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# Increasing Citizen Participation in U.S. Postal Service Policy Making: A Model Act to Create a Post Office Consumer Action Group

JOSEPH W. BELLUCK\*

## I. INTRODUCTION<sup>1</sup>

Today's political environment is characterized by an increasing awareness about the rise of "special interest" control over our country's regulatory apparatus and the resulting isolation individual citizens feel from both the legislative and administrative processes of federal and state governments.<sup>2</sup> Consumer advocate Ralph Nader has commented that the administration of laws is subject to instabilities, including the selective enforcement of laws (based on campaign contributions), that invite public cynicism and lower public expectation levels that help hold regulatory agencies accountable.<sup>3</sup> As corporate lobbies increasingly stall actions by legislatures and regulatory agencies, and frame, to their benefit, the content of those laws and regulations that are issued,<sup>4</sup> citizens have become anesthetized to abuses of public trust by government officials.<sup>5</sup>

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\* J.D. Candidate, University at Buffalo School of Law, May, 1994. While any errors of fact or judgment should be attributed solely to the author, it must be acknowledged that a substantial portion of the ideas and information in this article was gathered and developed by Ralph Nader's Center for Study of Responsive Law at which the author was employed from 1989-1991. Ralph Nader and the Center developed and refined the concept of consumer action groups and continue to advocate for their establishment. The Center can be contacted at P.O. Box 19367, Washington, D.C., 20036

1. This Introduction, as well as the sections of this paper that discuss consumer action groups, were adapted from Joseph W. Belluck, *Increasing Consumer Participation In State Utility Regulatory Proceedings*, A.B.A. SEC. PUB. SERV. L. REP. (forthcoming).

2. See generally DONALD L. BARTLETT & JAMES B. STEELE, *AMERICA WHAT WENT WRONG?* (1992); WILLIAM GREIDER, *WHO WILL TELL THE PEOPLE?* (1992).

3. See Ralph Nader, *The Consumer Movement Looks Ahead*, in *BEYOND REAGAN: ALTERNATIVES FOR THE '80S*, 271 (Alan Gartner, et al. ed., 1984).

4. See BARTLETT & STEELE, *supra* note 2, at 191. See also GREIDER, *supra* note 2, at 106. Greider provides numerous examples of regulations stilled by federal agencies, including the Food and Drug Administration, Nuclear Regulatory Commission, Department of Labor, Department of Defense, Department of Transportation and the Environmental Protection Agency. *Id.* at 112-13.

5. See BERNARD ROSEN, *HOLDING GOVERNMENT BUREAUCRACIES ACCOUNTABLE* 161 (1989).

A prominent reason why government has become unresponsive to most citizen's concerns is that the cost of participating in democratic processes is prohibitively expensive for most Americans. This entry barrier has allowed well-funded organized economic interests, namely corporations, to minimize the role of citizens in these processes.<sup>6</sup> According to a study by a committee of the United States Senate, even public interest groups—proxy representatives of citizens—“were stretched so thin that they were absent at more than half of the formal proceedings on regulatory issues and, when they appeared, were typically outnumbered ten-to-one by industry interests. Indeed, on issues of major importance, industries invest fifty to one hundred times more resources than the public-interest advocates could muster.”<sup>7</sup> The cost of public participation has “incapacitated the citizens of this democracy [and] rendered them ineffectual” to participate on both the state and federal level.<sup>8</sup>

The problem of inadequate public involvement in government processes has not escaped the United States Postal Service (“Postal Service”).<sup>9</sup> The Postal Service is one of the most expansive government-operated agencies in the country. It affects more citizens on a daily basis than any other government function.<sup>10</sup> It also employs over 750,000 people,<sup>11</sup> handles over 165 billion pieces of mail annually<sup>12</sup> and is the United States’ eighth largest corporation in terms of revenue.<sup>13</sup> Despite the prominent role of the Postal Service in the lives of most Americans, most residential postal users have no input into its policy decisions.<sup>14</sup> Instead, the Postal Service’s policy decisions are shaped by the influence of three parties—often referred to as the “iron triangle” of postal policy. These are: the postal worker labor unions, commercial mailers and the Postal Service itself.<sup>15</sup> Because of these parties’ exclusive influence, the Postal Service’s policies and rates have tended to benefit these constituencies at the ex-

6. GREIDER, *supra* note 2, at 50.

7. *Id.* (citing a Senate Government Affairs Committee study of citizen participation).

8. *Id.* at 161-62.

9. Arthur Best and Bernard L. Brown, *Governmental Facilitation of Consumerism: A Proposal for Consumer Action Groups*, 50 TEMP. L.Q. 253 (1977).

10. Joel L. Fleishman, *A Candid Assessment of a Decade of Postal Reorganization, in THE FUTURE OF THE POSTAL SERVICE* 1, 23 (Joel L. Fleishman, ed., 1983) [hereinafter FLEISHMAN].

11. Clyde Linsley, *Postage Due*, GOVERNMENT EXECUTIVE, Sept. 1992, at 39, 43.

12. *Id.* at 39.

13. Barth Healy, *Post Office Tries Battling Deficit with Stamp Sales*, N.Y. TIMES, June 2, 1992, at A16.

14. BEST & BROWN, *supra* note 9, at 276.

15. Joel L. Fleishman, *Postal Policy and Public Accountability: Is the 1970 Bargain Coming Unglued?*, in *THE FUTURE OF THE POSTAL SERVICE* 43, 46-49 (Joel L. Fleishman, ed., 1983) [hereinafter FLEISHMAN, *Postal Policy*].

pense of the residential postal user. The result has been steadily increasing rates and a series of service cutbacks.<sup>16</sup> Since 1971, postage rates have skyrocketed from six to twenty-nine cents. In addition, the Postal Service has: closed thousands of local post offices; reduced collection service; eliminated its postage due delivery service; reduced its mail forwarding service; restricted door delivery; and, reduced the number of hours that post offices operate.<sup>17</sup> Furthermore, mail service has become slower and less reliable.<sup>18</sup>

Consumer access to and input into Postal Service decisionmaking must be guaranteed in order to prevent the Postal Service from further abusing its powers. Towards that end this paper will examine how citizens can become more effectual participants in shaping the future of the United States Postal Service. Part I will provide a history of postal regulation, including a description of the restructuring of the Postal Service in 1971. Part II will outline the current barriers to effective public participation in the proceedings that shape postal policy. Finally, Part III will urge the enactment of legislation creating a congressionally chartered, mass-based post office consumer organization capable of representing citizens in such proceedings.<sup>19</sup>

## II. HISTORY OF POSTAL REGULATION

### A. *The Early Beginnings*

The United States Postal Service had its beginning in a tavern in Boston, Massachusetts in 1639.<sup>20</sup> That year, the General Court of Massachusetts passed legislation ordering that letters arriving from or sent overseas were to be deposited at a local tavern.<sup>21</sup> Approximately forty years later, the office of postmaster general for America was created with the approval of the King of England<sup>22</sup> and the colonies began developing small postal systems.<sup>23</sup> In 1753, upon being appointed postmaster general of the Colonies, Benjamin Frank-

16. See ROBERT J. MYERS, *THE COMING COLLAPSE OF THE POST OFFICE* 5 (1975); KATHLEEN CONKEY, *THE POSTAL PRECIPICE: CAN THE UNITED STATES POSTAL SERVICE BE SAVED?* 199-201, 279-80 (1983).

17. See *infra* part III.C.

18. *Id.*

19. While the focus of this paper will be the United States Postal Service, this framework could be used in other state and federal regulatory contexts. If successful, the result would be to reintroduce citizens to the democratic processes that currently seem unresponsive to their concerns.

20. GERALD CULLINAN, *THE POST OFFICE DEPARTMENT* 3 (1968) [hereinafter CULLINAN, *POST OFFICE DEPARTMENT*].

21. CONKEY, *supra* note 16, at 11.

22. *Id.*

23. *Id.*

lin initiated the framework for a universal postal system.<sup>24</sup> Franklin began an intensive campaign to improve the Postal Service, which included inspecting colonial post offices, increasing the speed and frequency of delivery, establishing new post offices and sending newspapers through the mails.<sup>25</sup> When Franklin was dismissed from office by England's Postmaster-General in 1774,<sup>26</sup> he had significantly improved both the quality and size of the postal system.<sup>27</sup>

"The establishment of a postal system was one of the first issues taken up by the Continental Congress."<sup>28</sup> On May 29, 1775, the Congress resolved that, "As the present critical situation of the colonies renders it highly desirable that ways and means should be devised for the speedy and secure conveyance of Intelligence from one end of the Continent to the other," a committee be appointed to consider the best means of establishing a post.<sup>29</sup> Two months later, the Continental Congress reappointed Benjamin Franklin postmaster general of the United Colonies and authorized him to establish a postal system.<sup>30</sup>

During the early years of the United States, inadequate and irregular service made the postal service a subject of frequent discussion in Congress. The importance of the postal system in American history is underscored by the fact that it was explicitly referred to in both the Articles of Confederation and the United States Constitution. Article IX of the 1778 Articles of Confederation states:

The United States in Congress assembled shall also have the sole and exclusive right and power of . . . establishing and regulating post offices from one State to another, throughout all the United States and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office. . . .<sup>31</sup>

Similarly, Article 1, Section 8 of the Constitution states: "The Con-

24. LINDSAY ROGERS, *THE POSTAL POWER OF CONGRESS: A STUDY IN CONSTITUTIONAL EXPANSION* 12 (1916).

25. See DOROTHY G. FOWLER, *UNMAILABLE: CONGRESS AND THE POST OFFICE* 1 (1977); CONKEY, *supra* note 16, at 12; ROGERS, *supra* note 24, at 12-13.

26. See FOWLER, *supra* note 25, at 2. Franklin may have been dismissed because of his support of patriotic activities and because British ministers wanted to impede communications between patriotic colonists. *Id.* See also ROGERS, *supra* note 24, at 13.

27. CONKEY, *supra* note 16, at 12.

28. ROGERS, *supra* note 24, at 13; FOWLER, *supra* note 25, at 3. After Franklin's dismissal the quality of the colonial post deteriorated and competing postal delivery systems gained popularity. CULLINAN, *POST OFFICE DEPARTMENT*, *supra* note 20 at 15-16. These competing services were "rebel" post offices that were attempting to undermine the British Crown's colonial postal service. *Id.*

29. 2 *JOURNALS OF THE CONTINENTAL CONGRESS* 71 (Ford ed.).

30. CULLINAN, *POST OFFICE DEPARTMENT*, *supra* note 20, at 16.

31. *ARTICLES OF CONFEDERATION* of 1778, art. IX, § 4.

gress shall have power . . . to establish post-offices and post-roads.<sup>32</sup>

Congress wasted no time in exercising its power to establish a postal system. In 1789, Congress passed a law creating the Post Office Department and placing the Postmaster General under the direction of the President of the United States.<sup>33</sup> Several years later, Congress passed the Post Office Act of 1792.<sup>34</sup> The Act, which was the first postage rate law enacted under the Constitution, established basic mail rates, granted the Post Office Department a monopoly on mail delivery and authorized the creation of post roads.<sup>35</sup>

### B. *The Expansion of the Postal System: Citizen Participation Shapes the Development of the Mails*

Following the passage of the 1792 Act, the public made constant demands upon the Post Office Department and Congress to establish and expand postal services in towns, villages and counties across America.<sup>36</sup> Citizens sent their demands directly to Congress, often flooding their representatives with petitions for post roads.<sup>37</sup> Congress would frequently respond by authorizing the Post Office Department to create more post roads and post offices. In 1792, there were 6,000 miles of post roads.<sup>38</sup> By 1829, there were 114,780 miles of post roads.<sup>39</sup> During the same time period, the number of post offices grew from 75 to 8,050.<sup>40</sup>

Postal rates were also a matter of concern for the average citizen.<sup>41</sup> The rates set by the 1792 Act were considered exorbitant and discouraged widespread use of the mails.<sup>42</sup> As a result, by the 1830's, Americans were looking for alternative, sometimes illegal, ways of sending letters.<sup>43</sup> A congressional report summed up the situation by stating that "[h]aving demonstrated in vain against what they deem to be exorbitant and oppressive rates of postage, our citizens have at last adopted the conclusion that it is right to oppose and evade laws which they consider unjust and oppressive."<sup>44</sup>

32. U.S. CONST. art. I, § 8.

33. Post Office Act of 1789, 1 Stat. 70. (1789).

34. Post Office Act of 1792, 1 Stat. 232 (1792).

35. *Id.* See also CULLINAN, POST OFFICE DEPARTMENT, *supra* note 20, at 27-28, 249.

36. CONKEY, *supra* note 16, at 14.

37. *Id.* at 15.

38. WAYNE E. FULLER, THE AMERICAN MAIL: ENLARGER OF THE COMMON LIFE 48 (1972).

39. CULLINAN, POST OFFICE DEPARTMENT, *supra* note 20, at 42.

40. *Id.*

41. FOWLER, *supra* note 25, at 13.

42. CULLINAN, POST OFFICE DEPARTMENT, *supra* note 20, at 28.

43. CONKEY, *supra* note 16, at 16.

44. FULLER, *supra* note 38, at 62.

In response to such public demonstrations, Congress passed a series of laws between 1845 and 1851 that reduced postage rates from a range of six to twenty-five cents to a range of three to five cents.<sup>45</sup> By 1919, Congress had lowered postage rates to two cents for a first-class letter and one cent for a post card.<sup>46</sup>

Congress was also responsive to public pressure to expand services, especially free door delivery. In 1863, Congress passed legislation to initiate free delivery to city residents.<sup>47</sup> By 1880, letter carriers were delivering mail to 104 cities.<sup>48</sup> In 1893, farmers and newspaper publishers, persuaded Congress to appropriate funds to establish an experimental delivery system for rural communities.<sup>49</sup> Between 1893 and 1902, Congress continued to appropriate more funds for the rural delivery system and authorized the Post Office Department to make rural delivery permanent.<sup>50</sup> Public demand for additional services also led Congress to continue to increase mail routes and post offices. By 1912, 40,000 mail routes criss-crossed the nation and approximately 40,000 post offices were operating.<sup>51</sup> Finally, public pressure from rural citizens also forced Congress to establish parcel post service.<sup>52</sup> The Parcel post service, which was created in 1912, was carrying over a billion pieces by 1952.<sup>53</sup> On another front, Congress reacted to public demand for more efficient mail delivery by supporting the Post Office's use of the railroads<sup>54</sup> and reacted to public pressure about the instability of private financial institutions by creating a Postal Savings Bank.<sup>55</sup> In 1838, for

45. See CULLINAN, POST OFFICE DEPARTMENT, *supra* note 20, at 58-65; CONKEY, *supra* note 16, at 16. See also Post Office Act of 1845, 5 Stat. 732 (1845); Post Office Act of 1847, 9 Stat. 188 (1847); Post Office Act of 1851, 9 Stat. 587 (1851). All of these laws reduced postage rates and were designed to encourage increased use of the mails. It was also during this period that Congress enacted legislation requiring mandatory use of postage stamps and prepayment of postage. Post Office Act of 1855, 10 Stat. 641 (1855).

46. Post Office Act of 1919, 40 Stat. 1150 (1919). See also CULLINAN, POST OFFICE DEPARTMENT, *supra* note 20, at 127-28. Congress raised the first-class postage rate to five cents in 1962. Interestingly, the price for first class postage was still only five cents in 1968. See Post Office Act of 1962, 76 Stat. 832 (1962).

47. CULLINAN, POST OFFICE DEPARTMENT, *supra* note 20, at 81-82. On March, 3, 1863, Congress passed a law authorizing the postal service to provide free delivery to city residents. See Post Office Act of 1863, 12 Stat. 704-7 (1863). Prior to the enactment of the Act, an additional two cents per letter was collected for delivery.

48. CONKEY, *supra* note 16, at 19.

49. *Id.* at 20. See also CULLINAN, POST OFFICE DEPARTMENT, *supra* note 20, at 194-95.

50. See CONKEY, *supra* note 16, at 20. See also CULLINAN, POST OFFICE DEPARTMENT, *supra* note 20, at 194-95.

51. *Id.*

52. CULLINAN, POST OFFICE DEPARTMENT, *supra* note 20, at 195-96.

53. CONKEY, *supra* note 16, at 30.

54. CULLINAN, POST OFFICE DEPARTMENT, *supra* note 20, at 53-54. CONKEY, *supra* note 16, at 24-26.

55. CULLINAN, POST OFFICE DEPARTMENT, *supra* note 20, at 197-99.

example, Congress declared all railroads to be post roads and authorized the Post Office Department to spend as much as \$300 per mile for railroad mail carriage.<sup>56</sup> The bank was established in 1911 under pressure from the populists.<sup>57</sup> The bank's greatest success was during the period immediately following the Great Depression. In 1935, the Postal Service Bank had 2,598,391 depositors and by 1947 it had more than four million depositors.<sup>58</sup>

By 1920, the Post Office was supplying most of the principle services that American people needed—city delivery, rural delivery, money orders, parcel post, a Postal Savings Bank, airmail and special delivery.<sup>59</sup> In addition, its post offices had become the center of activity in many communities and represented most communities' only link to the federal government. During the next fifty years, however, the Post Office would encounter the development of the telephone, radio and television. More than anything, these developments caused the American citizenry to take the post office for granted. Meanwhile, the Post Office was being strained by labor problems and an increasing volume of mail. It was in this atmosphere that Congress, in 1971, decided to reform the postal system.

### C. *Congress' Control over Postal Policy Before 1971 and the Corresponding Mechanisms for Public Participation*

Congress has always interpreted the Constitution's delegation of the general powers to establish post offices and post roads as a sweeping grant to create and regulate the entire postal system,<sup>60</sup> and the Supreme Court has confirmed Congress' broad interpretation.<sup>61</sup> Prior to 1971, when the Post Office Department was reorganized into the United States Postal Service, Congress had almost complete control over postal policy. Among the functions that Congress performed or influenced during this period were: the establishment of postal rates;<sup>62</sup> the establishment of postal wage rates;<sup>63</sup>

56. CONKEY, *supra* note 16, at 25.

57. CONKEY, *supra* note 16, at 30. The populists were a political movement that sought elimination of the abuses of capitalism and corporations, government ownership or regulation of railroads and telephone lines, and monetary reform. HOWARD ZINN, *A PEOPLE'S HISTORY OF THE UNITED STATES* 280 (1980).

