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FEDERAL GOVERNMENT COMPETITION WITH SMALL BUSINESSES

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

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CONTENTS

	Page
Hearing held on July 18, 2001	1

WITNESSES

Eakes, John, Owner & President, Royal Laundry Systems	3
Hamerschlag, Arthur, Deputy CFO, Veterans Health Administration	4
Spates, Michael, Manager of Delivery Options, U.S. Postal Service	5
Tucci, Gregory, Past Owner, P.A.S.S. of Granville	7
Merritt, Rick, Executive Director, PostalWatch	9
Reisland, Scott, Owner & Manager, Denali Grizzly Bear Cabins/Campground	30
Mack, Tom, Owner & President, Tourmobile, Inc	31
Mastromarco, Dan, Travel Council for Fair Competition	34
Hart, Clyde, Vice-President, American Bus Association	36

APPENDIX

Opening statements:	
Manzullo, Hon. Donald	43
Velázquez, Hon. Nydia	44
Prepared statements:	
Eakes, John	46
Hamerschlag, Arthur	53
Spates, Michael	56
Tucci, Gregory	68
Merritt, Rick	72
Reisland, Scott	144
Mack, Tom	148
Mastromarco, Dan	165
Hart, Clyde	177
Additional Information:	
Statement of Mr. C. Jack Pearce, President, O.S.I. Management, Inc	184
Letter to Matthew Szymanski, Special Counsel, from Michael Jimenez, Strategic Impact, Inc	196
Letter to Congressman Manzullo from Greg Felt, Canyon Marine, Inc	200
Letter to Mr. Spates from SBA	217
Letter to Mr. Spates from Chairman Manzullo	221
Letter to Chairman Manzullo from PostalWatch	225
Letter to Chairman Manzullo from USPS	236

FEDERAL GOVERNMENT COMPETITION WITH SMALL BUSINESS

WEDNESDAY, JULY 18, 2001

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Committee met, pursuant to call, at 10:15 a.m. in room 2360, Rayburn House Office Building, Hon. Donald A. Manzullo (chairman of the Committee) presiding.

Chairman MANZULLO. The full Committee on Small Business will come to order.

Today, the Committee will examine the extent, impact and fairness of direct competition by the government with small businesses. We will hear testimony on a VA hospital in Illinois competing with a private laundry owner; the Postal Service competing with private mailbox services, including a couple from Granville, New York, driving them out of business; the National Park Service competing with private recreational services, including an Alaskan campground owner and local Tourmobile owner; and the Federal Transit Authority competing with charter bus services.

We also have written testimony on the Air Force and Army providing river rafting services in Colorado—the Air Force providing river rafting services; I did read that right—in competition with private outfitters there. That witness could not be here today, but his statement is on the table, along with other witness statements provided to the Committee.

The relevant federal agencies have also been invited to participate. Two of these agencies will present witnesses today, while the others have chosen only to present material for the record. Evidently they do not have enough bureaucrats to send one here to testify on their behalf.

These examples represent a larger pattern, a pattern that costs small businesses contracts, revenues and jobs. Such competition by the government seems unfair by definition since the government shares little or none of the regulatory and tax burdens that it imposes on these small businesses.

I look forward to the testimony of the witnesses before us. On behalf of the Committee, I thank you all for coming, especially those who traveled from quite a distance.

I now yield for an opening statement by the gentlelady from New York, Congresswoman Velázquez.

[Chairman Manzullo's statement may be found in appendix.]

Ms. VELÁZQUEZ. Thank you, Mr. Chairman. I am happy that the Committee is examining this issue today because I believe these

problems are a core mission of advocating small business. This Committee has addressed the burden of government regulation and paperwork, which drain time and money from small business and discourages them from competing for federal contracts.

In the past year, we have focused a great deal of attention on the practice of bundling, which is the systematic exclusion of small business from skilled federal contracts when they are bought out and handled by prime contractors. We have proven time and time again that this practice does more than just discriminate and exclude. Bundling is costly, wasteful, inefficient and more likely to procure lower quality goods and services for the federal government.

In addition, this Committee and others have held a series of hearings in past years on the Federal Prison Industries' anti-competitive practices for government contracts. Last month, we took a fresh look. We learned that UNICOR paid a fraction of the federal minimum wage, remained exempt from OSHA requirements and can dictate pricing. No company in this country could possibly get away with that. All of these practices hurt American entrepreneurs' right to compete and win lucrative federal contracts.

Today we focus on an even more pernicious phenomenon: the federal government's direct competition with small business for goods and services. This is exactly opposite the ideal of the market economy. No company should fear direct competition from the government, which is more entrenched, subsidized, protected and powerful than they could ever be.

These are difficult activities to ferret out because they have been restricted for a generation first by the Office of Management and Budget's Circular 876 and later by the 1998 FAIR Act. Under scrutiny, anti-competitive government activities have become more subtle. That is why we are here: to look a little deeper.

We will hear the concerns of several small businesses here, in particular both charter contracts, one by federally backed public transit authority, as well as the practice of the post office which imposed requirements on independent mailbox owners that drove away customers.

Our aim here is simple; to continue to remove barriers and obstacles the federal government has placed in the way of America's small businesses. Our entrepreneurs have reason to expect the government will not compete with them directly, just as they expect the government to allow them to compete fairly for federal contracts.

Thank you, Mr. Chairman.

Chairman MANZULLO. Thank you very much, Congresswoman Velázquez.

Our first witness is John Eakes.

Mr. EAKES. Yes, sir.

Chairman MANZULLO. John is a constituent of mine, the owner and president of Royal Laundry Systems in Marengo, Illinois. It is interesting that none of the small business people in Marengo, which is a very small town in the Midwest, had proffered written testimony in our last hearing dealing with competition from Federal Prison Industries.

John, we look forward to your testimony. The rules are you will see a little light in front of you. When it gets to four minutes the yellow light goes on, and then when the red light goes on you should conclude by that time or very shortly thereafter.

We look forward to your testimony. The testimony of all the witnesses and all the Members of Congress will be incorporated into the full record without objection.

Thank you.

STATEMENT OF JOHN EAKES, OWNER/PRESIDENT, ROYAL LAUNDRY SYSTEMS

Mr. EAKES. Mr. Manzullo, thank you very much. I appreciate the opportunity——

Chairman MANZULLO. John, could you put the desk mike closer to you, please? Thank you.

Mr. EAKES. Thank you very much. I appreciate the opportunity to be here.

My name is John. My last name is Eakes. I am the president and owner of a company called Royal Laundry Systems of Wisconsin, Inc. Years ago I had laundry plants in Wisconsin, Janesville and Racine and on and on. That is why it is a Wisconsin corporation.

I am here because I am very concerned about competing with the United States Government, especially the V.A. hospital system and especially the V.A. hospital located in Hines, Illinois. I also compete with the prison system, and I have lost business to the prison system. I have already lost business to the V.A. hospital system.

Now, I pay a considerable amount of taxes. In fact, I would rather have the tax and let the IRS have the government or the profit, but it does not sound fair to me to compete with a government entity with my tax dollars. It appears that I am paying taxes to put me out of business.

Now, I have lost several competitive bids to the V.A. hospital. They are bidding out of their minds. Number one, they do not know how to bid. They do not know how to price it, and it is not a level playing field. I do not mind competition. I have been fighting competition all my life. But, I like a level playing field, and the U.S. Government, the V.A. hospital system, is not a level playing field.

They bid on an account, which is a state account. It is a rehab center, and they bid a price of 23 cents a pound. Now, attached to my attachment here in the back of the room you will see a Laundry News article that was put out by the V.A. hospital system that their cost is over 35 cents a pound, so how can they bid 23 cents? When you do a half a million pounds of linen times 11 or 12 cents, they are losing a lot of money.

What really concerns me is they are calling on one of my largest medical centers in the Chicagoland area. If they get that one, I will lay off about 40 people. These are God's poor people. They make $7 or $8 an hour. They pay taxes along with everybody else. That is the kind of jobs we are going to lose.

My laundry plant is located in Harvard, Illinois. That is McHenry County. I also have a laundry plant in Rockford, Illinois, which is Boone County. I still have one down near St. Louis, Missouri.

I already mentioned that I pay a lot of taxes. You name it, I pay it. Now if I happen to make a dollar, if I get real lucky and make a dollar, the IRS wants 39 cents out of that dollar, and then the State of Illinois wants another three cents, so they get 41 cents.

I have never received any federal grants or any contracts of any kind.

Thank you very much.

[Mr. Eakes's statement may be found in appendix.]

Chairman MANZULLO. That is right to the point, John. We appreciate that very much.

The next witness is Arthur Hamerschlag. Is that correct?

Mr. HAMERSCHLAG. That is correct.

Chairman MANZULLO. Thank you. He is the deputy CFO——

Mr. HAMERSCHLAG. Correct.

Chairman MANZULLO [continuing]. At the Veterans Health Administration here in Washington. I look forward to your testimony, Mr. Hamerschlag.

STATEMENT OF ARTHUR HAMERSCHLAG, DEPUTY CFO, VETERANS HEALTH ADMINISTRATION

Mr. HAMERSCHLAG. Thank you very much, Mr. Chairman. I have a brief statement, but with your permission I will read an even briefer summary.

I appreciate the opportunity to be here, Mr. Chairman. I think the record of the Department of Veterans Affairs in support of small business is a good one, and under the leadership of Secretary Principi we are taking steps to further improve that record.

The V.A. has authority to purchase health care resources needed for the veterans' health care from community providers and in limited circumstances to sell resources to other community entities.

Let me first say that V.A. has one primary mission, and that is to serve the needs of veterans and to do so in a cost effective and efficient manner. It is not in V.A.'s interest to enter into a contract that would have a negative impact on any community provider of that service.

V.A. has taken several steps to ensure that the agency acts responsibly with the contracting authorities it does have, and basically we ensure that any resource to be sold is consistent with statute, policy and common sense. As a matter of policy, Mr. Chairman, V.A. is not interested in competing with any other provider of a community health care resource or causing any harm to any commercial provider of a health care resource.

Our policy and our practice is simple. If V.A. becomes aware of an adverse impact to a commercial interest, we will not provide those services. That was done when our laundry at Hines considered contracting with Lorel University and will be done for any proposal about which we receive notice of a complaint. That is and will continue to be our practice. I think this example proves that our policy is in place and in fact does work.

Mr. Chairman, you should also be aware that at this time the Hines V.A. Medical Center does not rely on laundry services of any other non-V.A. entity and does not propose to do so.

Mr. Chairman, I would like to say again I appreciate the opportunity to be here. I would be happy to answer any questions you or the Members of the Committee may have.

[Mr. Hamerschlag's statement may be found in appendix.]

Chairman MANZULLO. We have a vote, so we are going to vote and come right back. Thank you.

[Recess.]

Chairman MANZULLO. Our next witness will be Michael Spates, who is the Manager of Delivery Options, U.S. Postal Service, in Washington, D.C.

Mr. Spates, we look forward to your testimony. Thank you for coming this morning.

STATEMENT OF MICHAEL SPATES, MANAGER OF DELIVERY OPERATIONS, U.S. POSTAL SERVICE

Mr. SPATES. Good morning, Mr. Chairman and Committee Members. My name is Michael——

Chairman MANZULLO. Could you pull that mike closer to you? Thank you.

Mr. SPATES. My name is Michael Spates. I am the Manager of Delivery Operations—I know it says options, but it does still fit the description—for the U.S. Postal Service. I ask that my full written testimony be submitted for the record. I will now give you a brief overview of that testimony.

I am happy to be here today in response to your request to address the issue of competition by the Postal Service with small businesses. The request cited in particular competition with a family owned commercial mailing receiving agency or CMRA, as we call it. You are seeking to determine the extent, impact and fairness of this competition, and I will address these issues.

The Postal Service recognizes that small businesses help drive our nation's economy. We are an important enabler of small business, a vital communications and distribution link. The Postal Service has a long, ingrained tradition of promoting businesses, especially small businesses, offering services and meeting their special needs. In fact, the Postal Service website, usps.com, has a link entitled Tools to Help Small Businesses. It is very educational and helpful.

In addition, the Postal Service has a long history of being a leader in contracting with small and minority owned businesses, a partnership that benefits us both. Small businesses are critical to the ongoing success of the Postal Service, and we are continuously looking for ways to strengthen our relationship, not ways to diminish it.

At the same time, the Postal Service has to maintain a delicate balance between meeting the needs of the business customer and the consumer protection needs of the mailing community. The commercial mail receiving agency rules improve the security of the mail by strengthening the requirements involved in the application and for use of a private mailbox. The end result benefits both businesses and consumers by reducing opportunities to use a private mailbox for fraudulent purposes.

Provisions associated with private mailboxes, it is important to note, mirror the same provisions and regulations on post office

boxes. Any perception that the Postal Service is seeking to compete unfairly with CMRAs may arise from allegations that recent rule changes were designed to make it difficult for CMRAs to operate and thus create a competitive advantage for the Postal Service. The rules in question were intended to fulfill the U.S. Postal Service's consumer protection responsibilities.

Small business interests participated in the development of these new rules and standards. They were represented by the CMRA industry, the Small Business Administration, the National Federation of Independent Businesses and the National Association of Self-Employed.

The evolution of CMRA rules, which include mutually agreed upon modifications and compromises, is a result of ongoing meetings with these various interest groups and the positive support of the CMRA industry and their representatives.

During the discussion stages of developing the final rule, there was opposition from small business representatives who wanted to continue using the designator suite for a business, implying that it was an office space when actually it was a mailbox.

Critics of the small business proposal, primarily the law enforcement representatives, strongly felt the use of suite could be deceptive to consumers. Also, a representative of Attorney Generals from 28 states supported the original proposal of the Postal Service to use PMB, which means private mailbox, just like PB or POB means post office box. It designates a box.

In response to the revised proposal, 50 state Attorney Generals plus the District of Columbia and the Virgin Islands signed a letter opposing the allowance of an alternative to the pound sign as a designator instead of PMB. Some states are considering legislation at the state level to tighten these requirements more.

As I stated previously, the Postal Service is attempting to maintain a delicate balance. There is a significant input from the regulatory agencies such as the Department of Justice, the Federal Trade Commission, state and local law enforcement. The initiative was not an effort of the Postal Service to compete with CMRAs.

It is important to note what the CMRA industry themselves are saying about fraud. I would like to reference the guidance that is put out by a CMRA association known as the Associated Mail and Parcel Centers. They represent 2,700 CMRAs. It was put out in 2001, and it was written by its president and executive director, Charmaine Finney, who is also the chair of the Coalition Against Unfair U.S. Postal Service Competition. Ms. Finney was a positive participant in our meetings.

I would like to quote their training manual. "It is important to note that CMRAs have historically been recognized as safe harbor for criminal elements. The history of crooks and rip off artists utilizing the CMRA is legion. The California consumer protection law may appear to be onerous to many operators, but if there had not been a high number of people perpetuating scams in California CMRAs, it would not have been passed." This is a quote directly from their training manual.

In conclusion, though some critics charge that the enactment of CMRA rules create an appearance the Postal Service misused its regulatory authority to hinder competition, the Postal Service

proudly believes it acted responsibly in addressing the concerns of those impacted by the regulation.

The end result is a stronger, more effective working relationship among the CMRA, small businesses, law enforcement and the Postal Service, resulting in enhanced consumer protection.

Thank you.

[Mr. Spates' statement may be found in appendix.]

Chairman MANZULLO. Thank you very much.

Our next witness will be Mr. Gregory Tucci, former owner of the P.A.S.S. of Granville, New York. Mr. Tucci, we look forward to your testimony.

Could you move the microphone closer to you? You might want to lift it up a little bit there. Thank you.

STATEMENT OF GREGORY TUCCI, PAST OWNER, P.A.S.S. OF GRANVILLE (DEFUNCT)

Mr. TUCCI. Chairman Manzullo and distinguished Members of the Committee, thank you for this opportunity to address the Committee today and share with you my experience as a small business owner who made the fatal mistake of opening a business in competition with the United State Postal Service.

My name is Gregory Tucci, and in June of 1997 I opened a mail and parcel center in the small town of Granville in upstate New York. My business, named P.A.S.S. of Granville, was the type of business the Postal Service refers to as a commercial mail receiving agency or CMRA, but we offered more services than this implied.

One week prior to opening the store, I went and visited Roger Curtis, Postmaster of the Granville Post Office, to discuss my new venture, and he informed me that all we needed to do to receive mail for our customers was to file a list of our customer names and box numbers with him once a year. He made no mention of Form 1583. Hence, they had none on file when the new regulations took effect.

Like many businesses, we got off to a slow start, but many prospective customers were interested in the services we offered over and above what they could get at the post office. Unlike the post office, our facility was fully handicapped accessible and provided customers with 24 hour secure access. Several prospects expressed interest and indicated they were thinking about switching to our service when their P.O. box rental expired.

In late May, Postmaster Curtis personally delivered a copy of the new regulations governing CMRAs to us. He admitted not understanding the new rules and was unable to explain any of the confusing and ambiguous details. He also presented us with a single copy of a Form 1583 to be filled out and signed by every one of our customers.

My wife, Elaine, the store manager, understood them perfectly. She concluded that we could be in for big trouble. She proved to be right. Every single one of our mailbox customers refused to execute the Form 1583 after reading the Privacy Act Statement on the back of the form, which stated that their home address and personal information could be released to anyone who asked for it if they were using our mailbox for business purposes. They felt this was a massive invasion of their privacy and violated their Fourth

Amendment rights, while posing a threat to their safety and the safety of their loved ones.

Those not using the box for business could see no reason to list the names and ages of their children. Parents are advised not to release this information for the safety of their children, and this was a major concern to them.

This was only the beginning of our problems. During the next few months, at least two dozen people came to the store to apply for mailboxes; however, when presented with Form 1583 changed their minds, citing the same reasons as our existing customers. Several of our mailbox customers just decided against the hassle and let their mailbox rental agreements expire without renewing.

We started losing significant revenue, and our cash flow became so critical that when tragedy struck and Elaine's mother passed away in July of 1999, we could only afford to close the store for one day in order to attend the funeral.

In August of 1999, we were notified by Postmaster Curtis that our store did not comply with the CMRA regulations. We filed a list of our customers, complete with addresses as required, but we had no completed Form 1583 to offer him. We had no feasible way to verify that each customer actually resided at the address we had on file.

We received a certified letter from Postmaster Curtis on September 29 threatening to shut off our mail delivery on October 13 if we continued to be in non-compliance. We promptly notified all our customers and stopped collecting rent from them. Despite the threat of mail disruption, our customers still refused to file the 1583 form, and on October 13, 1999, all mail delivery was discontinued to our customers.

After the shutting down of our mail delivery in what could be characterized as retribution for doing business with a postal competitor, the post office made our customers jump through hoops trying to collect their mail that was being held hostage.

With the permanent loss of all mailbox income, as well as the sales of other products and services to our mailbox rental customers, our business began to hemorrhage red ink. Our financial backer saw only disaster ahead and promptly withdrew all support. P.A.S.S. of Granville closed its doors for the last time on November 20, 1999.

