copy and merchandise. As of now, and we suspect for a considerable period of time, the ultimate configuration of electronic alternatives remains very much in doubt. The process of sorting out those alternatives is best left to the private sector. The Postal Service should not act as a venture capitalist enterprise. It is not MOAA's position that the Postal Service should be banned from any role in electronic alternatives. It may make sense for the Postal Service to offer certain auxiliary services within the electronic field. It does not, however, make any sense for the Postal Service to commit large resources in pursuing electronic alternatives.

QUESTION 4. In your prepared text you state that "incentives need to be put in place to bring about a more cost-efficient Postal Service" irrespective of volume growth. To what type of incentives are you referring? Do you think that implementation of a price cap regimen for postal rate increases is one way to incentivize the Postal Service to examine its costs?

ANSWER: MOAA's reference was to price cap incentives. It is important for the Postal Service to be able to compete in order to maintain and increase of mail volumes for the reasons set forth in our response to question 1. Nevertheless, it is MOAA's position that the Postal Service must be prepared to live within a rate of inflation even if volumes fall. Price caps should help achieve that objective. Additionally, providing performance bonus incentives for all postal employees could be an effective incentive.

QUESTION 5. On page 5 of your written testimony, you say that proposed section 3723 provides too much latitude to the PRC in establishing the adjustment factors. What type of criteria would you mandate the PRC consider when establishing the adjustment factors? Do you favor a rate cap regimen with no adjustment factor?

ANSWER: MOAA believes that rate caps with no adjustment factors would be preferable. As MOAA has stated, it will probably necessary for there to be omnibus rate cases from time to time in order to realign rate relationships. In the interim, the application of rate caps needs no adjustment factors.

QUESTION 6. Please explain for the Subcommittee how a price cap regimen is compatible with cost-of-service ratemaking. Current economic literature seems to suggest that the two systems are in fact quite different. Currently, our postal system employs a cost-of-service pricing in its ratemaking procedures whereby the regulated entity - the Postal Service - passes on its costs to the ratepayers. Price cap regulation severs this link by basing future increases on an objective economic index less an adjustment factor reflecting productivity or other objective criteria. How then is the concept of minimum cost recovery integrated in a price cap regime?

ANSWER: It does not appear to MOAA that there is an inconsistency between a "price cap regime" which MOAA supports, and ensuring that all postal services, competitive as well as noncompetitive, meet the direct and indirect costs of those services. If attributable costs were equal or close to overall Postal Service costs, that incompatibility might exist. Given the fact that approximately 35 percent of costs cannot be causally traced to any particular type of mail, a price cap regime would impose the necessary fiscal discipline upon the Postal Service while at the same time ensuring that no particular service gets a free ride. Pertinent to MOAA's position on this issue is the fact that those economists supporting "Ramsey" or value of service pricing in order to bring about economic efficiency have also recognized that there should be a check of the ultimate Ramsey prices produced to ensure that all mail meets its variable or "attributable" costs.

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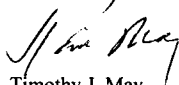
Congressman John M. McHugh
Chairman, Subcommittee on the Postal Service
Committee on Government Reform and Oversight
2157 Rayburn House Office Building
Washington, D.C. 20515-0143

Dear Chairman McHugh:

Enclosed are my responses on behalf of the Parcel Shippers Association to the written questions posed to me in your letter of October 22, 1996.

I would like to take this opportunity to thank you once again for the pioneering work you and your Committee are doing in major postal reform. It has been our pleasure to be able to provide our views and please know that we are ready to be of any assistance we can in the vital work that you are doing.

Sincerely yours,



Timothy J. May
Counsel for the Parcel Shippers Association

TJM:ecc
Enclosure

**RESPONSES OF TIMOTHY J. MAY
TO QUESTIONS SUBMITTED TO THE PARCEL SHIPPERS ASSOCIATION
FOLLOWING TESTIMONY OF SEPTEMBER 17, 1996**

Question No. 1. We have heard from some organizations opposed to many of the products and services which the Postal Service offers that directly or indirectly compete against similar offerings in the private sector. In my view, we have to allow the Postal Service some latitude in this area by which they can earn revenues that, in turn, can be used to support universal service. I want to ensure that the private sector is protected from unfair competition, which is why I included the anti-trust language, an independent Inspector General and PRC reviews, among other provisions. What are your thoughts on the issue of postal service competition with the private sector? How do you believe universal service will be provided if we limit the markets or products the Postal Service can enter?

Response to Question 1.

Generally, we would agree with you that the Postal Service should be allowed some latitude to compete directly and indirectly with the private sector as a means of earning additional revenues which, in turn, will help support universal service. As a general principle, we believe the Postal Service should be permitted to provide products which are not strictly postal where they have the ready ability to provide such products and services as a necessary byproduct and concomitant of their provision of the core postal services. We think that, on the other hand, good sense should constrain the variety of activities undertaken by the Postal Service.

The Postal Service should not undertake frivolous ventures, competing with Mom and Pop operations for the sale of postal mugs, tee shirts, and copying services. Such marginal activities unnecessarily divert the attention of postal management away from more important tasks, and there simply is not a great deal of revenue to be had in this type of venture in any event. The Postal Service should focus its new business development activities on mail related areas where there is substantial promise of new revenues (such as certain types of electronic

mail, image capturing and electronic transfer). I think it is beneficial that the Postal Service currently competes with UPS and Fed Ex and other express carriers, and we think that additional competition can only help the economy if the Postal Service is able to compete with AT&T, MCI, and others in the electronic communication media. As we have often pointed out, if the Postal Service did not compete with UPS for the home delivery of merchandise, UPS would have almost a complete monopoly over the market.

Question No. 2. As discussed in the hearing, what additional thoughts do you have regarding the most appropriate entity for carrying out the annual audit provisions of Section 3718, particularly in light of the fact that this section already requires the Postal Rate Commission to review an audit conducted by "an independent professional accounting organization (from outside of government)," rather than the PRC actually conducting the audit itself?

Response to Question No. 2.

It is a matter of judgment which agency would be most appropriate to conduct the analyses and make the findings and determinations provided for in Section 3782. In our testimony we suggested that the General Accounting Office would be a competent agency for these purposes. If properly staffed perhaps the new Inspector General could carry out these functions. What is clear to us, however, is that the Postal Rate Commission is the least appropriate agency. To reiterate, they do not have the expertise; they are in an adversary relationship with the Postal Service, and, therefore, their findings would be seen by many as biased, whether they were or not; and this function is guaranteed to create even more friction and antagonism between the Postal Service and the PRC.

In your question you state that Section 3782 of your bill "requires the Postal Rate Commission to review an audit conducted by 'an independent professional accounting organization (from outside of government),' rather than the PRC actually conducting the audit

itself." Reading and reviewing an audit such as this is quite a different thing than being able to conduct a management audit. Consequently, the fact that the PRC would review an outside audit does not in any way argue for its competence to perform the functions prescribed in this Section.

Question No. 3. On page 2 of your prepared remarks you mention the "current good health of the Postal Service." Do you feel the lack of any postal crisis, similar to prior rate cases or years of poor service scores, hurts the Subcommittee's efforts for reform and impedes our ability to gain a consensus on this issue?

Response to Question No. 3.

Certainly, the lack of a sense of crisis about the Postal Service is a deterrent to enacting reform. That can be said as well about a host of other issues pending before the Congress where remedial legislation is vitally needed for the country, and there is lacking a sense of crisis about those issues which compels the formation of consensus by the necessary parties. Postalologists often point to the collapse of the Chicago Post Office as the crisis that led to postal reform. That is not the case. The Chicago Post Office collapse occurred years before reform was actually enacted. A crisis in Chicago is not going to cause legislation to be enacted. What finally moved postal reform off the debating floor into enactment was a nationwide, wild cat postal strike. Many of us believe that the long-term prospects of the Postal Service are more seriously threatened now than they were at the time of postal reform and that the Postal Service's survival depends upon a redesign of the statute and procedures under which the agency operates.

There are indeed some issues around which all users of the Postal Service could come to agreement now. All users share a fundamental distress at the inability of the Postal Service to achieve productivity gains year in and year out, despite the expenditure of billions of dollars for automation and for other kinds of supposedly money saving investments. To the extent that your legislation identifies and solves the obstacles to increasing productivity, a ready consensus can

form around such provisions among the users. You must expect, however, that there will still be opposition from those whose toes are stepped on by the remedy, and also opposition from very powerful interests that simply do not want the Postal Service to succeed.

Question No. 4. You rather strongly support negotiated service agreements without testing. How do we answer the questions of others that these agreements would disadvantage other mailers who might be unable to take advantage of them?

Response to Question No. 4.

Our support for negotiated service agreements without testing presupposed that such service agreements would be generally available on the same terms and conditions. Your question suggests that there are those mailers who might be unable to take advantage of such agreements which would place them at a competitive disadvantage. So long as such mailers can obtain the same deal as anybody else, then their inability to meet the terms and conditions is no different than the fact that mailers who are unable to qualify for the various automation discounts currently find themselves at a disadvantage against mailers who are able to earn those discounts. Surely it cannot be that the Postal Service should, for example, have no discount offerings to the public unless every member of the public is able to meet the conditions of the discount.

Question No. 5. On page 8 of your prepared text you state that your most serious concerns focus on the "scheme under which there is one final rate proceeding to establish baseline rates." You suggest that new baseline rates be established periodically, so that the adjustment factors that are established can be utilized for their intended purpose. Are you suggesting a "hybrid" ratemaking system which employs rate caps which limit Postal Service annual rate increases on rates periodically established by the Rate Commission through an omnibus rate case procedure analogous to the current system?

Response to Question No. 5.

Yes.

Question No. 6. In your prepared testimony you voice concerns regarding the elimination of appropriations for the Postal Service and cite that generally accepted accounting principles require the Postal Service to "book as a loss up front" several year's appropriated amounts. Your suggestion that the legislation be amended to specifically provide that the Postal Service not be required to book this loss in one year, but rather to reflect the loss on its books during the years in which the appropriation would have been authorized but for this change appears reasonable. Could you provide the subcommittee with such appropriate language? Any pitfalls with language mandating this type of accounting procedure change since this would be a deviation from generally accepted accounting principles?

Response to Question No. 6.

The language needed to eliminate the necessity to book up front the losses from the elimination of authorized appropriations is being drafted by the Postal Service.

We do not believe there would be pitfalls to this one-time change in generally accepted accounting principles. In fact, this change in accounting is more in accord with what will actually be happening at the Postal Service, that is, that the loss will be recorded in the year in which the Postal Service did not get the appropriation.

Question No. 7. On page 14 of your prepared text, you state there is no justification for narrowing the postal monopoly to mail costing less than \$2. Currently, private carriage of mail is allowed when the rates charged are at least \$3 or double the postage. This rule protects Postal Service commercial ventures, especially when the Service enters markets where there is substantial private sector competition. Why should Service competitors be required to charge their customers at least \$6 (at current rates)? What are your views on my proposal for a limited demonstration project allowing access to the mailbox for non-Postal Service carriers?

Response to Question No. 7.

The question posed, as to why the Postal Service requires competitors to charge at least \$6 in order to avoid violating the postal monopoly, ignores the fact that we are talking about "letter" mail. This is not merchandise, etc., that is being protected by the Postal Service; it is what has been defined to be "letters." In fact, the current rule is a voluntary suspension of the postal monopoly laws by the Postal Service that allows private carriage of "letters" that are deemed to be time critical. The rule suspending the monopoly does not require that the private carrier charge a minimum of \$3 or double the applicable postal rates if the sender and carrier can meet the criteria to demonstrate that the delivery is "time critical." In lieu of that demonstration, the sender and the carrier are allowed to avail themselves of the suspension of the monopoly on that carriage if the rate is at least \$3 or double the applicable postal rates. In such circumstances the rule provides that it is irrebuttably presumed to be a time critical delivery (the reason being that, if it were not, that is, if this were not a delivery which was of such urgency that the Postal Service itself could not effect on time delivery, then why would the customer be willing to pay twice the applicable postal rate for delivery): Thus, the current rule, rather than being an attempt by the Postal Service to protect its commercial ventures in "markets where there is substantial private sector competition," is in fact a liberalization of the postal monopoly laws in favor of senders and private carriers. It should be emphasized that the "letter" mail market to which this rule applies is the core business of the Postal Service; and it is a market which the Postal Service

served long before any private carriers sought to provide similar service. This is hardly a case of the Postal Service entering markets where there is substantial private sector competition and using the postal monopoly to protect itself from competition. There is no evidence that the present rule, suspending the monopoly, is not adequately serving postal patrons and the market. It has always been a given that there are certain types of "letter" mail that could be delivered more cheaply by private carriers, because they did not have the burden to deliver those "letters" which were not profitable. If one accepts the essentiality of the postal monopoly in order to maintain universal service for letter mail, then there simply is no argument for a change in the current rule as proposed in the legislation.

You have also asked for my views on the limited demonstration project that would allow access to the mailbox for non-Postal Service carriers on a trial basis. In my opinion such a test would be guaranteed to raise a storm of protest among those postal patrons whose mailboxes are invaded by strangers. It is my view that postal patrons will not want to have to separate out mail delivered by the Postal Service from any and all variety of materials placed in their mailbox by private carriers. The addressees who are the subjects of this experiment will, I predict, react angrily against the Postal Service and blame it for this invasion of the privacy of their mailbox, not realizing that the Postal Service was compelled by law to conduct the test.

There is also the further legitimate question of the security of the mailbox which could very well be compromised by its open access to any private carrier. Additionally, the mailbox provides a customer an additional service. It is a convenient receptacle for the collection of the customer's outgoing mail. If the mailbox is available to all, then USPS carriers will have to thumb through all the mail to determine which articles in the box are a private party's deliveries

and which are the customer's outgoing mail. This additional time expended by the carrier could have serious cost implications to the Postal Service, as well as imposing decisions on postal carriers that they cannot be expected to make correctly all of the time.

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December 6, 1996

The Honorable John M. McHugh
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 Subcommittee on the Postal Service
 Committee on Government Reform and Oversight
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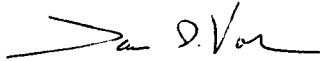
Re: Questions for the Record Regarding H.R. 3717

Dear Chairman:

I am enclosing the responses to the Questions for the Record propounded to the Advertising Mail Marketing Association as a follow-up to the hearings on the above-referenced Bill held on October 17, 1996. To facilitate inclusion of these materials in the record, each question has been restated verbatim and is followed by the response.

The Advertising Mail Marketing Association very much appreciates this opportunity to amplify its views on this very important legislative initiative. We look forward to working with you and the Subcommittee to bring this matter to an early and satisfactory conclusion in the upcoming session of Congress.

Very truly yours,



Ian D. Volner
 Counsel to
 Advertising Mail Marketing Association

Enclosure
 cc: Daniel Blair, Esq.

**ANSWERS FOR THE RECORD
FROM THE ADVERTISING MAIL MARKETING ASSOCIATION**

Question 1. We have heard from some organizations opposed to many of the products and services which the Postal Service offers that directly or indirectly compete against similar offerings in the private sector. In my view, we have to allow the Postal Service some latitude in this area by which they can earn revenues that, in turn, can be used to support universal service. I want to insure that the private sector is protected from unfair competition, which is why I included the anti-trust language, an independent Inspector General and PRC reviews, among other provisions. What are your thoughts on the issue of postal service competition with the private sector? How do you believe universal service will be provided if we limit the markets or products the Postal Service can enter?

Answer 1. The Advertising Mail Marketing Association ("AMMA") agrees with the principle that the Postal Service must have some latitude to offer products and services that directly or indirectly compete against similar offerings in the private sector. In fact, the Postal Service already faces direct competition in a variety of markets, particularly the parcel and overnight delivery markets; and it is our conviction that the existing ratemaking and classification rules significantly inhibit the Postal Service's ability to meet the competition that it faces in these and other areas.

AMMA also agrees that there is need for safeguards. Although we believe that the safeguards included in H.R. 3717 are entirely appropriate, they are not, by themselves, sufficient. For example, the anti-trust language certainly will protect competitors of the Postal Service from "predatory" (that is, below cost) pricing. However, AMMA is also concerned that, under the bill, the Postal Service would be able to inflate its rates to the monopoly classes (through the

adjustment factor) in order to generate profits which would then be invested in the offering of products or services that compete directly with mail users or their suppliers. This type of unfair competition is not covered by the anti-trust laws. That is, in part, why AMMA advocates elimination of the adjustment factor. If the Postal Service can keep its rates within the rate of inflation and generate profits that are then prudently invested in products and services that compete with the private sector, the element of unfairness between the Postal Service and its own customers (and their suppliers) is substantially diminished.

Lastly, AMMA believes that the relationship between universal service and the need for increased latitude on the part of the Postal Service to compete needs to be more precisely defined. Universal service (six day a week delivery to all or virtually all American households) is essentially a fixed cost. AMMA recognizes that the cost must be shared by all mailers. Greater latitude on the part of the Postal Service to compete with the private sector will not either increase nor decrease the cost of universal service. It will, however, generate additional mail volumes and profits which will enable the Postal Service to meet its universal service obligation at rates which are reasonable (in relation to the economy) and, perhaps, even at rates that are lower than they are today. That is why AMMA agrees with the principle that, within appropriate safeguards for both competitors and users of the postal system, the Postal Service should be given some latitude to compete with the private sector.

Question 2. As discussed in the hearing, what additional thoughts do you have regarding the most appropriate entity for carrying out the annual audit provisions of Section 3782, particularly in light of the fact that this section already requires the Postal Rate Commission to review an audit conducted by "an independent professional accounting organization (from outside of government)," rather than the PRC actually conducting the audit itself?

Answer 2. Perhaps we have misunderstood the operation of Section 3782 of the bill. We have interpreted that provision to mean that the audit of the independent professional accounting organization would conduct an annual financial audit to assure that the current rates for products in each category meet the terms of the Act. AMMA -- along with all of the other mailer organizations -- is equally concerned that service standards and performance goals be met before profit sharing takes place. We believe that an annual service quality audits must also be conducted. Quality of service audits are, obviously, quite different from financial audits. As AMMA's representative stated during the hearing, AMMA does not believe that the quality of service audits should be performed by the Postal Rate Commission. If Section 3782 is intended to require that both the annual financial and quality of service audits be conducted by an independent (non-governmental) organization, and submitted to the Rate Commission, AMMA's concerns in this regard are satisfied.

Question 3. You say on page 4 of your prepared testimony that "some form of expedited regulatory pre-clearance" is need on new products. What did you have in mind as to specifics to be reviewed during this pre-clearance process?

Answer 3. It is AMMA's belief that the expedited regulatory pre-clearance for experimental offerings should be brought under or at least closely parallel the informal rulemaking proceedings provided for by Section 553 of the Administrative Procedure Act (5 U.S.C. §553). Essentially, the Postal Service would file a request for permission to initiate an experiment with the Rate Commission, together with information regarding and justifying the proposed experiment. The Rate Commission would then give public notice in the Federal Register of the filing, affording interested parties a relatively brief (not more than 21-30 days) period of time within which to submit comments. All interested parties, including the Postal Service, would have an opportunity to reply. The Rate Commission's decision would be required to be issued within a (statutory mandated) time period following the filing of reply comments and would, by statute, entail either unqualified approval or unqualified disapproval of the experiment. To keep both the Postal Service and Rate Commission with the proper bounds of their roles, some form of judicial review, probably at the federal district court level, should be provided. The central difference between the Postal Rate Commission's existing experimental rules and the expedited pre-clearance regulatory review we envision is that, under the existing rules, on-the-record, trial-type hearings are contemplated; by contrast, under our vision of regulatory review of experimental services there would be no trial-type hearing.

Therefore, the entire process from Postal Service filing to Commission approval or disapproval should take no more than 60 days. AMMA fully recognizes that only those experiments that plainly lie outside the bounds of the legally permissible and economically rational would be disapproved. That is precisely what we intend. At the same time, the regulatory pre-clearance process puts enormous pressure on the Postal Service to propose experiments that lie within proper boundaries, and creates the requisite safeguard.

Question 4. You testified that the procedures regarding market tests for experimental products needs refinement in that the Postal Service is granted virtually unfettered authority to engage in experimentation. What types of procedures would you recommend?

Answer 4. Our proposal for expedited regulatory pre-clearance was meant to apply to, and only to, experimental offerings at the experimental stage. As we understand Section 1002 of the bill, the provisions of Section 3623 of existing law (relating to the establishment and modification of mail classification schedules) would remain intact and would apply to both situations in which the Postal Service seeks to convert an experimental offering into a permanent offering or proposes to modify existing classifications without prior experimentation. AMMA believes this to be the correct approach.

RESPONSES OF JERRY CERASALE
SENIOR VICE PRESIDENT
THE DIRECT MARKETING ASSOCIATION, INC.
TO QUESTIONS OF CHAIRMAN JOHN McHUGH

1. We have heard from some organizations opposed to many of the products and services which the Postal Service offers that directly or indirectly compete against similar offerings in the private sector. In my view, we have to allow the Postal Service some latitude in this area by which they can earn revenues that, in turn, can be used to support universal service. I want to insure that the private sector is protected from unfair competition, which is why I included the anti-trust language, an independent Inspector General and PRC review, among other provisions. What are your thoughts on the issue of postal service competition with the private sector? How do you believe universal service will be provided if we limit the markets or products the Postal Service can enter?

A1. Competition is the central core of the American economy. A company may compete against others, and, likewise, others may compete against that company. If the Postal Service competes with the private sector, the private sector must be allowed to compete with the Postal Service. That competition may be across the entire range of postal products, or, as we have today, in a narrow range of postal products (*i.e.*, ground parcel service, overnight mail, etc.). The main issues relevant to Postal Service competition with the private sector are the letter monopoly and the mailbox monopoly. The Postal Service must not be able to utilize these monopolies to the detriment of private sector companies in both competing with them and preventing them from competing with it. If there is fair competition, The DMA encourages the Postal Service to compete with the private sector and *visa versa*.

Universal service is vital to the member companies of The DMA. Under H.R. 3717, the letter monopoly will remain. In the short run, that will maintain universal service. However, as new technologies continue to bring alternative forms of communication to a larger and larger portion of the population, the letter monopoly may not be able to keep enough volume in the US Mail to support universal service as we now know it. The Postal Service must be given flexibility to meet competition, fairly, without lengthy regulatory delays to allow it to make every effort to maintain adequate mail volume. The Postal Service should be given the flexibility to test new products to boost revenues, but this is not a substitute for the Postal Service to control costs for its core businesses which produce over \$55 billion annual revenue. If the Postal Service fails due to regulatory constraints, its failure to control costs, its failure to offer the services demanded by the public, the advent of technology, or a combination of some or all of these, either the taxpayer will have the ultimate responsibility of supporting the infrastructure necessary to provide universal mail delivery service, or universal service will be available in some remote areas only at prices far higher than today's.

2. As discussed in the hearing, what additional thoughts do you have regarding the most appropriate entity for carrying out the annual audit provisions of Section 3782, particularly in light of the fact that this section already requires the Postal Rate Commission to review an audit conducted by "an independent professional accounting organization (from outside of government)," rather than the PRC actually conducting the audit itself?

A2. The DMA does not object to the PRC reviewing the independent annual audit of the Postal Service. In these days of lack of trust, an independent review of an audit financed by the Postal Service, hopefully, would increase faith in the results of the audit. Moreover, the audit would cover monopoly services, and a review outside the Postal Service is logical. The review could go to GAO or the Congress itself rather than the Postal Rate Commission. However, the demands on the resources of both Congress and the GAO might eliminate that choice. In any event, the PRC should not conduct the audit itself unless it adds audit personnel to its staff complement. With all these caveats about alternatives, the provisions of the bill appear to be the best course of action.

3. I am interested in your comments regarding the Postal Inspection Service. Are you suggesting we disband it and transfer its law enforcement functions to other law enforcement agencies? Would you expand on why you feel this way?

A3. As expressed in my letter of September 19, 1996, (a copy of which is attached) The DMA is concerned that mailers must fund through rates law enforcement activities which users of Postal Service competitors receive through taxpayer financed police departments. The DMA fully supports, and believes mailers should fund, the anti-fraud programs of the Postal Inspection Service. The DMA has worked with the Inspection Service for many years to put fraudulent marketers out of business. A fair marketplace is needed to grow direct marketing, and the Inspection Service is a great asset to maintaining such a marketplace. However, for the non anti-fraud law enforcement operations of the Inspection Service, The DMA believes that the Postal Service should be reimbursed by taxpayers for the costs of those operations. Otherwise, Postal Service competitors have an unfair advantage--their customers do not pay for law enforcement in the prices they pay.

4. Your fellow panelist, Mr. Volner, recommended in his testimony that I drop the adjustment factor and rely on increases tied directly to GDPPI. What are your views regarding this suggestion? If this recommendation was adopted, do you still believe that the time frame between adjustment factor cases should be shortened?

A4. The DMA opposes an adjustment factor which would allow the Postal Service to raise rates higher than the government-produced inflation index, whatever that index might be. Therefore, The DMA prefers the use of GDPPI without adjustment over the provisions of the bill. If there were no adjustment factor, there would be no need for an adjustment factor case. The PRC would review costs and price relationships during a

Postal Service rate case or, as The DMA recommended in my testimony, a periodic “base rate case”.

5. You say in your prepared statement that “the \$2.00 threshold for private carriage of letter mail in Section 703 is too great a change in too short a time.” Why?

A5. The current threshold is \$6.00, which covers a significant portion of Priority Mail. Priority Mail is a rapidly growing class of mail and contributes the third highest amount toward Postal Service overhead—behind only First- and third-class mail. The Postal Service must be able to adjust to a sudden, direct competitive pressure on Priority Mail. As major users of both First- and third-class mail, the members of The DMA cannot afford to shoulder the burden of a sudden loss of institutional cost contributions from Priority Mail. The Postal Service and The DMA’s members need time to adjust. That is why The DMA strongly recommends that a change in the letter mail threshold from \$6.00 to \$2.00 be phased in over time.

6. I appreciate your suggestion that rate adjustments within each rate basket for the noncompetitive classes be adopted on a uniform percentage basis. Doesn’t this limit the Postal Service’s flexibility? Why do you think that the rate adjustments within individual baskets should not differ?

A6. Uniform rate adjustments within noncompetitive class rate baskets would limit Postal Service flexibility compared to the provisions in the bill. Since the bill provides significantly greater flexibility to the Postal Service for competitive classes, The DMA does not believe that the flexibility in the bill for noncompetitive classes is needed. The average rate cap of the basket would not prevent the Postal Service from raising rates on a particular **noncompetitive class** far above the average rate cap. A noncompetitive class should not be so disadvantaged, especially since the Postal Service has such broad discretion over the rates for competitive classes.

7. Your fellow panelist Mr. Volner believes it is imperative that the law mandate a baseline rate proceeding before the implementation of price cap regimen. You testified that the bill should not force a rate filing earlier than necessary. Why the disagreement? Do you share Mr. Volner’s views that if price cap adjustments are based on baseline rates established under current law the resultant price cap rates will be either artificially inflated or insufficient for the Postal Service to meet its revenue needs in the price cap? How should the Commission handle the current consideration of contingency reserves and prior years’ losses in such a baseline case?

A7. There is no disagreement between Mr. Volner and The DMA on the issue of a baseline case. I agree that before a price cap regimen is implemented, there should be a baseline case. However, the baseline case should not be required at a specific date in the bill. Whenever the Postal Service determines that a change in rates is required, **after the bill becomes law**, that case would become the baseline case. The bill as written would

mandate a baseline case within a year. The price caps provisions of the bill should become effective after a baseline case--be it within one year or in the tenth year after enactment.

Any baseline case should not have a provision for contingencies. Since the Postal Service may raise rates each year at approximately the rate of inflation, there should be no need either for a contingency or for recovery of prior years' losses. With annual inflation increases and the authority to seek a PRC rate case, the Postal Service should not have the opportunity to recover prior years' losses. If there is a loss, it would be the fault of management. The Congress could consider allowing a prior years' loss recovery for losses which occurred prior to enactment of the bill. If included in the bill, those losses must be "paid off" within the timetable set in the baseline case. If the timetable is missed, the opportunity for loss recovery would be lost. Without contingency and prior years' loss provisions, such a baseline case would not produce the problems raised by Mr. Volner.



DIRECT MARKETING ASSOCIATION, INC.

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JERRY CERASALE
SENIOR VICE PRESIDENT, GOVERNMENT AFFAIRS

September 19, 1996

The Honorable John McHugh
Chairman
Subcommittee on Postal Service
Committee on Government Reform and Oversight
U. S. House of Representatives
B-349C Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman McHugh:

I thank you for having Direct Marketing Association appear at your postal reform hearing on September 17, 1996. I would like to take this opportunity to expand and clarify one portion of DMA's testimony and request that this letter be included in the record, preferably immediately following my testimony, or as an addendum to it.

H.R. 3717 removes authorization for all appropriations to the Postal Service thereby requiring mailers to fund nonprofit mail phased rates and old Post Office Department workers' compensation liabilities. DMA's testimony points out that mailers currently and since 1971 have funded the law enforcement activities of the Postal Inspection Service. No Postal Service competitor is required to fund a separate law enforcement organization. As we move to the 21st century with greater competition for the Postal Service, funding the Inspection Service which performs excellent police service to the public will put the Service at a cost disadvantage.

The anti-fraud work of the Postal Inspection Service is of critical benefit to the entire public and all mailers, including the direct marketing industry. Its efforts go beyond the mail into other media. DMA has worked closely with the Inspection Service in fraud matters over the telephone. This anti-fraud work should continue and, in fact, expand in the future.

Congress should consider a means to reimburse the Postal Service for these important law enforcement functions. Otherwise in a competitive environment the Postal Service may be forced to limit these functions. If some or all of the Inspection Service's law enforcement

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functions are transferred to other agencies in order to reduce Postal Service costs, those agencies must be required to fund and continue these functions at the same or greater level than the Inspection Service. However, the most desirable approach is to have the Postal Service reimbursed for its general law enforcement functions.

I appreciate this opportunity to expand on DMA's comments on your bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay C. [unclear]". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

cc: Jonah Gitlitz

Mr. MCHUGH. As I noted in my opening remarks, the second of our two panels is comprised of Mark Silbergeld, the Alliance of Nonprofit Mailers, and Mr. Lee Cassidy of the National Federation of Nonprofits.

Gentlemen, thank you for being here and I appreciate your patience.

As you know from your own experience if you could please rise and repeat after me on the oath.

[Witnesses sworn.]

Mr. MCHUGH. The record will show that once again the two gentlemen, both witnesses responded to the oath in the affirmative. Thank you again, as I said, for being here. We look forward to your comments and keeping in the tradition of the first panel why don't we start on my left, your right, with Mr. Cassidy and any opening remarks you may wish to make, sir.

STATEMENTS OF LEE CASSIDY, EXECUTIVE DIRECTOR, NATIONAL FEDERATION OF NONPROFITS; AND MARK SILBERGELD, PRESIDENT, ALLIANCE OF NONPROFIT MAILERS

Mr. CASSIDY. Thank you, Mr. Chairman. I am Lee Cassidy, executive director of the National Federation of Nonprofits. All of the Federation members, more than 300 nonprofit organizations in total, are significant users of mail. They will be affected in numerous ways by H.R. 3717, so we appreciate having this opportunity to comment upon it.

Over the last several years, nonprofits have been through annual appropriations battles to assure full funding of revenue foregone by the Postal Service, followed by a multiyear effort to end revenue foregone. That effort ended up reducing annual appropriations by more than a half billion dollars.

The subcommittee staff has been especially helpful to us in explaining many of the provisions of the bill. We make our comments based on our current understanding, which may not be our final understanding. For that reason, we may amend these comments at some point in the future.

There is much to like and some things we dislike in H.R. 3717. The Federation has elected to comment only on a few parts, those that we believe have special relevance to our members. And I will refer to them by section.

Section 104: we applaud the proposal to create an Office of Inspector General. It is clear to us that an independent and continuous overview of the Postal Service, as a \$58 billion organization, is both warranted and necessary. We believe it is appropriate to provide a self-funding mechanism for the Office of Inspector General with a budget subject only to congressional approval. Postal service management should not be able to affect any operations of the Office of Inspector General, and especially not by starving it for funds.

Section 503: we are greatly concerned about the proposed elimination of what we believe is a small annual appropriation for revenue foregone for four reasons: First, the Revenue Foregone Reform Act of 1993 was the compromise result of a multiyear effort by non-

profits, congressional staff, commercial mailers, Postal Service, Postal Rate Commission staff, and others.

It was reluctantly agreed to by all the participants, including Members of Congress from both Houses and both political parties. The legislation was a unified package, and all the parties understood that changing any single element would have altered the balance. For that reason, we believe that in spite of the worthy goal of making the Postal Service completely self-sustaining, we are obliged to continue to support the compromise and object to the elimination of the small annual appropriation.

Second, the appropriation called for in the Revenue Foregone Act is meant to reimburse the Postal Service for revenues which have actually been foregone. Congress established the phased-in schedule of nonprofits rates with the understanding that "full" rates for nonprofits would not be achieved until step six in October 1998. Until that time the Postal Service continues to forego revenues to which it is entitled. The Postal Service should receive those funds and we urge you to not eliminate the appropriation.

Third, the elimination of the appropriations envisioned by Sections 501, 502 and 503 would result in an annual revenue shortfall to the Postal Service of about \$125 million. That might collectively be called the cost of the Postal Service's public service obligations.

We agree that the Postal Service should continue to meet those obligations, but we also agree that Congress, having ordered that the obligations be continued, should impose the cost of those obligations upon the taxpayers and not on the customers of the Postal Service.

And the fourth reason, I don't necessarily expect the Chair to adopt as one of his own, but certainly as one of ours is that passage of the Revenue Foregone Act has had the favorable side effect of dramatically reducing long existing friction between nonprofit and commercial mailers.

Relations between regular rate and nonprofit mailers are better than ever. Cutting off the annual appropriation for free mail from the blind, payments for disability incurred while working for the Post Office Department, and amortization of revenue foregone would return to relations between nonprofits and commercial mailers the friction that once existed and it would be more difficult for us to work together in the future to solve the many problems that all mailers have in common.

Section 602: authorizes the Postal Service to create an option in the periodicals class of mail for nonprofit organizations to acquire subscribers upon request of those subscribers. Commercial publishers have had the requester option for many years. The provision would place nonprofits on parity with commercial publishers so we believe that this provision is unobjectionable.

The requester language included in H.R. 3717 was initially suggested by the Federation. Subsequently, the Alliance of Nonprofit Mailers represented by Mr. Silbergeld today made suggestions which we found acceptable and desirable so the two organizations have jointly prepared amendment language which we forwarded to your staff.

The requester option is an issue of great importance for nonprofit publishers. Because of its importance, we and the Alliance are

working together to achieve what we hope will be early passage of this provision and we hope that it can become part of Title 39 in the shortest possible time.

Section 604: the Federation does not object to the principle of volume discounts for large customers provided those discounts equally and fairly are offered to all mailers and provided the discounts can be justified on an economic basis.

The recently completed classification reform proceedings offer potential discounts for all but the smallest mailers, and to a significant extent those discounts are volume-related, inasmuch as most small mailers cannot qualify, and most large mailers can. Many members of the Federation will experience higher rates as a result of classification reform.

Nonetheless, if a rational case can be made for discounts based solely on volume, we do not object. We do believe the legislation should be strengthened to assure that there is no shifting of costs from large to smaller mailers. Mailers who are offered volume discounts must process their mail in ways that minimize Postal Service costs; and the law probably should specify many of those ways.

We believe that overall volume of individual mailers may not by itself be adequate justification for volume discounts. For example, if a large national mailer delivers segments of mailings to many different Postal Service facilities, perhaps that mailer should be treated not as a single entity but as many, each with its own volume level.

Loss of significant mail volume would be harmful to all bulk mailers because the Postal Service's fixed costs would be amortized over a smaller base, resulting in higher prices for all mailers. We hope that additional safeguards will be added to the legislation to assure that discounts will be cost justified and fair to those that do, and do not, receive them.

I want to take this opportunity to comment on an issue that is only partially addressed in H.R. 3717, and that issue is adequate notice from the Postal Service to its customers. Under current law, rates can be changed in as little as 10 days, which is grossly inadequate.

Our prepared testimony includes an example of how inadequate notice put one of our member charities at risk to the extent of \$100,000 less than 2 years ago. That is just one of many situations where the need for much greater advance notice is required both for rate increases and for changes in regulations.

We commend the chairman's proposal to require 45 days notice to change rates. We propose also that changes in regulations carry a minimum of 120 days notice and that any change as significant as the recently completed classification reform a minimum of 180 days.

We had no intention to comment on governance, but having read Mr. Silbergeld's testimony, we wholeheartedly agree with his comments, particularly those relating to staff for the Board of Governors. The Board needs staff.

One last comment. Over the years, each time significant postal legislation has been proposed, there has been discussion of whether changes should be made to further limit the eligibility of nonprofit organizations who have preferred postage rates. Appended to our

prepared testimony is a short statement of the long history of congressional support for nonprofit postage rates.

In addition, we forwarded to the subcommittee staff a much longer report of a study the Federation commissioned late last year, which demonstrates that history of support. We hope that the staff and the members of the subcommittee will read the report and continue that long tradition.

I repeat our appreciation for the opportunity to present our views today and as I noted earlier, as this legislation is further developed, we may have additional comments. Thank you, Mr. Chairman.

[The prepared statement of Mr. Cassidy follows:]

TESTIMONY OF LEE M. CASSIDY
BEFORE THE HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON POSTAL SERVICE
September 17, 1996

I am Lee M. Cassidy, Executive Director of the National Federation of Nonprofits. The Federation is a coalition of more than 300 nonprofit organizations including charities; colleges, universities and their alumni associations; symphonies, museums and other arts organizations; religious and veterans groups; and others. All of our members are significant users of mail. They will be affected in numerous ways by HR 3717, the legislation the Chairman has introduced, and we appreciate having this opportunity to comment upon it.

We commend the Chairman for taking on such a daunting task. Over the last several years nonprofits have been through annual appropriations battles to assure full funding of revenue forgone by the Postal Service, followed by a multi-year effort to end revenue forgone. The Federation is pleased to have played a leadership role in that effort, which reduced annual appropriations by more than a half-billion dollars. We know that HR 3717 will go through numerous revisions and amendments, and we will support the subcommittee's efforts to craft a final bill that will serve the Postal Service and its customers, even if we may disagree with some specifics.

The changes proposed in HR 3717 are impressively broad, and we have studied hard to fully understand them. The subcommittee staff has been especially helpful in explaining many of the provisions. We make these comments based on our current understanding, which may not be our final understanding. For that reason, we hope you will understand if we amend these comments in the near future.

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While there is much to like - and some things we dislike - in HR 3717, the Federation has elected to comment only on a few parts...those which we believe have special relevance to our members. I will refer to them by Section.

Section 104 - We applaud the proposed separation of the office of Inspector General from that of Chief Postal Inspector. It is clear both from recent reports from the General Accounting Office and from previous studies by the GAO and others that an independent and continuous overview of the Postal Service, the operations of which would make it one of the largest corporations in the world, is warranted and necessary. More than \$56 Billion of ratepayers' money requires monitoring in addition to, and in greater detail than, that which this subcommittee can provide.

We believe it is appropriate to provide a self-funding mechanism for the office of Inspector General, with the budget subject only to Congressional approval. Postal Service management should not be able to affect any operations of the Office of Inspector General, and especially not by starving it for funds.

Section 503 - We are greatly concerned about the proposed elimination of the small annual appropriation for revenue forgone, for four reasons.

First, the elimination of revenue forgone as a major appropriation was first suggested by the nonprofit community nearly five years ago. We recognized the difficulty Congress had continuing the appropriation at a time when there was, as there still is, a critical need to reduce the budget deficit by eliminating all possible discretionary expense. Over a period extending for more than two years we met with Congressional staff, commercial mailers, the Postal Service, Postal Rate

Commission staff, and many others, working to craft a compromise. The Revenue Forgone Reform Act of 1993 was the result of that multi-year effort. It was, albeit reluctantly, agreed to by all the participants, including Members of Congress from both houses and both political parties. The legislation was a unified package, and all the parties understood that changing any single element would have altered the delicate balance. For that reason we believe that, in spite of the worthy goal of making the Postal Service completely self-sustaining, we are obliged to continue to support the compromise so painfully achieved just three years ago, and we object to the elimination of the small annual appropriation.

Second, the small annual appropriation called for in the Revenue Forgone Reform Act is meant to reimburse the Postal Service for revenue which has actually been forgone. There was a partial failure of appropriation for several years prior to the Revenue Forgone Reform Act. Moreover, Congress established the current phased-in schedule of nonprofit rates with the understanding that "full" rates for nonprofits would not be achieved until Step 6, in October 1998. Until that time, the Postal Service continues to forgo revenue to which it is entitled, and which the 1993 Act intended to appropriate over the 42-year period established by the legislation. The Postal Service should receive those funds, and we urge you not to eliminate the small annual appropriation.

Third, the elimination of the appropriations envisioned by Sections 501, 502, and 503 would result in an annual revenue shortfall of approximately \$125 million. One might collectively call the three appropriations the cost of the Postal Service's "public service" obligations. We agree that the Postal Service should continue to meet those obligations. But we also believe that Congress, having ordered that the obligations be continued, should impose the cost of those obligations upon the taxpayers,

not the customers of the Postal Service.

Fourth, passage of the Revenue Forgone Reform Act has had the favorable side effect of dramatically reducing long-existing friction between nonprofit and commercial mailers. The feeling that special rates for nonprofits were causing commercial rates to be higher than necessary, which was especially prevalent during the period of partial failure of appropriation that lasted for several years, has since been reduced and almost eliminated. Relations between regular rate and nonprofit mailers are better than ever. Completely cutting off the annual appropriation for free mail for the blind, payments for disability incurred while working for the Post Office Department, and amortization of revenue forgone, would return the friction to relations between nonprofits and commercial mailers, making it more difficult to work together in the future to solve the many problems all mailers have in common.

Section 602 - HR 3717 includes language authorizing the Postal Service to create an option, in the Periodicals class of mail, for nonprofit organizations to acquire subscribers upon request of the subscribers. We greatly appreciate the inclusion of that language. Commercial publishers have had the requester option for many years, and the provision would place nonprofits on parity with the commercial publishers.

In our many and lengthy discussions with the Postal Service in preparation to the nonprofit classification reform case being filed with the Postal Rate Commission, we asked several times for the requester to be included in the filing. The Postal Service view was that the requester could not be included because only Congress had the authority to create such an option. At no point did the Postal Service object to the principle of the requester, nor did any intervenor in the case.

In fact, one of the very few substantive issues in that case was our presentation that the Commission did and does have the authority to recommend, and the Postal Service did and does have the authority to propose, a requester option for nonprofits. The issue was raised as a question of law, not of policy or economics. Given that background, we believe that this provision of HR 3717 is unobjectionable.

Having a requester option would mean that college alumni associations could send free copies of their magazines to alums who have not paid dues, as a means of enticing them to "request" a subscription, and eventually be convinced to become dues-paying members. Similarly, unions could send newsletters to retirees, and suggest they become subscribers upon request. Neither of those groups could be expected to pay for subscriptions to periodicals, but the requester option would give nonprofit publishers an opportunity to entice the recipients to become subscribers, thus increasing Postal Service revenue.

For all nonprofit organizations, the advantages of mailing at Periodicals rates (vs. Standard rates) include faster handling and delivery, forwarding to subscribers who have moved, and fewer restrictions on what can be advertised.

And, most importantly, having the requester option would give nonprofit publishers the same opportunity commercial publishers have received for years.

The language authorizing the requester option, included in HR 3717, was initially suggested by the Federation. In subsequent consultations with the Alliance of Nonprofit Mailers, which made suggestions we have found acceptable and desirable, the two organizations have jointly prepared amended language, which we have forwarded to your staff.

The requester option is an issue of great importance for nonprofit publishers. In the recently completed nonprofit mail classification reform case, the Federation spent thousands of dollars in legal fees petitioning the Postal Rate Commission to decide in our favor. The Commission did not agree, though we believe their decision was based on misunderstanding, rather than different interpretation of the law.

Because of its importance, we and the Alliance of Nonprofit Mailers are working to achieve early passage of this provision. We appreciate the Chairman's efforts to move it along, and hope that the requester option can become part of Title 39 in short order.

Section 604 - The Federation does not object to the principle of volume discounts for large customers, provided those discounts are equally and fairly offered to all mailers, and provided the discounts can be justified on an economic basis.

The recently completed classification reform proceedings for First-Class, Publications, and Standard mail offer potential discounts for all but the smallest mailers, in return for enhanced preparation of bulk mailings. To a significant extent, therefore, those discounts are volume-related, inasmuch as most small mailers cannot qualify, and most larger mailers can. Many members of the Federation will experience higher rates as a result of classification reform.

Nonetheless, if a rational case can be made for discounts based solely on volume, we do not object. We do believe the legislation should be strengthened to assure that there is no shifting of costs from large to smaller mailers; that mailers who are offered volume discounts must process their mail in ways that minimize Postal Service costs, and the law should specify, for

example, that delivery of bulk mailings to Postal Service facilities must occur only at specified off-hours.

We are concerned that overall volume of individual mailers may not, by itself, be adequate justification for volume discounts. For example, if a large national mailer delivers segments of mailings to many Postal Service facilities, perhaps that mailer should be treated not as a single entity, but as many, each with its own volume level.

Loss of significant mail volume would be harmful to all bulk mailers because the Postal Service's fixed costs, which are significant, would be amortised over a smaller base, resulting in higher prices for all mailers. But we hope that additional safeguards will be added to the legislation to assure that discounts are cost-justified, and fair to those who do and do not receive them.

I want to take this opportunity to comment on an issue that is only partially addressed in HR 3717. That issue is adequate notice from the Postal Service to its customers. Under current law, rates can be changed in as little as 10 days, which is grossly inadequate. In many cases in the recent past, mailers have had materials en route from their own plants to postal facilities, only to be told upon arrival that the amount of postage was inadequate.

In one recent case involving a charity which is a member of the National Federation of Nonprofits, the charity was preparing a mailing of nearly a million pieces, including a return envelope to which a live First-Class stamp was to be affixed. The charity planned to drop the mailing around January 1, 1995. In a rate case that was then active, the Postal Service had requested an increase in the First-Class rate to 32 cents, but the Postal Rate

Commission recommended, on November 30, 1994 that First-Class mail be increased to just 31 cents. So the charity was concerned, from that date on, about the amount of postage to put on the return envelopes. They could either risk the higher amount, a gamble that would cost them nearly \$100,000 if they guessed wrong, or put the lower amount on the envelope and risk not having the return envelopes accepted.

During that same time frame there also was extensive discussion in the mailing community about the effective date of the rate increase. Many mailers recommended January 8, because of the difficulty of making changes in a short time frame.

The Board of Governors decided on 32 cents on December 6, but didn't announce the effective date, which was January 1, until December 12. It was extremely difficult for the charity, which processes its own mail, to affix the proper amount of postage, and drop the mailing before January 1, to take advantage of the lower (existing) rate for the overall mailing, which was sent at nonprofit Third Class rates.

This is but one of many situations where the need for much greater advance notice is required, both for rate increases and for changes in regulations. In the recently completed mail classification reform case for regular rate mailers, completely new software needed to be developed, a process that usually takes six months or more, but software developers had less than five months to prepare. Some suppliers made it, some didn't. Mailers have paid the price.

Some of the final regulations for Periodicals were not published in the Federal Register until mid-April of this year, though they took effect on July 1. That's less than 3 months notice to change the way mail is prepared.

So we commend the Chairman's proposal to require 45 days notice to change rates, but propose also that changes in regulations carry a minimum of 120 days notice, and any change as significant as classification reform a minimum of 180 days.

One last comment. Over the years, each time significant postal legislation has been proposed, there has been discussion of whether changes should be made to further limit the eligibility of nonprofit organizations for preferred postage rates. We are grateful that the Chairman has promised, and has made good on that promise, to protect nonprofit rates.

Appended to this testimony is a short statement of the long history of Congressional support for nonprofit postage rates. In addition, we have forwarded to the subcommittee staff a much longer report of a study the Federation commissioned late last year, demonstrating that history of support. We hope that the staff and members of the subcommittee will read the report, and continue that long tradition.

I repeat our appreciation of the opportunity to present our views today. As I noted earlier, as this legislation is further developed we may have additional comments.

Thank you, Mr. Chairman.

PREFERRED POSTAGE RATES FOR NONPROFITS ARE CRITICAL TO RAISING FUNDS AND COMMUNICATING WITH THE PUBLIC

Nonprofit postage rates are a direct extension of the public policy of granting tax exemption to nonprofit organizations which meet criteria specified by Congress. Once a small fraction of commercial bulk rates, nonprofit second class and third class rates now are approximately two-thirds of commercial rates. The postage rate for advertising matter in second class mail is the same for nonprofits and commercial publishers.

Nonprofit rates have increased 20 times in 24 years, 675 percent since the Postal Service was created in 1971. During the same period, the price of a First Class stamp has increased just 8 times, by 300 percent. Moreover, eligibility for nonprofit rates has been significantly restricted twice during that period.

More than 100 years ago, Congress recognized the unique contributions of the nonprofit sector to American society, by authorizing preferred postage rates and the eligibility of certain publications for those special rates.

In 1894, "to further the objects and purposes of....society", Congress admitted the publications of certain organizations to the Second Class rate. Congress reiterated support for nonprofit organizations and preferred rates again in 1917, 1927, 1946, 1949, 1950, 1951, 1953, 1954, 1956, 1958, 1967, 1970, and numerous times since the creation of the Postal Service in 1971. In 1970, the Senate Committee on Post Office and Civil Service made this strong statement in support of nonprofit rates:

"[T]he Committee agrees that this report should specifically express committee concern over the rates to be established for certain classes of mail.

Accordingly, the committee alerts the Rate Commission established by this bill to the public service which certain preferred rates have historically performed.

Reduced rates...were enacted for a very good reason -- that the public generally benefits from such rates."

In 1973, the House Post Office Committee urged Congress to recognize the educational, cultural, scientific, and informational value of certain (nonprofit) mail, and one member of the Committee chastised the Postal Rate Commission for ignoring "fifty-five years of Congressional policy concerning the rate treatment of nonprofit community oriented organizations."

In 1976, Senator Goldwater noted flaws in the ratemaking criteria of the Postal Reorganization Act as they applied to nonprofits. His leadership resulted in amendments including a provision requiring the Postal Rate Commission to consider the "educational, cultural, scientific, and informational value to the recipient", when setting rates. The same amendments recommended that there be a phased-in schedule to have nonprofits pay their share of institutional costs (of the Postal Service), a suggestion proposed again by nonprofits in 1991, and enacted in 1993 as part of the Revenue Forgone Reform Act. When the 6-step phase-in is complete in October 1998, nonprofit rates will include a significant contribution to institutional (overhead) costs, determined by a Congressionally-mandated formula.

At a time when the demand for services provided by the nonprofit sector is increasing, it is critical to charities and other nonprofits that they have continued access to special postage rates, to raise funds to carry out their missions.

FOR MORE THAN 100 YEARS, CONGRESS HAS SUPPORTED
SPECIAL POSTAGE RATES FOR NONPROFIT ORGANIZATIONS

This study, prepared for the National Federation of Nonprofits by Fred Dombro, Esq., documents the history of nonprofit postage rates, and the restrictions imposed along with those rates.

After the American Revolution, the U.S. Post Office became viewed as an aid in building our nation, not as a profit making business. But by the late nineteenth century the Post Office's subsidization of mailings by nonprofit organizations was called into question. Though this debate has periodically recurred over the last 100 years, preferred postal rates have been preserved as a conscious policy of successive Congresses.

Special reduced mailing rates for nonprofits reflect Congress' perception that the government should foster the dissemination of mail containing information and ideas that benefit not only the sender and recipient, but society at large. Congress has consistently appreciated that the savings to nonprofits from preferred mail rates enables them to address the burdens upon our society that would otherwise fall upon the government's shoulders.

The Mail Classification Act of 1879 established a distinction between newspapers and periodicals on the one hand, and bulk mail on the other, at a time when the delivery of all publications was subsidized.

In 1894, Congress admitted the publications of certain organizations to the Second Class rate by relaxing the rules of eligibility. In so amending the postal law, it required that the publications had "to further the objects and purposes of such society."¹

The War Revenue Act of 1917 established special rates for nonprofit publications already qualifying for Second Class mail rates. It recognized that rates for nonprofits did not cover their costs, but Congress preserved the preferred rate because it perceived a benefit to the nation.

A zone system, which varied in proportion to the amount of advertising contained in a piece of mail and distance it was mailed, was established to raise money for the war. Nonprofit publications were specifically exempt from this zone system.

¹Act of July 1894, 28 Stat. 104, 105.

In the 1920's, commercial publishers waged a campaign to roll back a schedule of rate increases set by The War Revenue Act of 1917. When this effort was met by pressure on Congress to raise postal wages, the nonprofit preference was again scrutinized. The Post Office estimated that one million dollars were foregone each year due to the preferred rate for nonprofit publications.

Congressional supporters of nonprofits were quick to point out that such profits, "are used to take care of homes for the aged or homes for children, for the relief of persons who would otherwise be upon the public and a public charge."² Senator Robinson of Arkansas noted that:

"The periodicals and newspapers dealt with in paragraph (3) are not published for profit; they are published for religious and educational purposes. It had been the policy of the government prior to the act of 1925 to treat them generously in the matter of postal rates. Since this is a bill the purpose of which is to reduce postal rates which were raised in 1925 and to restore the rates which existed prior to 1920, I believe, it occurs to me that it would be fair and just to adopt this amendment. . . . It is a wise policy to encourage the distribution through the mails of newspapers or periodicals maintained in the interest of religious, educational, scientific, philanthropic, agricultural, labor, or fraternal organizations or associations".³

The 1946 Heiss Report was an independent analysis of Second Class mail, prepared by a special consultant to the Post Office. It scrutinized the revenues lost to preferred publications, and recommended that the exempt rate should be extended to organizations that provided specific benefits for persons other than their members.

Third Class nonprofit rates emerged in much the same way the Second Class rate was created in 1917. In 1951, Congress exempted nonprofit bulk mailings from a rate increase on commercial mailings. The new Third Class was the result of two years of lengthy hearings, during which the Senate and House Post Office Committees heard compelling testimony from nonprofits.

The National Society for Crippled Children and Adults testified that any increase in the third class rate would diminish services

²"Should Religious Publications Retain Privileged Rate Status?" Congressional Digest, Feb. 1925, p166.

³ Cong. Rec., Feb. 14, 1927, p.3664-5.

provided to crippled persons. A spokesman for the Society said that the impact on its Easter Seal campaign could be measured in services denied to the crippled. The rate hike would have meant an additional \$250,000 in postage costs to the Society, and Philip G. Rettig used this figure to illustrate his Society's position:

"This 250,000 is the equivalent of the total annual salary of some 90 physical therapists, or 90 occupational therapists, or 90 speech therapists. We are confident that it is not the intent of this Committee or of Congress to deprive thousands and thousands of children and adults of needed care.⁴

Rettig added that in West Virginia, an extra \$1,300 in postage costs could deprive crippled children of 450 camping days.⁵

Throughout the ensuing months, many nonprofits testified that increased rates would directly result in reduced services. Spokespersons for the National Tuberculosis Association, sponsor of the Christmas Seal Campaign, and the Disabled American Veterans testified to this effect.⁶ In other testimony, the National Society for Crippled Children and Adults responded to questions about the difficulty for the Post Office in determining eligibility by saying that the Internal Revenue Service, "does quite an effective job of ascertaining the charitable status of an organization."⁷ Later in the 81st Congress, the National Foundation for Infantile Paralysis, sponsor of the March of Dimes, reaffirmed this view.⁸

The 1951 legislation extended preferred rate status to bulk printed materials mailed by qualifying nonprofits, through an

⁴Adjustment of Postal Rates, Part 2: Hearings on S. 1103 before the Senate Comm. on Post Office and Civil Service, 81 st Cong., 1 st sess. (1949), p.702.

⁵id

⁶Postal Rate Increases: Hearings on H.R. 2945 before the Senate Comm. on Post Office and Civil Service, 81 st Cong., 2 nd sess. (1950), p.188-90.

⁷Postal Rate Increases, Vol. 2: Third - and Fourth Class Mail and Special Services: Hearings on H.R. 2945 before the House Comm. on Post Office and Civil Service, 81 st Cong. 1 st sess. (1949), pp. 1051-2; note 54 p.203-10.

⁸Postal Rate Increases: Hearings on H.R. 2945 before the Senate Comm. on Post Office and Civil Service, 81 st Cong., 2 nd sess. (1950), p.184-5.

exemption from the enacted rate increase. During the hearings held on this legislation, some nonprofits argued that increased postage costs would force them to cut back their medical and social services, thereby increasing the burden upon the government. Twenty-one nonprofits testified before the Senate that an increase would directly result in cuts in services, prompting three Senators to discuss the burden of increased rates on nonprofits:

Senator CARLSON. Mr. Chairman, only this: Mr. Goodman has presented very forcibly the appeal that will be confronted by this committee from the people interested in the humanitarian angle of civil life in this nation and it is going to be very difficult to avoid putting any increases on those groups.

Senator PASTORE. Personally I think it would be a great calamity in this country if we did anything that would curtail the services of these organizations.

The CHAIRMAN. I would like to say right now the subcommittee was unanimous pertaining to that matter. The full Committee was unanimous on it at the time, and it reported it out to the Senate along that line, that we ought not do anything that would handicap any of the organizations you mention here. Of course we placed them in the category of some others that did not pay income taxes, that is the eleemosynary corporations."⁹

There was pressure on Congress to raise third-class postage rates, so that the subsidy could be reduced, thereby reducing the so-called postal deficit. As the issue of eligibility continued to complicate the debate, Senator Russell Long went to the floor in defense of subsidies for charitable organizations:

I should like to point out to the Senator that I am not in this amendment proposing to increase any rate. The committee bill proposes to raise the penny postcard from 1 cent to 2. I am proposing that that increase shall not apply to charitable organizations....That would mean that we would be exempting about 5 percent of the penny post cards which in my opinion, constitute a class of mail which is above any other class, entitled to be exempt from this rate increase.

.....I agree that the amendment calls for a subsidy for the

⁹Adjustment of Postal Rates: Hearings on S. 1046, 1335, 1362 before the Senate Comm. on Post Office and Civil Service, 82nd Cong., 1st sess. (1951), p. 150.

service clubs and for charitable organizations and for the ordinary citizen.....the amendment would preserve for many of the charitable organizations the privilege to which we believe they are entitled.....Therefore, why should not the charitable and educational organizations receive the benefit proposed by my amendment.....After all, the amendment is designed for the benefit of the average citizen, who in this case is the forgotten man.¹⁰

Senator Long also argued that an IRS determination of tax exempt status is sufficient to handle the question of which organizations will qualify for the subsidy.

.....We can subsidize things for which a subsidy can be justified. What are they? One is charitable organizations. I believe if an institution or organization wants to raise funds for the prevention of cancer or heart disease or funds for orphan children, if it is a tax-exempt organization approved by United States Government and recognized under the Internal Revenue Code and therefore exempt from certain Federal taxes, that is a sufficient test and they should be exempt from paying 2 cents for the postal cards they use. That is in a way subsidizing a charity, and I would approve of subsidizing charities. . .¹¹

Throughout the following years, the Post Office maintained that IRS rulings were not binding, but departures from them were rare at best.¹²

In response to President Eisenhower's 1955 request that the Post Office distinguish between costs that should be borne by patrons, from those that should be supported by general taxation, Postmaster General Arthur E. Summerfield testified that the Post Office could be put on a self-sustaining basis if it were reimbursed for the services performed, "in the interest of the public at large."¹³ Olin D. Johnston (D-SC) chaired the Senate Committee on the Post Office. The ranking minority member of the committee was Frank Carlson (R-KS). They were both known for

¹⁰Cong. Rec., Sept. 7, 1951, p. 11026; 39.

¹¹Cong. Rec., Sept. 7, 1951, p. 11028.

¹²McCoy, Report on Preferential Second and Third-Class Postal Rates for Nonprofit Organizations, p29; 137-42.

¹³"Postal Rate Increase," Congressional Digest, June-July 1956, p. 178, 192.

their cooperative efforts on behalf of nonprofits, and together they pushed for recognition that preferred mailers did not add to the deficit. Senator Johnston said:

Compared with other Government departments and agencies, the Post Office Department does a magnificent job. The Post Office Department is the only major Government department which recovers 85 percent of its total cost. That is an excellent record considering all the free and special services provided by this Department in the interests of the national welfare.

...The alleged Post Office deficit in many respects is a phantom deficit because included in its loss figures are sums for many vital and important public services....The post offices store and distribute income tax forms by the millions for the Internal Revenue Service, help make surveys of vacancies for the Federal Housing Administration, and assist the Civil Service in spreading information about examinations for Government positions.....Post offices receive and transmit funds for many volunteer charities such as heart, cancer and others.

The Post Office Department provides a great mass of free postal services, such as those provided for the blind..... Publications issued by nonprofit fraternal, religious, and scientific groups are mailed at special low rates without relation to costs.....My colleague the Senator from Kansas [Mr. Carlson], chairman of the Senate Post Office and Civil Service Committee, when the Republicans last controlled the Senate, once said:

I do not see how anyone could justify RFD except as a service by the Government to its citizens.¹⁴

They also argued that nonprofits contributed to the public welfare. Johnston added:

In the main, public service rather than profit or loss must be the postal yardstick in appraising these establishments.¹⁵

Senator Hubert H. Humphrey also testified that the Post Office has a long tradition of public service:

¹⁴ Cong. Rec., Feb. 25, 1958, p. 2727-28.

¹⁵ Cong. Rec., Feb. 25, 1958, p. 2728.

When we think of the many community services which are performed by the post offices and the many public services which are performed by the post offices. . . so that there may be a dissemination of educational and informative material, I believe it is very doubtful that the postal service ought to be put on a pay-as-you-go or balanced budget type of operation. . . . It seems to me that the community as a whole - the whole nation - if there is to be any subsidy, should assume the responsibility of paying such a subsidy or such a service cost.

. . . . Yet the increase, if it goes into effect, might very well threaten the existence of certain important scientific, educational, philanthropic, and church publications. . . . [T]here is involved the principle of utilization of the services and facilities of the Government to promote the industry and the enlightenment, and the scientific progress and the spiritual improvement of the American people.¹⁶

Senator Neuberger added:

As the Senator from Minnesota has so vividly pointed out, there is only a small sum of money involved. At the same time, the very future of certain religious, educational, labor, church, eleemosynary, and charitable organizations is at stake, particularly with reference to their ability to reach their members and other people upon whom they depend for financial support.¹⁷

In 1954, The National Education Association was contracted by the Post Office to study the importance of the postal service to education. The report echoed the theme that some nonprofits serve the public at large and others primarily serve their membership.

Religious, educational, scientific, and philanthropic organizations offer their services to the community as a whole and to all members of that community. . . . the national welfare is promoted when religion, education, science, and philanthropy are encouraged.¹⁸

¹⁶Cong. Rec., Feb. 28, 1958, p. 3113.

¹⁷Id.

¹⁸S. Rep. No. 1086, 83rd Cong., 2d sess. (1954), p. 182-3.

The Postal Policy Act of 1958 provided that ratemaking proceedings give "due consideration to....the preservation of the inherent advantages of the postal service in the promotion of social, cultural, intellectual, and commercial intercourse among the people of the United States." The Act enumerated various reduced rate and postage free classes that, "shall be considered public services."¹⁹ In fact, the beginning of the act reaffirms the historical role of public service in post office policy:

....[H]istorically and as a matter of public policy there have evolved, in the operations of the postal establishment authorized by the Congress, certain recognized and accepted relationships among the several classes of mail. It is clear, from the continued expansion of the postal service and from the continued encouragement by the Congress of the most widespread use thereof, that the postal establishment performs many functions and offers its facilities to many users on a basis which can only be justified as being in the interest of the national welfare. . . .²⁰

The Act of Dec. 16, 1967 extended the commercial mail zone system to nonprofits. It set postage for Third-Class preferred rates at 40% of the regular rate.²¹ Initially Congress entertained the idea of splitting nonprofit mailers into two groups; charging a higher rate to nonprofits that serve their membership more than the public at large. The Senate rejected this proposal due to anticipated administrative difficulties.²²

The Postal Reorganization Act of 1970, (hereinafter "PRA") was signed by President Nixon on August 12, 1970, and eleven months later the Post Office Department became The U.S. Postal Service. The Act attempted to make the post office more businesslike, by requiring it to recover the direct and indirect costs for all mailing classes. For classes with preferred rates, subsidies were paid to the post office by the United States Treasury. In

¹⁹The Postal Policy Act of May 27, 1958, 72 Stat. 136-7.

²⁰The Postal Policy Act of May 27, 1958, 72 Stat. 134.

²¹81 Stat. 613, 615-17; Cong. Rec., Nov. 29, 1967, p34266-7.

²²Cong. Rec., Nov. 28, 1967, p. 33984.

spite of the subsidy guidelines laid out by Frederick R. Kappel,²³ head of the Commission on Postal Reorganization under President Johnson, the Nixon Administration sent legislation to Congress that left Congress in charge of determining preferred rates. At the same time Congress, through hearings, was expressing resistance to the elimination of Congressional control over rate policy.

Then, former member of the Senate Post Office Committee Frank Carlson testified on behalf of retaining control over the public service subsidies, even if the Post Office Department was converted to a business-like corporation as the Johnson administration desired:

The Post Office, is in a free society, the one basic and indispensable system of communications - the medium through which citizens exchange their news and thoughts and opinions, as well as being the medium through which they conduct their business. This free and uncensored exchange of information through the mails is essential to the health of a democracy, just as such freedom would be impossible privilege in any dictatorship. For this reason the postal service, through history, has always been freedom's first creation.....and tyranny's first target.

.....Congress has steadfastly and consistently set certain rates well below cost. In the Postal Policy Act Congress declares that it would be unfair for other users of the mail to make up the difference. This policy has borne fruit. Public contributions to these benevolent and eleemosynary works have enabled our country to stand taller in our own eyes and in the eyes of the world.

We submit that this cost is a residual, built-in cost of the national mail service and that some portion of it should be borne by the general taxpayers.

.....Under the present system, this Committee spends many hours determining whether there should be changes in the preferential rates for the nonprofit mail sent out.....We believe these hearings should be continued. Congress could then give the public reasonable and necessary protection for the many worthwhile activities involved. We further believe that it should be national policy to fund whatever difference may exist between reduced rates legislated by Congress and normal rates established by the proposed

²³President's Commission on Postal Organization, Towards Postal Excellence, Washington, DC: Gov't. Printing Off., 1968, p49-50.

rate-making machinery.²⁴

The House report on reorganization was explicit in identifying the source of the postal deficit. "While a portion of this deficit is properly attributable to public services for mailings at reduced rates, the deficit largely represents a subsidy by taxpayer to the users of the mail, most of which is generated by business organizations."

The House specified its role in determining rate policy more than once in the report:

The Postal Service is to become self-sustaining - eliminating the postal deficit - by January 1, 1978. Rates are to be set so that each class of service pays at least its own identifiable costs and so that revenues of the Postal Service as a whole meet its expenses, taking into account appropriations that the Congress may choose to make to cover the loss of revenues on Congressionally-declared free and reduced rate mail. Existing postal rates remain in effect until changed pursuant to the rate making provisions of the bill.

The same groups that enjoy the benefits of free or reduced rate mail today will continue to enjoy these benefits until changed by law, if and to the extent that Congress appropriates to the Postal Service the revenue foregone by the free or reduced rates.²⁵

....The existing categories of free and reduced-rate mail would be continued unless changed by Congress and the existing rate advantages for these categories would continue so long as Congress by specific appropriations provides the revenues that the preferred categories would have paid if "full rates" were applicable to them.

....H.R. 17070 continues the existing categories of free and reduced rate mail (e.g., mailings of certain nonprofit organizations.....) and provides that the preferential rates accorded these categories of mail will not be changed except by Congress, unless the Congress fails to appropriate funds sufficient to cover the revenue forgone because of the rate preference. H.R. 17070 reserves to Congressional initiative

²⁴Postal Modernization, Part One: Hearings on HR 11750 before the Senate Committee on Post Office and Civil Service, 91 st Cong., 1 st sess. (1969), p 579-86.

²⁵HR Rep. No. 91-1104, 91 st Cong. 2d sess. (1970), p10-11.

any changes in categories or rates applicable to mail formerly entitled to free or reduced rates. Thus, Congress will not legislate on this subject by a failure to veto any change proposed by the Postal Service in this area, but any change will be made only by affirmative legislation in the conventional sense. In this way, H.R. 17070 reflects the fact that any change in rates or categories for free or reduced rate mail entails questions of policy that are less appropriate to the expertise of a ratemaking commission than to a Congressional determination of the public interest.²⁶

The Senate, however, proposed phasing out the preferences and turning ratemaking over to the Postal Service and the Rate Commission, with certain provisions. The Committee used its report to:

.....specifically express Committee concern over the rates to be established for certain classes of mail. Accordingly, the Committee alerts the Rate Commission established by this bill to the public service which certain preferred rates have historically performed.

Reduced rates.....were enacted for a very good reason-that the public generally benefits from such rates.

Additionally, the Rate Commission should take into account the preferential rates for the mailings of authorized nonprofit organizations.²⁷

Senator Gale W. McGee explained that the Committee's version of the bill allowed preferred mailers up to ten years to adjust to rate increases,²⁸ and that the loss created by reduced rates will be made up by direct Congressional appropriation. In discussing ratemaking, he also discussed some themes that continue to this day:

The temptation is understandable, of course, to turn the Postal Service completely over to a private enterprise type of operation, if one thinks only of running something the way one runs a business. But something else is present that a business per se cannot be trusted with, and that is the

²⁶HR Rep. No. 91-1104, 91 st Cong. 2d sess. (1970), p17-18.

²⁷S.Rep.No. 91-912, 91 st Cong., 2 nd sess. (1970), p12; 14. See also Postal Modernization: Hearings on S. 3842 before the Senate Comm. on Post Office and Civil Service, 91 st Cong., 2 nd sess. (1970).

²⁸Cong. Rec., June 26, 1970, p10031-10032.

public interest.²⁹

Senator J. Caleb Boggs, a conferee, noted the importance of reduced rates to nonprofits:

.....A key to the finances of the new service will be a five-man body known as the Postal Rate Commission. It will be its responsibility to set rates to provide the necessary revenues to cover the costs. In doing this however, it will afford a degree of preferential treatment to certain types of charitable nonprofit organizations which currently depend upon reduced rates to operate their vital services.

Included among these nonprofit organizations are churches, charitable organizations, libraries, educational organizations, veterans groups, and agricultural publishers. The contributions of these groups, particularly those engaged in health research and rehabilitation, cannot be measured. And, without such preferential rates, their effectiveness would be significantly reduced.³⁰

It was also noted that Congress could rewrite the law to protect the preferred rates in the ten years it took to phase out the subsidy.³¹ The Republican minority leader of the Committee, Representative Corbett of Pennsylvania, applied that rationale:

.....I understand that the gentleman from Montana (Mr. Olsen) is going to submit an amendment to keep the public service allowance at 10 percent rather than have it go down to zero in 1978. Obviously, when this Congress votes a preferential rate for any class of service, the Congress has voted it and it should be paid for out of the Treasury and not by the users of the mail. I submit the most obvious example of that. We come in here and, in our collective judgment we say we should have free mail for the blind. Why in the world should that be charged to the users of the mail any more than when we give preferential rates to the Crippled Children's Fund, to Boys Town, to church publications, and all the rest? I am going to support that amendment very vigorously.....

²⁹Cona. Rec., Aug. 3, 1970, p26954-5.

³⁰Cona. Rec., Aug. 3, 1970, p26957-8.

³¹Cona. Rec., Aug. 3, 1970, p27599.

One committee member, Representative Button, called the bill a "happy compromise," but felt compelled to mention that charities were not sufficiently protected.

I grant that there are imperfections. One in particular is the lack of special rate consideration for educational religious and charitable organizations.

I attempted to change this during debate on HR 17070, but unsuccessfully. The impact of the loss of this free or reduced rate privilege currently in effect is little short of catastrophic for these groups and organizations.³²

Representative Mink declared that the Post Office was a public service, never intended to make a profit. She opposed the bill altogether, and added:

Under this bill, mailings by charities for their fund drives, mailings for the blind and other similar reduced rate "public service" mailings will have to be assessed the same rate as all other mail of the same class, and reduction of these preferential rates can only be possible if Congress specifically appropriates a subsidy. The existence of many public charities depends upon low cost mail solicitations, and this bill places all of these in jeopardy.³³

Debates occurred annually in appropriation hearings and ratemaking proceedings. There were outcries to Congress from mailers unhappy with the ratemaking proceeding. These debates, as presupposed, led to changes in the Act.³⁴

In 1973, the House Post Office Committee reported a bill extending the phased rate increases, and urged Congress to recognize the educational, cultural, scientific, and informational value of certain types of mail.³⁵ Representative Teague of Texas chastised the Postal Rate Commission for ignoring precedent and acting callously by dramatically increasing rates beyond congressional expectations.

³²Cong. Rec., June 18, 1970, p 20495.

³³Cong. Rec., June 18, 1970, p 20496.

³⁴See, Congressional Quarterly Almanac: Association Management, 1970-79.

³⁵HR Rep. No. 93-369, 93 rd Cong., 1 st sess. (1973), p.3-6.

.....Congress put the Postal Service on a break-even, pay as-it-goes basis.....And in adopting the break even principle, we clearly overlooked its effect on nonprofit community oriented organizations that use the mails extensively in order to serve their members and benefit the country.

.....The postal rate increases imposed on nonprofit organizations range from 200 percent to over 800 percent more than they were paying in Second-Class postage prior to May of 1971.

.....For over half a century prior to enactment of the Postal Reorganization Act the Congress had provided preferential mail rates for.....nonprofit mailers who disseminate information of benefit to their members and to the public. I do not believe the Congress intended to abandon the traditional treatment accorded these organizations.

The Postal Rate Commission has assigned to nonprofit mailers the second highest rate increase of all classes of mail in an apparent effort to "close the gap" in the Second Class rate structure for nonprofit organizations as opposed to regular rate publications. Comparisons.....make it clear that the rates for nonprofit organizations are a complete and dramatic departure from the rate concept traditionally accorded preferential second-class users.

In its enthusiasm to balance its budget, the Rate Commission has callously ignored those provisions of the Postal Reorganization Act and 55 years of Congressional policy concerning the rate treatment of nonprofit community oriented organizations. The rates discriminate against a class of publications which are least able to absorb the increases and whose history has been one of disseminating news and useful information in the public interest rather than becoming income oriented through the sale of large amounts of advertising.

.....Every dollar that must be devoted to increased postage is taken away from the worthwhile purposes these organizations fulfill. When the Postal Reorganization Act was passed, I think all of us anticipated that reasonable postal rate increases would be required for all mail users, including nonprofit organizations. But I seriously doubt that any member had the slightest inkling that rates would be increased to the extent that they have.

.....I do not believe that a slavish adherence to the Postal Service break-even requirement should be permitted to affect

the nonprofit community-oriented organizations as seriously and as detrimentally as will be the case unless the Congress takes action.³⁶

This proposal was revived in the next session of Congress. The Senate framed a sixteen year period for the phased rate increases that later became part of the 1974 amendments to the PRA. The committee report described increases imposed under the PRA as far exceeding Congress' expectations, and hurting mailers who had long been protected:

Senator Barry Goldwater, in testimony before the Committee, summed up cogently the influence of the Postal Reorganization act upon the historic policy of taking into account the effect upon the general welfare of all postal rate increases. He said,

"Especially in section 101(b) [T]here is visible proof that Congress placed a higher value on the benefits of communication than it did on achieving a self-sustaining basis for the Postal Service. I believe that this same fundamental principle flows through each and every provision of the Postal Reorganization Act and that, whenever there is plain danger to the communications needs of the public, it is the good of the people which is supposed to be served. The problem is that, while the Postal Service is obligated to consider the effects upon the general public, it has no way of funding a reduced rate even if it finds one warranted. For it has no right to obtain public appropriations to sustain the reduced rate. But Congress does, and this is why your Committee is properly considering several bills on this subject."³⁷

Much of the debate in postal hearings during that session centered around the contributions of nonprofits. Senator Randolph said:

Mr. President, I feel that Members of the Senate believe in the worth of nonprofit organizations. There is real concern over the burden increased postal rates have placed on these organizations. Their membership will suffer in the form of increased dues, reduced publication or possibly even curtailment of the major means of communication such an organization has with its members.

³⁶Cong. Rec., July 23, 1973, p25477.

³⁷S.Rep.No. 93-765, 93 rd Cong., 2d sess. (1974), p5.

.....The situation of nonprofit publications is critical since they are least able to pass increases along to their subscribers. They do great work for the common welfare of the Nation. In addition to their own constituencies, they have fewer commercial resources available than any group of publications and yet, they sustain the greatest percentage of increase and the heaviest burden of all in this new structure of postage rates.

Let us not be remiss in our effort to aid them. Not only do we have the authority to provide relief, but the obligation.³⁸

This debate was carried out in the House as well. Representative Hanley of New York said:

Experience has shown that the size of subsequent increases was severely underestimated and the ability of the mailers to adjust rapidly to the increases was severely overestimated. Thus we are faced today with a crisis..... among nonprofit organizations which, no matter how you look at it, will be detrimental to the American public.

.....From any of these perspectives, the American public is the loser because of the inexorable reduction of the availability of a broad range of.....charitable activities.

Representatives Derwinski and Dulski, respectively, added the following:

As the committee report quite properly points out, the activities of thousands of nonprofit organizations and educational institutions could be seriously curtailed.... Congress historically has provided lower rates for the nonprofit classes of mail. The Postal Reorganization Act continued this policy, in the form of phased rates, and therefore, the provisions of this legislation are consistent with both past and present congressional policy.³⁹

The 1976 Amendments expanded eligibility for preferred rates in response to a threatened rate increase. Senator Barry Goldwater and others believed that ratemaking under the PRA did not consider the traditional value attached to certain types of mail. Goldwater supported privatization, and used the PRA rate

³⁸ Cong. Rec., May 9, 1974, p14076.

³⁹ Cong. Rec., June 19, 1974, p19807.

increases as an argument for it. Senator Fannin of Arizona read into the record a statement by Goldwater entitled How Postal Costs Endanger America's Reading Habit. Goldwater stated in part:

....if churches find it too expensive to distribute religious materials in the mails, if retired persons' groups are unable to meet the cost of mailing news bulletins to their membership, if schools must trim mail purchases of classroom publications because of higher rates, or if small-circulation newspapers that meet the special needs of local communities disappear, who can predict what the impact on the American people might be?

....How can a political conservative who ordinarily is skeptical of more public spending support this program? Basically there are six grounds which appear compelling:

....Fifth, the circulation of the printed word in the mails has historically been treated as a public service which should be promoted by the government.

Sixth, this is an area in which the subject of free speech, and all that means to the general public and our way of life, is truly involved.⁴⁰

It was this sentiment that inspired a provision in the 1976 Amendments requiring the Postal Rate Commission to consider, "the educational, cultural, scientific and informational value to the recipient," when setting rates.⁴¹

The 1976 Amendments also created the independent, "Commission on Postal Service" to conduct studies and hearings. It estimated that 110,000 nonprofits used preferred rates, and recommended that, "Congress establish a new phasing schedule to begin in July 1987, under which nonprofit mailers would begin paying their share of institutional costs," thereby eliminating appropriation for preferred mailers by 1997.⁴²

Qualified political committees were added to the preferred mailers list as an amendment to the Overseas Citizens Voting

⁴⁰Cong. Rec., May 9, 1976, p27414.

⁴¹Act of Sept. 24, 1976, 90 Stat. 1303, 1311; Cong. Rec., Sept 10, 1976, p29748.

⁴²Commission on Postal Service, Report (Washington, DC: Government Printing Office, 1977), vol. 3a, p632-7.

Rights Act. Contribution limits on individual donors forced the political committees to expand their bases of support with small donors and, "encourage the average citizen to play a greater part in the political process.... This can be done most effectively by direct mail, but increased postal rates for Third-Class mail make this a most costly operation."⁴³ (The same rationale might apply today to nonprofits that are limited by cuts in government support.) The House initially intended the subsidy for individual political campaigns, but it was explicitly limited to, "a national or State committee of a political party," and was later limited to exclude small and emerging parties.⁴⁴

Through the early 1980's Congress conducted its own reviews. In 1980 Congressional Budget Office Director Alice M. Rivlin told a Senate Committee that....the reduced rates...were, "a significant fund-raising saving for organizations that rely heavily on mail solicitation as a source of income."⁴⁵ In 1982, the House Post Office Committee reviewed the PRA on the tenth anniversary of its implementation, with nonprofits reminding lawmakers that nonprofit organizations performed services that would otherwise fall upon government, and that frequent proceedings before the Postal Rate Commission and Congress taxed their meager resources.⁴⁶

The PRA did not alter eligibility for nonprofit mailers, and did not ease the problems of administration. However, while Congress was considering reorganization, the GAO was auditing nonprofits that used the preferred rate, and found 115 out of 1135 examined to be ineligible because their primary purpose was incompatible with the Post Office Department's requirements.⁴⁷ This prodded the Department to announce, in January of 1970, that religious educational, scientific and philanthropic organizations granted

⁴³HR Rep. No. 94-391, 94 th Cong., 1 st sess. (1975), p11-12.

⁴⁴Act of Nov. 4, 1978, 92 Stat.. 2535, 2538-9.

⁴⁵Treasury, Postal Service and General Government Appropriations, FY '81, Part One: Hearings on HR 7583 before the Subcommittee on Treasury, Postal Service and General Government, Senate Committee on Appropriations, 96 th Cong., 2d sess. (1980), p705-15.

⁴⁶Effectiveness of the Postal Reorganization Act of 1970, Part Two: Joint Hearings before the Subcommittee on Postal Personnel and Modernization of the House Committee on Post Office and Civil Service, 97 th Cong., 2d sess. (1982), p 226-69, 441-91, 764-70.

⁴⁷US General Accounting Office, "Determination of Nonprofit Organizations' Eligibility for Reduced Postage Rates Should be Improved," (1972) p14.

tax exempt status under section 501 (c) (3) of title 26, will qualify for the special Third Class rate, "unless the available evidence discloses some disqualification."⁴⁸ So as to discourage complete reliance on IRS classifications, the Postal Service further defined their qualifications, but still leaned heavily on the IRS. "Generally, an organization granted income tax exemption under Title 26.... will be considered as qualifying for the special Third-Class rate."⁴⁹ Among other reasons, the rule is stated this way because there are thousands of small nonprofits without a need for an IRS exemption.⁵⁰ Subsequently, the Postal Service has generally had its eligibility determinations upheld in courts and has restricted the unauthorized use of preferred rates by disallowing cooperative mailings where all parties are not qualified nonprofits,⁵¹ and requiring mailings to carry the name and address of the permit holder on either the message or the envelope.⁵²

In 1990, Congress enacted, as amendments to the Treasury/Postal Service/General Government Appropriations bill, new content-based restrictions in nonprofit third class mail on advertising for travel, insurance, and credit cards. The rules went into effect in 1992. The same 1990 law significantly increased the rates for non-letter sized nonprofit third class mail.

In 1993 Congress passed the Revenue Forgone Reform Act, also as an amendment to an appropriations bill, increasing rates for nonprofit Second Class and Third Class rates over a 6-year period, and imposed new restrictions on the content of advertising in third class. When the 6th step is reached, on the first Sunday in October 1998, nonprofits postage rates will bear a permanent relationship to regular rates, and will contribute substantially to Postal Service institutional costs.

The nonprofit community looks forward to continued support from Congress in the years ahead, as the social needs of Americans are increasingly served by charities and other nonprofit

⁴⁸Fed. Reg., Jan. 24, 1970, p1013-14; Dec. 23, 1970, p19434-19435.

⁴⁹Fed. Reg., Aug. 26, 1972, p17423-24.

⁵⁰Fed. Reg., June 22, 1977, p3192.

⁵¹Fed. Reg., Feb. 4, 1977, p6841; Aug. 18, 1977, p41634-41635.

⁵²National Retired Teachers Association v. US Postal Service, 430 F.Supp. 141, 148 (DC 1977).

organizations, which are dependent on affordable postage rates to communicate with donors, members, and the public at large.

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Mr. MCHUGH. Thank you, Mr. Cassidy. I appreciate that and we are all learning and all having differing views as we go through the process and we extend to you that right and that flexibility as well.

Second presenter on the second panel is Mr. Mark Silbergeld.

Mr. SILBERGELD. I am president of the Alliance of Nonprofit Mailers. With me today are Alan Klein, the Alliance's vice president seated back here, as well as Neal Denton, our executive director. Allow me to begin by thanking you for your efforts in improving our national communications delivery network of the U.S. Postal Service on behalf of the Alliance, a coalition of some—

Mr. MCHUGH. It is going in and out.

Mr. SILBERGELD. Let's try this mic. On behalf of the Alliance of Nonprofit Mailers coalition of some 200 nonprofit organizations, our members, affiliates, chapters, and vendors and especially on behalf of my own organization, Consumers Union of the United States, the nonprofit publisher of Consumer Reports. We appreciate the time and energy that you, your staff and subcommittee have devoted to this comprehensive set of hearings.

Your proposed legislation, H.R. 3717, demonstrates that the time is now to look at what is working at the Postal Service and what isn't. The chairman is exactly right. We should not wait for a crisis and then try to develop legislation in a crisis situation. This is the time to address what needs to be improved.

I would like to summarize the five areas covered in our written testimony. First, the creation of an IG for the Postal Service. In hindsight, it seems obvious that an IG should have been incorporated in the original reorganization act. It is logical. It is especially logical considering the dangers of a governmental monopoly and those dangers are borne out by the most recent reports from the GAO, as well as the experience of many mailers around the country. And it is especially important in view of the proposals for even more expanded authority with respect to ratemaking and new contractual relationships, greater flexibility in investments, and so forth.

This is not a criticism of the Postal Inspection Service which performs a different function. This is simply a recognition that the Postal Service needs additional oversight in its operations and it needs independent oversight.

Postal Service governance. Mr. Chairman, we have other concerns, that too often the Presidentially appointed seats on the PRC go vacant for long periods of time. A recent reclassification proceeding was decided by only four rate commissioners. More terms are due to expire on both panels in the next couple of months, the Board of Governors and the PRC.

I don't know what legal mechanism you can write into reform legislation to assure that these seats are filled in a timely fashion. Perhaps the mechanism is not legal in nature, but something needs to be done to assure that we have a full complement of Rate Commissioners and governors as the process goes on down the road.

In order to do this work right, we must avoid even the appearance of having a supine set of Presidential appointees as former Postmaster General Anthony Frank coined the phrase. We have often wondered why individual governors have no personal staff. The Postal Service will soon be a \$60 billion-a-year business.

While the secretary of the board may handle board communications well, an independent staff member for each governor most certainly would improve upon the quality and the independence of judgment of the decisions of this part-time board. One example is the most recent Board of Governors meeting in Washington on September 10.

We heard several incorrect and misleading statements by the staff of the governors. At one point, the USPS Chief Financial Officer, Mr. Reilly, referred to the pricing of nonprofit mail as "below costs." Indeed, I believe we heard a witness make that reference again here this afternoon.

Nonprofit mail covers all of its attributable costs and it makes increasingly large payments into the vast overhead pool of the Postal Service and as any economist knows and as the Postal Service itself repeatedly stated in testimony to the Rate Commission, indeed as another witness stated later and in the proceedings of the first panel this afternoon, rates that cover attributable costs are not priced below cost.

Also the Alliance has recently sent important communications to the governors about our serious concerns regarding staff decisions and other potential misinformation that the staff may be providing to the governors. To date, we have received no response from the governors to our important inquiries. And we would be happy to provide copies of that correspondence.

We think that a letter from the representative of a large number of mailers to the Postal Board of Governors deserves a reply. So while we are looking at increasing governors' salaries, it is important that we also look into making certain that we increase their accountability, and we believe that all of that can be aided by providing governors with staff that is separate from the staff provided by the management of the Postal Service.

Proposals to grant greater price flexibility to the service. Mr. Chairman, we are very uncomfortable. Indeed, we are very highly concerned with these proposals that would grant more flexibility to the Postal Service in setting rates. We understand why current management is seeking these, but we are far from convinced that these freedoms are desirable.

We are most concerned that the Postal Service has demonstrated that these freedoms are not deserved. I recognize the notion of whether the Postal Service is deserving of these flexibilities might be novel. There was great support for it in the first panel, but I think it is an important issue to consider.

If we could all rely upon the Service to act responsibly, sensibly and with the overall needs of our national mail delivery network in mind whenever decisions are made on prices, then there would be little room for concern. But too often the Service has its own agenda. Our very real concern has to do with the concept of dividing the pricing approach into competitive and noncompetitive postal products.

Over the last 15 years, nonprofit mailers have witnessed firsthand the gross abuses by the Postal Service of setting work-sharing discounts and postal rates.

While H.R. 3717 envisions that competitive products will not be cross-subsidized by the monopoly products, we do not believe that

the Postal Service will be able to resist the temptation to do so. And while at this point someone might say, well, you will have your recourse in court, what we have found in the past in the appeals for rate cases is that that is not a timely or an effective recourse no matter how right we may be.

We have had both the Rate Commission and the courts in the past recognize that the Postal Service should have done something different than what it did with respect to cost sharing. But find that the courts and the Rate Commission are unwilling to go back and fix things retroactively; that they set them forward to the next rate case, that our members go uncompensated as they should have been.

While H.R. 3717 envisions that competitive products will not be cross-subsidized by the monopoly products, we don't think the Postal Service, as I said, will be able to resist that temptation, nor do we believe that rates for individual postal products, subcategories and subcategories referred to in the bill will be set by the Postal Service and adjusted in a reasonable and nondiscriminatory fashion. The long and unfortunate history of our experience with rate sharing bears out this belief.

We don't think the Service can resist the temptation to put its finger on the scale to prop up the volumes of competitive products and pass the additional expenses on to those that are subject to a monopoly and have no real alternative to the Postal Service.

On another point we do—we are fascinated and do support very strongly a provision in Title X, Section 3701 that calls for the Rate Commission to evaluate, "the quality of mail service actually provided, each class or type of mail service including the collection, mode of transportation, priority of delivery and timeliness of delivery." That is the language in the bill.

This would be uncharted waters for the Commission and the Postal Service. For over 20 years, the Service has failed in its responsibility to establish a system of measurement for Third Class or standard class mail. And we think that is very important. Rates are important, but of course the rates compensate for an assumed level of service. If that service is not adequate, ratepayers are being charged too much.

Mr. Chairman, in the past many of us complained about the current process of setting postal rates. Some want more flexibility for the Postal Service. Everybody wants a shorter timeframe for cases, but most importantly, we all still want a chance to have some meaningful input into a fair and open rate-setting process.

On another point, which Mr. Cassidy mentioned specifically, the requester subclass for nonprofits. The creation of this subclass would substantially benefit nonprofit publishers, especially colleges and universities, which there are many among our members. It would also benefit the Postal Service.

The only delay has been in finding a legislative vehicle of postal reform that might include the corrective language. We have all looked over the language and as Mr. Cassidy pointed out, we have submitted some language that we all agree on and hope you will give it careful consideration.

Finally, the proposals to zero out the congressional appropriation to the Postal Service. This proposal would zero out the authoriza-

tion for the revenue foregone appropriations. Those that are continued in the Clay compromise and would terminate any future payments to the Postal Service for past appropriation shortfalls resulting from the revenue foregone format.

We appreciate that the bill protects the preferred postal rate and continues to honor the fee schedule of nonprofit postal rate increases as envisioned by the Reform Act and we agree that the free mail for the blind and overseas voting material and reduced rate for qualifying nonprofit mail should continue to be part of the Postal Service's public service obligations.

With that said, we hope that the subcommittee will reconsider and continue to appropriate funds to the Postal Service in payment of those obligations resulting from the RFRA and those remaining health care costs of workers under the old Post Office Department. Current postal ratepayers shouldn't be saddled with the payments for those loss revenues as they surely will be in the next general rate case if the continuing appropriation is discontinued.

Thank you for listening to our point of view, Mr. Chairman. To all of you on the subcommittee and to the fine staff of the subcommittee and in your office, Mr. Chairman we offer our compliments for this excellent set of hearings and for moving forward the discussion of how to fix what is wrong with the Postal Service before we hit a crisis.

[The prepared statement of Mr. Silbergeld follows:]

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**September 12, 1996****TESTIMONY BEFORE
HOUSE GOVERNMENT REFORM AND OVERSIGHT COMMITTEE
SUBCOMMITTEE ON THE POSTAL SERVICE****Mark Silbergeld, President
Alliance of Nonprofit Mailers
Washington, DC**

Mr. Chairman, allow me to begin by thanking you for your efforts at improving our national communications delivery network, the United States Postal Service. On behalf of the Alliance of Nonprofit Mailers, a coalition of some 200 nonprofit organizations, their affiliates, chapters and vendors -- and especially, on behalf of my organization, Consumers Union of U.S., Inc., we appreciate the time and energy you, your staff and the Subcommittee have devoted through this comprehensive series of hearings. As your proposed legislation demonstrates, the time is now to look at what's working at the Postal Service and what needs to be improved.

I would like to begin by addressing your legislative proposal, HR 3717. Five items are of particular interest to the nonprofit community.

1. We offer our strong support to the creation of an Inspector General of the Postal Service and of the Postal Rate Commission.
2. We have some suggestions and comments regarding the governance of the Postal Service.
3. We have some very grave reservations about granting the Postal Service greater flexibility in setting postal rates.
4. We are enthusiastically behind the proposal to extend a nonprofit equivalent of the commercial "requester" status to some nonprofit publications.
5. We hope that the Subcommittee will reconsider its proposal to zero-out the outstanding appropriations due the USPS, especially those resulting from the Revenue Forgone Reform Act.

The Creation of an Inspector General of the USPS

Title I, Section 104

With hindsight, it seems obvious that an Inspector General should have been incorporated into the original Postal Reorganization Act. Considering the dangers inherent in a governmental monopoly, a separate IG seems like a most prudent precaution. Those dangers are borne out by the most recent reports from the General Accounting Office, as well as practical experiences by many mailers around the country. Now, as the Postal Service requests even greater flexibility in the marketplace, some of which would be realized in this legislation, a separate IG seems imperative.

This is not criticism of the work of the existing Postal Inspection Service -- in fact, it is our understanding that the Inspection Service remains intact under this proposal. Instead, we recognize an IG as a much-needed oversight arm. This position becomes doubly important if we are to consider expansion of Postal Service authority to set rates, discounts and engage in new contractual relationships.

Creation of an IG for the Rate Commission also stands to reason. The PRC would also have expanded powers, and the public would benefit from the oversight of an independent IG.

Not mentioned in the legislation is disposition of the PRC's Office of Consumer Advocate. Considering the proposed reduction in the number of rate case proceedings, and the reduced OCA workload resulting from that reduction, perhaps this reduction in responsibility could become the source of additional funding for the IG's office.

USPS Governance

As to the creation of the IG, I haven't heard any logical or compelling opposition to the proposal, so I won't belabor the point. We do, however, have other concerns about the governance of the Postal Service.

The new Inspectors General of the Postal Service and of the Postal Rate Commission would be Presidentially-appointed. Members of the Postal Rate Commission and the Postal Service Board of Governors are also Presidentially-appointed. Too often, these important seats on the PRC or the Governors go vacant too long. The recent Classification proceedings encompassing the comprehensive overhaul of the mail classification schemes were decided by only four Rate Commissioners. More terms are due to expire on both panels in the next couple of months. I don't know what can be done to assure that these seats are filled by quality candidates in a timely fashion -- but it's important that they are. Especially considering the potential importance of the next "baseline" rate case proceeding or the new responsibilities of a Postal Service Board of Directors, we must avoid even the appearance of a "supine" set of Presidential appointees.

Also, in an effort to improve the decision-making of the Board of Governors, we've often wondered why individual Governors have no personal staff. The Postal Service will soon be a \$60 billion a year business. While the Secretary of the Board may handle Board communications, an independent staff member for each Governor would most certainly improve upon the quality of decision-making by the part-time Board.