58. *Id.* at 31. The bank was discontinued in 1966, due in part to the development of federally insured private banks. *Id.*

59. *See* U.S. POSTAL SERVICE, *HISTORY OF THE U.S. POSTAL SERVICE 1775-1980* (1981).

60. CULLINAN, *POST OFFICE DEPARTMENT*, *supra* note 20, at 218.

61. *See, e.g.*, *Ex Parte Jackson*, 96 U.S. 727 (1878); *Pensacola Telegraph Co. v. Western Union Telegraph Co.*, 96 U.S. 1 (1877); *Kohl v. U.S.*, 91 U.S. 367 (1875).

62. 39 U.S.C. §§ 4251-4560 (repealed 1970).

63. 39 U.S.C. §§ 3501-77 (repealed 1970).

the appointment of the Postmaster General and local postmasters;<sup>64</sup> the establishment and closing of postal facilities;<sup>65</sup> the establishment and curtailment of postal services;<sup>66</sup> and the appropriation of Post Office Department funds.<sup>67</sup>

All of these functions were undertaken in an intensely political manner. Citizens, as well as organized mailers and postal unions, were able to influence postal policy decisions by putting both direct and indirect pressure on members of Congress. Every member's vote on a rate increase was a matter of public record,<sup>68</sup> and fear of public outcry over postage rates prevented Congress from implementing frequent rate increases. Even though the operating costs of the Post Office may have exceeded the revenue generated by postage rates, Congress would appropriate funds to cover the deficit. Congress was guided by the principle that the Post Office was a public service and should be accessible and affordable to all citizens.<sup>69</sup> As such, in 1970, just prior to reorganization, it cost only five cents to mail a letter.

Political motivations also encouraged members of Congress to establish new local post offices and appoint local postmasters who were sensitive to regional interests. Indeed, the appointment of local postmasters was considered one of the most important forms of political patronage, even after Congress passed legislation that brought postmasters under civil service regulations.<sup>70</sup> In addition, Congress' control over the budget of the Post Office Department, allowed members to earmark money for special public services such as rural post offices and nonprofit organization mailing rates.<sup>71</sup> Finally, members of Congress and their staffs were able to force the Postal Service to resolve individual mail delivery problems affecting their constituents.

Despite Congress' sensitivity to public reactions, the pre-reorganization postal system was by no means completely responsive to individual citizens. The postal unions and organized commercial mailers were (and still are) well-supplied with lobbyists and funds

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64. 39 U.S.C. § 302 (1960) (current version at 39 U.S.C. § 203 (1988)). Prior to 1971, the Postmaster General was appointed by the President of the United States with the advice and consent of the Senate. Since 1971 the President of the United States appoints, with the advice and consent of the Senate, the nine Governors of the Postal Service. In turn, the Governors have the sole power to appoint the Postmaster General.

65. 39 U.S.C. § 701 (1960) (current version at 39 U.S.C. §§ 403, 404 (1988)).

66. See 39 U.S.C. § 2301-03 (1960) (current version at 39 U.S.C. §§ 101, 403, 3401, 3403, 3621-23, 3627, 3641, 3661 (1988)).

67. 39 U.S.C. § 2201 (1960) (current version at 39 U.S.C. §§ 2002, 2004, 2401 (1988)).

68. CONKEY, *supra* note 16, at 202.

69. *Id.*

70. Civil Service Act of 1883; CULLINAN, POST OFFICE DEPARTMENT, *supra* note 20, at 221.

71. CULLINAN, POST OFFICE DEPARTMENT, *supra* note 20, at 221.

for campaign-finance.<sup>72</sup> In addition, the unions were able to generate tremendous grass-roots support among their members. These well-organized constituencies were often able to secure legislative action that benefitted their interests over the interests of residential postal users.<sup>73</sup> Also, a number of service cutbacks were implemented under Congress' watch,<sup>74</sup> and the Postal Service was clearly not functioning efficiently.<sup>75</sup>

Admittedly, this situation was not the ideal model of public participation in government. Nevertheless, ordinary citizens still had the ability to influence postal policy through their votes. Members of Congress were responsive to citizen concerns about the Postal Service because of the political ramifications of ignoring the interests of the public and, most importantly, Congress had actual authority to influence postal policy. This mechanism for public involvement, though not perfect, made members of Congress reluctant to take actions, such as increasing postal rates and curtailing services, that would infuriate their constituents.

### III. POSTAL REORGANIZATION

#### A. *Reasons for passage of the Postal Reorganization Act in 1970*

Prior to 1971, the Post Office operated within the restrictions of most government agencies. Instead of being free to function like a private business it had limited "operating authority and managerial flexibility."<sup>76</sup> Managers of government agencies have far less control over their organizations' activities than their counterparts in private firms since the goals of public agencies are often established by entities outside the organization, such as legislative bodies, courts, interest groups and other government agencies.<sup>77</sup> Private corporations may also be influenced by outside entities, but to a lesser degree than public agencies. Furthermore, unlike their counterparts in private businesses, public managers have little flexibility to alter their organizations' production inputs such as wages.<sup>78</sup> Finally, gov-

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72. See FLEISHMAN, *Postal Policy*, *supra* note 15, at 49-53.

73. *Id.*

74. See CULLINAN, POST OFFICE DEPARTMENT, *supra* note 20, at 230. Among the service cutbacks that occurred prior to 1971 were reductions in post office window hours and daily deliveries. *Id.* It is important to note, however, that some of these cutbacks were mandated by steadily increasing volume, and a sharp rise in the number of customers and addresses. *Id.* at 227-30.

75. *Id.* at 227.

76. JOHN T. TIERNEY, POSTAL REORGANIZATION, POSTAL REORGANIZATION: MANAGING THE PUBLIC'S BUSINESS 2 (1981) [hereinafter TIERNEY, POSTAL REORGANIZATION].

77. *Id.*

78. *Id.* at 2-3.

ernment agencies are financed through legislative appropriations, rather than generating funds from their own revenues. Because of the differences, advocates of privatization argue that private businesses operate more efficiently. However, opponents of allowing public services to be provided by private businesses worry that entities motivated solely by financial and market considerations do not treat consumers of these services properly. These differences between public and private management were at the core of the postal system's reorganization.

In the 1960's, the Post Office faced a major financial crisis<sup>79</sup> due, in large part, to Congress' failure to continue to appropriate operating funds consistent with the increasing volume of mail that was moving through the postal system.<sup>80</sup> Unfortunately, this issue was not addressed until parts of the postal system broke down.

In October 1966, Chicago's massive main post office was paralyzed by a backlog of 10 million pieces of mail.<sup>81</sup> Several weeks later, when the mail finally started to move out of Chicago, smaller post offices throughout the region experienced similar backlogs.<sup>82</sup> As word of the Chicago disaster spread, newspaper columnists around the country publicized the crisis and called on Congress to act quickly to remedy the problems plaguing the Post Office Department.<sup>83</sup>

Also in 1960, President Johnson appointed Lawrence O'Brien to become postmaster general.<sup>84</sup> Upon assuming the post, O'Brien became frustrated by the "limited autonomy he had in trying to manage the mail agency."<sup>85</sup> O'Brien decided that drastic changes were needed in the organization of the Post Office. Accordingly, he created a highly confidential internal task force and "charged it with developing a reform plan that would provide postal management with much greater autonomy."<sup>86</sup> Early in 1967, this task force produced a proposal for converting the Post Office into a corporate-styled or-

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79. MYERS, *supra* note 16, at 17.

80. TIERNEY, *POSTAL REORGANIZATION*, *supra* note 76, at 8-9. By the mid-1960's, the volume of mail was increasing by roughly 2 billion pieces annually; the volume of mail increased from 28 billion pieces in 1940 to 78 billion pieces in 1967. *Id.* at 8.

81. CONKEY, *supra* note 16, at 37.

82. MYERS, *supra* note 16, at 17-18.

83. CONKEY, *supra* note 16, at 38. At the same time that the Post Office was experiencing these problems, members of Congress were realizing the decreasing political utility of operating the postal system, especially in light of the other matters demanding attention. TIERNEY, *POSTAL REORGANIZATION*, *supra* note 76, at 9. Among the other matters that were facing members of Congress were "the Vietnam War, urban disorders and rising health-care costs." *Id.*

84. *Id.* at 10.

85. *Id.* at 11.

86. *Id.* at 11-12.

ganization.<sup>87</sup> In April 1967, O'Brien publicly unveiled the plan.

One week later, with the support of the business community, President Lyndon Johnson formed the President's Commission on Postal Organization.<sup>88</sup> The Commission was chaired by Frederick Kappel, the retired chairman of American Telephone & Telegraph, Co.<sup>89</sup> The Commission also included chief executives and presidents from a number of other large corporations, such as General Electric Co., Federated Department Stores, Campbell Soup Co., Bank of America and Cummins Engine Co., and the president of the AFL-CIO, George Meany.<sup>90</sup>

The Commission met intermittently for over a year, and in June 1968 issued a report.<sup>91</sup> The report, which outlined the problems of the postal system from the perspective of managers—not customers<sup>92</sup>—clearly stated the Commission's conclusion:

The organization of the Post Office as an ordinary Cabinet department guarantees that the nominal managers of the postal service do not have the authority to run the postal service. The important management decisions of the Post Office are beyond their control and therefore cannot be made on the basis of business judgement.<sup>93</sup>

The Commission recommended creating a postal corporation and vesting the corporation's management responsibility and authority in a board of directors.<sup>94</sup> The report also recommended that the board select the Postmaster General. According to the Commission's report, the new corporation would operate on a self-supporting basis, construct and operate its own facilities, employ workers independent of the federal civil service system and establish rates subject to congressional veto.<sup>95</sup>

The Commission's report received widespread support from the press, but its implementation was stalled because of President Johnson's decision not to seek re-election in 1968.<sup>96</sup> When President Nixon took office, he appointed Winton Blount to be Postmaster

87. See FLEISHMAN, *Postal Policy*, *supra* note 15, at 59.

88. *Id.*

89. *Id.*

90. CONKEY, *supra* note 16, at 39.

91. PRESIDENT'S COMMISSION ON POSTAL ORGANIZATION, REPORT OF THE COMMISSION, TOWARDS POSTAL EXCELLENCE (1968). See also TIERNEY, POSTAL REORGANIZATION, *supra* note 76, at 14.

92. FLEISHMAN, *Postal Policy*, *supra* note 15, at 59.

93. PRESIDENT'S COMMISSION ON POSTAL ORGANIZATION, *supra* note 91, at 33.

94. See TIERNEY, POSTAL REORGANIZATION, *supra* note 76, at 14 (citing PRESIDENT'S COMMISSION ON POSTAL ORGANIZATION, *supra* note 91, at 55-64.) See also MYERS, *supra* note 16, at 50-54.

95. *Id.*

96. TIERNEY, POSTAL REORGANIZATION, *supra* note 76, at 14.

General. Winton Blount was a former chairman of the U.S. Chamber of Commerce<sup>97</sup> and had close ties to the business community. Together Nixon and Blount launched an intense campaign to push the postal reorganization plan through Congress.

The most powerful and concentrated opposition to postal reorganization came from the postal employee unions.<sup>98</sup> The unions opposed any changes, fearing a decline in their influence over the Post Office if Congress' role in making postal policy was curtailed.<sup>99</sup> The principle allies of Nixon and Blount were the business community and large publishers, who anticipated that Nixon would promote privatizing the Post Office and reduce mailing rates.<sup>100</sup> "To help sell the proposal to . . . Congress, [Blount] enlisted the efforts of large corporations and trade associations."<sup>101</sup> In fact many of these organizations lent lobbyists to the Post Office to aid in the effort. Among these corporations were Sears, Roebuck and Co., General Electric, Procter and Gamble, J.C. Penney and the Magazine Publishers Association.<sup>102</sup> The Post Office also supplemented its own lobbying activities by helping to establish an independent front group known as Citizens Committee for Postal Reform (CCPR).<sup>103</sup> Among its chief backers were McGraw-Hill, Inc., Sears, Roebuck and Co., Bank of America, Montgomery Ward, General Foods, Dupont, Pitney-Bowes, Time, Inc. and Standard Oil of New Jersey.<sup>104</sup> By 1970, the CCPR was the tenth largest lobbyist in the nation.<sup>105</sup> In addition to lobbying, CCPR ran supportive advertisements in newspapers and arranged for a continuous flow of news and feature stories in the mass media.<sup>106</sup>

Despite its efforts, the Post Office still faced the opposition of the postal unions. Besides fighting reorganization, the unions tried to convince Congress to raise the salaries of postal workers.<sup>107</sup> Throughout 1969, members of Congress tried to negotiate a pay

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97. *Id.*

98. *Id.*

99. TIERNEY, POSTAL REORGANIZATION, *supra* note 76, at 15.

100. *Id.* at 16.

101. *Id.* at 17.

102. *Id.*

103. CONKEY, *supra* note 16, at 46-48. A front group is an organization or association, established by private corporations, that appeals to the public interest or the needs of individual consumers, but is actually advancing the goals of the industry that established it. *See generally* MARK MEGALLI & ANDY FRIEDMAN, CORPORATE FRONT GROUPS IN AMERICA 2-3 (1991).

104. TIERNEY, POSTAL REORGANIZATION, *supra* note 76, at 18; CONKEY, *supra* note 16, at 47.

105. TIERNEY, POSTAL REORGANIZATION, *supra* note 76, at 18.

106. *Id.* at 19.

107. CONKEY, *supra* note 16, at 55.

raise deal that was acceptable to all parties, and President Nixon tried to encourage a settlement that combined a pay package and postal reorganization.<sup>108</sup> Despite these efforts, no agreement had been reached by March 1970.

At this point, a critical event leading to the reorganization occurred. Angry postal workers in New York City decided that enough time had passed without a pay increase and went on a strike that spread throughout the nation and lasted for eight days—crippling business activities and disrupting interstate commerce.<sup>109</sup>

During the strike, negotiations resumed in Washington between the postal labor unions and management. On April 1, the parties reached a compromise.<sup>110</sup>

The agreement provided for an immediate six percent pay increase, a second eight percent pay increase contingent on union support for postal reorganization and a postal reorganization package that included all of the Post Office Department's recommendations.<sup>111</sup> In return the unions secured a contract provision which established third party binding arbitration for all future salary negotiations.<sup>112</sup>

The proposal was sent to Congress and was passed by both the House and Senate.<sup>113</sup> President Nixon signed the bill on August 12, 1970, and eleven months later, on July 1, 1971, the old Post Office Department became the United States Postal Service.<sup>114</sup>

The foregoing demonstrates that residential postal users were excluded from the reorganization process and that postal unions and the business community were the main parties to the reorganization negotiations.

## B. *How Postal Reorganization Changed the Structure of the U.S. Postal Service*

The reorganized United States Postal Service has a vastly different structure than the old Post Office Department. First, the Postal Service is now overseen by an eleven member board of governors, nine of whom are appointed by the President on a bipartisan basis with the advice and consent of the Senate.<sup>115</sup> These nine mem-

108. TIERNEY, *POSTAL REORGANIZATION*, *supra* note 76, at 20.

109. CONKEY, *supra* note 16, at 55-56.

110. TIERNEY, *POSTAL REORGANIZATION*, *supra* note 76, at 21.

111. *Id.* at 21-22.

112. *Id.*

113. FLEISHMAN, *Postal Policy*, *supra* note 15, at 62.

114. Postal Reorganization Act, Pub. L. No. 91-375, 84 Stat. 719 (1970) (current version at 39 U.S.C. § 101 (1988)). See also TIERNEY, *POSTAL REORGANIZATION*, *supra* note 76, at 22.

115. 39 U.S.C. § 202 (a) (1988).

bers in turn name a postmaster general, who serves as the tenth board member and chief executive officer.<sup>116</sup> Finally, the ten members elect a deputy postmaster general, who serves as the eleventh member of the board.<sup>117</sup>

The Postal Reorganization Act also established the independent Postal Rate Commission<sup>118</sup> to recommend postal rates and classifications for adoption by the board of governors.<sup>119</sup> The Postal Rate Commission is an independent establishment of the executive branch which surveys the rate-making process of the Postal Service.<sup>120</sup> It is comprised of five Commissioners who are appointed by the President with Senate confirmation. The Commissioners' terms are six years,<sup>121</sup> and at any one time not more than three Commissioners may belong to the same political party.<sup>122</sup> One of the five Commissioners is chosen by the President to act as Chairperson and principal executive officer of the Commission.<sup>123</sup> The Chairperson presides over all executive and administrative functions of the Commission.<sup>124</sup> A Vice Chairperson is elected by a majority of the Commissioners and acts in the Chairperson's absence.<sup>125</sup> Interestingly, the original reorganization proposal would have authorized either house of Congress to veto proposed rate changes by a two-thirds vote. However, this congressional veto power was dropped from the final bill in the last months of legislative debate.<sup>126</sup> Thus, the Postal Rate Commission has exclusive authority to recommend rates to the Postal Service.<sup>127</sup>

Other provisions of the Postal Reorganization Act included the establishment of an independent personnel system for the Postal Service, which allows for direct collective bargaining between postal management and the unions.<sup>128</sup> Additionally, the Act authorized Congress to appropriate approximately \$920 million dollars per year to the Postal Service until 1979.<sup>129</sup> After 1979, the authorization was to decrease annually until 1982—at which time the Postal Service

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116. 39 U.S.C. § 202 (c) (1988).

117. 39 U.S.C. § 202 (d) (1988).

118. 39 U.S.C. § 3601 (1988).

119. 39 U.S.C. § 3621 (1988).

120. 39 U.S.C. § 3601 (1988).

121. *Id.* at § 3602.

122. *Id.* at § 3601 (c).

123. *Id.*

124. *Id.* at § 3604 (a).

