



Testimony of
The Honorable Dan G. Blair, Chairman
On Behalf of the
Postal Regulatory Commission
Before the
U.S. House of Representatives
Committee on Oversight
And Government Reform
Subcommittee on Federal Workforce,
Postal Service, and the District of Columbia

April 24, 2008

Good afternoon Chairman Davis, Ranking Member Marchant, and members of the Subcommittee. I have been asked to testify regarding issues pertaining to cooperative mailings. The Committee made its interest in this issue known to the Commission when I testified several weeks ago during a general oversight hearing. I am pleased to give you an update regarding your interests in this matter.

The Postal Accountability and Enhancement Act of 2006 charges the Commission with studying a relatively recent revision to the Cooperative Mailing Rule.¹ Specifically, Section 711 of the Act requires the Commission to

...examine section E670.5.3 of the Domestic Mail Manual to determine whether it contains adequate safeguards to protect against –

- (A) abuses of rates for nonprofit mail; and*
- (B) deception of consumers.*

The Commission is to report its findings to the Postal Service, along with any recommendations we deem appropriate.

THE COOPERATIVE MAIL RULE CONTROLS ACCESS TO REDUCED RATES

The Cooperative Mail Rule is a longstanding postal regulation designed to control access to Nonprofit Standard Mail rates. The main method has been to limit the ways in which an eligible mailer can “cooperate” with another entity and still obtain reduced postage rates. In fact, traditionally, the only permissible type of cooperation has been between mailers who each separately qualify for an authorization to mail at Nonprofit rates. This requirement has foreclosed a cooperative mailing with a for-profit entity, unless the relationship was strictly a legitimate principal-agency relationship, such as a fee-for-service printing contract at a charge that was customary in the community.

¹ A reorganization of the Domestic Mail Manual has resulted in the Fundraising Exception being located at DMM § 703.1.6.3.

The rationale for the restriction stems from concern over access to the subsidized rate and, to a certain extent, a potential for the partner to exercise control over the nonprofit entity. Thus, the restriction was intended to ensure that the mailing did not involve a joint venture or joint enterprise with a cooperating entity which was not, on its own, entitled to reduced rates. It was also thought that the eligible mailer should not “share risk” in terms of its agreement with the partner.

SEVERAL CONCERNS HAVE RESULTED IN A LIMITED FUNDRAISING EXCEPTION

Over the years, some concluded that the Cooperative Mail Rule was too restrictive and perhaps counterproductive, in that it prevented some nonprofits from obtaining professional fundraising assistance or other useful advisory services. There was also a concern that the traditional rule posed a conflict with a growing number of state laws on charitable fundraising.

In 2003, in response to these concerns, the Postal Service proposed and adopted a revision that is widely referred to as the “Fundraising Exception.” This Exception, in essence, lifts the longstanding restrictions on cooperation for mailings that are limited to the solicitation of monetary donations. It does not extend to mailings announcing or promoting products or services, regardless of how nominal associated fees, if any, might be. In addition, mailers qualifying for the Fundraising Exception must still meet all other applicable eligibility requirements, and must send only their own mail, not that of another entity or of their partner in the mailing. The cooperating entity may retain the donor list and related information, but the mailer must receive a copy or provide a written waiver.

STAKEHOLDERS ARE SENSITIVE TO POLICY ISSUES AND CONCERNS, BUT DIFFER ON THE APPROPRIATE BALANCE

The nonprofit community has always recognized that access to lower postage involves important trade-offs, such as limits on the types of entities that are eligible,

restrictions on what can be mailed, and greater scrutiny than would otherwise be the case. In fact, there is an extensive history of Congressional hearings and legislation addressing this balance; of related Postal Service administrative action; and — at times — media attention and judicial involvement.

The Postal Service's formulation of the Fundraising Exception reflects considered review of stakeholders' concerns. It attempts to achieve a consensus view on a relatively narrow point, but does not accommodate all viewpoints, especially on the question of the potential for abuse of Nonprofit mailing privileges and consumer deception. The study the Commission has been asked to perform provides an opportunity to examine whether the balance that has been struck in the Fundraising Exception contains adequate safeguards in these areas.