At the most recent Board of Governors meeting in Washington on September 10, we heard several incorrect and misleading statements by staff to the Governors. At one point, USPS CFO Michael Riley referred to the pricing of nonprofit mail as "below cost." That's a false statement delivered to the Board of Governors of the United States Postal Service by a supposedly responsible executive. Nonprofit mail covers all of its attributable costs and makes increasingly larger payments into the vast overhead pool of the Postal Service. As any competent economist knows -- and as the Postal Service has repeatedly stated in to the Postal Rate Commission -- rates that cover attributable costs are not priced, "below cost."

Indeed, standard nonprofit mail pays a higher markup over the Postal Service's attributable costs than many competitive categories of fourth class mail and other commercial mail. The Postal Service has repeatedly denied that these rates, which it charges in an effort to seize business from competitors in the private sector, are "below cost."

Also, the Postmaster General twice said that the \$29 million appropriation for the Revenue Forgone Reform Act had been eliminated -- if the proposed legislation is passed, that would be the case -- but in the present, this is a blatantly false statement to share with the Board of Governors.

Also, the Alliance has recently sent important communications to the Governors about some of our serious concerns regarding staff decisions and other potential misinformation that staff may be feeding to the Governors. To date, we've received no response from the Governors to our important inquiries. We think a *letter* to the Postal Service Board of Governors, of all places, deserves a reply. While we're looking at increasing the Governor's salary, let's also make certain to increase their accountability. The Governors need a separate staff.

Proposals to Grant Greater Price Flexibility to the USPS

Title VI, Section 604 - Volume Discounts

Title X, Section 1001

Mr. Chairman, we're very uncomfortable with proposals granting more flexibility to the Postal Service in setting rates. We understand why current USPS management is seeking these changes, but we're far from convinced that such freedoms are needed or desirable. And, we're most certain that the USPS has demonstrated that such freedoms are not deserved. I recognize that the notion of whether the Postal Service is "deserving" of these flexibilities might be novel. But I think it's an important variable to consider.

If we could all rely upon the Postal Service to act responsibly, sensibly and with the overall needs of our national mail delivery network in mind whenever decisions are made or prices are set there would be little room for concern here. But too often the Postal Service has its own agenda. Many -- if not most -- of the mailers most reliant upon the Postal Service can give you scores of stories of abused power, misplaced trust, faulty decision-making -- and even actions that are against the rational self interest of the Postal Service itself.

Using these past experiences as our frame of reference, we believe that giving the USPS more authority to set prices at the subcategory level or offer volume discounts without strict oversight to assure fairness to all mailers would be extremely ill-advised.

One very real concern has to do with the concept of dividing the pricing approach to "competitive" and "noncompetitive" postal products. Mr. Chairman, over the last fifteen years, nonprofit mailers have witnessed first-hand the gross abuses by the Postal Service of setting worksharing discounts and postal rates. While HR 3717 envisions that competitive products will not be cross-subsidized by the monopoly products, we don't believe that the Postal Service will be able to resist the temptation. Nor do we believe that rates for individual postal products -- the subcategories and sub-subcategories referred to in the Bill -- will be set in a just, reasonable and nondiscriminatory fashion. A long and unfortunate history bears this belief out. We don't believe the Service can resist the temptations of "putting a thumb on the scales" to prop-up the volumes of competitive products at the expense of those subject to the monopoly.

Perhaps the proposed five-year adjustments by the Rate Commission could remedy such abuses. But some damage might already be done. And, in light of our history, dating back to 1981 when the USPS arbitrarily denied fair worksharing to nonprofits to more recent experiences with 1) the Postal Service prolonged exclusion of nonprofits from the benefits of deeper discounts through classification reform; and 2) still forcing nonprofits to comply with the new makeup requirements without granting the accompanying discounts; and 3) the Rate Commission shrugging its shoulders and allowing the Service to perpetrate this injustice -- our members are not at all confident that the Service or the Rate Commission will "do the right thing."

And, as we begin to understand the significance of the attempt to establish price caps and the Commission's proposed new authority in setting an "adjustment" factor for noncompetitive products, we grow increasingly uncomfortable. We are especially uncomfortable with the provision in Section 3723(f) that would allow the Postal Service to "give away the store" so far as competitive products are concerned, and then petition the Rate Commission for an emergency increase "to restore the Postal Service to fiscal soundness." We would respectfully suggest that the Commission should conduct a *full* rate case, including both competitive and non-competitive products, if the Postal Service cannot live within the price caps. Even PRC Chairman Gleiman has voiced concerns and questions about this new role for the Commission. Despite all of our concerns, however, we remain open to a dialogue on this question.

We are fascinated by a provision in Title X, Section 3701 that calls upon the Rate Commission to evaluate the "quality of mail service actually provided each class or type of mail service, including the collection, mode of transportation, priority of delivery, and timeliness of

delivery..." This would be uncharted waters for the Commission and for the Postal Service. All mailers would warmly welcome any open-aided measurement of the quality of delivery of "Standard Class" mail. For over twenty years the Postal Service has danced around and evaded its responsibility to establish a system to measure the service given to third-class (or standard class) mail. Frankly, it is our belief that the Service doesn't want to know just how dreadful their performance is at times.

Mr. Chairman, in the past many of us in the mailing community have complained about the current process of setting postal rates. Some want more flexibility for the Postal Service, and we all want a shorter time-frame for rate cases. But, most importantly we all still want a chance to have some meaningful input into a fair and open rate-setting process.

Inclusion of "Requester" Subclass Status for Nonprofit Publishers Title VI, Section 602

At present, the rate schedule for second-class (periodical) regular rate mail provides for a requester subclass that has no nonprofit counterpart. Nor has the Postal Service ever made provision for nonprofit requester publications. It is ANM's understanding that a major reason, and perhaps the only significant reason, for not allowing qualified nonprofit organizations to mail requester publications at nonprofit rates was the previous need for an annual revenue forgone appropriation to support nonprofit rates. Creating a nonprofit requester subclass would only have increased the appropriation request which, under the circumstances, did not seem fitting.

Since enactment of the Revenue Forgone Reform Act (PL. 103-123 704(a)(1)(a)(4)), the Postal Service no longer receives a revenue forgone appropriation on behalf of nonprofit mail. Postage fees now being paid by nonprofit publications not only cover all of their attributable costs, but also make a contribution to Postal Service overhead. It is important to stress that (1) the Postal Service now makes money on fees paid by second-class nonprofit publications, and (2) the profit margin is scheduled to increase each year through 1998. Moreover, because postal rates for advertising in nonprofit and regular rate publications are the same (for those nonprofit publications with more than 10 percent advertising), and because those rates carry a high implicit markup, the more advertising that a nonprofit publication contains, the greater the contribution to the Postal Service's overhead.

We believe the creation of this new category would benefit nonprofit publishers, especially colleges and universities, and would also benefit the Postal Service. The only delay has been in

Suggested Section 602(b) of HR 3717 (creating a nonprofit requester subclass):

(b) RATES FOR MAIL UNDER SECTION 4358. Section 3626 of title 39, United States Code, is amended by adding at the end the following:

"(n) In the administration of this section, matter that satisfies the circulation standards for requester publications shall not be excluded from being mailed at the rates for mail under former section 4358 solely because such matter is designed primarily for free circulation or for circulation at nominal rates, or fails to meet the requirements of former section 4354(a)(5)."

finding a legislative vehicle of postal reform that might include the corrective language.

We've looked over the language included in HR 3717 and have some minor suggestions that we believe will improve the amendment. We've passed these suggestions on to your staff and include a copy of a draft amendment in this testimony. We would appreciate the inclusion of this technical correction in the Subcommittee's proposal.

Proposals to Zero-Out Appropriations to USPS Title V, Section 503

Also included in HR 3717 is a proposal that would zero-out the authorization for the Revenue Forgone Appropriations and terminate any future payments to the Postal Service for past appropriations shortfalls resulting from the Revenue Forgone Reform Act. We sincerely appreciate that the bill protects the preferred postal rate and continues to honor the phased schedule of nonprofit postal rate increases as envisioned by RFR, and we agree that free mail for the blind and overseas voting materials and reduced rates for qualifying nonprofit mail should continue to be part of the Postal Service's public service obligations. With that said, we hope that the Subcommittee will reconsider and continue to appropriate funds to the Postal Service in payment of those obligations resulting from RFR and those remaining health care costs of workers under the old Post Office Department. Postal ratepayers shouldn't be saddled with paying for those lost revenues in the next general rate case.

Conclusion

Mr. Chairman, thank you for listening to our point of view. To you, to the Members of the Subcommittee and to your staff, our most sincere compliment goes to the process that you've created to gather all of these ideas, to sift through the differing points of view and to refine proposals. Whether time will allow passage of this entire Bill prior to adjournment is one matter. Certainly you have found some resistance to some of the more controversial sections. However, as we have learned by listening to others testify before this panel, a number of these proposals are accepted unanimously. Perhaps you will consider introducing some of those measures in an expedited legislative initiative?

Some things are "broken" with our national mail delivery network, with the Postal Service and the rate-setting process. Thanks to the work of this Subcommittee, those problem areas have been identified. The Alliance of Nonprofit Mailers will continue to work with this Subcommittee and other mailers to find the solutions to these long-standing problems.

Mr. MCHUGH. Thank you, Mr. Silbergeld.

I just challenged my staff, but beyond them and John Kasich, to bring me one person who supports the revenue foregone provisions and, well, that is just—Mark, you talked about the management audit provisions, the quality of service and such that we had proposed that the PRC use as one of its determinants as to the acceptability of the rates. But I was pleased to see you supported that. I'm sure you also heard the previous panel, while not, I don't believe, objecting to the provisions of a management audit per se, but having concerns about the PRC performing that for a variety of reasons.

How would you feel about the management audit function being done by someone other than PRC, whether it be the GAO or someone, a firm contracted with some sort of expertise. Would that still meet your needs?

Mr. SILBERGELD. We haven't discussed it among our membership or leadership, but if I can wing it I believe I agree with the comments of the previous panel that this is not a rate-setting function that the PRC does not have management expertise as such on staff. They would have to add that for that purpose. It may present a conflict of interest for what they do.

It is quite possible that either GAO or some kind of an independent private audit could be performed and that certainly it should not be a function either of the service itself or the PRC. I think I also am sympathetic to Mr. May's suggestion that it is not properly lodged with the IG, but I think that we would like to consider that a little further and submit some specific suggestions for the record.

Mr. MCHUGH. Fine. I would appreciate that.

Mr. CASSIDY. I would like to comment on that, if I may, Mr. Chairman. There are probably only two people in this room who have ever regulated monopoly organizations: Mr. Schley behind us and myself. I was chairman of a State regulatory commission and I have some experience in management audits of monopoly organizations and I absolutely firmly believe that that has to be done with the greatest amount of independence.

I think that the Commission is neither qualified to audit, nor should they be allowed, as Mr. Silbergeld pointed out, there probably is a conflict of interest. Audits ought to be done with enormous independence by qualified people who are trained and experienced in doing management audits of large organizations. GAO obviously is one of them.

Mr. MCHUGH. OK. Thank you for that.

Both of you commented about the requester provisions as being important, particularly to nonprofits. I've had the advantage of reading all of the testimony prior, so I know that on the last panel comments will be made that I think it is fair to say object, even strongly object to this provision. And I would like to, out of fairness, provide you with the opportunity to state beyond your testimony, which goes into some detail, but beyond your testimony for the record as you are presenting it here today why that is important.

I would also be interested to learn if you have encountered any expressions of opposition to this in your discussions, whether it be

from an outside organization or concerns. So we are fair in that regard as well. I would like to hear from both of you but—

Mr. CASSIDY. I can make some summary comments on that, Mr. Chairman. We have been pushing the requester options since—officially, if you will, since the beginning of the classification reform process and we have been pushing it in writing since the beginning of the nonprofit classification reform process.

I believe I can honestly state that we have found no continuing objection on the part of commercial mailers. There were some questions at the beginning and I believe we have answered those to the satisfaction of those people. The Postal Service objected solely on a legal basis and, in fact, we raised that question on a question of law in the revenue foregone case and the response by the Postal Service was solely on a question of law, not on a question of appropriateness, economics or anything else.

So I absolutely welcome your expressed opportunity to make some further comments on why we need it, but as I say, I believe, in summary, I can say the only problem has been a question of law.

Mr. MCHUGH. There may be another we, out of fairness, need to explore in the last panel.

Mr. SILBERGELD. If, in fact, there are going to be objections in the next panel, I think what we would like to do to make sure the record is complete is to submit along with our corrected transcript some supplemental comments that specifically address the questions raised in their written and oral testimony so you have a point-by-point issue in rebuttal and we will have a full record on the issue.

Mr. MCHUGH. That is fine. Let me repeat the second part of the question I asked Mr. Cassidy. Are you aware of opposition beyond what he described? Have you encountered—

Mr. SILBERGELD. No, I just looked back at Mr. Denton who does this day in and out and he is unaware of any.

Mr. MCHUGH. OK, that is fine. Thank you. We will welcome that. I will state it now and I will repeat it later. We welcome any expansion from the third panel as to what concerns they may have. I am sure both sides have very legitimate reasons.

Mr. Silbergeld, you mentioned and referred to former Postmaster General Frank's observation about the problems of a supine Presidential appointee. I think the first half of your expression of concern is well-taken about vacancies occurring whether it be on the Commission or whether it be as the Board of Governors or whom-ever, and I am not concerned as you seem to express an uncertainty either how in law or statute we can address that.

But you are right it is a tough, troubling provision. I am bringing it up in the first instance to let you know I agree with you and, second of all, I want to express an all points bulletin that if anybody has any ideas legislatively how we might address that, we would be happy to entertain them.

We are going to express that further and that was based on the comments you made in your testimony. Of course, I think Mr. Frank was concerned about what he at least viewed and it is not a universal opinion, but what he at least viewed as some Presidential appointees who perhaps were not functioning as diligently

as they might therefore losing the intent of their position to be a productive part of the process.

I am not sure either how we ensured that although the point is well-taken and you didn't address that second part of your—you are shaking your head so I guess I can guess what the answer is.

Mr. SILBERGELD. I guess that is a political question and perhaps some strong bipartisan expression of the need to have people who are genuinely concerned about the issue and some communication about the concerns of the committees on both sides about the future of the Postal Service that might draw higher attention to the executive branch process of selecting the appointees.

Mr. MCHUGH. OK. I thank you. Again, I have been monopolizing the time. I would be happy to yield now or at any time to my colleague from New York, Mr. Owens.

Mr. OWENS. Just a couple of questions, Mr. Chairman. I think one of you pointed out that there are a lot of things that both the nonprofitmaking organizations agree on in the proposed reform bill and you urge that we go ahead and enact some of those. Is there basic agreement on the quality of service you get? As nonprofits, do you think you have the same quality of service that your mailers delivered as well as the mail of the commercial?

Mr. SILBERGELD. Congressman Owens, if I may seize the microphone first, in response to that question I think our most basic concern is that we are not necessarily getting the full quality of service that we pay for and whenever we do an audit we find there are problems with the quality of service.

Now, how different that is, how much less we are getting than what we pay for in comparison with the for-profit mailers, I don't know. I am not sure I can answer that question. I think all classes of mail have constant concerns and are constantly surveying and going to the Postal Service through the so-called MTAC, the Mailers Technical Advisory Committee, and other channels to tell the Postal Service where their shortcomings are and I am unaware of a time when anybody has ever come without any comments about the shortcomings, so there is always room for improvement.

Mr. OWENS. You don't think you have any chronic problems different from the—

Mr. SILBERGELD. I don't know that commercial mailers don't have a problem, therefore I don't know if it's a matter of discrimination between classes, mailers, as much as it is a chronic problem for all mailers. There may be some difference. The real problem is we would be happy if we get ours up to standard.

Mr. CASSIDY. If I can add just a little bit to that, Mr. Owens, the Postal Service has been measuring what had been Third Class and is now standard mail for several years. Those studies have not been released for whatever reason. We know what the numbers are on First Class because the Postal Service publishes them, I guess, quarterly. We have never seen, to the best of my knowledge, no mailers organization has ever seen the figures on what was Third Class. We are very interested in seeing them.

Mr. OWENS. Don't feel bad. In some cases Congressmen have hearts, after the problem with the amounts of people dumping their mail, frank mail.

You mentioned before that nonprofits are forced to subsidize competitive products? Did I hear you correctly? The way the rates are set, some way you end up with competitive products are subsidized by increases in your prices. Did I hear it right?

Mr. SILBERGELD. I maintain that if the Postal Service was granted in the future more reform legislation, greater flexibility, to be frank, to negotiate rates with very high volume, mailers that they might—they would be strongly tempted to, despite the guidelines in many bills, to negotiate rates that do not provide the revenue that, combined with other revenues, would not provide their target revenues and put the thumbs on the scale, as we said, in our testimony and pass the additional cost coverage on to the captive mailers, those that don't do the volume that provides them with non-Postal Service options.

Mr. OWENS. This relates to your share of the institutional cost?

Mr. SILBERGELD. We pay, as our testimony points out, our full direct costs and an increasing share of institutional costs. We have always paid some institutional costs, so since the Revenue Foregone Act we have made an increasing share of the institutional costs. Therefore we are not in any economic sense of the word subsidized by other classes of mail if that is what you are referring to, Congressman. We are paying our full costs.

Mr. OWENS. Mr. Chairman, did you say there was no support for the revenue foregone provision?

Mr. MCHUGH. No, I can give you a lot of support. What I half jokingly said, is I challenge my staff to bring in someone who would testify, other than themselves or Chairman Kasich who has—it is obvious by the record we have not had a single person strongly or even hardily disagree with what you have heard here today. And I was just kidding my staff about balancing the agenda here. They are not doing that.

Mr. OWENS. I was going to point out the late Senator Goldwater along with all of us certainly supported it very strongly.

Mr. MCHUGH. What I meant was that they are not supporting the provisions of the bill to end revenue foregone.

Mr. OWENS. I understand now. I didn't understand then.

Mr. MCHUGH. So I don't disagree.

As a followup point to both gentlemen's comments on the costs and do nonprofits cover their costs and, indeed, they do, I think you make a good point. I certainly understand the concerns that particularly you, Mr. Silbergeld, express about the Postal Service in perhaps its interest of negotiating rates and service agreements perhaps trying to make up revenues lost from you and others outside of the class.

But it is obviously the intent of this bill by dividing competitive and noncompetitive to ensure that doesn't happen to the competitive area. It must cover costs of the provision for negotiated service agreements. It is a frail provision that will be reviewed by GAO and others.

And last, that is why we attempted to strengthen the role of the PRC in other areas, including the right to subpoena data one might argue in the past has been used not to surrender to perhaps or cure the possibility of pulling over and causing that inappropriate subsidy. So we are attempting to deal with that.

I would say to both of you gentlemen thank you for being here. We do appreciate it and as with the first and I will say the last panel, we are going to continue to work with you. Obviously, we are going to draw some changes based on your comments and the comments of others and I am hopeful we will have the opportunity to discuss it further. Thank you both.

I am going to call a 5-minute recess so everyone can stretch their legs, but we will try to make this as brief as possible.

[Followup questions and responses follow:]



**ALLIANCE OF
NONPROFIT
MAILERS** 

December 3, 1996

Honorable John M. McHugh
Chairman, Subcommittee on the Postal Service
U. S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Chairman McHugh:

Thank you for allowing us the opportunity to respond to questions and comments raised before the Subcommittee during the September 17 hearings. As we prepare to roll-up our sleeves and begin anew on postal reform, we thank you again for your good work in the 104th Congress. And congratulations again on passage of the Inspector General proposal in the Appropriations Bill.

1. On transferring the law enforcement functions of the USPS Inspection Service to the Departments of Justice, Treasury and other state and local law enforcement entities.

As our testimony indicates, ANM supported creation of an independent Inspector General. As for placement of the law enforcement functions of the Inspection Service under a scattershot of federal, state and local agencies, it seems likely that the postal functions would get lost in the shuffle. Our understanding of the proposed legislation is that the Postal Inspection Service would continue to do the job that it currently does in able fashion. Unless the agencies listed are committed to specifically carving out postal inspection functions, it seems likely that the important protection of USPS revenues and other postal inspection functions would be diluted.

2. Observations on previous testimony that "new preferred rate categories contained in title VI of the bill (are) unconscionable and increas(e) the financial burden placed on mailers who are required to subsidize the current vast array of nonprofit and other preferred rate mailers."

Obviously we must categorically reject that argument.

We first should look to the history of nonprofit postal rates as well as the proposed legislation. Both strongly support maintaining preferred postal rates for select mail of qualified nonprofit organizations. And ANM appreciates the Chairman's choice of continuing to support one of the single most important fundraising tools available to nonprofit organizations. If we

President
Mark Silberstein
Connecticut Council on Public Policy

Vice President
Alan Katz
American Management Association

Secretary
Frank Emery
American Association
of Notified Persons

Treasurer
Robert St. Angelo
Rutgers College

Executive Director
Neal Donahue

accept this mandate from Congress as the proper and responsible public policy of the United States (and ANM would argue that it is), then the concerns as described by the witness should be moot.

A. The “new preferred rate categories” consist of one -- the requester rate for nonprofit mail. (Also see discussion of Question 4 below.) We have every reason to believe that most of the volume for this rate would shift from existing Standard A class mail into the Periodicals class. We think that universities would be the primary users of this new category. These mailpieces are currently mailed at the Standard class rates, simply because it cannot qualify under the stringent subscriber list requirements for nonprofit periodicals-class, this is a test that regular rate publications do not have to meet if they qualify as a “requester” publication. Offering this option to nonprofits does a number of things, not the least of which is finally creating the parallel structure of regular and nonprofit and commercial rate mail long-promised by the Postal Service and the Postal Rate Commission. As we testified, there have been no comprehensive studies conducted to determine the mail volume shifts that might occur -- only the USPS can conduct a test of the scope and magnitude that would be acceptable by the Postal Rate Commission.

B. To claim that creating this new category would be costly, ignores all of the evidence. Nonprofit Periodicals rates are generally higher per piece than nonprofit Standard rates (again, we believe most of this mail would migrate from standard) increasing USPS revenue. Considering the advertising opportunities available to nonprofits in the Periodicals rate over standard (ads for travel, insurance and financial arrangements are eligible to be mailed at nonprofit periodicals rates, but not at standard periodicals rates) their postage in turn would likely be even higher.

C. The underlying premise of this statement is flawed. Increased volumes of nonprofit mail is *not* a financial burden on the USPS or on other ratepayers. All nonprofit mail categories cover their attributable costs and make a substantial contribution to the USPS' institutional costs. More nonprofit mail means more revenue for the USPS -- including more mail that contributes to paying off the vast USPS overhead costs. To use the logic of the complaining party, only the highest overhead paying category would be considered non-subsidizing of the others. It is important to note that by using the complaining party's logic, nonprofit standard-class mail “subsidizes” regular rate Periodicals mail. And both nonprofit classes “subsidize” parcel mail.

D. The complaining party has a polar opposite view from ours of nonprofits and the problems that are besetting the USPS. There is no “vast array of nonprofit and other preferred rate mailers.” While the types of groups that can use the nonprofit postal rate has remained constant (except for motor-voter) for the past 25 years, the type of mail that is eligible has been reduced dramatically over the past five years (and USPS enforcement activities have often been overreaching and overbearing).

E. Nonprofit mail makes up less than 8% of the USPS's total mail volume; nonprofit mailers had to go to court to force the USPS to offer worksharing discounts to nonprofits;

nonprofit mailers are regularly left out of "historic" postal conferences and agreements; nonprofit mailers are often subject to overzealous enforcement of rules. Despite all of this, the USPS and those who do its political bidding traditionally point to the nonprofit community as the weak link in the chain that is bringing the US Postal Service down. Obviously, this cannot be true. We should look to flaws in management and shortcomings in the make-up of the Board of Governors.

3. On the need for periodic rate cases, to establish new baseline rates.

Once again, if everything were on an even keel, the rate setting mechanisms spelled out in the proposed legislation seem fair. Unfortunately, things are not on an even keel. The Postal Service's actions from past rate cases force mailers to act with extreme caution. Errors in the Postal Service's favor are not corrected until the next rate case -- if they are found at all. Given the history of the USPS presentation of rate case material, we feel the more opportunity to have that work checked, the more reliable it will become.

4. NNA Witness Waters' testimony and its characterization that Section 602 of the proposed legislation would authorize requester publications for in-county mail.

We were disappointed to learn of Mr. Waters' confusion in regard to section 602 of HR 3717. But, after reading Mr. Waters testimony, we note similar confusions and misunderstandings in other areas as well. It is our understanding that the Requester publication amendment would not apply to In-County publications. And as a practical matter it would be almost infeasible for a company to both meet the In-County requirements (DMM Section E270.1.0) and operate a requester publication. But, even if In-County publications were granted requester status, the same logic used in Question 2 and below would apply.

As for creating a requester subclass for nonprofit periodicals mail, at present, periodical (second-class) regular rate mail provides for a requester subclass that has no nonprofit counterpart (see Domestic Mail Classification Schedule, section E-224). Nor has the DMCS ever made provision for nonprofit requester publications. It is ANM's understanding that a major reason, and perhaps the only significant reason, for not allowing qualified nonprofit organizations to mail requester publications at nonprofit rates was the previous need for an annual revenue forgone appropriation to support nonprofit rates. Creating a nonprofit requester subclass would only have increased the appropriation request which, under the circumstances, did not seem fitting.

Since enactment of **The Revenue Forgone Reform Act ("RFRA")** (P.L. 103-123 704(a)(1)(a)(4)), the Postal Service no longer receives a revenue forgone appropriation on behalf of nonprofit mail. Postage fees now being paid by nonprofit publications not only cover all of their attributable costs, but also make a contribution to Postal Service overhead.

- (A) the USPS now makes money on fees paid by nonprofit periodicals, and

- (B) the profit margin is scheduled to increase each year through 1998 (on October 6, nonprofit rates will be at Step 4 of the 6-stepped set of phased increases); and
- (C) because postage rates charged for the advertising portion in nonprofit and regular rate publications are the same (for those nonprofit publications with more than 10 percent advertising), and because those rates carry a high implicit markup, the more advertising that a nonprofit publication contains, the greater the contribution to the Postal Service's overhead.

5. On the appropriate entity for carrying out the annual audit provisions.

Upon further review it makes sense that the Postal Rate Commission would not be the auditing entity -- that is not the PRC's function. However, it does make complete sense that the PRC be given full access to the audit results and some latitude in pursuing questions from the audit. As to what entity would actually perform the audit, ANM has no preference, other that it truly be independent, and be given complete access to USPS data and records.

Sincerely



MS
Mark Silbergeld
President, ANM



**ALLIANCE OF
NONPROFIT
MAILERS** 

October 4, 1996

Hon. John McHugh
Chairman, Government Reform and Oversight
Subcommittee on the Postal Service
U.S. House of Representatives
B-349C Rayburn House Office Building
Washington, DC 20515

President
Mark Silbergeld
Connecticut Investment Services
Vice President
Alan Kline
American Management Association
Secretary
Edi L. Strick
Accounting Association
of Retired Teachers
Treasurer
Kathleen Williams
Retailers' Alliance
Executive Director
Neal DePinto

Dear Chairman McHugh:

Congratulations on the passage of the Inspector General provision that had been included in H.R. 3717. As we told you during the September 17 hearings, we believe the creation of a separate Inspector General of the Postal Service is one of the single most important contributions you could have provided toward reform of the Postal Service. And, while we share some concern over the compromise allowing the USPS Governors the authority to select the IG, we understand this to have been a necessary trade-off for the creation of the IG -- and a provision that can be remedied if warranted. Thanks again to you and your staff for a job well done.

At the September hearings, there was some confusion over the necessity and intent of legislative reforms that would have created a separate "requester class" for nonprofit periodical publications. We have prepared some information that you and your staff might find useful in educating others.

Mr. Chairman, thank you again for all of your hard work in moving us closer toward a more competent, competitive and complete U.S. Postal Service. We're already looking forward to resuming the work in the coming months.

Sincerely,

Mark Silbergeld
President

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ALLIANCE OF NONPROFIT MAILERS

1111 CONNECTICUT AVENUE, N.W., SUITE 620

WASHINGTON, D.C. 20036-2701

MEMO: October 4, 1996
 TO: Chairman John McHugh and Staff
 House Oversight Subcommittee on the Postal Service
 FROM: Alliance of Nonprofit Mailers (202/462-5132)
 SUBJ: Requester Publication Status for Nonprofit Publishers

Creating a Requester Subclass for Nonprofit Periodicals Mail

Background and Introduction

At present, periodical (second-class) regular rate mail provides for a requester subclass that has no nonprofit counterpart (see Domestic Mail Classification Schedule, section E-224). Nor has the DMCS ever made provision for nonprofit requester publications. It is ANM's understanding that a major reason, and perhaps the only significant reason, for not allowing qualified nonprofit organizations to mail requester publications at nonprofit rates was the previous need for an annual revenue forgone appropriation to support nonprofit rates. Creating a nonprofit requester subclass would only have increased the appropriation request which, under the circumstances, did not seem fitting.

The Revenue Forgone Reform Act ("RFRA") (P.L. 103-123 704(a)(1)(a)(4)). Since enactment of RFRA, the Postal Service no longer receives a revenue forgone appropriation on behalf of nonprofit mail. Postage fees now being paid by nonprofit publications not only cover all of their attributable costs, but also make a contribution to Postal Service overhead. For the discussion that follows, it is important to stress that

- (1) the USPS now makes money on fees paid by nonprofit periodicals, and
- (2) the profit margin is scheduled to increase each year through 1998 (on October 6, nonprofit rates will be at Step 4 of the 6-stepped set of phased increases); and
- (3) because postage rates charged for the advertising portion in nonprofit and regular rate publications are the same (for those nonprofit publications with more than 10 percent advertising), and because those rates carry a high implicit markup, the more advertising that a nonprofit publication contains, the greater the contribution to the Postal Service's overhead.

Regulations initially proposed by USPS to implement RFRA. During 1994, the concept of instituting a requestor subclass for nonprofit publications took on some urgency because of the original regulations proposed by the Postal Service to implement the RFRA.

Those regulations, which were never put into effect, would have excluded from third-class nonprofit mail any publication that contained "unrelated" advertising. The third-class nonprofit mailstream contains a number of such publications. These are mailed by nonprofit organizations to recipients who neither subscribe nor pay regular membership dues that could be deemed to cover the price of a subscription. Having (i) paid subscribers or (ii) membership dues that cover a subscription are among the requirements to mail a publication at periodicals nonprofit rates. Because a number of publications mailed at standard (third-class) nonprofit rates can not meet this requirement, they are excluded from using periodicals nonprofit rates. Among the most notable examples are alumni magazines that many schools, colleges and universities distribute free to all of their alumni. Many alumni publications also carry paid "unrelated" advertising. Publications of nonprofit organizations other than schools may likewise mail at third-class nonprofit rates because, for similar reasons, they too are excluded from using second-class nonprofit rates. For all those nonprofit publications that USPS had planned to exclude from using third-class nonprofit rates, establishment of a requester subclass would have enabled them to continue mailing at nonprofit rates.

The DeConcini Amendment. Subsequent to implementation of the USPS's initially-proposed regulations, Congress passed a clarifying amendment to RFRA, widely known as the "DeConcini Amendment," which makes explicit that nonprofit publications can continue mailing at the third-class nonprofit rate. With passage of the DeConcini amendment, creation of a requester subclass for nonprofit publications became less urgent. The concept nevertheless has considerable merit.

Potential Market for Requester Publications

The potential market consists of (i) existing nonprofit publications already being distributed via the mail, and (ii) new nonprofit publications not now in existence and especially created to take advantage of a requester classification. Since no requester classification has ever been authorized for nonprofits, obviously no such publications exist at this time. Creating entirely new publications is a longer-term phenomenon. Accordingly, this possibility is discussed in the following section on growth potential.

Existing publications. Two types of existing publications might opt to enter the mail as nonprofit requester publications, were such a classification to become available. They are (i) publications that now mail at standard class (third-class) nonprofit rates and which the publisher is already distributing free of charge to recipients, and (ii) subscriber publications with a high percentage of advertising that are now being mailed at periodical (second-class) nonprofit rates.

Publications mailed at standard-class rates. Why would a nonprofit organization that is now mailing at third-class nonprofit rates opt to mail as a requester publication, were that to be allowed? At least two possible reasons come readily to mind.

First, it might be less expensive. RFRA requires that higher markups be phased in between now and 1998, and the differential between periodical and standard-class nonprofit rates

will gradually widen because of the higher markup on standard-class mail. Second, the Postal Service and the Postal Rate Commission have pursued markedly different pricing policies for periodical and standard-class nonprofit mail. In periodicals-class, nonprofit rate differentials reflect most or all of the attributable cost of the additional service provided, hence rates in periodicals are generally **compensatory** for mail with little worksharing (e.g., mail that does not qualify for any presort discount). In the standard-class nonprofit subclass, the Postal Service prefers to charge **noncompensatory** rates for mail with little or no worksharing, i.e., in standard-class the rates provide a large intraclass cross-subsidy to mail with little or no worksharing (especially flats). Thus, given the existing rate structure, any highly presorted publications that now use standard-class would predictably be among the most likely candidates to migrate to a requester classification.

Nonprofit publications with a high percentage of advertising. Keeping in mind that nonprofit publications contain, on average, only 20 percent advertising, versus 50 percent for regular rate publications, why would a nonprofit publication with a large percentage of advertising migrate to requester status? Here the motivation would be generally similar to regular rate. Namely, for some publications the recurring cost of soliciting and maintaining a subscriber base may exceed the subscription revenues. When this occurs, it becomes cheaper to distribute the publication free and rely solely on advertising revenues.

Since nonprofit publications average only 20 percent advertising content, far fewer nonprofit publications could be expected to survive solely on advertising revenues. Nevertheless, a number of nonprofit publications might find requester status appealing.

NOTE: Although advertising content averages 20 percent, the distribution may be somewhat "bimodal." That is, the advertising content in a great many nonprofit publications ranges from none whatsoever to "slight" (less than 10 percent), while a somewhat smaller number of nonprofit publications probably have significantly more than 20 percent advertising (and comparatively few have around 20 percent).

Growth Potential

As indicated previously, initial usage of a nonprofit requester subclass would most likely consist of existing nonprofit publications. Publications that merely switch, or migrate, to a newly-established requester subclass would represent growth within the subclass, but from a broader perspective migration obviously does not constitute growth of total volume. Real growth, or net increase in volume, would come from (i) an increase in the circulation of publications that switched to requester status, and (ii) publications that would be newly-created to take advantage of a requester subclass.

Publications that migrated to requester status. On one hand, some publications would not be expected to increase their circulation on account of requester status. This would include those nonprofit publications now being mailed free to members (as standard-class matter), such as alumni magazines or church publications, because they would surely continue mailing to the same list. On the other hand, any nonprofit subscriber publication that migrates to requester status

would have an incentive to increase their volume, because an increased circulation base generally enhances advertising rates and revenues. These publications might well increase their volume.

New publications. Finally, it is conceivable that some nonprofit organizations would create entirely new publications to take advantage of a requester subclass. Since the lack of a requester subclass currently prevents the existence of any such publication, this possibility is necessarily speculative. It is worth noting, though, that when a new publication starts from scratch, the necessity of obtaining paid subscribers in competition with publications of the same general genre represents a significant barrier to entry. To the extent that a requester subclass materially reduces this barrier to entry, it may lead to new publications and net growth in profitable volume for the Postal Service.

Administrative Costs

Postal Service administrative costs should be minimal, because existing regulations, requirements, forms for entering mail, procedures for identifying and tracking attributable costs, etc. are already in place for regular rate publications, and would apply with equal force to any nonprofit requester subclass.

NATIONAL FEDERATION
OF NONPROFITS



*Advocating for Nonprofits
in Postal Regulation,
Legislation, and Accountability
Issues Since 1982*

December 6, 1996

Hon. John J. McHugh, Chairman
U.S. House of Representatives
Subcommittee on Postal Service
B-349C Rayburn House Office Building
Washington, DC 20515

Dear Chairman McHugh:

This is in response to your letter of October 22, 1996, requesting my thoughts regarding various comments made during the hearings before your subcommittee on September 17. We appreciate the opportunity to expand our comments.

Your letter poses four questions. My response addresses those questions in the sequence they were asked.

1. The Postal Inspection Service has an inherent conflict of interest. It is properly responsible to protect the Postal Service from mail fraud, transportation of certain products and devices, and fraudulent revenue loss. But Postal Service management gives the Inspection Service goals and objectives which are financial, as well as administrative. Therefore, inspectors have incentive to make enforcement decisions which, though questionable interpretations of the law and regulations, bring in additional revenue.

This has been a constant source of concern for nonprofit mailers, who have innumerable experiences where inspectors rejected mail at nonprofit rates though the mail was, by any reasonable standard, acceptable at those rates.

When police are given quotas or goals, and are told to enforce traffic regulations so revenue can be increased, the media and public officials are properly up in arms. A similar situation exists with the Inspection Service, and we hope the outcry is the same.

We were recently made aware of a situation with a postal inspector whose aggressiveness has made his actions, if not his name, known to nonprofits nationally. An example: a few pieces of mail sent to alumni of (another state's) state university arrived in the inspector's city, and he insisted that the university, hundreds of miles and three states away and operating to the satisfaction of local postal authorities, be charged with a postage deficiency for the entire mailing.

The university was in the position of having satisfied one postal facility, but was rejected by this inspector. In court, that would be considered double jeopardy.

Postal inspectors should not make decisions about whether nonprofit mail meets the requirements of laws and regulations. Business mail acceptance staff has that responsibility, and the inspectors should concentrate on fraud.

2. As noted in my letter to you of September 20, a copy of which is attached, we believe there will be no additional financial burden on commercial mailers when nonprofits are authorized to utilize the requester option. Nonprofits are now authorized to mail at nonprofit Periodicals rates; the proposed change would merely give them the option to circulate their publications free of charge, an option commercial mailers have had for years.

We believe that nonprofit publishers of periodicals, most of whom now mail at Standard (A) postage rates, will continue to do so because the record-keeping requirements for the Periodicals class are onerous compared to Standard (A). But we also believe that fairness dictates that they should have the option to migrate to Periodicals class if they so chose.

Possibly the panel witness was referring to the "Elderhostel" provision of the Act as introduced last June. That point is now moot.

3. Yes. As the Postal Service finds ways to lower processing costs, the changes will not likely be uniform among classes and even subclasses. The new preparation requirements for Standard (A) mail are significantly more restrictive than for First Class, and one can reasonably assume that the relative contribution to overhead will change between the two classes. Such changes are likely to be continuous as automation becomes more prevalent.

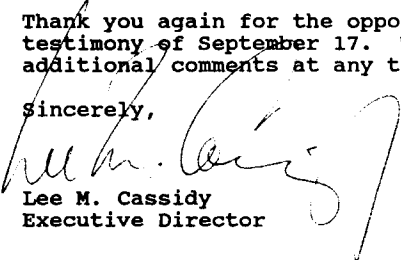
As demonstration of that point, during each rate case before the Postal Rate Commission, there have been changes in the overhead allocation among the classes. There is every reason to believe that such changes will continue, just as the costs of certain items in the consumer Price Index increase at different rates than the costs of other items.

4. Mr. Waters' reference is to in-county periodicals, not to nonprofit publications, and therefore is a non-sequitur. In-county periodicals are generally published by commercial organizations, but receive preferred rates by reason of their local communications value. Nonprofits receive preferred (nonprofit) rates because of public policy relating to their tax-exempt status, regardless of the county of their distribution.

I again refer you to my letter of September 20, and note that the proposed change would not increase eligibility, merely give nonprofit publishers the same option commercial publishers have had for many years.

Thank you again for the opportunity to elaborate on our testimony of September 17. We will be pleased to give additional comments at any time.

Sincerely,



Lee M. Cassidy
Executive Director

copy: Alliance of Nonprofit Mailers

NATIONAL FEDERATION
OF NONPROFITS



*"Advocating for Nonprofits
in Postal, Regulatory,
Legislative, and Accountability
Issues Since 1982"*

COPY

September 20, 1996

Honorable John McHugh, Chairman
U.S. House of Representatives
Subcommittee on Postal Service
B-349C Rayburn House Office Building
Washington, DC 20515

Dear Chairman McHugh:

During the September 17 hearing before your subcommittee, you asked that Mark Silbergeld of the Alliance of Nonprofit Mailers and I submit additional information about the requester option for nonprofit publishers. I'm pleased that you are interested in the issue, and take this opportunity to send the information.

To qualify for the Publications (formerly second class) postage rate, publishers must have a legitimate list of subscribers, who must receive a minimum of 50 percent of the distributed copies of each issue. Subscription lists are subject to audit.

For many years, commercial publishers have had the option of sending free copies of their publication to prospective subscribers, along with a reply card. Those who then "request" the publication become subscribers, and must be re-qualified periodically. Many trade publications in all fields are circulated in this manner, with the costs paid by advertisers.

When the Postal Reform Act was passed in 1970, nonprofit publications were not given the requester option. The reasoning was that the requester option would give nonprofit publishers unreasonable opportunity to carry advertising, in competition with commercial publishers, at lower postage rates.

Therefore, nonprofit publications must be paid for by subscribers, and cannot be offered free to requesters. Subscriptions can be purchased either by direct payment, or by the board of directors passing a resolution stating that a portion of dues (of membership organizations) be allotted to pay for the subscription.

Obviously, organizations without dues-paying members cannot use the Periodicals rate at all. Examples are union retirees, alumni associations (because not all alumni pay dues), and organizations such as Elderhostel, which is not a membership organization.

The Revenue Forgone Reform Act of 1993 eliminated the \$550 million dollar appropriation, and required nonprofit publishers to pay the same postage rates, for the advertising portion of their publications, as do commercial publishers. Therefore, there is no longer any reason to deny the requester option to nonprofit publishers.

In the recently completed Nonprofit Classification Reform case before the Postal Rate Commission, the National Federation of Nonprofits asked the Commission to rule that it would be legal for the Commission to recommend, and for the Postal Service to propose, the creation of an optional requester postage rate in the Publications class of mail for nonprofit publications. We argued that the creation of such a rate would not represent an extension or expansion of nonprofit eligibility (which only Congress can approve) but a redefinition of "subscriber", to include those who request the publication.

That would put nonprofits on a par with commercial publishers, who do have that option.

We posed a legal question, and the PRC ruled on the legal question. Neither the Commission nor any intervenor claimed that there was any philosophical or economic reason to deny nonprofits the requester option. The sole question was whether Title 39 permitted such an interpretation. The PRC disagreed with our position, and ruled against us.

I repeat that the requester option would not represent an increase in eligibility, but simply another means to acquire subscribers. Nonprofit publishers deserve to have the same options as commercial publishers, inasmuch as they are paying commercial postage rates for the advertising portion of their publications, and the full direct cost of postage, plus a contribution to overhead, for the editorial portion.

During the hearing you asked whether Mark Silbergeld or I were aware of any opposition to the nonprofit requester, and we both replied that we were not. I had not, at that point, read the testimony of Jerry Cerasale of the Direct Marketing Association, in which he implies that authorizing the nonprofit requester would "increase the financial burden on commercial mailers".

Not only is such is not the case, but the DMA did not raise any economic or other argument against the nonprofit requester in the Classification Reform case, so it seems at least a little disingenuous for them to do so now..

All nonprofit organizations are currently eligible to mail at nonprofit Publications rates, subject only to obtaining a permit. The preparation and content requirements for nonprofits are the same as for commercial publishers, which is as it should be. If nonprofits had the requester option, they would simply have available an additional means to acquire the subscribers they now must ask to pay. That would put nonprofits on a par with commercial publishers, who do have that option.

It is conceivable that some nonprofit organizations which now use Standard (formerly third class) mail to circulate publications would, given the requester option, migrate to the Publications class. Certainly there was some migration of commercial publishers when they achieved that option. Therefore, the Postal Service would have to perform cost studies to learn the economic impact. But while some Standard mail volume would be lost, Publications volume would increase even more, as publishers gained the opportunity to reach readers who cannot be expected to pay for the publications. And they would pay the higher postage rates for Publications class mail, as compared to Standard mail.

As I noted in my testimony, no party to the nonprofit Classification Reform case raised any but legal questions regarding the nonprofit requester option. Not the Postal Service. Not the Office of Consumer Advocate. Not the DMA. That's why I was able to say that I believe that the nonprofit requester is unobjectionable, and matter of simple fairness.

I appreciate your interest in this important issue, and will be pleased to provide you with additional information at any time.

Sincerely,

Lee M. Cassidy
Executive Director

copies: Alliance of Nonprofit Mailers
DMA

Mr. MCHUGH. If we could reconvene for the last, but as the saying goes, certainly not the least, our third panel of the day. This last is comprised of Christopher Little, Magazine Publishers of America; Stephen B. Waters, who is vice president and publisher of the Rome New York Daily Sentinel, on behalf of the National Newspaper Association; John Sturm, representing the Newspaper Association of America; and Steve Bair, Association of American Publishers.

Gentlemen, thank you for being here and for your patience in what is already a relatively long day. We value your input and are thankful for your willingness to be with us and to share your comments.

As you saw with the first two panels, we do need to administer an oath, so I would ask you kindly to raise your right hand and repeat after me.

[Witnesses sworn.]

Mr. MCHUGH. We have confirmed that all four panel members answered affirmatively to the oath.

As we have all day—I see no reason to disrupt a good thing—we will begin from my left, your right, and work down the table, if we might. And, Mr. Little, that means that you will be presenting first. And welcome. Thank you for being here, and we look forward to your comments.

STATEMENTS OF CHRISTOPHER M. LITTLE, CHAIRMAN, GOVERNMENT AFFAIRS COUNCIL, MAGAZINE PUBLISHERS OF AMERICA; JOHN STURM, PRESIDENT AND CEO, NEWSPAPER ASSOCIATION OF AMERICA; STEPHEN B. WATERS, VICE PRESIDENT AND PUBLISHER, ROME SENTINEL CO., NATIONAL NEWSPAPER ASSOCIATION; AND STEPHEN L. BAIR, SENIOR VICE PRESIDENT, LAW AND BUSINESS AFFAIRS FOR TIME LIFE, INC., ASSOCIATION OF AMERICAN PUBLISHERS

Mr. LITTLE. Thank you, Mr. Chairman.

I am Chris Little. I am president of the Meredith Publishing Group. We are one of the five largest consumer magazine publishers in the United States, and our magazines are "Better Homes and Gardens," "Ladies' Home Journal," "Country Home," and more. We are also in broadcasting, book publishing, and real estate, and we are a major user of the Postal Service. Its financial health and its performance is really critical to our business.

I am chairman of the Government Affairs Council of the Magazine Publishers of America, the principal association of consumer magazine publishing firms. There are over 200 domestic publishing firms that are members that publish over 800 magazines, and they range from nationally known magazines like "Time," "Newsweek," "National Geographic," and "Reader's Digest," to "Arts Indiana," "Home Office Computing," "Snowmobile," and "The Blood Horse."

Before commenting on the bill, Mr. Chairman, we would like to thank you for your leadership during the last 19 months in the postal world and particularly to thank you for the difficult task of starting the postal reform legislative process. We are very happy to see it under way.

My statement this afternoon will focus on three major proposals made by H.R. 3717: The new rate-setting system, the authority of

the Postal Service to offer volume discounts for both noncompetitive and competitive products and services, and the Presidential Commission. I am submitting for the record MPA's views on all other provisions of the bill.

Mr. Chairman, MPA endorses the major thrust of the bill. While we have reservations about many provisions, as is inevitable in such a comprehensive measure, we believe the bill makes constructive strides toward several important goals.

First, toward a long overdue modernization of the law governing the Postal Service, based partly on our experience since the Postal Reorganization Act of 1970 and also on the experiences of foreign postal administrations in reforming their own postal systems.

Second, the bill makes a major stride toward greatly needed but appropriately limited flexibility for the Postal Service to price its products and to respond to changing market conditions.

And third, the bill provides a meaningful role for the Postal Rate Commission and the Postal Service Board of Governors in the rate-setting process as well as providing the commission with necessary tools to carry out its responsibilities.

Before I touch on those three areas, I would like to add one point about the bill's scope and complexity. The people who testified today and many others have had several weeks to analyze the bill's provisions, but it's clear that there's going to be further analysis and discussion over the coming months and that that may result in modified views on various aspects of the bill. Since the changes proposed by H.R. 3717 are so significant, this longer period of analysis and deliberation is justified, in our view.

So first I would like to talk briefly about the new rate-setting system proposed in Title X. We support the new rate-setting system for both noncompetitive and competitive products and services. For competitive services, we think the Postal Service should have broad authority to set rates within the zone of reasonableness in a timely manner, so long as the rates cover attributable costs and make an appropriate contribution to overhead. For noncompetitive products and services, we support with some refinements the price cap rate-setting system proposed by the bill. This system, with rates adjusted annually up to an agreed upon inflation measure and a sharing of a portion of profits by employees and managers, will, in our view, provide more certainty for mailers and important incentives for the Postal Service to improve productivity.

However, we are proposing several important changes in the rate-setting system. First, despite the clear intent of the bill to keep annual increases below the rate of inflation, there's no restriction in the current language on the possibility of adjustment factors above the rate of inflation, thus producing a result that doesn't fit with the intent.

We believe that the PRC's authority to approve positive adjustments—that is, adjustments that go greater than inflation—should be restricted and exercised only under precisely defined conditions. We suggest that the bill might require the PRC to hold a rule-making proceeding as soon as the bill is enacted to determine the conditions under which positive adjustments would be permitted. Possible limits on positive adjustment factors, based on Federal Communications Commission experience and practices, are in-

cluded in the attachment to my testimony. We also suggest that positive adjustments should be revised every 3 years rather than every 5 years.

Second, with respect to the rate-setting system, we are concerned that the factors to be considered by the PRC, both in the baseline setting and adjustment factor cases, will focus too heavily on demand factors, first downgrading and then eliminating altogether such historically important factors as the educational, cultural, scientific, and informational value of products and services, ECSI, and fairness and equity among rates.

We believe that all of the current factors used to determine rates should be taken into account, with no particular order of priority, in both the baseline setting and adjustment factor setting cases. These factors have been endorsed by a series of Congresses, used in many rate cases, and interpreted by courts over a quarter of a century. They have been reasonable factors that have served the public interest well. Even if this bill is enacted, the Postal Service will remain, to a large extent, a public body serving public purposes. Consequently, in our view, demand factors should not be given exclusive or even primary consideration.

The loss of ECSI value would be particularly hard on the magazine industry, which has historically benefited from the PRC's and the Postal Service's adherence to the policy wishes of Congress in this area.

And the third point I would make with respect to the rate-setting process is a concern that the transition from the current rate-setting system to the new one proposed by the bill be very carefully worked out. In order to ensure that double counting of inflation for any specific year does not happen, by virtue of new rates being set in the baseline case, followed by the first indexed adjustment rates right after that, that there should be provided a delay in the implementation of indexed rate increases until at least 1 year after completion of the baseline test year. It's a simple matter, but we think it's a very important one.

Next, I will comment briefly on volume discounts for both non-competitive and competitive products and services. MPA believes that, with important changes, the bill's proposal for volume discounts for mailers would be a useful addition to the Postal Service's efforts to compete more effectively with private competition. We are pleased that the legislation provides the Postal Service flexibility to provide such discounts without necessarily raising rates for other mailers in the same subclass. We do not believe, however, that the Postal Service should have complete authority to set the terms and conditions of such discounts.

First, we would recommend that, instead of volume discounts, the bill include provisions authorizing productivity discounts—this was discussed in the previous panel briefly—and that this should apply to both noncompetitive and competitive products and services. These productivity discounts would be available for mailers meeting specified mail preparation and administrative requirements as well as minimum volume guarantees. This serves the purpose of giving an incentive to mailers not simply to provide volume but to drive costs out of the postal system.

Second, to ensure fair prices, we believe that all recipients of productivity discounts should be required to cover attributable costs and make a reasonable contribution to overhead.

Finally, on the Presidential Commission, Mr. Chairman, we appreciate the sensitivity of this matter and I admire your courage in addressing this subject in your bill. Since you believe that a study commission is the best available mechanism for moving toward change, we defer to your judgment and support your efforts to make the commission a well balanced, knowledgeable, and forward thinking group.

However, our big concern is that waiting for 3½ years after its creation for final recommendations is too long, given what is generally agreed to be the current dismal state of labor-management relations at the Postal Service and the overwhelming impact of personnel-related costs on the overall postal budget. This is a serious problem, everybody agrees that it is, and we would hope that it would be addressed with deliberate speed. There's a good starting point for this; the September 1994 report from the General Accounting Office. This is very helpful basic source material.

Our recommendation is that if the Presidential Commission is to be created, it should be required to issue a single comprehensive report 12 months after its creation.

Thank you, again, for the opportunity to be here.

[The prepared statement of Mr. Little follows:]



Statement
of
Christopher M. Little, President
Publishing Group, the Meredith Corporation
for the
Magazine Publishers of America
before the
House Subcommittee on Postal Service

September 17, 1996

I am Chris Little, President of the Publishing Group of the Meredith Corporation. Meredith is the fifth largest publisher of consumer magazines in the United States, publishing such well-known titles as Better Homes and Gardens, Ladies' Home Journal, and Country Home. Meredith is very active in broadcasting, book publishing, and real estate, and is a major user of the Postal Service, whose financial health and performance are of critical importance to our company's interests.

I serve as Chairman of the Government Affairs Council of the Magazine Publishers of America (MPA), the nation's principal association of consumer magazine publishing firms. MPA has approximately 200 domestic firms as members, publishing about 800 magazines. These magazines range from such nationally famous ones as Time, Newsweek, National Geographic, and Reader's Digest to Arts Indiana, Home Office Computing, Snowmobile, and The Blood-Horse.

Before commenting on HR 3717, Mr. Chairman, we want to thank you for your outstanding leadership during the past 18 months in the postal world. Thanks to you the difficult task of starting the postal reform legislative process has begun. It should go without saying that MPA hopes you will continue to play a major role in this process in the 105th Congress as well.

* * *

My statement this morning focuses on three major proposals made by HR 3717 -- the new ratesetting regime that would replace the current ratesetting system; the authority of the Postal Service to offer volume discounts for both non-competitive and competitive products and services; and the presidentially-appointed postal employee-management commission. I am also submitting for the record MPA's views, briefly stated, on all other provisions of the bill.

Mr. Chairman, MPA endorses the major thrusts of HR 3717. While we have reservations about many of the provisions of the bill, as is inevitable in such a comprehensive measure, we believe the bill makes constructive strides toward several important goals: first, toward a long overdue modernization and updating of the law governing the Postal Service, based in part on our experience since the Postal Reorganization Act of 1970 and in part on the experiences of foreign postal administrations in reforming their own postal systems; second, toward greatly-needed, but appropriately limited, flexibility for the Postal Service to price its products and to respond to changing market conditions; and third, to provide meaningful roles for the Postal Rate Commission and the Postal Service Board of Directors in the ratesetting process, as well as providing the Commission with necessary tools to carry out its responsibilities.

We would add one important point with respect to the bill's scope and complexity. While we and others have had several weeks to analyze the bill's provisions, it is clear that further analysis and discussion over the coming months may well result in modified views on many aspects of the measure. Since the changes proposed by HR 3717 are so significant, a longer period of analysis and deliberation is justified. In our view, this will mean that an improved bill will be produced in the next Congress.

* * *

Let me first address the new ratesetting system proposed in Title X of the bill.

MPA supports the new ratesetting system proposed for both non-competitive and competitive products and services. For the latter, we believe that the Postal Service should have broad authority to set rates within a zone of reasonableness, in a timely manner, so long as the rates cover attributable costs and make an appropriate contribution to overhead. For non-competitive products and services -- that is, those covered by the monopoly laws or lacking reasonably available private alternatives to the Postal Service -- we believe that, with some refinements, the price cap ratesetting system proposed by HR 3717, under which rates are adjusted annually up to an agreed-upon inflation measure (the Gross Domestic Product Price Index), together with a sharing of a portion of profits by employees and managers, will provide more certainty for mailers and important incentives for the Postal Service to improve productivity.

We believe, however, that several important changes should be made to the new ratesetting system.

First, despite the clear intent of the bill to keep annual increases below the rate of inflation, there is no restriction on the possibility of adjustment factors being positive and thus resulting in above-inflation price levels. We believe that the PRC's authority to approve positive adjustments should be restricted and exercised only under precisely-defined conditions. We suggest that the bill might require the PRC to hold a rulemaking proceeding as soon as it is enacted to determine the conditions under which positive adjustments would be permitted. Possible limits on positive adjustment factors, based on Federal Communications Commission (FCC) experience and practices, are included in the attachment to my testimony. We also believe that positive adjustments should be revised every three, rather than five, years.

Second, we are concerned that the factors to be considered by the PRC both in the baseline-setting and adjustment factor cases will focus too heavily on demand factors, first downgrading and then eliminating altogether such historically important factors as the educational, cultural, scientific, and informational (ECSI) value of products and services and fairness and equity among rates. We believe that all of the current factors used to determine rates should be taken into account, with no particular order of priority, in both the baseline-setting and adjustment factor-setting cases. These factors -- endorsed by a series of Congresses, used in many rate cases, and interpreted by courts over a quarter of a century -- are reasonable ones that have served the public interest well. Even if the bill is enacted, the Postal Service will remain a public body serving

public purposes; consequently, in our view, demand factors should not be given exclusive or even primary consideration. The loss of ECSI value would be particularly hard on the magazine industry, which has historically benefited from the PRC's (and the Postal Service's) adherence to the policy wishes of Congress in this area.

And third, we are also concerned that the transition from the current ratesetting system to the new one proposed by the bill be very carefully worked out. In order to ensure that double-counting of inflation for any specific year does not occur (by virtue of new rates being set in the baseline case, followed by the first indexed adjustment of rates), there should be a delay in implementation of indexed rate increases until at least one year after completion of the baseline case test year.

Next, volume discounts for both non-competitive and competitive products and services.

MPA believes that, with important changes, the bill's proposal for volume discounts for mailers would be a useful addition to the Postal Service's efforts to compete more effectively with private competition. We are pleased that the legislation provides the Postal Service flexibility to provide such discounts without necessarily raising rates for other mailers in the same subclass. We do not believe, however, that the Postal Service should have complete authority to set the terms and conditions of such discounts.

First, we recommend that instead of "volume" discounts, the bill include provisions authorizing "productivity" discounts for both non-competitive and competitive products and services. Such

discounts should be available for mailers meeting specified mail preparation and administrative requirements (such as minimum sortation levels, automation specifications, containerization requirements, and centralized postage payments), as well as minimum volume guarantees. The bill should allow for a series of discounts for various worksharing and volume levels. These “productivity” discounts would encourage mailers of all sizes to be more efficient and would drive costs from the postal system, with the discounts based not on volume level alone, but on mailer willingness to meet important worksharing requirements. And second, to ensure fair prices, we believe that all recipients of “productivity” discounts should be required to cover attributable costs and make a reasonable contribution to overhead.

Finally, the presidentially-appointed postal employee-management commission.

Mr. Chairman, we appreciate the acute sensitivity of this matter, and I admire your courage in addressing this subject in your bill. Since you believe that a study commission is the best available mechanism for moving toward change, we defer to your judgment and support your efforts to make the commission a well-balanced, knowledgeable, and forward-thinking group. Frankly though, waiting for three and one-half years after its creation for this commission’s final recommendations is simply too long, given the current dismal state of employee-management relations and the overwhelming impact of personnel-related costs on the overall postal budget. We believe this is a most serious problem and it should be addressed as soon as practicable.

Significant work has already been done in this area by the General Accounting Office. Its September 1994 report should be the commission's basic source material. If the commission is to be created, it should be required to issue a single, comprehensive report twelve months after its creation.

Thank you.



MPA POSITIONS ON POSTAL REFORM ACT OF 1996

TITLE I - ORGANIZATION

Section 101. This section renames the Board of Governors of the Postal Service as the Board of Directors.

MPA supports this section. This change reflects the increased business orientation of the Postal Service intended by H.R. 3717.

Section 102. This section renames the Postmaster General and the Deputy Postmaster General as the Chief Executive Officer and the Deputy Chief Executive Officer, respectively.

MPA supports this section. This change reflects the increased business orientation of the Postal Service intended by H.R. 3717.

Section 103. This section raises the salary of the Directors to \$30,000 per annum.

MPA supports this section, with the addition of language suggesting that, to the extent possible, Directors should have experience as executives in large business organizations, and preferably experience with transportation distribution networks and advanced technologies.

Section 104. This section creates a Presidentially-appointed Inspector General for the Postal Service and adds an Inspector General for the Postal Rate Commission.

MPA supports this section. This change will separate the responsibilities of the Chief Inspector - security of personnel, facilities, and investigation of postal crimes - from internal audit activities and program review activities. The Inspector General, to be appointed by the President, will be able to operate independently from Postal Service control. An Inspector General for the Postal Rate Commission is appropriate in light of its increased authority.

TITLE II - GENERAL AUTHORITY

Section 201. This section permanently authorizes the employment of postal police officers.

MPA supports this section. It should not be necessary to enact temporary authority for postal police officers each year.

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Section 202. This section would allow appeals of post office closings to be postmarked 30 days from notification rather than received at the Postal Rate Commission within 30 days of notification.

MPA supports this section. Persons affected by post office closings should have adequate time for appeals.

TITLE III - PRESIDENTIAL POSTAL EMPLOYEE-MANAGEMENT COMMISSION

Section 301. This section establishes a Presidentially-appointed Postal Employee-Management Commission for a period of three years to evaluate and recommend strategies to improve the deteriorating state of employee-management relations in the Postal Service.

MPA is disappointed that H.R. 3717 does not include specific proposals to alter the current dismal state of employee-management relations and address the numerous problems affecting that relationship. As GAO noted in its September 1994 Report (Labor-Management Problems Persist on the Workroom Floor), "labor-management problems are long-standing and have multiple causes that are related to an autocratic management style, adversarial employee and union attitudes, and inappropriate and inadequate performance management systems". The current collective bargaining system has broken down. In recent years real bargaining has ceased, with the largest contracts increasingly written by arbitrators. Grievances have also increased and the unions have been vocal in opposing any outsourcing of work to the private sector.

To the extent that the Commission's recommendations address compensation and other terms of employment for rank and file postal workers, they should be available for implementation in time for the next round of collective bargaining. We believe that in view of the work already done in this area, the Commission should make its recommendations within a year of its creation.

TITLE IV - FINANCE

Section 401. This section ends Treasury control of Postal Service banking and would enable the Postal Service, upon submission of a master plan, to deposit its revenues in Federal Reserve banks or depositories for public funds as it deems appropriate.

MPA supports this section. This change enables the Postal Service to act in a more business-like manner and to take advantage of open market financial services.

Section 402. This section removes Treasury control of Postal Service investments, allowing it to invest in obligations of, or guaranteed by, the Federal Government.

MPA supports this section. This change enables the Postal Service to make timely investments and to take advantage of favorable market conditions.

Section 403. This section severs the Postal Service's access to the Federal Financing Bank.

MPA opposes this section. The provisions in Sections 401,402, and 404 provide the Postal Service with more access to the open market, but create only a limited private-sector model (e.g., USPS investments must be in federally-guaranteed obligations). MPA recommends that the Postal Service retain the option to obtain financing from the Federal Financing Bank.

Section 404. This section allows the Postal Service to make its own borrowing decisions.

MPA supports this section. This change is consistent with the Postal Service's increased business orientation intended by H.R. 3717.

Section 405. This section removes the requirement of the Treasury Secretary to purchase Postal Service obligations, but would still permit the Secretary to purchase them.

MPA supports this section. This change is consistent with the Postal Service's increased business orientation intended by H.R. 3717.

TITLE V - BUDGET AND APPROPRIATIONS PROCESS

Sections 501/502. These sections repeal authority for transitional appropriations to fund worker's compensation liabilities of Post Office Department employees and make the liabilities for those employees liabilities of the Postal Service.

MPA opposes this section. Current and future ratepayers should not be required to pay for pre-1971 Post Office obligations.

Section 503. This section repeals the authorization for all Postal Service appropriations, including the revenue forgone appropriation that supplements reduced rates to nonprofit mailers, while maintaining the current phase-in schedule for nonprofit rates and free mail for the blind.

MPA opposes this section. Social obligations mandated by Congress should be funded by Congress, not by ratepayers.

Section 504. This section preserves Congressional oversight of the Postal Service.

MPA supports this section. The Postal Service's comprehensive statement to Congress and regularly submitted budget information will be useful inputs to the annual audit process and will ensure Postal Service compliance with the requirements of H.R. 3717.

TITLE VI - MISCELLANEOUS PROVISIONS RELATING TO POSTAL RATES, CLASSES, AND SERVICES

Section 601. This section authorizes the Postal Service to forward mail for recipients using Commercial Mail Receiving Agencies, such as private post office box rental companies.

MPA has no objection to this section.

Section 602. This section expands the definition of nonprofit organizations to include educational institutions for older adults, such as "Elderhostel", and allows the Postal Service to request from the PRC a nonprofit category for periodicals requester publications.

MPA has no objection to this section, if new social obligations created by Congress are financed by Congress and not by current and future ratepayers.

Section 603. This section allows the Postal Rate Commission to issue subpoenas to require attendance and presentation of testimony and production of documents and to order depositions and responses to written interrogatories.

MPA supports this section, with restrictions limiting the PRC's subpoena power to the employees and documents of the USPS during the pendency of official proceedings. No need for any other authority has been demonstrated. The PRC already has adequate authority to secure testimony and documentation from parties other than the Postal Service. However, experience during PRC cases has established the need for limited subpoena power over the Postal Service. This need is especially important for the proposed baseline rate case. Since the baseline case will be establishing the rate base upon which future rate increases will build, it is critical that the Postal Service's revenue requirement be accurate and credible. MPA takes no position at this time as to whether the PRC needs subpoena power to carry out its annual audit functions under H.R. 3717. The conditions for issuance of subpoenas by federal agencies as set forth in the Administrative Procedure Act should be expressly applicable to the PRC.

Section 604(a). This section clarifies the authority of the Postal Service to offer volume discounts as long as the discounted rates are set in accordance with H.R. 3717 ratemaking procedures and all customers are eligible for the same volume discount.

MPA supports instead “productivity discounts” for both competitive and non-competitive products for those meeting specified mail preparation and administrative requirements, such as minimum sortation levels, automation specifications, containerization requirements, and centralized postage payment, as well as minimum volume guarantees. This would encourage mailers of all sizes to be more efficient, with the discounts based on willingness to meet preparation and worksharing requirements, and not only volume commitments. MPA recommends that H.R. 3717 allow the Postal Service to offer a series of discounts for various worksharing and volume levels, to maximize worksharing and drive costs from the postal system.

MPA is pleased that H.R. 3717 affords the Postal Service the flexibility to provide “productivity discounts” without necessarily raising rates for other mailers in the same subclass. To ensure fair pricing, MPA proposes that all recipients of “productivity discounts” be required to cover attributable costs plus make a reasonable contribution to overhead.

Section 604(b). This section allows the Postal Service to test entering into negotiated rate and service agreements with mailers of competitive products through a three-year demonstration project.

MPA supports the three-year demonstration project on negotiated agreements for competitive products, so long as the rates cover attributable costs and make a reasonable contribution to overhead.

TITLE VII - PROVISIONS RELATING TO THE TRANSPORTATION, CARRIAGE, OR DELIVERY OF MAIL

Section 701. This section repeals outdated language relating to the Interstate Commerce Commission and other matters and removes time restrictions on the length of postal transportation contracts (currently limited to four years).

MPA supports this section. Removing restrictions on the length of transportation contracts gives the Postal Service increased contracting flexibility and will probably lower costs.

Section 702. This section allows the Postal Service freedom to contract for international air transportation of mail at competitive market rates.

MPA supports this section. Removing Department of Transportation regulation of international air transportation of mail will afford the Postal Service contracting flexibility and should lead to lower cost and improved service performance.

Section 703. This section defines the scope of the statutory monopoly that historically has been defined solely by the Postal Service and specifies that a letter may be carried by a non-USPS carrier when the amount paid for private carriage is at least \$2. Under current law and regulations, the amount is \$6.

MPA supports this section, unless the Postal Service can demonstrate that lowering the floor for the monopoly exclusion to \$2 would threaten USPS' financial viability.

Section 704. This section provides for a three-year demonstration project on the feasibility of allowing nonpostage items to be deposited in private mailboxes.

MPA supports the mailbox demonstration project. The Postal Service should design the demonstration project to protect security of mail items and to minimize disruption to normal delivery operations. MPA notes the apparent success of open mailbox policies in many foreign administrations and encourages USPS to develop the mailbox demonstration project using successfully-employed international practices. These may include registration and licensing of private carriers depositing mail in private mailboxes to protect security and limits on the types of nonpostage items that may be deposited in private mailboxes to protect against overloading.

TITLE VIII - DIRECT APPEAL OF DECISIONS OF THE MERIT SYSTEMS PROTECTION BOARD

Section 801. This section provides the Postal Service independent authority to seek judicial review of Merit Systems Protection Board decisions; currently the Office of Personnel Management is the only entity that may petition for review of MSPB decisions on behalf of the Postal Service.

MPA supports this section. This change would provide the Postal Service additional flexibility in postal personnel management and allow appeals of decisions that may have serious impacts on the Postal Service but not on the entire federal sector.

TITLE IX - LAW ENFORCEMENT

This title extends the applicability of federal assault statutes that protect federal and postal employees to postal contract employees (section 901); strengthens the deterrent to mailing unsolicited sexually oriented advertising by authorizing a civil

monetary penalty (section 902); allows the Postal Service to deposit asset forfeiture recoveries directly in the Postal Service Fund rather than the U.S. Treasury (section 903); authorizes the Postal Service to seek civil penalties for the improper mailing or packaging of hazardous materials (section 904); creates criminal penalties for stalking federal and postal employees (section 911); prohibits the mailing of controlled substances, creating a felony violation (section 912); enhances penalties for volume mail thefts (section 913); clarifies that the Postal burglary statute includes burglary of post office boxes and vending machines that are not in postal facilities (section 914); and increases the penalties for postal robberies to be equivalent to the penalties for bank robbery in the Violent Crime Control and Law Enforcement Act of 1994 (section 915).

MPA has no objection to these sections.

TITLE X - NEW SYSTEM RELATING TO POSTAL RATES, CLASSES, AND SERVICES

Section 1001. This section establishes a new ratemaking framework (designated Chapter 37 - New System for Establishing Postal Rates, Classes, and Services) to replace the current postal ratesetting process of Chapter 36.

MPA generally supports the new ratemaking framework proposed by H.R. 3717, including the price cap regulatory regime for “noncompetitive” products, enhanced pricing flexibility for “competitive” products, more freedom to test experimental services, and increased incentives for cost control and productivity gains through the introduction of a profit motive. This new system is consistent with the increased business orientation of the Postal Service intended by H.R. 3717 and will improve the Postal Service’s competitive position and viability.

Subchapter I. This subchapter establishes procedures for creating baseline rates and fees in a final omnibus rate case. There are two scenarios for establishing the baseline. If an omnibus rate case has just been completed and the Directors approve new rates to go into effect on the day of enactment or a rate case is pending at the PRC, the baseline is established using pre-enactment ratesetting criteria. Otherwise, the Postal Service must initiate an omnibus rate case under the new system; in this case, the same nine ratemaking criteria contained in the current act would apply, but the criteria would be ranked for “priority” – with cost and demand the most important and ECSI (educational, cultural, scientific, and informational) value and fairness and equity the least important.

Rate-setting criteria. MPA generally supports establishment of baseline rates that will serve as the initial maximum rate caps for noncompetitive products in a final omnibus proceeding. However, MPA strongly opposes H.R. 3717’s proposed new order of priority for applying rate-setting criteria. Baseline rates should be based on the same criteria under both scenarios. The PRC should establish baseline rates with full

consideration of all rate-setting criteria, as now. The current criteria -- endorsed by a series of Congresses, used in many rate cases, and interpreted by courts over a quarter of a century -- are reasonable ones that have served the public interest well.

Contingency and prior year losses. Before taking final action on this legislation, we recommend that the Subcommittee give careful consideration to whether the contingency element of the revenue requirement should be eliminated in the baseline case, since H.R. 3717 includes explicit provision for the Postal Service to request price-cap ceiling increases for extraordinary occurrences. The Subcommittee should also evaluate the appropriateness of including prior year losses in the baseline case.

Subchapter II. This subchapter establishes the price-cap regulatory regime for noncompetitive products. The rates established in the baseline case will become the first allowable "maximum rates". Each year, the Postal Service may increase the allowable maximum rates by multiplying the preceding year's rates by the increase in the Gross Domestic Product Chain-type price index (GDPPI), adjusted by an "adjustment factor". The PRC would establish the adjustment factors for various noncompetitive products and services every five years, taking into account demand, cost, productivity, revenues, and service. Separate adjustment factors would be calculated for each of four baskets of noncompetitive products and would generally be uniformly applied to all products in each basket. Adjustment factors could be either subtractions from or additions to the change in the price index. The adjustment factor would not change during the five-year cycle unless the Postal Service faces severe financial exigencies, in which case it could ask the PRC to modify the adjustment factor.

General. MPA generally supports establishing a price cap regime using baseline rates as the starting point and changes in the GDPPI minus an adjustment factor as the indexing standard (for positive adjustment factors, see below). We also generally support a five-year ratemaking cycle between PRC proceedings to determine adjustment factors.

Transition. We are concerned that implementing index-based rate increases upon completion of the baseline case may lead to double counting of inflation and higher than necessary rate increases. We propose a delay in implementation of indexed rate increases until one year after completion of the baseline case test year period to avoid mailers receiving a second rate increase on the heels of the baseline rate increase and to ensure against double-counting of inflation for any specific year.

Criteria for setting adjustment factors. We oppose limiting to cost, demand, productivity, profit, and quality of service the criteria that the PRC may use to determine adjustment factors. Since the PRC retains authority to make subjective judgments on the adjustment factors, it should be able to give as much consideration as it wishes to such criteria as ECSI value. We propose adding ECSI value, availability of alternatives, effect of rate increases on mailers, and fairness and equity among rates to the list of criteria used to set adjustment factors.

Positive adjustment factors. We are also concerned about rate increases that may exceed the pace of inflation. Consequently, we propose strict limits on positive adjustment factors, such as those used by the Federal Communications Commission (FCC) for pricing telephone services. We recommend that the bill provide for a separate rulemaking at the PRC to establish explicit conditions under which the PRC may make adjustment factors positive. The PRC should hold hearings allowing the Postal Service and intervenors to comment on the proposed positive adjustment factor calculation methodology and limits. USPS and intervenors should also be able to seek judicial review of the PRC's final adjustment factor rule.

In this regard, we note that the FCC allows positive adjustments only for "exogenous" factors that are beyond a carrier's control. We believe that positive adjustment factors for the Postal Service should also be limited to conditions that are beyond the Postal Service's control. These might include such extraordinary cost burdens as changes in laws, regulations, or rules (one of the factors allowed by the FCC), and conditions unique to the Postal Service's operating environment but not captured in the GDPPI (for example, a widespread but unavoidable disruption to the postal transportation network).

We note that the FCC does not include normal capital investments in the list of allowable exogenous factors. We believe this exclusion should also apply to the Postal Service. If capital investments are allowed to justify a positive adjustment factor, the Postal Service would have an incentive to invest in equipment or facilities that are not necessary or cost effective.

We also recommend that you reconsider the use of a single adjustment factor to set the price caps. We believe the price cap equation might be more meaningful and understandable if multiple underlying factors are not combined. We suggest for your review the FCC price cap formulas, which explicitly separate the "productivity improvement" adjustment (which is always negative and which applies uniformly to all baskets of products) from the "exogenous factors" adjustment (which is either positive or negative and can apply differentially to individual baskets of products).

We further recommend that the PRC set maximum amounts for positive adjustment factors based on the administrative experiences of other agencies with adjustment factors and that the PRC revise positive adjustment factors after three years, rather than five years.

Financial exigency cases. With regard to financial exigency cases, we support changing adjustment factors when a financial exigency occurs. However, we propose shortening the duration of such cases from six to three months, and allowing USPS expeditious judicial review of the PRC decision.

Subordinate units. As noted, adjustment factors generally apply to all products in a basket. However, the Postal Service is afforded ratesetting flexibility with regard to rates for rate categories. We generally support the ratesetting flexibility afforded the Postal Service with regard to rates for further subordinate units in the noncompetitive category as long as the maximum rates for subclasses are not exceeded. We recommend the addition of notice and comment procedures for increases or decreases in rate category prices that exceed some pre-determined limit, such as ten percent, and for cases where the Postal Service wishes to add or delete rate categories. Mailers should be able to file complaint cases if individual rate increases exceed the limit. While we recognize the value of breaking the link between cost and price for noncompetitive products, we suggest that you consider whether recipients of rate category price decreases should be required to cover attributable costs and make a reasonable contribution to overhead.

Subchapter III. This subchapter establishes ratesetting procedures for competitive products. Rates would be set annually by the Postal Service without a PRC proceeding, subject to the requirement that prices cover attributable costs plus make a reasonable contribution to overhead. Antitrust laws would apply to prices for competitive products.

MPA generally supports the increased ratesetting flexibility for competitive products and the requirement that rates cover an attributable cost floor. MPA has no position at this time on the applicability of antitrust laws to the Postal Service.

Subchapter IV. This subchapter authorizes the Postal Service to conduct three-year market tests of experimental products, restricting the tests to \$100 million in revenue per test.

MPA has no objection to this section. Providing the Postal Service additional flexibility to conduct market tests should improve the Postal Service's competitive position and long-term viability. However, we believe this authority should be used cautiously, to test important new products and services directly related to the Postal Service's core functions, and to do so as cost effectively as possible.

Subchapter V. This subchapter establishes Postal Service annual reporting requirements to demonstrate that rates are in compliance with the requirements of Title X, with information to be audited by an independent, private sector, professional accounting firm. The Postal Service must also submit to the PRC its comprehensive statement to Congress, performance plan and program reports, and market information, financial data, and measures of speed and reliability. The PRC would then determine whether any rates were not in compliance with the law and whether performance goals or service standards were not met. In case of noncompliance, the PRC could order that up to 50% of the previous year's profits be set aside to reduce or defray future rate increases for noncompetitive products. In case of compliance, the Postal Service could apply up to 100% of profits to cash bonuses for officers and employees.

Annual Audit. MPA generally supports additional Postal Service reporting requirements as long as such requirements are not too burdensome. We propose that, at least for the first few years after the bill's enactment, GAO, which already is experienced and well-equipped to handle the assignment, conduct the annual independent audit of the Postal Service. After this initial period, the audit could be assigned to private firms.

PRC role. We are also concerned about the appropriate role for the PRC in the audit process. We recommend further evaluation of audit responsibilities, considering a role for GAO in making the necessary determinations on financial data and the speed and reliability of postal services, and considering the applicability of the private sector "audit committee" model, with perhaps an advisory role for the PRC. We note, that as currently proposed, the only remedy included in H.R. 3717 if USPS rates fail to conform to the law (i.e., if rates for competitive services are not above the attributable cost floor) is for the PRC to require the Postal Service to sequester 50% of the profits in a given year to defray future price increases. We recommend that the Subcommittee give further study to the adequacy of this remedy.

Use of profits. While we generally endorse the concept of linking employee pay to performance, we oppose H.R. 3717's proposed use of profits provision, allowing 100% of profits to be disbursed in cash bonuses and tying bonuses to profits in a particular year. We suggest that you consider limits on the amount of profits the Postal Service can earn (and disburse in bonuses) without sharing such profits with ratepayers. We note that the FCC pricing system for telephone services both limits the amount of profits a carrier can make without reducing rates and ties that amount of profits to the strength of the carrier's commitment to productivity improvement.

The FCC methodology allows carriers to pick their productivity adjustment factor from a range of potential productivity improvement goals. Carriers who choose a higher productivity improvement goal are allowed to retain more earnings than carriers who select a lower productivity improvement goal. We believe that the FCC model merits consideration. Under such a system, for example, the PRC could establish a range of aggressive but reasonable productivity improvement goals; the Postal Service would then be allowed to select a particular goal within the range; the Postal Service would be subject to a cap on annual profits tied to the productivity goal selected; and Postal Service earnings above that cap would be rebated to ratepayers in the following year's rates.

Limitation on performance bonuses. We also recommend that individual performance bonuses not be limited to years in which USPS makes a profit. This restriction runs counter to generally accepted personnel performance recognition guidelines.

Mr. MCHUGH. Thank you, Mr. Little. I appreciate your comments.

Moving down the line, Mr. Sturm.

Mr. STURM. Good afternoon, Mr. Chairman.

I am here today to present the views of the Newspaper Association of America, 1,500 daily and weekly newspapers with 87 percent of the daily circulation in the United States. The subject, of course, is the future of our Nation's postal system. Like you and many others, we are concerned about how best to prepare the Postal Service for that future.

Many paths lead to the future, and our members believe the Postal Service has been, unfortunately, on the wrong path for some time. Despite our considerable respect for you and for the work of the subcommittee, we have also concluded that passage of H.R. 3717, as introduced, will only push the Postal Service further down a path it should not be on at all.

We have been fairly vocal about our opposition to provisions of this bill that will do significant economic harm to the newspaper industry. We have that responsibility to our members. At the same time, however, newspapers and Congress have a century-old history of working together to create the best postal policies, and, in this spirit today, I would like to step back from the specific details of the bill, which we have addressed in our written statement. My purpose is to highlight the larger philosophical differences that we have with the approaches taken by this legislation.

Now, we accept the premise that future legislative changes may be needed to improve the postal system. The issue, quite simply, is, what is the best strategy for keeping the Postal Service financially strong and providing a valuable public service in the next century? It's our answer to that question that causes us to part company from those who support all of the current bill.

Postal Service management itself has identified four key survival strategies: Increasing revenues, higher productivity, reducing costs, and improving services. Yet H.R. 3717 puts, as we see it, nearly all of the eggs in one basket, increasing revenues primarily by expanding mail volumes. We are convinced a more balanced approach would be in the best interest of the public. Our preferred goal, in fact, would be to focus on how the Service can better perform its core functions, not substantially change its mission as a public service.

Mr. Chairman, in an earlier hearing you said authorizing the Postal Service to make a profit and offer volume discounts were your bill's most important strategies for responding to the expected loss of First Class Mail. At the same time, you invited other opinions, so let me offer you ours.

First, to our knowledge, no evidence has been presented during these hearings on this bill to establish how much loss of First Class Mail is expected and when. Since this is the premise of this legislation, we think this is a fairly serious oversight.

Second, the bill allows a Government monopoly to relocate a line that is very important to the American people, the line where Government ends and the private sector begins. Recently, the loud and clear message to Washington has been to push this line back. We believe this bill goes in the opposite direction. It is not surprising

that it does. The Postal Service itself has been pushing the envelope in recent years, if you will please excuse that expression. It's true, its charter called for it to adopt appropriate business practices, but it chose to ignore the difference between businesslike operations and operating as a private business, which we believe it is not.

In fact, the very notion that it should compete with the private sector at all is at odds, we believe, with its charter. It's not a private business, no matter what its executives call themselves or the number presentations they make to Wall Street.

Third, a Government entity has a fundamental obligation to serve all of the people, not to pick winners and losers; not to discriminate, in other words. The Postal Service seems to think that obligation does not apply to itself because it's operating with ratepayer revenues, not taxpayer dollars. As long as it is a monopoly, however, most people have no more choice about paying postage than paying taxes. Consequently, it should meet the standards of a Federal agency.

There is no clearer rejection of this principle than granting it the authority for discriminatory pricing through volume discounts, negotiated rates, or any scheme that gives price breaks to mega-mailers at the expense of all others. We believe this is wrong as a matter of public policy. We say that with great respect for you.

It's also not clear that it will work. Again, the data seems to be missing from the record to establish that volume discounts will serve the purpose of attracting significantly more revenue. The competition for overnight delivery services has shown that price is far from the only competitive factor in postal services. Customers want fast and reliable delivery and are clearly willing to pay more for it. Poor performance at any price remains a bad deal.

Perhaps some might think volume discounts will offer cost savings to the Postal Service. It has made this argument for a decade. Not once, however, has it been able to make its case before the Postal Rate Commission. So now it seeks congressional intervention.

Of course, we have our own reasons for objecting to this provision. Like every other medium that relies almost solely on advertising, we object to the Postal Service helping our competitors lure customers away. It is doing that today, among other ways, with lavish kits promoting direct mail marketing. This kit is designed to help Postal Service employees sell direct mail advertising to small businesses around the country.

We certainly noted when the largest civilian employee in the country, or in the world perhaps, is, in effect, sending its employees out to help our competitors. We believe it's equivalent to the Federal Communications Commission using license fees to promote advertising on television and radio, which we would object to as well. This is an unwarranted intrusion by the Federal Government into the private marketplace.

There is no marketplace failure here. The direct mail industry is fully capable of doing its own promotion and advertising. We are concerned that in the name of increased competition for the Postal Service, the bill will reduce our industry's opportunity for competition in the private sector. Even worse, it is certain that those who

do not get these price breaks nevertheless will eventually pay for them.

Unfortunately, this is not new. For some time, mega-mailers have been getting a sweet deal. As a chart in our written testimony shows, First Class Mail volumes account for only 54 percent of volume, represent 60 percent of the total revenue, but pay 70 percent of institutional costs. The percentages work just the opposite direction for advertising mail.

In sum, we believe this bill is flawed at the conceptual level. Its central idea is that survival of the postal system depends on feeding the Postal Service's voracious appetite for mail volume rather than emphasizing cost cutting and better performance. To put it directly, the Postal Service must be made to cut costs before it cuts deals.

Mr. Chairman, we have said the Postal Service is on the wrong path. So what do we believe is the right path? It's the path of public service. The Congress said it best in 1970: The Postal Service is the first, last, and always public service.

Any legislation must reinforce that it is a Government entity that must provide its services at nondiscriminatory rates, without picking the winners and losers in the marketplace. It's the path of open and honest information. It's not a Postal Service that unilaterally defines the problem but withholds the data necessary to validate the proposed solutions. It's not one that says volume discounts produce cost savings when it can't prove it, and it's not a public service pretending it's a business when it's not.

It is the path of financial soundness. It's not a Postal Service that runs a negative net equity for 25 years, creating a financial burden for future mailers. It is not a service with poor productivity, even after substantial automation costs. And it's not a service that continues to expect first class mailers to pay more than their fair share of its costs.

Above all, it's a path that leads to every door. Universal service is a common goal of every stakeholder in postal legislation. That must be the touchstone of any legislative changes to one of our Nation's oldest but still absolutely most essential public services.

Mr. Chairman, we are prepared to work together with you and your committee to help the Postal Service plan the best path to the future. I appreciate the opportunity to appear before you today. I would be happy to answer questions at your election.

[The prepared statement of Mr. Sturm follows:]

STATEMENT OF JOHN STURM

Good afternoon Mr. Chairman, and distinguished members of the Committee. My name is John Sturm and I am President and CEO of the Newspaper Association of America ("NAA").

Thank you for giving NAA the opportunity to appear before you today to share our thoughts on the future of the postal system. We look forward to working with you and your staff on the difficult issues the Committee will face today and in the future.

EXECUTIVE SUMMARY

NAA supports a Postal Service that (1) is committed to universal service at nondiscriminatory rates; (2) is restored to fiscal soundness; and (3) does not, as a Government establishment, intrude into sectors of the economy served by private enterprise or otherwise disrupt competitive markets by picking "winners and losers" in those markets. NAA believes that efforts to change the fundamental nature of the Postal Service from a national public service to a more "market-driven" entity that deliberately competes with private enterprise are undesirable public policy, not a solution to what the USPS contends are its problems, and are not likely to succeed.

While NAA supports certain elements of H.R. 3717—notably the increase in pay of the Governors, the creation of an independent Inspector General, and giving the USPS greater ability to negotiate transportation contracts—we are unable to support the bill. While this statement addresses specific provisions of the bill in detail below, NAA strongly opposes the provisions of H.R. 3717 that would give the Postal Service even greater ability to discriminate among mailers

by conferring volume and contract-based discounts, and those provisions that give it expansive authority to conduct unregulated, unsupervised experiments.

INTRODUCTION

The Newspaper Association of America

The Newspaper Association of America is a national trade association representing more than 1,500 daily and weekly newspapers in the United States and Canada. NAA members account for more than 87 percent of U.S. daily circulation. More than 70 percent of NAA members are newspapers with circulations of less than 25,000. Most of these smaller newspapers serve less-densely populated rural and suburban communities in our nation.

Newspapers' Use Of And Interests In The Postal Service

The newspaper industry has a unique and complex interest in the Postal Service. While newspapers depend upon the Postal Service for the delivery of their editorial and advertising products and for the receipt of payments, they take strong issue with the general direction of the Postal Service. Although a newspaper in any local area often is one of the Postal Service's largest mailers, the Postal Service does not consider newspapers collectively as significant mailers, but as competitors. We regret that.

The fact that the Postal Service views newspapers as competitors was reinforced by the comments of the Postmaster General several months ago before this Committee: "In the category of advertising mail, you have television, radio and newspapers—those are people who are taking away our business." It is because of a long history of such statements that many of our members justifiably feel that the Postal Service has targeted the newspaper industry over the years, and has

sought to drive advertising revenues out of the pages of America's newspapers and into certain segments of direct mail, one of our direct competitors.¹

Newspapers spend hundreds of millions of dollars annually in postage for delivery of First Class mail, and what is now called Periodicals and Standard Mail. Newspapers' use of Periodicals and Standard Mail to mail our editorial and advertising products is well known, but our use of First Class Mail often is not appreciated.

In First Class, newspapers are both "senders" and "recipients." Newspapers and independent newspaper distributors mail millions of invoices every year and receive more than 90 percent of their income through the mail. Unlike many industries, newspapers have neither extensive over-the-counter sales nor extensive credit card sales. Few patrons walk into newspaper offices to pay bills, and few pay with credit cards. Rather, the income of newspapers and their independent distributors arrives in the mail, through millions of checks annually, to pay display and classified advertising invoices and circulation bills.

Nevertheless, for the reasons suggested above, newspapers have been forced by the Postal Service's actions to develop a strong competitive interest, and are concerned about recent Postal Service efforts to drive advertising out of other media. Recent examples of such inappropriate

¹ Newspapers compete with local, non-targeted direct mail companies, many of whom mail advertising circulars on a saturation basis. In this sense, newspapers compete in a "downstream" market (advertising) with mailers that rely on the Postal Service for upstream (distribution) service. However, as a competitor in a downstream market, newspapers feel the power of the Postal Service's enormous statutory advantages to distort competitive markets. These include the Postal Service's monopoly on most postal volume and the letterbox; its practically unlimited ability to borrow despite its poor equity position; its exemption from trade laws; and its freedom from state, local and federal taxes. Newspapers are especially wary of the Postal Service's ability to alter the competitive balance inefficiently by shifting overhead costs from "competitive" to monopoly services.

conduct include the new "Enhanced Carrier Route" subclass, the Postal Service's ill-fated "Neighborhood Mail" experiment, and the Postal Service's multi-million dollar advertising campaign touting direct mail over other advertising media.

Let us make it clear that our concern does not focus on the merits of advertisements promoting direct mail over newspapers, but rather on the question of who pays for it. Such advertising should be funded by the direct mail industry and not by the government through the Postal Service. Rather than favoring one medium over others, the Postal Service should act as a neutral party, allowing all players equal and nondiscriminatory access to its services. When the Postal Service departs from that role, as it has in recent years, we believe that it is acting in a manner entirely inappropriate for a governmental monopoly and in a manner fundamentally incompatible with the American faith in private enterprise. The Postal Service should not try to promote one sector of the private economy over another.

These interests create the prism through which NAA views H.R. 3717. Although H.R. 3717 contains some salutary provisions, we regret that overall the bill does not resolve the fundamental issue of the Postal Service's nature and mission—whether it remains a public service or is allowed to "morph" itself into a private competitor. Under this bill, the Postal Service would remain an institution with a confused mission. Further, it would remain one which enjoys valuable privileges arising from its governmental status and monopoly, privileges which could be used to displace more efficient private enterprises.

I. THE MISSION AND ROLE OF THE POSTAL SERVICE IN AMERICAN LIFE AND IN THE AMERICAN ECONOMY

The Postal Service occupies a unique place among American institutions. The Postal Service is and should remain a self-sufficient public service offering universal mail delivery service at nondiscriminatory rates.

A. The Postal Service Is And Should Remain A Public Service Providing Universal Service At Nondiscriminatory Rates

Section 101 of the Postal Reorganization Act establishes the basic function of the Postal Service: "to provide postal services to bind the nation together through the personal, educational, literary, and business correspondence of the people."² Similarly, the Act provides that the Postal Service "shall be operated as a basic and fundamental service provided to the people by the Government of the United States, authorized by the Constitution, created by Act of Congress, and supported by the people."³ These provisions, and the Postal Reorganization Act as a whole, were meant to preserve and retain "the public service character of the Nation's mail system."⁴ Indeed, Congress stated that "[t]he Postal Service is—first, last and always—a public service."⁵

To help it meet its obligations, the Postal Service was given certain statutory protections and advantages. The Postal Service enjoys a statutory monopoly on the delivery of letter mail.⁶

² 39 U.S.C. § 101(a).

³ 39 U.S.C. § 101(a).

⁴ Conf. Rep. No. 91-1363, 91st Cong. 2d Sess. 3654.

⁵ *Id.* at 3668.

⁶ The Private Express Statutes are codified at 18 U.S.C. §§ 1693-97. Placing unstamped "mailable matter" in a letterbox approved by the Postal Service is prohibited by 18 U.S.C. § 1725.

It does not pay taxes (federal, state or local), is allowed to borrow with the Full Faith and Credit of the United States Government behind it,⁷ is immune from hundreds of local ordinances and statutes, and is not subject to trade regulation laws applicable to all of its perceived competitors. The Postal Service's only fiscal constraint is that its projected revenues must equal "as nearly as possible" its estimated costs.⁸ The Postal Service has no shareholders or other owners, and, therefore, no incentive to maximize profits or increase efficiencies.

In recognition of the Postal Service's unique public service status and its major role in American personal and business life, the Act expressly prohibits discrimination. The Postal Service may not make "any undue or unreasonable discrimination among users of the mails," or grant "any undue or unreasonable preferences to any such user."⁹ Congress rightly concluded that conferring a price advantage on some mailers at the expense of others was, and is, fundamentally inconsistent with operation of the Postal Service as a public service.

The Postal Service, and its predecessor the Post Office Department, has always been required by law to operate on this public service basis. We believe that the Postal Service should rededicate itself to its public service role, and eschew its recent desires to assume the trappings of

⁷ The Postal Service also "borrows from the future." If the Postal Service runs a loss, it is allowed to recover that loss by increasing future rates. A prior year's loss is considered a common or "institutional" cost and is shared to some extent by all postal services; neither the Postal Rate Commission nor the Postal Service tries to identify the classes of mail which incurred the prior year loss. Consequently, First Class mailers, who are subject to the Private Express Statutes and have virtually no alternatives for mail delivery, bear a disproportionately large share of both the common (or institutional) costs of running the system *and* of the losses from past years.

⁸ 39 U.S.C. § 3621 requires that "[p]ostal rates and fees shall provide sufficient revenues so that the total estimated income and appropriations to the Postal Service will equal as nearly as practicable total estimated costs of the Postal Service." H.R. 3717 would repeal even this provision.

⁹ 39 U.S.C. § 403(c).

a private business while retaining unique and valuable privileges and immunities arising from its historic Governmental public function.

Some however, have argued that the Postal Service should be given the flexibility to “act like a business” and set its own rates. In principle, there is nothing wrong with a government agency “acting like a business” in the sense of running its operations in a “business-like” manner.¹⁰ However, there is a big difference between running a government agency such as the Postal Service in a “business-like manner” and operating it as a private sector business.

The unique mission and privileges of the Postal Service have produced an entity that is protected from most aspects of the marketplace, and therefore is institutionally incapable of “acting like a business” or being “market driven.” Since it is not subject to investor and shareholder constraints, the Postal Service is driven by its unique structure and advantages—which are those of a government bureaucracy—to pursue other goals. While economists believe that government bureaucracies generally pursue budget maximization, economists familiar with the Postal Service indicate that it pursues a combination of budget *and* volume maximization.¹¹

¹⁰ Indeed, conducting governmental affairs in a business-like manner is a theme of the Vice President’s “Reinventing Government” initiative. It has also been a theme of the Postal Reorganization Act since 1970.

