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February 12, 2003

Dennis Shea
Executive Director
President's Commission
on the United States Postal Service
1120 Vermont Avenue, N.W., Suite 971
Washington, D.C. 20005

Dear Mr. Shea:

On behalf of the Association of American Publishers ("AAP"), I am submitting comments requested by the President's Commission on the United States Postal Service (the "Commission") from interested parties regarding the future of the United States Postal Service (the "Postal Service").

AAP is the principal representative of the book publishing industry in the United States. It has over 300 members which encompass large and small publishing houses, as well as university and other non-profit publishers. AAP members publish hardcover and paperback books in every field – fiction, general non-fiction, poetry, children's literature, textbooks, reference works, bibles and other religious books, as well as scientific, medical, technical, professional and scholarly books and journals. AAP's members make particular use of the Bound Printed Matter subclass to send books through the mail, and also use the Periodicals class to mail scientific and scholarly journals.

AAP has been an active participant in postal policy matters and in the postal ratemaking process, including nearly every rate case before the Postal Rate Commission ("PRC"), for over twenty years. AAP believes that the Postal Service needs to adhere to its primary mission of providing universal service at affordable rates for all classes of mail. For AAP and its members, this allows books and journals to be delivered to people across the Nation – regardless of socioeconomic status or geographic location – at reasonable costs. The policies set in place by Congress to ensure that the content of the mail is considered when establishing rates should be continued. Nonetheless, AAP believes that cost issues must be addressed for the Postal Service to remain financially viable. AAP encourages the Commission to consider changes that provide the Postal Service with greater flexibility to control its costs and to implement recommendations that strongly encourage mailer worksharing as a means reducing those costs. AAP also suggests that the Commission consider recommending changes to the current ratemaking process.

I. The Postal Service's Mission Should Not Be Changed

In 1970, when Congress passed the Postal Reorganization Act, it also defined the mission of the Postal Service. That mission, which to this day has served as the foundation of the Nation's postal policy, states in part:

The Postal Service shall have as its basic function the obligation to provide postal services to bind the Nation together through the personal, educational, literary, and business correspondence of the people. It shall provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities.¹

While AAP strongly believes that the Commission should recommend changes that address flaws in the postal ratemaking system and that provide the Postal Service with additional flexibility to control costs, AAP believes that the fundamental mission of the Postal Service should not be changed. The Postal Service must continue to serve all communities, and, as part of that mission, must continue to be the primary and most economical means of delivering content based publications such as books, journals, magazines and newspapers. Books, in particular, promote literacy, education, and culture and are an important part of childhood development. The use of the Postal Service to deliver such publications "binds the Nation together" in a most profound way.

At present, the most cost-effective means of delivering a book is through the mail. While other private package delivery services can deliver a book, such services are more expensive and do not provide delivery to every address in this Nation. AAP is concerned that if the Postal Service's financial picture continues to worsen, the costs of delivering books and other content-based mail will increase to such an extent as to make the delivery of such materials through the mail uneconomical. More troubling is the prospect that the Postal Service will no longer be required or able to provide universal service, a change that could hamper the ability of publishers to widely disseminate educational and literary materials through the mail.

Consistent with the goals associated with the encouragement of reading and the promotion of literacy, there is a national interest in the broad dissemination of books through the mail at economical rates. Throughout the years, Congress has undertaken numerous initiatives aimed at improving literacy and encouraging reading. In 1999, it enacted the Reading Excellence Act that appropriates over \$260 million annually to improve children's reading. In 2000, it enacted the Literacy Involves Family Together Act which reauthorized and increased funding for the Even Start literacy programs. And, of course, the No Child Left Behind Act, which contains the President's education proposals, provides for additional funding mechanisms to promote literacy among children. Other literacy measures have been part of legislation such as the Workforce Investment Act, the Head Start Improvement Act and the National Literacy Act, among others. Congress has consistently promoted literacy efforts because of the wealth of research that confirms the importance of reading to development in every stage of life – from

¹ 39 U.S.C. § 101(a).

infancy, through childhood and adolescence, to adulthood. Reading is one of the most important means of binding the Nation together.

