



**REMARKS
BY
COMMISSIONER RUTH Y. GOLDWAY**

BEFORE THE

**DIRECT MARKETING ASSOCIATION
1999 GOVERNMENT AFFAIRS CONFERENCE**

MAY 5, 1999

Good afternoon. When I sat down to lunch earlier today to hear PMG Henderson speak, I stared at my plate and reminded myself, “Now, when it is your turn Ruth, don’t bite off more than you can chew.” I can be counted on to be restrained when it comes to food. In about 20 minutes we’ll all know whether the same holds true for my speechmaking.

When I was first appointed to the Commission – just about one year ago - I was frequently described in the trade press with hints of fear and loathing as the “*Pro-consumer Commissioner.*”

Yes, I think of myself as representing the consumer’s point of view. My first public policy work involved advocating for safer foods at lower prices. However, while my cousin frequently reminds me that I, indeed, have an Aunt Minnie, I want to assure those of you who may be concerned, I define the consumer as a far more active participant in society and the economy than that mythical, pleasant, white-haired grandmother writing quaint letters to her friends in beautiful, well practiced, old fashioned manuscript. My kind of consumer wants up-to-date information and choices so he/she can buy and best use the rapidly changing array of products, services and personal opportunities available. My kind of consumer wears several hats – homemaker, worker, parent, volunteer activist and couch potato. He/she deserves a world of opportunities and has the right to information. Therefore, you shouldn’t be surprised to learn that I value direct mail marketing. It is an effective tool for getting out useful information. I think it is perfectly ok that a growing proportion of mail volume is advertising-related and that the PRC has encouraged the development of worksharing discounts which have in turn helped to make direct mail such a cost-effective advertising medium.

Now, that doesn’t mean I tolerate deceptive advertising or approve of the excesses of the sweepstakes mail programs. I support congressional efforts to rein in practices that are blatantly misleading. And it does mean that I expect the United States Postal Service to maintain fair and accurate standards in its advertising as well. Some of you may recall the strongly critical language the Commission included in its answer to the Life Time Fitness Complaint regarding the Postal Service’s advertised but unsupported delivery commitment. From my perspective, all consumers have the right to know what they are buying. All businesses have an obligation to explain their offerings truthfully and to fulfill their commitments.

When the Supreme Court was asked to decide whether the First Amendment applied to truthful advertising, it said:¹ “... the particular consumer’s

¹ Va. Pharmacy Bd. V. Va. Consumer Council, 425 U.S. 748, 763-64 (1976)

interest in the free flow of commercial information ... may be as keen, if not keener by far, than his interest in the day's most urgent political debate." The case dealt with restrictions on prescription drug pricing. The Court's comments really put the value of advertising in focus. "Those whom the suppression of prescription drug price information hits the hardest are the poor, the sick, and particularly the aged. A disproportionate amount of their income tends to be spent on prescription drugs; yet, they are the least able to learn, by shopping from pharmacist to pharmacist, where their scarce dollars are best spent.

The Court's bottom line on truthful advertising? "So long as we preserve a predominantly free enterprise economy ... the free flow of commercial information is indispensable."

A democratic government assuring detailed and accurate information is available to consumers creates more discerning buyers who encourage more competition in the marketplace. And competition, generally, leads to greater economic efficiencies, higher quality, broader selection and lower prices.

In the past year, as I have studied postal issues, I have relied on these same principles to develop my own unique opinions on the Postal Service, the status quo and its future. This is my "entrée" for today.

Taking one small bite at a time, let me start with HR22.

I respect the hard work that Congressman McHugh and many of you have put into drafting HR22. I am concerned, however, that the bill, as currently approved by the subcommittee, focuses too much on protecting the marketplace from possible Postal Service competition and not enough on the advantages of competition. It should encourage the Postal Service to be more efficient and innovative. Its competitors would then have to respond and the public would get the benefit of lower prices and better services from all providers.

For example, §205's restrictions on the introduction of new non-postal products, except as part of a Private Law Corporation, limit the Postal Service's ability to be innovative and to take full advantage of scope and scale economies. The Postal Service should not be prohibited from providing services other than those specifically related to the physical delivery of letters, printed material or packages weighing up to 70 pounds, more or less freezing the Postal Service into in a 20th century timeframe. New non-postal products will be allowed to be offered by HR22's Private Law Corporation, but, as the debate at least week's markup underlined, the activities of such a corporation and its ability to succeed are problematic. I would rather give the Postal Service more room to introduce new products within what HR22 defines as the competitive product side.