STATUS OF COMMISSION STUDY

Since enactment of the PAEA in late December 2006, the Commission, the Postal Service and the rest of the postal community have been hard at work implementing the PAEA. The Commission's initial efforts focused on two clear priorities under the new law. One was delivering a new set of pricing regulations so the Postal Service — and ratepayers — could benefit as soon as possible from the PAEA's new approach. We accomplished that, and the upcoming May 12th price changes will mark the close of the first PAEA rate cycle. The other major effort involved establishing service performance goals and a service measurement system, which are the quid pro quo for more pricing flexibility.

While these efforts have garnered the most visibility and publicity, the Commission has been working on other aspects of the PAEA, such as the Universal Service Obligation study and regulations establishing the Competitive Fund, both due this December. While our focus has been on time sensitive studies and tasks, the Commission appreciated Chairman Waxman's expression of interest in the completion of this PAEA study. I would like to give the Subcommittee an update on where we stand.

First, as general preparation, the staff has been reviewing pertinent regulations and legislative history. This work has translated into extensive briefing material for the Commission's use, and provides a solid foundation for our study. Other groundwork has also been done. For example, in mid-March, I sent a letter to Postmaster General Jack Potter seeking, among other things, access to any reports, investigations or complaints, or other documents pertaining to whether the Domestic Mail Manual provisions have achieved their stated goals. Copies of this letter were sent to Chief Postal Inspector Alexander Lazaroff and the Inspector General of the U.S. Postal Service, David Williams. I recently received the Postmaster General's response, which provides the Commission with a direct contact for this issue at the Postal Service. Both pieces of correspondence are attached.

In addition, during the first few weeks in April, there have been meetings with Postal Service personnel. Three of these have involved the Postal Service's Office of Inspector General. Based on these meetings, it is my understanding that the OIG anticipates issuing a report on matters it is investigating, and that is likely to address how the Postal Service monitors use of the Fundraising Exception, the extent to which the Exception is used, and the potential impact of any changes in the Exception. Another meeting with Postal Service personnel has covered matters related to development of the formal rulemaking that resulted in adoption of the Fundraising Exception. The Commission looks forward to continued exchanges.

However, as abuse and deception in the context of the Fundraising Exception are areas the Commission must explore as part of its study, a note about jurisdiction may be in order. While the Commission has been tasked with preparing this report, I realize that matters related to mail fraud and protection of postal revenues fall under the purview of the Postal Inspection Service and the Postal Inspector General, respectively. We nevertheless hope to utilize any pertinent public findings of these two branches of the U.S. Postal Service in preparing our report.

We have also moved the study into a more public stage. Earlier this week, the Commission issued a notice seeking comments on the PAEA directive in section 711 for a Commission study. In that notice, the Commission invited comments from the general public to facilitate its examination of the following matters:

1. The 2003 rulemaking acknowledged that commenters had raised concerns about several types of abusive fundraising practices, including predatory credit arrangements. To what extent have these practices occurred, since the 2003 revision, in connection with mailings sent under the Fundraising Exemption?
2. Have there been any material changes in fundraising practices since the Postal Service's 2003 rulemaking that give rise to new concerns about abuse in connection with the Fundraising Exemption?
3. To what extent has the nonprofit sector engaged in education efforts designed to inform nonprofits, especially those considered especially vulnerable to overreaching or predatory partners, about the scope of the Fundraising Exemption and potential abuses? Also, are there reliable means of measuring or assessing the success of these efforts?
4. To what extent has the Postal Service (including any organizational division) engaged in education efforts specifically directed at the Fundraising Exemption and potential abuses? Are there reliable means of measuring or assessing the success of these efforts?
5. What information and data are available about the extent to which the Fundraising Exemption has been used by mailers eligible for nonprofit rates since adoption in 2003, in terms of features such as number and type of entities using the Fundraising Exemption, volume, and total postage involved?

6. The 2003 rulemaking mentioned that there were a growing number of state laws on charitable fundraising that created a potential for conflict with cooperative mail as then formulated. Has there been an increase in the number of states proposing or adopting such laws? What safeguards or protections are included in these laws? Do these laws pose any conflicts with the 2003 Fundraising Exception or did this Exception satisfactorily resolve relevant concerns?
7. To what extent has the Postal Service undertaken efforts to educate consumers (in the capacity of a donor or potential donor responding to a mailed solicitation) about abuses or potential fundraising abuses?
8. To what extent have individual states engaged in efforts to educate consumers (in the capacity of a donor or potential donor responding to a mailed solicitation) about abuses or potential fundraising abuses?
9. To what extent has deception of potential donors been reported or documented by the Postal Service, nonprofit mailer organizations, state or local consumer protection agencies, or others?