Filing bankruptcy, combined with the loss of her mother, our business and our house, devastated my wife, Elaine. She was diagnosed with severe clinical depression and remains under a doctor's care today.

The Postal Service used its regulatory powers to run us out of business. It is as simple as that. The Postal Service characterized all private mailbox customers as criminals while claiming the CMRA regulations were necessary to prevent mail fraud and identity theft. Our customers were not criminals. They were lawyers, teachers, people with disabilities, survivors of domestic abuse and small business owners: in other words, Americans with constitutional rights.

What I find most disturbing about this entire ordeal is that the Postal Service launched a regulatory assault on an entire industry of small business competitors without ever demonstrating any need

for the regulations. A recent report from the Postal Service's own Inspector General confirms this. By the time we closed our doors, these regulations had disrupted the entire private mailbox industry to such a degree that I could not even sell our mailboxes at fire sale prices.

The Postal Service showed absolutely no regard for the impact that these regulations could have on CMRAs and their customers, requiring every small business in America who used a private mailbox to change their address and purchase all new stationery, marketing materials and business cards, potentially driving them out of business. In the words of Timothy McVeigh, our customers were "just collateral damage."

The USPS showed no concern for our customers' privacy objections or for the expense of changing their address. They took no pity on victims of domestic violence who had found a safe haven. They did not care if we were driven into bankruptcy. Frankly, I am of the belief that shutting down small, private mailbox businesses such as mine was the sole purpose of the regulations in the first place.

We ran an honest business and worked hard to build our reputation. It is too late to save our business, but it is not too late to save our fellow mailbox stores, their small business customers or all the other small businesses that will undoubtedly suffer a similar fate as the Postal Service continues leveraging its vast regulatory power and exemption from the Administrative Procedures Act to gain competitive advantage over an ever increasing number of small business markets.

[Mr. Tucci's statement may be found in appendix.]

Chairman MANZULLO. Thank you very much.

Our next witness is Rick Merritt, who is the executive director of PostalWatch out of Virginia Beach. We look forward to your testimony, Mr. Merritt.

If you could take the mike? Thank you.

STATEMENT OF RICK MERRITT, EXECUTIVE DIRECTOR, POSTALWATCH

Mr. MERRITT. Thank you, Chairman Manzullo and honorable Members of the Committee. Thanks for this opportunity to appear here before you today, and thank you for the very important work that you do on behalf of the small business community around the country.

My name is Rick Merritt. I am the executive director of PostalWatch, a grassroots organization founded to provide small businesses with a voice in postal matters. My statement was kind of short, but Mr. Spates brought up a few issues that I would like to address before I get started.

Mr. Spates indicates that the Postal Service cooperated with the small, private mailbox industry and small business groups in preparing these regulations. The truth of the matter is that these organizations only became involved after the Postal Service promulgated the rules as final rules after receiving over 8,000 comments opposing and only ten supporting the rules.

I also might add that I find it interesting that Mr. Spates brings up the Federal Trade Commission as the last time that we checked they had no position on the private mailbox issue.

He mentions a consumer protection responsibility on the part of the Postal Service. Unfortunately, I do not think the Postal Service based on the last time that I read Title 39 has the authority to decide what it perceives as deceptive and that is in fact the domain of the Federal Trade Commission.

Moving on with my statement, a growing number of federal establishments are attempting to grow their budgets outside the appropriations process by entering a broad range of competitive endeavors. Of federal competitors, the Postal Service, with $67 billion a year in revenues, is by far the largest and most problematic. Its unique ability to regulate without protection afforded by the Administrative Procedures Act and disrupt the mail delivery of its competitors puts it in a class of its own.

The CMRA regulations and rules that we have been discussing with the last two witnesses, although modified, are still problematic to the small businesses and their customers that operate private mailbox facilities. Despite the changes that have been implemented over the last two years, the rules remain onerous, fundamentally flawed and ultimately unsustainable.

In executing this anti-competitive scheme, the Postal Service, claiming exemption from the Administrative Procedures Act, misused its regulatory power to the detriment of a commercial competitor. It is clear private mailboxes compete with the Postal Service for P.O. box rental business.

In 1995, prior to the implementation of these rules, the Postal Service had an 8.7 percent annual growth rate in P.O. box revenues. By 1997, the year these rules were first proposed, the growth rate had fallen to 1.3 percent. In that same year in November, the Postal Service in their five year strategic plan referred to the industry as rapidly growing and a significant competitor.

The fact that they are a competitor to the Postal Service is clear. What is unclear is why the Postal Service chose not to do the type of due diligence that a federal agency has a public policy responsibility to do when regulating a competitor.

These are responsibilities that were clearly put forth by the U.S. Justice Department Antitrust Division in 1979 when the Postal Service attempted to regulate magnetic computer tapes as magically becoming letter mail. The Justice Department gave it clear guidance on what its requirements were, one of which was to demonstrate that there was a need.

The Postal Service has done no studies on the criminality and, quite frankly, has no evidence as to any significant or disproportional criminality taking place at private mailbox facilities. It also did not conduct an impact study to determine what the economic and, in the case of the Tuccis, life altering effects these regulations would have on the small business people that they were regulating.

Notwithstanding, the Postal Service has produced no factual evidence as to any disproportional or significant criminality emanating from CMRAs, and consequently they have created a regulatory scheme that has damaged their competitors without documenting a need or demonstrating that they gave any concern for

the impact of their regulatory policies. This is just poor public policy and realistically cannot be tolerated.

The Postal Service unfortunately has a long history going back to the Hoover Administration of anti-competitive practices, referring to the airmail scandals in the 1930s. We cannot give deference to the Postal Service saying that they think these rules are important and necessary and thus we should allow them to regulate their competitors without documenting the need. That I think is the single, essential aspect of this.

I see I have run out of time. Unfortunately, I have a lot more to say, Mr. Chairman. Thank you very much.

[Mr. Merritt's statement may be found in appendix.]

Chairman MANZULLO. Thank you for coming. I have just a couple questions here.

Mr. Hamerschlag, did you say that Hines V.A. Hospital is not engaged in doing the commercial laundry?

Mr. HAMERSCHLAG. That is correct, Mr. Chairman. We checked twice before the hearing and double checked. At this time, they are not providing commercial laundry services, to our knowledge.

Chairman MANZULLO. Mr. Eakes, do you have anything to the contrary on that?

Mr. EAKES. They do have and were processing it. If they stopped, Mr. Chairman, they must have stopped just recently. They had a state bid called John J. Madden, which is located near Hines. They also have a large hospital on the south side.

I have attended the bid meetings. They received the bid, so if they are not processing the linen I wonder who is?

Chairman MANZULLO. Do you have any response to that, Mr. Hamerschlag?

Mr. HAMERSCHLAG. The Madden contract was terminated June 30. As far as I know, we checked with the Hines people, and they say they are not considering any commercial work at this point in time.

Chairman MANZULLO. So they do no laundry other than just in-house?

Mr. HAMERSCHLAG. Yes. Correct. It is all through V.A. facilities.

Chairman MANZULLO. Okay. What about for other facilities? Do you know for other hospitals or other not-for-profits?

Mr. HAMERSCHLAG. No. They are not doing work for anyone other than V.A. facilities.

Chairman MANZULLO. Right there?

Mr. HAMERSCHLAG. They may be doing work for other V.A. facilities, but no non-V.A. facilities.

Chairman MANZULLO. Okay. Okay. Evidently, the notice of the hearing took care of your problem, John. We appreciate V.A. jumping on this right away as soon as you got notice from us.

Mr. Eakes, if you have any further problems on that contact us or, Mr. Hamerschlag, would he have the ability to contact you directly on that?

Mr. HAMERSCHLAG. Absolutely.

Chairman MANZULLO. Okay. Thank you very much. I appreciate that.

I have some questions. Mr. Spates, in your testimony you said that the provisions associated with private mailboxes mirrored the regulations associated with post office boxes. Is that correct?

Mr. SPATES. Yes, sir.

Chairman MANZULLO. Do people who go into the U.S. Post Office have to fill out a form similar to 1583?

Mr. SPATES. Yes, sir, they do.

Chairman MANZULLO. Is it the same form?

Mr. SPATES. It is called a 1093. The 1583 is similar to a 1093.

Chairman MANZULLO. It is similar?

Mr. SPATES. The information is the same.

Chairman MANZULLO. Does it ask for the names and the ages of the children?

Mr. SPATES. That I would have to check.

Chairman MANZULLO. Well, you should know that. Do you have that form with you?

Mr. SPATES. No, sir, I do not, but I——

Chairman MANZULLO. Why do you not have that with you? I want it before you leave, or you are not going to leave the room.

If anybody is here from the post office, I would like you to retrieve that form immediately and bring it to my desk.

Is there anybody here with you?

Mr. SPATES. Yes, there is.

Chairman MANZULLO. All right. You can use our computers if you want. I would expect you to get up and leave right now to get that form. Could you instruct somebody to do that?

Could you take them to our computer so they could dig it off the website? Thank you. We will come back to you on that.

Mr. SPATES. All right.

Chairman MANZULLO. Now, I noticed in your testimony that you did not mention anything about the IG's report from Kenneth C. Weaver, the Chief Postal Inspector, dated April 9, 2001. Is that correct?

Mr. SPATES. Are you talking about the IG's report that went to Mr. Weaver and to Mr. Potter?

Chairman MANZULLO. That is correct.

Mr. SPATES. Right.

Chairman MANZULLO. You mentioned nothing about that in your testimony.

Mr. SPATES. I will be glad to. I took an excerpt out of the response. I am very familiar with it. Mr. Weaver and Mr. Potter both responded to the IG's audit, taking exception to the fact that they only interviewed in their audit people who were opposed to regulations. They did not talk to a single one of the state Attorney Generals involved or other consumer protection interests.

Chairman MANZULLO. So you are saying that there is a problem with the Inspector General's Office and the post office?

Mr. SPATES. The conclusion, and I am speaking for myself right now. The conclusion——

Chairman MANZULLO. I would expect you to speak on behalf of the post office——

Mr. SPATES. All right.

Chairman MANZULLO [continuing]. Because you are here in that capacity. I appreciate your personal opinions, but you are here representing the government.

Mr. SPATES. I am very familiar with the IG's audit and the various stages of that audit. We felt it was not objective in the fact that it only interviewed opponents.

Chairman MANZULLO. What we can do here is I can have a special panel and bring in your people and then bring in the people from the mailboxes that feel they got the brunt of it, and then you could have testimony right here. We can draw the conclusions ourselves, present that to Congress, and perhaps they may want to have some kind of remedial legislation on it.

I am just astonished that you are dismissing outright the report of your own IG. I mean, this is a very damaging report.

Mr. SPATES. The IG said several things in that report, and that is the Postal Service took extra steps. Even though they were not required from a regulatory standpoint to do certain things, the Postal Service took extra steps after they published the first rule to get all the reactions from the industry. We worked out compromises and put out subsequent modifications to their rule.

Chairman MANZULLO. No. This statement from the IG says, "Our audit revealed the Postal Service complied with internal rule making procedures, revising rules for commercial mail receiving agencies. In some cases the Postal Service went further and accommodated the affected parties than internal procedures required. However, the Postal Service did not fully assess the impact of revised rules on receiving agencies and their box holders."

Do you agree with that?

Mr. SPATES. What they are referring to in that last statement—the first statement is accurate, and that is what I just paraphrased a moment ago.

What they are talking about on the impact was primarily the cost. Mr. Merritt did a cost study that became quoted in the industry press as far as how much it would cost these people to change stationery and other costs.

Chairman MANZULLO. Did the——

Mr. SPATES. The IG—I am sorry.

Chairman MANZULLO. Go ahead and finish your statement.

Mr. SPATES. The IG reviewed that cost analysis, and it had problems with it also. It said it was over exaggerated.

What the Postal Service did to help mitigate any cost consequences for CMRAs is it delayed the implementation of the requirements. They do not go into effect as far as the addressing requirements until next week, so they have known about this for almost three years as far as the addressing changes.

During their normal turnover of stationery, depending on whether they wanted to use the pound sign or the PMB sign, they were well aware it was coming.

Chairman MANZULLO. Well, there is more impact than changing stationery. The other side of the impact is running people out of business. That is what happened to Mr. Tucci.

Did the post office comply with SBREFA on this?

Mr. SPATES. I am sorry. I did not hear the question.

Chairman MANZULLO. Did you comply with SBREFA? Do you know what that is?

Mr. SPATES. No. I am sorry.

Chairman MANZULLO. That is the Small Business Regulatory Enforcement Fairness Act. It applies to government agencies, but not to the post office.

We will have an amendment to make the post office fully comply with all the other regulations that are required of other federal agencies. I am sure that Mrs. Velázquez would probably join me in that to make sure.

Would the post office mind, just as a matter of a courtesy to the Chair, doing a cost impact analysis as if you had to comply with SBREFA?

Mr. SPATES. I will have to see what those requirements are.

Chairman MANZULLO. See, now the shoe is on the other foot. Those are rules and regulations that apply to all other agencies that should apply to you. That is what these gentlemen are talking about here.

Mr. SPATES. We will do the cost analysis to the best of our ability. We will meet the requirements.

I just wanted to point out we submitted in testimony in October, 1999, our cost analysis, a critique of the cost analysis done by Mr. Merritt. In there it shows what the real consequences are.

Chairman MANZULLO. What about Mr. Tucci? Is he a consequence?

What happened to you, Mr. Tucci? Why did your customers not want to fill out Form 1583?

Mr. TUCCI. Among our customers, we did have an abused spouse.

Chairman MANZULLO. Could you put that closer to you?

Mr. TUCCI. Among our customers, we had an abused spouse who did not—she used her mailbox for business purposes, too. With the way the regulations were, her spouse could find her by going into the post office and asking where her physical address is. It would be given to him.

Chairman MANZULLO. Just a second. Mr. Spates, if somebody comes to the Granville, New York, postmaster and asks, does so and so have a post office box here, is the postmaster at liberty to give the name of a post office box holder?

Mr. SPATES. The regulations used to be if somebody was doing business out of a post office box, a business, you could provide the name of the business owner, but that is not true.

Chairman MANZULLO. If they are doing business out of the post office box?

Mr. SPATES. Out of the post office box, yes.

Chairman MANZULLO. Okay. Go ahead.

Mr. SPATES. That is not true. That information will not be provided just across the counter like it was before. It has to come from some law enforcement agency through a request. The same is also true for 1583.

Chairman MANZULLO. This says in Box 12 on Form 1583, "If applicant is a firm, name each member whose mail is to be delivered." Then there is a parenthesis, "(All names listed must have verifiable identification. A guardian must list the names and ages of minors receiving mail at their delivery address.)"

Does that mean that parents have to disclose the names of their children?

Mr. SPATES. To my understanding, yes. I am not the expert on the requirements.

Chairman MANZULLO. You are the expert on it. That is why you are here.

Mr. SPATES. I just want to clarify something, and that is the reason for that is there could be mail received at that house to Joe Smith. We do not know whether Joe Smith is a person perpetuating a fraud, an older person, or is it one of the minor children of the family?

Chairman MANZULLO. But if they have the same last name? Do you mean every time somebody has another kid they have to file an amended 1583?

Mr. SPATES. I do not think it has gone that far.

Chairman MANZULLO. But that is what this says.

Mr. SPATES. If there is a change in who is receiving mail there, you have to list it.

Chairman MANZULLO. Now, I am Rural Route, Egan, Illinois. We lost our post office. It got merged with Leaf River. It comes to 792 East Lightsville Road.

We get names of all kinds of people who supposedly live at that household. I do not think the post office looks at the name of each addressee and says, does that addressee live at this house or receive mail at that box.

Mr. SPATES. The point is a 1583 is filled out saying I am giving permission for the CMRA to act as my agent. Other people in your house can receive mail while they are staying there. It does not mean that you are their agent.

Chairman MANZULLO. A parent is the natural guardian and agent with the ability to consent to medical care. Surely that would carry over with the ability to consent to receiving mail at the same P.O. box or residence as the child.

Mr. SPATES. I do not know if you are talking about your private mailbox. I am talking about——

Chairman MANZULLO. No. I do not have a private mailbox.

Mr. SPATES. I mean your personal mailbox.

Chairman MANZULLO. That is correct.

Mr. SPATES. I am sorry.

Chairman MANZULLO. That is okay.

Mr. SPATES. I am talking about the CMRA is acting as an agent. That means they are entitled to receive mail for those people who sign the 1583.

What happens sometimes in cases of divorce is somebody will submit a fraudulent 1583 to get his or her spouse's mail. These are the people who I am authorized to receive the mail for.

Chairman MANZULLO. What I do not understand is that I, with my mailbox, do not have to sign any form to receive any mail. What about Occupant?

Mr. SPATES. Where it says——

Chairman MANZULLO. Yes. What about Rural Delivery? How about the political junk mail that we send out?

Did you get your form yet? Did that form come yet? We can check it later.

Mrs. VELÁZQUEZ?

Mr. PASCRELL. Would the gentlelady yield?

Ms. VELÁZQUEZ. Sure.

Mr. PASCRELL. Mr. Chairman, I wanted to go back to your line of pursuit. I know Mr. Spates is the messenger.

In examining this form, it is a very serious accusation that was made in the testimony that there was not a compelling need to change the regulations. I do not know exactly where I stand on whether there was.

What are the statistics? I mean, it would seem to me in light of the questioning by the Chairman and the example of children that was there an intent that there might be a front organization and that literature may be getting to kids that we would have no control over? What is the real reason for doing this in the first place?

Mr. SPATES. The real reason is if I put Joe Smith was a minor child——

Mr. PASCRELL. Right.

Mr. SPATES [continuing]. And we did not know that, Joe Smith could have been an adult in there receiving running some kind of a scam. If we see Joe Smith and we know Joe Smith is a child, we are not going to assume there is a possibility of a scam.

There are certain indicators that CMRAs have put out for looking for scams when mail comes into one of those——

Mr. PASCRELL. But what was the original basis of changing that particular regulation? Did you have a plethora of information which led you to conclude that there were perpetual frauds? I mean, did law enforcement come to you and say this is what we recommend; you would make our job a lot easier. Is that how that happened?

Mr. SPATES. How the regulations got——

Mr. PASCRELL. Or none of the above? Tell me.

Mr. SPATES. A combination of all the above. The testimony back in October, 1999, was the Inspection Service presenting cases of mail fraud, significant cases. I will give you a couple that made national news, and that was in the—that is why Florida is changing their regulations or looking to change their regulations.

The case of Medicare fraud that was covered on NBC News, Policing of America, where post office boxes were set up to look like doctors' offices, and false billing statements were filed. That was on the news.

The case in New York recently where the gentleman was stealing the identity of well-known people like the Forbes family members, et cetera. That was all run through a CMRA.

Mr. PASCRELL. So Mr. Tucci goes into business. He gets those folks who want to participate in his business in that he can establish for them a service, a particular service. Does he have to investigate each of those potential customers of his in order to see their background? I mean, does he have that purview? Does he have that authority to do that? Do you want him to do that?