We should not curtail the ability of the Postal Service to be innovative just because we are afraid of its size and deep pockets. As the Supreme Court has said, "[l]ow prices benefit consumers regardless of how those prices are set, and so long as they are above predatory levels, they do not threaten competition."² Further, it has said, "[i]t is in the interest of competition to permit dominant firms to engage in vigorous competition, including price competition."³

Therefore, in my testimony to Congressman McHugh, I proposed loosening the definition of *postal product* in HR22's revised §102 to allow for product innovation where there is a nexus to postal operations, and where the Postal Service could show that the new product would benefit from Postal Service scale or scope economies. If the Postal Service were able to draw on such economies, when the underlying assets are already part of its postal delivery system, all postal consumers —large and small alike —would benefit from lower prices.

What kind of scale and scope economies am I talking about? For example, I would hope that HR22, if enacted, would permit the Postal Service to experiment with electronic communication, to sell advertising placed on its postal

² *Atlantic Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328, 338 (1990). See also generally *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209 (1993).

³ *Id.* at 341, citing prior cases for the same proposition.

delivery vehicles, permit outside firms to lease from the Postal Service already-acquired and underused equipment and buildings and/or coordinate supply chain management services. If the Postal Service were to own a significant portion of its trucking fleet, why should it not be able to lease this equipment when it is otherwise idle or running empty back to its destination? Along these lines, I liked the Postal Service's pack-and-send a proposal because it would have utilized existing employees during slow periods of the day in a service customers clearly want. If the first decades of the 21st century maintain the rapid pace of technological change we have seen in the last decade of the 20th century, who knows what new combination of products and services will be called for.

Enhancing the ability of the Postal Service and its competitors to do battle fairly will have a beneficial impact on Postal Service productivity, industry innovation and consumer welfare. Many have been critical of the Postal Service for what they characterize as bad, money-losing new service and product ideas, and they would like to rein in the Postal Service. Let's be aboveboard. Some of these complaints are from parties who would face competition from the Postal Service and do not like it. Objectively, there have been Postal Service successes, too, such as Priority Mail, and, it looks like, delivery confirmation. As to the latter new product, I know that trackable delivery is particularly important to direct marketers.⁴ In fact, it is a good example of 21st century synergy. Electronic information technology incorporated into old fashioned mail creates a better service than either could be on its own.

Yes, there have been many Postal Service failures. But even well established private sector businesses have a low success rate when introducing new products. When a new product makes it to the marketplace, having passed all the planning and product testing hurdles, the odds are it will fail; only about one in three consumer packaged goods products survive at least two years.⁵

Companies that do not innovate by offering new services eventually wither and die. For that reason I would allow the Postal Service broader discretion in its market tests for postal products than HR22 currently allows as *long as* at the midpoint of the trial, the PRC was required to review the ongoing test to determine that the resources allocated to the test were not unduly disproportionate to the revenues derived *and* the PRC could cancel the test if such a finding was made.

However, while I want to see the Postal Service survive and thrive in the new century, from my perspective as a consumer advocate and objective

⁴ *Compendium of Government Issues Affecting Direct Marketing in 1998* ("Compendium"), p. 9.

⁵ *Consumer Insight* (A.C. Nielsen pub.) March 1999, p. 5.

regulator, I believe enhancing competition in the postal industry should be a two-way street. We need to assess carefully the impact of all laws that may unfairly inhibit competition by Postal Service competitors.

It is vital that the Postal Service be required to present its products and services to consumers in the marketplace under the same terms as its competitors. Recently, the Commission held in the Life Time Fitness complaint case that the Postal Service's use of the term commitment in a marketing diskette for advertising mail was "deceptive and inappropriate."⁶ While we found it necessary to dismiss the complaint because of limitations on our complaint authority under current law, it was alarming to learn that the Postal Service's advertised delivery commitment was not supported by any data regarding the delivery performance of advertising mail. I suspect that if the Postal Service were not protected by its monopoly, it would carefully measure actual delivery times – from deposit of the mail to final delivery – for all mail classes. As you know, the Postal Service stopped measuring Standard A delivery performance in 1996.⁷ Moreover, I am concerned that the Postal Service's current measurement performance systems are not reliable. For example I have seen anecdotal complaints that through its EXFC system, it may be altering other aspects of service quality that might affect the data, such as eliminating late day collections from mailboxes. All consumers – whether businesses or individuals – have a right to know what kind of service their postal dollar is buying. Hopefully, HR22 will fix this problem. Section 3772(b) requires an annual report to the PRC on service levels in all noncompetitive products. This might be interpreted by future commissions to include requiring such measurements.