These nine items are not intended to be an exclusive list and commenters are encouraged to raise other relevant issues if they believe it will inform the Commission's work. This notice has been sent to the *Federal Register*, and we anticipate that it will be published shortly. A copy of the April 18th notice is available on the Commission's website at www.prc.gov. The notice provides a 90-day timetable for comments, based on a 60-day period for initial comments and 30 days for reply comments. The longer period for initial comments is due, in part, to a concern that nonprofits may have part-time or volunteer boards and thus need considerable lead time to organize their efforts.

Finally, our preliminary work in thinking about appropriate study methods has led us to consider whether existing Postal Service surveys, sponsored by Marketing and the Office of Consumer Advocate, might present an opportunity to explore the issues at the

heart of the study or to allow routine, ongoing monitoring in this area. We raised this issue with Postal Service representatives in our meeting and look forward to working with them in addressing this.

To conclude, I would like to take this opportunity to address an issue raised during a meeting between the Commission and Subcommittee staff. In the course of our discussion, a question arose about how much contribution Nonprofit Standard Mail makes to overhead. Developing a complete and accurate answer has entailed working with the Postal Service to obtain certain data and information. The most recent data the Commission possesses is from 1999. We can provide an estimate based on this data, but I would be more comfortable relying on updated data from the Postal Service. We have requested updated data from them and will provide you a response once we receive it.

I would be happy to respond to any questions.



March 14, 2008

DAN G. BLAIR
CHAIRMAN

Mr. John E. Potter
Postmaster General and Chief
Executive Officer
U.S. Postal Service
475 L'Enfant Plaza West, SW
Washington, DC 20260

Dear Mr. Potter:

As you may recall, House Oversight and Government Reform Committee Chairman Henry Waxman expressed concerns regarding the use of cooperative mailings during the subcommittee oversight hearing held on February 28, 2008. Specifically, he asked about the status of the Commission's review of the report mandated in Section 711 of the Postal Accountability and Enhancement Act (PAEA). This report requires the Commission to "examine section E670.5.3 of the Domestic Mail Manual to determine whether it contains adequate safeguards to protect against – (A) abuses of rates for nonprofit mail; and (B) deception of consumers."

In order to begin this work, the Commission would appreciate your assistance in several areas:

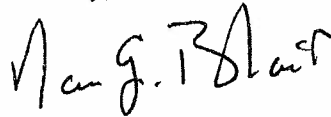
- (1) access to information from the permit system related the number of nonprofit permits and the volumes mailed under these permits;
- (2) access to any reports, investigations of complaints, or other documents pertaining to whether the Domestic Mail Manual provisions have achieved the stated goals;
- (3) access to personnel familiar with the cost and mailing characteristics of nonprofit mailings; and
- (4) access to other data reasonably designed to facilitate a comprehensive report.

Jack E. Potter
March 14, 2008
Page 2

Commission staff will soon follow up with the appropriate Postal Service offices with more specific requests. It is my hope that with your help, the Commission will produce a report that is responsive to Congress, and benefits the Postal Service and the mailing community.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink that reads "Dan G. Blair". The signature is written in a cursive style with a large, stylized "D" and "B".

Dan G. Blair

cc: Alexander Lazaroff, Chief Postal Inspector
David Williams, Inspector General, U.S. Postal Service

JOHN E. POTTER
POSTMASTER GENERAL, CEO



April 17, 2008

Mr. Dan G. Blair
Chairman
Postal Regulatory Commission
901 New York Avenue, NW, Suite 200
Washington, DC 20268-0001

Dear Chairman Blair:

Thank you for your letter of March 14 regarding the responsibility of the Postal Regulatory Commission to take action under Section 711 of the Postal Accountability and Enhancement Act.

We will be happy to work with the Postal Regulatory Commission to ensure that you and your staff have access to the necessary information to "examine section E670.5.3 of the *Domestic Mail Manual* to determine whether it contains adequate safeguards to protect against—(A) abuses of rates for nonprofit mail; and (B) deception of consumers."

To ensure there is coordination in this effort, I would ask you and your staff to work with Andrew German, Managing Counsel, Legal Policy and Ratemaking. He can be reached at 202-268-3034.

Please let me know if there is any additional assistance you may need in this matter.

Sincerely,

A handwritten signature in black ink that reads "John E. Potter".

John E. Potter