

**Overview of the  
Review of the Postal Regulatory Commission's  
Public Representative System  
June 2010**

The Postal Regulatory Commission is charged by statute with ensuring that the interests of the general public are represented in Commission proceedings.<sup>1</sup> This statutory mandate is carried out through a system where the Commission appoints an individual (typically a staff attorney or analyst) on a case-by-case basis to participate in the proceeding as the Public Representative (herein "PR"). The PR is then walled off from the Commission's consideration of a proceeding and advocates for the public as a participant in the proceeding. The PR continues with his or her regular Commission duties during and after the proceeding.

In late 2009, Chairman Ruth Y. Goldway requested a review of this system, and an assessment of its strengths and weaknesses and how it might continue to be developed to fulfill the obligation to represent the interests of the public.

This overview describes the nature of the review and summarizes the input that was received.

Input was gathered through interviews with 15 Commission staff who were serving or had served as PR, the PRC Commissioners, and a number of outside parties who have participated in Commission proceedings and have knowledge of the PR system. Status reports were provided during public Commission meetings on January 6, 2010 and April 7, 2010.

In general, the review revealed that the current system of delegating this important responsibility among Commission staff is effective and enjoys broad support. Challenges are in the areas of continuity, procedures, and training. These issues could be addressed by the designation of an Attorney Administrator for the PR process, as well as the development of administrative guidelines.

**I. Interviews with Public Representatives.**

In an effort to gain an understanding of the Public Representative system from the perspective of those who work on the front lines, 15 individuals who served as PRs were interviewed for this report. Every PR who was identified as having served or was on the list of current cases was contacted and invited to participate. Special efforts were made to reach out to PRs who had served on multiple cases, those who had served in the former Office of Consumer Advocate, and those who had served on unusually complex cases.

Below is a summary of the information gathered from the PR interviews, grouped by topic.

---

<sup>1</sup> *The Postal Regulatory Commission has a statutory duty to "designate an officer of the Postal Regulatory Commission in all public proceedings (such as developing rules, regulations, and procedures) who shall represent the interests of the general public." 39 USC 505.*

## Structure of the Public Representative System

### A. Current system of delegating Public Representative responsibilities among Commission staff

At the outset, this review evaluates the experience, thus far, with moving from a system where a dedicated office represented the interests of the public (the former Office of Consumer Advocate) to a system where representation of the public is delegated to individual members of the Commission's legal and technical staff.

PRs widely reported positive experiences with the current "delegation" approach, wherein staff must represent the interests of the public in their PR role, while simultaneously representing the interests of the Commission in their other work. PRs commented that this approach avoids "groupthink," brings in differing perspectives, offers staff the opportunity to be exposed to a variety of work that they might not otherwise see (a number of PRs echoed this sentiment), and provides an educational opportunity.

Concerns with the current delegation system centered around continuity, coordination, and consistency. Some PRs suggested that a delegation system may not always preserve a skill set and knowledge of data. It was pointed out that it can be confusing to outside parties, including the U.S. Postal Service, when there are differing approaches from the PRs in different proceedings.

### B. Management of the function; administrative support

A number of PRs suggested that it would be helpful to increase the level of formal management support, such as some mechanism to provide technical and administrative support, a PR manager, or a document reviewer. PRs suggested that having some type of PR point person or designated staffer might help to support staff in the face of competing demands, enhance the perception of the value of the work, and be a resource for consumer advocacy. It was also suggested, however, that such a person could potentially diminish the autonomy of the PR.

Some PRs commented that administrative assistance could be helpful (for example, templates for certain types of cases; general formatting templates, or a style manual).

## Guidance on the Public Representatives' Role and Responsibilities

### A. General guidance

Many PRs suggested a need for guidance on, and definition of, the PR function. Suggestions included a charter, mission statement, or memorandum of guidelines instructing PRs on such issues as: how to perform the task; what support is available; litigation-type processes; the scope of the PR's duty; prohibitions on speaking with certain other staff on the topic; how to

gather outside input; ethical guidelines; and whether PRs can make both procedural and substantive comments.

#### B. What is the “Interest of the General Public”?

The statute governing the appointment of PRs does not define the “interest of the general public,” nor is that term defined in Commission rules. There are a number of interpretations as to how a PR should define the public interest.

A view often reported by PRs is that the individual case dictates how the interest of the public is defined, and that PRs can determine their approach based on their own assessment of the case.

For PRs who adhered to a definition, that definition ranged from: the interests of individual or citizen mailers (sometimes called “Aunt Minnie,” a reference to the definition held by the former OCA), to citizen mailers plus unrepresented parties (which could include industry), to the general interest of the United States (“what is good for the country”). It was commented that it was unclear whether the interest of the public includes small businesses and maybe larger businesses that are not aware of the docket.

Some PRs suggested that it would be helpful to define “interest of the public” in a uniform manner, even if that definition directs that the PR should make his or her own assessment on a case-by-case basis.

#### C. Scope of Work: Discovery, Outreach, Initiation of Complaints

PRs provided a wide variety of views regarding how they approach discovery and outreach, and some suggested that guidance in this area would be helpful. Some PRs commented that there is no current mechanism for someone at the Commission to raise an issue or complaint as PR without being first assigned to the case, while others believe such authority is unclear and may exist.