Further, individual household consumers may be misled by the myriad rate and service offerings of the Postal Service. For example, consumers may mistakenly use Priority Mail when First Class mail would be cheaper and, for some areas, get the mail there just as fast, or even faster. Also, parcel service within a few hundred miles is relatively expeditious and at higher weight levels, much cheaper than Priority Mail. I would like to see the Postal Service provide understandable comparative data to consumers when they transact business at a post office window so they can get the biggest bang for their buck.

As you know from your own efforts at industry self-regulation, such as the Committee on Ethical Business Practice, the reputation and credibility of an industry is important to consumers. When consumers lack information or are suspicious that information given by a would-be seller is incorrect, one option is to find another product. When consumers have confidence in an industry, demand expands. It was for these reasons and to address the problems I have

⁶ Docket No. C98-1, *Complaint of Life Time Fitness*, Concurring Opinion of entire Commission, at 1, issued January 27, 1999.

⁷ See *Compendium*, *supra*, p. 16,

identified that I suggested that HR22 incorporate language to make it clear that the Postal Service would be subject to the full range of FTC jurisdiction, including deceptive practices. And I was gratified to see that Congressman McHugh accepted this amendment.

My concerns regarding the potential negative effects of price caps were not taken up by the Congressman. The rather elaborate and detailed statutory checks and balances built into HR22's price cap mechanism may serve to protect mailers from cost shifting or sudden price increases. On the other hand, they provide little opportunity or incentive for the Postal Service to lower rates either to reflect the rapid impact of management efficiencies or to offer volume-attracting discounts. Lowering prices in a nondiscriminatory fashion (i.e., not NSA's) in a competitive market does not always mean cost shifting or predatory pricing, and such reductions can be a way for the Postal Service to attract new customers. Lower prices could, in themselves, be powerful incentives for the Postal Service to increase productivity and directly benefit consumers.

Personally, I'm not sure I like price caps at all. However, in my HR22 testimony I supported that section of the Postal Service's amendments to the price cap proposal which made it more flexible by broadening the definition of products to current subclasses -- *as long as* HR22 also included an amendment requiring the Commission to review and adjust the baseline rates every five years. Such a regular quinquennial review would provide a public forum in which imbalances resulting from the price cap mechanism, on the high or low end, could be examined and corrected.

Whatever price rate setting mechanisms HR22 ultimately incorporates, inclusion of a five-year general rate structure review by the PRC would be wise. No one can predict how the economy will affect the mailstream in five years – on the demand side or the cost side. It may be that the most carefully thought out statutory system will produce a rate structure that is out of alignment in five years, and legislative action to fix any problem might take several years to enact.

My last comment on HR22 concerns Negotiated Service Agreements, or NSAs. I know your membership sees this as a most attractive aspect of the new legislation and does not want to see NSA's unduly restricted. For example, the Mailers Coalition for Postal Reform testified before the postal subcommittee that NSAs should be implemented immediately after the Postal Service provides public notice of the agreement and all its terms.⁸ The subcommittee revised §3662 by removing the pre-approval process in favor of a detailed advance notice procedure. Parties may file a complaint about the NSA's through the

⁸ Testimony of Jerry Cerasale on behalf of The Mailers Coalition For Postal Reform, Before The Subcommittee On The Postal Service Committee On Government Reform, U. S. House Of Representatives (March 4, 1999).

Commission. The Advertising Mail Marketing Association argued in its testimony that NSAs have been used by foreign posts. Robert Kamerschen, on behalf of the Saturation Mail Coalition, testified that the main problem with Section 3641 is its requirement that NSA mail make a contribution to institutional costs equal, on an average unit basis, to that of the most similar mail classification. He would permit NSAs that generate an equal or greater total dollar contribution to institutional costs achieved by increased volumes, reduced costs, or a combination of the two. On the other hand, as regulators, we, at the PRC, are required to insure costs are distributed fairly. Chairman Gleiman's testimony on behalf of the Commission disfavored the immediate implementation approach for NSAs, and supported the prior public review approach.⁹

Whatever the outcome in the Congress on HR22, there is no question in my mind that NSAs (at least de facto NSAs) are part of the Postal Service's and the PRC's future. At the moment, recent experiments with small numbers of large volume users and narrowly defined classifications, such as the experiment with non-standard BRM the Commission approved in MC97-1, demonstrate that we can, under current law, develop more or less individualized rates. I think the public review that goes along with these experiments does not unduly hinder such arrangements and is beneficial overall.

