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Because the Postal Service and the Postal Rate Commission disagree on the role the Congress intended the Commission to play in postal affairs, disputes have arisen involving the authority of the Commission to: set certain postal rates; pass on the validity of Service costs and revenue estimates; and investigate management efficiency and economy and the quality of mail service. Findings/Conclusions: The first two rate cases handled by the Commission took 17 and 23 months to complete. The cases required the time they did because of the necessity to: develop a data base for a new regulatory undertaking; and determine an appropriate costing method from several alternatives. There is some doubt whether the Commission has the legal authority to require the Postal Service to provide periodic reports on a regular basis. The Commission does not have explicit authority under the act to subpoena information required during a hearing. Existing law makes no provision for situations of court litigation where the Commission and the Postal Service, as two official clients of the Attorney General, advocate conflicting positions. The potential exists for the abuse by the Postal Service's Board of Governors of its approval authority over the amount the Commission can spend. Recommendations: If the Congress decides to leave the ratemaking process essentially as it is, its intent with respect to the role of the Postal Rate Commission should be clarified. The Postal Reorganization Act should be amended to provide the Commission with authority to: impose a periodic reporting system; issue subpoenas; and represent itself in court litigations. The Congress should also amend the Act to provide for congressional approval of the Postal Service's Board of Governors' adjustments to the Commission budgets. (Author/QM)

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*REPORT OF THE
COMPTROLLER GENERAL
OF THE UNITED STATES*

The Role Of The
Postal Rate Commission
Should Be Clarified

The essential overall structure of the postal ratemaking process is sound and has been working. Nevertheless, a clearer definition by the Congress of the role of the Postal Rate Commission and refinements in the Postal Reorganization Act would improve the system of establishing postal rates.

00436





COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-114874

The Honorable Lawton Chiles
Chairman, Subcommittee on
Treasury, Postal Service
and General Government
Committee on Appropriations
United States Senate

Dear Mr. Chairman:

In response to the Subcommittee's request, we are providing you with our report on the Postal Rate Commission.

Comments have been obtained from the Postal Rate Commission and the Postal Service and are included as appendixes III and IV.

As agreed with your office, copies of the report are being sent to the Chairman, Senate Subcommittee on Nuclear Proliferation, Science Planning and Federal Services, Committee on Governmental Affairs; the Chairman, House Committee on Post Office and Civil Service; the Postmaster General; the Chairman, Commission on Postal Service; and the Chairman, Postal Rate Commission.

Sincerely yours,

A handwritten signature in black ink that reads "James A. Stauts".

Comptroller General
of the United States

COMPTROLLER GENERAL'S REPORT TO
THE SUBCOMMITTEE ON TREASURY,
POSTAL SERVICE AND GENERAL
GOVERNMENT
COMMITTEE ON APPROPRIATIONS
UNITED STATES SENATE

THE ROLE OF THE POSTAL
RATE COMMISSION SHOULD
BE CLARIFIED

D I G E S T

The overall structure of the postal ratemaking process is sound and has been working. Nevertheless, a better definition of the role of the Postal Rate Commission and refinements in the Postal Reorganization Act would improve ratemaking.

COMMISSION JURISDICTION

Because the Postal Service and the Postal Rate Commission disagree on the role the Congress intended the Commission to play in postal affairs, disputes have arisen involving the authority of the Commission to

- set certain postal rates,
- pass on the validity of Service cost and revenue estimates, and
- investigate management efficiency and economy and the quality of mail service.

The Postal Reorganization Act is not clear on these matters. Both parties find support in the act and its legislative history for their positions.

The Commission argues that the functions given it under the act--rate determinations, mail classification, complaints and reviews of service changes--confer on it fact finding authority akin to that exercised by other regulatory bodies. Without such authority, the Commission reasons, no meaningful regulation can take place.

Unlike most regulatory agencies the Commission's decisions are not final and must be approved by the nine Postal Service Governors. From this, the Service has developed a rationale that the Commission's role was intended to be a limited one, with the Governors possessing broad discretionary powers subject to prior Commission review only where explicitly provided for in the act.

The first two rate cases took 17 and 23 months to complete. There is no appropriate standard against which the timeliness of these cases can be judged. Other regulatory agencies have often taken longer to resolve their cases. It is true, however, that the Service's finances were affected adversely by its inability to quickly adjust postal rates in response to swiftly rising costs.

In GAO's view the cases required the time that they did because of the necessity to (1) develop a data base for a new regulatory undertaking and (2) determine an appropriate costing method from several alternatives.

The Commission completed the third case in only 9-1/2 months. This was a major accomplishment. The reduced time can be attributed to (1) its use of improved, streamlined procedures and (2) a costing approach which it laid down in the second rate case that the Service generally favored. It should be noted that the U.S. Court of Appeals recently rejected this costing approach. The Service, with the strong endorsement of the Commission, has taken steps to appeal the decision.

Notwithstanding this improvement in rate case timeliness, the basic question of the proper role of the Commission persists.

The fundamental assumptions underlying the Postal Reorganization Act and the wisdom of creating an independent, financially self-sufficient Postal Service are being reexamined by the Congress.

The Postal Reorganization Act Amendments of 1976 established the Commission on Postal Service to study postal problems and recommend long-term solutions. As part of its task, the Commission on Postal Service is charged with evaluating the current ratemaking process and examining the role of the Postal Rate Commission.

RECOMMENDATION TO THE CONGRESS

If the Congress decides to leave the ratemaking process essentially as it is, its intent with respect to the role of the Postal Rate Commission should be clarified.

OTHER PROBLEMS REQUIRING CORRECTION

The differing views of the Service and the Postal Rate Commission have created other problems, some of which point up a need for other legislative changes that are desirable in the event of either a narrow or broad definition of the Commission's role.

Periodic Reporting

There is a dispute between the Service and the Commission regarding the authority of the latter to obtain relevant data from the Service. This problem relates directly to their differing views on the Commission's proper role.

The Service provides requested information that it considers necessary to fulfill its definition of the Commission's functions. The Service has rejected requests for information that it believes is not required to perform these functions, while the Commission considers that it is legally entitled to relevant information.

There is some doubt whether the Commission has the legal authority to require the Postal Service to provide periodic reports on a regular basis, since the Postal Reorganization Act does not explicitly grant this power to the Commission. Nevertheless, regardless of how the Commission's role is defined, it should explicitly be granted this authority.

Authority to subpoena

The Commission and the Service disagree as to the present existence of subpoena authority by the Commission. In GAO's view, the Commission does not have explicit authority under the act to subpoena information required during a hearing. The Commission, like other regulatory agencies, should have such authority, regardless of whether its role is narrowly or broadly defined.

Self-representation

The Justice Department is charged with representing both the Postal Service and the Commission in court litigation. Existing law makes no provision for situations where these two official clients of the Attorney General advocate conflicting positions, as had happened recently. GAO concludes that the Commission should have the option of self-representation to assure that its views are adequately presented in court. The Commission and the Service concur.

RECOMMENDATIONS TO THE CONGRESS

Although the Commission and the Service have worked out mutually agreeable arrangements for providing certain data, to clarify the Commission's authority the Congress should amend the Postal Reorganization Act to provide the Commission with authority to

- impose a periodic reporting system,
- issue subpoenas, and
- represent itself in court litigation.

GOVERNORS' ADJUSTMENTS OF COMMISSION BUDGET REQUESTS SHOULD BE CONGRESSIONALLY APPROVED

The Commission's operations are financed by the Service. The Governors have approval authority over the amount the Commission can spend. There is no reason to believe that the Governors would abuse this power. On the other hand, the potential in this regard is illustrated by an incident.

In 1976 the Governors reduced the Commission's budget request by \$1,371,000, of which \$710,000 was to be spent developing a system of accounts. These funds were deleted because of the poor financial condition of the Service and because the Governors believed (1) the Commission lacked authority to impose a system of new accounts and (2) the Service should not be required to restructure its system of accounts to meet the desires of the Commission. (See p. 26.)

Although GAO does not disagree with the Governors' decision in that case, it believes that the scope of the activities of the Commission should not be subject to the perceptions of the Governors or the state of the Service's financial condition.

The Service has indicated that it was not opposed to the Commission being funded directly by the Congress rather than through the Service. Rather than direct funding, in GAO's view, the Commission's expenses should be met from the Postal Fund, with any changes by the Governors to the original request to be approved by the Congress.

RECOMMENDATION TO THE CONGRESS

The Congress should amend the Postal Reorganization Act to provide for congressional approval of Governors' adjustments to the Commission budgets.

AGENCY COMMENTS AND UNRESOLVED ISSUES

The Postal Rate Commission supports most of GAO's conclusions.

The Commission does not believe that jurisdictional disagreements have been a significant hindrance to effective regulation.

The Commission said that if the Governors' authority to disallow any funds is to be limited, a concurrence of the Director of the Office of Management and Budget is preferable to congressional approval.

The Postal Service was provided with a draft of this report October 21, 1976, together with a request for written comments within 15 days. After numerous meetings with responsible officials, written comments were received on February 24, 1977. On some points its comments are unresponsive to the issues GAO presented in the report. Nevertheless, where appropriate, we have incorporated its comments in the report.

With the exception of the issue of self-representation, the Service disagrees with all of GAO's recommendations, stating that the proportion of the report devoted " * * * to so-called jurisdictional disputes overstates their practical importance to the ratemaking process * * * ." The Service further stated that the jurisdictional issues " * * * have in the main been resolved through practical case experience. We do not believe that a need for remedial legislation exists."

The Postal Service also believes that:

--A periodic reporting system already has been established by the Rate Commission and so there is no need for any legislative action.

--The need for subpoena power not been demonstrated, implying that the Rate Commission would likely abuse the subpoena power.

- There are insufficient safeguards to protect the Service from "fishing expeditions" by the Rate Commission.
- The recommendation for congressional approval of adjustments to the Commission's budget would muddle rather than clarify the budget approval process.

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CHAPTER 1

INTRODUCTION

On January 15, 1975, Senator Joseph Montoya requested that we evaluate the performance of the Postal Rate Commission and study its cost, functions, and continuity of management.

The Postal Reorganization Act of 1970 (39 U.S.C. 101) created two independent executive branch establishments--the Postal Service and the Postal Rate Commission. The Service is directed by an 11-member Board of Governors composed of nine Governors appointed by the President and confirmed by the Senate, the Postmaster General appointed by the Governors, and the Deputy Postmaster General appointed by the Governors and the Postmaster General.

The Commission consists of five Commissioners appointed by the President with the advice and consent of the Senate. Under the act, as amended, the Commission has jurisdiction over postal rates and fees, mail classification, nationwide changes in the nature of postal services, rate and service complaints, size and weight limitations for letter mail, and Postal Service determinations to close or consolidate any post office.

RELATIONSHIP BETWEEN GOVERNORS AND THE COMMISSION

The act authorizes the Governors to establish reasonable and equitable classes of mail, and reasonable and equitable rates of postage and fees for postal services. If the Service believes that changes in rates or fees are appropriate, it requests from the Commission a recommended decision on the proposed changes. The Commission makes a recommended decision after a hearing in which a formal evidentiary record--which is the sole basis for decision--is developed through the presentation and cross-examination of witnesses. The Commission's hearing procedures are expressly required by 39 U.S.C. § 3624 (a), which expressly makes applicable the on-the-record hearing procedures set forth in §§ 556 and 557 of the Administrative Procedure Act (5 U.S.C. §§ 556, 557). A similar procedure is followed for changes in mail classification.

Upon receiving a recommended decision from the Commission, the Governors may approve, allow under protest, or reject that decision. A rejected recommended decision is re-submitted to the Commission for reconsideration and a

subsequent recommended decision. When the Governors receive a second recommended decision they have the same options as they had for the initial decision but may also modify the decision by unanimous vote in specified situations.

The act provides for judicial review of the Governors' decision if appealed by a party to the proceeding before the Commission. The court's review of the decision is based on the hearing record before the Commission and the Governors. The Governors' decision may be affirmed or the entire matter returned to the Commission for further consideration, but it may not be modified by the courts.

ORGANIZATION, STAFFING, AND WORKLOAD

The Commission and its staff are governed by strict rules prohibiting off-the-record ex parte communications (i.e., benefiting one party to the proceeding made out of the presence of, and without notice to, the other parties) between the Commission and its staff, on the one hand, and interested persons outside the Commission, on the other, relating to any matter which is likely to be at issue in the proceeding before the Commission.

A related rule adopted by the Commission prohibits staff members who are participating in the trial of cases from advising the Commission as to its decision in that proceeding. To comply with these requirements, the Commission has divided its staff into litigation and advisory teams. The litigation staff participates in the trial of cases and assists the Officer of the Commission--an official designated by the Commission, as required by the act, to represent the interests of the general public in formal hearings before the Commission.

