A POLICY HISTORY OF SELECTED PREFERRED MAIL CATEGORIES:

*In-County Periodical Rate
*Second- and Third-Class Nonprofit Rates
*Library Rate

by

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CONTENTS

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FOREWORD

This report, prepared for the U.S. Postal Rate Commission, sketches the history of four preferred mail categories: in-county second class, nonprofit second class, nonprofit third class, and library rate fourth class. Pursuant to the contract, the study includes "treatments of the legislative history of Congressional enactments both before and after the Postal Reorganization Act of 1970, and of the development of the general public policies underlying such enactments, and their implementation (including POD and USPS rules.)"

Chapter one reviews congressional efforts to enunciate a rationale, and sometimes an administrative mechanism, governing the preferred classifications in postal policy. Chapters two through four deal separately with the preferred subclasses (except for a combined discussion of nonprofit second- and third-class) from their genesis to shortly before the Postal Reorganization Act of 1970. Special attention is given to the circumstances that led to the creation of each rate preference, including the legislative histories of the original laws. Chapter five follows the preferred subclasses from the legislative history of the reorganizaton act to 1982, including their administration by the U.S. Postal Service, and congressional modifications and reviews. The annual hearings and debates over the revenue forgone appropriation are treated cursorily except where they introduced major new elements into the ongoing debate. The last chapter pulls together observations about the preferred rates and their place in postal policy.

It has not been possible to dwell on every argument presented in the many congressional hearings and reports dealing with the issues covered here. Readers who seek further details are urged to follow the footnotes to the appropriate sources.

One

Preferred Rates as a Public Service

All postal functions, in a sense, qualify as a public service. But some postal operations provide much more than convenient service to mailers and recipients. Since the 1790s, if not before, the American postal service has been operated to accomplish certain goals "extraneous to the business of mail delivery."[1] Key features of the service, especially its rate structure, are best understood as expressions of social policy, however ill-defined or unarticulated. Throughout American history, the implicit rationale for preferred rates is that they have positive externalities justifying below-cost handling.[2]

The American post office began as a revenue-generating department of the British Crown, but, after the Revolution, was viewed

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[1]Jane Kennedy, "United States Postal Rates, 1845-1951," (Unpublished Ph.D. dissertation, Columbia University, 1955), p. 3.

[2]See "The Postal Reorganization Act: Case Study of Regulated Industry Reform," 58 Virginia Law Review 1030, 1081-1084 (1972).

largely as an agent of nation-building.[3] Among its tasks, the Post Office Department promoted development of the nation's transportation network -- roads, railways, steamships, and airlines -- through the contracts let to carry the mails.[4] But more central to the purpose of the post office was the below-cost delivery of periodicals and other mail matter. Well into the twentieth century, low rates for newspapers were predicated on the notion that widespread circulation of information benefited the sender, receiver and society.[5] Likewise, Congress adopted preferred rates for other kinds of mailings on the assumption that general social benefits compensated for the losses incurred in carrying them.

Notwithstanding the postmasters' general understandable concerns about deficits, as long as the post office actively participated in building the young nation, its public service role prompted little controversy. By the late 1800s, however, the proper public service functions -- and how to finance them -- frequently raised questions. Some in Congress suggested that the public service aspects of postal operations had outlived their usefulness; others claimed that they resulted from successful lobbying by the

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[3]Wesley E. Rich, The History of the United States Post Office to the Year 1829 (Cambridge: Harvard University Press, 1924), pp. 91-110.

[4]See generally Carl H. Scheele, A Short History of the Mail Service (Washington, D.C.: Smithsonian Institution Press, 1970).

[5]See generally Richard B. Kielbowicz, "News in the Mails, 1690-1863," (Unpublished Ph.D. dissertation, University of Minnesota, 1984).

beneficiaries; and still others accepted the public service responsibilities but wondered how they should be financed. All wrestled with the issue of whether reduced-cost services should be supported by cross-subsidization of different mail classifications, or by the Treasury.

THE KELLY ACT, 1930

In 1930, Congress addressed the problem of financing the post office's public service functions. Melville Clyde Kelly, a member of the House post office committee and a newspaper publisher, drafted a bill that identified the different sources of the postal deficit.[6] Specifically, the legislation required the post office to keep track of the revenue forgone on various classes of mail -- that is, the difference between preferred rates and the revenue that would have been derived if regular postage had been assessed.[7] The act's tangible accomplishments were largely in the realm of public relations. It did not create a mechanism for appropriating the revenue forgone, but it did alert the public, in the words of the postmaster general, that "[a]mong the objects for which appropriations are made in the annual bill are a number which are extraneous to the primary and essential purposes of the Postal Service."[8]

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[6] _Cong_. _Rec_., June 2, 1930, pp. 9908-9909. For a book by the architect of this law, see Clyde Kelly, _United States Postal Policy_ (New York: D. Appleton-Century Co., 1931), especially pp. 88-106.

[7] Act of June 9, 1930, 46 _Stat_. 523.

[8] S. Rep. No. 619, 71st Cong., 2d sess. (1930), p. 2.

Two of the preferred classes covered by the Kelly Act were free-in-county and second-class nonprofit. The law required the post office to provide the Treasury and General Accounting Office with

> (c) The estimated amount which would have been collected during the year at regular rates of postage on publications going free in the county. . . .
> (e) The estimated difference between the postage revenue collected during the year on mailings of newspapers and periodicals published by and in the interests of religious, educational, scientific, philanthropic, agricultural, labor, and fraternal organizations, and that which would have been collected at zone rates of postage. . . .[9]

Significantly, the law stipulated that the post office submit figures on the difference between the preferred and regular rates, not between the preferred rates and the actual cost of handling. In the Kelly Act, Congress recognized that postal services with positive externalities deserved to be partly financed from general tax revenues.

POSTAL POLICY ACT OF 1958

The Kelly Act expressed in concrete terms the policy that had long guided Congress -- that postal services benefiting society as a whole should be financed by the public, not just senders and recipients. But in the absence of a mechanism to appropriate a public service subsidy, the issue reappeared nearly every time Congress grappled with the recurring postal deficit. By the 1950s, the regular-rate mailers and the department sought some means to make the

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[9] 46 Stat. 523.

deficit appear less formidable; both backed the creation of a procedure that regularly furnished funds to the department to underwrite below-cost services authorized by public policy.

Commercial publishers, tired of being blamed for huge revenue deficiencies, began encouraging Congress to better distinguish between the different services provided by the post office. In 1950, for example, Conde Nast Publications attested to the value of reduced rates for the publications of nonprofit organizations, but did not want commercial mailers blamed for the deficit that produced. "[T]he costs attributable to this portion of the volume handled must necessarily be excluded from any consideration of the deficit from second-class mail," Conde Nast urged. Such "costs must be treated as a justifiable Government expense. . . ."[10]

Four years later, an advisory council to the Senate post office committee recommended that "Any expenditures which can be justified only on a national welfare basis . . . should be reimbursed from the general funds of the Treasury."[11] Low rates on the reading portion of periodicals and reduced-cost mailings of qualified nonprofit organizations were justified by their contributions to the public welfare, the advisory council noted. The National Education Association, which contributed to the report, explained that recipients, not the mailers, derived the primary

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[10] Postal Rate Increases: Hearings on H.R. 2945 before the Senate Comm. on Post Office and Civil Service, 81st Cong., 2d sess. (1950), p. 158.

[11] S. Rep. No. 1086, 83rd Cong., 2d sess. (1954), p. 18.

benefits from educational material sent at low rates.[12] The Post Office Department disputed some of the estimates of the advisory council, but concurred that "Subsidies intended by the Congress to categories of users of the mails should be specifically identified. These subsidies should be separately appropriated by the Congress into postal revenues."[13]

In 1955, President Dwight Eisenhower asked Congress to raise rates, adjust salaries, establish a Commission on Postal Rates, and distinguish postal 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 the department were reimbursed for the services performed "in the interest of the public at large."[14] The Senate post office committee pushed for legislation, which, as its report stated, endeavored to "establish for the first time in over 100 years a comprehensive set of ground rules to serve as a guide for the Congress in its rate-making legislation. . . ."[15] The committee had been chaired for seven years by Olin D. Johnston, Democrat from South Carolina, whose labors on behalf of nonprofit and educational

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[12] Ibid., p. 19.

[13] U.S. Post Office Department, Financial Policy for the Post Office Department (Washington, D.C.: Government Printing Office, 1954), p. 12.

[14] "Postal Rate Increase," Congressional Digest, June-July 1956, pp. 178, 192.

[15] S. Rep. No. 1321, 85th Cong., 2d sess. (1958), p. 2.

organizations had been supported by Frank Carlson, Republican from Kansas and ranking minority member. Both pressed vigorously for the recognition that preferred mailers, and such services as Rural Free Delivery, did not add to the deficit, but contributed to the public welfare.[16] Senator Hubert H. Humphrey agreed 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."[17]

The Postal Policy Act of 1958, part of a larger piece of legislation increasing rates and wages, embodied most of the views of the Senate post office committee. The act began by reaffirming the public service philosophy that had long guided the American post office:

> (4) historically 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. . . .[18]

It provided that ratemaking proceedings give "due consideration to," among other factors, "the preservation of the inherent advantages of the postal service in the promotion of social, cultural, intellectual,

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[16]See, e.g., Cong. Rec., Feb. 25, 1958, pp. 2727-2730.

[17]Cong. Rec., Feb. 28, 1958, p. 3113.

[18]Act of May 27, 1958, 72 Stat. 134.

and commercial intercourse among the people of the United States."

Going a step beyond the Kelly Act, the 1958 law also prescribed a means to cover the shortfall caused by rate preferences. It enumerated the various reduced-rate and postage-free classes that "shall be considered public services," including those for free-in-county, second- and third-class nonprofit, and library materials. The act authorized an annual appropriation, "which shall be deemed to be attributable to the public services enumerated under . . . this section, equal to the total estimated expenditures of the Post Office Department for the year. . . ."[19] Significantly, Congress was to determine the amount of the public service appropriation by "the <u>total loss</u> resulting from the transmission of matter in the mails free of postage or at reduced rates of postage as provided by statute. . . ."[20]

Although the law used the words "total loss," the next Congress balked at using the Post Office Department's definition of the concept. The disagreement turned on an old distinction -- the difference between revenue forgone and total loss. The revenue forgone concept, used in the Kelly Act, calculated the difference between the preferred and the regular rates for a class of mail; total loss measured the difference between a preferred rate and its total allocated cost. A public service subsidy computed by revenue forgone was smaller than one using total loss. Thus, in 1962 the department

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[19] Ibid., pp. 136-137.

[20] Ibid., p. 136 (emphasis added).

asked Congress to clarify the law. Congress heeded the department's request to construe the "total loss" language of the 1958 law literally: "The terms 'total loss' and 'loss' as used in this section mean the amounts by which the total allocated costs incurred by the postal establishment in the performance of the public services enumerated in this subsection exceed the total revenues received by the postal establishment for the performance of such public services."[21]

The last major congressional pronouncement on the public service function before the Reorganization Act was largely cosmetic. The Postal Revenue and Federal Salary Act of 1967 rearranged the U.S. Code to subsume rates for in-county delivery and publications of nonprofit organizations under the heading "Rates of postage; preferred." Similarly, library materials were brought under the section "Books, films, and other materials; preferred rates."[22]

Before the Reorganization Act, therefore, policymakers and preferred mailers frequently debated the means of financing the public service functions of the post office. Less effort, with some notable exceptions reviewed in the following chapters, was expended on identifying the particular benefits derived from underwriting the transmission of certain kinds of mail matter. Policymakers rarely confronted one central issue -- whether preferential postage rates were the most appropriate and effective means to accomplish certain social goals.

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[21]Act of Oct. 11, 1962, 76 Stat. 832, 836.

[22]Act of Dec. 16, 1967, 81 Stat. 613, 616-620.

Two

Rates for Periodicals Delivered in the County of Publication

From the beginnings of U.S. postal policy, debates over newspaper postage have reflected a tension between the urban and rural press. A desire to protect country weeklies from the encroachment of urban publications led to the creation of the in-county privilege in 1851. This privilege mirrored urban-rural competition on two levels -- business and cultural. It provided an advantage to rural publishing businesses in a communication system increasingly dominated by national and regional media firms. It also represented a social policy designed to protect rural culture from annihilation by urban institutions and values.[1]

Preferential rates for newspapers delivered in the county of publication have survived with only one brief interruption, making

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[1] See generally Richard B. Kielbowicz, "Modernization, Communication Policy, and the Geopolitics of News, 1820-1860," Critical Studies in Mass Communication, 3 (March 1986), pp. 21-35.

it one of the nation's oldest continuous federal subsidies for a particular type of business.[2] In keeping with the lengthy tradition behind this preferred subclass, Congress adjusted the in-county rates only a handful of times before the 1970 Reorganization Act.

ORIGINS OF THE FREE IN-COUNTY PRIVILEGE

Throughout most of the nineteenth century, U.S. postal policy facilitated the long-distance circulation of newspapers. To be sure, most papers remained in their own communities. But those who wanted a paper from out-of-town found that the mails made it easy to obtain one. Until 1874, recipients typically paid the postage for periodicals, which made postage an obvious cost of subscribing.[3]

City v. Rural Press

Newspapers published in small towns faced competitive disadvantages in relation to those issued in larger cities. Costs of production were greater, necessitating a higher subscription rate. Many readers, moreover, preferred getting their reading material from

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[2]For an overview of federal subsidies provided to various businesses, see House Committee on Agriculture, Government Subsidy Historical Review, Committee Print, 85th Cong., 2d sess. (1958).

[3]Until 1845, newspapers paid 1 cent postage for circulation up to 100 miles or anywhere in the state of publication; postage outside the state and beyond 100 miles was 1 1/2 cents. Newspapers paid these low rates regardless of their size and weight. Letter postage, in contrast, was several times higher and steeply graduated according to distance conveyed and number of sheets enclosed. For the history of early newspaper postal policy, see Richard B. Kielbowicz, "The Press, Post Office and Flow of News in the Early Republic," Journal of the Early Republic, 3 (Fall 1983), pp. 255-280.

one of the larger, and sometimes more attractive, city papers. In short, "by using the mails, any person living near a post road could subscribe to a distant city paper that was cheaper, more authoritative, as timely, and carr[ying] approximately the same stories as most journals produced closer to home."[4]

Taking advantage of low newspaper postage, city publishers actively courted subscribers in the country. Often they retained local agents to solicit and forward subscriptions. By 1820, papers in a dozen or more of the largest cities were publishing special editions expressly for circulation in the countryside. A Goshen, New York, editor analyzed the plight of country journalism in 1827:

> It is well known that post roads and post offices have increased rapidly within a few years; and that almost every person can have convenient access to papers by mail; and printers know, that the New York papers, designed for circulation in the country, are made up twice a week from the daily papers, and published at less expense than we can publish our country papers -- hence they can afford them at a lower price, in proportion to the news they contain, than we can publish our papers in the country; and thus in consequence of the facility of the mails, and the cheapness of the city papers, the circulation of our country papers is rapidly diminishing, and ere long many of them must be consigned to oblivion.[5]

The most notable weekly edition of a major daily, Horace Greeley's New York _Tribune_, attracted a huge national following, perhaps a million readers.[6]

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[4]_Ibid_., p. 259.

[5]Milton W. Hamilton, _The Country Printer: New York State, 1785-1830_ (New York: Columbia University Press, 1936), pp. 236-237.

[6]William H. Hale, _Horace Greeley: Voice of the People_ (New York: Harper & Bros., 1950), p. 227.

A Forerunner of the In-County Privilege

When Congress revamped the postage schedule in 1845, it used postal policy to enhance the competitive position of rural newspapers. Specifically, the law made locally produced papers more cost attractive by allowing them to circulate postage-free within 30 miles of the office of publication.[7]

The privilege of free, local circulation sparked considerable debate. Critics characterized it as a boon for the urban and New England press. "This bill comes before us a bill merely to cheapen postage to the inhabitants of the great cities," said a representative from Alabama.[8] A fellow Alabama Democrat explained that nearly all the inhabitants of New England could receive a newspaper postage-free within 30 miles of their residence. "Not so in the South or West," he complained. Fewer than one-fourth of the people in these regions lived within a thirty-mile radius of a newspaper.[9]

A minority of the House post office committee -- one Democrat and two Whigs, all from the Northeast -- framed the free local postage provision.[10] Regardless of which regions benefited, free circulation within 30 miles enhanced the competitive position of local publications while making it more costly to take distant ones.

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[7]Act of March 3, 1845, 5 Stat. 733, 737.

[8]Cong. Globe, appendix, Feb. [n.d.], 1845, pp. 307-308.

[9]Ibid., Feb. 24, 1845, p. 339.

[10]H.R. Rep. No. 483, 28th Cong., 1st sess., 1844, p. 17.

An across-the-board reduction in newspaper postage, as advocated by some, would have brought city papers into direct competition with the country press. The interests of the people were best served by preserving local outlets for news and opinion, some policymakers argued.[11]

The Free In-County Privilege

Congress withdrew the provision of free local circulation two years later because of declining revenues, but it kept reappearing in proposals as policymakers worked on further policy revisions.[12] In 1848, the Senate debated the merits of restoring the 30-mile free postage zone. Again, it revived the argument of whether such a policy benefited country papers more than those issued from cities. In the less developed parts of the country, it was noted, few subscribers lived within a 30-mile radius of a newspaper. Thus, the Senate considered extending the area of free circulation to 50 miles, or even the entire state of publication. Some found the latter proposal defective because it would have made it easier for the weekly editions of city dailies to circulate in the rural areas of their own state. Despite such objections, the Senate accepted an amendment to permit weekly papers to circulate free in their own states. Congress failed

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[11] Cong. Globe, March 22, 1844, p. 423. Interestingly, France had adopted a similar measure in 1827. Postage was cut on "periodicals circulated within the department where they were published" to protect against the encroachment of the Parisian press. A. D. Smith, The Development of the Rates of Postage (London: George Allen & Unwin, Ltd., 1917), p. 166.

[12] Act of March 3, 1847, 9 Stat. 202; Cong. Globe, Dec. 20, 1847, p. 57.

to agree on other parts of the post office bill, however, and adjourned without changing newspaper policy.[13]

In December 1850, Congress resumed debating the postal status of newspapers, this time in earnest. Three months later, Congress adopted the most revolutionary change in newspaper postage -- and the most complex rate schedule -- since the founding of the United States. The 1851 act restored, with alterations, the privilege of postage-free circulation. Where the 1845 law had a 30-mile postage-free zone, the new act permitted free circulation in the county of publication for weekly papers of three ounces or less.[14] This section of the law arose in the House, where it received its fullest explication. Most of those who spoke on behalf of the provision remarked that the country press needed to be insulated from the aggressive city sheets using the mails to circulate throughout the nation. Representative Abraham W. Venable, a North Carolina Democrat, offered the most extreme opinion:

> The poisoned sentiments of the cities, concentrated in their papers, with all the aggravations of such a moral and political cesspool, will invade the simple, pure, conservative atmosphere of the country, and, meeting with no antidote in a rural press, will contaminate and ultimately destroy the purity of sentiment and of purpose, which is the only true conservatism. Fourrierism, agrarianism, socialism, and every other ism, political, moral, and religious, grow in that rank and festering soil; and if such influence and such channels of communication are to be the only ones felt and employed, the press would be the greatest calamity instead of the greatest

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[13] Cong. Globe, Aug. 10-11, 1848, pp. 1059, 1065-1066.

[14] Act of March 3, 1851, 9 Stat. 587-589.

> blessing. We desire our country papers for our country opinions, our provincial politics, the organs of our conservative doctrines, and to assert the truth, uninfluenced by the morbid influences of city associations.[15]

After those intemperate remarks, others who supported the idea of free local circulation took pains to emphasize that they respected the city press, but thought that it was unfair to put rural papers in competition with those from the cities. Produced at lower costs because of their massive circulations, the city papers circulated widely and inexpensively through the mails. Orsamus B. Matteson, a Whig from New York, illustrated this unjust arrangement. When home in Utica, Matteson said, he kept abreast of developments in Washington by reading the local newspapers. But dailies of twice the size could be obtained from New York City, 250 miles away, at the same postage that it cost to take a paper carried only four or forty miles from Utica. "Is not this gross injustice?" he asked. "Ought these country or inland papers thus be compelled to submit not only to fair competition, but to struggle on with the aid of the Government extended virtually to the city journals against them in this manner?" As a privilege extended to the country press, free local circulation simply counterbalanced the privileges accorded city publications, proponents argued.[16]

Those who shared these views, however, disagreed over the dimensions of the free-postage buffer zone. Congressmen debated the

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[15] Cong. Globe, Dec. 18, 1850, p. 34.

[16] Ibid., Jan. 11, 1851, p. 220.

various merits of free conveyance within 30 miles of the office of publication, within 40 and 50 miles, anywhere in the county where published, in the congressional district, or in the state. Each variation had certain drawbacks. Two problems existed with free-circulation in county, the option finally adopted. First, counties varied greatly in size; those in the West and Southwest tended to be much larger than those in New England, which meant that those regions benefited more from this provision. Second, newspapers published close to county lines might have circulation restricted in the direction of the border.[17]

The other major feature of the 1851 law, like the in-county privilege, erected hurdles to the long-distance circulation of public information. The heart of the law graduated postage according to the distance conveyed, a sharp departure from earlier policy. Since 1792, there had been only two zones, plus free delivery within a 30-mile radius between 1845 and 1847. The 1851 law created six zones beyond the county of publication. Zoned newspaper postage did not last long; an 1852 law eliminated it, setting a flat rate of 1 cent for the first 3 ounces. This law, however, retained the free in-county privilege, and permitted newspapers of 1 1/2 ounces or less to circulate in the state of publication for half the regular rate.[18]

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[17] Cong. Globe, Dec. 18-19, 31, 1850, and Jan. 4, 11, 14-15, 1851, pp. 76, 84-93, 140, 166-167, 218, 220, 236, 240, 243, 245.

[18] Act of Aug. 30, 1852, 10 Stat. 38-39.

THE IN-COUNTY PRIVILEGE IN THE LATE 19TH CENTURY

Firmly entrenched, the free in-county privilege faced few serious threats in its first several decades. An exceptional law passed in 1873 did withdraw all free mailing privileges, but Congress hastily restored free-in-county delivery. Of more enduring importance, the in-county privilege adjusted to two developments -- an increasing use of weekly papers printed partly outside of the county, and the imposition of small charges for carrier delivery.

A Short-Lived Elimination of the Privilege, 1873

In one of the more notable vicissitudes of postal policymaking, Congress abolished all free mailing privileges -- those for the press as well as public officials and departments -- in 1873, but began restoring them the next year. The 1873 law eliminated two privileges for the press -- free transmission within county and free exchanges among editors.[19] Postal officials had long complained about the various free mailing privileges Congress bestowed on itself and others. In 1873, Postmaster General John Creswell, who had served in the House and Senate, convinced his former colleagues to relinquish their mailing privileges to reduce the department's deficit.[20] In the process, they swept away others' privileges.

Congress soon felt the wrath of state press associations, legislatures, and even some county and city governments. That same

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[19]Act of March 3, 1873, 17 Stat. 559.

[20]Gerald Cullinan, The Post Office Department (New York: Praeger, 1968), p. 86.

year, at least five state press associations adopted resolutions calling upon Congress to restore the press's free mailing privileges.[21] A trade journal boasted that "we trust that the influence of the press will be exercised to secure their repeal at the next session of Congress."[22] When Congress reconvened, it was besieged with petitions, most representing rural interests, imploring it to reinstate the free mailing privileges for the press.[23]

Congress revived the in-county privilege in 1874 as part of a major policy shift that established a pound rate for periodicals and required the prepayment of postage by publishers.[24] Up to this time, subscribers typically had paid postage on publications; in practice, much postage owed the department was never collected. In return for shifting the payment of postage to publishers, the 1874 law

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[21]William H. Taft, Missouri Newspapers (Columbia, Mo.: University of Missouri Press, 1964), p. 131; A. O. Bunnell, New York Press Association: 1853-1903 (Dansville: F. A. Owen Publishing Co., 1903), p. 18; Proceedings of the Mississippi Press Association . . . (Jackson: Clarion Steam Book and Job Printing Establishment, n.d.), p. 70; Proceedings of the New Hampshire Publishers, Editors, and Printers' Association (Manchester: Charles F. Livingston, 1873), p. 35; Proceedings of Wisconsin Editorial Association (Madison: Atwood & Rubles, 1873), p. 36.