Mr. SPATES. No.

Mr. PASCRELL. What do you want him to do?

Mr. SPATES. Just to get two forms of identification just like is required, one of them with a picture ID, to verify that the person and the address where that person lives.

Mr. PASCRELL. Mr. Chairman, I would thank the gentlelady.

Ms. VELÁZQUEZ. Mr. Eakes, how has the Department of Veterans Affairs responded when you have confronted them about harming your business?

Mr. EAKES. Excuse me. How have they responded?

Ms. VELÁZQUEZ. Yes.

Mr. EAKES. When you walk into the building, they all run and hide. They do not even talk to you, so I do not know. I cannot respond to that.

Ms. VELÁZQUEZ. So you never have talked to them?

Mr. EAKES. Oh, yes. Yes.

Ms. VELÁZQUEZ. What was the reaction? What was their answer to you?

Mr. EAKES. I cannot remember. There really was not any kind of a response to speak of. They just received the bid, and they went and processed the laundry.

Now, the gentleman to the left of me here said they quit in June. That is only about two or three weeks ago. They had the business for about two or three years. They have another account located on the south side of Chicago that is also a state rehab center. I do not know if they are still down there or they quit, but obviously they may have quit, which is good.

Ms. VELÁZQUEZ. Okay. When you state in your testimony that you have lost several competitive bids to the V.A., would you please specify what bids you lost?

Mr. EAKES. One of them was——

Ms. VELÁZQUEZ. Are they commercial contracts or government contracts or city contracts?

Mr. EAKES. They are State of Illinois rehab centers—they are owned by the State of Illinois—and their bids.

Ms. VELÁZQUEZ. Mr. Hamerschlag, did the Department of Veterans Affairs include any federal employees who are involved in the laundry contracts on the list required by the activities inventory reform, the FAIR Act?

Mr. HAMERSCHLAG. I cannot answer that question. I can either provide it for the record or consult with staff here.

Ms. VELÁZQUEZ. Do you have staff here that can answer that question?

Mr. HAMERSCHLAG. Yes. Yes, I do

Ms. VELÁZQUEZ. Mr. Chairman?

Chairman MANZULLO. Sure.

[Pause.]

Mr. HAMERSCHLAG. Yes. Our laundries are listed on the FAIR Act.

Ms. VELÁZQUEZ. They are?

Mr. HAMERSCHLAG. Yes.

Ms. VELÁZQUEZ. Were those employees considered to be performing an inherent government function?

Mr. HAMERSCHLAG. Yes, they are.

Ms. VELÁZQUEZ. Did the V.A. receive any comments about any of the employees listed on your FAIR Act submission?

Mr. HAMERSCHLAG. We will have to provide that for the record. I cannot give you an answer to that right now.

Ms. VELÁZQUEZ. Okay. Mr. Hamerschlag, you state in your testimony that the V.A. will back out of the commercial contract if the V.A. receives a complaint by a small business.

Mr. HAMERSCHLAG. That is correct.

Ms. VELÁZQUEZ. What constitutes a complaint?

Mr. HAMERSCHLAG. Mr. Eakes is a good example. He wrote the President some time ago. We responded back to him in January of this year. He was concerned at that time about Loyola University. We took direct action and made it clear to the folks in Hines that they would not compete for that business at Loyola.

Ms. VELÁZQUEZ. I have a couple of questions about the V.A.'s contracting practices and how they relate to small businesses.

Last year, the Democrats on this Committee released an evaluation of 21 federal agencies on their achievements towards their small business goals. We will be releasing the next edition coming this summer.

In looking at the V.A.'s achievements, I know that the V.A. set the women owned business goal and the small, disadvantaged business goal below the statutory goal of five percent. In fact, the small disadvantaged business goal is only 2.5 percent, half the statutory goal. Would you please explain to me why did you set a goal below the statutory goal?

Mr. HAMERSCHLAG. I have no direct knowledge of that. I will be happy to provide that for the record if I might.

Ms. VELÁZQUEZ. Well, you should have knowledge about that. You knew that you were coming to this hearing and that we would be discussing contracting practices within the V.A. You should be able to answer this question.

Mr. Chairman, I would request that he submit for the record——

Chairman MANZULLO. That would be fine. I do not think that Mr. Hamerschlag's area of expertise is the area that you are questioning him on. We will go into that with the appropriate witness.

Ms. VELÁZQUEZ. Well, he has to prepare because he knows that we would be—or at least the staff should know that we will be asking this type of question.

Let me just ask you this simple question. You just said in your testimony that you care about small businesses.

Mr. HAMERSCHLAG. Yes, ma'am.

Ms. VELÁZQUEZ. Yes. So why do you think, and you do not have to be an expert on this, the field of federal procurement. How can you explain why the V.A., if you care so much about small businesses, set a goal below the statutory goal of five percent?

Mr. HAMERSCHLAG. I would like to answer that question, but I have to tell you that is really not in the area I have any direct knowledge of. I just cannot give you an answer.

Ms. VELÁZQUEZ. Well, let me just say this to you. Not only did you set a goal below the statutory goal, but then when you set those goals very low you do not achieve them either.

You need to go back to the V.A. and talk to them and tell them that not only are you not complying with the statutory goal set by the United States Congress, but that we are going to be releasing a report that is going to evaluate the performance of the V.A. regarding federal procurement goals and federal procurement practices.

Mr. HAMERSCHLAG. You may rest assured I will carry that back.

Chairman MANZULLO. Would you like that in writing so you know exactly what she is asking for?

Mr. HAMERSCHLAG. If you would like to make it part of the record, that would be fine.

Chairman MANZULLO. Thank you very much.

Mr. Bartlett.

Mr. BARTLETT. Thank you very much.

We have been discussing a lot of details relative to the practices of specific government agencies and their competition with small businesses. I would just like to ask a very generic kind of question.

I notice here that we are receiving testimony relative to the Department of Veterans Affairs, U.S. Postal Service. The next panel will be the National Park Service and the Federal Transit Authority and their competition with small business.

Not even listed here is another government agency entity which I know has had a major impact on small business, and that is the federal prison system in their employment. I have a small business person in one of the counties I represent that was almost put out of business because the prison system decided just arbitrarily that they were going to make aluminum containers. That was their business. Garrett Container. Had the prison done that, they would have just put them out of business.

Competition is good for everybody, and I know that many government agencies now are deciding to compete for services that they used to do themselves in-house. They have developed procedures for commercial pricing so that they can be sure cities, for instance, are now contracting with others to collect their trash if they can do it cheaper than the municipal employees can collect the trash.

They have developed commercial pricing procedures so that you can make sure you are comparing apples with apples when you are comparing the bid that you get from your municipal, state or federal employees and the bids you are getting from the private sector.

I do not know any small business that does not think they can compete with a government agency and win if it is on a level playing field, but I am very familiar with some of the problems with the post office. The post office's motif for their little stores looks very much like the motif for one of their commercial competitors. You know, this is really the 700 pound gorilla that the little mom and pop shop is dealing with.

I remember when the home alarm people came in to talk with me because they were concerned that the cable people or telephone people and cable people also were going to get into the home security alarm business. There were a bunch of these private sector competitors. They were not afraid of competition. They compete every day and stay alive.

What they were afraid of was competing were what they referred to as a 700 pound gorilla. The phone company owned the lines coming into the house. They just felt that they had an unfair advantage. That was worked out to the satisfaction of these small business people so that now the telephone company can compete. They are competing on a level playing field.

I think the fundamental issue here is how do we get to a point where there is a level playing field? I do not know anybody in small

business who does not think they can do a better job than government can do if they are on a level playing field.

Is that not what we need to do is to make sure that there is a level playing field here? Is that not the concern of small business: that it is not a level playing field?

Mr. Merritt?

Mr. MERRITT. Yes, Congressman Bartlett. One of the problems with the level playing field that is so often talked about is that government establishments enjoy enormous human and economic resources that dwarf those of even established small businesses by multiple orders of magnitude, and realistically they cannot be divorced from their competitive advantages.

I think we all would agree. At least the Members of the Committee here I believe would agree that a government agency using its federal privileges for competitive advantage is poor policy. The problem is they cannot divorce themselves from them because those advantages exist by the pure fact of them being a federal entity. I think that is a significant problem for small businesses.

I might point out that there is a very growing trend of government agencies going in and competing with the private sector. Last week, the AP ran a story about Amtrak, which posted the largest loss in its history of $944 million, despite generating a total of 46 percent of its total revenues from non-passenger train operations.

When Amtrak gets to what, say 99 percent non-train operations, is that when we decide that it is not really in the public interest any more? I might point out that when they sell souvenirs, somebody is not selling souvenirs.

When the Postal Service decided to sell passport photos, those passport photos they sold came at the direct expense of a small merchant down the street. They did not create any more demand for international travel or passports when they went into that business.

I think we have some problems with even the concept of allowing federal agencies to compete with private sector companies.

Mr. BARTLETT. If your analysis is correct, and that is that it is just inherently fundamentally impossible for a federal agency to be on a level playing field with the private sector, then they should not be competing.

I need to be convinced of that, and what I would like to do is encourage you to submit to us some recommendations as to how we can get to that decision point where we decide whether or not a level playing field can be created. If it can be created, then you need to tell us how that process should be conducted. If it cannot be created, then federal agencies should not be competing with the private sector.

I would like to believe that we can, at least in many circumstances, create a level playing field so that competition will do what it always does: make the product or service better and make it cheaper. Goodness knows, government bureaucracies could benefit by some competition, could they not?

Mr. MERRITT. If it was on a level playing field.

Mr. BARTLETT. If it is on a level playing field, yes.

Mr. MERRITT. Unfortunately, again, my basic premise.

Mr. BARTLETT. I think that is our challenge.

Thank you, Mr. Chairman.

Chairman MANZULLO. Thank you very much.

Our search is on for the elusive Form 1093. We have been advised that the Form 1583 is on the USPS internet site, but Form 1093 is not.

The post office has been called, and the fax is on its way. Is that correct?

Mr. SPATES. She is not in the room here, so she must be out looking for it.

Chairman MANZULLO. All right.

Mr. SPATES. I do not know why that is not on the web also.

Chairman MANZULLO. I do not know why you did not bring it with you because you made the statement that the regulations for 1583 are the same as the USPS. I would have expected it with the memo.

Mrs. Tubbs Jones?

Mrs. TUBBS JONES. Thank you. Good morning, Mr. Chairman, Ranking Member, gentlemen on the panel.

I am going to stay with the United States Postal Service but come from a different perspective. I come from a prosecutor/Judge background, having worked with law enforcement in the past, and the experience of having had a lot of dilemma with post office boxes and lack of identification for many of those situations.

I am reading, Mr. Spates, the government relations statement. It looks like a statement from the United States Postal Service that you worked with the CMRA industry to promote some of these changes. Is that correct, Mr. Spates? Who from the industry did you in fact work with?

Mr. SPATES. We had representatives from Mail Boxes, Etc. We had representatives from the Association of Mail and Parcel Centers. That is the one I referred to earlier that represented 27 of the smaller CMRAs. We had two other representatives—I do not have their names handy right now—that represented different franchises.

Mrs. TUBBS JONES. And would you restate again what your purpose in promulgating these regulations was, sir?

Mr. SPATES. The purpose to begin with—first, there is one thing I want to add to make sure everybody understands. The 1583 is generating a lot of discussion. The 1583 has been modified, but it has been in effect for CMRAs for over 30 years that you had to file a 1583.

There is also now a form for CMRAs to formally apply as the agent. That was very informal before, but the 1583——

Mrs. TUBBS JONES. What was the original purpose for the 1583, Mr. Spates?

Mr. SPATES. It is to sign off that I am legally saying that this person can act as my agent to receive my mail in my name, especially if it is certified or something to that effect.

Mrs. TUBBS JONES. Go ahead. You were saying that you met with the CMRA representatives, and as a result of those discussions what occurred?

Mr. SPATES. Let me go back. Do you mind if I go back a little bit in time?

Mrs. TUBBS JONES. No. Go right ahead.

Mr. SPATES. Mr. Merritt brought it up about the initial rule and all the comments. The initial rule apparently did not get as much wide circulation among the industry members as we thought. We got 8,000 responses, but most of them were form letters.

What we did after the first filing is the Chief Postal Inspector, Ken Hunter, who was the Chief Postal Inspector at the time, because this was all done under consumer protection and fraud protection, called together industry members, anybody who had interest in these regulations, and that includes small business representatives, state Attorney Generals—the group got rather large—to see what we could do to modify the regulations to reach a compromise between protection and impact from small businesses.

Those meetings, there has been at least a half a dozen large meetings that Mr. Hunter was chairing that pulled together compromises on these regulations. As they reached compromises, new proposals went out. Issues on privacy, typing up the privacy restrictions on what can be released, was added to it, working with the Coalition Against Domestic Violence and representing their interests from a Protective Order standpoint. If they are running a business out of their home, they did not want any information released.

That has all been included in these regulations, so they have evolved to get better over time. Are they perfect? Maybe not, but they are significantly improved from the initial regulations and what existed prior to the regulations.

Mrs. TUBBS JONES. Thanks, Mr. Spates.

Mr. Merritt, do you believe that the Postal Service, the UPS, the—let me say this correctly—CMRAs, have any obligation to assist law enforcement in deterring fraud through mailboxes or people using fraudulent addresses or making misrepresentations as to how they are or what they represent?

Mr. MERRITT. That is obviously a very long and complicated——

Mrs. TUBBS JONES. No, it is not a long and complicated question. The question merely is do you believe that they have any obligation to assist law enforcement in dealing with that issue? It is very simple.

Mr. MERRITT. Oh, absolutely. I am sorry. I wanted to go into more detail. Absolutely. I do.

Where I part company with the Postal Service is where the Postal Service in its role as a regulator takes it upon itself to regulate in this case a particular competitor using that particular reasoning without justifying it as necessary. That is where our problem comes from, not from——

Mrs. TUBBS JONES. So you do not—I am assuming you own a CMRA. You personally do that?

Mr. MERRITT. No. I was just a customer for 12 years that was forced to change my address——

Mrs. TUBBS JONES. Okay.

Mr. MERRITT [continuing]. Unfairly and supply information that I did not feel was necessary.

Mrs. TUBBS JONES. So you merely come here as someone who you believe your privacy has been invaded, not as a representative of one of these CMRAs that has had to deal with law enforcement where there have been fraudulent addresses and the like?

Mr. MERRITT. Right.

Mrs. TUBBS JONES. I am just trying to be clear on who you represent.

Mr. MERRITT. That is correct.

Mrs. TUBBS JONES. I do not mean to denigrate that. I think it is a great idea that if you believe your privacy has been invaded that you should be here, but I am trying to get on the table as well the whole issue of how do we address the issues that are raised by the Postal Service and others with regard to fraud and people who are constantly on the internet and all kinds of places where particularly in my community senior citizens who are put in a terrible situation as a result of being bilked by people who represent that they are something that they are not, and they use the mail service to do it.

I am out of time. I am sorry. Thank you very much. If the Chairman will allow me time for you to respond, I would be glad to have you respond.

Chairman MANZULLO. Go ahead. Please.

Mr. MERRITT. Mr. Chairman, with your permission. Fraud is a big problem. There is no doubt. It does negatively impact the most vulnerable of our society.

The problem is that with these regulations if you want to look at it from a fundamental standpoint, we have a commercial enterprise, the United States Postal Service, which has tremendous regulatory authority and their own in-house law enforcement, fully empowered law enforcement organization, not reporting to the Justice Department, but to potentially commercially minded executives.

The point here is that if there is a particular problem that needs to be addressed, then they should have done the due diligence that SBREFA and REGFLEX and the Administrative Procedures Act put in place to protect small businesses.

The other point is that for the first time with these regulations the Postal Service has embarked and set a precedent for changing our address driven mail delivery system to a resident recipient driven system that requires identification, and the privacy consequence is another issue of much consternation these days.

Chairman MANZULLO. Thank you, Mr. Merritt. I know that you are very energetic, and we appreciate that. That is why you are here.

Congresswoman Napolitano?

Mrs. NAPOLITANO. Thank you, Mr. Chairman. I was just looking at the 1583 and reading the testimony of Mr. Tucci in regard to his customers not willing or able to fill out the form is concerned.

What type of client usually is a box rental client?

Mr. TUCCI. I can give you several examples. One of our customers was a lawyer. Another one—we had mention of the internet. It was a girl who did a lot of communicating with people on the internet, and she wanted a safe haven for mail so that they would not know where she actually lived because she was leery, and we have all heard the stories.

As I said, we did have an abused spouse who wanted a safe place where she could get her mail without her spouse being able to sit outside the post office for eight hours. It would only take eight

hours. Our post office is not even open that long to get mail. She could come in any time, 24 hours a day. She could stagger her times coming in and be safe.

We had several small business people who preferred that the mail came to a box rather than to their house. It just enabled them to separate business from home a little bit. As a business owner, you do not necessarily want everybody knowing your home address and bothering you at home at any hour of the day. By having a private mail, even a P.O. box or a private mailbox, it just gave them a little more privacy at home.

Mrs. NAPOLITANO. Was there any indication or at least were you aware that any of your customers might have been involved in some kind of fraudulent type of operation?

Mr. TUCCI. None of our customers did. To be honest with you, we had identification from all of our customers on file. If the post office had a problem with a customer they could come to us, and we could give them all the information they had. Our customers trusted us with that information. They were not trusting the post office with that information.

The biggest objection they had was the Privacy Act statement that is on the back of 1583. We heard that the post office will not give that out. Well, the post office has made it a rule to not give that out. They have not made it part of the regulations that that information will not be given out. Therefore, two years down the road they could change that rule without going through the whole process.

Mrs. NAPOLITANO. Mr. Merritt, could you answer that?

Mr. MERRITT. The Postal Service, as they interpret their regulatory power, is exempt from even posting notice and requesting comment to the rule making, so Mr. Tucci is in effect correct. They could change the rules at will any time they wanted to.

Mrs. NAPOLITANO. Mr. Spates?

Mr. SPATES. We would not change the rule, especially pertaining to privacy, without following the process. I have the lawyer here with me who helps us on that process. He can verify that. We would file a proposed notice to get comments. In fact, we tightened up the privacy rules, and we put out for comment back when we were tightening up the privacy rules.

Mrs. NAPOLITANO. But this form has been in effect 30 years. Why has it not been done?

Mr. SPATES. It has been done. If I may point out, on the privacy statement on the 1583 it says about two-thirds down in kind of small print, "Information concerning an individual who has filed an appropriate Protection Order, for example, will not be disclosed in any of the above circumstances except pursuant to the Order of a Court of competent jurisdiction." This is one of the revisions.

Mrs. NAPOLITANO. Yes. You are talking about a Protective Order. I am talking about any client.

Mr. SPATES. This information will not be released.

Mrs. NAPOLITANO. It just does not make sense.

Mr. SPATES. It used to be released, but not now.

Mrs. NAPOLITANO. The last statement in the last few lines indicates that, "If the form is not completed, the mail will be returned to sender."

