

**Before the President's Commission on the
United States Postal Service**

Comments of the
Association of Priority Mail Users, Inc.

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Introduction

The Association of Priority Mail Users, Inc. (“APMU”), which was founded in 1993, is a nationwide coalition of businesses and other organizations which are substantial users of Priority Mail. APMU members, representing diverse sectors of business and industry, are joined in a common effort to work with the U.S. Postal Service and litigate before the Postal Rate Commission to develop quality service for Priority Mail at fair, reasonable, and stable rates. Additional information is available at www.apmu.org.

APMU wishes to address three issues for the benefit of the President’s Commission. The first two issues present weaknesses in the current system — one statutory and one cultural. The last issue discusses reasons for optimism based on the current leadership of the Postal Service.

1. The Governors’ Unilateral Power to Increase Postal Service Rates

The Postal Reorganization Act of 1971 (“the Act”) defines the process for the setting of domestic postal rates and fees. The Act divides authority over postal rates between the Postal Service and the Postal Rate Commission. The Act guarantees substantial due process and other protections of mailers’ rights in the ratemaking process. However, courts have circumscribed these protections by holding that nearly all such protections apply only to the process whereby the Postal Rate Commission develops “recommended” rates. While such recommended rates are normally accepted and implemented by the Governors of the Postal Service, there is a mechanism whereby the Governors can bypass such due process rights and impose rates unilaterally — which some have called the “anarchy clause.”

Postal rates normally are set in an “omnibus rate case,” which begins when the Postal Service files a request for a recommended decision on postal rates and fees with the Postal Rate Commission. The Commission then offers mailers and other interested parties the opportunity to question the Postal Service witnesses in writing and orally regarding the Postal Service’s proposed rates, to present alternative rates, and to argue against the rates proposed by the Postal Service and other parties. Mailers may put forth their evidence, and be challenged on it by the Postal Service and by other mailers. Also, there is an opportunity for reply testimony. The cases end with two rounds of briefs, and, sometimes, oral argument.

The Postal Rate Commission by statute has 10 months to conduct the case, which means from the time of receiving the Postal Service’s request the Commission must develop a schedule to allow time for written questioning of the Postal Service and other parties, holding all of the public hearings, examining the evidence, reviewing initial and reply briefs filed by the parties, selecting “recommended” rates for each “rate cell” and “rate component,” and issuing an Opinion and Recommended Decision to the Board of Governors.

The rate changes are only “recommended” by the Postal Rate Commission, and are not implemented until they are approved by the Board of Governors. If the rates are not approved,

the Board of Governors can reject the Commission's recommended rates, allow the rates to be implemented “under protest,” or request reconsideration by the Commission.

If reconsideration by the Postal Rate Commission is requested, and the Commission does not yield to the position of the Postal Service, the Governors may modify rates if they unanimously, in writing, concur in the view that modification of the rates “is in accord with” the record of the Commission's proceedings and the Postal Reorganization Act, and that the Commission's recommended rates will not provide sufficient revenues.

The Governors have exercised this so-called "anarchy clause" to modify rates – *i.e.*, implement rates proposed by the Postal Service, notwithstanding the proceedings before the Commission — on three occasions: Docket No. MC78-2 (a mail classification case affecting advertising mail); Docket No. R80-1 (an omnibus rate case); and Docket No. R2000-1 (which implemented a July 2001 rate increase related to the 2000 omnibus rate case).

This “anarchy clause” conflicts with fundamental principles underlying the Postal Reorganization Act. The courts have observed that the structure of the Act (and its amendments) reflected Congressional fears of allowing the Governors to control revenues, and of their usurpation of control over rates from the Postal Rate Commission. However, the courts have imposed very few limits on the Governors' power to exercise the anarchy clause, although they have held that mailers' due process rights are sharply circumscribed when the Governors take such unilateral action. Although the absolute limits of that power have not been firmly established, many believe that the practical difficulties involved in challenging its exercise have allowed the Governors excessive power which is inconsistent with the fundamental ratemaking procedure established in the Act.

Mailers remain at the mercy of the Governors' ability to set postal rates virtually however they want using the modification power, even where those rates contradict the evidentiary findings of the Postal Rate Commission. In 2001, the Governors exercised their powers under this clause and raised postal rates, including Priority Mail, despite the considered opinion of the Postal Rate Commission to the contrary. Priority Mail rates were, in effect, unilaterally imposed by the Governors, giving Priority Mail users two rate increases within six months. These rate increases have produced annual double-digit percentage decreases in Priority Mail volume since then.

As a result of the July 2001 increase in Priority Mail rates implemented by the Governors under the “anarchy clause,” many mailers felt that they are totally vulnerable to increases in rates, even when the Postal Rate Commission did not recommend them. Since that time, many Priority Mail users have stopped considering the Postal Service as a predictable vendor, as the Postal Service demonstrated its ability and willingness to impose huge rate increases on mailers acting alone.