As of October 27, 1976, the Commission had a staff of 73 employees consisting of 47 professional and 26 administrative positions. For a listing of Commission cases, see appendix II.

HISTORY OF RATE CASES

The Commission's first rate decision was issued on June 5, 1972. The Postal Service Governors approved the recommended decision on June 28, 1972, but expressed reservations about certain jurisdictional assertions by the Commission.

Several intervenors (persons claiming an interest in the proceedings and authorized by the Commission to participate) appealed the decision to the U.S. Court of Appeals

for the District of Columbia, and the Court of Appeals unanimously affirmed the Commission's decision. Although cost allocation was not an issue before the court, the entire court joined in a separate concurring opinion expressing concern over the method used by the Service to allocate costs among different classes of mail. The method was criticized because 51 percent of the costs were divided among the classes of mail on a judgmental basis described by the judges as "an unstructured and well-nigh unreviewable discretion * * *."

The Commission's second rate decision, issued on August 28, 1975, was approved by the Postal Service Governors, with reservations about certain jurisdictional assertions, on September 4, 1975. The decision was appealed to the U.S. Court of Appeals for the District of Columbia contesting most importantly the Service's and the Commission's costing methodology.

In January 1976 this case was consolidated for purposes of oral argument with two others related to postal ratemaking pending before the appellate court. The appellate court's decision in these cases was rendered on December 28, 1976. It struck down the Service's and the Commission's costing methodology. The Service, with the strong endorsement of the Commission, has taken steps to appeal the decision.

The Commission's third rate decision, issued on June 30, 1976, was approved by the Postal Service Governors on July 7, 1976. Seven appeals have been filed with the U.S. Court of Appeals for the District of Columbia from the decision in this case.

SCOPE OF REVIEW

Although we do not have specific legal authority to audit the Postal Rate Commission, the Commissioners agreed to cooperate with us in the review.

Our examination of the Commission included reviewing (1) the Report of the President's Commission on Postal Organization, where it pertains to ratemaking activities, (2) the legislative history of the Commission, (3) the several rate decisions issued by the Commission, (4) several volumes of background information supplied by the Commission, and (5) other information concerning organization, budgeting, and personnel. In addition, we held discussions with the Commissioners and their staff.

Discussions were also held with officials of the Postal Service.

CHAPTER 2

CONGRESSIONAL INTENT UNCLEAR

REGARDING COMMISSION JURISDICTION

We believe that the essential overall structure of the postal ratemaking process is sound and has been working. Nevertheless, a better definition of the role of the Postal Rate Commission and refinements in the Postal Reorganization Act would improve ratemaking performance.

The Postal Service and the Commission disagree on the role the Congress intended the Commission to play in postal affairs. Jurisdictional disputes have arisen on a broad range of issues involving the authority of the Commission with respect to setting certain postal rates, determining the validity of Service cost and revenue estimates, and investigating the efficiency and economy of management and the quality of mail service.

The Postal Reorganization Act is not clear on these matters, and both parties find support for their positions in the act and its legislative history.

The Commission argues that the functions given it under the act, as amended--rate determinations, mail classification, complaints, service change reviews, and Postal Service determinations to close or consolidate any post office--of necessity confer on its fact finding authority, akin to that exercised by other regulatory bodies. The Commission reasons that without such authority no meaningful regulation can take place and it and the public would have to accept the unilateral determinations of the Service.

On the other hand, beginning with the fact that unlike most regulatory agencies the Commission's decisions are not final and must be approved by the nine Postal Service Governors, the Service has developed a rationale to support its position that the Commission's role was intended to be a limited one, with the Governors possessing broad discretionary powers subject to prior Commission review only where explicitly provided for in the act.

The first two rate cases took 17 and 23 months to complete. There is no appropriate standard against which the timeliness of these cases can be judged, but we note that other regulatory agencies have often taken longer to resolve

their cases. It is true, however, that the Service's finances were adversely affected by its inability to quickly adjust postal rates in response to swiftly rising costs.

We believe that the cases required the time that they did because of the need to (1) develop a data base for a new regulatory undertaking, and (2) determine an appropriate costing methodology from among a number of alternatives.

The Commission completed the third case in only 9-1/2 months; this was a major accomplishment. The reduced time can be attributed to (1) the Commission's use of improved, streamlined procedures and (2) a costing approach laid down by the Commission in the second rate case which the Service generally favored. It should be noted that the U.S. Court of Appeals recently rejected this costing approach. The Service, with the strong endorsement of the Commission, has taken steps to appeal the decision.

Despite this improvement in rate case timelines, the basic question of the proper role of the Commission persists. The jurisdictional disputes between the parties largely spring from the differing interpretations of the Commission's role.

NEED TO RESOLVE JURISDICTIONAL DISPUTES BETWEEN THE POSTAL RATE COMMISSION AND THE POSTAL SERVICE

During ratemaking and classification hearings, a number of challenges to the Commission's authority have been raised by the Postal Service. None of the jurisdictional questions discussed below have been resolved.

We reviewed five areas of dispute which we considered to be the most important to determine whether the Commission had jurisdiction to

- examine the Service's level of cost and revenue estimates,
- evaluate the Service's management and quality of service provided,
- recommend rate phasing,
- recommend adjusted rates, and
- determine conditions of mailability.

Commission review of Service's level
of cost and revenue estimates

Does the Commission have jurisdiction to inquire into or review the Service's estimates of its total costs and revenues that are filed in support of a request for a rate increase?

The Commission believes that to accomplish any meaningful regulation, it is essential that cost and revenue estimates submitted by the Service supporting a request for a recommended decision on changes in rates and fees be subject to the Commission's independent review.

The Commission argues that without an opportunity for it to verify the accuracy of the Service's total estimates, or for the public to examine those cost estimates, the public would be obliged to pay whatever total bill the Service unilaterally decided to charge.

The Commission concludes that it has the authority on the basis of:

- The act's emphasis on the Commission's independence.
- The direction in the act to recommend a decision in accordance with the policies of the act which includes the policy to insure that

"Postal rates and fees shall provide sufficient revenues so that the total estimated income and appropriations to the Postal Service will equal as nearly as practicable total estimated cost of the Postal Service."

- The indication in the act that Service requests be subject to hearings and appellate review.

The Commission contends the purposes of the act can only be accomplished by actually examining the bases for Service requests for increased rates and fees. The Commission also argues that there is no compelling evidence in the act's legislative history that the Congress intended to withhold from the Commission the authority to examine the Service's estimates.

The Service's position is based on what it perceives to be practical considerations. The Service is concerned that the postal system cannot be managed effectively if major management decisions are subject to modification or reversal by outside parties.

The Service, therefore, contends that the act necessarily confers responsibility to carry out policies not plainly expressed in the act on the postal structure's basic management machinery--the Governors, the Board of Governors, and the Service--not on the Commission. The Service would limit the Commission's ratemaking responsibilities to apportionment of postal costs among the several classes of mail to determine the rate each should pay.

The Service's management and quality of service

Does the Commission have jurisdiction to determine whether the Service's management is honest, efficient, and economical for purposes of ratemaking or mail classification? and may the Commission take account of level and quality of service in determining proposed rates or mail classification?

The Commission contends that it has the authority to consider, for purposes of ratemaking, the Service's honesty, efficiency, and economy of management and the level and quality of postal service. In regard to honesty, efficiency, and economical management, the Commission's assertion of authority is based on an interpretation of the language of the act similar to that made concerning its authority to consider independently the Service's total cost estimates.

Similarly, the Commission contends that it may review the level and the quality of service on the basis that those factors are generally inherent in the policies stated in the act and are necessary elements of the factors that the Commission is specifically directed to consider in preparing a recommended decision.

The Service contends that the Congress would not have left a major policy judgment, such as jurisdiction to review efficiency, to be arrived at by implication from general words of the act. Moreover, the Service argues that honesty, efficiency, and economy of management, and level and quality of service are strictly matters of management committed to the supervision of the Board of Governors and that fragmentation of responsibility for review of those factors would, in fact,

frustrate the act's policy of investing the Board with management authority.

The Service contends that evaluating efficiency cannot be an exercise taking place only when the Commission recommends a decision, but rather must be a primary and continuing concern of the Board of Governors in carrying out its oversight responsibilities. In this connection, the Service believes that its efficiency of operations as reviewed by the Board, is subject to "outside" inquiry only under specific statutory provisions, such as that authorizing audit by the Comptroller General and general and continuing inquiry by the Congress and its committees.

The Service also contends that if the Commission had jurisdiction it could result in the Commission disallowing, for rate-setting purposes, Service expenses perceived by the Commission as resulting from inefficiency. This could lead to the legally impermissible situation of rates being set at levels that would preclude revenues and appropriations from equaling costs.

Finally, the Service believes that the Congress could not have intended to prolong the Commission's ratemaking proceedings by enlarging the area of regulatory supervision to include reviewing the efficiency of operations and other management performance objectives.

Phasing of rates

Does the Commission have authority to recommend how rates should be phased over transition periods specified in the act? Neither the language of the act nor its history sufficiently outlines jurisdiction in this area.

To ease the impact of certain second-, third-, and fourth-class rate increases under the Postal Reorganization Act of 1970, the Congress provided for the gradual introduction of those increases over specified terms of years through the adoption of separate rate schedules "with annual increases as nearly equal as practicable." This procedure is termed "phasing." However, the statute does not state whether phased-rate schedules can be adopted unilaterally by the Service and its Board of Governors, or whether proposed schedules are subject to recommended decisions by the Commission.

The Commission argues that the act's legislative history indicates that the Commission has jurisdiction to issue a recommended decision on phasing. Both the House and Senate bills provided for unilateral adoption of phasing schedules by the Governors or a similar body. The conference substitute adopted the Senate version but deleted any express reference to the Governors. Thus, the act simply provides that "a separate rate schedule shall be adopted."

The Commission concludes from the conferees' omission of the reference to the Governors an intent to give the Commission the authority to recommend a phased-rate schedule. The Commission also contends that the further deletion from the Senate bill of a provision that phased rates could be adopted "notwithstanding the provisions of this chapter" is a clear signal that the conferees did not intend to exempt phased-rate setting from the provisions for recommended decisions from the Commission.

In addition, the Commission points out that the only language in the act which indisputedly grants to the Service unilateral power to set rates is found in the temporary rate provision in section 3641. The Commission argues that the clarity of that one express exception to the general ratemaking machinery strongly suggests that if the Congress had intended to preclude the Commission from the phasing area, it would have expressly done so.

The Commission further contends that it cannot meaningfully perform certain of its statutory tasks without review of the rate phases. For example, the Commission believes that it cannot truly assess the impact of rate increases on the general public and business mail users without some control over the rate phases. Finally, the Commission argues that the act, empowering the Commission to take "necessary and proper" action to carry out its statutory functions, is further evidence of the intention to invest it with responsibility in the phased-rate area.

The Service resists Commission jurisdiction on a number of grounds. First, the Service argues that since the act gives it the responsibility to determine the amount necessary to be appropriated to offset revenue losses caused by phasing, it necessarily has the unilateral power to determine phasing schedules. Second, the Service contends that establishing phased rates is merely a mechanical and ministerial task designed for the Postal Service's management machinery, i.e., the Service and the Board. Finally, the Service contends that Commission jurisdiction will create undue delay, since the recommended decision procedure is often lengthy and involved.

Adjusted rates

Does the Commission have jurisdiction to adjust rates where the Congress fails to make an appropriation to cover revenues lost through phasing? 39 U.S.C. §2401(c) (1970) authorizes the appropriation to the Service of amounts equal to revenues lost because of the act's provisions for free and reduced rate mail. If the Congress fails to appropriate funds equal to such "revenue foregone," section 3627 permits the adjustment of rates to increase revenues and recoup the unappropriated amount "in accordance with the provisions of this subchapter."

The Postal Service contends that computing the level of a rate adjustment is a ministerial and mechanical exercise which the court approved the Postal Service's performing in Direct Mail Advertising Association v. United States Postal Service, 458 F.2d 813 (1972).

The Commission responds that the court in that case did not approve the Service's making unilateral adjustments but expressly declined to pass on the question in its footnote 9. Moreover, in the statutory provision's explicit wording, "this subchapter" can only be subchapter II, in which section 3627 appears. Since the procedure in subchapter II for changing rates provides for Commission input in the form of a recommended decision, it is clear that the Service cannot institute rate adjustments without first submitting its proposed adjustments to the Commission. The Commission also disagrees

that adjustments are merely ministerial and mechanical tasks, which involve no discretion. To determine whether circumstances justify an adjustment, a finding must be made that the Congress has failed to make certain appropriations for revenue foregone, which should be made by the Commission as an impartial tribunal.