¹¹ See Sidak and Spulber, *PROTECTING COMPETITION FROM THE POSTAL SERVICE* at 120 (1995). Increasing mail volume provides justification for continuation of the Postal Service as a communications “safety net” and for an ever-increasing workforce. Moreover, increasing mail volume corresponds to the incentive structure for lower level managers in the Postal Service. Postal wages are set by pay grade, which is a function of job scope and responsibility. Job scope, in turn, depends upon volume and employment levels. History demonstrates that the Postal Service has, in fact, acted entirely consistently with this insight since Reorganization. The Service regularly has sought to exploit its statutory advantages to offer comparatively lower prices for certain services in an effort to boost mail volume, especially in classes of mail that face competition from tax-paying private enterprises.

Significantly, it does not pursue a goal of profit-maximization. And it is important to note that H.R. 3717 would not change these incentives.

B. The Postal Service Seeks To Abandon Its Historic Mission And To Favor Some Mailers Over Others At The Expense Of Those Held Captive By The Monopoly

As noted above, newspapers believe that the Postal Service has, in recent years, increasingly strayed from the fundamental mission that has guided its operations for well over two centuries. These steps, taken in the name of "acting more like a business," presuppose a role for the Postal Service in the American economy that is greatly at variance from the function originally envisioned by Congress, and the function that has earned it the support of the American people for these many years.

The Postmaster General's testimony before this committee in July aptly illustrates the point, through its advocacy of "pricing latitude, market testing authority, volume discounts, and a test period for negotiated service agreements."¹² The Postal Service's own actions speak equally loud, as shown by its desire for virtually unbridled experiments and its ever-increasing claims of "commercial privilege" as grounds for withholding information from the Postal Rate Commission (PRC). These actions are the actions of a U.S. Government Agency that has lost sight of its basic public service mission.

The Postal Service's continued pleas for authority to negotiate service rates and offer volume discounts that it cannot justify on the basis of cost savings are yet other examples of this trend. For nearly a decade, the Postal Service has sought to offer volume discounts, and has

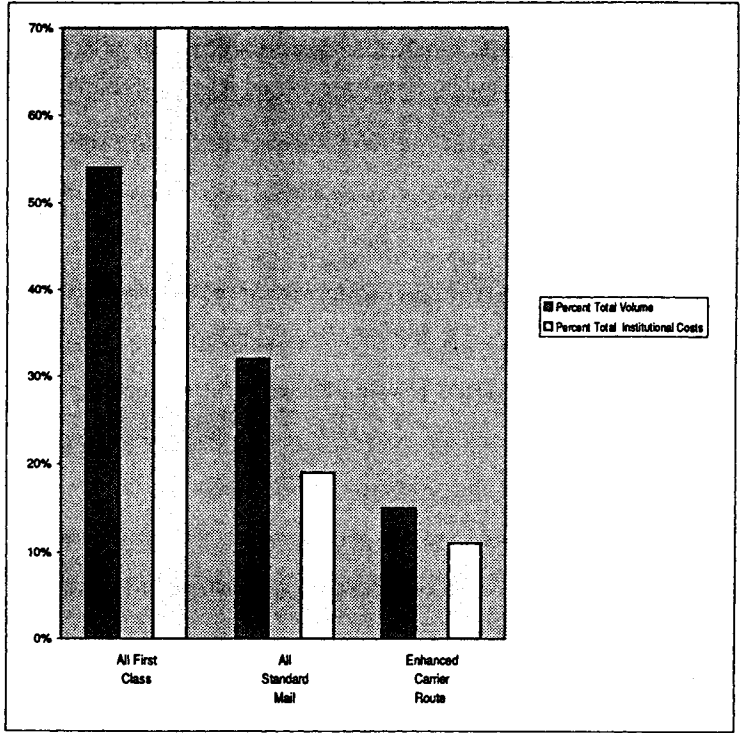
¹² Statement by Marvin Runyon Before the House Subcommittee on the Postal Service (July 10, 1996).

argued its case repeatedly before the PRC. Not once, has it demonstrated that larger volumes result in any cost savings. This has not been the case with other discounts, where the Postal Service has requested, and the PRC has granted, lower rates.

Perhaps to circumvent its inability to find a cost justification for volume discounts, the Postal Service now wants Congress to allow it to negotiate rates with the largest mailers. This would allow large mailers to obtain rate reductions based not on lower costs but on negotiating prowess and promises, and to obtain rates not available either to other mailers or to the general public. This would be a major departure from the fundamental principle that the Government should treat all of its citizens equally, and not charge different people different rates for the same service.

These actions are signals of an agency adrift. Worse, these actions have brought direct injury to the vast majority of mailers in the form of unnecessarily higher rates. This is because the Postal Service has for years sought to improve its self-perceived "competitive" position by trying to shift an ever-increasing portion of costs off of "competitive" services, such as Express Mail, Parcel Post, and local advertising mail, to monopoly mail, particularly First Class mail. Although the Postal Rate Commission has rejected some of these proposals, the Postal Service's cost-shifting schemes have succeeded to a substantial degree, as the following table and graph demonstrate.

Facts on Volume, Institutional Cost Burden and Revenue			
	Percent Total Volume	Percent Total Institutional Costs	Percent Total Revenue
All First Class	54%	70%	60%
All Standard Mail	32%	19%	18%
Enhanced Carrier Route (within Standard Mail)	15%	11%	7%



Source: PRC Opinion and Recommended Decision, MC95-1

As shown in the graph above, First Class mail now constitutes 54 percent of the mailstream, but generates 60 percent of the revenue, and pays an even greater share—70 percent—of the institutional costs of the system. In contrast, while Standard mail constitutes 32 percent of the volume, it pays only 19 percent of the institutional costs. One particular subclass of Standard Mail, the Enhanced Carrier Route subclass, will account for 15 percent of total volume, pays only 11 percent of the overhead costs of the system, and brings in only 7 percent of the revenue.

These figures are symptoms of an agency that has lost sight of its fundamental public service mission. The Postal Service's mission is to provide universal hardcopy delivery services on a nondiscriminatory basis, not to favor some mailers over others.

C. The Changes In Pricing Rules Sought By The USPS Are Not A Solution To Its Fears About Electronic And Hardcopy Competition

The Postal Service has asserted that it faces a "crisis" in the form of an alleged loss of "market share" in five of its six major product areas. For example, the Postmaster General has expressed public concern that the number of electronic-mail messages has increased by 122 percent, and United Parcel Service's overnight and two-day products have shown double-digit growth in the last year. In addition, he has expressed concern over the continued explosive growth of electronic banking and Internet shopping and their effect on the USPS's market share.

While the Postmaster General's testimony made for good sound bites, his premises are based upon several fundamental fallacies. Moreover, his suggested solution is not a cure for his alleged problem.

First, the Postal Service has never demonstrated the accuracy of its claim to be “losing” market share in five of six markets. In fact, the Postal Service has admitted that such statements are not based on “quantitative analysis” but “merely reflect a qualitative perception of a potential shift in trend,” and the Postal Service’s actual results tell a much different story.¹³

In FY 1995, USPS volumes *and* revenues *increased* in First Class mail, Expedited Mail (Priority Mail and Express Mail), Parcels, Periodicals, and advertising mail. The *only* market segment in which the Postal Service lost volume in 1995 was international mail, although its revenue increased even in that segment. It is ironic indeed that the Postal Service’s worst performance occurred in the one market—international mail—in which it sets its rates free of oversight by the Postal Rate Commission.

Second, the Postal Service’s cure could exacerbate its perceived problem. The Postal Service assumes that burgeoning telecommunications services are substitutes for traditional mail service.¹⁴ The most prominent of these new services is electronic mail. As with all relatively new technologies, it is impossible to predict with full confidence the eventual extent of public acceptance and the range of uses to which the technology will be put. E-mail may become ubiquitous or it may not. It may compete directly with telephone calls or with mail service or with other presently familiar services, or it may find entirely new uses. What cannot be disputed is that

¹³ USPS Response to Interrogatory Number 153 of the Office of the Consumer Advocate, September 22, 1995, Docket MC 95-1.

¹⁴ The trade press reports that the Postal Service has recently received an analysis suggesting that electronic mail will prove to be a complement to postal services, rather than a substitute. See *Business Mailers Review* at 2-3 (September 9, 1996). This would be consistent with the experience with every other technological change, which have always increased the volume of messages.

the evolution of e-mail surely could be affected by the Postal Service's pricing policies. The more expensive a First Class stamp, the more consumers could search for substitutes.

Thus, if the Postal Service's assertion that e-mail significantly competes with hard copy mail turns out to be correct, raising the price of First Class letters (by shifting more costs onto captive mailers) is the wrong solution. Shifting more costs onto First Class mail simply pushes the price of a stamp even higher, thus compounding the problem by creating a stronger price incentive to leave the mailbox for the Internet.

Third, while United Parcel's two-day products have grown in recent years, so have the Postal Service's Priority Mail, and the Postal Service now thinks of it as one of its leading products. As for overnight mail, while UPS has done well in recent years, that success does not mean that the Postal Service could have captured that growth if it had pricing flexibility; for unreliable service is a bad deal at any price for urgent deliveries.

Fourth, the reasons for any actual loss of market share by the Postal Service are far more complex than simple pricing policies. While the Postal Service has lost a large market share in Parcel Post over the last 25 years, that loss neither occurred recently nor was due to a lack of so-called "pricing flexibility. Indeed, Parcel Post has increased (albeit slightly) its market share in recent years. The big erosion in Parcel Post's market share occurred well over a decade ago, when the USPS effectively lost these markets to poor service quality and a general lack of reliability.

Finally, reducing rates for some mailers and raising rates for others to induce mail volume increases will not help the Postal Service meet its bottom-line obligations. The Postal Service seeks authority to offer discounts in order to increase volume and increase revenues. However,

the Postal Service focuses on total revenues, rather than net revenues. An increase in total revenues does not necessarily equate to an increase in net revenues, and an increase in total revenues could even leave the USPS worse off than it is now if the costs associated with the new volumes were larger than the revenues generated by that volume. And, as the Postal Service's own data shows, that is the case. Giving non-cost based price breaks would not increase net postal revenues.

In particular, the USPS's own analyses show that demand for *all* postal services except Express Mail, is inelastic. In other words, a reduction in the price of a particular class of mail will result in a less-than-proportional increase in the quantity of that mail class that is placed in the mailstream. Mail volume for that class would increase, but not enough to recover the net revenue lost due to the price reduction. The USPS's numbers simply do not add up. The sad truth of the matter is that the data demonstrates that the only way to increase net postal revenues is to *increase* rates, not decrease rates.

II. ANY AMENDMENT TO THE POSTAL REORGANIZATION ACT MUST PROCEED ON THE BASIS OF CLEAR, CONSISTENT PRINCIPLES

NAA respectfully submits that as Congress considers amending the Postal Reorganization Act, it is important that Congress enunciate the vision of the Postal Service it wishes to create, and that this vision be clear and consistent.

A. Essential Elements Of Any New Postal Legislation

Section 101 of the Postal Reorganization Act provides that “[t]he United States Postal Service shall be operated as a basic and fundamental service provided to the people by the Government of the United States, authorized by the Constitution, created by Act of Congress, and

supported by the people.”¹⁵ The newspaper industry believes that this declaration remains a sound foundation for the nation's postal system, and that the Postal Service must refocus on its statutory mission of obtaining the best possible service for the public at a reasonable rate. This position is shared by the Main Street Coalition for Postal Fairness. NAA is a member of that coalition, and supports its fundamental objectives.

Consistent with this position, any legislative reform of the Postal Service should include, at a minimum, the following three principles:

- A recommitment to universal public service at nationwide, nondiscriminatory rates with high quality service;
- A restoration to financial soundness, especially restoration of the taxpayers' equity and an end to deficit operation;
- A clear direction that the Postal Service should not strive intentionally to compete with private sector firms or interfere with private markets by “taking sides” or picking “winners and losers.”

1. Universal service

Quality universal delivery service at *nondiscriminatory* rates is and should remain the core mission and fundamental purpose of the Postal Service. These postal obligations are properly mandated by the Act, demanded by the mailing public, and should be maintained. Actions by the Postal Service inconsistent with this fundamental mission should no longer be tolerated.

Congress should remember that the Postal Service itself has reduced service quality in recent years, thereby harming national universal service objectives. In particular, in 1990 the Postal Service reduced its delivery standards for First and second-class mail under the guise of

¹⁵ 39 U.S.C. §101(a).

“realignment,” resulting in a slower delivery standard for the majority of First Class mail. As a result, none of the Postal Service’s comparisons of delivery performance are on an “apples to apples” basis with years prior to 1991.

In addition, the Postal Service seems unwilling to submit all but the most general of delivery performance information to the sunshine of public disclosure. The GAO recently reported that of the numerous different delivery performance benchmarks measured by the USPS, only one is publicly disclosed. The Postal Service does not make any delivery performance information publicly available for Periodicals and Standard Mail.

H.R. 3717 addresses service quality primarily through the tool of audits performed by the Postal Rate Commission. While NAA supports publicly available independent service quality audits, audits alone cannot improve the quality of the service actually experienced by the American citizenry. Indeed, we see a danger that the “bonuses” provisions of the bill could create a strong incentive for the Postal Service to adopt even more lax (and thus easier-to-satisfy) delivery standards in order to reward USPS management, rather than improve the actual service.

2. Restoration of the Postal Service’s financial soundness

As this Committee is well aware, the Postal Service’s financial condition has deteriorated significantly since Reorganization. In the 25 years since 1970, it lost nearly \$9.4 billion. Although the Postal Service recently has reduced this deficit—actions which NAA applauds—it continues to have a negative net equity.

This is a long term problem. At the request of the Postal Service’s Board of Governors, the Price Waterhouse accounting firm recently analyzed the harm to the postal system from the

Postal Service's net equity deficit.¹⁶ Price Waterhouse's key conclusions included a recommendation that "equity restoration must become a fundamental goal which shapes Postal Service strategies in the future."

The Price Waterhouse report concludes that the USPS's negative net equity position harms the organization (and thus, the American public) in a variety of ways. For example, the report noted that a negative net equity position (1) reduces the USPS's financial flexibility; (2) unfairly burdens mailers in the long run; and (3) impairs the USPS's ability to fund capital improvements internally. Another unfortunate consequence of the USPS's net equity deficit—although outside of the scope of Price Waterhouse's review—consists of harm to private sector enterprises that compete with, or with direct mailers that rely upon, the USPS. It is difficult for private firms to compete with a Government establishment that—backed by the Full Faith and Credit of the United States Government—operates with an ongoing deficit.

The net equity deficit amounts, in effect, to an interest-free loan to current (and past) mailers from future mailers, and is recovered in rates as institutional costs. Since First Class mailers now pay 70 percent of the institutional costs of the Postal Service, this really means that *future* First Class mailers are subsidizing *current* mailers of *all* classes.

We are pleased that the Governors of the Postal Service have voted to approve the Price Waterhouse analysis, and that the Board has adopted the restoration of equity as one of its major financial objectives. However, we believe that any legislative reforms must continue this momentum, and expressly require the USPS to restore its equity within a set period.

¹⁶ A copy of this report is in the record of *the Special Services Reclassification* proceeding now pending before the Postal Rate Commission in Docket MC 96-3.

Unfortunately, H.R. 3717 does not address this problem. Indeed, the bill does not require the Postal Service to take steps to restore the taxpayers' equity, even as a precondition to allowing management to earn bonuses, and would compound the problem by repealing Section 3621 which, while ignored over time, at least requires the Postal Service to set rates so that overall revenues equal overall costs. These are steps backward, and will frustrate the important objective of restoring the USPS to a sound financial position.

3. Avoid market distortions and protect ratepayers by prohibiting subsidized competition with the private sector

To prevent the competitive harm and burden on ratepayers which would result from these activities, the Postal Service should be required to set prices in a manner which avoids harm to competitors and avoids distorting competitive markets. Simply put, in the absence of market failure, government provision of services is unnecessary and wasteful. Similarly, where provision of services by government entities is deemed expedient, the government must take steps to avoid harming ratepayers and competitors or distorting competitive markets.

In particular, the Postal Service should not set postal rates in a manner that harms captive monopoly ratepayers. At present, the total institutional cost pool of approximately \$18 billion¹⁷ is allocated by the Postal Rate Commission in the process of generating its statutorily required rate recommendation. At present, 70 percent of institutional costs are allocated to First Class, even though First Class accounts for only 54 percent of volume. This disparity must be redressed.

¹⁷ According to the data in the last omnibus rate case, Docket R94-1.

Although the Rate Commission has made some attempts to rectify this unfairness, we agree with the Commission that there remains much room for improvement in this regard. Unfortunately, *every single rate proposal* by the Postal Service over the past decade has tried to shift more of the overhead costs onto the already disproportionately burdened First Class mailer. The current *Special Services Reclassification* proceeding is no exception, for the higher rates being proposed therein would mostly be paid by First Class mailers.

B. Comments On H.R. 3717

In general, while many provisions of H.R. 3717 have merit, and this Committee and its staff have made a good and an honest effort to tackle some very difficult problems, NAA believes the bill presents a vision of the Postal Service that is not consistent with its proper public service mission, and that it would authorize an unprecedented and unwarranted governmental intrusion into areas of the economy well served by private enterprise.

1. The Postal Service cannot have it both ways

Our first concern is more general, and that is that H.R. 3717 simply does not address, much less resolve, the fundamental issue of defining the nature and role of the Postal Service. The bill would authorize the Postal Service to act "more like a business" but without any substantial corresponding diminution of governmental status. In particular, the bill:

1. Does not strip the Postal Service of its governmental status;
2. Does not subject the Postal Service to the discipline of profit-seeking ownership;
3. Does not require the Postal Service to pay federal, state, or local income, property, or business taxes; and

4. **Allows the Postal Service untrammelled pricing freedom in "competitive" services long before opening the USPS's own monopoly to competition; leaves the test of the "mailbox rule" entirely in the hands of the Postal Service, which has both the incentive and the ability to bias the test; and relaxes the Private Express Statutes only in the context of Priority Mail.**

NAA does not believe that the Postal Service should have it both ways. If the USPS wants to preserve its privileges as a public service, it should accept the constraints that go with that status. If it wants to recreate itself as a competitor to private enterprise, then it should give up all its privileges.

2. **The Postal Service should not be allowed to discriminate through volume discounts, contract rates, and virtually untrammelled market tests of new services**

Our second concern is more specific. H.R. 3717 would authorize the Postal Service, a federal government agency, to use the pricing devices of non-cost based volume discounts and contract rates to discriminate among mailers. We believe that this is a fundamental departure from the Postal Service's proper mission and role, that it would expand governmental intrusion into the marketplace, and that it would undermine the continued public support for the Postal Service.

- a. **The Postal Service should not engage in price discrimination in the form of volume discounts or contract rates to the detriment of the vast majority of postal users**

Despite its status as a privileged Government service required to provide service on a nondiscriminatory basis, the Postal Service has repeatedly sought (1) to offer big mailers volume discounts that it cannot justify on the basis of cost savings, and (2) negotiate contract rates for favored mailers. For example, the Chairman of the Board of Governors has testified before

Congress that the present system “hasn’t allowed us to offer discounts to encourage high-volume mailers the way our competitors can.”¹⁸ Similarly, the Postmaster General has made no secret of his desire to cut prices to certain mailers of “competitive” mail services to make the Postal Service more “market driven.”¹⁹

Just why the Postal Service should be trying to “compete” with private enterprise is a fundamental question in its own right, and one deserving of significantly more attention than it has received to date. It would be more appropriate for the Postal Service to focus on providing universal service and filling niches unserved by the private sector.

The Postal Service seeks to interfere with the Nation’s market economy by allowing it to engage in rampant price discrimination.²⁰ The bill specifically provides that the Postal Service may offer volume discounts for both “competitive” and “noncompetitive” mail classes;²¹ and for noncompetitive mail, there is *no lower limit* on the rate that may be offered.²² NAA strongly opposes these provisions.

Price discrimination among mail users in the form of volume discounts (not justified on the basis of costs) or negotiated contracts are inimical to the fundamental concept of a public service

¹⁸ Prepared Statement of Sam Winters, Hearings Before the Subcommittee on Postal Service, Committee on Government Reform and Oversight, U.S. House of Representatives, at 8, March 8, 1995.

¹⁹ Address by Postmaster General Marvin Runyon to the National Press Club, January 31, 1995.

²⁰ Price discrimination is present where different mailers are charged different prices for the same service.

²¹ See proposed 39 U.S.C. § 403(c)(2).

²² *Id.* at proposed § 403(c)(2)(B).

operated on a nondiscriminatory basis. Indeed, the Postal Service's legal monopoly justifies—even requires—retaining the prohibition of undue discrimination and rejection of the Postal Service's request for pricing flexibility.

It must be understood that postal price discrimination is a euphemism for higher rates for the vast majority of Americans. Not surprisingly, it is high-volume mailers (typically large commercial interests)—not individual mailers—to which the Postal Service wants to give volume discounts and contract rates. Accordingly, large mailers would pay less; Aunt Minnie and small mailers would pay more. Because mail volume responds less than proportionally to a change in price, the large commercial interests with contract rates or volume discounts will, in the aggregate, contribute less to the recovery of institutional costs than they did previously. The Postal Service cannot “make up the difference on volume.” The institutional costs that these contract rate mailers would avoid paying must be recovered, leaving low-volume consumers—including every individual and small business in the Nation in all classes—to bear an ever-increasing overhead cost burden. As a result, captive mailers would have to pay more to offset the revenue losses from the volume discounts or contract rates.²³ The bottom line is that pricing discrimination without a firm tie to lower costs means that for every rate that goes down, someone else's rate has to go up.

The so-called “cap” on rates for noncompetitive mail envisioned by H.R. 3717 would not prevent the Postal Service from losing money on volume discounts and shifting the losses to

²³ Furthermore, the Postal Service's ability to shift costs presently is limited by the class structure. The Rate Commission assigns institutional costs to classes of mail, not particular mailers. Thus, allowing the Postal Service to engage in price discrimination will facilitate discrimination within classes and between individual mailers as well as between classes.

captured mailers. The bill provides for rate increases in the event the Postal Service is unable to meet its obligations.²⁴ In effect, if capped rates will not fund losses accrued due to volume discounts, the Postal Service need only seek to raise the cap.

Nor is there any reason to expect that the proposed price cap will engender gains in productive efficiency. One of the advantages often advanced in connection with proposals to switch from a cost-of-service to a price cap form of rate regulation is the incentive for efficiency that results from the regulated firm's opportunity to appropriate some or all of the cost savings for its shareholders. But, of course, the Postal Service's status as a government enterprise means that no such advantage is available here. The substitution of a price cap structure will not alter the Postal Service's fundamental status as a government monopoly. The rather different incentives that attend government monopolies--principally volume and budget maximization--will continue to control its productive efforts.

Should the fundamental rate regulatory mechanism be changed to price caps, however, consideration should be given to whether a so-called "productivity factor" should be imposed. H.R. 3717 does not impose a productivity factor. Whether one is warranted or not should be examined with some care. A productivity factor enables consumers to share in the efficiency gains, just as they would if the industry were competitive rather than monopolistic.

Furthermore, volume discounts and contract rates of the type desired by the Postal Service could easily be inefficient from an economic viewpoint. Many of the highest-volume mailers could cost more for the Postal Service to serve than smaller local mailers. However, if the Postal Service negotiates a private discounted rate with a national mailer, there is no assurance that the

²⁴ *Id.* at proposed § 3723(f)(2)(A-B).

negotiated rate would recover the USPS's costs.²⁵ Indeed, if the USPS were free to offer "loss leaders," then by definition those rates would not cover their costs.

A related problem could arise where two competing mailers pay different rates for postal delivery that costs the same, simply because one mailer is owned or affiliated with a larger, national mailer that has obtained a non-cost based contract rate for all its mailings. In this instance, two mailers would receive identical service from their Government; however, the one fortunate enough to have a large corporate parent would pay less than its local rival. Indeed, a worse case could even exist, and the company whose mail has the lower cost characteristics could end up paying more than a competitor whose mail has higher cost characteristics. These substantial inequities highlight the fact that, in the context of the Postal Service, contract rates and volume discounts would not necessarily reflect the underlying cost of providing the service in question.

c. H.R. 3717 would give the Postal Service excessive authority for market tests

NAA opposes proposed Section 3761, relating to market tests. As drafted, H.R. 3717 would give the USPS unlimited authority to engage in predatory and below cost practices for at least three years, capped only by an annual revenue ceiling of \$100,000,000—a vast sum that exceeds the annual income of the great majority of businesses in this Nation, and certainly that of most of our members. No entity should have such raw, unchecked power, and certainly not a government bureaucracy such as the Postal Service.

²⁵ For example, national mailers with centralized mail production facilities (*e.g.*, national billing centers) likely will enter the mailstream at a limited number of points and therefore require more sorting, distribution and transportation resources.

The Postal Rate Commission recently adopted market test rules that are less broad than H.R. 3717 would allow. Together with representatives of thousands of captive mailers, NAA has asked the Commission to reconsider its action and to tighten the protections against the risk of financial losses that would be borne by captive mailers. These concerns apply with even more force to the proposal in this legislation.

This statement has focused on the provisions of H.R. 3717 that NAA believes are key provisions. NAA notes that the bill does not address any labor issues. NAA believes that any significant postal legislation must address labor issues. The attached appendix contains NAA's comments on other provisions of the bill.

CONCLUSION

For the reasons cited above, NAA strongly opposes the provisions of H.R. 3717 that would give the Postal Service even greater ability to discriminate among mailers by conferring volume and contract-based discounts and give it expansive authority to conduct unregulated, unsupervised experiments.

The Postal Service is and should remain a public service offered by the government to all citizens, on a nondiscriminatory basis.

APPENDIX

NAA opposes the change in the title of the Postmaster General, Deputy Postmaster General, and of the Governors. While the changes are not substantive, they are highly symbolic. The Postal Service is a public agency, dedicated to public service. It is not a private business. The change would strip the organization of a time-honored title that calls to mind the best of the public service mission of the postal system. By comparison, the proposed new title, Chief Executive Officer, gives no sense of the long history and tradition of the postal system. For similar reasons, we oppose the other proposed titles changes.

NAA does, however, support the increase in the salary of the Governors. The increase in the bill would restore the salary, in real terms, approximately to the level set in the 1970 Act.

NAA also supports creation of an independent Inspector General. While NAA has no criticism of the current Postal Inspection Service,²⁶ there is substantial reason to believe that the American people would stand to benefit by the creation of an Inspector General with full independence from postal management. The Postal Service is simply too large and plays too important a role in American economic life not to have an internal check that is independent of management.

NAA also supports granting the Postal Rate Commission subpoena authority over the Postal Service. The Postal Service's persistent refusal over the last decades to respond to many

²⁶ NAA's support for the concept of a Postal Inspector General should in no way be read as casting any aspersions on the work of the men and women of the United States Postal Inspection Service. Indeed, just recently, the Postal Inspection Service obtained a 17-count indictment for conspiracy, mail fraud, and money laundering against a number of individuals in California. These indictments arose out of a bogus invoicing scheme that had particularly plagued newspapers and newspaper advertising customers for years. NAA and its member newspapers worked with the Inspection Service in this area, and the Service did an excellent job in resolving the matter.

legitimate discovery requests from the Commission is notorious, and has deprived the Commission of data necessary for proper ratesetting. However, there is no reason to confer the Rate Commission with subpoena authority over private firms, as the bill seems to do. Current Rate Commission policies strike the appropriate balance regarding information from private firms; if firms do not provide data, then the Commission may discount their testimony accordingly.²⁷

NAA supports the provisions of title VII relating to transportation services.

NAA has long supported the Private Express Statutes as a means of support for universal service. While NAA continues to support the Statutes, we must point out that public acceptance of this monopoly can be expected to become weaker if the Statutes cease to be used for their proper purpose, and function instead as a piggyback to finance competitive ventures.

NAA believes that the provisions of H.R. 3717 dealing with a test of the Mailbox rule will not yield impartial results. The test lies entirely in the hands of the Postal Service, which has both the incentive and the ability to bias the test.

NAA opposes the repeal of 39 U.S.C. § 3008 because it would weaken the power of the federal government to protect America's children from receiving pornographic materials. Section 3008 empowers individual American citizens to forbid the delivery of pandering material to their mailboxes, and it is significantly stronger than the proposed substitute penalties. Current Section

²⁷ Moreover, NAA notes that Section 603(g) would appear not to confer private parties with a right to protect commercially sensitive information, although giving the USPS such a right. NAA assumes this is an oversight, for it would give the USPS a license to fish for the most sensitive business documents in the hands of any private business anywhere within the United States. This would be manifestly unfair to private firms, and contrary to both the policies of the Freedom of Information Act and the standard practice before other federal administrative and judicial bodies.

3008 places the judgment of what material is “pandering” where it should be—in the hands of the individual American household, and not in the hands of government bureaucracies or U.S. attorneys.

NAA strongly opposes the pricing provisions of Title X. Among the major deficiencies are:

1. Giving the USPS greater pricing flexibility without also subjecting it to federal, state, and local taxation, the need to fairly pay for its capital, and the full range of the antitrust and state competition law;
2. The “price cap” structure is a price cap only in form, not in substance, for the rate caps would not be determined by impartial, external factors, but rather by a process constrained only by politics, with no requirement that any external factor work to benefit captive mailers by reducing rate levels;
3. Placing greater weight on demand elasticities that are artificially constrained by the Private Express Statutes;
4. The elimination of all judicial review of the rates actually charged American citizens by the Nation’s largest government bureaucracy; and
5. The extraordinarily broad provisions for “market tests.”

While H.R. 3717 does not propose a true price cap, it certainly raises the issue. The issue of price caps is a major issue, and is deserving of considerable debate and reflection. One point to be debated is how to create a check that would prevent the Service from showing a “profit” by cannibalizing service, since the Service’s performance would be measured by its own standards. As the Chairman of the Postal Rate Commission recently pointed out, the growing number of appeals of USPS decisions to close post offices might leave one to wonder whether the Postal Service is trying to cut its costs by reducing service in rural communities.

Further, NAA agrees with the PRC Chairman’s testimony before this Committee that it would be wasteful to create a new set of pricing criteria for any benchmark rate case. The factors

currently contained in 39 U.S.C. § 3622 have received more than two decades of administrative and judicial interpretation, and there is no need to change them for one last case. The Commission should simply apply the existing criteria in a way that is more consistent with the sound goal of protecting captive mailers.²⁸

As noted above, NAA also opposes placing more emphasis on estimates of “demand” elasticity in postal ratesetting, when those elasticities result from regulatory provisions and constraints, rather than any realistic indication of what true market demand would be absent those restrictions. It is important to understand that because of the constraints of the Private Express Statutes on the Postal Service, placing greater weight on “demand” pricing in setting postal rates is a euphemism for higher rates for First Class mailers, since First Class demand for postal services are artificially constrained by the Private Express Statutes. In addition, the Postal Service has no accurate estimate of demand elasticities, as the estimates used in forecasting volumes are artificially manipulated by unspecified “fudge factors” and are not reliable.

Finally, NAA firmly believes that *all* postal rates should be subject to judicial review. Given the importance of the Postal Service in the economic life of this Nation, all Americans should have the right to seek impartial judicial review of the prices the USPS seeks to charge for basic postal services. Thus, we strongly oppose the new Section 3724(e) of Title 39, as contained in H.R. 3717, which precludes judicial review of rates both for the non-competitive baskets and competitive²⁹ services.

* * *

²⁸ NAA estimates that approximately 80 percent of the Postal Service's present mail volume will remain subject to the Private Express Statutes.

²⁹ By reference in proposed Section 3742(c).

Mr. MCHUGH. Thank you very much, Mr. Sturm. I appreciate your comments, and we will get to some questions certainly.

Mr. Waters, welcome.

Mr. WATERS. Thank you very much, Mr. Chairman.

For 25 years, the Postal Service has been a great experiment, and this committee is undertaking an experiment that's equally bold—calling the Postal Service to account for what it's done—and, for that, your whole subcommittee deserves credit. The historical gravity of what you have undertaken really needs to be noted.

I will leave our written statement and that of our sister organization with you, so that you can take a look at the detail of our opinions about H.R. 3717.

I do want to thank you for the opportunity to speak on behalf of my small, family owned, daily newspaper up in your neck of the woods, on behalf of my community and on behalf of the National Newspaper Association, which represents more than 4,000 weekly and small daily newspapers. Since 1852, I and five generations of my family have had stewardship over a small but important public service, the detailed coverage of local news and advertising in Rome, NY.

Now, the job of the Postal Service is to deliver the mail that exists, and not generate more, and do it efficiently. Yet H.R. 3717 has apparently adopted the Postmaster General's acceptance of volume as the driving force.

I would like to relate to you something the former Postmaster General, Anthony Frank, said to me in a moment of candor some 10 years ago. I asked, "Do you think the Postal Service is addicted to volume?" He paused for a moment and then said, "Yes, and I don't know how to get it off."

When the current Postmaster General came into office, I related the anecdote and asked if he concurred. He said, "Yes." More recently, I asked him if he still concurred, and he said, "Yes."

If you compel the Postal Service to build its future on volume, you compel it to solicit it and then to cope with it, and then the rest of us are going to have to pay the cost.

Volume discounts become a part of this approach, but anyone in our business knows that it's an unskilled salesperson who sells on price alone. Value counts. Service counts.

Now, stepping back from this, if you distort the fundamental job of the Postal Service, there are bad things that will happen, and reduced coverage of local news is going to be one of them. This is a bit of history. Some 20 years ago, newspapers had twice the portion of each ad dollar than direct marketing in the Postal Service. At that time, the Postal Service had to achieve their objectives. They had to increase volume to increase mechanization. Today, we have nearly an equal portion of that ad dollar.

Now, we don't mind competition, but what's proposed now is not competition and it imperils the social structure's delivery of local news.

In other words, don't take more advertising for another purpose until you have a plan how to replace it; a plan how to prevent the United States from becoming a two-tiered society of news haves and have-nots.

Now, to run a business means to run efficiently and at low cost. With this in mind, compare the Postal Service with other corporate models. How is policy made? Who asks the tough questions? Who calls management to account? That's what "run like a business" means.

The postal governors must recognize that true corporate structures maximize efficiency and maximize profits, which in this case is returned to the real shareholders, the public, by means of lower rates. Instead, the Postal Service goes into market share gathering to support its infrastructure. Further, H.R. 3717 worries me for what it proposes to do and, like an Alfred Hitchcock movie, terrifies me with the specter of the uncertainty that it stages.

Please, for now, stick to the useful changes that can be implemented almost by a change of mind rather than a change of world.

No. 1, direct the postal governors that the real stockholders in this corporation are not postal management and not large mailers but all of the American people.

No. 2, give the governors back a staff so they can stand independent of postal management.

No. 3, give subpoena power for cost and revenue data to the Postal Rate Commission.

No. 4, restate the principle that to run like a business means to run efficiently at low cost.

No. 5, unequivocally, treat all customers the same, regardless of volume, because to treat a big customer better than a small one is a volume maximization strategy, not a customer service strategy that is a good, sound principle of good government.

Mr. Chairman, universal postal service is one of the great institutions of our country, and strenuous efforts like yours need to be made to protect it. However, community newspapers are also one of the great institutions of our country. My family newspaper is 175 years old this year. Remember, community newspapers are, after all, the single most important conveyer of detailed local news in America.

Now, some will disagree with this or that, but I certainly appreciate your inquiry. It takes a great deal of force and certitude on your part to do it. Thank you very much for your efforts.

[The prepared statement of Mr. Waters follows:]

**TESTIMONY OF
STEPHEN B. WATERS
VICE PRESIDENT/PUBLISHER
ROME, NEW YORK DAILY SENTINEL
ON BEHALF OF THE NATIONAL NEWSPAPER ASSOCIATION
BEFORE THE HOUSE SUBCOMMITTEE ON POSTAL SERVICE
SEPTEMBER 17, 1996**



Many people have been reviewing the Postal Reform Act to try to figure out how it might affect them. In the newspaper industry, it's a simple mathematical calculation to determine the effects of this legislation.

If this legislation had been in effect at the beginning of 1994, our postal rates would be 28 percent higher today than what we currently pay.

In the spring of 1994, the Postal Service requested a 34 percent increase on the in-county postal rate paid by most community newspapers. Thanks to the Postal Rate Commission process, we were able to show that the Postal Service data were incorrect. To its credit, once it realized it had faulty information, the Service moved immediately to correct it. When the Postal Service recalculated the proposed rate using corrected data, it admitted that the in-county rate should actually decline.

In 1995, the Postal Service proposed an increase of 17 percent for our out-of-county mail. Again using the Postal Rate Commission process of open and balanced proceedings, we were able to avoid having to pay this premium rate.

Our survey of our members postal practices shows that about two-thirds of their mail goes via in-county and the other third is out-of-county regular rates. Using these ratios we can see our rates up 28 percent. This is not a happy prospect you can be sure.

Under the proposed Postal Reform Act we would simply have to bear these increases with no opportunity and no forum in which to challenge the Postal Service. This is why we are so strongly opposed to the enactment of this legislation.

The National Newspaper Association was founded in 1885 and represents more than 4,000 newspapers throughout the country. While I publish a daily newspaper in Rome, New York, the majority of our members are weekly newspapers who utilize the Postal Service for the distribution of their product to subscribers and who compete against Postal Service direct mail offerings.

I am a member of NNA's Board of Directors and also a member of its Postal Committee. I am here representing thousands of people whose livelihoods are dependent upon an effective Postal Service.

Today, a system of checks and balances is in effect that recognizes the fact that the Postal Service has a monopoly on most mail and a public service mission to serve the nation. Despite the fact that the Service has not been able to enjoy many economies of scale and has seen very little productivity growth, the system has served the Postal Service very well for 25 years.

The Postal Rate Commission serves as a referee in the process. It provides a forum for open and fair proceedings in which any interested party has a chance to comment on postal rate and classification policies. The Commission also offers objective data on the workings of the Postal Service in its various studies and reports.

The third important part of the existing system is that postal customers and competitors can participate in the process. This is important because there are many degrees of competition between postal customers. Open, public hearings allow the competing claims and interests of various mailers to be balanced on the basis of fairness and equity.

The existing system sometimes seems cumbersome and expensive; but it works.

However, in the last couple of years, Postal Service officials have expressed a strategic view of the future that concludes the Service cannot survive without significant changes in the current procedure. Specifically, the Postal Service says it must have the ability to give volume discounts to large mailers and contract rates to specific mailers.

The Postal Reform bill before us today is designed to convey these new powers to the Postal Service.

Two false assumptions underpin the current strategic view at the Postal Service. First, the Postmaster General is taking the view that every e-mail message and every fax transmission is business lost for the Postal Service. Second, he has assumed that the Postal Service needs to have continually increasing volume in order to survive. The Postal

Reform bill seems to adopt these two erroneous concepts when, instead, this Committee should be questioning these fundamental premises.

Electronic Competition. It is true that e-mail and faxes are playing an increasing role in communication all over the world. Nevertheless, it is not a one-for-one substitution of an electronic message for a mailed, hard-copy message. Also, e-mail and faxes are taking business away from overnight delivery companies and couriers, not just the Postal Service.

The important point is that nothing the Postal Service does is going to reverse or slow the growth of electronic messaging.

Volume Growth. No business should be as heavily reliant upon continually growing volume—as opposed to growing profits—to remain viable. The Postal Service has been blessed with increasing volume during its 25-year history but to expect that situation to continue into the indefinite future is to risk disaster.

The Postal Service should immediately begin planning to be successful in a variety of volume scenarios; including a reduction in total volume. This will be a big challenge because the Postal Service has not been able to benefit from the economies it should have realized from the constant volume growth it has already enjoyed.

The Postal Service is a vital cog in the American economy and changes in the way it works should not be undertaken lightly. Each of us is dependent on the Postal Service

for a myriad of services and any change in postal policy has the potential to disrupt those services through the concept of unintended consequences.

A comprehensive set of changes, such as those embodied in the bill before us, cannot even be considered without a far more searching analysis of its impact than we have yet seen.

The Postal Service is making a serious error in seeking to become more competitive through statutory changes. Any concessions the Postal Service gets from the Congress are likely to be balanced by loosening or eliminating the many monopolistic and governmental advantages the Service now enjoys.

The Postal Service pays no property taxes, no fuel taxes and no income taxes. It is exempt from state and local taxes and regulation. It has a monopoly on most mail and complete control over the mailbox. It has a multi-billion dollar line of credit at the U. S. Treasury. Loss of any existing benefits could seriously harm the Service and, consequently, harm its existing customers.

We have listed below some of the provisions of the bill to which we object or which raise questions.

Section by Section analysis

Section 602(b)—This section abandons the century-old requirement that in-county mail be mailed by periodicals with a “legitimate list of paid subscribers.” No reason is given for the change and it is hard to understand the rationale for this classification change.

Section 603—This section allows the Postal Service to block any subpoena issued by the Postal Rate Commission to the USPS. If the USPS chooses to block the subpoena, the procedures in this section will prevent any of the data involved to be used in a PRC proceeding. Thus, the section would reduce the information available and would allow the Postal Service to insulate any information it wants to protect from use by the PRC.

Section 604(a)—This section permits “competitive” mail to be priced at cost while “non-competitive” mail has to cover the overhead costs of the Postal Service. Since about 40 percent of total Postal Service costs is assigned to overhead, prices in the “non-competitive” categories will have to rise dramatically to pay for the assumption of additional overhead costs.

Moreover, the notion that “competitive” products can be priced at cost seems entirely unfair to the Service’s private sector competitors who do not have monopoly products to pay for their overhead. This provision tilts the “playing field” even further to the Postal Service’s advantage.

Section 604(a)—This section allows every mailer in a class of mail to have the same rate as a large volume mailer receives in the generic volume discount provision of the bill. This could have far-reaching effects on Postal Service revenues.

Section 604(b)—In addition to “generic” volume discounts, this section permits 3-year volume discounts for individual mailers that would not even be available to other mailers who are similarly situated. We find it hard to believe the Congress would endorse a provision with such a lack of equity.

1001(c)—This section revises existing law by giving priority to the standards enumerated for setting postal rates. Amazingly, the lowest priority is given to the standard requiring a “fair and equitable” rate schedule. The next to the last priority is given to the “educational, cultural, scientific, and informational value to the recipient of the mail matter.” With the highest priority given to the value of the mail piece to the sender, this provision turns universal public service on its head.

This same section assigns a high priority (second of nine standards) to the “quality of service.” However, the Postal Service refused to tell the Congress, the PRC or the mailing public how timely its service is. Therefore, this standard could never be utilized.

New section 3722(b)(4)—This section requires postal rates to be set at full cents. Bulk mail rates have traditionally been set more precisely—by tenths of a cent, for example—and we find it hard to explain why this precision should not be retained.

New section 3723(c)—The bill includes a process for adjusting rates between five-year rates cases. However, the factors for these adjustments are different from those used in the comprehensive rate cases. The result will be that commercially-generated, unsolicited advertising mail will be favored for lower rates during the adjustment process.

New section 3723(d)—In the adjustment process, the PRC is required to adjust whole classes as a group without considering cost changes for subclasses. In other words, Periodicals would have to be adjusted all together so that in-county, regular rate, classroom and library rates would all have the same factor of change. This means that adjustments in rates will not reflect cost changes as is currently the case.

New section 3723(f)—This provision allows the Postal Service to adjust rates whenever it faces “financial exigencies.” Therefore, the Postal Service, as a business, never has to face a downside risk. It can make as much money as it wants and it can tap into the monopoly whenever it faces the potential of a net loss.

New section 3741—Periodicals are not considered to be a competitive category despite the two facts that (1) far more periodicals are delivered outside the Postal Service than the combined mail pieces in the so-called “competitive” categories and (2) it is likely that the Postal Service is losing market share in Periodicals faster than it is losing market share in any of the “competitive” classes.

New section 3742—This section permits the “Directors” (Board of Governors) to set the postal rates for “competitive” categories of mail on their own motion. Even though such a decision will have a significant impact on other categories of mail, the decision-making process can be undertaken in secret with no input from the public. Moreover, the “Directors” are permitted to use any method they want to calculate the attributable costs of the mail. This provision will allow the Postal Service to low-ball the costs of competitive mail classes thereby adding to the overhead share of costs and increasing the rates in monopoly categories.

New Section 3743—This section gives the Postal Service veto power over which categories of mail will be considered as competitive. This means that whether or not a category is, in fact, competitive the Postal Service can refuse to acknowledge that fact.

New section 3744—This section purports to apply antitrust law to the Postal Service. However, other provisions of the bill prohibit any administrative or judicial appeal from a Postal Service decision. Additionally, all of the competitive advantages of the Postal Service (it is exempt from taxation, it is exempt from zoning ordinances, it is backed by the full faith and credit clause, it need not show a net profit, it is protected from financial losses, it has a statutory monopoly, etc.) are not subject to antitrust considerations so the provision is likely to be meaningless.

New section 3761—This section permits the Postal Service to enter any line of business; it is currently planning to sell merchandise at retail for its catalog mailers in competition with local retail merchants. The provision exempts the Service from most existing restriction under Title 39. The market tests under this provision would have no time limit except as decided by the Postal Service.

New section 3782—This section requires the Postal Service to submit information to the Postal Rate Commission. However, it does so in a way that would allow the Postal Service to block the use of the information in any Postal Rate Commission proceeding and prevent the Commission from using the material in any of its decisions.

New section 3783—This Section establishes the concept that the Postal Service is owned by the managers of the Postal Service rather than its true owners—the ratepayers of the United States. The provision allows all of the net profit to be given to Postal employees. It permits postal employees to be the highest paid workers in the Federal government even though the Postmaster General has said they are paid about 20 percent more than they should be.

Because postal rates are set at break-even levels plus an amount to make up for prior year losses and a three percent contingency, it is likely that in the first year after new rates the Postal Service would enjoy net profits of hundreds of millions of dollars not because of operational efficiencies but because of prior year losses and contingency funds. In 1995, half of the employees of the Postal Service could have received bonuses of more than \$4,000 simply from these non-operational “profits.”

This provision, interestingly, prohibits the Postal Service from using any net profit to make up for the loss of equity caused by years of net losses. It also creates an incentive to lower service standards by making available large windfall bonuses to postal management.

This is a wonderful part of the bill for postal managers because they take home the profits at the same time they are statutorily protected from losses. It is the ultimate in upside potential with absolutely no downside risk—except to postal ratepayers.

Section 1002—This section emasculates the recent Postal Rate Commission reclassification opinions. Its practical effect is to repeal the PRC rejection of the USPS request to lower rates 14 percent for 250 to 3200 large national magazines and increase rates 17 percent for 12,000 smaller magazines and newspapers. The Postal Service could unilaterally implement the changes on the day the bill takes effect.

Section 1002(f)—This section limits the Postal Rate Commission to 90 days in reviewing complaints against the Postal Service—which means that interested parties would have no time to review the complaint and comment on it. Furthermore, the provision permits the Postal Service to ignore any recommendation the PRC makes.

Mr. MCHUGH. Thank you, sir, and for your efforts of being here and making the not less than substantial trip—one that I have made a few times myself—to join us. I know we do appreciate that.

Last, and, again, not least, Mr. Bair. Welcome, sir.

Mr. BAIR. Thank you. Thank you, Mr. Chairman.

I am here today on behalf of the Association of American Publishers, which is the national organization of over 200 book publishers, big publishers, small, university presses, and nonprofits. We have followed with great interest the efforts, or lack of same, at postal reform over the years.

We applaud your producing a tangible effort at reform, and in the main we support the bill. Listening to the testimony here before me, most of the comments that were made we have also made, and I will simply direct the committee to look at our written testimony for the details.

The one issue that I would like to emphasize this afternoon is the issue of content and the apparently short shrift that the bill gives to the old Criterion Eight; that is, the educational, scientific, cultural, and informational content of the mail; and the 1970 act codified that as a criterion to be taken into account in determining rates.

If I understand H.R. 3717 correctly, that criterion has been, in a sense, demoted in that it is 8 out of 10 in order of decreasing importance in the base case and not to be considered at all in the adjustment considerations.

We would urge the committee to take another look at the need for maintaining content as a valid criterion in determining rates. We think there's no less need now than there was 25 years ago for the post office to consider the necessity of a free information exchange in this country as a national priority.

I would be happy to answer any further questions, but, again, we really do appreciate the effort that you and your committee have made in this important first step.

[The prepared statement of Mr. Bair follows:]

TESTIMONY OF STEPHEN L. BAIR
ON BEHALF OF
THE ASSOCIATION OF AMERICAN PUBLISHERS

My name is Stephen L. Bair. I am Senior Vice President, Law and Business Affairs of Time-Life, Inc., but I am here in my capacity as Chairman of the Postal Committee of the Association of American Publishers ("AAP"). AAP appreciates the opportunity to present its views to the Committee on H.R. 3717, the proposed Postal Reform Act of 1996.

AAP is the national association of book publishers. It has over 200 members which encompass large and small publishing houses, as well as university, religious and non-profit publishers. AAP's members use all classes of mail for business purposes, but they particularly use fourth class -- bound printed matter, special rate fourth, and library rate -- to distribute books and other educational materials to the public. We actively participate in postal rate cases and other proceedings before the Postal Rate Commission in pursuit of our strong interest in an efficient and economically viable postal service. Today, I wish briefly to present AAP's preliminary views on the Postal Reform Act of 1996 and highlight those areas of the bill which affect our members most directly.

I have had the opportunity to testify before this Committee on several occasions about the need for measures to improve the efficiency, competitiveness and financial health of the Postal Service. AAP has consistently supported reform. Unfortunately, previous efforts have resulted in little, if any, significant changes to the Postal Service or to the postal ratemaking system. Today, more than ever before, serious and achievable reform is needed.

The portions of the legislation dealing with reform of the postal ratemaking system are of the greatest interest to AAP and its members. The present ratemaking system is almost 25 years old. Its architects could not have envisioned the changing marketplace in which mailers and the Postal

Service compete. Private carriers now dominate the business segments of the small package delivery market, while E-mail and faxes are increasingly used by both individuals and businesses in place of First Class Mail. Thus, reform of the ratemaking process is needed not only to accommodate the changing needs of the mailers, but also to ensure the continued ability of the Postal Service to provide competitive low-cost services to its customers. AAP believes that the Postal Reform Act of 1996 is an important first step in this direction, and congratulates the Chairman for moving beyond rhetoric and concretely addressing important reform issues.

The proposed legislation contains several provisions which make progress towards reforms that AAP and other organizations have long advocated. AAP supports moving in the direction of encouraging innovation by providing for a test of negotiated agreements between the Postal Service and mailers, provided that such agreements will cover attributable costs and contribute to overhead. AAP also is pleased that the proposed legislation provides greater ability to the Postal Service to conduct market tests for experimental new products. Rewarding mailers with volume discounts for cooperation with the Postal Service also is worthwhile, particularly when worksharing results in the reduction of the Postal Service's costs. AAP also looks favorably upon the institution of measures in the ratemaking process that are aimed at achieving greater rate stability. Specifically, we believe that the institution of a price-cap regime will achieve this result. A five year-cycle for adjusting rates also may have a beneficial effect on rate stability provided that it is guided by appropriate criteria and subject to adequate safeguards.

We do, however, have several concerns about the proposed legislation. First and foremost, it fails to adequately incorporate "content" as a criterion for guiding ratemaking. Under the current Postal Reorganization Act, one of the criteria for postal rate recommendations is the educational,

scientific, cultural and informational value of the mail matter. The proposed legislation minimizes the importance of this ratemaking criterion. Specifically, the criterion would be ranked among the least important to be considered by the Postal Rate Commission in the baseline rate case for non-competitive products, and would not be considered by the Postal Rate Commission in establishing or changing the adjustment factors for the subsequent five year-cycle. We believe this to be a serious flaw in the legislation. Promotion of literacy and improving education and training are critical needs today. The public interest goals of the Postal Service, and in particular the importance of the Postal Service to the dissemination of books and other educational materials, must not be lost as a consideration in guiding postal policy and rates.

Another concern we have about the proposed ratemaking process is the "exigent circumstances" exception to the five-year ratemaking cycle for non-competitive products. While we agree that some provision of this sort is necessary, the criteria permitting the Postal Service to seek rate increases because of exigent circumstances are not far different from the circumstances which currently provide the basis for the Postal Service to file omnibus rate cases. The Postal Service may thus still be able to re-open rate matters every two or three years as historically has been done. The value of a regular and more extended rate cycle would thus disappear. Moreover, the absence of judicial review of exigent circumstances decisions would leave mailers in a worse position than under current law. We would welcome the opportunity to work with the Committee on resolving this important issue in order to ensure that the "exigent circumstances" exception does not render the five year ratemaking cycle illusory.

We also have concern about aspects of the proposed legislation which deal with the categorization of postal products. We believe that the proposed legislation provides insufficiently

precise standards for determining when products may be transferred from the non-competitive to the competitive mail category. The proposed legislation merely requires that in recommending such a transfer, the Postal Rate Commission consider "the policies of this title" and "the availability and nature of the enterprises in the private sector engaged in the delivery of the product involved." We are also concerned about the pricing latitude that the Postal Service would have for what the legislation terms "further subordinate units" of products in the non-competitive category. While we support the notion that the Postal Service be provided with greater discretion in order to improve its competitiveness, we do not believe that such discretion should be as unbridled as the proposed legislation appears to permit.

Finally, as the Chairman is aware, genuine and thoroughgoing reform will only be achieved when the fundamental issues of labor costs and incentives to operate in a cost effective manner are fully addressed. At the same time, we recognize the difficult nature of these issues and hope that members of this Committee and all those concerned with the health of the Postal Service will work to bring them to resolution. We believe that the establishment of a commission to study these issues is a sensible approach at this time.

In summary, while AAP has several serious concerns with the legislation, it commends the Chairman for introducing this bill and allowing interested parties such as AAP to offer suggestions for its improvement. It is clear that serious reform of the postal ratemaking system is needed, and AAP looks forward to cooperating with the members of this Committee in these reform efforts. In addition, we know that there are many issues raised by this legislation which I have not specifically addressed in my testimony. These issues are currently under consideration by AAP's members and we would be happy to discuss those issues with the Committee at a later time.

Mr. MCHUGH. Well, I thank you, Mr. Bair.

As I mentioned, particularly the first panel but I meant it to apply to all three, and I will state it here again, having taken the time to read all of your testimony, I do welcome the effort that you put into it and assure you, as I have the other panelists, that it is our intention to fully, and I hope fairly, consider those points that you have all made.

Keeping with the tradition of the first two panels, let me start with Mr. Bair. You, too, as others have, spoke about the concern you have on what we are calling the exigency factor, emergency rate increases above the original that would be established by the PRC.

As I had mentioned earlier, it is our intent to have a full committee hearing. It was then pointed out to me that when many in the industry speak about that, they talk about a baseline case. Was that your concern as well, that if there was to be an employment of an emergency rate case, that we start from square one rather than just effecting an adjustment to whatever the PRC had set originally?

Mr. BAIR. I think, Mr. Chairman, that well may be a concern. What we were thinking about was the ease with which the post office could go back for the simple fact that they were running out of money, and you would be faced with continual tinkering with or—

Mr. MCHUGH. Well, you are absolutely right. I suppose that the Postal Service can go back as it sees fit. There's no—I don't believe, any language in the bill that has to have the Postal Service demonstrate it, other than they feel it's necessary.

Of course, we did put in there that the PRC is the ultimate decisionmaker as to whether or not the Postal Service's request is met.

Are you suggesting, perhaps, we ought to have some sort of threshold beyond which the Postal Service would have to cross before they could even ask for it?

Mr. BAIR. Well, I think what we are trying to get to is a stability in rates where we can look forward to 3 to 5 years of rates without change. The post office is always in the position of having plenty of money in the first couple of years of a cycle and increasingly less money in the last year or two. And I don't know exactly what to suggest in terms of how to ameliorate the problem, but there ought to be some way of preventing the post office from going in every couple of years simply because of normal economic cycles.

Mr. MCHUGH. I see. Thank you.

Both Mr. Waters and Mr. Sturm have submitted, as they indicated, testimony. Mr. Sturm's was particularly comprehensive, and we are going to spend a lot of time on both of yours.

But I think your comments that you presented here today are instructive, and I appreciate especially Mr. Sturm's comment in his prepared testimony that he brings a particular view on the bill through the prism of the newspaper industry, and it's admirably honest, and it is more than legitimate, and your comments today highlighted that as well.

And Mr. Waters, very understandably as well, has a perspective not just as a representative of the industry but a representative,

as he noted, of a family enterprise that has been doing, I think it is obvious to say, a whole lot of good in his community.

And in that regard, I suppose we have had and may continue to have philosophical differences as to how we go about the problem at hand, because I would like to believe, and I do believe, that all of us are concerned about one thing, and that is, we provide a Postal Service that is there, is affordable, and is universal in its provision of its services, particularly affordable to folks like yourself who are in that interesting position of both competing and yet relying upon the Postal Service. And we have to decide how best we can do that.

We have presented a way by which we think the goals that both of you gentlemen, particularly Mr. Sturm has outlined, can best be achieved, and that is to encourage productivity by breaking that zero sum game mold that currently exists that, indeed, where, if one mailer benefited, the cost had to be extracted from someone else by providing and allowing for profit, for profit sharing, by trying to ensure that there is a system by which costs aren't shifted from one segment to another, and, in very real ways, gets away from that purely volume-driven mindset, because I would certainly argue, under the current system, that is the only shelter in the storm, because you are locked into recovering all your costs and not more and there aren't a whole lot of reasons to do things better.

And the Postal Service is like any other organization with which I have any familiarity, and that is, incentives are important for people. You two gentlemen, obviously, have a different perspective, and I respect it. I think that obviously you have much to add to the debate.

I want to be as sincere as I can and want everyone to believe me when I say that I hope this debate continues, because it is through this kind of interaction, I think, that we will hopefully ultimately come up with a better product. If everyone agreed with our first go around, I would think there was something wrong. So let me thank you for that.

Mr. Waters, in your prepared testimony, have—you submitted a fairly large number of bullet objections and concerns.

Mr. WATERS. Yes, sir.

Mr. MCHUGH. I think it's fair to say that, in sum, they were very critical of the bill, very legitimate.

I want to tell you that I was very happy to read your very specific criticisms because, quite honestly, I think they point out that perhaps we haven't been communicating the structure of this bill as well as we might have to you.

For example, you express a concern about how the Postal Service can block the subpoenas that the PRC may issue and so forth, and that's not in the bill. And there are any number.

So what I would like to do is provide you a point-by-point analysis and, where it's appropriate, counterbalancing, and what I hope will be helpful, clarifying material where a good number of at least the express concerns that you have should not be.

That doesn't mean you won't have other interpretations of them. I am not suggesting that. But we do have a lot of areas here that you have been concerned about that, frankly, on what you stated you shouldn't be because the bill does something quite differently.

And I will provide that to you rather than go through it here. I don't feel it's necessary.

But I would say to those in the audience, as we have prepared it, because your comments are part of the record, we will make our response part of the record, and if anyone wants to share in that, obviously they have access to it, and we would be happy to provide a copy.

I promised during the first panel—or the second panel—I am sorry—on the responder provisions for not-for-profits that I would provide you with an opportunity to respond, and it was Mr. Waters who raised the concerns and objections about that provision.

You heard what both gentlemen had to say, Mr. Cassidy and Mr. Silbergeld. I was curious, was there anything you would like to add to the testimony you submitted based on their comments about that particular provision?

Mr. WATERS. Mr. Chairman, first of all, I would like to say that rather than being critical, I hope that our comments are constructive in the spirit of the dialog. As far as the specifics on the request or proposal, we would be happy to discuss with your staff the details of it.

Finally, sir, if I would take one piece of wisdom from this, if you will but look to your premises, I think that there is a lot of growth that can happen as you move forward with this legislation, and it's in the premises that are the key to the future.

Mr. MCHUGH. Well, I appreciate that. And let me say, you are right there, spoken like a true wordsmith, a man who makes his living by the word. When I used the word "critical," it probably takes a pejorative connotation. I do not mean it that way. I do take them as constructive criticisms.

Mr. WATERS. I certainly do appreciate the discussions we have had so far, and I appreciate your endeavors.

Mr. MCHUGH. Well, thank you. And your point was well taken.

Yes, I would like to explore just one point of your written testimony. You did mention that—because I don't—there may be something afoot here that I am not aware of, and I would like to have that from you. You noted that if this legislation was in effect in the beginning of 1994, your postal rates would be, in your estimation, 28 percent higher. I am assuming that the 28 percent figure is what the Postal Service requested as a rate increase affecting your class at the time of their rate filing, and I understand that.

What I am very unclear on is how this legislation, as we have written it, would have permitted that one-time 28 percent increase.

Mr. WATERS. Sir, the recourse that we would have had to examine the information and to state our case would have been more severely limited.

Mr. MCHUGH. But the 28 percent is not a figure that even remotely approximates what has been the rate of inflation.

Mr. WATERS. That's right. But as I look to a circumstance that allows us recourse, that allows the PRC to serve as a referee and an umpire, I see that the procedures severely handicap us in our efforts to come to terms with the Postal Service's initial judgments.

Mr. MCHUGH. OK. I understand that conclusion, and I wouldn't take exception to that, because indeed the structure has changed,

although I would respond, the PRC is given enormous new power, I would argue, enormous new power, subpoena power and such.

What I was questioning is the 28 percent figure, because, simply put, there's no scenario under this bill in which that could happen unless inflation had hit 28 percent, which, God save us all if it does.

Mr. WATERS. The 28 percent is a mechanical calculation of the percentage of in-county and out-of-county when taking a look at the other percentages that happen to be listed lower in the bill. And the staff of NNA would be happy to give your staff a line-by-line summary of that.

But, sir, with all due respect to the postal employees—and we get along famously with the postal employees and with the postal management that we deal with on a day-to-day basis—the proposals that the Postal Service came forward with, as far as price increases, were in some instances simply dead wrong. And if they are dead wrong, what avenues have we? What recourse have we? And so I would relate to you the specific instances of the last rate case, and, as I say, our staff would be happy to work with you on.

Mr. MCHUGH. Well, yes, I think we need to do that, because given what you just said, you should be enamored with our part of the bill, because the Postal Service doesn't make requests except those based on what the established GDPI is and would not have the opportunity to come in with dead wrong statistics.

The other thing, just so that you can have this for your people when they begin to make those calculations: The out-of-county 17 percent increase you were talking about was not a rate case, it was a reclassification case, which has nothing to do with this bill. But we would look forward to the—

Mr. WATERS. I am a publisher. I apologize.

Mr. MCHUGH. Oh, no, no, please don't apologize. I am just trying to make sure that we have a clear understanding because that's real important, as I know you understand.

Mr. WATERS. Yes.

Mr. MCHUGH. Mr. Sturm, as I mentioned, I sure understand the concerns that you have about the competitive circumstance that exist between the newspapers and the Postal Service, and in your written comments you talked about some of the statements for the record that the Postal Service has made about being aggressively your competitors, which concerns you. It should.

Let me just ask you very simply: Would you, based on your comments and your positions, argue that we should just take the Postal Service out of the area of standard class mail, no longer be allowed—no longer allow them to be in that area of service?

Mr. STURM. There's a certain temptation to quickly agree with you on that, which I am trying to fight off at the moment: To be honest with you, I think there's a better answer.

But first, let me say that we don't necessarily feel we compete directly with the U.S. Postal Service. They are, in our view, a public service. We need them for a lot of reasons. They are often an essential part of our business. The folks we do compete with are, perhaps, the best single customer, in some fashion, of the Postal Service. And our concern is not with competition, but it is with what we believe is the Postal Service putting their finger on the

scales of competition—the down-the-stream competition that we have with, the direct mail industry.

But I don't think I would necessarily support immediately the removal of the Postal Service from standard mail without a lot of analysis, and, frankly, we haven't done that analysis. I am just not absolutely positive that that would be either good or bad for our industry or for the public in general. But like I say, my gut says I should quickly agree with you, but I'm a little worried about doing that.

Mr. MCHUGH. I can't tempt you to pass the line? OK.

Mr. Little, let me note for the record the very extensive and, I found, very helpful, certainly interesting, comments and suggestions you appended to your written statement. A lot of work. And thank you for that. As you all did a lot of work.

I would like to hear a little bit more about your views on the so-called productivity discounts. How high do we set that bar? I think if others were in the room who had a different view, they might say, well, if you set that bar too high, you are, by almost definition, excluding other smaller mailers because we don't have the capacity to sort whatever it may be.

Is there a way for us to balance that, or would that, in your view, be a positive outcome, that we need to narrow this down in such a way that there's no question that those who are partaking of these discounts are doing so in a way that saves the Postal Service money?

Mr. LITTLE. Well, I think, for one thing, we have to recognize that technology has made this more than a big mailer/small mailer question. I mentioned some of MPA's members. I am representing some very small magazines today as well as some very large magazines. Meredith itself publishes magazines you have never heard of like "American Patchwork and Quilting."

Mr. MCHUGH. I just got mine.

Actually, I have heard of it.

Mr. LITTLE. And increasingly, what we are taking advantage of is the opportunity to use co-mailing of small publications and small mailings with other small mailings or with large mailings, and that process is growing in the availability and in the usefulness of it and the amount of money that is saved in doing it.

So, first of all, I would like to make sure that you understand that we are not just saying that big mailers should get a volume discount, and it's why we said that this should not just be called a volume discount. There should be something connected to it. And I think part of what we are doing is responding to the Postal Rate Commission's invitation in the reclassification case, when they said reclassification we are not going to do, but we would welcome and we are looking for opportunities for specific cost saving, money saving ways, to give discounts that give people an incentive to drive costs out of the Postal Service.

So I don't think with the technology changing and with more small mailers participating in this, I don't think that you can provide more protection than by saying this has to cover attributable costs and make a reasonable contribution to overhead and see how it works. I think we have seen examples over time.

I would tend to disagree that efforts to drive costs out of the Postal Service have not worked. I think that if we had not made progress over the last 10 years, we would be, A, choking on the mail that we have and, B, paying prices that would make that mail so uneconomical that you couldn't mail it.

So I think a great deal of progress has been made, and the idea behind the productivity discounts is that each case would be viewed on its merits, carefully and with the technology that's being applied, and that you know that attributable costs are covered and you know there's a reasonable contribution to overhead, and at that point I think that it's a sensible way to put what you have called the incentives into the Postal Service for people to do a smarter, tougher job.

Mr. MCHUGH. I think you have got a good point.

I would also say that while certainly productivity is a factor we have to aggressively pursue and do whatever we can to produce it, it should be noted that in the world of postal workers across this great planet of ours, no postal worker is more productive than the American postal worker. It doesn't mean we all can't do better, but I don't want anyone coming out of this process thinking that, they are less than productive, because at least my opinion is that that simply is not the case.

Let me ask you, Mr. Little, to just—and it is in your presented testimony, but let me ask you to just expand a little bit on the record for a moment on those kinds of things that you feel we should put in as determinants in where the rate on the base case is going to be above inflation. You note it in your comments.

Mr. LITTLE. Yes. And we suggested looking at the experience with the Federal Communications Commission on telephone rates, that, with experience, has proven to be a good regulatory guide.

The FCC only allows an adjustment that exceeds the inflation rate if there is an external event or circumstance that is outside the control of the telephone company that raises their costs. And we would suggest the same situation could apply to the Postal Service, that they should be able to keep their rates below the rate of inflation, and, if there's an exception, it should be something that happens beyond their control, outside their business operations, some major change or breakdown in the truck transportation business or some such thing. This should be very carefully limited, or else we are back in the same situation we are now where, if the Postal Service thinks it needs rates above the rate of inflation, it's much easier to get than what you are proposing here.

By the way, the reason I read the bill's intention as being to hold rates, rate increases, below the rate of inflation, is that the section-by-section analysis of the bill refers to the adjustment factor as something that is deducted from the inflation index and that the question is whether the Rate Commission would determine that the rate each year would be the inflation factor or would be the inflation factor minus an adjustment.

And certainly we applaud that intention, and all of us would agree that that's what we want to happen, and I would argue that the—if we allow the Postal Service's internal workings to govern whether they can get an adjustment above the rate of inflation, we

will remove a major incentive that this bill provides to the Postal Service to keep its increases below the rate of inflation.

Mr. MCHUGH. Well, the old saying, "You get in trouble when you assume," and the assumption was that insofar as our experience when you talk about rate cap procedures as they have existed across the country, that factor was a subtraction. But I guess you could certainly interpret the language itself as being less than definitive.

Mr. LITTLE. Well, I would suggest another way to approach this is that the language be clear that it's talking about the adjustment as a subtraction and that if the Postal Service feels that it has an unusual serious financial issue, that they use the financial exigency provision—

Mr. MCHUGH. Yes.

Mr. LITTLE [continuing]. And not use the adjustment process as a loophole, I would say, for having increases that are above the rate of inflation. They still have the financial exigency opportunity—

Mr. MCHUGH. Right.

Mr. LITTLE [continuing]. That they can send to the Postal Rate Commission.

And on your earlier question about, is there enough control over that? I think the ideal control over that is that, to get the special consideration, they have to go through the PRC. So maybe that takes care of the whole adjustment question.

Mr. MCHUGH. Your observations clearly point out that we are less than clear on that, and that is important for us to understand.

Mr. LITTLE. Could I comment on your requester publications question? You asked us if we had a comment on that.

Mr. MCHUGH. Yes, please do.

Mr. LITTLE. We state in my attachment that if Congress chooses to enlarge the nonprofit mailing categories to allow in this case requester publications, in our view, it is fine for Congress to make that decision, but if it's a social decision, it should be funded by Congress.

And so our first comment would be that if you would allow requester publications to have nonprofit mailing status, there should be an appropriation to pay for that.

I recognize the chances of that happening are very slim, and so given that, the question before us is whether requester publications should have nonprofit status.

I don't think we know enough about the cost that is involved or how many publications are involved or how the Postal Service would handle this, because if you are going to have ratepayers pay for this, I think the one thing you are going to have to consider is, many nonprofits may have to pay for this too.

Many nonprofits do not have requester publications, and you have heard concerns before that nonprofits could end up having to pay money. We have a large number of nonprofit members in the MPA, and we would be concerned about how much money was involved and what impact it would have on rates. We would be happy to sit down and talk about what is involved in this. We don't know enough about it at this point to say more than we would be concerned about it.

Mr. MCHUGH. I appreciate that, and I was aware of what was in your statement, but I thank you for bringing it up now as a response to my offer.

I think you raise a good point. You are absolutely right in the construct that, in theory, in the Pentagon how many take advantage of the requester provision that other nonprofits who are not requesters would indeed share in that cost were it not provided for through appropriation.

Do any of the panelists have a comment beyond or different from what we heard about the management audits and that should be someone outside the system rather than the PRC itself?

As I recall, it wasn't something that was expressed in any of your testimony, but do you agree with that, it should be done outside?

Mr. Waters is nodding his head yes.

Mr. Little.

Mr. LITTLE. Yes, out of any concern about the PRC's competence. It is just the great strength of the PRC is in rate setting. The GAO and an outside auditor would have much more experience in the broader financial and operating issues that are involved.

Mr. MCHUGH. Mr. Sturm.

Mr. STURM. Oddly enough, I went through my audit yesterday—

Mr. MCHUGH. Well, you are still here.

Mr. STURM. Yes, I am still here. They didn't issue a management letter. Therefore, I am still here.

We haven't really confronted that question head on in our testimony, as you know. I tend to agree with Mr. Little. I don't think it has anything to do with the competence of the PRC. I think they are perfectly competent to do that kind of thing. There are others that perhaps may have greater expertise going in.

The only thing I would say, and consistent with the theme of my testimony, if it's done by the PRC or the GAO—that is, Government agency to Government agency, as opposed to an outside accounting firm doing something to an entity—may look like something else or want to look like something else.

Mr. MCHUGH. Right. Understood?

Mr. BAIR. Only to the extent I have heard some horrific tales about the powers of Inspector Generals. And that is really an aside.

Mr. MCHUGH. We could stay here forever, but I have a note which my secretary has sent down, "Representative Kasich called regarding 3717." So I guess I have myself in a pickle.

So with that, let me thank you again for being here as I appreciate all three panels and truly do thank you for your thoughtful comments, and we are going to go forward, and I hope you keep in communication and look forward to it. Thank you.

With that, we will stand in adjournment until next Thursday, when we will have the first and last scheduled hearing on the bill.

[Whereupon, at 4:20 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]



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December 4, 1996

Rep. John M. McHugh
Chairman
Subcommittee on the Postal Service
U.S. House of Representatives
2157 Rayburn House Office Building

Dear Chairman McHugh:

Thank you for your October 22 letter.

As you requested, enclosed are my responses to the questions posed for completion of your hearing record.

Please accept my best wishes for your continued success as Chairman of the Postal Service Subcommittee.

Sincerely yours,

A handwritten signature in black ink that reads "George Cross" followed by a stylized flourish.

Christopher M. Little
Chairman
Government Affairs Council

RESPONSES OF THE MAGAZINE PUBLISHERS OF AMERICA TO
QUESTIONS FOR THE RECORD FROM REP. JOHN MCHUGH, CHAIRMAN
OF SUBCOMMITTEE ON THE POSTAL SERVICE

1. As discussed in the hearing, what additional thoughts do you have regarding the most appropriate entity for carrying out the annual audit provisions of Section 3782, particularly in light of the fact that the bill requires the Postal Rate Commission to review an audit conducted by "an independent professional accounting organization (from outside of government)," rather than the PRC actually conducting the audit itself?

Answer. As I mentioned in my testimony, MPA believes that, at least for a few years, GAO should be involved in the data evaluation and determinations included in H.R. 3717's proposed annual reporting requirements process. However, we believe that the actual audit mentioned in Section 3782 could probably be conducted by one of the nationally-known, professional accounting organizations.

Our understanding of H.R. 3717 is that the Postal Service is required to have an audit by "an independent professional accounting organization (from outside of government)" to accompany its submission of "sufficient information.... to demonstrate that the then current rates for products are in compliance with all applicable requirements of this title". However, in addition to this information, the Postal Service is required to submit to the PRC: (1) a recent comprehensive statement; (2) performance plan and program performance reports; (3) market information, including mail volumes; (4) postal financial information, including costs and revenues; and (5) measures of speed and reliability of service.

It appears, from the language in H.R. 3717, that the PRC is expected to examine all the information provided by the Postal Service and make a written determination as to the Postal Service's compliance or noncompliance with the requirements of the title with respect to rates and fees, performance goals, and service standards. This determination will in turn impact the Postal Service's possible uses of any profits it generates.

Our statement with regard to the GAO relates not just to the annual audit, but to the larger body of information to be submitted to the Postal Rate Commission and the multiple determinations of compliance or noncompliance that the PRC is expected to make. We believe that the GAO, which has conducted numerous studies of many facets of the Postal Service's operations and finances, may be best qualified to compile the data and make some of the determinations of compliance or noncompliance identified.

2. You mention the criteria that the PRC will use in setting the adjustment factors as being too focused on demand factors and you also advocate the retention of all factors. Do you believe that the current nine ratemaking criteria are readily available to measurement and should be maintained?

Answer. I believe that all nine current ratemaking criteria should be maintained.

Not every goal or objective in the public sector is capable of reduction to mathematical measurement. The PRC has for many years successfully incorporated judgmental factors into the ratemaking process. Furthermore,

while some of the nine ratemaking criteria are not subject to precise, quantitative measurement, all are subject to qualitative, directional, and/or comparative measurement which should be sufficient in determining adjustment factors for the GDPPI index. H.R. 3717 places responsibility for adjustment factor calculation with the Postal Rate Commission. The Commission is quite familiar with the subjectivity inherent in some of the nine ratemaking criteria and is adept at converting judgmental considerations into quantitative ratemaking decisions.

WILLIAM F. CLINGER, JR., PENNSYLVANIA
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ONE HUNDRED FOURTH CONGRESS

Congress of the United States
House of Representatives

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October 22, 1996

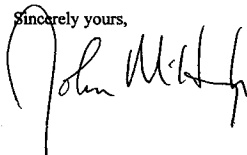
Christopher M. Little
Chairman, Government Affairs Council
Magazine Publishers of America
1211 Connecticut Avenue, NW
Suite 610
Washington, D.C. 20036

Dear Mr. Little:

I again want to thank you for your appearance before the Subcommittee on the Postal Service on September 17. We would be appreciative of having your thoughts on the attached questions. Your responses will enable us to compile a comprehensive hearing record.

Again, you have my thanks. With best wishes,

Sincerely yours,



John M. McHugh
Chairman
Subcommittee on the Postal Service

Enclosure

QUESTIONS FOR THE RECORD
FOR THE MAGAZINE PUBLISHERS OF AMERICA

1. As discussed in the hearing, what additional thoughts do you have regarding the most appropriate entity for carrying out the annual audit provisions of Section 3782, particularly in light of the fact that the bill requires the Postal Rate Commission to review an audit conducted by "an independent professional accounting organization (from outside of government)," rather than the PRC actually conducting the audit itself?

2. You mention the criteria that the PRC will use in setting the adjustment factors as being too focused on demand factors and you also advocate the retention of all factors. Do you believe that the current nine ratemaking criteria are readily available to measurement and should be maintained?

**Response by Witness Stephen B. Waters
on behalf of the National Newspaper Association
to Chairman John M. McHugh
of the House Committee on Government Reform
Subcommittee on the Postal Service
December 20, 1996**

Introduction

On behalf of the National Newspaper Association, we appreciate your thoughtful rebuttal to our testimony and we continue to be impressed with the thorough approach your committee has taken to postal reform.

In several areas, our disagreement is rooted in our difficulties with a flawed Postal Service, as it exists today and which H.R. 3717 would not repair. Permit me to provide further enlightenment on the points you raise in responding to our testimony:

Benchmark Case

Our concern that proposed 34 percent and 17 percent increases would have been passed on to our members in a new world of postal reform remains much alive. The 34 percent increase in in-county rates, proposed in the latest rate case, resulted from badly miscalculated IOCS calculations. Had the Postal Rate Commission not been in a position to provide leverage for correcting the error, and had the Postal Service not been willing to re-examine its calculations upon the urging of a rather costly litigation team from NNA, that 34 percent increase would have become a permanent part of our cost structure.

In the benchmark rate case that would precede your price-cap mechanism, such errors can and will occur--and with limited resources, NNA may or may not be able to identify and correct them. But at least in today's world, if we miss our target corrections in the next case, there will be yet another cost-based rate case coming in three or four years when we can take another shot. In the world of H.R. 3717, the damage will be done and the disfigurement will only be enhanced by regular price-cap-delimited increases.

The 17 percent increase, which we also dodged, would have been an outgrowth of the reclassification case if the USPS had prevailed. That case was truthfully an ill-disguised attempt at volume discounts for large periodical mailers. Approximately 11 companies would have benefited and the rest of us would have paid the price. Under H.R. 3717, the volume discount tool will be perpetually available and it will be used to achieve the same ends that the Rate Commission denied in the Publications Service. Possibly, the incentives built into H.R. 3717 would require the Postal Service to recoup the losses it would inevitably face from market-share driven pricing through cost controls--and not through more frequent rate increases. But I would not want to bet my family's paper on it.

Postal Rate Commission

Our concern with limiting the PRC's jurisdiction over rate increases, even with the addition of audits, rests equally with the current problem of stonewalling by USPS so that even the PRC has difficulty obtaining the data for a fair review, and with the truncation of the intervenors' ability to conduct their own examinations. In a perfect world, your periodic audits and general oversight would be excellent, but our world is riddled with turf wars, the Postal

Service's perpetual paranoia over sharing data with potential competitors, and with the sheer expense and volume of a true audit.

We are not prepared to say the process we now face is flawless. As we earlier mentioned, NNA consumed nearly \$50,000 in legal fees--nearly a third of our total litigation budget--in the 1993-94 rate cycle--just waiting for USPS to finish correcting data that it admitted to be flawed. Clearly this is a draining and costly process for our members, but we would rather have a costly process than one that replaces our own rights to discovery and examination with a reliance upon the Commission's inquiry.

With respect to USPS responses to subpoenaed information, our objection is the same as in the above. We have tremendous respect for the PRC analysts and the commissioners themselves, but there can be no substitute for due process for all parties. We strongly suspect that the "classified" stamp would be as freely used at USPS as it is in our national security arena--reflexively and not thoughtfully.

Pricing Methodologies

The pricing methodologies for the competitive and noncompetitive mail contain concerns for NNA members in several respects. To begin with, the idea that a noncompetitive mail piece (which would include, presumably, a direct-mailed grocery store flier) could be priced below cost in a volume discount offered to a nationwide mailer is objectionable and indefensible. This so-called "competitive strategy" for "noncompetitive mail," if passed, would find newspapers' chief direct mail competitors standing at L'Enfant Plaza with contracts in hand before the ink was dry on the President's signature of this bill.

At that juncture, the tension between the government-owned Postal Service and the nation's newspapers would reach the fevered pitch that we recently witnessed in Canada. NNA wishes the committee to understand that the newspapers of America are and have been on the receiving end of the Postal Service's market advances in the advertising industry--and that this bill will accelerate its motion. The committee can expect the opposition of a united newspaper industry to volume discounts designed to enhance direct mail advertising at our expense -- whether or not the newspapers are also customers of the Postal Service.

Secondarily, the committee must face the fact that the first benchmark case after the passage of this bill would result in a mass migration of mail volumes that the Postal Service considers "competitive" into mail products with barely discernible costs, and resultingly low markups to cover overhead. The rest of the mail, whose costs would be benchmarked, would be left with rising unit cost attributions--and those higher attributions would then be frozen into a rate structure that would then be subject to the price cap.

This is the only possible result, unless and until the Postal Service comes to grips with its costs. The costs have to go somewhere--and if they are not found lurking within the basis of competitive mail, they will inevitably find their way to the noncompetitive mail.

We fear the Postal Service will end up setting extraordinarily high benchmarked cost structures for monopoly first-class. For the Periodicals class and Standard mail, costs also will rise—but the national mailers will slip away through volume discounts and leave the small and rural businesses with the check to pay.

We do not see clarity in the bill as far as the proposed cost recovery structure after the benchmark case. How would the postage revenue from price-capped products be applied by the Postal Service? Will the recovery of revenue in the competitive products be applied to lower rates for the noncompetitive mail products or will it be directed to management bonuses - or equity? How would noncompetitive mail be affected by changes in the cost averaging? Although the goal to prevent cross-subsidization is stated, it is not clear how this would be accomplished, and we are not certain a price cap after an inherently flawed omnibus rate process would help us.

Access to Information

Access to quality of service studies is a continuing sore point with mailers. Again, the Postal Rate Commission cannot subpoena information that does not exist. The Postal Service can stonewall to a fare-thee-well when a subpoena is issued, as it presently does with information requests. And if the subpoena does succeed and a study is relinquished to the PRC, there is no guarantee that the public will see the information sought. Again, intervenors' rights are not protected by the due process in the bill, although we agree that subpoena power for the Commission is needed. What is to protect the mailing public from a future day when a new cast of characters at the PRC become a friendly lapdog to the USPS and does not release information? There can be no substitute for open process. While we support your committee's efforts to create a subpoena power, we believe it does not go far enough.

Adjustment Factors

We believe the adjustment factors in the proposed five year rate cases provide a good deal of room for USPS to continue its market share strategies for advertising mail. While it is impossible to predict with any certainty whether the adjustment factors for any certain category would mitigate rates a lot or a little, the experience of the newspaper industry is that the "demand" quotient tends to become a shorthand for increasing USPS market share. We would have every reason to expect that "demand" for advertising mail will increase and that rates will therefore be mitigated while "demand" for newspaper mail will not increase and rates will therefore drift higher.

Financial Exigencies

The causes for financial exigencies may be multifold. The mechanism for USPS to approach the Commission for exigent rate changes under H.R. 3717 is intended as a stopgap to prevent the Postal Service from running aground as it experiments with its new status as a competitor, or to keep the nation's most important delivery enterprise afloat as the Internet and electronic funds transfers nip away at the cash cow within first-class mail. We can envision many ways USPS could find itself in gravely exigent circumstances under H.R. 3717. We applaud the committee for building a safety net into the new rate experiments. But,

paradoxically, the very existence of a safety net is something a private enterprise does not have. When it underprices its products and cannot meet its payroll, it goes out of business. While USPS will acquire a new license to attempt to drive its competitors into such a state (as PMG Runyon recently bragged it had done with Publishers Express), the Postal Service will be nursed back to health by the ratepayers. This is hardly a free marketplace.

Profits

The debate over the building of equity versus the use of "profits" to extend rate cycles has been with us since 1970. H.R. 3717 would only continue that debate, as customers seek rate stability and management wishes to build equity. What H.R. 3717 adds to the equation is the opportunity for management to use profits neither for rate stability nor for rebuilding of equity, but for compensation. In the real world, an election of the compensation option to the detriment of customers or shareholders would bring a revolt in the marketplace or a punishing response on Wall Street. Does H.R. 3717 suggest that the Rate Commission's determination to pay down rates can mitigate the results of management's prior determination to reward itself? We are dubious.

Reclassification

It is quite correct that H.R. 3717 does not further reclassification, nor reverse it. We understand the intent of the bill to take the Postal Service where it is presently found, or at least where it is found at the conclusion of the benchmark case. The condition in which it is found - and far more so the condition in which it would be found at the conclusion of a mother-of-all-rate cases-- is the problem. Its foundations are weakened by the present conundrum of public service versus private competition, which H.R. 3717 does nothing to resolve. Its foundations are weakened by the current limitations upon management control of costs, particularly labor costs, which H.R. 3717 does nothing to resolve. It is weakened by the very fact of its massive size and its volume-gobbling strategy for survival, which H.R. 3717 does nothing to solve and instead does much to encourage. Reclassification was but a benchmark on the road of the Postal Service's quest to have the benefits of private enterprise, but none of the risks. We see new benefits added here, but no new risks.

Audit

With regards to your question on the annual audit in section 3782, because of the Postal Service's peculiar status as neither agency nor corporation, the nature of accountability has become easily obscured in the public mind. Some believe the PRC to be accountable, but courts have made it clear that the agency is not an "oversight" body, but merely a rates and costs advisor. Indeed, the PRC has specifically been barred from adjusting the amount of money the USPS believes it needs in each case.

Likewise, the Postal Board of Governors appears to have the top statutory authority. But to expect a body of laymen to oversee this complex institution in a day and a half of meetings each month is ludicrous, particularly since the governors were pressured by Congress in the mid-1980s to relinquish their independent legal counsel and small oversight staff because they were considered to be "micro-managing."

That leaves the oversight responsibility to Congress, which in our view must exercise that oversight with far greater zeal than it has in the past. Congress has typically delegated its obligations completely to the four expert members of Congress with subcommittee leadership. The rest of the members content themselves with pitching grenades onto the Postmaster General's desk when a constituent complaint is received. It is hard to imagine such a massive delegation of interest in, say, the Social Security Administration, or in Veteran's Affairs, which have no less impact upon the public interest. We believe this is a shirking of duty by Congress which created the neither fish-nor-fowl government corporation and has taken a hands-off attitude as the USPS has wandered aimlessly into its dream of becoming fully corporate, but with a state-sponsored monopoly and a grant of nearly full immunity from performing on its service responsibilities.

In short, we encourage a more direct role by Congress in oversight. We hope the other 534 members of Congress will follow Chairman McHugh's lead in developing an expertise on the operations of its company. Because of its non-agency status, we believe the separation of powers concerns articulated in Buckley v. Valeo and progeny may not apply here--and accordingly, we urge the committee to appoint its own expert auditors, the General Accounting Office, to provide the oversight that Congress and the courts have denied to the Postal Rate Commission. However, we also join in the Chairman's belief that the PRC must be strengthened in order to provide a more detailed scrutiny. We specifically urge the committee to permit the PRC to review the USPS revenue requirement when the USPS files a rate request.

There is one additional point I'd like to add before closing. I believe the fundamental job of the Postal Service is to deliver existing mail--not to generate more or to seek profit-making alternatives to universal service; and to deliver the existing mail efficiently. Yet there is little mention in H.R. 3717 of the risks of volume growth by the Postal Service to our communities, our businesses, or the impact it would have on universal service as a goal.

As I noted in my earlier testimony, former Postmaster General Anthony Frank admitted ten years ago that the Postal Service is addicted to volume. The current PMG, Marvin Runyon, responding to my earlier comments, emphasized that indeed, the Postal Service should grow volume. H.R. 3717 presents the opportunity for the Postal Service to grow volume without any criteria, process or oversight by Congress. I believe this is a serious deficiency. Who decides how much volume is enough?

In summary, as I considered the points you articulated in your response to our testimony, I have been lead to my own conclusion that our biggest problem with postal reform as it presently stands is that it tackles the wrong problem. The problem is not in the Postal Service's need for pricing flexibility, nor the ability to dress itself in Brooks Brothers' suits so it can meet corporate America in market square. The problem is in a federal enterprise that has been permitted to grow without limitation, simply because Congress has not mustered the political will to rein it in.

Let me say in closing that I have tremendous respect for the mission of the Postal

Service. As I said in my testimony, I believe in universal service and I hope the USPS will devise the best and most efficient mechanisms for doing so. Much that USPS does is right. It is a valuable national resource. Universal service is a valuable national resource. Your comments have clarified for me my deepest concern with the Postal Service's direction.

But I believe that giving the USPS what it wants in competitive tools will be like giving my son a fast, red convertible when he turns 16. Without the necessary check-and-balance of indispensable qualities like maturity, fear of insurance premiums, personal reputation and awe of the sheriff, he might well be tempted to drive it the way a 16-year-old might be expected to do. Out of love for him and out of my desire to see him grow into a man who develops those indispensable qualities, I will more likely provide him a more plebeian means of transportation. I urge the committee not to hand USPS a convertible until it is able to drive with more regard to others on the road.

Respectfully Submitted,



Stephen B. Waters
NNA Region 2 Director
Vice President/Publisher
Daily Sentinel
Rome, New York



John F. Sturm
President and Chief Executive Officer

November 27, 1996

The Honorable John M. McHugh
Chairman Subcommittee on the Postal Service
Committee on Government Reform and Oversight
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Chairman McHugh:

I am pleased to enclose the answers of the Newspaper Association of America to the questions that you posed following my testimony before your subcommittee on September 17, 1996.

We appreciated the opportunity to present our views then and now, and we look forward to working with you and your staff on postal issues in the next Congress.

Should you have any questions, or wish any further information, please let us know.

Sincerely,

Newspaper Association of America®

The Newspaper Center, 11600 Sunrise Valley Drive, Reston, VA 22091-1412
703-648-1007 FAX 703-620-0046
Internet: sturj@attmail.com

PRINTED ON RECYCLED PAPER

**Responses to Chairman McHugh's questions to the Newspaper Association of America following John Sturm's September 1996 Appearance.
November 27, 1996**

Question One: As discussed in the hearing, what additional thoughts do you have regarding the most appropriate entity for carrying out the annual audit provisions of Section 3782, particularly in light of the fact that the bill requires the Postal Rate Commission to review an audit conducted by "an independent professional accounting organization (from outside of government)," rather than the PRC actually conducting the audit itself?

NAA Answer to Question One.

It is critical that the auditing organization ("auditor") not be selected by the Postal Service, so that it doesn't become a "captive auditor," responding to the needs and desires of its client, the Postal Service. Having the right data in the right format would also be critical to the auditor's task. Therefore, there are two sets of questions that need to be addressed:

- Who should select and then review the auditing organization?
- Who should determine what data to collect and in what form it should be collected?

The best solution to this problem is to have the Postal Rate Commission select the auditing organization, be responsible for reviewing its performance and determining what data should be produced and in what form. The auditing organization would need full and complete access to all aspects of the Postal Service's financial and costing operations. Also, it should have the authority to require the Postal Service to keep certain accounts, and to maintain and gather data in specific forms.

The experience of agencies such as the Federal Communications Commission in this area may be useful. For years, the FCC has required communications common carriers to collect and report certain data and to keep a uniform system of accounts.

Question Two: As one of your members, the Wall Street Journal, stated on Thursday September 12, in a front page story entitled in part, "a Post Office Problem? Looms for the Federal Reserve banks," like the Post Office, the Fed is "under increasing pressure from private competitors and new electronic-payment technologies." The Journal article further states, "As their workload dwindles, Fed banks could be left with what insiders delicately term "the Post Office problem": They will be handling checks for mostly small, high-cost customers such as rural banks." What is your suggestion for the Congress to deal with "the Post Office problem?"

NAA Answer to Question Two.

The *Wall Street Journal* story referred to in this question points out that the Fed is increasingly finding itself left with small check-clearing operations as more efficient private sector clearinghouses take business away from it. This is similar to the position in which the Postal Service finds itself with parcels and Express Mail. This “postal problem” is leading many to question whether the Fed still belongs in the check-clearing business.

Two points need to be made here, related to the postal context.

First, there is absolutely *no* data that we know of that suggests that there will be a radical loss of *postal* volume to electronic delivery or to any other alternative anytime in the near or intermediate future. If there exists data or a study to the contrary, then it should be produced so that everyone can study it and have an *informed* discussion on this issue. It should be up to the Postal Service to demonstrate that the “crisis” it is presupposing is a real one, not a contrived one.

The effect of alternatives to mail, such as email, faxes, and electronic commerce, is unclear. The demise of mail was predicted when the telephone was invented 120 years ago, but today Americans still make 800 million phone calls while mail volumes top 500 million letters per day. Thus, while telecommunications alternatives have been around for much of this century and doomsayers have regularly predicted the demise of the postal system during that time, the postal system has grown steadily and today is posting record volumes and revenues.

When the children of the baby boomers—today’s demographic “baby boomlet”—become old enough to incur and pay their own bills, there will be an influx of First Class letter volume into the postal system, even if today’s “baby boomlet” pay some of their bills electronically. Thus, even if electronic delivery would slow the growth of future postal volumes, it is entirely possible that this new “baby boomlet” volume could counter that slowed growth. In any case, until studies are done in this area and until there is some credible evidence on these issues, there is no reason to assume that large volume decreases will occur, or that any type of mailers—either large or small, low cost or high cost—will leave the system for electronic communications in any great numbers.

Finally, it has been asserted by some that any diversion of mail due to electronic funds transfer (EFT) would occur more in urban than rural areas. We know of no evidence to support this premise. Indeed, since the cost of delivering an electronic communication to a rural area via satellite is no more expensive than delivering the communication to an urban one,¹ any EFT diversion could occur just as easily in a rural area as in an urban one.

¹ Electronic satellite communications hit the earth in enormous “footprints” that equally cover rural and urban areas.

Second this question also assumes that the cost of rural delivery is more than the cost of urban delivery. That is not necessarily the case. See "A Cost Comparison of Serving Rural and Urban Areas in the United States" by Robert H. Cohen, William W. Ferguson, and Spyros S. Xenakis, Office of Technical Analysis and Planning, Postal Rate Commission. April 20, 1993.

The above cited Cohen study suggests that rural delivery is not more expensive than urban delivery for several reasons. Rural carriers cost less than urban ones. Delivery more frequently occurs directly from the carrier's vehicle to roadside mailboxes in rural areas. Finally, rural carriers create efficiencies and revenue through the use of window services as they travel their routes.

Question Three: How do you square your opposition to H.R. 3717 with the support of fellow members of your periodicals class, the Magazine Publishers of America, in which MPA "endorses the major thrusts of HR 3717?" Isn't MPA--as a fellow mailer in the Periodicals class and as an entity whose members also "compete" with the Postal Service for advertising--looking through the same "prism" as NAA?

NAA Answer to Question Three.

The Magazine Publishers of America and the Newspaper Association of America do not look at the Postal Service through the same prism. For one, the Postal Service generally serves as the primary distribution system for most large consumer magazines, and it no longer does for most larger newspapers. Further, until recently, the Postal Service generally has *not* targeted magazines' advertising revenues, as it has newspapers' advertising revenues over the last decade and a half. Perhaps it is the client/distributor relationship that has enabled magazines to steer the Postal Service away from competing with them more directly.