Mr. SPATES. If a 1583 is not filled out then that CMRA cannot legally act as the agent for that person, so we cannot give that mail to the CMRA.

Mrs. NAPOLITANO. Is that not stretching it a little bit far? These people have opted to have a recipient of their mail, and they verified name, address, drivers license or whatever it is that they used to be able to get up the account.

Mr. SPATES. And had not signed the 1583?

Mrs. NAPOLITANO. Correct.

Mr. SPATES. We do not have any evidence to show that they authorized——

Mrs. NAPOLITANO. But they do.

Mr. SPATES. The CMRA does?

Mrs. NAPOLITANO. I am assuming they are.

Mr. TUCCI. Yes. We had all that information on file. If the post office questioned whether we were able to, we could show it to them, but we would want to keep it on file. We only turned over a list of names and box numbers of our customers receiving mail.

If there was any question as to whether we were in agreement with these people, they could come in and ask us and check it off their list or something, but the information our customers trusted us to keep private. They did not trust the post office to keep it private.

Mr. SPATES. But the point is the Postal Service is turning over mail to an independent third party that we have no evidence to show that they have the authority to receive the mail for that person.

Mrs. NAPOLITANO. Then the question, Mr. Spates, from me, would be, have you found areas or times or instances where there has been a problem for a recipient of a piece of mail that is dated that has gone through a mail service unbeknownst to them?

Mr. SPATES. Unbeknownst to them? Yes, ma'am. The case in point got a lot of publicity several years back on the 60 Minutes show where the identity theft of——

Chairman MANZULLO. Would you yield on that?

Mrs. NAPOLITANO. Yes. Certainly.

Chairman MANZULLO. Do you have something more specific than a TV show? Do you not have real, live examples of fraud to which you are referring?

Mr. SPATES. We can provide them.

Chairman MANZULLO. I mean, why do you not have that now? That is why we are having the hearing.

Mr. SPATES. I have one case with me that just broke in the Washington, DC, metropolitan area. If you want me to outline it, I can.

Chairman MANZULLO. Your time is up, but if you want to take a minute now. You know, I am not interested in what 60 Minutes or one of those shows have on there. I mean, that is interesting, but I would expect that you would have a portfolio of abuse after abuse after abuse.

Mr. SPATES. We do have that. That was provided in the October of 1999 testimony. We have updated that.

Chairman MANZULLO. Can you update for us?

Mr. SPATES. Yes. Yes.

Chairman MANZULLO. Okay. I finally got this Form 1093, and I can assure you that when I was elected to Congress—our family maintains two residences—and I went to the PO in Alexandria, they gave me this form. Do you know what I put on here? I put my name and address and signed it. No one asked me for a picture ID. No one asked me for the name of my children.

I mean, I have a very difficult time believing, Mr. Spates, that the Form 1583 is the substantial equivalent. I mean, first of all, it does ask Name of Person Applying and Name of Organization.

Mr. SPATES. I am not sure that this 1093——

Chairman MANZULLO. This came from your office.

Mr. SPATES. I am just saying I am not sure this is the latest one.

Chairman MANZULLO. All right. You are not going to leave the room until somebody makes a verification. Does anybody know if this is in fact the form in effect from the USPS, Form 1093 dated July, 1998? Is this the one that is in effect? Does anybody know from your organization? Ask them, please.

Mr. SPATES. Jeff? Is Jeff back there? There he is.

Chairman MANZULLO. Does anybody know? How many are here from USPS? How many people do you have with you?

Mr. SPATES. Three.

Chairman MANZULLO. There are three people here? Who was called at USPS for this Form 1093?

Mr. ZELKOWITZ. We have been calling the Retail people and Delivery. The Delivery expert is not in the office today.

Chairman MANZULLO. What is that person's name?

Mr. ZELKOWITZ. Roy Gamble.

Chairman MANZULLO. Roy Hamble?

Mr. ZELKOWITZ. Gamble.

Chairman MANZULLO. Campbell?

Mr. ZELKOWITZ. Gamble with a G.

Chairman MANZULLO. Gamble?

Mr. ZELKOWITZ. Right.

Chairman MANZULLO. And that person's official capacity?

Mr. SPATES. He works in Delivery. He has been heavily involved with modifications to the form from the standpoint of identification requirements and working with our Retail people.

Chairman MANZULLO. And he reports to you?

Mr. SPATES. Yes, he does.

Chairman MANZULLO. Why did you not bring him with you?

Mr. SPATES. He is on annual leave. He is away out of town.

Chairman MANZULLO. And there is no one else that has the answer on that?

Mr. SPATES. The Retail Operations folks, as Jeff mentioned.

Mr. ZELKOWITZ. I have not been successful in reaching those people yet.

Mr. SPATES. This is a Retail Operations proposal.

Chairman MANZULLO. I would just like to say that I am not done with this yet. For the hearing, that is fine.

I am going to give Ms. Velázquez a couple more minutes if she wants to follow up——

Ms. VELÁZQUEZ. Yes.

Chairman MANZULLO [continuing]. And then we will go to the next panel.

Ms. VELÁZQUEZ. Mr. Spates, the preamble in the final regulation on commercial mail receiving agencies dated March 25, 1999, states that, "A number of commentors for 'the new rule' questioned the intent of the undertaking to amend the rule. There are assertions from CMRAs that compliance with the regulation would put them out of business. Customers of CMRAs assert that the rule making appears to discriminate against them because of their choice of an address. These claims are erroneous."

This is what appears on your report. Now that you are aware that the rule could indeed in fact put CMRAs out of business, will you amend the rule?

Mr. SPATES. Since that time, we have amended the rule to make some changes. The PMB designation. The CMRAs felt like that was a scarlet letter identifying them as a possible problem address. That is when Ken Hunter, working with the CMRA industry, came up with a compromise allowing you to use PMB or pound sign. A lot of them do use pound sign today.

What you are not allowed to use, and in fact the State of California prohibits it for CMRAs already, is the word "suite." That was a real concern for hiding behind, saying I have an office space. That is what suite implies. That was some of the concerns.

We made other changes, and privacy issues was one of them, that answered the concerns of Mr. Tucci. There have been significant modifications.

We have also extended the time line of when this goes into effect so that they can turn over, you know, their stationery stock and business advertising. A lot of modifications were made.

There was also a modification made where it originally said in the rule we will return mail that did not have those designations.

Ms. VELÁZQUEZ. Mr. Spates, the modifications were made after you put out the rule.

Mr. SPATES. Right, because that is when everybody came out of the woodwork, all the special interest groups, and we wanted to—we made a mistake, and we——

Ms. VELÁZQUEZ. But Mr. Tucci was put out of business because of the rule.

Mr. SPATES. 1583 was in effect when Mr. Tucci opened his business. That has been in effect for over 30 years. If someone did not want to fill out a 1583, that has been there. The CMRAs, there are roughly 10,000 of them today. They are still growing. They have had that requirement all along. I do not think we can blame it on 1583.

Ms. VELÁZQUEZ. Mr. Tucci, you did not know about the Form 1583?

Mr. TUCCI. No. Before I opened the business, the week before that I went to our local postmaster. I asked him what I needed in order to receive mail from my customers.

All I was told was that I had to report their names and the box numbers that they were using once a year. No mention was ever made of the original 1583, which I have never seen a original 1583.

Ms. VELÁZQUEZ. Is there a process in place, Mr. Spates, where you explain?

Mr. SPATES. There is a reference to explain it. I would like to ask Mr. Tucci a question if I can.

Ms. VELÁZQUEZ. Sure.

Mr. SPATES. Were you a franchise, part of a franchise?

Mr. TUCCI. No.

Mr. SPATES. You were just totally independent?

Mr. TUCCI. Yes.

Mr. SPATES. We have literature that is provided to postmasters to provide to CMRAs as far as what the——

Ms. VELÁZQUEZ. Did you get a copy of that?

Mr. TUCCI. No, I did not.

Ms. VELÁZQUEZ. What do you have to say to that, Mr. Spates?

Mr. SPATES. If he did not, it is very unfortunate. Very unfortunate.

Ms. VELÁZQUEZ. Well——

Mr. SPATES. You are talking about a small post office deep in the ranks of the Postal Service. I apologize that they made a customer error, but——

Chairman MANZULLO. Excuse me a second. I come from a small town, and I take great exception to reference even to a small post office as somehow being second class to a larger city post office——

Mr. SPATES. I was not——

Chairman MANZULLO [continuing]. Because the people that I deal with at our post office have answers for every question. In fact, at times he has even helped me fix my tractor. He knows the name of my dog. Some carry biscuits.

Whenever a business person goes to a postmaster, regardless of the size, and says I want to comply with the law I would expect that postmaster to have the information and not have to rely upon an association. It is not the job of the association to instruct people in small businesses going into this. It is the job of the post office.

Mr. SPATES. I totally agree with you. I apologize that I gave the impression. To show you just what a small town, 5,000 people roughly, postmaster did for Mr. Tucci and his customers, those people were concerned that they were not getting their mail. He separated the mail and personally carried it down to Mr. Tucci's organization separated for the people who had a 1583 and gave it to Mr. Tucci.

You are right. The postmaster does bend over backwards in the local communities to help them out, so while I do not know exactly what transpired that first day they met, but Mr. Curtis kept bringing him up to date on what was required, and there still was not any compliance.

Ms. VELÁZQUEZ. Mr. Tucci, would you like to comment on that?

Mr. TUCCI. Yes. First off, if there was a problem with us not filing a 1583 in the first place, our customers were receiving their mail for two years up until the new regulation took effect.

As for hand delivering our mail, that was after the mail was cut off. In order for our customers to get their mail before it was sent back to the sender, they went down to the postmaster, filled out a 1583. Instead of Mr. Curtis handing them the mail then, he made them come back to our store. He brought the mail back down to our store and handed it to them there.

Ms. VELÁZQUEZ. Yes?

Mr. SPATES. From my conversation with Mr. Curtis, they filled out the 1583, and then he brought the mail down to them on sev-

eral occasions. It was not just you had to come to the post office every day. He brought it down on several occasions.

He also allowed them to file a change of address if they wanted to go somewhere else, to have their mail sent somewhere else. He was helping the customer out who had a 1583.

Mr. Tucci was given plenty of advance notice, although it has to be approved all the way up to the district manager level, to correct the situation. Nothing was done, so we could not deliver the mail for the other people.

Chairman MANZULLO. If you would yield?

Ms. VELÁZQUEZ. Sure.

Chairman MANZULLO. Evidently nothing was done because people did not want to reveal the names of their children and their ages, and they would not fill out the form. Is that correct, Mr. Tucci?

Mr. TUCCI. Yes.

Chairman MANZULLO. That is why nothing was done. I would defy anybody to take a look at the 1093 dated July of 1998, while you are trying to find out if this is current, and Form 1583. There is no language similar on here to indicate you have to list the names of your children. I would never fill out a 1583 that listed any of my children. That is no one's business. That is not the business of the post office.

I doubt very much, Mr. Spates, whether or not if the name of my children were on a form and I had a box and a document came addressed to them that you would think there was some kind of a fraud. If that is where you are spending the time to look for fraud, I can think of better places where it could be done than that.

We want to thank the first panel for coming, and we will continue to work on it. Mr. Spates, I appreciate your patience and everybody else here.

Mr. Hamerschlag, I appreciate the fact that the V.A. jumped on this as soon as Mr. Eakes got a hold of you. I appreciate looking forward to any other problems that may arise.

We have a vote here. During the period of time, the staff could get the second panel ready.

[Recess.]

Chairman MANZULLO. We are going to start our second panel. We continue this hearing on federal government competition with small businesses.

Our first witness will be Scott Reisland, owner and manager of Denali Grizzly Bear Cabins and Campground in Denali, Alaska. He came all the way from Alaska to testify here today. Is that correct?

Mr. REISLAND. Yes, sir.

Chairman MANZULLO. And along with your son? Is he here?

Mr. REISLAND. My son and I are very excited to be here.

Chairman MANZULLO. We are honored that you came here and at your own cost.

Mr. REISLAND. Yes, sir.

Chairman MANZULLO. We have a five minute rule, but we are a little bit flexible. We appreciate your testimony. Why do you not go ahead and start, Mr. Reisland?

STATEMENT OF SCOTT REISLAND, OWNER/MANAGER, DENALI GRIZZLY BEAR CABINS/CAMPGROUND

Mr. REISLAND. Thank you. My name is Scott Reisland. I am from Denali, Alaska. My parents moved to that area in Alaska during the territory days and developed a small cabin and campground business, which our family of five run to this day.

I am here also representing eight neighboring campgrounds in the Denali area, along with the National Association of RV Parks and Campgrounds, ARVC, which is our trade association. We have concerns with National Park Service infringement on private enterprise nationwide.

The campgrounds around Denali and gift shop people and businesses in the tourist industry are very gravely concerned and are being threatened by specifically Denali National Park and Preserve. The Park Service developed a plan for growth in the Denali area with an increase in campsites, camper amenities such as delis, gift shops, showers, a liquor store and other conveniences.

This development plan—Denali National Park was required to do an economic impact on the surrounding businesses and an environmental impact. The environmental impact performed by the U.S. Wildlife Service showed that this was critical moose habitat where they planned to develop the campground and new facilities at and that it was a very critical habitat and would have negative impacts on the animals in the park.

No economic study was done to see or realize an impact with the private sector. There was simply a statement that it was underprovided by the private sector. This was brought to the attention of Superintendent Steve Martin of Denali National Park, and with him the people voiced their concerns, businesses. The Denali Borough wrote resolutions in opposition of this growth.

I have a whole packet of letters from campground owners and gift shop people in the Denali area, all private business, which I would like to give to you in support of small business and the damage that this development at Denali Park would do to us.

Chairman MANZULLO. Could you suspend for a second, Scott? The National Park Service was invited to participate at this hearing and specifically refused to get involved.

You are telling me that they never did conduct an economic impact study?

Mr. REISLAND. No, sir.

Chairman MANZULLO. And they have never requested any documents from any of the affected businesses?

Mr. REISLAND. We got together and had a hearing with Superintendent Martin. I set up the meeting. The Denali Borough was present. We sent documents to them saying please look at our occupancy rates. Please look at the impact you will have on us. We were hoping that this would be solved in-house, the problem solved, and they would not continue with the development.

This summer they are bulldozing huge areas of the park. I have pictures I have brought with me from Alaska showing all the new development. They disregarded our pleas and our occupancy rates and our information and moved forth.

Chairman MANZULLO. Why do you not go ahead and continue with your testimony?

Mr. REISLAND. Okay. The Denali National Park says well, we want to build rustic campsites. There are none available in the private sector. The outlying campgrounds, we are only two or three or five miles from this proposed development area.

The private campground owners have developed showers, amenities, trying to draw visitors out of Denali Park and into the private campgrounds. We have a difficult time with this because the Park Service, with their large budgets, can offer small dollar costs for a campsite. We cannot come close to what they can offer because we have a host of taxes and maintenance, and we just do not have the budgets that the park has to run the business.

The size. Superintendent Martin said that the growth is nominal. Well, he is talking 50 sites which equates to 5,500 campsites which we will lose in the Denali area because the park fills up. We survive only off the overflow after the park has absolutely no vacancies, so we are taking the scraps left from the Park Service in the tourist industry, what is left over.

We are talking about 5,500 camp nights. A season is about 110 days in Denali. Everything is closed in the winter. This equates to about $100,000 that the nine campgrounds are going to lose directly from this development, and that is a lot of money for us.

As I say, we are small mom and pop campgrounds, families that have been there, homesteaders from the early territory days of Alaska. Several. There are new people that have come in to develop since there has been a growth in tourism, which we are not seeing today. Tourism has actually dropped. Alaska is now below average in visitation for states nationwide in tourism.

We have offered and we have shown the Park Service that we can accommodate the extra tourist load, which we do not really see. We are just very upset. I am here as a last resort to request some help from this Committee and the people that I am meeting here in Washington.

We just have a lot of family businesses whose livelihoods are on the line directly because of the negative ramifications of the Park Service competing with us.

Thank you.

[Mr. Reisland's statement may be found in appendix.]

Chairman MANZULLO. Thank you very much.

We have some fights going on on the Floor. I beg your forgiveness for the inconvenience, but I have to run and go down and vote. I will be right back.

[Recess.]

Chairman MANZULLO. James Madison said that the Constitution was set up with a lot of hoops and loops and made purposely complex for the purpose of having good government. Forgive us.

Our next speaker will be Tom Mack. Tom is the owner and president of Tourmobile, Inc., of Washington. Mr. Mack?

STATEMENT OF TOM MACK, OWNER/PRESIDENT, TOURMOBILE, INC.

Mr. MACK. Thank you, Mr. Chairman, for the privilege of——

Chairman MANZULLO. Mr. Mack, could you bring the mike closer to you?

Mr. MACK. Thank you, Mr. Chairman, for the privilege of being present and to share with you and the Committee a real life example of how government can step in and provide unfair financial subsidies and support for a non-profit organization that intends to compete head on with a long time, tax paying, private company that is already under contract with an agency of the federal government to provide the same transportation service.

It is longstanding federal government policy, as expressed in OMB Circular A–76, the government should not compete with its citizens. Our company, Tourmobile Sightseeing, began its operation in 1969 after having won a contract from a prospectus presented by the Park Service nationally, and after having won that contract we were sued by some agencies of the federal government, as a matter of fact, claiming that the Secretary of the Interior did not have the authority to issue such a contract.

It is ironic that our relationship from that time on I would say for 20 years or more has been excellent, outstanding, but recently it is not what it has been, and communications have been poor.

The organization that has threatened us now is called D.C. BID, District of Columbia Business Improvement District. This is a non-profit organization, but has enlisted the support of a large number of agencies of the federal government such as WMATA, the U.S. Department of Transportation, GSA, National Capital Planning Commission, and we even have information that the Smithsonian Institution had intended to join this organization as, as they call it, a stakeholder.

We acquired this information under the Freedom of Information Act because we had heard rumors that our organization was being threatened, and we simply did not know how it could be threatened in that we had a contract that does not expire for another four and a half years.

Nevertheless, the Washington Post, the Washington Business Times, the Washington Journal, all wrote stories about the intention of BID, which is largely represented by the District of Columbia, to propose and operate a service directly competitive with ours. The first time frame that I had was in the year 2001. They have since moved it to 2003 and later to 2005. They change a lot, but their objective remains the same. It is to operate a competing service as ours on the national mall.

In the beginning, and this is ironic, the Secretary of the Interior was challenged, questioning his authority to issue such a contract. The Supreme Court made a decision, which the Congress considers, the way it is, the way it is going to be, that the federal government has control over the federal enclave and certainly not an organization such as BID, which strongly represents the District of Columbia.

The Park Service now appears to at least hold serious discussions with this organization, BID, and we learned under Freedom of Information that it has been doing so, communicating with them, for two years. Although the Park Service has written a letter to BID, to the mayor of the District, telling them in fact that our organization has a legitimate contract that will not be abrogated, we have the right to do what we are doing, it took them more than two years to write such a letter.