[22]"The New Postal Regulations," Printers' Circular, May 1873, p. 93.

[23]See, e.g., Cong. Rec., Dec. 3, 1873-June 6, 1874, pp. 28-4468, especially 65-69, 185-186, 504, 2380.

[24]Act of June 23, 1874, 18 Stat. 232-237.

substantially reduced the rates.[25] The free in-county privilege was but a small part of this package of postal reforms. Joseph Cannon, a representative from Illinois and later one of the most influential Speakers of the House, shepherded the legislation through Congress. He favored the in-county privilege, explaining that it simply compensated rural residents for postal services inferior to that in cities.[26] Thus, the privilege was restored after only a year's suspension, and broadened from weeklies to papers of all frequencies. Later, the Mail Classification Act of 1879 extended the privilege to all second-class matter.[27] Interestingly, Congress restored the postal privilege for country papers before reestablishing its own franking privilege.

Accommodating "Patent Insides"

In the 1860s, papers began running afoul of postal authorities because their use of readyprint or "patent insides" was thought to render them ineligible for the in-county privilege. Most weekly papers consisted of four pages -- one sheet of paper printed on both sides and folded. To save money, country weeklies turned to readyprint services, companies that printed one side of the sheet (usually the two inside pages) and shipped them to publishers who

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[25]For details of the 1874 law and its implications for publishers, see generally Richard B. Kielbowicz, "Origins of the Second-Class Mail Category and the Business of Policymaking, 1863-1879," _Journalism Monographs_ (in press).

[26]_Cong. Rec._, June 6, 1874, p. 4661.

[27]Act of March 3, 1879, 20 _Stat._ 356, 362.

added local news. By 1880, a handful of companies furnished patent insides to 3,089 of the nation's 8,633 weeklies.[28]

Postal authorities had to decide whether these papers satisfied the statutory requirement of being published in the county of circulation. The 1863 law, for example, stipulated that "publishers of weekly newspapers may send to each actual subscriber within the county where their papers are printed and published one copy thereof free of postage."[29] Weekly papers made up from patent insides were printed, at least in part, hundreds of miles from the readers. Some of these papers were denied free circulation within their counties until the post office ruled in 1869 that they were entitled to the privilege.[30] The issue was revived in 1873, when the chairman of the House post office committee, John F. Farnsworth of Illinois, proposed to exclude "cooperative" papers from the in-county privilege. After lobbying by representatives of the readyprint companies, the House committee reworked the bill to include cooperative papers.[31]

When Congress restored the privilege in 1874, it expressly

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[28]Alfred M. Lee, The Daily Newspaper in America (New York: Macmillan, 1937), p. 386; see generally Elmo S. Watson, A History of Newspaper Syndicates in the United States, 1865-1935 (Chicago: by the author, 1936).

[29]Act of March 3, 1863, 12 Stat. 701, 707 (emphasis added).

[30]"Recent Decisions by the Department," U.S. Mail and Post Office Assistant, November 1869, p. 1.

[31]Cong. Globe, Feb. 11, 1873, pp. 1261-1264; "Congress and the Co-operative Newspapers," American Newspaper Reporter, Feb. 24, 1873, pp. 124, 128; Watson, A History of Newspaper Syndicates in the United States, pp. 20-21.

provided for free mailings of "newspapers . . . within the county where the same are printed, in whole or in part, and published. . . ."[32] That should have resolved the matter, but the department encountered situations in which a paper was printed wholly in one county, while maintaining its office of publication in another. The post office ruled that it could not be sent free anywhere.[33] If, however, a paper was typeset in the county of publication, but presswork was done outside, it was entitled to free delivery.[34]

The seemingly straightforward statutory language presented other administrative problems because it failed to cover all possible contingencies. The most vexing arose when a paper was published in the county where a subscriber lived, but the reader or publisher or both used a post office in another county. Postal guides repeatedly carried such instructions as "If a subscriber's usual post office (not residence) is in an adjoining county he may receive his county paper free, but not a paper published in the said adjoining county."[35] In short, subscribers living in the county where a paper was published received it postage-free regardless of the location of the post office of mailing or delivery.[36]

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[32] Act of June 23, 1874, 18 Stat. 231, 233 (emphasis added).

[33] 2 Op. Asst. Att'y Gen. P.O. Dep't 525 (Feb. 28, 1888).

[34] 4 Op. Asst. Att'y Gen. P.O. Dep't 470 (May 23, 1907).

[35] "Answers to Correspondents," U.S. Mail, May 1866, p. 2.

[36] See, e.g., U.S. Postal Guide, April 1875, pp. 46-47.

The Impact of Letter Carriers and Rural Free Delivery

The free-in-county privilege was created before the post office delivered mail to patrons' homes and offices; subscribers called for their papers at the post office. Those living outside of towns felt especially isolated before Rural Free Delivery:

> A farmer went to his post office once a week or so to pick up his mail, he never expected very much, and he was rarely surprised. . . .
>
> As for news, one newspaperman who knew rural America in the 1880's and 1890's very well, estimated that not one farmer in 300 took a daily newspaper in the 1890's, and he could not have been far wrong. Only farmers who lived close enough to a post office to get their mail every day could take full advantage of a daily. Otherwise, daily papers came a "sackful at a time," as one pioneer Nebraska once remarked, and under the circumstances it was more sensible to take a county weekly than a daily that arrived weekly.
>
> Even the county weekly was a rarity in many communities.[37]

Thus, the free in-county privilege, though valuable, was of limited usefulness, for it simply entitled papers to transportation from the post office of entry to other offices in the same county; they were not delivered to readers.

Once the post office inaugurated carrier service in 1863, direct delivery to some subscribers became possible, but this enhanced service was not free. Not long after carrier service was started in larger cities, Congress clarified the law regarding the handling of free in-county publications. An 1868 law prohibited letter carriers from distributing weekly papers sent to subscribers in the county where published unless postage was prepaid at the rate of 5 cents per

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[37]Wayne E. Fuller, RFD: The Changing Face of Rural America (Bloomington: Indiana University Press, 1964), p. 293.

four months, or .38 cents per copy.[38]

Cities, then villages, enjoyed carrier service. Rural Americans, however, had to await Rural Free Delivery before they realized the full advantages of a national postal network. In the first few decades of RFD, "by far the largest percentage of all the mail that poured into farm homes over rural routes . . . was second class -- newspapers and magazines -- the kind of mail that did the most to relieve the farmer's isolation."[39] Periodicals distributed in the county of publication were entitled to be sent postage-free over RFD routes that operated from post offices without letter carrier service.[40] The in-county privilege, therefore, still protected the local circulation of weeklies and smaller dailies from competition with the metropolitan papers that tried to penetrate the countryside.[41]

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[38]Act of July 27, 1868, 15 Stat. 194-195.

[39]Fuller, RFD, p. 293.

[40]For a while, considerable confusion existed on whether rural free delivery of newspapers in-county was indeed free since the law clearly prescribed that in-county delivery by city and village carriers subjected a paper to postage. But the department construed the rule liberally to permit free delivery on rural routes. 4 Op. Asst. Att'y Gen. P.O. Dep't 51-56 (Feb. 1, 1906); S. Doc. No. 204, 60th Cong., 1st sess. (1908), pp. 13-17; 1913 Postal Laws & Regulations 226-227.

[41]For the effects of RFD on rural papers, see Fuller, RFD, pp. 293-296.

REVIEWING THE IN-COUNTY PRIVILEGE

Although advances in postal delivery services required adjustments in the in-county privilege, the basic preference remained intact. In fact, of all the preferred categories, the in-county privilege enjoyed the longest period of stability: the rates fixed in 1885 remained essentially unchanged until 1962.[42] Even when regular second-class rates faced greater scrutiny, few recommended eliminating or sharply curtailing the in-county privilege. This reflected, first, the perception that the department did not lose much revenue for the short hauls involved and, second, the solicitude shown by policymakers for country papers in particular and rural postal services in general.

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[42] A 1/8 cent minimum per copy charge was assessed some in-county deliveries in 1951. Otherwise from 1885 until 1962, in-county rates were:

Within county of publication:	
For delivery at office of mailing having city or village carrier service	
By carrier--weekly newspapers	1 cent per pound
--more often than weekly	1 cent per copy
--less often than weekly (2 oz. or less)	1 cent per copy
--less often than weekly (2 oz. or more)	2 cents per copy
Through post office boxes, general delivery, rural and star route	1 cent per pound
For delivery at offices having city or village service other than office of mailing	1 cent per pound
For delivery at offices not having city or village carrier service:	
If printed in county, one copy to each subscriber residing in county	Free
If not printed in county	1 cent per pound

U.S. Post Office Department, <u>United States Domestic Postage Rates, 1789 to 1956</u> (Washington, D.C.: Government Printing Office, 1956), p. 32.

Reviews Before the 1940s

One of the first major examinations of the second-class mail was the 1906 Penrose-Overstreet Commission, whose hearings attracted representatives from all segments of the publishing industry. The representative of the Weekly Publishers' Association, a group of 4,121 newspapers, seemed reluctant to speak for his members as to the reason for the in-county privilege. When pressed, he said, "The best reason I know for it is that the Government considered that the good accomplished by the local paper offset any cost that it created in carrying or handling it. . . ."[43] The Inland Daily Press Association and Kansas Editorial Association offered a few words in support of the privilege; the American Newspaper Publishers Association called for its elimination.[44] The third assistant postmaster general claimed that excessive use of patent insides contravened the policy behind the in-county privilege. "The greater parts of very many of the newspapers circulated in the mails under this free provision are printed in one central office located in some large city," he told the commission.[45] Contrary to the underlying postal policy, the standardized content in such papers did little to preserve local values and culture.

Free-in-county circulation occupied little of the Penrose-Overstreet Commission's time, and a similar investigative group chaired by Charles Evans Hughes covered much of the same ground in

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[43] H.R. Doc. No. 608, 59th Cong., 2d sess. (1907), p. 354.

[44] Ibid., pp. 164, 370, 498-499.

[45] Ibid., p. 38.

1911 with few tangible consequences.[46] When Congress revamped the rate structure for periodicals in 1917, it carefully noted that "nothing in this title shall affect existing law as to free circulation and existing rates on second-class mail matter within the county of publication."[47] (See chapter three for a discussion of the 1917 law and its impact on the press.) The 1917 law eliminated the flat rate, instead assessing postage by zones and by the proportion of advertising content -- but only for publications circulated outside the county of publication. Initially, rural papers represented by the National Editorial Association (now the National Newspaper Association) voiced mixed feelings about the zone system. In time, however, they realized that the zone system served as a buffer -- just like the free in-county privilege -- in keeping distant papers from competing in their neighborhoods.[48]

The 1946 Heiss Report

In 1946, Charles A. Heiss, a special consultant to the post office, prepared a report on the second-class mails that included an incisive study of the in-county privilege.[49] For fiscal year 1944, he found that 341 million pieces circulated free-in-county. In one

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[46] H.R. Doc. No. 559, 62d Cong., 2d sess. (1912).

[47] Act of Oct. 3, 1917, 40 Stat. 300, 328.

[48] Hiley H. Ward, "Ninety Years of the National Newspaper Association," (Unpublished Ph.D. dissertation, University of Minnesota, 1977), pp. 231-232.

[49] Charles A. Heiss, Report on Second-Class Mail (Washington, D.C.: Government Printing Office, 1946), pp. 29-35.

month, nearly 15 million pounds of periodicals were carried free in the county of publication, of which smaller dailies accounted for 9,757,000 pounds; weeklies, 4,087,000; metropolitan dailies, 250,000; newspapers of other frequency, 360,000; and other periodicals, 156,000. With few exceptions, major daily papers were ineligible for free delivery because their local circulation areas were completely covered by letter carrier service.[50]

Analyzing the in-county privilege, Heiss made two broad recommendations -- that it be scaled back and its administration simplified. In the hundred years since the establishment of free local circulation, a number of improvements in communication -- telephones, automobiles, radio, and others -- had substantially reduced rural isolation. The "time is ripe for revision in line with present conditions and requirements," Heiss observed.[51] Thus, he suggested eliminating the free in-county privilege, but still retaining a preferential rate. Heiss also wanted to simplify the complicated rate schedule that applied to periodicals for in-county delivery by letter carriers. A number of factors determined the proper rate -- frequency of publication, weight, and whether the periodical was intended for local or non-local delivery within the county.[52] Heiss's proposal would have eliminated some of the less

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[50] Ibid., pp. 30-32.

[51] Ibid., p. 34.

[52] See above note 42 for the various permutations of in-county rates.

important distinctions. In all, he proposed to recover more of the cost of handling periodicals in the county of publication, but still leave a substantial rate preference.[53]

GUARDING AND MODIFYING THE PRIVILEGE

The 1885 rate structure for in-county deliveries of periodicals underwent its first change, albeit it a slight one, in 1951. It survived further challenges until 1962, when the privilege of free-in-county circulation was more or less voluntarily relinquished by the country press.

Fending Off Rate Hikes

The free in-county privilege -- reserved only for post offices without city or village carrier service -- obviously established a preferred subclass. As the years passed, moreover, papers paying for in-county postal carrier delivery enjoyed a growing rate advantage. When Congress created the modern second-class category in 1879, it set the basic rate at 2 cents a pound for delivery both inside and outside the county; dailies paid a higher rate -- 1 cent a copy -- for in-county carrier delivery, probably to discourage metropolitan papers from using the mails for local distribution. Thus, the in-county distinction made no difference in postage for weeklies delivered by letter carrier offices; dailies initially paid more for in-county than out-of-county delivery by

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[53]Heiss, Report on Second-Class Mail, pp. 34-35.

letter carrier offices.[54]

Beginning with the 1917 rate hike -- the first since 1885 -- Congress exempted in-county delivery from general postage increases. Second-class rate adjustments in 1928, 1932, 1934, 1952, 1953, 1954, and 1955 did not materially affect papers paying for in-county carrier delivery.[55] Rates for carrier delivery outside the county of publication generally rose, while charges for the same service within county remained at their 1885 levels. Many papers, of course, used a mixture of all three second-class categories -- the free in-county privilege, the low in-county rates, and regular outside-of-county postage.

The varied use of different second-class rate categories occasionally created divisions among different segments of the publishing industry when lobbying on postal matters. In 1947, for example, the National Editorial Association, the principal association of weeklies, informed its members that "Post Office reports for 1944 to 1946 show that the dailies enjoy the chief benefits from free-in-county by a ratio of more than two-to-one over the weeklies."[56] A few years later, a spokesman for NEA (which became the National Newspaper Association in 1965) told the Senate post office committee that he

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[54]This discussion glosses over some nuances of the postage schedule. For precise details, see note 42.

[55]Ibid. The Act of Oct. 30, 1951, 65 Stat. 672-673 did set a 1/8 cent minimum for both within and outside county mailings, except free-in-county.

[56]NEA Legislative Bulletin, April 7, 1947, quoted in John C. Sim, The Grass Roots Press: America's Community Newspapers (Ames: Iowa State University Press, 1969), p. 103.

preferred the elimination of the free in-county privilege to across-the-board second-class rate increases. But, he quickly added, "I am expressing more of a personal opinion than I am for the entire membership of our organization, because there is considerable difference of opinion among our membership on that subject. There are a large number who maintain that these exemptions should be retained. I question that wisdom, however."[57] By 1953, NEA member publications were sending an estimated average of 40 percent of their circulation outside-of-county.[58]

After several years of hearings and debates, Congress finally raised second-class rates in 1951 -- the first increase since the 1920s[59] -- but it carefully exempted free-in-county delivery. The 1951 law did, however, impose a 1/8 cent minimum charge on all other publications, both within and outside of county, including those of nonprofit organizations. During hearings on this legislation, the NEA argued for the retention of free-in-county, though other witnesses favored its elimination.[60] Even NEA, however, seemed more concerned

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[57] Postal Rate Increases: Hearings on H.R. 2945 before the Senate Comm. on Post Office and Civil Service, 81st Cong., 2d sess. (1950), p. 58.

[58] Postal Rate Revision: Hearings on H.R. 6052 before the House Comm. on Post Office and Civil Service, 83rd Cong., 1st sess. (1953) vol. 2, p. 501.

[59] Rates were increased in 1932, but two years later restored to their former levels. U.S. Post Office Department, United States Domestic Postage Rates, p. 32.

[60] Adjustment of Postal Rates: Hearings on S. 1046, S. 13335, S. 1369 before the Senate Comm. on Post Office and Civil Service, 82d Cong., 1st sess. (1951), pp. 457-467.

about general rate increases than free-in-county. Its witness told the Senate committee that the costs of production for rural newspapers were rising and profits falling, especially in relation to those of metropolitan dailies.[61] Once the bill reached the floor, senators and representatives took pains to emphasize that free-in-county would not be affected. When Senator Paul H. Douglas, a Democrat from Illinois, proposed an increase higher than called for in the bill, he added, "my amendment in no sense interferes with the county press. So I hope that my good friends will not complain that the amendment is intended to put the county newspapers out of business."[62]

Toward the Elimination of Free In-County

The 1958 Postal Rate Increase Act raised the per piece minimum charge from 1/8 cent to 1/2 cent in three annual increments starting Jan. 1, 1959. Initially the per piece charge applied to in-county deliveries, except those enjoying free mailing. Even before the new rates took effect, however, Congress restored the 1/8 cent minimum for in-county carrier deliveries.[63]

By the late 1950s, pressure was building for an overhaul of the in-county rate structure. As Postmaster General Arthur E.

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[61] Act of Oct. 30, 1951, 65 Stat. 672-673.

[62] Cong. Rec., Sept. 7, 1951, p. 11046. See also H.R. Rep. No. 547, 82d Cong., 1st sess. (1951) pp. 1-2; Cong. Rec., Sept. 18, 1951, p. 11555.

[63] Act of Aug. 28, 1958, 72 Stat. 1089. Apparently, Congress had inadvertently applied the increases to in-county delivery. See H.R. Rep. No. 2511, 85th Cong., 2d sess. (1958); S. Rep. No. 2316, 85th Cong., 2d sess. (1958).

Summerfield reminded Congress in 1958, adding the 1/8 cent minimum per copy charge had been the only change for in-county rates since 1885.[64] In 1957, he reported, the post office handled 351 million postage-free copies within county, 520 million at 1 cent a pound, and 321 million at the 1/8 cent minimum per piece rate -- nearly 1.2 billion copies at the in-county rates.

In 1962, partly with the assent of small newspapers, Congress eliminated free-in-county delivery. As indicated by the 1957 figures mentioned above, only about one-fourth of the in-county mailings were going postage-free. Thus, its value to the country press had vastly diminished since its enactment in 1851. With rate hikes apparently imminent, some rural publishers seemed willing to sacrifice the free-in-county privilege to retain other favorable rates. During the hearings, Senator Mike Monroney, Democrat of Oklahoma, expressed appreciation for this stand:

> Since these smaller newspapers have volunteered to give up the free-in-county rate, which is 100 years old, I feel that we could and should try to maintain the present in-county rates if possible, and I was impressed by your testimony showing quite clearly that you need a broader area for this county rate where newspapers are distributed through one post office. . . . Today county lines are an obsolete measure of a trade area because of the automobile, and perhaps we should agree on an area of 50 to 100 miles.[65]

The publishers' willingness to give up the free-in-county

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[64] Postal Rate Revision of 1962: Hearings on H.R. 7927 before the Senate Comm. on Post Office and Civil Service, 87th Cong., 1st sess. (1962), p. 128.

[65] H.R. Rep. 2511, 85th Cong., 2d sess. (1958), pp. 3-4.

privilege helped keep the minimum per copy rate at 1/8 cent rather than the 1/4 cent originally proposed.[66] The vice president of NEA helped the Senate post office committee overhaul the in-county rate structure.[67] And Chairman Olin D. Johnston, Democrat of South Carolina, declared, "I want to do anything I can to help the country newspaper."[68]

During the hearings and debates, at least three reasons were given for the elimination of free-in-county circulation. First, in the words of Senator Monroney, the newspapers were "tired of being accused of being freeloaders on Uncle Sam with this free-in-county business."[69] Second, the conditions necessitating free-in-county in the nineteenth century had changed.[70] Third, newspapers issued in towns near county lines found free-in-county delivery to be of limited value.[71]

The 1962 law recognized all second-class in-county rates as a public service whose costs were partly subsidized by congressional appropriation. It fixed in-county rates for weeklies at 1

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[66] Cong. Rec., Sept. 27, 1962, p. 20999.

[67] Ibid., Sept. 26, 1962, p. 20819.

[68] Postal Rate Revision of 1962: Hearings on H.R. 7927 before the Senate Comm. on Post Office and Civil Service, 87th Cong., 1st sess. (1962), p. 127; "Small Papers Fear P.O. Rate Increase," Editor & Publisher, March 31, 1962, p. 126.

[69] Ibid.

[70] Letter from National Education Association to Washington Post reprinted in Cong. Rec., Sept. 27, 1962, p. 20999.

[71] "Small Papers Fear P.O. Rate Increase," Editor & Publisher, p. 126.

cent a pound for 1963 and 1964 and 1 1/4 cent thereafter, or, if applicable, a minimum charge of 1/8 cent per piece. Publications other than weeklies paid somewhat higher postage.[72] Thus, the law still favored rural weeklies, as it had in 1851. The 1962 act also dropped the long-standing requirement that a periodical enjoying in-county rates had to be printed, at least in part, in the county of publication. This accommodated an increasingly common practice in rural publishing -- printing the paper at a centralized plant, often one outside the county.[73]

This last provision, intended to help small papers printed outside their county, also proved beneficial to large magazines. In 1966, Postmaster General Lawrence O'Brien reported that magazines with large circulations used their reentry privilege to qualify for the in-county rate. By trucking magazines to cities where they had second-class permits, publishers avoided zone rates on the advertising portions of their publications.[74] The Johnson administration moved to eliminate this unforeseen use of preferred in-county rates.[75] In 1967, Congress amended the law to restrict the low per copy in-county

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[72] If issued more than once a week, the rate was 1 cent per copy; if issued less often, it was 1 cent a copy for publications of 2 ounces or less, and 2 cents a copy for heavier periodicals. Act of Oct. 11, 1962, 76 Stat. 832-833, 836.

[73] Ibid.; Cong. Rec., Jan. 23, 1962, p. 771. See also Sim, The Grass Roots Press, pp. 145-147.

[74] 1967 PMG Annual Report 99; "P.O. Suggests Higher Rates for Non-Profit Mailers," Advertising Age, April 25, 1966, pp. 1, 178.

[75] "House Postal Bill Harsh on News, Non-Profit Books," Advertising Age, July 31, 1967, pp. 1, 8.

rates to the office of original entry. The 1967 law also clarified the situation for independent cities not part of any county. And, finally, the 1967 law raised in-county rates in three annual steps up to 1 1/5 cents a pound or 1/5 cent per copy.[76]

The House report recommending these changes provides a revealing glimpse of in-county mailings on the eve of the Reorganization Act. The 1.5 billion pieces mailed in fiscal 1966 yielded only .7 cent per piece, but cost the department 5.3 cents. In other words, revenues covered "about 13 percent of fully allocated costs." Use of the preferred in-county rates continued to grow despite a shrinking rural population because suburban community papers increasingly took advantage of them. "[I]n-county rates are being turned to different ends than Congress envisioned more than a century ago when in-county rates were first established," the House report concluded. "While these rates were intended to help the rural press, volume growth is taking place largely around metropolitan areas."[77]

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[76] Act of Dec. 16, 1967, 81 Stat. 613, 616-617; Fed. Reg., Jan. 3, 1968, p. 26; Aug. 31, 1968, p. 12280.