125. *Id.* at § 3601 (d).

126. CONKEY, *supra* note 16, at 59.

127. 39 U.S.C. §§ 3621-22 (1988).

128. 39 U.S.C. §§ 1201-09 (1988).

129. *See* 39 U.S.C. § 2401 (1988).

was to become self-sustaining.<sup>130</sup> In short, the Postal Service is now presumed to operate on a break-even basis.

In 1976, the Postal Reorganization Act amendments were enacted.<sup>131</sup> In addition to authorizing appropriations to the Postal Service, the Act prohibited the Postal Service from closing or consolidating any post offices prior to giving proper notice to the post office's customers and considering the effect of the action on the community served and workers employed by the post office.<sup>132</sup> The Amendment further specified the conditions under which the Postal Service could enact temporary changes in rates and classes of mail, and altered the structure of the Postal Rate Commission itself.<sup>133</sup>

### C. *How the United States Postal Service has operated since 1971*

Residential postal customers are "interested primarily in reasonable [first-class] postal rates and adequate delivery service."<sup>134</sup> Since the Postal Service was reorganized in 1971, it has failed to provide residential customers with either reasonable rates or adequate service. In fact, since 1971, the Postal Service has continually raised rates while discontinuing services.

From 1885 until 1971, first-class postage went from two to six cents.<sup>135</sup> In 1971, the year the reorganized Postal Service began operating, the cost of mailing a first-class letter was still just six cents.<sup>136</sup> Since 1971, however, first-class postage rates have skyrocketed. From eight cents (1971) to ten cents (1974) to thirteen cents (1975) to eighteen cents (1981) to twenty cents (1981) to twenty-two cents (1985) to twenty-five cents (1988)<sup>137</sup> to twenty-nine (1991).<sup>138</sup> On March 8, 1994, the United States Postal Service requested an additional rate increase which would raise the price of a first class stamp to thirty-two cents. Since 1975, the price of a first-

130. Carol Crawford, *The Federal Role in Postal Services and Opportunities for Privatization*, in FREE THE MAIL 142, 148 (Peter J. Ferrara ed., 1990). See also DOUGLAS K. ADIE, MONOPOLY MAIL: PRIVATIZING THE UNITED STATES POSTAL SERVICE 12 (1989). It should be noted that Congress still appropriates approximately \$600,000 to the Postal Service to allow the Postal Service to recover the money it loses by providing reduced rates to nonprofit organizations and other special users of the mail. *Id.*

131. The Postal Reorganization Act Amendment of 1976, Pub.L. 94-421, 90 Stat. 1303 (1976) (codified in scattered sections of 39 U.S.C.).

132. 39 U.S.C. § 404 (1988).

133. *Id.*

134. BEST & BROWN, *supra* note 9, at 274.

135. CONKEY, *supra* note 16, at 201.

136. *Id.*

137. JOHN T. TIERNEY, THE U.S. POSTAL SERVICE: STATUS AND PROSPECTS OF A PUBLIC ENTERPRISE 143 (1983) [hereinafter TIERNEY, POSTAL SERVICE].

138. Steve Lohr, *730,000 Employees and a Challenge*, N.Y. TIMES, Nov. 15, 1992, § 3, at 8.

class stamp has risen eleven percent a year, much more than the rate of inflation.<sup>139</sup>

Furthermore, while mail rates have increased since 1971, first-class mail rates have risen more than other classes of mail.<sup>140</sup> In addition, first-class users have continuously been forced to subsidize other classes of mail.<sup>141</sup> This subsidy is a result of the manner in which postage rates are established. The Postal Reorganization Act requires the Postal Service to generate sufficient revenues so that its income will equal its established costs.<sup>142</sup> The Act also requires that each class of mail bear the burden of direct and indirect costs attributable to that class plus the portion of all other postal costs reasonably assignable to that class.<sup>143</sup> These provisions have generally been interpreted to prohibit cross-subsidies; the subsidization of one class of mail by another.<sup>144</sup> However, the attribution of postal costs among classes of mail is highly subjective and, therefore, cross-subsidization continues.<sup>145</sup> The task of separating out the costs specific to each class from those costs that are joint is complex and makes it difficult to construct a subsidy-free rate structure.<sup>146</sup> Using the subjective elements of cost allocation, the Postal Service has forced first-class mailers and, therefore, residential postal users to subsidize other classes of mail.<sup>147</sup> As early as 1974 the Postal Service Rate Commission noted "the Postal Service has become a tax-collecting agency, collecting money from first-class mailers to distribute to other favored classes."<sup>148</sup> In fact, recent Postal Rate Commission figures show that in 1992 bulk mailers paid \$420 million less in institutional costs than they should have and that first-class mailers paid \$1.1 billion more in postage than expected.<sup>149</sup>

139. *Id.*

140. FLEISHMAN, *Postal Policy*, *supra* note 15, at 121; CONKEY, *supra* note 16, at 201.

141. *Id.* See also FLEISHMAN, *supra* note 10, at 14; GENERAL ACCOUNTING OFFICE, PRICING POSTAL SERVICE IN A COMPETITIVE ENVIRONMENT (1992); *Task Force Recommends More Frequent But Smaller Postal Rate Increase*, BNA DAILY REPORT FOR EXECUTIVES, Mar. 5, 1992.

142. 39 U.S.C. § 3621 (1988).

143. 39 U.S.C. § 3622 (b).

144. INSTITUTE OF PUBLIC ADMINISTRATION, REPORT TO THE BOARD OF GOVERNORS OF THE UNITED STATES POSTAL SERVICE, THE RATEMAKING PROCESS FOR THE UNITED STATES POSTAL SERVICE, vol. 1, Oct. 1991, at 13.

145. *Id.* at 13, 24.

146. PRESIDENT'S COMMISSION ON PRIVATIZATION, PRIVATIZATION: TOWARD MORE EFFECTIVE GOVERNMENT, March, 1988, at 103 [hereinafter PRESIDENT'S COMMISSION ON PRIVATIZATION].

147. GAO REPORT, INSTITUTE OF PUBLIC ADMINISTRATION REPORT, POSTAL RATE COMMISSION OPINION AND RECOMMENDED DECISION, vol. I., Docket R90-1 at iv.-5 (Jan. 4, 1991).

148. POSTAL RATE COMMISSION, Docket R74-1, INITIAL DECISION, vol. I, at 13.

149. Bill McAllister, *Postal Panel Backs Across-the-Board Hike*, WASH. POST, Mar. 8,

One reason why the Postal Service can charge first-class mailers more is that they "will bear more without deserting the Postal Service for alternative delivery systems."<sup>150</sup> Furthermore, the Postal Service exacerbates its cross-subsidy problem by offering a wide-range of discounts to large commercial mailers who prepare their mail in particular orders; for example either by zip code or address.<sup>151</sup> This process is known as presorting<sup>152</sup> and it is premised on the Postal Service's belief that such presorting saves the Postal Service money by transferring a portion of its mail processing operations to mailers. However, it is unclear whether presorting actually saves money for the Postal Service, especially an amount equal to the discounts offered.<sup>153</sup> Therefore, these discounts may also represent a cross-subsidy by first-class postal users.

In terms of service, the Postal Service has routinely neglected the interests of residential postal users. Perhaps the most significant service reduction has been the closing of local post offices. Since 1971, the Postal Service has closed over 3,200 post offices.<sup>154</sup> In fact, between 1971 and 1976, the Postal Service could close post office without any oversight.<sup>155</sup> In 1976, however, a group of well organized postmasters successfully lobbied Congress to amend the Postal Reorganization Act to include a stipulation that requires the Postal Service to carefully and formally consider the effects on the community when deciding whether to close a post office.<sup>156</sup> The amendment also established the right of any customer using a post office that has been slated for closing to appeal the decision to the Postal Rate Commission and empowered<sup>157</sup> the Commission to provide an opinion as to whether the Postal Service has met the statutory conditions for closing a post office. In 1979, the Postal Rate Commission was presented with its first opportunity to review twenty-

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1994, at A5. Publishers and fourth-class mailers also paid less than expected. *Id.*

150. ADIE, *supra* note 130, at 48.

151. See CONKEY, *supra* note 16, at 241-42.

152. *Id.*

153. *Id.* at 242. See also Commission Notice and Order Concerning a Petition to Initiate a Rulemaking Proceeding to Consider the Costing of Automation-Related Mail Processing Costs, POSTAL RATE COMMISSION ORDER NO. 930 (July 7, 1992). On July 7, 1992 the Postal Rate Commission took the first step towards investigating charges that presorting discounts do not save the Postal Service money. *Id.* This case was eventually dismissed because the Postal Service failed to cooperate with the Postal Rate Commission's inquiry. Paul Alberta, *USPS Tells PRC It Can't Provide Info on its Mail Processing Costs*, DIRECT MARKETING NEWS, Nov. 1, 1993, at 3.

154. CENTER FOR STUDY OF RESPONSIVE LAW, POSTAL ACTION KIT (1991).

155. See TIERNEY, POSTAL SERVICE, *supra* note 137, at 98-99.

156. See *supra* note 131. It is important to note that this legislation was primarily lobbied for by local postmasters interested in preserving their jobs—not residential postal users.

157. TIERNEY, *supra* note 137, at 99.

three appeals of post office closings. Of the twenty-three, the Commission remanded twenty-two, criticizing the Postal Service for acting too much like a manager of its own operations and not enough as a guardian of the public interest.<sup>158</sup> However, by 1981, the Postal Rate Commission's role in overseeing post office closing was relatively non-existent. In 1981, for example, 86 post offices were slated to be closed but only three were appealed to the Commission.<sup>159</sup> Thereafter, the rate of post office closings began to increase.<sup>160</sup> Between 1986 and 1990 alone, approximately 400 post offices were closed.<sup>161</sup> Despite the lack of appeals many of these closings have been opposed by communities that felt that both their identity and link to the federal government were in jeopardy.<sup>162</sup>

Post office closings represent only a fraction of the residential postal services eliminated by the Postal Service since 1971.<sup>163</sup>

The Postal Service has reduced collection from neighborhood boxes by reducing the number of mailboxes in residential areas and reducing the number of times mail is collected from the remaining mailboxes.<sup>164</sup> In fact, the Postal Service has eliminated Sunday collections entirely.<sup>165</sup> It has also eliminated postage due service. Between 1934 and 1974, the Postal Service delivered residential mail sent without postage, and requested that the recipient of such mail pay the postage.<sup>166</sup> In 1974, the Postal Service eliminated this policy and now returns all unpaid mail to the sender. In addition, any mail without a return address is forwarded to a dead letter branch office for processing. At that point, the mail is opened in an attempt to determine the name and address of the sender so that his/her property may be returned. If the sender still cannot be determined, the piece is delivered as addressed upon payment of postage due.<sup>167</sup> This process delays mail to residential customers and causes the Postal

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158. *Id.* at 100.

159. *Id.* at 101.

160. *Id.*

161. U.S. POSTAL SERVICE, ANNUAL REPORT OF THE POSTMASTER GENERAL, 1990, at 53 (1991).

162. See, e.g., *Demonstration Planned to Keep Post Office Put*, BOURNE COURIER (Bourne, Mass.), Apr. 11, 1990; *Washington Residents Enraged over P.O. Plan*, NEW MILFORD TIMES (New Milford, Conn.), Jan. 24, 1991.

163. CULLINAN, POST OFFICE DEPARTMENT, *supra* note 20, at 237; See also CONKEY, *supra* note 16, at 312.

164. Congressman William S. Broomfield, *Let's Put "Service" Back in the Postal Service*, CHRISTIAN SCIENCE MONITOR, Nov. 12, 1991, at 18.

165. See Letter from USPS Consumer Affairs Department to Wolfgang Wasserman, Dec. 12, 1990 (on file with author).

166. CONKEY, *supra* note 16, at 313-14.

167. *Id.*

Service to incur added processing costs.<sup>168</sup>

The Postal Service has drastically reduced the number of hours its service windows are open and all post offices have drastically cut back on Saturday window hours.<sup>169</sup> Further, until 1950, the Postal Service would give directory service to all first-class mail. Any letter received by the Postal Service that contained an incorrect address would be checked against local directories to determine where the addressee was located. Currently, directory service is only provided for international, registered, certified, insured and COD mail, and Express Mail. In addition, the increased use of automation equipment has reduced the personal attention that mail used to receive. "The helpful hands that would have moved the mail along, despite a flawed address will no longer get that chance as automated mail scanners/sorters will have diverted mail long before it reaches the carrier."<sup>170</sup>

In September 1980, the Postal Service reduced the length of time it would forward mail on a change of address order from two years to one year.<sup>171</sup>

The Postal Service has restricted door delivery to residential customers. Prior to 1978, all residential areas were eligible to receive door delivery.<sup>172</sup> In 1978 delivery regulations were changed and door delivery was eliminated as an option for new residential areas.<sup>173</sup> The Postal Service now provides a choice of two delivery options for residential customers in new delivery areas—centralized delivery to a cluster of mailboxes or curbside delivery.<sup>174</sup> The curtailment of door delivery in housing built after 1978 has been one of the major service cutbacks implemented since reorganization. Notwithstanding the severity of this service cutback, the Postal Service has embarked on an aggressive campaign in certain localities to pressure people living in pre-1978 housing into agreeing to change the type of delivery they receive. In Jacksonville, Florida, where a particularly aggressive campaign is underway, residents claim that the Postal Service has misrepresented the voluntary na-

168. *Id.*

169. GEORGE CULLINAN, *THE UNITED STATES POSTAL SERVICE* 238 (1973) [hereinafter, CULLINAN, *POSTAL SERVICE*]; Congressman William S. Broomfield, *Let's Put the "Service" Back in Postal Service*, CHRISTIAN SCIENCE MONITOR, Nov. 12, 1991, at 18; Arnold Abrams, *Post Office's Restoring Service*, NEWSDAY, Nov. 27, 1991, at 35.

170. Richard W. Pavey, *Automation Bringing Changes to USPS*, THE OFFICE, Jan. 1993, at 42.

171. CONKEY, *supra* note 15, at 315. See also CULLINAN, *POSTAL SERVICE supra* note 169, at 238-39.

172. CONKEY, *supra* note 16, at 317-18.

173. *Id.*

174. *Id.*

ture of switching from doorstep to curbside deliveries.<sup>175</sup> In other cities where the Postal Service has implemented a program to change door delivery to curbside delivery, similar techniques have been discovered.<sup>176</sup>

In addition to the foregoing, mail service has also become "slower" and "less reliable since reorganization."<sup>177</sup> For example, in 1982, delivery of a first class letter took ten percent longer than it did in 1969.<sup>178</sup> In 1989, first-class mail moved fifteen percent slower than it did in 1969.<sup>179</sup> In fact, the Postal Service is not even meeting its own delivery performance goals. For example, in 1990, the Postal Service's goal was to deliver ninety-five percent of the mail on time. However, it delivered roughly ninety-two percent of overnight mail on time, eighty-five percent of second-day mail on time and eighty-six percent of third-day mail on time.<sup>180</sup> Nationwide, for the period between March 6, 1993 and May 28, 1993, the Postal Service delivered overnight first-class mail on schedule only eighty-four percent of the time.<sup>181</sup> During the same time period delivery rates in some areas were even further below the ninety-five percent goal. For example, Baltimore, Maryland's on time rate was sixty-nine percent; Long Island, New York's on time rate was only seventy-six percent;

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175. See Kevin Punskey, *Nader Joins Mailbox Dispute*, FLORIDA TIMES-UNION, Jul. 11, 1992 at B1.

176. See Charles Strum, *Front-Door Mail Delivery Triumphs*, N.Y. TIMES, Aug. 7, 1992, at B12. See also Letter from Superintendent of Postal Operations for Camden, Arkansas, United States Postal Service, to residential occupants of Camden, Arkansas 71701 (Feb. 1, 1993) (on file with author); Letter from Marvin Runyon, Postmaster General, United States Postal Service, to Ralph Nader (Aug. 19, 1992) (on file with author). Runyon states "The message I will personally drive home is that we are not going to pursue cost savings at the expense of quality service. *Id.*"

Curbside delivery creates many problems for residential postal customers. See Letter from Senator David Pryor, Chairman, United States Senate Subcommittee on Post Office and Civil Service, to Marvin Goembel (Mar. 8, 1993) (on file with author). Senator Pryor has indicated that he will "take up this matter with" Postmaster General Runyon during oversight hearings. *Id.* First, elderly and handicapped customers often have trouble collecting mail from curbside mailboxes. Second, young children venture near busy streets to collect mail from curbside mailboxes. Third, curbside mailboxes are more vulnerable to vandalism and mail theft. On April 8, 1992, a Postal Service inspector mailed a letter to a significant number of households in the Los Angeles area, warning residents of "thefts, rifling and other mistreatment of mail once it has been delivered to . . . residential curbside mailboxes." Finally, lives have been saved by letter carriers because of personal door-to-door delivery. Letter carriers have often heard elderly customers screaming for help after a fall or illness and foiled burglaries. They have also spotted fires.