During that time, some of my managers, certainly some of our employees, felt severely threatened. They did not know whether the stories printed in the media and the electronic media also were true and whether they would have a job.

In a case like that, our company has been threatened to the point of possible destabilization. When the personnel are unhappy, when they are uncertain of what they may be doing, even in the face of attack that we have a contract, and I, of course, discussed that with them and told them, they nevertheless were shaken when they saw these articles in the newspaper and heard about it on television and on the radio.

The downtown Business Improvement District has no experience operating a transportation operation. In its own statements it has indicated that it proposes hiring someone to do it for them on federal land. One of those is WMATA, the metro system. The metro has its hands full doing what it is presently doing. BID indicated that if Metro could not do it, it would take the authority to find someone else to do so.

We were simply surprised that an organization like the National Park Service with whom we surely have had a close partnership would take more than two years to address this organization and tell them clearly and forthrightly you cannot do this, you cannot operate on the national mall, there is a concessionaire there who has operated 32 years and each and every year received high marks for performance.

That again is disheartening when one works under those circumstances. The Park Service knows that this is unfair, unreasonable, but it did that.

The real culprit here, however, I feel is BID, which was able to organize, to talk with and to get federal agencies to sign on as, as they call them, stakeholders, and sign documents, which we received again under Freedom of Information, that they would support such an operation.

It is not possible for these organizations not to have known that a contract was already in existence. As a matter of fact, they even addressed the question arrogantly, in my opinion, feeling that they can get around it and especially since the National Park Service was present at their meetings I believe from the very beginning.

We are continuing our operation now. We expect to continue it. We feel that after having served 50 million people over the 32 years that the quality of service speaks for itself, and we hope that even after our contract ends in four and a half years a service similar to ours can continue to operate consistent with the Supreme Court decision that pointed out very clearly that the Secretary of the Interior had undeniable control over the federal mall and national parks.

Chairman MANZULLO. How are you doing on time there, Mr. Mack?

Mr. MACK. Sir?

Chairman MANZULLO. How are you doing on time?

Mr. MACK. I am fine.

Chairman MANZULLO. Okay. Did you finish your thoughts?

Mr. MACK. I did, sir. I simply wanted to thank you and the Committee for this opportunity and to share an unfair competition plight in which I and my company are the intended victims.

[Mr. Mack's statement may be found in appendix.]

Chairman MANZULLO. Our next witness is Dan Mastromarco. That is a good Swedish name like Manzullo.

Mr. MASTROMARCO. That is exactly right.

Chairman MANZULLO. He is with the Travel Council for Fair Competition. We look forward to your testimony.

STATEMENT OF DAN MASTROMARCO, TRAVEL COUNCIL FOR FAIR COMPETITION

Mr. MASTROMARCO. Thank you. I appreciate it. I want to begin by thanking you, Mr. Chairman, and also your staffer, Matthew Szymanski, for putting this hearing together and focusing on this very important issue.

My name is Dan Mastromarco, and I am executive director of the Travel Council for Fair Competition, which is a coalition of several small business trade associations that includes the National Tour Association, the American Society of Travel Agents, the American Bus Association, the American Hotel and Motel Association, America Outdoors and the National Park Hospitality Association.

We are formed to accomplish two objectives. First, to raise public awareness of the problem of unfair competition both with respect to government competition and non-profit unfair competition, second, to defeat misguided public policies which contribute to that problem.

Mr. Chairman, two small business owners, as you know, have joined me on this panel. One has literally crossed the tundra during his peak business season to tell his story. The other is the general manager of Tourmobile, a fixture in this nation's capital. Let me also introduce, as you pointed out, Mr. Reisland's son, Donovan, who is sitting behind me, who is exercising his own sort of oversight over our function today. What we are here to do is to prevent Mr. Reisland and Mr. Mack from becoming Mr. Tucci on the first panel: in other words, put out of business because of federal competition.

Let me begin by saying that I hope this Committee can help their individual concerns. If you cannot, who will? Their presence here demonstrates the degree to which their livelihoods are so deeply affected by unfair competition. In a larger sense, however, these gentlemen did not come here to represent their special interests or their business. They come to symbolize the national threat of an abuse that cries out for constant vigilance and prioritization.

Allow me to make a few observations. First, unfair competition is not localized, not sporadic and not confined to one business or industry. It is burgeoning, it is widespread, and if you so chose to you could extend these hearings several days on the problem confronting small business in the travel industry alone. Broaden that to affected industries, and you would not have to leave this room.

Second, Mr. Chairman, it is not new. If we were to imply that this is a new issue, the ghosts of the 1933 and 1955 Congress would visit upon us. The history of unfair competition is marked

with a cavalcade of abuses and failed efforts to correct them over more than three-quarters of a century.

Third, the position of small business is not wishy-washy. It is unequivocal. Mr. Chairman, TCFC members possess a fundamental philosophy that has deep roots in the tenets of our republic. Government should not be engaged in activities that can be fulfilled by private enterprise. The existence of small businesses are proof positive that government need not be duplicating their efforts.

We share this philosophy with good company. More than two centuries ago, Thomas Jefferson had this to say. "Let the general government be reduced to foreign concerns only except to commerce, which the merchants will manage the better the more they are left free to manage for themselves, and our general government may be reduced to a very simple organization and a very inexpensive one; a few plain duties to be performed by a few servants."

Let us compare his words to no less an authority than the manifesto of the Communist party by Karl Marx and Fredrick Engels. It describes a state of affairs that would come to fruition once Communism takes root as, "Centralization of the means of communication and transport in the hands of the government . . . extension of factories and instruments of production owned by the state . . . and establishment of industrial armies."

Mr. Chairman, government competition is fundamentally unfair because the government enjoys numerous and unquantifiable advantages. It is inefficient. As comedian P.J. O'Rourke said, effectively translating Jefferson's words into the modern age, "You cannot get good Chinese take out in China nor Cuban cigars, and Cuban cigars are rationed in Cuba."

Well, let me in the interest of expediency move to what I think this Committee should look toward and seek to accomplish. First, it is important, Mr. Chairman——

Chairman MANZULLO. You are about a minute overdue now.

Mr. MASTROMARCO. Oh, okay.

Chairman MANZULLO. Could you finish up in a minute so we can make sure Mr. Hart testifies——

Mr. MASTROMARCO. I certainly will.

Chairman MANZULLO [continuing]. Before the bells go off again?

Mr. MASTROMARCO. All right. I think that it is important that this Committee exercise constant vigilance by jealously and liberally using your oversight function.

Second, concentrate on specific agencies as you have done in this hearing.

Third, work with the Administration to develop a cohesive national strategy for reliance on the private sector. You know, nearly a quarter of a century ago GAO recommended a single national policy endorsed and supported by both the legislative and executive branches, and their report is as valid then as it is today.

Let me just conclude in the following way. As your staff advances into this issue, they will hear from naysayers that the problem cannot be solved. That is the time in which you wish to look back to this hearing and think about our industry, a quintessentially commercial industry.

Why is the government more cost effective in operating a tour bus or means of transportation, running campgrounds, mass transit, rafting trips? These are quintessential commercial activities.

We appreciate your time.

[Mr. Mastromarco's statement may be found in appendix.]

Chairman MANZULLO. Thank you very much. It is kind of hard to get everything into five minutes.

Our next witness is Clyde Hart, Jr. Clyde the vice-president of the American Bus Association. He is here at the request of Ms. Velazquez dealing with a very interesting situation going on in New York.

Mrs. Velázquez is tied up in a meeting. She extends her apologies. We appreciate the fact that you are here. Go ahead, Mr. Hart. We look forward to your testimony.

STATEMENT OF CLYDE HART, JR., VICE-PRESIDENT, AMERICAN BUS ASSOCIATION

Mr. HART. Thank you, Mr. Chairman. Good afternoon. My name is Clyde Hart, and I am the vice-president of government affairs for the American Bus Association.

The ABA is a national trade association representing the interests of the private intercity motorcoach industry. ABA is comprised of approximately 3,400 member companies that operate buses and provide related services to the motorcoach industry.

A.B.A. members provide all manner of bus services to 775 million U.S. bus passengers annually. Our roster of members includes nationally known intercity bus passenger carriers, regional carriers and family owned businesses across the nation.

I am here to make you aware of a serious problem that affects the private bus industry, specifically the problem of unfair competition from publicly funded transit agencies, universities and national parks.

First a few words about the motorcoach industry represented by ABA. The industry serves more than 4,000 communities directly with scheduled or fixed route service. The industry is a small business success story, comprising almost 4,000 companies of which 90 percent operate fewer than 25 buses. The motorcoach industry accomplishes all this and more with the highest safety rating of any commercial passenger transportation mode and all without benefit of government subsidy.

This lack of subsidy is the core of my testimony. ABA members face increased competition from transportation providers that are subsidized. Not a week goes by without a call from an ABA member company complaining of a transit agency that has failed to provide proper notice as required by federal law of their intent to compete for a charter job or, worse, having lost their job to a subsidized carrier.

Many times ABA is not notified of the charter bid, again as required by law. In addition, there have been instances where the FTA has advised transit agencies how to structure proposed charter operations to circumvent the charter regulations and pass legal muster.

The ABA keeps a record of examples of public transit agency incursions into charter operations. There are many. Just a few exam-

ples include: in Oregon local transit agencies provided free passes and charters, compliments of local transit agencies, to conventioneers and guests.

In North Carolina, a local transit agency provided charter transportation for college basketball tournaments and conventioneers. And in Maine, when a local transit agency bid out a fixed route service, private companies did not win the bid because the local transit agency's true overhead, as well as higher tax exemptions on fuel, were not calculated fairly.

These practices by public transit agencies have a deleterious effect on our members and on the riding public. Having one's business peeled away like an onion means that the operation will, in time, lose the ability to provide service elsewhere along its system.

The FTA has actively encouraged the subsidized competition in the past. For example, the charter restrictions do not apply to transit service that is scheduled service rather than charter. As long as the transit agency can plausibly claim that the service falls outside the definition of charter service then the private operator may not challenge the transit service.

There is a growing problem with public transit agencies providing intercity service. While there is nothing in the law that allows public transit agencies to offer such service while receiving FTA grant money, there is nothing in the law that expressly prevents it. This is because there is simply no workable definition of intercity service in the law.

Indeed, FTA has determined that intercity service is merely scheduled service for the general public with intermediate stops over fixed routes connecting two or more urban areas. Given this limited definition, it is no wonder that we are treated to the spectacle of public transit systems offering intercity system.

A.B.A. needs Congress and the FTA to establish a workable definition of intercity service for all types of bus operations. Greyhound Bus Lines, for example, has complained of local public transit systems linking together to provide intercity service in California. Indian Trails Bus Company has lodged a similar complaint in Michigan. Without such a workable definition, it may quite literally be possible for the New York transit system to offer intercity service between New York City and Chicago, Illinois.

Even unlikely publicly subsidized organizations are beginning to encroach on the private market. The Flagstaff Public School System, which owns and operates its own bus fleet in cooperation with Northern Arizona University, also provides charter service. The school district states they do "this to keep their drivers employed" during the summer.

Congress can resolve these concerns in two ways. First, require FTA to establish a clear definition of inter city service that is not eligible for federal funding. Second, specifically provide that transit agencies may not provide regular route service beyond their urban area boundaries.

On behalf of the ABA and its members, I want to thank you and the Committee for the opportunity to address these issues.

[Mr. Hart's statement may be found in appendix.]

Chairman MANZULLO. We appreciate that very much.

Again, I ask your apology for these beepers going on and off with the votes. That is the reason why other Members are not here as they had to hurry off to other engagements.

Scott, I have some problems with the way this whole issue of information and making the park land into a recreation area came about and what was furnished to the small business people. My understanding is that you and was it seven other retail owners are clustered around Denali? Is that correct?

Mr. REISLAND. That is correct. We are located all within—our personal business is right on the south boundary of Denali Park, which is six miles from the visitors center where everyone goes at the entrance to the park.

Within an eight mile radius of that visitors center there is the north boundary of the park, and there are campgrounds and all types of camper amenities, gift shops, book stores. We are right within a six, seven, eight mile area as close as we can get to the park itself without being in the park, of course, yes. There are quite a few businesses aside from camper parks that are also being affected.

Chairman MANZULLO. Denali, prior to this major construction, did offer campsites? Is that correct?

Mr. REISLAND. Yes.

Chairman MANZULLO. How many sites did they offer?

Mr. REISLAND. Riley Creek, which currently has existed for many years, is 100 campsites, and that is the largest campground in all the area.

They also have a campground about a couple miles away from Riley Creek, which is called a rustic camping site, Marino Campground, which is run by the park. That is 60 sites. They also have campgrounds on into the park.

Chairman MANZULLO. And those have been there for some time?

Mr. REISLAND. Yes, they have.

Chairman MANZULLO. How many spaces, how many sites, do they want to add?

Mr. REISLAND. Fifty.

Chairman MANZULLO. Fifty. But they also want to add a bunch of amenities? Is that correct?

Mr. REISLAND. Correct.

Chairman MANZULLO. My understanding also is that normally the park fills up first, and then the eight retailers have enough of the overflow?

Mr. REISLAND. Absolutely. The park fills up first for camping, and then the people cannot find a spot to camp so they start trickling out to the boundaries of the park and going to the public or private campgrounds. Private campgrounds.

Also with the park developing the 50 more sites, we will lose the ancillary benefit of campers in our campgrounds, you know, buying from our gift shops, from our little grocery stores, so we will also lose money not only on hard camp nights and the money from paying for a campsite, but also in ancillary propane sales and that sort of thing.

Chairman MANZULLO. When people buy items inside the park, do they have to pay sales tax?

Mr. REISLAND. No, they do not.

Chairman MANZULLO. So the local communities become deprived to a great extent of sales tax revenues by these items being purchased inside the park?

Mr. REISLAND. That holds true also with the camping facilities. The private campgrounds outside the park boundaries pay taxes to the Denali Borough, which runs the ambulance services, the fire and a whole host of different programs, which the park is tax exempt from paying anything to the Denali Borough, yet they reap the rewards of our tax dollars for getting ambulance service in the park and fire department service. That is correct.

The Denali Borough has written a resolution. You will get a packet as soon as we can copy it that shows resolutions from the Denali Borough and the mayor strongly opposing the park in this development because they will lose what is called overnight tax, overnight accommodation tax that we have in Alaska.

Chairman MANZULLO. The National Park Service, though, complains that they are 20 years behind in construction and about what, $8 billion short of the money that they need just to maintain their present facilities. Have you heard those figures, Scott?

Mr. REISLAND. I imagine they were behind. At one time the park was the only thing out there and so there was a reason for them to have a liquor store and offer a little store and amenities because that was it. It was all wilderness, several hundred miles away from Fairbanks or about 400 miles away from Anchorage. If you were to go to Denali, you needed those services.

Since then, the highway has come through between Fairbanks and Anchorage, and it has become a lifeline between the two with Denali Park in the center. Private enterprise has developed unbelievably in that area to take up and provide services for folks traveling to Denali.

I do not see why they need to expand any more of their own facilities because private enterprise is more than willing to supply anything the park can provide and more.

Chairman MANZULLO. Who is the person with whom you were having conversations at the National Park Service?

Mr. REISLAND. Superintendent Steve Martin.

Chairman MANZULLO. And he is at Denali?

Mr. REISLAND. At Denali.

Chairman MANZULLO. Has he been cooperative with you?

Mr. REISLAND. What he has told us—we have had meetings. We have really wanted him to do a real economic impact study, so we gave him what we have in our facilities, how many campsites we have, how many electric RV sites, how many dry camping sites.

We gave him all this information hoping that he would look at it and see the light that hey, there is a—we can accommodate the increase in terms of outside the park in the private sector, but he has taken a position that we are 100 percent occupied, and they need to do the development.

Chairman MANZULLO. Is that his decision to make, or does it come from higher up in Washington?

Mr. REISLAND. I do not know.

Chairman MANZULLO. It would be interesting to find out.

Mr. REISLAND. We have worked and tried very hard. The borough and the private sector has worked very hard to try to persuade Superintendent Martin to not go through with this.

Chairman MANZULLO. At what stage is the construction?

Mr. REISLAND. They are currently bulldozing, plowing trees, clearing land for this development.

Chairman MANZULLO. What we are going to do is, I would like you to get the information on the loss of business, the fact that you are not 100 percent occupied, and get that to Attorney Szymanski.

We will send a letter to the superintendent and request that he answer within a relatively short period of time. If he does not, then he might be sitting here in Washington under subpoena.

I am very disappointed with the fact that the National Park Service is discourteous in not sending somebody here to represent them. I just cannot, you know, blowing off a Congressional Committee on items this critical.

Is anybody in this room here from the National Park Service? No representatives at all?

Mr. MASTROMARCO. If they were, I am not sure they would admit it.

Chairman MANZULLO. You know, they would have been sent here. I did not say that to embarrass anybody, but not having anybody here to testify is not—you do not do that.

Mr. REISLAND. Sir, we have the list of all documents in support.

Chairman MANZULLO. Matt, if you could write that letter? We will get on that right away. I have a question to ask you, Mr. Mack. We hear nothing but great compliments of the Tourmobile. As people contact our office, we let them know that this is the best way to get around in Washington.

My first question to you is, is there a need for another service? In other words, are all your coaches filled all the time? Are there people that are turned away from your service that would necessitate another line coming in?

Mr. MACK. No, there is not a need for another service. We are well serving those people who are interested in getting on our service.

We at one time carried upwards of two million people annually. Presently we are carrying about 1.4 million or 1.5 million.

Chairman MANZULLO. Is there a reason for that?

Mr. MACK. Increased competition. You know, really the Park Service could address a question like this, but one thing is very clear. Information that we received, again from a Freedom of Information request, is that our operation does not do as well as it might because the Park Service has not done what it said it intended to do in the first place, which was under the old and esteemed McMillen Plan, the federal plan, was intended to be a pedestrian mall with a mass transportation system operating throughout with an absence of traffic and parked cars.

I know that the Park Service has tried to some extent to do that. They do acknowledge that it is a problem. They have not been able to achieve it. That to a fair extent decreases our ability to accomplish what we might otherwise do.

There is no need certainly, absolutely not, for a service similar to ours there now as we are there.

Chairman MANZULLO. Would they be running the same routes as you?

Mr. MACK. The one proposed by BID covers our route, yes, in addition to others throughout the city. Their objective, as clearly stated in their information, which we have, is their title suggests what they intend to do, business improvement district.

At the top of their circulator plan they state their intention, and their intention is to take people, tourists, off the mall and take them throughout the city of Washington.

Chairman MANZULLO. In the information that you gave us appears this interesting statement by BID. It says, "The purposes of the Tourmobile and the circulator are different. However, as the Tourmobile is an interpretive service to present and explain the area to visitors, the circulator's function is transportation and marketing." Come on.

Mr. MACK. That is their intention. However, they are relegating the importance of a very old Park Service tradition I believe started by——

Chairman MANZULLO. That is like giving them straight As.