We believe the provision in section 3627 that rates may be adjusted "in accordance with the provisions of this subchapter" contemplates using the recommended decision procedure.

Conditions of mailability

Does the Commission have jurisdiction to determine conditions of mailability of various classes of mail? Although the Commission has the authority to make determinations on size and weight, it is not clear which other conditions of mailability, or to what extent such conditions of mailability, are subject to the Commission's jurisdiction.

In general, mailability encompasses mail preparation, mail acceptance (deposit of mail, postage payment, and separation of mail), and mail characteristics (address and markings, size, and weight). These factors are detailed in mail classification schedules and enable the postal patron to evaluate rates and alternative conditions of mailability and service to the extent an alternative exists within or outside the Postal Service. The act requires the Service to request a recommended decision from the Commission before establishing or changing a mail classification schedule.

The Service contends that only the essential factors of the classification schedule necessary to define the several classes and subclasses of mail are subject to the recommended decision procedure and that the Service retains the authority to define detailed conditions of mailing. The Service argues that this flexibility is necessary to enable the Service to insure that mail will be prepared and accepted under conditions that promote processing and administrative efficiency, protect postal revenues, and result in minimum cost to users of postal services.

The Commission, however, contends that all conditions of mailing (as distinguished from operational regulations)

detailed in mail classification schedules are subject to Commission recommendations.

The act does not clearly define which conditions of mailing are subject to the recommendation procedure. In section 404 (1) the Service is given the specific power to provide for the "collection, handling, transportation, delivery, forwarding, returning and holding of mail, and for the disposition of undeliverable mail." However, section 3682(c) authorizes the Service to establish size and weight limitations for letter mail in the same manner that is prescribed for changes in classification, i.e., by first requesting a recommended decision from the Commission.

Thus, it would appear that certain conditions of mailing (size and weight) which seem to be included in the grant of power to the Service in section 404 (1) are specifically made subject to Commission jurisdiction by section 3682(c). It is not clear whether other factors of mailability detailed in mail classification schedules are removed from the Service's independent authority by reference to the Commission's jurisdiction over mail classification schedules in section 3623.

CONCLUSION

The legislative history of the Postal Reorganization Act makes it clear that in creating the independent, bipartisan Postal Rate Commission, the Congress intended the Commission to serve as a "true partner" of the Governors of the Postal Service. The Senate Post Office and Civil Service Committee noted that if a bureaucratic struggle developed between the Commission and the Service, then the whole theory of independent ratemaking will have failed.

The jurisdictional disputes discussed here indicate that something less than a true partnership exists between the Postal Service and the Commission. Furthermore, with three rate cases completed, two distinct philosophies concerning the role of the Commission in ratemaking have evolved. The Commission views its authority under the act as being much broader and requiring a more indepth review than the Postal Service's more narrow view.

The fundamental assumptions underlying the Postal Reorganization Act and the wisdom of creating an independent, financially self-sufficient Postal Service are being reexamined by the Congress. The Postal Reorganization Act

Amendments of 1976 established the Commission on Postal Service to study postal problems and recommend long-term solutions. As part of its task, the Commission on Postal Service is charged with evaluating the current ratemaking process and will necessarily examine the role of the Postal Rate Commission.

Our purpose in noting these differences is not to assess blame on either the Rate Commission or the Postal Service. Since the Postal Reorganization Act is not clear, the arguments advanced by both parties have merit and have support in the language of the act. Clarification of the act, therefore, should result in better cooperation between the Rate Commission and the Service.

RECOMMENDATION TO THE CONGRESS

If the Congress ultimately decides to leave the ratemaking process essentially as it is, its intent with respect to the role of the Postal Rate Commission should be clarified.

POSTAL RATE COMMISSION COMMENTS

The Commission disagrees with our recommendation. The Commission states in their reply that:

"These disagreements are normal in the development of a new regulatory system, and it is equally normal for them to be resolved not by continuous overhauling of the governing statute but by litigation (which, by its nature, is usually quite limited) in the courts."

The Commission further stated that:

"* * * as a practical matter--theoretical disagreements between the Commission and the Postal Service over the essential role of the Commission have not materially hindered postal regulation."

We do not dispute the statement that disagreements are not uncommon in a new regulatory system. However, unless and until the Rate Commission is given authority to initiate litigation, we doubt that these jurisdictional disputes will find their way to the courts for resolution. It is likely that only disputes having a substantial financial impact on a particular private party will reach the courts, quite apart from their importance to the ratemaking process, since the initiation of suits rests with the private sector. In fact, that was the situation in the court case cited by the Commission in support of their position.

Furthermore, it is important to note that in the approximately 6-1/2 years since the Commission was established, the Commission and the Postal Service still disagree on the right of the Commission to review such fundamental issues as the Service's cost and revenue estimates in ratemaking proceedings. Although we recognize that it was proper Rate Commission advocacy to contend, in their reply, that the U.S. Court of Appeals for the District of Columbia, in a recent case, "seems largely to resolve previous disagreements over jurisdiction over cost and revenue estimates* * *," we caution that the issues were not briefed and argued in the case, and it is not clear that the language of the court resolved any of these disagreements.

With respect to the statement that "* * * theoretical disagreements* * * have not materially hindered postal regulation," we note that responsible officials of the Commission specifically directed our attention to these matters and contended that the disputes resulted in delays in producing information and refusals to produce information.

For purposes of clarification, we did not intend to imply that the Rate Commission does or should function as an "inspector general" of the Postal Service or as a "roving Commission" to conduct general oversight of postal management performance outside the context of rate, classification, and service proceedings called for by the act, as the Rate Commission comments suggest. (See p. 37.)

POSTAL SERVICE COMMENTS

The Postmaster General stated that the Service has no objection to the Commission on Postal Service reviewing the jurisdictional issues, "but a number of events have occurred that lead us to think that a legislative remedy would be inappropriate and unnecessary." The Postmaster General also stated:

"The proportion of the report devoted to so-called jurisdictional disputes dramatically overstates their practical importance to the ratemaking process, particularly when it is suggested that these areas of dispute have led to delays in Commission proceedings. There is not any evidence presented or contained in the report to support such an allegation."

Although the discussion of jurisdictional disputes is lengthy, we felt it was necessary to adequately present the views of both parties on each issue. We do not imply or

assert that jurisdictional disputes caused delays. The significance of this discussion is not delays resulting from the disputes, but rather the disagreement between the Service and the Commission over what the role of the Commission should be. Examples of instances of delays resulting from the disputes, however, are documented in the records of the Commission's proceedings.

The Postmaster General stated that most of the issues have been substantially resolved. The five issues we presented in this report are not all inclusive. And, although the Service and the Commission have reached a workable arrangement on most of the issues at the present time, the matter of jurisdiction has not been resolved. Consequently, the potential for disputes in the future over these and other areas of jurisdiction still exists. (See p. 48.)

The Postmaster General also stated that we should have directed our review to more fundamental questions of rate-making. These questions go to the heart of ratemaking procedures, including the desirability of having one Federal agency whose sole purpose is to review the operation of another Federal agency and whether formal proceedings within the Postal Service itself would better serve the Commission's purposes.

At the request of Senator Montoya we restricted our review work to the Postal Rate Commission under the rate-making procedures established by the Postal Reorganization Act. The questions raised by the Postmaster General have been discussed on a number of occasions in the Congress and are currently the subject of study by the Commission on Postal Service. We believe that the Commission on Postal Service is the appropriate forum to study these issues. (See p. 46.)

CHAPTER 3
NEED FOR AMENDMENTS TO THE
POSTAL REORGANIZATION ACT

The differing views of the Service and the Rate Commission have created other problems, some of which point up a need for other legislative changes that are desirable in the event of either a narrow or broad definition of the Commission's role.

These problems have to do with

--a periodic reporting system,

--subpoena power, and

--self-representation in court litigation.

PERIODIC REPORTING SYSTEM

There is a dispute between the Service and the Commission regarding the authority of the Commission to obtain relevant data from the Service. This problem relates directly to their differing views on the Commission's proper role.

The Service provides requested information that it considers necessary to fulfilling its definition of the Commission's functions. The Service has rejected, however, requests for information that it believes is not required to perform these functions. The Commission considers that it is legally entitled to obtain relevant information it needs itself or it requests on behalf of intervenors in performing its functions.

Postal ratemaking proceedings are relatively unique in that, although there are numerous parties and participants, the basic and essential data is in the control of only one party, the Postal Service. In each of the first three rate cases, there have been more than 50 intervenors aside from the Postal Service and the Officer of the Commission. Most of these had to obtain data from the Postal Service through interrogatories.

Almost 1,725 written interrogatories were filed by the participants in the second rate case, more than 1,013 of which were served on the Postal Service. By the conclusion

of the testimony, more than 66 interrogatories were unanswered and the Postal Service had not answered more than 46.

If basic ratemaking data was periodically submitted and made available for public inspection, separate and apart from any proceeding pending before the Commission, the necessity for large numbers of interrogatories during each proceeding might be considerably reduced. Since this basic information would be available to all the parties at the beginning of and even prior to, any particular proceeding, the parties could quickly evaluate the Service's application and prepare their own cases in a timely manner. Such periodic reporting requirements have been established by rule by most Federal regulatory agencies under specific authority to do so.

In its recommended decision in the first rate case the Commission stated it would hold a rulemaking proceeding to determine what cost and revenue data should be obtained for use in future proceedings. A rulemaking proceeding was begun in the summer of 1972. Included in the proposed rules were a series of forms on which the Postal Service would be required to periodically report basic ratemaking data to the Commission.

The Postal Service contested the Commission's jurisdiction to impose periodic reporting requirements and contended that the decision to regulate the Service's reporting system was within the sole discretion of its management. Moreover, the Postal Service claimed that a great deal of the information the Commission required was not available and could be made available only at exorbitant expense.

The Commission relented and the proposed reporting forms were deleted from the proposed rules, including those for which the Postal Service conceded it had the information readily available. However, the rules that were implemented specified in more detail the information that must be filed in an application for rate adjustments and accordingly represented a significant step in acquiring needed information from the Postal Service. But the requirements were self-limiting in that the data need only be supplied "to the extent information is available or can be made available without undue burden."

A second rulemaking proceeding was concluded in October 1976, at which time the Commission prescribed the regular submission of some existing Postal Service data. The Postal Service agreed to supply the information, but does not recognize the Commission's authority to require such reporting.

We recognize that there is some doubt whether the Commission has the legal authority to require the Postal Service to file periodic reports, since the Postal Reorganization Act does not explicitly grant this power. Congressional clarification is therefore desirable.

RECOMMENDATION TO THE CONGRESS

In order to enable the parties to obtain needed information easily and quickly, the Congress should amend the Postal Reorganization Act as follows.

SEC. __. Title 39, United States Code, is amended by redesignating section 3604 as 3607 and by inserting immediately after section 3603 the following new section:

" § 3604. Periodic and special reports."

"(a) The Postal Service shall file with the Postal Rate Commission such annual and other periodic reports or special reports as the Commission may by rules and regulations prescribe as necessary or appropriate to assist the Commission in the proper administration of this chapter. The Commission may prescribe the manner and form in which such reports shall be made, and require from the Postal Service specific answers to all questions upon which the Commission may need information. Such reports shall be made under oath unless the Commission otherwise specifies.

"(b) It shall be unlawful for any employee of, or any person acting on behalf of, the Postal Service willfully to hinder, delay or obstruct the making, filing or keeping of any information, document, report, memorandum, record, or account required to be made, filed or kept under this section or any rule or regulation thereunder.

"(c) The Commission may investigate any facts, conditions, practices, or matters which it may find necessary or proper in order to determine whether any person has violated or is about to violate any provision of this section or any rule or regulation thereunder.

"(d) Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a

violation of the provisions of this section or of any rule or regulation thereunder, it may in its discretion bring an action in the proper district court of the United States to enjoin such acts or practices and to enforce compliance with this section or any rule or regulation thereunder, and upon a proper showing a permanent or temporary injunction or decree or restraining order shall be granted without bond. Further, upon application of the Commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this section or any rule or regulation thereunder.

"(e) The District Courts of the United States shall have exclusive jurisdiction of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this section or any rule or regulation thereunder. Such suit or action may be brought in the district wherein any act or transaction constituting the violation occurred or in the district wherein the defendant is an inhabitant, and process in such cases may be serviced wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 1254 and 1291-1294 of Title 28."