177. ADIE, *supra* note 130, at 51.

178. *Id.*

179. James Bovard, *The Slow Death of the U.S. Postal Service*, in FREE THE MAIL, 12 (Peter Ferrara ed., 1990).

180. U.S. POSTAL SERVICE, SPRING 1993 SERVICE PERFORMANCE AND CUSTOMER RATINGS (June, 1993).

181. *Id.* at 19.

and, Northern Virginia's on time rate was only seventy-four percent.<sup>182</sup> Two ill-advised actions taken by the Post Office account for increasingly slow postal delivery. First, the Postal Service has reduced mail processing on Sundays.<sup>183</sup> This reduction eliminated work shifts that sorted most of the approximately twenty million first-class letters collected from mail boxes on the average Sunday.<sup>184</sup> Now, letters mailed on Sundays are not sorted until Monday, delaying by one day the delivery of mail deposited on Sundays. Second, the Postal Service has recently implemented the greatest intentional slowdown in postal history. In July 1990, over the objection of the Postal Rate Commission, Postmaster General Frank implemented a realignment of delivery standards.<sup>185</sup> The new standards resulted in a portion of the mail previously delivered overnight being delivered in two days and a portion of the mail previously delivered in two days being delivered in three days.<sup>186</sup> In November 1992, the General Accounting Office released a report that found that the realignment of delivery standards did not substantially improve consistency of delivery and that "the speed of delivery service slipped."<sup>187</sup> The GAO stated, "Service slowed under the new delivery standards, because the new standards generally allow an extra day for delivery."<sup>188</sup>

The destruction of mail by postal employees is another service problem that represents utter disregard for consumers' rights on the part of the Postal Service. In 1988, a Postal Inspection Service audit found properly addressed mail dumped in the trash at 76 percent of the post offices it visited.<sup>189</sup>

In addition to basic rates and services, the Postal Service has disregarded the interests of residential postal consumers in a number of other ways. For example, the Postal Service has not ade-

182. *Id.*

183. See BOVARD, *supra* note 179, at 12; Letter from USPS Consumer Affairs Department to Wolfgang Wasserman, Dec. 12, 1990 (on file with author).

184. TIERNEY, POSTAL SERVICE, *supra* note 137, at 107.

185. See Postmaster General Anthony M. Frank, *Postal Service Meeting Consumers' Wants*, U.S.A. TODAY, Feb. 2, 1990, at 10A.

186. See Ralph Nader, *Postal Service is Failing Consumers*, U.S.A. TODAY, Feb. 2, 1990, at 10A.

187. GENERAL ACCOUNTING OFFICE, REVISED DELIVERY STANDARDS: POSTAL DELIVERY SCORES IMPROVED BUT SERVICE IS SLOWER, GAO/GCD-93-12, (Nov. 25, 1992).

188. *Id.*

189. Bovard, *supra* note 179, at 13. Other measures of service and customer satisfaction underscore the deficiencies of the Postal Service. One of these measures is the Postal Service's own consumer complaint card system, which allows customers to send complaints to the Postal Service on standardized forms. CONKEY, *supra* note 16, at 291-92. Despite the fact that the system is operated without publicity, the Postal Service receives approximately 500,000 complaint cards a year. *Id.* at 292. In 1980, the Postal Service received 710,526 cards. *Id.*

quately protected the privacy of postal users. Despite the fact that postal regulations prohibit the Postal Service from making available for any purpose any list of names to the public by any means or for any purpose,<sup>190</sup> the Postal Service currently supplies address information to commercial mailers. In 1990, for example, the Postal Service announced that it was developing the Universal System of Addressing File. This computerized database will provide correct addresses—but no names or other personal information—for all delivery points in the United States.<sup>191</sup> Moreover, the Postal Service currently provides giant mailing lists containing every change of address form filed with the United States Postal Service. Currently, for \$52,000 a year, twenty-three companies receive 96 million names for use in marketing and commercial activities.<sup>192</sup> The only caveat is that a mailer can only use a new address if it already has an individual's name on its list. However, this privacy safeguard is not enforced and mailers may be using the Postal Service's information to add new names and addresses to their mailing lists.<sup>193</sup> Finally, the Postal Service currently operates a Computerized Delivery Sequence service which allows mailers to submit mailing lists to the Postal Service for address sequencing.<sup>194</sup> As part of this service, the Postal Service will add address cards containing missing and new addresses within a zip code. These services threaten postal users' privacy and increase the amount of unwanted mail received by residences because they allow private mailers to gain access to the addresses of residential postal customers and make it easier for private mailers to send unsolicited mail.

The Postal Service has manifested its disrespect for residential customers in yet other areas. For example, the Postal Service has frequently disregarded the concerns of citizens in the building of new postal processing facilities. On several recent occasions, the Postal Service has begun constructing facilities in residential areas, without considering the impacts increased truck traffic and pollution may have on the local community.<sup>195</sup>

Unrelated to customer service, but important as an overall measure of the Postal Service's performance is financial efficiency.

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190. 39 C.F.R. § 265.6(e)(1) (1992).

191. *Post Office Criticized for Opening Its Address List*, N.Y. TIMES, May 14, 1992, at A17.

192. *Id.*

193. *Id.* See also Dana Priest, *How Direct Mailers Get New Addresses*, WASH. POST, May 15, 1992, at A23.

194. *Id.*

195. See, e.g., Anne C. Fullam, *East Hampton Opposed on Doubling Post Office*, N.Y. TIMES, Nov. 1, 1992, § 13LI at 14; John Moroney, *Judge Halts Mail Facility Construction*, NEWS TRIBUNE (Waltham, Mass.), May 15, 1991, at A1.

Since postal reorganization, the Postal Service's financial performance has not significantly improved.<sup>196</sup> The most relevant evidence of the weak financial performance of the Postal Service is the fact that it is currently anticipating a \$2 billion deficit for 1994.<sup>197</sup> As a result of this mismanagement, it is likely that more service cutbacks are in store. Indeed, the newly appointed Postmaster General, Marvin Runyon, has raised the possibility of reducing residential mail delivery to four days a week.<sup>198</sup>

Despite all of these factors, one can not get a clear picture of the Postal Service's disregard for residential postal consumers without examining the special efforts that the Postal Service has undertaken to provide enhanced service to commercial mailers. During the past twenty years, the Postal Service has gone to extreme lengths to help business mailers increase their profits. The offering of presort discounts for commercial mailers has already been discussed.<sup>199</sup> Further, the Postal Service provides free mailing list standardization services to business mailers which allows them to qualify for these mailing discounts. If the Postal Service did not provide this service the business mailers would have to pay for the standardization service themselves in order to obtain the mailing discounts.<sup>200</sup> Furthermore, the Postal Service has established Postal Business Centers to help businesses develop worksharing programs. Among the services provided to mailers through these centers are: mail piece design; address correction; and the sending of postal employees to private offices to help process mail.<sup>201</sup> Other indicies of the cozy relationship between the Postal Service and commercial mailers include: the provision of free accommodations and meals to business mailers at the 1992 Summer Olympics;<sup>202</sup> the creation of a Third-Class Mail Analysis System to provide an outside measurement

196. See ADIE, *supra* note 130, at 7.

197. Bill McAllister, *Postmaster General to Seek Higher Postage Rates in 1995*, WASH. POST, Jul. 9, 1993, at A19.

198. See Bill McAllister, *Postmaster Reaffirms 6-Day Mail; Cutting Delivery Had Been Raised*, WASH. POST, Oct. 16, 1992, at A23. See also Representative Frank McCloskey, *Congressman McCloskey Blasts Postmaster General on Privatization*, Press Release of United States House of Representative Committee on Post Office and Civil Service, Subcommittee on Postal Operations and Services, Oct. 16, 1992.

199. See *supra* notes 128-29 and accompanying text.

200. Letter from Ralph Nader to Anthony Frank, Postmaster General, U.S. Postal Service (Apr. 4, 1991) (discussing Postal Service's efforts on behalf of commercial mailers) (on file with author).

201. Barth Healey, *In Profit Search, Postal Service Goes Mailer-Friendly*, N.Y. TIMES, July 12, 1992, at A14.

202. Dana Priest, *Olympic Giveaway: Postal Service Offers Free Trips to Industry Elite*, WASH. POST, Jun. 18, 1992, at A1.

source of Third-Class mail,<sup>203</sup> the results of which are shared with business mailers to help them improve their advertising techniques; the reimbursement of private companies to upgrade their mailing equipment and computers; and the organization of formal committees and councils to allow business mailers easy access to postal policymakers, such as the Mailer Technical Advisory Committee (MTAC).<sup>204</sup>

The unabashed cutback of residential services and shameless catering to commercial mailers demonstrate the need for increased consumer input into the United States Postal Service. More troublesome, however, is the fact that the Postal Service's actions indicate that it is moving towards complete privatization of our country's mail delivery system. Privatization of postal services is interpreted to mean the repeal of the private express statutes which generally prohibit the "carriage of letter mail for hire by anyone other than the United States Postal Service."<sup>205</sup> The repeal of these statutes would allow private companies to operate postal delivery systems for all types of letter mail to all residential addresses.<sup>206</sup> There are many pro-privitization arguments<sup>207</sup> and the force of these arguments grows as the Postal Service faces increasing competition from private storefront post office substitutes, new technologies such as the fax machine and electronic mail, and private overnight delivery companies.<sup>208</sup> Among these arguments are the assertions that private carriers, free from the constraints of government regulation and faced with competition from other carriers, would offer cheaper and more efficient and elaborate services to postal users.<sup>209</sup> However, it is widely believed that privatization would result in the elimination of "universal six day doorstep delivery at a uniform price."<sup>210</sup> This result is predicted because it is assumed that the areas of our nation

203. *Mailers Test Delivery Time With USPS*, FOLIO, Nov. 1989, at 30.

204. CONKEY, *supra* note 16, at 295.

205. 18 U.S.C. §§ 1693-99 (1988).

206. The Postal Service has issued regulations that allow for private carriage of "extremely urgent" letters. 39 C.F.R. 320.6 (1993). These regulations are utilized by private overnight delivery companies.

207. See, e.g., PRESIDENT'S COMMISSION ON PRIVATIZATION, *supra* note 146; *Status of the United States Postal Service: Joint Hearings before the Subcomm. on Postal Operations and Services and the Subcomm. on Postal Personnel and Modernization*, 101st Cong., 1st Sess. (1989); OFFICE OF CONSUMER ADVOCATE OF THE POSTAL RATE COMMISSION, *STUDY OF THE POSTAL SERVICE'S FIRST CLASS PRESORT WORKSHARING PROGRAM* (1992); Stuart Brotman, *The U.S. Postal Service's Public v. Private Crisis: Congress Must Act Now*, TEX. LAW., Apr. 9, 1990, at 24; William R. Cummings, *Reinvent the Post Office*, WALL ST. J., Jan. 11, 1993, at A16; ADIE, *supra* note 130; FREE THE MAIL, *supra* note 130.

208. See Thomas G. Dolan, *Service at the Post Office? Postmaster General Marvin Runyon Dreams the Impossible Dream*, BARRON'S, Dec. 7, 1992, at 10.

209. PRESIDENT'S COMMISSION ON PRIVATIZATION, *supra* note 146, at 112-16.

210. ADIE, *supra* note 130, at 36.

that have higher delivery expenses, such as rural communities and inner city neighborhoods, would not receive service at the same level or cost as those areas, such as suburbs, which have lower delivery costs.<sup>211</sup> Indeed, the likely result of privatization is that private companies will skim off the most lucrative parts of the postal system.<sup>212</sup> Privatization would also dislocate large numbers of postal workers.<sup>213</sup> The elimination of universal delivery at a uniform price would be the ultimate service cutback for residential mailers.

#### D. *Mechanisms for public participation in postal policy after 1971*

Residential postal users are severely limited in their ability to participate in or influence the formation of Postal Service policy. Currently, there are two main focal points of public participation in postal policy decisions neither of which gives residential customers real access to decision makers: the Postal Rate Commission and the Postal Service itself. Congress, to a lesser extent, is also an arena of public participation. However, reorganization stripped Congress of almost all of its oversight responsibilities.

1. *Postal Service.* Input into the Postal Service, from the top down, is skewed against residential postal users. At the top level, the Board of Governors is comprised of individuals representing interests which are inconsistent with those of the general public. Currently, not one governor represents residential postal users. Indeed, since the Postal Service was reorganized, many of the governors have come from corporate backgrounds and worked for corporations that have direct interests in postal issues.<sup>214</sup> For example, former Governor Norma Pace, who also served as Chairman of the Board of Governors, was also a director and shareholder of Sears, Roebuck and Co., a director of the United States Chamber of Commerce, and a shareholder of McGraw-Hill Corporation. The latter two organizations regularly participate in Postal Rate Commission cases.<sup>215</sup> Sears, through the Mail Order Association of America and the Mailers Council, also participates in rate cases.<sup>216</sup>

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211. TIERNEY, POSTAL SERVICE, *supra* note 137, at 213-15.

212. *Id.* at 213; PRESIDENT'S COMMISSION ON PRIVATIZATION, *supra* note 146, at 107.

213. PRESIDENT'S COMMISSION ON PRIVATIZATION, *supra* note 146, at 108.

214. CONKEY, *supra* note 16, at 62.

215. *See, e.g.*, Postal Rate Comm'n, Opinion and Recommended Decision, Postage Rate and Fee Changes, 1990 Docket No. R90-1, (Jan. 4, 1991).

216. *Id.* Although Governor Pace recused herself from the Governors' initial vote on the proposed rates, she participated in the Governors' vote on the Rate Commission's recommended decision in the 1990 Postage Rate and Fee charges case. Her conflict of interest was underscored by a letter sent from the Mail Order Association of America to the Postal Service Board of Governors on January 14, 1990. The letter was an appeal to the

Chairman Pace is not the only individual with a conflict of interest to serve as a governor. Several governors have been associated with banks that are members of the American Bankers Association. Banks send large volumes of first-class mail, mainly bank statements and bills, and therefore are very concerned about postage rates. These include: Tirso del Junco, who is founder and former chairman of Los Angeles National Bank; Crocker Nevin, who was the president and chief executive officer of Marine Midland Bank; and John Griesemer, Director of Boatmen's National Bank. Governor Robert Setrakian was affiliated with banking institutions that are not members of the American Bankers Association—but also send large volumes of first-class mail—and therefore, have similar interests as other banks.<sup>217</sup>

Despite the fact that the Board of Governors does not represent the interests of all postal users, it has made no effort to increase consumer input into the Postal Service decisions made during its monthly meetings. The Board meets for two days each month. The Sunshine Act<sup>218</sup> requires that all government meetings be open to the public, except for very narrow exceptions covering national security and privacy issues.<sup>219</sup> Since 1977, however, the Postal Service has routinely closed the first of its monthly Board of Governors meetings to the public with only cursory explanation.<sup>220</sup> Furthermore, full minutes and recordings of closed meetings are not prepared or disseminated to the public.<sup>221</sup>

On the second day, the Board holds a public meeting that generally involves rubber-stamping Postal Service projects.<sup>222</sup> The Board of Governors does not make an effort to schedule these meetings in a variety of cities and towns. Rather, most of the meetings are held at U.S. Postal Service headquarters in Washington, D.C.<sup>223</sup>

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Governors to reject the Postal Rate Commission's recommended rates. On January 15, 1991, McGraw-Hill also sent a letter to the Board of Governors commenting on the recommended decision.

217. Because a disproportionate number of governors come from corporate backgrounds, it has been suggested that the Board of Governors be restructured. CONKEY *supra* note 16, at 495. One proposal calls for the Board to be composed of at least two individuals from residential consumer backgrounds, one individual from a small business background and one individual from a labor background. *Id.*

218. Sunshine Act, 5 U.S.C. § 5526.

219. *Id.*

220. CONKEY, *supra* note 16, at 496. Currently, the Board meets for two days each month. On the first day, the meeting is closed to the public. *See e.g.*, USPS Board of Governors, 59 Fed. Reg. 8681 (1994), *USPS Board of Governors*, 58 Fed. Reg. 47318 (1993).

221. *Id.*

222. For example, approving funds for the purchase of mail processing machines. (See remarks by Postmaster General Preston R. Tisch before the Board of Governors meeting, San Francisco, CA, Nov. 4, 1980.)

223. *See USPS Board of Governors*, 59 Fed. Reg. 8681 (1994).

Additionally, the Postal Service fails to provide adequate publicity in local media to inform the public of impending Board of Governors' meetings.<sup>224</sup> Furthermore, there is no opportunity for public participation at Board meetings.<sup>225</sup> Members of the public are unable to ask questions or make comments, and members of the press can only ask questions if the Board schedules a separate, closed to the public, press conference following the meeting.<sup>226</sup>

Beyond its makeup and secretive sessions, the Board has also taken affirmative actions against residential postal users. The Board's antagonism is exemplified by its filing of a lawsuit to block the implementation of a special consumer automation rate.<sup>227</sup> The rate, which would amount to a two cent discount for all mail sent with bar codes—which includes almost all utility, financial and insurance bill payments—was recommended by the Postal Rate Commission.<sup>228</sup> The Rate Commission determined that the rate was necessary in order to allow all postal users to benefit from the increasing use of automated equipment.<sup>229</sup>

Because the Board of Governors is not representative of residential postal users and has made it impossible for residential mailers to comment on its decisions, it is not surprising that the Postal Service has continually raised rates and cutback services to residential mailers.

The Postal Service has established a Consumer Advocate's office. Representative of the general public in name only, this office is hamstrung by its status as an internal arm of the Postal Service.<sup>230</sup> Its main functions are to respond to customer inquiries and complaints about the Postal Service, and to investigate mail fraud.<sup>231</sup> While it may do an adequate job of responding to complaints, it neither presents cases nor submits materials to the Postal Rate Commission, and has failed to adequately involve consumers in postal policy decisions.<sup>232</sup>

In an attempt to allow more consumer input into the Postal

224. CONKEY, *supra* note 16, at 496.

225. *Id.*

226. *Id.* The author of this article has attended many Board of Governor's meetings and has been prohibited from asking questions during these meetings.

227. *Postal Service: Postal Governors File Brief Opposing Bush Administration Motion*, DAILY REP. FOR EXEC., Jan. 12, 1993, at 7.

228. *Postal Rate Commission Opinion and Recommended Decision, Postal Rate and Fee Changes*, 1980, Docket No. R90-1, January 4, 1991.

229. *Id.*

230. CONKEY, *supra* note 16, at 509.

231. See U.S. POSTAL SERVICE, CONSUMER SERVICE HANDBOOK, PO-250 (1988).

232. *Id.* For example, the Consumer Advocate's office does not regularly involve residential postal users in decisions about post office closings or service cutbacks, such as the curtailment of door delivery.

