

Chairman McHugh, Ranking Member Collins, and Members of the Subcommittee,

Thank you for inviting me to testify. I am accompanied by my colleagues Vice Chairman W. H. "Trey" LeBlanc, Commissioner George W. Haley, and Commissioner H. Edward Quick, Jr.

I have much to report. Since last we met, the Postal Rate Commission has been very, very busy. Last June, after a request from the Postal Service Governors, we issued our Opinion and Further Recommended Decision in Docket No. R94-1, the most recent omnibus rate case. That decision was adopted by the Governors. We have considered and completed a major mail classification reform case, Docket No. MC95-1. Since December 19, 1995, we have been considering the Postal Service's request for expedited consideration of an experimental case involving First Class and Priority small parcels. And, we have made significant progress in Docket No. RM95-4, a rulemaking proceeding intended to provide further streamlined procedures for certain types of cases. I will have more to say on that in a few minutes.

We have modernized the Commission's computer systems, with a view toward facilitating data transmission and, eventually, electronic filing. I want publicly to thank the Postal Service for its technical assistance in this regard. Recently I wrote the Postmaster General asking his assistance to simplify further our proceedings by ensuring that all data filed by the Postal Service is presented in a standard format. Also, in its reclassification decision, the Commission announced its intention to launch a rulemaking proceeding to reexamine its "computer evidence" rules.

As a result of your initiative, Mr. Chairman, we are working with the Subcommittee, the Postal Service, and the General Accounting Office (GAO) to study how the information and data needs of the ratesetting process can be better served. I

thank you for moving forcefully to address the concerns I expressed about this when I appeared here last year. We have also, on several occasions, provided technical assistance to the GAO, most recently in connection with its study on international mail, released this week, and its work concerning the Private Express Statutes.

Despite this progress, we continue to be concerned about the expense and effort required of parties who participate in major rate and classification cases. Now that the classification case is completed, we hope to open discussions with various parties to explore methods to reduce the effort and expense required to participate in rate and classification proceedings.

In the midst of all of this, we have disposed of an unusually large number of small post office appeals. We also, in February 1995, initiated a rulemaking proceeding to amend our rules of practice to provide that a post office appeal is timely if the appeal was *postmarked* before the 30-day time limit. Our existing rule requires the appeal to be *received* by the Commission within the 30-day time limit. On March 30, 1995, the Postal Service filed comments opposing the proposed change, arguing that the Commission does not have the statutory authority to make such a change in its rules. We have held this proceeding in abeyance while related legislation is being considered in the House, but a statutory change is probably desirable. Mr. Chairman, I know the Subcommittee is familiar with this type of issue, where practice under existing law sometimes appears inconsiderate of overall equity and fairness.

We have accomplished the above despite the fact we have fewer staff today than when I appeared here last March; and, our budget, when adjusted for the one-time purchase of computer equipment, has not grown by even one penny.

The mail classification reform case, MC95-1, was a huge effort, not just for the Commission, but for the Postal Service and the many interested and affected parties. The case affects 89 percent of all mail volume. Most rates for this mail will change because of the restructuring of the mail classification schedule.

We were very pleased the Governors, with two exceptions, accepted our recommended decision in the reclassification case. One of the exceptions, the “bulk parcel” issue, is a very technical matter, and we disagree with the position taken by the Governors.

The second exception, involving Courtesy Envelope Mail (CEM) deeply troubles me, and I will touch on that in a few minutes. First, an overview of the decision.

The case was completed in the ten months contemplated by the law (plus three snow days). More than 70 parties participated, and the Commission held 35 days of public hearings. The transcript comprises more than 17,000 pages. Now, I know there are some who say this process is too long and too complicated. But, please consider that the mail affected by this case generates 80 percent of postal revenues—that is \$43.7 BILLION. A change in rates of a few tenths of one cent means millions, maybe even tens of millions, of dollars to a major mailer. Even changes that do not involve large amounts of postage, such as changes in mail eligibility requirements, can have a profound effect on mailers whose livelihood depends on access to the postal system. The stakes are extremely high. It is critical that affected parties be permitted to participate in a meaningful manner, and, frankly, that requires some time and great care. As one of our lawyers recently said to me, “sure, we can speed up this process. It’s just a matter of whose due process rights you want to take away!”