POSTAL RATE COMMISSION COMMENTS

The Commission states that while it "strongly favors the GAO's conclusions with respect to periodic reporting legislation," it believes that "the authority to require such reporting already exists" in view of the Commission's general powers to "establish procedures * * * and take any other action they deem necessary and proper to carry out their functions and obligations." (39 U.S.C. Section 3603.) While we respect this advocacy position of the Commission, we believe, and the Commission concurs, that its statutory outlines on this point should be further delineated. (See p. 41.)

POSTAL SERVICE COMMENTS

The Postal Service, in commenting on our report, stated that the Commission and the Postal Service have established a periodic reporting system through a rulemaking process and, therefore, no reason exists for legislative action.

The Service, however, believes that periodic reporting will not reduce the number of interrogatories and thereby shorten the hearing process. In addition, the Service stated that we should have made an attempt to evaluate the reasonableness and relevance of the data requests made by the Commission and the intervenors and the cost of developing such data.

As previously stated, we believe there is some doubt whether the Commission has the authority to require periodic reporting. In addition, the Postal Service while now co-operating with the Commission in establishing a periodic reporting system, has given no indication that it has reversed its position that the Commission does not have the jurisdiction to impose such a reporting system. Therefore the need to provide clear authority for periodic reporting exists.

With respect to reducing the number of interrogatories, we believe that it is logical to assume that basic rate-making data, available for public inspection, separate and apart from any proceeding pending before the Commission would have the effect of reducing to some extent the number of interrogatories in a proceeding.

Concerning the relevancy and cost of data requests, the Postal Service can appeal to the courts in any case where it feels a request is unreasonable. We see no value, at this point, in our commenting on past requests where reasonableness and relevance was determined by the administrative law judge. (See p. 51.)

NEED FOR AUTHORITY TO ISSUE SUBPOENAS

Large numbers of interrogatories can be expected in each ratemaking proceeding particularly before the establishment of an effective periodic reporting system. In order that proceedings may be expeditiously concluded, it is essential that the parties promptly answer interrogatories--written questions--addressed to them. The interrogatories are part of the procedure called "discovery" whereby the parties are allowed to elicit information from each other, before the hearing begins as well as while it is going on, to assist them in preparing their own cases and rebutting the arguments of opposing parties. The present Commission rule regarding the failure of a party to comply with rules of discovery is inadequate.

We note that the Commission's Rules of Practice does provide in part that:

"Presiding officers shall have the authority, within the Commission's powers and subject to its published rules * * * (3) To issue subpoenas authorized by law; * * *."
(Underscoring supplied.)

However, this is but a paraphrase of the authority given a presiding officer under the Administrative Procedure Act, and its delimiting provisions--"within the Commission's powers" and "authorized by law"--may effectively preclude exercise of the power, since the Commission does not have explicit statutory authority to issue subpoenas.

The Commission and the Service disagree as to the present existence of subpoenaing authority by the Commission. The importance of this issue in the presence of disagreement over what information the Commission can rightfully demand is obvious. We believe that the Commission, like other regulatory agencies, should have such authority, regardless of whether its role is narrowly or broadly defined.

RECOMMENDATION TO THE CONGRESS

In order that all the information necessary for the Commission to make an equitable decision in its proceedings will be made available, the Congress should amend the Postal Reorganization Act by adding the following section to Title 39, U.S. Code:

"§ 3605. Attendance of witnesses; production of documents; subpoena.

"(a) For the purpose of any investigation or any other proceeding under this chapter, any member of the Postal Rate Commission, or any officer designated by it, is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which the Commission finds relevant or material to the inquiry.

Such attendance of witnesses and the production of any such records may be required from any place in the United States or at any designated place of hearing.

"(b) In cases of contumacy by, or refusal to obey a subpoena to, any person, the Commission may invoke the aid of any court of the United States within the

jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, contracts, agreements, and other records. Such court may issue an order requiring such person to appear before the Commission or member or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found or may be doing business. Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in his or its power so to do, in obedience to the subpoena of the Commission, shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than \$1,000 or to imprisonment for term of not more than one year, or both.

"(c) The testimony of any witness may be taken by deposition upon authorization by the Commission or the presiding officer on application of any party in any proceeding or investigation pending before the Commission. Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission, as hereinbefore provided."

POSTAL RATE COMMISSION COMMENTS

A majority of the Commissioners endorse the proposal to provide specific subpoena power. Nevertheless, although the Commission agrees that the Postal Reorganization Act does not expressly confer authority on the Commission to issue subpoenas, it states that it "would expect to contend successfully for the enforcement of a subpoena on the grounds that its issuance was statutorily authorized both by the Act's general powers provision (39 U.S.C. Section 3603) and an expressed authorization (which arguably encompasses issuance of subpoenas), found in Section 3624 (b)(3) of the Act that 'the Commission may (without limitation) adopt rules which provide for * * * discovery both from the Postal Service and the parties to the proceedings.'"

Again, while we respect the advocacy position of the Commission, we have reservations whether it would prevail in a court case. Consequently, we believe, and the Commission agrees, that future proceedings could involve procedural subpoena questions and prior congressional enactments of our recommendations would aid the Commission in resolving such questions. (See p. 41.)

POSTAL SERVICE COMMENTS

The Postal Service states that a review of the legislative history of the Postal Reorganization Act indicates the Congress did not want a bureaucratic struggle between the Commission and the Service, and the proposed extension of subpoena power would lead to relationships which the Congress did not envision or want. The Service also implies that the Rate Commission would likely abuse the subpoena power, and contends that there are insufficient safeguards to protect the Service from "fishing expeditions" by the Rate Commission. In addition, the Service states that it has supplied voluminous data in all proceedings when the data was available and the expense reasonable in obtaining it.

Although the Congress did not want a bureaucratic struggle between the Rate Commission and the Service, we do not believe that providing the Rate Commission with the explicit power of subpoena need result in such a struggle. In fact, the Rate Commission believes it already has the power of subpoena under the present statute, although it is not specific. We do not believe that it is appropriate for the Service to be determining what data is reasonable for it to supply to the Rate Commission in a rate case, nor do we believe that the Rate Commission would undertake fishing expeditions with the subpoena power. (See p. 52.)

THE COMMISSION NEEDS THE OPTION OF SELF-REPRESENTATION IN COURT LITIGATION

The Justice Department is charged with representing both the Postal Service and the Commission in court litigation. Existing law makes no provision for situations where the Attorney General's two official clients advocate conflicting positions.

An example is the recent case of Associated Third-Class Mail Users v. United States Postal Service where an issue was whether the Commission had jurisdiction over changes in special service fees. The Associated Third-Class

Mail Users, in accord with the views of the Commission, argued that the Commission had jurisdiction while the Postal Service denied any such jurisdiction. Therefore, the two Federal agencies were on opposite sides of the litigation.

The matter was resolved by the expedient of having the Justice Department advocate the Postal Service's position but simultaneously attaching to its brief an "informational" memorandum of law prepared by the Commission staff setting forth the Commission's views. The U.S. District Court found in favor of the Associated Third-Class Mail Users and thus upheld the Commission's position.

When the case was appealed to the U.S. Court of Appeals for the District of Columbia by the Postal Service, the same difficult situation existed. The Justice Department again supported the views of the Postal Service and presented only the position of the Postal Service in oral argument with the result that the views of the Commission may have been inadequately presented. Nevertheless, when the Court rendered its decision, the Commission's position was affirmed.

In this case, the views of the Commission were at least made known by the Department of Justice. However, it might in its discretion have refused to do so. The possibility exists, therefore, that in some future case the views of the Commission may not be presented at all.

RECOMMENDATION TO THE CONGRESS

To avoid a situation where the views of the Commission may not be presented adequately or at all, the Congress should amend the Postal Reorganization Act by adding the following section to Title 39, U.S. Code:

" § 3606. Legal services for Postal Rate Commission.

"The Postal Rate Commission shall have the right to be a party to litigation involving proceedings under this chapter. The Commission may employ, by contract or otherwise, such attorneys as it finds necessary for proper legal aid and service of the Commission or its members in the conduct of their work, or for proper representation of the public interest in investigations made by it, or cases or proceedings pending before it, or to appear for or represent the Commission in any case in court."

POSTAL RATE COMMISSION COMMENTS

The Commission agrees with the recommendation.
(See p. 42.)

POSTAL SERVICE COMMENTS

The Postal Service agrees with our recommendation and further stated that "from our point of view, it would be appropriate if both the Service and the Commission are able to represent themselves in court." (See p. 52.)

CHAPTER 4
GOVERNORS' ADJUSTMENTS OF
COMMISSION BUDGET REQUESTS SHOULD
BE CONGRESSIONALLY APPROVED

The Commission's operations are financed by the Postal Service, and the Governors have approval authority over the amount the Commission can spend. There is no reason to believe that the Governors would abuse this power. On the other hand, the potential in this regard is illustrated by a past incident.

The Commission has submitted five budgets for fiscal years 1972 through 1976. Four of these budgets were approved as submitted. The budgeted amounts are shown in the following schedule.

<u>Fiscal</u> <u>year</u>	<u>Budget</u> (000 omitted)
1972	\$2,500
1973	2,500
1974	2,500
1975	3,000

For fiscal year 1976 the Commission requested \$4,150,000. The Board of Governors, however, adjusted the total amount of money requested to \$2,779,000 which represented the total expenditures for fiscal year 1975 plus 10 percent. In adjusting the budget, the Governors, by letter dated June 3, 1975, stated:

"* * * the Governors wish to avoid any action in regard to the Commission's budget which would impair the ability of the Commission to perform its duties in a timely and efficient manner. Nevertheless, the Commission's proposal for a FY 1976 budget in the amount of \$4,150,000 represents an increase of more than 65 percent over the Commission's estimated expenditures for FY 1975. Given the current condition of the national economy, the very large deficits generally faced by the Federal Government, and the present financial condition of the Postal Service itself, we believe it would be irresponsible for us to approve an increase of such magnitude at this time * * *"

The Governors took particular exception to the request for an increase of \$710,000 to begin developing a system of accounts for the Postal Service. The Governors recognized that the

"* * * Commission is seeking a system which would enable the Postal Service to periodically report cost and revenue data to the Commission to provide on-going support for more expeditious consideration of rate and classification proceedings."

However, the Governors believed (1) the Commission lacked authority to impose a system of new accounts and (2) since the Commission is regulating a unique entity and not an industry where uniform reporting might be desirable, the Service should not be required to re-structure its system of accounts to meet the desires of the Commission. In addition, the Governors stated that the Postal Service was well advanced in the process of revising its chart of accounts and a new system will be largely in place during fiscal year 1976.

In conclusion, the Governors stated:

"* * * we have no intention of reducing the Commission's budget so as to impair its ability to perform its statutory functions. In the past, we have followed a practice of restraint so as to avoid any risk of such impairment; we intend to follow the same practice in the future. Thus, if the Commission finds that its ability to operate effectively is threatened by our adjustment of its budget, we would expect to have the opportunity to consider further adjustment."

The Commission, in replying to the Governors, stated that the adjustment to the budget "seriously threatens the Commission's ability to carry out its statutory responsibilities" and, as a minimum, an additional \$825,000 over the estimated fiscal year 1975 expenditure level was needed to meet its obligations under the Postal Reorganization Act. In justifying the appeal, the Commission stated that its request for \$3,440,000 represented the minimal staff and housekeeping resources needed to carry a "vastly-increased workload." In addition to the major postal rate and mail classification cases, the Commission's workload included two advisory opinion cases filed by the Postal Service, a complaint filed by a private party concerning the Postal Service's interpretation of the Private Express Statutes, and an issue raised in the mail classification case concerning the Commission's jurisdiction over Private Express

regulations. Without the additional funds, the Commission felt its ability to function effectively and efficiently as an independent administrative agency was seriously undermined.

With respect to the system of accounts, the Commission stated that it was willing to hold in abeyance its request for the \$710,000 pending further discussion of the matter with the Governors. In return, the Governors promised their full cooperation in resolving this matter.

In replying to the Commission's request for a further adjustment in the fiscal year 1976 budget, the Board of Governors, on July 10, 1975, stated:

"Having in mind the pendency of the current rate case and the inadvisability of detailed discussions between the Commission and the Governors while the rate case is before the Commission, the Governors have concluded that it would be best to keep your request for a further adjustment under advisement. We will give further consideration to this matter at a later date. In the meanwhile, the approved budget will continue to be \$2,779,000."

On October 7, 1975, the Governors approved a revised budget for the Commission for fiscal year 1976 in the amount of \$3 million.

Although we do not disagree with the Governor's decision concerning the system of accounts, we believe that the scope of the activities of the Commission should not be subject to the perceptions of the Governors or the state of the Service's financial condition.