### Staff Experience

#### A. Experience in General

Many PRs reported a high level of satisfaction with the work. Some commented that their contributions added value to the process and would not have been raised otherwise. Some commented that they enjoy the autonomy of PR work, the opportunity to do a case without review, and the sole responsibility for completing it by the deadline. PRs also enjoyed exposure to new subject areas and the opportunity to work on a team with a lawyer or analyst.

Some PRs noted that they had no problems with balancing the casework, while others expressed concerns about balancing overall workload.

## B. Potential conflicts with the Commission; independence

PRs resoundingly reported that they work independently and are not the subject of Commission interference. They commented that the Commission was “hands off” and that there is a high degree of ethics about fulfilling the role. Other PRs commented that an aspect of the work they particularly enjoyed was working alone and being the sole voice of the PR, they enjoyed forming their own opinions, exercising flexibility and creativity, working without direction, and finding another point of view to contribute to the case.

PRs reported that they understood that they might take a controversial stance, but that the Commission seemed to understand that it was their duty as PR to do so under appropriate circumstances.

Staff clearly understands that an ethical wall exists between PRs and the Commission, however it was suggested that rules with respect to the ethical wall could be clarified for the future.

## C. Lawyers and analysts

In many cases, PRC lawyers and analysts (also called “technical staff”) are paired together. Several PRs commented on the benefits of these pairings (for example, “the best substantive answers are at the intersection of the lawyer’s knowledge and the analyst’s knowledge”).

## II. Summary of Interviews with PRC Commissioners.

### Structure of the Public Representative System

Some Commissioners expressed support for the concept of charging a single person to oversee the PR function in some manner. Commissioners generally commented that there is no need for a dedicated and staffed office such as the former Office of Consumer Advocate. It was suggested that the cross-pollination resulting from the current system is a positive factor, and that PRs play a valuable role in raising issues that might not otherwise be raised in proceedings.

### Guidance

It was suggested that there should be additional guidance for PRs, such as internal rules or procedures. A checklist or manual could be created, and it could include the definition of PR. Most Commissioners suggested that PRs should receive more support.

As to questions about scope and discovery, it was suggested that there could be a clearer understanding of how the PR should interact with the Postal Service, and perhaps a mutual understanding of how information exchanges should operate.

## Conflicts; independence

Commissioners stressed the importance of having an effective wall between the Commission and the PR, to avoid the perception or the reality of persuasion or interference by the Commission. It was suggested that new written procedures should include guidance on what contacts can be made with the Chairman and the Commissioners, and what guidance and direction, if any, is appropriate.

### **III. Interviews with Sampling of Outside Parties.**

Feedback was received from an informal sampling of a diverse range of outside parties who were familiar with the PR process.

#### Structure of the Public Representative System

A frequent comment by outside parties was that the current delegation structure lacks continuity; there is not a consistent point of contact or institutional knowledge to build upon. Some parties also suggested that results are inconsistent and the work itself is uneven. However, it was also suggested that delegating PR cases provides the interested parties with an opportunity to educate staff across the agency, and that staff may have the opportunity to look at broad policy implications not raised by their ordinary Commission work. One party suggested that there is not an enormous need for continuity within PR appointees, as the issues are similar year after year. Some outside parties commented that continuity was not a concern for them.

One party argued that, as a matter of statutory interpretation, Section 505 directs that the Commission must designate a single officer to represent the public in “all” cases to represent the “interests of the general public,” rather than the current system where the Commission designates a different PR in “each” case. As such, this party argued that the Commission is required by law to maintain a standing PR.

One party argued that the delegation system allows the airing of controversial issues; sometimes the PR is criticized, but serving on a rotating basis minimizes the exposure for any single staff person. The delegation system allows PRs to raise the issues they believe need to be raised -- sometimes, a PR is the only voice in a proceeding raising certain controversial issues.

Many outside parties suggested that continuity problems could be solved by designating a standing PR or PR liaison to provide institutional knowledge, serve as a point of contact and outreach, and be more of an advocate for the public. One party suggested that a PR liaison would be more effective than a more expansive PR office, as an office could become a gatekeeper for ideas and become bureaucratic. One party suggested a committee of a PR liaison, the Chairman’s office, and the General Counsel’s office to review cases and assign PRs.

A number of outside parties complimented the PRs’ work product and commented on the high quality of the staff.

## Guidance

A number of parties observed that there is no common definition of “interest of the general public” and some parties suggested that definition should include only the individual mailer or the individual mailer and the smallest businesses. Others suggested it should include business interests, or the interests of business that would not otherwise be represented. Others suggested that the definition should be determined based on the case. Some parties prefer that a definition be adopted.

One party commented that, due to a number of factors including the recession and questions about whether docket comments have an impact, not all parties with an interest in a proceeding actually file comments. Therefore, the role of the PR is important in filling out the record. As such, the definition of “interest of the general public” should be broad enough to include interests that are not otherwise represented.

Some parties suggested that the PR should be able to initiate a complaint. One party commented that it is unclear whether a PR can bring a complaint to institute a new docket.

## Independence

It was commented that the PR should be ensured independence, and that the Commission should have no part in suggesting the PR’s mandate, except what is provided under appropriate public channels. It was also noted that the nature of firewalls should be clear, as well as the parameters of staff interactions and potential conflicts.