This was the first comprehensive look at mail classification since the 1970 enactment of the Postal Reorganization Act. The Postal Service and the parties advanced numerous classification theories, often competing or conflicting, to justify mail classification changes they proposed. In the end, the Commission's Opinion sets forth clear guidance for applying the statutory classification and ratesetting criteria (39 U.S.C. 3622, 3623). It recognizes that the function of mail classification is to create groupings of mail *for the purpose of ratemaking*. Under the Postal Reorganization Act, and judicial and Commission precedents applying it, postal ratemaking involves two fundamental steps: (1) the attribution of direct and indirect costs required by 39 U.S.C. 3622(b), and (2) the assignment of institutional, or overhead, costs in accordance with the noncost criteria set forth in the statute. The attributable costs comprise 65 percent (more than \$36 billion) and the overhead costs about 35 percent (about \$20 billion) of total costs.

The Commission recommended the renaming and regrouping of existing mail classes as the Postal Service requested. Express Mail will become Expedited. First-Class Mail will be unchanged, but existing third and fourth class will be combined into a new Standard Mail class. Existing second class is renamed Periodicals class.

The Commission endorsed the Postal Service goal of promoting automation by restructuring classifications and rates to reward "workshare" mailers. These mailers prepare mail for processing on automated equipment and mail that otherwise bypasses postal operations, thereby reducing postal costs. Many of these mailers will see rate reductions which reflect their worksharing activities.

The Recommended Decision encourages automation-compatible mail.

The Commission largely adopted the changes in mailing rules and procedures proposed by the Postal Service in the form of a new Domestic Mail Classification

Schedule, thereby permitting the Service to go forward with the 123 Federal Register pages of implementation rules it had developed in consultation with its customers.

Probably the most controversial aspect of the Postal Service's proposal pertained to second-class mail—mostly magazines and newspapers. The Postal Service proposed dividing the existing second-class regular subclass into two new subclasses with, essentially, one for large publications and another for small. Opponents of this proposal argued that it would lead to an unfair allocation of postal overhead costs, thereby harming many for the benefit of a relative few. The Postal Service's proposal would have meant an average 17 percent postage *increase* for more than 11,000 small volume periodicals to effect an average *decrease* of 14 percent in rates for some 800 densely-circulated publications.

The Commission rejected the Postal Service's subclass proposal for magazines and newspapers. It could find no basis, economic or otherwise, for drawing such an arbitrary line between large and small publications. It did, however, recommend rates that reflect the worksharing activities of publication mailers. Large, highly-presorted publications (the roughly 800 identified by the Postal Service) will experience an average rate decrease of 3.7 percent, not 14 percent. The average increase for others will be 3.5 percent. Improved Postal Service cost studies in this area could lead to further rate refinements.

The Commission endorsed a Postal Service proposal for a new Enhanced Carrier Route subclass in Standard Mail and has been harshly, but understandably, criticized by some competitors of the Postal Service for this action. While we wish we could please everyone, we, of course, cannot. We have a law to follow and apply to the facts presented in our proceedings. As the Commission's decision explains, the evidence clearly supported dividing carrier route and noncarrier route mail into separate subclasses. The concern of competitors (primarily large daily newspapers) is understandable because the

new subclass results in lower rates for mailers who compete with them for advertising dollars.

I mentioned the Governors' rejection of the CEM recommendation. This is why their action troubles me.

First, what is CEM? CEM, as recommended by the Commission, is limited to preprinted reply envelopes provided to consumers by entities expecting or hoping for remittance mail (for example, credit card or utility companies sending bills, catalog companies distributing mail order forms, or charitable organizations seeking donations). This mail, although generally deposited one piece at a time by householders, can be sorted directly by automated equipment because it displays both a preprinted barcode and a Facing Identification Mark (FIM). Also, it is frequently picked up at the post office, avoiding the need for delivery. Thus, it costs less to process and should be eligible for a discount.

The Governors' decision complains that the CEM recommendation was not based on a recommendation "proposed by the Postal Service in this proceeding." This is true. But, the Commission's Office of Consumer Advocate proposed this classification, and the Commission thought the evidence demonstrated the need for it. CEM is important because it has the potential to touch each and every person in this country who pays a bill by mail.