Service, the Consumer Advocate's office recently created a nationwide network of approximately 200 Customer Advisory Councils to discuss the concerns of local communities with local postal officials.<sup>233</sup> The Postal Service claims that these organizations will adequately represent residential postal customers, however, the councils are composed of a cross section of postal users, including businesses, organizations and homeowners.<sup>234</sup> Furthermore, these councils are not widely advertised to consumers and have no authority to represent residential ratepayers before the Postal Rate Commission or Congress.<sup>235</sup>

While the Postal Service has failed to create any mechanism that allows residential postal users to substantively participate in postal policy it has created numerous mechanisms for commercial mailers to participate in postal policy. For example, the Postal Service has created the Postal Service Sales Conference Management Program to provide business customers with information about postal services and allow business mailers to provide direct feedback to the Postal Service. Further, the Postal Service sponsors national and regional postal forums—conferences intended to provide business mailers with a forum to discuss postal services and industry concerns.<sup>236</sup> The Postal Service has also created the Mailers' Technical Advisory Committee, comprised of 78 associations representing all major-mailing industries.<sup>237</sup> These representatives meet quarterly to discuss the technical aspects of mail processing, delivery and transportation and current and future postal programs. Moreover, the Postal Service has established over 285 Postal Customer Councils in communities around the country to provide yet another forum for business mailers and the Postal Service to discuss areas of mutual concern.<sup>238</sup> Finally, the Postal Service has formed a joint indus-

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233. U.S. POSTAL SERVICE, SERVICE PERFORMANCE AND CUSTOMER RATINGS (Summer 1992).

234. See *Newsbrief: Roslyn Post Office to Form Joint Customer Advisory Council*, U.S. POSTAL SERVICE, Dec. 1992. These councils meet on a monthly basis to discuss the concerns of members with local postal officials and seek to improve customer service. U.S.P.S., *supra* note 187. While some councils may meet this goal, their diverse membership does not allow them to focus solely on the needs of residential mailers.

235. Prior to 1975, the Postal Service had a Postal Service Advisory Council that was supposed to be consulted about all aspects of postal operations. 39 U.S.C. § 207 (1988). The group was composed of representatives of labor, major mailers and residential postal users appointed by the President of the United States. *Id.* In 1982, however, Congress passed legislation that authorized the termination of the Postal Service Advisory Council in 1975, Pub. L. 92-463, 86 Stat. 770 (1982) amended by Pub. L. 94-409, 86 Stat. 774 (1982) and removed another mechanism for public participation in postal policy.

236. NATIONAL POSTAL FORUM CONFERENCE, FNS DAYBOOK, Sept. 2, 1992.

237. Lee Epstein, *What Went Down at the MATC*, DIRECT MARKETING NEWS Aug. 9, 1993, at 16.

238. John Nolan, *Postal Partnerships Save Business Time, Money*, CRAIN'S N.Y.

try and Postal Service worksharing group to submit proposals directly to postal management concerning worksharing and automation.

2. *Postal Rate Commission.* Input into the Postal Rate Commission is also not feasible for residential postal users. Before 1971, postal rates were set by Congress. When Congress reorganized the Postal Service, it determined that the Postal Service's rates should be established using the standard model of public utility rate regulation.<sup>239</sup> To that end, Congress created the Postal Rate Commission,<sup>240</sup> an independent executive branch agency, to recommend the Postal Service's rates.<sup>241</sup> The postal ratemaking process begins when the Postal Service's Board of Governors determines that it needs to change rates.<sup>242</sup> Upon making that determination, the governors authorize the Postal Service's general counsel to file a change of rates request with the Postal Rate Commission. This request includes all of the Postal Service's testimony, data and documentation in support of the rate change. Once the Commission receives the request, it provides notice of the request in the Federal Register and gives interested parties an opportunity to intervene in a rate proceeding.<sup>243</sup>

The first stage of the rate proceeding consists of prehearing conferences, discovery, the submission of direct testimony and cross-examination.<sup>244</sup> After this evidentiary stage is complete, the parties to the case can file briefs commenting on the Postal Service's proposal. This process is followed by a period of oral argument and the filing of reply briefs.<sup>245</sup>

When this process is complete, the Commission evaluates all the information that was presented during the hearing and, taking into account the rate-setting criteria that Congress enumerated in

BUSINESS, June 4, 1990, at 10. See also *USPS Memo to Mailers*, Jan. 1990, at 2, 8.

239. The standard model of public utility rate regulation, specifically regulation of natural gas, electricity, telephone and transportation services, generally involves rate-setting by a "full-time commission that, with the aid of technically trained full-time staffs, approve rates after reviewing" accounting, engineering and economic evidence. TIERNEY, *POSTAL SERVICE*, *supra* note 137, at 143. These commissions base their rate decisions on evidentiary proceedings. *Id.* Generally, these commissions are charged with protecting the interests of consumers by ensuring adequate service at reasonable rates, and also guaranteeing a fair rate of return to the utilities and their shareholders. BETH GIVENS, *CITIZENS UTILITY BOARDS: BECAUSE UTILITIES BEAR WATCHING* 14 (1991).

240. See *supra* note 118 and accompanying text.

241. 39 U.S.C. § 3601 (1988).

242. TIERNEY, *POSTAL SERVICE*, *supra* note 137, at 144-45; 39 U.S.C. § 3622 (1988).

243. TIERNEY, *POSTAL SERVICE*, *supra* note 137, at 144-45.

244. *Id.*; 39 U.S.C. § 3624 (1988).

245. *Id.*

the Postal Reorganization Act,<sup>246</sup> issues a recommended decision on the rate change to the Postal Service Board of Governors. By law, the Rate Commission has ten months from the Postal Service's initial filing to issue its decision.<sup>247</sup> The Board of Governors can: approve the Postal Service's recommendation and place the recommended rates into effect; reject the proposal and submit an entirely new request to the Rate Commission; or, resubmit the pending request to the Rate Commission for reconsideration. If the Postal Service chooses the last option, the Rate Commission must render a new decision.<sup>248</sup> Once this second decision is issued, the Board of Governors can modify that decision by unanimous vote and effectively implement any changes in rates.<sup>249</sup> In other words, the final word on rate increases is vested in the Board of Governors of the Postal Service without congressional oversight.<sup>250</sup> In 1980, the Postal Service exercised this last option and, despite the fact that the Rate Commission had issued two decisions recommending a first-class rate of eighteen cents, the Postal Service Board of Governors voted to modify this recommendation and implement a first-class rate of twenty cents.<sup>251</sup>

Because of the complexity of the Rate Commission's proceedings, meaningful participation by interested individual mailers is all but precluded.<sup>252</sup> Developing meaningful testimony for the Postal Rate Commission is difficult without substantial funding and postal expertise; resources unorganized postal users often lack. "The heavy reliance on economists and lawyers and other professionals in the

246. TIERNEY, POSTAL SERVICE, *supra* note 137, at 1656; 39 U.S.C. § 3622(b) (1988). These criteria include: the establishment of fair and equitable rates; the value of mail service, the requirement that each class of mail bear the direct and indirect costs attributable to that class plus that portion of all other costs of the Postal Service reasonably assignable to such class or type, the effect of the rate increases upon the general public, the availability of alternative means of sending and receiving mail, the degree of preparation of mail for delivery, the educational, cultural and informational value of mail matter, and other factors that the Commission deems appropriate. *Id.*

247. 39 U.S.C. § 3624 (d) (1988).

248. TIERNEY, POSTAL SERVICE, *supra* note 137, at 165; 39 U.S.C. § 3625 (1988).

249. 39 U.S.C. § 3625 (d) (1988).

250. 39 U.S.C. § 3625 (1988). *See also* Newsweek, Inc. v. U.S. Postal Serv., 663 F.2d 1186 (2d Cir. 1981), *aff'd and remanded on other grounds*, 462 U.S. 810, *and on remand*, 716 F.2d 993 (holding that Board of Governors has authority to disregard improper recommendations by Postal Rate Commission); National Ass'n of Greeting Card Publishers v. U.S. Postal Serv., 607 F.2d 392 (D.C. Cir. 1979), *cert. denied*, 444 U.S. 1025 (1979); Time, Inc. v. U.S. Postal Serv., 685 F. 2d. 760 (2d Cir. 1982) (holding that Board of Governors is not precluded from rejecting or modifying recommended decision of Postal Rate Commission on rates and fees). *Governors of the U.S. Postal Serv. v. U.S. Postal Rate Comm'n*, 654 F.2d 108 (D.C. Cir. 1981) (holding that Congress vested Board of Governors exclusive authority to manage Postal Service, with Postal Rate Commission assigned duties and authority to make recommendations with respect to rates and classifications).

251. TIERNEY, POSTAL SERVICE, *supra* note 137, at 165.

252. *Id.* at 153.

rate-making process means that the costs of intervening in these lengthy rate proceedings are substantial—ranging from tens of thousands of dollars to over a million.<sup>253</sup>

Therefore it is not surprising that representatives of business mailers generally dominate Postal Rate Commission hearings. For example, during the most recent hearing<sup>254</sup> sixty-five of the seventy-three intervenors were representatives of business mailers, corporations or organizational mailers.<sup>255</sup> The remaining intervenors consisted of two postal unions, the New York State Department of Consumer Affairs, the Postal Rate Commission Office of the Consumer Advocate and four individuals.<sup>256</sup> Although the Postal Rate Commission's Office of Consumer Advocate (OCA)<sup>257</sup> has represented the broader public interest in the past, this office—wholly unsupported by grassroots efforts—is no match for the combined influence of the Postal Service and large corporate mail users. The OCA's ability to represent residential postal consumers is hampered by the fact that it lacks certain statutory powers such as subpoena authority.<sup>258</sup> Consequently, Rate Commission hearings are consistently skewed against the individual first-class mailer in favor of other classes.

3. *Congress.* Congress, to a lesser extent, is also responsible for postal policy decisions. Although reorganization stripped Congress of almost all of its oversight responsibilities, members of Congress still regularly contact the Postal Service on behalf of individual constituents.<sup>259</sup> In addition, Congress holds numerous hearings on issues affecting postal services and it has the ultimate ability to alter the structure of both the Postal Service and the Postal Rate Commission. The Senate must also confirm nominees to the Postal Service Board of Governors and the Postal Rate Commission.

Currently, however, it is difficult for individual citizens to influence members of Congress. Organized commercial mailers and the postal labor unions, with their well-financed lobbyists and campaign finance funds, as well as the Postal Service's government affairs department, have access to members of Congress and influence over their legislative decisions. Since there is no organized group of residential mail users, residential mail users have enjoyed neither the same access nor influence.

253. *Id.*

254. POSTAL RATE COMMISSION, Opinions and Recommended Decision, Postal Rate and Fee Changes, 1990, Docket No. R90-1, Jan. 4, 1991.

255. *Id.*

256. *Id.* The author was one of the four individuals.

257. 39 U.S.C. § 3624 (a) (1988).

258. 39 U.S.C. § 3661 (c) (1988).

259. FLEISHMAN, *Postal Policy*, *supra* note 15, at 90-93.

IV. CONSUMER ACTION GROUPS<sup>260</sup>

"The existing lack of effective consumer representation calls for the formation of consumer-based groups capable of engaging in sustained efforts on behalf of their constituencies."<sup>261</sup> The development of such consumer organizations, free from the political constraints that limit the effectiveness of government appointed advocates and the funding problems of citizens groups, has long been a goal of consumer advocates.<sup>262</sup> In 1974, consumer advocate Ralph Nader proposed "bill inserts" as a means of securing funding for a wide range of consumer organizations.<sup>263</sup>

In order to "band together" customers of utilities and other corporations into effective consumer groups, Nader proposed that messages soliciting contributions to and membership in such consumer organizations be included in the regular billing envelopes mailed by companies to their customers.<sup>264</sup> Nader's proposal for the creation of such consumer groups to represent the residential ratepayers of utilities was first proposed in a law journal article published in 1976.<sup>265</sup> Today, Nader refers to the bill insert as the silicon chip of the consumer movement.

According to the proposal, fundraising for the consumer groups would be "piggybacked" onto existing financial transactions; the statements and bills that customers regularly receive for services such as utilities, insurance, and financial institutions.<sup>266</sup> Inside the billing envelope, a consumer would receive an invitation to contribute toward an organization that would represent the customer in regulatory proceedings, before the legislature and in the judicial system. "The consumer would read about the advocacy group just at the time that they would be most responsive to its message, when paying the bill."<sup>267</sup> Furthermore, every customer of the industry would receive an invitation to the group, providing an efficient way for inherently unorganized consumers to become organized.<sup>268</sup>

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260. The material in this section is adapted from GIVENS, *supra* note 239 which should be consulted as a more complete discussion of consumer action groups and segments of this section first appeared in Joseph W. Belluck, *Increasing Consumer Participation in State Utility Regulatory Proceedings*, A.B.A., PUB. SERVICE DIVISION (forthcoming).

261. BEST & BROWN, *supra* note 9, at 253.

262. GIVENS, *supra* note 239, at 17.

263. Ralph Nader, *Foreword* to ANDREW SHARPLESS & SARAH GALLUP, *BANDING TOGETHER: HOW CHECK-OFFS WILL REVOLUTIONIZE THE CONSUMER MOVEMENT* (1981).

264. GIVENS, *supra* note 239, at 18.

265. Robert Leflar & Martin Rogol, *Consumer Participation in the Regulation of Public Utilities: A Model Act*, 13 HARV. J. ON LEGIS. 239 (1976).

266. GIVENS, *supra* note 239, at 18.

267. *Id.*

268. *Id.*

Nader saw bill inserts as an efficient and effective means to raise money as well as create a democratically structured organization with broad consumer participation.<sup>269</sup> Nader proposed that a consumer group's ability to insert a bill be authorized by state or federal law—depending on the type of industry involved. The law would charter the nongovernmental consumer group and empower it to represent consumers before the appropriate regulatory agencies, the legislature and the courts.<sup>270</sup> One key to the proposal was that the groups would not be taxpayer or government funded.<sup>271</sup>

During the late 1970s, citizen organizers tried to stimulate the

269. *Id.*

270. *Id.*

271. *Id.* The bill insert concept is a variation of the "check-off" mechanism used to organize workers and consumers throughout our country's history. *Id.* Essentially, the check-off is the use of an existing payment, like a bill or paycheck, to collect funds for another group or purpose. In many instances, the check-off funds an organization that has a role adversarial to the administrator of the payment or billing system. One of the oldest check-off mechanisms is still widely used, the labor union dues check-off. SHARPLESS & GALLUP, *supra* note 263, at 1. After a worker has individually authorized dues withholding, the employer deducts the amount of the union contribution directly from his or her paycheck, and then forwards the collections directly to the union. The union dues check-off was first used by the United Mine Workers in 1898. *Id.* at 2. In the 1920's and 1930's, the union dues check-off grew steadily. In 1946, more than six million workers were covered by a check-off. *Id.* See also *Aboud v. Detroit Bd. of Educ.*, 431 U.S. 209 (1977).

Producers of a number of different agricultural commodities have gained congressional approval of laws enabling them to establish check-offs to fund research and commodity promotion activities. SHARPLESS & GALLUP, *supra* note 263, at 6. Each year, millions of dollars are collected through volume-based check-offs to support the work of agricultural trade associations. See, e.g., 7 U.S.C. § 2110 (1988) amended by 7 U.S.C. § 2110 (a) (Supp. IV 1992) (cotton producers check-off); 7 U.S.C. § 2618 (g) (Supp. IV 1992) (amending 7 U.S.C. § 2617 (g) (1988)) (potato producers check-off); 7 U.S.C. § 2712 (1988) (egg producers check-off). The Beef Promotion Act of 1985 required every purchaser of cattle to remit a one dollar assessment to a state beef council or the national Cattlemen's Board. Beef Research and Information Act, Pub.L. No. 99-198, 99 Stat. 1597 (1985) (codified as amended at 7 U.S.C. §§ 2901-11 (1988)). The check-off authorized by the Beef Promotion Act was upheld in a 1989 Court of Appeals decision. See *United States v. Frame*, 885 F.2d 1119, 1122 (3d Cir.), *cert. denied*, 493 U.S. 1094 (1990).

The most pervasive check-off currently in use is the income tax. GIVENS, *supra* note 239, at 18. The federal income tax, a mandatory check-off collection piggybacked onto virtually every paycheck issued in the United States, has been in continuous operation since 1943. SHARPLESS & GALLUP, *supra* note 263, at 11. State and local governments also use a check-off to withhold income taxes. In addition, the federal government uses a check-off to finance presidential campaigns. Presidential candidates can receive money on a matching basis from a special fund if they agree to specified campaign expenditure limits. The fund is capitalized by a check-off on individual income tax returns that allows taxpayers to designate \$1.00 of their tax liability for this purpose. *Id.* at 13. In addition, in 1991, there were over 137 check-off programs operating in the 41 states that collect personal income tax, allowing taxpayers to contribute to social programs, charitable organizations and political funds. *Checking Off Taxes*, STATE GOVERNMENT NEWS, Apr. 1992, at 9, 10.

development of consumer actions groups for utility customers.<sup>272</sup> These consumer action groups were referred to as CUBs. The first CUB was formed in 1979 when the Wisconsin legislature passed a bill requiring Wisconsin utilities to carry statements from the Wisconsin Citizen Utility Board up to four times a year inviting utility consumers to join the organization for a minimal fee.<sup>273</sup>

By 1984, CUBS were created in three more states—California, Illinois and Oregon.<sup>274</sup> In addition, CUB legislation was under consideration in at least nine other states in the late 1970s and early 1980's.<sup>275</sup> In addition, consumer action groups were being proposed for a variety of other industries and government agencies, such as the insurance industry, automobile industry, Internal Revenue Service, broadcasting and the Postal Service.<sup>276</sup>

By the early 1980s, however, utility companies began to sense the growing threat of an invigorated citizenry organized with bill inserts. The utilities responded to this growing consumer movement by challenging the ability of CUBs to use the extra space in billing envelopes on First Amendment grounds.

By 1986, a California case challenging bill inserts reached the United States Supreme Court.<sup>277</sup> In an oft criticized 5-3 plurality decision, the Court ruled that requiring a utility to carry a billing insert from a consumer group representing residential ratepayers violated the utility's "negative free speech" rights or its right "not to speak."