Where USPS has targeted magazines' revenues, magazines have reacted in much the same way that newspapers have reacted. See for instance the attached MPA news release of October 23, 1996 "denouncing" the Postal Service for promoting the attributes of direct mail over magazines. Moreover, where direct mail interests have been threatened with postal competition, their reaction has been stronger than that of NAA--as last year's Neighborhood Mail incident so clearly illustrated.²

No one—magazines, direct mailers, or newspapers—wants to be forced to compete with a \$55 billion federal government agency that is free from the antitrust laws, pays no taxes,

² See AMMA Bulletin, September 8, 1995 (Postal Service *not* a private sector business, but a government entity charged to provide a "basic and fundamental service"); *Washington Post* August 28, 1996 (Harte Hanks President saying Neighborhood Mail "is absolutely outrageous."); *DM News* August 28, 1996 (Mail Advertising Service Association saying that Neighborhood Mail was a "mistake" because it "sets the postal service up as a competitor of mail advertising companies").

and is not only able but more than willing to leverage its monopoly to gain unwarranted advantages in the marketplace.

Question Three A: MPA endorses volume discounts for both non-competitive and competitive products and service and notes that the legislation provides the Postal Service flexibility to provide such discounts without necessarily raising rates for others mailers. You, however, state that pricing discrimination means that for every rate that goes down, someone else's rate has to go up. Shouldn't the price cap regime break this tie of a zero sum rate game?

NAA Answer to Question Three A.

As we read MPA's testimony, MPA does *not* support, but rather *opposes*, non-cost based volume discounts, just as NAA does.

We recommend that *instead* of "volume" discounts, the bill include provisions authorizing "productivity" discounts for both non-competitive and competitive products and services. Such discounts should be available for mailers meeting specified mail preparation and administrative requirements (such as minimum sortation levels. . .).

MPA Statement, September 17, 1996 at 5-6 (emphasis added).

Properly calculated discounts that are based on worksharing do not drive up the rates of other mailers.

Moreover, even with these productivity discounts, MPA does not think that the Postal Service should have the complete authority to set the terms and conditions of such discounts. MPA Statement at 5. Since the devil is in the detail in rate matters, NAA would need to see more details on "productivity" discounts before commenting further.

With respect to price caps, instituting a price cap regime does not change the basic dynamic that if someone's rates decrease without saving costs or bringing in sufficient new revenues, some other mailer's rates have to increase. Having rate levels capped by price caps provides no protection from cost shifts due to volume discounts. First, price caps would not stop the Postal Service from spreading across mail classes losses caused by giving a few favored mailers deep non-cost based volume discounts. Second, even if price caps did provide some protection, H.R. 3717 would not really establish a price cap system because of the provisions for an adjustment factor and for an "exigent circumstances" exception, as more fully explained in our answer to question five below. Indeed, unrealized cost-savings or revenue due to non-cost based volume discounts could easily form the base of an "exigent circumstances" appeal to the PRC.

Question Four: In your testimony, you begin by stating that NAA supports a Postal Service that "does not, as a Government establishment, intrude into sectors of the

economy served by private enterprise or otherwise disrupt competitive markets by picking ‘winners and losers’ in those markets.” In light of your concern about the Postal Service’s delivery of advertising mail and its growth, as well as our discussion on this subject in the hearing, should the Postal Service get out of delivering Standard Mail (formerly third class) because it is inconsistent with your vision for the Postal Service?

NAA Answer to Question Four.

There is nothing wrong with the Postal Service delivering products such as Standard Mail. Indeed, newspapers are some of the largest users of Standard Mail in the country. If a product is needed by American citizens, and the private sector does not provide it, then the Postal Service should be free to provide it.

NAA’s problem is with the Postal Service’s conscious attempt to skew private sector markets through both its advertising campaigns and its pricing practices. Specifically, NAA does not believe that the Postal Service should promote direct mail over other mediums. The direct mail industry is free to promote itself. It is not the job of the Postal Service.

Most importantly, NAA does not believe that it is appropriate for a government entity deliberately to price one set of mail rates in ways designed to drive advertising dollars out of other media. This is particularly true where the means to capture the advertising dollars is to move overhead costs from one set of mail rates to First Class rates, which are fully covered by the monopoly. See chart and accompanying text at pages 9 and 10 of our written Statement of September 17, 1996.

Question Five: On p. 23 of your prepared text, you state that a proposed price cap regime will not engender gains in productivity efficiency. On what basis do you make this statement? How will the current structure better produce gains in productivity than the approach proposed in H.R. 3717?

Answer to Question Five.

Experience from other regulatory arenas—such as telecommunications and electric utilities—demonstrates that the principal benefit to consumers from a price cap system stems from a productivity offset factor which guarantees that rates will rise less than the rate of inflation. *No such factor is included in H.R. 3717*, as noted at page 23 of our written Statement.

It must be recognized that H.R. 3717 would not really establish a price cap system, but merely recasts the existing ratemaking process in a different form. Unlike a typical price cap system, the bill does not create an indexed “ceiling” on rates above which the regulated entity cannot price services. While H.R. 3717 does use a government index as a

measure, the Commission is free under Section 3723 to adopt an “adjustment factor” that could be either positive or negative.

Moreover, the factors which Section 3723 would direct the Commission to consider are merely a truncated version of the ratemaking factors currently in effect and found at Section 3622(b) of the Postal Reorganization Act. And, if Postal Service management desires to raise rates above the “capped” level, it need only seek Commission approval of a higher adjustment factor under the “exigent circumstances” exception. This does not appear to be a difficult standard and indeed even makes it easier than the current system for the USPS in at least one respect – the elimination of judicial review of adjustment factors adopted under the “exigent circumstances” exception.

Directly addressing the question of efficiency, our testimony notes that “Economists have posited that the Postal Service seeks to maximize either its budget (cost) or mail volume, neither of which is consistent with efficiency.” The pricing scheme set forth in H.R. 3717 does not affect the incentives that drive the Postal Service, since the bill does nothing to alter budget or volume incentives. Indeed, to the degree that the volume discount and contract rate provisions are founded on a “more volume is better” attitude, regardless of institutional cost contribution, then these provisions could actually end up reducing postal productivity.

The questions of applying price caps to a government entity also raises certain questions. To our knowledge, economic theory has yet to consider the likely effects of price caps on a governmental entity that does not face the incentives and discipline that typify privately-owned firms, such as shareholders and investment analysts that persistently demand superior financial performance.

Finally, the current structure is just as capable than that proposed in H.R. 3717 of producing productivity gains.³ Key to increasing productivity is gaining the good will and cooperation of both management and labor. That cannot be legislated, no matter how much customers and Congress wish otherwise. Nothing in H.R. 3717 changes existing law governing postal labor relations. Therefore, H.R. 3717 would not change the fundamental incentives on the part of labor and management to improve productivity.

³ For instance, the USPS has begun to explore aligning pay and bonuses with performance, as shown by its recently announced plans relating to its postmasters and some city carriers. These developments could create some productivity increases.

FOR IMMEDIATE RELEASE

MPA
NEWS
 R E L E A S E

Contact: Judy Jorgensen
 (212) 872-3723

**MPA DENOUNCES USPS AD CAMPAIGN
 ATTACKING CREDIBILITY AND
 EFFECTIVENESS OF MAGAZINE ADVERTISING**

(NEW YORK, October 23, 1996) — A print advertisement from the United States Postal Service promoting the attributes of direct mail while criticizing magazines was sharply denounced today by Magazine Publishers of America, the industry association for consumer magazines. Donald D. Kummerfeld, President of MPA, responded to the USPS ad appearing in the October 21 issue of The New York Times as follows:

"While we recognize the right of the Postal Service to promote the products of any of its customers in a positive manner, the ad in question is offensive, inappropriate, misleading and silly. The USPS marketers would be better off concentrating their message on how effectively and efficiently they are trying to deliver the mail, rather than attacking one of their major customers.

"As for the so-called substance of the ad, it's just silly. To assume that advertisers are only interested in the most targeted audiences, regardless of cost, reach, frequency or other elements of a well-designed marketing strategy is both foolish and misleading. Magazine advertising and direct mail each has a role to play in a successful marketing effort. Intelligent advertisers understand that, and, frankly, we're surprised that the postal service marketers can't seem to figure that out as well.

"In fact, magazine publishers believe in direct mail and rely on it to solicit subscribers. We are one of the largest categories of direct mailers. But it is patently foolish to assume that direct mail does the same things as magazines, only better."

Another advertisement in the USPS campaign, which appeared in The Wall Street Journal on October 22, focuses on the clutter of print ads and why direct mail should be part of the media mix. Kummerfeld commented, "While considerably less offensive than the earlier (New York Times) ad, it attacks print advertising 'clutter' while ignoring the clutter of TV and radio advertising as well as the clutter in the mail box."

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MAGAZINE PUBLISHERS OF AMERICA
 919 THIRD AVENUE NEW YORK, NY 10022 • (212) 872-8700 FAX (212) 688-4217



1718 Connecticut Avenue, N.W. #700
 Washington, D.C. 20009-1148
 Telephone 202 232-3335
 FAX 202 745-0694

December 6, 1996

The Honorable John M. McHugh
 Chairman
 Subcommittee on the Postal Service
 2157 Rayburn House Office Building
 Washington, D.C. 20515-6143

Dear Chairman McHugh

I was pleased to have been able to testify on behalf of the Association of American Publishers (AAP) at the hearing before the Subcommittee on the Postal Service on September 17, 1996. We have the following responses to the questions for the record transmitted with your letter of October 22, 1996:

1. *As discussed in the hearing, what additional thoughts do you have regarding the most appropriate entity for carrying out the annual audit provisions of Section 3782, particularly in light of the fact that the bill requires the Postal Rate Commission to review an audit conducted by "an independent professional accounting organization (from outside of government)," rather than the PRC actually conducting the audit itself?*

AAP believes that it is more important that audit requirements provide useful information and not be unduly burdensome and hence costly to the Postal Service and, ultimately, mailers. If annual audits of the Postal Service are to be required as proposed by Section 3782 of the proposed postal reform legislation, the General Accounting Office (GAO) should have the experience and capabilities to carry out this function, at least in the first few years after enactment. After experience is gained under the new legislative regime, audits might then be undertaken by private firms.

2. *I appreciate your understanding that reform is needed. You raise concern that the PRC consider more precise standards for determining when products may be transferred from the noncompetitive mail category. The bill currently mandates the policies of title 39 and the availability and nature of the enterprises in the private sector engaged in the delivery of the product involved. What are your recommendations for further precision?*

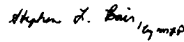
A postal product should not be transferred from the noncompetitive to the competitive category unless there are genuine alternatives available to mailers and effective competition to the Postal Service. Since the proposed legislation uses concepts from the telecommunications field in rate setting, it may be helpful to utilize definitions in that field

The Honorable John M. McHugh
December 6, 1996
Page 2

of effective competition to enterprises that have previously held monopoly positions. A more precise standard might thus be the existence of at least two alternatives to the Postal Service for the mailing of the product in question which hold at least 50% of the market. Tests for undue market concentration might also be found in the antitrust laws. Furthermore, we believe that the bill should specify that the standards under Section 3623(c) would apply as appropriate to any such transfers from the noncompetitive to the competitive category.

As I stated in my testimony, AAP commends you for introducing the postal reform legislation. We look forward to cooperating with you in postal reform efforts and to continuing a dialogue with you and your staff on this critical subject.

Sincerely

Handwritten signature of Stephen L. Bair in cursive script.

Stephen L. Bair
Chairman, AAP
Postal Committee

STATEMENT

of

EDWARD SATELL, CEO
PROGRESSIVE BUSINESS PUBLICATIONS

on

H.R. 3717
POSTAL REFORM ACT OF 1996

Before the

COMMITTEE ON GOVERNMENT REFORM AND
OVERSIGHT SUBCOMMITTEE ON THE POSTAL SERVICE

September 17, 1996

Mr. Chairman:

I am happy to testify in support of Section 104, H.R. 3717, the Postal Reform Act of 1996, which would create an Inspector General appointed by the President within the United States Postal Service. This action, which was approved by the House of Representatives in 1994, is long overdue, and I urge the Committee to give priority to this provision of H.R. 3717 so that it can be enacted before Congress adjourns. An independent Inspector General for the Post Office is essential to curb abuses by over-zealous and poorly trained postal inspectors.

Progressive Business Publications (PBP) is a private company that publishes 18 newsletters on financial and technical subjects. Nearly every major corporation in America purchases at least one of our products. We are one of the fastest growing newsletter companies in the United States and currently employ over 500 people. The company puts a strong emphasis on ethics in marketing and reporting and is widely respected for its honesty and reliability. PBP depends on the U.S. mails for its livelihood, and we support the Committee's efforts to improve postal operations.

Unfortunately, PBP's recent experience with postal inspectors demonstrates the need for an independent Inspector General within the Postal Service. In 1995, PBP

became the victim of an arbitrary and malicious prosecution by over-zealous postal inspectors even though our marketing practices had been specifically approved by the Postal Service in private letter rulings and published rules. We defended the case successfully, but the cost was high and the abuse of legal process by the government was outrageous. Even more important, now that the legal proceedings have been concluded, where the government not only failed to prove its charges or to obtain its stated objectives in the settlement, we find PBP is left without any effective means of redressing its grievances because postal inspectors and the Postal Service are largely immune from civil suit. An independent Inspector General could help ensure that postal inspectors observe the rule of law and respect the civil rights of both postal employees and users of the U.S. mails.

Under current law, the Chief Postal Inspector serves as both the top police officer of the U.S. Postal Service and as Inspector General for all Postal Service offices and employees. This means that postal inspectors operate unchecked and also have the power to intimidate other employees who might blow the whistle on misconduct by the inspectors. This situation leaves postal inspectors unaccountable for their actions and has led to serious abuses of the civil rights of postal employees and postal customers.

Among other abuses in our case, the postal inspectors (1) never defined the specific charges against PBP nor explained how they could bring charges inconsistent with the substantive rules of the Postal Service; (2) attempted to cut-off PBP's mail -- and cash flow -- without a hearing; and (3) made serious misrepresentations to the Court. These abuses were continuous and were aimed at coercing settlement of a flawed prosecution and avoiding the deposition of the postal inspectors. The situation became so serious that the judge stated that he disagreed with the inspector's characterization of the evidence and forbade the assistant U.S. Attorney from showing company documents to postal inspectors in the future.¹

¹ *United States v. American Future Systems, Inc.* (unreported March 1996). A number of cases have involved postal inspectors in Pennsylvania. *See, e.g., Pendleton v. U.S.*, 1990 WL 167996 (E.D. Pa. Oct. 31, 1990); *Trimble v. Casey*, 1988 WL 36382 (E.D. Pa. April 18, 1988).

Postal Inspectors Have Accumulated Extraordinary Police Powers and Abuses are Endemic

Unknown to most Americans, the U.S. Postal Service has accumulated sweeping police powers, not entrusted to any other law enforcement agency, that are more in keeping with a dictatorship than a democracy. One example -- a postal inspector has the means to put an innocent company out of business without a fair hearing by obtaining an *ex parte* order cutting off the company's mail. Further, these extraordinary powers are being exercised by poorly trained and supervised postal inspectors within a system that lacks the normal checks and balances that are standard in other federal agencies. In these circumstances, it is not surprising that over-aggressive postal inspectors have abused these powers in numerous cases, threatening the civil rights of both postal employees and postal customers.

These abuses have led to public scandal, numerous law suits against postal inspectors, and widespread criticism of the Postal Service. For example, the House Committee on Post Office and Civil Service investigated abuses of postal employees and others in 1994, after receiving misleading information from the Postal Service concerning a scandal in Cleveland, Ohio. The Committee uncovered abuses by postal inspectors in several cities and concluded that the problems with the Postal Inspection Service were serious and systemic, *See* H.R. Rep. 103-561, 103d Cong. 2d Sess. In the words of one Congressman: "The service's activities became more than embarrassing; they destroyed lives . . ." *See* 140 Cong. Rec. H5085-02 (daily ed. June 27, 1994) at p. H5087.

The law books are littered with tort claims by citizens who have been falsely accused of criminal conduct by postal inspectors, seriously hurt by vindictive prosecutions and acquitted by the justice system. Over the past 15 years, there have been at least 24 cases alleging such misconduct by postal inspectors in 12 states and Puerto Rico.² These abuses have occurred across the country from Texas to Pennsylvania. Inspectors have been accused of improper search and seizure, excessive

² *See, e.g., Lyles v. Sparks*, 1996 WL 118611 (4th Cir. March 19, 1996); *Moore v. Valder*, 63 F.2d 189 (D.C. Cir. 1995); *Anfanador v. U.S. Postal Service*, 787 F. Supp. 261 (D.P.R. 1991), *aff'd*, 976 F.2d 724 (1st Cir. 1992) (unpub); *Stone v. River*, 960 F.2d 152 (9th Cir. 1992) (unpub); *Edmond v. United States Postal Service General Counsel*, 949 F.2d 415 (D.C. Cir. 1991); *Sutton v. United States*, 819 F.2d 1289 (5th Cir. 1987); *Crow v. United States*, 634 F. Supp. 1085 (D. Kan. 1986); *Heywood v. United States*, 585 F. Supp. 590 (D. Mass. 1984).

use of force and providing false and misleading testimony in all sections of the country. In Los Angeles, where a postal employee wrongly accused by inspectors was acquitted in court, both the judge and jury commented on the poor quality of the investigation.³

Unfortunately, many citizens, who suffered grievously, could not obtain compensation through the courts because existing legislation limits accountability of postal inspectors. In one recent case, the court held an inspector could not be sued for perjuring himself before a grand jury.⁴ Even worse -- there is no effective legal remedy against the Postal Service for a citizen whose legal rights are abused by postal inspectors even if that person's life is ruined by the arbitrary abuse of extraordinary powers.

The cumulative effect is a widespread perception among other postal employees, in business, in Congress, and in the courts, that rogue postal inspectors acting with a gestapo mentality too often violate the civil rights of postal employees and postal customers. This pattern of behavior can ruin lives, destroy businesses and seriously damage the Postal Service itself. The Inspection Service has a vital role to play, and many inspectors perform well. Unfortunately, arrogance and poor performance by a minority of inspectors jeopardizes the integrity of the Inspection Service as a whole.

Legislative Remedy

These are serious problems, but they could be fixed by a few moderate but effective changes in the existing legal regime. Congress has studied the problems in depth and is in position to take constructive action immediately. The first essential step is to establish an Inspector General within the Postal Service independent from, and with power to review the operations of, the Inspection Service. The problem is urgent, and Congress should act promptly.

³ H.R. Rep. 103-561, *supra*, at 4.

⁴ *Lyles v. Sparks*, 1996 WL 118611 (4 Cir. March 19, 1991).

Testimony of Mury Salls, Vice-President,
International Billing Services

I. INTRODUCTION

My name is Mury Salls. I am Vice President of International Billing Services. My company prepares and mails billing statements for over 900 customers in the telecommunication, utility, cable and financial industries. International Billing Services is one of the Nation's largest mailers of First-Class Mail pieces, and its mailings are virtually all First-Class Mail.

I am extremely familiar with postal matters and the regulation of postal rates and classifications. At my company, I have primary responsibility for all postal matters. In my capacity as President of Major Mailers Association, a group of the largest First-Class mailers that have no interest in other mail classes, I have testified frequently before the Postal Rate Commission. I am a representative to the Mailers Technical Advisory Committee (MTAC), an adjunct to the Postal Service, and have served as industry co-chair

of MTAC's First-Class Committee.

I want to thank you for this opportunity to submit this statement to your Subcommittee. This Subcommittee has undertaken an important task in proposing a reform of the postal laws. Recognizing the difficulty of that effort, and the difficulty of reconciling conflicting interests, I am impressed with the Subcommittee and its staff's accomplishments in its first effort, H.R. 3717. I want to explain to you, however, why my company has serious reservations about H.R. 3717's impact upon First-Class Mailers.

II. OVERVIEW OF TESTIMONY

As long as the Private Express Statutes require First-Class mailers to remain as captive customers of the Postal Service, I believe that those mailers are entitled to protection against excessive rate increases. For the past twenty-five years, the Postal Rate Commission has been empowered--under Section 3622(b)--to protect First-Class mailers. But if H.R. 3717 is enacted, Section 3622(b) would be repealed.

In place of Section 3622(b), H.R. 3717 would substitute a price "cap" mechanism which, in my

opinion, contains many defects (which I discuss later). Because of these defects, H.R. would leave First-Class mailers subject to exploitation.

III. THE PRESENT STATUTE AND PROPOSED CHANGES

A. Due to the Private Express Statutes, the 1970 Act Empowered the Commission to Protect First-Class Mailers Against Exploitation

In formulating postal legislation, Congress' task is especially difficult in the case of First-Class Mail. When the Ninety-First Congress faced this problem in 1970, it succeeded in devising legislation that balanced competing interests affecting First-Class Mail in a manner that was fair and consistent with the public interest.

On the one hand, the Ninety-First Congress retained the provisions of the Private Express Statutes that protect the Postal Service's revenues from its largest source of business--the delivery of letters and invoices.

But the Ninety-First Congress also recognized that, under the Private Express Statutes, First-Class mailers are forced to be captive customers of the Postal Service. Because First-Class mailers are

captive customers, the Postal Service has an incentive to overcharge those mailers, while using excessive First-Class Mail revenues to subsidize rates to its customers in competitive services. As Congress warned when it enacted the 1970 Act: "The temptation to resolve the financial problems of the Post Office by charging the lion's share of all operational costs to first class is strong; that's where the big money is."¹

Many economists favored solving this problem by eliminating the Private Express Statutes, thus freeing First-Class mailers to seek ways to deliver their mail outside the Postal Service.

But, in 1970, Congress found another solution. First, it created the Postal Rate Commission to review the Postal Service's proposed rates in order to insure that the rates are--in the words of Section 3622(b)--"fair and equitable." Second, in Section 3622(b)(3), Congress imposed a "requirement" that the rates for each class and subclass must be based upon that class

¹ S. Rep. No. 912, 91st Cong., 2d Sess.13 (1970).

or subclass' own costs. Thus, although First-Class mailers remained captive customers of the Postal Service, the Commission was given the power to protect those mailers from being charged excessive rates.

B. By Invoking Section 3622(b)'s Standards, the Commission Has Struggled to Protect First-Class Mailers From Excessive Rates

As embodied in Section 3622(b), the Ninety-First Congress' solution has worked well.

In case after case, the Commission has had to reduce the Postal Service's proposed increases in First-Class rates. In each instance, the Commission found that the Service's proposals were not "fair and equitable" and would have forced First-Class mailers to pay more than their fair share of the Service's overhead costs.

The Commission did not, however, deprive the Postal Service of needed revenues. Instead, while the Commission reduced the burden on those classes (like First-Class) which the Postal Service would have charged too much, the Commission increased rates for the mail classes (like advertising mail) which the Postal Service would have charged too little.

Today, the Commission's task of protecting First-Class Mail is still incomplete. In the last two rate cases, the Commission has recognized that "despite our rate adjustments, ... First-Class mailers are providing revenues which more properly should be provided by third-class mailers...."²

C. H.R. 3717 Ends the Commission's Traditional Power To Protect First-Class Mailers While Leaving Those Mailers Subject to the Postal Service's Monopoly

If enacted, H.R. 3717 would strip the Commission of its powers, under Section 3622, to protect First-Class mailers from being exploited by excessive rates. This is because Section 3622 would cease to exist. The bill provides that "Section 3622...is repealed" (H.R. 3717, §1002(b)(1)).

My company would not object to this repeal if the Private Express Statutes were also liberalized as to First-Class Mail. We would have no objection to liberalizing the Postal Service's rate-setting powers --if First-Class mailers were allowed to seek

² Commission Opinion in Docket No. R90-1, page IV-33, note 16 (Jan. 4, 1991). See Commission Opinion in Docket No. R94-1, page V-19 (Nov. 30, 1994).

nonpostal alternatives for delivering their mail.

But H.R. 3717 bill does not relax the Postal Service's monopoly under the Private Express Statutes. Instead, the bill allows continuation of First-Class mailers' status as captive customers.

So First-Class mailers must object to H.R. 3717's deletion of the Commission's powers under Section 3622(b) unless the bill provides a substitute mechanism that enables the Commission to protect First-Class mailers against exploitation.

**D. The Price "Cap" Mechanism Is Flawed
And Will Not Protect First-Class
Mailers Against Excessive Rate Hikes**

I recognize that H.R. 3717's drafters meant to restrain increases in First-Class Mail rates by means of an annual price "cap" (H.R. 3717 §3722). But the "cap" is weakened by being made subject to questionable "adjustments." This deficiency in the price "cap" mechanism will expose First-Class mailers to exploitation.

1. "Adjustments" To The Cap Will Allow
First-Class Mailers to Be Charged More
Than the Costs of Serving Them

The heart of the existing Act is its prohibition

of noncost-based pricing. Thus, although existing Section 3622(b) contains various criteria for ratemaking, one criterion predominates--the "requirement" that each class and type of mail bear its own attributable costs (plus a reasonable share of overhead costs).

In H.R. 3717's provision for adjustment of price caps (§3723(c)), the bill also enumerates various criteria, but these eliminate the requirement for cost-based rates. Instead, under the bill, cost becomes only one of many factors; it can be subordinated to other criteria. That permits First-Class Mail to be charged much more than its full share of attributable plus overhead costs, while other mail types pay less than their share of those costs.

2. "Adjustments" To The Cap Will Allow
First-Class Mailers to Be Charged
All That the Traffic Will Bear

Under H.R. 3717, the first criterion for adjusting the cap is price sensitivity--the "volume responses" of mail types to rate increases (H.R. 3717, §3723(c)(1)). That penalizes First-Class mailers twice for the Postal Service's monopoly under the

Private Express Statutes. First, those mailers are captive customers, having virtually no alternative means of delivering their letters. Second, the bill would treat those mailers' inability--after rate increases--to reduce their volumes as an excuse for raising their rates even more.

Indeed, because of the inelasticity of demand for First-Class Mail, H.R. 3717 might allow the Postal Service to raise all its needed revenues--or, at least, a disproportionate share of them--by increases in First-Class Mail rates. The bill thus invites cross-subsidization on a massive scale.

3. "Adjustments" To The Cap Do Not Direct
That Rates Be Fair and Equitable

In his July 10 testimony, the Chairman of the Postal Rate Commission notes that H.R. 3717 "relegates the concept of fairness and equity--previously the first criterion for both ratemaking and classification--to an 'also ran' status." It is hard to believe that the bill's drafters want to eliminate the directive, contained in current Section 3622(b)(1), that rates must be "fair and equitable." The final bill should

continue the current statute's rule.

* * *

I do not want to end my testimony upon a negative note. The Subcommittee's objective of reforming the postal legislation is a worthwhile objective, and H.R. 3717 is a laudable first step towards that goal. The Postmaster General, the Chairman of the Postal Rate Commission and others have identified features of the bill that warrant a second look. It has been my objective to do the same.

H.R. 3717, THE POSTAL REFORM ACT OF 1996

THURSDAY, SEPTEMBER 26, 1996

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE POSTAL SERVICE,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:04 p.m., in room 2247, Rayburn House Office Building, Hon. John McHugh (chairman of the subcommittee) presiding.

Present: Representatives McHugh, McIntosh, and Green.

Ex officio present: Representative Clinger.

Staff present: Dan Blair, staff director; Jane Hatcherson, Robert Taub, Heea Vazirani-Fales, and Steve Williams, professional staff members; and Jennifer Tracey, clerk.

Mr. MCHUGH. I would like to call this session to order. I would like to apologize for running late; I encountered someone of great importance, many limousines, a lot of insignia on the cars—I don't know if it was the President or the Vice President—but it caused a traffic jam and caused me to be late, but I appreciate your patience.

Let me just say good afternoon and, as I mentioned, the subcommittee will come to order. Today's session marks the subcommittee's final hearing of this congressional session on H.R. 3717, the Postal Reform Act of 1996. During the hearings conducted over this past summer the subcommittee has heard from a variety of witnesses representing a wide range of interests within the postal community.

The subcommittee has received testimony from the Postmaster General, the chairman of the Postal Rate Commission, postal employee and management groups, and members of the commercial mailing community. Today, we round out this witness list when we hear from postal-reliant businesses and competitors.

As always, we have prepared a lengthy and, I think, very interesting opening statement, but we do have a number of very important—and I mean that sincerely—witnesses here today and I don't want to impinge upon their time constraints any longer than we have to by reading my opening statement. So I would ask that it be submitted in its entirety for the record.

[The prepared statement of Hon. John M. McHugh follows:]

Statement of the Honorable John M. McHugh, Chairman
Subcommittee on the Postal Service
Hearing on H.R. 3717, the Postal Reform Act of 1996
September 26, 1996

Good afternoon and the Subcommittee will come to order. Today's session marks the Subcommittee's final hearing of this congressional session on H.R. 3717, the Postal Reform Act of 1996. During the hearings conducted over this past summer, the Subcommittee heard from a variety of witnesses representing a wide range of interests within the postal community. The Subcommittee received testimony from the Postmaster General, the Chairman of the Rate Commission, postal employee and management groups, and members of the commercial mailing community. Today, we round out this witness list when we hear from postal-reliant businesses and competitors.

When this legislation was introduced this past June, I did so to initiate the dialogue necessary to refine these postal reform proposals. There is not an individual, organization or business in this country that is not served in some way by the Postal Service. Given the magnitude and degree of public reliance on the mails, I believe it is imperative that the Subcommittee make all efforts to insure that this valued public institution remain a vibrant and dynamic entity well into the 21st century.

Our first witness this afternoon is our good friend and colleague, Congressman Duncan Hunter of California. Congressman Hunter has long been an interested party in postal affairs and the Subcommittee looks forward to him

sharing his thoughts regarding the future and direction of the Postal Service.

Our second set of witnesses today is comprised of a varied group of coalitions and associations representing interests dependent on the Postal Service. I welcome Maynard Benjamin (pinch hitting for an injured Mike Love) with the Envelope Manufacturers Association of America, Dan Goodkind with the Mail Advertising Service Association, Charmaine Fernie representing the Coalition Against Unfair USPS Competition, John Estes of the Main Street Coalition for Postal Fairness, and Robert Williamson representing the National Association of Presort Mailers.

Our third panel of witnesses represents the primary competitors to the Postal Service in areas where the private express statutes have been modified to allow for direct competition. I want to issue the Subcommittee's welcome to the CEOs of both Federal Express and the United Parcel Service - Messrs. Fred Smith and Kent "Oz" Nelson, and Philip Belyew, President of the Air Courier Conference of America. I appreciate these chief executives taking time from their busy schedules to individually represent their organizations in testifying before the Subcommittee. I think your appearance here today emphasizes the role that competition currently plays in the postal arena and I look forward to constructive dialogue regarding H.R. 3717.

Today's hearing will be the final opportunity - during this Congress - for the Subcommittee to hear from interests affected by postal reform legislation. When I was handed the reigns of this Subcommittee at the inception of the 104th Congress, the Postal Service was awash in red ink and suffering from a well publicized delivery and service debacle. However, the Service has performed

remarkably since that time. Now, the Postal Service boasts record financial performance and record - or near record - delivery scores. But, we should not labor under any illusions that today's good Service performance portends a future without substantial risks.

This week, the GAO released its long-awaited report on the Private Express Statutes and the effects that could be expected should those statutes be relaxed. From my perspective, the report makes clear that failure to enact reforms which equip the Postal Service to operate in today's competitive marketplace will leave that organization at a severe competitive disadvantage. Some may argue it is inappropriate for a government-run entity to compete with the private sector, given the natural advantages that government ownership bestows upon the entity. However, Congress endorsed this approach in 1970 when it established the Postal Service and directed it be conducted in a business-like manner. To quote from the House Report to the 1970 Act, "The Postal Service is a public service, but there is no reason why it cannot be conducted in a business-like way, and every reason why it should be."

As an ardent capitalist, I believe our federal government's role should be to stimulate growth in the private sector, not inhibit it. That is why H.R. 3717 attempts to level the competitive playing field for both the Postal Service and its competition. Some argue that the federal government should retreat from its role as a provider of universal mail service and allow the private sector to fill in the gaps as the market would see fit. While such an approach may look attractive at first blush, it ignores the social benefits conferred through the mandate of universal postal service. I have said from the outset that any reform proposal must

be rooted in the commitment toward universal service and the commitment to this principle is the foundation of H.R. 3717.

H.R. 3717 eschews the approach of privatization, and its converse, government control of the marketplace. Rather, the measure seeks to strike a balance of fostering competition where feasible while strengthening the Postal Service where private sector competition is least likely to appear.

The changes proposed through this legislation are quite significant and will change the way the Postal Service - and its dependent businesses and competitors - do business. Today, a quarter century old ratemaking structure encourages the Postal Service to pass along all its costs to its customers while providing few incentives to contain or reduce these costs. The legislation before us attempts to break this link and place pressure on the Postal Service to better control expenses. The bill allows the Postal Service to introduce new products and services to better respond to changing customer needs. Yet, oversight - be it from an independent Inspector General, an enhanced Postal Rate Commission, and this Subcommittee - is strengthened in order to assure that the Postal Service is performing its fundamental mission of universal service.

In granting these new authorities, this legislation recognizes the competitive nature of a number of Postal Service products and takes steps to level the playing field by removing many of the natural advantages a government entity enjoys. Specifically, the bill applies strict Anti-Trust provisions to the Postal Service and reduces the monopoly protection extended to carriage of the mails to those products requiring postage of \$2 or less. Significantly, a demonstration project is ordered which would allow, for the first time, limited access to the mailbox for

private delivery.

Critics of the Postal Service have long pointed to the advantages of access to Department of Treasury funds and the general lack of financial discipline exercised by the Postal Service. H.R. 3717 addresses these concerns by eliminating access for the Postal Service to the Federal Financing Bank and installing a price cap ratemaking regimen which links future rate increases to an objective economy-wide index rather than a cost-based adjustment where incentives to control costs are underutilized.

The Postal Reform Act of 1996 attempts to strike the balance between fostering competition in the marketplace, where competition is feasible, while protecting universal service mandates by strengthening the Postal Service to better meet the demands of its customers. The goal of this reform proposal is a postal system that is flexible enough to withstand the coming changes in the communications arena while maintaining efficient universal mail service at continued reasonable rates. There is no reason to believe that the freedoms contemplated in H.R. 3717 will lead to the demise of either the Service or its competitors. Rather, H.R. 3717 breaks the glass and reaches beyond the boundaries of the current postal paradigm by refusing to recognize the status quo and its zero-sum game. Rather, these reforms stand to establish a new market dynamic thereby benefitting to all postal customers.

Mr. MCHUGH. I just want to say a few brief words about the process. When my chairman, who is seated on my left—your right—called me back in December, some 2 years ago, to consider this subcommittee chairmanship, I related in the past I entered it eagerly but rather naively.

I suspect I felt a lot like Charles Darwin when he stepped off on the Galapagos and found a whole new world where many interesting things were occurring, perhaps unlike anywhere else in the world. But it has been a fascinating experience.

I would be remiss during this final hearing if I didn't say thanks to, certainly, my chairman, for having the faith and trust in me for allowing me to take up this challenge and also to thank him for the work that he has done on behalf of the people of his district and this Nation as he goes on to other challenges, and to also thank the subcommittee members who will never know how highly I think of them at this moment, because they are not with us—but I am sure it will be reported to them.

But I most of all want to thank two other groups. The first is the staff. I challenged them to give us a bill that, for whatever else it may or may not do, did accomplish one thing, and that is to begin the debate on postal reform from a defensible position, to give the many interested parties the opportunity to look at these issues anew.

I think they not only met that challenge; they cleared the bar by many meters. All of you, I suspect, know who they are. I won't take the time to list them all by name but they have been outstanding and they are certainly, I think, the best on the Hill and I am deeply indebted to them.

The other group is all of you, folks with whom I have come to work and know and enjoy. This is indeed a unique environment, the Postal Service and the postal community. It is one that is dependent upon each other but also one that competes. I can say that the uniting theme is simply that you are folks who come to this business with the best of intentions and are willing to work hard, and we cannot say that, unfortunately, that often in this town, so I appreciate your patience and understanding.

I don't know what the future may bring, but I am told—I was shocked to hear—there is an election on November 5th, so we will have to wait and see what things happen there. But whatever tomorrow may bring to us, the past 2 years have been a real joy, and I thank you for the opportunity.

With that, I would, before we go to our first distinguished guest, yield to my chairman, the full committee chairman, Mr. Clinger, the gentleman from Pennsylvania.

Mr. CLINGER. Thank you very much, Chairman McHugh. I just wanted to come back 2 years later and confirm I made the right choice and say that in spades, because I think without question the 2 years that you have chaired this committee have seen the most thorough-going, comprehensive—exhaustive, yes—review of the issues and challenges facing the Postal Service in the next century.

I cannot think of anybody who could have done a more thorough and conscientious job than you have done with this. As you say, you came to this assignment really not, perhaps, understanding all the mines that were in the minefield out there and all of the var-

ious contentious issues that deal with subject matter that you would think would be relatively benign. But as we find in almost every area, there are very few benign issues that we deal with.

So I just really want to congratulate you on holding those hearings and showing the patience and the persistence in wading through all this and listening to all the points of view, taking those all into account and, in my view, crafting a very fine piece of very technical legislation and getting that piece of legislation out there so that it now becomes the vehicle to really lead the way toward a reform of the Postal Service.

I think the hallmark of it is that we are engendering competition in this area, it is something that everybody has indicated they can support and live with, and I think that you have provided the format, the procedure, the structure by which that can be attained.

But I just really wanted to come and congratulate you on a fine piece of work and a total dedication to the job that you have shown over the last 2 years.

Mr. MCHUGH. Well, I thank you very much, Bill.

Before he even gets a chance to be seated, I would gladly yield to the gentleman who has been here almost without exception—I cannot think of a single hearing that we had that he did not take time out of his busy schedule to come here and to not just listen but to participate, and I appreciate that kind of interest and support. I would yield now to the gentleman from Texas, Mr. Green, and any comments he might wish to make.

Mr. GREEN. Thank you, Mr. Chairman. I have an opening statement I would like to submit but, again, I want to thank you, and I've done this for each of these hearings, thank you for the initiative you have taken with your bill, and I think these hearings have taught a lot of us about the reform effort, both the pros and the cons, that we need to look at. I think you have set the stage for the next session of Congress, and I am just happy to be on the committee with you as the chairman.

[The prepared statements of Hon. Gene Green and Hon. Barbara-Rose Collins follow.]

Opening Statement
for
Congressman Gene Green
Postal Subcommittee Hearing on H.R. 3717
September 26, 1996

As we reach the end of this session of Congress we have also come to the end of the hearings on H.R. 3717, The Postal Reform Act of 1996. I would first like to commend Chairman McHugh for having the foresight to broach these controversial and sensitive issues. Postal Reform has been long overdue but due to the sensitive balance that exists between the Postal Service and its competitors it has not been approached until now. Chairman McHugh has set the pace for the 105th Congress to re-visit

this issue and to hopefully pass some sort of comprehensive legislation. Because of the complexity of this issue it requires many hearings to get an equal balance of what needs to be included in the legislation to reform the Postal Service. In addition, we need to be cautious of giving the Postal Service too much freedom and creating another large government organization that will be competing with smaller corporations. There is a very fine balance that exists and it must be approached carefully. Chairman McHugh has made a conscientious attempt at this reform and should be commended. I look forward to the testimony from the commercial mailers and am very interested in their recommendations for this legislation.

Thank you Mr. Chairman.

Statement of the Honorable Barbara-Rose Collins

Ranking Minority Member

Subcommittee on the Postal Service

Hearing on H.R. 3717, the Postal Reform Act of 1996

September 26, 1996

Mr. Chairman, I am pleased to join you in welcoming our distinguished panelists to the fourth hearing on the Postal Reform Act. Today we will discuss the impact H.R. 3717 will have on postal reliant businesses and competitors.

I would like to take this opportunity to thank today's witnesses for their very detailed analysis of H.R. 3717. I applaud your efforts in closely examining the provisions and determining the impact that this legislation will have on your industry and consumers.

Mr. Chairman, as we approach the end of the 104th Congress, I would like to take this opportunity to applaud your efforts in conducting the many necessary hearings throughout the year. You have done a commendable job as Chairman of this Subcommittee. It has been a great pleasure working with you, and I wish you and my colleagues the best in the coming year. Thank you.

Mr. MCHUGH. Well, thank you, and I again thank the gentleman for his dedicated work on behalf of these interests.

As I mentioned, we have a number of panels today, and our first panel is comprised of a single gentleman, but certainly one who can carry the weight of an entire panel, I know, the gentleman from California, Duncan Hunter, who has for some time now been talking to me about the issues involving postal reform in general and specifically his understandable concerns about some of the more precise competitive aspects of reform and how it will affect private industry, private sector enterprise.

So I am pleased he asked to be here today and I am delighted we are able to have the opportunity to hear from him, so Congressman Hunter. It is always an unusual situation to me that we swear in everybody but politicians, but those are the rules and we won't swear you in, and I know you are going to be honest, so we are all yours.

**STATEMENT OF HON. DUNCAN HUNTER, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. HUNTER. Thank you, Mr. Chairman—I have been sworn at, but not sworn in much lately. [Laughter.]

Thank you for letting me attend this hearing. I want to congratulate you and Mr. Clinger and Mr. Green for your work on developing the Postal Reform Act. Let me just offer what I would hope would be my contribution to this act. I think an important part of postal reform necessarily must be what I would call "a line of demarcation," a demarcation that will let the Postal Service know what it can do within its charter and, also, let small business people know what they can do. Specifically, I would hope that the many hundreds, the thousands, of pack-and-send postal private companies that have postal stores will be able to survive over the next several years.

I think if this subcommittee and committee does not strike a line of demarcation, if you will, that it is going to be very difficult for many small businesses, many people who have invested their life savings to survive, and I want to tell you why.

First, Mr. Chairman, of course, like most people who testify before you, I have a lengthy written statement. I would like to submit that, if I could, for the record.

Mr. MCHUGH. Without objection.

Mr. HUNTER. I appreciate that. There are about 9,700 private mail and postal centers. These are operated many times by families, many of them are little businesses where people have invested literally their life savings in this particular enterprise, and one is located in just about every congressional district in this Nation—in fact, I think there is one in every congressional district.

There are 226 private mail centers located in the San Diego region, from which I come, and there are 33 in my own congressional district, so I know that they are well spread out across the country.

There are 230 Postal Service-supported Pack & Sends. That is this new competitive postal store that the Postal Service has embarked upon. I think the best way to describe that is not particularly my description but the description of one of their own brochures, which is quite interesting and, I think, describes exactly

and tells exactly where the Postal Service is going in this competition with free enterprise.

First, they start out with—and this was sent, incidentally, in Albuquerque, to every postal patron at ratepayers' expense. This is something, obviously, that a small business cannot do but the Postal Service can do this, presumably, whenever they want to. As you can see as people in politics who send out brochures all the time, this is a fairly expensive piece, mailed to about 250,000 people in the Albuquerque area. It is advertising.

It starts out with the statement: "If your post office looks and sounds a little different lately, it is. Now we're more like a store."

The next portion of it says: "Have you seen our latest collections? This is our gift shop. Now you can find a great selection of gifts and collectibles right inside your post office."

Second, "May I pack that for you? If packing up boxes ties you in knots, then try our new Pack & Send service. Would you like that on your credit card?" They now have a credit card service for that. "You can now shop with us at your supermarket." And finally, "a free gift if you will come in and be our patron."

So not only is the Postal Service sending out hundreds of thousands of these at ratepayers' expense, with nothing off their bottom line, because there is no bottom line, but they can also give away free gifts at the ratepayers' expense.

The point that I am making is that to be factually correct I think we would have to step up to the plate and say, yes, the Postal Service is definitely in competition now with the thousands of small businesses that have been started to do things that don't involve sending the mail but do involve photocopying, do involve packaging, do involve the very same things that these Pack & Sends are doing.

The other interesting thing is that if you talk to the Postal Service, to their leadership in Washington, they say, "Well, we're just doing what people want us to do. We've been asked to do this to provide a service." But if you will look at the places where the Pack & Sends are located, they have all been put right up against—in the same area—against the private postal service centers, these little private operations.

There are none of these operations, for example, in Idaho, where you have many rural patrons. In fact, this is one place where people probably would really like to have a service like this. There are none in these other extremely rural areas. They have put them right in the population centers, right up against the entrepreneurs who are trying to make a go of their business. It is for this reason, Mr. Chairman, that I think this line of demarcation must be drawn.

Now, let me just make a couple of points with respect to the unlevel playing field that was addressed by my constituent, La Mesa Mailboxes, a small business that wrote me when they understood that I would be testifying. They said:

The Postal Service does not collect or pay sales tax, which is a 4- to 10-percent advantage, depending on the area. It is a self-insured agency of the U.S. Government. Our business insurance costs us over \$1,200 annually.

It does not have to make a profit to survive, as their overhead, supplies, and salaries are provided. There is nothing that requires them to be profitable. It can borrow money from the U.S. Federal Reserve at a favorable rate if they need a loan. When

we need to borrow it, it is at prime rate. It has huge volume purchasing advantage. The USPS can use its national size to receive large discounts from suppliers nationwide, which we cannot as a small business.

This is true of my constituents, La Mesa Mailboxes, a small operation writing in from my district laying out the points that we are all familiar with.

So they have a statutory monopoly, also, on the delivery of First Class Mail and the revenue of that can be used to subsidize other services.

Very clearly, Mr. Chairman, because right now there isn't a legislative line of demarcation, the Postal Service has decided to engage in a full-blown battle with the many thousands of small businesses, and they have stated if they were a business, a private business, they would be the 12th largest business in the world—I think that is true.

But they have decided to engage in a direct competition with small businesses, many of which were financed with literally the life savings of the entrepreneurs who launched these businesses. And there will be a deleterious effect on these small businesses. Already two of the postal services, this year, in Omaha and in Las Vegas, where U.S. ratepayer-financed postal shops were put in right next door to them, in the same malls, literally, two of those have gone broke, one around March of this year and then the last one just a couple of months ago. We can document that for you.

I would go simply to a statement—we have got to have an anecdote or two in here—I have laid out the basic facts for you. But in Albuquerque one of the small business owners who buys many stamps, because these small businesses, whether it is Mail Boxes Etc., or other businesses, do buy a lot of stamps from the Postal Service, because they sell them to their customers, one of them went, as she has gone many times, to buy stamps from the mail center, from the Postal Service. Her name is Filomena Monk and she is from Albuquerque, NM.

She was told by the postal clerk that they were not selling stamps to the postal centers. A supervisor overturned that decision but told her that they would not sell any stamps to her in the future, so she could have some stamps now but she would not be able to get any in the future.

She then went to another post office and when asked if she was a mail center, she stated, "No," she said that she was a nurse—which is true, she is a nurse—and she was buying stamps. And that was true, but it was also necessary to get the purchase of stamps. At that point the clerk sold her the stamps and said, "Well, we're glad you're not a mail center, because we're going to drive them out of business."

Now, we see businesses in this country, private businesses, competing against each other. We see it all the time and it is part of the rough and tumble of the free enterprise system. But nobody can see this brochure that says, "If you think we're more like a store, it's because we are like a store, and welcome to our gift shop and here's a free gift, courtesy of the U.S. ratepayers, if you will use us instead of somebody else," without coming to the common-sense conclusion that, yes, they are trying to drive these thousands of free enterprise service centers out of business.

Mr. Chairman, unless a line of demarcation is written by this committee, they will drive these small businesses out of business. The bill that I have offered, H.R. 3690, simply establishes a simple line of demarcation and it says that the Postal Service may continue as they have for hundreds of years to engage in all of the things, all of the activities, that they have engaged in nationally before January 1, 1994—that is when they undertook this campaign to enter into this new area and to drive these small businesses out of business.

I would ask, Mr. Chairman, that the committee seriously consider, for the sake of small business, for the sake, also, of the rate-payers and the people that buy the stamps, the Americans that buy the stamps and make the U.S. Postal Service go, that for their sake that you draw a line of demarcation between these businesses and the U.S. Postal Service. Otherwise, I think this line of demarcation will be moved farther and farther back, or the difference between the two, until there are virtually none of these small businesses left.

Thank you for listening to me.

[The prepared statement of Hon. Duncan Hunter follows:]

DUNCAN HUNTER
52D DISTRICT, CALIFORNIA
COMMITTEE ON NATIONAL SECURITY

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Testimony by Duncan Hunter
before the Postal Service Subcommittee
Regarding the Postal Reform Act of 1995, H.R. 3717
September 26, 1996

Thank you Mr. Chairman and members of the Subcommittee, for allowing me the opportunity to address you with my support for postal reform. First of all, I would like to commend the Committee for all of your hard work on this complicated and, sometimes, controversial issue. Like you, Mr. Chairman, I remain committed to the preservation of universal service at a uniform price. As you know, much of my district covers rural communities that would most likely suffer significant service reductions should this long protected right to postal service be altered. At the same time, however, I, like much of the American public, recognize that change within the postal service is necessary. It has been over twenty-five years since Congress last investigated the changing needs of the United States Postal Service. The time has come for this body to implement reforms that are fair to the public, and allow the Postal Service to continue to offer their critical service.

As you have discovered through your investigations, many groups representing diverse needs have an interest in the work you are doing here today. I am appearing here today because I am concerned about the impacts of postal reform on related small businesses, specifically the Commercial Mail Receiving Agents (CMRAs) industry. As you know, CMRAs, perhaps the most famous store being MailBoxes Etc., provide value added and ancillary service to postal customers and serve as mini-offices for many home based businesses and sales people. Specifically, CMRAs provide the materials and help their customers safely pack parcels to ensure safe delivery; they help customers identify the most efficient and cost effective manner to send their packages; they oversee mailboxes; and offer personalized postal services to their customers. Over 15 years ago, Tony DeSio saw the need for these services within his community of San Diego, and he opened the

first Mailboxes Etc. Since then, the industry has grown to over 10,000 small businesses located in every congressional district in the country.

So far, this story sounds like the American dream. Everyday American small business owners invest their own capital and work to achieve the American dream. That would be the case in this instance if it were not for one major problem: the United States Postal Service, which has enormous taxpayer supported advantages, has decided to directly compete with this industry.

As I stated earlier, I am a big supporter of the U.S. Postal Service. Like all of you and every American, I depend upon the hard work and dedication of the Postal Service employees for the timely delivery of my mail six days a week, and I want a strong Postal Service. I question the fairness, however, of the Postal Service targeting small businesses for its revenue. The CMRA industry is home grown, and it should not be preyed upon by the U.S. Government.

After all the Postal Service is a government industry with the following enormous advantages:

1. The Postal Service does not charge tax on its retail items—that is a 5-10 percent advantage right there.
2. The Postal Service is self-insured as an agency of the U.S. Government—these small business CMRAs have to purchase insurance to protect their investment.
3. The Postal Service does not have to make a profit—there is nothing that requires them to be profitable as far as I know. When they are under threat of not breaking even they request a postal rate increase.
4. The Postal Service borrows money from the U.S. Federal Reserve at the most favorable rates—CMRAs have to borrow money at market rates.
5. The Postal Service has a statutory monopoly on the delivery of first class mail, the revenue of which can be used to subsidize other services.

Perhaps the Postal Service's biggest advantage of all is their sheer size. If it was a private business, it would be ranked as the 12th largest business in the nation, and 33rd largest in

the world. I don't believe it is fair that the Postal Service is entering in to competition with small businesses with all of these inherent advantages. The Justice Department would not stand by and allow Ford to maintain a monopoly, while letting them use their profits to compete against small businesses on a different front. Nor would Exxon be allowed to compete with small businesses if it had limited sovereign immunity and was represented by the Department of Justice in all its legal matters. Therefore, it is the Postal Service should be held to the same standard.

The Postal Service has a job to do--deliver the mail and sell postage. That is what it was designed to do by the Founding Fathers. That is what it is good at, and what it should continue to do. Offering ancillary services only detracts from their core mission. While I acknowledge that Postal Service will have to be creative in their revenue generation in the future in order to maintain their delivery infrastructure at the highest level and lowest price, targeting small businesses is an inappropriate method to rise to their unique challenge.

In an effort to address this inequity, earlier this year I introduced the Postal Service Core Business Act. This bill prohibits the Postal Service from getting into the CMRA business. Although remarkably simple, my proposal addresses the question of what is the proper role for the Postal Service in areas where private industries already provide the service. It is important to note, however, that my bill in no way effects the products offered by the Postal Service prior to January 1, 1994, and does not stop them from improving and expanding upon their core services. I firmly believe that Postal Service can remain a reliable, vital and nonreplacable agency without harming small businesses.

I am familiar with reports of postal executives stating that they need to get into retail businesses to protect the Postal Service and their customers. This is simply not true. This agency made over \$1.5 billion last year, and has released reports that they are well on their way to making a large profit again this year as well. As the country's largest retail organization, which includes a distribution system with more than 50,000 outlets, many purchased by the American taxpayer, I am quite certain that their financial future is not at risk.

Once again, I must reiterate that I support the U.S. Postal Service and its employees. As stated in P.L. 91-375, our nation depends on the services the Postal Service provides to “bind the Nation together through the personal, educational, literary, and business correspondence of the people.” The Postal Service faces enormous challenges on their horizon, but they have faced similar ones in the past and have prevailed and become an even stronger agency. I am certain that, with the leadership of this Committee, reforms will be identified that will enable them to meet these challenges head on, but without using their unique status to endanger our small businesses.

I would like to point out that in the past, the Postal Service and CMRAs have worked together to serve their customers, the American people, in a better more efficient capacity. It is a shame that this spirit of cooperation appears to have fallen by the wayside. It is my hope, and one I am sure that you share Mr. Chairman, that an equitable compromise will be found that will encourage all entities involved in the delivery of postal and communication services to work together to meet the needs of their customers.

Mr. Chairman, your postal reform proposal is a good start. As the Postal Service is forced to be more competitive, they also need to have rules and boundaries placed on their activities so as not to use their taxpayer supported benefits to harm the very people who pay those taxes and also contribute to the economy. In our economy today, one of our biggest assets are the people willing to take risks and start a small business. The 104th Congress has recognized their contributions and has attempted to make achieving the American dream less burdensome while providing support mechanisms. We should continue these efforts by also ensuring that competition with government agencies is not the reason for failed businesses.

Once again, Mr. Chairman, I would like to thank you for this opportunity to address you and your committee on this important issue. I look forward to working with you in the future to pass postal reform that recognizes the contributions made by small businesses and the United States Postal Service.

Mr. MCHUGH. Thank you, Duncan. What is the gift, by the way?

Mr. HUNTER. Let me see. It is a free bull's eye of Duncan Hunter.

[Laughter.]

It is "Bring in the coupon today and get a free 'Fancy Dance' wall poster from the American Indian Dances stamp series. It's perfect for framing and it's yours with any purchase."

Mr. MCHUGH. There you go. I liked the bull's eye one better. [Laughter.]

I don't mean to make light of your comments, Congressman. As you know, you and I have had any number of conversations on this issue and I not only understand your passion—certainly, in many ways, I share those concerns—I look forward to working on the issue with you in the future as well.

I think it is important, as you did note, to recognize that the situation that you describe exists now. Clearly, we are trying to use H.R. 3717, as a vehicle by which we can begin to fix what you, I think, accurately describe as an unlevel playing field.

Some things that I think what in the industry are known as CMRAs would look very favorably upon are provisions, unlike today, that would require the Postal Service to give the kind of forwarding-of-mail services to CMRA boxholders that every other American enjoys, trying to break that link with the Treasury that the Postal Service enjoys today and perhaps can be used to secure them better financial rates; trying to require there is a clear demarcation between what the Postal Service has always done and these kinds of things so that the competitive advantage they enjoy is greatly diminished, that they cannot use any revenues taken from monopoly mail and use them to subsidize those areas where they compete against private industry and trying to narrow the monopoly that the Postal Service has on First Class Mail and the like.

Those are the kinds of things that we are working on. We are trying to achieve a balance on that; that is the purpose of these hearings. But the effort to ensure where we allow the Postal Service to compete, we also require them to compete is a very important part of this mix. I thank you for your efforts and continuing to keep us focused on that very important objective.

Mr. HUNTER. Mr. Chairman, thank you. One thing that I think we need to look at closely is this. As you and I know as members of the Armed Services Committee, where we have, because you have to have a public sector, a certain industrial base that is available during time of war, our military depots, and at the same time we depend on free enterprise to provide many of our military services.

Once you do not have a demarcation between what you are allowed to do and what you are not allowed to do, because we have some level of competition, it is extremely difficult to adjust that playing field. For example, if you took the people that have already been driven out of business in Omaha and Las Vegas, if we laid out a series of things that we think might have helped, very probably there are factors that are overwhelming factors that I don't think we can help.

For example, just the size of the Postal Service allows them to go in and endure; that is, to lose money, if you will, for a long pe-

riod of time until their competitor is gone. That is a factor that is very, very difficult for us to turn around.

The only other point I would make is this. It is true that as of just recently, for example, January 1, 1994, is the cutoff date that I propose, the U.S. Postal Service had just started this. In terms of legislative sessions they have just started this, so this isn't something that has gone on for 10 or 20 or 30 or 40 years. This is something that has gone on for a matter of months.

And the first deleterious effects of it, these two bankruptcies by the people they moved right in next door to, I think, symbolize the possibilities of the difficulty that private enterprise is going to have here. So this is, the gift stores and these types of services, the wrapping, the packaging, all of that is virtually brand new. I would hope that maybe we could look on it in that light, because it is not something that has traditionally been a Postal Service practice.

Mr. MCHUGH. I understand. I thank the gentleman. One of the provisions of the bill is we require them to make a profit on their competitive areas. We have another representative today on the next panel who represents the MRAs and we are certainly looking forward to her testimony.

I don't know if either of my colleagues, Chairman Clinger, if you have any questions?

Mr. CLINGER. No questions. I want to thank you, Duncan, for bringing these concerns, and I think they are legitimate concerns, to the attention of the committee. Obviously, the point of this bill is to create a more competitive atmosphere, not a less competitive atmosphere. I think the objective that we want to get your viewpoint and the others on is to ensure that we have got a balance here that is going to work and not have the result of actually reducing the amount of competition that exists.

Mr. HUNTER. My only point is that you have got an arena, and I agree with you totally, this arena of competition, where you have a common—where you have the delivery competition, but my point is that the area that the Postal Service has moved into, selling gifts and giving away free gifts and packaging, has never been in the arena. So I like full competition in the arena, but I think by virtue of allowing them to move out of the arena away from their core service is a little bit of an end run by the Postal Service on the problems that they face in the arena, in their traditional area of service to the American public.

I thank you, gentlemen.

Mr. MCHUGH. Gene.

Mr. GREEN. I don't have any questions.

Mr. HUNTER. Thank you very much, Mr. Chairman, and Mr. Clinger, I appreciate it.

Mr. MCHUGH. We appreciate your being here.

The next panel is comprised of Michael Love, Dan Goodkind, Charmaine Fennie, John Estes, and Robert Williamson.

All right, I am told that Maynard Benjamin, whom I see right in front of me, will be pinch-hitting for Michael Love.

Before all of you are seated, as I mentioned with Congressman Hunter, it is the rules of the full committee that everyone who is going to make a presentation to swear to an oath as to their testimony.

[Witnesses sworn.]

Mr. MCHUGH. Thank you. The record will show that all five witnesses did indeed respond to the oath in the affirmative.

Let me welcome you all here, I appreciate your patience as we work toward your panel. Let me just, as I did in the beginning, thank you individually for being here and participating, not just today but through this process. We look forward to working with you in the future to try to reach as broad a consensus as possible on the entire issue of postal reform.

With that, let me just go very quickly. We have kind of developed a process here that has no relevance to reality in any way other than it seems to work and we use it all the time, and that is to start on my left, your right, with Maynard Benjamin, and then we will just proceed down the table.

We have your full statements, and I say this in great admiration and appreciation, I have read them all and they are in-depth and probably would take you a bit longer than 5 or 10 minutes to present them to the committee, so I would ask that all of the presentations here today, without objection, be submitted into the record in their entirety. If you would, summarize those presentations for us, hitting on the points that you feel are most important, because I know all of the points are important. We will try to begin in that way.

So Maynard, welcome, and our attention is yours.

STATEMENTS OF MAYNARD H. BENJAMIN, PRESIDENT, ENVELOPE MANUFACTURERS ASSOCIATION OF AMERICA; DAN GOODKIND, CHAIRMAN OF THE BOARD, MAIL ADVERTISING SERVICE ASSOCIATION; CHARMAINE FENNIE, CHAIRPERSON, COALITION AGAINST UNFAIR USPS COMPETITION; JOHN T. ESTES, EXECUTIVE DIRECTOR, MAIN STREET COALITION FOR POSTAL FAIRNESS; AND ROBERT WILLIAMSON, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF PRESORT MAILERS

Mr. BENJAMIN. Thank you. Thank you, Mr. Chairman. I don't know if I should say "Good afternoon, Mr. Chairman and Mr. Chairman," or "Mr. Chairmen," but good afternoon to both of you, and Mr. Green.

Mr. GREEN. I am the only one who is not a chairman.

Mr. BENJAMIN. Delighted to see you here today.

Mr. Chairman, I would also second Mr. Clinger's appraisal of you. You've done an extraordinary job and you have an extraordinary staff. We have enjoyed working with them. They have been very, very helpful to us as we tried to sort through what we believe to be our position on this very complicated subject.

I am going to summarize Mr. Love's testimony. I had the unfortunate position of being the person that Mr. Love reached on the telephone, the first person, when he threw out his back. So I am here today standing in for him and offering some of his views on this legislation.

It is never easy to make everybody happy when it comes to legislation, no less a comprehensive piece of legislation like H.R. 3717. We applaud the work of the staff. You have heard countless hours

of testimony. We have been in a couple of times to talk to you. It is really difficult to sort through many of these views.

We have offered a lot of our views on postal reform in a paper, which we also include for the record today, which is the need for flexibility in rate-setting and cost control. We have tried to stick very closely to that paper in our testimony, and I will summarize that.

I am going to go into the subject of the Inspector General first, that is contained in your legislation. I noted the GAO report that we were provided with when we came in, and the use of Inspectors General in the Federal Government has become an important mechanism to ensure that the interests of the citizens of this country are protected by an effective review function.

We also know that the current chief inspector of the Postal Service sort of serves in two roles. He is the chief law enforcement officer and he also serves as an auditor. We feel that the idea of moving apart the audit function from the enforcement function is probably a very good idea. There is a need for an independent review function, in our view.

We were very involved with the Federal Bureau of Prisons in setting up the first independent review function for the Federal Bureau of Prisons so that groups like ours who felt that there was unfair competition from the Federal Bureau of Prisons with the private sector through their work-in-prisons program would have a voice that we would go to that would be able to do some independent audits and provide an assessment back to the board of directors of the Federal Bureau of Prisons to determine whether or not the work programs were competing against the private sector.

I would say in the comments that Mr. Hunter offered this morning that that is a perfect job for an Inspector General who is looking into situations like that, where the Postal Service may or may not be a good citizen, so to speak, in the way it uses its operating authority and is driving small businesses out of business. If that is, indeed, the case, then certainly that should be documented and something should be done about it.

Our concern in the whole concept of the creation of this Office of an Inspector General is just to ensure that there are no overlapping authorities, that we clearly delineate in the legislation what the Inspector General is going to do, what the chief postal inspector is going to do, and we also noted that the Rate Commission also has some audit functions provided to it in the legislation with the review of examining postal productivity statistics for the purpose of establishing cost-adjustment factors—that is in Subchapter II, Subsection 3721.

Again, our primary concern here, and it is a concern with a little c, not a big C, is just that we ensure that all of these parties clearly understand their role, because we have so many people involved in analyzing the Postal Service today, including the GAO—there have been four separate reviews of postal ratemaking authority, to our knowledge—that we need to keep some of these things in perspective, all this review we are creating.

We support the Presidential Postal Employee Management Commission. We represent 18 different nations in EMA. We have over 180 corporations in our membership. Six of those nations have

postal administrations that we are very involved with. We range from Australia Post to Canada Post to New Zealand Post to Sweden Post as we go across our membership.

Many of those postal administrations—and you heard from the managing director of Australia Post, Mr. Graeme John, during some hearings earlier this year, of their effective working relationship with labor in Australia. And at the same time, we have been burdened to hear about the working relationship that the Royal Mail has had to deal with right now with the terrible postal strike that occurred recently in Great Britain.

Nevertheless, we need to take an independent look at this area. We ought to step back, take a look at the nature of these relationships now, and have an independent body provide some input to us before we move forward with legislation to deal with this.

But clearly, it is the opinion of our association that something needs to be done with regard to labor-management relations and the ability to control resulting labor costs. When 80 percent-plus of your costs are labor, that really inhibits your ability to be very, very competitive in a competitive communications environment in the future.

On the subject of Postal Service financing, we applaud this decision go to the private sector to finance Postal Service debt. We only suggest that maybe input from the GAO on a master plan would also be a useful approach to make sure that we are just crossing the “t’s” and dotting the “i’s” on a master plan.

The issue paper that we gave you talked a great deal about our ideas about ratemaking reform. We like the idea of cost caps; we are very supportive of that, we thought it was a good direction to go into. Our concern, still, is keeping the ratemaking process as simple as possible. We know it is a very cumbersome process. In the past we have participated in some rate cases. Thank goodness we have not had to participate in many frequently, because it is a very expensive and cumbersome process for those that do.

As I mentioned to you, we have about six major postal administrations that we deal with and we can find no other examples in the world right now of such a complicated and comprehensive look at postal costs versus postal revenues, and just feel that it is important to keep in mind that we are not creating the mother of all rate cases every 5 years when we start to establish the rate caps that are envisioned by this piece of legislation.

We like the idea of defining the information-gathering activities of the Rate Commission but, again, we just do hope that it comes with some thought that postal rate simplification does not go the way of tax simplification.

We feel, in the area of noncompetitive products, that we don’t see the freedoms that are given in the bill providing the Postal Service a license to roam the communications market looking for targets of opportunity. There are ample public laws that would protect consumers, we feel, from a competitive side of the Postal Service going after private business.

Nevertheless, that is why you have an independent audit function, to take a look at those areas and circumstances, when they do occur, and we do hope that additional thought is given to that as we move forward with that legislation.

We support the issue of volume discounts as long as all services and all classes receive the same type of discount. We applaud innovative ideas like this and hope that they are not destroyed through some regulatory overkill as we look to evaluate the costs of these postal products.

We noted the \$2 floor in the pricing of private letters, which, according to the Postmaster General's testimony, puts \$4 billion of the Postal Service's current business at risk. We feel that that still means that \$41.6 billion of the Postal Service's revenues are not at risk.

I suppose our point here is there are no easy solutions to the argument of competition. There is always risk in competition and if you get involved in it, you are going to take on these risks. We can only hope that you have set the floor correctly, so that the Postal Service does not lose more business than it gains. We also hope that these measures will ensure that we can speed new competitive products from the Postal Service at a greater rate and that we do have some diminished regulatory oversight in the future.

A mailbox demonstration project? That gave us a little bit of concern. Our concern is not that philosophically we are absolutely opposed to the mailbox being open: We are very concerned about the quantity of mail. If you look at postal statistics, we have the highest per capita consumption of mail in the world. North America represents 52 percent of the world's postal volume. We are at 170 billion, with the People's Republic of China probably at about 10 billion in terms of mail volume right now.

There is concern out there in the general public about the quantity of mail they are receiving. There are content rules which we have on the Federal side, which protect, so to speak, the sanctity of that mailbox. We feel that before you open it up to a demonstration project, you really think of that issue of privacy and how people are going to be impacted through the quantity of delivered items they are going to get through the mailbox.

In summary, Mr. Chairman, you cannot please everyone with any single piece of legislation. We are fortunate in having a legislative system that is built on compromise in this Nation. We see many compromises that are possible in this piece of legislation that you have before you.

Postal reform is not going to be an easy process. It is going to be a multi-year process, it is going to take a lot of work, and a lot of work still to come. You once stated that envelope manufacturers were like canaries to the coal miners in the old days; they warned the miners of the dangers of the mine.

Well, your canaries are telling you that this is a good bill, that we should move forward, we should continue to dialog, and that you have made a very good start.

Thank you, Mr. Chairman, I hope I have not exhausted my time.

[The prepared statement of Mr. Love follows:]

**Testimony of Michael E. Love
Envelope Manufacturers Association of America
before the
Subcommittee on the Postal Service
Committee on Government Reform and Oversight**

September 26, 1996

Mr. Chairman I am delighted to appear before this subcommittee to discuss the views of my industry on H.R. 3717, the Postal Reform Act of 1996. I am joined by our President, Maynard Benjamin who will be assisting me in replying to your questions. I am a third-generation envelope manufacturer located in Tulsa, Oklahoma. I have had the honor of being the Chairman of the Envelope Manufacturers Association and continue to involve myself in postal matters affecting the industry. I provide this testimony today, not as a postal expert. But as a student of postal affairs and as a concerned businessman. One thing is certain, if our postal system fails, my business will fail with it. We cannot afford to have our postal system become second rate, too many of our citizens depend on the mail.

It is never easy to make everyone happy when it comes to legislation, no less a comprehensive piece of legislation like H.R. 3717. Our industry applauds the work of this committee and its staff. You heard countless hours of testimony on wide ranging subjects dealing with our ideas on postal reform and we are pleased with the end-product.

In offering some observations on this legislation, let me refer to a new issue paper that we released several months ago entitled *Postal Service Competition: The need for flexibility in rate setting and cost control*. I have provided copies to the committee as part of my testimony today. It is the position of our association that the future of the Postal System is closely tied to its ability to compete in a vast and ever changing communications market. As the Postmaster General has stated on numerous occasions, the Postal Service faces competition in many service lines and from some alternative delivery systems, primarily in the expedited courier area. We believe that the rules that govern the Postal Service should be changed when it comes to those services and mail products in which it has competition and in areas that it does not, appropriate controls should exist that assure postal ratepayers that costs are fairly established.

The Inspector General

The use of Inspectors General in our Federal Government has become an important mechanism to insure that the interests of the citizens of this country are protected via an effective review function independent of review functions indigenous to various government departments. As you know, the Postal Service does have a chief inspector that currently performs many of the duties

that we would envision an Inspector General would also perform. In addition, the GAO seems to be continuously in the process of auditing one postal function or program or another. We are assuming that the addition of this position would clarify the role of the Chief Postal Inspector to be that of a chief law enforcement officer and the Inspector General to oversee the audit function. Our concern with this position is how much analysis is enough? For example, there are parts of this legislation which provides some review functions to the Postal Rate Commission, specifically, in examining postal productivity statistics with regard to the establishment of cost adjustment factors (see H.R. 3717, Subchapter II, § 3721 (3)(c)(3)). We understand the need for good independent information with which to evaluate postal operations but it appears to us that there is a great deal of information already available. Would the Inspector General be another information source? How would this position interrelate with the other independent review functions already on-going? We are simply concerned over the need for this new position given all of the other entities involved in examining postal information. We hope there will be some significant differentiations of roles to insure that an Inspector General can be an effective check and balance on the other methods of evaluation currently on-going.

The Presidential Postal Employee Management Commission

We support the establishment of a Presidential Postal Employee Management Commission as called for in Title III, Section 301 of this legislation. We believe that a hard look needs to be taken into the nature of employee-management relationships at the Postal Service. Earlier this year, this Subcommittee in joint hearings with the Senate heard from the Managing Director of Australia Post, Mr. Graeme John. Mr. John's testimony offered many examples of what employee-management relationships could become. The USPS is not Australia Post but it can and must develop an effective working relationship with postal labor or real postal reform will only be a pipe dream. We need more contemporary ideas and we believe that such a commission, properly constructed, might just provide some important recommendations. I note, Mr. Chairman, that we covered our thoughts on labor management relations in our issue paper under two topics, the failure of binding arbitration and the lack of incentives to reward superior performance.

Postal Service Finances

We believe that the Postal Service should be given flexibility as to where it does its banking and we are delighted that this legislation recognizes that need. We believe that the open market is the best financial market for the Postal Service to invest its funds. We also believe that the requirement to submit a master plan before implementing an open market banking approach is wise and we would suggest that input from the GAO on this master plan would also be a useful approach. We do not want to over analyze a master plan but we believe that if it is properly constructed in the first place it will serve the Postal Service well.

Rate Making Reform

Our latest issue paper addressed the need for flexibility in pricing and products. We noted that the

rate making process as it exists today is extremely cumbersome. We also noted that there is general consensus that as long as the Postal Service retains a statutory monopoly over substantial segments of the mail, there is a need for some regulatory check- an independent review of the services it proposes to offer and the prices it proposes to change. Yet, we can find no other examples in the industrialized world of such an exacting scrutiny over postal rates. Mr. Chairman, EMA represents envelope manufacturers in over 18 nations and we have working relationships with many of the postal administrations in these nations. In every other nation that we know of, there is less regulation of postal pricing than in the United States.

We note that H.R. 3717 greatly increases the responsibilities of the Postal Service Directors in setting rates for both competitive and non-competitive products. We have argued for more price setting flexibility and we applaud your inclusion of this flexibility in H.R. 3717. We also note a significant increase in the powers of the Postal Rate Commission by giving them the authority to issue subpoenas, manage proprietary documentation and procure necessary information. Under this legislation in Section 3783, the Commission would be given oversight responsibilities, not just with respect to Postal Service rate setting and classification, but also with respect to determining whether the Service is meeting its performance goals, and, whether it is meeting its service standards. We are concerned that this extension of the Rate Commissions mandate might overlap with the functions intended for an Independent Inspector General. We agree with Postal Rate Commission Gleiman that productivity is just as important as profits¹. But we also suggest that the rate process is too cumbersome as it is and it is much too expensive. We were hoping for more relief from regulatory overkill than we received in this legislation. It seems that we have now created the "mother of all rate cases" every five years as we move to implement a price cap regulatory scheme envisioned in Title X of this legislation. We did address the issue of simplified rate change procedures in our issue paper and we thought that price caps were a good way to go. We can only hope that rate case simplification does not suffer the same fate as tax simplification.

At the same time, we do not agree with the Chairman of the Rate Commission that these new price caps would give the Directors of the Postal Service the license to roam the communications market, looking for targets of opportunity to prey upon with abnormally low pricing.² We believe that pricing flexibility within noncompetitive products gives the Postal Service the ability to adjust to the ever changing communications marketplace without going through an arduous rate making process and having to disclose their competitive intentions to competitors. The Postal Service must have the ability to adjust products to markets and to do so they must have some pricing discretion. We fail to see that the amount of oversight contemplated in this legislation would not represent a force to correct any pricing anomalies that might be inappropriate. We also feel that Subsection 3743 provides a safety valve to move noncompetitive products to competitive products and thus provides anti-trust protection in areas where it is needed.

¹Gleiman, Edward J., "Testimony before the Subcommittee on the Postal Service", July 10, 1996, p. 8.

² Same as 1, p. 10.

Volume Discounts

Under Section 604 of this legislation we note that the Postal Service is authorized to offer volume discounts in a rate or fee, as long as all users of the class or service involved would be eligible for the same discount, and as long as the discounted rate satisfies a criterion applicable to the mail's status in the Competitive or Noncompetitive category. We applaud these innovative ideas and we only hope that in implementation volume discounts do not become victim to the same amount of regulatory overkill as other postal products.

Private Carriage of Letters

We note the \$2.00 floor in pricing of private letters which according to the Postmaster General puts \$4 billion of the Postal Service's current business at risk but at the same time we note that this legislation still protects \$41.6 billion of the Postal Service's revenues.³ Our point is, competition no matter what form requires a certain amount of risk. Mr. Runyon feels that \$4 billion is too much of a price to pay and is concerned over the 18 months imbalance between revenues and costs. There are no easy solutions to this argument as there are no easy decisions when it comes to commercial freedom for the Postal Service. We can only hope that you have set the floor correctly so that the Postal Service may not lose more business than it gains. We also hope that these measures will insure that we can speed new competitive products to postal customers at a greater rate and we have greatly diminished the regulatory oversight of the competitive business activities of the Postal Service.

Mailbox Demonstration Project

Among the more minor but more controversial sections of this bill is the mailbox demonstration project. The bill provides for a three year test of allowing nonpostage items to be deposited in private mailboxes. We are concerned that this may provoke consumers to object to the quantity of non-postage items being delivered. There are federal statutes which relate to the types of material that can be delivered in the mail, would there be similar protections for non-postage items? Americans receive the largest per-capita amount of mail in the world and many Americans still feel that the direct response industry is doing an adequate job of protecting their privacy. We only suggest that you study the ramifications of multiple deliveries to the mailbox, the quantity of non-postage mail that might be delivered and how content of the mail would be protected before you move forward with such a significant project. We would also suggest that this committee and the Postal Service might want to hear from citizen groups concerning this proposal. The security of our mail box is important as is the security of our residential communities. Americans have come to appreciate the postal delivery employee as part of their neighborhood, someone whom they recognize and trust. We realize that there are many private delivery services, florists, UPS and Federal Express that deliver in our neighborhoods every day. But we also feel, before we open up that mailbox to everyone we ought to think carefully about the consequences of more delivery

³Runyon, Marvin, "Testimony Before House Postal Subcommittee", July 10, 1996, p.4.

services and increased volume of items being placed in that mailbox.

Summary

Mr. Chairman, you can never please everyone in any legislative endeavor. We are fortunate in having a legislative system that has been built on compromise. We see many compromises in this legislation, the result of painstaking effort by your staff and yourself to draw upon the countless pages of testimony that you received. Postal reform will not be easy, it will not be risk free and it will not be without a great deal of change to the traditional manner in which we carry the mail. Yet we all know that reform must come, that no legislation that is 25 years old can be expected to address today's competitive environment. We have taken but one step down a long road with this legislation but we must take this first step if we are ever to address our future. You once stated that envelope manufacturers were like the canaries to the coal miners in the old days, they warned the miners of the dangers of the mine. Well your canaries are telling you that you must move forward and you have made an excellent first start.

Thank you Mr. Chairman

Mr. MCHUGH. Thank you very much, Maynard. You remembered that?

I am not sure you stated it for the record, so I shall. You are here, obviously, as we all know, representing the Envelope Manufacturers Association of America. Perhaps as we move down the table, if each panelist could just begin by stating their name and title, if they are so fortunate as to have one, and who you are here associated with, I would appreciate that.

With that, Mr. Goodkind. Welcome, sir.

Mr. GOODKIND. Thank you very much. I would like to comment we really appreciate the opportunity to provide our comments to your committee, Mr. Chairman.

My name is Dan Goodkind and I am chairman of the Board of Directors of the Mail Advertising Service Association, known as MASA. I am also co-owner and president of Goodkind & Goodkind Direct in Carter Lake, IA, right next door to Omaha, NE, which is a preparer of direct mail and advertising mail.

MASA is the 76-year-old national trade association for the mailing services industry and has 540 members. Our member companies include lettershops, dataprocessing companies, mailhouses, direct mail agencies, fulfillment operations, and suppliers to these businesses. By some measures, MASA members prepare almost half of the standard advertising mail handled by the U.S. Postal Service, and a large volume of First Class Mail as well. MASA members prepare the mail, and the Postal Service delivers the mail.

We have long supported various measures to reform the Postal Service and appreciate the efforts you have undertaken over the last 2 years to gather the views of a broad spectrum of mailing professionals.

We agree that it is time to eliminate "general" from the position titles of senior management and turn the Postal Service into a truly demilitarized zone. We believe that such a move would be consistent with the Postal Service's stated goal to move more from an autocratic working environment to one that is more participatory.

We also support the other proposals in this title, including changing the designation of the Board of Governors to the Board of Directors of the U.S. Postal Service, and increasing the compensation of the directors. It makes sense that the Postal Service, which in so many ways operates in the business community and the competitive marketplace, adopt appropriate management terminology, as the bill proposes.

MASA supports the proposal to create the position for an Inspector General within the Postal Service separate and distinct from the position of chief postal inspector. This change would bring focus to the Inspector General function and contribute to a more efficient organization that enjoys the trust and confidence of the customers and the American public.

We oppose the creation of an Inspector General position for the Postal Rate Commission because of the Commission's modest-sized budget and lack of complexity. We feel it makes the Inspector General position not quite as necessary and a significant expense which would have to be paid by postal ratepayers.

Because the Postal Service police officers play an important role in keeping the peace and preventing crime both within postal facilities and in areas removed from those facilities, we believe that the public rather than ratepayers should fund their operation. However, we do support bringing these police under the control of the Postal Service.

We also agree with the establishment of an independent commission to examine the labor relations climate of the Postal Service. We agree with the composition of the Commission as proposed in the bill, except that we believe that of the two management representatives of similar sized private corporations at least one should be from a corporation which has a successful working arrangement with a nonunion workforce. We also think the Commission should be tasked with making its final report no later than 1 year after its establishment.

In order to enable the Postal Service to control its costs and operate efficiently, we support the proposal to liberalize the Postal Service's banking practices within the controls outlined in the bill.

We do strongly disagree with Section 501 and part of Section 503. These financial obligations to fund the workers' compensation liabilities of pre-1971 Postal employees belong to the Post Office Department prior to reorganization and were part of the agreement establishing a postal service. To shift these financial obligations which appropriately belong to the general taxpayer would not be in the spirit of the Postal Reorganization Act of 1970.

There is no question that these obligations would quickly be passed on to ratepayers in the form of rate increases. It is not fair to hold today's ratepayers responsible for obligations incurred over 25 years ago by the Post Office Department and assumed at that time by the Government at large.

We strongly oppose changing the forwarding arrangements for commercial mail receiving agencies, which would substantially increase postal operating costs. Traditionally, there has been only one way for the Postal Service to recoup the added cost of any operating changes, and that is through rate increases.

As postage rates escalate, the competitive market posture of advertising mail is compromised and advertisers begin to use alternative media. This causes decreases in mail volume, which forces unit costs to increase and forces more advertisers to seek alternatives, a deadly spiral that threatens the very existence of the postal system.

MASA supports the volume discounting and negotiated service agreements provisions of this title for competitive products only.

Mr. Chairman, we strongly oppose any experimentation with the opening of the mailbox to the private sector. We do not believe that a test could be developed that would adequately capture the long-term harm that would result from elimination of the traditional safeguards that are—excuse the pun—part and parcel of the American mailbox.

At a time when personal privacy is under assault from modern technological advances, the sanctity of the mailbox should be protected at all costs. Good or bad, our mail reveals a lot about us and should not be the subject of review by just anyone. Please do not

tinker with one of this country's most precious and successful symbols: the American mailbox.

We support the proposal to give the Postal Service access to reasonable judicial review of the decisions of the Merit Systems Protection Board which affect the Postal Service and its employees and we enthusiastically support all sections of Title IX relating to law enforcement.

Although it is unclear whether the new ratemaking procedures contained in Title X would result in higher or lower postage costs for advertising mail, MASA supports the general thrust of the revisions. By lengthening the rate cycle to 5 years and pegging prices to the inflation-plus-adjustment factor the reform provisions would significantly reduce the legal fees that now attend the rate process, provide significant incentives to the Postal Service to maintain productivity, and inject some certainty into the ratemaking process that will significantly improve the ability of the mailing industry to anticipate rate changes.

MASA would, however, recommend that Title X reforms be modified in certain respects to improve the chances that the legislative goals would be achieved. First, it should be mandatory that base-line rates be set under the new statutory regime which prioritizes the factors that the PRC must take into account in setting rates to ensure that economic efficiency and demand pricing is of paramount concern.

The current reform risks losing this critical benefit by allowing base-line rates to be set under the existing statutory scheme in the event that a rate case is in process when the statute becomes effective. Because mailers and the Postal Service will have to live with the base-line rates indefinitely, it is critical that the base-line rates be set with economic efficiency as the controlling principle.

MASA also supports the recommendations of the DMA and AMMA that some mechanism be added to permit review of the base-line rates on a periodic basis and to ensure that the base-line ratemaking procedures do not slant rates, either toward a surplus or a loss condition.

Second, the reform proposal sacrifices much of its productivity incentive because of the interplay between annual rate increases and the bonus pool. It is virtually inevitable under the bill that the Postal Service will increase rates by the maximum allowable amount every year, because an increase that is not used is lost and maximum increases, even if not justified on economic grounds, will tend to increase the bonus pool.

This bill should be modified to tie bonuses to productivity gains and to restrict the Postal Service's ability to implement the maximum increase automatically. This bill should also limit collective bargaining agreements that allocate a share of the profits available for the bonus pool automatically, without regard to achievement of performance goals.

Third, the current bill contains no standard for the PRC to determine whether a request to shift a product from noncompetitive to competitive status should be granted. The bill should be amended to add standards and one of the standards should take into account the effect of the requested shift on remaining noncompetitive products.

Fourth, the Postal Service should be prohibited from using the provisions permitting experimental products to enter into competition with private enterprises, except to the extent that technological innovations create the opportunity to extend the traditional Postal Service product.

The bill now only permits the Postal Service to raise rates as much as the maximum increase in any given year or to implement no rate increase. It makes no provision for a reduction in rates, even in circumstances in which productivity gains have made rate reductions reasonable. This bill should permit the Postal Service to reduce rates in appropriate circumstances.

Mr. Chairman, I appreciate the opportunity to share the views of the Mail Advertising Service Association on this far-reaching legislative proposal and will work with you and the committee staff to revise any portions that you may ask us to help on.

[The prepared statement of Mr. Goodkind follows:]

TESTIMONY OF
DAN GOODKIND
CHAIRMAN, MAIL ADVERTISING SERVICE ASSOCIATION (MASA)
BEFORE THE
SUBCOMMITTEE ON THE POSTAL SERVICE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
U.S. HOUSE OF REPRESENTATIVES

SEPTEMBER 26, 1996

My name is Dan Goodkind and I am Chairman of the Board of Directors of the Mail Advertising Service Association (MASA). I am also President of Goodkind & Goodkind Direct in Carter Lake, Iowa, which is a preparer of direct and advertising mail.

MASA is the 76 year old national trade association for the mailing services industry and has 540 member companies nationwide. Our member companies include lettershops, data processing companies, mailhouses, direct mail agencies, fulfillment operations, and suppliers to these businesses. By some measures, MASA members prepare almost half of the Standard advertising mail handled by USPS, and a large volume of First-Class mail as well. MASA prepares the mail, and the Postal Service delivers the mail.

We have long supported various measures to reform the Postal Service and appreciate the efforts you have undertaken over the last two years to gather the views of a broad spectrum of mailing professionals. The legislation you have introduced represents a comprehensive approach to the many challenges of reforming the world's greatest

postal system — a postal system that has served the American people extremely well for over two hundred years, and plays a vital role in the success of the commerce of this country and provides a crucial link to markets worldwide.

Obviously, no organization the size of the Postal Service is without its flaws or areas that need improvement. The Postal Reform Act of 1996 is clearly a positive step toward focusing on the issues where improvements can be made without destroying the Postal Service's core competencies. There are many components of this legislation with which MASA can heartily agree, some on which we have no opinion and others that, we feel, head in the wrong direction and may well cause more problems than they solve.

Marketing experts will tell you quite simply that advertising through the mail is the most effective means of delivering a personal message that will reach the desired audience and will be acted upon more than any other form of advertising. It is important to keep in mind that a healthy, vital Postal Service is essential to the mail advertising industry. Regulations and systems need to be in place to assure that the Postal Service can continue to be effective in this highly competitive environment.

To the extent this legislation increases the Postal Service's ability to control its costs, respond to new and emerging markets, be more accountable for its performance, and strengthen its core competencies, MASA is supportive. However, we would argue against any postal reform that would cause postage to increase unfairly, threaten the sanctity of the mail box, or provide the Postal Service with excessive flexibility to introduce products or services which have traditionally been the purview of the private sector.

With those thoughts in mind, I will now discuss MASA's position on the specific titles of the legislation.

Title I

We agree that it is time to eliminate the term "general" from the position titles of senior management and turn the Postal Service into a truly "demilitarized zone." We also support the other proposals in this title, including changing the designation of the Board of Governors to the Board of Directors of the U.S. Postal Service and increasing the compensation of the directors. It makes sense to us that the Postal Service, which in so many ways operates in the business community and the competitive marketplace, adopt the appropriate management terminology, as the bill proposes.

MASA supports the proposal to create a position for an Inspector General within the Postal Service, separate and distinct from the position of Chief Postal Inspector. We believe that this will bring focus to the Inspector General function and contribute to a more efficient organization that enjoys the trust and confidence of its customers and the American public.

MASA opposes the creation of an Inspector General position for the Postal Rate Commission. The commission's modest size, budget, and lack of complexity make an Inspector General position unnecessary. This would be an unnecessary expense, which would have to be paid by postal ratepayers.

Title II

Because postal police officers play an important public role in keeping the peace and preventing crime, both within postal facilities and in areas removed from those facilities, we believe that the public, rather than ratepayers, should fund their operation. However, we do support bringing these police officers under the control of the Postal Service.

Title III

We agree with the establishment of an independent commission to examine the labor relations climate of the Postal Service. We agree with the composition of the commission as proposed in the bill except that we believe that of the two management representatives of similar sized private corporations at least one should be from a corporation which has a successful working arrangement with a non-union workforce. We think the commission should be tasked with making its final report no later than one year after its establishment.

Title IV

In order to enable the Postal Service to control its costs and operate efficiently we support the proposal to liberalize the Postal Service's banking practices, within the controls outlined in the bill.

Title V

We strongly disagree with Section 501 and part of Section 503. These financial obligations, to fund the worker's compensation liabilities of pre-1971 postal employees, belong to the pre-reorganized Post Office Department and were part of the agreement establishing the Postal Service. To shift these financial obligations, which appropriately belong to the general taxpayer, would not be in the spirit of the Postal Reorganization Act of 1970. There is no question these obligations would quickly be passed on to ratepayers in the form of rate increases. It is not fair to hold today's ratepayers responsible for obligations incurred over 25 years ago by the Post Office Department and assumed at that time by the government at large.

Title VI

We strongly oppose changing the forwarding arrangements for Commercial Mail Receiving Agencies which would substantially increase postal operating costs. Traditionally, there has been only one way for the Postal Service to recoup the added costs of any operating changes and that is through rate increases. As postage rates escalate, the competitive market posture of advertising mail is compromised and advertisers begin to use alternative media. This causes decreases in mail volume which forces unit costs to increase and forces more advertisers to seek alternatives — a deadly spiral that threatens the very existence of a universal postal system.

MASA supports the volume discounting and negotiated service agreements provisions of this title for competitive products only. However, we urge strict regulatory control over the conditions under which agreements are arranged.

Title VII

Mr. Chairman, we strongly oppose any experimentation with opening the mailbox to the private sector. To compromise this very personal relationship between the originator and recipient of the mail message would undermine many of the fundamental principles that make our economy successful. At a time when personal privacy is under assault from modern technological advances, the sanctity of the mailbox should be protected at all costs. Personal correspondence, advertisements, and bills that we find in the mailbox every day would not be quite the same if we knew that someone else had the opportunity to review them. Good or bad, our mail reveals a lot about us and should not be the subject of review by just anyone who seeks access for delivery of their message or product.

Our clients depend on the sanctity of the mailbox to not only assure the proper delivery to the right person with the right message, but more importantly, to assure security of the transaction. A transaction of business that has forever been a cornerstone of commerce in the American economy. We are well aware of some of the ventures in other countries that purportedly demonstrate the mailbox can be opened with little consequence to the postal system. We submit that the American experience is unique and the dynamic of our free market economy would not yield the same results. This is clearly one component of the present postal system that should not be tampered with under any circumstances. We can think of no instance where senders or receivers of mail would be comfortable sharing access to the mailbox with anyone other than the Postal Service letter carrier. A letter carrier who not only completes a vital link in the commercial chain, but is protected and controlled by the force of federal statutes when entering this very private sanctuary belonging to American citizens.

Title VIII

We support this proposal to give the Postal Service access to reasonable judicial review of decisions of the Merit Systems Protection Board which affect the Postal Service and its employees.

Title IX

MASA enthusiastically supports all sections of Title IX.

Title X

Although it is unclear whether the new rate-making procedures contained in Title X would result in higher or lower postage costs for advertising mail, MASA supports the

general thrust of the revisions. By lengthening the rate cycle to five years, and pegging prices to the consumer price index plus adjustment factor, the reform provisions would significantly reduce the legal fees that now attend the rate process, provide significant incentives to the Postal Service to maintain productivity, and inject a degree of certainty into the rate process that will significantly improve the ability of the mailing industry to anticipate rate changes. MASA would, however, recommend that the Title X reforms be modified in certain respects to improve the chances that the legislative goals will be achieved.

First, it should be mandatory that baseline rates be set under the *new* statutory regime, which prioritizes the factors that the PRC must take into account in setting rates to ensure that economic efficiency and demand pricing is of paramount concern. The current reform risks losing this critical benefit by allowing baseline rates to be set under the existing statutory scheme in the event that a rate case is in process when the statute becomes effective. Because mailers and the Postal Service will have to live with baseline rates indefinitely, it is critical that baseline rates be set with economic efficiency as the controlling principle.

Second, the reform proposal sacrifices much of the productivity incentive it would otherwise have and the bonus pool because of the interplay between annual rate increases. It is virtually inevitable under the bill proposal that the Postal Service will increase rates by the maximum allowable amount every year for at least two reasons: (i) if an increase is not used in one year, it is lost and cannot be added to the next year's increase; and (ii) the Postal Service will have a strong incentive to make the maximum increase in non-competitive rates, even if not justified on economic grounds, because it will tend to increase the bonus pool for management and employees. A modification of the reform provision that placed restrictions on the Postal Service's ability to implement the maximum increase automatically — for example, in years where a particular product has demonstrated a profit of more than a specified

percentage — would minimize this disincentive. It may also make sense to limit by statute collective bargaining agreements that allocate a share of the profits available for the bonus pool automatically, without regard to achievement of performance goals.

Third, the current bill contains no standards for the PRC to determine whether a request to shift a product from non-competitive to competitive status should be granted. The bill should be amended to add standards, and one of the standards should take account of the effect of the requested shift on remaining non-competitive products.

Fourth, the Postal Service should be prohibited from using the provisions permitting experimental products to enter into competition with private enterprises already serving the need that would be addressed by the experimental product, except to the extent that technological innovations create the opportunity to extend a traditional Postal Service product.

Fifth, the bill now only permits the Postal Service to *raise* rates by as much as the maximum increase in any given year, or to implement no rate increase. It makes no provision for a *reduction* in rates, even in circumstances in which productivity gains have made rate reductions reasonable. The bill should permit the Postal Service to reduce rates in appropriate circumstances.

Mr. Chairman, I appreciate the opportunity to share the views of the Mail Advertising Service Association on this far reaching legislative proposal and will work with you and the committee staff to revise portions that may need further consideration.

Mr. MCHUGH. Thank you very much, Mr. Goodkind. I appreciate that and look forward to coming back to you in a few moments and having a dialog on some of the specific proposals that you talked about.

Our next presenter is Charmaine Fennie, and welcome, Ms. Fennie. Thank you for being with us, and please proceed.

Ms. FENNIE. Thank you. Good afternoon, Mr. Chairman and members of the subcommittee: My name is Charmaine Fennie, chairperson of the Coalition Against Unfair USPS Competition, and president of Associated Mail and Parcel Centers, the industry's trade association. Accompanying me today is Mr. Michael Phillips, owner of a Mailbox, Etc., store on Capitol Hill.

I would like to thank you, Mr. Chairman, for bringing your postal reform proposal to the table and beginning a much-needed dialog on the future of the Postal Service.

The private mail and parcel industry was born about 25 years ago in response to market demand for more convenient access to postal services. The Coalition represents approximately 10,000 mail and parcel centers nationwide. This industry is made up of small independent business operators who have invested their life savings and worked long, hard hours to ensure the success of their businesses.

In creating the Postal Service in 1970, Congress granted it a monopoly on First Class Mail in order to accomplish the public service mission of universal delivery at universal prices. We have a particular interest in serving a segment of the mail recipients who are receiving substandard mail service.

Currently, private mailbox holders are the only postal patrons who are not afforded change-of-address services when they move. The mail-forwarding provision contained in Section 601 would end this policy and create a more convenient and efficient method of delivering mail to these customers.

This legislation also alters the role and authority of the Postal Rate Commission, the PRC. We believe that the PRC must be strengthened in order to protect the integrity of the Postal Service and to protect the Postal Service from abusing its monopoly powers.