Exactly one year ago today, the U.S. Postal Service issued its Press Release No. 23, entitled "Customers Get First Look At Reclassification Case." Let me read you a short paragraph from the third page of that release:

The Postal Service will also propose that reply envelopes included in

the First-Class automation subclass be properly barcoded. The Postal Service plans to ask the Postal Rate Commission at a later date for a lower rate based on the lower costs of automating this mail. These savings would be passed on to the consumer.

Mr. Chairman, when the Postal Service makes such a public commitment, should not the public be able to take the Service at its word? Apparently not.

One of the Postal Service mottoes is “We Deliver for You.” The Commission’s decision gave the Service the opportunity to live up to that motto. We recommended a “shell classification” and left it to the Postal Service to fill the shell, as it saw fit—as one year ago it publicly said it would.

And, what did the Postal Service Governors do? With great gusto and a number of, at best, specious arguments about operational problems—problems that simply do not exist by virtue of establishing a shell classification, they ground the shell to dust. They threw out the framework needed to do what the Postal Service told the public, in its Press Release No. 23, it was committed to doing.

In recent weeks Postmaster General Runyon has been talking about threats to First Class mail volumes from technologies—for example, the potential growth in electronic bill paying by individuals. This mail is CEM or courtesy envelope mail. This is the very mail that would have been the beneficiary of those savings that were, according to Press Release No. 23, going to be passed on to the consumer. Perhaps fulfilling the commitment made in Press Release No. 23 would help keep in the system the very mail about which the Postmaster General is worried.

I hope that the lone dissenting voice among the Governors on this CEM issue, that of Governor David Fineman, is enough to ensure that individual mailers will soon get the benefits promised a year ago. But even if this should come to pass, I still will not understand why the Governors took the action they did in rejecting the CEM shell. Their action makes no sense at all, unless they never really intended to let the general public share directly in the benefits of automated mail.

Last year, when I appeared before the Subcommittee, I suggested, partly in response to the Postmaster General's call for more flexibility in setting rates and introducing products, that the Postal Service reexamine the recommendations of the 1992 Joint Task Force on Postal Ratemaking. Shortly after that, I met with the Postmaster General, then Chairman Winters, and other Governors and urged this course of action. So, I was pleased when the Postal Service, shortly after our meeting, petitioned the Commission for rules based on the Task Force's recommendations. The Commission promptly initiated a rulemaking proceeding (Docket No. RM95-4), and has had two rounds of comments on various aspects of the Postal Service's proposal. The initial invitation for comments on the Postal Service's proposals drew diverse comments from 21 parties.

In response to these comments, last October the Commission published proposed rules to implement a majority, but not all, of the Postal Service's procedural initiatives.¹ The Commission explained it was proceeding in this limited fashion for several reasons. First, it was mindful of the current workload imposed on all those involved in Docket No. MC95-1 and mail classification reform generally. Second, there were potential legal

¹ On October 27, 1995, the Commission published proposed rules for conducting proceedings on Postal Service requests for market tests of new services, temporary establishment of provisional services, and minor changes in mail classification, all in 120 days or less. Rules that would allow proposed new services to break even financially over a multi-year period were also included.

impediments to implementing at least some of the rules held in abeyance. And, finally, the four initiatives for which proposed rules were published appeared “to hold the greatest promise for procedural reform in the near term.”² The Commission promised, however, that it would “endeavor to pursue the remaining initiatives, which appear to present somewhat greater challenges under the Postal Reorganization Act as currently interpreted, in subsequent proceedings.”³ Frankly, we thought this was the most expeditious way to proceed. We would tackle the seemingly less controversial proposals first.

Well, when it comes to the Postal Service, as I am sure the Subcommittee has learned, very little is noncontroversial. In the 17 sets of comments submitted, the Commission was criticized both for what it proposed and what it did not propose. One party went so far as to assert that the Commission’s failure to address immediately the negotiated service agreements or “contract rates” proposal was “a disservice to the American public.” While the Commission has been accused of many things over the years, somehow, I doubt individual and small business mailers feel disserved because the Commission chose to allow time for carefully evaluating the legal and economic ramifications of rules which could permit a few large volume mailers to cut deals directly with the Postmaster General for special, undoubtedly lower, rates.