Mr. MACK. President Theodore Roosevelt, and that is one of interpretation. That is part of the Park Service's job to interpret. You find Park Service personnel at monuments, memorials, battlefields, various places, historic houses. I am pleased to say that it was the Park Service's very good idea.

Chairman MANZULLO. That is how they are trying to circumvent breach of contract is to say it is something different.

What does Tourmobile have, 22 or 23 different stops throughout the——

Mr. MACK. Yes, sir. Twenty-five.

Chairman MANZULLO. Twenty-five different stops. The people get on and off. They get back on with shopping bags full of stuff and do all kinds of things on that tour, do they not?

Mr. MACK. Yes. Yes, sir.

MALE VOICE. And learn a lot about the District.

Chairman MANZULLO. They learn a lot about the District, buy a lot of things and pay a lot of sales tax.

I cannot see any qualitative distinction between what you are doing and what they are trying to do.

Mr. MACK. I see their intention is to expand their business. They are into a lot of things. We got their annual report—it is a financial report—off of the web and discovered some of the things that they are doing. They are doing a lot of things, but they are subsidized.

Chairman MANZULLO. For example?

Mr. MACK. Helping the homeless, cleaning streets, offering information to tourists, among other things, but it is subsidized by the District government primarily. And now they feel that, whether that has been successful or not I am not qualified to say, but it is clear here that their next intention is to get into the transportation business.

Chairman MANZULLO. Did you have some questions from Mrs. Velazquez that you wanted me to ask to Mr. Hart on the issue in New York?

FEMALE VOICE. No.

Chairman MANZULLO. Okay. There is some kind of a conference coming up in New York that a bid went out recently with a private carrier in the city?

Mr. HART. Yes. I am confused a little bit, Mr. Chairman, because there are conferences in New York City all the time, but I do remember Rochester Transit getting a bid to provide transportation to a conference while in New York City.

Chairman MANZULLO. That is correct.

Mr. HART. Yes. Again, we think that is just something that a private business could do.

Chairman MANZULLO. Do you have more details on that?

Mr. HART. I could certainly provide them for you, Mr. Chairman.

Chairman MANZULLO. Okay. If you could, I would appreciate it very much.

Mr. HART. Certainly.

Chairman MANZULLO. I appreciate you all coming here. I again appreciate the indulgence of the time.

Scott, you came all the way. You literally crossed the tundra to come here. How long are you going to be in Washington?

Mr. REISLAND. I will leave, sir, on the 21st, so I will get to do some sightseeing, which I am very excited about and my son is very excited about.

Chairman MANZULLO. Well, if there is anything that our office can do personally, stop on by. We will give you tickets.

I expressed to Mr. Young here, a Member of Congress, that you were here, and I know he wanted to stop by and exchange hellos with you, but that just was not possible.

Again, I want to thank all of you for coming. All of your statements will be made part of the permanent record.

This Committee is adjourned.

[Whereupon, at 1:40 p.m. the Committee was adjourned.]

OPENING STATEMENT
Donald A. Manzullo, Chairman

Hearing before the U.S. House of Representatives
Committee on Small Business; Donald A. Manzullo, Chairman
Wednesday, July 18, 2001, at 10:00 a.m., 2360 Rayburn House Office Bldg.

Today the Committee will examine the extent, impact, and fairness of direct competition by the Government with small businesses. We will hear testimony on:

- a VA Hospital in Illinois competing with a private laundry owner;
- the Postal Service competing with private mailbox services, including a couple from Granville, NY (driving them out of business);
- the National Park Service competing with private recreational services, including an Alaskan campground owner and a local tourmobile owner; and
- the Federal Transit Authority competing with charter bus services.

We also have written testimony on the Air Force and Army providing river rafting services in Colorado, in competition with private outfitters there. That witness could not be here today, but his statement is on the table, along with all other witness statements provided to the committee.

Relevant federal agencies also have been invited to participate. Two of these agencies will present witnesses today while the others have chosen only to present material for the record.

These examples represent a larger pattern -- a pattern that costs small businesses contracts, revenues, and jobs. Such competition by the Government seems "unfair," by definition, since the Government shares little or none of the regulatory and tax burdens that it imposes on these small businesses.

I look forward to the testimony of the witnesses before us. On behalf of the Committee, I thank them all for coming, especially those who traveled far. I now yield for any opening statement by the gentlelady from New York, Ms. Velazquez.

DONALD A. MANZULLO, ILLINOIS
CHAIRMAN

NYDIA M. VELÁZQUEZ, NEW YORK

Congress of the United States
House of Representatives
107th Congress
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515–6315

STATEMENT
Ranking Member Nydia M. Velázquez

Thank you, Mr. Chairman.

I am happy that the committee is examining this issue today, because I believe it follows our core mission as advocates of small business.

This committee has addressed the burden of government regulation and paperwork, which drains time and money from small business and discourages them from competing for federal contracts.

In the past year, we have focused a great deal of attention on the practice of "bundling", which is the systematic exclusion of small business from scaled federal contracts when they are "bundled" and handed to a prime contractor. We have proven time and time again that this practice does MORE than just discriminate and exclude. Bundling is costly, wasteful, inefficient, and more likely to procure lower quality goods and services for the federal government.

In addition, this committee and others have held a series of hearings in past years on the Federal Prison Industries' anti-competitive practices for government contracts. Last month we took a fresh look. We learned that UNICOR pays a fraction of the federal minimum wage, remains exempt from OSHA requirements, and can dictate pricing. No company in this country could possibly get away with that.

All of these practices hurt American entrepreneurs' right to compete and win lucrative federal contracts.

Today we focus on an even more pernicious phenomenon: the federal government's direct competition with small business for goods and services. This is exactly opposite the ideal of a market economy. No company should fear direct competition from government, which is more entrenched, subsidized, protected and powerful than they could ever be.

These are difficult activities to ferret out because they have been restricted for a generation, first by the Office of Management and Budget's Circular A-76 and later by the 1998 FAIR Act. Under scrutiny, anti-competitive government activities have become more subtle. That is why we are here: to look a little deeper.

We will hear the concerns of several small businesses here, in particular bus charter contracts won by federally backed Public Transit Authorities, as well as the practice of the Post Office, which imposed requirements on independent mail box owners that drove away customers.

Our aim here is simple: to continue to remove barriers and obstacles the federal government has placed in the way of America's small businesses. Our entrepreneurs have reason to expect the government will not compete with them directly, just as they expect the government to allow them to compete fairly for federal contracts.

Royal Laundry Systems
of WI., Inc.

Main Office
200 E. Frisco Drive
Harvard, Illinois 60033

(815) 943-7909
Fax: (815) 943-4616

As the President and owner/manager of three commercial laundries in the Midwest, which include plants in IL., MO., IND., and WI., I am particularly concerned with the Government (Hines V.A. Hospital in Maywood, IL.) taking business away from my laundry plants.

My business, Royal Laundry, has paid considerable amounts of taxes to the Government over the past twenty years. Some of this tax money is used to fund the V.A. System, which includes their laundries.

I have lost several competitive bids to the V.A. Laundry because I cannot process linen at the cost they are bidding and being awarded contracts.

According to the most recent cost analysis provided by the U.S. General Accounting Office, which is fiscal year 1999, it costs Hines V.A. Hospital thirty-five and one half cents per pound to process linen. This cost of thirty-five and one half cents per pound does not include some true costs, which would drive their costs even higher.

So, keeping in mind that it costs the V.A. Hospital a minimum of thirty-five and one half cents per pound to process linen, how can they bid competitive accounts and be awarded the contracts at twenty-three cents per pound? The V.A. Hospital loses twelve and one half cents per pound of linen processed, minimum!

How long could I stay in business if I lost twelve and one half cents per pound of linen processed?

I wanted to stay working another 4 or 5 years, but this V.A. Laundry situation scares me! Monday, July 30th, this problem will no longer be mine. I retire on the above date.

My plants process approximately ten million pounds of linen per year. Using the V.A.'s numbers, my business would lose one million two hundred and fifty thousand dollars per year.

How long can I stay in business, when I am competing against a business..... I'm sorry, I'm not competing against a business. I'm competing against a government entity that's supported by my tax dollars.

How long can I stay in business when my competition, who I help fund, can afford to lose money on an indefinite basis?

In the laundry business, like any other business, work equates to jobs and paychecks for the common man and woman. God's poor people's weekly payroll in Illinois averages $30,000 per week.

According to Royal Laundry's calculations, the contracts which have been awarded to the V.A. Hospital, has cost my company approximately twelve full time jobs. If the V.A. Laundry continues to take work away from us, it could cost us another thirty or forty jobs.

Royal Laundry pays lots of taxes; Illinois, Wisconsin, Missouri, Federal taxes, Sales tax, Employer taxes, fuel tax, luxury taxes, real estate taxes, and most all of our employees pay most of these same taxes.

It seems that our tax money is being used to put us out of business. Perhaps it will cost all of us our jobs and paychecks.

Close: Winston Churchill

Re: Witness Disclosure Requirement –
"Truth in Testimony"
Item #3

We have not received any federal grants or contracts.

ROYAL LAUNDRY SYSTEMS OF WI., INC.

John Eakes

John Eakes
Owner/President
July 13, 2001

DEPARTMENT OF HUMAN SERVICES
MADDEN MENTAL HEALTH CENTER
1200 SOUTH FIRST AVENUE
HINES, ILLINOIS 60141-7000

AGENCY'S TRANSMITTAL LETTER TO VENDORS

TO: Bid Manager

SUBJECT: Attached Invitation for Bids
LAUNDRY SERVICES -HS033542074

The DHS - Madden Mental Health Center is requesting that you review the attached Invitation for Bids (IFB).

For your convenience, the following is a summary description of the supplies and/or services requested:

The Department of Human Services of Illinois-Madden Mental Health Center is soliciting bids for LAUNDRY SERVICES at Madden Mental Health Center, 1200 S. First Avenue, Hines Illinois 60141-7000.

The IFB itself consists of "Instructions on Submitting Bids", and Exhibits 1 and 2. Exhibit 1 tells how we will evaluate your bid. Exhibit 2 identifies the State's needs and goals, provides a detailed description of supplies and/or services requested, as well as related terms and conditions. Exhibit 2 also tells what your bid must provide and shows any required format.

If you are interested and able to meet the requirements set forth in the IFB, we would appreciate and welcome a bid.

Sincerely,

Robert D. Matthis
Business Administrator

May 1999
Royal Bid - $0.46/lb
Hines V.A. Bid $0.23/lb

American
LAUNDRY NEWS

Volume 28, Number 3 | The Newspaper of Record for Institutional Launderers | March 2001

LateNews

OSHA affirms need for safer devices to prevent needlesticks

WASHINGTON – The Occupational Safety and Health Administration (OSHA) has revised its bloodborne pathogens standard to clarify the need for employers to select safer needle devices as they become available and to involve employees in identifying and choosing the devices.

The updated standard, which was mandated by the Needlestick Safety and Prevention Act that President Clinton signed into law in November, also requires employers to maintain a log of all injuries from contaminated sharps.

Housekeepers and laundry workers are the most likely hospital employees after nurses, doctors and nursing assistants to suffer needlestick injuries, according to a recent study.

Last March, the Centers for Disease Control and Prevention estimated that selecting safer medical devices could prevent up to

Closing 13 plants could save VA millions, GAO says

By Bruce Beggs, Editor

WASHINGTON – The U.S. Department of Veterans Affairs (VA) could save $2 million or more in annual operating costs by closing 13 of its 67 laundries and moving their workloads to other, underused VA laundries within a four-hour drive, the U.S. Government Accounting Office (GAO) says.

The VA also could avoid spending about $9 million in equipment and building renovations that would otherwise be required for their continued operation.

Further savings could be realized, according to the GAO, if the VA would make greater use of competitive sourcing – comparing the operation of its laundries to private-sector operation of VA laundries or use of commercial laundries.

The findings are at the core of *VA Laundry Service: Consolidations and Competitive Sourcing Could Save Millions*, a report submitted to the U.S. House Committee on Veterans Affairs by Stephen Backhus, director of Health Care – Veterans and Military Health Care Issues.

Terry Everett, who chairs the Subcommittee on Oversight and Investigations, asked the GAO to study major VA support services and assess options for increasing their efficiency. The GAO gathered data, interviewed VA and private-sector officials, and made site visits in preparing the laundry report.

See GAO on Page 2

Bruce Beggs

Dr. Sophia Mikos-Schild, with her staff looking on, inspects the contents of a surgical pack her new department will soon be processing in house.

Resurrection making switch to reusables

EVANSTON, Ill. – The four hospitals of the Resurrection Healthcare System are making the switch from disposable to reusable textiles, and a new Surgical Pak Operations Department here at St. Francis Hospital is preparing to process and prepare sterile packs for the entire system.

Resurrection Medical Center and Our Lady of the Resurrection Medical Center, both in Chicago; Westlake Community Hospital in Melrose Park, Ill.; and St. Francis Hospital have standardized their packs throughout the system, according to Dr. Sophia Mikos-Schild, who

See SWITCH on Page 3

Grand America installs state-of-the-art central laundry

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a Operating costs include direct labor, administration, supplies, utilities, and transportation of laundry to other locations.
b VA paid the contractor for processing this amount of laundry, but this was an estimated amount and likely resulted in overpayments.
c These numbers do not include the number of private contractor employees who operate these laundries.
d VA laundries in Asheville and Salisbury, N.C., are not listed in this table because they both recently closed and consolidated with the VA laundry in Mountain Home, Tenn.

GAO

Continued from Page 1

Consolidation

The VA's laundries serve more than 36,000 inpatients a day in its hospitals, nursing homes and domiciliaries. In fiscal 1999, the VA spent about $52 million to process more than 166 million pounds of laundry, employing approximately 1,100 workers.

While VA has already enhanced its efficiency by reducing through consolidation the number of laundries (from 116 to 67 since 1979), there are still 24 plants in multi-laundry markets – that is, located within four hours' drive time of one or more other VA laundries.

The 13 sites the GAO identified as consolidation candidates are spread across the country and employ a total of approximately 150 workers, ranging from about three to 26 per location.

The VA may determine other locations would be better consolidation sites, the GAO says, and actual savings may differ from estimates if each laundry, once consolidated, can't meet the production standard of 160,000 pounds of laundry annually per employee.

"We found that all networks plan to study laundry consolidation in the future as the workload at individual facilities decreases and laundry equipment reaches the end of its useful life," the report says. "Three are currently studying potential consolidations."

Competitive sourcing

The VA uses private-sector companies to operate two of the 54 laundries that would remain if the 13 laundries closed. VA also uses 10 commercial laundries to provide off-site laundry service. A GAO review of laundries from both groups found that competitive sourcing resulted in lower costs.

GAO identified these 13 VA laundries as candidates for consolidation, as well as neighboring facilities to take on their workload:

Lebanon, Pa., to Perry Point, Md.
Clarksburg, W.Va., to Pittsburgh, Pa.
Salem, Va., to Richmond, Va.
St. Cloud, Minn., to Minneapolis, Minn.
Walla Walla, Wash., to Spokane, Wash.
Northampton, Mass., to Brockton, Mass.
Huntington, W.Va., and Murfreesboro, Tenn., to Louisville, Ky.
Cleveland, Ohio, to Dayton, Ohio
Hines, Ill., and Madison, Wis., to Milwaukee, Wis.
Fayetteville, Ark., to Little Rock, Ark.
Dallas, Texas, to Waco, Texas

GAO's assessment of the 52 VA-operated laundries shows that many of the facilities have some of VA's highest labor costs and also have aged equipment. Thirty-four of these plants, not counting the 13 that could be closed and the two operated by private contractors, appear to be "prime candidates for achieving savings" through competitive sourcing.

Thirteen of the 52 laundries report they are facing "major capital investments" within five years to replace aged equipment or to renovate buildings. Projected costs range from $200,000 to $3 million.

The VA "would need to consider the effect such changes could have on its career work force" when contemplating competitive sourcing, GAO says.

The report recommends that the Undersecretary of Health be required to direct the 22 VA networks to assess each laundry, determining which option or options would reduce costs while maintaining or improving quality, and implementing the most cost-effective option in a timely manner.

Concurrence

Hershel Gober, acting secretary of Veterans Affairs, concurred with the recommendations, but didn't offer a plan or timetable for implementing the least costly options.

"The Office of Facilities Management (OFM) will develop and maintain program oversight policy and reporting systems through which Veterans Health Administration textile care key business elements can be evaluated," he said in an October letter to Backhus. "OFM will provide an annual report to Headquarters and field managers with comparative information for operational and opportunity improvement. We anticipate assessment and implementation will occur in concert with these reviews and as other priorities are met."