In the 230 post offices where the new service is being tested, a customer can bring in an unwrapped item and postal clerks will package the item for shipping. The Postal Service is claiming that Pack & Send is not a postal service and, therefore, not within the PRC's jurisdiction.

The Postal Service argument, if followed through to its logical conclusion, would place nonpostal services under no one's jurisdiction other than the agency itself. To expect a Government agency, especially one with a monopoly, to police itself is naive and irresponsible. The PRC should be given the authority to require action by the Postal Service, not simply recommend it, in cases where the Commission has determined the USPS to be acting illegally.

The Postal Service often touts itself, its status, as a self-supporting agency not funded by taxes. While technically correct, it ignores the advantages that it receives through its status as a Federal agency. Mr. Hunter has already outlined these advantages quite

well. But the Postal Service has never been subject to Federal anti-trust or anticompetition scrutiny, which is no small advantage.

In offering Pack & Send, the U.S. Postal Service has placed itself in direct competition with the mail and parcel industry. With about \$2 billion in annual revenues, our industry is less than one-twentieth the size of the Postal Service. Packaging services account for about 40 percent of the annual revenues of the average mail and parcel center.

Representative Hunter has introduced legislation to protect small businesses like Mr. Phillips'. H.R. 3690, the Postal Service Core Business Act, would prevent the Postal Service from offering any new commercial nonpostal services such as volume retail photocopying, packaging services, including gift wrapping, notary public service, and the sale of office supplies. This legislation is absolutely critical to our industry and we thank Mr. Hunter for introducing it.

The Postal Service would have the public believe that by entering new markets it can keep postage rates down. Nothing could be further from the truth. Postal Buddy was a business and financial disaster and its newest venture into phone cards is backed by a Hollywood-style contract. The phone card provider gets to recover its expenses before the Postal Service gets to share in the profits.

Some post offices offer fax and notary public services. You can even order checks at some post offices. And what do these new ventures have to do with providing the Nation with the much-valued public service of timely and efficient mail delivery? Nothing.

Are they diverting Postal Service employees and other resources from their public service mission to these new business ventures? Management has abandoned the American public in an all-encompassing pursuit of profit.

By concentrating on its public service mission, the USPS will be better able to serve the American public efficiently and provide efficient mail delivery at reasonable prices. Congress is the ultimate arbiter of the Postal Service power and must legislate on this issue.

I urge members of the subcommittee to support H.R. 3690 and ask that it be incorporated into this postal reform legislation. Thank you very much.

[The prepared statement of Ms. Fennie follows:]

STATEMENT OF
CHARMAINE FENNIE, CHAIR OF THE
COALITION AGAINST UNFAIR USPS COMPETITION,
BEFORE THE
HOUSE SUBCOMMITTEE ON THE POSTAL SERVICE
September 26, 1996

Good afternoon, Mr. Chairman and members of the Subcommittee. My name is Charmaine Fennie, Chairperson of the Coalition Against Unfair USPS Competition and President of Associated Mail and Parcel Centers. Accompanying me today is Michael Phillips, owner of a Mail Boxes Etc. store on Capitol Hill. I am pleased to be here today to discuss the issue of postal reform as it relates to the mail and parcel center industry.

At the outset, I would like to thank you, Mr. Chairman, for bringing your postal reform proposal to the table and beginning a much-needed dialogue on the future of the Postal Service. Your commitment to a "fiscally sound and viable Postal Service" and creating a "level playing field by which all postal customers will benefit" are goals which we support. (*Letter to Steve Silver, CAUUC counsel, June 24, 1996*)

INDUSTRY BACKGROUND

The private mail and parcel center industry was born about 25 years ago in response to market demand for more convenient access to postal services. Currently, there are over 10,000 mail and parcel centers nationwide. This industry is made up of small, independent business owners who have invested their own capital and work long, hard hours to ensure the success of their business. Over the years, the industry has changed in response to increased demand for communications services. In addition to traditional postal services, these stores also offer access to private carriers, fax transmittal and receipt, copying, notary services, and other communication and business services. The fastest-growing segment of the economy -- small and home-based businesses -- are the primary customers of our industry. In their communities,

these mail and parcel businesses are one of the local post office's largest customers, purchasing large volumes of stamps and postal services. The Coalition represents that approximately 10,000 mail and parcel centers across the country. Our board of directors includes the industry's trade association (AMPC), and five of the largest franchisors — Mail Boxes Etc., Pak Mail, Parcel Plus, Postal Annex+, and PostNet.

THE POSTAL SERVICE'S PUBLIC SERVICE MISSION

In creating the Postal Service as an independent establishment of the Executive branch in 1970, Congress granted it a monopoly on first class mail. Monopoly powers were granted in order to accomplish its public service mission of universal delivery at universal prices. Congress did not intend for Postal Service management to be motivated by profit, but rather, to be motivated to provide every citizen of the United States with efficient mail service.

"The United States Postal Service shall be operated as a basic and fundamental service provided to the people by the Government of the United States, authorized by the Constitution, created by Act of Congress, and supported by the people. The Postal Service shall have as its basic function the obligation to provide postal services to bind the Nation together through the personal, educational, literary, and business correspondence of the people." 39 U.S.C. §101(a)

In 1995, that monopoly generated nearly 60 percent of the Postal Service's \$54 billion annual revenue. An additional 22 percent, or \$11.8 billion, was generated by its monopoly on third-class (advertising) mail. Those two classes of mail alone represented over 90 percent of the Postal Service's volume in 1995.

POSTAL REFORM ACT OF 1996

Our industry, like many others, has paid close attention to your legislation, H.R. 3717, the Postal Reform Act of 1996. That the Postal Service laws need changing, we have no argument. As technology and the communications habits of the world change, the Postal Service must change, too. The exact nature of that change, however, is the question before this panel.

We have a particular interest in serving a segment of mail recipients which is receiving sub-standard mail service. Currently, private mailbox holders are the only postal patrons who are not afforded change-of-address service when they move. The mail forwarding provision contained in Section 601 would create a more convenient and efficient method for delivering mail to these customers. Granting a private mailbox holder the same change-of-address order privileges accorded every other postal customer will restore principles of fairness and result in faster delivery times. We believe this provision is non-controversial and will solve a problem which has caused headaches for the small business owners who make up our industry and for the Postal Service, as well. This is an important matter for our customers. We thank you, Mr. Chairman for having included this provision in your bill.

This legislation also alters the role and authority of the Postal Rate Commission (PRC). We believe that the PRC must be strengthened in order to protect the integrity of the Postal Service. The PRC must be responsible for preventing the Postal Service from abusing its monopoly power in circumstances where it competes with private enterprise.

By providing the PRC with subpoena power, this legislation is on the right course. The language, however, is unclear as to whether that power applies in all rate proceedings. The PRC should have the power to subpoena information in proceedings for both competitive and non-competitive products, and all parties should have access

to the information.

The PRC is a valuable tool for those who believe the Postal Service is acting in a manner not in accordance with its statutes. The Coalition has filed a complaint with the PRC charging the Postal Service with violating its statutes by not filing for a rate for a new packaging service called Pack & Send. In the 230 post offices where this service is being tested, a customer can bring in an unwrapped item and postal clerks will package the item for shipping. The pivotal issue is whether the service is postal or non-postal in character. The Postal Service is claiming that Pack & Send is not a postal service and therefore, not within the PRC's jurisdiction.

The Postal Service argument, followed through to its logical conclusion, would place non-postal services under no one's jurisdiction other than the agency itself. To expect a government agency, especially one with a monopoly, to police itself is naive and irresponsible.

The Postal Service has also refused to provide documents requested under the discovery rules of the Commission because of "commercial sensitivity." The Commission should review Pack & Send for its total and attributable costs. Instead, the Postal Service is essentially setting its own rate for Pack & Send without any oversight.

The Commission denied the Postal Service's motion to dismiss, and last week, we filed our direct case with the PRC. If the Commission determines that this service is indeed within its jurisdiction, however, it does not have the power to direct the Postal Service to initiate a rate case for Pack & Send. The PRC should be given the authority to require, not simply recommend, action by the Postal Service in cases where the Commission has determined the USPS to be acting illegally.

THE POSTAL SERVICE AS UNFAIR COMPETITOR

In its print advertising campaign, *Postal Notes*, the Postal Service trumpets, "The U.S. Postal Service is totally self-supporting. All of our operations are funded from the sale of stamps and postage, none of them (zero, zilch, nada) from taxes."

While a technically correct statement, it ignores the fact that it receives an assortment of advantages due to its status as a federal agency. For a government agency, "off budget" or not, to compete with small business is wrong. Not simply because it is a government agency, but because it operates in the free market without abiding by all the rules that every other private enterprise must. Consider the following:

- It is exempt from federal, state and local income taxes.
- It is exempt from state and local property taxes on USPS-owned buildings and equipment.
- It does not collect sales taxes, even on non-postal products, such as packaging materials, and philatelic collection items.
- It borrows directly from the US Treasury, and issues debt backed by the full faith and credit of the government.
- It is exempt from full compliance with OSHA and cannot be fined by OSHA.
- The Postal Service touts its *Fortune* magazine ranking as one of the 15 largest U.S. businesses (the U.S. Postal Service is 12th), along with the likes of General Motors, AT&T, and IBM. It has never been subject to either Department of Justice or Federal Trade Commission anti-trust or unfair competition scrutiny, no small advantage for a \$54 billion government monopoly with over 750,000 employees and over 40,000 post offices across the country.

In offering Pack & Send, the U.S. Postal Service has placed itself in direct competition with the mail and parcel industry. With about \$2 billion in annual revenue, the mail and parcel industry is less than one-twentieth the size of the Postal Service. On average, packaging services account for about 40 percent of the annual revenue of one of these small businesses.

Our industry welcomes competition. But for a colossal government agency with these advantages to use its monopoly-generated size and capacity to compete against small business is patently unfair.

THE POSTAL SERVICE CORE BUSINESS ACT

Representative Duncan Hunter (R-California) has introduced legislation, H.R. 3690, the Postal Service Core Business Act, which would prevent the Postal Service from offering any new commercial nonpostal services such as "volume retail photocopying, packaging services (including gift-wrapping), notary public services, and the sale of office supplies." This legislation is absolutely critical to our industry and we thank Mr. Hunter for introducing this bill and bringing it to the attention of this Subcommittee.

Hunter, in his introductory statement, said, "...[T]he Postal Service has a job to do—deliver the mail and sell postage. That is what it was designed to do by the Founding Fathers. These core services are what the Postal Service is good at, and what it should continue to do. Offering ancillary services only detracts from their core mission." *Congressional Record, June 20, 1996*

Indeed, the Postal Service is considering selling the traditional holiday videos, "Rudolph the Red-Nosed Reindeer" and "Frosty the Snowman," during the holiday season, according to the Postal Service's Senior Vice President of Marketing, Loren Smith. (*Business Mailers Review, March 25, 1996* attached)

And in Bloomington, Minnesota's giant Mall of America, the Postal Service recently opened Postmark America, a large-scale retail store selling postal-inspired clothing and other products, including clocks, scarves, stationery, key chains, and children's toys. The Postal Service reportedly invested \$250,000 in fixtures and inventory for the store. From which part of the existing Postal Service rate base did this investment come? It's unclear.

Seguro Dinero ("safe money" in Spanish) is a new electronic money transfer service being tested in a number of cities along the Mexican border. This service allows people to send money from the post office to Bancomer, Mexico's largest retail bank. Some post offices offer fax and notary services. You can even order checks from some post offices.

What do these new ventures have to do with providing the nation the much-valued public service of timely and efficient mail delivery? Nothing.

The Postal Service would have the public believe that by entering into new markets, it will be able to keep postage rates low. Nothing could be further from the truth. Postal Buddy was a business and financial disaster. And its newest venture into phone cards is backed up by a "Hollywood-style" contract; the phone card provider, American Express, gets to recoup its expenses before the Postal Service gets to share in the profits. By diverting Postal Service employees and other resources from their public service mission to these new business ventures, management has abandoned the American public in an all-encompassing pursuit of profit.

H.R. 3690 will force the Postal Service to focus its resources on what it does well — delivering the mail and providing philatelic services. By concentrating on its public service mission, the USPS will be better able to offer the American public efficient mail delivery and reasonable prices.

Congress is the ultimate arbiter of the Postal Service's power. Congress giveth and Congress taketh away. The current statutes do not define what the Postal Service can or cannot offer. The Postal Service must either be a monopoly or a business, but it cannot be both. It should not be competing with small businesses in areas of non-traditional services.

Congress needs to legislate on this issue. It is up to this Subcommittee, Mr. Chairman, and your respected colleagues in the House and Senate to decide what services the Postal Service will be allowed to provide. I urge members of the subcommittee to support H.R. 3690, and ask that it be incorporated into this postal reform legislation. This will protect private enterprise from unfair competition and redirect the Postal Service to its true mission — providing the citizens of the United States with the finest mail delivery in the world at an affordable, universal price.

Thank you. Mr. Phillips and I will be happy to answer any questions the members of the subcommittee may have.

Mr. MCHUGH. Thank you, Ms. Fennie. We look forward to coming back to you as well.

The next presenter is Mr. John T. Estes. Mr. Estes, thanks for being here.

Mr. ESTES. Thank you for having me here, Mr. Chairman. I am the executive director of the recently formed coalition, Main Street Coalition for Postal Fairness. Our members, according to informal estimates of the Postal Service, already account for nearly 30 percent of the annual Postal Service volume and includes mailers from small business to small and medium-size circulation publications.

Mr. Chairman, without going through my statement paragraph by paragraph or section by section, may I, for you, just briefly summarize the thoughts that lie behind the statement that we have submitted and the concerns that are expressed in that statement?

Mr. MCHUGH. Please do, sir.

Mr. ESTES. First of all, with respect to postal reform, we believe it must, under any circumstances, at least contain three essential elements.

First, a strong, viable, accountable, efficient postal service dedicated to an overriding universal public service mission.

Second, a participating, hands-on Postal Rate Commission with a clear mission to protect the interests of the public.

And last, a postal system that is structured to instill public confidence in its operations as fair, equitable, and nondiscriminatory.

You will notice, Mr. Chairman, that in each of these three elements the public is referenced. The one common denominator, in our judgment, for effective postal reform is the public interest, not a vested interest nor a bureaucratic interest nor a special interest: always a public interest.

You may ask, if that is your position, then why not endorse my bill? I think that is a reasonable question to ask.

Mr. MCHUGH. Thank you.

Mr. ESTES. Without providing a detailed section-by-section analysis, Mr. Chairman, let me just briefly state the substance of concerns that we have in the bill. They boil down as follows:

First, much more study, in our judgment, and evaluation needs to be done on the price-cap approach. We should be comfortable that the evidence would support a conclusion that price caps would result in effective cost control, particularly for an employee-sensitive institution such as the Postal Service.

Second, if there is one missing link in the bill—and I say “if,” because it is very comprehensive, very complex, and very thorough—if there is and whether or not one agrees with the thrust of the bill, it may be that there must be a certainty in the legislation that there is public accountability by the Postal Service and by the Rate Commission.

Last, Mr. Chairman, we should avoid, in our judgment, permitting regulatory mischief by allowing volume discounts which are not directly linked, even penny for penny, to cost savings, on the one hand, and also revenue transfers as provided in the bill from one basket or even one product category to another to cover other basket or other product shortfalls—revenue shortfalls.

Mr. Chairman, in conclusion, we want to commend you and congratulate you and the staff for causing the postal community to

think new thoughts, examine new approaches, and seek new solutions. You have done that and, hopefully, we will do that. We look forward to working with you in the future. Thank you.

[The prepared statement of Mr. Estes follows:]

Introduction

Mr. Chairman and Members of the Subcommittee, my name is John T. Estes. I am Executive Director of the Main Street Coalition for Postal Fairness. Your comprehensive proposal addresses many serious problems confronting both mailers and the Postal Service and while we commend you, other Members and the dedicated and hard working Subcommittee staff for advancing postal reform efforts, we are unable to support H.R. 3717. We do, however, want to make clear our desire to be a helpful and constructive participant throughout the process you have initiated in this Congress as this critical issue is considered in the future. We take this position because not only is a fair, equitable and efficient Postal Service good for the Country, it is essential for us.

We agree with your goal that it is essential to continue the public service provided by the Postal Service. The hope of our Coalition members, as representatives of mailers generating significant volume for the Postal Service, is to participate in reviewing and refining legislative reform proposals PRIOR to introduction of a Bill. We would prefer to be in a position to urge public support early in the legislative process for as many substantive reform provisions as possible. That is not the position we are in today, even late in the process. Nonetheless, we look forward to embarking with you on this long journey, over some difficult and complicated terrain, much of which you have already encountered. While some may believe "the joy is in the journey", I find that the successful completion of the effort to be equally as rewarding and trust you also share that view.

It is our understanding that the House plans to adjourn sine die shortly. This issue,

probably not to be resolved in this Congress, and whether or not in this form containing all or some of the provisions of H.R.371, would then be considered de novo by the 105th Congress convening in January 1997. Because the setting sun will rise again, we very much appreciate your kind invitation for us to go on the record now. Our Coalition members have a great deal at stake in this legislation, to put it mildly. While some of our members have presented testimony to you in earlier sessions, others also would have preferred to be with me here today to emphasize to you first hand their unique problems with H.R.3717 as it would impact their businesses. They understand, however, the time constraints placed on you, Mr. Chairman, as dictated by the proposed House adjournment schedule and we have therefore referenced below some of those concerns. Accordingly, we view our mission today as setting forth for the record the unifying principles and concerns that have brought this Coalition together and which we will stress in the months ahead. It is not our intention to furnish a detailed section by section technical analysis of H.R. 3717 at this time. That objective is best accomplished by engaging in a constructive dialogue as the process moves forward next year, which it surely will.

About the Coalition

The Coalition, whose members according to informal estimates from the Postal Service, account for nearly thirty percent of the annual postal volume includes mailers from small business to small and mid size circulation publications. Their daily operations (and bottom lines) are critically impacted by the policies and actions of the Postal Service and the Postal Rate Commission. The thousands of small businesses and organizations who are the recipients of the

Postal Service obligation to “bind the nation together” may tend to operate much closer to the margin, as you may appreciate, than large mass volume mailers, also served by the Postal Service.

Companies and organizations currently affiliated with the Coalition are:

American Business Press	Associated Church Press
Greeting Card Association	Hallmark Cards, Inc.
Knight Ridder, Inc.	Miller Freeman, Inc.
National Federation of Non-Profits	National Newspaper Association
Newspaper Association of America	Pennwell Publishing Co.
Penton Publishing, Inc.	Tribune Company

The Coalition of Religious Press Associations

Without burdening the hearing record with the significant and broad outreach in the postal community of all the companies and associations listed above, I note the Coalition of Religious Press Associations (CRPA) as an illustrative example. The constituent members of CRPA represent more than 1200 United States periodicals, some of which include: The American Jewish Press (175 member periodicals and a readership of 4.5 million); The Associated Church Press (172 member periodicals with a per issue circulation in excess of 9.5 million); The Catholic Press Association (more than 600 publications with a combined per issue circulation of 26.5 million); The Evangelical Press Association (400 member periodicals with a combined per issue circulation of about 20 million); The Seventh-day Adventist Publishers (a combined periodical base of 65 periodicals); and the Southern Baptist Press Association (39 Baptist papers with a combined per issue circulation of 1.7 million).

In addition, the American Business Press represents more than 900 periodicals, trade papers and medical journals with 27 million readers, and the Newspaper Association of America more than 1500 newspapers, or 87% of the total U.S. circulation, of which more than 70% are newspapers with less than 25,000 daily circulation. The Greeting Card Association represents an industry that contributes nearly \$7 billion in retail sales to the U.S. economy each year and indirectly employs over one quarter million Americans. Millions of Americans send 5 billion greeting cards through the U.S. mails every year. The National Newspaper Association represents more than 4,000 newspapers throughout the country.

There are other members, but the foregoing provide a basis to appreciate the impact and legitimate interest of our Coalition in maintaining a viable, efficient and universal public postal service. Main Street mailers, largely captive to the Postal Service, remain for the most part constantly concerned that the rush to make the Service more "competitive" in the market place not be done in such a way as to preclude them from utilizing the nation's hard copy carrier at reasonable rates. Such mailers are "captive" to the Service, but not a "hostage" to it. In our judgement the Postal Service is properly, first and foremost, a government protected monopoly providing a universal public service and only secondarily- at best- a competitive market place player in the collection, sorting and delivery process. It should and must remain that way. We suggest that it is properly that way because the evidence is far from complete, as some have urged, that repeal or amendment of the Private Express Statutes would be in the public interest. It may very well be in some private interest and it may have a nice ring to some in academia. However, the practical consequences of such a "reform", particularly for the citizen and small volume mailer, have not as yet been publicly aired. Rather, we believe the Postal Service should

stick to what it does best and not stray into other areas in order to compete with private industry. With that background, we offer the following brief overview comments on H.R. 3717 and our preliminary assessment of some of the potential ramifications for the citizen and small volume mailer.

Before doing that, however, may we call to your attention written statements and in some cases the testimony regarding H.R.3717, separately submitted by some Coalition members to the Subcommittee. For example, the American Business Press urges the Subcommittee to consider the unique role that small circulation periodicals play in educating and informing the nation's business leaders and their dependence upon a reasonably priced, universally available postal system. In addition, ABP is especially concerned with the excessive rate autonomy given the Postal Service under H.R.3717 and with downgrading of "educational, cultural, scientific and informational" value of mail. The National Federation of Nonprofits has urged the creation of a nonprofit requester option for the periodicals class of mail, giving Nonprofits equality with commercial publishers. In general, members of the Coalition have stressed to the Subcommittee the uniquely targeted problems that they have with the Bill. Other Coalition members will advance their concerns to specific provisions as the process moves ahead next year.

Basic Concepts

The drafters of H.R.3717 wrestled with many basic and elemental questions that go to the core of Postal Service operations and that affect widespread expectations of the public. Comprehensive proposals to address almost, but not quite all, of the major Postal Service

difficulties have been suggested in the Bill. That in itself is a major and worthwhile undertaking, whether or not one agrees with all the proposals. We would submit, and believe you agree, that identifying problems and proposing alternative or new solutions does not complete the journey. Because the ubiquitous operations of the Postal Service touch nearly every citizen, it is essential that there be a broad consensus and public support for the legislative treatment proposed. Indeed, it was this lack of wide support that caused the long-time expert and Senate guardian of the Postal Service, Ted Stevens, to forego any reform efforts until such a consensus could be reached. We are particularly sensitive about that because of the broad scope and nature of our Coalition. As you can see we are not a narrow segment of the postal community representing narrow interests. Set forth below from the view point of the smaller mailer (the business and individual mailer from Main Street - if you will) are some of the critical questions we believe should be addressed to the satisfaction of the public and our preliminary observations.

SHOULD THE POSTAL SERVICE CONTINUE TO GROW

The Bill seems to rest heavily on a positive answer to that question. It further appears that H.R. 3717 rests on the assumption that Postal Service growth is essential in the competitive and noncompetitive categories of Postal Service products and as to both revenue and volume. The Coalition urges a further evaluation of whether that premise is both necessary and desirable. It really goes to the heart of what kind of postal service the public wants and needs rather than the kind of postal service the postal management may desire. Maybe they are the same, but we question whether that issue has been satisfactorily aired with those ultimately and largely

responsible for the use and cost of any changes...the Main Street mailer. These hearings have obviously helped, but we submit much more needs to be done. Without prejudging the answer to the question that is posed, we would note that in nearly every other segment of our economy, in both the private and public sectors, there is now underway an aggressive effort to "downsize" operations, to improve efficiency, control costs and increase productivity. That is not just a passing fad. Our members will tell you it is often the price of economic survival. We suggest it would be desirable to review what appears to be the basic assumption of H.R. 3717 that growth in and of itself is both good and essential and whether a leaner Postal Service might result in a more effective public service. We urge an examination of whether a public service institution such as the Postal Service should be service oriented... not growth oriented.

SHOULD THE POSTAL SERVICE EXPAND INTO NEW VENTURES

Is it necessary and desirable for this to happen? Does it better serve the interests of the public? This consideration logically follows from the question posed above. The Postal Service asserts that to survive, it must compete. Perhaps, but compete with whom and in what areas. We suggest more evidence needs to be examined to support that claim when not only is the Postal Service developing record "profits" ("surpluses" would be a more accurate characterization), but also when only one percent of the volume is generated currently from the competitive basket of products as defined in the Bill. It may be appropriate to consider establishing some form of public necessity requirement prior to granting authority to the Postal Service to move into new or modified products, even on an experimental basis as provided in the Bill. Whether such new

ventures can be efficiently, economically, universally and reliably provided by the private sector should be a relevant inquiry. Not all government monopolies are bad. Some of us have no problem with that concept at the NTSB, the FDA or even the DOD. But it raises the question which needs examination as to whether the public desires a quasi governmental Postal Service supported in part, at least, by a government enforced monopoly competing with the private sector, where such combinations are illegal, or would they prefer a monopoly managed solely in the public trust for the public benefit.

SHOULD CRITICAL DECISIONS BE MADE BEHIND CLOSED DOORS

Behind this somewhat rhetorical questions lies what we believe to be a potentially serious problem. The proposal to expand dramatically the authority of the Postal Service Directors (Governors) particularly, but not exclusively, for rate setting functions (admittedly with certain Rate Commission oversight) when considered with the reach of the Postal Service into nearly every segment of the American economy, merits special and close consideration. Any relaxation of actual or perceived public accountability for Postal Service action requires the most careful scrutiny. We think it is important and in the public interest for the Main Street Coalition, whenever possible, to be an advocate for the Postal Service and not its adversary. That is of course also in our interest. It is even more important that the public (the customer and suppliers of our Coalition members) encourage and endorse Postal Service operations. Such a patriotic sense of public confidence in the Postal Service is unlikely to occur if there is a veil of secrecy which often

leads to suspicion and distrust. Some suggest that the Postal Service's present mode of operation has caused disenchantment by the mailing community. To the extent that is the case, it must be rooted out and a truly open door policy adopted...today and tomorrow. If such a policy requires abandoning or not pursuing certain competitive ventures, that is a price well worth paying in return for enthusiastic customer and public support for the Postal Service.

WILL THE PRICE CAP SCHEME ENCOURAGE RESPONSIBLE MANAGEMENT

We raise this not to question the validity of this approach in certain other regulatory settings. Our purpose is to encourage an examination of whether it is in the public interest to have cost of service regulation replaced by price caps like those in the bill—for which exceptions are easily available to management—for a highly employee sensitive institution such as the Postal Service. We stress the exceptions not just because of their possible direct effect on rates but because a price cap that is easily changed or evaded by the regulated firm provides no incentive for efficient management. In any public or private institution, most managers would agree that efficiency and cost control go hand in hand.

At the Postal Service, as the Subcommittee is aware, personnel and related costs are about 82% of total costs. If price cap regulation, as proposed in H.R. 3717, replaced cost-of-service regulation, would employee cost control measures be adequately addressed or are such measures expected to evolve based on revenue constraints rather than on tough, realistic managerial action backed up with employee cooperation? In other words: will the price cap approach amount to a forfeiture of management responsibility and foster instead a pattern of excuses and apologies for

ineffective performance?

The problem is compounded by the fact that total Postal Service productivity is declining. It should be carefully examined whether such current apparent operational inadequacies are the result of the cost-of-service regulation approach or of management performance; and, if the latter in whole or in part, how and to what extent moving to a price cap scheme would improve operational results. First, it should be clear to what extent evidence reasonably supports an expectation that substituting a price cap revenue-constraining scheme will result in effective cost controls achieving greater efficiency and increased productivity. Second, if the evidence shows that it would, any price cap proposal should be designed so as not to squander those benefits. In that way, price caps could potentially achieve the ultimate goal of a cost control program. This is a complex question for which there is no simple answer, but it must be examined with great care.

At this point, it is at best uncertain whether or not the price cap approach will lead to meaningful cost control. The Bill proposes an interesting option, but the consequences of that approach must be studied and thoroughly understood before it is adopted as a primary basis for distribution of billions of dollars of postal costs.

CROSS CLASS SUBSIDIZATION

For the small mailer the institutional evil of cross class subsidization must be convincingly eliminated and for that reason it is extremely important that implementation of a price cap scheme does not create a structure (as opposed to a policy) permitting (not necessarily sanctioning) pricing dislocations between the various baskets, groups, or sub-groups, as defined in the Bill.

This may be one of the most complex areas in this complex Bill. We urge a careful examination and analysis of proposed rate making implementation procedures and the potential for pricing discrimination between large and small volume postal users within the overall pricing constraints of the Bill.

**PREVENTING COST SHIFTING FROM COMPETITIVE TO MONOPOLY
PRODUCTS**

Once again this is a real concern under the present system and one to which special and careful attention must be paid in any proposal. This is of course one of the root concerns of small mailers and it calls into question the wisdom of a Postal Service pursuit of competitive projects and the resulting uproar when currently only one percent of postal volume is in the proposed competitive product group, as noted above. The extent of current and future competition to the Postal Service is not well understood, in particular the diversion of hard copy mail to an electronic format. Before notions of "competition" and hypotheses about the appropriate Postal Service response to competition result in a major restructuring of operations, the Postal Service should provide much more complete market information and market forecasts.

UNIVERSAL SERVICE AT AFFORDABLE RATES

As in the initial concept first discussed above, this is a basic consideration of the importance, value and legitimacy of the Bill from the vantage point of the citizen and small volume mailer. We should be certain that in no circumstance would the Bill compromise this

principle. But there are warning signs in the amendments that the Bill would make to the current standards the Commission would apply in its setting of the "baseline" rates and in its oversight of Postal Service rate making activities.

THE POSTAL RATE COMMISSION

The Coalition is a strong advocate of an effective Postal Rate Commission primarily because in many respects it is the best hope for the protection of the citizen and small volume mailer. Many of the Commission reforms proposed in the Bill are welcomed by the Coalition in strengthening enforcement responsibilities. We will not go into them here. We would only note that the Commission is too important to be relegated to the position of either an after the fact auditor of Postal Service actions or of an accountant calculating the range rather than the rates which may be placed on the citizen mailer. Although that function is important under the scheme of the Bill, Commission involvement in Postal Service decisions and the need for prior review before implementation of rates is essential.

CONCLUSION

These remarks may sound critical, but they are not meant to be. You have taken on a huge task in an area in which self appointed experts far outnumber scholarly, thoughtful and reasoned participants. In that regard, you and your staff must experience on occasion feelings similar to the coach of the Washington Redskins or perhaps of the Buffalo Bills. They seem to be holding up pretty well and we are confident the same will be true here.

Mr. MCHUGH. Thank you, Mr. Estes, and I appreciate your summarizing, as I do all the witnesses. As I said, I spent Sunday, Monday, and Tuesday reading your full statements and they are very thorough, and I appreciate the effort and thought that went behind them all.

Our last presenter on our first panel—which is actually our second panel, is Mr. Robert Williamson. Welcome, sir. Thank you for being with us.

Mr. WILLIAMSON. Thank you, sir.

The members of the National Association of Presort Mailers thank you, sir, and your distinguished committee for this opportunity to appear here today. With your permission, we are asking that the accompanying testimony be inserted in the record and that we be permitted to proceed with a brief summary.

Mr. MCHUGH. Without objection, please, sir, proceed.

Mr. WILLIAMSON. In introduction, I am Robert C. Williamson, executive director of the National Association of Presort Mailers and have served in that capacity since the Association was founded in 1984. I have been involved in mail processing since 1970 and, before that, served in the U.S. Navy as an officer and a naval aviator for 24 years.

Mr. Chairman, in your invitation letter you indicated your subcommittee wished to be informed about our perception of the provisions of the Postal Reform Act of 1996 and its potential impact on both postal customers and work-sharing partners. Our statement attempts to meet those wishes.

For the past 19 years members of our Association have made a major contribution to reducing the Postal Service's operating costs by billions of dollars. We actively participate as members of the Mailers Technical Advisory Committee, which is a joint postal-industry committee, and its various ad hoc subcommittees.

We were active participants in Postmaster General Frank's Joint Work-Sharing Task Force in 1988, and his Competitive Services Task Force in 1992. It is interesting to note that one of the tasks of the latter was to make the Postal Service more customer-driven and less operations-driven. It is obvious that that objective was short-lived, because most of the reforms in Docket MC95-1, which was the Classification Reform Case, are more operations-driven than ever before, with arbitrary requirements which many in the private sector find difficult to comply with.

In our testimony before the Postal Rate Commission in Docket MC95-1, we forecasted major migration of mail away from work-sharing, which would only add to the already saturated work loads in many of the post offices. Our forecast was correct, as subsequently proven on the Classification Reform implementation on July 1, 1996. The result was no winners.

The small business postal customers lost postage savings and thus increased their postage costs. The lettershops and service bureaus lost volume and revenue to the point that some were unable to sustain operations. And the Postal Service was forced to absorb billions of pieces of mail without bar codes and not sorted ready for distribution, which significantly increased their cost and will probably result in another substantial increase in postage rates in either late 1997 or in 1998.

We are and we will continue to support the Postal Service's automation goals but cannot, if overregulation precludes our contribution by processing over 16 billion mail pieces annually, of which approximately 80 percent are bar coded with the 11-digit delivery-point bar code. We have invested hundreds of millions of dollars to support the Postal Service without any formal contracts and these investments are ongoing long-term financial commitments.

Our statement not only reviews some of the highlights of the recent chaotic implementation of classification reform but addresses areas of concern with the sections of the draft of the Postal Reform Act of 1996. Specifically, while we do not adamantly oppose revising the titles of upper management in the Postal Service or their compensations, we do believe that such changes will not correct the management deficiencies caused by what the General Accounting Office characterizes as "authoritarian management culture."

Further, we view the splitting of the current functions of the Postal Inspection Service by adding a separate Inspector General as operating overhead, which needs to be decreased, not increased. We concur with the Postmaster General and the president of the American Postal Workers Union that such a move is both unwanted and unneeded, and we question if expansion of the bureaucracy is counter to the budget-controlling theme of the current Congress.

Business executives participating in the April 1995, Harris Poll, which was appended to our testimony last year, leaves little doubt that more competition, however achieved, would be good for all: businesses, the Postal Service, and the American public.

A majority then expected that the cost of mailing would go down as a result of competition and an even greater majority saw a competitive marketplace spurring the Postal Service to offer improved quality of service without resorting to the misuse of its monopoly.

These same business executives expressed strong confidence that private companies could do a better job of managing the Nation's postal services than is currently being done by the Postal Service. By margins that exceeded 70 percent in that poll, executives expected private companies could do a better job of controlling operating costs, modernizing management practices, improving productivity, and enhancing customer satisfaction.

Finally, and probably of greatest concern, is the revolutionary and radical change in the ratemaking process. It does not improve the means for adequate rebuttal of proposed rates as had been the practice in the past through hearings held by the Postal Rate Commission.

After the final omnibus rate case, which may or may not be held, there is no means to question the Postal Service's proposed rates. Further, it appears that the checks and balances provided by the annual adjustments using the factors in caps does not preclude the increase in discounted rates while maintaining the basic rate. We illustrate that in our testimony.

In conclusion, we have offered our comments in a constructive manner and trust that they are accepted as such. Those who participated in the drafting of the act should be commended for the monumental effort given to the task. We sincerely appreciate this committee's role in oversight hearings and the time you give to

hearing from those of us who work hard to take substantial financial risk to help the Postal Service meet its objectives and goals.

We have proven our performance, our capabilities, and our willingness to continue those great efforts. We will gladly try to respond to any immediate questions and stand willing to do the same in the future. Again, thank you, Mr. Chairman, and the members of your distinguished committee for this opportunity to be here today.

[The prepared statement of Mr. Williamson follows:]

STATEMENT OF ROBERT C. WILLIAMSON, EXECUTIVE DIRECTOR, ON BEHALF OF THE NATIONAL ASSOCIATION OF PRESORT MAILERS BEFORE THE U.S. HOUSE OF REPRESENTATIVES' COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT SUBCOMMITTEE ON THE POSTAL SERVICE.

SEPTEMBER 26, 1996

INTRODUCTION

In a letter dated August 9, 1996, we were invited by the Honorable John M. McHugh, Chairman, Subcommittee on the Postal Service of the House of Representatives' Committee on Government Reform and Oversight, to participate in the oversight hearing scheduled on September 25, 1996 and later changed to this date. This written testimony was prepared on behalf of the members of the National Association of Presort Mailers by its Executive Director, Robert C. Williamson, with observations and inputs from many of its 115 members. These small businesses have invested heavily on the invitation of former Postmaster General Anthony Frank to assist the Postal Service in meeting its goals and objectives for automated processing of mail. Most of these company members have sophisticated automation systems used in the prebarcoding and presorting of both first and third class mail with a collective investment in the hundreds of millions of dollars.

Since the Association's founding in 1984, one of the primary objectives has been to develop and improve USPS worksharing programs which produce cost savings and service benefits for both mailers and the U.S. Postal Service. The presort industry developed the comingling process nearly twenty years ago so that

small and medium volume mailers could realize proportionate postage savings enjoyed by the major mailers. In our opinion, the prebarcoding and presorting of mailpieces is the most successful worksharing program ever offered by the Postal Service. It has saved the Service billions of dollars in mail handling costs from the era of manual and/or mechanized processing of yesteryear to the automation age today. Our contribution to the Postal Service's goals is the generation of over sixteen billion mailpieces annually of which approximately 80% is prebarcoded with the 11-digit Delivery Point Barcode utilizing Multi-line Optical Character Reader (MLOCR) systems. The significant investment in these systems is obviously a long term commitment with amortization periods of five to seven years. The financial risks are far above normal since we have no contract or written working agreement with the Postal Service, and these systems are restricted to one purpose, prebarcoding and presorting mail. Also, these investments are irreversible due to the rapid changes in technological advances forcing improvements, software revisions and/or replacement of entire automation systems before the end of planned amortization schedules. For example, the failure of mailers to adopt the Zip+4 numeric zipcode in anticipated volumes forced the shift from Single-line Optical Character Readers (SLOCR) to Multi-line Optical Character Readers (MLOCR) at significant costs to mailers and service companies and without compensating incentives to offset those costs. Again, in 1993, the Postal Service implemented the requirements for the 11-digit barcode (Delivery Point Barcode)

without any adjustment in the worksharing incentive, but with full knowledge that the longer barcode would cause a degradation in the coding rates. Before the shift to the Delivery Point Barcode on March 21, 1993, we found that the degree of degradation was substantial and requested that the implementation date be deferred. The Postal Service ignored our findings and the premature implementation of the Delivery Point Barcode cost the private sector millions of dollars.

In our testimony before this distinguished committee last year, we expressed our concern about the new eligibility requirements for incentives outlined in the Service's testimony before the Postal Rate Commission in Docket MC95-1 (Classification Reform I) which posed serious threats to our industry. Many of these arbitrary requirements were prematurely implemented on July 1, 1996 negatively impacting letter shops and presort service bureaus and their estimated tens of thousands of postal customers whose annual postage budgets are based on savings from mail prepared for automation processing. As in 1993, the Postal Service ignored advice from major MLOCR manufacturers, software vendors and end-users that the July 1, 1996 implementation date was unrealistic primarily because it did not allow sufficient time for the development and testing of software to meet the very comprehensive and complex rules associated with Classification Reform. This group unanimously recommended that the date be more realistically set for September 1, 1996. This lack of consideration of their own customers and the inflexibility to postpone an arbitrary date for

two months supports statements by former Postmaster Generals that the Postal Service cannot become a business but it could learn to be more business-like. Once again, the private sector lost millions of dollars unnecessarily because of a bureaucratic decision evolving from what the General Accounting Office characterizes as the Service's authoritarian management culture. There are some who believe that pursuing such a management style is an abuse of the monopoly granted to them by the Private Express Statutes. Their treatment of "business partners" is incomprehensible knowing well the substantial financial investments that are in constant jeopardy and the tens of thousands of postal customers who have suffered irrecoverable losses over the inflexibility of the postal bureaucracy in their dealings with American business. Concurrently, the Service boasted about their readiness and their expected 1.6 billion dollar surplus at the end of this fiscal year. A General Accounting Office study of the Classification Reform premature implementation would probably reveal the contention that the Service cannot act as a business or compete fairly with the private sector as long as they have the monopoly. The least such a study would reveal would be confirmation of the financial losses suffered by the postal customers, letter shops and presort service bureaus.

THE POSTAL REFORM ACT OF 1996

We were honored by the invitation to submit comments about the proposed Act and are very impressed with the effort and content in the draft sent to us. We will limit our testimony to those areas

which have either a direct or indirect impact on our industry or the postal customers we serve.

TITLE I - ORGANIZATION. In view of the concerns expressed in the introduction and background above, we question the need to make a bureaucracy look like a business merely by changing titles (Sections 101 and 102). We mean no offense to the current postal leaders who truly have the experience, professionalism and business acumen to lead the Postal Service, but redesignating the titles does not change the overall connotations of the militaristic titles of "General", nor does it change the authoritarian management style of the bureaucracy. Further, we have recommended on several occasions the findings of the Competitive Services Task Force of 1992 which focused on the Service and industry working together to maximize the efforts to gain common objectives at the lowest combined costs. Such recommendations fall on deaf ears. Is this business-like? No. The chaotic conditions immediately following the arbitrary implementation on July 1, 1996 were also very costly for the Postal Service. We previously mentioned that 80% of the mailpieces processed were barcoded on an MLOCR with a Delivery Point Barcode and the remainder were presorted manually with five digit barcodes or no barcodes. Mailers and service bureaus planned to adopt remote video encoding (RVE) or encoding desks to increase the 80% barcode rate to the high 90's. Unfortunately, the RVE systems were delayed by the Postal Service over a potential

patent dispute and was not made available until after May 1, 1996. This delay did not provide sufficient time for vendors to gear up by July 1, 1996 and resulted in a rush of orders for encoding desks which were not deliverable until late July. Accordingly, the opportunity to adding the Delivery Point Barcode to mailpieces was not an option on July 1, 1996 and millions of pieces of nonprocessed mail was delivered to postal facilities daily resulting in saturation in some cities and this condition still exists. Delivery of mail was affected during the month of July by as much as three days and required numerous redating of mailpieces by both the mailers and the postal facilities. Is this a business-like way to treat postal customers? No. In conclusion on this point, redesignating titles and increasing salaries alone will not change the way the Postal Service conducts business with its customers or worksharing partners.

SECTION 104 - AMENDMENTS RELATING TO ESTABLISHING AN OFFICE OF INSPECTOR GENERAL WITHIN THE UNITED STATES POSTAL SERVICE AND CERTAIN OTHER MATTERS. Our concern in this plan is the further expansion of a bureaucracy which if anything needs further down-sizing to help contain and ultimately reduce operating costs. We concur with the Postmaster General's testimony that an added Inspector General would be redundant and this was supported by the American Postal Workers Union. It has been suggested that the motivation behind an appointed Inspector General

would bring the Postal Service in line with all other Federal agencies in Washington who have Inspector Generals. We are not in a position to judge the advantages and disadvantages of an Inspector General in the myriad of Washington departments and agencies but we do have some knowledge of the Postal Service's combined Chief Postal Inspector and Inspector General. It has been our observation that the functions performed by this "two-hatted" arrangement is an efficient utilization of personnel resources when performing parallel functions. We envision the duplication of efforts if the overall responsibility was split and a diminished effectiveness in the assignment of specialists to work for two masters. As a member of the Mailers Technical Advisory Committee (MTAC), we have been recipients of the Postal Inspection Service's semi-annual Law Enforcement Report which covers the diverse activities of the Inspection Service leading to convictions for a wide variety of crimes. They also have gained notoriety in the press, TV, radio and newspapers for their nationwide activities such as the arrest of forty-five men in a mail-order child pornography racket which effectively shutdown the largest known commercial distributor of child pornography in U.S. history. These reported successes do not reflect a need to reform the Postal Inspection Service/Inspector General's office as we know it today. Internally,

revenue protection is paramount and the Postal Inspection Service has been very successful in finding embezzlements and other fraudulent acts within postal facilities. They have also been very active in audits of mailers where there have been suspicions of revenue losses through underpayment of postage. As an industry, we have worked closely with the Postal Inspection Service on auditing procedures to help expedite the determination of possible fraud vs. compliance with rules which are subject to many interpretations. Mail prepared by our industry is verified in depth daily because the mailpieces come from many sources. Such concentration on verifying first class mail obviously limits the time allotted to other classes of mail as concluded in a recent General Accounting Office study (GAO/GGD-96-126) entitled "Stronger Mail Acceptance Controls Could Help Prevent Revenue Losses." We do not concur with the estimate that eight billion dollars of revenue is lost by poor acceptance procedures alone. The quality control belongs at the point of mail generation and not at the bulk mail acceptance points. Accordingly, we have participated over the last two years in the development of a Total Quality Management Program soon to be launched by the Postal Service as a means of attaining the best quality of automation compatible mail at its source whether it be bulk first class mail or bulk business mail. Finally, we

believe that the policing of revenue flows and adherence to mail processing policies internally can be well managed by the Postal Service's headquarters department heads such as operations and finance with assistance from the Postal Inspection Service when necessary. This eliminates the need to increase the size of an already bloated bureaucracy which would increase costs to the point that postage rates would rise again to support the addition of another administrative function which is not needed. Did the FAA Inspector General's opinions have any influence on the positions taken by the FAA or the Department of Transportation on airline safety? No. It only forced the resignation of the Inspector General. Again, we concur with the recommendations made by the Postmaster General and the President of the American Postal Workers Union in this matter.

TITLES II, III, AND IV - NO COMMENT

TITLE V - BUDGET AND APPROPRIATIONS PROCESS

This appears to be merely a transfer of responsibility of specific obligations formerly assumed by the Congress and results in the Postal Service assuming such responsibility as part of its overall mission to provide universal service. This effectively ends funding of any postal services by the American taxpayer. Since there is little difference between the American taxpayer and the American public, the same person

or company is going to pay the cost by the way of higher postage. There is a limit on what the public will pay for mail services and there have been polls indicating that the public will seek alternatives to letter mail if the cost reached such a limit. In our opinion, we have just begun to see the impact of electronic mail and we don't want the Postal Service to lose volumes of letter-size mail to any alternative solutions. Decreases in volume, especially first class mail, will reduce revenues significantly to the point rates will climb substantially in order to maintain universal service. It has been reported that a forthcoming GAO study will address the impact of lower volumes on postage rates.

**TITLE VI - MISCELLANEOUS PROVISIONS RELATING TO POSTAL RATES,
CLASSES, AND SERVICES**

SECTION 603

In past omnibus rate cases, the Postal Service claimed that responses to interrogatories during discovery would release proprietary information setting the precedents for other intervenors in the case to make like claims in their responses. This is a moot point if in fact there will be no more omnibus rate cases after the next one specified in the Act as the final such case. However, we will comment later on the termination of the right of the mailing community to be heard by an independent body like the Postal Rate Commission after

the final omnibus rate case.

SECTION 604

To preclude predatory pricing in order to gain market share in the Competitive MAIL category described in Chapter 37, we recommend a clearer definition of the limits USPS prices can be reduced and still cover all attributable costs and a reasonable contribution to institutional costs. On a single piece rate in this category, the monopoly given the Postal Service by the Private Express Statutes places constraints on the Service's competitors' pricing. For example, the UPS must charge \$6.00 for a single piece of 2-day expedited mail which is double the price charged by the Postal Service - \$3.00 for its Priority Mail. It is reported that UPS volume discounts are no greater than 40%. If the Service's "competitors" offered volume discount prices of \$3.60, does that mean the Service could cut its prices to \$1.80 in order to retain market share? The question also arises - can an enterprising private company offer Priority Mail services (preparation, inserting, sealing and posting) for multiple customers, but by showing the same return address on each piece, qualify for volume discounts? Based on the applicable volume levels set by the Postal Service, this will discriminate against the small volume mailers.

TITLE VII**SECTION 704**

Postal Service regulations require postal customers to furnish a box or door slot in which a letter carrier can deliver mail. This could also be a box within a postal facility but again is paid for by the postal customer. He knows today that no other alternative deliverers can use the U.S. Mail box for which he has purchased or leased. We can visualize that open mail boxes could under this proposal be crammed with unaddressed advertising pieces, political flyers, magazines, newspapers, samples and any other unwanted articles. This misuse of private property could prevent a postal carrier from delivering postage-paid first or standard class mail. If the postal carrier is not authorized to remove box contents in order to deliver postage-paid mailpieces, the mail would be returned to the post office for delayed delivery the following working day. We recommend deleting the mail box demonstration project without any feasibility testing.

TITLES VIII AND IX - NO RECOMMENDED CHANGES OR COMMENTS**TITLE X - NEW SYSTEM RELATING TO POSTAL RATES, CLASSES AND SERVICES**

Generally, this Title is so over-referencing to other laws as to be unintelligible by laymen. We would respectfully

suggest that it be rewritten so that reading the text alone would provide an understanding of the objectives and requirements of this revolutionary revision to the rate-making process. Our comprehension of the proposed changes indicate that it could have an extremely significant impact on the presort industry and others in the mailing community. This Title would not only restructure postal rate-making but would provide the Postal Service with extremely broad discretion to adjust rates on an annual basis which will cause unpredictability and inconveniences too frequently to the mailing community. Such discretion is particularly broad in the area of adjustments made to rates for rate categories within a subclass.

SECTION 3724

Under this Section, the Postal Service would adjust rates not more than once per year for each rate category up to the maximum rate cap, as adjusted by the adjustment factor. Such USPS adjustment would be made on a mere forty-five days notice in the Federal Register, without any opportunity for comment of interested parties or any action by the Postal Rate Commission. In addition, in the case of all non-competitive mail, other than single piece first class, the Postal Service would have the authority to establish rates for rate categories of any particular subclass at such level as the USPS deemed appropriate, so long as the resulting average maximum

rate for the rate categories within the subclass did not exceed the average of the maximum rate that would otherwise apply to such rate categories. The proposed Act is silent as to whether such averaging by the USPS would be weighted for volume of mail within each particular rate category.

The Act at Section 3724 (d) (1) appears to use the term "Subordinate Unit" instead of "Subclass" and the term "Further Subordinate Unit" instead of "Rate Category". These terms should be more clearly defined. Also, the term "Alternative Maximum Rates" needs better definition at Section 3724 (d) (3) (c) to clarify whether the maximum rates referred to in such definition are affected by volume.

To focus on the extremely broad discretion to set rates on an annual basis, particularly rates for rate categories such as first class automated mail, we add the following comments to those mentioned above. The ultimate rate for a rate category will be affected by the baseline rates established in a final omnibus rate proceeding (in which the Postal Rate Commission and those affected would have the opportunity for participation), and by the adjustment factor which is to be established every five years in a Postal Rate Commission administrative proceeding (again in which affected mailers would have an opportunity to participate).

However, within that broad framework, on an annual basis, the Postal Service would have the unfettered discretion to adjust for each rate category up to the annual rate cap (which has been established by application of the change in the Gross Domestic Product Chain-Type Price Index (the "GDPPI")) as adjusted by the adjustment factors, to the previous rate cap. This annual exercise by the USPS would be made without any involvement by the Postal Rate commission or opportunity for comment from affected mailers.

Since the change in the GDPPI will apply uniformly to all rates, and the adjustment factors are to apply uniformly across each so-called "basket" of mail, the rate cap, as adjusted by the adjustment factor, should increase uniformly on an annual basis across all categories within each basket of mail. However, in the case of rate categories within baskets other than that for single piece First-Class mail, the USPS has the unilateral discretion to ignore this uniform change in the rate cap, as adjusted, and set rates for rate categories in excess of the annual cap, as long as the change for all rate categories within a subclass averages out to no more than the average of the rate caps for such subclass. In other words, in a basket of mail such as the "second basket" (i.e., all First-Class mail other than single piece), each year, the USPS has the

unilateral discretion, without Postal Rate Commission involvement or input from affected parties, to make significant adjustments between rate categories within the subclass. For illustration, assume that the current rate caps for Basic, three-digit sorted and five-digit sorted First-Class automated letter mail were as follows:

<u>Rate Category</u>	<u>Rate Cap</u>
Basic	28 cents
Three digit sorted	27 cents
Five digit sorted	26 cents

Assume further that movement in the GDPPI increased these rate caps by 10% to the following levels:

<u>Rate Category</u>	<u>Rate Cap</u>
Basic	30.8 cents (28 cents + 2.8 cents)
Three digit sorted	29.7 cents (27 cents + 2.7 cents)
Five digit sorted	28.6 cents (26 cents + 2.6 cents)

Using its discretion to adjust rates between rate categories, the Postal Service could make annual adjustment for the rates for such rate categories to the following notwithstanding the above rate caps.

<u>Rate Category</u>	<u>New Cap Rate</u>
Basic	30.4 cents
Three digit sorted	30.1 cents
Five digit sorted	28.6 cents

The above example assumes equal letter volumes within each rate category; Basic is set 0.4 cents below the rate

cap at the expense of Three digit sorted which is set 0.4 cents above the rate cap. Such an adjustment would have a profound impact on all automated mailers.

CONCLUSION

In conclusion, we are seeking fairness and reasonableness in this radical change in the rate-making process. As we have stated above the USPS would have substantial discretion on an annual basis to unilaterally make significant adjustments in the worksharing incentives for automated rate categories of first class mail without any input from the Postal Rate Commission or affected mailers. Further, we question whether the unilateral pricing of postage under the protection of the monopoly by the Private Express Statutes offers fair competition under the Competitive Category within this Act. Labor costs in the Postal Service represented over 80% of total costs in 1995 and that percentage has changed very little since 1969, the year before the passage of the 1970 Act. This trend has continued despite the billions of dollars invested in automation equipment in order to reduce labor costs. Between April 1993 and November 1995, when the Service had largely completed a downsizing effort, overall postal employment (career and non-career) grew by approximately 10% from 782,000 to 855,000 employees. The vast majority of those employees who collect, sort and deliver mail, have job security union contracts that generally prohibit layoffs. This job protection will prevent the Service from reducing its work force to offset the effects of any significant downturn in first class mail volume which is critically

important to the Service's overall revenue and its ability to cover all operating costs. According to revenue and cost data used in Docket R94-1, first class revenue was estimated to cover about \$32 billion, or 66% of the Service's total operating cost and \$11.7 billion, or 71% of its institutional cost in fiscal year 1995. If there are significant and sudden drops in first class mail volume in the near future, revenues will drop substantially as overhead continues to rise if the Service is forced to carry higher labor costs with no flexibility in reducing labor costs. Perhaps an option to adding more overhead by adopting the unwanted additional cost of an Inspector General and staff would be retaining a professional consulting firm specializing in business management on the short term to analyze business-like costs and make remedial recommendations. Until there is cost containment, there will be a need for annual increases in postage rates which will only inspire businesses to seek alternative methods of communications. We thank you, Mr. Chairman, and the members of this distinguished committee for the opportunity to express the above views and offer our assistance in the future with perceptions from the private sector.

Mr. MCHUGH. Thank you, Mr. Williamson, I appreciate your comments and your testimony.

I would acknowledge that we have been joined by the gentleman from Indiana, Mr. McIntosh. Welcome.

Mr. MCINTOSH. Thank you, Mr. Chairman. I have no statement at this point.

Mr. MCHUGH. Let me go back to where we started on this panel, back with Maynard. In your comments you talked about the mailbox test. I believe I heard you correctly, you said you are not so concerned, or as concerned, about the security issues as you are about the volume issues, and I think you made a very clear case as to why you hold that concern, but let's return to the security part of it, because the subcommittee has heard a lot about those kinds of concerns.

Why are you not as troubled by the security issues as perhaps you are on the volume?

Mr. BENJAMIN. I think there are a number of delivery services in neighborhoods every day. We have become very accustomed to the person in brown that walks up to our door and puts a package there, the person in the red-and-white truck that comes by and drops off a package, the florists, many other people that we have a trusting relationship.

Our concerns stem around a feeling that if you move forward in this area, you would have to extend some protections that are in Federal statute to private—or controls that are in Federal statute—to private delivery services, certainly control over pornographic material, the type of content controls we have in this Nation that you can put in the mailbox.

I don't want to make too light of our concerns about opening up this mailbox, because it is, to a certain extent, a Pandora's box, once we open it, because how are we going to control that quantity of information, and our overriding concern is the quantity issue.

I meant to reflect, when I was speaking earlier about the excellent work that the Direct Marketing Association has done in providing the opportunity for people to opt out of mailings, but a lot of the research that we have done through our activities with EMA and with the papercom coalition tell us that the quantity issue is still a very major issue. We are delivering a lot of materials to people's doorsteps, and if we do something to stimulate that, we had better pay a great deal of attention to the increase in quantity of materials that is going to be there.

Mr. Goodkind did make an excellent comment and that is that whole concept of the sanctity of the mailbox. In America there are very few privacies left, when it really comes down to it, and one of those is that mailbox. And we also believe that some thought should be given to that, that when you are going to open that up, are we taking away that last little bit of privacy that you do have over the information that you get and the amount of it that you get?

To a certain extent, these delivery systems we have in the country do tend to have an influence over the quantity of information that we are getting just by the price that is charged for them.

Mr. MCHUGH. Certainly I think you make good points and, as I have stated in the past, we are concerned about it as well, and that

is why we tried to tailor a test that we felt offered an opportunity to pursue those concerns and see how they are actually played out in the real world, because we do not have any experience at all in this country in that regard.

Would you care to make any comments about the proposed structure of the test?

Mr. BENJAMIN. At this point, I think, Mr. Chairman, we would like to look at it in a great deal more detail before we make any overall comments about it. I feel that maybe it wasn't an item that should have been included in this piece of legislation; maybe it is an item downstream a little bit more that we might want to look at. We look at a number of different nations where they have experimented with these sorts of tests. Some of them have gone very well and some of them have not gone so well.

Clearly, people are concerned about what is in their mailboxes. We know from some tests that we have done in England and we have done in Canada and we have done in Australia that they are concerned about what goes in that mailbox, and I think that should be the overriding concern here.

These mailers all have a tradition of being very, very careful about the type of business that they handle and they have been good about enforcing these federally mandated content regulations to ensure that we do not have illegal material going in.

So to a certain extent you have got a delivery system that is working very well and the interests of our citizens are served by it, and if you move forward to open it, I think it bears a lot of thought as to what that will mean in terms of the type and content of materials that are going to be delivered, sir.

Mr. MCHUGH. Thank you. Why don't I move down to Mr. Goodkind. You and Ms. Fennie shared some concerns in your written testimonies—and also what Ms. Fennie spoke about—in that you mentioned that you would prefer to see the Postal Service not be allowed to introduce products, new products, where that competes with the private sector—my assumption was where that private sector activity is already in place. Is that a fair recollection of what you testified to?

Mr. GOODKIND. Yes, sir.

Mr. MCHUGH. And that is obviously a concern reflected both in Congressman Hunter's bill and Ms. Fennie's comments.

Had you thought about how you would make that determination? To give you an example, Congressman Hunter mentioned that many of the Pack & Send operations that the CMRAs are competing against are largely in urban areas. If you find competition like that, would you rule out the Postal Service providing that service everywhere, or only where a CMRA, using that specific example, or whatever example you may use, exists, or how would you pursue that?

I think it is a reasonable concern, a reasonable objective, but I was wondering if you had a thought as to how we would make that judgment as to where the competition is actually in place.

Mr. GOODKIND. There are several different forms of competition. You mentioned one that is local by nature and we would probably have to look at what a local, a specific local competition might do where there weren't businesses providing that service.

But most of what the Postal Service does is universal. I have rarely seen them go and provide a service in just one specific area that they don't offer it to everyone else on a level ground. So I am not sure how I would answer something that would pertain only to a small part of the country.

We are more concerned about the competition that the Service might create on the competitive products instead of the non-competitive areas. An example might be ECOM, that they had several years ago, where the Postal Service was taking names and addresses and performing personalization of letters and bolding the letters and stuffing envelopes and then delivering those stuffed envelopes to their recipients, whereas private industry was already set up to do that type of service.

Mr. MCHUGH. Let me follow through with Ms. Fennie. As I read Congressman Hunter's bill, and I don't want to hold myself out to be an expert, but as I read it, he has a cutoff date of some time in 1994, and that would preclude any introduction of new services that, in theory, compete with the private sector.

How would you respond to an initiative that said, "You can't compete, Postal Service, unless there is a clear need to be met"—for example, Pierpont Manor, NY, God's country, where I live when I am not here in Washington. I doubt, and maybe I am wrong, but I doubt in the near term you are going to see Mail Boxes Etc., in Pierpont Manor, nor, probably, within a number of miles of it.

Would you object to the Postal Service providing that kind of activity where there clearly, within some geographic range, is or is not likely to be in the near future competition?

Ms. FENNIE. I don't think, philosophically, we would object to having a geographic range, but I think putting it into a real life situation, how would we determine those parameters? Would that be something that the Postal Rate Commission would decide? That is outside of their scope. Would the Postal Service, then, decide what geographical boundaries they would fall within or what economic or demographic boundaries? Or would that be something that we would decide together?

We have discussed this at length and we cannot seem to come up with a way that would really work, unless the post office were to say, "Yes, we will go into every little tiny town in America to provide this needed service," which I don't think you are going to see.

Mr. MCHUGH. You are right, it is an arguable point. Would the Postal Service provide it in Pierpont Manor? You can certainly focus on that. But I am trying to understand what the bounds of the discussion are. Are we just going to say to the Postal Service, no matter how great the need, no matter how much it is not being met by the private sector, "You cannot provide it," or are we going to say, as something less than that, "You can provide it if there is nothing within 10 miles," or whatever it may be?

Ms. FENNIE. Well, I think rather than looking at what they can or cannot provide, the bill that Congressman Hunter is addressing is an attempt to keep the Postal Service to their core mission of delivering and collecting the mail. And yes, it is a competitive industry with our industry if they are allowed to do these competing enterprises.

But we think the greater good of keeping them to collecting and delivering the mail is the main point.

Mr. MCHUGH. OK. Yes, Mr. Estes? If I may interrupt you, I don't want to preclude any panel member from responding to any question. If you will just indicate, I will be happy to recognize you, as I just did with Mr. Estes.

Mr. ESTES. Thank you, sir. We had suggested in our statement to you that in this area, the Pierpont Manor example that you give, that perhaps with respect to getting into competitive areas like this we may want to look at a public necessity threshold test, and that could be divided into a number of various tests that need to be refined and looked at.

For example, is private industry doing this now and is it doing it efficiently? Does it relate to the public health and welfare of the particular area covered? That sort of thing. So you have some type of a parameter around which the Service branches out into these competitive areas. I have forgotten the page number, but we just reference that with that thought in mind, Mr. Chairman.

Mr. MCHUGH. And I appreciate that and your commenting on it—I do recall that from your testimony.

The concern I have, just to state it for the record, is that the GAO, whom a number of us have quoted here this morning, has found that in their survey about 45 percent of the post offices in this country are losing money.

I didn't go down through the list, but I suspect that a large number of them are, if not in Pierpont Manor, perhaps places like it, and we have to, it seems to me, or at least those of us who live in the Pierpont Manors of America and who enjoy a U.S. Postal Service office have to think about what, if anything, do we do to continue their presence or something like it, whether it be you—and by the way, I have had discussions with the USPS representatives, encouraging them, where possible, to form a bond, a working relationship, with your facilities that it seems to me in certain cases could be beneficial to both.

I mean, that is a challenge down the longer road for rural America that I think we have got to begin to focus on. That is where I am coming from on the question; I am not saying that I have an answer to it. Sir?

Mr. ESTES. If we go down the path—which I know you are not—but if we did, of saying that each post office should be a profit center, if we did that sort of analysis, then I think we are placing in real jeopardy what we believe to be an extremely important concept of universal service.

Mr. MCHUGH. I agree and that's the debate point, the core debate point, of this bill. What are we going to do to ensure what I think everyone agrees is necessary, and that is universal service at a uniform—hopefully affordable—price across America. And is the key to that to go to the core services, which certainly, over the long term, suggest some real challenges on revenue, or do we bring back in the Federal taxpayer on subsidies of a \$50-plus million industry?

Those are the kinds of things we have to do and I would never at this juncture say that those 45 percent have to close down if we cannot find a way to make them profitable. I agree totally with what you say.

Ms. Fennie, do you want to comment?

Ms. FENNIE. Yes. To address a portion of that, would it not be prudent to look at the amount of money that the Postal Service is directing toward these other competitive ventures and, indeed, toward their advertising budget as a whole? Could that money be better directed to the entire concept of universal delivery?

Mr. MCHUGH. It sure could be and, in all humility, at the risk of sounding full of myself, I think this bill, for the first time, would clear the air and provide a "demarcation," to use Congressman Hunter's word, between the competitive and noncompetitive activities of the Postal Service to make those kinds of judgments.

It seems to me right now, if it is not impossible, it is very difficult to get a real feel for what is happening in those kinds of efforts that you are speaking about and as they relate to that First Class Mail, that monopoly mail.

We can disagree—I am not saying we do—but we can disagree and debate as to how we make those judgments, but I think we all agree those are judgments that have to be made. So your point is well taken.

I have talked far too long. I would be happy to yield to the gentleman from Texas.

Mr. GREEN. Mr. Chairman, I have no specific question, but you are wrestling with a dilemma: Should the Postal Service expand in the private sector businesses that the private sector can do? And let me give you some examples of where we are at now.

I am in an urban area and I am not in Pierpont—

Mr. MCHUGH. Pierpont Manor. Pierpont is farther north. Pierpont Manor. [Laughter.]

Mr. GREEN. OK. In Texas we have plenty of competition in an urban area but the Postal Service has provided, historically, service in a rural area. For example, I know—and I don't have any of them, but I have talked to rural letter carriers that are really Postal Service—they are full-service letter carriers and not only deliver mail, they sell stamps, they sell money orders, they sell lots of things.

But in an urban area the Postal Service has always, as far as I know, sold money orders, which is a growth business in an urban area, particularly with high immigrant populations. And yet you can still buy a money order at a convenience store, at your bank. And yet every Saturday morning or whatever, I can see the folks lining up to buy money orders from the Postal Service.

Using that argument that says they should not expand into business like package wrapping, should we then come back and say, well, you provided money order services for 10, 20, 50 years, whatever, but now that there is competition in an urban area, you should get out of that business?

Again, that is what we are wrestling with. I know that is what the chairman is wrestling with, with his bill. I have some philosophical problems about the private business competing with a Government agency because of the protections that a Government agency has. But I also know that there are some services they provide that for years people didn't provide and maybe the legislation or whatever is considered might need to recognize that, and I think

the chairman has made a good faith effort in trying to reach that point. But that is just generally where we are coming from.

I have no other questions, Mr. Chairman. I just appreciate the chance to hear the testimony from the folks today.

Mr. MCHUGH. I thank the gentleman. I would be happy to yield to the gentleman from Indiana. Mr. McIntosh.

Mr. MCINTOSH. Thank you, Mr. Chairman. I have a couple of questions. One is, and I will maybe ask each of the panelists, or at least Mr. Estes and Mr. Goodkind and Ms. Fennie, who seemed to have addressed part of it in their testimony, have you looked at the studies and the analogy to regulated utilities, such as the telephone company, where in more recent history there have been both regulated and competitive features in their business?

One of the great concerns we had there leading up to the Telecommunications Act was that there was a cross-subsidy going on between the highly regulated and at the same time monopolistic areas in their particular business, between that and the more competitive areas. Is that what is going on and do you feel the unfair competition? Or is it that the Postal Service does not have to comply with the same regulatory burdens and other costs in competing with the private sector in these areas?

Mr. ESTES. It is probably both.

Ms. FENNIE. Yes. Go ahead.

Mr. ESTES. There is no question. I mean, our concern, one of our major concerns, is cross-subsidies, where one class or one area would be subsidizing another area. We think that is just not right, that each area ought to carry its own freight and pay for its own costs. That gets into this whole problem in this truly fascinating subject of cost control and cost accountability and how do you do it.

But the other problem of the extent to which public utilities—and that experience is helpful, particularly with respect to the price-cap mechanism that is proposed in the bill as an incentive, a presumed incentive, to control costs—raises for us another issue that we think merits exploration, and that is that the Postal Service is unique in many respects, but one in which it is clearly unique is its excessive—“excessive” may not be the correct word—but its high employee sensitivity, and whether or not, with a high employee sensitivity as opposed to a public utility, which may be equipment- or asset-oriented, whether or not cost controls from a price-cap mechanism will result, when 82-some percent of the total costs, as you know, are employee benefits and costs, whether or not that will result in an effective method to control those costs.

That is the thing that really bothers us. It might. But it—

Mr. MCINTOSH. Let me followup on that just a little bit. On the private companies that deliver some of the services, the overnight mail and others, do they have that same percentage of employee costs?

Mr. ESTES. I would not be your best witness for that.

Mr. MCINTOSH. I guess we will hear from them later.

Mr. ESTES. My guess would be no, but I don't know. You are going to have some witnesses today, probably—

Mr. MCINTOSH. Yes, we will reserve that for the next panel. Assuming it is known, we will find out later.

But maybe the absence of competition creates part of the problem.

Mr. ESTES. Of high employee concentration?

Mr. MCINTOSH. Exactly.

Mr. ESTES. It is possible. I think there are many complicated reasons for it. One of them, clearly, is the mandatory arbitration problem, where the labor organizations gave up the right to strike. In return, they received mandatory arbitration, and that is a quid pro quo. Whether or not that is in the public interest, of course, is another subject. But that may be another reason.

Mr. MCINTOSH. Let me ask this and focus in on the advertising. The way it has come to me from my constituents is are we as taxpayers paying for all these ads? Is there a sense that it is an appropriate function of the Government to be advertising a product?

Mr. GOODKIND. I think that most people consider the Postal Service the Government but, really, when you look at the advertising the Postal Service creates, it is the ratepayers that are paying for the advertising that the Postal Service provides. Unfortunately, because of its contact with every American, they consider the Postal Service and the Government as one, whether or not they are exactly and truly in that situation.

Mr. ESTES. I think there is a difference between advertising and informing the public of the services that are available. I listened just briefly this morning to the Postmaster General—on the Senate side—giving his annual report, and one of the things he mentioned that the Postal Service is doing is a new telephone system where you can call in several sections of the country one number instead of the literally hundreds of numbers that are available today to find out what the Service is doing.

That is one thing. That is fine. I think hawking a product in the private sector with ratepayers' money is entirely different. I think we can approach them differently.

Mr. MCINTOSH. I think this may be to Mr. Williamson, but when you go out and market your product, do you find that the Postal Service is in competition with you?

Mr. WILLIAMSON. No, not at all. We think that what we do is provide these services to small businesses that cannot qualify their mail for the incentives recommended by the Postal Rate Commission and approved by the Board of Governors. Without that, the small businesses could not enjoy those postage savings.

Mr. MCINTOSH. Now, if they changed the rates, would the Postal Service be a competitor for you?

Mr. WILLIAMSON. If they did this, if they—in our testimony we illustrate if they would hold the basic rate the same and increase the discounted rates, that would have a very, very negative impact on our businesses. Our investment to support the Postal Service is based on those discounted rates.

Mr. MCINTOSH. How about you, Mr. Goodkind? Do you find them competing with you as you offer direct mail services to people?

Mr. GOODKIND. Not right now, we don't find the Postal Service competing with us, because we do perform different services. We actually prepare the mail, and so far they have not entered into that type of service; they simply deliver the mail and their preparation is for internal purposes.

Mr. MCINTOSH. I have no other questions.

Mr. MCHUGH. I thank you gentlemen.

Ms. FENNIE, you may not be able to answer this but maybe you can give us a ballpark feel for it. What do your members charge as compared to what the Postal Service is currently charging for Pack & Send, assuming it is the same type of package? Is there any way you can compare those two or is it so different from community to community?

Ms. FENNIE. Well, we have received the post office's charges for pack and send and, frankly, we cannot figure them out, because in some cases they seem artificially low, in some cases artificially high. Based on surveys of our industry, there does not seem to be any rationale behind their charges.

For an item that they consider a large fragile item, they seem to be charging much lower prices than the market—or than the private sector is used to being able to charge, because we have to take into account all of our overhead, et cetera, where they don't appear to have to do that.

Mr. MCHUGH. Yes, so it does, it varies from community to community. Your members come from different places and maybe you can't answer this, but would a Mail Boxes Etc., franchise in Alexandria, VA, charge relatively the same for the same service as another franchisee in San Diego?

Ms. FENNIE. I think the franchises are fairly cost-comparative across the country. Most of our industry, unless they are in a fairly rural area, will charge pretty much the same for every service.

Mr. MCHUGH. But you are not quite like McDonald's or Burger King. If you enter into a franchise it doesn't dictate what you charge for a hamburger, in their case? There are some variations?

Ms. FENNIE. There are some variations. Also, our industry is made up of so many franchises and independents that there would be a variety, depending on which organization was patronized.

Mr. MCHUGH. You mentioned in your testimony you brought a gentleman with you, and because of the number of folks who are at the table he was not able to join us. Would you want to point him out to everybody? I would like to know.

Ms. FENNIE. He is right behind me.

Mr. MCHUGH. Welcome.

Ms. FENNIE. He has a Mail Boxes Etc., store very close to here.

Mr. MCHUGH. Well, give him advertising. How close? Where is it?

Ms. FENNIE. How close is it, Mike?

Mr. PHILLIPS. The 600 block of Pennsylvania Avenue. One here on the Hill and another one in Georgetown.

Mr. MCHUGH. Is that Southeast?

Mr. PHILLIPS. Yes, sir, Southeast.

Mr. MCHUGH. OK, well, you all know where to go—[laughter]—if you can't make it to the post office.

Mr. MCINTOSH. Mr. Chairman, if I might interject to followup on one point there, you mentioned that the Postal Service doesn't have to include in the price their overhead. Who ends up paying for their overhead?

Ms. FENNIE. Who ends up paying for their overhead?

Mr. MCINTOSH. Right.

Ms. FENNIE. Well, it would be the people buying stamps and the people paying for postal products.

Mr. MCINTOSH. So it's the people buying stamps, in other words, the regulated noncompetitive parts of their business that subsidize the areas where they compete with you?

Ms. FENNIE. It appears that there is cross-subsidization going on. Already we see them advertising their Pack & Send services, their gifts and all these things. Representative Hunter had a nice long brochure here that he was able to show, and it appears that the revenue generated from the First Class Mail services is subsidizing these other efforts.

Mr. MCINTOSH. Let me ask you this. Are you increasingly finding that smaller and smaller communities fit the business plan to have your services?

Ms. FENNIE. Not smaller and smaller. There is definitely a threshold. We don't recommend having a store or a service like this in a community of less than 15,000 people.

Mr. MCHUGH. There goes Pierpont Manor.

Mr. MCINTOSH. And you started out in communities that size or did you start out in major cities?

Ms. FENNIE. No, the industry began in major cities.

Mr. MCINTOSH. So it has shrunk from the beginning?

Ms. FENNIE. Yes.

Mr. MCINTOSH. And currently the threshold is a 15,000—

Ms. FENNIE. To be a successful, viable operation, yes.

Mr. MCINTOSH. Thank you, Mr. Chairman.

Mr. MCHUGH. You are very welcome.

I would just note that the very accurate things that Ms. Fennie said are attempted to be addressed in this bill, because we would require in the competitive classes that whatever revenues are generated contribute to overhead and to those institutional costs.

Congressman Hunter made an interesting statement. I was surprised by it and maybe I am too naive, and I was wondering if you had a thought. One of the anecdotes he said was that certain CMRA franchisees would go in and try to buy stamps and if the postal workers understood them to be purchasing them for that purpose they would not sell them the stamps. Are you familiar with that?

Ms. FENNIE. Yes, sir. That was brought to our attention just this Monday of this week. One of our operators in Albuquerque experienced that. It happened to her and she had to go to another post office and basically fib to get stamps.

Mr. MCHUGH. Does your organization have or have you had an opportunity to look at the legality of refusing to sell stamps?

Ms. FENNIE. Because it came upon us in such a quick manner, we have asked all of our operators in the Albuquerque area to document this, if it happens to them. It is something that we will certainly address when we return back to our organizations on Monday.

Mr. MCHUGH. So if it occurred as reported to you, you are not certain yet if that would be legal or not? Forget about if it is right or wrong, but legal.

Ms. FENNIE. Exactly. I don't have personal knowledge of the legality but we are certainly going to look into it, because we are very concerned.

Mr. MCHUGH. Can I count on you to let us know how that goes?

Ms. FENNIE. Yes, sir.

Mr. MCHUGH. Good. Thank you. Does anyone else have further questions?

[No response.]

Mr. MCHUGH. Gentlemen and Ms. Fennie, thank you very much for being here. As I indicated earlier, we have a long way to go down this road and we appreciate your being with us so far. So good day to you all.

[Followup questions and answers follow:]



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November 15, 1996

The Honorable John M. McHugh
 Chairman, Subcommittee on the Postal Service
 U. S. HOUSE OF REPRESENTATIVES
 Committee on Government Reform and Oversight
 2157 Rayburn House Office Building
 Washington, DC 20515-6143

Dear Representative McHugh:

Thanks so much for your letter of October 22, 1996. Let me respond to several questions you have posed in your letter to me:

1. **The need for a balanced approach in the drafting of HR-3717.**

As I indicated in my testimony to the subcommittee, it is always difficult to create such a comprehensive piece of legislation and please everyone. We have two major concerns with HR-3717. The first surrounds the procedure for establishing both rate caps and base line rates for purposes of establishing a new method of setting postal rates. As you know, we have supported such a program in our Issue Paper which was provided to you as part of our testimony. Our concern is over the complexity of the process to establish the rate caps and adjustment factors and baseline levels of rates. We need to streamline the rate-setting process, not make it more complicated. The current language and intent of the process described in the legislation needs to be better-explained in terms of a diagram of the various processes to be used and the overall time frame for various events to occur within the processes that are outlined. The testimony of Edward Gleiman, Chairman of the Postal Rate Commission, demonstrated the need for streamlining this process. The chairman outlined a wide variety of interpretations, questions and concerns in his testimony. I believe it would be most important for the staff to prepare a general memorandum and flow chart outlining just how the process would be envisioned to ensure that mailers and other groups, having an interest in the rate-setting process, truly understood the flow events, and how these events are of perceived to streamline the rate-setting process rather than make it more complicated.

The Honorable John M. McHugh
November 15, 1996
Page Two

We also have a great number of concerns over the limited tests on opening up the mailbox. As I indicated during our testimony, we are very concerned that opening up the mailbox would mean mailboxes would be filled with a wide variety of extraneous matter not related to advertising targeted on the consumer. We are not sure that customers would accept an endless array of fliers and brochures provided by private delivery services that would be intermingled with checks, invoices, and other bills sent to their mailboxes which are of a more sensitive and confidential nature. The mailbox is one of those few areas where the privacy of correspondence can still be ensured. No one can open up the mail except that person to whom the mail has been addressed. Yet, opening up the mail box to any group or person creates the perception that the consumer or recipient of the mail no longer has a private place to receive sensitive letters, bills, financial transactions or other important documents without the unwanted intrusion of a great deal of other matter.

I noted with great interest the current study that the GAO is undertaking to study mailer attitudes toward this issue. I only hope that this study points up more of these concerns. I would not move forward with this test until proper study is completed of the implications of this test. Our mail system is too important to risk destroying customer confidence in it through legislation not properly researched in terms of its impact on the user of our system of mail delivery.

2. **The adjustment factor index is being too cumbersome and complicated.**

As I indicated in our comments above, we believe that the process is complicated. I am sure that the process is understood by those extremely experienced in rate-setting, and cost-factoring issues. However, we are again creating a rate-setting process that the average citizen cannot understand. Why is this level of detail necessary? Why are we creating a system of rate-setting and classification that the average user of the mail would have a difficult time understanding? If we do not have a rate-setting and classification process that a mailer can readily understand, are we well-served by it? I believe that the acid test of a viable and effective rate-setting system is ease of understanding, effective administration, and fairness and equity across all levels. We need a system that is not only understood by lawyers, accountants and those with years of experience in rate-setting and classification or cost analysis, but by the citizen. I believe we have created a more complicated rate-setting system than is necessary. I would urge a reassessment of this process and an effort to truly simplify this cumbersome, expensive and overly-technical process.

The Postal Service must improve its productivity if it ever expects to get its costs under control. You can only cut costs by so much without sacrificing service. If you cannot control your labor costs, you cannot hope to effectively deliver a cost-effective and efficient

The Honorable John M. McHugh
November 15, 1996
Page Three

postal system. Each time we raise postal rates, we force more mailers to reconsider the use of the mail. Clearly, we have to create a rate system that incentivizes the Postal Service to tackle the tough issue of improving productivity and keeping cost growth under control. If we cannot keep postal rates at or near the increase in inflation, we are forcing mailers and their customers to consider other alternatives for business communication. An inflation index would presumably be easier to administer and would have an effect of setting a cap on revenues and controlling costs. We must try harder to provide an incentive to control costs to ensure that our postal system remains competitive in the future. Productivity is an important measure as well as efficiency in rate setting and administration. We hope that the legislation which will emerge in 1997 will reflect on this important guidance.

3. The issue of the Postal Service competing against private sector concerns.

It was most interesting to hear the testimony offered by Ms. Finney on the problems her members were having in their efforts to grow their businesses and competing against postal service retail outlets. The Postal Service must be a good neighbor in the business community. It cannot afford to use the heavy-handed tactics which were outlined by the many small businesses testifying in the subcommittee hearings.

We believe the legislation does contain adequate protections against unfair competition by the Postal Service. One of those important protections is to ensure that postal service products are adequately priced. The issue of cross-subsidation from products falling under monopoly to those falling outside the monopoly is a very real issue. The Canada Post Mandate Review Report indicated a great number of mailer concerns over this issue regardless of the studies and analysis conducted by Canada Post which proved to the contrary. Ultimately, the Mandate Review Report indicated that Canada Post had unfairly competed against the private sector in several areas where rates that were charged for certain services were arbitrarily low and suspected of being used to drive away competition. In our own industry, we recently had the experience of contractors for the Postal Service taking business away from one envelope company and reallocating that envelope business to vendors certified to do business with the Postal Service. In essence, the Postal Service was remarketing priority mail service via taking on the obligation to provide priority mail envelopes for free to customers who had previously been paying for these envelopes and selecting a priority mail service. While the Postal Service was not technically in the business of producing these envelopes and competing with the private sector, the Postal Service was making the decision on who would produce the envelopes and therefore determining who would be in this market and who would not be in

The Honorable John M. McHugh
November 15, 1996
Page Four

the market. This is a clear example of the sort of aggressive tactics that small shippers were complaining of in the hearings before the subcommittee. The new Inspector General should have a clear mandate to investigate all cases of unfair competition and recommend prosecution where appropriate, or rather refer to the Justice Department cases where elements of the Postal Service have not followed federal guidelines or statutes. There should be a zero tolerance policy against unfair competition and a streamlined investigating procedure that would ensure that the Postal Service maintains a "good neighbor" status with those trying to make a living by enhancing mail service. We fail to see why the Postal Service needs to be in the arena of electronic commerce when there are so many providers in the private sector, and how the Postal Service can offer an effective moderate cost operation, and compete, without losing money. The Postal Service has a history of not being able to effectively compete against private sector firms. We must not forget the Postal Service's aborted attempt at electronic mail provision in the late 1970's and early 1980's. One can clearly argue that it was not the right time or the right place. However, one must also determine whether or not it was the right entity to provide such service.

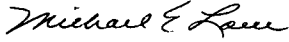
It will not be easy for the subcommittee to balance the need to ensure that the Postal Service is primarily targeted on core-business products and services versus the need to diversify and create a balanced revenue stream. The Postal Service must have a strategy for maintaining and enhancing its core services while at the same time generating funds from some alternative and well-defined services. It would seem to us that any service the Postal Service provides must have some relationship to its core service of hard copy delivery. Interactive marketing services, cash cards, telephone cards and other such services need to be carefully analyzed to include that their impact on the private sector, specifically on small businesses, before they are being launched. The Postal Service is spread across too many business ventures. It is clear from its history that it cannot be everything to everybody. Private industry is concerned and small businesses are even more concerned. There must be adequate checks and balances and a structure of governments designed to ensure that the Postal Service is both a fair competitor and reasonably addresses products and services that support its core business activities.

Speaking on behalf of the entire envelope manufacturing industry, I am delighted that the subcommittee continues to study different ways of upgrading and streamlining the existing legislation. While our association feels that HR-3717 was an excellent first start, we are also delighted that the committee remains open to new ideas and concepts with which to enhance the value of HR-3717 to ensure it has a chance of passage in the 105th Congress. Our association continues to support the

The Honorable John M. McHugh
November 15, 1996
Page Five

need for postal reform and appreciates being considered by the subcommittee for our views. We will be delighted to meet with staff members or any representative of the subcommittee to further outline our views.

Sincerely yours,

A handwritten signature in cursive script that reads "Michael E. Love".

Michael E. Love
Chairman Emeritus

MEL/mh



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February 7, 1997

The Honorable John M. McHugh
Chairman, Subcommittee on the Postal Service
Committee on Government Reform and Oversight
House of Representatives
2441 Rayburn Building
Washington, DC 20515

Dear Congressman McHugh:

I write in response to your follow-up questions relating to my testimony before the Subcommittee on the Postal Service on September 26, 1996, on H.R. 3717.

You asked for comments on the use of the GDPPI index to cap annual rate increases by the USPS. MASA does not have any objection to the use of this index. Others have, however, suggested the use of a special "postal index," weighted to account for the labor contribution to USPS costs. While some such weighting may be appropriate, MASA is concerned that much of the benefit of a cap would be lost if the index used perpetuated the USPS' historical labor cost increases. Accordingly, any special index used to cap rate increases should in no circumstances be tied to postal labor costs, which have increased at greater than the rate of inflation.

You also asked what standards MASA would recommend govern the decision to switch a product into the proposed non-competitive class. MASA believes that one important standard should be that no proposed shift have a material adverse impact on private businesses. For example, if a significant portion of the volume of a class or subclass were to shift to non-competitive classification with the consequence that the remaining non-competitive products would experience a material price increase, this factor should weigh heavily against switching.

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The Corporate
Communications Group
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Brian M. Scherr
Admail Express, Inc.
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Donald Webb
Mail-Pak Direct Marketing,
Systems, Inc.
Largo, Florida

Marvin Weinberg

Quality Letter Service
New York, New York

Thomas H. Wilde
W.A. Wilde Companies, Inc.
Holliston, Massachusetts

David A. Weaver, CEO
Alacran, Virginia

The Honorable John M. McHugh
February 7, 1997
page two

Other factors that should be taken into account include:

1. Whether the product to be switched to competitive status is a traditional letter-type or other postal product to which the postal monopoly extends.
2. Whether switching a product to competitive status would allow the Postal Service to compete unfairly with private businesses already offering similar services.
3. Whether the shift would allow the Postal Service more efficiently to deliver the "competitive" product or service.
4. Whether the shift of a product to competitive status would impair the efficiency of the Postal Service with respect to the delivery of non-competitive mail.

MASA also recommended in my initial testimony that the Postal Service be prohibited from using the new "experimental service" provisions to compete directly with an existing service or product offered by private business. You asked what standards MASA would recommend govern whether the Postal Service may offer an "experimental service." MASA does not suggest that merely because the need for a particular experimental product is already being met by private business in an isolated geographical area of the country, it necessarily follows that the Postal Service should be precluded from offering an experimental service that would meet a demand in the rest of the country, as the hypothetical in your question suggests. We respectfully submit, however, that the hypothetical is unlikely to occur. If there were a nationwide demand for a service, it is virtually inconceivable that American businesses would not have tried to satisfy that demand.

In our view, the Postal Service should not be permitted to engage in **unfair competition** by offering products or services that are already offered by private businesses, or that would directly compete with a product or service offered by private business.

You have asked me to elaborate on MASA's objection to the mailbox test contained in H.R. 3717. As I said in my prepared remarks, the American experience with the sanctity of the mailbox is unique. It is unique not only because we are the only major industrialized country to prohibit non-postal matter in the mailbox, but, importantly, because the American public has come to depend on the long tradition of exclusive access as security against intrusions on their privacy. The experience of other countries with open mailboxes but without the long tradition of exclusive access is not, therefore, translatable to the United States.

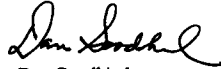
The Honorable John M. McHugh
February 7, 1997
page three

Moreover, because the U.S. Postal customer can count on the fact that only mailed matter will appear in his mailbox, the value of advertising mail is preserved. Many countries have tried for years to duplicate the marketing efforts of mailing companies in the U.S. We lead the world in this form of advertising and anything to weaken our position could have serious negative effects. The consequence of opening the mailbox to other forms of non-mail advertising flyers, brochures, and the like is that advertising mail will be devalued, and volume in Standard Class mail will suffer a substantial decline. As this Class is the healthiest segment of the Postal Service's product lines, any experiment that poses such an adverse threat should be avoided.

Of course, one could argue that there is no harm in a "test" of an open mailbox. The problem with a test, however, is that it will not produce reliable results because those who might otherwise place non-postal matter in the mailbox will not commit the resources to take full advantage of the opportunity presented by a limited test period. Accordingly, any test is almost certain to underreport significantly both the damage to advertising mail that is likely to result from opening the mailbox and the opposition of the public to the loss of privacy and security that mailbox exclusivity provides. It would be far preferable to do a statistically valid survey — with input at the design phase from mailers — that determines whether the American public truly wants an open mailbox.

Let me thank you again for giving MASA the opportunity to comment on the important legislation under consideration by your committee. The reform legislation is of vital importance to the many small and large businesses that comprise our membership. MASA commends your efforts to consider how the services offered by the USPS can be improved for all Americans.

Very truly yours,



Dan Goodkind
Chairman

Answers to Subcommittee Questions

1. The position of the Coalition Against Unfair USPS Competition generally is to support the Postal Service in carrying out its public mandate of providing universal mail service to the American public. That mandate should not include competition against private sector, small businessmen in areas which are not part of this universal mail service mandate. The CAUUC does agree that tax-exempt status is appropriate for a government chartered corporation which is straightforwardly fulfilling its public mandate. That governmental status also makes that corporation, in this case USPS, subject the oversight of the Congress as to how it is fulfilling its public mandate.

The issue of operating "unprofitable" posts offices is part of the universal service mandate under which USPS operates. The Congress and USPS management must determine what criteria are utilized for this issue. Operation of the system is ultimately subject to stamp revenue. It however is not appropriate that USPS should engage in competition with small businessmen such as the members of CAUUC to increase revenue for this or other purposes.

2. The principal issue regarding Pack & Send and other similar services relates to whether a "line of demarcation" should be established regarding services which the USPS offers. With 53,000 facilities or "locations," the USPS is poised to offer a variety of services which it has not offered in the past. Pack & Send is only the most recent.

CAUUC does not believe it is appropriate for USPS to offer services which it has not traditionally offered in direct competition with the private sector. Pack & Send is one such service. It has not been a traditional USPS offering. The private sector through the members of CAUUC have created this industry and offer it nationwide in a network of nearly 10,000 stores. The USPS had stated that it intends to offer it only in areas where it makes "demographic" sense. In other words, not in all its locations, but in direct competition with CAUUC members.

Finally, CAUUC is convinced that USPS cannot offer Pack & Send or other similar services at a market competitive rate with out cross subsidy from first class mail or other revenue. This is not appropriate and is another reason why such services should not be offered.

CAUUC has only some market information regarding either costs or pricing of Pack & Send. The Postal Service refuses to release full information. Anecdotally, in the locations in which Pack & Send has been offered, the Postal Service would be the best source for this information.

The offering of Pack & Send in areas which are not served by private businesses is hard to quantify. The Postal Service by its own statements does not intend to offer this service in such areas. It seems to want to offer this service only in areas which are already served by the private sector.

3. The issue of mail forwarding is a consumer issue and not one between the USPS and the CMRA. The only customers in the entire USPS system which cannot file a change of address or

have their mail forwarded are postal customers of CMRA's. In similar situations, including private businesses such as stores, apartment houses, condominiums as well as government run facilities such as prisons, hospitals, or schools, any postal customer can file a change of address or have his mail forwarded. The 32 cent stamp affixed on mail does not contain fine print indicating that mail cannot be forwarded to the addressee simply because the addressee has transferred his postal address from a CMRA to another address.

As to costs, the USPS saves a great deal of money by delivering mail unsorted to CMRA's; more than enough to justify mail forwarding. Additionally, the Domestic Mail Manual requires undeliverable, "refused" mail to be returned to the sender at no additional postage costs to the CMRA or any other addressee. Each individual store owner sets his own mailbox rental rates. There is no uniformity in the CMRA industry in which virtually all stores are individually owned. This issue of "building costs" into mailbox rentals is incorrect and inapplicable. This argument is just as applicable to businesses, apartment stores, or condominium which also sort mail for the USPS. This justification has not caused the USPS to require individual mail forwarding by these businesses.



Main Street Coalition for Postal Fairness

February 18, 1997

John T. Estes
Executive Director

MEMBERS
.....

- American Business Press
- Associated Church Press
- Canhens Publishing Company
- Greeting Card Association
- Hallmark Cards, Inc.
- Knight Ridder, Inc.
- Miller Freeman, Inc.
- National Federation of Non-Profits
- National Newspaper Association
- Newspaper Association of America
- Pennwell Publishing Company
- Penton Publishing Company
- Tribune Company

John M. McHugh
Chairman
Subcommittee on Postal Service
Committee on Government Reform
and Oversight
410 Cannon House Office Building
Washington, DC 20515-3224

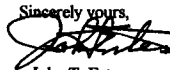
Dear Mr. Chairman:

Attached are responses to questions posed to us resulting from hearings last year before your Subcommittee.

We apologize for the delay in responding, however, these were just recently called to our attention. I would certainly be reluctant to suggest they were lost in the mail.

Please let us know if we can be of any further assistance.

With every best wish, I am

Sincerely yours,

John T. Estes
Executive Director

Enclosure

Response to Question No. One:

Over past decade American businesses have been forced to accomplish more with fewer resources. While that challenge has been quite daunting, the success of American businesses in meeting that goal is well documented. A leaner Postal Service, with fewer post offices, clerks and carriers, could provide better services to postal customers by being more efficient. We see no reason why the Postal Service should be exempt from comparable drives for more efficiency, and a more efficient postal system would, over the long term, be able to handle more volume with less personnel. This could, perhaps, be accomplished through continued, more effective automation of the system, with labor changes being handled through attrition. The Postal Service has invested billions of dollars in recent years, and plans to spend billions more, to improve productivity. Employment and even facility reduction in the face of billions of dollars of automation investment is a reasonable expectation, even while maintaining or improving service. We are not recommending contracting out as a management priority, but we note that to his credit Postmaster General Runyon has attempted several such initiatives over strong opposition. It is a management option that should be weighed on a case by case basis.

There is no credible evidence to suggest that maintaining the Postal Service as a public service would mean funding the Postal Service with taxpayer revenues, and we certainly do not suggest that public funding would be necessary. For example, even though the Postal Service has not received any "public service" appropriations since the early 1980s, its governing statute still requires it to be a basic service for all the people (Sec. 101 (a)). The problem the subcommittee faces is to compel the Postal Service to focus on its public service mission, and on more efficiently providing those core services to the American public, rather than stepping back from that mission and expanding its cost structure by entering markets adequately served by the private sector.

Response to Question No. Two:

We certainly agree that the application of the current cost-based rate making system does not encourage cost control by the Postal Service. We understand the theory of price cap regulation in encouraging cost-consciousness, responsible management on the part of a regulated entity. However, a price cap that lets the regulated entity avoid this discipline (with an adjustment factor to the price index such as that contained in H.R. 3717) is not really a price cap. The "adjustment factor" to the price index that H.R. 3717 would create would have an "anti-efficiency" effect, because it would let some or all postal prices - and consequently postal costs - rise faster than inflation, and because the Postal Service could seek an increase whenever it experienced a "severe financial exigency" even if the "exigency" were caused by inefficiency. Other proposals we have seen for a price cap using an adjusted price index require that the adjustment be subtracted from the price index - i.e., that the regulated firm's prices and costs go up less quickly than the general price level.