We recommend that the Commission recommend that the Governors' power to modify be repealed by Congress so that a government monopoly does not have the ability to set its own rates.

2. The Postal Service Has Refusal to Consider Salutory Priority Mail Classification Changes Proposed by Mailers

The Postal Service has developed a reputation for rejecting mailer proposals regarding new products which were “not invented here” (*i.e.*, at the Postal Service). Although there appears to have been some improvement in this culture at the Postal Service in recent months, the problem has not been entirely fixed.

Priority Mail offers an example of the problem. For at least seven years, the Association of Priority Mail Users has urged the Postal Service to create a discounted rate for Priority Mail when it is used to drop-ship other postal products. This “Priority Mail Dropship” is generally used to expedite the transportation of sacks of mail to a destinating Sectional Center Facility where the mail is opened and entered into the mail stream as, for example, Standard Mail. As this Priority Mail destinates at a Postal Service facility, it is never delivered to a business or a household, and the Postal Service incurs no cost in delivering this mail. Nevertheless, the Postal Service charges the same rate for this mail as it does for Priority Mail which is actually delivered to a business or household.

In Docket No. R2000-1, APMU used the right that it has under the Postal Reorganization Act to propose mail classification changes to the Postal Rate Commission. APMU presented a comprehensive proposal through the expert testimony of a veteran postal economist to the Postal Rate Commission for the creation of such a “new product.” The Postal Service opposed this proposal by APMU, and did not cooperate in obtaining the data that it would have obtained if the proposal had been its own. The Postal Rate Commission declined to force the proposal upon the Postal Service, despite the fact that it generally viewed the proposal favorably:

Witness Haldi [for the Association of Priority Mail Users] has identified a segment of Priority Mail volume that may merit recognition in the form of a rate category to which discounts would apply. In qualitative terms, the “Priority Mail dropship” segment already identified in the DMM would appear to offer the potential for such recognition. However, as the Postal Service has argued, significant uncertainties remain addressed, primarily for lack of cost and demand data specific to this portion of Priority Mail volumes. While the Commission comments witness Haldi for focusing attention on this type of Priority Mail, his discount proposal lacks sufficient support to warrant recommendation at this time. However the Commission strongly encourages the Postal Service to investigate the bases of such a discount in its

ongoing review of the Priority Mail Subclass. [*Opinion and Recommended Decision*, Docket No. R2000, para 5338 (November 13, 2000).]

Even if the Postal Rate Commission recommended the adoption of this APMU proposal, it would have been to no avail, for the Board of Governors are not required to adopt any mail classification changes that the Postal Service did not initiate. The Board of Governors can adopt and implement the Opinion and Recommended Decision of the Postal Rate Commission which generally involves obtaining higher rates, but can sever the mail classification changes recommended by the Commission. In the final analysis, the authority of the Postal Rate Commission to decide on the merits of mail classification matters can be trumped by the power of the Board of Governors.

3. Improvements Under the Current Postmaster General and Chief Operating Officer

APMU was particularly pleased when, in early 2002, Postmaster General John Potter began several programs demonstrating his desire to improve Postal Service management.

With its Transformation Plan, the Postal Service has taken a new course in aggressively seeking out the means to modify existing practices and policies even without the enactment of postal reform legislation. Acting on that plan, Chief Operating Officer Patrick Donahoe has shown remarkable managerial skill in his successful efforts to reduce work hours and cut excess costs out of the system.

On May 28 and June 27, 2002, the Postal Service and Postal Rate Commission held two sessions to air criticisms of the process of omnibus rate cases and to engage in discussions of suggestions for changing the process to reflect the needs of the users. Together, these two **Postal Rate Summits** allowed for a comprehensive examination of rate and classification areas that could be changed by the Postal Service, within the framework of existing law, including niche classifications, negotiated service agreements, phased rate increases, etc. APMU was particularly pleased by the participation of Postal Service policy-makers at the highest levels, including the Postmaster General. The brief time that separated the two meetings and the atmosphere of openness engendered by the speedy turnaround in responding to the concerns aired in the initial meeting gave APMU hope that a similarly-structured meeting might be possible to examine and structure Postal Service handling of Priority Mail pricing costs and service issues.

Thereafter, in response to the APMU request for discussions of the need to improve Priority Mail as a product the Postal Service convened a special **Priority Mail Summit** on September 4, 2002, with the objective creating an action agenda that included better delivery performance, consideration of classification changes, and sharing of ideas in cost containment

and reduction. Since the date of that meeting, APMU, working together with COO Donahoe and his staff, continue to develop plans to implement some of the ideas discussed at that meeting. As a direct result of the Priority Mail Summit, COO Donahoe has designated nine regional service representatives to respond rapidly to any problems of Priority Mail delivery. This important change was effected within 60 days of the Priority Mail Summit. APMU is hopeful that this change will be the forerunner of other changes that can be made to improve the Priority Mail product under current law.