"VA has made good progress in consolidating laundries, but more remains to be done," the GAO report says. "VA has the opportunity to save millions of dollars by systematically assessing where it could consolidate laundries, obtain laundry services through competitive sourcing, or both." ALN

Inside

Columnist At Large: Eric Frederick asks: Would a single, stronger industry association spur membership interest? 4

Environmental Services: Even as spring arrives, Barbara Bowen is thinking about snow and how to get rid of it 5

Newsmakers 6

Product News 8

2001 Buyer's Guide – Product/Service Directory: Shopping for your laundry has never been easier 12

2001 Buyer's Guide – Company Directory: Everything you'll need to go right to the source 18

Calendar of Events 26

Panel of Experts: If outsourcing steps into your ring, prove why your OPL is still the champ 30

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Fiscal Year 1999 Production for VA's 67 Laundries

Laundry	Poundage	VA FTEs	Cost/Pound[a]	Laundry	Poundage	VA FTEs	Cost/Pound[a]
Albany, N.Y.	2,250,962[b]	1.20[c]	$0.254	Lebanon, Pa.	725,987	10.00	$0.564
Albuquerque, N.M.	871,213	9.03	0.369	Little Rock, Ark.	3,915,302	31.50	0.396
Alexandria, La.	1,526,292	11.55	0.429	Louisville, Ky.	1,457,539	21.50	0.545
Augusta, Ga.	5,989,548	52.00	0.376	Madison, Wis.	3,203,347	15.90	0.250
Battle Creek, Mich.	3,295,828	1.00[c]	0.382	Martinsburg, W.Va.	1,337,473	13.50	0.465
Bay Pines, Fla.	3,724,402	21.03	0.226	Milwaukee, Wis.	4,185,076	24.50	0.218
Big Springs, Texas	310,979	7.90	1.037	Minneapolis, Minn.	2,991,134	22.58	0.333
Biloxi, Miss.	5,264,728	41.00	0.334	Mountain Home, Tenn.[d]	1,411,798	12.00	0.352
Boise, Idaho	427,450	3.75	0.416	Murfreesboro, Tenn.	2,187,278	12.50	0.255
Brockton, Mass.	4,806,152	40.00	0.383	Northampton, Mass.	1,608,835	12.60	0.367
Buffalo, N.Y.	2,891,771	19.10	0.244	Oklahoma City, Okla.	1,315,468	13.00	0.348
Canandaigua, N.Y.	2,101,962	15.55	0.382	Perry Point, Md.	4,903,741	39.80	0.424
Clarksburg, W.Va.	600,000	4.75	0.376	Phoenix, Ariz.	2,941,250	22.60	0.326
Cleveland, Ohio	2,985,434	17.00	0.270	Pittsburgh, Pa.	6,033,288	42.50	0.362
Dallas, Texas	2,759,125	18.00	0.319	Portland, Ore.	1,771,952	14.10	0.305
Dayton, Ohio	2,929,043	26.00	0.337	Reno, Nev.	508,330	3.75	0.393
Erie, Pa.	854,265	8.10	0.401	Richmond, Va.	5,224,632	44.00	0.331
Fargo, N.D.	818,245	6.70	0.301	Roseburg, Ore.	1,353,042	14.18	0.461
Fayetteville, Ark.	676,379	9.30	0.538	Salem, Va.	1,473,597	9.40	0.321
Fayetteville, N.C.	2,384,205	20.60	0.318	Salt Lake City, Utah	931,272	9.00	0.383
Fort Harrison, Mont.	286,692	3.03	0.541	San Juan, P.R.	3,329,245	12.25	0.209
Fort Lyon, Colo.	592,642	6.75	0.433	Sheridan, Wyo.	363,913	3.75	0.497
Fort Meade, S.D.	1,035,766	8.77	0.387	Sioux Falls, S.D.	600,000	8.00	0.336
Fresno, Calif.	457,315	5.03	0.317	Spokane, Wash.	649,998	7.50	0.325
Grand Island, Neb.	924,823	8.00	0.329	St. Albans, N.Y.	13,113,432	69.00	0.245
Grand Junction, Colo.	264,427	3.52	0.556	St. Cloud, Minn.	1,055,064	7.25	0.373
Hines, Ill.	3,339,727	26.00	0.355	St. Louis, Mo.	2,881,664	20.80	0.394
Houston, Texas	3,303,180	21.80	0.222	Togus, Maine	866,754	6.10	0.327
Huntington, W.Va.	740,087	5.40	0.338	Tuscaloosa, Ala.	2,358,523	29.00	0.453
Iron Mountain, Mich.	328,519	3.49	0.471	Waco, Texas	2,327,006	24.00	0.340
Kerrville, Texas	2,295,389	17.50	0.317	Walla Walla, Wash.	301,210	2.75	0.432
Knoxville, Iowa	2,718,455	24.56	0.407	W. Los Angeles, Calif.	4,947,378	55.00	0.332
Lake City, Fla.	2,536,801	18.40	0.270	W. Palm Beach, Fla.	3,686,858	22.35	0.224
Leavenworth, Kan.	2,985,505	20.70	0.346				

Source: U.S. General Accounting Office

a Operating costs include direct labor, administration, supplies, utilities, and transportation of laundry to other locations.

b VA paid the contractor for processing this amount of laundry, but this was an estimated amount and likely resulted in overpayments.

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GAO

Continued from Page 1

Consolidation

The VA's laundries serve more

Competitive sourcing

The VA uses private-sector companies to operate two of the 54 laundries that would remain if the 13 laundries closed. VA also uses 10 commercial laundries to provide off-site laundry service. A GAO review of laundries from both groups found that competitive

The VA "would need to consider the effect such changes could have on its career work force" when contemplating competitive sourcing, GAO says.

The report recommends that the Undersecretary of Health be required to direct the 22 VA networks to assess each laundry,

Statement of

Arthur S. Hamerschlag

Deputy Chief Financial Officer

Veterans Health Administration

Department of Veterans Affairs

on

Review of Direct Government Competition

With Private Sector Small Businesses

Before the

Committee on Small Business

U. S. House of Representatives

July 18, 2001

Thank you for this opportunity Mr. Chairman. I think the record of the Department of Veterans Affairs (VA) in support of small business in America is a good one, and under the leadership of Secretary Principi we are taking steps to further improve that record.

The VA has authority to purchase health care resources needed for veterans' health care from community providers and, in limited circumstances, to sell resources to other community entities. This authority is found in Title 38 U.S.C. Section 8153.

Let me first say that VA has one primary mission and that is to serve the needs of veterans, and to do so in a cost effective and efficient manner. It is not in VA's interest to knowingly enter into a sharing agreement that would have a negative impact on any community provider of that service.

In FY 2000 VA used this authority to purchase $290 million in health care resources. The five leading resources purchased included: diagnostic radiology ($27 million); organ transplant ($25 million); radiation therapy ($24 million); and primary care ($20 million). We also used this authority to sell $32 million in health care resources to other community entities. The leading resources we sold in FY 2000 included the following: medical space ($8 million), primary care ($4 million) and diagnostic imaging ($4 million). We also sold $2 million in hospital laundry services system wide in FY 2000.

Starting in 1997 VA took several steps to ensure that the agency acted responsibly with the contracting authorities granted and expanded by Congress. These steps included VHA Directive 97-015, and VHA Directive 1660.1. Directive 97-015 was issued in March 1997, and Directive 1660.1 was issued in August 2000. Directive 97-015 established a Rapid Response Team (RRT) made up of staff from the Office of General Counsel, the Medical Sharing Office,

and the Office of Acquisition and Materiel Management. Since 1997 we have required that all sharing concept proposals under 8153 authority must have the approval of the RRT, before negotiations start. The RRT is responsible for determining that that the resource to be sold is consistent with statute, VA policy, and common sense.

As a matter of policy Mr. Chairman, VA is not interested in competing with any other provider of a community health care resource or causing harm to any commercial provider of a health care resource. That activity would not benefit VA or America. We do however, actively enter into and seek community partnerships under sharing authority where the agreement results in improved services to veterans as well as a benefit to other Americans living in the community.

Mr. Chairman, before I discuss the specific case at hand, I want to be sure the Committee is aware of the VA policy. Our policy and practice is simple. If VA becomes aware of an adverse impact to a commercial interest, we will not provide those services. That is what was done when our laundry at Hines considered contracting with Loyola, and will be done for any proposal about which we receive notice of complaint. That is and will continue to be our practice. This example proves our policy is in place and, in fact, does work. Mr. Chairman, you should also be aware that at this time the Hines VAMC does not provide laundry services to any other non-VA entity, and does not propose to do so.

Mr. Chairman, I would be happy to answer any questions.

Statement of
Michael F. Spates
Manager, Delivery Operations
United States Postal Service
before the
House Committee on Small Business
July 18, 2001

Good morning, Mr. Chairman and committee members. My name is Michael F. Spates, and I am the Manager of Delivery Operations for the United States Postal Service. I am happy to be here today in response to your request to address the issue of competition by the Postal Service with small businesses. The request cited, in particular, competition with a family-owned commercial mail receiving agency or CMRA. You are seeking to determine the extent; impact; and fairness of this competition. I will address these issues.

The Postal Service recognizes that small businesses help drive our nation's economy. We are an important enabler of small business – a vital communications link that allows the business to advertise, ship merchandise and communicate, at a low cost, around the world.

The Postal Service has a long, ingrained tradition of promoting businesses, especially small businesses, offering services, meeting special needs of small offices and home offices; services such as e-postage, internet access to postal information, forms, regulations, mailing procedures, delivery of business supplies to small offices and home offices, city or rural, at least six days a week. The Postal Service web site usps.com has a link entitled "Tools to Help Small Businesses," which includes topics such as "How Can I Find and Reach My Target Audience?," "How Can I Get Orders to Customers Fast?," and "How Can I Build Better Customer Relationships?." Each of these topics has approximately a half dozen sub-topics to help meet special needs.

In addition, the Postal Service has a long history of being a leader in contracting with small and minority-owned businesses; a partnership that benefits us both. Small businesses are critical to the ongoing success of the Postal Service. We are continuously looking for ways to strengthen our relationship – not ways to diminish it.

At the same time, the Postal Service has to maintain a delicate balance between meeting the needs of the business customer and the consumer protection needs of the mailing community. The commercial mail receiving agency (CMRA) rules improve the security of the mails by strengthening the requirements involved in the application for and use of a private mailbox. The end result benefits both businesses and consumers by reducing opportunities to use a private mailbox for fraudulent purposes, which can have significant or even traumatic financial consequences for the innocent victims. The provisions associated with private mailboxes mirror the regulations associated with post office boxes.

On the surface, both the CMRAs and USPS offer "mailbox services" to customers, the Postal Service in the form of post office boxes at its facilities. In our opinion, the extent of USPS competition with CMRAs is minimal and the impact, if any, small. Moreover, to the extent there is competition, it is inaccurate to portray it as "unfair." We largely do not compete for box holders; i.e. persons who are CMRA box holders would likely not use post office boxes because of our locations or we do not provide the full array of services they seek. This is not to say that individual CMRAs do not face significant competition. One source of this competition is other CMRAs. Because of our regular dealings with the CMRA industry, we are aware of major CMRA franchisors, as well as numerous independent operators, totaling over 10,000 CMRAs. In discussions

with the CMRA franchisors, we have become aware of the turnover in CMRAs and CMRA ownerships, especially in the smaller, family run operations.

However, we understand that this is based on the economics of running such businesses, and competition from private sources, rather than any competition from the Postal Service. In fact, the CMRA industry approached the Postal Service on setting up a special process for handling the customers' mail at CMRAs that are "abandoned" by the owner or go out of business. These procedures were published in March 1999.

To the extent that it can be said that there is competition between the USPS and CMRAs, it cannot accurately be said that it is done on unequal terms. The USPS has made every effort to ensure that the procedures it employs in offering its own services are at least as strict as those faced by CMRAs. For instance, the USPS has long imposed identification requirements on post office box customers similar to those required of CMRAs. Further, the upcoming requirement that CMRA customers not use "apartment," "suite," or other term that implies a physical presence at the CMRA's address mirrors the longstanding requirement that post office boxholders use a post office box address, by which is commonly understood that the boxholder does not maintain a physical presence at the postal facility.

Any perception that the Postal Service is seeking to compete unfairly with CMRAs may arise from unfounded allegations that the recent rule changes were designed to make it difficult for CMRAs to operate and thus create a competitive advantage for the Postal Service. The rules in question were intended to fulfill the USPS' statutory consumer protection responsibilities. The departments responsible for developing them were the Postal Inspection Service and

Operations. Marketing motives were not considered. Indeed, if the Postal Service's motive were the "bottom line," it likely would not have promulgated the rules. Any USPS revenue gains would likely be minimal since the USPS and CMRAs do not compete for the same customers, and these gains would likely be overshadowed by the cost of administering the rules.

In promulgating the rules, the USPS paid deference to small business interests. In the course of developing and implementing the new standards, the Postal Service has continuously invited the relevant interest groups to present their views. As part of these efforts, the USPS has met with these groups to seek to work out any remaining disputes. For the most part, we believe this dialog has been successful in promoting a working relationship between the parties, an understanding of the issues and concerns of each, and, in a surprisingly large number of instances, developing consensus where possible. Small business interests were invited to participate in this process, and were represented by the CMRA industry, the Small Business Administration, the National Federation of Independent Businesses, the National Association of the Self-Employed. In addition, the Federal Trade Commission and other government agencies, law enforcement officials, the National Coalition Against Domestic Violence, office business centers, mailing associations, and many others were invited to get all of the issues and concerns on the table and find a fair, workable resolution.

Their views were respected and considered throughout the process. I can't say that we adopted all of their views, but neither did we adopt all the views of Law Enforcement or any nonpostal group. That is the reality in attempting to balance the interests of diverse parties.

The evolution of the CMRA rules, which include mutually agreed upon modifications and compromises, is the result of ongoing meetings with the various interest groups and the positive support from CMRA industry representatives. Elements of the final rule have been in effect for some time; however, all elements of the final rule are effective August 1, 2001. These elements include the following and represent an outline of major provisions contained in the revised regulations:

- CMRAs must register, using Form 1583A, *Application to Act as Commercial Mail Receiving Agency*, with the Postal Service to act as an agent to receive mail for others. CMRAs have long been required to register; the changes provide a specific form that can be used.

- CMRAs are to require two forms of identification, one with a photo, to rent private mailboxes to their customers using Form 1583, *Application for Delivery of Mail Through Agent*. The application requirement has been required long before these regulations were revised. The identification requirements are identical to post office box requirements that have been in effect since the early 1990s.

- CMRAs are not authorized to deliver mail to a box unless a Form 1583 in that name is on file; the effective date for having the completed form on file was June 26, 1999. This codified existing policy.

- CMRAs will submit quarterly updates of the list of box holders to the Postal Service. The requirement used to be annual; however, due to box holder turnover rates, a quarterly update is necessary. However, in view of the more regular reporting, the requirement that CMRAs notify postmasters immediately whenever one of their customers terminates the agreement was rescinded.

- CMRA box holders must represent their address by the use of "PMB" (private mailbox) or the alternative "#" sign mailing address. Suite, apartment, or other designators are not allowed; the compliance deadline is August 1, 2001.

- CMRAs are to affix new postage to re-mail to former customers for at least six months, rather than indefinitely as required under previous provisions; after the six month period, CMRAs may endorse and return First-Class Mail for former customers to the post office without the need for new postage.

- CMRAs will endorse and return mail to the post office for which the CMRA has no form 1583 on file; no new postage required.

There were also important revisions to internal postal policies regarding CMRAs:

- Prohibition of the release of information pertaining to individuals who use either private mailboxes or post office boxes for business purposes. Prior to these regulations, this information was releasable upon request.

- Provision that mail without the PMB designation may be returned if the CMRA box holder does not make a reasonable effort to notify correspondents of the requirements. The original rule used the term "will."

- Provision that CMRAs may accept all accountable mail (insured, certified, etc.), other than Registered Mail. This improves revenue opportunities for the CMRA.

- Additional clarifications and modifications regarding the remailing obligations of the CMRA, addressing format, acceptable forms of identification, and procedures to ensure non-complying CMRAs are given an opportunity to correct deficiencies.

- Of utmost significance, working with the Coalition Against Domestic Violence, the Postal Service issued stringent rules against release of information, including release to law enforcement and other government officials, on CMRA box holders submitting a protective/restraining order. The ability of law enforcement to submit oral requests was changed to require them to be written requests.

During the discussion stages of developing the final rule, there was opposition from small business representatives who wanted to continue using the designator "suite" for a business, implying it was "office space," when actually it is a mailbox. Critics of the small business proposal strongly felt the use of "suite" could be deceptive to consumers. Also, the representative of Attorney Generals from 28 states supported the original proposal of PMB (Private Mail Box) as the only possible designator, just as PO Box or POB designates a Post Office Box. In response to the revised proposed rule making, 50 State Attorney Generals, plus the District of Columbia and the Virgin Islands, signed a letter opposing the allowance of the "#" sign as an alternative designator. Some states are considering legislation at the state level to tighten the requirements.

As I stated previously, the Postal Service was attempting to maintain a delicate balance between business customer needs and consumer protection needs. Previous criticism was aimed at the Inspection Service for allegedly having only anecdotal evidence of fraud cases involving CMRAs and these revisions weren't warranted.

There was significant input and support of the regulatory change voiced by the law enforcement and consumer protection communities. The Inspection Service acknowledged that it did not have empirical data to document the number of instances CMRA addresses were being used in relation to illegal promotions. In fact, some of the CMRA businesses did not register and it is very difficult to capture how many actually existed and where they were located. The new regulations will improve this situation. However, the Inspection Service did present a limited, yet compelling, number of case examples that on their own support the creation of some preventive or protective measures. The Department of Justice, the Federal Trade Commission, state and local law enforcement agencies and prosecutors, and the many consumer groups keenly followed the development of these regulations. These are the elected and appointed officials who are responsible for protecting consumers. This initiative was not an effort of the Postal Service to compete with CMRAs. It was a law enforcement initiative to protect consumers and the sanctity of the mail.

However, should there still be skeptics regarding whether there is significant evidence to support the changes that are being implemented, I'd like to refer to several excerpts from a CMRA association publication *"Mailbox Rental 101 - The Complete Guide to Operating a CMRA (Legally, Profitably, Professionally) 2001 Edition,"* published by Associated Mail and Parcel Centers (AMPC), Charmaine Fennie, President and Executive Director. The AMPC represents over 2,700 CMRAs. Ms. Fennie is also chair of the Coalition Against

Unfair USPS Competition (CAUUC), a non-profit organization founded in 1995 in an effort to keep the Postal Service from competing unfairly with small businesses. Ms. Fennie participated in every meeting with industry representatives and the Postal Service in developing the final rules and regulations for CMRAs.

Excepts from "*Mailbox Rental 101 – The Complete Guide to Operating a CMRA*"

Page 33:

> "While there are ample provisions for the protection of privacy of legitimate customers, it is important to note that CMRAs have historically been recognized as "safe harbors" for criminal elements. Armed with the knowledge that the CMRA address will provide at least a temporary shield of the criminal's true address, the history of crooks and rip-off artists utilizing CMRA addresses is legion. Therefore, it is the right, and indeed, the responsibility of the reputable CMRA operator to vigilantly screen potential customers and to remain on the alert for problems that may arise after a customer is signed up."

Page 34:

> "The California "Consumer Protection" Law (see page 56) may appear quite onerous to many operators. If there had not been a high number of people perpetuating scams out of California CMRAs, however, the law would never have come to be.
>
> Law enforcement officials in several other states, most particularly Florida and Pennsylvania, have looked closely at California's law with plans to implement similar restrictions in those states. The State of Texas is considering sweeping changes in CMRA operations, including fingerprinting and back-ground checks of every potential CMRA operator."

Page 34:

> "There are generally two fears of CMRA operators that are spoken when the issue of CMRA fraud is brought up; 1) the fear of retribution from the customer, and 2) the fear that the customer might leave if their ID or operation is questioned in any way.

> To answer those fears: First of all, there has never been any evidence of retribution from a CMRA customer who has been turned over to the law. Most of the time, unfortunately, the notification to law enforcement about the customer comes too late, and the scammer is long gone. And, in answer to the fear the customer may otherwise leave – is this really a customer that you want anyway? You risk the total shutdown of your mail receiving service because of one customer who can't or won't comply – is this worth the risk?"

Page 35:

> "California is trying to protect innocent consumers from the criminal types who do like to "hide" at CMRAs. Mail fraud perpetuated from CMRAs in California has drastically decreased since the law went into effect in 1995. Many other states are expected to adopt these standards for CMRAs as well.
>
> To comply with the "California Mailbox Law," CMRA operators must obtain and photocopy the identification, maintain a file for the customer for two years after termination, . . ."

Page 36:

> "There are several known scams that are perpetuated every year from CMRA locations – some have been going on for years. We'll try to address the best known scams here – obviously, permutations of these can crop up from time to time. It pays to be very vigilant when opening a box, as well as paying close attention to the types of mail received for your customers."

The Postal Service has developed a plan for consumer education regarding the meaning of the PMB designator and the "#" sign designator. The "#" sign option was added due to concerns expressed by small businesses. But this created a need to help the public identify which addresses including "#" signs were served by CMRAs. Two major elements of this education process are: 1) access to a toll free telephone number to allow consumers to determine whether an address bearing a "#" designator is a CMRA location. The PMB designator is an easier, one step education process which does not necessitate a

phone call; however, the option is there. 2) U.S. Postal Service has developed a web site address lookup program. Simply access the U.S. Postal Service web site, as is done today; enter the address and ZIP Code. A response will identify whether the address is that of a CMRA.