The point this question makes concerning the inability of the present system to encourage efficiencies is well taken, and that comes from the fact that 1) under the present system the regulated entity has final control over its revenue requirement (as opposed to the regulator having final control), and 2) the regulated entity is a government organization and not a private sector business. With a private sector business, a regulator normally has the power to disallow a cost by

moving it out of the rate base or the recoverable operating cost, thus reducing the revenue requirement and forcing the owner - usually stockholders - to bear the burden of the unrecovered cost. When a cost is found improper and disallowed in this way, the affected stockholders can act to discipline the managers responsible and guard against a repetition of the problem. It is this mechanism, which is normally present in a regulatory structure, that is lacking in the current one, again due to the Postal Service's governmental status. Also, price caps can easily sway a monopoly in the direction of reducing service quality. H.R. 3717 includes provisions for non-cost based volume discounts, which also would tend to discourage efficiency.

Thus, while the Main Street Coalition supports initiatives to encourage efficiencies, we cannot support the rate making mechanism of H.R. 3717 because it does not contain a true price cap, does not adequately address the question of service quality, and provides for volume discounts unrelated to potential cost savings.

Response to Question No. Three:

We agree that the Postal Rate Commission should review and approve all ventures of the Postal Service. We do not believe that the Postal Service should be offering non-postal services, except as some sort of reasonable ancillary function. For instance, suppose the Postal Service - desirous of entering the telecommunications business - decided to purchase a small local telephone company or a small long-distance telephone company, or to offer long distance service through the resale of purchased satellite time. While these are the type of services that other countries' postal systems have offered, they are good examples of services available in the marketplace and often subject to rigorous competition, that the American postal system should not offer.

We call your attention to Postal Rate Commission Docket No. C97-1, just decided by the Commission in response to a complaint of a group of small businesses that operate pack and ship shops (such as Mail Boxes Etc. and Pak Mail). The Commission found that the Postal Service was providing a "postal service" that should have had prior Commission approval, at least for the prices charged. This decision helped to prevent one type of unfair competition. We understand the Postal Service subsequently withdrew from this venture. We would respectfully suggest that your subcommittee consult with the Commission to ascertain if the Commission needs additional authority to prevent such unwarranted Postal Service competitive ventures, which may or may not be "postal" in nature. This case illustrates how Commission action can result in prompt resolution of these kinds of controversial matters, while affording due process to the parties.

Finally, we should point out that the net effect of all of these ventures on the bottom line of the Postal Service is minimal, and given the size of the Postal Service, would likely remain so. There could be serious questions as to whether the promotional expenditures likely to be needed to launch such ventures would eat up any net gain.

Response to Question No. 4:

As the question states, the price caps apply to the product baskets, but they do not apply to the "further subordinated units" within the baskets. H.R. 3717 does not require that individual rates within a "noncompetitive" basket cover the cost of the particular type of mail concerned.

Since the bill would permit a rate not to cover its costs, the bill would permit cross-subsidization within baskets. Moreover, since the bill allows for price increases greater than the rate of inflation, through an adjustment factor added to rather than subtracted from the price index, one basket might over time be made to cross-subsidize others in that its maximum rates would increase more rapidly. We believe the basket/subordinate unit/further subordinate unit matrix is confusing and vague and un-workable.

Our view is that the Postal Service should return to its basic public service mission of serving the American public, including the delivery of editorial products and the products of nonprofit corporations. The very concept of a category that is competitive with the private sector is per se troubling to us, since the Postal Service is a government entity.

Response to Question 4-Subpart A:

The appropriateness of any method of allocating institutional costs cannot be assessed without reference to the underlying public policy goals sought to be promoted by the law. We believe, that the "proper" institutional cost allocation method will be one that is consistent with the underlying public service mission of the Act.

While the "equal total markup" method does present a novel and interesting approach to the institutional cost issue, we have concerns that the approach does not further the underlying public service mission of the institution. In particular, as reflected in the Question, it seems to be largely concerned with the distinction between competitive and non-competitive services. Competitive status is only one of a number of important considerations (particularly when the services recognized as "competitive" in the H.R. 3717 approach amount to about one percent of postal volume). Before commenting further, we would need to examine a more detailed proposal.



NATIONAL ASSOCIATION OF PRESORT MAILERS

1422 K STREET, N.W., SUITE 805 • WASHINGTON, D.C. 20005

February 4, 1997


Honorable John M. McHugh, Chairman, Subcommittee on the Postal Service
U. S. House of Representatives' Committee on Government Reform and Oversight
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Mr. Chairman:

Our response to your letter dated October 29, 1996 has apparently been misplaced and an attempt to reconstruct the answers to your questions is enclosed. The mid-November transmittal letter conveyed our sincere congratulations on your reelection to the Congress and our desire to work with you and your staff on Postal Reform legislation.

Please do not hesitate to contact us at the number below if additional information is needed.

Very Respectfully,


Robert C. Williamson
Executive Director

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RECEIVED

OFFICE OF THE EXECUTIVE DIRECTOR
3906 BUTTERNUT COURT
BRANDON, FL 33511-7961

PHONE (813) 684-4118
FAX (813) 681-5800

RESPONSES TO QUESTIONS FROM THE HONORABLE JOHN M. MCHUGH,
 CHAIRMAN, SUBCOMMITTEE ON THE POSTAL SERVICE, IN AN ENCLOSURE
 TO HIS LETTER DATED OCTOBER 29, 1996 TO ROBERT C. WILLIAMSON,
 EXECUTIVE DIRECTOR OF THE NATIONAL ASSOCIATION OF PRESORT MAILERS

- ITEM 1. Because of prejudices and biased interpretations of postal regulations, bulk mail acceptance clerks at some locations are over-zealous in their judgements of mail quality and compliance with comprehensive and complex postal regulations. This results in excessive penalties with little or no correlation with revenue loss and unnecessary confrontations which lead to costly redating of mailpieces and delays in mail deliveries.

Most of the mail processed by NAPM members is initially prepared and posted by the originator of the mailpiece - the postal customer. It is in the best interest of both the originator of the mail and the service bureaus to work together to produce a quality mailpiece to meet the specifications set forth to qualify for automation incentives. This is a continuing effort to improve envelope design, print quality including the use of the best readable fonts, reflectance ratios, address formatting and accuracy of zipcodes. In addition to this "one-on-one" effort with the postal customers, members of NAPM have participated in the development of the Mail Preparation Total Quality Management Program (MPTQMP) which is designed to standardize the quality measures needed the results of automation processing. This initiative is a joint effort between the Postal Service and our industry. The Postal Service, as the recipient of our processed mailpieces, needs to a uniform set of quality standards to be introduced into our operations. These uniform standards would replace the self-developed standards that individual presort service bureaus have in place today. We expect this approach to result in consistency of the quality of the mail presented to any location and gives the Postal Service the opportunity to then be more consistent in its review of mailings and how any quality problems that do arise are corrected. Our industry has agreed to be a test base for this new total quality management approach to the preparation and acceptance of mail. If successful, it is our understanding that the Postal Service plans to adapt this approach to other segments of the mailing community.

The Postal Service will finalize the quality standards in the form of manuals and training videos and set the time frame for the program's implementation. This is what we meant by the phrase, "launched by the Postal Service" in our testimony. Again, it has been a joint effort over the past two years and will be used to focus quality on the mailers who actually generate the mailpiece - the postal customer.

- ITEM 2. Our comments on an independent Inspector General were based primarily on the need to avoid expanding the size of the bureaucracy when it was obvious that the 104th Congress was seeking ways to decrease the size of Federal agencies. Adding a whole new functional staff with long-term overhead costs appeared to be "empire building" unwanted at that time by the Postmaster General and the president of the American Postal Workers Union.

The Postal Service frequently uses firms like Price Waterhouse, Peate Marwick, Coopers and Lybrand, Anderson Consulting, Booz Allen Hamilton, the McKenzie Company and others as consultants including those generated by reports from the General Accounting Office. As an example, Price Waterhouse has had ongoing contracts to measure mail delivery times between cities.

You asked what particular management decision should be evaluated. From a business perspective, it appears that the relatively small market-share attributed to Express Mail should be reviewed to determine if that service at current pricing is being heavily subsidized by the other classes of mail.

ITEM 3. Prior to formalizing the content of the NAPM testimony, we were informed that the Postmaster General and the president of the APWU did not support the idea of an independent Inspector General. Not knowing the views of the Chief Inspector and since this was his area of responsibility and as a courtesy we asked his approval on our intent to comment. We certainly did not intend to seek his approval or disapproval of the content of our testimony. We received no response from the Chief Inspector nor did we expect one since we expressed our intent as an informational courtesy as we did a few years ago on the Revenue Forgone issue. Frankly, had we not known the Postmaster General's position on this issue, we would have probably extended the same courtesy inquiry to his office. The fact of the matter is that we make every effort to support both the Postal Service and the Postal Inspection Service since the future of our industry rests in their hands. To the best of our recollection, we have always kept them informed whenever new policies are known to have a negative impact on our industry. The capital investment committed by our members in support of the Postal Service's automation objectives and goals is collectively in the hundreds of millions of dollars. This significant investment dictates a spirit of cooperation to insure that the objectives and goals are mutually beneficial and accomplished at the lowest combined costs.

Mr. MCHUGH. If the next panel could come forward, it is comprised of Frederick W. Smith, who is chairman and CEO of Federal Express, Kent "Oz" Nelson, who is CEO of United Parcel Service, and Philip Belyew, who is President of Air Courier Conference of America. Gentlemen—we have two out of three. That is a song, "Two Out of Three Ain't Bad."

Ah, here you here. Don't be seated yet. If the other two gentlemen would rise, please?

[Witnesses sworn.]

Mr. MCHUGH. Thank you, gentlemen. The record will show that all three gentlemen did swear to the oath in the affirmative.

Let me, before I begin, express my particular appreciation to you three gentlemen for your efforts to be here today. We have been fortunate through the course of this subcommittee's deliberations to have the input and the help of many, many distinguished individuals. I would want to point out particularly that the staff people who work with your two organizations here on the Hill have been particularly helpful, but it is a special privilege to have gentlemen of your stature join us here today and share your insights with us.

I have enormous respect for the achievements and the contributions that your companies, largely through your efforts, have made to this Nation, the economy, and the provision of what we will generically call postal services. So we are particularly pleased that you are with us, and thank you for being here.

With that, in keeping with our standard, we would be pleased to start with Mr. Smith, and we would welcome your testimony at this time. Please proceed as you see fit, sir, and welcome.

STATEMENTS OF FREDERICK SMITH, CHAIRMAN AND CEO, FEDERAL EXPRESS; KENT (OZ) NELSON, CEO, UNITED PARCEL SERVICE; AND PHILIP A. BELYEW, PRESIDENT, AIR COURIER CONFERENCE OF AMERICA

Mr. SMITH. Thank you very much, Mr. Chairman. Just as a matter of my edification, is Alex Bay in your district?

Mr. MCHUGH. Yes, sir. If you need to catch some fish, come on up.

Mr. SMITH. Well, I spent a couple of real nice summers up there in the Thousand Islands. It's a pretty part of the world, I will tell you.

Mr. MCHUGH. Well, thank you. We would love to have you back.

Mr. SMITH. I'll try to do that.

Mr. Chairman, on behalf of 125,000 FedEx employees around the world, we are very appreciative of being invited to appear before this panel on this very important question. I am particularly pleased to be on the panel with Mr. Nelson, my friend, and a gentleman whom I respect and whose company I am a great admirer of.

We would like to submit our statement for the record, if that would be acceptable, and then I would like to make some extemporaneous comments.

Mr. MCHUGH. The testimony of all three of you gentlemen will be submitted in its entirety and without objection and we would be pleased to hear your summaries.

Mr. SMITH. Glad to be on the panel with you too, sir. I am not personally familiar with Mr. Belyew.

We think at FedEx this is a very positive step forward. This is the most thoughtful bill that has been advanced in a quarter of a century concerning the Postal Service, and we commend the subcommittee for examining this issue.

Our position is that H.R. 3717 provides an acceptable framework for reform but that we cannot support it exactly as it is drafted and there are certain areas we think that need to be fleshed out and we look forward to working with the subcommittee.

Basically, our philosophy would simply be that Government should not compete in areas that private enterprise can accommodate and we are clearly aware of the enormous effects of changing technology and what that is doing to the Postal Service.

The logical response from our point of view would simply be that the Postal Service should get out of these sectors as private enterprise is able to take them on, but that, of course, ignores a very important and critical point, and that is the human issue of the 850,000 USPS employees, so FedEx can certainly accept a congressional decision to give the Postal Service a fighting chance to adapt to this new age.

I would point out, Mr. Chairman, though, that in our view that this effort by the Congress to do this, however, is not a public policy interest, it is a private interest, and it is the private interests represented by those 850,000 employees. We believe that the Postal Service competition must be fair with respect to the interests of FedEx and UPS and our hundreds of thousands of employees as well, and other people that are in the courier or express-related businesses.

We believe that the approach of H.R. 3717 is fair and reasonable in dividing Postal Service products into competitive and non-competitive sectors and apply appropriate regulatory procedures suited to each. We believe that this bill and the revised regulation correct two key problems in the current law.

No. 1, it provides price caps which limit total monopoly revenue and, two, the Postal Rate Commission gets jurisdiction over international, which is a serious issue and much abused at the moment. We do have a concern with this increased emphasis on value of service and some of the softer definitions there.

Regarding the regulation of Postal Service's competitive products, we think the overall plan of having rules of fair competition and an annual audit is OK if the rules are strict enough, if the audit is thorough and detailed enough, with absolute integrity of the information and, finally, and perhaps most important, that there is an enforcement mechanism that allows the enforcement to be tough enough. In each of those areas, Mr. Chairman, we think H.R. 3717 needs strengthening.

The rules for fair competition, as we would see them, would be an appropriate allocation of institutional costs or overhead to the prices of competitive products. As you well know, a private company cannot sell all its products at marginally costed—on a marginally costed basis. So the Postal Service's competitive products should, we believe, face the same discipline and not use postal mo-

nopoly products to underwrite the overhead costs of competitive products.

We would advocate a very simple principle, and that is that competitive products as a group should make the same proportional contribution to overhead costs as noncompetitive products. So if the noncompetitive products are contributing 36 percent of the overhead, then the competitive products should contribute 36 percent of the overhead and the Postal Service would have the freedom within that allocation within their competitive group to price some products marginally and price some products more fully.

Equally important, along these same lines, is that there must be a mandatory profit on the competitive products. A competitive product should return a profit that is comparable to private companies if they are going to compete with them.

The audit and enforcement of rules for competitive products must be very strict and clear, in our opinion. The bill needs to clarify the right of the Rate Commission to get data and the right of various parties to comment. The Rate Commission must be able, and this may be one of the most important recommendations that we would have, must be able to order increases in Postal Service prices when they find that the pricing has violated the rules.

I think that the dividing line between noncompetitive and competitive products also needs clarification, particularly the words "effective competition." There needs to be equal application of laws to the U.S. Postal Service concerning competitive products. We support the application of antitrust to competitive products but, I have got to tell you, the way the laws of the United States are today, without a strong enforcement mechanism through the Postal Rate Commission, we will all be dead and gone if you took the Postal Service to task on an antitrust basis.

We think, for instance, that should allow private interests to have access to mailboxes. The mailboxes don't belong to the Postal Service. The best I remember, the mailbox in my front yard belongs to me and there is no reason why competitive services cannot use that.

We think, for instance, there should be equal treatment under the customs laws. Let me just show you something here that I think is fairly dramatic. The Postal Service, to bring an item into the United States from a foreign country, if the value of that item is less than \$200, that is the total amount of paperwork that the Postal Service has to apply—it is a little green thing there, probably costs you about 2 cents to fill it out. The Postal Service is not required to file with the U.S. Customs Service a manifest on this shipment.

Just for starters, this is a very serious breach of the U.S. system of controlling its commerce in terms of both contraband and terrorist activities and in the collection of appropriate duties and taxes.

Private companies have to have a manifest that looks like this, with all the information about the shippers, and the information is put in. It costs us about \$1.60 to do one of these and, as best we can tell, about \$18 million a year we have to spend on these items. The Postal Service is completely exempt from that.

We wrote the Customs Service in May 1993 and said, look, we would like to have the same rules apply to shipments moving in

under FedEx that are less than \$200 in the Postal Service, and that was promptly denied by the Customs Service. So that is an example.

Let me show you another example here which sort of gets in my craw. Put this photograph up here, Doyle. This is a Postal Service truck, Mr. Chairman, and you notice, if you look at it, it doesn't seem too much different than any other truck. But you notice, if you look at it, there is no license plate on it.

So all the 200,000 Postal vehicles around the country don't pay a penny into the State and local coffers for the licenses for these vehicles that every one of us and every one of our companies has to do. This is an over-the-road truck, of which we have thousands, and UPS has thousands and thousands. We pay between \$3,000 and \$5,000 of taxes per year in those over-the-road vehicles. The Postal Service pays nothing.

So I just bring these three aspects up—the access to mailboxes, the equal treatment under the customs laws, and the licensing of vehicles—to point out that there are very real differences with the treatment of the Postal Service under this monopoly it has and when they want to go over into the competitive sector.

They allocate, for instance, on their parcel post business an overhead allocation of 1 percent. Now, we are in the express business, meaning we carry fast, time-sensitive, and information-intensive shipments only. So there are certain sectors that we are not competitive in with the Postal Service at all. But in the express marketplace, I can assure you that the Postal Service allocating 1 percent of its overhead, for instance, as parcel post business is just ludicrous. I mean, there is a lot more overhead in the Postal Service going into that product than 1 percent.

We do not believe that the USPS should issue an enforced postal monopoly regulation. One of the strangest things that I have ever seen is the Congress passes a law in 1872 giving the Postal Service a monopoly over "letters," a term which has been in common usage since the reign of Charles I in 1635, and the Postal Service takes that monopoly and then makes its own laws, with its own policemen, with no congressional laws whatsoever, and defines letters all the way up to and including posters for Disney World being Mickey Mouse come to see Mickey Mouse.

They deal with these issues as if they have the force of law and there is not one bit of statutory authority for that—not one. So we believe that the Congress should set the rules of the game, not the Postal Service, on some sort of ephemeral authority that it gets from an 1872 law that they then expand into this incredible enforcement mechanism, which they have done.

They should not represent the United States before the universal postal unions. The USPS should certainly have the right to contract with foreign partners, but it should have no right to make treaties with foreign governments.

We believe that the postal monopoly rules and mailbox access should be much more along the lines of what has happened abroad. Many other countries are farther along in this postal reform than we are. For instance, in Great Britain, I think it is 1 pound; anything above 1 pound is exempt from any sort of postal monopoly. Here we have both an urgency and a rate test, and the Postal Serv-

ice utilizes that to sell competitive products when they know that the items, by the traditional definition of letter, are not letters at all, but they use that to keep commercial operators from competing with them. So we believe that things like that are very important.

We think that should the USPS interest in new lines of businesses—if they want to go into the first-class French fry business or the USPS brewery business, or something of that nature, that that ought to be separate and in a separate subsidiary and not part of these traditional services.

We believe that the Postal Rate Commission should be able to determine exactly what the true public service costs are and authorize compensation by using a tax on the noncompetitive products and profits from the competitive products to provide these universal service obligations, if that is what you want.

I would point out that we serve every address in the contiguous 48 States, Puerto Rico, Hawaii—I believe UPS does, too, and has for many years. There are a few places in Alaska that we don't go to directly. I just point out we were able to do that in 25 years: It took the Postal Service something like 125 years to get to that same level.

So if the Congress wants the Postal Service to provide this universal service in the noncompensatory areas, then identify that, similar to what the Congress did with the essential air service when they deregulated air transportation, and have those subsidies right up on the top, so to speak.

As the Postmaster General said, we are sympathetic to the fact that they have intense competition in every area of our business and if the Postal Service really feels that way, then what they need to do is to become a private company and pay license tag fees and pay taxes and not use their police powers to try to compete.

We believe that the Postal Service's statement is implicitly saying that the public interest rationale for a Government postal service is ended. The current reform should keep in mind the implications of the Postmaster General's vision in that regard without predetermining the future, and we believe that H.R. 3717 makes a very, very good start, commensurate with the comments that I have just made.

[The prepared statement of Mr. Smith follows:]

HR 3717, the Postal Reform Act of 1996, is the most substantial and thoughtful proposal to reform the postal laws of the United States in 25 years or more. Postal reform is an important and difficult task, and I sincerely commend the Chairman, the members of the Subcommittee, and the Subcommittee staff, for their careful and craftsmanlike efforts to date. I am pleased to have this opportunity to present personally Federal Express's comments on HR 3717.

Federal Express believes HR 3717 offers an acceptable conceptual framework for reforming the 1970 act and adapting the Nation's postal laws to changing business conditions. On the other hand, we believe that the framework erected by HR 3717 needs to be filled out with a number of supplemental provisions that will prove critical to a fair and viable reform plan. Federal Express cannot support enactment of HR 3717 as is, but we are looking forward to working with the Subcommittee to help complete the task begun by HR 3717.

WHY SHOULD THE POSTAL SERVICE COMPETE WITH PRIVATE COMPANIES?

The basic direction of HR 3717 is to allow the Postal Service greater commercial freedom to compete against private companies while establishing new guidelines to ensure that the Postal Service is competing fairly. While Federal Express supports this basic approach, I believe it is important to make clear what it is we do and do not support.

As the Chairman of the Subcommittee has stated, postal reform is necessitated by changing circumstances. New technologies and shifting business practices are placing more and more competitive pressure on commercial activities traditionally provided by the Postal Service in a more or less monopolistic manner. In the next few years, fax and electronic "mail" will become realistic alternatives for an increasing fraction of first class mail. Second and third class mail will also face

stronger threats from alternative media, especially the Internet, as well as from private delivery services. For international mail, the competitive fray will be enhanced further by the appearance of foreign post offices in the U.S. marketplace.

The emergence of new competition does not, however, offer an obvious justification for allowing the Postal Service to compete vigorously with private companies. On the contrary, if private companies can now do some jobs better than the Postal Service, why not let them do so without government interference? Government participation in a competitive market is always disruptive. A government "corporation" — which does not need to make a profit, does not answer to shareholders, loads its fixed costs on a legal monopoly, and cannot go out of business — behaves so differently from private competitors that it distorts the entire market. All things being equal, the only good reason for government enterprise is to provide necessary services that would otherwise be unavailable from private companies. Yet, by definition, the Postal Service will not be providing unique public services if it is participating in competitive markets.

The Postal Service suggests the need to maintain unique public services provides an indirect justification for entry into competitive markets. Profits from new competitive products, it is said, will help defray losses incurred by non-competitive, public service products. This argument cannot withstand scrutiny. There is no reason to believe the Postal Service can earn supra-normal profits from competitive products. It is not doing so today. Indeed, Postal Service talk of large "profits" from forays into competitive markets raises unsettling issues. Abnormal "profits" from competitive services will almost certainly be impossible unless the Postal Service tries to take commercial advantage of special legal advantages available to it alone. Such revenues are not true profits at all.

They are the cash value of unfair legal advantages, which in turn distort the competitive market and discourage efficiency and innovation among private companies competing with the Postal Service. As public policy, giving the Postal Service legal privileges so that it can extract abnormal profits from a nominally "competitive" market would be just as bad as giving the Postal Service an outright legal monopoly over that market, without the minor virtue of forthrightness associated with a legal monopoly.

So far as I can see, there is no *public* purpose to be achieved by letting the Postal Service offer services in competition with private companies. The only plausible rationale for allowing entry into competitive markets arises from the *private* interests of Postal Service managers and employees. It can be argued that it would be unfair and unworthy of the U.S. government to establish a large commercial organization such as the Postal Service, employ hundreds of thousands of dedicated men and women, and then restrict this organization to a declining core business while denying its personnel a fighting chance to save their jobs by using their collective skills and expertise to compete in the market.

I have considerable sympathy with this argument. Federal Express itself employs thousands of men and women. I would not like to see them tied to a business with no future and abandoned without an opportunity to compete vigorously. Indeed, I would do everything I could to avoid such a fate.

Although the concern of the government, as a responsible employer, for the private welfare of its employees is commendable, it should not be confused with the public interest of the United States. The personal financial needs of the managers and employees of the Postal Service are *private*

interests. The *private* nature of these interests underscores the need to ensure that Postal Service participation in competitive markets, must be, to the maximum possible extent, on the same terms as faced by private companies. This is the basic perspective in which I view the proposals in HR 3717.

NON-COMPETITIVE POSTAL PRODUCTS

For the foreseeable future, the bulk of Postal Service revenues will continue to be derived from markets that are non-competitive because of the legal or practical consequences of the postal monopoly law. HR 3717 proposes a basic change in the regulation of non-competitive products with the introduction of price caps for baskets of products.

The proposed price caps would address a fundamental flaw in the 1970 act. Under current law, the Postal Service has unfettered discretion to determine the overall level of revenues to be extracted from customers who cannot choose alternative suppliers. Such unchecked monopoly power is logically absurd and detrimental to the public interest. The Postal Service has had little reason to control its costs, and postal unions have had no incentive to moderate wage demands. An independently administered system of price caps is a necessary reform. Given the seemingly wide discrepancy between current levels of postal costs and the costs of efficient production, it also appears necessary to authorize an independent regulator to adjust any price index according to the light of experience. The basic approach proposed in HR 3717 thus seems to me to be correct, although I would like to reserve judgement on the technical aspects of particular price cap mechanisms.

HR 3717 would also mend another basic oversight in the 1970 act by submitting non-

competitive *international* mail products to the same regulatory oversight as non-competitive *domestic* mail products. The reasons which require regulatory oversight of domestic mail — protection against abuse of monopoly power and control of predatory behavior — apply equally to international mail. The omission of international mail from the 1970 act was an unfortunate oversight. I strongly support this provision.

For non-competitive products, domestic and international, price caps would be set with reference to rates established in a "baseline rate case." This last old-fashioned rate case will not only set baseline rates for non-competitive products but also develop data necessary for later price cap rate cases and annual audits of competitive products (e.g., the determination of what costs are attributable to which products). Unlike the previous rate cases, therefore, the baseline rate case should address international mail rates as well as domestic mail rates. In addition, as the Chairman of the Postal Rate Commission has noted, it appears that the Commission will need new authority in the baseline rate case to disallow excess costs and adjust the overall revenue need claimed by the Postal Service since the Postal Service will have a strong incentive to exaggerate its revenue needs for that case. The provisions for the baseline rate case should be revised to address these two crucial points.

I cannot agree with the new prominence which HR 3717 would give to "value of service" as a factor in setting rates in the baseline rate case and price cap rate cases. "Value of service" is an approach to distributing "institutional costs" (i.e., overhead) among various classes of mail. The idea is that the more a mailer values a class of mail service (i.e., the more he is willing to pay for it), the more overhead cost should be included in the price of that class of mail. No doubt value of service

is a legitimate consideration in setting postal rates, but it should not be the primary consideration. One flagrant problem is that the postal monopoly distorts the "value" that mailers are willing to pay for some classes of mail, for the simple reason that they have no alternatives. The Postal Rate Commission has, after long consideration, correctly rejected value of service as a primary guide in the allocation of institutional costs among classes of mail. In the future, the Commission should, as it does now, consider a range of factors in the allocation of institutional costs, including value of service.

More philosophically, I do not believe that the idea of a legal monopoly is compatible with over reliance on value of service considerations. When Congress last debated the postal monopoly (in 1845), it consciously opted for an inefficient, homogenous level of public service rather than differentiated services tailored to different demands, as a competitive market would have produced. If economic efficiency is now to be given greater weight in postal policy (as I think it should be), then the proper approach is to limit the scope of the postal monopoly and not to encourage the Postal Service to exploit its monopoly more efficiently by relating prices to inverse demand elasticities.

Once baseline rates and price caps are established, HR 3717 would allow the Postal Service greater pricing flexibility in adjusting rates for non-competitive products and the possibility of offering volume discounts. This approach seems acceptable within limits. It would seem unfair, for example, for the Postal Service to give very large discounts to only a very few large mailers. The bill should probably set limits on the range of discounts allowable under price caps or authorize the Postal Rate Commission to do so.

COMPETITIVE POSTAL PRODUCTS

The Postal Service has argued that in order to compete effectively, it must be able to manage with the same flexibility as private companies. On the other hand, it seems clear that, if the Postal Service retains access to the privileges of a government agency, then an independent regulator must ensure that the Postal Service does not use governmental powers for commercial ends. These policies pull in opposite directions. HR 3717 attempts to strike a balance between them by setting out basic rules for fair competition, allowing the Postal Service to offer competitive products without prior review by the Postal Rate Commission, and subjecting the Postal Service to a careful audit at the end of each year to determine whether the Postal Service has in fact abided by the rules.

In principle, this seems a reasonable approach, at least during a period of transition from effective monopoly to increased competition. Of course, an annual audit is not a perfect solution in the sense that no system of accounts and audits can truly duplicate the conditions of a competitive market. The Postal Service will not have all the commercial freedom of a private company. Nor will all unfair commercial advantages of the Postal Service be wholly eliminated. No private company ventures into a new market with the name recognition and resources the Postal Service can command, yet these precious commercial assets are the Postal Service's not by virtue of competitive enterprise but government office.

The task today is not to devise a perfect postal policy from scratch but to reform the current situation with reasonable fairness. HR 3717 addresses the task at hand, but I believe there are some crucial points that need further consideration.

First, the requirement that competitive products make a "*reasonable contribution*" to

institutional costs is critical and needs to be clarified. Different definitions of "reasonable" can affect the selling price of postal products by 35 percent or more. Indeed, the possibility of volume discounts for competitive products, introduced in HR 3717, makes this issue more important still for a competitor. The concept of "reasonable contribution" can be, and should be, clarified in a manner that allows the Postal Service competitive freedom and yet provides the Postal Service with the same restraints as the competitive market places upon private companies. I urge the Subcommittee to consider an "*equal total markup* rule," that is, a principle that competitive products *as a group* should provide the same contribution to institutional costs as non-competitive products. Thus, the Postal Service, like a private company, would be free to price some competitive products more aggressively than others, but, in so doing, it would also run the risk of losing business in other competitive products whose prices would have to be raised to make up for lost contribution to overhead.

The Postal Service's standard argument regarding the allocation of institutional costs to competitive products is that even if a competitive product makes only \$1 in marginal revenue, it is helping to reduce the total institutional cost burden on the non-competitive products by \$1. If the Postal Service were required to abide by an "equal total markup" rule, goes the argument, the price of the competitive product will have to be raised and the customer will take his business to competitors. If the Postal Service loses the business entirely, it loses the \$1 "profit" as well. Overall, requiring the Postal Service to live by an "equal total markup" rule will cost the Postal Service marginal revenues because it will raise the prices of competitive products.

This is an argument of the form "what is good for the Postal Service is good for the country"; it is not sound public policy. If the Postal Service undercuts prices in a given market by pricing at

or near marginal costs, it may earn marginal revenues, but these revenues are not cost-free for society. Private companies competing with the Postal Service will lose some business, increasing the burden of their overhead costs on their remaining customers. Furthermore, the private companies will be forced to depress their prices to meet the Postal Service's artificially low prices which may cost them profits. Or they may lose economies of scale or reduce research and development. Or they may push up prices to other customers outside the sphere of Postal Service competition. Whatever the outcome, the Postal Service's gain is someone else's loss, and the long term economic costs due to market distortion almost certainly exceed the marginal revenues earned by the Postal Service. If the Postal Service is in fact the lowest cost producer in its range of competitive markets (i.e., if its marginal costs are lower than those of its competitors), then it should be able to include a full share of institutional costs in its prices, just as a private company must do, across the whole of its competitive product range. If, on the other hand, the Postal Service's marginal costs are high compared to its competitors, then it should be forced by the discipline of competition to reduce its costs in order to compete; it should not be able to escape this discipline by loading a disproportionate share of institutional costs on to non-competitive products and, in effect, masking its high cost structure.

Second, for a private company, product prices not only cover marginal costs and overhead, they must also generate a *profit*. Otherwise no one would invest in the company. The Postal Service's competitive products as a group should be required to earn a profit, over and above all costs, that is consistent with the operation of the market as a whole. Otherwise, the Postal Service has an automatic advantage over its competitors equivalent to several percent of the final selling price. As

discussed below, these profits can be used to defray public service costs borne by the Postal Service or other delivery services.

Third, for the purposes of the annual audit and other investigations, it is essential that the Postal Rate Commission have authority to obtain necessary information and make final decisions regarding attribution of attributable costs to competitive products. It also essential that the other parties have the right to comment upon such accounting decisions, subject to protective orders deemed appropriate by the Postal Rate Commission. Federal Express's experience in the last rate case makes clear that subpoena power is absolutely necessary. In that case, the Postal Service defied a Commission order to produce certain international mail data. In its final order approving the recommended rates, the Board of Governors made a special point of claiming a right to refuse requests for information if the Postal Service is "unconvinced" that the Commission put forth an "adequate explanation" why it needs the information in question. In light of this history, the bill should leave no doubt that the subpoena power applies to all Commission proceedings, including annual audits and Commission investigations of complaints against the rates of competitive products and that the Postal Rate Commission, not the Postal Service, will determine the conditions for public disclosure of data deemed confidential by the Postal Service. It should also be made clear that the Commission can extend statutory deadlines in case of Postal Service refusal to provide necessary data. This authority, which the Commission has currently, seems to be repealed by the bill.

Fourth, effective *administrative remedies* are absolutely necessary where the Postal Service has been found to engage in illegal competition. The Postal Rate Commission should be able to order illegal prices raised to legal levels and, in cases of deliberate misconduct, to award damages to

parties injured by illegal pricing policies and/or to fine the Postal Service for illegal activities. HR 3717 offers the welcome prospect of an antitrust suit to discipline grave anti-competitive conduct by the Postal Service, but it must also be recognized that an antitrust case is an exceedingly slow and expensive process. In Europe, we are now in the eighth year of a major antitrust case against blatantly anti-competitive practices (price fixing and market allocation) by various post offices (including the U.S. Postal Service). Even though there is general agreement that these postal activities were inconsistent with the European competition laws, we still have obtained no relief.

Fifth, I believe the line between non-competitive and competitive sectors needs to be drawn more clearly by incorporating the concept of *effective competition*. Merely removing legal barriers to competition does not justify giving the Postal Service greater commercial freedom in a given market. There must be effective competition before the market can replace the regulator as a check on abuse of monopoly power. This is the lesson to be learned from deregulation of the telecommunications sector. A period of 17 years elapsed between the courts' deregulation of AT&T's legal monopoly on long distance telecommunications (1978) and the FCC's determination that effective competition could be relied upon to check the monopoly power accumulated by AT&T in the provision of retail long distance telephone service (1995). Similarly, I believe that HR 3717 should instruct the Postal Rate Commission to transfer Postal Service products from the non-competitive to the competitive sectors only if it finds "effective competition" has lessened the need for direct regulation.

The concept of "effective competition" points to a need to reconsider whether some of the products listed as competitive in HR 3717 should in fact be classified as competitive products. The

most important case is Priority Mail. The Postal Service today earns extraordinary profits from Priority Mail. It restrains competition for Priority Mail by issuing postal monopoly regulations that declare private companies must charge at least twice as much as Priority Mail rates. The General Accounting Office has just completed a report that claims a \$2 price limit on the postal monopoly will greatly increase the competitive threat to Priority Mail. All of these indications suggest that Priority Mail is not now facing effective competition, but is in fact, substantially protected by the postal monopoly. The introduction of a \$2 limit on the postal monopoly (proposed by HR 3717) will likely subject Priority Mail to actual competition over time, but it will not introduce actual competition immediately. Greater commercial freedom for Priority Mail should await a Postal Rate Commission finding that Priority Mail rates are subject to effective competition. By the same token, the existence of effective competition for many "special services" also deserves more careful consideration. Some special services seem to be closely tied to non-competitive products and hence are non-competitive as well.

EQUAL APPLICATION OF THE LAWS TO COMPETITIVE PRODUCTS

What I feel most strongly about — even more strongly than about the precise scope of the postal monopoly — is the principle that the Postal Service should be subject to the same laws as everyone else where it competes with private companies. HR 3717 makes an important step in this direction by extending the antitrust laws to competitive products, and I applaud this reform. As in European law, however, it should be clear that the antitrust laws apply not only to the Postal Service *per se* but also postal agreements and activities undertaken in the name of the United States (usually represented by the Postal Service) and to foreign "public undertakings" (to use the term of the EC

Treaty) engaged in postal activities. Otherwise, anti-competitive agreements between post offices, entered into directly or through the medium of the Universal Postal Union, may escape the ambit of U.S. antitrust law even though they are today amendable to European antitrust law.

Although most welcome, the single step of extending the antitrust laws to the Postal Service and its partners does not assure equal application of the laws to the Postal Service's competitive products. Again, it is helpful to consider European law in this regard. In 1991, several European post offices and Canada Post formed a joint venture with a large private express company (TNT) to provide international express services. The European Commission approved this agreement only after insisting that it include provisions explicitly denying the joint venture any legal privileges enjoyed by the post offices. In its order approving the joint venture, the Commission specifically noted that it had considered

whether the JVC [Joint Venture Company] would benefit from certain legal privileges which are available only to postal administrations and not to private companies. These legal privileges relate, inter alia, to VAT exemptions, customs privileges, exemptions from legal liability and special provisions for air or road operations such as night flights. To the extent such privileges would be extended to the JVC they would distort competition between the JVC and the private operators. However, insofar as such privileges continue to exist in relation to express delivery services, they cannot apply to the JVC since it will have the status of a private operator only. In addition, the agreement now obliges the shareholders not to seek any postal privileges for the JVC in the future. [TNT/Canada Post and Others, Case M-102 (Decision of 2 December 1991, pars. 54-55 (emphasis added))]

The same spirit of equal application of the laws should apply in the United States to the Postal Service's competitive products. I urge the Subcommittee to address directly some of the clearest and most significant examples of unequal legal treatment and to require the Department of

Justice to conduct a thorough review of remaining legal disparities. The specific legal disparities that the Subcommittee's bill should address include the following:

- *Mailbox access.* Competitive products of the Postal Service should have no greater access to the mailbox than products of private companies. If, for reasons unfathomable to me, private express companies are denied the ability to deposit urgent packages in the recipient's mailbox, then the Postal Service's Express Mail Service should likewise be denied this possibility.
- *Vehicle licenses and parking tickets.* The Postal Service owns and operates more than 200,000 vehicles, yet it does not obtain state license plates. Federal Express pays an average of more than \$200 per state vehicular license. The Postal Service is not required to pay parking tickets. Parking tickets cost Federal Express \$ 3.3 million per year (FY 1996). In the future, Postal Service vehicles offering competitive products should be required to obtain licenses and pay parking tickets like private companies.
- *Customs laws.* Customs laws are the single biggest impediment to the development of international trade. Under the bill, most international mail is classified in the competitive sector. Competitive inbound international products should therefore receive the same treatment from the U.S. Customs Service as similar products offered by private companies (assuming equivalent types of products and levels of document preparation). Similarly, for competitive outbound international products, the Postal Service should not be allowed to take advantage of special customs treatment from foreign customs authorities.

More generally, the Department of Justice should be instructed to undertake a general review of all federal and state laws and regulations which distinguish between the Postal Service's competitive products and similar products of private companies. Within a year, the Department of Justice should report back with a strategy for eliminating these legal differences.

IMPARTIAL ADMINISTRATION OF THE LAWS

Closely related to the matter of equal application of the laws is the problem of impartial administration of the laws. Not only should the Postal Service, in its competitive activities, play by the same rules as everyone else, the government should apply the rules equally and impartially to all. This will not be the case so long as the Postal Service presumes to exercise governmental authority. Two particular problems in this area require attention: administration of the postal monopoly and negotiation of international treaties.

The Postal Service's efforts to administer and enforce the postal monopoly are fundamentally unfair and always have been. When Congress enacted the current postal monopoly law in 1872, it was understood throughout the government that authoritative rulings on the scope of the postal monopoly were the province of the Attorney General, not the Post Office Department. Given the direct financial interest of the Post Office in the scope of the monopoly, disinterested interpretation and enforcement of the law was not expected. When the postal function was separated from the administrative control of the Executive in 1970, Postal Service attempts to manipulate the scope and commercial impact of the postal monopoly crossed the line from improper to outrageous. The Postal Service suddenly claimed a monopoly over all first, second, and third class mail and the divine right to "suspend" the monopoly for politically powerful groups like newspapers and banks. Postal

inspectors pushed into the offices of the customers of private companies with the threat of massive "back postage" fines, notwithstanding the fact that the Attorney General had ruled long ago that no such fine was ever sanctioned by Congress. Such use of government power for commercial ends is simply wrong. The Postal Service should have no role in the administration or enforcement of the postal monopoly. This authority should be vested in a disinterested agency such as the Department of Justice.

Similarly, U.S. law should be competitively neutral with respect to international delivery services. The Postal Service should not be authorized to represent the United States at inter-governmental organizations with treaty making or policy making powers such as the Universal Postal Union. Representation should be handled by an Executive Department which is, by law, vested with responsibility for government policy regarding U.S. international delivery services. Inter-governmental agreements should be "competitor-blind." If, for example, a foreign country is unwilling to permit the free exchange of delivery services, then the limited bilateral rights that can be agreed to should be awarded to U.S. delivery services by an impartial regulatory procedure based on the application of public interest criteria in an open proceeding, just as limited international aviation and telecommunications rights are awarded. Presidential review of such designations should be limited to foreign policy and national security issues.

This is not to say that the Postal Service should be restricted in its ability to make commercial agreements with foreign post offices. On the contrary, the Postal Service should be free to negotiate and conclude any agreements pertaining to the collection, transportation, or delivery of international mail, or anything else. These agreements, however, should have the legal status of contracts, not

international public law. They should be subject to the antitrust laws and other laws applicable to international business.

POSTAL MONOPOLY AND MAILBOX ACCESS

HR 3717 would introduce a \$2 limit to the postal monopoly and require a test relaxation on restrictions to private company access to mailboxes.

In my view, a price limit on the postal monopoly that is fairly close to the cost of a first class stamp is long overdue in the United States. Many other countries — including the United Kingdom, Canada, Australia, and Germany — have introduced such measures without harming the ability of their post offices to maintain universal service. Two dollars is a reasonable proposal, although I do not think universal service would be endangered if the limit were half as much.

More important than the specific level of the new price limit is the need for an administrative mechanism for adjusting the monopoly when new evidence and changing circumstances make clear that the monopoly can be reduced without jeopardizing universal service. Indeed, the mere threat of administrative deregulation would help deter gross abuses of monopoly authority and disregard of price caps. I suggest, therefore, that the Postal Rate Commission be authorized to grant specific or general licenses for provision of services covered by the postal monopoly, especially where the Postal Service fails to provide an adequate and efficient service to a given set of customers.

There is also a crucial "missing link" in the monopoly provisions of HR 3717. While various postal products are declared to be "competitive," no provision in the bill actually declares these products to be outside the scope of the postal monopoly. Given the Postal Service's broad and variable claim of monopoly, it should be made explicit that a product in the competitive sector is,

ipso facto, outside the postal monopoly.

The proposal for a limited three-year test relaxing restrictions in mailbox access is, I believe, unduly cautious. The mailbox access rule is a matter of great frustration to Federal Express. Enacted in 1934, it was certainly not intended to restrict the delivery of express parcels. There is no economic evidence — and there never has been — that mailbox access restrictions are necessary to maintain universal postal service. No other country has a mailbox access rule like the United States. The mailbox access rule is not necessary to protect the security of mailboxes, since criminal and civil laws punish theft and trespass. Yet the mailbox monopoly persists, hampering the ability of Federal Express to make deliveries in suburban and rural areas.

Under these circumstances, I believe it is evident that the public interest would be served by an outright repeal of mailbox access rule subject to two safeguards. First, an individual mailer should be able to reserve his mailbox for the use of the Postal Service (or any specific set of delivery services) since it is, after all, his mailbox. Second, the Postal Rate Commission should be able to restrict access to mailboxes in particular areas or circumstances where, according to demonstrable evidence, the public interest so requires. In any case, as mentioned above, I feel strongly that any restrictions on mailbox access should apply equally to all competitive products, whether offered by the Postal Service or private companies.

MARKET TESTS

Under HR 3717, the Postal Service will be given freedom to “market tests for experimental products” without facing the regulatory audits designed for well-established products. Federal Express accepts the principle that the Postal Service should have a certain flexibility to test new

competitive products. However, the openended nature of HR 3717's provisions on market tests merits further consideration. In particular, HR 3717 seems to imply that the Postal Service should *itself* "waive" application of all but a handful of laws to market tests. Such governmental power should not be vested in the Postal Service. Then, too, the limit on the size of market tests seems to take no account of the size of the market entered and the private companies affected. As the Chairman of the Postal Rate Commission has pointed out, \$100 million is a lot of money to some people.

More fundamentally, it seems to me that the bill should probably distinguish between two types of new products. Some new products, such as International Package Consignment Service, are essentially new marketing packages for transportation and delivery systems that have been developed for and are intimately related to the basic operations of the Postal Service. The only thing fundamentally new about such products is the price. It seems to me that new products which make use of the Postal Service's basic transportation and delivery systems should be held to the same pricing standards which HR 3717 will introduce for the Postal Service's existing competitive products generally, regardless of whether the Postal Service calls them "new" or not. On the other hand, temporary relaxation of the remaining classification rules may be appropriate.

For other truly new products, caution should be the rule. As written, HR 3717 would apparently allow the Postal Service to enter any business at all earning less than \$100 million in annual revenues after publishing notice of its intent to do so. In light of postal ambitions evident in other countries, one could imagine the Postal Service entering such businesses as banking, insurance, book selling, publication and printing services, freight, and electronic mail. Nor is there any reason

to stop the list there. As written, HR 3717 would apparently allow the Postal Service not only to sell packaging materials in post offices but also build a paper plant to manufacture its own supplies. It could not only sell refreshments to mailers waiting in postal queues, but also open a micro-brewery to add a little something extra to PostOBurgers and First Class Fries. Does the United States really want to allow the Postal Service to enter these markets while it still derives 90 percent of its income from non-competitive sources? Or is such expansion properly left to a second stage of postal reform? Such questions must be addressed explicitly. At a minimum, I suggest that Postal Service activities that lie outside the normal field of postal operations should be established as separate, arms-length subsidiaries so as to facilitate regulatory and congressional review.

COSTS OF PUBLIC SERVICES

HR 3717 would require the Postal Service to bear certain additional public services costs, including "revenue foregone" and the pension costs of pre-1970 employees. Public subsidies would be terminated.

I am concerned that the unclear manner in which the Postal Service is required to underwrite these public service costs may confuse future discussions of postal policy. The great stumbling block to a more competitive postal policy has always been the vague claim by the Postal Service that greater competition would preclude it from covering the cost of its public service obligations, the cost of which never seems to be quantified. In theory, the Postal Service may argue, correctly, that it is unfair to expect it to compete like a private company and pay costs associated with public services.

I suggest, therefore, that funding of public services costs should be made more explicit. As

part of the annual audit, the Postal Rate Commission should prepare a report on public service costs incurred by the Postal Service and possible savings to be derived from alternate means of supplying the same or similar public benefits. To pay for the public service costs, the Postal Rate Commission could be allowed to "tax" non-competitive postal services at a rate not to exceed the "profit" level charged to the Postal Service's competitive products (since the "tax" is an explication of existing cross-subsidies, it will have no effect on postage rates). Such "tax" revenues could be placed in a separate fund so that public service costs would be spread out over good years and bad years. In addition, "profits" earned on competitive products can also be placed in the same fund. In essence, the Postal Rate Commission would be responsible for spending the "profits" that the United States can expect to earn from its investment in postal services on the condition that the money is spent to support public services which Congress has declared must be provided.

Such an explicit approach would be preferable to a hidden, internal cross-subsidy in several respects. It would facilitate the transfer of products from the non-competitive sector to the competitive sector. It would also simplify the process of licensing private companies to provide postal services now covered by the postal monopoly. As a condition of the license, they could be required to pay the implicit tax assigned by the Postal Rate Commission.

Ultimately, as the Postal Service becomes more and more of a competitive operator, responsibility for assuring universal service should be transferred from the Postal Service to the Postal Rate Commission, much as the ultimate responsibility for universal service was the province of the Civil Aeronautics Board and the Federal Communications Commission, not the aviation and telecommunications carriers. The Postal Rate Commission should identify what services require

subsidy in order to sustain universal service and contract with suitable delivery services to provide such services. For a while, the Postal Service might have "first refusal" rights to such contracts, but it should not be obliged to provide competitive services that it deems unprofitable.

THE FUTURE: "INTENSE COMPETITION IN EVERY AREA OF OUR BUSINESS"

The Postmaster General has recently testified to this Subcommittee that "*we have intense competition in every area of our business.*" The Postmaster General exaggerates. In fact, the Postal Service enjoys substantial, if imperfect, protection from competition in most areas of its business. Nonetheless, the Postmaster General's vision of a day when the Postal Service faces intense competition across the range of its products is useful, for it helps to clarify the fundamental nature of the issues raised by the present bill.

As the Postal Service competes more and more with private industry — whether because of changing circumstances or its own business decisions — it must be allowed, and required, to compete on terms that are substantially identical to those faced by private competitors. If and when the Postal Service finds itself in competition in all aspects of its business, then it must, in all aspects of its business, face the same conditions as private competitors. In other words, it must become a private competitor. In short, on the day when the Postal Service truly faces intense competition in every area of its business, there will no longer be any public policy justification for a governmentally owned and operated Postal Service. The only viable public policy will be to repeal all postal laws and sell the Postal Service to the public. This may be the inevitable fate of the Postal Service; inevitable because of the logic of changing communications technology. I suspect that it is. However, it is too soon to predict the future of the Postal Service with certainty, and the Subcommittee's proposal

wisely does not try.

The Subcommittee has made an excellent start on legislation that will allow the Postal Service to respond to presently foreseeable increases in competition and, at the same time, repair flaws in the 1970 act. There remains scope for improvements: some highly desirable and some, in my judgement, absolutely and logically necessary. I hope that my testimony will assist the Subcommittee in the process of revision and improvement, and I look forward to working with the Subcommittee next year as it completes the important task of preparing a plan for modernizing the Nation's postal laws.

Thank you for your consideration of the views of Federal Express.

Mr. MCHUGH. All right, thank you very much, Mr. Smith. I also thank you for your in-depth and, I thought, very insightful and thoughtful, written presentation. All the presenters' written testimony was excellent, but I found particular effort in yours, and I appreciate that.

Next, Mr. Nelson, who has joined us—welcome, sir. It is an honor, as I said before, to have you with us, and we look forward to your comments.

Mr. NELSON. Thank you, Mr. Chairman. I am going to try to find what is left here to talk about—Fred has done a nice job with it. I am very pleased to be on this panel, also, and I would like to say hello to the members of the panel, also.

I am Oz Nelson, chairman and CEO of United Parcel Service. I appreciate the fact that my extended statement will be part of the record. This is, in fact, the first time that a chairman of United Parcel Service has testified before Congress in our 89-year history. I mention this only to illustrate the point that at this time postal reform is a critical issue for my company and the nearly 9 million American businesses and individuals we serve on a daily basis.

Before I go on with what I hope you will interpret as helpful suggestions, may I just compliment the chairman on his hard work and his sincere effort in leading the legislative reform effort. You have consistently displayed patience, candor, an open mind and, importantly, an open door, and I appreciated walking through it—

Mr. MCHUGH. Thank you.

Mr. NELSON [continuing]. And spending some time with you.

We value our relationship with you, the other members of the subcommittee, and your staffs, and look forward to continuing to work with you to bring needed reform to our postal system.

I am chairman and CEO of the only Fortune 50 company in America whose largest competitor is the Federal Government. The proposed legislation, Chairman McHugh, would give the Federal Government even greater power to compete with private sector companies like mine; 337,000 United Parcel Service jobs rest on your assumptions being correct about the extent and fairness of that competition.

Recognizing that where one stands on an issue often depends on where one sits, may I just say that from where I sit the competition we see today from the Postal Service is not fair. As we testified a year ago before this subcommittee, the Postal Service uses revenue from its monopoly to subsidize competitive services, including its rates and services, competitive markets of all kinds, but in this international product line, which is not subject to PRC oversight, the Postal Service has been even more aggressive in its willingness to purchase market shares at rates below its cost, charging way below market rates.

Nor has the Postal Service been shy about making full use of its Government agency status, even as it ups the competitive ante with private competitors. It has been able to obtain special privileges through a number of foreign postal administrations to expedite customs clearance procedures for packages sent in its new global package link service and is also in the process of obtaining radio frequencies worth of tens of millions of dollars in the private

sector on terms available only to it because of its Government status.

This aggressive competitive activity, backed by an estimated \$120-million-a-year advertising budget, might be expected from a private sector competitor. I find it appalling that it comes from a Government agency. It is not appropriate for the Postal Service to spend \$120 million on a Priority Mail campaign that compares apples to oranges and implies that they are all the same, all of this aimed at taking business away from tax-paying private enterprise companies.

And frankly, that is where I get confused. It is not all clear to me that your bill addresses the most basic question before this subcommittee, namely, what is the mission of the post office? Is the Postal Service a business which should have as its goal growing to as big as it can and making as much profit as possible? Or is the Postal Service a public service offered by the Government to meet a public need? I submit that it cannot be both without profoundly negative consequences.

The proposed legislation strives hard to try to achieve an illusory balance rather than implement a clear choice, which is not to deny that there are many excellent proposals in your legislation. But I must say, in all candor, that before this subcommittee goes a step farther, it should first take a step back. This legislation has the potential to make private enterprise competitors like UPS endangered species. This committee might ask itself whether it wants to help a public service become more focused and efficient so it can deliver better services in its core monopoly services that it has been entrusted with or whether it wants to convert a public service to a private sector competitor.

Your obvious goal to help the Postal Service be more businesslike is laudable, but the proposed implementation is flawed. The Postal Service is simply not a private business. As CEO of the world's largest delivery company, I can attest that Postmaster General Marvin Runyon is not a CEO facing the challenges of a private business.

As CEO of a private sector business, you do not lose money in 17 out of 24 years and still have a company to be CEO of. Private sector businesses make a profit over time or they go bankrupt. They most certainly do not have an open checkbook to borrow at the lowest possible rates backed by the full faith and credit of the U.S. Government. Nor do private sector businesses like mine have guaranteed cash-flow from monopoly which is nearly 80 percent of their revenue, which in this case—the monopoly part—amounts to \$42 billion, that happens to be just about twice the size of my company.

Private sector businesses also pay taxes—in UPS' case over \$1.7 billion in taxes paid in 1995 alone. And this is a very big one: They do not compete in the same regulatory environment that we do. That, believe me, is no small amount of cost in our operations. The Postal Service meets none of these base-line criteria, nor would it even if the proposed legislation were signed into law tomorrow.

If the Postal Service is not going to be subject to these same pressures faced by for-profit, private sector competitors, then in

truth it must be strictly regulated to ensure that its competitive services cover the fair share of their cost.

On the other hand, if you remove the monopoly, force the Postal Service to pay taxes on profits, as do the British Post Office, Canada Post, and a number of other foreign postal services, took away the full faith and credit of the U.S. Government by selling the post office to a private investor who had the same freedom to succeed and fail as UPS does, then we might bring about true postal reform.

Mr. Chairman, if that time has indeed come, to make the Postal Service a business, as Mr. Runyon apparently suggests, then let's make it a business. If that kind of radical reform is not the goal of this subcommittee, then we need to refocus the Postal Service on its core mandate: providing universal mail service on a fair, equitable, and nondiscriminatory basis. And for that I have included a number of specific suggestions in my extended remarks.

Mr. Chairman, if the time has indeed come to make the Postal Service a business, as Mr. Runyon suggests, then let's make it a business in all respects. Now is not the time to take the middle of the road with the U.S. Postal Service. It is the time to make a decision.

I thank the committee for the opportunity to testify and I welcome any questions you have at the appropriate time.

[The prepared statement of Mr. Nelson follows:]

**STATEMENT OF KENT C. "OZ" NELSON,
CHAIRMAN, UNITED PARCEL SERVICE**

September 26, 1996

**Before the Subcommittee on the Postal Service
Committee on Government Reform and Oversight
U.S. House of Representatives**

Good morning, Mr. Chairman, Members of the Subcommittee. I am Oz Nelson, Chairman and CEO of United Parcel Service. I appreciate the opportunity to be here today. This is, in fact, the first time that a Chairman of UPS has testified before Congress in our company's 89-year history. I mention this only to illustrate the point that Postal Reform is a critical issue for my company and the nearly 9 million Americans we serve every day.

Before I go on with what I hope you interpret as helpful suggestions, may I just compliment the Chairman on his hard work and sincere effort in leading this legislative reform effort. You have consistently displayed patience, candor, an open mind and an open door.

We value our relationship with you, the other members of the subcommittee and your staffs, and look forward to continuing to work with you to bring needed reform to our postal system.

I am the Chairman and CEO of the only Fortune 50 company in America whose largest competitor is the federal government. The proposed legislation, Congressman

McHugh, would give the federal government even greater power to compete with private sector companies like mine. 337,000 United Parcel Service jobs rest on your assumptions being correct about the extent and fairness of that competition.

Recognizing that where one stands on an issue often depends on where one sits, may I just say that from where I sit, the competition we see today from the Postal Service is not fair. As we testified before this subcommittee a year ago, the Postal Service uses revenues from its monopoly to subsidize its rates and services in competitive markets. With its international product line, which is not subject to PRC oversight, the Postal Service has been even more aggressive in its willingness to purchase market share at rates below its cost. Nor has the Postal Service been shy about making full use of its government agency status even as it ups the competitive ante with the private sector. It has been able to obtain special privileges through a number of foreign postal administrations to expedite customs clearance procedures for packages sent in its new Global Package Link service and is in the process of obtaining radio frequencies worth tens of millions of dollars in the private sector on terms available to it only because of its governmental status.

This aggressive competitive activity, backed by an estimated \$120 million a year advertising budget would be admirable for a private sector competitor. I find it appalling that it comes from a government agency. It is not appropriate for the Postal Service to spend \$120 million on a Priority Mail advertising campaign that compares apples to oranges and implies they are the same. And frankly, that's where I get confused. It is not

at all clear to me that this bill addresses the most basic question before this subcommittee; namely, what is the mission of the Postal Service? Is the Postal Service a business which should have as its goal, making as large a profit as possible? Or is the Postal Service a public service offered by the government to meet a public need?

I submit that it can't be both without profoundly negative consequences. Where we have a fundamental point of disagreement with your approach is that it appears the proposed legislation is trying to achieve an illusory "balance" rather than implement a clear choice. Which is not to deny that there are many excellent suggestions in this proposed legislation. But I must say, in all candor, that before this subcommittee goes a step further, it should take a step back.

It must ask itself whether it wants to help a public service become more focused and efficient so that it can better deliver the core monopoly service it's been entrusted with, or whether it wants to convert a public service into a private sector competitor.

Your obvious goal, to help the Postal Service be more business-like, is laudable but the proposed implementation is flawed. The Postal Service is NOT a private business.

Private sector businesses do not have a monopoly exceeding \$42 billion nearly 80% of their revenue. Private sector businesses make a profit over time, or go bankrupt. Private sector businesses pay taxes, and private sector businesses compete on a level

playing field in the same regulatory environment. The Postal Service meets none of the baseline criteria which would qualify it as a business, nor would it even if the proposed legislation were signed into law tomorrow.

If the Postal Service is not going to be subject to the same pressures faced by for-profit, private sector competitors, it must be strictly regulated to ensure that its competitive services cover the fair share of their costs.

On the other hand, if Congress removed the monopoly, forced the Postal Service to pay taxes on profits --as do the British Post Office, Canada Post, and a number of other foreign postal services-- took away the full faith and credit of the U.S. government by selling the Postal Service to a private investor who had the same freedom to succeed or fail as do UPS and Federal Express, we might bring about true postal reform.

If that kind of radical reform is not the goal of this subcommittee, then we need to refocus the Postal Service on its core mandate of providing universal mail service on a fair, equitable and non-discriminatory basis. We believe that H.R. 3717 contains a number of provisions that would improve the responsiveness of the Government's mail delivery service to the American public.

Specifically, UPS endorses the provisions in Title I increasing the salaries of the Governors or Directors of the Postal Service and creating a truly independent Inspector General for the Postal Service. We also endorse the provisions in Title V that would

finish the job, begun in 1970, of making the Postal Service fully self-sufficient, separated completely from the vagaries of the postal appropriations process. And we endorse the provisions in Title VII, which would expand the delivery choices available to the public by permitting consumers to use private carriers to deliver letters as long as the rate paid is at least \$2.00, or more than six times the 32 cent first class rate.

This last change is particularly important because, unlike UPS, the Postal Service does NOT provide universal delivery service to the door of every mail recipient in the country. In a proceeding now before the Postal Rate Commission, the Postal Service has acknowledged that in many areas of the country, postal patrons must come to the post office to get their mail because the Postal Service will not take the mail to them. We find it ironic that the Postal Service argues that it needs special protection in order to provide universal service at reasonable cost. The Postal Service does not, in fact, provide universal service to every citizen. I am proud to say that UPS does provide universal service. In fact, we let our customers determine the location where their packages are delivered, unlike the Postal Service which may assign delivery points miles away from the customer.

Of the specific proposals made in HR 3717, UPS has the most concern with the rate indexing scheme, which we believe does not adequately address the danger of cross-subsidization.

In an organization like the Postal Service, which provides both monopoly and competitive services, indexing creates a tremendous temptation to cross-subsidize. It simply cannot deal with the highly technical and complex problems of cost allocation and overhead cost assignment that must be fairly and equitably resolved in the case of an organization such as the Postal Service, where the danger of cross-subsidy is so great.

Let me explain. Only 62% of the Postal Service's total costs are attributed or traced to its classes of service; the other 38% -- almost \$21 billion -- must be "reasonably assigned," on a largely judgmental or discretionary basis, among the many monopoly and competitive services. Since at least 1980, institutional costs have been growing faster than attributable costs, as the chart attached shows.

Despite certain handicaps imposed on it by the 1970 statute, the Postal Rate Commission (PRC) has done a yeoman's job over the years of trying to keep the Postal Service from loading these unattributed costs onto the captive monopoly users. Nevertheless, about 65% of all institutional or overhead costs are paid by First Class Mail, even though First Class Mail represents only about 53% of mail volume, and only 17% of postal volume by weight. In 1995 Parcel Post paid less than 0.1% -- that's less than one-tenth of one percent -- of institutional costs. That means Parcel Post barely covered its attributable costs in the first year of the Postal Service's three to four year rate cycle.

Under the dual ratemaking system proposed in the bill, there could easily be an increase in the GDPPI index, and therefore in the maximum allowable rates for letter mail, while in reality there would be a very small increase in the Postal Service's costs for delivering monopoly letter mail -- or even a decrease in costs, if the Postal Service's claims that it expects to save \$15 billion from its automation program come to fruition. Under this scenario the Postal Service could raise First Class Mail rates by, for example, 2% each year for five years, or a total of 10%, even though First Class Mail costs actually went down as a result of automation. At the same time, the Postal Service would have complete freedom to decrease the rates for competitive services even though costs for those services may have increased. In other words, the rate cap scheme in the bill would permit the Postal Service to overcharge captive monopoly users and use the extra revenue to depress the rates for competitive services. I must emphasize here that a one cent increase in first class is equal to \$1 billion in revenue for the Postal Service.

Moreover, the line between "competitive" and "noncompetitive" services is too murky. Postmaster General Runyon testified before you that the Postal Service faces competition in every aspect of its business. He wants you to expand the number of "competitive" services in which the Postal Service would have unchecked authority to charge whatever it wishes. That would only make things worse. And while the bill provides for a product to move from the "noncompetitive" to the "competitive" sphere, it cannot move the other way.

Postmaster General Runyon boasted when he appeared before you that the Postal Service was “doing pretty good” in competing with certain types of competitors, proudly citing the fact that the Postal Service had actually put some alternative delivery companies out of business. That was his stated reason for wanting complete flexibility to change the rates for advertising mail. That boast is of concern to all Postal Service competitors, not just UPS. It echoes a similar statement made by the Postal Service’s Chief Operating Officer, William Henderson, not too long ago. He said, “Two-day Priority Mail is gold waiting to be mined. If we can make it two days, we could drive everyone out of business.” Postal Service Marketing Manager Dave Shinnebarger shared similar thoughts with the audience at the National Postal Forum in April of this year. Mr. Shinnebarger said, “I really believe I was put on this earth to help UPS have financial difficulties. I think that’s my mission.”

Rate cap regulation for monopoly postal services combined with complete freedom to set competitive postal prices simply cannot work. It will inevitably lead to cross-subsidy. That may be why, Mr. Chairman, Congress decided just this past year, when it adopted the Telecommunications Act of 1996, that the local Bell Operating Companies, which have monopoly control of the local telephone market, must first open the local market to competition before being able to enter the competitive long distance market. In the postal context, that is the same as saying that the Postal Service cannot provide competitive services unless and until it gives up its monopoly over letter mail delivery.

We realize that you have attempted to mitigate these problems by granting the Postal Rate Commission subpoena power -- a provision we endorse. However, given the other provisions in the bill, subpoena power is not an effective enforcement mechanism. Even if a subpoena could be issued and enforced in a timely fashion, the Commission lacks the power to direct the Postal Service to make the needed changes to its rate structure. It could not, for example direct the Postal Service to increase below-cost rates for Parcel Post and Express Mail, or to reduce rates for monopoly letter mail.

If the Commission finds that the rates charged by the Postal Service are not supported by the costing data, the Commission's only recourse is to prohibit the Postal Service from using up to 50% of its profits from the prior fiscal year to pay bonuses to its officers and employees. The Postal Service could still pay bonuses from the remaining 50% of the profits -- hardly a deterrent to abusive monopoly rates.

For example, in fiscal year 1995 the Postal Service had a surplus of almost \$1.8 billion. Assuming that Express Mail, Parcel Post, and other competitive rates in effect during fiscal year 1995 were found to be below cost, the Postal Service could still pay bonuses amounting to \$900 million -- almost \$1 billion -- to its officers and employees.

Mr. Chairman, that just is not enough of a "penalty" for anti-competitive behavior.

We are also concerned that the bill does not provide a meaningful opportunity for either mailers or competitors -- both of whom have an important stake in ensuring proper postal rates -- to be heard. With respect to "competitive" products, neither competitors nor mailers would have any opportunity to be heard.

Given the Postal Service's tremendous powers and advantages, Congress was wise to create in 1970 an independent agency to oversee the postal ratemaking process. We believe that, on balance, the ratemaking provisions of H.R. 3717 weaken rather than strengthen Commission oversight.

As long as the Postal Service has a monopoly over the vast bulk of its services and is still allowed to compete with the private sector, our goal should be to improve on the compromises struck in 1970, and give the Commission real authority over postal rates, not just the power to render a recommended decision that the Postal Board of Governors can overrule. That change alone would make the present ratemaking process more efficient and effective by removing any incentive for the Postal Service to withhold needed information, thereby substantially reducing the expensive and time-consuming discovery process. Combined with the following suggestions, we might actually achieve reasonable protection against cross-subsidy:

- Rate proceedings would be less time-consuming and therefore less expensive if the Commission's decisions were made final and binding, subject only to judicial review.

That would eliminate the contentious and time-consuming back and forth between the Commission and the Governors that now occurs after every general rate case.

- Proceedings would also be less cumbersome, less expensive, and far less contentious if the Commission had full authority to require the Postal Service to use consistent Commission-approved costing methods. This would cut down discovery -- the most expensive and most time-consuming part of rate cases -- and eliminate the constant disputes over the Postal Service's refusal to supply data sought by the Commission, disputes which have especially plagued recent proceedings.
- Give the Commission clear authority over the Postal Service's revenue requirement. That authority is necessary to provide the incentive for the Postal Service to be efficient and control its costs. It serves much the same function as a rate index or price cap.
- Require the Postal Service to produce its Cost and Revenue Analysis report, using the Commission's costing methods, within 90 days of the end of its fiscal year. This is similar in intent to Section 3782 of the bill and to the requirement of the Securities Exchange Commission that private companies file financial information within 90 days after the end of the fiscal year. Right now, nobody knows whether rates cover costs until some seven or eight months after the Postal Service's fiscal year ends.

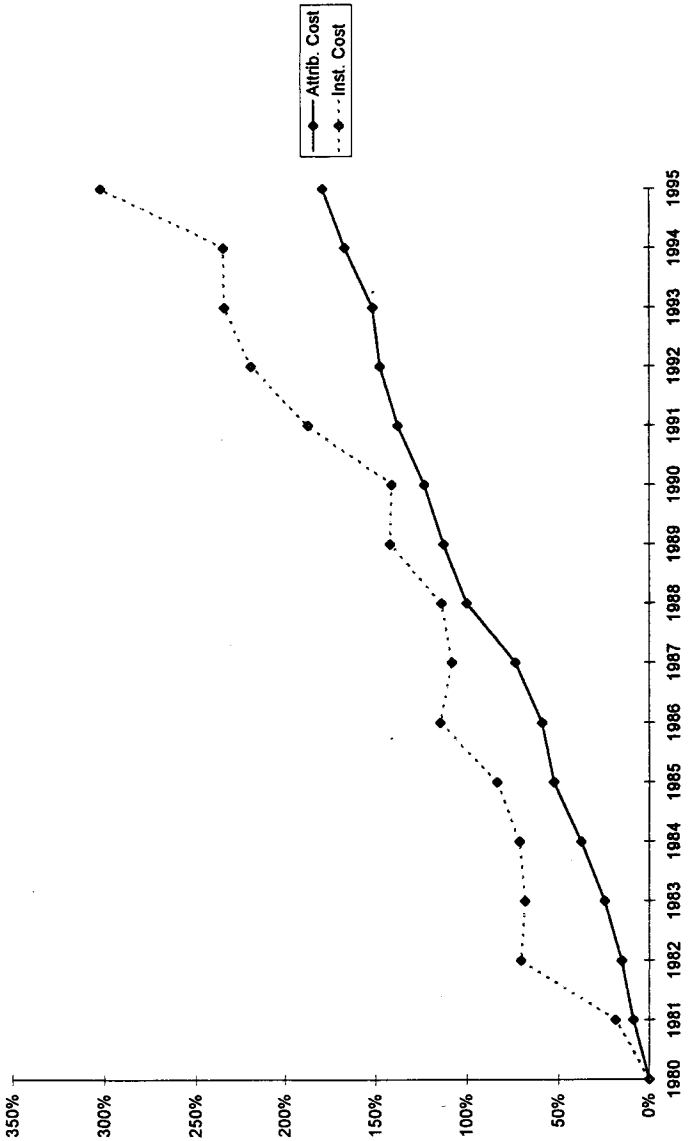
In 1970, Congress exhaustively examined the question UPS has submitted to this committee today: Does this country need a government-run postal service? It concluded that the Postal Service was created to be a public service first and foremost. Congress went on to mandate that the Postal Service be operated in a business-like and efficient fashion to the extent consistent with its public service mission. Congress did not make the Postal Service into a private business -- and for good reason. Providing universal mail service on a fair, equitable, and non-discriminatory basis is still the primary reason for the Postal Service's existence -- and the only possible justifiable reason for giving it a monopoly over letter mail.

Before pursuing reform, Congress must again address the basic question of whether it wants a government run postal service. If it does, the '70 Act can be improved upon in the ways we have suggested to fix the problems that have emerged over the last 26 years, and the Postal Service can be allowed to continue as long as its service provides value.

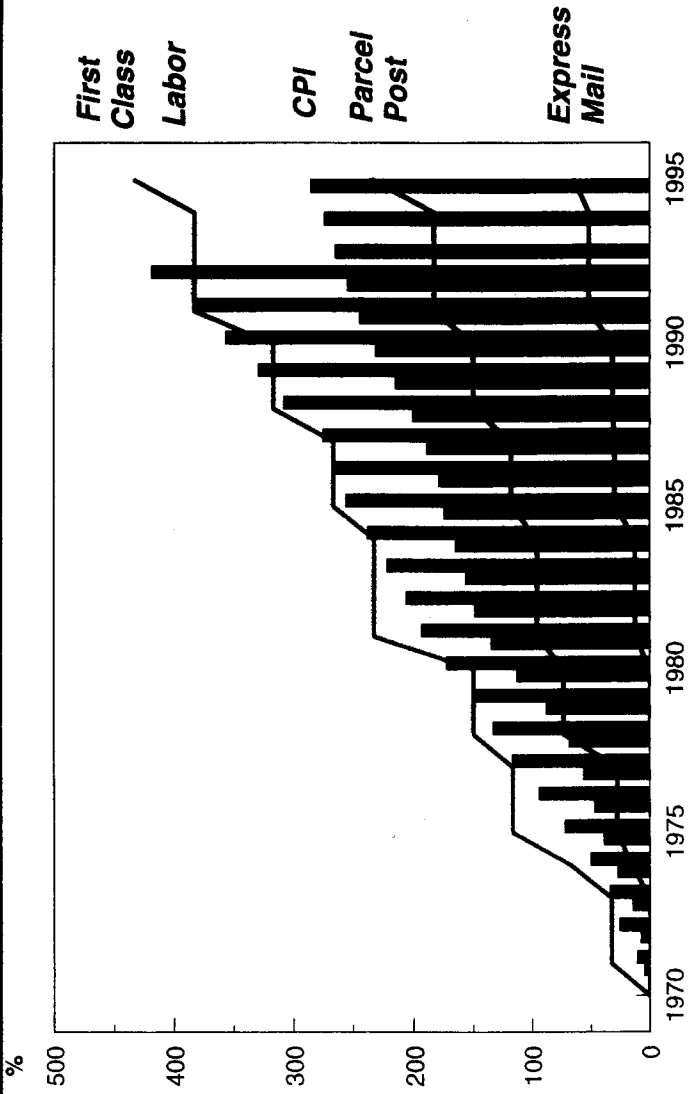
If the time has indeed come to make the Postal Service a business, as Mr. Runyon suggests, then let's make it a business. Now is not the time to take the middle of the road with the U.S. Postal Service. It is time to make a decision. I thank the committee for the opportunity to testify, and I welcome any questions you may have.

Chart

Percentage Increases in Attributable and Institutional Costs
All Mail



Percentage Rate Increases



Mr. MCHUGH. Thank you, Mr. Nelson. And, again, I appreciate not just your appearance here today but yours and your company's interest in this process and your participation over these past few months. It has been very helpful, and I look forward to the future.

Our, as the saying goes, last but certainly not least presenter on the third panel today is Mr. Philip Belyew. Welcome, sir. Thank you for your patience.

Mr. BELYEW. Thank you, Mr. Chairman. I am deeply honored to be able to testify before this subcommittee. I must admit it is rather difficult to follow two class acts like Fred Smith and Oz Nelson.

For the record, my name is Phil Belyew. I am the president of the Air Courier Conference of America, which is an association represented by about 100 companies, including United Parcel Service and Federal Express. They specialize in the same-day and next-day delivery of time-sensitive documents.

I am also the chairman and CEO of United Transnet, Inc., the second largest same-day delivery company in the United States, headquartered in that very fine city in the South which did such a magnificent job in the 1996 Olympics, Atlanta, GA—also, I believe, headquarters for United Parcel Service.

On behalf of the Air Courier Conference of America, I am delighted with the opportunity to address the subcommittee. Our basic point of view is very simple: The Postal Service wants to compete and we want them to compete. But our companies all operate in a very competitive environment and, as an industry, we want to make sure that in this environment we are competing on a level playing field.

Our industry in some ways is a very well-kept secret. Virtually everyone is aware of United Parcel, DHL, and Federal Express. The three companies represent probably \$35 billion in annual revenue and employ several hundreds of thousands of people. What may be a mystery is the other 15,000 delivery companies involved in same-day delivery of expedited packages and letters and, in most cases, are involved in time-critical shipments. These companies employ an additional 300,000 employees, with approximately \$15 billion in revenue. Add those numbers together and we equal in size the post office in the number of employees. And yet the Postal Service continues to operate in what we feel is an unfair advantage.

But ACCA's membership, which, as I said, includes United Parcel, FedEx, DHL, and Airborne, are all engaged in expedited delivery of packages and letters, working internationally and nationally and regionally, and providing, in some cases, highly specialized services, such as organ transplant delivery and critical parts shipments.

Virtually every one of these entrepreneurial enterprises competes with the Postal Service in one way or another. But Congress has given the Postal Service a competitive edge over an industry that is equal in size to them and provides as many jobs, if not more. That is why we support the antitrust provisions within H.R. 3717.

Earlier this year the Postal Service renegotiated its contracts with the airlines to carry mail. These same airlines are a vital link in the service provided by ACCA's members and the rest of the cou-

rier industry, since most of them are not large enough to have their own fleets of planes.

In its competitive zeal the post office added a change that said that the carriage of mail has boarding priority over the airlines' own package parcel products, which is the backbone of our industry. These provisions, enacted over the protest of several airlines, undermined the relationship between the airlines and the couriers and will adversely affect the public by bumping packages from the airlines in favor of the mail.

The thought of receiving a call late at night on February 12th or 13th from Ford Motor Co., saying they have an urgent part needed to keep the Ford assembly plant running in Detroit being bumped by a sack of Valentines is something I wouldn't hope for and certainly is not what the people of the Detroit area would desire or, even more significant, a call for a critical part supporting a major city's 911 system and the 911 system went down because we couldn't get on the plane. It would be most unfortunate.

This legislation will make it clear that the ability of the Postal Service to impose a contract like this puts them at an unfair competitive advantage but, more important, real people could suffer.

ACCA believes that the antitrust exemption over a 3-year trial period for experimental products is not appropriate. With a \$55 billion annual revenue base the Postal Service could easily target any one of its competitors and could cause material damage or even drive them out of business without fear of antitrust recourse. We believe that the Justice Department and not the Postal Service should have the sole authority to enforce the postal monopoly laws.

This fundamental unfairness extends to our ability to conduct business internationally. In the past 5 years the overseas delivery industry has boomed, primarily due to the innovations of our larger competitors, yet in the forum in which decisions involving international delivery practices are being made, are represented by the Postal Service alone acting in the name of the Government in deliberations on key regulatory issues. We believe that the representation of the U.S. consumer and the U.S. delivery industry should be the responsibility of the Government and not of a commercial postal service.

The Postal Service presently represents the United States at intergovernmental organizations such as the Universal Postal Union. Here, again, the Postal Service uses its position to ensure that the playing field is tilted in its favor to the detriment of the entrepreneurial enterprises. H.R. 3717 does not address this fundamental unfairness and should by vesting international rule-making power in an executive department involved in trade rather than a commercial postal service.

Finally, fair competition goes even as far as the mailbox. The laws passed in the 1930's preventing anyone but the Postal Service from using the mailbox were certainly not enacted with the idea of preventing express delivery companies from utilizing those mailboxes. There were not any express delivery companies in the 1930's. The use of the mailbox should not be so restrictive, because it restricts the freedoms of the owner to use it as he or she see fit and extends the monopoly beyond letter mail.

Fair competition is what makes innovation possible. That is ACCA's firm belief. For that reason, ACCA recommends the following: Implementing the proposed antitrust provisions, removing the 3-year antitrust exemption for experimental products, and requiring that the Postal Service be subject to all applicable commercial laws; extending jurisdiction of the Postal Rate Commission to include supervision of international mail rates on the same basis as domestic rates; providing that the U.S. Government, not the Postal Service, should represent the United States at intergovernmental organizations such as the Universal Postal Union; divesting the Postal Service of any enforcement authority over the postal monopoly laws; establishing by legislation a reasonable price limit for postal monopoly; authorizing the Postal Rate Commission to conduct a study of the impact of elimination of the monopoly on private mailboxes.

Once again, on behalf of the Air Courier Conference of America, I appreciate the opportunity to testify before this subcommittee on this critical issue and will be pleased to provide any additional information the subcommittee might request.

[The prepared statement of Mr. Belyew follows:]

**STATEMENT
of the
AIR COURIER CONFERENCE OF AMERICA**

The Air Courier Conference of America (ACCA) is pleased to accept the invitation of the Subcommittee to address public policies pertaining to the U.S. Postal Service. ACCA is the trade association of companies engaged in the expedited delivery of packages, typically on a same day or overnight basis. ACCA's members include integrated carriers such as DHL, United Parcel Service and Federal Express as well as national, international, regional, local, and specialist companies. ACCA has 69 members with total revenues of over \$40 billion, and was founded in 1975.

We would like to bring to the attention of the Subcommittee some postal policy issues which directly impact our industry. Some of these issues are broad, others specifically relate to HR 3717 which we, as an industry, have found it necessary to address in recent years.

1. ACCA SUPPORTS THE ANTITRUST PROVISIONS

Because our members compete with the Postal Service, we are most pleased with and commend the bill for its antitrust provision, Section 3744. By way of background, the 1970 Postal Reorganization Act included a "sue and be sued clause." The Supreme Court has twice held that the "sue and be sued" language of the Act stripped the Postal Service of its sovereign immunity and made it subject to suit in the same manner as any commercial venture. Loeffler v. Frank, 486 U.S. 549 (1988); Franchise Tax Board of California v. United States Postal Service, 467 U.S. 512 (1984). Nothing in the 1970 Act exempts the Postal Service from the antitrust laws, and implied exemptions are not lightly inferred. Accordingly, notwithstanding of the Postal Service's continued claims of sovereign immunity, there is compelling legal precedent to support the proposition that the Postal Service is already subject to the antitrust laws. Nonetheless, the chasm between legal reality, on the one hand, and the perception, myth and conduct of the Postal Service, on the other, makes the bill's provision holding the Postal Service's feet to the antitrust fires extremely important to

ACCA's membership. There can be little doubt of the need for this provision. As an example, earlier this year, the Postal Service re-negotiated its transportation contracts with airlines. These are the contracts under which the Postal Service puts mail on domestic air carriers. These same air carriers offer an array of services to couriers. In fact, the airlines tell us that counter-to-counter service, which is essential for same-day courier service, may be the airlines' single most profitable service.

In its competitive zeal, the Postal Service has imposed contractual provisions on airlines that intentionally undermine the relationship between the airlines and couriers. In March 1996 amendments to the carriers' contracts with the Postal Service, the Postal Service, over several airlines' objections, added a provision that the carriage of mail has boarding priority over couriers' small package/parcel product unless a courier is traveling on an aircraft, in which case the product may have boarding priority ahead of mail provided that the courier pays the airline's published excess baggage rate, thus excluding negotiated rates for couriers.

This provision will have adverse competitive effects on the public and the courier companies providing their specialized services. It will demote unaccompanied courier shipments from second place boarding priority (after passengers) to lower priority, just ahead of general cargo. The possible resultant bumping of courier shipments will hurt couriers' reputations with their customers, and increase their expenses, by requiring courier delivery personnel to wait until the departure of the flight is confirmed or risk having to return to make alternative arrangements for any bumped shipments. Furthermore, public health, safety and economic security will be put severely at risk when organ transplants, joint replacements, and essential parts to keep factories and computer systems up and running will be bumped by Christmas cards.

The amended provision in the Postal Service's contracts with the airlines represents a clear abuse of the Postal Service's dominance and purchasing power to the detriment of its competitors. The bill's provision will make clear that this amendment may be challenged in court under the antitrust laws.

However, the antitrust provision would benefit from further study and possible modification in two areas. First, antitrust violations are the result of actions by the Postal Service and its employees. They may not be easily ascribed to a particular

Postal Service product. To the extent Postal Service conduct harms a competitor in a business that competitors are permitted by law to conduct, it should not matter which of its postal products the Postal Service is trying to promote. As worded, there is a substantial risk that any antitrust challenge to anticompetitive conduct by the Postal Service will bog down into a metaphysical question of whether the postal product involved is in a competitive category of mail.

Second, there is no sound reason why the Postal Service should have antitrust immunity for the three year duration of experimental products. This would allow the Postal Service to price experimental competitive products in a predatory way, tie them to the sale of First Class Mail and engage in other predatory conduct to establish its product. In so doing it could target specific small competitors and drive them out of business with impunity. With the cushion of \$55 billion in annual revenues, the Postal Service can destroy any competitor in three years, particularly ACCA's smaller start-up members that are a frequent source of innovation in the market. Given that the Postal Service has no explicit antitrust immunity at present, the three year provision would be a step backward that would undermine the entire provision.

Accordingly, ACCA would ask the Committee to reconsider the limitations on the antitrust provision.

2. POSTAL INSPECTION SERVICE ACTIVITIES ARE INCOMPATIBLE WITH A MORE COMMERCIAL POSTAL SERVICE

The Postal Inspection Service is a law enforcement arm of the Postal Service. It is primarily responsible for security of personnel, facilities and investigation of postal crimes.

Recently, postal inspectors have been called upon by the Postmaster General to increase revenues for the Postal Service. As a result, the Inspection Service has initiated what it calls RAPP, the Revenue and Asset Protection Program. RAPP has resulted in several investigations of and lawsuits against the Postal Service's competitors and such competitors' customers.

In a case against an ACCA member, the Postal Inspection Service sought treble damages under the False Claims Act for the alleged "violation" of a postal procedures manual. The Postal Service's relentless pursuit of competitors raises a series of questions about the Postal Service's status. For example, can the Postal Service

exercise its rule-making authority for anti-competitive purposes? Should the Postal Inspection Service have any role in enforcing the Private Express Statutes and the Postal Service's attempts to limit competition by regulation? Does the Postal Service have authority to enforce the False Claims Act and other laws that protect the taxpayer funds in the U.S. Treasury when the Postal Service is independent of Treasury funding, and even Treasury contributions? The Postal Service's claims of authority to enforce the False Claims Act are particularly ironic at a time when it is engaging in massive advertising of its corporate status, free of government funding.

Unless some of the issues are more clearly addressed in reform legislation, Congressional intent to subject the Postal Service to competition may be thwarted by the Postal Service's expanded claims of rule-making authority, by the Postal Service's attempts to exercise governmental authority under the likes of legislation such as the False Claims Act, and by the Postal Inspection Service's use of police powers against the Postal Service's competitors.

3. AUTHORITY TO ADMINISTER THE POSTAL MONOPOLY SHOULD BE VESTED IN THE DEPARTMENT OF JUSTICE.

In the Subcommittee's oversight hearings in June 1995, ACCA urged the Subcommittee to divest the Postal Service of authority to administer or enforce the postal monopoly laws. While HR 3717 does not address this issue, we would respectfully ask the Subcommittee to reconsider the matter. HR 3717 would give the Postal Service more freedom to compete with private carriers in the delivery service industry. The more competitive the Postal Service becomes, the more unfair it is to allow the Postal Service to administer and enforce the postal monopoly.

The case for divesting the Postal Service of administrative responsibility over the postal monopoly is, we submit, strongly reinforced by a consideration of the distortions of original legislative intent that have crept into the Postal Service's postal monopoly regulations. It is impossible for a student of postal law to say that the current postal monopoly regulations represent a faithful execution of the postal monopoly law as enacted by Congress. Even the General Accounting Office is confused by the Postal Service's obfuscations. A recent GAO report on the postal monopoly incorporates a number of legal and historical errors in describing the postal monopoly; the source of

this confusion is plainly the Postal Service. (ACCA's comments on a draft version of the GAO report are included as **Appendix A** to this testimony).

4. THE POSTAL SERVICE SHOULD BE SUBJECT TO OTHER LAWS AFFECTING COMMERCE

ACCA believes that the Postal Service should be subject not only to the antitrust laws, but also to other laws to which commercial endeavors are generally subject. ACCA believes the Postal Service is already subject to such laws. However, the bill, by making explicit that the Postal Service is subject to the antitrust laws, may enable the Postal Service to argue that it is not subject to other laws generally governing commercial entities. Our concerns are based on the experience of our members litigating against the Postal Service. In one case, an ACCA member filed a counterclaim for unfair competition in a suit by the Postal Service as a result of the Postal Service's having planted a false and misleading article in an industry newsletter about the Postal Service's complaint against the ACCA member. The court dismissed the Postal Service's suit, yet also dismissed the air courier's counterclaim as barred by the Postal Service's alleged sovereign immunity, despite the two clear Supreme Court decisions subjecting the Postal Service to suit in the same manner as other commercial entities. Another member company has recently sued the Postal Service for trademark infringement under the Lanham Act. The firm is challenging the Postal Service's right to use "Global Priority Mail" in light of the ACCA member's registered service mark.

These examples as well as the Postal Service's aggressive, possibly false and misleading comparative advertising campaign naming competitors and using actors to impersonate competitors' employees, make clear that competitors need all the remedies available against commercial entities to protect themselves against the Postal Service's business practices.

Moreover, Congress is presumed to know the latest court interpretations of a statute at the time it considers amendments. Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723 (1975). Thus, any court decision on the books that Congress does not explicitly reverse is likely to be relied upon after the bill is enacted.

Accordingly, the Committee may want to include a provision in H.R. 3717 which specifies that the Postal Service is subject to the full panoply of laws applicable to

commercial entities. The provision may list these laws and also articulate a standard that the courts should apply when considering the application of laws to the Postal Service that the list may overlook. The list should include federal statutes and state common law and statutory causes of actions for unfair competition, interference with business relations, patent, trademark and copyright infringement, theft of trade secrets, malicious prosecution, defamation and similar causes of action.

5. ACCA SUPPORTS THE \$2 LIMIT ON THE POSTAL MONOPOLY.

In June 1995, ACCA urged the Subcommittee to consider a price limit ceiling for the postal monopoly, pointing out that many other countries had adopted such a limit without affecting the quality of universal service. HR 3717 does indeed propose a price limit of \$2. ACCA gratefully acknowledges the attention of the Subcommittee to this concept and strongly supports the proposed provision.

6. AUTHORITY TO NEGOTIATE AGREEMENTS RELATING TO INTERNATIONAL LAW SHOULD BE VESTED IN AN EXECUTIVE DEPARTMENT.

In our testimony in June 1995, we summarized the problems that have arisen because the Postal Service, rather than an Executive Department, represents the United States at inter-governmental organizations such as the Universal Postal Union. In brief, the Postal Service has, in the name of the United States, agreed to various international postal agreements which have the force of international law and which inhibit competition to the commercial benefit of the Postal Service but the detriment of the United States. We urged the Subcommittee to revise 39 USC 407 to divest the Postal Service of authority to represent the United States at inter-governmental organizations with treaty-making powers. We did not, and do not, object to the Postal Service's conclusion of international postal *contracts*, provided these contracts do not have status of public international law.

HR 3717 does not respond to ACCA's suggestion. However, HR 3717 would exacerbate the need to vest international negotiating authority in an Executive Department by classifying most international mail as part of the class of "competitive products" over which the Postal Service may exercise substantial commercial freedom.

We believe that vesting international law making power in an Executive Department, rather than the commercially active Postal Service, is a matter of fundamental fairness to which no plausible objections can be raised. As in the case of Postal Service administration of the postal monopoly, the problem to be addressed is that of the Postal Service acting as both competitor and governor.

7. ACCA SUPPORTS THE PROVISIONS OF HR 3717 THAT WOULD SUBJECT INTERNATIONAL RATES TO THE SAME POSTAL RATE COMMISSION SCRUTINY AS DOMESTIC RATES.

ACCA is particularly pleased to note that HR 3717 would subject international mail rates to the same Postal Rate Commission scrutiny as domestic rates. Although ACCA is not in a position to either support or oppose all of the changes in Postal Rate Commission review proposed in HR 3717, we can unqualifiedly endorse the extension of basic ratemaking principles to international mail.

8. ACCA SUPPORTS THE MAILBOX STUDY

ACCA strongly supports the goal of eliminating one of the strangest monopolies in the United States, the anachronistic monopoly the Postal Service enjoys over the private mailboxes and mail slots bought and paid for by Americans. The survival of the Postal Service's exclusive access to the decidedly low-tech individual mail box into the age of the Internet is truly remarkable. Unlike telephones, mail boxes are not interconnected with other mailboxes, and do not have the potential to receive strong currents or foreign signals. Thus, the arguments that the Bell System used for so long to maintain its monopoly on the telephone instruments plugged into the wall jack do not apply to mail boxes.

Without the elimination of AT&T's monopoly, the internet could never have been created. Yet years after that monopoly was eliminated, the Postal Service retains its monopoly over the mail box. ACCA, therefore, appreciates section 703 of the bill for placing this issue on the reform agenda, a long overdue and welcome first step.

Nevertheless, given the lack of any potential technical problems from freeing America's Girl Scouts, neighborhood associations and pizza parlors from placing their flyers into America's mail boxes, ACCA wonders why the first step is so timid and why Congress would entrust its outcome to the party that has resisted this change all the

way to the Supreme Court. United States Postal Service v. Council of Greenburgh Civic Associations, 101 S. Ct. 2676 (1981).

There is really no good reason to conduct a study before eliminating the mail box monopoly. First, the monopoly is an unnecessary extension of the Postal Service's exclusivity on first class mail. As such, it prevents competitors like ACCA members and local messengers from competing with the Postal Service in the delivery of materials that are not protected by the Private Express Statutes. Thus, in the unlikely event that the Postal Service will be shown to lose any volume, it will be mail that is not protected by the Private Express Statutes in the first place. The only likely outcome of eliminating the mail box monopoly is to decriminalize activity that goes on anyway and eliminate the litter on lawns, in apartment hallways and in college dormitory lobbies from those who do obey the law.

However, if there has to be a test, ACCA and the public would be much more comfortable if Congress entrusted a disinterested party with conducting it. ACCA nominates the Postal Rate Commission, an impartial, commercially disinterested party that could be expected to carefully weight the effects of the monopoly's elimination. Moreover, the parameters of the study, ACCA submits, should be limited to the effects of the elimination of the monopoly on First Class Mail. Finally, if there has to be a study, Congress should set objective criteria for its success, which, if met, would confer authority on the PRC to terminate the mail box monopoly by regulation. Such a proceeding should have input from the Postal Service as well as the Antitrust Division of the Department of Justice.

CONCLUSIONS

In light of the foregoing considerations, ACCA respectfully urges the Subcommittee to consider the following recommendations:

1. Implement the proposed antitrust provisions, removing the three year provision, and require that the USPS is subject to all applicable commercial laws.

2. Extend jurisdiction of the Postal Rate Commission to include supervision of international mail rates on the same basis as domestic rates.
3. Provide that the United States government, not the U.S. Postal Service, should represent the United States at inter-governmental organizations, such as the UPU, which adopt or amend international agreements and conventions having general legal effect.
4. Divest the Postal Service of any administrative authority over the postal monopoly laws.
5. Legislatively establish a reasonable price limit for the postal monopoly.
6. Authorize the Postal Rate Commission to conduct a study on the impact of elimination of the monopoly on private mailboxes.

ACCA appreciates the opportunity to offer input to the Subcommittee's deliberations and will be pleased to provide the Subcommittee with additional information in regard to any aspect of this testimony.

Thank you for your consideration of our proposals.

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AIR COURIER CONFERENCE OF AMERICA

COMMENTS ON THE JULY 17, 1996, DRAFT OF
A REPORT BY THE GENERAL ACCOUNTING OFFICE
"STATUTORY RESTRICTIONS ON PRIVATE
LETTER DELIVERY ARE QUESTIONED"

SEPTEMBER 13, 1996

1. The Draft Report incorrectly suggests the postal monopoly established by the postal act of 1872 can be enlarged by Postal Service regulations.

Contrary to the Draft Report, the scope of the postal monopoly cannot be "broadened" by "regulatory changes" (II.14) adopted by the Postal Service or its predecessor, the Post Office Department. To conclude otherwise would be inconsistent with the Constitutional principles of separation of powers (since Congress has never delegated authority to modify the scope of the postal monopoly) and due process (since USPS is financially interested in the scope of the monopoly). For these reasons, it appears incorrect to state that "Postal Service regulations define a letter" (II.14) or determine the "current scope of the monopoly" (II.15). Postal Service regulations only "interpret" the scope of the monopoly and are valid to the extent they conform to the scope of the monopoly granted by Congress in 1872.

2. The Draft Report understates the scope of the postal monopoly now claimed by Postal Service regulations and fails to contrast the Postal Service's position with the underlying statute.

Contrary to the Draft Report (II.17), the Postal Service claims that its monopoly over the carriage of "letters" includes second class as well as first and third class matter. The position of the USPS is that, since 1974, it has "suspended" the postal monopoly over second class matter. According to this position, the postal monopoly "suspensions" in regard to second class matter stand on the same footing as the "suspensions" in regard to "urgent letters" and first class matter such as "checks" and "telegrams."