Seriously, the commenters raised important concerns about the proposals we viewed as less controversial. For example:

“If the Commission were to adopt its proposed rules, it would be faced with making its decisions on a one-sided record submitted by the Postal Service. Opposing parties would have no valid opportunity to make an alternate case. The result would be a Postal Rate Commission that could not possibly fulfill its statutory responsibilities.” And,

Other rules proposed by the Postal Service concerning “limited scope” rate cases, rate bands, and negotiated service agreements, were held in abeyance.

² 60 Fed. Reg. 54981 (October 27, 1995)

³ Ibid.

“Thus, any financial losses stemming from ill-advised or underpriced ‘new’ or ‘provisional’ services under rules such as those proposed in the *Notice* would shift from the users of these ‘new’ and ‘competitive’ services to monopoly mailers. This would constitute a cross-subsidy of such services by First Class mail, and, as such, would contravene the intent of Congress.”

Even the Postal Service has expressed dissatisfaction with the Commission’s version of the proposed rules, although for a very different reason than the above-quoted commenters. It wants even more flexibility than the proposed rules would allow.

So, we are continuing to consider the issues raised by this rulemaking and will be able to give them even more attention when the experimental small parcel case is completed, particularly now that the initial phase of the classification reform effort is in hand.

When I was here last year, I also expressed some concerns with the information and data used by the Postal Service to support requests filed with the Commission. During the recent classification reform case, the Postal Service provided a number of cost studies which, I am happy to say, were at least up to the standards of earlier Postal Service cost studies. However, I do want to bring to the Committee’s attention two potential problems with the data and information the Commission and the parties normally use to evaluate Postal Service proposals.

The first concern is with the timeliness of regular Postal Service data reports. The Commission rules, developed in conjunction with the Postal Service, provide for the regular submission of basic cost and volume data. It has been my experience that the Postal Service does not always submit this information in a timely manner, and this can pose significant difficulties to parties and the Commission when a case is proceeding. As

an example, the basic Cost and Revenue Analysis report for 1994 was not filed until May 22, 1995, almost two months after the Postal Service classification reform request was submitted to the Commission. In contrast, the 1993 version of that report was filed in March 1994. Since parties must file their direct case within four months, a two month delay poses a serious hardship.

The other issue I want to raise is the Postal Service's increasing tendency to withhold information or data it claims has some commercial value. Many private businesses appear before the Commission and voluntarily disclose what is clearly proprietary information. The Postal Service is not a private enterprise, although it is expected to operate in a businesslike fashion. It seems to me that the Service should avoid withholding information as proprietary unless it is clearly evident that disclosure would be likely to have a significant harmful impact.

Early in the classification case, the Postal Service was asked to provide information on its customers' reaction to a reduced rate for courtesy reply mail. Initially, the Postal Service resisted providing any information. Then, when pressed, the Postal Service provided a relevant study with certain portions redacted. When the Commission insisted that the Service explain why this information was withheld as proprietary, it became clear that there was little or no likelihood that this information would have harmed any Postal Service business interests.

Unfortunately, the process for obtaining data not willingly provided by the Service can extend for months. Thus, by interposing meritless objections, the Postal Service withheld information sufficiently to reduce its value to participants in the case. A similar controversy delayed participant access to a report highly relevant to Postal Service claims that alternative delivery of second-class publications was an economic threat. As I noted when we issued our decision on January 26: "[t]he record evidence indicated that there

was no real competitive threat in this area—a conclusion supported by a summary of a Postal Service study which became available through discovery. Interestingly, the Postal Service witness in this area was not apprised of the existence of the study while preparing his expert testimony.”

I recognize that there may be some proprietary business information which the Postal Service might need to withhold. But as long as the Postal Service remains the nation’s provider of monopoly mail service, it should be willing to operate in the sunshine and allow the American people to understand both its successes and its failures.

Partly because of these difficulties, I am reversing a position I took last year. You may recall, I was asked whether I thought the Commission should have statutory authority to subpoena Postal Service records and documents. I said I was not ready to ask for that power. Now I am, and as the Subcommittee proceeds to consider postal reform legislation, I urge you to give the Commission that authority.

The Commission believes there are other legislative changes which could benefit the ratesetting process. But that is not the subject of this hearing. We look forward to sharing our thoughts on this in the future, and, of course, we offer our services and assistance to the Subcommittee as it proceeds.