After the 1986 *Pacific Gas and Electric (PG&E) v. California Public Utilities Commission (PUC)* decision, efforts to create new CUBS were temporarily stalled.<sup>278</sup> However, as a result of the 1986 *Pacific Gas and Electric* decision, Illinois passed legislation authorizing its CUB to enclose messages in state agency mailings, such as

272. GIVENS, *supra* note 239, at 19.

273. *Id.* The bill insert mechanism was very effective. In less than a year over 50,000 utility consumers had joined Wisconsin CUB, and a professional staff was hired to represent utility consumers in utility proceedings and the state legislature. *Id.*

274. *Id.*

275. *Id.*

276. See BEST & BROWN, *supra* note 9, at 254.

277. *Pacific Gas and Elec. Co. v. Public Util. Comm'n of Cal.*, 475 U.S. 1 (1986). Nicholas Nesyos, *Pacific Gas and Electric Co. v. PUC: The Right to Hear in Corporate Negative and Affirmative Speech*, 73 CORNELL L. REV. 1080 (1988); Mitchell C. Tilner, *Government Compulsion of Corporate Speech: Legitimate Regulation or First Amendment Violation? A Critique of PG & E v. Public Utilities Commission*, 27 SANTA CLARA L. REV. 485 (1987); Note, *Pacific Gas & Electric v. California Public Utilities Commission: Property in an Envelope*, 49 U. PITT. L. REV. 229 (1987).

278. GIVENS, *supra* note 239, at 25. At the time of the 1986 PG&E decision, efforts to create a CUB were underway in Massachusetts and New York. In addition, CUB legislation or citizen initiatives were proposed in Nevada, Florida, Rhode Island, Montana, Missouri and Kansas. *Id.* at 19.

motor vehicle registration renewals, thereby avoiding the First Amendment issues related to utility bills.<sup>279</sup> Other states, including New York, will also utilize state agency mailings as the carrier for CUB inserts. In addition, since 1986 Congress has considered chartering consumer action groups for the financial, telecommunications and broadcast industries.<sup>280</sup>

Because the Postal Service is a government operated entity it could also be required to deliver a consumer action group message without raising the First Amendment issues involved in the *Pacific Gas and Electric* case.

#### A. *Consumer Action Group Characteristics and Advantages*

Inserts provide a highly effective and efficient means of communicating with consumers and soliciting funding support. The messages are delivered in such a way that they will be opened, unlike traditional mail solicitations which are often discarded before they are opened.<sup>281</sup> In addition, the messages are read at times when customers are sensitized to the issues of the industry seeking to be monitored—when they are getting their mail.

Consumer action groups can significantly trim operating costs by using the messages rather than traditional fundraising techniques.<sup>282</sup> It is estimated that the cost of printing inserts and delivering them to the Postal Service is only one or two cents per insert.<sup>283</sup> The cost of a sending a traditional direct mail solicitation is approximately twenty-five to forty cents per solicitation.<sup>284</sup> This cost savings allows a consumer action group to direct most of its resources toward representing consumers. Low fundraising costs also allow consumer action groups to ensure a broad base of support and remain accessible to low-income households and persons on fixed incomes. A consumer action group's minimum membership dues are typically \$10 per member.<sup>285</sup>

In contrast to consumer groups, typically funded by direct mail

279. GIVENS, *supra* note 239, at 26.

280. See Statement of Ralph Nader and James Love on HR 3636: THE NATIONAL COMMUNICATIONS COMPETITION ACT OF 1993, Feb. 9, 1994 (urging the creation of citizen utility boards); Ralph Nader and Claire Riley, *Oh, Say Can You See: A Broadcast Network for the Audience*, S.J. LAW & POLITICS 1 (1988) (urging creation of broadcast consumer action groups); Proxmire Financial Modernization Act of 1989, S.305, 101st Cong., 1st Sess. (1989) (creating financial consumer association); Financial Consumer Association Act of 1992, 102d Cong. 2d Sess. (1992).

281. GIVENS, *supra* note 239, at 26.

282. *Id.*

283. *Id.*

284. *Id.*

285. *Id.*

solicitations and canvassing, and government appointed advocates, limited by state financial and political constraints, consumer action groups have a financial self sufficiency that provides stability and independence.<sup>286</sup> In addition, consumer action groups have the advantage of not imposing additional costs on taxpayers,<sup>287</sup> who are often required to fund government appointed advocates and help subsidize the nonprofit mailing rates used for traditional direct mail solicitation.

Consumer action groups are also unique in their ability to empower consumers and foster broad-based participation. Acting alone, few individuals have the financial means and expertise to contribute in any significant way to regulatory proceedings—such as Postal Rate Commission hearings. Consumer groups generally cannot match the financial and organizational capability of a government agency or industry representatives, with their full-time staffs of attorneys and economists, to participate in regulatory proceedings.<sup>288</sup> Consumer action groups offer consumers an easy opportunity to pool their resources and hire lawyers, economists and advocates to represent them in regulatory proceedings, litigation and legislative efforts.<sup>289</sup> Consumer action groups also have legal standing to represent ratepayers in all three branches of government, and can focus on issues on a full-time basis.<sup>290</sup> In addition, consumer action groups engage in grassroots organizing to foster consumer involvement in regulatory and legislative proceedings.<sup>291</sup>

Most importantly, consumer action groups are democratically organized. Any member contributing to a consumer action groups is eligible to run for and vote to elect a board of directors.<sup>292</sup> In order to qualify to be on the ballot for the board of directors' election, a candidate must obtain a specified number of members' signatures on a nominating petition.<sup>293</sup> Board members are elected by geographical region, usually based on congressional districts.<sup>294</sup> Each board member has a term of two to four years. Consumer action group legislation and bylaws impose strict conflict of interest regulations and campaign contribution restrictions on board members in order to

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286. *Id.*

287. *Id.*

288. *Id.*

289. *Id.*

290. See *infra* Post Office Action Group Model Statute, section 5 (f) [hereinafter Model Statute].

291. GIVENS, *supra* note 239, at 20.

292. See *infra*, Model Statute, section 12. See also GIVENS, *supra* note 239, at 22.

293. Model Statute, section 12 (c).

294. See *infra*, Model Statute, section 11 (a).

guard against undue influence from special interests.<sup>295</sup> "In order to ensure accountability to its members, consumer action group legislation and bylaws prescribe stringent requirements not generally imposed on other citizens organizations, including public release of records, open meetings, annual reports and supervised elections."<sup>296</sup> The inherent democratic organizational structure of consumer action group keeps it accountable to its members and gives it another characteristic often lacking in government appointed advocates and other consumer groups. Government appointed advocates representing postal users are generally accountable to the individual who appoints them or to a political party, not the ratepayers themselves.<sup>297</sup> Similarly, consumer groups that are membership-based, but not democratically structured, generally are not accountable to the group's members.<sup>298</sup>

Finally, consumer action groups have the advantage of being organizationally independent. Because of their structure, consumer action groups are not limited by political constraints.<sup>299</sup> Consumer action groups do not have to tailor their advocacy to avoid political conflicts or special interest pressure.<sup>300</sup> Therefore, they are able to directly and solely advocate on behalf of residential consumers.<sup>301</sup>

#### B. *Post Office Consumer Action Group (POCAG)*

The attributes of public utilities which make them suitable subjects for the establishment of consumer action groups include the complicated nature of their operations, the vastness of their resources as compared to the resources of their individual customers, the general inadequacy of current public interest monitoring of their work and the relative ease of determining a consumer point of view on most regulatory issues.<sup>302</sup> These attributes also apply to the Post Office.<sup>303</sup> The idea for POCAG was originally proposed in a 1976 law review article<sup>304</sup> and has been continually suggested by consumer advocates ever since.<sup>305</sup> The final section of this book contains model

295. See *infra* Model Statute, sections 12 (b)(4), (d), (e), (f)(1) and (f)(4); GIVENS, *supra* note 239, at 20.

296. GIVENS, *supra* note 239, at 20.

297. GIVENS, *supra* note 239, at 20.

298. *Id.* at 22.

299. *Id.*

300. *Id.*

301. *Id.*

302. See BEST & BROWN, *supra* note 9, at 254.

303. *Id.*

304. *Id.*

305. See, e.g., CONKEY, *supra* note 16; Letter from Ralph Nader to Postmaster General Preston Tisch (Jan. 29, 1987) (proposing POCAG); Letter from Ralph Nader to Post-

legislation for the creation of a Post Office Consumer Action Group (POCAG). The legislation is a synthesis of four previous model acts for consumer action groups.<sup>306</sup>

Because of the barriers to participating in Postal Rate Commission and Postal Service proceedings and the lack of access to Congress, individual postal users need a facility to help them band together, if they wish, and to have their own full time advocates, economists, researchers, organizers and lobbyists. Most individuals are residential postal users - homeowners, condo and apartment dwellers—who primarily use first-class mail. POCAG would be a nonprofit, congressionally chartered national organization for individual mail users which would provide them with an opportunity to band together for better services, for easier complaint handling and for more skillful participation in the shaping of national and local postal policies.

By aggregating the resources of residential mail users and hiring a full-time staff, POCAG would provide a mechanism for residential postal users to have access to the Postal Rate Commission, Postal Service and Congress. As a result POCAG would increase postal users' confidence in the decisions and actions of the Postal Service.

POCAG would encourage citizen knowledge and participation, help assure informed debate on postal matters and promote voluntarism—all without creating a new government agency or requiring federal funds.<sup>307</sup>

Pursuant to Congressional authority, POCAG would be funded by voluntary membership fees (perhaps \$10 minimum annual dues)

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master General William F. Bolger (Dec. 9, 1980) (proposing POCAG) (on file with author); Ralph Nader, *Mail Users Should Unite*, WASH. STAR, Apr. 19, 1975; Memorandum from Joseph Belluck, Center for Study of Responsive Law, to American Postal Workers Union (July 1991) (proposing POCAG) (on file with author); *Oversight of the U.S. Postal Service: Hearings Before the Senate Comm. on Governmental Affairs*, 101st Cong. 2d Sess. 31,208 (1990) (statement of Joseph W. Belluck, Center for Study of Responsive Law); *Effectiveness of the Postal Reorganization Act of 1970, Part 2: Joint Hearings Before the House Subcomm. on Postal Operations and Service and the Subcomm. on Post Office and Civil Service*, 97th Cong. 2d Sess. 352 (March 4, 1982) (statement of Ralph Nader); *U.S. Postal Service Budget: Joint Hearings before the Subcomm. on Postal Operations and Services and the Subcomm. on Postal Personnel and Modernization*, 100th Cong. (1989); Ralph Nader, *Case in Chief*, POSTAL RATE COMMISSION HEARINGS ON POSTAL RATE AND FEE CHANGES, 1990, Doc. No. R90-1, Jan. 4, 1991.

306. The four previous models are contained in: Post Office Consumer Action Group Model Statute, Center for Study of Responsive Law (1980) (Post Office Consumer Action Group); BEST & BROWN, *supra* note 9, at 253 (Insurance Consumer Action Group); LEFLAR & ROGOL, *supra* note 265, at 239 (Residential Utility Consumer Action Group) GIVENS, *supra* note 239, (Citizens Utility Board). Other models include the one described in Nader & Riley, *supra* note 280, at 1.

307. CONKEY, *supra* note 16, at 509.

solicited on a regular basis through a mailing sent to all residential postal addresses.<sup>308</sup> This invitation would be written by POCAG, according to certain size and weight limitations, and would be delivered twice a year by the Postal Service to every residential address.<sup>309</sup>

Individual postal users who contribute the small membership fee each year would become members of POCAG and would vote by congressional districts to elect delegates who, in turn, would elect a policy-making board. The organization would then hire a full-time staff to advocate for postal consumers.<sup>310</sup>

By providing a mechanism for individual mail users to organize themselves into a group that would advocate on their behalf and represent their concerns before Congress, the Postal Rate Commission and the Postal Service, POCAG would help protect vital postal services, ensure equitable rates and advocate against systemic changes to our country's mail delivery system that would harm residential mailers. Its staff of full-time economists, researchers and attorneys could present information to Congress, advocate legislative changes to the Postal Service, participate in Postal Rate Commission proceedings and monitor the activities of the Postal Service. Without this type of participation, the Postal Service, Postal Rate Commission and Congress will continue to be unresponsive to the needs of residential postal users. Not only will this continue to burden residential postal users, with rate increases and service cut-backs it will further erode the confidence that Americans have in the Postal Service and hasten its privatization and, ultimately, its demise.

This type of organized representation on behalf of residential ratepayers has proved successful in other contexts, as well as within the context of the Postal Service. CUBs, the existing consumer action groups, have had tremendous successes on behalf of consumers. In Wisconsin, for example, Wisconsin CUB has saved ratepayers at least \$100 for every \$1 invested in membership fees by forcing hundreds of millions of dollars of rate reductions.<sup>311</sup> Wisconsin CUB has also won victories for low-income consumers by forcing the Wisconsin Public Service Commission to consider ratepayers' ability to pay in all utility rate cases.<sup>312</sup> In 1985, Illinois CUB was able to secure a major revision of the Illinois Commerce Commission (ICC), which included the creation of a consumer advocacy office to represent re-

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308. CONKEY, *supra* note 16, at 510. See *infra* Model Statute, section 9.

309. CONKEY, *supra* note 16, at 511. See *infra* Model Statute, section 9.

310. CONKEY, *supra* note 16, at 511.

311. GIVENS, *supra* note 239, at 32.

312. *Id.*

sidential ratepayers in ICC and court proceedings.<sup>313</sup> Illinois CUB has also been responsible for blocking hundreds of millions of dollars of rate increases<sup>314</sup> and recently earned a \$1.34 billion refund for Illinois consumers of the Commonwealth Edison energy utility.<sup>315</sup> Oregon CUB has also been responsible for preventing rate increases and successfully lobbied the Oregon legislature to make the Oregon Public Utility Commission more democratic.<sup>316</sup>

With regards to the Postal Service, when consumers have organized themselves, they have had some limited success in saving some endangered postal services.<sup>317</sup> For example, residential postal users were instrumental in stopping the elimination of photocopiers from post offices and local postmarks. Citizens from rural communities were also instrumental in pressuring Congress to pass the Postal Reorganization Act of 1976<sup>318</sup>, which placed a temporary moratorium on the closing of post offices in rural communities and forced the Postal Service to consider the effect of closing a post office on the community it serves.<sup>319</sup> These Postal Service and utility consumer successes demonstrate that POCAG could help protect consumers from further rate increases and service cutbacks.

Postmasters General Marvin Runyon, and his three predecessors—Anthony Frank, William Bolger and Preston Tisch—have rejected the concept of POCAG.<sup>320</sup> Three reasons have been given for the rejection of POCAG. First, the Postal Service has stated that it cannot conduct a mailing to every household in the country because the mailing would constitute a form of financial assistance to a private organization. According to the Postal Service, other nonprofit organizations would demand similar support, and other mailers “would go to court and successfully argue that they were subsidizing POCAG through payment of full rates.”<sup>321</sup> The second argument amounts to a refusal to establish a group that would be controlled by Ralph Nader or his associates. Third, the Postal Service argues that

313. *Id.* at 41.

314. *Id.*

315. Jim Ritter, *Edison to Refund Record \$1.3 billion*, CHI. SUN TIMES, Sept. 28, 1993, at A1.

316. GIVENS, *supra* note 239, at 45.

317. CONKEY, *supra* note 16, at 335.

318. *See supra* note 118 and accompanying text.

319. CONKEY, *supra* note 16, at 333. It should be noted, however, that the organized representatives of postal workers, namely the postal labor unions, were the primary supporters of this legislation.

320. The information contained in these paragraphs was gathered from numerous letters between Ralph Nader and Postmasters Runyon, Frank, Bolger and Tisch. The letters are located at the Center for Study of Responsive Law, P.O. Box 19367, Washington, D.C. 20036, (202) 387-8030. *See also* CONKEY, *supra* note 16, at 511.

321. Conkey, *supra* note 16, at 511.

the cost of such a mailing would be over \$40 million.

None of these arguments are based on an accurate analysis of the facts surrounding POCAG. The first contention about POCAG is incorrect. POCAG would be a special congressionally chartered organization that would focus solely on representing residential postal users. It would not be just another private nonprofit organization. In addition, because the delivery of POCAG invitations would be based on its status as a representative of residential postal users, other nonprofit organizations would have no claim to the same privilege. Since POCAG would be democratically organized it would be totally controlled by its members. Therefore, any citizen that wanted to affect postal policy could join POCAG and have an equal say in the organization's activities. This structure would eliminate the need for duplicate groups with the right to have the Postal Service deliver their messages.

Furthermore, the contentions that the Postal Service would be sued by mailers complaining about the subsidizing of POCAG or that the Postal Service cannot help fund POCAG's activities can be refuted by even a glancing examination of the Postal Service's relationship with business mailers. During the past twenty years, the Postal Service has gone to extreme lengths to help business mailers increase their profits.<sup>322</sup> Given the extent of these efforts, it is not plausible that the Postal Service cannot support POCAG. If the Postal Service can support the business of large mailers, it can certainly help organize residential postal users on occasion.

The Postal Service's second argument about the control of POCAG is also incorrect. POCAG will be chartered by congressional legislation that will preclude any individual from having control over the organization by specifying procedures through which the members of POCAG elect its directors.<sup>323</sup>

With respect to the third argument, the Postal Service's own figures dispute the assertion that a mailing to every household in the country would cost tens of millions of dollars. First, carriers would simply deliver the POCAG mailings during their regular rounds, so no individual addressing would be necessary. Furthermore, in 1990, the Postal Service conducted a similar mailing to every household in the country to deliver a guide to addressing letters. The cost of that mailing, including the printing of the guide, was under \$3 million.<sup>324</sup>

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322. See *supra* notes 150-53, 199-204 and accompanying text.