This Postal Service "interpretation" of the scope of the postal monopoly statute is, however, plainly inconsistent with the postal monopoly granted by Congress in the 1872 act. The statutory monopoly covered the regular carriage of "letters and packets." As contemporaneous interpretation makes clear, the postal monopoly did not include "commercial papers" wholly or partly in writing; even though such items were "first class" mail. The postal monopoly also did not include printed matter in the second class (newspapers, magazines, and periodicals) or third class (miscellaneous printed matter such as circulars, pamphlets).

Since one purpose of the Draft Report is to "determine the historical and current basis" (II.11) for the postal monopoly, it appears necessary to set out the precise statutory text which establishes the postal monopoly and to describe accurately the legal position of the Postal Service.

3. The Draft Report's description of the congressional intent underlying the postal monopoly law is confusing at best.

The Draft Report implies that Congress established the postal monopoly in order to finance what we now think of as "universal postal service." The Draft Report (II.12-13) first devotes a page and a half to emphasizing the *current* public service aspects of the "*primary mission*" set for the Postal Service in the 1970 act. Mixing apples and oranges, the Draft Report then reports (Draft Report, II.14) that "the monopoly was created by Congress as a revenue protection measure for the Postal Service's predecessor to enable it to fulfill *its mission*" without making clear that the "mission" of the Post Office Department when Congress last debated the postal monopoly statute (1845) was entirely different from the "mission" just described.

In 1845, Congress did not conclude that a postal monopoly was needed to sustain what we now think of as universal service. At that time, the Post Office did not provide delivery of mail (only post office to post office service), did not serve the entire country, and did not maintain a uniform letter rate. While the intent of Congress underlying the 1845 act is not entirely clear, it seems that Congress was attempting to (i) suppress the development of private express companies made possible by the onset of steam powered transportation, (ii) protect the financial capacity of the Post Office to finance the building of post roads serving post offices in southern and western states, (iii) limit the ability of private interests to obtain commercial information more quickly than the public generally, and (iv) protect the political power of the federal government derived from establishment of post roads and appointment of postmasters. The postal monopoly act of 1845 did not prohibit private local (intra-city) mail service or private mail service to the far western states, and in fact, both of these services were pioneered by private companies, not by the Post Office Department.

In 1872, Congress revised the 1845 postal monopoly as part of a general revision and codification of the postal laws. The Congressional intent underlying the revised postal monopoly is unknown since there exists no legislative history specifically discussing these provisions.

Thus, it is incorrect to suggest that "according to legislative history . . . the purpose of the Statutes has long been to ensure adequate revenue to protect . . . universal mail service to all communities" (Draft Report, II.26). In fact, Congress has never examined the relationship between the postal monopoly and what is now thought of as universal service. Similarly, the Draft Report incorrectly states that Congress expressed itself in respect to the postal monopoly in the 1970 act: ("Congress adopted then existing restrictions on private letter delivery" (Draft Report, II.14)). In fact, Congress did not revisit the postal monopoly provisions in the 1970 act, even by way of formal reenactment.

Similarly, the Draft Report deals imprecisely with the historical scope of the "private express" laws. The Draft Report (II.13) states that "for over 200 years the Postal Service and its predecessors have operated with a statutory monopoly imposed by the Private Express Statutes, which restrict the private delivery of most letters." In fact, private expresses were not prohibited before 1845 and private delivery of mail was not prohibited until 1872. The term "Private Express Statutes" — inflated

by capitalization -- was never used by Congress in legislation. It was coined for public relations pamphlets put out by the Post Office Department in the 1930's to discourage competition.

4. The Draft Report should clarify the evidence casting doubt on the "suspension power" and the significance of this debate for USPS's postal monopoly regulations.

The suspension power is inextricably related to the broad claim of monopoly adopted by the Postal Service in 1974. In the 1974 regulations, the Postal Service claimed, for the first time, that the postal monopoly of 1872 included the carriage of all first, second, and third class matter. To assuage skeptical mailers, the Postal Service also claimed, for the first time, to have authority to suspend the postal monopoly, citing an 1864 postal act (now 39 USC 601(b)). Under color of this act, Postal Service announced suspensions of the monopoly for carriage of items of interest to politically powerful groups such as newspapers, magazines, banks, and telecommunications companies.

In fact, the legislative record of the 1864 act is crystal clear and flatly contradicts the Postal Service's claims of a suspension power. The absence of such authority undercuts the entire structure of the Postal Service's 1974 postal monopoly regulations. The Draft Report obscures this fundamental fact, however, by failing to provide details of the legislative history of the 1864 act. The entire legislative history to the 1864 act can be recounted in two or three pages. The Draft Report should have done so.

The Draft Report lends further credibility to the mythical suspension power by repeatedly referring to it as though Congress actually delegated such authority to the Postal Service (e.g., II.14, II.15, II.16, II.26, II.36, II.39, II.40, II.44, II.60, II.67). The false impression created by such references is partially qualified in a section in the Draft Report (II.46-49) which suggests that an absence of suspension power may cast doubt on the validity of two particular suspensions: the suspensions for urgent letters and international remail ("such suspensions", II.46). Legally, however, the absence of a suspension power renders invalid all purported suspensions of the postal monopoly, including suspensions for private delivery of newspapers, magazines, financial instruments, and electronic hard copy ("telegrams"). In other words, all references to suspensions in the Draft Report must be qualified, not merely references to suspensions for urgent letters and international remail.

The Draft Report also incorrectly implies that private delivery companies have endorsed the Postal Service's claim of a suspension power by requesting the Postal Service to suspend the postal monopoly for urgent letters. The Draft Report declares that "responding to pressures from mailers and competitors, the Service suspended the operation of the Statutes for certain letters in 1979 and 1986" (II.36) and "as a result of requests made primarily by private delivery companies, the Service has issued regulations to suspend the Statutes for certain letters" (II.46). In fact, in the mid 1970s, the private delivery companies petitioned *Congress*, not the Postal Service, for legislation to except urgent letters from the postal monopoly. In the mid 1980s, private companies did not request the Postal Service to suspend the postal monopoly as it applied to international remail; they merely opposed the Postal Service's efforts to amend the postal monopoly regulations in such a way as to

expand the threat then posed to international remail. From 1974 to the present, private delivery companies have repeatedly challenged the existence of the suspension power.

5. The Draft Report incorrectly states that the Postal Service has adopted a "suspension" covering all outbound international mail.

The Draft Report states that the Postal Service has suspended the postal monopoly for "international letters originating in the United States for delivery in other countries" (II.46) and "all outbound international letters" (II.47). In fact, the purported suspension (39 CFR 320.8), pertains only to international letters tendered to foreign post offices and not to letters delivered by private companies. Insofar as they are legally valid, the Postal Service's postal monopoly regulations continue to prohibit the private delivery of U.S. mail in foreign countries. The "international remail suspension" is nothing more than a rule that says a mailer may give his mail to a post office closer to the final destination; he must still give it to a post office.

6. The Draft Report fails to highlight serious legal questions regarding the Postal Service's efforts to enforce the postal monopoly.

The Draft Report reports that "enforcing the statutes has become difficult" (II.49) and relates various difficulties that Postal Service inspectors have had in enforcing the postal monopoly. This discussion wholly omits any discussion of the serious legal questions posed by such efforts. In particular, the Draft Report fails to note that Postal Service inspectors have repeatedly searched mailers' offices even though the law setting out the limits of their search authority (39 USC 603) does not permit such searches.

The Draft Report states that were not "any fines or penalties assessed" mailers subject to searches by Postal Service inspectors between October 1988 and June 1994 (II.51). ACCA believes this statement is incorrect. For example, the Equifax case (II.53-54) certainly seems to reflect a "fine." More importantly, the Draft Report fails to make clear that a Postal Service regulation (39 CFR 310.5) threatens mailers with these fines even though legal authority to impose such fines has been denied in opinions by the Attorney General of the United States and the solicitor of the Post Office Department.

The Draft Report gives the erroneous impression the Postal Service has more or less abandoned attempts to enforce the postal monopoly: "direct enforcement of the Statutes rarely occurs" (II.49) and "by June 1994, the Postmaster General had deemphasized the Postal Inspection Service role in ensuring compliance" (II.54). While direct harassment of mailers by Postal Inspectors has diminished (it has not stopped), the most important mechanism for threatening mailers has persisted without change: Postal Service regulations which threaten mailers with "audits" (39 CFR 320.6(e)), "back postage" fines (39 CFR 310.5), and loss of access to private carriers for the delivery of urgent letters (39 CFR 320.6(e)). Published regulations affect many more mailers than occasional enforcement efforts.

7. The Draft Report incorrectly suggests that there is a substantial debate among economists as to whether a postal monopoly is necessary to provide "efficient, universal, and affordable postal services" (II.42).

The Draft Report incorrectly suggests that there is substantial economic support for the proposition that a postal monopoly is needed to provide "efficient, universal, and affordable postal services" (II.42). To sustain the impression of an economic argument supporting the monopoly position, the Draft Report repeatedly relies upon statements of unsubstantiated beliefs attributed to the Postal Service -- e.g., "The Postal Service believes that any change in the Statutes could jeopardize its ability to meet such public mandates (II.26-27); "The Postal Service believes that the Statutes must remain intact to carry out its current public service mission" (II.34); "The Service believes the protection provided under its double postage rule is necessary for meeting its public service obligations" (II.35) -- while failing to point out past instances in which Postal Service predictions concerning the ruinous effects of an urgent letter exemption proved groundless. The Draft Report also relies upon vague attributions to nameless experts -- e.g., "some experts on the economics of postal services" (II.37); "various competing economic theories" (II.42); "some maintain" (II.42). The Draft Report concludes its review of the economic literature by declaring that "none of the materials that we reviewed indicated a need to expand the scope of the Statutes" (II.42), implying that some of the material offered an economic basis for the current postal monopoly.

In this manner, the Draft Report not only fails to clarify, it obscures the answer to the economic question which should have been central to its study: What economic reasons, if any, have been advanced by reputable, independent (i.e., not associated with the Postal Service or its competitors) economists to support the belief that a postal monopoly is necessary or desirable to assure the United States "efficient, universal, and affordable postal services" (II.42)? It may be beyond the task of GAO to evaluate the economic arguments -- "a complete economic analysis of all economic perspectives on the Statutes was not within the scope of our review" (II.38)) -- but it does not seem too much for GAO to identify the key arguments and their proponents, if any.

In fact, so far as ACCA is aware, there is no true debate among economists over the postal monopoly because no reputable economist believes that the postal monopoly is sound public policy. The failure of the Draft Report to survey the economic literature and identify the presence or absence of reputable, independent analysis to support the postal monopoly represents a fundamental missing link in the Draft Report.

8. The Draft Report incorrectly suggests that the Postal Service pioneered express mail service.

By selectively comparing the beginning dates for the Postal Service's Express Mail and Federal Express, the Draft Report gives the incorrect impression that the Postal Service pioneered modern express mail service. The Draft Report states that "in 1971, when the Postal Service introduced an experimental Express Mail service, Federal Express (FedEx) was not yet operating . . . it appears that FedEx may have surpassed the Postal Service as the leading overnight delivery carrier in less than 5 years." (II.58-59). This presentation suggests that the Postal Service pioneered express mail

service and that private companies such as FedEx took it away from the Postal Service. In fact, what is now known as express mail service was pioneered by "courier" companies such as DHL, Purolator, and World Courier. FedEx pioneered the use of a dedicated hub and spoke air transport system which made domestic express mail into the great national service it is today. In both the development of express mail service and in the development of the dedicated hub and spoke system, private companies led the Postal Service.

The Postal Service's role in the development of express mail in the United States was correctly reflected in the 1973 Postal Service Board of Governors report on the postal monopoly. Referring to conditions as of June 30, 1972, this report stated that:

In addition to the practical problems of detecting such violations and enforcing the Statutes, there may be serious equitable considerations. Primary among them is whether a postal service is offered which is comparable to that of the courier in terms of convenience, celerity, certainty and cost. The answer has been negative in numerous investigations. The extent to which the Postal Service can improve that comparison, by the recently announced restoration of late collections and innovations such as Express Mail, remains to be seen. [Appendix E, page 83 (emphasis added)]

As this report makes clear, in mid 1972, the Postal Service did not offer an express service that was "comparable to that of the courier in terms of convenience, celerity, certainty and cost". Since the Draft Report repeatedly cites this Board of Governors report (e.g., II.14, II.36-38, II.42, II.59), there does not seem to be any justification for overlooking these facts.

9. The Draft Report incorrectly states that "private carriers have come to dominate [the international mail] market" (II.67).

The Draft Report's statements based upon GAO's reading of a 1992 market analysis by the Postal Service are reported in GAO's report, "U.S. Postal Service: Unresolved Issues in the International Mail Market" (1996). As ACCA demonstrated in its response to that report, GAO's analysis of this Postal Service study yielded a misleading and incorrect portrait of the market. Major flaws in this analysis include the facts that (i) the analysis ignores qualitative differences between submarkets (i.e., 1 ounce letters and 30 pound packages are qualitatively different markets), (ii) the analysis ignores the inbound market, and (iii) the analysis ignores the economic values associated with the delivery of outbound remail.

10. The Draft Report's analysis of the results of eliminating the postal monopoly fails to reflect a public interest perspective and is superficial.

Chapters 3 and 4 of the Draft Report (consisting of half of the report) concentrate on the possible dangers of greater competition to the Postal Service's business. ACCA submits that this

analysis is fundamentally misguided. The public policy issue is not the commercial well being of the Postal Service but the level and quality of delivery services available to the public. Throughout Chapter 3, the yardstick employed is the "market share" of the Postal Service. Each appearance of a competitor is portrayed as a trespasser on the commercial preserve of the Postal Service instead of a new option and service improvement for the mailer. While Chapter 3 may be appropriate as an internal report of the Postal Service's marketing department, it is inappropriate as a study to inform public policy.

Chapter 4 tries to predict the financial effects of eliminating the postal monopoly on various classes of mail. The postal service seen most threatened by elimination of the postal monopoly law is Priority Mail. In the absence of a postal monopoly, the Draft Report notes that both private carriers (II.91-92) and the Postal Service (II.132-34) are likely to compete more aggressively. These observations are obvious and cannot foretell the outcome of competition. The key issue is to what extent mailers are today persuaded by the postal monopoly law to use Priority Mail more than they otherwise would. On this critical issue, the Draft Report relies upon a survey of 14 mailers, of whom only 3 stated that they were "likely to divert Priority Mail letters to private carriers if the Statutes were modified." (II. 101). There is no indication of how much Priority Mail might be "diverted" even from these 3 mailers nor whether these statements were based "off the cuff" answers or substantial analytical study. From the statements from 3 out of 14 mailers, the Draft Report reports that "the relative risk of loss" of Priority Mail is "high" if the postal monopoly law is repealed. ACCA submits such analysis is superficial and inconclusive.

11. The Draft Report's survey of foreign postal monopolies fails to draw the obvious conclusion that the postal monopoly bears no relationship to the level or quality of universal postal service.

The Draft Report reviews the postal monopolies in several other countries but fails to draw the obvious conclusion that the postal monopoly law bears no apparent relationship to the level or quality of universal postal service. Chapter 5 of the Draft Report draws heavily from a Price Waterhouse survey of postal laws in eight developed countries. The Draft Report notes that the postal monopoly laws were different in the 8 countries surveyed (II.147), that the scope of the postal monopoly had been reduced in many of these countries (II.144), and that none of the 8 countries restricted access to mail boxes (II.146). In no case was there a reported drop in the quality of universal service due to a reduction (or, in the case of Sweden, elimination) of the postal monopoly. In no case was there a reported need to restrict access to mail boxes in order to ensure universal service.

ACCA submits that the Draft Report's review of foreign postal practices is remarkable for what it did not find. There appears to be no relationship between (i) the scope of the postal monopoly and/or restrictions on mail box access and (ii) the quality or level of universal postal service (public and private) available to mailers. This was, as ACCA understands it, the explicit conclusion of another Price Waterhouse report, prepared for the German government in 1994. Given the obvious importance of such evidence for national postal policy, ACCA submits that the Draft Report should have pressed further in its comparative analysis of postal monopoly laws.

12. It is fundamentally unfair for the GAO to include the comments of the Postal Service in its report and exclude comments by private delivery services.

GAO has stated it will include the comments of the Postal Service in the final version of its report but not include the comments of private delivery services. Since the GAO report concerns a law which vitally affects commercial competition between the Postal Service and private delivery services, ACCA submits that it is fundamentally unfair to include comments from the Postal Service without including the comments of private delivery services.

Mr. MCHUGH. Thank you very much, Mr. Belyew.

Mr. Smith, let me start off with you. We might be able to kill a couple of birds here—to answer some of what is wrong with the educational system in America. Is the story true that I heard that you wrote a college thesis that essentially gave the outline for establishing Federal Express and submitted it and got a C?

Mr. SMITH. Well, Mr. Chairman, let me just make sure that I be—

Mr. MCHUGH. You're under oath. [Laughter.]

Mr. SMITH [continuing]. On the front end of this and say that a C would have been a very good grade. [Laughter.]

So I was happy to get whatever I got on that paper.

Mr. MCHUGH. Well, for me, C was always up. It's very nice to have you here; I'm glad that I can point you out to other folks to justify my under-achieving.

Let me go and ramble back to some of the comments that you had made during your opening remarks and, also, as I noted during your presentation of your paper, because, as I said, I found it very thorough and very helpful.

You talked about requiring the Postal Service to make a profit on the competitive side. You also talked about some interesting ways in which that could be used. But have you had a chance to think about how we might enforce that? I mean, to say it is one thing. And as I've heard from you three panelists and as we have heard repeatedly throughout this process, one of the real concerns in the system, either as it exists today or as anyone might propose, is veracity of numbers and making sure that what we are saying is, in fact, being done.

How might we enforce or track that kind of requirement?

Mr. SMITH. Well, I think that the most important element in that regard, Mr. Chairman, is to vest in the Postal Rate Commission very strong regulatory powers and, equally important, I suppose, is to require the Postal Service to make any and all information in terms of costs and allocation formulas and so forth available to the Postal Rate Commission.

I think the proposal is that they could introduce a new competitive product and then, at the end of the year, the PRC can go and audit it. But then, if at that point, if the PRC finds that the Postal Service has not been fairly allocating its costs and been utilizing its monopoly cash-flows to subsidize competition against private competitors, then the Postal Rate Commission would have the ability to order and to cause to effect rate increases or, I suppose, decreases—I can't think of a circumstance where there would be a rate decrease, because you wouldn't limit their earnings power—but could mandate a rate increase to correct the misallocation.

Mr. MCHUGH. Actually, the new product introduction period is 3 years. Then your audit is after one. So—

Mr. SMITH. No, what I meant was that under the bill, after the phase-in period, the Postal Service can introduce the new service. Then, a year after that service has been in place, the PRC can come and audit—

Mr. MCHUGH. Oh, after the experiment.

Mr. SMITH [continuing]. After it has already been in place. So they would have to have an enforcement mechanism right then, that if it is wrong, to force rate increases.

Mr. MCHUGH. Mr. Belyew, you mentioned your concern, and I understand that, about that 3-year introductory period on test products.

Mr. BELYEW. Right.

Mr. MCHUGH. And the exemption from antitrust provisions. I suspect I am asking the obvious, but let me ask it anyway. Would you find any comfort in reduction of that period to the first audit line so that the exemption, rather than 3 years, would technically be through that first 1 year until we perform an audit? Or do you think it is absolutely essentially we eliminate that antitrust provision from day one?

Mr. BELYEW. Well, certainly we would like it to be eliminated, but a 1-year exemption would be much better than a 3-year one.

Mr. MCHUGH. So you would find some comfort there?

Mr. BELYEW. Right.

Mr. MCHUGH. Mr. Smith, you talked about the need to clarify the right and the ability of the Commission to get new—to get data. And clearly, in the comments you just made that is important as well. We tried to address that in the subpoena power, which has caused some uncomfot among some. But do you think we need to go further than that, or do we need to take steps to more clearly define the subpoena process? What do you think we need to do to clarify the PRC's rights for that data, because that is a real important issue, it seems?

Mr. SMITH. It is, indeed. I'm not an expert in that area, Mr. Chairman. I would just, again, hark back to the point I made a moment ago: However you clarify it—and I'm sure that with the legal minds, excellent legal minds, that you have available to you—you can put a clear requirement on the Postal Service to make that detailed cost available. But the important thing would then be to give the PRC the ability to correct the problem.

And by the way, I might just say that this is not hypothetical. I mean, I have watched the Postal Service and I am sure Mr. Nelson has, too, do exactly this. They were in the express mail business with a very large market share and as private competition developed, their market share dropped, dropped, dropped to about 7 percent, and at that point in time what they decided to do was to increase the advertising and make a huge investment to put in an express mail network.

The Express Mail network, which operates over Indianapolis, produced, when it was put in place, about a million pounds of air-lift per day. The Postal Service's Express Mail complement going through that network was about 150,000 pounds a day. So what they did is they diverted into this express mail network, this Eagle Network, to fill it up Priority Mail, which was taken off of the airlines where they had been paying 29 cents a pound and they lowered the revenue they paid the airlines to 26 or 27 cents, and the cost of moving a pound of priority mail through the Eagle Network was \$1.09.

So you had an Express Mail product, which was exempt by the Postal Service's private express statutes—and I mentioned before

they really don't have any legal grounds to do that—but yet their legally protected monopoly product, Priority Mail, then was used to subsidize the competition in Express Mail. So this isn't hypothetical; they do it all the time.

In the parcel post sector, I believe I am correct, their allocation of overhead is about 1 percent. So this goes on all the time and I am not being accusatory here. I mean, we all have these competitive juices, and if I had a big \$42 billion monopoly, I would probably use it to whock Oz, or something, you know. [Laughter.]

Or vice versa. But that is just the way it is.

We have also seen the same thing happen in Canada. Canada was allowed to—the Canada Post was allowed to buy the only private express company up there and they floated this rock on the basis of, well, we're going to take the profits from this competitive thing and subsidize delivering mail to the outback, the far reaches of Canada.

Well, exactly the opposite happened. The rates decreased on the competitive sector and the monopoly profits went to compete against the private sector. So that will happen if you don't put mechanisms in place that give total integrity of that data to the PRC and then very strong enforcement powers to the PRC that can correct the conduct.

Mr. MCHUGH. Just to followup on that last comment, we tried to provide a mechanism by which, when the PRC found inappropriate circumstances, they could seize 50 percent of the profits, reassign, et cetera. I just want to make clear for the record, is it true you would suggest that we give them the power to directly come in and readjust the rates?

Mr. SMITH. Yes.

Mr. MCHUGH. Rather than just go—

Mr. SMITH. Yes, sir, and I think the remedy that you have in place today is that you say now the Postal Service is going to be subject to antitrust laws and so you can sue them.

Well, we have got an example of that going on right now. The Postal Service is running this \$120-million Priority Mail campaign. If that campaign were being run by a private company, we would have sued the fool out of them a long time ago, because it is misleading and it is totally egregious. But they are not subject to any laws we can get our hands on. They are not subject to the FTC or anything else. Then once you go to court, as you well know, if you have got good enough lawyers, you can be in that venue for a long, long time.

So there needs to be a mechanism that can correct the abuses on the spot and immediately.

Mr. MCHUGH. Thanks. Let me ask just one more question, then I will yield to my colleagues.

Mr. Smith, you explained, both in your comments today and in your written testimony, obviously, the concerns that many provisions of this proposal would have on your competitive position, and I understand that and I don't take exception to them individually.

But let me just ask you a pretty simple question—I think it's simple: Which is worse, what is happening today, assuming that, for whatever reason, small politics, or gridlock, or whatever, the Congress is not able to make any substantive changes to the sys-

tem on the ground as you compete against and deal with every day or what we are proposing?

And I am not trying to lock you in so I can say, "See, you agreed." I am just curious as to—on the whole, do we help you here in this bill more than you are being hurt now?

Mr. SMITH. You are talking to Mr. Nelson, aren't you?

Mr. MCHUGH. I'm sorry. Mr. Nelson. Did I say Mr. Smith?

Mr. SMITH. You said Mr. Smith, but—

Mr. MCHUGH. I'm looking right at you, Oz. I'm sorry. I meant Oz Nelson.

Mr. NELSON. That is a tough question, because I think there are a lot of good parts of your bill. And I think its intention and philosophy is pretty good. So I hate to tell you that I think I would be worse off with it, but I think I would be.

Mr. MCHUGH. Worse off with the bill?

Mr. NELSON. Yes.

Mr. MCHUGH. OK. Well, I asked for it.

Mr. NELSON. If it's not altered, and I think it can be.

Mr. MCHUGH. Fair enough. Thank you.

I would be happy to yield to the gentleman from Texas.

Mr. GREEN. Mr. Chairman, I just have a couple of questions, and I just appreciate the panel being here, because obviously you have shown that you can compete with a Government monopoly and be successful, but there are bumps along the road. I know, because I have heard Postmaster General Runyon sit—not at the same table, it has been in different committee rooms—and talk about how he wanted to do different things with the Postal Service.

Just this last week we heard, or I saw in the paper, where the post office was selling space at their facilities for telecommunications antenna, which is a good way to utilize property, and I am sure each of you might look at that and see if you can market some of your property for telecommunications.

But I have also been concerned about the expansion of the Postal Service into those areas. Have either of you heard rumors of the Postal Service getting into the telecommunications business? And let me preface it, because in other parts of the world the postal services are into telecommunications—in Europe—and we are seeing the privatization of those services and yet not just the intent is, but actually in the competing with the AT&T's, the MCI's of the world, similar to what they may compete with you.

Mr. NELSON. Congressman Green, I think that it is pretty clear that is what they are planning to do and it is a perfect example of why you can't be fish and fowl, you have got to be one or the other, you can't be in both.

There has been some spectrum freed up by the Government, at 220-, 222-megahertz has been freed up, and the original intention, I understood, was going to be make this available for various private enterprise organizations to provide services. Though the Postmaster has said he wants to be treated like a CEO and wants to have the flexibility to compete like private enterprise, he very quickly has grabbed the Government authority that he claims to have to take one of the two spectrums nationwide into his system, build antennas in his post office, in his locations all around the country, and claim immunity to any local regulations about wheth-

er these are acceptable to the local community or not—in fact, there is a lawsuit going on right now in Schaumburg, IL, on this very case, and there are going to be some more if they continue it.

What is he going to build those for? Because he wants a free way to create services, both information services to compete with Fred's company and mine and others, and, also, he has other plans—it's my belief they have other marketing plans—to create other services, information services, to create a new business for the post office.

And I think you are very right in saying that other countries have gone the other way. We have just been through a terrible experience in Germany, where the telephone company supports the post office. The post office lost horrendous amounts of money, was subsidized by the telephone company.

The telephone users in Germany got very upset about it and put pressure on that Government to separate them out, and that is what they have been doing. And you know what? The telephone services are getting more competitive, they are providing more services in Germany now. They are starting to look at their consumers and instead of that money going to the post office, it's now going into providing better services in that area, and the post office in Germany is now starting to stand more on its own, as it should.

Mr. SMITH. Well, I agree with everything that Mr. Nelson said. I mean, there is an article that counsel just handed me that was in the Washington Post on September 25th. It's about this very issue and it makes it very clear that they are not subject to local zoning, and so they put them in without regard to what the local folks want them to do. If we tried those as private businesses, the local folks might let us do it and they might not, and if they did let us do it, they might charge us a lot of money for it.

I think the problem transcends just the issue of this particular thing; it's the mindset and the whole *raison d'être* of the Postal Service being lost here. I mean, the Congress set it up to provide uniform postal services to an economy where that was really the only way to communicate. Well, that is so far beyond the situation today it is almost laughable, so we are really talking about, now, as Oz said, if there—there is really no public purpose behind all of this. It is a private purpose to try to perpetuate the institution known as the USPS.

I think the Congress has got to think very carefully if that is what your intent is.

Mr. GREEN. Thank you, Mr. Chairman, and I guess I can relate to the concern I said earlier, at the earlier panel, that there are functions for the U.S. Postal Service but, again, when they compete with private business, we need to look at that and see if it is a level playing field, and that is what bothers me about the competition.

It is interesting, the antitrust provision that you talked about, you might be able to sue your competitor but you can't sue the post office for antitrust. Thank you.

Mr. MCHUGH. The gentleman from Indiana?

Mr. MCINTOSH. Thank you, Mr. Chairman. I have got a couple of questions and time constraints will cause me to be quick. The first question is for Mr. Nelson, and I talked about this a little ear-

lier with the earlier panel, but you mentioned you thought it was inappropriate for the Postal Service to advertise—I guess, in particular, in their Priority Mail—to the extent that it does, \$120 million a year.

How do you reach the conclusion that it would be inappropriate? Are they violating any laws, any standards, that they should be following that we should be aware of?

Mr. NELSON. I don't say that they—you know, the laws don't seem to apply to them, so it doesn't make much difference whether they violate them or not in these areas. I do think an earlier panelist told you that informational advertising, if you will, is certainly acceptable, and it's good for the public.

But do we want a Government agency spending hundreds of million—\$120 million, in this case—to advertise to take business away from private companies that are paying taxes and are creating jobs and creating returns and profits for investors? It just seems to me an inappropriate use of Government money.

Mr. MCINTOSH. In fact, I am remembering from my days serving over in the administration that there was an OMB guideline that went out to Government agencies that they should not compete with the private sector wherever they may be able to. It strikes me that this is a classic example of where the Postal Service seems to be ignoring that.

Mr. NELSON. There is a guideline, and I wish I could remember the number—it is in here somewhere—but there is a guideline saying it is inappropriate for the Government, any Government agency, to advertise a service that is competitive with a private company.

Mr. MCINTOSH. And yet we are seeing the Postal Service spend \$120 million. I imagine people, as they go in and buy the stamps, are wondering how much of this is going toward select TV ads.

Let me ask another, more open-ended, question. And prefacing it, it strikes me there are two models that we could look at in moving forward here. One is open competition. Let the Postal Service compete but also withdraw the special advantages that they have, both in terms of being a monopoly and in terms of being exempt from various regulations, customs regulations, local zoning regulations.

Now, the response that you get from people who work at the Postal Service is, "Well, that's not fair, because we have a requirement to provide universal service." So you might want in this model to say, "OK, we'll let you compete with other people who will also provide universal service."

The second model is to say, well, it's not possible to find anybody who is going to take that on, so what we will use the Postal Service is those areas where the market won't sustain universal service, but in other areas, where you can, in segmenting in it and different products, new products that might come on the line, we are going to allow the private sector to take on that. But then, at that point, the Postal Service recedes from those services and you have competition in the private sector.

What we seem to have now is a hybrid as we have moved from the Postal Service being a Government agency to being a quasi-private entity. Probably the best model would be some sort of highly regulated utility. We allow them to continue to have a monopoly in

certain areas and certainly continue to have a beneficial position vis-a-vis various regulations, and yet they are now starting to want to enter into more and more competitive businesses. So I think we have got to move away from that hybrid to one of the two, and before us here in Congress lies that basic option.

That is a long way of leading into my question, which is do you foresee a day—and I will ask this to any of the panelists here—where we could have either your companies or a company in the private sector say, “Yes, we’ll compete head to head and provide universal service and we’ll compete with the post office if you put us on an equal playing field for that type of service?”

Mr. NELSON. I would like to try that for just a minute. As it applies to package deliveries and the air deliveries that we make, we do provide universal service, and I would take the position that the post office does not. It is a fiction that they provide universal service in the 48 continental United States.

My company delivers to literally thousands of homes that the post office will not deliver to. We drive 30 and 40 miles round trip to make deliveries to places that the post office won’t deliver to. There are an untold number of businessmen and individuals and homes who cannot get delivery by the post office. They have to drive to the post office to pick up their merchandise.

And even look at the changes they have been making, which they rack up to improve productivity over the last years. They don’t deliver to the doors at apartments any more; they force clusters. People are putting mailboxes out in front of their driveways instead of getting delivery to their houses. Well, private enterprise is going to the doors and delivering all those packages and letters, so I say we are universal and they are not. It is a fiction.

Now, would that same thing happen in First Class letter mail, in the letter service? Initially it would not happen in all locations. It would happen with probably 90 percent of the mail in probably 65 or 80 percent, or 75 percent, of the locations. So is there a need for some universality? I think there probably is. Would somebody else provide it at a much more efficient rate, at a lower cost? I suspect they could, yes.

Mr. BELYEW. Congressman McIntosh.

Mr. MCINTOSH. Yes?

Mr. BELYEW. The companies represented at this panel are for-profit companies representing several hundred companies. We all operate for a profit, or we want to. Our margins are rather slim in this industry. When we venture into new markets or we want to diversify, we have to utilize the capital that is available to us through additional operating income and additional profits.

For the post office to be able to diversify and venture into new markets, whether it’s a marketing program or an advertising program or whatever, operating the way they are today, I am opposed to that.

Mr. MCINTOSH. Thank you. Mr. Smith, did you—

Mr. SMITH. The only thing I would say is that, again, you have got to go back to the original rationale for postal services, to begin with, and certainly the U.S. Postal Service. It wasn’t only universal service, it was universal service at a uniform price.

Today people that send letters across Los Angeles, Washington, and New York are paying an incredible subsidy for people sending something from Miami to Seattle. And so if you said could you open the postal services up to private competition and you weren't concerned with universal service at a uniform price, you would see postal services springing up everywhere, and significant savings to the citizens of lots of places.

But the costs of uniform service would go up and it would cost you more to go from Miami to Seattle, and that is the cloak that the Postal Service pulls across its self-righteous breast all the time, is universal service at uniform rates.

I agree with Mr. Nelson. They don't provide universal service. We also serve every address in the United States and we deliver to the door.

Mr. McINTOSH. You have universal. Do you have one rate?

Mr. SMITH. We do. We do for document services. We carry express documents, express packages, and express freight. For express documents, they are flat rated. But I don't think it's really comparable to a 35-cent stamp.

So that is why we, when we came to Congress today, we agreed with the approach of H.R. 3717. I mean, the dislocation of dismantling willy nilly, so to speak, the concept of universal service at a uniform price—which probably isn't justified by today's standards, I mean, why should there be a uniform price for a letter going from Miami to Seattle, why not a fax, why not an e-mail, why not a whatever—but it probably would be very traumatic, so I think the approach that is in H.R. 3717 is a very good step in that direction.

Then after you have let this thing sort out a bit more and technology advance, then you can make the decision as to whether you want to go to the next step and say there is no public policy being served by a Government corporation providing a universal service, although it is not really, again, as Mr. Nelson said, at a uniform price or not.

But if you permit them to cross-subsidize these competitive products with these monopoly profits, that is not in the public interest, I can assure you.

Mr. McINTOSH. I guess, making it very personal, would you be willing to enter into an agreement some time in the future where you had to provide universal service for First Class Mail with a price cap, that you could compete below a certain level?

Mr. SMITH. Well, we're not—let me just digress for a minute, again, and point out, we are in the express business. We are an express company, and that means that we only carry things that are moving with a relative time sensitivity, whether it's a contract for a big business deal or a heart valve or a piece of freight going to keep a factory open, or what-have-you.

That is very different from a lot of the business that the Postal Service conducts, which is moving Valentines and Christmas cards and get-well cards, and what-have-you. FedEx is not going to get into the First Class Mail business.

What the Postal Service wants to do is to use that monopoly to take money and try to get into more of an express business. To me, as I mentioned in the example of the Express Mail, any other business that had gone from like a 40-percent market share to a 7-per-

cent market share would have said, "OK, we're getting out of the business." That is not what the Postal Service did. They said, "We're going to spend more money on this." And the way they spent the money was to divert money from monopoly products.

Mr. MCINTOSH. But if we took the Postal Service and said, OK, maybe Federal Express won't compete with you on the other services that aren't express-oriented, but we are going to give you the opportunity to go out there and price anywhere you want below the cap, but also allow any other people to come in and compete for that, will that protect you in the areas where you do compete with them, and tell them, OK, you can also go compete in express services?

Mr. SMITH. Well, if I were recommending a policy for you, if you wanted to make sure that you had universal service at a uniform price, what I would do is to say that anybody that wanted to go serve a particular market area, wanted a license from the Government, you can go in there and provide this type of service as long as you won't go over this cap, what would immediately happen is that you would have a tremendous decrease in rates for the services in that area.

What the Postal Service and its unions would argue, quite rightly, is that that would be a form of cream-skimming, that you would take all of the high-density areas and we would be left with the cats and dogs. In the package business, the express package business, we have been able to offer universal service as has UPS because the average revenue per transaction is much greater than the cost of a First Class letter.

So you can't have a network until a network exists and, believe me, I know, and I'm sure Oz will agree, it costs a lot of money to build one.

Mr. NELSON. Right.

Mr. SMITH. So it would be difficult for somebody to spring up sort of, you know, just in whole to be able to compete with the Postal Service on a nationwide basis. That has been done in the package business and the Express Mail business, but it would be very difficult for that to happen in the First Class Mail business.

Mr. MCINTOSH. Thank you. Thank you, Mr. Chairman.

Mr. MCHUGH. I thank the gentleman for his comments. Of course, one of the things we are trying to do in this bill or all other good things, bad things, or indifferent things, is to divide that non-competitive revenue out to the extent that it cannot be used in any way to supplement and to underpin the competitive activities.

Mr. Nelson, let me go back here. You made a comment that I just want to make sure I understand. You talked about the Postal Service's negotiations with foreign governments for favorable customs treatments. Am I getting that right?

Why do I keep doing—who said that?

Mr. SMITH. Yes. That is just a fact. The Postal Service, through the UPU and their Government status, are held to a different set of standards than private express carriers are, and I gave you one example in this country, where an item that is valued at \$200 or less, that is what the Customs Service requires of the Postal Service, that little form there, and this is what is required of us, and

this information is put online to the Customs Service, and it costs us about \$18 million a year. It's exactly the same thing.

They have one set of standards that the U.S. Customs Service holds them to, a different set of standards for us and UPS. Now, abroad it is much more egregious, because in certain places the customs services and the postal services are first cousin governmental agencies and they really kick you around.

Mr. MCHUGH. That is what I thought Oz—Mr. Nelson—had referred to in your comments about—

Mr. NELSON. Let me maybe add to that. I am an old salesman for UPS and I have called on customers from time to time. To give you an example of the frustration of trying to sell international services to Canada, or air service—or ground, for that matter—we are told by customers, “We like the dependability of your service and the speed of your deliveries. We'd even be willing to pay more for it than we pay by the post office, but our experience with the post office is we only have to pay the custom duties about 30 percent of the time. Custom duties cost a lot of money, so the odds are we're going to save even more than the shipping charges by shipping by the post office.”

So how would you like to sell against that?

Mr. SMITH. The same is true in Japan, Mr. Chairman. L.L. Bean, they use the Postal Service to move packages into Japan and they will tell you right up front the same thing that Oz just said, “We won't have to pay a lot of the dues over there,” because the United States Postal Service and the Japanese postal service have a different set of criteria applied to them by the Japanese customs authorities compared to us.

Mr. MCHUGH. The point I wanted to make clear in my own mind, and I thought I was correct, these circumstances arise not because it's a negotiation—in other words, you would not be allowed to go in and negotiate that circumstance—they arise simply because the Postal Service has the imprimatur of the U.S. Government and they, in turn, normally deal with other foreign governments, or at least their postal services.

So you are just not of the same status; it is not that they are great negotiators. True?

Mr. SMITH. No, that is absolutely right. It is their status as a governmental entity.

Mr. MCHUGH. What would be the answer to that? To get you equal treatment or to get them equal treatment? Do we lift your ship or sink theirs?

Mr. SMITH. Well, first of all, Mr. Chairman, you need to think about the implications of this, particularly with things of note. The system today is—I don't know, in a public hearing, I want to get into a lot of detail about this, but the system needs reform for a lot of reasons, not the least of which are public safety and legal compliance issues.

Mr. MCHUGH. Postal or Customs, or as the two intersect, the Postal-Customs system?

Mr. SMITH. The regulations that apply—well, let me just give you an example. If you come into FedEx or UPS and you want to ship something that goes across the ocean, you are going to have to give

us all the information about your—you know, who you are, what you are doing. That is on line and it is instantaneously available.

When you walk into the Postal Service, that is all you have to fill out.

Mr. MCHUGH. Security reasons.

Mr. SMITH. There are a lot of security issues here and there are a lot of contraband issues here. It is just—it's unbelievable to me, quite frankly, this has been allowed to go on as long as it has. And I say this from my role over at the Air Transport Association and all of the issues we are dealing with over there, public policy issues. It is just wrong, it's not right, and it needs to be changed for lots of reasons other than just the competitive landscape between the private companies and the Postal Service.

Mr. MCHUGH. Do any of you gentlemen care to add anything?

[No response.]

Mr. MCHUGH. Well, we are creeping up on 3 hours, and that is enough of listening to me. I do, again, appreciate you gentlemen being here. It has been an honor, and we do look forward, as I said, to working with you and everyone else. I don't know when the House is going to do this, but for the purposes of this hearing and on this bill for this Congress, I am going to adjourn and say go in peace. Thank you.

[Whereupon, at 4:55 p.m., the subcommittee was adjourned.]

[Followup questions and answers and additional information submitted for the hearing record follow:]

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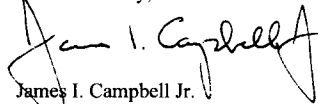
The Honorable John M. McHugh
Chairman
Subcommittee on the Postal Service
United States House of Representatives
Washington, D.C. 20515-6143

Dear Chairman McHugh:

Enclosed please find Federal Express's response to the Subcommittee's letter of October 22, 1996, to Chairman Fred Smith. Per Mr. Smith's request, I am sending this to you directly rather than awaiting a formal cover letter from him because of our tardiness in responding. We sincerely apologize for the delay. The original Subcommittee letter was apparently lost in the mail, and we did not receive a fax copy until the end of November.

I know that Mr. Smith particularly enjoyed the opportunity to testify before your Subcommittee. I am sure he would like me to express again Federal Express's appreciation for a chance to participate in the Subcommittee's review of U.S. postal policy.

Yours sincerely,



James I. Campbell Jr.
Counsel to Federal Express

Enclosure

**Frederick Smith
Chairman and CEO, Federal Express**

**Answers to Questions for the Hearing Record re H.R. 3717 (104-2)
from the House Subcommittee on Postal Service
January 17, 1997**

1. In your comprehensive testimony you outline a variety of areas for improving H.R. 3717, and you indicate that some of these changes would be "highly desirable" and some would be "absolutely and logically necessary." Of the variety of issues you outline, which ones in your view are desirable and which others are necessary?

In general, I believe that the proposed price cap regime for non-competitive products represents a major improvement in the regulation of non-competitive products. With regard to competitive products, my basic concern is that the Postal Service competes fairly, without benefit of governmental authority or legal favoritism. Over the longer term, I believe it will be the threat of competition (direct and indirect), not price caps, that proves the most effective catalyst for improvements in postal service. From this perspective, I believe the improvements to HR 3717 that are absolutely and logically necessary are:

- An oversight procedure for competitive products in which the Postal Rate Commission is clearly authorized (i) to obtain all data which is, in PRC's judgement, necessary to assess the lawfulness of competitive postage rates and (ii) to order illegal rates revised to legal levels and impose such other penalties for unlawful rates as may be appropriate.
- For competitive products, definition of the concepts of contribution to overhead and profit that reasonably reflect the practical financial constraints placed on private companies by the market.
- A clear definition of the boundary between non-competitive products and competitive products that reflects the precedents and concepts developed by the Federal Communications Commission in deregulating the AT&T monopoly.
- Transfer of authority to administer the postal monopoly to an impartial agency (or, better, to the courts) and establishment of a price limit for the postal monopoly that is reasonably near the postage rates for first class mail.

- Transfer of authority to represent the United States at inter-governmental organizations which have the power to make international law to an impartial Executive Department or agency.
- Equal application of the mailbox access rules (preferably by abolition) and customs laws (U.S. and foreign) to all competitive products and at least a start towards equal application of all other federal and state laws to competitive products.
- Clarification of the "market test" provisions in such a way that allows the Postal Service flexibility to test new products without taking unfair advantage of its governmental advantages.

Of course, I believe that my other suggestions are all "highly desirable."

2. "Why should the Postal Service compete with private companies? (Pages 1-4)" You argue that the Postal Service should be allowed to compete in competitive markets as long as it is on the same general terms as faced by private companies. To what extent, if at all, do you agree with the argument that the Postal Service must compete in order to ensure that it maintains sufficient revenue to provide universal service to the American public -- including universal service of its competitive products -- at reasonable rates?

This is a fundamental question because a correct answer is necessary to the development of a sound approach to postal reform. Unlike many fundamental questions, this is a question for which reasoned analysis should be able to provide a definite answer. My answer is that the cited argument is simply incorrect, i.e., it is *not* necessary for the Postal Service to compete in competitive markets in order to provide universal service at reasonable rates. The case for allowing the Postal Service to compete in competitive markets must rest on other grounds.

The basis for my conclusion can be explained as follows. For the sake of simplicity, imagine that there are two types of competitive markets in which the Postal Service might participate:

- *Non-mail markets.* Markets which are substantially different from mail services so that USPS would have to establish new operations in order to compete.
- *Mail markets.* Markets in which the Postal Service can operate using the same operational facilities now used to deliver mail.

In non-mail markets, there is, in general, no reason why the Postal Service

should be able to earn greater profits than other competitive firms. The express market, for example, is a non-mail market. In order to provide express service like Federal Express, USPS must establish collection, delivery, air transport, tracking and tracing, and management systems which are distinct from those employed for normal mail operations. While USPS might be able to use some existing postal facilities for the collection of express mail and some letter carriers to deliver express packages on their early delivery runs, the overlap is limited. Express service generally requires a wholly new operation. If USPS abides by the same laws and economic principles as Federal Express, USPS might earn a normal profit in the express market, but there is no reason to believe that USPS can earn an *extraordinary* profit in competition with Federal Express and other express companies. In fact, USPS does not abide by the same laws and economic principles as Federal Express. In the last rate case, express mail rates were set at only 19 percent above operating costs ("attributable costs") even though for mail services as a whole rates are set at 58 percent above operating costs in order to break even. Meanwhile, Federal Express must set its express rates high enough to cover all overhead costs *and* make a profit on top of that. Despite the fact that the Postal Service escapes the economic realities that control Federal Express's prices, it still does not earn an extraordinary profit on express mail.

What is true for the express services market is true for other *non-mail* competitive markets. If USPS does well in a competitive market, it may earn a respectable profit, but there is no reason to anticipate extraordinary profits. Extraordinary profits result from new inventions, new and unique products and services, activities with substantial economies of scale, and governmental barriers to entry. Of course, it is not impossible that USPS managers may hit upon a new invention or unique product and use the profits to underwrite the costs of ordinary mail service. It would be unreasonable, however, to base public policy on this remote possibility.

USPS's prospects for commercial success are better in *mail* markets, that is, markets in which it can employ its existing universal service delivery system to provide additional services. In such markets, the Postal Service can take advantage of existing economies of scale, which others will find hard to duplicate. The difficulty here is to think of commercial services which make use of the USPS's universal delivery network but which USPS is not now providing. There may be some. An obvious example is distribution of unaddressed advertising. In many respects, this is a "natural" market for the Postal Service because it can, up to a point, make use of the existing delivery system. Even here, however, USPS would find it difficult to generate extraordinary profits if it correctly allocates its costs and overhead. Why? Because USPS pays its letter carriers more than unaddressed advertising delivery firms pay their employees. USPS pays higher wages partly because the delivery of addressed mail requires more skills than the delivery of

unaddressed mail and partly because the Postal Service pays wages in excess of the market rates. In short, in the market for the distribution of unaddressed advertisements, USPS has economies of scale working in its favor but high wage rates working against it.

What is true for the distribution of unaddressed advertisements is true for other *mail* services that might make use of USPS's universal delivery operation. The Postal Service has disadvantages as well as advantages. The bottom line is that the Postal Service is unlikely to make substantial profits in competitive mail markets unless it manages to get its costs and operations more in line with those of private competitors. This will be difficult and may, in any case, not be sufficient to overcome slight but important differences in the markets in question. Thus, at this stage, it seems unduly optimistic to believe that the Postal Service will make such *extraordinary* profits in *mail* competitive markets to cover substantial losses in universal delivery services.

To summarize, I do not agree with the suggestion that the Postal Service must compete in new *competitive* markets in order to ensure that it maintains sufficient revenue to provide universal service to the American public. This suggestion is based upon the premise that the Postal Service can earn extraordinary profits in competitive markets that can be used to cross-subsidize losses in universal service markets. To me, this premise is not plausible for the foreseeable future.

A. Do you believe that the Postal Service could still provide its universal postal service mission if prohibited from remaining in or entering competitive postal markets? If so, how would you accomplish this objective?

Yes, for two reasons:

- revenues from competitive services are unlikely to provide significant financial support for the provision of universal postal services (as explained above); and
- economic losses associated with universal service, if any, appear to be relatively small compared to the total income of the Postal Service and the increases of revenues that may be derived from modest increases in postage rates.

As I tried to make clear in my prepared statement, I believe the case for Postal Service expansion into competitive postal markets depends primarily on the argument that postal managers and employees should be allowed a "fighting chance" to save their jobs by using their collective skills and expertise to compete in new markets. As an employer of many thousands of men and women, I can sympathize

with this approach. I also think that the "fighting chance" model for postal reform has the advantage that a more competitively oriented Postal Service will likely offer improvements in all types of postal services, competitive and non-competitive. HR 3717 implicitly adopts this "fighting chance" approach to postal policy, and my prepared statement tries to address the proposals in HR 3717.

As your question implies, however, there is an alternative to the "fighting chance" approach. The Postal Service could be required to "stick to its knitting" -- i.e., it could be downsized as the demand for traditional postal services declines or is met by competitors and alternative media. Unneeded postal employees could be given assistance in their search for other jobs or generous "buyouts." While this may be less "fair" to workers in some sense, such an approach is defensible. Indeed it is the logical end to viewing the Postal Service purely as a public service; as the need for a public service declines, the government agency created to provide the public service should be wound down.

If the Postal Service were downsized (by attrition, layoffs, sale of assets) in the face of declining demand, I do not believe that universal service at reasonable rates would be jeopardized for the foreseeable future. As the General Accounting Office has demonstrated, large reductions in the demand for postal services will not lead to drastic increases in rates *assuming the Postal Service can reduce attributable costs as volumes decline*. A 25 percent decline in first class mail volume, for example, implies an increase in first class stamp prices of only about three cents. Moreover, these figures assume the persistence of current levels of efficiency. In reality, the Postal Service could offset the adverse financial effects of significant reductions in volume by reducing staff and operating in a more efficient and competitive manner. Compared to the financial gains to be derived from such factors, the cost of maintaining universal service is relatively small. Thus, it appears that the Postal Service could "stick to its knitting" and still maintain universal service at reasonable rates without great difficulty until first class mail volumes decline very substantially below current levels. When this day may come is not presently foreseeable.

Whether or not the Postal Service *withdraws* from presently competitive markets (parcels, express, and bulk international) is immaterial to achieving universal service at reasonable rates. These markets do not make a significant contribution to USPS overhead.

Finally, it should be noted that even if the Postal Service is confined to *currently* non-competitive markets, this does not altogether avoid the problem of the Postal Service interfering with the operations of private companies. Changing technology is likely to make competition more feasible even in currently non-competitive markets. Under a strict "stick to its knitting" approach, it seems likely that the need to downsize the Postal Service will be driven both by a shrinking demand for

traditional mail services and by increasing capabilities of competitors.

3. "Non-competitive Postal Products (Pages 4-6)" You state your opposition to the demand pricing criterion -- value of service -- as a factor in setting rates in the baseline case and for the adjustment factors in the 5-year cases, noting that it "is a legitimate consideration in setting postal rates, but should not be the primary consideration . . . the Commission should, as it does now, consider a range of factors . . . including value of service."

However, this criterion is not the primary consideration but is one of a range of factors for the Commission to consider. For example, in the adjustment factor cases it is one of five other factors including cost, productivity, revenue, and service quality that are not weighted toward any one factor over another. Moreover, the bill does not require a formulaic application of "Ramsey pricing" but instead simply requires consideration of demand pricing principles, which can be derived from not only inverse demand elasticities but from marketing studies or other information. Thus, the "monopoly protected" products such as First-Class mail could make a reasonable case based on marketing studies that their volume is being diverted to electronic mediums. Given these clarifications, do you have any further concerns with the demand pricing criterion?

Yes, I remain concerned about the provisions in HR 3717 which seem to give greater prominence to demand pricing criteria in setting standards for allowance of price discrimination between classes of mail.

According to HR 3717, in the baseline rate case, the ratemaking factors (now found in §3622(b)) are to be substantially revised. The mere fact that these criteria are changed significantly is a matter of concern. New language offers the Postal Service new freedom to argue again for interpretation of the ratemaking criteria in a manner more amenable to "Ramsey pricing." As the Subcommittee is aware, this issue has been repeatedly litigated before the Postal Rate Commission and the courts, and a rough compromise has been reached in which the Commission gives substantial but not primary consideration to demand factors. New language opens Pandora's Box again.

Not only are the new ratemaking criteria changed, but the direction of the change *seems* to be in the direction of requiring -- not merely allowing -- the Postal Rate Commission to give greater consideration to demand factors. Thus, new (b)(2) explicitly introduces inverse demand elasticity into the list of factors to be considered although it is not a consideration explicated in current law. The new introductory text in (b) states that these criteria "shall" be applied by the Postal Rate Commission "*in descending order of priority.*" HR 3717 at page 59, line 21. Since the first factor in the list, (b)(1), deals only with the recovery of "attributable costs," inverse demand

elasticity, (b)(2), seems to be the most important factor in the allocation of the remaining institutional costs. Moreover, in contrast to (b)(4) found in current law, new (b)(6) omits consideration of the effects of new rates on "enterprises in the private sector of the economy engaged in the delivery of mail matter" as a factor in Postal Rate Commission deliberations. Thus, not only is the Commission directed to give priority consideration to inverse demand elasticity, but it is no longer authorized (except as a residual, discretionary factor under new (b)(10)) to balance such considerations by reference to possibly adverse effects of such an approach upon competitors.

If the purpose of these changes is *not* to direct the Postal Rate Commission to give additional prominence to demand elasticity considerations in the baseline rate case, then it seems to me that the existing criteria should be retained to avoid unnecessary litigation. If, on the other hand, the purpose of these changes is to direct the Postal Rate Commission to give additional prominence to "Ramsey pricing" considerations in the baseline rate case, then I must respectfully disagree with this purpose. It seems to me that the Postal Rate Commission gives ample consideration to Ramsey pricing considerations under current law.

I do not support giving additional support for "demand factors" in setting cost coverages for different classes of mail for several reasons:

First, as a matter of policy, I do not believe that it is fair to mailers to forbid competition and then authorize unchecked price discrimination by a monopolist. In a competitive market, price discrimination occurs in an industry with substantial fixed costs such as delivery services, but the prospect of competition keeps price discrimination within tolerable bounds. As I mentioned in my prepared statement, in 1845 Congress limited competition in the postal business precisely in order to suppress distinctions in service and price that the competitive market was producing at the dawn of the industrial revolution. The great problem, as Congress then saw it, was that citizens living along newly built railroad and steamship lines would get better and cheaper service than those living in other areas. If the justification of the monopoly was to prevent price and service discrimination by a competitive market, then it appears inappropriate to allow even greater price and service discrimination by a public monopolist.

Second, as an economic proposition, greater price discrimination is unnecessary to the maintenance of universal service at reasonable prices. Losses associated with the provision of a universal delivery service at uniform letter rates appear to be no more than a few hundred million dollars per year. Even if one considers the maintenance of commercially non-viable post offices and other services to be necessary public services associated with "universal service," the annual cost of universal service seems to be only on the order of a billion dollars. Meanwhile, the

cost of inefficiencies associated with the Postal Service -- such as excess wages and staffing levels -- appear to be on the order of several billions of dollars per year. Moreover, the postal business is so large that small increases in postage rates yield revenue increases that are large compared to the cost of universal service. Under these circumstances, losses associated with "universal service at reasonable prices" (if any) can easily be made up by slightly greater efficiency and/or small increases in postage rates. There is no economic reason to resort to the unfairness of greater price discrimination.

Third, as a practical matter, it seems likely that alternative media and new business methods will put greater competitive pressure on some non-competitive products than others. For example, the Postal Service may be required to reduce the price for delivering bank statements in order to limit diversion to electronic banking. If price increases are capped, then reductions in some prices in turn imply costs have been reduced. Yet if the Postal Service can achieve cost savings for some users of non-competitive products, should it not pass along similar savings to all users of non-competitive products? If greater price discrimination between mail classes is permitted, the Postal Service will be able to reduce prices for some non-competitive products without making similar reductions for other products. The good effects of competition from alternative media may be enjoyed only by the largest mailers. If, on the other hand, greater price discrimination between mail classes is not permitted, then the Postal Service will, to a greater extent, be required to reduce the costs for *all* non-competitive products in order to meet the competitive threat of alternative media for *some* non-competitive products. The latter mechanism seems to be preferable from a public policy standpoint.

In light of these considerations, it seems to me the case is weak for giving greater priority to demand factors in deciding a fair relation between rates for classes of *non-competitive products*.

In the adjustment factor rate cases, it is correct, as the question notes, that the ratemaking criteria are not -- as in the baseline rate case criteria -- set out in an order of priority. Nonetheless, changes in the ratemaking criteria used in the baseline rate case will be reflected in the adjustment factor rate cases because the adjustment factor rate cases will only modify the relationships between rates set in the baseline rate case to a limited degree. Furthermore, as in the baseline rate case criteria, there are changes from current law in the ratemaking criteria established for the adjustment factor rate cases, and among these revised criteria, inverse demand elasticity considerations are listed first. Thus, there seems to be a danger here, too, that the Commission and the courts will interpret these changes from current law as directing the Commission to give greater prominence to Ramsey pricing than under existing rate criteria. If this is not the purpose of these changes from current law, then something closer to existing law should be retained; if it is the purpose, then I must

disagree for the reasons given above.

4. You mention that the volume discounting provisions “should probably set limits on the range of discounts allowable under price caps or authorize the Postal Rate Commission to do so.” Please elaborate on what you have in mind?

Several possible rules suggest themselves regarding limits for discount rates. Possible rules follow in order of decreasing commercial flexibility:

- 1) No limit on discount rates.
- 2) Discount rates must at least cover attributable costs.
- 3) Discount rates must cover attributable costs and make a contribution to institutional costs that is consistent with the ratemaking factors applicable for class and subclass rates.
- 4) Discount rates must cover attributable costs and make the same *percentage* contribution to institutional costs as the class or subclass rates from which they are discounted.
- 5) Discount rates must cover attributable costs and make the same *per item* contribution to institutional costs as the class or subclass rates from which they are discounted.

The Postal Rate Commission interprets current law to imply rule 5 as the requirement that must be met by discount rates, called “rate categories” in Commission lingo. HR 3717 adopts rule 1 for discounts for non-competitive products and rule 2 as the rule for competitive products. In the recent reclassification case, the Postal Service in effect argued for rule 3 by arguing that work sharing rates for first class mail should be considered as “subclasses” rather than “rate categories.” The fact that the Postal Rate Commission allows deeper discounts for a subset of mail if the subset is called a “rate category” (subject to rule 5) rather than a “subclass” (subject to rule 3) has prompted long debates about when a subset of mail should be deemed a “classification.”

My concern about the absence of any limits for discounts for non-competitive products is fairness. If the Postal Service’s costs rise less than assumed by the Postal Rate Commission in setting the price caps, the Postal Service will be able to give large discounts to the largest mailers and pay for the discounts by charges to mailers of non-discounted mail. The mailers of non-discounted mail could wind up paying much more than a fair share of institutional costs.

Current Commission policy reflects similar concerns, and as a result the Commission has adopted a rather strict limit on discount rates (rule 5). An important factor in the Commission's reluctance to allow worksharing discounts to follow rule 3 or rule 4 seems to be concern that the Postal Service would increase non-discount rates significantly. Since the Postal Rate Commission currently has no authority to limit rate increases, a larger discount implies acceptance of higher rates for non-discounted mail.¹ Under these circumstances, the approach of the Rate Commission has been to allow discounts only when they benefit mailers of non-discounted mail as well as mailers of discounted mail.

While the policy reasons for the Commission's interpretation of current law are clear, the price cap mechanism proposed in HR 3717 seems to ameliorate some of the concerns impelling this interpretation of the law. If the price cap can prevent unreasonable increases in postage rates for non-discounted mail (an important "if"), then deeper discounts for other mail appear less questionable because they would have to be combined with an overall reduction in costs in order to keep the top rates within the price caps. Reductions in costs would, in turn, apparently benefit both discounted and non-discounted mail. In short, given the premise (implicit in the current law) that rule 3 is presumptively a reasonable basis for introducing price discrimination between *classes* of mail, it is at least arguable that rule 3 would be a reasonable basis for price discrimination between discounted and non-discounted mail, again assuming the regulatory scheme also provides a means of protecting small consumers against unreasonably large increases in rates. In addition, division of the non-competitive products into baskets implies that the grossest forms of price discrimination -- between individual and bulk mailers -- may be policed separately from other forms of price discrimination.

Rule 4 is similar to rule 3 except that rule 4 is easier to administer because the Postal Rate Commission is relieved of the need to reconsider the application of the ratemaking factors for each subset of mail to be given a discount. The cost coverage applicable to the entire class (or subclass) of mail would be applicable to the discounted mail as well. For this reason, it seems possible that the Postal Service could be allowed to introduce rule 4 discounts subject to an annual audit to ensure

¹ For example, using the test year data from the recent reclassification case and assuming no change in the overall revenues or attributable costs of first class mail, shifting from rule (5) to rule (4) would imply that the average rate per piece for presort mail would decline from 31.4 cents to 24.6 cents and the average rate per piece for automation mail would decrease from 26.0 cents to 19.3 cents. At the same time, the average rate for non-discounted first class mail would increase from 38.9 to 43.4 cents. The basic stamp price would have to increase from 32 cents to 36 or 37 cents.

that the attributable costs were correctly calculated.

In short, I believe that the Subcommittee should carefully review the policy reasons given by the Postal Rate Commission for adopting rule 5 and consider the possibility of a discount rule that combines rule 4 with price caps for the prices of non-discounted mail. In making this suggestion, I do not question the wisdom or the correctness of the Postal Rate Commission's analysis of current law. My point is that the addition of price caps for non-discounted mail *may* offer the possibility for additional flexibility without unfairness.

5. "Competitive Postal Products (Pages 7-12)" I am interested in your proposal to address the reasonable contribution challenge by moving to an equal total markup rule, in that competitive products as a group would provide the same contribution to institutional costs as non-competitive products. I find interesting the idea of moving to an aggregate contribution from the competitive side to avoid a product-by-product assessment within the entire competitive basket. How would you determine the level of institutional costs to be paid from competitive products? Would you set an aggregate dollar figure, or base it on a percentage of overall institutional costs? Is it fair to require the same contribution to overhead as the non-competitive products when under our bill the competitive products only currently comprise 14 percent of total postal revenues?

My suggestion is that competitive products as a group should bear the same *percentage* of overhead costs as the non-competitive products as a group. The effects of this rule are illustrated in the following table.

Under this approach, in 1995, the Postal Service would have been required to raise approximately \$1 billion more in revenues from competitive products and to reduce prices of non-competitive products by the same amount.

If both competitive products and non-competitive products are required to make the same *percentage* contribution, I believe the rule is fair regardless of whether non-competitive products comprise a low or high percentage of USPS's products. The point is that the Postal Service should not be able to compete with private companies while using non-competitive products to pay for its overhead costs. If the Postal Service's costs are too high, then it should be forced to reduce costs for all users so that it can compete successfully; it should not be allowed to escape the consequences of a high cost structure by loading a disproportionate share of costs on users of non-competitive products.

Relative contribution to overhead by USPS's non-competitive and non competitive products				
All numbers in billions of dollars.	Revenue	Attributable Costs	Contribution	Cost Coverage
USPS - All services	54.16	34.43	19.73	157%
Non-Competitive Services, as classified by HR 3717				
First class letters, non presort	22.03	14.12	7.91	156%
First class letters, presort	10.33	4.57	5.76	226%
Periodicals	2.06	1.82	0.24	113%
Special rate 3d/4th class mail	12.39	8.79	3.60	141%
Totals	46.81	29.30	17.51	160%
Competitive Services, as classified by HR 3717				
Priority Mail	2.76	1.40	1.36	197%
Express Mail	0.68	0.57	0.11	119%
Mailgrams	0.01	0.01	0.00	100%
International Mail (1)	1.67	1.37	0.30	122%
Parcel post	0.68	0.63	0.05	107%
Special services	1.54	1.15	0.40	134%
Totals	7.34	5.13	2.21	143%
Equal total markup rule				
Non-competitive products	46.08	29.298	16.78	
Competitive products	8.07	5.132	2.94	157%
Source: Testimony by Edward Gleiman, Chairman, Postal Rate Commission, on HR 3717 (July 10, 1996), based on PRC projections for FY 1995 in R94-1.				

6. You also mention that the Postal Service should be required to make a profit from its competitive products. What would be the enforcement mechanism if they failed to do so? How would you define or determine "profit?"

The "profit" on competitive products should be set by the Postal Rate Commission at a rate that reflects either the long term profitability of competitors or a fair return on long term loans. Profit would be defined as revenues less all costs, including attributable costs and contributions to institutional costs under the equal total markup rule. Assuming the Postal Rate Commission determined 5 percent to be a reasonable profit, the table in the previous answer would imply an obligation to make a "profit" of about \$40 million. This profit should be considered a cost like any other cost since it is, in effect, the cost of equity given to the Postal Service by the United States for competitive purposes. If the Postal Service fails to achieve the mandatory profit from competitive products in one year, the shortfall should be considered as a debt to be repaid in successive years from the competitive sector -- the same as if competitive products failed to cover institutional costs. The bottom

line should be that the Postal Service, like any private company, should be required to withdraw competitive products that, after a reasonable startup period, persistently fail to show a profit. For the purposes of this rule, the Postal Rate Commission should devise a procedure for reasonably and flexibly allocating debts, institutional costs, and "profits" among competitive products.

7. Why should the Commission be allowed to extend the statutory deadlines in case of Postal Service refusal to provide necessary data when the bill provides for subpoena authority with enforcement by U.S. district court?

Litigation arising from enforcement of a subpoena may take some time. If data withheld by the Postal Service is necessary to prepare a reasoned decision, then fixed deadlines could force the Postal Rate Commission to render a decision without necessary data. To avoid this problem, the Postal Rate Commission should be allowed, in appropriate cases, to extend statutory deadlines by the period of delay.

8. The bill mandates that the Commission take "into consideration the availability and nature of enterprises in the private sector engaged in the delivery of the product involved" when recommending whether a product should be transferred from the noncompetitive to the competitive category of mail. However, you discuss the concept of "effective competition" in your testimony. Are you suggesting that we replace the current factor with this notion of effective competition? How would you define "effective competition?"

Yes, I believe the rules defining the boundary between non-competitive products and competitive products should be revised to incorporate a more explicit concept of effective competition. My intention in this portion of my prepared statement was to urge the Subcommittee to review the precedents of the Federal Communications Commission which, in the 1980s and early 1990s, faced public policy issues similar to those now under consideration in HR 3717: How should the government regulate a firm which effectively controls some but not all markets in which it competes?

The answer of the FCC was to divide firms in the long distance telecommunications market into two categories: dominant and non-dominant. As the FCC stated in 1980:

we define a dominant carrier as a carrier that possesses market power. Market power refers to the control a firm can exercise in setting the price of its output. A firm with market power is able to engage in conduct that may be anticompetitive or otherwise inconsistent with the public interest. This may entail setting price above competitive costs in order to earn supranormal

profits, or setting price below competitive costs to forestall entry by new competitors or to eliminate existing competitors. In contrast, a competitive firm, lacking market power, must take the market price as given, because if it lowers price it will face unrecoverable monetary losses in an attempt to supply the market demand at that price. [*Competitive Carrier Rulemaking*, 85 FCC 2d 1, 21]

AT&T, the only dominant firm, was subject to full blown price cap regulation and tariff filing requirements while non-dominant firms were more or less unregulated. In 1991, the FCC decided that some of AT&T's services had become "substantially competitive" and "streamlined" the regulation of those services, substantially deregulating them. In considering whether or not a service had become substantially competitive, the FCC considered the following primary factors: (i) demand elasticity, (ii) supply elasticity, (iii) relationship of AT&T's prices to the price caps, (iv), market share, (v) relative cost structures of AT&T and its competitors, and (vi) AT&T's size and resources. In late 1995, the FCC summarized this history and concluded that competition had increased to the point that AT&T should be considered non-dominant. *Order 95-427* (Oct. 27, 1995). At the same time, the FCC proposed a similar three tier approach (price cap/streamlined/non-dominant) to the regulation of prices of local exchange carriers. *Order 95-393* (Sept 14, 1995). In section 401 of the Telecommunications Act of 1996, Congress indicated substantial agreement with the approach of the FCC when it explicitly approved "forbearance" authority.

The FCC's decisions to classify some firms as dominant and some as non-dominant and to apply or not apply "streamlined" regulation to certain of AT&T's products appear to present public policy issues that are essentially the same as those presented by a Postal Rate Commission decision to reclassify a non-competitive product as a competitive product. My suggestion is that HR 3717 be modified to allow, and require, the Postal Rate Commission to undertake a similar approach to that developed by the FCC. The standard proposed in HR 3717, while roughly similar in spirit to the FCC approach, does not seem to contemplate the same comprehensive inquiry pioneered by the FCC.

A. Likewise, you suggest that we reconsider the placement of certain products in the competitive category. How would you split the various products in H.R. 3717? Are you suggesting that we leave the actual split to a Commission proceeding or are you merely suggesting that we specifically just reconsider Priority Mail and certain "Special Services"?

I am suggesting only that you reconsider the classification of Priority Mail and Special Services.

It seems to me that USPS postal monopoly regulations significantly inhibit competition in the Priority Mail market. While I believe these regulations are illegal because they purport to classify as "letters" items which cannot be considered "letters" in ordinary speech, effective limits on competition cannot be ignored. The \$2 limit to the postal monopoly proposed in HR 3717 will eliminate the legal inhibitions arising from current postal monopoly regulations but it will take some time for the market to catch up with the law. A decision on when competition can effectively replace regulation as a check of Priority Mail rates should be left to the Postal Rate Commission as explained above.

I cannot comment on the degree of competition in the various Special Services markets since Federal Express only provides express services; however, many of these services seem so closely tied to non-competitive products that a legislative classification as "competitive products" appears premature.

Finally, in this answer I am assuming that "international mail" in new section 3741(2) refers only to non-single piece international mail since single piece international mail is included in the first basket of non-competitive products. If so, I do not object to legislatively classifying non-single piece international mail, inward and outward, as competitive products provided the law also (i) makes clear the inapplicability of the postal monopoly to such services and (ii) bars the Postal Service from taking advantage of customs preferences for such services found in domestic and foreign laws.

9. "Equal Application of the Laws to Competitive Products (pages 12-15) and Impartial Administration of the Laws (pages 15-17)" I appreciate your suggestion that the Department of Justice review the laws. Are you confident that the Department of Justice will render an objective and disinterested review of the legal differences between another entity of the Executive Branch and the private sector? Similarly, do you believe that the Department of Justice has the necessary resources to administer and enforce the postal monopoly? How many additional resources, if any, will the Department of Justice require? Would this include transfer of the Postal Inspection Service to the Department of Justice?

I am confident that the Department of Justice will undertake a thorough and professional review of the laws. However, as part of its report, I believe it would be appropriate for the Department of Justice to solicit comments from affected parties and append such comments to its final report to Congress.

Whether or not the Department of Justice has sufficient resources to enforce the postal monopoly laws is properly a question for DOJ to address. However, I note that, according to a recent GAO report, the USPS Inspection Service has devoted relatively few resources to postal monopoly investigations in the last several years.

"Postal Service Reform: Issues Relevant to Changing Restrictions on Private Letter Delivery" (Sept. 1996), volume 2 at pages 29-32. Hence, it appears likely that DOJ currently has sufficient resources to administer the postal monopoly laws and does not require any additional resources.

I do not see any need to transfer the Inspection Service to the Department of Justice for the purpose of enforcing the postal monopoly laws. However, the Inspection Service helps to enforce a number of other laws of a criminal nature. As a general rule, I believe that criminal laws should serve a broad public purpose and not be directed to the benefit of any specific group or organization. If criminal investigations by the Inspection Service are intended to protect the public generally, then it seems appropriate that the public generally should underwrite the cost of such enforcement, not the customers of the Postal Service. By the same token, the public, not the Postal Service, should direct such investigative and enforcement efforts.

10. "Postal Monopoly and Mailbox Access (pages 17-18)" You state that "two dollars is a reasonable proposal, although I do not think universal service would be endangered if the limit were half as much." However, some witnesses such as the Postal Service, the Rate Commission, the labor unions, and newspapers seemed to indicate that the \$2 threshold was too low and would have a huge impact on the Postal Service's viability and public service mission. Could you elaborate why you find the \$2 standard outlined in this bill not to have the effect some of these other witnesses think it will?

At today's postage rates, a \$2 price limit will subject to competition first class letters weighing more than 8 ounces. According to a provocatively titled 1992 GAO report, first class non presort letters weighing 8 ounces or more accounted (in 1992) for 0.36 percent of all first class non presort mail and 2.5 of first class non presort revenues. "Priority Mail at Risk to Competition if Double Postage Rule is Suspended" at 10. This amounted to only 0.01 percent of total mail revenues (i.e., \$494 million out of \$47.2 billion). Although these percentages may have changed slightly since 1992, they are unlikely to have changed much.

A \$2 rule will also subject to competition the portion of Priority Mail now protected by the postal monopoly regulations. As noted above, I believe these regulations are illegal; hence, I do not regard the \$2 rule as subjecting Priority Mail to any significant degree of new competition from a legal standpoint. Nonetheless, I concede that postal monopoly regulations actually do inhibit competition for carriage of "flats" sent by Priority Mail. According to the same GAO report, flats accounted (in 1992) for about 47 percent of Priority Mail pieces and a higher but unspecified percentage of Priority Mail revenues. In 1995, Priority Mail accounted for about 5 percent of USPS revenues so that a \$2 price limit might subject some 3 or 3.5 percent of USPS revenues to new competition. Insofar as USPS loses this

competition, it will also save the attributable costs associated with producing Priority Mail, so the maximum net financial threat to the Postal Service posed by applying the \$2 rule to Priority Mail is about 1.5 percent of revenues. Moreover, as a practical matter, the Postal Service has natural advantages in the production of Priority Mail due to economies of scale derived from the postal monopoly. Therefore, I do not believe that the Postal Service would lose anything like 100 percent of Priority Mail flats to competition.

In short, the foreseeable financial effects of a \$2 price limit on the postal monopoly amount to less than 2 percent of total postal revenues, probably much less. Competitive losses, if any, will not be immediate; they will develop gradually as competition develops. In my judgement, such a minimal increase in the competition faced by the Postal Service cannot affect the financial viability of the Postal Service or its public service mission. Indeed, any losses could be offset easily by small increases in efficiency.

Finally, I note that experience in other countries fully supports this conclusion. The United Kingdom has had a UK£ 1 price limit to the postal monopoly for many years without adverse effect on the financial viability or public service mission of the U.K. Post Office. Similarly, Canada Post operates without apparent ill effect despite a low price limit on its postal monopoly (three times the stamp price for a 50 gram letter). The European Union has just agreed to legislation that would limit the postal monopoly to 5 times the basic stamp price.

A. Similarly, some of these same groups mentioned concerns with the mailbox demonstration project, but you note that it is "unduly cautious" and "not necessary to protect the security of mailboxes, since criminal and civil laws punish theft and trespass." How would you respond to their counter concerns in this regard in light of your suggestion for outright appeal?

As I understand it, the question refers to "counter concerns" such as those expressed by Mr. Biller, president of the American Postal Workers Union:

opening mailboxes will lead to a glut of unwanted materials and destroy the security and sanctity of the mail. Embedded in our basic Constitutional protections is a right to privacy. Americans have come to expect a standard of privacy in the personal communications that exceeds the standards of most other nations. This provision would be a serious step in removing this shield of protection. [page 5].

In response, I would make two points. First, insofar as any person finds that unrestricted access to his mailbox results in a "glut of unwanted materials," I would

accord any mailbox owner the right to reserve access to his mailbox for the Postal Service or any specific group of carriers. Second, I believe that the "security and sanctity of the mail" is protected by the penalties in 18 USC 1702 and 1708, not the limitations on mailbox access found in 18 USC 1725. Under sections 1702 and 1708, the penalty for stealing a letter from a mailbox appears to be a fine up to \$250,000 (\$500,000 for companies) and imprisonment for up to 5 years. It is difficult to believe that there are many persons who are undeterred by such penalties and yet balk at opening a mailbox because of the restriction on mailbox access found in section 1725. Nonetheless, if any owner of a mailbox suspects that open access to his mailbox has compromised the security of his mail, then I would, as noted, accord him the right to reserve access to his mailbox for the Postal Service or any specific group of carriers. Finally, if open access to mailboxes in fact proves to be the source of significant problems in any locale, I would authorize the Postal Rate Commission to reimpose the restriction on mailbox access. With such existing and additional safeguards, I do not believe that repeal of 18 USC 1725 would either overwhelm addressees with undesired mail nor threaten the security of mailboxes.

Finally, I would like to emphasize my view that whatever the rules on mailbox access may be, they should apply equally to all competitive products whether offered by the Postal Service or private carriers. If Federal Express cannot deliver express packages to the mailbox, then neither should the Postal Service.

11. "Market Tests (page 18-20)" You mention that "at a minimum," Postal Service activities that lie outside the nominal field of postal operations should be established as separate, arms-length subsidiaries. How do you envision this working in practice as it relates to structure, employees, and cost?

My suggestion was based on a concern for fair competition, not a desire to suggest an operating plan for the Postal Service. In Europe, some post offices -- notably, the French Post Office -- have pioneered the use of separate subsidiaries for competitive activities which are operationally distinct from traditional postal services. The separate subsidiary should be subject to the same laws as other companies. To the extent that the Postal Service sells services (e.g., marketing services, collection services) to its subsidiary, it should do so at a fair price and, where feasible, make such services available to private companies for the same price. Accounts for the subsidiary should be self contained so that all costs, equity, and revenues are apparent. In this manner, the structural separation between the Postal Service and its subsidiary will go a long way towards ensuring fair competition between the subsidiary and private companies. I assume that the Postal Service would give preference to current Postal Service employees in staffing a subsidiary, but employment issues seem to me properly a matter for Postal Service management.

12. "The Future: Intense Competition in Every Area of Our Business (pages 22-23)" You state that "it is too soon to predict the future of the Postal Service with certainty, and the Subcommittee's proposal wisely does not try. The Subcommittee has made an excellent start on legislation that will allow the Postal Service to respond to presently foreseeable increases in competition and, at the same time, repair flaws in the 1970 act." In your prepared testimony you noted that the Subcommittee has offered "an acceptable conceptual framework for reforming the 1970 act." However, your counterpart from the United Parcel Service testified that the Subcommittee's framework is flawed. Please explain your different viewpoint on this legislation from Mr. Nelson's.

Mr. Nelson and I developed our positions on HR 3717 independently. Although I can explain my viewpoint on HR 3717, it is not possible for me to explain Mr. Nelson's views or to explain any differences between his and mine.

Additional comment on HR 3717's proposal to authorize the Postal Service to contract with international air carriers for the transportation of international mail.

Finally, I would to address a question not posed. HR 3717 would remove restrictions on the ability of the Postal Service to contract for international air transportation for mail. I did not comment on this proposal in my prepared statement because I wanted to consider it further. Recent abuses of domestic contracting authority by the Postal Service, however, make comment necessary.

I can support the proposal in HR 3717 insofar as the transportation of *competitive* international products is concerned, provided this reform is part of a larger program of equalizing the application of the laws for all competitive products.

For the international air transportation of *non-competitive* products, I believe there should be some limits to the Postal Service's use of its bargaining power.

First, if the Postal Service can make a contract for the transportation of non-competitive products dependent upon good treatment for the transportation of competitive products, then the Postal Service has greatly enhanced bargaining power for its competitive products. For example, if the Postal Service demands that an airline give boarding priority for express mail or lose the contract to carry any mail, then the airline will have little choice but to acquiesce. If, on the other hand, the Postal Service has to pay a fair rate for the transportation of non-competitive mail, and bargain separately for the transportation of express mail, then it would find it far more difficult to negotiate extraordinary boarding priority for express mail without

paying a price that would push the price of express mail to unacceptable levels. In other words, the Postal Service would face the same competitive considerations faced by a private express negotiating a contract for air transportation. This is how it should be. A recent postal contract that requires boarding priority for all domestic mail effectively precludes private couriers from bargaining for boarding priority on equal terms. Such abuses, whether in domestic or international commerce, should be prohibited.

Second, the practical effect of the Postal Service's hard bargaining for low rates for the air transportation of non-competitive products is to shift airline costs from mailers to other, more vulnerable buyers of air transportation. After all, the costs a monopolistic Postal Service saves itself by hard bargaining are common costs incurred by the airline in the operation of the aircraft. If the Postal Service does not pay a fair share of these common costs, they must be covered by other, smaller buyers, since airlines must recover their costs somehow. It is not right for the U.S. government to use the law to invest the Postal Service with tremendous commercial leverage and then allow it to use this leverage in a commercial manner to force smaller buyers of air transportation to pay more than a reasonable share of common production costs. On the contrary, I believe that the Postal Service's non-competitive products should bear the fully allocated costs of air transportation, i.e., a proportional share of the overhead costs of air transportation.

In sum, I believe that the Postal Service should be able to bargain freely for the air transportation of competitive products, but contracts for the transportation of competitive products should not be tied to contracts for the air transportation of non-competitive products. In contracting for the air transportation of non-competitive products, the Postal Service should pay the fully allocated cost of such transportation to avoid harming other buyers of air transportation.



United Parcel Service 315 Pennsylvania Ave. S.E., Washington, D.C. 20003
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July 31, 1995

Chairman John McHugh
Subcommittee on the Postal Service
B-349-C Rayburn House Office Building
Washington, DC 20515

Dear Chairman McHugh,

Attached are my responses to the questions that you submitted to me after you gave me the opportunity to testify on the difficulties we face in competing with the US Postal Service. If you need any clarification or further information, please contact us at your convenience.

Thank you again for the opportunity to testify before you and your committee.

Sincerely yours,

A handwritten signature in cursive script that reads "James A. Rogers". The signature is written in dark ink and is positioned above the printed name.

James A. Rogers

Vice President

Responses of

James A. Rogers
United Parcel Service

to the written questions of

Chairman John M. McHugh

Subcommittee on the Postal Service

1. At a recent hearing one of our witnesses expressed concern that UPS, through the assistance of the Postal Rate Commission, has established a de facto monopoly over the carriage of small parcels for residential delivery. He further stated that UPS, in an effort to destroy its only competitor - the Postal Service, petitions the Postal Rate Commission to inflate the rate for parcel post in order to create a floor for UPS rates. Could you comment on this testimony?

I was not present to hear these statements. I was very surprised when they were reported to me. Any definition of monopoly includes the power to exclude competition. Competition for the delivery of parcels to residences for the members of the Parcel Shippers Association is anything but exclusive. Members of this association use parcel post, Third class mail -- the Postal Service carries more than four times as many parcels in third class mail than in parcel post -- Airborne, Federal Express, Roadway Package Service as well as United Parcel Service and regional and local carriers. A quick review of the catalogs published by the different members of PSA shows that they exercise their choice of a wide variety of carriers to deliver their merchandise. The notion that parcel post is UPS's only competitor in this market is given short shrift by the catalogs of Mr. May's own members.

The position of PSA is further eroded by the June 19, 1995, Parcel Shippers Association Information Letter 95-6, which tells PSA members on page 5 of the letter how to get a free copy of the 1995 - 1996 Service Directory of the Express Carrier Association located at the headquarters of the American Trucking Associations in Alexandria, VA. A copy of this directory is attached as Appendix 1. The Directory is 82 pages long and lists 79 different companies, the areas they serve and their features of service..

UPS participates at the Postal Rate Commission for one purpose and one purpose alone. That purpose is to assure that all of the ratemaking standards contained in the Postal Reorganization Act are complied with. Over the years, the Postal Rate Commission, even though handicapped by its inability to get complete information from the Postal Service, has done a fairly good job of enforcing this statute. Attached as Appendix 2 is a graph showing the increases sought by the Postal Service in first class and parcel post and the actual rates recommended by the PRC. This graph shows that the PRC has prevented even greater abuse of the Postal monopoly and the citizens subject to it by restraining

repeated Postal Service attempts at cross subsidies from first class mail to parcel post. The PRC would have been even more successful had the Governors of the Postal Service not overruled the PRC's recommendation of an 18 cent first class stamp in 1981 in favor of the 20 cent stamp proposed by the Postal Service.

I am also confused by the statement that UPS seeks to have the Postal Rate Commission create a floor for parcel post rates on residential deliveries by inflating parcel post rates. UPS asks only that parcel post rates cover the costs caused by parcel post and a reasonable contribution to postal overhead. If by floor, the PSA witness means that the Postal Service's parcel post rates establish a "lower limit" for UPS rates, then we must point out that the current rate chart comparison between UPS residential ground rates and parcel post rates show that UPS has lower rates in 39% of the rate cells. Obviously, this so called "floor" has some serious holes in it.

2. Mr. Sidak and Mr. Spulber conclude in their report attached to your written testimony that Congress should privatize the Postal Service and repeal the Private Express Statutes. Do you agree with their conclusion? Why or why not?

I do not read the Sidak-Spulber report to conclude that Congress should privatize the Postal Service and repeal the Private Express Statutes. The report states that there no longer is any compelling technological, economic, or public policy reason to continue the Postal Service's monopoly over the delivery of letter mail, but then goes to make six policy recommendations should Congress decide not to truly privatize the Postal Service and repeal the Private Express Statutes. Mr. Sidak and Professor Spulber note that true privatization and repeal of the Private Express Statutes would achieve the same result as their first six policy recommendations.

Sidak and Spulber recommend eventual repeal of the Private Express Statutes if that is necessary to prevent predatory cross subsidization by a government owned monopolist.

We strongly support the full package of policy recommendations and the conclusions of the Sidak-Spulber report. If Congress feels it is essential to maintain a monopoly over addressed letters and the use of the destination mailbox, the first six policy recommendations are essential to protect the public and competitors for non-monopoly service from abuse of the monopoly. Even if the Private Express Statutes were repealed, as long as the Postal Service is a governmental or even a quasi-governmental entity there would still be a need for some body to insure Postal Service accountability to the public interest because of the Postal Service's government status and in light of its mammoth size and resources. At the very least, there would be a continuing need for the PRC during a transitional period after privatization while the market adjusted to a private Postal Service which starts off with some \$55 billion in revenues and the tremendous advantages of having 40,000 outlets where its services are offered.

3. Mr. Rogers, in an article from last February in *Industry Week* entitled "Shape up and Ship out -- How Kent "Oz" Nelson is repackaging UPS for the future", I found many items that correlated with what the Postmaster General has been saying he needs to do as well. Two of the axioms quoted in the article are that UPS had to serve customers the way they want to be served and, secondly, identify what the true costs of providing the services were. I was also intrigued by the statement that as long "as competition was a monolithic post office that provided one level of service at one rate, that our (UPS) focus was fine." Are those recommendations you would make to the Postmaster General or is the USPS different because of its quasi-government status? How important is knowing your costs and knowing your competition?

The Postal Service's status as an instrumentality of the government certainly makes it different from private enterprise and requires that it be accountable to the public interest in a different way than in private enterprise. However, I agree that the Postal Service and the PRC should identify the true costs of providing each of the Postal Service's various services. I also agree that in fulfilling its core mission -- providing a class of mail for the delivery of correspondence nationwide at a uniform rate -- the Postal Service should provide its customers with the quality service they want. But the Postal Service should not lose sight of this basic mission by focusing on ancillary services and attempting to take business away from private companies which are doing the job in rendering other services.

The primary responsibility of the Postal Service is to provide delivery of letter mail at a uniform rate to the citizens of the United States. The Postal Service receives 80 to 85% of its revenue from this monopoly. The remaining portion of its revenue comes from services for which the private sector may compete. Even this remainder is not truly competitive since the private sector may not use the consumer's mailbox and it includes services (such as overnight delivery and the delivery of addressed publications) which may only be provided by the private sector as long as the Postal Service continues to waive the monopoly it claims in those respects.

The Postal Service does not have "quasi-government" status. It is clearly a part of the Executive Branch of the Government (see 39 USC 201). Delivery of addressed letter mail to consumer mail boxes in every portion of the country at a uniform rate is a government function. Congress and the public may wish the Postal Service to be more business like, but it clearly remains a government agency whose primary obligation is to provide a government service and which has advantages (such as not paying taxes) which result from its governmental status.

In the private sector it is important to know your costs. Any firm having the market position of the Postal Service must cover its costs. Failure to do so risks liability under the anti-trust laws, and could subject the firm to onerous penalties, both criminal and civil. Even aside from the antitrust laws, if a private company continually fails to cover costs, it inevitably goes bankrupt.

It is equally important to know your competition. If your competitors have structural advantages over you, perhaps that is a market in which you should not compete. Without such knowledge of both competitors and costs, you will soon be out of business. You could not survive in the private sector with the Postal Service's track record: cumulative losses of \$9 billion accumulated in 17 of 23 years and a \$6 billion negative net worth.

4. You state clearly in your testimony that you believe that the Postal Rate Commission is at a disadvantage by being able to be overruled or by not being able to get the most up-to-date information and say you believe it needs to be strengthened. Do you feel that more stringent reporting requirements provided to the Commission could coexist with a shorter time-frame for its decisions?

Yes, we feel eliminating the device of permitting the Governors to approve, reject, or modify the PRC's decision, coupled with more stringent reporting requirements and PRC authority to compel the Postal Service to provide data could lead to a shorter time frame for decisions on postal rates. Even under the current circumstances, the Commission acts quickly on complex rate requests involving tens of billions of dollars -- much more quickly than other similar agencies. The Postal Rate Commission is the only body we are aware of that has ever had to police a monopoly without having the ability to compel the monopolist to provide the information the Commission needs to perform that function. If such information were provided to the PRC and the public on a regular basis, some of the discovery conducted in the current ten month process could be eliminated or reduced.

This problem can be explained by a few examples. There is no mechanism in place that makes the Postal Service file its financial and cost data on the same basis as the most recent PRC recommendations. In fact, the Postal Service does not always even apply the same costing principles that were adopted by the PRC in the preceding case. This makes it difficult to analyze postal data between requests. Inconsistencies of this kind in Postal Service requests for rate or classification changes cause confusion and lead to extensive, time consuming discovery that could easily be avoided if the PRC could set forth the requirements for reporting.

Although the need for cooperation between the US Postal Service and the PRC has been stressed in the past by mailers, Congress and even at times the Postal service, the Postal Service continues to protect and use their every prerogative under the current system. The PRC clearly needs both the necessary information, and a consistent format for both the filing of the information and its regular submission if they are ever to successfully speed their review of rates proposed by a \$40 billion dollar plus monopolist that aggressively competes with the private sector in non-monopoly services.



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In-win Lebowitz
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Ray R. Thurston
SonicAir Courier International

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Guy S. King
Timespress Air Services

Douglas T. Smalls
United Parcel Service

Jeffrey I. Rhodes
US Delivery Systems

■ EXECUTIVE DIRECTOR

Joseph B. Morris

February 28, 1997

Honorable John M. McHugh
Chairman
Subcommittee on the Postal Service
c/o Jennifer Tracy
Room B-349C
Washington, DC 20515

**RE: ACCA'S ANSWERS TO HOUSE POSTAL SUBCOMMITTEE
QUESTIONS ABOUT TESTIMONY BY PHILIP A. BELYEW**

Dear Congressman McHugh:

The Air Courier Conference of America is pleased to respond to the committee's questions concerning some of the points raised by the testimony of its President Philip A. Belyew concerning H.R. 3717 on September 26, 1996.

1. *Regarding the bill's antitrust provisions, please expand upon your suggestions regarding your suggestions that those provisions of H.R. 3717 be redrafted to avoid an emphasis on a particular postal product.*

Section 3744(a) of H.R. 3717 provides that "the antitrust laws shall apply with respect to the Postal Service to the extent that the Postal Service engages in conduct with respect to (1) any product in the competitive category of mail." It is a fundamental tenet of the antitrust laws that they are intended to protect competition. If lawful competition (*i.e.*, any private sector activity not prohibited by the Private Express Statutes) is harmed by Postal Service conduct proscribed by the antitrust laws, consumers and competitors should be afforded antitrust remedies. The proposed limitation of the Postal Service's antitrust liability to conduct involving its competitive categories of mail would reverse the traditional starting point of antitrust standing and competitive analysis. Rather than confer standing based upon the effects of the Postal Service's conduct in the market place, the proposal would confer standing and provide remedies based upon a product-based source of Postal Service's conduct. The proposed limitation is essentially unworkable, would leave large areas of competitive harm without a remedy and would increase the already high costs of antitrust litigation.

The proposed limitation is unworkable because the Postal Service is a horizontally and vertically integrated economic unit. That

means that Postal Service management makes business decisions that encompass a broad array of products and activities in the collection, processing, transportation and delivery of services. It will be the exception, rather than the rule that a business decision can be tied to conduct relating to a particular "product." A case in point is the Postal Service's ASYS agreement with the airlines.

As noted in Mr. Belyew's testimony, with its recently amended ASYS contracts the Postal Service has imposed anticompetitive contractual requirements upon airlines whereby they are forced to bump high cost, low volume courier shipments in favor low cost, high volume mail. The Postal Service's air transportation agreements favor the Postal Service institutionally and interfere with the courier industry's access to reliable air transportation. The bulk of the Postal Service's mail shipments under these contracts is First Class Mail which would not be in the competitive category. However, the Postal Service also uses the ASYS agreements to ship lesser amounts of Priority Mail which it defines as including same day, next day and two-to-three day delivery which are in the "competitive category." The source of the Postal Service's leverage as a buyer (monopsony power) that allows it to impose conditions that are economically irrational to the airlines and competitively harmful to competitors is clearly the First Class monopoly. Applying the proposed limitation of section 3744 to this scenario is virtually impossible.

First, it is unclear whether, and unlikely that, the Postal Service employees who devised the ASYS amendments have responsibilities that are compartmentalized to any particular postal "product." The amendments can be expected to achieve general strategic objectives cutting across product lines. Second, the harm to the Postal Service's competitors would exist whether or not the Postal Service uses the contracts for competitive products. The market power the Postal Service is abusing originates in the First Class monopoly but has its effects on couriers whose services compete with the Postal Service's competitive products. Third, the requirement for competitive postal "product" link would undermine the ability of the airlines to resort to antitrust remedies. From the airlines' perspective, the product that relates to the Postal Service anticompetitive conduct is not a mail product at all, but air transportation services. Moreover, even if the airlines' provision of transportation services to the Postal Service were a sufficient nexus for the airlines' standing to sue, there is no rational reason why that standing should depend on whether the Postal Service

uses the ASYS agreement to carry competitive or non-competitive mail categories.

The fundamental premise of the proposed product line limitation appears to be that the beneficiary of anticompetitive conduct can be easily identified and that, if the beneficiary is the First Class monopoly, there can be no harm to legitimate competition. The Postal Service's conduct, however, can disrupt markets having nothing to do with competitive mail delivery services. It can disrupt non-mail markets such as air transportation, where the Postal Service is a buyer. However, the Postal Service can potentially disrupt other non-mail markets in which businesses compete with the Postal Service by offering non-mail products or services, such as private mail and parcel service stores, cellular telephone transmission and pre-paid telephone cards. In many of these cases, the Postal Service's is using its First Class monopoly to subsidize below-cost offerings in non-mail areas. For antitrust remedies to be limited to conduct related to a "competitive category of mail" will deprive the targets of the Postal Service's predation from antitrust remedies.

Finally, the proposed limitation will create a costly hurdle to potential antitrust litigants against the Postal Service. This will take the form of attempting to discover where in the recesses of the Postal Service decisions were made. Indeed, the Postal Service may even organize itself in such way, if it is not already so organized, that anticompetitive conduct can simply be attributed to a portion of the bureaucracy without links to particular postal products, thereby evading the antitrust provision altogether.