[77] H.R. Rep. No. 722, 90th Cong., 1st sess. (1967), p. 31.

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Second- and Third-Class Rates for Nonprofit Organizations

The special postal rates given certain nonprofit organizations have proven controversial for two reasons: first, some groups enjoying these low rates compete, at least in part, with commercial enterprises; and second, applying congressional standards of eligibility has confounded the post office. Part of the confusion surrounding these preferred subclasses stems from the indirect method of their enactment; both nonprofit rates were added as exemptions to general rate increases, the second-class in 1917, and the third-class in 1951. Congress never clearly explained why some nonprofit organizations were favored with, and others excluded from, enjoyment of these reduced rates. Complicating matters, eligibility grew haphazardly as policymakers added one or another group or class of publications to the preferred rates.

NONPROFIT PUBLICATIONS AND THE SECOND-CLASS MAILS BEFORE 1917

Although Congress did not give a special rate to publications of nonprofit groups until 1917, the battle over their right to use the second-class mails dates from 1879.

Fraternal Publications in the Mails

After passage of the Mail Classification Act of 1879, the Post Office Department developed the paid subscriber rule as a criterion for admission to the low second-class. The rule derived from the law's fourth condition:

> Fourth. It [the publication] must be originated and published for the dissemination of information of a public character, or devoted to literature, the sciences, arts or some special industry, and having a legitimate list of subscribers; provided, however, That nothing herein contained shall be so construed as to admit to the second class rate regular publications designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates.[1]

The paid subscriber rule meant that most of a periodical's subscribers had to request and pay for the publication. If a large portion of a newspaper's or magazine's circulation was simply given away, the department deemed it "designed primarily for advertising purposes" and thus ineligible for second-class rates.[2]

The rule, developed mainly to keep advertising circulars from the low second-class rates, also excluded publications issued by organizations for their members. In the 1880s and 1890s, the post office began ruling that publications of fraternal organizations usually failed to qualify for second-class rates. Such journals

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[1]Act of March 3, 1879, 20 Stat. 359.

[2]For details on the origins of this rule, see Richard B. Kielbowicz, "Development of the Paid Subscriber Rule in Second-Class Mail," Report prepared for the U.S. Postal Rate Commission in the Tri-Parish Journal Case (Docket C85-2), Aug. 16, 1985.

belonged in the third-class because they were "devoted entirely and exclusively to advertising the private interests of the owners. . . ."[3] Furthermore, the assistant attorney general for the Post Office Department found subscription to be a "compulsory collection and can not be considered as constituting 'a legitimate list of subscribers' within the meaning of the law."[4] But fraternal groups specifically designating a portion of their members' annual dues for a subscription qualified for second-class rates.[5]

At the behest of some of the affected organizations, Congress in 1894 added language to the postal law that evolved during the next quarter of a century into the nonprofit subclass. The law admitted to the second class those publications issued

> under the auspices of a benevolent or fraternal society or order organized under the lodge system and having a bona fide membership of not less than one thousand persons or by a regularly incorporated institution of learning or by or under the auspices of a trades union and all publications of strictly professional, literary, historical, or scientific societies including the bulletins issued by State boards of health. . . .[6]

The law stipulated that the publications had "to further the objects and purposes of such society" -- language that later proved crucial in

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[3]1 Op. Asst. Att'y Gen. P.O. Dep't 882-883 (Nov. 10, 1883).

[4]2 Op. Asst. Att'y Gen. P.O. Dep't 961 (Oct. 15, 1891); see also 2 Op. Asst. Att'y Gen. P.O. Dep't 749-751 (Nov. 8, 1889); and 1893 Postal Laws and Regulations 117.

[5]2 Op. Asst. Att'y Gen. P.O. Dep't 806-807 (Feb. 25, 1890).

[6]Act of July 16, 1894, 28 Stat. 104, 105.

determining eligibility.[7]

The debate over this law suggests that Congress intended to reverse postal rulings, an unusual move as legislation at this time usually ratified the department's administrative decisions. Legislation that began with a limited purpose -- to admit publications of fraternal societies to the second-class privilege -- ended by adding the publications of a variety of groups. The law prevented strict application of the paid subscriber rule to such periodicals, and determined that publications of organizations with specialized interests had sufficient "public character" to qualify for second-class rates.[8] Postmaster General Wilson S. Bissell opposed this extension of the privilege, arguing that "everything, in a word, that is of an advertising character or calculated to help the society, or order, or institution -- could come in." He predicted that much general advertising matter, then mailed at 8 cents a pound, would work its way into the one-cent-a-pound second class.[9]

Eligibility of Organizations' Periodicals

Administering the 1894 law saddled the post office with many of the responsibilities it faces today in applying the nonprofit second-class rate. The 1894 law exempted specified types of publications from adherence to the paid subscriber rule. The

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[7] Ibid.

[8] Cong. Rec., April 5, 1894, p. 3488; for details on the legislative history of this law, see 5 Op. Asst. Att'y Gen. P.O. Dep't 214-221 (July 27, 1909).

[9] Cong. Rec., April 5, 1894, p. 3489; April 24, p. 4047.

department feared that this relaxation of the rule, which had been developed to keep third-class material from getting second-class rates, would enable more advertising to qualify for the lowest postage.

According to the post office, some of the organizations used their exemption from the paid subscriber rule to promote their own financial interests. The postmasters general complained in 1894 and 1901 that benevolent societies used the second-class mails to sell insurance in ways that would subject most periodicals to third-class rates as advertising circulars.[10] Fraternal associations conceded during the 1906 Penrose-Overstreet hearings that their groups "conduct life, health, and accident insurance on the cooperative plan. . . . Many of these fraternities provide other benefits and charities and none of them is operated for profit."[11]

The post office and commercial publishers also charged that these types of publications carried excessive amounts of advertising. For example, a representative of the American Newspaper Publishers Association claimed that some groups mailed advertising-filled sample copies to nonsubscribers; one, the _Modern Woodsman_, mailed 8 million copies in 1901.[12] ANPA, of course, regarded these publications as competitors for advertising. The assistant postmaster of New York

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[10] 1894 _PMG Annual Report_ 481; 1901 _PMG Annual Report_ 772-786.

[11] _Report of the Postal Commission Authorized by Congress to Make Inquiry Regarding Second-Class Mail Matter with Hearings_, 59th Cong., 2d sess. (1906), p. 304.

[12] _Ibid._, p. 165.

City suggested that publications devoted to public service should be entitled to second-class rates only if their advertising related directly to their purpose.[13]

Representing the department, Third Assistant Postmaster General Edwin C. Madden told the commission that "We have great difficulty in determining what is a benevolent or fraternal society; what is a professional society; what is a historical society, for every man and every organization wants to get the second-class rates."[14] The department had ruled that the American Library Association was a professional society because it promoted "bibliothetical science" and was nonprofit;[15] a free public library, in contrast, was not strictly literary as prescribed by the law, and therefore could not mail its publications at second-class rates.[16] In 1908, the department rejected the second-class mailing application of the _Journal of the American Bankers' Association_ of New York because it was a business, not a professional, society. The special counsel

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[13] _Ibid_., p. 196.

[14] _Ibid_., p. 46.

[15] 4 _Op. Asst. Att'y Gen. P.O. Dep't_ 102-104 (March 13, 1906).

[16] 5 _Op. Asst. Att'y Gen. P.O. Dep't_ 20-21 (Aug. 18, 1908); see also 112-113 (Dec. 9, 1908). The department ruled that a local Chautauqua society failed to qualify as an institution of learning within the meaning of the 1894 act, but seemed to be both a literary and scientific society; 4 _Op. Asst. Att'y Gen. P.O. Dep't_ 148-151 (May 9, 1906); that the _Women's Catholic Forester_ was issued by a nonprofit fraternal organization that had "initiations, ritual, regalia, and emblems"; 4 _Op. Asst. Att'y Gen. P.O. Dep't_ 662-663 (Nov. 11, 1907). Such ritual is still considered today in determining eligibility; see _Domestic Mail Manual_ 623.238.

for the post office ruled that the association promoted the financial interests of bankers.[17]

Permitting Advertisements: The 1912 Law

A 1912 act tried to resolve one uncertainty -- the acceptability of advertisements in the periodicals of these organizations. Under the 1894 law, qualified groups could mail at second-class rates provided "That such matter shall be originated and published to further the objects and purposes of such society. . . ."[18] The post office construed this language to deny second-class privileges to publications "containing advertisements in the interest of other persons or concerns than the society or trades union or institution of learning which the paper represents. . . ."[19] Using this test, the department denied second-class mailing privileges in 1911 to the publication of a benevolent society because its members made a profit from its publishing program.[20] The National Fraternal Congress implored Congress to allow its supposedly nonprofit publications to carry ads on the same basis as "the commercial press" since the advertisements generated funds for charitable works.[21]

Opposing this move, the postmaster general underscored an

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[17] 5 Op. Asst. Att'y Gen. P.O. Dep't 50-54 (Oct. 22, 1908).

[18] 28 Stat. 105.

[19] H.R. Doc. No. 559, 62d Cong., 2d sess. (1912), p. 61.

[20] 5 Op. Asst. Att'y Gen. P.O. Dep't 493-502 (Nov. 8, 1911).

[21] Cong. Rec., March 8, 1910, pp. 2913-2914.

inherent contradiction in the two laws governing fraternal, benevolent and similar publications. "[O]n the one hand, the papers are compelled to be of an advertising ('to further their own objects and purposes') character; and on the other, they are not ('must not be designed or published primarily for advertising purposes') to be of such character."[22] The first quote, from the 1894 law, admitted fraternal publications to the second-class rate; the second provision, from the 1879 law, denied second-class rates to publications issued by parties who had a special interest in the product or service being advertised.

Another aspect of the debate leading to the 1912 law dealt with the uncertain postal status of professional, scientific, and medical journals. The problem, according to a Senate report, was that such journals "can not, according to present [post office] rulings, carry any matter, either advertising or reading matter, that it (sic) is not directly intended to further the object and purposes of the order. . . ."[23] Many journals admitted to the second-class mails had been removed when postal authorities began cracking down on publications carrying ads not directly related to the sponsoring organizations' activities. The Senate committee endorsed the arguments of those scientists, doctors, and engineers who claimed that specialized advertising was a public service to professionals and

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[22]S. Doc. No. 648, 61st Cong., 2d sess. (1910), p. 4; see also S. Doc. No. 815, 61st Cong., 3rd sess. (1911).

[23]*Cong. Rec.*, March 3, 1911, p. 4099.

yielded revenues that helped sustain worthy nonprofit publications.[24]

The 1912 law tried to promote these publications while preventing commercial interests from exploiting their special postal status. The act added a few new groups to the preferred rates, but more significantly, it stipulated that such periodicals

> shall have the right to carry advertising matter, whether such matter pertains to such benevolent or fraternal societies or orders, trades unions, strictly professional, literary, historical, or scientific societies, or to other persons, institutions, or concerns; but such periodical publications, hereby permitted to carry advertising matter, must not be designed or published primarily for advertising purposes, and shall be originated and published to further the objects and purposes of such benevolent or fraternal societies. . . .[25]

As a further protection against abuse, the law provided that these societies could not mail more than 10 percent of their circulation as sample copies.[26] This provision addressed a concern of postal authorities that these organizations had mailed many sample copies of their periodicals, a tactic sometimes used to get third-class advertising circulars into the less expensive second-class mails.

ORIGINS OF THE SECOND-CLASS NONPROFIT RATE

The 1894 and 1912 laws did not establish special _rates_, but they did anticipate the policy of treating certain kinds of organizations preferentially. Congress went a step further in 1917,

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[24] _Ibid_., p. 4101.

[25] Act of Aug. 24, 1912, 37 _Stat_. 539, 551.

[26] _Ibid_.

creating special rates for <u>some</u> of the groups already admitted to the second-class mails as long as they operated on a nonprofit basis. The legislative history of this provision in the War Revenue Act of 1917 is rather spare, for debate over the commercial press overshadowed all other considerations.

The law introduced a new principle -- zoned rates on advertising portions -- in assessing postage on newspapers and magazines, but exempted publications of prescribed nonprofit groups. That the act emerged from the House Ways and Means Committee, rather than a post office committee, may explain in part its revolutionary treatment of commercial publishers.[27] The law established a new means of figuring postage on second-class matter: the quantity of advertising and the distance of delivery determined what a publication paid. Under the act, rates rose in four steps between 1918 and 1921 until they reached 1.5 cents on the reading portion and from 2 to 10 cents on the advertising matter. Some in Congress expressed delight that a wartime emergency measure had given them the opportunity to raise second-class rates after years of hearings and special commissions had failed to do so. (Second-class rates had remained at 1 cent a pound since 1885.)[28]

Assessing postage partly by the amount of advertising signaled Congress's desire to make rates reflect, at least in part, the private benefits publishers derived from using the mails. The

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[27] <u>Cong</u>. <u>Rec</u>., May 10, 1917, appendix, p. 483.

[28] See Irving I. Raines, "The Second-Class Postal Rate Controversy," (Unpublished Ph.D. dissertation, University of Illinois, 1952) for a review of the debate on the zoning provisions. He does not mention the creation of the nonprofit subclass.

Post Office Department, and some in Congress, had long argued that subsidizing the circulation of advertising-filled periodicals yielded some benefits for society, but more directly enriched publishers. Under the zone system, those who derived the greatest financial advantage from the use of low-cost mails paid somewhat in proportion to the rewards they reaped. Remarks of Majority Leader Claude Kitchin, Democrat from North Carolina, reflected the tenor of these debates; he decried the "clear, legalized robbery by them [publishers] of the people of $89,000,000" in postal subsidies.[29]

At the same time, Congress decided that nonprofit organizations should be exempt from the policy that assessed postage by the amount of advertising. Hence, these periodicals came to be called "exempt publications" or "exempt second-class matter." Specifically, the law provided

> That in the case of newspapers and periodicals entitled to be entered as second-class matter and maintained by and in the interest of religious, educational, scientific, philanthropic, agricultural, labor, or fraternal organizations or associations, not organized for profit and none of the net income of which inures to the benefit of any private stockholder or individual, the second-class postage rates shall be, irrespective of the zone in which delivered . . . 1 1/8 cents a pound or fraction thereof. . . .[30]

The rates prescribed by the act, effective July 1, 1918, were scheduled to rise to 1 1/4 cents a pound one year later. Furthermore, the act required that organizations using this subclass provide

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29 Cong. Rec., May 10, 1917, appendix, p. 489; much of Kitchin's speech berated the press and some of his most scalding observations were applauded.

30 Act of Oct. 3, 1917, 40 Stat. 300, 328.

satisfactory evidence that they indeed qualified as nonprofit.[31]

Congressional debates shed a little light on the rationale for selecting some types of organizations while excluding others. To expedite consideration, the Ways and Means Committee skipped general public hearings, though some commercial publishers presented their arguments in informal conversations.[32] A member of the House Ways and Means Committee observed that the _Christian Herald_, conducted for profit, would be subjected to the proposed zoned rates. If, however, a religious, educational or similar publication made a profit for use by the sponsoring organization, it could still pass at the exempt rates.[33] One opponent of the bill predicted that the term educational would be construed to cover many types of publications. Furthermore, he was troubled that two members of the Ways and Means Committee told him that _National Geographic_ would not qualify for the nonprofit rates as the journal of an educational organization.[34] The House added scientific groups to the subclass, and specified that periodicals issued by commercial printers on behalf of nonprofit organizations would be entitled to the reduced rates.[35]

The Senate version of the bill did not originally confer a special rate on nonprofit publications. Unlike the House, where no

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[31] _Ibid_.

[32] _Cong. Rec._, May 10, 1917, appendix, p. 492.

[33] _Ibid._, May 12, 1917, pp. 2222-2223.

[34] _Ibid._, May 15, 1917, p. 2354.

[35] _Ibid._, May 22, 1917, pp. 2773, 2775.

representative spoke against the special subclass, a few Senators proposed that rate increases apply to all periodicals.[36] Most, however, were sympathetic. An amendment approved by the Senate, but absent from the law as finally passed, would have put all farm and religious publications -- profit and nonprofit -- in the special subclass. None earned much of a profit, the sponsor argued, and wartime inflation in the price of paper and labor justified such a subvention of worthy publications.[37] The Senate eventually agreed to the House version.[38]

Except for mail matter enjoying free mailing privileges, the nonprofit second-class rate was the lowest in the schedule of postage. Not surprisingly, it quickly presented postal authorities with problems of interpretation. Shortly after the law took effect, the post office had to decide whether the Christian Science Monitor and The Deseret News deserved the special rate. The proprietors of the Deseret News reported that the paper was controlled by the Mormon Church, paid no dividends, and applied any profits to lessen the cost of church literature. The assistant postmaster general, reviewing the legislative history of the 1917 act, declared these papers to be essentially metropolitan dailies.[39] Seven years

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[36] Ibid., Aug. 27, 1917, p. 6356.

[37] Ibid., Aug. 28, 1917, pp. 6399-6401.

[38] Ibid., Oct. 1, 1917, p. 7572.

[39] 6 Op. Solic. P.O. Dep't 638-641 (Aug. 16, 1918) and 665-668 (Oct. 14, 1918).

after passage of the 1917 act, the Postal Laws and Regulations provided no criteria beyond that in the statute to judge eligibility.[40]

In short, the War Revenue Act of 1917 permitted all institutional publications admitted to the general second-class mails by the 1894 and 1912 laws to retain their regular second-class privilege. But the law moved some of these publications (and added a couple) to a more preferential status, exempting postage that would otherwise be charged on the advertising portions.

PROTECTING THE PREFERRED RATE THROUGH THE 1940S

The first review of the new subclass came in the mid-1920s, when Congress labored to increase revenues in order to cover pay raises for postal employees. During the next two decades, the preferred postage prompted occasional, though rarely serious, calls for rate hikes.

1920s Campaign to Adjust Rates

Still smarting from the imposition of the zone system, commercial newspaper and magazine publishers mobilized in the 1920s to roll back rates scheduled to rise in four installments. About the same time, policymakers sought to raise postal wages. Together, these pressures on postal receipts and expenditures triggered a series of proceedings during the mid-1920s, including the first major review of

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[40] 1924 Postal Laws and Regulations 166.

the preferred nonprofit rate.

The post office reported that nearly 6,000 publications were using the preferred rate several years after it took effect, suggesting that the department construed the qualifications liberally. The department carried 125,043,125 pounds of exempt matter, from which it collected $1,630,362, during the fiscal year ending on June 30, 1925. The preferred rate saved nonprofit publications about $1 million a year, according to a crude estimate made by the post office. Religious and educational organizations issued most of the exempt publications.[41]

During these years, Senator George H. Moses, a Republican from New Hampshire, repeatedly urged that all publications in the "already highly preferential second-class postal rates" should be treated equally. Some exempt publications, he observed, were 40 percent advertising -- advertising "sought in competition with all newspapers and periodicals of all classes. . . ." Moreover, much of the advertising had nothing to do with the purpose of the sponsoring organization. Finally, though such publications did not produce profits for stockholders, "every one of them exists for the purpose of profit in the payment of very considerable salaries to those who have to do with their editorial management and publication," he wrote. "They exist . . . in a very real sense for the purpose of making

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[41] _Postal Rates: Hearings on S. 3674 before the Special Joint Subcomm. on Postal Rates_, 68th Cong., 1st sess. (1925), p. 1254. A list of all exempt publications appears on pp. 1160-1228 of the hearings.

money."[42]

Those supporting low rates for nonprofit groups acknowledged that the publications often made profits. They pointed out, however, that the 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."[43] To grant this mailing privilege, another senator explained, the post office had to find that profit "goes into the service of religion, if it be a religious publication or that it goes into the service of education, if it be an educational publication."[44] To prevent possible abuses -- and to allay concerns expressed during the debates -- one senator proposed that "these special postal rates shall not apply to any such periodical which pays excessive salaries to its editors, managers, or employees. . . ." He set $12,000 as the ceiling, and would have required that publishers applying for the low rate submit evidence to the postmaster general on the salaries they paid.[45] This amendment was defeated.

The nonprofit subclass survived, but in 1925 Congress raised the rates from 1 1/4 to 1 1/2 cents a pound.[46] In the next few years, Congress resisted attempts to roll back the rates to 1 1/4 cents or

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[42]"Should Religious Publications Retain Privileged Rate Status?" Congressional Digest, February 1925, p. 166; see also Cong. Rec., Feb. 14, 1927, pp. 3664-3665.

[43]Ibid.

[44]Ibid., Jan. 22, 1925, p. 2506.

[45]Ibid., Jan. 27, 1925, pp. 2506-2508.

[46]Ibid., Jan. 29, 1925, p. 2618; Feb. 25, p. 4651; New York Times, Jan. 28, 1925, p. 5; Act of Feb. 28, 1925, 43 Stat. 1066.

even 1 cent a pound.[47] Rates for preferred mailers, set at 1 1/2 cents a pound in 1925, remained stable for 38 years. In other measures of stability, the postal regulations governing admission to the preferred subclass showed no substantial change for these years and decisions on eligibility were still centralized in Washington, D.C.[48]

The Heiss Report, 1946

Although the nonprofit subclass saw few changes in the 1930s and '40s, it did come under the scrutiny of a special consultant to the post office. Charles A. Heiss, former comptroller of a large corporation, prepared the first independent analysis of second-class policy and rate structure since the 1911 Hughes Commission. His 1946 report, studying all aspects of second-class mail, reviewed how exempt publications used the mails and recommended some changes in eligibility. The 4,500 exempt publications constituted nearly one-fifth of all second-class permit holders.[49] The post office delivered about 800 million pieces of preferred publications for a little more than $2 million in revenues. The estimated cost was $20 million. Had

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[47] Postal Rates: Hearings on S. 3674 before the Special Joint Subcomm. on Postal Rates, 68th Cong., 1st sess. (1925), pp. 378-381; Cong. Rec., March 1, 1927, p. 5277.

[48] Compare 1924 Postal Laws and Regulations 166-167 to 1948 Postal Laws and Regulations 209-210.

[49] In September 1944, religious organizations issued 1,690 exempt publications; educational, 1,606; fraternal, 378; scientific, 228; agricultural, 201; labor, 114; miscellaneous, 113; philanthropic, 104; and news agents, 66. Charles A. Heiss, Report on Second-Class Mail (Washington, D.C.: Government Printing Office, 1946), pp. 25-28.

the advertising portions been charged zone rates, the department would have collected an additional $350,000 a year, Heiss estimated.[50]

Heiss offered several recommendations governing eligibility. First, he observed, some of the exempt publications were conducted partly or largely for the benefit of the groups operating them. For example, "[f]raternal insurance societies may in fact be large 'business' concerns, and while describing themselves as fraternal or benevolent their dealings with members are on a strictly contract basis," he found. "In these and similar organizations the officers or promoters may continue in charge year after year at substantial emolument." Heiss thought the exempt rate should be extended only to those organizations that provided specific benefits for _other than their members_. This meant withdrawing the exempt rate from the publications of agricultural, labor, fraternal and scientific groups. He explained that "[a]gricultural publications distributed by organizations of farmers, even though such organizations may not make a 'profit,' are for the benefit and financial advantage of the members making up that group, and only indirectly for the public as a whole." Most labor organizations worked to improve the lot of members, scientific publications immediately benefited certain professionals, and so forth, Heiss reasoned. "[W]hen the activity is primarily for the advantage of the particular groups or persons concerned," he concluded, "it is not apparent that the Postal Service should provide assistance to them at the expense of other mail users or from public

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[50] _Ibid._

funds as distinguished from other groups equally worthy."[51]

Other recommendations involved limiting advertising and setting a minimum per piece rate. Heiss suggested that no exempt periodical should consist of more than 50 percent advertising. In addition, because these publications were smaller and generally traveled farther than regular second-class matter, Heiss thought they should pay a minimum charge per piece to reflect the costs of handling.[52] The Heiss report directed attention to the troubled rate structures and uncertain policies of the second-class mails, but prompted no changes for exempt publications.