Thus, decisions that are made regarding the mission of the Postal Service and scope of universal service must be viewed in the context of the public interest. Limiting that mission or eliminating universal service might result in a short-term economic benefit, but over the long-term may have unintended consequences. For instance, Congress adopted a postal policy that favors and encourages the sending of content-based published materials through the mail by explicitly requiring that the educational, cultural, scientific and informational value of the mail be considered when setting rates.² This requirement has resulted in the imposition of a lower cost coverage and lower rates for Periodicals and Bound Printed Matter mail. Lower rates contributed to volume increases and provided additional revenue to the Postal Service. If postal policy no longer accounts for the content of the mail, universal service is ended, or the current rate incentives for mailing books and periodicals are discontinued, mail volume of such items is likely to significantly decrease which, in turn, will only further exacerbate the Postal Service's financial difficulties.

Because AAP believes that the Postal Service's mission should not be fundamentally altered, it does not believe that the Postal Service should be privatized or that the Postal Service's mailbox monopoly should be discontinued. Although there may be aspects of the Postal Service that can effectively compete in the private marketplace, AAP believes that the Postal Service must maintain a monopoly over classes of mail for which there is no effective competition. These include the content-based classes of mail such as Bound Printed Matter, Media Mail, Library Mail, Periodicals and First Class Mail.

II. The Postal Service Should Have Increased Flexibility to Control Costs

At the root of the Postal Service's problems lies the issue of costs. According to a recent General Accounting Office report, "the ability to control costs and sustain productivity gains is a key challenge to improving the Service's financial situation. . . . The Service continues to face significant challenges in sustaining long-term cost savings and productivity gains, particularly in workforce and infrastructure areas, where costs are difficult to cut."³ If the Postal Service's financial position is to improve, this problem must be addressed.

AAP recognizes that there is no simple solution to this issue. Many of the Postal Service costs are fixed, and the size of the Postal Service's infrastructure and workforce make significant cost cutting measures extremely difficult. The Postal Service is also constrained by Congress from closing small post offices. Whether that restriction should be continued is a matter that the Commission should closely examine as part of its review.

² 39 U.S.C. § 3622(b)(8).

³ *Major Management Challenges and Program Risks: U.S. Postal Service*, GAO-03-118 (January 2003).

AAP credits the steps that the Postal Service plans to take in an attempt to reduce costs, as identified by the short-term strategy outlined in its April 2002 Transformation Plan. We also agree with the GAO's conclusions that the Postal Service needs to examine its operations to determine where it can better improve efficiencies, particularly as automation increases. With respect to labor, AAP strongly believes that productivity must continue to increase. In short, there must be real incentives for the employees and management to meet well defined productivity and performance goals.

III. Worksharing Should Be Expanded

One means by which the Postal Service might begin to reduce its costs is to place greater emphasis on worksharing. Many mailers are willing to work with the Postal Service to devise worksharing methods that shift certain Postal Service costs directly to the mailers. In short, many mailers have the ability to prepare and sort mail to a level that permits the mail to be entered further down the mail-stream thereby reducing the Postal Service's mail processing and transportation costs. Although AAP strongly supports worksharing, it believes that any worksharing proposals need to be developed in close consultation with the mailers, and not independent of them. The Postal Service should actively respond to mailer suggestions of possible ways of reducing costs as a result mail preparation activities by mailers.

AAP cautions that worksharing proposals that mailers are not prepared or able to implement could reduce volume. For instance, in the R2000-1 rate case, the Postal Service proposed a dramatic restructuring of the Bound Printed Matter subclass that imposed significant worksharing obligations upon book mailers. Unfortunately, because the worksharing proposals were poorly designed and required mail volumes that most book mailers did not possess at the time, the worksharing proposals were of little use to many book mailers. Worse, the worksharing proposal for Bound Printed Matter resulted in significantly higher rates for those mailers who could not process or sort their mail in the manner required by the worksharing discounts. At no time prior to the introduction of the worksharing proposal for Bound Printed Matter did the Postal Service ever consult with book mailers to determine if the proposal was even feasible. If the Postal Service had sought mailer input, it might have been possible to develop a worksharing proposal that actually met the abilities of the mailers and encouraged volume growth.