A. In the hearing, you indicated the concern that the antitrust provisions applications did not apply to the experimental products. However, Section 3744 of the bill does apply antitrust provisions to these products. Does this affect your position on the bill?

A. ACCA's testimony concerning antitrust immunity for experimental products contained an editing error that changed its meaning. We regret the error. ACCA's concern is that the antitrust remedy against experimental products with annual sales as high as \$100 million free of Postal Rate Commission regulation for three years would be ineffective. In addition to the shortcomings of linking the antitrust provision to particular products as described above, there is a substantial danger that, notwithstanding the explicit provision of section 3744(a)(2) applying the antitrust laws to such products, the Postal Service may be able drive small

competitors out of business by undetectable below cost pricing during the three years before Postal Rate Commission jurisdiction begins.

The definition of antitrust law should also include other unfair competition and intellectual property laws, including the Lanham Act, 15 U.S.C. §1501 *et seq.* The Postal Service has recently argued successfully that it can engage in trademark infringement and other unfair competition covered by the Lanham Act, because it enjoys sovereign immunity from the Lanham Act. It defies credibility that the Postal Service, which has sued competitors under the Lanham Act for infringing its trademarks could one day call itself FedEx or Microsoft with impunity.

The effective date provision would retroactively immunize conduct for which the Postal Service currently lacks any express exemption from the antitrust laws. The antitrust provision should go into effect on the effective date of the legislation as a whole, without suggesting that it immunizes past conduct that is arguably covered at present, given the lack of any explicit exemption.

2. *Do you believe that all of the Postal Inspection Service's law enforcement duties and responsibilities be transferred to the Department of Justice or Treasury, or are you suggesting that there should be no enforcement of the postal monopoly laws by the Inspection Service?*

ACCA believes that all of the Postal Inspection Service's law enforcement duties should be transferred to law enforcement agencies to prevent its use for anticompetitive purposes or as a marketing tool for the Postal Service.

3. *Like Federal Express, you suggested that postal monopoly enforcement and interpretation be transferred to the Department of Justice. Do you believe that the Department of Justice has the resources and objectivity to do the job? Who should fund this enforcement - postal ratepayers or taxpayers?*

Enforcement and interpretation of the postal monopoly laws does not appear to be a law enforcement activity requiring substantial resources. According to the GAO report, "Postal Service Reform: Issues Relevant to Changing Restrictions on Private Letter-Delivery" (Sept. 1996), Postal Service inspectors investigated only about 10 cases per year between 1988 and 1994 (vol. II, page 29) and no cases since 1994 (page 31). Today USPS's educational and enforcement efforts involve only two employees (page 32).

Since USPS's postal monopoly regulations are more complex and elaborate than can be justified by disinterested administration of the law, it may be that DOJ administration of the postal monopoly would entail still less resources. Hence, it appears likely that DOJ currently has sufficient resources to administer the postal monopoly laws.

Whether DOJ is sufficiently "objective" to administer the postal monopoly laws is a more difficult question. In ACCA's view, the due process principle implies that rulemaking power of the United States should not be tainted by commercial interest of the rule maker. For this reason, it is unacceptable that USPS issues rules that purport to administer a monopoly in which USPS has a direct commercial interest. Shifting administrative authority to DOJ would materially alleviate this situation because (i) DOJ has no direct commercial interest in the postal monopoly and (ii) DOJ, unlike USPS, is subject to the direction of the President. On the other hand, all of the financial resources of the government are interrelated to some degree so DOJ does retain an indirect financial interest in the fortunes of USPS. For this reason, ACCA would prefer that interpretation of the postal monopoly laws is committed primarily to the courts. As Attorney General MacVeagh said in 1881 in ruling on the scope of the postal monopoly, "What is a letter I can make no plainer than it is made by the idea which common usage attaches to that term." It seems to ACCA that the postal monopoly laws use ordinary words that can be, and should be, interpreted according to "common usage" without distortion by arcane administrative regulations.

Finally, ACCA believes that the postal monopoly is justified only if it serves a public purpose. It is not justified as an indirect subsidy to the Postal Service, postal employees, or postal ratepayers. If the postal monopoly does indeed serve the public generally, then the public generally--i.e., taxpayers--should pay the costs of enforcing the law. In any case, as noted above, such costs appear to be minimal.

4. In relation to your suggestion for modifying the mailbox demonstration project, how do you respond to the concerns of those who complain that even this demonstration project would compromise the "sanctity" of the mailbox?

Resort to the supposed "sanctity" of the mailbox is a mantra not a defense. It therefore requires no direct response. Access to the mailbox is an economic and competition policy issue which should be analyzed in those terms. AT&T put forward the same "sanctity"

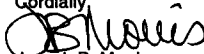
mantra 20 years ago with respect to interconnection and foreign, *i.e.* non-Western electric equipment and telephone instruments. AT&T's sanctity arguments at least had a plausible technical basis. They were, nonetheless, rejected on economic and competition policy grounds. The predicted technical problems never materialized. The "sanctity" arguments stand on weaker grounds here, given the lack of any potential technical problems.

A. Some have argued that this demonstration project would lead to increased postal fraud and theft. What safeguards should be built into this project?

A. Predictions of increased fraud and theft do not withstand scrutiny. First, there are those who presumably engage in postal fraud and theft today, when the law prohibits access to mailboxes by persons other than postal letter carriers. Thus one possible basis to credit the predictions, is to believe that these wrongdoers are somehow restrained by the fact that access is limited and would increase their illegal activities during a demonstration project. That does not make any sense. Second, another implausible possibility is that there are others who have not yet engaged in fraud or theft who are also restrained by the currently limited mailbox access. Third, another unlikely possibility is that the access to mail boxes by non-postal delivery people will embolden non-postal carriers to interfere with the mail. Lastly, there is no more reason for non-postal delivery people than letter carriers to tamper with the mail. Accordingly, since we are at a loss as to the basis for the dire predictions, we see no need for safeguards for the project.

ACCA appreciates this opportunity to clarify its views concerning H.R. 3717. If you have any further questions we would be pleased to answer them.

Gordially



Joseph B. Morris
Executive Director

26T117

National Star Route Mail Contractors' Association

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9/20



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July 25, 1996

The Honorable John M. McHugh
Chairman
Subcommittee on the Postal Service
House Government And Oversight Committee
Rayburn House Office Building - B349B
Washington, D.C. 20515

Chairman McHugh and Members of the Subcommittee:

I want to thank you for the opportunity to comment on HR 3717, the Postal Reorganization Act of 1996. My name is John V. "Skip" Maraney, Executive Director of the National Star Route Mail Contractors' Association. The Association ultimately represents some 15,000 small business men and women who contract with the United States Postal Service for the over-the-highway transportation of the U.S. Mail.

Mr. Chairman, I want to commend you and your staff for making the first major revision to the Postal Reorganization Act of 1970 with an eye to improving upon its original intent of giving the USPS more flexibility in providing service to the American people. The Association, of course, concerned primarily with the transportation of mail by contract and will first address our comments to TITLE VII of the Bill.

Section 701(b) agrees with the repeal of Chapter 52 of title 39 since the USPS does not have the right to transport mail no longer an Interstate and Foreign Commerce matter. The repeal has been just taking up space for a considerable period of time. The repeal of the Contractual Restrictions of Length of Contracts, the Association believes the current language should be amended by striking (1) "shall be subject to the same conditions as when the Postal Service determines that special circumstances exist" and (2) "in excess of 6 years") at least as long as the contract for mail contracting is concerned. If flexibility is the goal here, and I believe it is, I suggest that the current language in Title 39 be amended to read:



PART V. MAIL TRANSPORTATION (B) (1) - CONTRACTS FOR THE TRANSPORTATION OF MAIL PROCURED UNDER SUBSECTION (A) (4) OF THIS SECTION SHALL BE FOR PERIODS NOT IN EXCESS OF 4 YEARS (OR SUCH LENGTH OF TIME AS MAY BE DETERMINED BY THE POSTAL SERVICE TO BE ADVISABLE OR APPROPRIATE).

The reasons for maintaining the 4 years as a basic structure are numerous:

- 1. The 4 year term permits the USPS to test the open market in order to ascertain the best competitive price prior to renewing a contract. This discipline forces the contractors to keep their costs competitive and makes sure the Postal Service is getting the best service for the best price. An unlimited contract term would make it more difficult for the Postal Service to determine current market value. Conversely, terms under 4 years would force contractors to compress their costs into a shorter period thus increasing the cost to the Postal Service.
2. Current indemnity payments for a contract cancelled for the convenience of the Postal Service are based on a 4-year term. 1/3 of the annual rate of the contract if cancelled in the first two years, 1/6 in the third year and 1/12 in the fourth. The indemnity provision is extremely important to a contractor, particularly a first timer, trying to borrow capital from a lending institution as it serves as collateral. Some contractors even have the potential indemnity payments assigned to the lending institution.
3. Having at least a 4- year contract written into the law gives a lending institution much security in considering loans to contractors. The loan is protected through a 4-year cash flow from a quasi-government agency.
4. Monetary adjustments to a contract are based on a 4-year term.
5. The language in question has remained the same in every rewrite of Title 39 since 1948 because it returns corresponding benefits to both the Postal Service and the highway contracting industry. This has been constantly reaffirmed by the Postal Service, the industry and through congressional committee reports. Why change something that works?

The amendment we suggest while preserving the basic structure of a program that has worked so well, would give the Postal Service the authority to contract for longer terms if it felt it was in its best interest and allow it the flexibility it has not had heretofore.

TITLE VII. SECTION 704. MAILBOX DEMONSTRATION PROJECT.

The Association understands that you are only proposing a demonstration project but we are most apprehensive about allowing open access to individual mailboxes. This involves the sanctity and privacy of individual mail and could invite a lot of trouble since no one would not know who had been in or out of the mailbox during the day. We believe the American public would take affront to this happenstance as a gross invasion of privacy. This provision could also amount to a great revenue loss to the Postal Service.

IN TITLE IX . SECTION 911, THE ASSOCIATION SUGGESTS THE FOLLOWING AMENDMENT:

Page 49, Section 911, paragraph 881, Stalking Federal and Postal Officers and Employees

(a) (1) (B) "In the United States Postal Service "or under contract with the United States Postal Service," while such other person is engaged in official duties or on account of such duties." The reasons for the underlined amendment are multiple:

- A. It would help give sanctity and security to the mail;
- B. Contract operators or employees have similar exposure to the same employer conduct as USPS employees;
- C. During strikes, slowdowns or other situations involving labor unrest, contractors and their employees are directly in a zone of potential conflict/danger and need this protection.
- D. Eliminate the dual standard. Under the current proposal, a person who is an employee of the Postal Service would have protection while a contractor or employee of a contractor is denied protection.

Finally, Mr. Chairman, the Association supports your efforts to give the Postal Service more flexibility and freeing it from some of the restraints that have put it at a definite disadvantage with some of its competitors. The fate of the highway contracting industry is inexorable linked to the fate of the Postal Service and we support measures to further its financial stability and increase its share of the mail volume as we are the industry that will haul it over the highway.

We thank you, Mr. Chairman, for the opportunity to submit our views on the provisions of HR 3717 and commend you, members of your subcommittee, and staff for putting these measures forward for consideration.

I will be happy to respond to any questions.

STATEMENT OF
GREETING CARD ASSOCIATION
FOR THE
SUBCOMMITTEE ON POSTAL SERVICE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
September 20, 1996

The Greeting Card Association appreciates the opportunity we have been given to comment on H.R. 3717 -- an important and comprehensive bill to reform the Postal Service. The Greeting Card Association has a fifty year record of championing the citizen mailer's views on postal issues. Indeed, we are the only organization that has done so consistently. This legislation is critical to our industry and the individual customer's interest in maintaining a healthy Postal Service into the 21st century. While there are many provisions of the bill that we can and do support, unfortunately, Section 10 as currently drafted forces us to oppose the bill in its present form. We hope you will study our comments and give them the consideration we believe they deserve.

The GCA is a member of the newly-formed Main Street Coalition for Postal Fairness because we share many concerns with other members of the Coalition. These include supporting a strong Postal Rate Commission, guarding against any cross-subsidization of classes of mail, and promoting efforts to strengthen the financial stability of the Postal Service to secure its viability in the future.

However, the views that we relate here primarily represent the concerns of the millions of Americans who every year send 5 billion greeting cards through the United States mails. The Greeting Card Association's basic aim is to ensure that, in the

process of developing new regulations to reform the Postal Service, the rates paid by the citizen mailer remain fair and equitable.

In addition to our prepared statement, we are enclosing a technical analysis covering key aspects of the bill in detail which we ask be included in the record. Of most importance to us is a reexamination of the rate-cap provisions of H.R. 3717. We believe there are serious flaws in these provisions that need to be addressed. We do not disagree with the idea of a price-cap per se. For example, the concept of a rate cap that used CPI-U minus the actual rate of productivity growth would be a good basis for developing a new approach to postal ratemaking.

H.R. 3717 is a remarkably comprehensive bill. The Subcommittee and its Chairman are to be commended for addressing a broad spectrum of widely differing issues. Of the variety of proposals it contains, some are definitely worthy of further development. Suggestions like the provision of subpoena authority for the Postal Rate Commission, the establishment of a Presidential Postal Employee-Management Commission, the extensive reporting provisions, and some, if not all, aspects of the Rate Commission's post-audit responsibility for enforcing lawful ratemaking are commendable.

We are concerned with the overall tone of the legislation that attempts to position the Postal Service as a private "business" rather than a public service providing universal delivery service for all Americans. Indeed, references in the bill such as the "business nature anticipated by the reform" add to our concern that the bill addresses large volume business needs and speaks primarily to the sender, not the receiver of mail.

In addition, there are major aspects of the Postal Service's ability to maintain financial stability that are conspicuously missing from the bill such as the labor issue. We believe such a comprehensive piece of reform legislation should attempt to address this key area, difficult as it may be to do so.

The Postal Service is vital to American businesses -- including ours -- but this government monopoly is not itself a business. In 1970, the Congress declared it to be

a basic and fundamental service provided to the people by the Government of the United States, authorized by the Constitution, created by Act of Congress, and supported by the people.

Its mission was, and is, to "provide postal services to bind the Nation together through the personal, educational, literary, and business correspondence of the people." It was, and is, meant to be universally available, and it is forbidden to apportion its costs "so as to impair the overall value of such service to the people."

This is the charter of a government enterprise whose prime duty is service, not "competitive" pursuit of bulk mail volumes. Yet that appears to be the first -- and in some areas, the only -- concern of this legislation. The rate-cap mechanism, which is promoted as safeguarding the ordinary citizen against excessive postage rates, in fact covers many categories of mail used by high-volume bulk business mailers. These business-oriented bulk categories are mail types the Postal Service has historically (and indeed quite recently) declared are in danger from competition. The rate-cap scheme is so designed as to encourage, if not virtually mandate, price discrimination in favor of these classes of mail and against the ordinary household user, who has no hard copy delivery options.

From its earliest days our Nation has had a universal, government-owned postal system because mail communications have value to the recipient. They may bring family news, expressions of sympathy or congratulation, business opportunities, entertainment and enlightenment, or notice of a sale at the supermarket. It is, we believe, a profound misunderstanding of what a postal system is and does to suppose that the value of mail means only what amount of postage the sender is willing to pay.

That misunderstanding, however, is central to H.R. 3717. The ratemaking requirement, written into law in 1976, that the Rate Commission specifically consider the educational, cultural, scientific, and informational value of mail to *the recipient* would be written out of the law by this bill. Demand pricing -- some call it "charging what the traffic will bear" -- is mandated. In addition, the bill either reduces to minimal significance or completely discards the existing legal requirement that postal rates be fair and equitable.

There is no question that it is a challenge to design a utility pricing system that will protect captive customers while not condemning the utility to lose that part of its business that is subject to competition. But it can be done. The rate-cap scheme in this bill, considered superficially, may appear to provide such consumer protection. In practice it would probably have exactly the opposite effect.

The rate cap covers not only First-Class single piece letters -- the archetypal "monopoly mail" -- but also periodicals mailed by publishers (what used to be called third-class advertising mail), certain kinds of parcel-type mail, and -- as a separate category from the letters and cards sent by householders -- bulk-entered First-Class mail. The bill requires each of these groupings to have its own "adjustment factor." The

adjustment factor -- which "adjusts" the price index either up or down -- is what drives the maximum rates for each grouping. In setting adjustment factors, the Rate Commission is told it must use demand pricing.

In short, the rate cap is less a protection for the everyday captive postal customer than a way for the Postal Service's campaign to be "competitive" in distributing advertising and magazines, and its resistance to banking and billing by electronic media, to be financed out of the household mailer's pocket.

There are some categories of mail, where the Postal Service does indeed have competition, which the bill declares "competitive." These are, in effect, deregulated. The Governors of the Postal Service -- renamed "Directors" by the bill, seemingly to emphasize that we must no longer think of it as a public service -- can set what rates they like, as long as the rates cover attributable cost and make some contribution to other costs. If the Rate Commission later finds a violation of this rule, it can sequester half the Postal Service's profits (should it have any) for future rate relief. Unless and until that happens, the captive mailer will predictably pay the freight -- the more so, since the Service could ask for extra rate increases, *from the classes under the rate cap only*, if it found itself in "severe financial exigencies." Of course such exigencies could be caused by imprudent underpricing of competitive mail. But once again the mailer without competitive alternatives would pay.

There are numerous other features of this legislation that tend in the same direction. If they have a common fault, it is that they depend, in practice if not indeed in concept, on taxing the captive customer.

That is not a proper policy for our Nation's postal system. The right way for the Postal Service to be competitive -- not the easy way, necessarily; but the right way -- is to operate efficiently.

Again, we commend the Subcommittee for attempting the first first comprehensive postal reform legislation since the Postal Reorganization Act of 1970. It is a herculean effort. We stand ready to work with you to find ways to ensure a viable future for the Postal Service and to maintain the promise of universal mail delivery to the American people into the 21st Century.

TECHNICAL ANALYSIS
POSTAL REFORM ACT OF 1996 (H.R. 3717)

Introduction. This paper provides a technical analysis and critique of some key sections of the "Postal Reform Act of 1996," recently introduced in the House of Representatives and scheduled to be the subject of House hearings in July 1996. The bill is broad in scope, affecting organizational, financial, and regulatory aspects of the Postal Reorganization Act of 1970.¹ By no means all of these topics can be covered here; this analysis concentrates on those provisions of the bill that directly or indirectly affect rates and ratemaking.

This paper examines the bill in light of the proven fundamentals of present-day postal ratemaking:

- the break-even rule, requiring that over a reasonable term the Postal Service will record neither a surplus nor a deficit;
- the concept of attributable costs; that is, costs which can be causally traced to particular classes of mail and which by law must be recovered from those classes;
- the process of assigning the remaining costs (about 35% of the total) to classes by balancing a number of mandatory statutory considerations; and
- the performance of the ratemaking function by an independent agency, the Postal Rate Commission ("PRC"), through public, on-the-record hearings.

Present in the background are the fundamental policies of the Postal Reorganization Act, which include maintenance of a universally available postal communication system for the "personal, educational, literary, and business correspondence of the people" and the prohibition of cost allocation that would "impair the overall value of such [postal] service to the people." 39 U.S.C. § 101(a).

Progressive features of the bill. Much of the present analysis leads to conclusions critical of the bill's basic theory and proposed implementation. However, the bill also contains several good ideas -- separable, for the most part, from the features that are objectionable. They could enhance efficiency of Postal Service operations and of the regulatory process that oversees some aspects of those operations.

These beneficial proposals are: the provision for PRC subpenas; the Postal Employee-Management Commission; and the new reporting and auditing measures.

Subpena authority for the PRC. At present -- unlike most regulatory commissions -- the PRC does not have authority to issue subpenas compelling the attendance of witnesses or the production of documents.

Subpenas are fact-seeking devices. Facts are needed to determine the amount and causation of costs, the relationship between mail volume or demand and cost and service factors, and mail usage patterns. Many of these facts are available within the Postal Service but nowhere else.

Section 603 of the bill would add to existing § 3604 a subsection (f) authorizing the PRC Chairman, a Commissioner designated by the Chairman, or an Administrative Law Judge

employed by the PRC to issue subpoenas, with the written concurrence of a majority of the Commissioners then holding office. Unlike normal subpoena practice, however, the Postal Service may unilaterally determine that a subpoenaed document or other matter is not to be disclosed under § 410(c) or under a Freedom of Information Act exemption. If it does, the material may not be seen by anyone but officers and employees of the PRC. This sweeping privilege is qualified to the extent that the material is obtained through the discovery rules applying to trial-type hearings conducted by the PRC [proposed § 3604(g)(3)], provided the PRC has adopted appropriate confidential-treatment rules similar to those of the Federal courts. As other agencies have developed such rules, the PRC should find it possible to satisfy this condition and thereby gain the ability to enforce its information requirements in court. The concession for trial-type hearings is less generous than it might appear, however, since the scope of such public, on-the-record proceedings is drastically curtailed by other provisions of the bill, and court proceedings could readily consume much of the limited time the bill allows for such proceedings.

The Employee-Management Commission. All mail users stand to benefit from improvements in the operating efficiency of the Postal Service. In particular, all mail is dependent (if to varying degrees) on the efficient utilization of postal personnel -- including the assurance of workplace conditions where they can function productively.

The proposed temporary Presidential Postal Employee-Management Commission (§ 301 of the bill) could serve as a vehicle for constructively improving the complex relationship between postal management and labor by bringing fresh ideas and an objective viewpoint.

Reporting requirements. Proposed § 3782 provides for an annual rate compliance report by the Postal Service. Before this report is submitted to the PRC, the information in it is to be audited by an independent, non-governmental accounting organization. In addition, the Service must provide its most recent comprehensive statement, a report on its performance plans, and a variety of other market and financial information.

Unfortunately, from the standpoint of the broad mailing public, this reporting requirement is subject to the same unilateral USPS determinations regarding confidentiality, and the same restriction of access to PRC staff, that appeared in connection with the subpoena provision. While it is thus unclear how these provisions would assist interested mail users, they would clearly assist the PRC in identifying and understanding upcoming issues, and should also give postal managers an incentive to strive for more favorable efficiency results.

The "refund" provision. One novel, and in its theoretical aspects beneficial, feature of the bill is the ability of the PRC -- if it detects violations of ratemaking requirements -- to order a portion of Postal Service profits set aside for future rate relief (proposed § 3783). This is a common mechanism in other rate regulation systems. Unfortunately, as it would be implemented by the bill, it would offer little protection to the citizen mailer.

The Postal Service, like many similar organizations, tends to act as a volume maximizer.² This makes it likely that such rate violations as occur will result from charging below-cost rates. Below-cost rates, in turn, are unlikely to result in abnormal profits. (Such profits, if they do occur in the presence of below-cost rates set to gain volume, are likely to flow from gouging of captive customers. But below-cost

ratemaking need not result in abnormal profits, or any profits at all.)

This means that -- since it can reach only profits³ -- the PRC cannot count on being able to provide relief to citizen mailers with respect to costs properly chargeable to, but not recovered from, mailers in the favored groups. Only if the gouging of the captive customer went beyond the illegitimate shifting of costs, and began to produce actual profits, could the PRC act.

Even then, no more than 50% of the profits could be set aside for future rate relief. The rest would remain within the Service's discretion, to be used for such purposes as officer and employee bonuses [proposed § 3783(e)].

These detailed provisions make it unlikely that refund relief for the citizen mailer can be provided on a scale commensurate with the possible scope of violations. Nonetheless, the basic idea of ratemaking compliance review and provision for related refunds has potential, and could be developed in more useful ways.

It is now appropriate to turn from these measures to the core ratemaking and rate policy provisions of the bill. In the what follows, the most extensive discussion centers on the rate cap mechanism purportedly protecting the captive mailer. Also discussed are the baseline rate procedure and certain deregulatory initiatives including negotiated rates and market tests.

The analysis shows that the bill would not offer captive mailers the protection it promises, and, indeed, that -- in derogation of the fundamental policies of the present postal code

-- it is overwhelmingly biased in favor of large-volume business users.

I. THE RATE CAP

Introduction. The bill contains a rate cap mechanism that purports to protect small-volume, captive users of letter mail from price gouging. This mechanism is apparently thought of as counterbalancing the effective deregulation of "competitive" postal rates (i.e., rates for mail classes declared subject to "full competition within the marketplace"). *Summary of Postal Reform Act of 1996* (cited as "Summary"), at 2. As will be shown, it does not protect the citizen mailer, and in fact exposes that mailer to higher rates in the future.

A rate cap can provide protection for a utility's captive customers if it is properly designed, applied to the appropriate class(es) of service, and not riddled with exceptions. Unfortunately, the bill as introduced incorporates a rate cap meeting none of these standards. If enacted in place of the existing ratemaking system, it would very likely leave the household letter mail user worse off than before.

Relation between price and cost. A rate cap which, like the one in the bill, limits rate changes by reference to an exogenous index such as the Gross Domestic Product Price Index (GDPPI), necessarily undoes the connection between rates and costs. The bill's proponents present this decoupling as an advantage:

Price cap regulation as outlined in this new chapter breaks the link between cost and price, and ends the "zero sum game of postal finances," as the current process is described by numerous informed observers. . . . In contrast to the cost of service process that has been in existence since 1971, the Postal Service will not be allowed higher revenues from services subject to the price cap simply when the costs

of those specific activities rise; thus, the Postal Service's ability to increase its earnings by assigning accounting costs from its competitive services to those services subject to the price cap is decreased. This decreased ability to profit from cost misallocation correspondingly reduces the Service's incentive to attempt cross-subsidization.

Section-by-Section Analysis, Postal Reform Act of 1996 (cited as "*Analysis*"), at 13. The quotation contains valid criticisms of cost-of-service rate regulation (particularly where, as with the Postal Service, cost accounting has not been standardized and made auditable by regulatory action). The question is whether the proposed rate cap would provide a remedy.

The discussion that follows deals with:

- A. The grouping of mail types subject to the rate cap;
- B. The adjustment factor applied to the chosen price index to derive rate caps;
- C. The escape mechanism for "financial exigency";
- D. "Alternative maximum rates" set by the Postal Service with no public oversight; and
- E. The effect of baseline rates (which are discussed in more detail in the following section).

A. Mail types subject to the rate cap

The declared object of the rate cap is to control rates "[f]or those postal products that are protected by the Private Express Statutes as well as for those products with few if any alternatives outside of the U.S. Postal Service" (*Analysis* at 12). This array of "noncompetitive" products is then subdivided into four "baskets." Each of these must be priced separately, under criteria set out in the bill.

What mail is being referred to by the term "noncompetitive" mail? The "noncompetitive" category covers an extremely large proportion (98.7 percent) of total Postal Service volume. It also contains 85.6 percent of the Service's total mail and services revenue, and 87.5 percent of its net revenue (revenue less attributable cost). See fig. 1.

The first question suggested by these figures is why a drastic overhaul of rate policy is needed to "recognize . . . marketplace realities and competition" (Analysis at 12), if "competitive" mail services account for less than two percent of total volume.

Are all mail types covered by the rate cap actually noncompetitive? The bill's line of demarcation between the competitive and noncompetitive categories appears to negate the need for legislation. However, it is equally possible that the bill fails to separate truly competitive services from those truly subject to monopoly. If this is so -- that is, if classes that actually should be treated as subject to competition⁴ are included in the "noncompetitive" category -- then the bill creates more, not fewer, opportunities for exploitation of the captive mailer. By "break[ing] the link between cost and price" and allowing the USPS to charge favored mailer groups rates that may not recover costs, it removes one means of protecting the captive user, while failing to provide an effective exogenous price cap for that purpose.

Review of recent official Postal Service statements leaves little doubt that much of what the bill dubs "noncompetitive" mail is considered by the Service to be subject to significant competition. In view of the bill's expressed purpose, and several of its detailed provisions discussed below, it is therefore probable that some "noncompetitive" classes would be

treated less favorably than others even though all are supposedly protected by the rate cap.

In a recent PRC proceeding regarding how mail should be classified, *Mail Classification Schedule, 1995 - Classification Reform I*⁵ (cited as "*Classification Reform I*"), the Postal Service argued that its proposals for the classes the bill treats as "noncompetitive" (First-, second-, and third-class mail) were necessitated by competitive threats to those classes. See PRC Opinion, Docket No. MC95-1, ¶¶ 2107-2112 and testimony there cited. These are the mail classes the bill treats as "noncompetitive." In the *Classification Reform I* case, the Postal Service hoped to thwart its perceived competitors by reducing the contribution to its institutional costs paid by the mail in the new, "efficient" (and supposedly competition-sensitive) subclasses while taxing those costs to the remaining, non-bulk or less-automated mail. *Id.* at ¶ 2129. The PRC found this effort to shift costs not justified in terms either of cost accounting or of demand differences between the proposed new classes. The bill calls for use of this device as well, however -- suggesting that one of its objectives is Congressional overruling of the PRC.

Consistently with that interpretation, the section-by-section analysis provided with the bill explains that

Subsection 3723(c) outlines the factors that the Commission will use to determine the adjustment factors. *Subsection (c) emphasizes cost, demand, productivity, profit, and quality of service -- the factors that determine the competitiveness of the Postal Service with other delivery services and other methods of communication. . . .*

Analysis at 16 (emphasis added). The price-discrimination potential of these factors is discussed below. What is most significant here is that the *Analysis* acknowledges that maximum

rates for supposedly noncompetitive mail must be set by criteria designed to promote "competitiveness."

B. Applying the rate cap; adjustment factors

Institutionalized price discrimination within the rate cap mechanism. The suspicion that the inclusion in the "noncompetitive" group of mail types previously alleged to be subject to competition is intended to facilitate price discrimination in their favor is confirmed by analyzing the detailed ratemaking provisions proposed in the bill.

It would be natural to suppose that if prices for classes of service subject to monopolistic exploitation are to be decoupled from cost and -- to protect consumers -- capped by reference to an exogenous price index, all such classes would be treated in the same way. That is, if the acceptable rate of increase for monopoly service is deemed to be equal to (some fraction of) the general rate of inflation, that rate of increase should be the same for all such classes. Instead, the bill divides the rate-capped mail into four "baskets" and requires that in developing rate caps the price index be adjusted, separately, for all four.

First, the bill requires separate adjustment factors for single-piece and bulk First-Class mail, the first and second "baskets" respectively. (The third basket, periodicals, is by nature a bulk category; the fourth, standard mail other than parcel post, comprises predominantly bulk mail.) As noted earlier, this distinction between bulk and single-piece mail was rejected as unjustified in *Classification Reform I* (see PRC Opinion at ¶¶ 5030 ff.).

More generally, the proposed criteria for setting adjustment factors make it plain that price discrimination is at least a

likely consequence of applying them, if not indeed their principal object.

The first criterion, proposed § 3723(c)(1), is:

The value of the product to senders, as reflected by the volume response of classes of mail and types of service to changes in postal rates and fees, and, as appropriate, the price and quality of alternative means of sending mail.

This standard institutionalizes demand pricing, albeit for a legal monopoly utility.⁶ It is a substitute for, among other things, present § 3622(b)(2), which also speaks of value of service, but in very different terms:

[T]he value of the mail service actually provided each class or type of mail service to both the sender and the recipient, including but not limited to the collection, mode of transportation, and priority of delivery[.]

This provision requires attention to both the relative demand for and the intrinsic quality or desirability of service [*Direct Marketing Association v. U.S. Postal Service*, 778 F.2d 96, 103-104 (2d Cir. 1985)]. The bill redefines "value of service" to mean only demand response -- "what the traffic will bear."

In addition, proposed § 3723(c)(1) makes irrelevant the value of mail to recipients. The same narrowing of focus to price discrimination is evident in the complete repeal of present § 3622(b)(8), requiring consideration of the educational, cultural, social, and information value of mail to the recipient.

The role of the "cost" criterion. Another standard for setting adjustment factors is "[c]ost to the Postal Service of providing the product" [proposed § 3723(c)(2)]. The bill does not make clear how product cost is to be applied in determining

adjustment factors, but on any interpretation the "cost" criterion raises serious questions.

One possibility is that cost to the Postal Service is meant to be a rate or revenue floor, either for the prices of particular products or for the aggregate of products in a particular basket. On this interpretation, it would be possible -- depending on the behavior of Postal Service costs -- for the rate of increase in noncompetitive-category rates to exceed the rate of inflation. Under proposed § 3723(e)(2), the adjustment factor need not reduce the rate of change in postal rates below that of inflation:

(2) APPLICATION. -- For purposes of section 3722(b)(1)(A), to adjust a change in the GDPPI by an adjustment factor, the adjustment factor shall be added to or subtracted from such change in the GDPPI, as the case may be. [Emphasis added.]

In the example given at *Analysis*, p. 15, the hypothesized adjustment factor is -.5 percent which applied to a GDPPI change of 3.5 percent gives a permissible change in postal rates of 3.0 percent. Under the provision just quoted, however, the adjustment factor could equally well be positive, yielding a supra-inflationary rate change of 4.0 percent.⁷ The bill apparently would permit such a result no matter how the cost standard is interpreted. If the standard is meant to act as a rate floor, however, this result would be mandatory whenever postal costs were rising faster than general inflation.

Under another possible interpretation, "cost" is meant not as an absolute floor but only as an influential factor to be combined with others in arriving at an adjustment factor. Postal rates could rise faster than inflation under this interpretation as well, for reasons stated above. In addition, this more flexible reading of the cost standard could provide a basis for

proposals to discriminate within the "noncompetitive" category, on the ground that "more efficient" mail types (i.e., those deemed less costly to provide) should be encouraged at the expense of "less efficient" types. This approach (shifting institutional costs away from the favored mail group) was basic to the Postal Service's proposals in *Mail Classification Reform I*, and was rejected in that case.

Since each basket of noncompetitive products must be assigned its own adjustment factor, the division of First-Class Mail into two baskets -- single-piece and all other [proposed § 3723(a)(3)] -- would facilitate such price discrimination. A similar question arises with respect to the role of "productivity" [proposed § 3723(c)(3)]: would it be invoked to promote price discrimination in favor of mail types characterized by high *joint mailer-USPS productivity* (i.e., extensive worksharing)?

One novel feature of proposed § 3723 is the provision [subsection (c)(6)] for use of additional criteria, provided they are agreed upon by the Postal Service and the Postal Rate Commission. Under present law, the PRC may consider pricing factors in addition to those specified in § 3622(b)(1)-(8). However, since these factors can be applied only in a recommended decision reached after a hearing on the record, every participant in a § 3622 case has the chance to be heard on whether or not the additional factor is appropriate. Although on-the-record hearings are still required, participants other than the Service apparently would be denied a hearing on the merits of a suggested new factor: proposed § 3723(c)(6) lets the PRC and the Postal Service effectively amend the law by agreeing that it will be applied. It is unclear whether such an agreement would be subject to judicial review under proposed § 3723(g).

C. ~~Ex~~ception for severe financial exigencies

The "*financial exigency*" escape clause. While under normal circumstances the PRC may change adjustment factors only once in a rate cycle, and the Directors may change rates only once a year [proposed §§ 3724(c)(1), 3742(c)], there is a partial exception for "severe financial exigencies." The exception is partial because it is available *only* with respect to rates for services in the noncompetitive category. For this mail, if the Directors find that the Service faces severe financial exigencies and that a change is "warranted" to restore it "to fiscal soundness," they may ask the PRC for an intra-rate-cycle decision on new adjustment factors. The PRC has six months to render a decision, and the decision is exempt from judicial review. The Directors may then establish increased rates based on the new adjustment factors [proposed § 3742(c)(2)].

The bill thus allows for collection of needed additional revenues from the noncompetitive classes alone, although a significant part of the Service's revenue (almost 15 percent; see p. 8 above) comes from "competitive" mail. It does not appear that the cause of the financial exigency is meant to have any bearing on the case; thus even if it were caused in part by misidentifying or failing to recover the attributable costs of competitive classes, or by assigning them unreasonably small contributions to institutional costs, the noncompetitive sector would make up the shortfall.⁸

D. Alternative Maximum Rates

While the bill provides for the PRC to determine uniform adjustment factors for each of the four noncompetitive baskets, it also permits the Directors to establish "alternative maximum

rates" based on different adjustment factors. See proposed § 3724(d).

The Directors may set their own adjustment factors, and rates, "for further subordinate units of any particular subordinate unit of a product" -- i.e., for what are now called "rate categories" -- on condition that

the resulting average maximum rate, for the further subordinate units comprising such subordinate unit (determined separately for each successive level, if there are 2 or more levels of further subordinate units), remains equal to the maximum rate that would otherwise apply with respect to those further subordinate units.

Proposed § 3724(d)(3)(C). Thus if the PRC were to prescribe a single adjustment factor covering both barcoded and non-barcoded pieces, the Directors could substitute a unique adjustment factor for each, with correspondingly different maximum rates. Their action could not be administratively or judicially reviewed.

It should be noted that the equality required in the quoted passage is between the previous maximum rate and the average maximum rate resulting from the Directors' action. This appears to make the total revenue contribution of the affected mail irrelevant to the legality of the Directors' action. If the former maximum was, for instance, 10.0¢ and the Directors employ alternative adjustment factors to arrive at alternative maxima of 6.0¢ and 14.0¢, the requirement of proposed § 3724(d)(3)(C) would be satisfied. But assume volume is distributed as shown in fig. 2:

I. SINGLE MAXIMUM RATE		
	500.0 million pieces * \$0.10 =	\$50.0 million gross revenue
II. BIFURCATED MAXIMUM RATES		
Further subordinate unit A:	400.0 million pieces * \$0.06 =	\$24.0 million gross revenue
Further subordinate unit B:	100.0 million pieces * \$0.14 =	\$14.0 million gross revenue
Totals:	500.0 million pieces	= \$38.0 million gross revenue

Fig. 2

The favored further subordinate unit would thus produce a revenue deficiency, by comparison to the rates based on public proceedings before the PRC. No statutory standards (except the average-unit-rate rule) would govern the establishment of alternative maximum rates.

It may be argued that, since under current law there is no requirement that each rate category within a subclass must recover attributable cost plus a contribution to institutional costs, proposed § 3723(d) does not represent a great change. This view, however, seems oversimplified. Present law requires each subclass, as a whole, to recover its attributable cost plus a contribution to all other costs. This is insured, in practice, by estimating the aggregate revenue of the subclass at the proposed rate level(s) and comparing it with estimated aggregate cost. The unit-rate averaging procedure prescribed by proposed § 3723(d) could result in the entire subclass failing to recover attributable cost. (In fig. 2, this would occur if the subclass's total attributable cost were \$40.0 million.)

It should be noted that the alternative maximum rate procedure may be used only for bulk First-Class mail, periodicals, and Standard Mail (second, third, and fourth baskets). This limitation is consistent with the hypothesis (cf.

pp. 9 above) that only the first basket (single-piece First Class) is actually considered immune from competition.

E. Baseline rates

Because the "competitive" category set up by the bill contains a variety of mail classes, the initial rate relationships among these classes would significantly affect the results of regulation under the rate-cap regime. Biases in those pre-existing relationships cannot necessarily be remedied by manipulating the adjustment factors. This is particularly true if the same general rate policies are to govern both "pre-rate-cap" ratemaking and rates established under proposed § 3723.

It was noted above (pp. 9-10) that by emphasizing "competitiveness" as the basis for selection of the adjustment factor criteria, the bill would facilitate price discrimination within the noncompetitive category. We find the same emphasis, in nearly the same words, in the explanation of how baseline rates are to be set [Analysis at 14, describing proposed § 3701(b)].

Details of the baseline rate process are discussed in the next section.

The principal shortcoming of the rate cap mechanism incorporated in the bill is that it does not seek to protect the truly captive postal customer by holding rates to a reasonable, exogenously determined level of increase over time. Instead, it

- includes mail classes heretofore considered competitive,
- stresses promotion of USPS competitiveness as a guiding principle of ratemaking,

-- invites price discrimination against the captive customer (and tends to perpetuate any discrimination present in the baseline rates),

-- fails to impose real limits on rate increases, because the exogenous price index can be adjusted either up or down, and

-- makes the restoration of Postal Service financial soundness in times of exigency a charge on the noncompetitive classes alone.

II. BASELINE RATES

The bill allows rate-cap regulation of noncompetitive rates and deregulation of competitive rates to start from an existing rate schedule established under present law, provided that schedule is new or relatively recent. Absent these circumstances, however, baseline rates must be established by a proceeding conducted under new rules (proposed § 3701).

Ad hoc revision of ratemaking criteria. The most noticeable feature of this one-time ratemaking scheme is the comprehensive revision of statutory ratemaking standards [present § 3622(b)]. The changes are uniformly to the prejudice of household and small-volume mailers.

It was noted above that the *Analysis* emphasizes promotion of Postal Service competitiveness as the ruling principle for establishment of baseline rates, even though the rate schedule so established would include mail classes deemed "noncompetitive" under the succeeding rate-cap regime. This is a substantial change in rate policy from present law, where the ability of the Service to compete with other carriers and modes of communication is one consideration among many.

Rank ordering of criteria. Another major departure from present law is the assigning of relative priorities to the rate criteria. In current rate-case practice, the PRC uses record evidence and the experience of past cases to determine what weight to assign the various statutory factors. This approach has been judicially approved. *Direct Marketing Association*, supra, 778 F.2d at 102-106. It allows for needed change in light of historical trends; a good example is the PRC's substantial lowering of the institutional cost contribution from Express Mail as private-carrier competition became more important. While the baseline rate mechanism would be used only once, its effects -- including the effects of legislative ranking of criteria -- would continue to be felt in subsequent rate relationships under the rate-cap-plus-deregulation scheme.

Specific changes in ratemaking criteria. The specific priorities assigned to existing rate criteria, and the changes made in some of them, demonstrate substantial bias against the household mail user.

Under present law, establishment of a fair and equitable rate schedule is listed first among the (coequal) factors. Proposed § 3701(b) demotes it to ninth place (of ten -- the tenth being "[s]uch other factors as the Commission deems appropriate") and thus to the lowest priority. Captive postal customers' chance of receiving consideration in ratemaking depends to a great extent on fairness concepts, since the alternative approach -- concentration on volume response to price changes -- would assign a disproportionate burden to such mailers.

The value of mail to recipients (specifically, its "educational, cultural, scientific, and informational" value) is recognized by another of the present coequal factors, which in proposed § 3701(b) retreats into eighth (next-to-last) place.

Value to recipients cannot be measured by the willingness of senders to pay, but is historically one of the reasons for a universal, public postal system.

The most important criteria, according to proposed § 3701(b), are: (1) the recovery from each class of its attributable cost and a reasonable contribution to all other costs [corresponding to existing § 3622(b)(3)] and (2) a value-of-service provision replacing § 3622(b)(2).

Under existing law, "value of service" refers both to the intrinsic qualities of a postal service and to the sensitivity of its users to price changes, as measured by the volumes they demand. It is specifically defined as value "to both the sender and the recipient."

Proposed § 3701(b)(2) (i) bars any consideration of value to recipients, and (ii) restricts the meaning of "value to senders" to demand elasticity alone:

(2) The value of the mail service to senders as reflected by the volume response of classes of mail and types of service to changes in postal rates and fees, and, as appropriate, the price and quality of alternative means of sending mail.

Thus, once recovery of costs has been assured, the most important consideration in fixing baseline rates is "what the traffic will bear." It is true that the existing "rate shock" criterion [§ 3622(b)(4)] is preserved in part⁹, but under the ranking imposed by the bill it is comparatively unimportant (sixth of nine specified factors).

The main effect of the baseline rate provisions of the bill would thus be to give the reformed ratemaking system a pronounced initial bias in favor of mass mailers and against small-volume,

nonbusiness mail users. These are the mail users most in need of regulatory protection from exploitation of the Service's monopoly -- protection which the bill would dismantle.

III. VOLUME DISCOUNTS AND OTHER DEREGULATORY FEATURES

A. Volume discounts -- uniform or individual

Completely outside the proposed new system of ratemaking, the bill would authorize the Postal Service to establish and implement both "volume discounts" for favored categories of mail, and special rate agreements with favored mailers. Since the Postal Service would retain its legal monopoly over letter mail, and the desire (and presumably the obligation¹⁰), to collect total revenues at least equal to total costs, recovery of the reductions in revenues from mailers so favored will be sought from disfavored mailing groups -- including, predictably, the citizen mailer.

Moreover, the non-public, nonreviewable nature of the process by which these special rates would be established may be expected to result in demoralized cost accounting and revenue management functions within the Postal Service. The proposed legislation contains open invitations to shift the attribution of costs to disfavored groups and to increase those mailers' share of the burden of Postal Service institutional costs.

Uniform volume discounts. The bill authorizes the Postal Service to set volume discounts for either noncompetitive or competitive classes of mail, so long as all users of the class are eligible for the same volume discount. For "noncompetitive" mail, no standards are provided, except that the discounted rate "not exceed the maximum rate then allowable for such product

under subchapter II of chapter 37." Proposed § 604(a)(2)(B)(i). This appears to be at best a pseudo-standard, since it is not clear how a *discounted* rate could ever exceed the *undiscounted* base rate for the same service.

For volume discounts in the competitive sector, the only standard is that

. . . the discounted rate --

* * * *

. . . satisfies the requirement under section 3742(b) that each such product bear the direct and indirect postal costs attributable to such product plus a reasonable contribution to all other costs of the Postal Service.

This standard could give rise to volume discounts that create a net loss for the Postal Service -- leaving the shortfall to be recouped from mailers not eligible for the discount.

At present in setting postal rates, each subclass of mail is assigned its attributable costs plus a subclass-wide markup. The markup provides the subclasses' contributions to meeting the Service's overhead and other institutional costs. Where mail groupings within a subclass have distinct cost-reducing characteristics, reflecting worksharing, discounts are established. These discounts correspond in amount to the demonstrated savings flowing from the worksharing activity. These savings by their nature represent reductions in attributable cost for the mail concerned; thus discounts no greater than the savings cannot result in the mail receiving them failing to cover attributable cost. The rates, including the discounts, are established through public hearings and written decisions subject to judicial review.

Because the only requirement for competitive volume discounts is that the category's aggregate revenue -- from both discounted and nondiscounted mail -- not fall below attributable cost plus some institutional-cost contribution, the Service could readily establish volume discounts greater than the actual savings (if any) from volume entry. Nothing in the bill would prevent the offering of such excessive discounts, which would reduce the favored mails' contribution to institutional costs and expose other mail to additional charges to make up the difference. The discounts need bear little, if any, relationship to the cost effects of mailers' meeting the eligibility requirements or to any other relevant market factor.

Volume discounts may be expected to be developed, at least initially, through nonpublic negotiations. While notice-and-comment procedures are provided for the negotiated-discount demonstration project set up by proposed § 604(b), it appears that there would be no public proceedings of any kind to establish the uniform discounts of proposed § 604(a). Thus there would be no chance to send questions to or receive answers from the Service regarding the costs and revenue changes associated with such discounts.

Negotiated discounts for individual mailers. Proposed § 604(b) would set up a demonstration project, allowing the Service to negotiate individual-mailer volume discounts in mail classes within the competitive category. Public notice and a comment period are required with respect to the project as a whole, but apparently not with respect to any individual rate negotiation. In this case as well, the only legal standard would be that aggregate revenue from the product meet the attributable-cost-plus-contribution test.

Consequently, with respect to any mail potentially eligible for volume discounting, the bill creates significant potential for shifting of costs to the captive, small-volume mail user.

B. Other deregulatory features

Certain other features of the bill tend in the same direction. Two such provisions require at least brief mention.

Market tests. The bill authorizes the Service to conduct "market tests" for periods up to three years, for revenue sets of as much as \$100 million per year per test. Proposed § 3761. While the plan for the test, including anticipated costs and revenues, must be published and submitted to Congress 60 days before it starts, nothing appears to prohibit a "market test" from being in fact (i) the repackaging of an existing service at a more favorable price, (ii) for a limited group of mailers chosen to participate in the test.

Transfer of products from noncompetitive to competitive status. Under proposed § 3743, the Service, or mail users, may ask the PRC for a recommended decision shifting a product from the noncompetitive to the competitive category. Such a decision would lead, for reasons explained above, to the substantial deregulation of rates for that product. It is noteworthy, however, that no provision is made for a transfer in the opposite direction. Even if the "availability and nature of enterprises in the private sector engaged in the delivery of the product involved" -- the standard for decision under this section -- were such that a product was no longer competitive in fact, § 3743 could not be used to move it to the noncompetitive sector. If the once-competitive group cannot be so moved, that group cannot be protected from monopoly exploitation.

IV. SUMMARY AND CONCLUSION

The provisions analyzed above are not necessarily the only ones about which serious questions could be raised. They do, however, establish the unmistakable thrust of the bill. That thrust is captured in a few words of the Analysis: "the business nature anticipated by the reform." It is to convert the Postal Service from a unit of the national government intended to provide a utility service to the people as a whole into a gain-maximizing pseudo-business with extensive monopoly powers and ample opportunities to exploit them at the expense of its captive customers.

One basic assumption of the bill appears to be that mail can be thought of as having "value" only to those who send it (and not to recipients), and that when we speak of its "value" we mean no more than the highest price at which it can still be sold. This assumption is reflected in the bill's focus on some (though not all) commercial mail, to the exclusion of all else. Its insistence on pricing mail in inverse relationship to its elasticity of demand -- a monopolistic taxing practice not suited to fostering use of a utility service by the citizen mailer -- evidences this narrow focus. So does the general reduction of postal rate regulation because of the supposed existence of competition from private carriers or alternative media.

Another basic assumption of the bill is that "meeting competition" in some categories of mail must take precedence over the provision of universal, affordable letter mail service for ordinary citizens. Analysis of the rate cap proposed to replace the regulation which now protects citizen mailers and other users of noncompetitive mail classes makes this clear. The classes of mail placed under the rate cap include many that the Service itself has historically treated as subject to competition. This

illogical grouping, considered in light of the procedures and standards for setting maximum rates for all "noncompetitive" mail, appears directed toward fostering rate discrimination. Rate discrimination -- charging a favored group rates that do not recover the costs of serving that group plus a contribution to overheads that is varied only because of demonstrated differences in demand or user-value factors -- is likely, because the bill would allow the Postal Service to shift costs within noncompetitive classes of mail. For instance, the procedures for establishing maximum rates, which are the bill's proposed restraint on cost shifting, are heavily biased in favor of "competitiveness" and laden with exceptions and qualification so as to allow uncontrolled shifting of cost responsibility onto truly captive mailers. Under these procedures, those mailers, including especially the household mailer, may look forward to drastic rate increases.

The bill would essentially discard the existing legal requirement that the postal rate schedule be adequately fair as well as adequately "efficient." If the Postal Service is to recover its full costs through rates, then -- unless it is able suddenly to improve its operating efficiency -- all the revenues not received owing to special discounts and other rate breaks for "competitive" mail will have to be otherwise collected. If other rates are deemed constrained by competition, these revenues will be sought from captive customers.

Some provisions of the bill could, directly or indirectly, promote postal operating efficiency. On balance, however, the bill would reduce, rather than promote, another vital concern: postal accountability. The scope of public, on-the-record proceedings for rates -- and for other inquiries that precede ratemaking -- is drastically reduced. While the Postal Rate Commission is given some auditing authority, the consequences for

postal management of findings of illegal pricing or deficient service are severely limited. Given the numerous ways in which the bill vitiates or simply abandons the traditional Postal Service mission and the constraints that help focus postal management's efforts on that mission, the effect of these theoretically beneficial amendments is likely to be disappointing.

In summary, therefore, the bill must be considered a failure from the viewpoint of the great majority of Postal Service customers. The provisions purporting to protect the household mailer and other captive customers not only fail to do so but may leave those mailers worse off than before. The abandonment of concern for the citizen mailer, and for the recipient as well as the sender of letters and other mail, cannot be justified in terms of the Postal Service's historic mission. Attempts to recast this mission as that of a gain-maximizing quasi-private enterprise were rebuffed, with good reason, in recent mail classification proceedings. There is no greater justification for seeking the same end through ill-designed special-interest legislation.

- NOTES -

1. Codified as Title 39, United States Code. All citations to statutory section numbers herein refer to title 39 unless a different title is specified.

2. An organization that is perceived as having a natural monopoly (and in addition has a legal monopoly on much of its business), that is restricted by law and political tradition to a limited number of lines of activity, and that has no distinct residual claimant to surpluses (e.g., shareholders), is likely to seek to maximize its volume rather than either maximizing its profits or minimizing its costs.

3. It should also be noted that the PRC has only 90 days to discover and rule on violations subject to this section.
4. The Postal Service might in fact treat these mail types as subject to competition, were the bill enacted.
5. PRC Docket No. MC95-1 (January 26, 1996).
6. A utility, moreover, whose legislative charter calls for it to foster, not ration, written communication. 39 U.S.C. § 101.
7. The statements in the *Summary* (p. 2) and the *Analysis* (p. 13) that the rate cap would be based on the GDPPI "less an 'adjustment factor'" do not seem consistent with the language of proposed § 3723(e)(2) or *Analysis*, p. 16.
8. It is also unclear whether, once fiscal soundness had been restored, the PRC could interpret proposed § 3723(c)(4) ("level of postal revenues attributable to the product") as requiring compensatory prospective rate relief for the noncompetitive classes.
9. The changes are of some interest in themselves. Present § 3622(b)(4) reads:

[T]he effect of rate increases upon the general public, business mail users, and enterprises in the private sector of the economy engaged in the delivery of mail matter other than letters[.]

Proposed § 3701(b)(6) reads:

The effect of rate increases upon users of the mail and the general public.

The "general public" is now distinguished from "users of the mail" in general -- apparently implying that the general public is no longer thought of as using the postal system -- and no consideration is to be given effects on nonpostal carriers of non-letter mail.

10. It is not entirely clear whether the language of the bill retains the present legal requirement that the Service not operate at a deficit. Compare § 1002(a) of the bill with existing 39 U.S.C. § 3621.



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October 1, 1996

The Honorable John McHugh
Chairman
Subcommittee on the Postal Service
Committee on Government Reform and Oversight
U. S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Mailers Council appreciates this opportunity to comment on H.R. 3717, the Postal Reform Act of 1996. The Council commends you, Mr. Chairman, and the staff of the Postal Service Subcommittee for the extraordinary effort you have put into the development of this bill. Only through the exercise of genuine leadership and painstaking attention to many and diverse views can this kind of legislative effort be mounted.

It is, however, that same diversity of viewpoints, some even sharply diverging, that can be found within the comprehensive business and nonprofit mailing community membership of the Mailers Council. The Council will, therefore, be constrained from taking a position, pro or con, overall on H.R. 3717. Rather, we will confine our comments to those issues arising from your bill where we have found consensus within the Council.

The Mailers Council is a coalition of 59 organizations deeply concerned about postal affairs. Its member companies and trade associations, with a range of interests that includes every postal class and subclass, estimate they collectively account for as much as 75% of the mailstream. The organizations together employ more than 2 million people and represent more than 25,000 companies and nonprofit organizations, large and small. Council members have an enormous stake in the system for delivery of products, publications, business correspondence, payments and receipts, promotions and more. The Council strongly supports a robust and efficient postal system.

Following are the specific comments we are prepared to make about H.R. 3717.

The Honorable John McHugh
October 1, 1996
page 2

TRANSFERRING OF FUNDING RESPONSIBILITIES TO THE POSTAL SERVICE

Under Title V of the bill, the Postal Service would be required to assume several financial obligations that have heretofore been borne, pursuant to the Postal Reorganization Act, by the Treasury. These include liabilities incurred by the former Post Office Department prior to reorganization, "revenue foregone" appropriations authority for reducing certain "preferred" rates, and more. According to the Postal Service, this transfer of responsibility would be "booked" at a value of \$1.6 billion.

We have several serious concerns with passing these financial obligations on to the Postal Service. First, obligations incurred before there even was a Postal Service should not become its responsibility and therefore, of course, that of its customers. Prior to reorganization, as you know, the postal system was a department of the United States Government. As fully a part of that government, the POD's liabilities were the government's, i.e., the taxpayers, not the ratepayers. That principle was carefully and deliberately observed when the system was reorganized in 1970 into the quasi-corporate Service: the new USPS would make a clean break with the obsolete POD, and would not carry over liabilities that were traditionally and properly the government's. The authorization of "transitional" appropriations effectuated that change.

There is no good reason why that logic and its sound conclusion should change. Debts incurred by the Postal Service should be paid by the Postal Service. Those incurred before its existence should not be imposed upon it.

Second, over the years Congress identified several discrete classes for reduced rates. These so-called "preferred" rates were established because the Congress found that reduced rates for certain mailers were in the public interest. Since they were in the public interest, the Congress appropriated the difference between the reduced rates paid by these "preferred" mailers and the costs (including an overhead contribution) incurred by the system in moving their mail. Assuming that carriage of "preferred" mail at reduced rates remains in the public interest, then it should continue to be a responsibility borne by the public, through the Treasury, to defray the cost of that reduction. It should not now become fully the responsibility of Postal Service customers, thus enabling a benefit in the public interest to be conferred on certain classes of mailers cost-free to that public.

In short, there is no free lunch. Other mailers would have to make up the difference inasmuch as the Postal Service has no money of its own. That would not only be unfair, but entirely inconsistent with the "self-supporting" principle of the Postal Reform Act. The Congress should continue to appropriate funds for the "preferred" rates, so long as it deems those rates to be in the public interest.

Third, these transfers would amount to unfunded mandates. The bill mandates certain

The Honorable John McHugh
 October 1, 1996
 page 3

responsibilities be maintained, but eliminates any potential for funding them. This is at odds not only with the philosophy of the 104th Congress, but with its actions in discouraging unfunded mandates generally. (See P.L. 104-4 requiring Congressional Budget Office review of new unfunded mandates.)

Fourth, the cumulative financial impact on USPS would be serious. It alone would amount to about \$600 million. And, according to USPS, in conjunction with the impact of other aspects of the bill, would put in play \$1.6 billion -- or nearly 3% of the Service's annual revenues. This would be more than sufficient to raise the price of a stamp by 1¢ with corresponding increases for other classes of mail. USPS, and the customers who fund it, cannot afford a \$1.6 billion increase. Adding \$1.6 billion, especially that part for costs USPS has not incurred, is dramatically inconsistent with the goal of this bill as we understand it: to make USPS more efficient and competitive.

FINANCE

The Council supports the changes proposed in Title IV of H.R. 3717 to the Postal Service's ability to borrow and invest monies. Giving the Postal Service more latitude to enter the financial markets would be a wise change in policy that is consistent with a more business-like and competitive USPS. It would impose upon USPS some of the market discipline confronted routinely by the private sector. That would benefit the Service and its customers over time.

The one change the Council would make is to retain the Service's ability to obtain financing from the Federal Financing Bank. In our view, FFB access would simply be another beneficial option in a range that USPS might use in its discretion. When it would make financial sense, USPS should use the FFB. If there are financial or other important reasons to use another fiscally sound source, then USPS should have that opportunity, as well.

POSTAL RATE COMMISSION SUBPOENA AUTHORITY

Under Section 603 of H.R. 3717, the Postal Rate Commission would be empowered to issue subpoenas compelling the presentation of testimony by "any individual." This power would be nationwide in scope. The Council supports this provision in part and opposes it in part. Specifically, the Council believes that the Commission should have subpoena authority, but only insofar as it applies to the Postal Service and only with respect to proceedings conducted on the record before the Commission. The Council further believes that the provisions of the bill designed to protect trade secrets, proprietary and other sensitive information need to be strengthened.

Over the years, it has become clear that the adversarial nature of on the record proceedings conducted before the Commission, and the natural tension that arises between the

The Honorable John McHugh
October 1, 1996
page 4

Service, the Commission and intervenors have, on some occasions, limited the ability of the Commission and the parties to obtain data they need from the Service. Enabling the Commission to issue subpoenas will better inform all concerned, improving the ability of the parties to effectively litigate and the Commission to adjudicate.

This conclusion does not, however, hold with respect to subpoenas issued to private sector intervenors, or certainly, non-participants. While it is true that the courts have traditionally been reluctant to issue subpoenas compelling testimony or documents from non-moving parties and non-parties, the attempt to analogize between the subpoena power of courts and the subpoena power proposed to be conferred upon the Commission is inapt.

First, under the bill, the Commission has the power to issue subpoenas on its own motion and it has repeatedly insisted that, unlike other tribunals, it is not a disinterested party. Second, proceedings before the Commission invariably involve a large number of parties, many of whom are, or perceive themselves to be, in competition with other parties. There is thus, frankly, the very real danger that the subpoena power would actually be used for competitive purposes, while ostensibly for postal rate or classification matters.

Third, the Council believes existing rules and policies provide adequate protection against abuses by private sector intervenors. If the Commission demands evidence from an intervenor which declines to produce it, the Commission may infer, negatively, that the refusal constitutes an admission that the evidence does not exist or does not support the claim being advanced.

In sum, there is sound reason to authorize the issuance of subpoenas against the Postal Service and no valid reason to extend this power to other intervenors or "any individual."

Similar considerations support the Council's conviction that the subpoena power should be confined to proceedings conducted before the Commission that are required to be held on the record under the Administrative Procedures Act. The entire purpose of the subpoena power is to assure the adequacy of a record; moreover, in those cases, any Commission issuance of subpoenas would be subject to review by a court, and the inherent caution and conservation in exercising its power that the availability of such a review tends to prompt. The extension of subpoena power to matters that do not require an on-the-record hearing, gives rise to the danger that this new and powerful tool could be used for "fishing expeditions:" roving searches for information not necessary to develop a record and in which subpoenaed parties -- including the Service -- have very limited recourse. The power to compel evidence should, therefore, be limited to on-the-record proceedings.

Lastly, but by no means least, the Council strongly urges that the provisions of Section 603 designed to protect against disclosure of trade secrets, confidential and proprietary information be strengthened. If the Service is to be able to operate on a businesslike basis, it is

The Honorable John McHugh
October 1, 1996
page 5

absolutely essential that there be free and open communication between it and its customers over a broad array of matters. Mailers must be able to respond to Postal Service surveys without concern that those responses may become publicly available, except in aggregate form. Mailers must be able to meet privately with USPS to discuss operational problems, possible means of improving service, new products and the resolution of legal and factual disputes that are either pending or likely to come before the Commission. There has been, over the years, considerable litigation over the question of disclosure of information supplied to the Service by mailers in mailer surveys including whether, and to what extent, the Service's representations of confidentiality should be respected. Moreover, on more than one occasion, information and views supplied to the Service by mailers or mailer organizations have been publicly disclosed in the course of proceedings before the Commission, although not always placed upon the record. The Council strongly believes that the confidentiality provision of Section 603 must be strengthened to permit the free flow of information and ideas between the Service and its customers that is so central to a businesslike operation.

APPEALS FROM MSPB DECISIONS

The Mailers Council supports Title VIII of H.R. 3717, providing authority to the USPS CEO to appeal decisions of the Merit Systems Protection Board affecting the Service directly to the U.S. Court of Appeals for the Federal Circuit. This is an important conferral of authority that will simplify and clarify the Service's ability to conduct its personnel matters, which is integral to its (or any other organization's) ability to conduct business generally. It is also consistent with the policy goal of this bill to provide more authority and flexibility in general to the Postal Service to run its business.

GOVERNORS' COMPENSATION

The Council supports section 103, which would raise the annual compensation of the Postal Governors from \$10,000 to \$30,000. There has been no change to the Governors' pay since the enactment of the PRA twenty-five years ago. Inflation has dramatically eroded the value and buying power of their current level, while the job has become increasingly complex and time consuming.

As we understand it, the raise proposed by the bill would only recover the loss to inflation since and adjust the compensation in 1996 dollars to its original, 1971 level. The Council believes this change is fair, appropriate and justified.

TRANSPORTATION OF MAIL

The Council supports Sections 701 and 702. We believe it is self-evident that the existing provisions of law that would be affected by the changes in these two sections of the bill have

The Honorable John McHugh
October 1, 1996
page 6

become obsolete. The changes that the bill proposes seem beneficial and in the public interest, because the existing provisions are a clear example of no longer necessary intrusive constraints upon the flexibility USPS needs to conduct its business.

PRESIDENTIAL POSTAL EMPLOYEE-MANAGEMENT COMMISSION

Title III of the bill would establish a presidential commission to examine postal employee-management issues. Clearly, these issues weigh heavily on any agenda of reform for the postal system. Whether it is a matter of collective bargaining, arbitration, the size and structure of the workforce, the number of grievances, or the sheer impact of the workforce on the cost of the system, these issues cannot be ignored.

At the same time, labor-management issues in any context are extraordinarily difficult to deal with, especially when contemplating whether and how the current process should be changed. There is some measure of comfort in the familiar, even when the need for change, in some respects at least, seems manifest.

Thus, the Council recognizes that reform in this area must be approached carefully, cautiously, and in a very balanced way. One avenue for doing so is, as proposed, through an independent commission with balanced representation. It will be able to take into account, and over time, the views of all parties in an attempt to fashion a consensus on whether change is necessary and, if so, in what direction.

Given the fact that currently there is no consensus other than that problems exist in the current system, and that some of the views diverge to the point of intractability, the Council believes that the Subcommittee had little choice but to contemplate a Commission if it were to address employee-management issues at all. We commend the Chairman for not ignoring the issues and acknowledge that this Commission would be perhaps the only viable vehicle for achieving some progress.

In determining the priorities for this Commission, the Council believes that the issue of compulsory arbitration should be at or near the top of the list. In our view, it is a procedure that is broken and needs to be fixed. The various, well-known alternatives ought to be examined in the context of the postal employee-management arena. Such a Commission, also, with the range of input it would receive, may be in a position to be innovative. We certainly would look forward to hearing any new ideas.

NON-BINDING RESOLUTION ON BUDGET DEFICITS

Over the last decade, the Service has been required to pay \$14 billion to help defray the federal deficit. This is despite the fact that USPS is off-budget and not adding to that deficit. The

The Honorable John McHugh
October 1, 1996
page 7

Council strongly believes that there should be no more raids on the postal weal, and no more resultant "stamp taxes." Postal customers should no longer suffer rate increases simply to help balance the federal budget.

Therefore, the Council respectfully suggests to the Subcommittee that it include a non-binding resolution in the bill calling on the Administration and future Congresses not to regard the Postal Service as a "cash cow" for deficit-cutting purposes, and refrain from the temptation to make a cost-free, at least to the Treasury, deficit reduction.

Thank you, Mr. Chairman, for this opportunity to comment on the bill. The Council looks forward to working with you and the other Members of the Subcommittee, and certainly the staff, to the extent that we can during what will be a long, but we hope productive, legislative effort.

Sincerely,

A handwritten signature in cursive script, appearing to read "Arthur B. Sackler".

Arthur B. Sackler
Executive Director

STATEMENT OF AMERICAN BUSINESS PRESS
BEFORE THE SUBCOMMITTEE ON
POSTAL SERVICE OF THE
HOUSE GOVERNMENT REFORM AND OVERSIGHT COMMITTEE

I. Introduction

The American Business Press (ABP) is pleased to present its views to Chairman McHugh and the subcommittee on the important issue of postal reform. At the conclusion of the September 17 hearing, the Chairman expressed hope that the debate would continue, and in this spirit of seeking resolutions to real problems, ABP adds its views and its concerns about H.R. 3717. As we shall explain, ABP supports an effort to improve the Postal Service and to give it the tools needed to lower costs, but ABP strongly opposes the rate-setting autonomy that H.R. 3717 would bestow upon that government monopoly. The independent Postal Rate Commission has faithfully carried out the duty to guard the public interest that Congress assigned to it by Congress by considering and balancing a variety of policy and economic factors when rates and classification changes are proposed. In doing so, it has also protected the vital flow of information effected by the nation's publishers. Titles VI (volume discounts) and X (ratesetting) of H.R. 3717 would severely limit the authority of the PRC to rule on postal rates without an adequate substitute to protect those publishers.

Since the first major postal reorganization in 1970, there have been vast changes in the economy and the composition of the mail. The mass shift to electronic communications dominates business headlines, yet both letter and third class mail

volumes are significantly greater today than they were in 1970 and continue to increase.¹ ABP approaches the question of "postal reform" in 1996 with the view that legitimate solutions to legitimate problems ought to be carefully considered and effectively implemented. But in doing so, Congress must take great care not to tear apart a great Postal Service that continues to serve the nation's need for a reliable hard copy delivery system. The system is not broken, although there may be areas where mending is in order. H.R. 3717 is a beginning of a process to examine what should (and must) be retained from the 1970 reorganization, and what improvements ought to be made to ensure the continuation of USPS's still-necessary role as the federal institution charged by Congress to "bind the nation together" by providing reliable delivery, at reasonable rates, to every business and residential address in the nation.

ABP is an association of the 850 leading trade newspapers, medical journals, and business periodicals, with more than 27 million readers. Its members' titles include Advertising Age, Aviation Week and Space Technology, Automotive News, Billboard, CableVision, Computer World, Medical Economics, Nature, PC, Professional Builder, Railway Age, Solid State Technology, Windows Magazine, and many others that are vital to the constant update of information products and skills that America's professionals, managers, physicians and scientists must have to keep America prosperous and competitive in a global economy. The efficient operation of the economy depends upon information, much of which can only be found in the business press. Our readers in their

¹ For example, First Class mail volume has increased from 52 billion pieces per year in 1971 to 134.6 billion pieces in 1995, while third class has increased from 20.6 billion pieces to 88.57 billion pieces (a 430% increase in volume).

various roles generate 80% or more of the GNP. From telecommunications to computers to managed health care, the periodicals of ABP increasingly break the technological and business news and analysis that is subsequently reported by broadcast, cable, newspapers and news magazines. These journals, like the vast preponderance of periodicals that use (and indeed must use) the United States Postal Service, are smaller circulation publications, averaging a little under 50,000 copies per issue.² Their circulations are relatively small; their impact on our economy, educational and healthcare systems is immense.

II. The 1970 Reorganization

In 1969, ABP appeared before this subcommittee to urge enactment of sweeping postal reform to replace the cabinet-level Post Office Department with an independent, more business-like (but still publicly-owned) Postal Service. ABP (and ultimately Congress) realized that the old Post Office was broken, that service was on the verge of collapse, and that Congress ought to get out of second-guessing day-to-day operations, setting rates and wages, and appointing postmasters. ABP members helped to create and support the Citizens Committee for Postal Reform, the major bi-partisan organization that brought postal reform to the public's and Congress's attention in the late 1960s. This vehicle disseminated and promoted the findings of the Kappel Commission to the public and to the press. The decision to support reorganization of a 180-year old post office

² Remarkably, fewer than 200 publications in the United States have circulations over 500,000 copies per issue, out of the nearly 30,000 publications carried by the United States Postal Service. Of approximately 12,000 "regular" (*i.e.*, for-profit) periodicals mailed at periodical rates, fewer than 800 would qualify for high-density, volume oriented rates, according to the Postal Rate Commission's reclassification decision in 1995.

(which had been successful in many ways) was not easily arrived at by ABP, Congress or other interested parties. After two years of congressional hearings and debate, as well as significant support by the Nixon Administration, a restructuring occurred that took USPS out of the Cabinet, tried to tackle seemingly intractable labor issues, uncoupled rates from politics, and significantly untied the hands of postal management in ways that were unimagined a few years earlier.

III. ABP's Positions on H.R. 3717

The following points summarize ABP's initial positions on H.R. 3717. Many of the ramifications of H.R. 3717 remain unclear, because of the relatively short time the subcommittee has had to obtain quantitative as well as policy analyses. It appears, however, that the proposed changes may be at least equal in scope to those mandated by the 1996 Telecommunications Reform Act, which took Congress ten years to consider (with many controversial issues now being resolved in the courts and at the FCC).

This committee is well aware of the broad mandate of the original Postal Reorganization Act that USPS "shall be operated as a basic and fundamental service provided to the people by the Government of the United States ... [and] shall have as its basic function the obligation to provide postal services to bind the Nation together through the personal, educational, literary, and business correspondence of the people." 39 U.S.C. 101 [Postal Policy]. The recently-passed telecommunications act also includes a mandate that universal service be provided at reasonable rates. The final bill as passed (see Title I) provides that the FCC and a federal-state joint universal service board are to develop principles and regulations to ensure that access to advanced telecommunications

and information services will be provided in all regions of the nation, that all providers of telecommunications services make an equitable and non-discriminatory contribution to the preservation and advancement of universal service, and that a telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition.

The concern for assuring universal service that Congress displayed in the Postal Reorganization Act of 1970 and, twenty-six years later in this year's telecommunications act, should not be given short shrift now.

After all of the varied parties have presented their views on H.R. 3717, and the subcommittee and its staff have a reasonable opportunity to consider them, we anticipate there will be some reformulation of H.R. 3717 and additional opportunity to present further views on postal reform in the next Congress. However, notwithstanding some fundamental opposition to portions of H.R. 3717, ABP would like to acknowledge Chairman McHugh's initiative and dedication to a difficult but worthwhile effort.

ABP's initial reaction to the current version of H.R. 3717 may be summarized as follows:

(1) The concept of price caps is interesting and deserves further study as a possible method to reduce labor costs and maximize automation benefits. However, as some parties have already advised the Committee, the price cap provisions as written do not provide needed cost reduction incentives and do not adequately and explicitly encourage postal labor productivity improvements. Moreover, because the caps are not based upon USPS costs, and can be pierced under certain circumstances, they fail to assure a break-even or "in the black" USPS. Despite the "caps," there could still be a

multitude of rate changes that substantially exceed the "GDPPI" index that would be merely a starting point for annual rate changes, and it can be expected that many mailers would face rate increases much higher than the average price caps adopted for "baskets" (mail classifications).³ In all likelihood these intra-basket adjustments would negatively affect smaller volume mailers who comprise the vast preponderance of captive USPS customers, including all but a few national publications. This impact would in turn have adverse effects on the national dissemination of critically-needed business and professional information, with consequent harm to U.S. industry and the economy.

(2) The legislation eliminates without any justification the current and explicit requirement enacted in 1976 (but carrying forward longstanding Congressional policy) that the educational, cultural, scientific and informational (ECSI) value of the mail be considered when rates are established. See current 39 U.S.C. §§3622(b)(8). Second-class mail (now called periodicals) has long been given special recognition for the role it plays in disseminating information, a role that is no less important in the age of electronic communication than it was at the founding of the Republic. Periodicals, along with portions of fourth-class (now standard) mail (books), pay a relatively lower percentage contribution to postal overhead than most other subclasses (although they fully cover their attributable costs and do in fact make a significant contribution towards overhead). ECSI value has also been critical in giving the Postal Rate Commission a legal standard

³ We urge the Subcommittee, in the ongoing review that it will undertake after hearing all parties' views, to examine the appropriate index to apply to price caps, in particular to ensure that a labor-cost based index is used.

by which to measure and sometimes reject ill-considered USPS rate design and classification proposals affecting second-class mail, and it shall not be cost aside.

Three recent examples stand out: in 1990 and again in 1995, USPS proposed rate and classification changes that would have zoned the traditional uniform “flat” rate applicable to the editorial content of periodicals, resulting in rate reductions for a handful of large periodicals and massive increases for smaller circulation periodicals that rely on USPS for national transportation and distribution to readers. The Commission found that the flow of information to the public would have been significantly impaired by the USPS proposal.⁴

In 1992, the Commission, relying upon the importance of ECSI value, turned down a USPS-proposed discount available only for palletized publications, finding that USPS’s requirements at that time for palletization meant that publishers had to have unusually large volumes in order to palletize, so that, again, a few would have benefited, while most periodicals would have paid more simply for being “small.” And, in 1995, the Commission properly decided, after thousands of pages of testimony and hearings, that periodical mail should not be divided into subclasses based on high density versus low density mail preparation requirements.

H.R. 3717’s elimination of ECSI value along with the critical standard of “fairness and equity” would allow USPS, either through negotiated “volume discounts” or creation of “subordinate units” (*e.g.*, low-volume, national publications) to increase

⁴ Letters, for example, pay a uniform national rate. We note approvingly that H.R. 3717 does not seek to charge distance-based rates for letters, but the subordinate rates USPS could assess without Commission approval via H.R. 3717 would allow distance zoned rates for the editorial content of periodicals.

rates with little or no Rate Commission oversight and to impose the discriminatory (and non-cost effective) type of reclassification upon the publishing industry that the preponderance of the industry opposed and that the Rate Commission, after weeks of hearings, rejected. Bear in mind that, under H.R. 3717, the Postal Service is given unreviewable authority to establish rates for most mail with no floor whatsoever, and that the PRC would have virtually no say in the establishment of any specific rates.

The Commission has not turned its back on lawful and legitimate efforts by the Postal Service to pass cost savings through to mailers. Using the current statute, it has adopted worksharing discounts since the late 1970s that have meant tens of billions of dollars in postal savings, primarily for larger mailers in every class of mail, and sometimes (like increases imposed earlier this year) meaning higher rates for small publications based on cost-of-service standards. The kinds of "value" based rates and discounts allowed by H.R. 3717 have been carefully examined by the Rate Commission, and have been denied on both public policy and cost efficiency grounds.

(3) The Postal Rate Commission. The bill provides important procedural weapons for the Postal Rate Commission to carry out its new proposed duties -- auditing revenues and costs, and a new and much needed function, service monitoring. We support these concepts and look forward to discussing details with the Chairman and staff.

But the PRC must be more than an auditing agency. It must continue to be the public's watchdog over excessive, harmful and discriminatory rate increases that USPS has proposed from time to time. Given the continuation of USPS's legal monopoly over letters and its de facto monopoly over the delivery of national periodicals and other types

of mail, the opportunity for rate discrimination by USPS against smaller circulation periodicals (that account for more than 98% of the periodicals in the nation) are much too great to tie the Commission's hands by emasculating the authority it now has and exercises consistent with now well-understood and court-approved statutory ratemaking and classification criteria. The placement of almost unbridled rate authority in USPS's hands, with little say by the Commission other than to set aggregate percentage "price caps," would be a serious mistake. Under the bill, the Postal Service would have absolute authority with respect to rates for favored "competitive mail" and for those few with sufficient volume to negotiate rates. In total, little or no independent public policy judgment will be exercised in the setting of prices for an agency that now collects nearly \$59 billion per year, and longstanding concerns like most publishers' absolute dependence most upon USPS to distribute periodicals to readers would be lost in the shuffle.

We especially urge the Subcommittee not to accept on blind faith representations made by some parties that "smaller mailers" could benefit from volume discounts tied to productivity standards if those small mailers would only "co-mail," a practice that MPA oral testimony at the September 17 hearing presented as an example of a practical tool for smaller volume publishers. To the contrary, after an exhaustive examination of co-mailing in last year's reclassification case, the Postal Rate Commission concluded, after hearing testimony from numerous publishers and printers, found that there are "substantial impediments" to co-mailing by the publishing industry. Para. 5278, PRC Op. & Rec. Dec., Docket MC95-1 (1996). Discounts should continue to play a role in postal rates, but only where the mailer behavior truly drives costs out of the system and

where the discounts do not discriminate against smaller mailers in favor of the largest mailers that already receive the lion's share of discounts.

(4) The legislation provides for a labor-management commission with a goal of enhancing worker-management cooperation. The creation of this commission is an excellent idea, but its charter must be broadened in order for USPS's central problem of stagnant or falling productivity coupled with greater than average labor cost increases to be dealt with effectively. Likewise, the Postal Rate Commission has pointed out that an ever-increasing annual share of USPS costs are fixed costs unrelated to volume, a phenomenon that, to date, no one has satisfactorily explained. Price caps, volume discounts and give-aways to large mailers who would be rewarded simply for being large will not resolve the impact of increasing work hours, growing payrolls in an era of downsizing, the oft-noted (by GAO) failure of USPS to satisfactorily reduce workhours despite automation, and deteriorating service.

(5) The proposals in the legislation to provide bonuses to employees, better compensate governors, create an independent inspector general, and give USPS management greater flexibility in investing USPS's significant cash flow are progressive ideas that would allow management to run a more-motivated, professional organization without sacrificing USPS's universal service role. Bonus provisions, however, should not be tied to price caps or to rates that are not directly related to productivity.

(6) H.R. 3717 seeks to give USPS the tools with which to fight off alleged (and largely unproven) private delivery threats, but it also retains some rate preferences (e.g., nonprofit mail) that require funding either from other mailers or by Congress. Thus, under H.R. 3717, certain "preferred" categories, like in-county mail and non-profit

mail, would continue to enjoy rate preferences under the statute, but past costs of handling this mail, for which current law authorizes an appropriation of \$29 million per year for 40 years, would be completely shifted onto ratepayers. The elimination of revenue foregone appropriations while mandating an advantage for non-profit mail paid for by other mailers is exactly what Congress sought to prevent in 1993. Similarly inappropriate is the proposal to shift certain retirement costs from the U.S. Treasury to current ratepayers.

(7) Finally, Title VII of H.R. 3717 also contains provisions that would, albeit on an experimental and limited basis, allow for the private delivery of letters and access to mailboxes by private carriers. However, only USPS has a legal mandate to deliver to every single address; only USPS has a mandate to guard the privacy of the mails. We continue to believe that these mandates would be jeopardized by a weakening of the Private Express Statutes, and we share the Postmaster General's concerns on these matters. Much of third class mail, and in theory only, all of second-class mail, as well as of course the parcel and overnight delivery business, can lawfully be served by private delivery today. In the case of periodicals, however, USPS has by far the most overall efficient and economical service and often the only available service for publishers (except for local, daily newspapers). Like the other provisions of H.R.3717, such as basing rates on "competition," real or imagined, the incipient destruction of private express statutes could lead to transfers of USPS's growing fixed costs from large volume mailers to smaller volume mailers, with no resultant cost efficiencies.

Conclusion

1. It is almost certainly wrong and at best premature to shift fixed, institutional costs to the shoulders of smaller mailers or to those deemed the least likely to abandon USPS. There are few or no studies that illustrate (1) how productivity can be enhanced by volume discounts or competitive rates, or (2) how the electronic diversion of letter mail will lessen if price caps as now structured in H.R. 3717 are adopted.

2. Recognition of ECSI value remains central to USPS's mission and reason for existence and is critical to the future of thousands of periodicals upon which America's business, science and culture rely. It should remain a major ratemaking and classification factor.

3. ABP urges the Committee to find realistic ways to reduce labor costs, increase productivity, and maximize postal efficiency. No solution that leaves the cost or labor structure of USPS untouched will assure USPS's long term future. Chairman McHugh's goal of a viable future postal service can be met by thorough and deliberate study and action by all interested parties, and not just by a few interested in short-term economic gain.

ABP looks forward to working with this committee, with the Postal Service and with other interested participants to fashion a postal system that is up to date and that offers management flexibility without undue discrimination against any mailer. Before we discard a system that overall has worked well, we should be more informed as to what the real or likely consequence for all mailers and for USPS will be.



September 24, 1996

VIA AIRBORNE EXPRESS

The Honorable John M. McHugh
 Chairman
 Subcommittee on the Postal Service
 Committee on Government Reform and Oversight
 United States House of Representatives
 Washington, D.C. 20515

Dear Chairman McHugh:

TNT is one of four worldwide express companies which provide international services to and from the United States. We employ over 1,200 people in the United States and have offices in all major American cities.

TNT has been following the postal reform hearings of the Subcommittee with great interest, especially since introduction of HR 3717. Our perspective is a little different from that of the other three major international express companies (DHL, Federal Express and UPS) for two reasons. First, TNT is almost exclusively concerned with the international market rather than the U.S. domestic market; TNT is an Australian-European company headquartered in Amsterdam. Second, TNT has placed relatively more emphasis on the development of inexpensive (i.e., postal-like) international delivery services, although it should be noted that many American companies, including but not limited to the "majors", participate in this market as well.

We believe it is clear that the evolution of improved and inexpensive global delivery services will benefit U.S. commerce and world commerce significantly. Progress on this front, however, will require reforms in the international legal framework and this, in turn, depends upon substantial leadership from the United States. To date, this leadership has largely been missing because international delivery service policy has received little attention in the Executive Branch.

The primary focus of HR 3717 is the domestic sector, as it should be. However, HR 3717 also represents an opportunity to materially advance the role of the United States in the development of international delivery service policy. I have prepared a statement that attempts to explain the case for including provisions in HR 3717 that address the unique aspect of international delivery service policy. I respectfully request the Subcommittee to consider our views and to include our prepared statement in the hearing record.

Thank you for your consideration of this letter and the accompanying statement.

Yours Sincerely,

David J. Brodigan
 Regional Vice President - North America

DJB/ck

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Hearings Before the
Subcommittee on the Postal Service of the
Committee on Government Reform and Oversight
U.S. House of Representatives on
HR 3717, the Postal Reform Act of 1996

Statement of David Brodigan
Regional Vice President - North America
Mailfast (division of TNT Express Worldwide)

TNT Express Worldwide is an international express company headquartered in Amsterdam, the Netherlands. TNT is jointly owned by TNT Limited, an Australian transportation company, and the post offices of the Netherlands and Sweden. TNT has offices in all major American cities and employs more than 1200 persons in the United States. TNT very much appreciates this opportunity to present its views on HR 3717, the Postal Reform Act of 1996.

TNT provides international express services between the United States and the rest of the world similar to those of DHL and Federal Express and agrees generally with the comments of those companies on Postal Reform Act of 1996 insofar that they relate to international express operations. In contrast to the other major international express companies, however, TNT's Mailfast division offers a greater range of international postal-like services including remail, mailing list management services, international business reply services, and direct hand delivery of international letters. As a dispatcher of international letters and documents, Mailfast is today the fifth largest "post office" in the world. The purpose of my statement is to draw your attention to the implications and opportunities presented by the Postal Reform Act of 1996 for a new type of international commercial organization, the "global post office" or, to put it more neutrally, the "global delivery service."

1. Summary of statement

The Postal Reform Act of 1996 should be considered by the subcommittee not only for its effect on the development of a better, more efficient delivery services sector in the United States but also for its effect on the emergence of global delivery service systems. While improvements in the national delivery system must be regarded as Congress' first priority, the United States also has an interest in the development of efficient global delivery services. The United States is a major seller of international services of all types, notably including international direct marketing. These activities depend upon good postal-like services in the international economy no less than in the domestic economy.

From the standpoint of facilitating global delivery systems, HR 3717 takes a giant step forward by extending Postal Rate Commission oversight to international mail markets on the same terms as domestic mail markets. However, HR 3717 still fails to appreciate the unique aspects of international delivery services. International delivery services have become global networks with their own particular requirements. The regulatory framework for global delivery services is not the product of a single nation but a complex of many national regulations. The role of the United States in this international legal framework is not so much the role of direct legislator as the the role of advocate and precedent-setter. From the perspective of a global delivery service, what is missing in the Postal Reform Act of 1996 is a recognition that United States must develop a mechanism for advocating a pro-free trade position for international delivery services and setting a free-trade example in its own legal approach towards global delivery services. Unless the United States exercises greater leadership in this area, global progress will be exceedingly difficult.

With this perspective in mind, I urge the Subcommittee to consider the following specific steps:

- establishment of a governmental office that is independent of the Postal Service and charged with the responsibility to develop and advocate, at the Universal Postal Union and elsewhere, policies that encourage liberalized and commercially neutral legal treatment for all international delivery services; and
- reform of U.S. laws so as to set a free-trade example for other countries, including abolition of the postal monopoly over international postal services and equalization of treatment for postal and private shipments under customs and other laws unique to international trade.

2. Background: emergence of true global delivery services

Before the advent of national post offices, private postal systems transmitted letters along lines of "posts" extending across national territories. In the 16th and 17th centuries, national governments took over these private posts for reasons of security and revenue. Thereafter, national postal administrations negotiated bilateral agreements to exchange international mail for delivery or forwarding to neighboring postal administrations.

In 1874, inspired in large part by American initiatives, the Universal Postal Union was established to organize this system on a multilateral basis. Over the years, however, the UPU has evolved a series of economically irrational arrangements open only to post offices. A leading example is the system of "terminal dues" (what post offices pay each other for the delivery of international mail). These UPU arrangements have made it difficult for private operators and national post offices alike to avoid the shortcomings of the international postal system. Whether intentionally or not, the effect of the UPU has been to reinforce the system of national post offices

and postal monopolies.

In this manner, for more than a century, international postal law maintained international postal service as a shared monopoly for national post offices and thwarted the evolution of true international postal services. No organization provided an international postal service similar to the national postal service provided by a national post office. That is, no organization could control and standardize the end-to-end collection and delivery of ordinary international letters and documents. Rather, international service was a byproduct of postal operations optimized to provide efficient service at the local and national levels. As a result, international postal service was never as good as domestic postal service. Providing international postal service by linking national postal services is a "second best" solution to the problem of providing an inexpensive and reliable international delivery service.

In the last ten to fifteen years, international mailers and delivery services have increasingly sought ways to circumvent the inadequacies of traditional, UPU-based services, but their progress has been impeded by an international legal framework that is designed to accommodate post offices only.

The first major step in the development of international postal-like delivery services was the introduction of "re-mail." Remail is a service whereby a large mailer tenders international mail to an express company or foreign post office (i.e., not the post office of the country in which the mailer is located) for transport to a foreign postal hub, where it is then either dispatched for local postal delivery in the same country or forwarded via the international postal system to third countries for postal delivery. Remail offers a way around deficiencies in the international postal service of the mailer's national post office. To give a simple example, in New York City, the U.S. Postal Service

sends all mail, including international mail, to a sorting center in New Jersey, delaying the export of international mail by a day or more. A remail company operating in New York City typically collects international mail and transports it to JFK Airport for export the same night.

Remail also offers other advantages over traditional international mail services. A mailer can avoid terminal dues rates which exceed actual costs and access terminal dues which are less than the actual cost of delivery by the destination post office. Remail also offers "value added" elements -- such as collection, sorting, and billing -- which post offices traditionally failed to provide international mailers.

Although an improvement over a national post office's international mail service, remail is only the forerunner of still more closely integrated global delivery services. In the foreseeable future, true global delivery services will be able to collect, transport, and deliver international letters, documents, and small packets from end to end between the major cities of the world. Outside of major cities, items will be tendered "downstream" to the offices of local delivery services located near the addressee, bypassing cumbersome "exchange offices" which national post offices employ to carry out UPU-related procedures. Local delivery services may be either national post offices or private local delivery services depending on which offers the best service for the best price. Overall service will be inexpensive and reliable, like good quality national postal services.

In a recent report prepared as part of a review of international delivery services (still in progress), the Organization for Economic Cooperation and Development (OECD) has declared:

Consumers have not yet begun to benefit from the ease, convenience and potential savings of shopping by mail in a global marketplace. . . . For the global marketplace to develop, it must be possible to deliver goods internationally for a reasonable price and with high quality of service.
[DAFFE/CP(95)9 (20 November 1995)]

In fact, several commercial organizations are now racing to develop such global delivery systems. They include both international express companies and major national post offices. Organizations such as TNT, the U.K. Post Office, and the PTT Post BV (Dutch Post) are probably the current leaders in this contest, but they are far from being the only participants.

3. U.S. failure to lead reforms in international postal policy

Progress towards evolution of global delivery services has been impeded by an international legal framework that is designed to accommodate national post offices. Reforming a patchwork of ancient national and international laws demands the leadership of one or more major nations. Indeed, as a practical matter, *liberalization* of trade is almost impossible with American leadership.

Unfortunately, over the years, the United States has done little to use its "bully pulpit" to advocate an efficient, non-discriminatory legal framework for international delivery services that would facilitate the evolution of global delivery services. Indeed, too often the role of the United States has been to provide aid and comfort to those who sought to fortify the traditionally balkanized international postal system against change. For example:

- The United States has not advocated abolition of anti-remail provisions in the Universal Postal Convention and has, in fact, supported their continuation and even their strengthening.
- The United States has failed to protest when foreign post offices have intercepted and returned the mail of American companies that was not posted with the U.S. Postal Service.
- The United States has not opposed, but rather supported, provisions of the Universal Postal Convention which encourage special customs treatment for postal traffic and

preferential rates for large international mailers without regard to considerations of fair competition such as set out in the U.S. Postal Reorganization Act.

- The United States has led opposition at the Universal Postal Union to separation of commercial and regulatory functions and to adoption of open procedures for outside observers similar to those adopted by the International Telecommunication Union.
- The United States has not advocated equal customs treatment for private and postal delivery services at the World Customs Organization during its reconsideration of the Kyoto Convention, the basic international treaty of customs simplification.

4. HR 3717 should address the particular needs of international postal policy

By extending Postal Rate Commission jurisdiction to international mail, the Postal Reform Act of 1996 is applying to international mail regulatory procedures originally developed to police the pricing of domestic mail. This is a positive and necessary step. Nonetheless, HR 3717 fails to address the regulatory issues which are unique to international postal policy and have no direct parallel in domestic postal policy. These issues fall into two groups: (i) measures which would allow and encourage the government of the United States to seek pro-competitive delivery service policies in international fora and (ii) national law measures which would establish a pro-competitive example towards international delivery services that other countries could follow.

Under current law, development and advocacy of U.S. international delivery services policy is controlled by the U.S. Postal Service. As the Air Courier Conference of America pointed out in testimony before this subcommittee in June 1995, the Department of State has conceded that it has no control over U.S. policy at the Universal Postal Union. Until August 1994, the U.S. Postal

Service was representing the United States without explicit permission of the President and presenting postal treaties to the President on an after-the-fact take-it-or-leave-it basis. Each time, the President was faced with no practical alternative but to sign whatever the Postal Service had negotiated. Despite mounting reservations within Executive Departments, this was in fact the manner in which the UPU conventions of 1984 and 1989 were negotiated and agreed. When ACCA brought this situation to the attention of President Clinton, he dispatched a one-sentence letter to the Postal Service authorizing it to represent the United States at the UPU convention in Seoul, Korea. The Clinton Administration declined to discuss international postal policy with representatives of ACCA, and its authorization letter to the Postal Service included no provisions for public or Executive Branch oversight of what the Postal Service was advocating in the name of the United States. Without guidance or public scrutiny, in the UPU Convention of 1994 the Postal Service again agreed to a number of anti-competitive provisions designed to advance the commercial fortunes of post offices but not the commercial interests of the United States.

The remedy, plainly, is to create an office of international delivery services policy within the Executive Branch. Such an office should consult regularly with all types of international delivery services, including the U.S. Postal Service, and with all types of users of international delivery services. It should also coordinate development of U.S. positions in other international fora (such as the World Customs Organization, International Civil Aviation Organization, Organization for Economic Cooperation and Development, and World Bank) that affect the development of international delivery services. When Congress seeks an account of U.S. policy towards international delivery services, this office would be available to give a coherent answer. No such office currently exists. In the course of the OECD study of international delivery services noted above, the

responding office in the U.S. government has been, by default, the Federal Trade Commission.

The second means by which HR 3717 could be adapted to the needs of global delivery services is to address those aspects of U.S. law which, if reformed, could set an important example for other countries to follow. In the European Union, the European Commission has advocated (i) deregulation of postal monopolies insofar as they restrict international delivery services, (ii) adjustment of terminal dues so as to remove biases for or against international mail compared to domestic mail, and (iii) equal treatment of private and postal shipments under customs laws, tax laws, and other laws. In regard to the latter issue, the European Commission actually imposed equal treatment under customs and other laws as a condition for approving a joint venture between several post offices and TNT Limited (to form TNT Express Worldwide). More generally, however, the European Commission has encountered extreme political resistance to these proposed reforms from post offices and postal unions. There can be no doubt that the pro-reform position of the European Commission would have been materially strengthened by pro-competitive precedents in the United States.

Outside of Europe, other countries are also reconsidering their postal policies. In these countries, as well, the absence of a pro-competitive approach towards global delivery services in U.S. law represents a missed opportunity for American trade policy.

For the United States, international mail represents less than one-half of one percent of all mail. Reforms to facilitate international delivery services can be accomplished with relative political ease in the United States compared to other countries. Yet, because international mail is such a small fraction of total mail, the United States generally overlooks the importance of addressing international delivery services issues. The Postal Reform Act of 1996 can and should address the

types of reforms advocated by the European Commission. Enactment of such reforms in the United States will encourage other countries to follow suit. In this manner, the United States can advance its campaign to liberalize international trade in services without in any way posing a risk to universal postal delivery in the United States.

5. Conclusion

The evolution of unrestricted global delivery services will serve the commercial interests of the United States and the world. I respectfully suggest that HR 3717 be strengthened by addressing the particular requirements of international delivery service policy that are not evident in domestic delivery service policy. In so doing, the United States can become both an example and an advocate of freer and fairer trade in international delivery services.