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[51] Ibid., pp. 26-28; Heiss wrote:

> If the policy of granting preferential treatment to certain 'non-profit' publications is to be continued, it should preferably not be granted to any publication with an advertising content in excess of, say, 50 per cent and be confined to the following:
>
> Religious publications;
>
> Publications of definitely philanthropic and charitable bodies organized primarily for the purpose of extending such service beyond their own organizations;
>
> Official publications and bulletins of educational institutions (other than of a strictly private character) for which the authorities of the institution assume full responsibility, not including those of students or any which are not a definite part of the educational program; and
>
> Official bulletins and publications of State boards or departments of health, public charities, corrections, and agriculture.

[52] Ibid.

ORIGINS OF THE THIRD-CLASS NONPROFIT RATE

The origins of the second- and third-class nonprofit rates bear a striking resemblance. In 1951 Congress exempted bulk mailings by nonprofit organizations from a rate increase applied to commercial mailers, much as it had exempted nonprofit publications from a rate hike applied to commercial publishers in 1917. The preferred third-class rates enacted in 1951 marked the culmination of proceedings initiated two years earlier. Salary increases in 1948 and 1949 exacerbated the postal deficit, which jumped from $308 million in 1948 to $551 million in 1949.[53] To reduce the shortfall, the post office proposed substantial rate increases in most classes, and Congress considered them in lengthy hearings.

The 1949 and 1950 Hearings

The idea of exempting nonprofit organizations from third-class rate increases first arose in congressional hearings in the spring of 1949. Most nonprofit groups that testified expressed concern about proposed across-the-board increases in second-class postage. The Elks and Veterans of Foreign Wars, just two of many such groups appearing before Senate and House post office committees, argued that increased postage on their organizations' magazines would reduce funds otherwise used for public service works.[54]

Other groups, especially those dependent on fundraising by

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[53] 1948 _PMG Annual Report_ 1; 1949 _PMG Annual Report_ 2.

[54] _Adjustment of Postal Rates, Part 2: Hearings on S. 1103 before the Senate Comm. on Post Office and Civil Service_, 81st Cong., 1st sess. (1949), pp. 477-481, pp. 236-239.

mail, strenuously lobbied against the proposed hikes in third-class rates. Philip G. Rettig, director of research services for the National Society for Crippled Children and Adults, made perhaps the most compelling presentation to Congress on behalf of exempting certain groups from the increases. Rettig asserted that any increase in third-class postage would undercut services provided for crippled children and adults. The society received almost all of its annual funding from responses to 25 million appeal letters it mailed as part of its Easter Seal campaign. The proposed higher bulk rates would add $250,000 to its postage bill, Rettig claimed. "It is not enough for us to say so flatly that our postage costs would be increased," he told the Senate committee.

> It is more real for us to say that crippled children and adults throughout the land could be deprived of $250,000 in service now available to them. 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.[55]

To underscore his point, Rettig described the services that would be curtailed in several states because of the added postage costs. In West Virginia, for example, $1,300 in extra postage "could deprive crippled children . . . of some 450 camping days."[56]

Rettig also anticipated some of the policy and administrative concerns of Congress. He insisted that none of the

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[55] Ibid., p. 702.

[56] Ibid.

third-class mailings of his society crossed state borders, explaining that solicitations, handled by state and local chapters, did not travel far. Therefore, such third-class matter cost less to transport than most other bulk mail, he contended. Addressing the problem of eligibility, Rettig suggested that only charitable and philanthropic organizations be entitled to a preferred third-class rate. "I mean charitable organizations here in a somewhat restricted sense," he elaborated. "I do not mean mere nonprofit corporations." Organizations to which individuals could make tax-deductible contributions would qualify, he suggested. In fact, in response to questioning, Rettig said the Internal Revenue Service "does quite an effective job of ascertaining the charitable status of an organization."[57]

During the 1950 hearings, other organizations dependent on raising funds through mail solicitations echoed the arguments of the National Society for Crippled Children and Adults. The National Foundation for Infantile Paralysis, sponsor of the March of Dimes, called on Congress to "exempt the philanthropic organizations which are exempted under the Internal Revenue Act . . . from the increase to a cent and a half in this third-class mailing."[58] The director of the

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[57] Postal 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, 81st Cong., 1st sess. (1949), pp. 1051-1052; see also his testimony and the remarks of E. Urner Goodman, representing several organizations, in the Senate hearings above, note 54, pp. 203-210.

[58] Postal Rate Increases: Hearings on H.R. 2945 before the Senate Comm. on Post Office and Civil Service, 81st Cong., 2d sess. (1950), pp. 184-185.

National Tuberculosis Association's Christmas Seal campaign told the Senate committee that increased postage would force a curtailment of services.[59] The Disabled American Veterans joined the effort to exempt philanthropic organizations from increases in bulk mailing rates.[60]

The 1951 Law

After two years of hearings and debates, the Eighty-First Congress adjourned in January 1951 without altering postage. With barely a pause, however, the Eighty-Second Congress took up the matter. Most of the organizations that had testified in 1949 and 1950 appeared again before the post office committees.

The Senate committee gave the nonprofit groups a warm reception. After hearing testimony on behalf of 21 national voluntary health and welfare organizations, the committee chairman said, "[W]e ought not to do anything that would handicap any of the organizations you mentioned here."[61] As before, supporters argued (1) that these nonprofit groups devoted any income to their charitable activities; (2) that the organizations might have to curtail some of their services to cover higher postal costs while the post office would gain little revenue; (3) that these groups were helping people who would

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[59] Ibid., pp. 188-189.

[60] Ibid., pp. 189-190.

[61] Adjustment of Postal Rates: Hearings on S. 1046, 1335, 1369 before the Senate Comm. on Post Office and Civil Service, 82d Cong., 1st sess. (1951), p. 150.

otherwise be forced to depend on government aid; and (4) that, in the midst of the Korean and Cold Wars, voluntary associations had added responsibilities and expenses.[62] The House committee was less favorably inclined. The chairman, for example, saw "justification for giving a special rate to these non-profit, religious, scientific, educational and agricultural and labor publications under second-class matter because Congress adopted that policy many years ago." But he anticipated problems from the creation of a new differential between commercial and nonprofit mailers in the third-class.[63]

Not all the groups that stood to benefit from the preferred rates agreed with presentations made during the hearings. Christian Century lambasted "[f]ive witnesses representing 38 Protestant church-owned publishing houses" that testified before the House committee. "They want the subsidy extended!" the magazine exclaimed in reference to the preferred second-class rates. "Separation of church and state? Apparently the Protestant publishers have never heard of it. Religious liberty? Not when it interfers with profits." Christian Century claimed that the witnesses did not represent the entire religious community, and speculated that such government subvention

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[62] Ibid.; see, especially, the testimony of E. Urner Goodman, representing 21 groups, pp. 139-150; the Elks, pp. 166-173; the Veterans of Foreign Wars, pp. 227-230; various religious magazines, pp. 438-443; and the National Society for Crippled Children and Adults, pp. 479-492.

[63] Postal Rate Revision: Hearings on H.R. 1046 and H.R. 2982 before the House Comm. on Post Office and Civil Service, 82d Cong., 1st sess. (1951), pp. 464-465. For the testimony of various groups on the need for exemptions from second- and third-class postage increases, see, e.g. ibid, pp. 454-466, 518-527, 559-563.

might influence religious magazines.[64]

The original House bill failed to protect publications of nonprofit organizations, but the House post office committee recommended continuing the exemptions and adding veterans' organizations. During the House hearings, witnesses offered 38 amendments to exempt their mailings from rate increases.[65] The House report, however, did not shield nonprofit organizations from the proposed increase in third-class bulk mailings.[66] The Senate report exempted various nonprofit organizations from increases in both second- and third-class rates. Like the House report, the Senate version added veterans' organizations, but also included the mailings of service clubs.[67]

Most references to the preferred rates during the floor debate were incidental parts of more general discussions. Senator Russell B. Long of Louisiana, for example, sought to protect nonprofit organizations from a proposed doubling of the rate on postal cards. (This would have created a preferred first-class rate.) He argued that subsidies were justified for charitable organizations. An IRS determination that an organization qualified as tax exempt "is a

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[64]"No Mail Subsidies for Church Press!" _Christian Century_, March 28, 1951, pp. 388-389; see also "Southern Baptists Oppose Postal Subsidies," _ibid_., Oct. 14, 1953, pp. 1155-1156; "House Coddles Religious Press," _ibid_., Feb. 24, 1954, pp. 228-229.

[65]H.R. Rep. No. 547, 82d Cong., 1st sess. (1951), pp. 1-2; see also _Cong. Rec_., Sept. 18, 1951, pp. 11561-11562.

[66]_Ibid_., Sept. 18, 1951, p. 11555.

[67]_Ibid_., Sept. 6, 1951, p. 10980.

sufficient test," he stated.[68] Long's amendment failed. One representative wondered why the publications of professional societies, which disseminated educational information, were not included in the preferred subclass. A member of the House post office committee responded that some might well qualify under the educational category.[69]

A conference committee resolved the differences between the House and Senate bills. The conferees added veterans' organizations but deleted service clubs and temperance groups from the Senate version, emphasizing that many temperance publications would qualify anyway as educational. The conferees adopted the Senate language that exempted certain nonprofit organizations from increases in third-class rates; the prescribed types of organizations were identical to those in the preferred second-class.[70] The House and Senate accepted the conference report with virtually no debate, though one representative observed that the national magazines of some fraternal and veterans' organizations carried large amounts of advertising.[71]

Where the regular per piece minimum charge for bulk mailings rose to 1 1/2 cents, that for preferred mailers remained at 1 cent.[72] The rules issued to implement the act specified that "These special

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[68] Ibid., Sept. 7, 1951, pp. 11024-11025, 11028, 11041-11043.

[69] Ibid., Sept. 18, 1951, p. 11570.

[70] Ibid., Oct. 19, 1951, pp. 13581, 13585.

[71] Ibid., pp. 13524-13525, 13587-13588.

[72] Act of Oct. 30, 1951, 65 Stat. 672-674.

rates are not applicable where mailings are made jointly under arrangements with contractors or others for the latter's profits."[73] Because the 1951 law exempted the prescribed types of organizations from _general_ third-class rate increases, the preferred groups also gained a slight advantage in bulk mailings of books, catalogues, seeds, cuttings and the like. Although the 1951 law left the special second-class rate largely untouched, the publications of nonprofit organizations were subject to the minimum 1/8 cent per piece rate assessed all second-class mail except newspapers enjoying free-in-county circulation.[74]

ADMINISTRATION OF THE PREFERRED RATES

The continuation of the special second-class rates and the creation of a preferred bulk mailing rate aggravated the problem of determining eligibility. In fact, the statute exempting selected types of nonprofit organizations from the increase in bulk mailing rates provided no guidelines nor did it create a mechanism for deciding eligibility. The Post Office Department was left to develop criteria.

Barely 18 months after Congress created the preferred third-class rate, the department had processed 38,000 applications, denied

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[73] _Fed_. _Reg_., Dec. 28, 1951, p. 13092.

[74] 65 _Stat_. 672-674; _Fed_. _Reg_., Dec. 28, 1951, p. 13092.

6,250, and was still receiving several hundred a week.[75] A post office consultant estimated that the department lost about $12 million a year on the special third-class privilege, of which $3.6 million represented the difference between regular and preferred rates.[76]

Because the statute failed to specify how to determine admission to the special third-class, the Post Office Department simply adapted the procedure that it used for the reduced second-class rates. An organization gave the local postmaster evidence that it was "not conducted for private profit and none of its net income inures to the benefit of any private stockholder or individual." Post office headquarters then rendered a decision.[77] For the second-class privilege, the number of exempt publications remained relatively stable, making it possible to maintain centralized decision-making.[78] Applications for the special third-class rate, however, swamped the post office, necessitating procedural changes. Beginning in 1957, local postmasters decided the eligibility of applicants for the privileged third-class rate, with appeals going to the Mail

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[75] _Authorizing Educational Films and Related Material to be Transmitted at Book Rates: Hearings on S. 971 before the Senate Comm. on Post Office and Civil Service_, 83rd Cong., 1st sess. (1953), p. 18.

[76] _Postal Rate Revision: Hearings on H.R. 6052 before the House Comm. on Post Office and Civil Service_, 83rd Cong., 1st sess. (1953), p. 125.

[77] _Fed. Reg._, Dec. 12, 1951, pp. 13092, 13094; Dec. 6, 1961, pp. 11543, 11547.

[78] A 1963 Circuit Court decision affirmed the post office's authority to approve or deny applications. _Christian Beacon v. U.S._, 322 F.2d 512 (3rd Cir. 1963).

Classification Division.[79] Later, to attain a more uniform application of the law, initial decision-making responsibility was shifted from the tens of thousands of local postmasters to the 62 postal service centers. Appeals from adverse decisions still went to the Classification and Special Services Division.[80]

Even so, postmasters at the postal service centers had few guidelines on which to base their decisions, a 1963 study found.[81] The Postal Manual listed the eligible types of organizations as well as some that did not qualify. Limited guidance came from the decisions rendered by the Classification and Special Services Division, typically letters from three to five sentences long. Decisions were based on the application form and supporting documentation, usually the organization's charter, by-laws, income tax exemption, bulletin and similar materials. In reviewing such evidence, the postmaster, or, if on appeal, the classification division, looked at two dimensions of eligibility -- the type of organization and its nonprofit status.

Primary Activity of the Organization

In the first years of administering the preferred third-class rates, the department apparently attached the greatest weight to

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[79] Fed. Reg., June 27, 1957, p. 4500.

[80] Fed. Reg., Feb. 15, 1962, p. 1417; Feb. 20, 1965, pp. 2313-2314.

[81] Neal S. McCoy, "Report on Preferential Second and Third-Class Postal Rates for Nonprofit Organizations," (Unpublished study submitted to the associate general counsel, Post Office Department, 1963.)

whether an organization fit one of the specified categories.[82] Workable definitions proved elusive. As Postmaster General Arthur E. Summerfield told the House post office committee in 1953, "We probably need a little help from this committee in definitions as to what is educational and what is religious."[83] Earlier he had complained that "many nonprofit organizations not included in the groups designated by the law have applied for exemption."[84]

The educational category proved most troubling, and the department developed as a test whether the organization offered instruction through a pupil-teacher relationship.[85] For example, the department denied preferred rates to magazines of voluntary alumni associations, while giving them to similar publications sponsored directly by colleges and universities. Chiding the post office for drawing "an unnecessarily fine line in excluding such alumni associations from the privilege that Congress extended to nonprofit, educational organizations," the Senate post office committee in 1952 reported a bill to bring alumni magazines within the preferred rate, but it failed to pass.[86] Until 1955, the Division of Mail

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[82] S. Rep. No. 1086, 83d Cong., 2d sess. (1954), p. 182.

[83] Postal Rate Revision, Vol. 1: Statement and Testimony of the Postmaster General and Staff: Hearings on H.R. 6052 before the House Comm. on Post Office and Civil Service, 83rd Cong., 1st sess. (1953), p. 29.

[84] 1952 PMG Annual Report 62.

[85] S. Rep. No. 1086, 83rd Cong., 1st sess. (1954), p. 189.

[86] S. Rep. No. 1798, 82nd Cong., 2d sess. (1952), p. 2.

Classification disposed of most applications by determining whether the primary activity of the organization was religious, educational, and so forth.[87]

After five years' experience administering the special third-class rate, the Post Office Department generated a list of types of organizations that did not qualify even though they operated on a nonprofit basis:

> Automobile clubs; business leagues; chambers of commerce; citizens' and civic improvement associations; individuals; municipal, county, or State governmental bodies; mutual insurance associations; political organizations; service clubs such as Civitan, Kiwanis, Lions, Optimist, and Rotary; social and hobby clubs; and trade associations.[88]

This list reflected the variety of applicants seeking the preferred rates.

Nonprofit Status

The other test of eligibility focused on an applicant's nonprofit status. In the long run this probably proved more difficult to gauge, but, at the same time, more in tune with the legislative history of the 1951 law. As a report by the National Education Association observed, the 1951 law "seemed to be primarily concerned with making sure that exempt organizations were genuinely nonprofit rather than with the question of whether the organization was

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[87] McCoy, "Report on Preferential Second and Third-Class Postal Rates for Nonprofit Organizations," p. 26.

[88] Fed. Reg., June 27, 1957, p. 4500; Aug. 4, 1959, p. 6231; Dec. 6, 1961, p. 11547.

religious, or educational, or scientific in character and purpose."[89]

A 1955 letter by Post Office Department Solicitor Abe McGregor Goff recommended discarding the primary activities test -- that is, whether an organization was primarily educational, scientific or the like. Instead, he advised that the post office defer to the Internal Revenue Service's decisions dealing with an applicant's tax exempt status. He suggested "that where the statutory standards in . . . [corresponding sections of the Internal Revenue Code] are at least as high, or higher, than those contained in the postal statutes, the Department should follow the lead of the Internal Revenue Service. This would be in all cases except those involving labor, agricultural and veterans' organizations."[90] In 1961, the acting deputy general counsel reaffirmed this position.[91] The department continued to insist that IRS rulings were not binding, and, to be sure, not all nonprofit applicants for the reduced rates qualified as one of the prescribed types of organizations. But, reviewing twelve years of department actions, a 1963 report "found no case . . . where the Post Office Department has failed to defer to the Internal Revenue Service's determination of an organization's nonprofit status. The reason for this is that the Post Office Department has not developed a

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[89]S. Rep. No. 1086, 83rd Cong., 2d sess. (1954), p. 190.

[90]Letter from Goff to Edwin A. Riley, May 9, 1955, reprinted in McCoy, "Report on Preferential Second and Third-Class Postal Rates for Nonprofit Organizations," pp. 137-140.

[91]Letter from Adam G. Wenchel to Director of the Postal Services Division, Aug. 17, 1961, reprinted in <u>ibid</u>., pp. 141-142.

set of concrete standards for making this determination."[92]

CONGRESSIONAL ACTIONS THROUGH THE 1960S

Congress adjusted the rates and eligibility of the preferred subclasses slightly during the 1950s and 60s, which occasionally prompted reexaminations of the underlying policy.

Preferred Rates as Public Service: 1954 and 1958 Studies

Working under contract to the Senate post office committee, the National Education Association in 1954 prepared an ambitious study assessing the importance of the postal service to education. The NEA questioned the validity of distinguishing mailers by their tax status, arguing that some commercial firms advanced educational interests as much or more than nonprofit operations. Furthermore, NEA challenged the wisdom of conferring the preferred rates on the eight types of organizations enumerated in the law. In a recommendation reminiscent of one made by Charles A. Heiss in 1946, NEA suggested the following distinction:

> Religious, educational, scientific, and philanthropic organizations offer their services to the community as a whole and to all members of that community. This is less true of labor, agricultural, veterans, and fraternal organizations whose clientele is composed primarily of segments of society. . . . The preference given to the first four categories appears to be based on the general assumption that the national welfare is promoted when religion, education, science, and philanthropy are encouraged.[93]

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[92]*Ibid.*, p. 29.

[93]S. Rep. No. 1086, 83rd Cong., 2d sess. (1954), pp. 182-183.

NEA speculated that Congress included labor and agricultural organizations because of their economic contributions, and veterans and fraternal groups "more for reasons of expediency rather than as the result of a carefully thought-out policy."[94] The NEA recommendations, however, never became law.

Throughout the mid-1950s, Postmaster General Arthur E. Summerfield kept pushing for substantial rate increases.[95] In 1957, the Senate post office committee took charge of the administration's proposal and reported a bill that would have fixed second- and third-class preferred rates at 50 percent of those charged regular mailers.[96] This formula would have produced only modest changes for the nonprofit organizations; it nonetheless provoked debate, which centered on the slightly higher minimum charge for exempt periodicals.

Senator Mike Monroney, Democrat of Oklahoma, led the drive to raise the 1/8 cent per piece minimum rate. Like Heiss and NEA, Monroney could not "reconcile the continued attempt to shift to the general taxpayer the cost of handling publications, aside from religious, scientific, and educational ones." He acknowledged the public service value of carrying mail for certain nonprofit organizations at reduced rates, but he recommended a minimum charge of

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[94] _Ibid._, p. 183.

[95] A byproduct of this perennial effort was the enactment of a far-reaching postal policy that reaffirmed the public service value of the preferred categories. See Chapter 1 for a discussion of the 1958 Postal Policy Act.

[96] S. Rep. No. 1321, 85th Cong., 2d sess. (1958).

1/2 cent, and, when that seemed unlikely to pass, 1/4 cent.[97] Monroney decried the abuse of the special second-class rate, noting that almost all groups qualified "except the Rotary Clubs, the United States Chamber of Commerce, and the National Association of Manufacturers, which have been excluded because they were definitely mentioned in a House report."[98] He singled out the publications of such wealthy organizations as the American Bar Association, the American Medical Association and the teamsters union as undeserving of the subsidized rate. Even those who supported a continuation of the 1/8 cent minimum rate agreed that "there has been a lot of freeloading."[99]

As passed, the 1958 law left the rates on exempt publications undisturbed. Preferred third-class bulk rates, however, were fixed at 50 percent of the regular postage. The rate was 1 cent per piece until Jan. 1, 1960, and 1 1/4 cents thereafter.[100]

Raising Rates and Adding Publications: 1962

Four years later, many of the same individuals repeated the debate. As often happened, Congress entertained requests to vastly expand eligibility for the preferred rates.[101] One unsuccessful

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[97] Cong. Rec., Feb. 26, 1958, p. 2867; Feb. 27, pp. 3024-3027.

[98] Ibid., Feb. 28, 1958, p. 3115.

[99] Ibid., p. 3116.

[100] Act of May 27, 1958, 72 Stat. 134, 140; Act of Sept. 2, 1960, 74 Stat. 578, 673.

[101] Cong. Rec., Jan. 23, 1962, p. 763.

proposal would have added for-profit religious magazines to the special rates.[102] This time, however, the special third-class rate emerged untouched, but postage for exempt publications rose slightly. Because a general rate hike seemed inevitable, and small newspapers expressed willingness to give up the free-in-county privilege, substantial sentiment favored small phased increases for exempt publications. (See chapter two for a discussion of the 1962 law's impact on the in-county rate.) Proposals to double the minimum charge to 1/4 cent per copy met stout resistance. As the postmaster general remarked during the hearings, the post office realized that "to increase not-for-profit rates would not justify that entirely separate and extremely difficult area of dispute which we would get into."[103] Echoing these sentiments, Senator Monroney, who had led an attempt in 1958 to raise rates for nonprofit organizations, pressed for slight increases "knowing how little good it will do."[104] The conference committee froze the minimum preferred second- and third-class rates. The major change involved a three-step increase in the pound rate for nonprofit publications, from 1.5 cents a pound to 1.6 cents in 1963, to 1.7 cents in 1964, and 1.8 cents in 1965.[105]

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[102] _Ibid._, pp. 761-762.

[103] Quoted in _ibid._, Sept. 27, 1962, p. 20996.

[104] _Ibid._, p. 20998.

[105] Relevant sections of the various conference reports and debates are found in _ibid._, Sept. 26, 1962, pp. 20755-20757; Oct. 3, pp. 21903-21905, 21916-21919, 22024-22027; Oct. 5, pp. 22571-22573, 22584-22588; Act of Oct. 11, 1962, 76 _Stat_. 832, 833.

Congress also admitted the publications of rural electric cooperative associations and state highway agencies to the preferred second-class rates. Spokesmen for REC associations testified that proposed second-class rate increases would fall especially heavily on their publications. They did not explicitly ask to be added to the list of exempt publications, but they did point out that their magazines' small profits were used for the benefit of the sponsoring organizations.[106] The conference committee retained this provision and it passed without debate.[107] The general manager of the National Rural Electric Cooperative Association, a former congressman, explained that the preferred rate would benefit about 30 magazines with a circulation of 3 million copies.[108] The American Newspaper Publishers Association said there was "no justification for the special privilege," and the Chamber of Commerce claimed "REC groups will now be able to enjoy a financial advantage while propagandizing against their prime target, the investor-owned private power industry."[109] At least twice in the next few years, bills to delete rural electric cooperative associations from the list were introduced,

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106 Cong. Rec., Sept. 25, 1962, pp. 20691-20692, 20819-20822; Postal Rate Revision of 1962: Hearings on H.R. 7927 before the Senate Comm. on Post Office and Civil Service, 87th Cong. 1st sess. (1962) pp. 326-345.