AAP believes that mailers should be able to enter into individual negotiated service agreements that allow mailers to negotiate specific rates for sending mail that take into account the level of mail preparation and other worksharing activities that a particular mailer is able to provide. AAP is encouraged that the Postal Service recently has sought to enter into such an agreement with a large first class mailer. In order to enter into such an agreement, the Postal Service initiated a classification proceeding before the PRC.⁴ As a result, the Postal Service's proposal to enter into the agreement has become subject to a full administrative proceeding. AAP does not believe that procedures for reviewing a negotiated service agreement should require a full hearing. To the extent PRC approval is needed, there should be a streamlined

⁴ PRC Docket No. MC2002-2.

approval process that allows third-parties to submit comments in support of or opposition to the proposal.

IV. The Ratemaking Process is Flawed

AAP believes that the current ratemaking process is fundamentally flawed. The process favors the status quo and discourages innovation. AAP bases this view on experience. It has been an active participant in every rate case since the Postal Reorganization Act of 1970. While AAP believes that it has made valuable contributions in each of these cases, recent experience has caused it to believe that the process no longer works as envisioned.

The current ratemaking process places the burden upon the intervenors to present information to disprove the Postal Service's case. Although the Postal Service must file a case-in-chief that contains information regarding the Postal Service's finances, costing methodologies underlying the proposed rate increase and specific descriptions outlining the basis for the increases in each class and subclass, the material supplied by the Postal Service is often incomplete or fails to fully explain the basis for its proposals. For instance, in the R2000-1 rate case, the Postal Service's explanation of its rate filing failed to fully account for the volume of books sent through the mail. AAP attempted to obtain more information regarding the Postal Service's data on the number of books sent as Bound Printed Matter by submitting interrogatories to the Postal Service and cross-examining its witnesses. In short, AAP was forced to expend tremendous resources just to determine whether the Postal Service properly accounted for the number of books sent through the mail. This episode illustrates how the process is enormously expensive, time-consuming and highly uncertain of success given the Postal Service's control of its data. And, even if a party convinces the PRC that the Postal Service's proposal is flawed, and the PRC recommends rates different from those proposed by the Postal Service, the Postal Service Board of Governors – through a unanimous vote – can still implement the rate increases it proposed at the start of the rate case if it finds that the rates recommended by the PRC are not adequate to provide sufficient total revenues.⁵

This is exactly the result that occurred in the R2000-1 rate case. At the conclusion of the 10-month rate case process, the PRC made a recommendation that included a reduction in the revenue requirement sought by the Postal Service in its request for a rate increase. The PRC set the contingency at 1.5% instead of the 2.5% requested by the Postal Service. In accordance with the procedures set forth in the Postal Reorganization Act, the Board of Governors of the Postal Service reviewed the PRC's decision. As allowed by the Act, the Board of Governors accepted the proposed rates, but only under protest and asked that the Postal Rate Commission reconsider its recommended contingency as well as rates in several subclasses of mail that the Board of Governors found to contain errors. On reconsideration, the PRC adhered to its recommended contingency. The Board of Governors returned the recommendation to the PRC one further time, and when the PRC again did not recommend the contingency requested by the Postal Service, the Board of Governors unanimously voted to modify the PRC's decision in order to implement the 2.5% contingency originally sought by the Postal Service. The end result was that the Board of

⁵ 39 U.S.C. § 3625(d).

Governors implemented rates that were higher than those recommended by the PRC. The higher rates resulted in an additional \$800 million in revenue for the Postal Service.