The scope of our review did not include an examination of the justification of the Commission's fiscal year 1976 budget. We cite the events of the Commission's budget approval as support for our conclusion that, while there is no indication that the independence of the Commission in its recommended decisions has been affected by the budget procedures, it is unusual for the funds of a regulatory agency to be under the control of the regulated agency. This could provide a means for limiting the scope of the Commission's activities. Furthermore, the budget approval procedure is another illustration of the confusion (see ch. 2) that exists as to the respective roles of the Commission and the Postal Service under the Postal Reorganization Act.

We believe the Commission's expenses should be met from the Postal Service Fund, with the Congress reserving the right to review any changes by the Governors to the original request.

RECOMMENDATION TO THE CONGRESS

GAO recommends that the Congress amend the Postal Reorganization Act by redesignating section 3604 of Title 39 U.S. Code as section 3607 and amending subsection (d) thereof to read as follows:

"§ 3607 Administration

"(d)(1) The Commission shall periodically prepare and submit to the Postal Service a budget of the Commission's expenses, including but not limited to, expenses for facilities, supplies, compensation and employee benefits. The budget shall be considered approved--

"(A) as submitted if the Governors fail to act in accordance with subparagraph (B) of this paragraph; or

"(B) as adjusted if the Governors holding office, by unanimous written decision, adjust the total amount of money requested in the budget" and such adjustment is approved by the Congress. 1/

"Subparagraph (B) shall not be construed to authorize the Governors to adjust any item included within the budget.

"(2) Expenses incurred under any budget approved under paragraph (1) of this subsection shall be paid out of the Postal Service fund established under section 2003 of this title."

POSTAL RATE COMMISSION COMMENTS

The Commission stated that it appreciates the reasoning leading to the recommendation that certain control of the Commission's budget be taken from the Governors of the Postal Service and lodged in the Congress, although the present simple system, with the exception of the one instance, has worked satisfactorily. The Commission agrees that the further review we recommended would be appropriate, if it were deemed feasible by the Congress.

The Commission, however, is concerned that since its budget is so small and the funds are derived from the Postal Service's Fund, it might be needlessly burdensome for the

1/ Underlined portion is language to be added to present law.

Congress to expend valuable time reviewing and approving an exceedingly minor matter. Accordingly, it suggests the alternative of limiting the Governor's authority to disallow any funds by requiring the concurrence of the Director of the Office of Management and Budget in such a decision.

We still believe congressional concurrence in Commission budget adjustments is preferable. (See p. 43.)

POSTAL SERVICE COMMENTS

The Postal Service stated that on prior occasions it had not opposed the Commission being funded directly by the Congress rather than through the Service, and its position remains unchanged. However, it believes that a recommendation that the Congress reserve the right to review any change by the Governors muddles rather than clarifies the budget approval process, and the Commission should shoulder directly the burden of obtaining approval of its budget rather than work through an awkward process which shifts the burden of justification for budget action to the Governors. (See p. 53.)

The Postal Service also states that we overstate the case regarding the Postal Rate Commission budget. It believes that a review of the statute and of the history of the Commission budget requests and actual expenditures of prior years indicates that the alleged problem is not a problem at all. (See p. 53.)

The central issue is that the budget of the regulatory agency ought not to be under the control of the regulated agency. Whether in the past the Postal Rate Commission did or did not spend the full amount of funds approved by the Governors is irrelevant. The events surrounding the 1976 Postal Rate Commission budget request merely illustrate the inadvisability of retaining the present budgetary process, and this procedural problem ought not to be dismissed as insignificant.

We believe our recommendation would be curative and would not be awkward in operation, since it would necessitate congressional involvement and action only in those instances where a dispute arises between the Governors and the Commission over a budget adjustment.

JOHN L. MCCLELLAN, ARK., CHAIRMAN
 WARREN S. MARGOLSON, WASH.
 JOHN C. STENNIS, MISS.
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 LAWTON CHILES, FLA.

JAMES R. CALLOWAY
 CHIEF COUNSEL AND STAFF DIRECTOR

United States Senate

COMMITTEE ON APPROPRIATIONS
 WASHINGTON, D.C. 20510

January 15, 1975

Honorable Elmer B. Staats
 Comptroller General of the United States
 General Accounting Office
 441 G Street, N. W.
 Washington, D. C. 20548

Dear Mr. Comptroller General:

For some time now I have been deeply concerned about the growing volume of consumer complaints regarding the quality of mail service being provided by the U. S. Postal Service, and the apparent ineffectiveness of the Postal Rate Commission. I am, therefore, requesting the assistance of the General Accounting Office in these two areas.

I should like the General Accounting Office to undertake an intensive review of the quality of mail service within the State of New Mexico, comparing delivery performance in New Mexico with regional and national performance and reporting its findings and conclusions on problems affecting the service and GAO's recommendations for their solution.

With regard to the Postal Rate Commission, I request that the GAO study include data on its cost, functions, continuity of management and an evaluation of its performance.

Should you or your staff require any help on these matters, do not hesitate to contact my office which will be pleased to assist you.

I much look forward to receiving from you comprehensive reports resulting from these studies.

With best wishes.

Sincerely,

Joseph M. Montoya

Joseph M. Montoya
 Chairman, Subcommittee on
 Treasury, Postal Service
 and General Government

JMM/lid

HISTORY OF POSTAL RATE COMMISSION CASES

<u>Docket No.</u> (note a)	<u>Starting date</u>	<u>Finish date</u>	<u>Subject</u>
R71-1	2-01-71	6-05-72	Rate increases
R74-1	9-25-73	8-28-75	Rate increases
R76-1	9-18-75	6-20-76	Rate increases
MC73-1	1-18-73	b/4-15-76	Mail classifica- tion changes
N75-1	4-11-75	4-22-76	Retail Analysis Program (So- called Buchanan case)
N75-2	5-01-75	9-08-75	Change in 1st- class mail (Merged regular 1st-class and air mail)
C72-1	11-12-71	4-05-72	1st-class metered mail complaint
C72-2	4-18-72	9-20-72	Nonprofit 3rd- class bulk mail complaint
C74-1	7-09-73	12-05-73	Newspaper delivery complaint
C75-1	5-02-75	10-22-75	Tariffs as letters complaint
C76-1	7-10-75	10-09-75	Post Office box rent complaint
RM71-1	1-07-71	1-12-71	Rules of practice
RM73-1	7-17-72	3-23-73	Evidentiary and filing require- ments in rates and classifica- tion cases
RM73-2	8-14-72	2-09-73	Revisions in rules of practice
RM73-3	11-22-72	11-25-72	Change in title from hearing examiner to administrative law judge

APPENDIX II

APPENDIX II

<u>Docket No.</u> (note a)	<u>Starting date</u>	<u>Finish date</u>	<u>Subject</u>
RM74-1	9-07-73	9-11-73	Ex parte communication changes
RM75-1	1-09-75	2-18-75	Public information and requests
RM76-1	7-02-75	7-09-75	Election of vice-chairman
RM76-2	7-25-75	8-27-75	Privacy Act rules
RM76-3	9-17-75	9-18-75	Organization of Office of Planning and Operations
RM76-4	10-22-75	8-06-76	Private Express Statute study
RM76-5	4-05-76	10-21-76	Periodic reporting by U.S. Postal Service
RM76-6	7-30-76	7-30-76	Reorganization of Office of Planning and Operations
RM76-7	8-11-76	12-30-76	Privacy Act rules
RM76-8	8-11-76	12-30-76	Privacy Act rules
RM77-1	10-07-76	Pending	Rules governing procedures on closing and/or consolidation of Post Offices
RM77-2	10-20-76	2-03-77	Rules of practice and procedure
RM77-3	12-10-76	Pending	Rules governing public attendance at PRC meetings and Ex parte communications

APPENDIX II

APPENDIX II

<u>Docket No.</u> (note a)	<u>Starting date</u>	<u>Finish date</u>	<u>Subject</u>
MC76-1 (note c)	6-03-76	Pending	Classification changes in 1st-class mail
MC76-2 (note c)	6-03-76	Pending	Classification changes in 2nd-class mail
MC76-3 (note c)	6-03-76	Pending	Classification changes in 3rd-class mail
MC76-4 (note c)	6-03-76	Pending	Classification changes in 4th-class mail
MC76-5	6-03-76	Pending	Basic mail classification reform schedule (matters formerly assigned to Phase III of Docket No. MC73-1)
MC77-1	11-10-76	Pending	Legislative changes in mail classification schedule

a/Numbering: R=Rate case; MC=Mail classification case; N=Nature of postal services case (39 U.S.C. 3661(b)); C=Complaint case; RM=Rule-making proceeding.

First 2 digits represent the fiscal year in which the case began and the hyphenated digit represents the sequential case in the same fiscal year.

b/Phase I only. Phases II and III were re-docketed as MC 76-1, -2, -3, -4, and -5.

c/In Dockets MC 76-1, -2, -3, and -4, the Commission has received several settlement proposals covering limited issues. Some of these, after analysis of the record, have been approved by the Commission and embodied in recommended decisions sent to the Governors.

POSTAL RATE COMMISSION
Washington, D.C. 20288Clyde S. DuPont
CHAIRMAN

FEB 15 1977

Victor L. Lowe, Director
General Government Division
United States General Accounting Office
Washington, D. C. 20548

Dear Mr. Lowe:

This is in response to your request for comments on your draft report entitled "The Role of the Postal Rate Commission Should Be Clarified." We appreciate the opportunity to offer our views.

[See GAO note below.]

Summary of GAO Recommendations. We understand GAO to advocate, first, some "clarification" of the role of the Commission (a question which GAO recognizes is under study by the Commission on Postal Service), and, second, several amendments to the statute which should be enacted regardless of whether "a narrow or broad definition of the Commission's role" (Digest, p. v) is adopted. We agree with the second of these propositions, 1/ and to the extent we

1/ The recommendations for periodic reporting authority, subpoena power, and authority to appear in court by Commission counsel have all been made by the Commission itself in legislative statements. See, e.g., 94th Cong., 1st Sess., House Committee on Post Office and Civil Service, Hearings on H.R. 2445 (March 11, 1975); 94th Cong., 2nd Sess., Senate Committee on Post Office and Civil Service, Hearings on S. 2844 (January 28, 1976) (statements of Chairman DuPont); 93rd Cong., 2nd Sess., House Committee on Post Office and Civil Service, Hearings on H.R. 15511 (July 10, 1974), p. 112.

GAO note: Material no longer related to this report has been deleted.

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disagree with the first it is because--as a practical matter --theoretical disagreements between the Commission and the Postal Service over the essential role of the Commission have not materially hindered postal regulation.

COMMISSION COMMENTS CONCERNING JURISDICTIONAL DISAGREEMENTS

These disagreements are normal in the development of a new regulatory system, and it is equally normal for them to be resolved not by continuous overhauling of the governing statute but by litigation (which, by its nature, is usually quite limited) in the courts. The disputes, in other words, are sometimes expressed as disagreements over fundamental roles, but it is almost always possible to resolve them simply as questions of statutory interpretation--which is the province of the courts. Thus, for example, one of the most serious disagreements--whether the Commission has authority to regulate fees for special services ^{1/}--has now been resolved by the United States Court of Appeals for the District of Columbia Circuit. National Association of Greeting Card Publishers v. United States Postal Service, ___ F.2d ___ (D.C. Cir. No. 75-1856, et al., December 28, 1976, affirming Associated Third Class Mail Users v. United States Postal Service, 405 F. Supp. 1109 (D.D.C., 1975)).

It should be noted that where questions of Postal Rate Commission jurisdiction have arisen in court litigation, the courts have generally upheld the existence of such jurisdiction. ^{2/} The court in the Greeting Card Publishers case also indicated (slip op., 56) that the Commission's "authority. . . reasonably extends to all aspects of such [rate] decisions, including review of budget estimates, allocation of postal costs, establishment of rates for postage . . ." (Emphasis added.) This seems largely to resolve previous disagreements

^{1/} In spite of the fact that this disagreement arose squarely in the third rate case, its existence did not prevent the Commission from completing the case in the 9-1/2-month schedule it had established at the outset. This clearly shows that even conceptually significant jurisdictional disagreements have not materially delayed the Commission's execution of its regulatory functions.

^{2/} See, e.g., Buchanan v. United States Postal Service, 508 F.2d 259 (5th Cir., 1975) (\$ 3661); Associated Third Class Mail Users v. United States Postal Service, 405 F. Supp. 1109 (D.D.C., 1975), affirmed sub nom. National Association of Greeting Card Publishers v. United States Postal Service, ___ F.2d ___ (D.C. Cir., 1976).