107 Cong. Rec., Sept. 25, 1962, pp. 20691-20692, 20819-20822.

108 Quoted in "REC Papers Get 1/8 Cent Rate in New Bill," Editor & Publisher, Nov. 3, 1962, p. 64.

109 Quoted in Ibid.

but defeated.[110]

The provision adding "one publication published by the official highway agency of a State . . . which contains no advertising" apparently was added to assist Arizona Highways.[111] The addition of these two types of publications meant that the list of second- and third-class preferred mailers was no longer parallel. The post office had to add associations of rural electric cooperatives to its list of groups not eligible for the special bulk rates.[112]

Final Adjustments Before Reorganization

Postmaster General Lawrence O'Brien initiated the next round of changes in 1966 when he asked Congress to look at the growing use of the privileged rates. He proposed that postage on exempt publications be assessed, at least in part, on their advertising content. This proposal stemmed from a study of 213 nonprofit organizations that found six periodicals containing more than 51 percent advertising, and another 50 carrying 26 percent to 50 percent ads. In the third-class, the volume of nonprofit mail had risen 60 percent in six years, while regular-rate bulk mail had gone up only 15 percent.[113]

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[110] McCoy, "Report on Preferential Second and Third-Class Postal Rates for Nonprofit Organizations," p. 7; Cong. Rec., Oct. 10, 1967, pp. 28438-28439.

[111] McCoy, "Report on Preferential Second and Third-Class Postal Rates for Nonprofit Organizations," p. 7.

[112] Fed. Reg., Feb. 15, 1963, p. 1469.

[113] "P.O. Suggests Higher Rates for Non-Profit Mailers," Advertising Age, April 25, 1966, pp. 1, 178.

To cope with the burgeoning bulk mailings by nonprofit organizations, the House post office committee offered a variation on an idea suggested at least twice before. This latest proposal would have created a subclass within the preferred third-class rates for mailings by nonprofit charitable, religious, and general health organizations.[114] Other preferred groups still would have enjoyed rates below those paid by commercial mailers, but slightly higher than those of strictly charitable organizations. The rationale was that some groups in the preferred class, though nonprofit, existed primarily for the benefit of their members, and therefore did not deserve special rates for all their bulk mailings. Charles Heiss had made the same distinction in 1946 (for the preferred second-class), as had the National Education Association in its 1954 report. Taking a cue from the proposal, groups testifying at the Senate hearings underscored any activities that met this standard. Some, like the National Society for Crippled Children and Adults (Easter Seal), and the National Tuberculosis Association (Christmas Seal), had few problems.[115] The language of the House bill, however, proved

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[114]"House Postal Bill Harsh on News, Non-Profit Books," <u>Advertising Age</u>, July 31, 1967, pp. 1, 8.

[115]<u>Postal Rates: Hearings on H.R. 7977 before the Senate Comm. on Post Office and Civil Service</u>, 90th Cong., 1st sess. (1967) pp. 451-456.

troubling to such groups as the Disabled American Veterans.[116] A member of the Senate post office committee had to reassure the DAV and similar organizations that they would be entitled to the lowest rates even though their medical services were offered to a limited clientele.[117]

Foreseeing administrative difficulties, the Senate post office committee rejected the idea of dividing nonprofit third-class mailers into two groups. Special third-class postage, the committee instead recommended, should be 40 percent of the regular rates and remain at that level through subsequent increases.[118] The Senate committee did express concern about the number of nonprofit organizations using the preferred rates. It invited the Post Office Department to suggest criteria that "may need to be imposed in order to eliminate those organizations whose activities do not warrant this large subsidization by the taxpayer." The report noted that an organization's nonprofit status "for internal revenue purposes has nothing to do with its being classified as a 'nonprofit' under the statutory requirements of postal laws." Beyond that observation, however, the Senate post office committee did not indicate what

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[116]The House proposal would have extended the special low bulk mailing rate to "qualified nonprofit organizations (1) which are organized for charitable, religious, or general health purposes, or (2) when such matter consists wholly of solicitations of funds to be used for charitable, religious, or general health purposes." _Postal Rates: Hearings on H.R. 7977 before the Senate Comm. on Post Office and Civil Service_, 90th Cong., 1st sess. (1967), p. 452.

[117]_Ibid._, p. 473.

[118]_Cong. Rec._, Nov. 28, 1967, p. 33984.

criteria might be appropriate.[119]

The postmaster general's plan to charge postage partly by the advertising content of the nonprofit publications fared well in both the Senate and the House. The Senate post office committee was especially displeased with "those publications which carry substantial amounts of advertising and who therefore have an unfavorable advantage over regular taxpaying commercial publications because of their tax-exempt status and the reduced postage rates they pay." To reduce this abuse, the committee recommended that identical rate schedules be used for the advertising portions of both commercial and nonprofit publications; postage on the reading portion, in contrast, would remain preferential for the nonprofit periodicals.[120] Commercial publishers had long complained that exempt publications carried paid advertising in competition with profit-making enterprises. Congress seemed sympathetic to this appeal, especially when many of the nonprofit organizations hastened to distance themselves from such publications as _National Geographic_, which paid the same rates as small, advertising-free, nonprofit periodicals.[121] The House committee found that of the 8,000 to 10,000 publications authorized to use preferred second-class rates, only 200 accounted for 60 percent of

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[119] S. Rep. No. 801, 90th Cong., 1st sess. (1967), pp. 15-16.

[120] _Ibid._, p. 15.

[121] _Postal Rates: Hearings on H.R. 7977 before the Senate Comm. on Post Office and Civil Service_, 90th Cong., 1st sess. (1967), p. 473.

the copies mailed and 70 percent of the weight.[122]

The Act of Dec. 16, 1967, extended the zone system to the publications of nonprofit organizations, but it set postage for the advertising portions well below those of commercial publications. Congress protected the small periodicals of nonprofit organizations by stipulating that those with less than 10 percent advertising paid postage only on their reading portion. Third-class preferred rates were set at 40 percent of the regular rates, as the Senate post office committee had suggested.[123]

During the floor debate neither house dwelled on what kinds of organizations were -- or should be -- entitled to the preferred rates. An attempt to add volunteer fire and rescue companies to the list of preferred mailers was defeated.[124] And some senators seemed surprised to learn that groups sending materials at the special second-class rates could take political stands.[125] The 1967 act created two mailing preferences. One, the program guides of nonprofit educational broadcast stations, was added by the Senate post office committee; it provoked no discussion.[126] The other, one publication of the official development agency of a state, was added by the House

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[122] H.R. Rep. No. 722, 90th Cong., 1st sess. (1967) pp. 30-31.

[123] 81 Stat. 613, 615-617; Cong. Rec., Nov. 29, 1967, pp. 34246-34247.

[124] Cong. Rec., Oct. 11, 1967, pp. 28626-28627.

[125] Ibid., Nov. 29, 1967, p. 34247.

[126] S. Rep. No. 801, 90th Cong., 1st sess. (1967), p. 13; Cong. Rec, Dec. 11, 1967, p. 25836.

committee.[127]

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[127]H.R. Rep. No. 722, 90th Cong., 1st sess. (1967), p. 30. The House committee mistakenly said that this preference was already part of the 1962 law.

Four

The Library Rate

The creation in 1928 of a special library rate followed several decades of sporadic lobbying by library and education groups. Once established, however, the rate remained relatively unchanged and noncontroversial until the Postal Reorganization Act of 1970. The Post Office Department rarely complained about administering the subclass but it did object to the loss of revenue it caused. This argument, never pressed vigorously, arose when Congress added materials to the library rate in the late 1950s.

Reduced postage for library books initially served three objectives. Proponents urging the library rate on Congress in the early 20th century argued (1) that rural residents required such a service to enjoy even minimal access to library resources; (2) that interlibrary loans of specialized materials advanced science and scholarship; and (3) that house-to-house delivery would be convenient for library patrons. When Congress in 1976 extended this special rate to _publishers_ mailing books to libraries, an additional rationale appeared: lower distribution costs for book producers would be passed along to libraries.

BACKGROUND

Several developments converged in the last quarter of the nineteenth century to pave the way for a special library rate. The American Library Association, the principal proponent of an inexpensive library post, was founded in 1876 as an outgrowth of a more general phenomenon, the public library movement. Originating in the Northeastern states, an organized drive to establish public libraries gained currency, though unevenly, throughout the country at mid-century. Associated with the growth of public education, the library movement at first underscored its value as an adjunct to schools. By the 1880s and 90s, however, professional librarians and their partisans envisioned a larger role for public libraries, one of personal, moral, and civic betterment.[1]

To promote individual and social improvement through reading, librarians realized that they needed to reach patrons, especially those far removed from collections. They began a concerted program of library extension, much like agricultural extension, at the close of the nineteenth century. At first, extension services emphasized making books more accessible <u>within</u> cities that already had public libraries. Branch libraries and deposit stations opened in a number of city neighborhoods. But the creation of the first county

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[1]See generally Samuel S. Green, <u>The Public Library Movement in the United States, 1853-1893</u> (Boston: The Boston Book Co., 1913); Robert E. Lee, <u>Continuing Education for Adults through the American Public Library, 1833-1964</u> (Chicago: American Library Association, 1966), chapter 2.

library in 1898 signaled a new phase of the extension program -- reaching out to communities deprived of library services. A number of states organized county library systems in the first decades of this century and they often used book wagons (later bookmobiles) as well as the mails to reach widely scattered readers.[2]

Books by Mail

Only in 1914 did the mails become a viable channel for the circulation of books. Although Congress had encouraged the dissemination of periodicals since the passage of the first postal law, books were banned from the mails until 1851.[3] Policymakers and the post office department had discouraged mailings of heavy or bulky matter because primitive postal transports could not easily accommodate it. Once accepted as mailable matter, books were assessed the relatively expensive rate for irregular pamphlets. From 1863 until 1914 books paid third-class postage, somewhat less than letters but considerably more than periodicals.[4] As the library extension movement was getting underway, for example, third-class postage on books was 1 cent per 2 ounces compared to the 1 cent per pound second-class rate that periodicals enjoyed.[5] These rates

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[2]Lee, Continuing Education for Adults through the American Public Library, pp. 31-33.

[3]Act of March 3, 1851, 9 Stat. 587.

[4]U.S. Post Office Department, U.S. Domestic Postage Rates, 1789 to 1956 (Washington, D.C.: Government Printing Office, 1956), pp. 10-11, 33-34.

[5]Ibid., pp. 31-35.

effectively closed the mails to library books.

The post office became somewhat more hospitable to the circulation of library materials in 1914 when the postmaster general shifted books to fourth-class parcel post mail. Parcels of books weighing 8 ounces or less paid 1 cent per 2 ounces, the same as third-class rates. For parcels over 8 ounces, rates were substantially less and assessed according to distance conveyed.[6]

Before books were accorded parcel post rates, libraries rarely used the mails; rather, they shipped materials, usually interlibrary loans, by private express companies. Reduced book postage, however, immediately stimulated a proliferation of various library extension services. Most notably, a number of state and city libraries began offering their resources to patrons through the parcel post. In 1914 Wisconsin launched an ambitious program to place the resources of the major libraries in Madison within reach of all state residents, including those 250 miles to the north. Borrowers paid postage, rarely more than 5 cents. Librarians noticed that rural borrowers typically asked for more nonfiction books than those in the city. Some borrowers shared a book obtained through parcel post with many friends before returning it to Madison. A number of city libraries inaugurated similar parcel post systems in 1914 and 1915;

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[6] Order No. 7705, Dec. 6, 1913, effective March 16, 1914; Order No. 7706, Dec. 6, 1913, effective Jan. 1, 1914; Order No. 7800, Jan. 31, 1914; U.S. Post Office Department, U.S. Domestic Postage Rates, 1789 to 1956, pp. 36-37, 70.

some required that borrowers deposit money for postage.[7]

Library Books at Second-Class Rates?

A faltering movement to secure a special rate for library books emerged in the 1880s, but it failed to mount an organized campaign until library extension programs became well established at the turn of the century. The first phase of the movement involved efforts to extend low second-class rates to library books. Second-class rates had long enticed book publishers; some went as far as releasing unbound books as part of so-called library series, issued just often enough to meet the post office's definition of a periodical. In 1886 the American Library Association proposed that library books be admitted to the second-class; a bill to that effect was introduced in Congress a year later.[8] About the same time, the post office and Congress were working to remove books from the second-class mails.[9] With policymakers laboring to restrict, rather than expand, this subsidized category, the ALA's proposal died.

A more sustained lobbying effort for a cheap library post began as the library extension movement gained momentum. The New England Education League organized a Library Post Committee in 1899 to "secure house-to-house delivery of books in cities and large towns and

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[7]Laura Janzow, Library Without Walls (New York: The H.W. Wilson Co., 1927), pp. 373-380, 395-417.

[8]W. Scott, A Cheap Library Post (Cambridge, MA: The People, 1901), p. 1.

[9]H.R. Rep. No. 177, 50th Cong., 1st sess. (1888); Cong. Rec., Feb. 2, 1888, pp. 911-914.

to open central libraries to outlying areas on an equitable plan of library support. . . ."[10] W. Scott, secretary of the postal committee, presented a plan for admitting library materials to the second-class mail at the 1899 ALA meeting. Scott and other proponents argued that postal policy should not discriminate in favor of ephemeral commercial publications and against the more enduring printed matter circulated by public libraries. Mailing library books cost four to eight times as much as magazine postage, Scott noted, and much of that material was inferior "yellow journalism" or base fiction. The nation needed an antidote of more serious reading matter. Scott also asserted that low-cost library postage would equalize access to library resources, both within cities and in the countryside. In fact, it might even yield a profit for the post office because most library books would circulate locally.[11]

The Library Post Committee lobbied vigorously for cheap library rates. It solicited letters of support from dozens of librarians, formed a national council with representatives in at least eighteen states, and successfully courted favorable attention in the press. The committee canvassed crucial policymakers, including Eugene F. Loud, the chairman of the House post office committee who had spent several years trying to tighten eligibility requirements for second-class mail matter. "I would prefer to see second-class privileges curtailed rather than extended," Loud wrote the committee, "yet if

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[10] Ibid.

[11] Ibid.; Library Journal, July 1899, pp. 134-135; "Editorial," Education, November 1899, pp. 177-178.

privileges are to remain as they are, I know of no reason why library books should not be included; in fact, I think they are more entitled to admission than much of the matter that is now accepted." The postmaster general's ambivalent remarks followed in the same vein, though those of some former postmasters general were more favorable.[12]

The Library Post Committee framed a bill and arranged for its introduction in the House. It stipulated that books and other printed matter would be entitled to pass to, from, and between public libraries as well as those operated by schools and nonprofit organizations, for 1 cent per pound, the same as second-class rates. The House post office committee held hearings on the bill, but failed to take further action.[13] This was an inopportune time to try to add library books to the second-class mail privilege as Loud, with the active support of the Post Office Department, had already spent several years (and would spend several more) attempting to restrict eligibility for these low rates.[14]

Prospects for adding library books to the second-class mail did not materially improve in the following years, so the American Library Association and others working for a cheap library post changed their tactics slightly. Supporters noted that a few European countries had a special mail category for library materials, in some

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[12] Scott, _A Cheap Library Post_, pp. 11-12.

[13] _Ibid_., pp. 7-22; _Cong. Rec_., Jan. 27, 1900, p. 7513.

[14] See generally H.R. Rep. No. 260, 54th Cong., 1st sess. (1896), pp. 188-211.

cases including postage-free interlibrary loans. By 1905, the ALA was advocating a special library post of 1 cent per pound.[15] Another tactical shift involved focusing on benefits to rural America, a step that enlisted supporters, both in and out of Congress, from states with large rural populations. The movement for a library post, which had arisen in New England, thus broadened its political and geographical base.

LEGISLATIVE HISTORY OF THE FIRST LIBRARY RATE, 1928

The special library post, created by the Act of May 29, 1928, was but a small part of a major overhaul in second-, third-, and fourth-class rates. Moreover, the library rate attracted little attention during the push for postal reform that began in 1921 and culminated in 1929. In fact, bills to create a library rate emerged in nearly final form in the early 1920s, but kept getting pushed aside as the policymaking process bogged down in debates over second-class rates.

Spencer and The First Congressional Hearings

A school principal from upstate New York led the fight for a library rate that Congress eventually passed in 1928. Alfred L. Spencer, noting the paucity of books in rural communities, began his crusade in 1916. In 1919, as chairman of a New York Library

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[15] Janzow, Library without Walls, p. 401; R. R. Bowker, "The Post Office: Its Facts and Its Possibilities," American Monthly Review of Reviews, March 1905, pp. 325-332.

Association committee, Spencer experimented with a penny library rate. He arranged for his local post office to mail books at a rate of 1 cent for an ordinary volume and 2 cents for larger works; Spencer provided the difference between this low experimental rate and the actual parcel post charges. The demand for the service convinced him of the need for a regular low-cost library rate.[16]

Joining forces with the American Library Association, Spencer showed increasing sensitivity to the realities of the policymaking process. For example, when an Iowa congressman proposed free delivery of library books on rural routes, Spencer and the ALA studied the plan but decided against endorsing it because of opposition in the Post Office Department.[17] Rather, Spencer arranged for his congressman to introduce a bill to reduce rates on library books, which, in 1924, prompted the first major congressional hearings on the issue. Spencer, moreover, took charge of the witnesses, all of whom spoke favorably of the plan.

Representatives from the ALA, AFL, National Grange, Library of Congress, League of American Penwomen, National Education Association, PTA and the General Federation of Women's Clubs testified about the advantages a low library rate would bring to rural America. Several witnesses claimed that 40 to 50 million Americans lived too far from the closest library to enjoy its benefits. In his testimony,

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[16] Library Journal, Sept. 15, 1928, p. 765; New York Libraries, November 1919, p. 20.

[17] "Cheaper Library Book Post," ALA Bulletin, March 1923, p. 184.

Spencer told committee members that two rather different leaders wrote to endorse the plan -- the dean of the Missouri College of Agriculture and Samuel Gompers, long-time president of the American Federation of Labor. "They said this, that it was an essential matter of good public policy that in this wide country, with the far-separated populations, that all classes in all sections should have regular and reliable access to the same sources of information. . . ."[18]

Moreover, most library books, Spencer noted, would circulate locally, certainly within the state of the lending library, so they would not tax the department's transportation resources. In fact, the post office could probably handle library books with little additional cost, he argued, because most of its rural postal carriers were underutilized. Furthermore, library books were especially sensitive to postage because they traveled both to and from the borrower. Thus, the 6 cent average postage for a book became 12 cents for the round trip. Astutely, Spencer also discounted the importance of interlibrary loans, which would require long distance mailings, in favor of underscoring the advantages of a library post to rural residents.[19]

As part of the coordinated lobbying effort, the ALA tried to mobilize all state library commissions and 121 county libraries to support the proposed rate. But congressional action stalled.

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[18] Postage Rates on Books To and From Certain Public Libraries: Hearings on H.R. 7218 before a Subcomm. of the House Comm. on the Post Office and Post Roads, 68th Cong., 1st sess. (1924), p. 7.

[19] Ibid.

Although the House committee exhibited sympathy for the proposal, it honored the post office's request to postpone further consideration until the department completed a study to ascertain the costs of handling the different classes of mail.[20] Once the results of the cost ascertainment report became available, Spencer seized on its findings to demonstrate the financial wisdom of a cheap library rate. Parcel post packages traveled an average of 373 miles, whereas most library books, he estimated, would circulate within 50 miles. He pressed his argument further, claiming that "Our proposed library rate is quite as self-paying as any class of commercial mail" because it would add revenue on the underutilized rural routes.[21]

Despite the compelling argument that a low library rate would be self-supporting or even revenue-producing, the proposal failed to make much headway. As the ALA recognized, a controversial plan to raise postal employees' salaries preempted consideration of much else by the House and Senate post office committees during 1925.[22] Advocates of a cheap library post redoubled their efforts in 1926 and secured introduction of a bill in Congress.[23] During extensive hearings held in 1926 by a joint subcommittee of Congress, the National Association of Book Publishers endorsed the ALA's proposed

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[20] "Book Post," ALA Bulletin, August 1924, pp. 199, 227-228.

[21] Alfred L. Spencer, "The Case for the Library Book Post," Library Journal, Jan. 15, 1925, pp. 77-78.

[22] "Library Book Post," ALA Bulletin, July 1925, p. 198.

[23] "Book Post," ALA Bulletin, March 1926, p. 342; Cong. Rec., March 13, 1926, p. 5587.

library rate but then went further, suggesting that it be extended to those who bought, not just borrowed, books.[24] Congress, however, adjourned before action could be taken, postponing consideration of a library post until the entire fourth-class mail category could be revamped. The post office still opposed the creation of a special rate despite Spencer's pleas that it would be economical and beneficial to rural America.[25]

The Library Rate Passes, 1928

The breakthrough finally came in 1928 when the Post Office Department embraced the idea of a library rate as a small part of a plan to overhaul postage in all classes of mail except the first. During House hearings, Joseph Stewart, speaking for the department, recommended a library rate of 3 cents for the first pound and 2 cents for each additional pound; this rate was to apply through the third zone (300 miles) or within a state (because Texas and California spanned four zones). Except for one change -- a reduction in the rate for the second and additional pounds to 1 cent -- this proposal, approved by postal authorities, became law. Stewart indicated the department's willingness to consider an even lower library rate on rural routes that did not require the use of expensive railway

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[24] Postal Rates: Hearings before the Special Joint Subcomm. on Postal Rates, 69th Cong., 1st sess. (1926), p. 406.

[25] Ibid., p. 1673; Library Journal, Dec. 15, 1926, p. 1139.

transportation.[26]

The library rate provoked virtually no debate as it wound through Congress. The House post office committee reported a bill in keeping with the post office's recommendation.[27] The proposed library rate was among the provisions Representative Clyde Kelly of Pennsylvania called "not in the least controversial, since they have been approved without qualification by every party concerned."[28] Kelly had chaired the 1924 hearings devoted exclusively to consideration of a library post. In explaining the 1928 version of the proposal, Kelly noted that 42 million rural residents had no access to library materials. Parcel post rates for a typical 2-pound book sent within the local, first, and second zones was 8 cents; to the third zone, 10 cents. The proposed library rate reduced the charge to 5 cents, or 10 cents total for return postage. The favorable reception accorded the proposed library rate probably stemmed from the belief that it would produce revenue, not drain it.[29]

Advocates of the library post even succeeded in securing one modification in the bill that made it more attractive to them. Trade journals criticized the House committee's rate of 2 cents for the second and subsequent pounds as penalizing bulk mailings of books,

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[26] Library Journal, March 15, 1928, p. 266; see also Regulating Postal Rates: Hearings on S. 808, 843, 1459, 2040 and H.R. 12030 before the Senate Comm. on Post Office and Post Roads, 70th Cong., 1st sess. (1928).

[27] Cong. Rec., April 2, 1928, pp. 5780-5781.

[28] Ibid., p. 5788.

[29] Ibid., p. 5786.

which formed the backbone of some traveling libraries.[30] A Senate amendment reducing the charge for additional pounds to 1 cent met with unanimous approval in a conference committee.[31] As amended, the proposed library rate survived several more conference committees that haggled over second-class rates, and was signed by the president on May 29, 1928.[32]

The 1928 law provided that public libraries or nonprofit organizations could send and receive books for 3 cents for the first pound and 1 cent for each additional pound in the first three parcel post zones (up to 300 miles) or within the state. In addition, the law stipulated that institutions using library rates had to provide

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[30] Library Journal, April 15, 1928, pp. 363-364; "Unfair Discrimination in Book Post," Libraries, May 1928, pp. 243-244.

[31] Cong. Rec., May 2, 1928, p. 7607; May 19, p. 9137; May 26, p. 10138.