323. See *infra* Model Statute, section 11.

324. Response to Freedom of Information Act request by Center for Study of Responsive Law, Washington, D.C.

## CONCLUSION

Since the 1971 reorganization of the Postal Service residential postal users, the Postal Service's largest constituency, have been victims of a faster-than-inflation rate spiral and numerous service cutbacks. Furthermore, these rate increases and service cutbacks have occurred while the Postal Service has been catering to its business mailers. The reason for this disparity is that the well-organized and well-funded business mailers are capable of influencing the bodies that formulate postal policy: Congress, the Postal Rate Commission and the Postal Service itself. Residential postal users, inherently unorganized and lacking the extensive resources of business mailers, have been unable to command such influence. Now, the Postal Service's policies are hastening its demise as a government-operated agency.

The only way to end the rate spiral, preserve and expand postal services, and prevent the privatization of the Postal Service is for Congress to facilitate the organization of residential postal users. Congress can accomplish this goal, at no cost to the taxpayer, by enacting legislation to create a Post Office Consumer Action Group (POCAG). POCAG would be a mechanism for residential postal users to influence the formulation of postal policy. If Congress fails to act, it will encourage the demise of one of our country's most vital public services by failing to guarantee the future of an affordable and accessible mail delivery system for every resident of the United States.

V. MODEL STATUTE<sup>325</sup>

## Post Office Consumer Action Group Model Statute

**Sec. 1. Short Title.**—This Act may be cited as the “Post Office Consumer Action Group Act (POCAG).”

**Sec. 2. Findings and Purposes.**—

(a) **FINDINGS.**—The legislature finds that:

- (1) Individual action by residential postal users for the purposes of participating in postal matters and communicating their views is rendered impracticable by reason of the disproportionate expense of taking such action.
- (2) Such participation and representation can be best secured by the creation of a permanent, not-for-profit organization which is under the democratic control of its membership, solely responsive to that membership’s goals, and which is funded by voluntary contributions.
- (3) The formation of such an entity by consumers acting voluntarily is impeded because consumers have neither the resources nor an efficient mechanism to contact all residential postal users, raise initial funds and join such an entity.
- (4) In order to create such an entity, it is necessary to establish a democratically structured organization and to provide for the dissemination, to all postal users, of information as to the formation and purposes of such organization and to provide an efficient means for joining and contributing to such organization.

(b) **PURPOSES.**—It is the purpose of this Act—

- (1) To assist in establishing adequate and affordable postal service to all residential postal users.
- (2) To foster and encourage active citizen participation in postal matters and to facilitate effective representation and advocacy of the interests of residential postal users before regulatory agencies, Congress, the courts and other bodies; and for these purposes create a permanent not-for-profit organization.
- (3) To create an efficient funding mechanism for the organization, involving no compulsory burden whatso-

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325. See *supra* note 306 and accompanying text (explaining the origin of this Model Statute, and listing the four previous model statutes that were synthesized and improved to produce this Model Statute).

ever on the taxpayers of the United States, whereby individual residential postal users and others may voluntarily contribute to the organization.

- (4) To ensure that public policies affecting the provision, quality and cost of postal services fairly reflect the needs and concerns of those users.

For these reasons there shall be established a permanent not-for-profit Corporation know as the "Post Office Consumer Action Group, Inc." with the responsibility to promote adequate representation of residential postal users; to collect operating funds; to assist in the redress of residential postal user complaints; and to provide for residential postal users' membership in such Corporation and residential postal users' direction of the actions of such Corporation.

**Sec. 3. Definitions.—**

- (a) "Individual residential postal user" means any person who sends or receives letters, packages and other items through the United States Postal Service for non-business purposes.
- (b) "Private mail delivery service" means any establishment which regularly delivers second-class, third-class, fourth-class, overnight or other category of mail for profit.
- (c) "Agency" means any local, state or federal department, commission, office, authority or other public body with the legal authority to establish or alter rates or services for the provision of postal services within the United States.
- (d) "Proceeding" means any formal hearing or meeting conducted by the United States Postal Service, the Postal Rate Commission, or any other agency or subdivision thereof, including a meeting conducted by an administrative law judge, regarding:
- (1) The establishment or alteration of rates and charges for the provision of postal services within the United States.
  - (2) The promulgation of rules and regulations concerning postal services and other matters that affect the interests of individual residential postal consumers,
  - (3) Adjudication of complaints, claims, disputes and petitions of residential postal users.
  - (4) The gathering of information on matters that affect the interests of individual residential postal consumers.

- (e) "The Corporation" means the Postal Office Consumer Action Group, Inc.
- (f) "Member" means any person who meets the requirements for membership in the Corporation set forth in this Act.
- (g) "Director" means any member of the Corporation duly elected or appointed to the board of directors of the Corporation.
- (h) "Delegate" means any person duly elected or appointed as a delegate under the provisions this Act.
- (i) A "District" means a district designated by the board of directors pursuant to this Act.
- (j) "Campaign expenditure" means a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made for the purpose of electing a candidate as a director or delegate, or a contract, promise, or agreement therefore.
- (k) "Campaign contribution" means money, goods, services, or other benefits paid, made, loaned, given, conferred, or promised, including but not limited to, use of office space, telephones, equipment, staff services and provisions of meals, drinks, entertainment, services or transportation made for the purpose of electing a candidate as a director or delegate.
- (l) "Political committee" means any committee, club, association, or other group of persons which makes campaign expenditures or receives campaign contributions during the year before an election of directors or delegates.

#### **Sec. 4. Creation of Corporation Membership—**

- (a) There is hereby created a not-for-profit membership corporation to be known as the Post Office Consumer Action Group Inc., herein referred to as the Corporation.
- (b) The membership of the Corporation shall consist of all individuals of sixteen years of age or older who have contributed to the Corporation at least an annual membership fee at such times as shall be set by the board of directors, provided, that any person may resign from membership.

#### **Sec. 5. Duties, Rights and Powers.—**

- (a) The Corporation shall:
  - (1) Represent and promote the interests of individual residential postal users. All actions by the Corporation under this Act shall be directed toward such duty.
  - (2) Inform, insofar as possible, all residential postal us-

- ers about the Corporation, including the procedure for obtaining membership in the Corporation.
- (3) Establish an annual membership fee which shall be set at a level that provides sufficient funding for the Corporation to effectively perform its powers and duties, and is affordable for as many residential postal users as is possible, but nevertheless not less than eight dollars.
  - (4) Have all rights and powers accorded generally to, and be subject to all duties imposed generally upon, not-for-profit membership corporations under the laws of the United States.
- (b) In addition, the Corporation shall have the following rights and powers:
- (1) To solicit and accept gifts, loans, grants or other aid, in order to support activities concerning the interests of residential postal users, except that the Corporation may not accept gifts, loans or other aid from the Postal Service or from any governor, employee or agent or member of the immediate family of a governor, employee or agent of the Postal Service.
  - (2) To seek tax-exempt status under state and Federal law.
  - (3) To conduct, support and assist research, surveys, investigations, planning activities, conferences, demonstration projects, individual counseling of postal users, and public information activities concerning the interests of individual residential postal users.
  - (4) To contract for services which cannot reasonably be performed by its employees.
  - (5) To represent the interests of individual residential postal users before the United States Postal Service, Postal Rate Commission, Congress, state legislatures, federal and state courts, and other agencies, except as this Act otherwise provides.
  - (6) To support or oppose ballot propositions concerning matters which it determines may affect the interests of individual residential postal users.
  - (7) To transmit complaints by individual postal users concerning the United States Postal Service and private postal delivery services to the United States Postal Service and other appropriate agencies. Any such agency shall promptly inform the Corporation of its response to such complaints.
  - (8) To initiate, to intervene as a party, to maintain, or to

otherwise participate on behalf of residential postal users in any proceeding which affects the interests of residential postal users.

- (b) The Corporation shall have, in addition to the rights and powers enumerated in this Act, such other incidental powers as are reasonably necessary for the effective representation of the interests of individual residential postal users.
- (c) The Corporation shall not sponsor, endorse, or otherwise support, nor shall it oppose, any political party or candidacy of any person for public office.

**Sec. 6. Representation of Citizens in Proceedings.—**

(a) Notification of Impending Proceedings.—

(1) The United States Postal Service, the Postal Rate Commission, and other agencies which regulate postal rates or services, shall notify or cause notice to be given to the Corporation in advance of the time, place, and subject of each formal proceeding of the agency, in which the Corporation may be eligible to participate. The agency shall notify or cause notice to be given to the Corporation at least thirty days before the scheduled date of such proceeding or within five days after the date and calendar for such proceeding is fixed, whichever is later. In addition, the agency shall give notice or cause notice to be given within five days to the Corporation of any filed statement proposing to modify or increase rates, services, schedule of rates or any other rating rule or to adopt or amend any rate or service rule or regulations.

(b) Intervention and Participation in Proceedings.—

(1) The Corporation may intervene as of right as a party or otherwise participate in any proceeding of the United States Postal Service, Postal Rate Commission or agency which the Corporation reasonably determines would affect the interests of individual residential postal consumers.

(2) The intervention or participation of the Corporation in any such proceeding will not affect the obligation of the United States Postal Service, Postal Rate Commission, or other agency to operate in the public interest.

(c) Conduct of the Proceeding.—

(1) When the Corporation intervenes or participates in a proceeding of the United States Postal Service, Postal Rate Commission, or other agency, it shall be subject

to all laws and rules of procedure generally applicable to the conduct of the proceeding and the rights of interveners and participants. The Corporation shall have the same rights regarding representation by counsel, participation in pre-hearing conferences, discovery, requests for issuance of subpoenas by the agency, stipulation of facts, presentation and cross-examination of witnesses, oral and written arguments, participation in settlement negotiations, and other aspects of the proceeding as are accorded to other interveners under the laws of the United States or, in instances where a proceeding is held by state or local public body, under the laws of that state, except as otherwise provided in this Act.

**Sec. 7. Judicial Review of Decisions by Public Bodies; Enforcement Actions.—**

The Corporation shall be deemed to have an interest sufficient to maintain, intervene as of right in, or otherwise participate in any civil action, proceeding or appeal for the review or enforcement of any decision by the United States Postal Service, Postal Rate Commission, or other public body which the Corporation determines would substantially affect the interests of individual residential postal users.

**Sec. 8. Representation of Members in Lawsuits.—**

- (a) If the Board or Executive Director reasonably determine that bringing a civil action against the United States Postal Service on behalf of any member or group would further the general purposes of this Act, the Corporation shall provide the legal services necessary and the expert witness services reasonably appropriate for prosecution of the action.
- (b) Any member who receives money due to a settlement or judgment attained with assistance in litigation provided by the Corporation as described in subsection (a) of this Section shall reimburse the Corporation for its expense in prosecution of the action, provided, that such reimbursement shall not exceed ten percent of the money received by the member.

**Sec. 9. Funding of the Corporation.—**

- (a) The Corporation shall have the authority to prepare a statement concerning the organization and activities of the Corporation, including the purpose, history, nature,

structure and achievements of the Corporation, and other matters which may affect the interests of individual residential postal users. The statement shall indicate that the statement is not connected to the Postal Service or any governmental agency. The statement shall indicate the procedure for becoming a member of the Corporation. The statement shall not contain an individual postal address.

- (b) The Corporation shall furnish such a statement to the United States Postal Service, which will then print a quantity of the statements sufficient to provide one statement for every residential postal address. Each such statement shall weigh no more than ( ) ounces avoirdupois. Prior to furnishing a statement to the United States Postal Service, the Corporation shall seek and obtain the approval of the Postal Rate Commission of the content of the statement. The Commission shall approve the statement if it determines that the enclosure (a) is not false and misleading, and (b) contains and is limited to the information permitted by subsection (a) of this section. The Commission shall be deemed to have approved the statement unless it disapproves the statement within fourteen days of receipt.
- (c) The Postal Service shall, subject to subsection (d) of this section, deliver to each individual post office or postal facility in the United States, a quantity of the mailings, pursuant to subsections (a) and (b) of this section, which approximately equals the number of residential addressees in the region served by the postal facility. Individual post offices and postal facilities shall deliver such mailings to every residential address in their district during regular delivery rounds.
- (d) The United States Postal Service may implement a procedure for distributing such mailings other than the procedure specified in subsection (c) of this section, unless such other procedure would be more costly to the Corporation or would be a slower or otherwise less efficient means of distributing such mailings.
- (e) The United States Postal Service shall be required to distribute such mailings within 60 to 90 days of the date on which the statement is given to the Postal Service by the Corporation.
- (f) The United States Postal Services shall not be required to deliver such mailings pursuant to subsections (c) and (d) of this section at intervals of less than six months. This provision shall not affect the obligation of the United States

Postal Service to deliver any mailings for the Corporation for which the Corporation pays postage fees.

- (g) The United States Postal Service shall bear all cost incurred in distributing mailings pursuant to subsections (c) and (d) of this Section.
- (h) Any disputes arising from the operations of subsections (a) through (g) of this section shall be resolved by negotiations between the Corporation and the United States Postal Service if possible, or by a civil proceeding in the courts of the United States. Neither the United States Postal Service nor the Corporation may fail to comply with the provisions of this Act by reason of such a dispute.
- (i) An individual may contribute to the Corporation by sending a payment to any office of the Corporation. He or she may list the names of additional contributors in his or her household who are sixteen years of age and older and the amount each has contributed.

**Sec. 10 Prohibited Acts.—**

- (a) No official or employee of the United States Postal Service, or any other public official or employee or officer, or any employee or agent of any private mail delivery service may interfere or threaten to interfere with or cause any interference with mail delivery to, or penalize or threaten to penalize or cause to be penalized, any person who contributes to the Corporation or participates in any of its activities, in retribution for such contribution or participation.
- (b) No official or employee of the United States Postal Services, or any other public official or employee or officer, or employee or agent of any private postal delivery service may prevent, interfere with, or hinder the activities described in this Act.
  - (1) A person who violates subsection (b) or (c) of this Section shall be subject to a civil penalty of not more than \$10,000. Each such violation shall constitute a separate and continuing violation of the Act.
- (c) No person shall use any list of contributors to the Corporation, nor any part of such list, for purposes other than the conduct of business of the Corporation as prescribed in this Act. No person shall disclose any such list or part thereof to any other person unless the person has substantial reason to believe that such list or part thereof is intended to be used for the lawful purposes described in this Act. A person who violates this subsection shall be subject to a civil penalty of not more than \$10,000

**Sec. 11. Board of Directors.—**

- (a) The affairs of the Corporation shall be managed by a board of directors. There shall be twenty directors.
- (b) The term of office of elected directors shall be three years and no member shall serve more than two consecutive terms. One third of the directors first elected to the board shall serve a one-year term; one third of such directors shall serve a two-year term; and one third of such directors shall serve a full three-year term. The directors shall draw lots upon their installation in office to determine the length of their first terms. The term of office of directors appointed pursuant to this Act shall end when the first elected directors are installed in office.
- (c) Directors shall meet the qualifications for delegates set forth in this Act.
- (d) The directors shall serve without salary, but each director may be entitled to reimbursement for actual and necessary expenses. The board of directors shall establish standard allowances for mileage, room and meals and the purposes for which such allowances may be made and shall determine the reasonableness and necessity for such reimbursements.
- (e) No director nor members of his or her immediate family shall, either directly or indirectly, be employed for compensation as a staff member or consultant of the Corporation.
- (f) Any director who shall handle, disburse, or receive money on behalf of the Corporation shall be bonded. Such bond shall be a cost to the Corporation.
- (g) Each director shall represent the interests of residential postal users of the United States.
- (h) Each director shall have one vote of the board of directors.
- (i) Elected directors shall be installed in office by the president of the outgoing board of directors.

**Sec. 12. Duties of the Board of Directors.—**

The Board of Directors shall have the following duties:

- (a) To establish the policies of the Corporation regarding appearances before the Postal Rate Commission, other agencies, the courts, and other public bodies, and regarding the activities which the Corporation has the authority to perform under this Act.
- (b) To maintain up-to-date membership rolls, and to keep them in confidence to the extent required by the provisions of section nine of this Act.

- (c) To keep minutes, books, and records which shall reflect all the acts and transactions of the board of directors which shall be open to examination by any member during regular business hours.
- (d) To make all reports, studies, data pertaining to the finances of the Corporation, and other information compiled by the Corporation, available for public inspection during regular business hours.
- (e) To maintain for inspection by membership quarterly statements of the financial and substantive operations of the Corporation.
- (f) To cause the Corporation's books to be audited by a certified public accountant at least once each fiscal year, and to make the audit available to the general public;
- (g) To prepare, as soon as practicable after the close of the Corporation's fiscal year, an annual report of the Corporation's financial and substantive operations to be made available for public inspection.
- (h) To report to the delegates at the annual meeting of delegates on the past and projected activities and policies of the Corporation.
- (i) To employ an executive director and to direct and supervise his or her activities.
- (j) To hold regular meetings at least once every three months on such dates and at such places as it may determine. Special meetings may be called by the president or by at least one-quarter of the directors upon at least five days' notice. One-half of the directors plus one shall constitute a quorum. All meetings of the board of directors and of its committees and subcommittees shall be open to the public. Complete minutes of the meetings shall be kept.
- (k) To carry out all other duties and responsibilities imposed upon the Corporation and the board of directors by this Act.

**Sec. 13. Appointment of Interim Board of Directors.—**

- (a) Within sixty days after the effective date of this Act, the Attorney General, the Speaker of the House, the President Pro Tempore of the Senate, the majority and minority leaders of the House, and the majority and minority leaders of the Senate of the United States shall each appoint two interim directors of the Corporation to serve until a board of directors is first elected. The interim directors shall be installed in office by the President of the United States. If the Corporation fails to reach the level required

by this Act within three years of the appointment of the complete interim board of directors, the Corporation shall be dissolved after having satisfied its debts, liabilities and obligations to the extent possible from funds made available to the Corporation. Individuals considered for appointment for the board of directors shall have the same qualifications as candidates for the permanent board of directors pursuant to this Act, and shall, to the extent possible, represent each region of the United States.

- (b) The interim board of directors shall:
- (1) Inform the residential postal users of the United States of the of the existence, nature, and purpose of the Corporation, and encourage residential postal users to join the Corporation's activities and to contribute to the Corporation.
  - (2) As soon as possible after appointment, organize for the transaction of business.
  - (3) Elect officers.
  - (4) Employ such staff as the directors deem necessary to carry out the purpose of this Act;
  - (5) Make all necessary preparations for the first election of delegates and directors, oversee the election campaign and tally the votes.
  - (6) Solicit funds for the Corporation.
  - (7) Carry out all other duties and exercise all other powers accorded to the board of directors of this Act.