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over jurisdiction over cost and revenue estimates presented by the Service in rate cases filed with the Commission. Conversely, the Commission has taken care not to assume jurisdiction where objective legal analysis does not support its existence. See Statement of General Policy, Order No. 133, Docket No. RM76-4 (August 6, 1976) (Jurisdiction over administration of Private Express Statutes); Order No. 148, Docket Nos. MC76-1 et al. (January 12, 1977) (Jurisdiction to add to list of mail items eligible for phasing).

Similarly, the Commission has disclaimed any intent to function as an "inspector general" of the Postal Service (see PRC Opinion, Docket No. R71-1, pp. 255-260). What the Commission has asserted is "that the Commission, in rendering rate recommendations, must advise the Governors whether the cost estimates on which the rates are based reflect the § 3621 criteria." (Id., p. 258.) The particular question to which the quoted statement was addressed had to do with Commission inquiries into quality of service and efficiency of postal management, and the Commission was attempting to make it clear that while it does not review postal management performance under a "roving commission" to conduct general oversight (that being the function of, among others, GAO itself) it must, by statute, assure that the cost estimates advanced as a basis for rate proposals are justified in terms of the statutory criteria. Thus the Commission is required to undertake certain inquiries in the specific context of its cases which it does not undertake outside that context. It may well be that failure to distinguish between such an investigation performed as an integral part of a rate proceeding and a similar investigation performed for the sole purpose of evaluating the performance of postal management has given rise to some of the perceptions of jurisdictional conflict between the Service and the Commission. GAO's reference (Digest, p. i) to "investigating the efficiency and economy of management and the quality of mail service," if meant to imply that the Commission undertakes such investigations outside the context of rate, classification and service proceedings called for by the Act, is therefore not correct.

COMMISSION COMMENTS CONCERNING
GAO'S SPECIFIC LEGISLATIVE RECOMMENDATIONS

When we turn from jurisdictional matters to the specific measures which GAO advocates, we agree with the conclusions expressed at pp. iv - vi, under the heading "OTHER PROBLEMS REQUIRING CORRECTION." We are pleased, as well, to see that an impartial observer such as GAO has independently come to the same conclusions as the Commission on the need for these additional regulatory tools. See p. 1, fn. 1, supra.

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Introduction. We should like to express our appreciation for the fact that the draft Digest recognizes the progress we have made in recent years in expediting our rate proceedings. As the Digest recognizes, we have, through the use of streamlined procedures and by concentrating our resources effectively, succeeded in completing a full-scale postal rate case, involving 71 different parties and the examination of 53 witnesses, in less than 10 months. 1/ The process of writing the 800-page decision in the case, begun after final oral argument, took the Commission only about one and a half months. Similar procedures are being employed in other matters pending before the Commission, and we are hopeful of achieving similar rapid results. 2/

Commission Rate Cases and GAO Legislative Proposals. In evaluating this performance, it seems to us important that the Commission must follow statutorily prescribed procedures designed to safeguard the right of all parties to a full hearing and a decision based solely on the evidentiary record. The parties appearing before the Commission are numerous and their interests are substantial; Congress--recognizing that this would be the case--expressly provided that the Commission was to conduct its proceedings in strict accordance with the requirements of a formal hearing on the record within the meaning of §§ 556 and 557 of the Administrative Procedure Act (5 U.S.C. §§ 556, 557). We believe that this fact makes it even more desirable that the GAO recommendations for periodic reporting and subpoena authority be enacted. The parties' right to present an evidentiary case before the Commission is dependent for much of its value on

1/ Congress legislated a 10-month time limit on rate cases in Pub. L. 94-421 (September 24, 1976)--thereby implicitly approving the Commission's performance in the third rate proceeding. In that proceeding, the Commission noted (PRC Opinion, R76-1, p. 23, fn. 1) that formal amendment of a rate request could be employed where increased costs overtake the originally filed estimates. The Service, with the Governors' approval, could have followed this course in earlier cases as well, thereby mitigating the adverse impact of cost increases, to which GAO refers (Digest, p. i).

2/ The Commission also follows recommended regulatory practice [see 5 U.S.C. §§ 554(c), 556(c)] in encouraging settlements. Thus the first mail classification case (Docket No. MC73-1) was settled, with the aid of Commission mediation, and the resulting decision was approved by the Governors. Similarly, partial settlements in subsequent classification cases have been successfully achieved (Docket Nos. MC76-1 through -4).

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adequate data, and--as is usually the case in economic regulation--the regulated entity has, in the first instance, control of the data on which the decision must ultimately rest. 1/ To date, much of this information on the finances and operations of the Postal Service has had to be acquired by the participants through interrogatories. At times, responses to these discovery questions 2/ have been less than satisfactory in their completeness or timeliness. (There was a very significant improvement in this respect in the third rate case.) We therefore suggest that the periodic reporting and subpoena mechanisms would tend not only to expedite and make more efficient the Commission's procedures as such, but also to allow the participants for whose benefit Congress established those procedures to make better use of them, at lower cost to themselves. 3/

Periodic Reporting. Because of the great importance of adequate, well-organized data to the regulatory process as Congress has established it under the Postal Reorganization Act, we believe it is important to place the proposal for periodic reporting authority in context, and to do so in some detail. As we have mentioned above, Congress has determined--quite rightly, we believe--that a full evidentiary

1/ As the Court stated in *Association of American Publishers v. United States Postal Service*, 485 F.2d 768, 779 (D.C. Cir., 1973): ". . . it [Postal Service staff] alone is in a position to influence the Postal Service's day-to-day accounting procedures and record keeping. Outsider challenges to the fundamental approach Postal Service takes to ratemaking are unlikely to meet with stunning success under these circumstances."

2/ Discovery is specifically provided for by 39 U.S.C. § 3624(b)(3).

3/ One reason that most agencies have established periodic reporting procedures is to provide a publicly-available file of information on relevant financial and operating characteristics of regulated entities--thereby relieving litigants of the necessity of filing repetitive and possibly duplicative discovery requests. The Postal Service, of course, would be the principal beneficiary. It would avoid much of the burden of responding to discovery requests during the already demanding rate case cycle, and it would benefit from increased expedition in the decision of rate proceedings.

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hearing and decision on the basis of the record there made are necessary for effective postal ratemaking. A hearing on the record has been interpreted to mean a formal hearing including the right of discovery and cross examination as set out in the Administrative Procedure Act; see 5 U.S.C. § 556, United States v. Florida East Coast R. Co., 410 U.S. 224 (1973); 39 U.S.C. § 3624(a). The data themselves are important from the standpoint of the correctness of the agency decision, and the method by which they are obtained is equally important from the standpoint of the parties' right to litigate in a meaningful way and from that of prompt and timely decision.

Data are not, of course, requested in the abstract; they must be related to issues that have appeared, or are likely to appear, in the cases coming before the agency. They must, in other words, be of such a nature as to be potentially useful in arriving at findings and conclusions. But by the same token, the agency's decisions must be based on adequate findings which in turn rest on substantial evidence; otherwise they are subject to judicial reversal. See Wichita R. & L. Co. v. Public Utilities Commission, 260 U.S. 48 (1922); Mahler v. Eby, 264 U.S. 32 (1924); Florida v. United States, 282 U.S. 194 (1931); Panama Refining Co. v. Ryan, 293 U.S. 388 (1935); Morgan v. United States, 298 U.S. 468 (1936); also see Davis, Admin. L. Treatise, 1970 Supp., § 16.14.

There are several advantages to periodic reporting as proposed, at various times in the past by the Commission, and now by GAO. In the first place, as we have noted above, it has the potential for expediting proceedings. In the third rate case, the participants served 1767 interrogatories on the Postal Service, all but a few of which were ultimately answered in writing. If a sound system of periodic reporting were in existence it is likely that many of these written questions would have been unnecessary. Parties intending to litigate before the Commission could consult the data already on file and prepare their studies--and their questions for use in cross examining postal witnesses--with the aid of those files. Moreover, it would be possible, with a system of periodic reports, for interested parties to monitor the operations and finances of the Postal Service between cases. They could thus--given adequate analysis by their own experts--obtain a preliminary view of the issues that would likely arise in the next proceeding and be better prepared to file testimony and exhibits in a timely manner.

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While the Commission strongly favors the GAO's conclusions with respect to periodic reporting legislation, we believe that the authority to require such reporting already exists in view of our general powers (39 U.S.C. § 3603) 1/--though its statutory outlines could be further delineated. In reliance on the authority we believe to be inherent in any regulatory mandate, we have recently concluded a rulemaking proceeding (Docket No. RM76-5) which calls for periodic production of a number of existing Postal Service data reports. The Postal Service has agreed to provide most of the data considered in that docket, but has indicated that it may possibly refuse to supply some items. We believe that this docket has constituted a useful beginning in creating a sound data system, and that the legislation proposed by GAO would greatly facilitate the completion of the job. 2/

Subpoena Authority. A majority of the Commission endorses the proposal to provide specific subpoena power. Unlike the statutes of certain other regulatory agencies, the Postal Reorganization Act does not expressly confer authority on the Commission to issue subpoenas. Nonetheless, the Commission would expect to contend successfully for the enforcement of a subpoena on the grounds that its issuance was statutorily authorized both by the Act's general powers provision (39 U.S.C. § 3603) and an express authorization (which arguably encompasses issuance of subpoenas), found in section 3624(b)(3) of the Act [39 U.S.C. § 3624(b)(3)], that

* * *the Commission may (without limitation)
adopt rules which provide for * * * (3)
discovery both from the Postal Service and
the parties to the proceedings; * * *

1/ Similar provisions in other regulatory statutes have been construed as conferring authority upon regulatory agencies that is "coterminous with the scope of agency regulation itself. . ." American Trucking Assns. v. United States, 344 U.S. 298, 311 (1953); Appalachian Power Co. v. FPC, 328 F.2d 237 (4th Cir. 1964), cert. denied, 379 U.S. 829 (1964).

2/ We may note that the President's Commission on Postal Organization (the "Kappel Commission") recommended that the postal regulatory body develop unit functional costs as a ratemaking tool. See Towards Postal Excellence (1968), pp. 30-31. This is one important task which GAO's reporting proposal would help us complete.

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In the 6-year period since its establishment, the Commission has not had occasion to consider the issuance of a subpoena; during this period its discovery procedures alone (involving primarily the use of interrogatories) have been sufficient in developing an evidentiary record for decisional purposes.

Future proceedings, however, could involve procedural subpoena questions and prior Congressional enactment of the GAO recommendation would aid the Commission in resolving such questions. Moreover, the recommended amendment is consonant with the Commission's statutory discovery powers and its present rules of practice.

We note that the Administrative Conference of the United States also favors the existence of agency subpoena power. The ACUS has proposed, and actively supported, legislation to confer such authority on all agencies subject to §§ 556 and 557 of the Administrative Procedure Act. See 1974-75 Report, Administrative Conference of the United States (March, 1976), pp. 34-35.

Court Representation. The Commission fully endorses GAO's recommendation that the Commission should have the authority to represent itself in court litigation. Under existing law, as the Digest points out, the Attorney General is charged with the responsibility of representing both the Postal Service and the Commission, and there is no provision for the situation where the two agencies hold conflicting positions. In the recent case of Associated Third Class Mail Users v. United States Postal Service, 405 F. Supp. 1109 (D.D.C., 1975), this situation actually arose, and the Commission's views were brought before the court only by means of a memorandum which the Department of Justice agreed to attach to its own pleading. This was a discretionary action on its part, and the possibility exists that it might decline to follow this course in the future.

We would note that the right to conduct litigation independently of the Department of Justice is a common attribute of regulatory agencies, including the Federal Trade Commission [15 U.S.C. § 45(c)]; the Federal Power Commission [15 U.S.C. §§ 717r, 717s; 16 U.S.C. § 825m(c)]; the National Labor Relations Board [29 U.S.C. §§ 160(e), 160(f)]; the Securities and Exchange Commission [15 U.S.C. §§ 77i(a), 77v(v), 78y(a), 79(x)]; and, as to some types of cases, the Federal Communications Commission [47 U.S.C. § 402(b)].

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A Further Suggestion: Finality of Decision. In addition to the matters which it has undertaken to consider in the present report, GAO might also wish to focus on a question which the Commission has raised in past legislative testimony ^{1/} and which is now before Congress in a bill introduced by Senator Hollings (S. 94). That is the proposal to make the Commission's decision final, rather than "recommended". Under existing law, as GAO is aware, the Governors of the Postal Service receive "recommended decisions" from the Commission and have the power, within defined limits, to remand, reject, or modify them.