[32] 45 Stat. 940, 943.

the post office with evidence of their nonprofit status.[33]

Librarians applauded the law, but signaled their interest in securing an even broader privilege. "The next step is to get lower postal rates for all books sent to any part of the country, particularly when a special rate is granted to magazines and newspapers," one library journal proclaimed. "To do otherwise would be to discriminate against educational activities."[34] The ALA, however, noted that it preferred to study the effects of the existing

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[33] Ibid., p. 943:

> (d) Books, consisting wholly of reading matter and containing no advertising matter other than incidental announcements of books, when sent by public libraries, organizations or associations not organized for profit and none of the net income of which inures to the benefit of any private stockholder or individual, as a service to county or other unit libraries or as a loan to readers or when returned by the latter libraries or readers to such public libraries, organizations, or associations shall be charged with postage at the rate of 3 cents for the first pound or fraction thereof, and 1 cent for each additional pound or fraction thereof, except that the rates now or hereafter prescribed for third or fourth-class matter shall apply in every case where such rate is lower than the rate prescribed herein for books under this classification: Provided: That this rate shall apply only to such books as are addressed for local delivery, for delivery in the first, second, or third zone, or within the State in which mailed.
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> Public libraries, organizations, or associations before being entitled to the foregoing rates shall furnish to the Postmaster General under such regulations as he may prescribe, satisfactory evidence that none of the net income of such organizations inures to the benefit of any private stockholder or individual.

[34] "Book Post Bill in Congress," Libraries, June 1928, p. 316; quote from "Lower Postal Rates for Libraries," July 1928, p. 351.

law before launching another campaign.[35] In fact, one year after the library rate took effect, an ALA postal committee expressed concern that fewer than 100 institutions had registered with the post office to take advantage of it.[36] Some observers claimed the registration procedure discouraged use.[37]

Postmaster General Harry S. New described the special library rate in glowing terms; the "rate will undoubtedly promote and facilitate the circulation of meritorious literature, increase the spread of knowledge, and bring some measure of pleasure and contentment to those previously unable to have access to the books desired by them."[38] But two years later, only 300 libraries had registered to use it.[39]

Use of the library post may have started slowly, but a few years after its inauguration statewide library services had greatly expanded their operations based on this postal privilege. For example, the Wisconsin Free Library Commission, which had sent up to 4,000 books a year under 1914 parcel post rates, was loaning about 100,000 volumes by 1937. Borrowers living in villages and along rural

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[35]"The Lower Postal Rates on Library Books," Libraries, October 1928, p. 415; "Library Book Post," Library Journal, Nov. 15, 1928, p. 930; ibid., Jan. 15, 1929, p. 71.

[36]"The Library Postal Rates," New York Libraries, November 1929, pp. 14-15; see also "Neglected Postal Rates," Libraries, April 1929, p. 162.

[37]"Editorial Forum," Library Journal, July 1929, p. 598.

[38]1928 PMG Annual Report 3.

[39]1930 PMG Annual Report 53.

routes received their books directly; those in larger towns called at their local library for books sent by the state commission. Some states developed adult education programs using the library rate to send packages of books on related subjects to students.[40] County library systems also used the special rate to move books between central collections and branches.[41]

EXTENDING THE LIBRARY RATE

The library rate established in 1928 remained unchanged for twenty years, when it was raised slightly. In the interim, one development, the creation of a general book rate, bore some relation to the library post.

The Library and Book Rates

President Franklin D. Roosevelt created the book rate by proclamation in 1938. As part of Depression era emergency legislation, the president had been empowered to reduce postal rates, though not increase them. Book publishers, who had pressed for lower rates in 1925 and 1928 hearings, now directed their efforts at President Roosevelt. Publishers and their allies, including library and education groups, formed a National Committee to Abolish Postal Discrimination Against Books and retained as counsel a prominent

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[40] Marion Humble, _Rural America Reads_ (New York: American Association for Adult Education, 1938), pp. 71-83.

[41] Mildred W. Sandoe, _County Library Primer_ (New York: H.W. Wilson Co., 1942), pp. 99-100.

attorney, Morris Ernst. Ernst set out the publishers' arguments in a memorandum to Roosevelt. He noted, for example, that a 2-pound magazine sent from coast to coast paid 3 cents postage, where a book of equal weight sent by parcel post cost 26 cents. Roosevelt responded by establishing a special book rate of 1 1/2 cents a pound regardless of distance.[42] The president kept renewing the rate until Congress in 1941 added the special book rate to statute, but raised it to three cents a pound. Congress hiked the book rate again in 1944 and 1948 until it stood at 8 cents for the first pound and 4 cents for each additional pound.[43]

Book publishers, understandably pleased with the 1938 book rate, enlisted the cooperation of librarians and educators to vigorously oppose the increases Congress proposed in the 1940s.[44] Initially, book postage was cheaper than the library rate. And even as the book rate climbed, librarians found it useful because their special rate applied only within the state or up to 300 miles. A year after the book rate took effect, the Office of Education estimated that it saved schools and libraries $1.6 million.[45] The book rate remained cheaper than parcel post, which was the alternative for long-

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[42] Fed. Reg., Oct. 31, 1938, p. 2588.

[43] Jane Kennedy, "United States Postal Rates, 1845-1951," (Unpublished Ph.D. dissertation, Columbia University, 1955) pp. 81-85; "Committee Formed to Secure Lower Postal Rates," Publisher's Weekly, Oct. 8, 1938, p. 1360; "Major Co-operative Effort Rewarded by New Book Post Provisions," Publisher's Weekly, Nov. 3, 1951, pp. 1793-1795.

[44] "Booksellers Can Help Preserve Low Postal Rate for Books," Publisher's Weekly, May 24, 1947, p. 2567.

[45] S. Rep. No. 1086, 83rd Cong., 2d sess. (1954), p. 200.

distance mailings (i.e., more than 300 miles) of library materials.[46] Librarians had an additional incentive for siding with publishers in opposing increases in the book rate: publishers passed along increases in delivery costs, which cut into library budgets.[47]

While the book rate rose sharply in the 1940s, the library post faced only one modest increase. In 1947, President Harry S Truman and the postmaster general asked for rate increases to cover part of the mounting postal deficit. At the time, revenue from fourth-class mail, which included the book and library rates, fell an estimated $47 million short of its costs.[48] In 1948, the book rate was nearly doubled, while that for library materials rose from 3 cents to 4 cents for the first pound.[49] Unable to thwart the general postage hike in 1948, the American Library Association asked Congress in 1949 to restore the library rate to 3 cents for the first pound <u>and</u> permit mailings beyond the 300-mile limit.[50] Paul Howard, director of ALA's Washington office, testified that libraries would have to seek increased tax revenues to cover expenses, not only because of the higher library rate, but also because the near doubling

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[46] 1948 <u>Postal Laws & Regulations</u> 235-242.

[47] <u>Increase in Postal Rates, Part 4: Hearings on S. Res. 43 before the Senate Comm. on Civil Service</u>, 80th Cong., 1st sess. (1947), pp. 363-365.

[48] <u>Cong. Rec.</u>, June 18, 1948, p. 8908.

[49] "New Book Postage Rates Go Into Effect January 1," <u>Publisher's Weekly</u>, Dec. 25, 1948, pp. 2469-2471.

[50] <u>ALA Bulletin</u>, May 1949, p. 167.

of the book rate had hurt them as well as booksellers.[51]

Adding Films to the Library Rate

Congress did not heed these pleas in 1949, but in the early 1950s it began considering proposals to extend the library privilege in two directions -- by including library materials other than books and by lifting the 300-mile limit.

In 1953, the Committee on Equitable Postal Rates for Educational Films, a coalition of several dozen education and library organizations, began pressing Congress to make films eligible for the library and book rates. A spokesman for the National Education Association, who also represented the coalition, argued that film use had mushroomed since the creation of the library and book rates. Moreover, "[b]ecause of the high unit cost of films, relatively few organizations and individual schools can afford to purchase them and must depend upon film library service through the mails."[52] The NEA representative estimated that postage on films amounted to $6 million under current rates, and would be cut by about half if Congress included them in the book and library posts.[53] In questioning Julia D. Bennett, director of the ALA's Washington office, Senator Mike Monroney of Oklahoma observed that books mailed "under a public-

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[51] "Postal Rate Hearings," ALA Bulletin, June 1949, p. 206.

[52] Authorizing Educational Films and Related Material to be Transmitted at Book Rates: Hearings on S. 971 before the Senate Comm. on Post Office and Civil Service, 83rd Cong., 1st sess. (1953), p. 4.

[53] Ibid.

service rate" generally reached one reader, while "a film going out would, on the average, serve 25 or 50 or even 75 or 100 people. So you magnify whatever reductions there are in the cost, if the transportation of the film is not just to serve one, but it reaches an audience of many."[54] Bennett reported that in November 1952, the nation's public libraries had circulated 231,826 educational films reaching an audience of 2.9 million viewers.[55] A witness testifying for the National Grange told the committee that films had become an important tool in demonstrating new farming techniques.[56]

Both the Senate and House committees strongly supported the bill.[57] Only the post office testified against the proposal, estimating it would reduce revenues more than the $3 million one proponent had mentioned. But, as South Carolina Senator Olin Johnston told the department's witness, "I am convinced this is just as important as the subsidies in other classes."[58] The department also feared that deciding eligibility would prove troublesome because the library rate applied to nonprofit organizations as well as

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[54] Ibid., p. 12.

[55] Ibid., p. 11.

[56] Ibid., pp. 12-14.

[57] S. Rep. No. 293, 83rd Cong., 1st sess. (1953); H.R. Rep. No. 668, 83rd Cong., 1st sess. (1953).

[58] Authorizing Educational Films and Related Material to be Transmitted at Book Rates: Hearings on S. 971 before the Senate Comm. on Post Office and Civil Service, 83rd Cong., 1st sess. (1953), p. 17.

libraries.[59] The bill passed without debate.[60]

The law specifically entitled schools, colleges, and universities, along with public libraries and nonprofit organizations, to use the preferred rate to send and receive films. Presumably most educational institutions already qualified for the library rate as nonprofit organizations, but this was the first time they were mentioned in statute. The 1953 law also enumerated the eligible types of nonprofit organizations; not surprisingly, they were the same ones entitled to the preferred second- and third-class rates. Whether intentionally or not, the statutory language permitted _commercial_ producers and distributors to send films to libraries and the other eligible mailers at the preferred rate. Books, in contrast, could just be sent to and from borrowers at the reduced rate.[61]

NO ZONES AND NEW LIBRARY MATERIALS

Even as success on reducing postage for films seemed imminent, the American Library Association announced an ambitious long-term goal at its 1953 convention: "that a single unzoned and uniform rate for reading matter -- in books, magazines and newspapers -- and for educational audio-visual materials should be the ultimate

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[59] _Postage Rate for Educational Film: Hearings on H.R. 1939 and S. 971 before the House Comm. on Post Office and Civil Service_, 83rd Cong., 1st sess. (1953), p. 12.

[60] _Cong. Rec._, May 21, 1953, p. 5303; July 7, p. 8124.

[61] Act of July 20, 1953, 67 _Stat_. 183, 184; _Fed. Reg._, Aug. 15, 1953, pp. 4889-4890.

objective. . . ."[62] The ALA, of course, never succeeded in putting books on the same terms with periodicals, but in 1958 it did secure an unzoned library rate for a variety of educational materials.

Public Service and the Library Post

At the request of President Dwight D. Eisenhower, Congress began exploring a plan to put the post office on a sounder financial footing. In 1953, the Senate launched a major study of all rates and contracted with the National Education Association to estimate the public service value of postal operations. (See chapter 1 for details of this inquiry.) NEA, in turn, enlisted the ALA to gather data on libraries' use of the mails.[63] From the outset, this round of proceedings promised to treat the library rate favorably. Kansas Senator Frank Carlson, chairman of the post office committee, announced that the study would proceed on the assumption that "A segment of postal service concerns activities having to do with education and particularly adult education. Books, magazines, newspapers, films handled through the mail . . . ha[ve] to do in the broadest way with education." The major unanswered question, Carlson noted, was how to finance the public service function.[64] The NEA's

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[62]"Postal Rates," ALA Bulletin, September 1953, p. 363.

[63]"Postal Rates," Wilson Library Bulletin, December 1953, p. 380.

[64]Cong. Rec., July 24, 1953, p. 10053; see also Postal-Rate Revision, Vol. 2: Hearings on H.R. 6052 before the House Comm. on Post Office and Civil Service, 83rd Cong., 1st sess. (1953), pp. 477-478.

part of the Senate study concluded, not surprisingly, that special rates for library and other educational materials were justified by their value to the nation, and a portion of their cost should be considered a public service.[65]

Far-reaching proposals addressing the basic structure of rate policy emerged from this round of investigations, but one of fairly modest dimensions expanded the library privilege. Building on the findings of the NEA study, key postal policymakers introduced bills to "rectify practically all of the significant irregularities in the postal rates affecting educational and cultural materials sent through the mails."[66] Sponsored by Republicans and Democrats on the House and Senate post office committees, the bills proposed to eliminate the 300-mile delivery limit on the library rate and to abolish the requirement that users obtain a permit from the department. In addition, they would make certain materials -- bound academic theses, bound periodicals, bibliographies, and others -- eligible for book and library rates.[67]

The development of specialized library collections had invalidated the rationale for the 300-mile (or within state) limit on the library rate, witnesses testified. When created in 1928, the special library post was principally meant to serve library

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[65] S. Rep. No. 1068, 83rd Cong., 2d sess. (1954), pp. 231-232.

[66] John E. Moss, Jr., "Libraries, Education and the Postal Service," Library Journal, May 1, 1955, pp. 1080-1081.

[67] Ibid.; see also Olin D. Johnston, "Educational Use of the Mails," National Education Association Journal, May 1955, pp. 291-292.

extension programs within states. But, "[i]n the interest of economy and efficiency, regional library services for scholarly and research materials have been established, and a nationwide network exists for the interchange of materials needed for research," the Senate committee reported.[68] The ALA witness underscored the argument that with the specialization of knowledge, statewide systems were no longer self-sufficient, and that researchers needed access through the mails to regional and national collections.[69] The Senate committee also agreed that registering libraries accomplished little when audiovisual materials, admitted to the library post in 1953, could be sent without obtaining a permit.[70]

The other aspect of the proposal, to admit more educational materials to the library rate, also received support from all witnesses except those representing the Post Office Department. Supporters complained that the existing classification scheme imposed unnecessary burdens on libraries.[71] The ALA spokesman explained that some educational materials commonly exchanged by mail often had to go at book or parcel post rates while others went at library rates; this required separate packaging and handling even when sent to the same address. In addition, the post office considered scholarly

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[68] S. Rep. No. 517, 84th Cong., 1st sess. (1955), p. 8.

[69] _To Readjust Postal Classification on Educational and Cultural Materials: Hearings on H.R. 5139 and H.R. 5142 before the House Comm. on Post Office and Civil Service_, 84th Cong., 1st sess. (1955), p. 24.

[70] S. Rep. No. 517, 84th Cong., 1st sess. (1955), p. 8.

[71] _Ibid_.

bibliographies to be advertising for book publishers, rendering them ineligible for the nonprofit library rate. The ALA urged Congress to add bibliographies, along with bound magazines, to the preferred subclass. Bound magazines had also been kept from interlibrary loans because the publications contained advertising.[72] Speaking against extending the library rate, the assistant postmaster general noted that the department lost $1.2 million on it during 1954.[73] Despite the department's reservations, Congress approved the expanded library rate as part of the Postal Policy Act of 1958.[74] (See chapter 1 for details on the philosophy underlying the 1958 Act.)

In 1958, the Post Office Department also relaxed the requirements for use of the library rate. Mailers no longer had to obtain a permit from their postmaster; they needed only to indicate the name of the eligible library or organization in the address or return address.[75]

Adding Scientific Kits

Clarification of the library rate became necessary in 1959 and it opened the door to further additions. At the request of the

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[72] To Readjust Postal Classification on Educational and Cultural Materials: Hearings on H.R. 5139 and H.R. 5142 before the House Comm. on Post Office and Civil Service, 84th Cong., 1st sess. (1955), pp. 21-27.

[73] Ibid., p. 6.

[74] Act of May 27, 1958, 72 Stat. 134, 140-141; Fed. Reg., July 31, 1958, p. 5762.

[75] Fed. Reg, April 9, 1958, p. 2301; May 9, 1958, p. 3100.

post office, Congress substituted "sound recordings" for "phonograph recordings" and clarified a provision dealing with books containing blank spaces for notations, typically school workbooks. During the hearings on these uncontroverted modifications, the ALA and National Audiovisual Association intervened to request two minor additions to the library privilege. The ALA sought to bring unbound periodicals within the coverage of the library rate, and the audiovisual association asked that printed scripts and guides be permitted to accompany films. The department agreed to these requests.[76]

These hearings also provided an opportunity to add an entirely new type of material to the library rates -- scientific and mathematical kits. A representative of Science Materials Center, affiliated with the Library of Science in New York, argued that such educational kits and instruments deserved the same postal status as library materials. The federal investment in science education, which rose dramatically after the Soviet Union's success with Sputnik, militated in favor of extending preferential rates to scientific teaching tools, he claimed. He told the committee that some American schools imported science kits from the Soviet Union because its heavily subsidized production and distribution made them economical

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[76] Clarifying Postage Rates for Educational, Cultural and Library Materials: Hearings on H.R. 4595 and H.R. 4596 before the House Comm. on Post Office and Civil Service, 86th Cong., 1st sess. (1959); H.R. Rep. No. 252, 86th Cong., 1st sess. (1959); Special Postage Rates for Educational, Cultural, and Library Materials: Hearings on H.R. 4595 and H.R. 4596 before the Senate Comm. on Post Office and Civil Service, 86th Cong., 1st sess. (1959).

even in the United States.[77] The Senate postal committee reported a bill adopting his suggestions as well as permitting materials mailed to and from cooperative processing centers to be sent at the library rate.[78] The post office interposed no objections, and the bill passed without debate.[79]

Administratively, the department made one additional change of some value to users of the special (i.e. book) and library rates. In 1965, it relaxed the regulation on enclosures sent with books. The new rule permitted mailers in these two subclasses to enclose announcements, order forms, envelopes, and invoices as long as they dealt with books and were included in a book shipment.[80]

ON THE EVE OF POSTAL REORGANIZATION

Shortly before the U.S. Postal Service replaced the Post Office Department, Congress raised library rates and lengthened the list of eligible mailers.

While eligibility for the library privilege had grown steadily through the 1950s, the rate itself -- 4 cents for the first

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[77] _Special Postage Rates for Educational, Cultural, and Library Materials: Hearings on H.R. 4595 and H.R. 4596 before the Senate Comm. on Post Office and Civil Service_, 86th Cong., 1st sess. (1959), pp. 17-28.

[78] S. Rep. No. 1496, 86th Cong., 2d sess. (1960).

[79] _Cong. Rec._, June 18, 1960, pp. 13197-13198; July 2, p. 15756; Act of July 14, 1960, 74 _Stat._ 479; _Fed. Reg._, Sept. 21, 1960, p. 9048. See also 1960 _PMG Annual Report_ 113-114.

[80] _Fed. Reg._, June 4, 1965, p. 7392.

pound and 1 cent for each additional pound -- remained unchanged since 1948. As part of a sweeping rate hike, the administration in 1967 asked Congress to consider raising the library post to 8 cents for the first 2 pounds and 3 cents for each additional pound.[81] A House post office subcommittee reduced the library rates slightly, only to have the full committee restore them to the level of the administration's request.[82] Not all representatives favored the rate increases. At least one expressed concern that higher library postage would fall especially heavily on the small country libraries that depended on interlibrary loans for much of their material.[83] The House report enlarged eligibility only slightly, adding films narrower than 16-millimeters.[84]

The major changes came from the Senate. The ALA witness, Edmon Low, convinced a friendly Senate committee to scale back the proposed increase in the library rate. Low pointed out that libraries would suffer from increases in all rates, particularly book and library postage. He reported the results of an ALA state-by-state survey that showed higher rates would impair interlibrary loans and

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[81] 1967 PMG Annual Report 98.

[82] "Postal Rate Revision," ALA Bulletin, September 1967, p. 923; Postal Revenue and Federal Salary Act of 1967: Hearings on H.R. 7977 before the House Comm. on Post Office and Civil Service., 90th Cong., 1st sess. (1967), pp. 11, 36.

[83] Cong. Rec., Oct. 11, 1967, p. 28634.

[84] Postal Revenue and Federal Salary Act of 1967: Hearings on H.R. 7977 before the House Comm. on Post Office and Civil Service., 90th Cong., 1st sess. (1967), p. 144.

especially loans to readers in rural areas. Furthermore, Low argued that higher book postage would be passed along by publishers and cut further into libraries' tax-supported fixed budgets.[85] The rate finally adopted -- 5 cents for the first pound, and 2 cents for each additional pound -- emerged from the Senate post office committee after extensive public hearings.[86] At the old library rate, a 10-pound package cost 13 cents; at the new rate, 23 cents.[87] The Senate committee also extended the preferred fourth-class rate to a new category of materials and mailers -- museums and herbaria.[88] The conference reports retained this provision and it passed without comment during the floor debates.[89]

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[85] "Postal Rates Increase Modified for Libraries," ALA Bulletin, January 1968, p. 29.

[86] "Postal Rates on Library, Education Materials Go Up," Scholastic Teacher, Feb. 1, 1968, p. 4.

[87] Postal Rates: Hearings on H.R. 7977 before the Senate Comm. on Post Office and Civil Service, 90th Cong., 1st sess. (1967), pp. 431-440.

[88] S. Rep. No. 801, 90th Cong., 1st sess. (1967), p. 13.

[89] The law entitled museums and herbaria to send "museum materials, specimens, collections, teaching aids, printed matter, and interpretative materials intended to inform and to further the education work and interests of museums and herbaria. . . ." Act of Dec. 16, 1967, 81 Stat. 620. See also Fed. Reg., Jan. 3, 1968, p. 27.

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Preferred Rates Under the Postal Reorganization Act

Although the Postal Reorganization Act swept away the U.S. Post Office Department and revamped the ratemaking process, it only slightly altered the status of preferred mailers. Congress, after all, reaffirmed the public service philosophy enunciated in 1958; it retained control over the preferred classifications even though it relinquished control over other rates; it provided little guidance to the new postal establishment in deciding eligibility; and, as before, it continued to extend the list of preferred mailers. Thus, all the problems connected with the preferred classes under the old Post Office Department survived the transformation of the institution. Exacerbating the situation, the remarkable growth of the nonprofit sector, with its sophisticated fundraising methods, increased the demands placed on the preferred categories.

LEGISLATIVE HISTORY OF THE PREFERRED CLASSES

The origins of the U.S. Postal Service have been recounted often enough that the general details need not be repeated here.[1] The legislative course of the preferential rate provisions does, however, deserve attention.

Background

Of the developments that propelled postal reorganization -- the arrival of a politically astute postmaster general, recurring deficits, a mail handling crisis in Chicago, trouble with unions and others -- few directly involved preferential rates. The deficits, of course, stemmed partly from below-cost postage. Soon after he took office as postmaster general, Lawrence F. O'Brien pointed to rising volumes of nonprofit mail as contributing to the shortfall. In a 1967 speech before the Magazine Publishers Association and the American Society of Magazine Editors, O'Brien proposed converting the Post Office Department into a nonprofit government corporation. President Lyndon B. Johnson took the first formal step toward reorganization by appointing Frederick R. Kappel, retired chairman of AT&T, to head a Commission on Postal Reorganization.