Beyond the reforms considered in HR22, I have been pondering whether greater efficiencies and savings can be generated through a narrowing or eventual elimination of the postal letter monopoly. I do not pretend to have superior wisdom on the subject. As you know, I am a relative newcomer to the postal regulatory arena. However, some basic propositions seem apparent.

In my testimony, I suggested that further legislation should consider decreasing the scope of the letter monopoly on a graduated basis, say over ten years, charging the PRC with reporting annually to Congress about such a provision's effects on universal service. A ten-year phase in would permit critical analysis, and would give time for the Postal Service, potential competitors, and consumers to adjust. Such a long lead in would also give Congress adequate time to make any fixes that were required, as the mail market became increasingly competitive and as electronic commerce's effects on the mail stream were evaluated.

It is often said that the large fixed costs associated with delivery — in the 70% range — justify the monopoly. For example, it is argued that it would be unnecessarily costly to have more than one carrier serving the same route.

⁹ Testimony of the Honorable Edward J. Gleiman, Chairman, on behalf of the Postal Rate Commission, before the U.S. House of Representatives Committee on Government Reform, Subcommittee on the Postal Service, February 11, 1999, p. 12.

Corollaries of this notion are that the letter monopoly is needed to assure universal service at a uniform price, and that legal protection is necessary to prevent cream skimming — where competing carrier systems would serve only the most profitable routes. But as deregulation and privatization have proven to be highly successful in other industries, forms of, at least, partial deregulation should be considered by those of us not afraid of change.

The Clinton administration revealed a few weeks ago its latest legislative plan to deregulate the nation's electricity markets and allow consumers to choose their power suppliers by 2003. Energy Secretary Richardson said the proposal would save consumers \$20 billion a year, equal to \$232 in savings for the average family from cheaper electricity bills and the reduced costs for goods and services. Nearly two dozen states have already acted to open their electricity markets to competition.

Change at the Postal Service, for instance, could mean the possibility of demonopolizing acceptance. This would mean that any retail operation could accept mail and send it off for processing. That there is no natural monopoly in acceptance can be seen in the efficient operation of acceptance procedures already in place at non-Postal Service units. For example, many retail stores sell postage stamps or accept parcels for Postal Service handling. The Postal Service employs many contract offices that are in reality just retail establishments making a little money on the side by acting as post offices. It would be fairly simple to establish a qualifications process for such operations, such as requiring clerks to pass postal regulation tests. Should the Postal Service decide the optimal number of retail outlets? Or, should the marketplace? Perhaps then we would get a full array of postal acceptance services at least eight hours a day, seven days a week. You also might see lower window acceptance costs, and increased volumes for the Postal Service, especially in package delivery, that would benefit the Postal Service.

In the delivery or distribution segment, studies by PRC staff suggest that absent regulation or monopoly, universal service would be maintained by natural market forces. Two PRC staff studies have found that city delivery does not subsidize rural delivery, and that cream skimming, serving only profitable routes, would not occur.¹⁰

¹⁰ See Robert H. Cohen, William W. Ferguson, John D. Waller, Spyros S. Xenakis (October 1998), "An Analysis of the Potential for Cream Skimming in the US Residential Delivery Market," in *Emerging Competition in Postal and Delivery Systems*, edited by M.A. Crew and P.R. Kleindorfer. Boston: Kluwer Academic Publishers; and, Robert H. Cohen, William W. Ferguson, and Spyros S. Xenakis, (July 1992), "Rural Delivery and the Universal Service Obligation: A Quantitative Investigation," in *Regulation and the Nature of Postal Delivery Services*, ed. Crew & Kleindorfer, Kluwer Academic Publishers, 1993. Many of

It is true that introducing competition into delivery might produce different levels of service to different communities, but is this necessarily a bad thing? High-cost service areas that were unprofitable to serve six days a week might become profitable with fewer days of delivery. In fact, the reality of universal service under the monopoly is that most postal services are already based on costs considerations or the volume of mail traffic. Mail boxes on secluded lanes do not receive the same frequency of pickup as those in front of the post office or on a busy street corner. Universal service has never meant absolutely equal service. What should its definition be in the next century when almost every home will have wired or wireless cable, internet, and telephone?

Thank you, Jerry, for this opportunity to “say a mouthful.” It is my hope that my talk will be understood as a “full plate of ideas” which you and your members can “digest” during the remainder of your conference and in the future as we work together on postal issues.

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the points made about rural and city delivery expense and cream skimming are taken from these papers, which are available on the PRC web site, www.prc.gov.