A majority of the Commission favor changing this system to the one otherwise universal among regulatory agencies, wherein the agency's decision is final and is subject to direct judicial review. Such review, in these circumstances, would of course be available to the Postal Service as well as to any other party. To date, the system of recommended decisions by the Commission, with final decision by the Governors, has not caused any serious difficulty, but it is perhaps needlessly cumbersome. If it were changed by making the Commission decision final, it would also be worthwhile to consider adding to the statute a provision allowing the Service (or any other party) to seek rehearing of the decision before going to court. This is likewise a common provision of regulatory statutes.

Congressional Approval of Governors' Changes to Commission Budget. The Digest correctly summarizes events which resulted in a downward adjustment--by the Governors, acting under § 3604(d)(1)(B) of the Act--of the Commission's FY 1976 budget. This reduction, as GAO states, amounted to \$710,000 which the Commission had earmarked for the development of a system of postal accounts. The system would have been designed to aid a quicker establishment of a meaningful postal data base.

GAO, according to the Digest (at p. vii), proposes that

. . . the Commission's expenses should be met from the Postal Fund, with any changes by the Governors to the original request to be approved by the Congress.

^{1/} See, e.g., 94th Cong., 2d Sess., Sen. Committee on Post Office and Civil Service, Hearings on S. 2844 (January 28, 1976) (Statement of Chairman DuPont).

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This further review would be appropriate, in our view, if it were deemed feasible by Congress. Our concern, expressed in an earlier communication with GAO, is (1) that our budget is relatively small (\$3,000,000 in FY 1976) and (2) inasmuch as funds are derived from the Postal Fund rather than the general funds of the United States Treasury it would be needlessly burdensome for Congress to expend valuable time reviewing and approving an exceedingly minor matter.

We fully appreciate the reasoning leading to the recommendation that certain control of the Commission's budget be taken from the Governors of the Postal Service and lodged in Congress. We recognize that the existing arrangement is unusual, if not anomalous, in a regulatory context. On the other hand, it has--barring the instance documented in the Digest--worked satisfactorily in the past. It has the advantage of simplicity, which for a relatively small budget such as ours is in our view a desirable attribute. If it is desired to impose a check on the Governors' power to interfere with Commission programs by means of the budgetary process, we would suggest limiting the Governors' authority to disallow any funds by requiring the concurrence of the Director of the Office of Management and Budget in such a decision. As the President's principal officer in charge of the Government's budget and fiscal program, he would seem to be the appropriate officer to settle a budgetary disagreement between the two agencies which are "independent establishment[s] of the executive branch of the Government of the United States." 39 U.S.C. §§ 201, 3601.

Conclusion. In general, we support most of the conclusions at which GAO has arrived. The Commission believes that--as the Digest states (p. i)--"the essential overall structure of the postal ratemaking process is sound and has been working." Our main area of difference with GAO's approach is in the degree of emphasis placed on jurisdictional disagreements, which we do not believe have been--in any sense--a significant hindrance to effective regulation. This slight disagreement with GAO does not affect our view of the proposals to enact specific data reporting and subpoena authority and to enable the Commission to represent itself in court, all of which we agree with. As we point out above, the largest single problem has been that of adequate postal data and absence of certain related factual analyses; this is being resolved, and the GAO recommendations, if acted on, would further accelerate the process.

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Finally, we welcome continuing review of our activities by GAO--particularly as we develop further refinements in ratemaking and as we move into an entirely new area of jurisdiction recently created by Congress. 1/ The Commission itself is pledged to continue making every effort to expedite its proceedings 2/ while maintaining the procedural rights of the parties and contributing to a viable postal system.



Clyde S. DuPont
Chairman

1/ Pub. L. 94-421 (September 24, 1976) creates appellate jurisdiction in the Commission to review Postal Service determinations to close small post offices, 39 U.S.C. § 404(b).

2/ In this connection, the GAO may wish to monitor a study being undertaken by Prof. Thomas D. Morgan of the University of Illinois Law School on "The Problem of Ratemaking Delay." Prof. Morgan's study (sponsored by the Administrative Conference of the United States) apparently will consider various reasons for lengthy proceedings in various federal ratemaking agencies including the CAB, FCC, FPC, ICC, and FMC.



THE POSTMASTER GENERAL
Washington, DC 20260

February 24, 1977

Mr. Victor L. Lowe
Director, General Government Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Lowe:

We appreciate the opportunity that has been afforded us to comment on your draft report entitled "The Role of the Postal Rate Commission Should be Clarified." In his January 15, 1975 request, Senator Montoya asked that the study include data on the Commission's costs, functions, continuity of management and an evaluation of its performance.

In our view, the draft report does not come to grips with Senator Montoya's request for an evaluation of "the apparent ineffectiveness of the Postal Rate Commission." The draft limits its horizons to considering only fine-tuning adjustments, presumably to overcome alleged delays in obtaining information from the Service. In reply to Senator Montoya's request, a report based almost exclusively on inquiries directed to the Commission (to the exclusion of the parties who have been involved in Commission proceedings, including representatives of the mailing public and the Postal Service), and limited in its recommendations mostly to adjustments derived from the Postal Rate Commission's own legislative program, is less than responsive. Further, we note that certain recommendations have been overtaken by subsequent events.

If, at this time, it is not practical to redirect the inquiry into a more serious examination of the fundamental issues giving rise to the concern which triggered Senator Montoya's request, we believe that the report should be revised to at least display prominently a concern for the kinds of questions which a more rigorous, broader-based study would have examined. For example, a new chapter, inserted prior to the discussions in the present draft, might raise matters similar to the following:

SUGGESTED CHAPTER 2

NEED FOR IMPROVED RATEMAKING
RAISES FUNDAMENTAL QUESTIONS THAT
REQUIRE STUDY

In recent years, the performance of the Postal Rate Commission and the overall approach of the Postal Reorganization Act to rate and service determinations have drawn serious criticism from a number of sources. The combination of complex and lengthy proceedings has led some mailers to charge that the end product is not worth the cost and that the average citizen is effectively denied the opportunity to participate. Some members of Congress have proposed to abolish the Commission, to provide for Congressional review of proposed rate increases, or both. Legislative hearings in which we have participated have taken initial steps to evaluate a proposed novel direction for postal ratemaking, linking changes to the consumer price index.

These criticisms and proposals suggest that there are some fundamental questions - relating to the goals that ratemaking and service decisions should be expected to achieve, the relative values of these respective goals, and the ways in which those values can be maximized - that need serious study in the process of trying to improve upon past performance.

For example, what are the values obtained from having a separate agency to review and participate in formulating Postal Service rate and service plans? What is the proper balance between provision for the interest, respectively, of the average citizen and of the large mailers who have the principal economic stake in postal decisions, and is that balance achieved or is either interest well served? Is the cost of the entire process, in terms of public and private expenditures, worth the benefit provided in comparison to simpler and less time-consuming alternatives?

What are the values and the costs involved in maintaining one Federal agency whose sole purpose is to review the operations of another Federal agency? Would such an agency as the Postal Rate Commission function best with the full powers and responsibilities that have been developed for agencies assigned to regulate the profit-making activities of entire industries or private firms? What does recently increasing disenchantment with the regulation of those agencies suggest in the postal context? Would the Commission's purposes be better served through formal proceedings within the Postal Service itself, subject to the protections of the Administrative Procedure

Act, review by the courts, and oversight by the Congress and the General Accounting Office, but without the degree of independence provided to a separate agency?

Would it be better as well as quicker to subject proposed postal rate and service changes developed by the Postal Service to the test of review by an electorally attuned body - as by a Congressional veto mechanism - rather than through a legalistic process of formal litigation before an agency and the courts? Is it practical to devise some kind of automatic arbiter of postal revenue needs, such as a link to an economic indicator?

Adequate consideration of the foregoing questions, in our view, requires a substantial effort. However, we note that through section 7 of the Postal Reorganization Act Amendments of 1976, the Congress established an independently funded Commission on Postal Service with specific instructions to investigate, and if appropriate to propose legislation with respect to, the particular kinds of issues.

In addition to the suggested inclusion of a section on fundamental issues which the report did not consider, we would like to comment on the recommendations that were directed to the Congress.

A. Commission Jurisdiction. The report suggests that if the rate-making process is left basically unchanged, then the role of the Postal Rate Commission should be clarified.

The report (pages 6 - 20) cites disagreement between the Service and the Commission in the areas of postal rates, validity of Service cost and revenue estimates, the efficiency and economy of management, and the quality of mail service. It states that the disputes have not been resolved.

The proportion of the report devoted to so-called jurisdictional disputes dramatically overstates their practical importance to the rate-making process, particularly when it is suggested that these areas of dispute have led to delays in Commission proceedings. There is not any evidence presented or contained in the report to support such an allegation. Most of the issues have been substantially resolved and Docket No. R76-1 is tangible evidence that a Commission proceeding concerning a rate request can be processed in a reasonable time. The Service has no objection to the Commission on Postal Service reviewing these so-called jurisdictional issues, but a number of events have

occurred that lead us to think that a legislative remedy would be inappropriate and unnecessary. After our review of the data concerning the so-called jurisdictional disputes, we conclude that the recommendations in general do not respond to the facts as they exist or to subsequent events that have occurred.

Review of Service Cost and Revenue Estimates. The report (page 9) suggests that the Service resists any examination into its estimates of costs and revenues. However, in Docket No. R76-1 (submitted to the Commission September 18, 1975), the Service submitted over 300 pages of working papers explaining the justification and derivation of its revenue and cost estimates and responded to over 100 interrogatories concerning these workpapers. The interrogatories directed to the estimates of revenues and costs were less than ten percent of the total interrogatories received and answered in about sixty days by the Service. The record in Docket No. R76-1 clearly shows an attitude on the part of the Postal Service as wholly cooperative toward inquiries directed to cost and revenue issues.

Evaluation of Service's Management Efficiency and Quality of Service. The Service has responded to all relevant questions concerning these issues. In Docket No. R76-1 the Service submitted testimony (the rebuttal testimony of Witness McGregor) which addressed management efficiency. The Service is unaware of any specific issue here that has remained unresolved. The report seems to imply that the Commission has made no disallowances in its recommended decisions which evaluated the Service's revenue requirements, although in Docket No. R74-1, the Commission did "disallow" certain expenses.

Phasing of Rates. The report states there has been disagreement about the role of the Commission regarding the phasing of rates. There has been no delay to Commission proceedings because of this disagreement.

In prior recommended decisions, the Commission has recommended phasing schedules and the Governors have adopted the schedules as submitted unless in error. In Docket No. R76-1, the Commission included a set of phasing schedules in its recommended decision to the Governors that contained numerous errors. These were corrected by the Governors in their decision of July 7, 1976. The action taken by the Governors was needed, it was proper, and it did not cause delay.

The essentially mechanical task of establishing phased rates, coupled with the authority contained in 39 U.S.C. Section 3621 (the break-even mandate), certainly does not warrant further delay inherent in the recommended decision process.

Adjusted Rates. 39 U.S.C. Section 3627 clearly speaks to the failure of appropriations for "revenue foregone" - or for appropriations for those classes of mail entitled to "phased rates" under 39 U.S.C. Section 2401(c).

The report suggests that the Service cannot institute rate adjustments without first submitting its proposed adjustments to the Commission. This recommendation simply does not square with the break-even mandate (39 U.S.C. Section 3621) and the Service's financial stewardship responsibility. It simply makes no sense to suggest that Commission proceedings be initiated in order to implement rate adjustments and thus cause delay, when it is clear what action must be taken once "failure of appropriations" is recognized. Further delay would increase the financial uncertainty of the Postal Service and perhaps contribute to short term rate instability. Lastly, the recommendation is at odds with two Court of Appeals opinions which have upheld the steps taken by the Service in previous situations where there has been a "failure of appropriations" (Direct Mail Advertising Association v. United States Postal Service, 147 U.S. App. D.C. 394, 458 F. 2d 813 (1972); Direct Mail Marketing Association, Inc. v. United States Postal Service, 163 U.S. App. D.C. 157, 501 F. 2d 717 (1974)).

Conditions of Mailability. The conditions of mailability have not been a factor in any rate case and certainly have not caused delay. Moreover, the Commission's recommended decision in Docket No. MC73-1 has aided considerably in resolving this issue. Lastly, we believe there is much to be gained by examining "conditions of mailability" on an ad hoc basis rather than by some preconceived inflexible rules.

The Service strongly disagrees with the allegation that so-called jurisdictional disputes have contributed to delays in Commission proceedings in Docket Nos. R71-1 and R74-1. The evidence to support such an allegation does not exist. A careful examination of the Commission proceedings during Docket No. R74-1 indicates a number of reasons which contributed to the lengthy delay such as:

- 1) a lengthy initial delay before discovery practices were initiated,
- 2) a lack of informal discovery procedures,
- 3) a failure to place reasonable limits on written interrogatories by either the Administrative Law Judge or the Commission, and
- 4) a rather relaxed hearing schedule.