The Kappel Commission carefully distinguished between subsidies to the postal service as a whole, which should be eliminated, and those to specified groups, which it characterized as

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[1]See generally Harold E. Dolenga, "An Analytical Case Study of the Policy Formulation Process (Postal Reform and Reorganization)," (Unpublished Ph.D. dissertation, Northwestern University, 1973); Alan L. Sorkin, The Economics of the Postal System (Lexington, MA: D.C. Heath & Co., 1980); and John T. Tierney, Postal Reorganization: Managing the Public's Business (Boston: Auburn House Publishing Co., 1981).

the "real 'public service' subsidies."[2] Questioning whether the postal service was the most "efficient and visible way of assisting these [charitable and educational] groups," the commission nevertheless recommended a method of funding preferred rates if Congress wished to continue them. It advised against using general tax revenues because "such a procedure would mean retention of the appropriation link with the Congress." Instead, the commission proposed "that such costs be added to the other expenses of the Corporation and spread among postal customers in the same manner as other institutional costs." A ceiling on such subsidies would prevent mailers paying regular rates from shouldering too heavy a burden.[3] The commission predicated its recommendation on the belief that subsidies for preferred rates constituted only a small part of total postal costs, an estimated 3.8 percent.[4]

The Preferred Classes in Congress

President Richard M. Nixon authorized his postmaster general, Winton M. Blount, to review the Kappel Commission's findings. Legislation finally submitted to Congress retained much of the basic structure outlined by the commission, but departed from its

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[2]President's Commission on Postal Organization, Towards Postal Excellence (Washington, D.C.: Government Printing Office, 1968), pp. 49-50.

[3]Ibid., p. 62.

[4]Ibid., pp. 135-142.

recommendations involving the preferred rates.[5] Blount urged Congress to retain the subsidies and appropriate sufficient funds to make up the revenue forgone. "If the Congress should fail to appropriate the necessary funds," he told a House committee, "the Postal Service is required to adjust rates for free and reduced-rate mail patrons by an amount necessary to yield equivalent funds."[6]

Unlike the Kappel Commission, the Nixon administration preferred to leave Congress in charge of the subsidized rates. Even before the White House sent its bill to Congress, hearings had indicated stiff resistance to eliminating congressional control over the public service aspects. Former Senator Frank Carlson, long-time member of the post office committee and advocate of low rates for preferred mailers, testified on behalf of retaining the public services even if the post office were converted to a business-like corporation.[7] Like the administration, the House planned to continue the preferred rates indefinitely. The House report on reorganization declared that "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

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[5] For the President's message, see H.R. Doc. No. 91-313, 91st Cong., 2d sess. (1970).

[6] Post Office Reorganization, Part One: Hearings before the House Comm. on Post Office and Civil Service, 91st Cong., 1st sess. (1969), p. 334.

[7] Postal Modernization, Part One: Hearings on H.R. 4 and H.R. 11750 before the Senate Comm. on Post Office and Civil Service, 91st Cong., 1st sess. (1969), pp. 579-586.

Postal Service the revenue foregone by the free or reduced rates."[8] Congress should retain control, the House post office committee explained, because these rates entailed "questions of policy that are less appropriate to the expertise of a ratemaking commission than to a congressional determination of the public interest."[9]

The Senate post office committee took a different stand. Its report proposed to phase out the preferences and turn ratemaking over to the Postal Service and the rate commission -- with some guidance from the committee:

> Notwithstanding its rejection of a proposal to impose its views on the new Postal Service by law, the committee agreed 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 for within-county newspapers, for libraries, for books, and for associations of rural electrification co-ops were enacted for very good reason -- that the public generally benefits from such rates.[10]

Senator Gale W. McGee, chairman of the post office committee, explained that its version of the bill allowed preferred mailers up to ten years to adjust to rate increases.[11]

Not surprisingly, the conference report compromised the

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[8]H.R. Rep. No. 91-1104, 91st Cong. 2d sess. (1970), p. 11.

[9]Ibid., p. 18.

[10]S. Rep. No. 91-912, 91st Cong., 2d sess. (1970), p. 12. See also Postal Modernization: Hearings on S. 3842 before the Senate Comm. on Post Office and Civil Service, 91st Cong., 2d sess. (1970).

[11]Cong. Rec., June 26, 1970, pp. 10031-10032.

issue. It gave preferred mailers ten years to reach a postage level that did not "exceed the direct and indirect postal costs attributable to mail of such class or kind (excluding all other costs of the Postal Service). . . ."[12] McGee told the Senate that the loss created by the reduced rates "will be made up by direct congressional appropriation and if Congress fails to appropriate the money, the Postal Service may increase the rates."[13] One of the Senate conferees noted that even after ten years the law "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." He singled out those groups "engaged in health research and rehabilitation" as especially important.[14] Another took comfort in the realization that Congress could, in the ten years it took to phase out the subsidy, rewrite the law to protect the preferred rates.[15]

On August 12, 1970, President Nixon signed the Postal Reorganization Act, and eleven months later the Post Office Department became the U.S. Postal Service. The law gradually reduced the preferential rates for in-county delivery of periodicals, the

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[12]Conf. Rep. on H.R. 17070, Cong. Rec., Aug. 3, 1970, p. 27070,

[13]Cong. Rec., Aug. 3, 1970, p. 26954.

[14]Ibid., p. 26957.

[15]Cong. Rec., Aug 6, 1970, p. 27599. For comments on the library rate see, e.g., ibid., June 16-18, 1970, pp. 19850, 19855, 20495; on in-county, see, e.g., ibid., June 16-18, pp. 20207, 20447, 20457, and June 29-30, p. 22313; on nonprofit rates, see, e.g, ibid., June 16-18, pp. 19846, 19855, 20448, 20496; and on preferred mailers generally, see, e.g., ibid., June 16-18, pp. 20450, 20483-84 and June 29-30, p. 22338.

publications and third-class mailings of certain nonprofit organizations, and library materials. Even after higher postage had been phased in, minor rate preferences would remain because revenue from these preferred classes would only have to cover the "direct and indirect postal costs attributable" to them. The pace of the phase-in depended on annual congressional appropriations.[16]

MAJOR REVIEWS AND CONGRESSIONAL CHANGES IN POLICY

The Postal Reorganization Act ended decades of relatively stable rates for nonprofit organizations, library materials and in-county delivery of periodicals. Even before passage of the PRA, preferred mailers recognized the danger in reducing the role of Congress, which had always been friendly, and they lobbied accordingly.[17] One trade journal presciently observed that the reorganization plan "would mean an annual fight in Congress."[18] The new process not only necessitated yearly appropriation hearings and debates but also prompted occasional policy reviews, which sometimes

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[16]Act of Aug. 12, 1970, 84 Stat. 719, 762-763.

[17]See, e.g., Publisher's Weekly, May 11, 1970, p. 23; ibid., June 29, 1970, p.76.

[18]Susan Wagner, "Pending Bills Threaten Postal Rates for Books," Ibid., June 8, 1970, pp. 128-129.

led to changes in the act itself.[19]

The 1974 Amendments

Upset with the first ratemaking proceeding held under the PRA, preferred mailers turned to the courts and Congress. Book publishers and the American Library Association complained that the PRC had failed to fairly weigh the cultural value of materials in the special fourth classes (book and library rates), as the PRA prescribed.[20] But an appellate court rebuffed this claim, observing that "If petitioners are aggrieved by asserted insensitivity to the unquestionably major contributions made to our civilization by the type of mail matter for which they are spokesmen, the remedy is legislative."[21]

Preferred mailers and others discovered that they could obtain a sympathetic hearing in Congress. Key congressional leaders regretted having relinquished direct control over postal affairs, and

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[19]Focusing on the policy and administration of the preferred classes, this section pays relatively little attention to the annual appropriations debates and the several ratemaking proceedings. Although they generated reams of data and provided mailers with a forum in which to present their cases, most of the critical information and arguments were also aired in the congressional reviews, which will be covered here. For convenient summaries of year-by-year developments, see Congressional Quarterly Almanac. Some trade journals cover postal developments for the preferred mailers; for in-county, see Publishers' Auxiliary and Editor & Publisher; for nonprofit mailers, see Association Management; and for library rates, see Publishers Weekly.

[20]Susan Wagner, "AAP and Allies Challenge Postal Rate Decision," Publisher's Weekly, July 17, 1972, p. 92.

[21]Association of American Publishers, Inc. v. U.S. Postal Service, 485 F. 2d 768, 775 (D.C. Cir. 1973).

they began introducing legislation to modify the reorganizaton act.[22] The House post office committee, for example, reported a bill in 1973 to extend the phased increases for both regular and preferred mailers, and to establish permanently reduced rates for nonprofit publications. The committee also urged Congress to underscore the importance it attached to the "educational, cultural, scientific, and informational value" of certain mail matter. Much of the testimony presented during hearings focused on the special value of "small regular rate publications, nonprofit publications, and libraries and educational institutions."[23] The bill died after a debate in which one representative chastised the Postal Rate Commission for ignoring "55 years of congressional policy concerning the rate treatment of nonprofit community oriented organizations."[24]

In its next session, Congress revived some of the proposals it rejected in 1973 and adopted them as part of amendments to the reorganization act. The legislation, framed by the Senate post office committee, extended the phased increases over a 16-year period instead of the original ten for preferred second-class, nonprofit third-class and library mailers. Regular second-class mailers received a shorter extension. The Senate committee argued that rate increases under the

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[22] Sorkin, The Economics of the Postal System, pp. 167-169.

[23] H.R. Rep. No. 93-369, 93rd Cong., 1st sess. (1973), p.. 3-6; John Fischer, "The Easy Chair: A Threat of Death by Mail," Harper's, May 1973, pp. 30-33.

[24] Cong. Rec., July 23, 1973, p. 25477; "House Kills Postal Bill: ALA, AAP Lose Round One," Publisher's Weekly, Aug. 6, 1973, p. 29.

PRA had far exceeded Congress's expectations, hurting mailers who had long been protected in postal policy. The committee projected that second-class nonprofit rates might rise by 700 percent at the end of the phase-in period called for by the PRA.[25] A minority report opposed the bill on the grounds that big, profitable publishing houses would be the main beneficiaries, and that preferred mailers would still enjoy a substantial subsidy even after all increases were phased in.[26] The measure passed easily after extensive debate, much of it praising the contributions of nonprofit organizations, the work of libraries and the role of the rural press.[27]

Two questions of eligibility arose during the deliberations. A senator offered an amendment to add volunteer fire and ambulance companies to the list of mailers entitled to reduced second- and third-class rates. The amendment was withdrawn after Gale McGee, chairman of the Senate post office committee, assured its sponsor that these companies qualified as philanthropic as long as they were not primarily social clubs. A Maine senator then inquired whether fishermen, treated as equivalent to farmers under some laws, could qualify as agricultural for the reduced rates. The rationale for one applied to the other, he said; better communication among members of the industry improved the production of food for society. "It seems

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[25] S. Rep. No. 93-765, 93rd Cong., 2d sess. (1974).

[26] Ibid.; Cong. Rec., May 9, 1974, pp. 14054-14056.

[27] Cong. Rec., May 9, 1974, pp. 14050-14060, 14075-14078; June 19, pp. 19802-19817; Act of June 30, 1974, 88 Stat. 287-288. See also Susan Wagner, "Congress Acts to Ease Rates for Book Mailers," Publisher's Weekly, July 1, 1974, pp. 22-23.

entirely logical," McGee replied.[28]

More Preferred Mailers: The 1976 Amendments

Soon after passage of the 1974 amendments to the reorganization act, Congress began working on a variety of proposals that eventually expanded eligibility for preferred rates. This round of proceedings was triggered primarily by "the ruling of a single administrative law judge for the Postal Rate Commission [that] threatened to increase mailing rates for local [i.e., in-county] newspapers by 250 per cent, books by 96 per cent, magazines by 121 per cent and nonprofit publications by 132 per cent," Senator Barry Goldwater wrote.[29] Goldwater and others believed that ratemaking under the PRA did not adequately consider the traditional value attached to certain mail matter.[30] Preferred mailers strongly supported the provision of the 1976 law that required the Postal Rate Commission to consider "the educational, cultural, scientific and informational value to the recipient" in setting rates.[31]

Extending the library rate to publishers when they mailed books to libraries or schools was the most important change relating

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[28] Cong. Rec., May 9, 1974, pp. 14068-14070.

[29] Ibid., Aug. 24, 1976, p. 27413.

[30] Ibid., p. 27414.

[31] Act of Sept. 24, 1976, 90 Stat. 1303, 1311; Cong. Rec., Sept. 10, 1976, p. 29748; Susan Wagner, "Book World Hails Passage of McGee Postal Bill," Publisher's Weekly, Sept. 13, 1976, p. 49. For background on the 1976 amendments, see generally "Moves in Congress to Restructure the U.S. Postal Service: Pro & Con," Congressional Digest, November, 1976.

to preferred rates in the 1976 law.[32] At least since the 1940s, librarians had lobbied alongside book publishers to keep the book rate as low as possible. (See chapter four.) Librarians argued that publishers passed along mailing costs when sending books to libraries, reducing libraries' limited book-buying budgets. A House report endorsing the proposed extension of library rates to book publishers explained that

> Libraries and schools currently receive at least half their books by mail. As a result, every dollar paid for book postage further erodes library and school budgets. The situation is worse for small rural libraries and schools which receive an estimated 90 percent of their books by mail. Under this amendment, these libraries would benefit from the lower rate.[33]

Extending the preferred fourth-class rate to commercial publishers was justified by the indirect benefits accruing to libraries. This modification of the library rate was expected to cost about $5 million.[34] Shortly after the 1976 amendments passed, librarians and publishers began lobbying for an administrative interpretation or a legislative action that allowed libraries to return materials to

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[32] 90 Stat. 1312.

[33] H.R. Rep. No. 94-391, 94th Cong., 1st sess. (1975), p. 12; Susan Wagner, "Postal Bill Before House Revives Public Service Idea," Publisher's Weekly, Sept. 1, 1975, p. 23. This bill also eliminated an anomaly; films, sound recordings, and other library materials had long been entitled to go at the library rate when sent by commercial producers and distributors to libraries and nonprofit organizations. The 1976 amendment added books. Susan Wagner, "AAP Acts on Four Fronts Dealing with Postal Matters," Publisher's Weekly, Jan. 17, 1977, pp. 25-26.

[34] Cong. Rec., Sept. 10, 1976, p. 29743.

publishers at the library rate.[35]

The 1976 PRA amendments expanded and clarified eligibility for reduced rates in other ways. The law entitled one publication of a state's conservation or wildlife agency to pass at the nonprofit second-class rate.[36] A House report explained that such advertising-free publications had been mailed at the regular rates, straining fish and game revenues.[37] Another House amendment clarified the meaning of "agricultural" by stipulating that it embraced harvesting marine resources; this had first been suggested during deliberations on the 1974 amendments. Moreover, the 1976 changes provided that "agricultural organizations or associations shall include any organization or association which collects and disseminates information or materials relating to agricultural pursuits."[38]

Commission on Postal Service, 1977

Among its many provisions, the 1976 PRA amendments created an independent commission to study the postal service. The commission sponsored studies and conducted extensive hearings at which various preferred mailers testified. As before, the National Easter Seal Society for Crippled Children and Adults argued that it and similar organizations relied on reduced rates to obtain contributions. Its witness reported that the Easter Seal Society had experimented with

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[35]Wagner, "AAP Acts on Four Fronts," p. 25.

[36]90 Stat. 1311.

[37]H.R. Rep. 94-391, 94th Cong., 1st sess. (1975), p. 11.

[38]Cong. Rec., Sept. 10, 1976, p. 29749; 90 Stat. 1311.

other media and channels for solicitations, but had found all inferior to the mails. Increased postage, therefore, would force cutbacks in the society's services to crippled children and adults.[39] The National Newspaper Association asked the commission to consider the valuable role of community papers in the communication system. Many small papers used the mails for most of their circulation, the NNA spokesman said, and below-cost postage was a legitimate public service function.[40] Not all the witnesses argued for the continuation of the preferred rates. The American Business Press, for example, complained that magazines enjoying reduced second-class rates carried many pages of advertising in competition with commercial publishers.[41]

The commission estimated that 110,000 nonprofit groups were using the preferred rates. It 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."[42] The proposed graduated increases would eliminate the continuing appropriation for preferred mailers by 1997.

Adding Political Committees

The last major preferred mailer -- qualified political

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[39] Commission on Postal Service, Report (Washington, D.C.: Government Printing Office, 1977), vol. 3a, pp. 632-637.

[40] Ibid., vol. 3c, pp. 2764-2768.

[41] Ibid., vol. 3b, p. 1369.

[42] Ibid, vol. 1, p. 68. Although this sentence mentions only nonprofit mailers, the context suggests that the commission intended to eliminate all preferred rates.

committees -- was added as one of several 1978 amendments to the Overseas Citizens Voting Rights Act. Similar legislation had been offered in 1971 and 1975. As the House post office committee explained in 1975, federal campaign laws imposed new financial requirements on state and national political parties. With contribution limits, the parties had to expand their bases of support with small donors. Moreover, reaching many people through the mails would "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 House framed the new mailing preference. An early draft of the proposal would have extended the preferred rates to candidates for federal office, not political committees. Its sponsor presented three reasons for underwriting the distribution of campaign literature: voters would receive more information about candidates; the increased publicity would produce a larger voter turnout; and reducing the "mailing costs for all candidates would help neutralize the advantages of incumbency."[44] The final House version, however, took a different form. It extended nonprofit third-class rates to "qualified political committee[s]," which meant "a national or State committee of a political party, the Republican and Democratic Senatorial Campaign Committees, the Democratic National Congressional

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[43]H.R. Rep. No. 94-391, 94th Cong., 1st sess. (1975), pp. 11-12.

[44]Cong. Rec., June 14, 1978, p. 17707.

Committee, and the National Republican Congressional Committee. . . ."[45] This amendment to the voting rights act excited little opposition. One senator, however, said he "did not believe the Government should subsidize any political mailings. I believe existing provisions of law should be amended so as to preclude the subsidization of political mailings by labor unions and by other so-called nonprofit organizations."[46]

Within a year, Congress limited the mailing privilege for political committees so as to exclude small and emerging parties. The House debate, where the provision arose as an amendment to a postal appropriations bill, revealed two reasons for the limitation. Some representatives said the cost was much higher than originally projected, while others complained about subsidizing the mailings of such groups as the communists and the Nazis.[47] The bill passed, restricting the mail preference to the political committees of major and minor parties.[48] Thus, any party whose presidential candidate

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[45] Act of Nov. 4, 1978, 92 Stat. 2535, 2538-2539. The act defined national committee as "the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level. . . ." An analogous definition was used for state committees.

[46] Cong. Rec., Oct. 13, 1978, p. 36682. See also H.R. Rep. 95-1568, 95th Cong., 2d sess. (1978), p. 21; Cong. Rec., Sept. 19, 1978, pp. 30173-30177. In 1975 and 1978, a county Republican committee obtained an injunction to prevent a labor group, which held a nonprofit mailing permit, from sending campaign literature on behalf of a Democratic candidate. A court found this arrangement to violate Postal Service rules on cooperative mailings. Owen v. Mulligan, 640 F. 2d 1130 (9th Cir. 1981).

[47] Cong. Rec., July 13, 1979, pp. 18453-18461.

[48] Act of Sept. 29, 1979, 93 Stat. 559, 562.

failed to receive at least 5 percent of the vote in the last election no longer qualified for the reduced bulk mailing rate. The Postal Service notified about 30 political committees that they were no longer entitled to the low rates. Predictably, several sued and a district court declared this part of the law unconstitutional. Government had no obligation to offer postal privileges, the court explained, but once it did the privileges had to be accorded without regard to "the content of the speech or the popularity of the speaker."[49]

The Postal Service adjusted its regulations to comport with the ruling; reduced rates were again available to the state and national committees of _any_ political party.[50] A later decision extended the preferred rates beyond the statutory language. A Cincinnati citizens group that "expressly eschews affiliation with any state or national political organization" was denied the reduced rates. A court upheld the group's contention that limiting the preferred rate to only national and state political committees abridged its freedom of speech on the basis of its ideas.[51] Not all litigation involving the reduced rates for political committees raised

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[49]_Greenberg v. Bolger_, 497 F.Supp. 756, 776 (E.D.N.Y. 1980). See also Comment, "Elections -- Denial of Reduced Postal Rates to Minor and New Political Parties Constitutes a Violation of the First and Fourteenth Amendments," 57 _North Dakota Law Review_ 479 (1981).

[50]_Siebert v. Conservative Party of New York State_, 724 F. 2d 334, 335 (2d Cir. 1983).

[51]_Spencer v. Herdesty_, 571 F.Supp 444, 447 (S.D. Ohio 1983); _Spencer v. U.S. Postal Service_, 613 F.Supp. 990 (S.D. Ohio 1985).

questions of constitutional dimensions. For example, the law made political committees -- not candidates -- eligible for the preferred rates, but, in at least one case, a candidate used a party's mailing permit to distribute campaign literature.[52]

Reviews and Criticisms Through 1982

The need for regular appropriations kept attention focused on the status of preferred rates under the reorganization act. Trade journals, of course, charted the ups and downs of appropriation and ratemaking proceedings.[53] At the same time, the general press followed -- and often criticized -- the burgeoning use of nonprofit rates. Congress monitored the effects of reorganization through the annual appropriations process and, in 1982, conducted a separate examination.

Some opinion journals and business magazines sniped at nonprofit mailers. In the article "How Your Stamps Help Buy Jacques Cousteau an Asparagus Fork," Washington Monthly claimed that reduced rates, originally created to help charities, had "been extended to

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[52] Siebert v. Conservative Party of New York State, 565 F.Supp. 56 (S.D.N.Y. 1983), affirmed, 724 F. 2d 334 (2d Cir. 1983), cert. denied, 104 S.Ct. 2363 (1984). The central issue was whether a private cause of action existed from violation of the statute; the court found none.

[53] See, e.g., Howard Fields, "Postal Rate Commission Recommends 8% Rise for Book Rate, 21% for Library Rate," Publisher's Weekly, March 6, 1981, p. 16; "Lobbyists Against Budget Cuts Encounter Mixed Results," ibid., May 1, 1981, p. 16, 24; "Library Rate to Drop Under New Postal Plan," ibid., Oct. 16, 1981, pp. 14-16; George Brandon, "In-County Postal Rates Hiked By About 25%," Editor & Publisher, Jan. 9, 1972, p. 15; "Mapping the History of Nonprofit Rates," Association Management, June 1985, p. 64.

just about anybody equipped with a proclamation of lofty purpose."[54] The article singled out National Geographic, Mother Jones, Smithsonian and Ms. magazine. Ms., it observed scornfully, "topped them all by winning non-profit status merely because it was not making money: there was no pretense of 'educational' or 'agricultural' service."[55] Forbes echoed those sentiments, noting that many such magazines reaped handsome advertising profits -- obtained in competition with commercial publications -- for the sponsoring organization.[56] New Republic objected that the categories of qualified nonprofit organizations "are much too slippery to keep out the undeserving." It complained that the Moral Majority, rejected as an educational organization, later qualified as an educational, philanthropic, and religious group, when, in the estimation of the New Republic, it was largely political.[57]

In 1980, the Congressional Budget Office sketched a picture of the use and cost of the reduced rates. CBO Director Alice M. Rivlin told a Senate committee that nonprofit reduced rates covered about half the cost of delivery for each piece; that for library materials, 65 percent; and that for in-county publications, 50 percent. About three-fourths of the revenue forgone subsidy went to

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[54]"How Your Stamps Help Buy Jacques Cousteau an Asparagus Fork," Washington Monthly, January 1980, p. 38.

[55]Ibid., p. 39.

[56]William Baldwin, "Those 'Nonprofit' Profits," Forbes, Sept. 1, 1980, p. 98.

[57]"Sectarian Subsidy," New Republic, Dec. 23, 1981, p. 10.

cover nonprofit mailings. Religious organizations were the leading users of nonprofit rates, followed by educational, scientific, and charitable groups. Despite the nonprofit organizations' heavy use of the reduced rates, CBO concluded that most did not appear dependent on them. But, Rivlin acknowledged, reduced rates were "a significant fund-raising saving for organizations that rely heavily on mail solicitation as a source of income." In terms of the recipients, CBO found that most nonprofit mail was sent to upper income households.[58]

Preferred mailers were amply represented in 1982 when the House post office committee reviewed the effectiveness of the PRA ten years after its implementation. Most of the presentations consisted largely of updated figures and arguments: The American Library Association reported that rural library services faced cutbacks because of rising postage, and that patrons increasingly paid for interlibrary loans. Publishers of religious periodicals testified that they posed little threat to commercial publications in the scramble for advertising, and that higher postage would undermine their humanitarian efforts. The International Labor Press Association also emphasized that labor publications sought little advertising, and that some journals faced extinction because of increased delivery costs. The Alliance of Third-Class Nonprofit Mailers reminded lawmakers that its member organizations performed services that would otherwise fall upon government. The American Newspaper Publishers

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[58] Treasury, Postal Service and General Government Appropriations, FY 81, Part One: Hearings on H.R. 7583 before the Subcomm. on Treasury, Postal Service and General Government, Senate Comm. on Appropriations, 96th Cong., 2d sess. (1980), pp. 705-715.