**Sec. 14. Delegates.—**

- (a) The Corporation shall elect one delegate from each congressional district in the United States, including the District of Columbia.
- (b) The delegates shall serve without salary.
- (c) The term of office of delegates shall be two years and no delegate shall serve more than two consecutive terms.
- (d) No delegate nor members of his or her immediate family shall, either directly or indirectly, be employed for compensation as a staff member or consultant of the Corporation.
- (e) Any delegate who shall handle, disburse, or receive money on behalf of the Corporation shall be bonded. Such bond shall be a cost to the Corporation.

**Sec. 15. Duties of Delegates.—**

The delegates shall have the following duties.—

- (a) To publicize the activities of the Corporation in their districts.

- (b) To encourage members in their districts to participate in the Corporation's programs and activities.
- (c) To act as a liaison between the board of directors and members in their districts. To transmit to the board of directors comments, writings and suggestions concerning the Corporation from members in their districts and to inform such members of the board's response to their statements.
- (d) To vote at the annual meeting of delegates and at special meetings of delegates called by the board on matters involving basic changes in the policies and operations of the Corporation. A majority vote of the delegates shall be necessary to institute such changes.
- (e) To vote on other items submitted to delegates by the board of directors at annual and special meetings. A majority vote of the delegates shall indicate approval by the delegates of such items.
- (f) To carry out all other duties and exercise all other powers accorded to delegates under this Act.

**Sec. 16. Election of Delegates and Directors.—**

- (a) Not more than sixty days after the membership of the Corporation has reached 50,000 persons, with at least 100 members in each district, and the Corporation has received \$250,000 in contributions, the interim board of directors shall set a date for the first election of delegates and shall notify every member. The date set for the election shall be not less than four months nor more than six months after such notification.
- (b) Each general election of delegates other than the first election shall be held not less than eleven months and not more than fourteen months after the last preceding general election. The date of such elections shall be fixed at least four months in advance of the date chosen for the election.
- (c) Within eleven months of the first election of delegates, the delegates shall elect a board of directors, consisting of twenty members. Only delegates shall be eligible to run for the board of directors. Any delegate may nominate himself or herself or any other delegate for election to the board.
- (d) Subsequent elections of directors shall be held at not less than eleven months and not more than thirteen months after the last preceding general election. Elections may be held at the annual meeting of delegates if the elections would conform to the requirement of this subsection.

**Sec. 17. Qualifications of Candidates.—**

- (a) No present employee, director, consultant, attorney, accountant, real estate agent, shareholder, bondholder of the Postal Service or Postal Rate Commission shall be eligible to be a delegate or director. No delegate or director nor any candidate for delegate or director may hold an elective public office or be a candidate for an elective public office or be appointed to hold a public office.
- (b) To be eligible for election as a delegate, a candidate must:
  - (1) Meet the qualifications for candidates.
  - (2) Submit a petition for nomination.
  - (3) Be a member of the corporation and resident of the United States district which he or she seeks to represent as a delegate.
  - (4) Submit a statement of financial interest and a statement of personal background and position.
  - (5) Affirm, under penalty of perjury, that the information contained in the statement of financial interest and personal background and position is true and complete.
- (c) To be eligible for election to the board of directors a candidate must:
  - (1) Meet the qualifications for candidates.
  - (2) Be a member of the corporation and a delegate.
  - (3) Submit a petition for nomination.
  - (4) Submit a statement of financial interest and personal background and position.
  - (5) Affirm, under penalty of perjury, that the information contained in the statement of financial interest and personal background and position is true and complete.

**Sec. 18. Nomination.—**

- (a) The interim board of directors and every subsequent board of directors shall make available for inspection by any member, upon request, a list of the current members in that member's district.
- (b) A candidate for election as a delegate shall submit to the board, no later than sixty days prior to the election, a petition for nomination signed by at least [five percent] of the members residing in his or her district. Upon receipt of a member's nominating petition, the board of directors shall certify that such member is a nominated candidate for delegate.
- (c) A candidate for election as a director shall submit to the

board, no later than sixty days prior to the election, a petition for nomination signed by at least [five percent] of the delegates. Upon receipt of a member's nominating petition, the board of directors shall certify that such member is a nominated candidate for delegate.

**Sec. 19. Statement of Financial Interests.—**

A candidate for election as a delegate or director shall submit to the board of directors, not later than [sixty] days prior to the election, a statement of financial interests upon a form provided by the board of directors. The statement of financial interests, which shall be open to public inspection, shall include the following information:

- (a) The occupation, employer, and position at place of employment of the candidate and of his or her immediate family members.
- (b) A list of all corporate and organizational directorships or other offices, and of all fiduciary positions held in the past three years by the candidate and by his or her immediate family members; and
- (c) An affirmation, subject to penalty of perjury, that the information contained in the statement of financial interests is true and complete.
- (d) Such other information as the board of directors shall require candidates to disclose, which disclosure is required of other public officials at the time, and shall be in the judgement of the board of directors in the best interests of the Corporation.

**Sec. 20. Statement of Personal Background and Positions.—**

A candidate for election as delegate or director shall submit to the board, not later than sixty days prior to the election, on a form to be provided by the board of directors, a statement concerning his or her personal background and positions relating to postal issues or the operations of the Corporation. The statement shall contain an affirmation, subject to penalty of perjury, that the information contained in the statement of personal background is true and complete and that the candidate meets the qualifications prescribed for delegates and directors.

**Sec. 21. Restrictions on and Reporting of Campaign Contributions and Expenditures.**

- (a) No candidate for delegate or director may accept more than [\$100.00] in campaign contributions from any person or political committee during the year preceding the date of the election.

- (b) Each candidate for election to the board of directors or as a delegate shall keep complete records of all contributions to his or her campaign of fifty dollars or more during the year preceding the election. Such records shall be available for inspection by the public.
- (c) Each candidate shall keep complete records of his or her campaign expenditures, and such records shall be available for inspection by the public.
- (d) Each candidate, no earlier than the next day succeeding the election and no later than thirty days after the election, shall submit to the board of directors, on a form provided by the board of directors, an accurate statement of his or her campaign contributions accepted and campaign expenses incurred, and shall affirm to the board, subject to penalty of perjury, that he or she has fully complied with the requirements of this subsection.
- (e) No candidate shall accept campaign contributions from the Postal Service, the Postal Rate Commission, or a private postal delivery service.
- (f) If the board of directors determines that the candidate's campaign expenses have exceeded the limits contained in this section, the candidate shall be disqualified and may be required to pay the expenses incurred by the Corporation in mailing that candidate's statement of personal background and position. The Corporation may pursue all civil remedies to recover the cost of mailing the candidate's statement of personal background and position. In the event of disqualification, the board of directors shall call a special election to be held not fewer than four months and not more than six months after the determination of disqualification.
- (g) No candidate may use any campaign contribution for any purpose except for campaign expenditures.

**Sec. 22. Election Procedures for Delegates.—**

- (a) The board of directors shall send or have sent to each member in the district of a candidate for delegate, to be postmarked no later than twenty days before the date fixed for a special or general election, the following:
  - (1) An official ballot listing all candidates for delegate from the member's district who have complied with the requirements of this Act.
  - (2) Each such candidate's statement of financial interests.

- (3) Each such candidate's statement of personal background and positions
- (b) Each residential postal user who is a member of the Corporation on the thirtieth day preceding a special or general election may cast a vote in such election by returning his or her official ballot, properly marked, to the principal office of the Corporation by eight p.m. of the date fixed for the election. Voting shall be by secret ballot. The candidate receiving the greatest number of votes in each district shall be declared elected as a delegate.
- (c) The board of directors may prescribe rules for the conduct of elections and election campaigns not inconsistent with this Act.

**Sec. 23. Election Procedures for Directors.—**

- (a) The board of directors shall send or have sent to each delegate, to be postmarked no later than twenty days before the date fixed for a special or general election, the following:
  - (1) An official ballot listing all candidates for director who have complied with the requirements of this Act.
  - (2) Each such candidate's statement of financial interests.
  - (3) Each such candidate's statement of personal background and positions
- (b) Each member of the Corporation who is a delegate on the thirtieth day preceding a special or general election may cast a vote in such election by returning his or her official ballot, properly marked, to the principal office of the Corporation by eight p.m. of the date fixed for the election, or by casting such vote in person if an election is held at an annual or special meeting of delegates. Voting shall be by secret ballot.
- (c) Each delegate may vote for a maximum of twenty candidates for director and may cast only one vote for each candidate. If over twenty candidates each receive at least thirty percent of the vote on the first ballot, the twenty candidates with the highest number of votes shall be elected to the board. If less than twenty candidates receive at least thirty percent of the vote on the first ballot, those candidates who have received at least thirty percent of the vote shall be elected to the board, and a second ballot shall be conducted to elect candidates to the remaining positions on the board. If there are fifteen or more remaining positions left after the first ballot, then the names of the forty

candidates, excluding those already elected, who received the highest number of votes in the first ballot shall be placed on the second ballot, and the candidates receiving the highest number of votes on the second ballot shall be elected to the remaining positions. If there are less than forty candidates for the remaining positions, the names of all remaining candidates shall be placed on the second ballot. If there are less than fifteen remaining positions left after the first ballot, then the names of the twenty-five candidates, excluding those already elected, who received the highest number of votes on the first ballot shall be placed on the second ballot, and the candidates receiving the highest number of votes on the second ballot shall be elected to the remaining positions. If there are less than twenty-five candidates for the remaining positions, the names of all remaining candidates shall be placed on the second ballot.

- (d) The board of directors may prescribe rules for the conduct of elections and election campaigns not inconsistent with this Act.

**Sec. 24 Installation of Elected Candidates.—**

The president of the board of directors shall install in office within thirty days after the election all elected candidates who meet the qualifications prescribed in this Act.

**Sec. 25 Recall of Directors.—**

Upon receipt by the president of the board of directors of a petition to recall any director with the valid signatures of at least forty percent of the delegates, forty percent of the members of the district from which such director was elected as delegate, or ten percent of the Corporation's total membership, the president shall call a special election, to be held not less than four months and not more than six months after receipt of the petition, for the purpose of electing a director to serve out the term of the recalled director; provided, that no petition to recall a director may be filed within six months of his or her election. A director may become a candidate in an election following his or her own recall. A director recalled shall continue to serve until the installation in office of his or her replacement. A director who has been recalled shall be allowed to complete his or her term of office as a delegate, unless the petition for recall clearly states that its purpose is to recall a person from the office of delegate as well as director. No delegate removed from office shall be allowed to continue serving as director.

**Sec. 26 Vacancies on the Board of Directors.—**

When a director dies, resigns, is disqualified, or otherwise vacates his or her office, except as provided in section twenty-two of this Act, the board of directors shall select, within three months, a successor from among the delegates for the remainder of the director's term of office. Any director may nominate any qualified delegate as successor. The board of directors shall select the successor from among those nominated, by a two-thirds majority of the remaining directors present and voting. The successor shall be installed in office by the president of the board of directors.

**Sec. 27 Recall of Delegates.—**

Upon receipt by the president of the board of directors of a petition to recall any delegate with the valid signatures of at least forty percent of the members from such delegate's district, the president shall call a special election for the district to be held not less than four months and not more than six months after receipt of the petition, for the purpose of electing a delegate to serve out the term of the recalled delegate; provided, that no petition to recall a delegate may be filed within six months of his or her election. A delegate may become a candidate in an election following his or her own recall. The Delegate recalled shall continue to serve until the installment in office of his or her successor.

**Sec. 28 Vacancies of Delegates.**

When a delegate dies, resigns, is disqualified, or otherwise vacates his or her office, the board of directors shall hold, within three months of the date on which such vacancy was created, an election in the delegate's district for the purpose of electing a successor for the remainder of the delegate's term of office. The successor shall be installed by the president of the board of directors.

**Sec. 29 Annual Meetings of Delegates.—**

- (a) An annual meeting of delegates shall be held on a date and at a place within the United States of America to be determined by the board of directors.
- (b) All delegates shall be eligible to attend, participate in, and vote in the annual meeting of delegates. Two-thirds of the delegates shall constitute a quorum. Each delegate shall have one vote at such meeting.
- (c) Items may be placed on the meeting's agenda by the following methods:
  - (1) By request of any director or delegate not less than five days and not more than four months in advance of the date of such meeting.

- (2) By petition containing the valid signatures of at least twenty percent of the members of any district or at least one percent of the total membership. Such petition must be filed with the board of directors not less than two days and not more than five months in advance of the date of such meeting.
- (d) The form of the annual meeting of delegates shall be provided in the laws of the United States regarding not-for-profit membership corporations.
- (e) The annual meeting of delegates shall be open to the public. Members shall be given a reasonable opportunity at such meeting to present their comments, criticisms and suggestions concerning the Corporation, but members may not vote at such meeting.
- (f) The treasurer shall reimburse delegates for actual expenses necessarily incurred by them in the performance of their duties and for such expenses only.
- (h) The directors may hold a special meeting of delegates to consult with delegates on matters concerning the Corporation's policies, activities, and operations. The board of directors shall set a time and place for a special meeting and shall inform every delegate of such time and place not less than fourteen days and not more than sixty days in advance of the date of such meeting. The directors shall be required to call a special meeting when they receive a petition containing the valid signatures of over fifty percent of the delegates or at least five percent of the members or when the majority of delegates vote for such a meeting. The meeting shall be held not more than thirty days after the filing of such petition or the date of such vote.

**Sec. 30. Officers.—**

- (a) At the first regular meeting of the board of directors at which a quorum is present and subsequent to the initial appointment of directors, and at the first regular meeting of the board of directors at which a quorum is present subsequent to the installation of new directors following each annual election, the board shall elect by a majority vote of members present and voting from among the directors a president, a vice-president, a secretary, and a treasurer. The board also has the power to elect a comptroller and such other officers as it deems necessary.
- (b) Officers shall be installed by the president immediately upon their election. The term of office for officers shall be one year; provided that an officer may resign, or may be

removed from office by a two-thirds vote of all the directors. After an officer's term of office has expired, the officer shall continue to serve until his or her successor is installed.

- (c) When an officer dies, resigns, is removed, or otherwise vacates his or her office, the board of directors shall elect a successor to serve out such officer's term of office.
- (d) The officers shall exercise such powers and perform such duties as are prescribed by this Act or are delegates to them by the board of directors.

**Sec. 31. Executive Director.—**

- (a) The executive director hired by the board of directors shall have the same qualifications as a candidate. The executive director may not be a candidate for the board of directors or delegate while serving as executive director. The by-laws of the Corporation shall provide a method for discharging the executive director, but in no event shall such discharge occur unless one-half of the directors plus one shall have consented to such discharge.
- (b) The board of directors shall require all applicants for the position of executive director of the Corporation to file a financial statement. The board of directors shall require the executive director to file a financial statement annually.
- (c) The executive director shall have the following duties:
  - (1) To implement the policies of the board of directors.
  - (2) To employ and discharge employees of the Corporation.
  - (3) To supervise the offices, facilities and work of the employees of the Corporation.
  - (4) To have custody of and maintain the books, records and membership rolls of the Corporation.
  - (5) To prepare and submit to the board of directors annual and quarterly statements of the financial estimates for the operations of the Corporation.
  - (6) To attend and participate in meetings of the board of directors as a non-voting director.
  - (7) To exercise such other powers and perform such other duties as the board of directors delegate.

**Sec. 32. Relationship to Existing Law and Policy.—**

- (a) The not-for-profit corporation law applies to the Corporation; provided, that if any provision of the not-for-profit corporation law conflicts with any provision of this Act, the conflicting provision of the not-for-profit law shall not ap-

ply in such case. If any provision of this Act relates to a matter embraced in the not-for-profit corporation law but is not in conflict therewith, both provisions shall apply.

- (b) Nothing in this Act shall be construed to limit the right of any individual or group or class of individuals to initiate, intervene in, or otherwise participate in any proceeding before any regulatory agency or court; nor to require any petition or notification to the Corporation as a condition precedent to such right, nor to relieve any postal agency, court or other public body of any obligation, or affect its discretion to permit intervention or participation by a postal user or class of postal users in any proceeding or activity, nor to limit the right of any individual or individuals to obtain administrative or judicial review.
- (c) The intervention or participation of the Corporation in a proceeding or activity shall not affect the obligation of any regulatory agency or other public body to operate in the public interest.

**Sec. 33. Corrupt Practices and Conflicts of Interest.—**

- (a) No person may offer or give anything of monetary value to any director, delegate, employee or agent of the Corporation if the offer or gift influences, or is intended to influence, the action or judgement of the director, employee or agent of the Corporation in his or her capacity as director, delegate, employee or agent of the Corporation.
- (b) No director, delegate, employee or agent of the Corporation may solicit or accept anything of monetary value from any person if their solicitation or acceptance influences, or is intended to influence, the official action or judgement of the director, employee or agent in his or her capacity as director, employee or agent of the Corporation.
- (c) Any person who knowingly and willfully violates this section shall be subject to a civil penalty of not more than \$10,000.
- (d) The board of directors shall remove from any director, delegate, employee or agent of the Corporation violating the provisions of this section.

**Sec. 34. Penalties.—**

A violation of any provision of this Act pertaining to conduct by the Postal Service of officers or employees thereof shall be subject to a civil penalty of not more than \$10,000 for each violation.

**Sec. 35. Construction.—**

This Act, being necessary for the welfare of the United States and its inhabitants, shall be liberally construed to effect its purposes.

**Sec. 36. Severability.—**

If any clause, sentence, paragraph or part of this Act or the application thereof be adjudged by a court of competent jurisdiction to be invalid, such judgement shall not affect, impair or invalidate the remainder, and the application thereof, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgement shall have been rendered.

**Sec. 37. Effective Date.—**

This Act shall become effective on the date of its enactment.