Many of the reasons cited above which contributed to previous delays in Commission proceedings were addressed by the Commission in Docket No. R76-1 as it moved to strengthen its procedures and shorten the process, and that case was completed in less than ten months.

The so-called jurisdictional issues dealt with in the report have in the main been resolved through practical case experience. We do not believe that a need for remedial legislation exists.

B. Postal Reorganization Act Amendments. The report recommends that Congress should amend the Postal Reorganization Act to provide the Commission with authority to:

- 1) impose a periodic reporting system,
- 2) issue subpoenas,
- 3) represent itself in court.

The recommendations, either because of the occurrence of subsequent events, or the previously stated position of the Service, or their own limitations do not substantially enhance the ratemaking process. Our comments are offered below.

Period Reporting. A periodic reporting system and procedure have been established by the Postal Rate Commission through a rule-making process. There exists no reason for legislative action.

For a number of years, the Service has provided to the Commission those basic reports which summarize the financial status of the Service and provide information on revenues and costs as the data has become available. Periodic reporting broadens somewhat the scope of information and data previously provided to the Commission.

The report suggests (page 22) that periodic reporting may reduce considerably the number of interrogatories introduced during Commission proceedings and, thus, implies that the hearing process might be shortened. Based upon our experience, we disagree strongly. Most interrogatories do not request data; rather, they seek explanation on points of testimony or amplification of methodology, which the report totally ignores. Many of the interrogatories requesting data (estimated at 20 to 30 percent) are asking for data previously furnished and thus the response is a citation - the page or line where the data can be found.

The report would have more balance if an attempt had been made to evaluate the reasonableness and relevance of the data requests made

by the Commission and/or intervenors and whether the cost of developing such data was a reasonable burden to impose upon the Postal Service.

Subpoena Power. A review of the legislative history of the Reorganization Act indicates that Congress did not want a bureaucratic struggle between the Commission and the Service. The proposed extension of subpoena power would lead to relationships which the Congress did not envision nor want. The need for subpoena power has not been demonstrated and no participant in a Commission proceeding has made a credible showing that the Service has withheld relevant evidence. The Service has supplied voluminous data in all proceedings when the data was available and the expense reasonable in obtaining it.

In considering subpoena power for the Rate Commission, it is important to bear in mind that the constraints of relevance and scope which work to protect the conventional regulated utility from overreaching "fishing expedition" subpoenas might not be applicable to the Postal Rate Commission. Since the Postal Service and the Postal Rate Commission are separate arms of a single Federal Government, it is by no means clear that the courts would afford the Postal Service the same kind of protection against abuses of claimed subpoena power as that which is generally available to private parties. Moreover, the problem would be compounded by the fact that neither the Postal Service nor the Rate Commission has clear access to the courts through its own attorneys - the Department of Justice might well decline to bring an interagency disagreement of this kind before the courts.

Given the extraordinary fact that the Postal Rate Commission has no function that does not involve the Postal Service, and given the natural propensity of many bureaucrats to expand the apparent scope of their jobs by demanding increasingly extensive reports from those within their reach (cf. Parkinson's Law), it is all too easy to imagine a rapidly growing and increasingly costly Rate Commission staff feeding on liberally applied subpoena authority. It is less easy to imagine that this would serve the public interests.

Moreover, we should point out that subpoenas could run to private parties in Commission proceedings as well as the Postal Service. Unfortunately, the report is silent on the views and interests of other parties in regard to granting the Commission subpoena powers.

Right to Represent Itself in Court. The litigation in which the Commission and the Service become involved is quite complex and usually involves areas of law not commonly dealt with by the Department of Justice. On previous occasions, the Service has requested the right to represent itself in court and, from our point of view, it would be appropriate if both the Service and the Commission are able to represent themselves in court.

C. Postal Rate Commission Budgets. On prior occasions, the Service has indicated that it was not opposed to the Commission being funded directly by the Congress rather than through the Service and our position remains unchanged. The recommendation that Congress reserve the right to review any changes by the Governors muddles rather than clarifies the budget approval process. Since the thrust of the major recommendations contained in the report is aimed toward enlarging the Commission's role, the Service believes the Commission should shoulder directly the burden of obtaining approval of its budget rather than work through an awkward process which shifts the burden of justification for budget actions to the Governors.

However, the report overstates the case it tries to make. A review of the statute and of the history of prior years Commission budget requests and actual expenditures indicates that the alleged problem is not a problem at all. The report suggests that the existence of jurisdictional disputes adds a new dimension to the way the Commission is funded and that the ability to fund the Commission's budget request gives the Service a capability to prevent the Commission from performing functions it believes to be a part of its responsibilities (page 34).

The report recommendation would have had more substance if the statutory requirements of budget approval pertaining to the Postal Rate Commission imposed upon the Governors had been examined (39 U.S.C. Section 3604(c)) and if a review of budgets approved and actual expenses had been made. 39 U.S.C. Section 3604(c) states that the Governors may approve and adjust a budget submitted by the Commission to the Postal Service if, by unanimous written decision, the total amount of money requested is adjusted. No line item authority to revise or adjust the budget exists. Thus, even if the Governors should exercise their authority under 39 U.S.C. Section 3604(c), the Commission, at all times, has the authority to decide how it will spend the funds that are approved.

Secondly, the initial budget submitted by the Commission to the Postal Service has been approved in all prior years by the Governors with the exception of FY 1976 which the Governors subsequently revised upward in response to a revised Commission request (Minutes - Board of Governors, October 7, 1975). What is more important is a comparison of funds requested and approved versus actual expenditures as shown below and which responds to Senator Montoya's request.

Postal Rate Commission Funding
(000's)

<u>Year</u>	<u>Budget Submitted</u>	<u>Budget Approved</u>	<u>Actual Expense</u>
1972	\$2,500	\$2,500	\$1,408
1973	2,500	2,500	1,620
1974	2,500	2,500	2,095
1975	3,000	3,000	2,291
1976	4,150	2,779*	2,709

* Approved upward to \$3,000,000 on October 7, 1975.

The Service is subjected to intensive review concerning its estimates on revenues and costs by the Commission as part of its rate proceedings. The Commission's own record of estimation leaves much to be desired, particularly when a later justification indicated that \$3,440,000 was the minimum needed to carry out the increased workload.

Lastly, postal reform legislation provided the Service with certain general powers including that "... to determine and keep its own system of accounts ..." (39 U.S.C. Section 401 (4)). The Postal Rate Commission is not regulating an industry composed of many firms of all sizes where uniformity for operational and financial reporting may be desirable for regulatory purposes. There is only one Postal Service. The Service should not be required to take information from the system of accounts it has developed and reformulate it to meet the requirements of the Commission. It is needless, it would be costly, and it would be wasteful of resources. The Service does not imply that its data base or information systems cannot and should not be improved, but there is no need for two systems of accounts where one can satisfy most of the requirements of the two agencies.

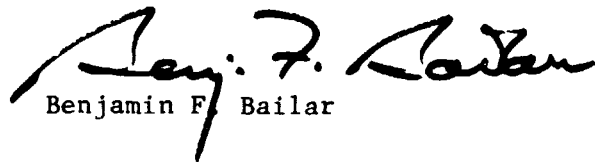
The draft report cited one example of what is termed potential abuse of the Governors' approval authority over Postal Rate Commission budget requests. The citation does not square with the facts and is flagrantly misleading (p. vi of the Digest). It ignores the point that the Governors have acted scrupulously in reviewing Postal Rate Commission budgets, as the Postal Reorganization Act contemplated they should. It ignores the fact that the final adjustment of the Rate Commission's budget for FY 1976, to \$3 million, was in keeping with the Rate Commission's request. Indeed, the impression which the draft report conveys of the Governors (and the Postal Service) clashing with the Commission

over the Commission's budget on an issue centering largely on the Commission's needs for periodic reports of cost and revenue data is in sharp conflict with the truth, as evidenced in the minutes of the Board's meetings of June 3, 1975, and October 7, 1975. As shown in the minutes of the June meeting, the fact is that the Governors favored the development of reasonable methods of attaining a system which would enable the Postal Service to periodically report cost and revenue data to the Commission to provide ongoing support for more expeditious consideration of rate and classification proceedings and stated that they would expect the Postal Service to be responsive to reasonable requests from the Commission for such periodic reports. But no one would glean this from reading the draft report.

We are enclosing pertinent excerpts from the Board minutes in question. You will note that they present a picture which is markedly different from that which emerges from your draft report.

We would be most willing to discuss our response with you further.

Sincerely,


Benjamin F. Bailar

Enclosures

EXCERPTS FROM MINUTES OF
BOARD OF GOVERNORS MEETING
JUNE 3, 1975

* * * * *

The Governors then discussed the budget of the Postal Rate Commission for FY 1976 which had been submitted by the Commission in accordance with the Postal Reorganization Act (39 U.S.C. §3604(c)(1)). The Governors noted that the Commission's proposal for a FY 1976 budget in the amount of \$4,150,000 represented an increase of more than 65% over the Commission's estimated expenditures for FY 1975. Given the current condition of the national economy, the very large deficits generally faced by the Federal Government and the present financial condition of the Postal Service itself, the Governors concluded that it would be irresponsible to approve an increase of such magnitude, it being difficult - for example - to find justification for a tenfold increase in Commission travel costs at a time when the Postal Service (and indeed the entire Federal Government) was making a determined effort to reduce travel costs. The Governors also observed that the Commission requested an increase of \$710,000 to begin the development of a system of accounts for the Postal Service and that the bulk of this amount was apparently intended for contracts with outside consultants. While recognizing that the Commission was seeking a system which would enable the Postal Service to periodically report cost and revenue data to the Commission to provide ongoing support for more expeditious consideration of rate and classification proceedings, and while

favoring the development of reasonable methods of attaining this result, the Governors noted that the development of a system of accounts involved functions which the Congress explicitly had assigned to the Postal Service (39 U.S.C. §401(4)), that the Postal Service was well advanced in the process of revising its chart of accounts and the new system would be largely in place during FY 1976, and that systems of accounts should be compatible not only with the needs of ratemaking but also with other management needs. In view of these considerations, the Governors questioned whether it would be prudent to spend hundreds of thousands of dollars for outside consultants in this connection and it was suggested that it might be more useful for the Commission to specify in some detail exactly what cost and revenue information it wished to have the Postal Service submit to it on a periodic basis and to suggest what form such submissions might best take. The Governors indicated that they would expect the Postal Service to be responsive to reasonable requests of this kind. The Governors stressed that they had no intention of reducing the Commission's budget so as to impair its ability to perform its statutory functions in a timely and efficient manner and that they intended to continue to follow their past practice of restraint so as to avoid any risk of such impairment. Accordingly, the Governors determined to adjust the total amount of money requested from \$4,150,000 to \$2,779,000, the latter amount representing the Commission's estimated expenditures for FY 1975 plus 10% thereof. Upon motion duly made,

seconded, and unanimously carried by all the Governors holding office, the Governors adopted Resolution No. 75-3, Approval of the Postal Rate Commission Budget for FY 1976 with Adjustments, which is annexed hereto and incorporated herein.

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EXCERPTS FROM MINUTES OF
BOARD OF GOVERNORS MEETING
OCTOBER 7, 1975

* * * * *

The Governors then excused Messrs. Bailar, Bolger, and Cox from the meeting and Commissioners DuPont, Miltich, O'Doherty, Sapanaro, and Villarreal of the Postal Rate Commission met with the Governors to explain the Postal Rate Commission's revised budget submission for FY 1976. The Commissioners explained that they had reduced the Commission's initial submission of \$4.1 million to \$3 million and outlined the changes in Commission plans which made the reduction possible.

* * * * *

The Governors then undertook consideration of the Postal Rate Commission's revised budget submission for FY 1976, as presented by the Commissioners earlier in the meeting. The Governors noted that they had adjusted the Commission's initial budget to \$2,779,000 at their meeting of June 3, 1975, as reflected in Resolution No. 75-3. They also noted that the Postal Reorganization Act provides that a Rate Commission budget shall be considered approved as submitted if the Governors do not act to adjust it by unanimous written decision. The Governors concluded that the revised Commission budget in the amount of \$3,000,000

should not be adjusted and that Resolution No. 75-3 should be modified so as to remove any doubts as to the validity of the revised budget. Accordingly, upon motion duly made, seconded, and carried, the Governors adopted Resolution No. 75-9, "Revision of Resolution No. 75-3 Regarding the Postal Rate Commission Budget for FY 1976," as annexed hereto and incorporated herein.

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