Association and National Newspaper Association joined together in reminding Congress of the historical imperative to protect rural and community newspapers. The small nonprofit mailers further noted that frequent proceedings before the Postal Rate Commission and Congress taxed their meager resources.[59]

ADMINISTRATION BY THE U.S. POSTAL SERVICE

The Reorganization Act did not alter eligibility for preferred mailers, nor did congressional deliberations leading to its passage furnish guidance in administering the in-county, nonprofit and library rates. As before, the two preferred nonprofit classifications proved most vexing to administer, and the subsidy for the special third-class mail climbed rapidly (see Table 5.1). Administering the preferred rates for library materials and in-county delivery of periodicals created fewer problems.[60]

Nonprofit Eligibility

Even as Congress was considering postal reorganization, the General Accounting Office was checking the qualifications of nonprofit mailers using the reduced rates. Scanning a list of 10,400 organizations granted preferred rates at five post offices, the GAO selected 1,135 of questionable eligibility for further review. It

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[59] Effectiveness of the Postal Reorganization Act of 1970, Part Two: Joint Hearings before the Subcomm. on Postal Personnel and Modernization of the House Comm. on Post Office and Civil Service, 97th Cong., 2d sess. (1982), pp. 226-269, 441-491, 764-770.

[60] To the extent that the Federal Register is a barometer of administrative difficulties, presorting requirements were the major problem. Fed. Reg., Dec. 7, 1976, p. 53478; July 31, 1979, p. 44896.

Table 5.1

Analysis of Revenue Forgone Subsidy by Class of Mail from 1972 to 1983
(in millions of dollars)

Year	In-County			2nd Nonprofit			3rd-Nonprofit			Library Rate			TOTAL SUBSIDY
	Rev.	Sub.	Total	Rev.	Sub.	Total	Rev.	Sub.	Total	Rev.	Sub.	Total	
1972	9.4	26.5	35.9	13.6	58.6	72.2	79.3	134.1	213.4	4.0	8.3	12.3	227.5
1973	9.3	28.9	38.2	16.9	64.0	80.9	90.6	129.0	219.6	4.1	9.7	13.8	231.6
1974	10.3	25.0	35.3	20.7	71.5	92.2	93.5	174.4	267.9	5.0	13.9	18.9	284.8
1975	11.4	29.8	41.2	25.0	83.5	108.5	99.7	247.5	347.2	6.2	17.0	23.2	377.8
1976	11.4	35.9	47.3	28.6	98.1	126.7	109.7	293.3	403.0	7.2	23.0	30.2	450.3
1977	14.1	40.2	54.3	40.1	105.9	146.0	134.7	338.2	472.9	16.3	29.0	45.3	513.3
1978	18.1	44.0	62.1	51.7	109.9	161.6	166.0	386.7	552.7	20.4	39.1	59.5	579.7
1979	20.9	46.8	67.7	63.9	124.2	188.1	212.9	423.1	636.0	21.9	54.5	76.4	648.6
1980	27.7	41.1	68.8	99.7	114.4	214.1	259.4	471.8	731.2	28.7	78.0	106.7	705.3
1981	34.5	40.0	74.5	116.7	102.1	218.8	301.2	419.5	720.7	32.0	69.6	101.6	631.2
1982	37.7	72.5	110.2	153.5	62.7	216.2	425.0	450.7	875.7	40.0	47.2	87.2	633.1
1983	43.6	46.1	89.7	123.2	102.2	225.4	442.9	523.1	966.0	43.8	34.0	77.8	705.4

Source: Annual Reports of the United States Postal Service, 1972 through 1983.

"concluded that 115 of the 1,135 nonprofit organizations -- 84 business leagues, 21 citizens' and civil improvement associations, and 10 social clubs -- were not eligible for reduced rates." Reviewing IRS files, GAO determined that the "primary purpose and activities of such organizations" disqualified them. The Post Office Department's own rules had long declared business leagues, citizens' and civic improvement associations and social clubs ineligible (see chapter three).[61]

The GAO audit prodded the Post Office Department to clarify the standards used in determining admission to the special third class. In January 1970, the department announced that religious, educational, scientific, and philanthropic organizations granted tax exempt status under section 501(c)(3) of title 26, or fraternal groups under section 501(c)(8), "will be considered as qualifying for the special third-class rate unless the available evidence discloses some disqualification."[62] This ratified in regulations what the post office generally had done in practice. (See chapter three.) The department also repeated the list of nonprofit organizations that did not qualify.

The GAO's suggestion that the post office follow the lead of

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[61] U.S. General Accounting Office, "Determination of Nonprofit Organizations' Eligibility for Reduced Postage Rates Should be Improved," (1972), p. 14.

[62] Fed. Reg., Jan. 24, 1970, pp. 1013-1014; Dec. 23, 1970, pp. 19434-19435.

the IRS was taken too literally, as Postmaster General Blount acknowledged. "Many postmasters at Postal Service Centers have interpreted this regulation to provide for blanket approval of all applications which include evidence the organization has been exempted from payment of Federal income taxes under" the provisions of the Internal Revenue Code noted above.[63] To standardize administration of the nonprofit rates, the Office of Mail Classification devised definitions of the eight categories of eligible organizations. The definitions, used for both second- and third-class reduced rates, were disseminated to the 64 postal service centers.[64]

The Postal Service went a step further, proposing in August 1972 that the definitions become part of the official regulations.[65] After receiving public comments, the Postal Service modified its proposals to "include education-oriented organizations in addition to schools, colleges, universities, etc., such as, for example, Parent Teachers Associations, symphony orchestras, museums and zoos"; to include animal welfare leagues under the philanthropic category; and to bring its definitions of agricultural, labor and veterans organizations into line with "similar definitions in use by other agencies." The rules also stipulated that "action" organizations could not qualify as religious, educational, scientific, or

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[63] Letter from Blount to the GAO, July 7, 1971, reprinted in the GAO, "Determination of Nonprofit Organizations' Eligibility," p. 32.

[64] Ibid., p. 33.

[65] Fed. Reg., Aug. 26, 1972, pp. 17423-17424.

philanthropic.[66] Furthermore, the Postal Service leaned heavily on the decisions of the IRS:

> Generally, an organization granted income tax exemption under title 26, United States Code, section 501(c) (3), as a *religious, educational, scientific,* or charitable (philanthropic) organization[;] under section 501(c) (5) as an agricultural or labor organization; under 501(c) (8) as a fraternal organization; or under 501(c) (19) as a veterans organization will be considered as qualifying for the special third-class rate.[67]

The definitions finally adopted "more clearly express historical interpretations by the Postal Service than the proposed regulations and, where possible, parallel similar definitions in use by other Government agencies." The definitions of religious, educational, scientific, philanthropic, agricultural, labor, veterans and fraternal organizations found in the current Domestic Mail Manual vary little from those given in 1973.[68]

A rule adopted in 1977 suggested one reason why the Postal Service hesitated to automatically defer to IRS determinations in deciding eligibility. In response to a comment on a proposed rule, the Postal Service explained that "There are thousands of small qualifying organizations which apply for nonprofit second- and third-

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[66]Ibid., Jan. 15, 1973, pp. 1566-1567.

[67]Ibid., p. 1566.

[68]Compare Domestic Mail Manual sec. 623.23 to Fed. Reg., Jan. 15, 1973, pp. 1566-1567. The only difference of more than a few inconsequential words is that DMM sec. 623.235(b) has language not found in 1973: "The term agricultural also includes any nonprofit organization whose primary purpose is collecting and disseminating information or materials related to agricultural pursuits," did not appear in the 1973 rules.

class rates which do not have IRS exemptions and have no need for such." Requiring an IRS exemption would be unnecessary and costly for some eligible mailers, it added. "For those organizations that do seek IRS exemptions, however, . . . the Postal Service generally acts in a parallel fashion to IRS, though the regulation retains the possibility of an independent administrative choice, in line with the authority implied by statute."[69]

Litigation of Nonprofit Eligibility

As the Postal Service refined and articulated its rules governing eligibility, a few mailers began seeking redress in the courts. Where there had been only one reported court decision dealing with eligibility for the nonprofit rates before 1973, such cases became more frequent after that date. In 1973, a district court upheld the revocation of the Sierra Club's nonprofit second- and third-class mailing permits because its primary purpose was conservation, not education.[70] About the same time, the Postal Service initiated proceedings to revoke the National Rifle Association's special mailing permits. The administrative law judge acknowledged that NRA had a number of educational features, but that it was primarily a sportsperson's organization. Furthermore, the Postal Service ruled, NRA's lobbying activities made it an action

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[69] Fed. Reg., June 22, 1977, p. 3192.

[70] Sierra Club v. U.S. Postal Service, 386 F.Supp. 1102 (N.D. Cal. 1973).

organization, and thus ineligible for the reduced rates.[71]

Not long thereafter, however, the Postal Service restored action organizations to the nonprofit rates. This change was prompted by the Tax Reform Act of 1976 and the comments of the court in the National Rifle Association case.[72]

Curbing Unauthorized Mailings at Nonprofit Rates

In 1975, the Postal Service confronted the problem of nonprofit organizations using their special postal status to send materials for other ineligible groups. Two associations -- the National Retired Teachers Association and American Association of Retired Persons -- tried to mail a catalogue of pharmaceutical products for a third group, Retired Persons Services. NRTA and AARP both held third-class mailing permits; RPS, though nonprofit, did not qualify. Nonetheless, NRTA and AARP sought to mail the RPS catalogue under their permits. The Postal Service refused to accept it at the preferred rates and added a rule to the Postal Service Manual: "Cooperative mailings may not be made at the special bulk third-class

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[71] In the Matter of the National Rifle Association of America, P.S. Docket No. 4/169 (1976); see also National Association of America v. U.S. Postal Service, 407 F.Supp. 88 (D.D.C. 1976).

[72] Fed. Reg., March 2, 1977, pp. 12069-12071; June 2, 1977, pp. 32592-32594; Act of Oct. 4, 1976, 90 Stat. 1520, 1723-1724; Postal Bulletin, Aug. 25, 1977, p. 9. The court did not reach the issue of whether action organizations were disqualified, but it did observe, "If the law judge finds that NRA does qualify as educational, philanthropic, or scientific but is ineligible for special rates as an action organization, then the issue of the authority of the Postal Service to restrict the qualifications for special rates without the approval of Congress will be ripe for review in this court." National Rifle Association v. U.S. Postal Service, 407 F.Supp. 88, 96 (D.D.C. 1976).

rates for qualified nonprofit organizations if one or more of the cooperating persons or organizations is not entitled itself to the special rates."[73] NRTA and AARP challenged the Postal Service rule on several grounds; the court held that the rule "fully comports with the spirit of the special rate legislation and was necessary to prevent abuse of the existing program."[74]

To facilitate enforcement of the rule banning cooperative mailings, the Postal Service began requiring clear identification of the mailer. After weighing public comments, the Postal Service decided that preferred third-class mailings had to carry the name (or a well-known designation) and return address of the permit holder on either the message or the envelope.[75] The return address of a valid permit holder, however, did not guarantee that the contents fell within the rules. For example, when a postal official heard that a political committee used its permit for an improper cooperative mailing, he simply noted that the return address was that of a qualified organization.[76] Confusion sometimes arose when qualified organizations used a variety of names in identifying their special rate mailings, particularly when they used the "name of a subpart in a

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[73] Fed. Reg., Aug. 26, 1975, p. 32709.

[74] National Retired Teachers Association v. U.S. Postal Service, 430 F.Supp. 141, 148 (D.D.C. 1977).

[75] Fed. Reg., Feb. 4, 1977, p. 6841; Aug. 18, 1977, pp. 41634-41635.

[76] Siebert v. Conservative Party of New York State, 565 F.Supp. 56, 58.

more prominent manner than the name of the organization."[77]

[77] *Fed. Reg.*, Sept. 12, 1980, p. 60452.

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Summary and Conclusions

Reduced-rate postage has traditionally rested on the assumption that some mailings yield benefits for senders, recipients, and, most important, society. This rationale traces its roots to the first federal postal policy, which recognized that important social goals could be advanced by promoting the dissemination of information through below-cost newspaper postage. Congress considered the other preferences natural extensions of the long-standing policy that had justified low newspaper rates. In fact, the in-county and nonprofit preferences were simply carved out of the periodical rate, while the library post, part of the fourth-class, made books more accessible to readers. When Congress passed the 1970 Postal Reorganization Act, it reaffirmed the preferential status of these special services. Even before 1970, however, it was clear that some reduced-rate mailings provided too few societal benefits to warrant support by cross-subsidization or taxation.

The value of the preferred rates today can be measured, at least in part, by comparing how well they comport with the policies underlying their creation and the general public policy enunciated by the Postal Reorganization Act.

THE IN-COUNTY RATE

The rate preference for in-county delivery of periodicals has survived for 135 years. Free-in-county delivery was originally designed to protect community media voices, especially in rural America. The economies of scale enjoyed by city publications, plus low newspaper postage, brought many of these papers into the countryside. Free-in-county delivery acted as a buffer, protecting small-town papers from competition with urban periodicals sent through the mails. Aside from protecting rural newspapers as businesses, policymakers believed, the in-county rate preference checked the cultural imperialism of urban America.

Given its lengthy history, this subclass has witnessed few changes. Most important was the gradual decline of the free privilege and the growing importance of low in-county rates. Free-in-county began in 1851 before the post office provided door-to-door delivery. In 1868, Congress decided that papers delivered by letter carriers, whether in or out of county, should pay for the enhanced service. Free-in-county delivery of periodicals continued until 1962, but only on those routes starting from post offices without carrier service. Other in-county periodical deliveries paid postage, but Congress did not increase these rates between 1885 and 1962 (except for a slight adjustment in 1951). Thus, as regular second-class postage rose, albeit slowly, in-county rates remained unchanged, creating an ever greater rate preference. Policymakers paid surprisingly little attention to the growing subsidy of in-county rates, for most of their attention remained focused on the free-delivery privilege, even though it steadily waned in importance. In fact, in 1962, publishers willingly relinquished the free-delivery privilege in return for holding down in-county rates.

The major problem encountered in administering the in-county privilege arose when newspapers began turning to centralized printing plants for production of their publications. At first, some papers used readyprint services -- that is, printing part of the paper out of the county, and Congress amended the law to cover such arrangements. Many decades later, Congress permitted papers printed entirely outside the county of publication to use the in-county rates; this enabled small papers produced at centralized printing plants to retain their in-county privilege. At the same time, it inadvertently allowed large-circulation magazines to use low rates within counties for which they had second-class reentry permits. Congress curbed the practice.

Throughout the long history of the in-county preference, therefore, the policy has been consistently applied to protect media and cultural diversity. Low in-county postage has given local media outlets a slight competitive boost in a communication system with strong nationalizing tendencies. Suburban papers, a recent beneficiary of these low rates, represent community media voices even though they do not serve rural areas.

THE NONPROFIT RATES

Preferred rates for nonprofit mailers became part of postal policy in an offhanded fashion. Congress admitted the publications of certain organizations to the second-class mails in 1894 by waiving strict compliance with the rules of eligibility. At this point, they paid regular second-class rates. But in 1917, as part of a measure to raise revenue for the war, Congress revamped the basis for assessing periodical postage. Before, periodicals paid postage regardless of their advertising content or distance conveyed; the new law created a "zone system" that charged in proportion to the amount of advertising and distance mailed. The zone system was predicated on the belief that profitmaking publications should pay for use of the subsidized postal service according to the benefits they reaped. Publications issued by nonprofit organizations were exempted from this scheme, effectively establishing them as a preferred subclass. The debates suggest that this legislation was aimed more at increasing the postage paid by commercial publishers than conferring a privilege on nonprofit organizations. Discussion of the nonprofit exemption was slight; little was said that illuminated an underlying policy.

The third-class nonprofit privilege received slightly more consideration at its conception. After two years of deliberation, Congress in 1951 raised third-class postage, but exempted qualified nonprofit organizations. The prescribed organizations were those already entitled to the reduced second-class rate, with the addition of veterans groups to both. During the hearings, most organizations seemed chiefly interested in forestalling nonprofit second-class rate increases, but a few, notably those relying on mail solicitations for funding (e.g., the Easter Seal and Christmas Seal campaigns), pressed for an exemption from third-class rate hikes. Higher postage costs, they argued, would force cutbacks in their medical and social services, which might shift responsibilities and costs to the government.

During the next 30 years, Congress lengthened the list of groups entitled to the nonprofit rates. Typically, proposals adding preferred mailers were a small part of wide-ranging bills that included postage increases; debate about higher rates overshadowed all else. In some cases, an amendment late in the legislative process added a new group of mailers without prompting any discussion. Members of Congress added a few preferences to accommodate particular constituents, some of whom intervened in the formal legislative process, while others probably pressed their case informally. In short, the list of preferred mailers grew in a piecemeal fashion, and Congress never articulated a comprehensive policy that explained why some but not all nonprofit groups were entitled to reduced rates.

Two reports, both prepared outside the inner circle of policymakers, offered remarkably similar recommendations to restructure the nonprofit rates. A 1946 report by Charles A. Heiss and a 1954 National Education Association study both recognized the sound public policy behind mailing privileges for <u>some</u> of the qualified organizations -- religious, philanthropic, and educational. Charitable groups in particular existed largely to serve nonmembers, plus they often performed tasks that would otherwise devolve upon government. Heiss and NEA saw much less justification for the rate preferences extended to the other groups -- agricultural, veterans, fraternal, labor. Such organizations, they believed, existed largely to serve their members, who were also the principal beneficiaries of the mailings. Some of these groups certainly rendered meritorious public services, but not regularly enough, in the estimation of Heiss and NEA, to warrant the subsidy conferred by the nonprofit rates.

Only once did Congress seriously consider a proposal that would have revamped the nonprofit subclasses. A 1967 House bill tried to bring the list of eligible organizations more in line with the implicit underlying public policy. It would have permitted the third-class mailings of religious, philanthropic, and educational organizations to pass at the special rates. Other nonprofit groups would have been entitled to the lowest rate only when their mailings were made in connection with some public, charitable service -- that is, when they did not chiefly pertain to and benefit members. This legislation embraced the idea that public policy justified a subsidy only for mailings that provided direct social benefits for other than the sender and receiver. This attempt to restructure the nonprofit rate failed because of objections about the difficulty of administering it.

The rather hazy public policy, plus the absence of much congressional guidance, frustrated officials who administered the laws. Determining which organizations qualified under the broad categories -- educational, scientific, agricultural, and so forth -- proved vexing. The preference for educational organizations in particular became a catch-all because most groups claimed that their activities had informational or instructional aspects. Initially, the post office construed educational narrowly so that it applied only to teacher-student instruction. Later, however, groups that provided training for their members or disseminated information to the public qualified. Congress itself did not encourage strict application of the statutory language, for representatives and senators sometimes observed that groups not explicitly mentioned in the list of prescribed organizations were sufficiently educational or philanthropic in nature to qualify for reduced rates.

The other dimension of eligibility was an organization's nonprofit status. Shortly after the creation of the second-class nonprofit rate, some members of Congress complained that publications mailed at reduced rates carried ample amounts of advertising and in fact produced a profit. The rule, however, was not that a publication operate without making a profit, but that the sponsoring nonprofit organization use any such revenues for its activities. Nonetheless, commercial publishers have long accused nonprofit organizations of using their preferred tax and postal status to unfairly compete for advertising and readers. Congress partly rectified the problem in 1967 when it created zoned rates for the advertising portions of nonprofit publications, though the postage was still below that paid by commercial publishers. In evaluating the nonprofit status of applicants, postal officials have traditionally attached considerable weight to the determinations of the Internal Revenue Service, but have repeatedly emphasized that they are not bound by IRS decisions.

A finding that an organization operated on a nonprofit basis did not resolve all the problems with its use of the mails. Nonprofit organizations have used their postal privilege in conjunction with commercial enterprises to publicize products and services at reduced postage rates. Furthermore, some nonprofit groups' educational mission involved the dissemination of information that advocated positions on public policies. Increasingly, postal officials have had to look beyond the nature of qualified nonprofit organizations to scrutinize the contents of their mailings.

The nonprofit rate subclasses, then, have developed in ways that were never envisioned by the policymakers who created them. Although the original purpose of the second-class nonprofit rate is hard to fathom, the 1917 law unmistakably signaled Congress's belief that publications should be assessed postage commensurate with the financial benefits they reaped from using the mails. When Congress created the third-class nonprofit rate in 1951, it seemed mainly swayed by the appeals of charitable and philanthropic groups. Such organizations testified that they raised funds for medical and social services through bulk mailings. Higher postage would force cutbacks in service and transfer costs to the government. Thus, publicly subsidized postage in the long run saved the public expenditures in other areas. But in practice, much of the mail sent by nonprofit organizations at reduced rates directly benefited their members and only remotely provided demonstrable service to the general public. Such mailings were difficult to reconcile with the Postal Reorganization Act's general mandate that costs should be apportioned to benefits.

THE LIBRARY RATE

The library rate developed with few controversies. Although it took the American Library Association decades to convince policymakers of the need for a library rate, even the post office finally endorsed the plan. The ALA and its allies originally urged Congress to adopt the library rate because of its utility in bringing books to rural readers. The original library rate, therefore, was limited to a 300-mile circulation area. This limitation helped convince the post office that reduced-rate library materials would not burden the costly long-distance mails. Later, however, the ALA successfully argued that the library rate should apply without regard to distance as a means of facilitating interlibrary loans of special scholarly and scientific resources.

The library post grew in two directions. Adding materials -- films, bound and unbound magazines, theses, items for museums and herberia -- elicited little opposition except for halfhearted statements from postal officials about increasing costs. The addition of more eligible mailers likewise provoked few comments. Originally, public libraries and nonprofit organizations, presumably including many educational institutions, were entitled to the library rates. Museums and herberia were added, too. Finally, in 1976, Congress authorized commercial book publishers to use the library rate when they mailed materials to eligible organizations. The ALA and book publishers had been working together for decades to reduce the cost of book shipments. Indirect benefits would accrue to libraries, the ALA believed, because publishers would pass along lower distribution costs.

The library rate continues to be of special importance to rural areas in reducing cultural and informational isolation. Other users, though not suffering impaired access to general information, nonetheless have difficulty in obtaining specialized resources except through interlibrary loans. The 1976 amendment to the reorganization act directing ratemakers to consider mail matter's "educational, cultural, scientific, and informational value to the recipient" pertains to many uses of the library rate. Publishers' entitlement to the library rate, however, seems to be a rather indirect means of either protecting library budgets or getting books into the hands of more patrons.

HISTORY, PUBLIC POLICY AND THE PREFERRED RATES

Some features of the policy governing reduced rates appear strikingly anomalous in light of the Postal Reorganization Act. All sectors of society have a self-interest in the circulation of all mail matter, yet relatively little today is entitled to reduced rates. For example, the public has a self-interest in an enlightened citizenry, but we no longer subsidize the circulation of most periodicals discussing public affairs. Much of the mail entitled to reduced rates undoubtedly enriches society in one way or another, but in most cases the principal beneficiaries are the sender and recipient.

Champions of certain public policies often invoke the weight of history to justify the continuation of government programs they favor. But subsidizing the delivery of certain mail matter, like many public policies, has grown in ways that strayed far from the intentions of those who initiated the policy. In addition, changing social conditions have invalidated some of the reasons that once justified the practice. Finally, attaching weight to the fact that a policy has survived a number of decades provides no assurance that it was well crafted in the first place.