While the action of the Board of Governors in R2000-1 was permitted by the ratemaking procedures set forth in the Postal Reorganization Act, it likely set a precedent that will make future ratemaking cases an empty exercise. Specifically, even if the PRC agrees with intervenors that the Postal Service's proposed rates are not justified, the Board of Governors has the ability to implement the rates sought by the Postal Service at the time the rate case is filed. Given the Postal Service's financial problems, it is likely that the Board of Governors will continue to follow this practice. If that is to be the case, AAP questions the usefulness of the current ratemaking process.

The most obvious way to ensure that the rate making process entails a meaningful review of the Postal Service's rate proposals is to strengthen the authority of the PRC and to make it the final decision-maker in the ratemaking process. AAP also believes that the ratemaking process might be improved by requiring the parties to enter into good-faith settlement negotiations at the start of the rate case. These settlement negotiations would be overseen by the PRC, with PRC officials acting as settlement coordinators. Only those matters that could not be settled would be subject to a full ratemaking proceeding. The process would encourage the Postal Service to reach consensus with mailers, and would discourage a party from adopting an all-or-nothing approach. Further, as part of that process, the Postal Service would be required to make full disclosure regarding its finances, costs and other information that supports its rate proposal.

A negotiated proceeding is not a novel concept. In 1990, Congress passed a law encouraging federal administrative agencies to adopt negotiated rulemaking in an effort to avoid "adversarial rulemaking."⁶ In 1998, President Clinton issued a Memorandum urging each Federal agency to take steps to adopt alternative dispute resolution techniques and to make greater use of negotiated rulemaking.⁷ As a result, some agencies, such as the U.S. Department of Education, almost exclusively rely upon negotiated rulemaking for purposes of establishing regulations. In the utility ratemaking context, the Federal Energy Regulatory Commission ("FERC") has taken steps to encourage settlement of its proceedings and, to that end, has established an office of dispute resolution. As explained by FERC in a report on its alternative dispute resolution proceedings:

To keep current with the changes in the energy markets, and to prepare for the future, [the Chairman of FERC] recognized that the presumption that traditional disputes could best be resolved through adjudicatory processes needed to be changed. The Chairman recognized that the public and private sectors needed to engage each other in a constructive way in the search for real and prompt solutions to the technical and

⁶ See P.L. 101-646, § 2, as codified at 4 U.S.C. § 562 *et seq.*

⁷ Memorandum from William J. Clinton to Heads of Executive Departments and Agencies on Agency Use of Alternate Means of Dispute Resolution and Negotiated Rulemaking, May 1, 1998.

operational problems that impede further efficiency gains and competition. Thus, the Chairman sought to promote early resolution of contested matters and complaints through expanded use of consensual decision-making, including ADR.⁸

Unlike FERC, the PRC has not established a formal settlement process although it has strongly encouraged settlement in the last several rate cases. Of course, it may not always be possible to reach settlement on a particular issue. Costing methodologies are typically disputed and likely will require a full-rate case to resolve. Yet, there is no question that settlement can be achieved in many cases. AAP believes that by strengthening the authority of the PRC and creating a structured settlement process overseen by the PRC, mailers will have greater input on rates than under the current process and that the Postal Service will have additional flexibility to structure rates in a manner that better serves the mailing community.

V. Conclusion

AAP strongly supports the work of the Commission as it begins the difficult task of considering changes to the current postal system. As the Commission undertakes its work, AAP requests that the Commission carefully consider how the current Postal System "binds the nation together" and cautions that a fundamental alteration of that mission would not be in the public interest. If the Postal Service is to succeed in the future, it must remain responsive to the public and the needs of its business customers. This will require greater innovation on the part of the Postal Service as well as a commitment to maintaining rates and costs at reasonable levels.

Sincerely,

A handwritten signature in black ink, appearing to read "Pat Schroeder".

President and Chief Executive Officer

⁸ Report on the Federal Energy Regulatory Commission's Alternative Dispute Resolution Initiatives, December 20, 1999.