With regard to the small business CMRA owner, a curriculum plan has been drafted by industry representatives in concert with the Postal Inspection Service which covers CMRA owner requirements, CMRA customer requirements, privacy issues and ramifications, fraud prevention profiles of indicators and notification of the Inspection Service. This notification process includes two-way information sharing among CMRAs and between the Inspection Service.

The Postal Service has also been working with representatives of the Office Business Centers (OBC). An OBC rents office space, equipment and service, typically to small businesses, on a full time, scheduled part time or an as needed basis. The OBC primary business is to rent space and provide ancillary services, such as, reception, telephone, Internet, word processing and conference rooms, etc. They also provide mail receiving agent services to some clients. For many OBCs the CMRA clients represent a small part of their business revenues; less than 10 percent. The question arose as to when is a client of an OBC in reality a CMRA customer. Representatives of the traditional CMRA industry were included in the discussions with the OBC representatives because of their concerns that CMRAs not face a competitive disadvantage. The objective of the meetings was to develop guidelines to distinguish between a CMRA client and a qualified OBC client when each category is contracted with the OBC.

The parties agreed in principle that a OBC client will not be subject to the CMRA regulations when the contract is primarily for office space and other non-CMRA related ancillary services. However, the OBC client, who is contracted for just services similar to those provided by a CMRA, will be subject to the CMRA regulations. The proposed rule making was published in the *Federal Register* on July 11, 2001, for a 30 days comment period.

In conclusion, while some critics charge that the enactment of the CMRA rules created the appearance USPS misused its regulatory authority to hinder competition, the Postal Service strongly believes it acted responsibly in addressing the concerns of those impacted by the CMRA regulations. The end result is a stronger and more effective working relationship among the CMRA businesses, law enforcement and the Postal Service resulting in enhanced protection for consumers.

Testimony of Gregory Tucci, former owner of the P.A.S.S. of Granville, Mail and Parcel Center, Before the House Small Business Committee, on the issue of Federal Government Competition with Small Business.

July 18, 2001

Chairman Manzullo and distinguished members of the Committee, thank you for allowing me this opportunity to address this Committee today and to share with you my experience as a small business owner who made the fatal mistake of opening a business in competition with the United States Postal Service.

My name is Gregory Tucci, and in June of 1997, I opened a mail and parcel shipping and receiving center in the small town of Granville in upstate New York on the Vermont border. My mail and parcel business, named P.A.S.S. of Granville, was the type of business the Postal Service refers to as a Commercial Mail Receiving Agency or CMRA.

We offered our customers many mail and shipping related products and services, including private mailbox rentals, private carrier package shipping and receiving services as well as parcel packaging services.

One week prior to opening the store, I went and visited Roger Curtis, Postmaster of the Granville Post Office to discuss my new venture and he informed me that all we needed to do to receive mail for our customers was to file a list of our mailbox customer names and box numbers with the Granville Post Office once a year. He made no mention of PO Form 1583 hence they had none on file when the new regulations took effect.

Like many small businesses, mine got off to a slow start. We held our Grand Opening in September of 1997 and rented our first 5 mailboxes by the end of 1997. We rented 8 more boxes in 1998 and began noticing a definite increase in new mailbox customer inquiries. Many prospective customers were interested in the additional services we offered over and above the P.O. Box rental services offered by the Grandville Post Office. Unlike the Post Office, our facility was fully handicapped accessible and provided our customers with 24-hour secure access. Several prospective mailbox customers expressed interest, and indicated they were thinking about switching to our mailbox service when their P.O. Box rental with the Granville Post Office expired.

By the beginning of May of 1999, we had rented 10 more mailboxes and were now receiving significant interest in our mailbox services from prospective customers

In late May of 1999, Granville Postmaster Curtis personally delivered a copy of the new Postal regulations governing CMRAs to us. He admitted not understanding the new rules and was unable to explain any of the confusing and ambiguous details. He also presented us with a single copy of a PS Form 1583 to be filled out and signed by every one of our customers.

My wife Elaine, the store manager at that time, read the convoluted regulations and understood them perfectly. She concluded that we could be in for some big trouble!

She proved to be right.

Every single one of our mailbox customers refused to execute PS Form 1583 after reading "Privacy Act Statement" on the back of the form which stated that their home address and personal information could be released to any government agent, domestic or foreign, for law enforcement purposes without any mention of a warrant. My customers found this a clear violation of their fourth amendment rights. Those customers who were using the mailbox for business purposes could have their personal information given out to anyone who asked for it. My customers felt this was a massive invasion of their privacy and violated their fourth amendment rights, while posing a threat to their safety and the safety of their loved ones. Those not using the box for business could see no reason to list the names and ages of their children. Parents are advised not to release this information for the safety of their children and this was a major concern for them.

This was only the beginning of our problems. During the next few months, at least two-dozen people came to the store to apply for mailboxes, however, when presented with PS Form 1583 changed their minds, citing the same reasons as our existing customers. Several of our mailbox customers just decided against the hassle and let their mailbox rental agreements expire without renewing.

We started loosing significant revenue and our cash flow became so critical, that when tragedy struck and Elaine's mother passed away in July of 1999, we could only afford to close the store for one day in order to attend the funeral.

In August of 1999, Granville Postmaster Curtis sent us a certified letter stating that our store did not comply with the CMRA regulations. We filed a list of our customers, complete with addresses as required but we had no completed PS Forms 1583 to offer him. We also had no feasible way to verify that each customer actually resided at the address we had on file on the mandated quarterly basis.

We received a certified letter from Granville Postmaster Curtis on September 29, 1999 threatening to shut off mail delivery to our facility on October 13, 1999 if we continued to be in non-compliance with the CMRA regulations. We promptly notified all our customers and stopped collecting rent from them. In spite of the threat of mail disruption, our customers still refused to file PS Form 1583, and on October 13, 1999, all delivery of mail addressed to our customers was stopped by the Postal Service.

After the shutting down of our customer mail delivery in what could only be characterized as retribution for doing business with a Postal competitor, the Granville Post Office made our former customers jump through hoops trying to collect their mail that was being held hostage.

With the permanent loss of all mailbox income, as well as the sales of other products and services to our mailbox rental customers, our business began to hemorrhage red ink. Our financial backer saw only disaster ahead and promptly withdrew all support. P.A.S.S. of Granville closed its doors for the last time on November 20, 1999, filing bankruptcy in March of 2000. Being personally liable for many of the business's debts, I was forced to file personal bankruptcy as well.

Filing bankruptcy, combined with the loss of her mother, our business and our house devastated my wife Elaine. She was diagnosed with severe clinical depression and remains under a doctor's care today.

The Postal Service used its regulatory powers to run us out of business; it is as simple as that! The Postal Service characterized all private mailbox customers as criminals while claiming the CMRA regulations were necessary to prevent mail fraud and identity theft. Our customers were not criminals, they were lawyers, teachers, people with disabilities, survivors of domestic abuse and small business owners; in other words, Americans with Constitutional rights.

What I find most disturbing about this entire ordeal is that the Postal Service launched a regulatory assault on an entire industry of small business competitors with out ever demonstrating any need for the regulations. A recent Postal Service Inspector General report on the CMRA rules released earlier this year states:

> *"In particular, the Postal Service did not demonstrate the need for regulatory change by presenting statistical or scientific data to support its claims of mail fraud conducted through private mailboxes."*

"In addition, it did not show how the regulations would curb fraud, assess the impact of the proposed rules on receiving agencies and private box holders, or consider alternatives to revising the rules."

"Some of the rules represented significant changes that could cost receiving agencies and their customers millions of dollars."

By the time we went out of business, the Postal regulations had disrupted the entire private mailbox industry to such a degree that I could not even sell our bank of mailboxes at fire–sale prices.

The Postal Service showed absolutely no regard for the impact these regulations would have on mail and parcel centers and their customers, requiring every small business in America who used a private mailbox to change their address and purchase all new stationery, marketing material and business cards, potentially driving them out of business. In the words of Timothy McVeigh, our customers were "just collateral damage."

The USPS showed no concern for our customers' privacy objections or for the expense of changing their address. They took no pity on victims of domestic violence who had found a safe haven of privacy and protection. They didn't care if we were driven into bankruptcy. Frankly, I am of the belief that shutting down small private mailbox businesses such as mine was, in fact, the sole purpose of the regulations in the first place.

We ran an honest business and worked hard to build our reputation. It is too late to save our business, but it is not too late to save our fellow mailbox stores, their small business customers, or all the other small businesses that will undoubtedly suffer a similar fate as the Postal Service continues leveraging its vast regulatory power and its exemption from the Administrative Procedures Act to gain competitive advantage over an ever-increasing number of small business markets.

Statement pursuant to rule IX; clause 2(g)(4) of the Rules of the House of Representatives: I Gregory Tucci have not received any contract, subcontract, or grant from any federal source during the last two fiscal years.

Statement of Rick Merritt
Executive Director, PostalWatch Incorporated
before the
House Small Business Committee
on
Government Competition with Small Businesses
July 18, 2001

Chairman Manzullo and honorable members of the Committee, thank you for this opportunity to appear here before you today.

My name is Rick Merritt. I am the executive director of PostalWatch, a grass roots organization dedicated to providing the private sector and small businesses a voice in Postal matters.

Speaking on behalf of our membership and as long-time small business owner myself, I would like to thank you and the Committee for its valuable work on behalf of the small business community and in particular for this important hearing on the disturbing trend towards governmental competition with small businesses.

Over the past several years, a growing number of federal establishments have initiated competitive endeavors in an attempt to grow their budgets outside the appropriations process.

At first blush, lawmakers may be tempted to tacitly condone this *commercialization of government* as a somewhat politically painless means by which to fund government. However, the government competing against private businesses at any level is a slippery slope, poor public policy and particularly problematic as it relates to small businesses.

The smallest of federal establishments possess human and economic resources dwarfing those of even established small business concerns, by monumental orders of magnitude. The daily challenges facing small business owners - raising capital, collecting receivables and managing cash flow to cover weekly payroll, are absolutely no concern to federal establishments.

The United States Postal Service is a "super-competitor" with staggering competitive advantage and regulatory power over its small business competitors. This *independent establishment of the executive branch* interprets its statutory mandate "*to operate like a business*" as a green-light from Congress to compete directly with the smallest of private businesses in a host of competitive markets

Small businesses are extremely fragile enterprises, as is the delicately balanced environment necessary for them to grow and flourish. These embryonic enterprises are susceptible to all sorts of life threatening maladies and many times are destroyed by a single, seemingly insignificant event. Disrupting this delicately balanced environment

with an onslaught of governmental competition could easily lead to the mass destruction of these important engines of economic growth and job creation.

Of all the federal establishments competing with small businesses, the U.S. Postal Service is by far the largest and most problematic. Its unique ability to regulate and disrupt the mail delivery of its competitors puts it in a class of its own. The $67 billion a year giant; employs over 900,000 workers, pays no state or local taxes, fines or fees, enjoys a $15 billion line of credit from the U.S. Treasury and operates in competitive markets as if it were exempt from the antitrust laws. It claims exemption from federal rule-making requirements, the Administrative Procedures Act and all derivative statutes designed to protect small businesses from arbitrary and capricious actions by federal agencies. It exercises its unparalleled regulatory powers to the detriment of competitors, spends in excess of $100 million advertising the "USPS brand" every year, regularly forms alliances with already market dominant strategic partners and possess absolute control over delivery of the Nation's mail. This quasi-governmental business maintains its own fully empowered federal law enforcement agency accountable, not to the Justice Department, but to commercially minded postal executives and is defended from lawsuits by the U. S. Attorneys Office.

The Postal Service competes in a large and ever-increasing number of small business markets. Outside of its government granted monopoly in first and third class mail, the United States Postal Service; develops commercial real estate, rents post office boxes, sells stationery, envelopes, mailing labels, tee shirts, ball caps, jackets, sweatshirts, vests, passport photos, money orders and prepaid calling cards. The agency provides data and remittance processing services, sells information technology and digital signature services to other federal agencies; maintains a commercial website at www.usps.com offering electronic bill payment services, online greeting card and printing services as well as a host of other e-commerce related services. On its website, the agency endorses select *partners* offering direct mail, graphic design, mailing list management and tax preparation services. These partners enjoy the "blessing" and $100 million a year "branding" of the United States Postal Service and are in many cases, large and market dominant corporations like Microsoft.

In a glaring example of governmental competitive interests run-amok, the Postal Service's now infamous Commercial Mail Receiving Agency (CMRA) regulatory debacle stands out as the epitome, or "poster-child" if you will, of the dangers posed to small businesses by unrestrained governmental competitive interests.

Following a decidedly sharp decline in post office box revenue growth, from an annual rate of 8.7% in 1995 of to less than 1.5% in 1997, the Postal Service embarked on an anticompetitive regulatory assault targeting its small businesses competitors offering private mailbox rentals.

In August of 1997, making no mention of reducing fraud or identity theft and citing as to purpose only, "*to update and clarify procedures for delivery of an addressee's mail to a Commercial Mail Receiving Agency*", the Postal Service first proposed and in March

1999, made "final" the highly controversial CMRA regulations. In this regulatory initiative, the Postal Service instituted unnecessary, anticompetitive and burdensome requirements on the operators and customers of its mailbox competitors.

The CMRA final rule as promulgated in March of 1999 forced upwards of one million, predominantly small businesses utilizing private mailboxes (customers) to:

- Change their address to include the "PMB" designator without the benefit of normal postal change-of-address services
- Purchase new business cards, stationery and marketing materials
- Reregister with the USPS by executing a revised Form 1583, regardless of tenure
- Provide two forms of identification; (1) photo and (1) "traceable to the bearer"
- Provide their "true" physical home or business address
- Accept criminal penalties for the failure to provide accurate information
- Accept the free disclosure of their personal information to anyone, if they were using the address for business purposes (the vast majority)
- List the names and ages of minor children receiving mail
- Execute an agreement with governmentally dictated terms of service

The CMRA rules additionally required the nearly 10,000 small businesses operating private mailbox establishments to:

- Register with the USPS as a "Receiving Agent" executing a Form 1583a
- Provide two forms of identification; (1) photo and (1) "traceable to the bearer"
- Incur the expense of reproducing and obtaining an executed "revised Form 1583" from each customer, complete with duplicate to be supplied to the Postal Service
- Provide sorted and collated quarterly reports, listing all current and recent customers, in some case requiring operators to purchase computer systems
- Register all employees receiving mail at the CMRA location
- Receive and forward, at the operators' expense, all mail addressed to prior customers for a period of 6-month following termination of the box rental term

The CMRA rules have been significantly modified since first promulgated more than two years ago, due in large part to continued pressure exerted by several Members of Congress, the small business community and private mailbox users across the country. Through a seemingly endless series of regulatory proceedings, the Postal Service has attempted to deflect opposition by amending the CMRA rules to:

- Limit disclosure of box-holder personal information to only government and law enforcement officials providing written authorization.
- Exclude Social Security cards and credit cards as acceptable forms of identification
- Require a court order to disclose information on customers with protective orders
- Allow box-holders to use a Pound Sign (#) address designator in lieu of "PMB"
- Allow operators to charge previous customers the cost of forwarding mail
- Allow operators and customers to agree on the disposition of mail upon termination

- Extend the address designation enforcement deadline to August 1, 2001

Despite the many changes, several issues remain unresolved and onerous to small businesses. The CMRA regulations are a classic example of governmental arrogance and abuse of power as many problematic issues remain yet unresolved:

- The previously postponed enforcement of the CMRA addressing requirements is scheduled to begin just two weeks from today, on August 1, 2000. Only after the expected aggressive, albeit inconsistent, enforcement of these precedent-setting addressing requirements, will we actually come to realize the true impact of these regulations on the small business community. Ultimately, the truly staggering cost of these regulations will come from the intentional disruption of mail delivery to CMRA customers and the resulting loss of revenue to private mailbox operators as customers seek reliable mail delivery alternatives.

- There are numerous reports from box holders, of computer systems operated by major banking, credit card, and utility companies unable to assimilate the CMRA address requirements. Additionally disturbing, if not downright sinister, are reports of *address-correction* software, powered by Postal Service databases used by major mailers, is permanently deleting any reference to "PMB" and the trailing number from box holders address records. As a result, any mail addressed to box holders by such systems would be in violation of the CMRA address requirements and subject to disruption following August 1st.

- In April of 1999, responding strictly to competitive concerns expressed by some within the Private Mailbox industry, the Postal Service arbitrarily and without benefit of rule-making procedures, expanded its definition of a CMRA to include Executive Suites or Office Business Centers (OBC). OBC industry representatives objected, citing many of their customers leased office space on a full-time basis and that the services offered by OBCs were significantly more robust than the "mail-receiving" services offered by private mailbox operations. In pursuit of resolving purely competitive issues, the Postal Service initiated a series of closed-door meetings amongst a select group of representatives from the Private Mailbox and Business Center industries. The product of these meetings between three dominate participants in the alternative-business-services market was a modification to the CMRA regulations proposed by the Postal Service in February of 2000 which if made final, would have exempted from the CMRA requirements, those OBC customers contractually bound to purchase a minimum of $125 in office services per month. Just last week on July 13, 2001, after receiving criticism as to the "price-fixing" nature of the proposal, the Postal Service replaced the "$125 price-discriminator" with an equally anticompetitive "16 hours-of-use discriminator" in yet one more proposed modification to the CMRA rules.

- In its latest rule-making proposal of July 13th, the Postal Service has once again, as it has done of several prior occasions, proposed a significant modification just prior to an impending enforcement deadline, without postponing the deadline. In this

particular instance, the Postal Service proposed a modification that would determine which Business Center customers would be exempt from the rules entirely, however has failed to provide guidance or notice as to requirements of Office Business Centers and their customers come August 1st, a mere two weeks into the public comment period for the proposal. Notwithstanding its inability to enforce rules prior to determining those affected under the due process clause of the US Constitution, the continued use of such tactics has resulted in much unnecessary confusion and consternation over the past two years.

The CMRA rules remain fundamentally flawed and ultimately unsustainable. The Postal Service, claiming exception from the Administrative Procedures Act, executed a regulatory scheme targeting small business competitors and their customers, while failing to provide any tangible justification for its regulatory actions. The Postal Services blatant disregard for the impact of its predatory abuse of regulatory authority and anticompetitive actions cannot be tolerated in a free society. In the CMRA proceeding;

- The Postal Service regulated its direct competitors and their customers without demonstrating any compelling public need or legitimate regulatory goal. In a report on the CMRA rules on April 9, 2001, the Postal Service Inspector General stated, *"In particular, the Postal Service did not demonstrate the need for regulatory change by presenting statistical or scientific data to support its claims of mail fraud conducted through private mailboxes. In addition, it did not show how the regulations would curb fraud, assess the impact of the proposed rules on receiving agencies and private box holders, or consider alternatives to revising the rules."*

- The Postal Service has announced, for the first time in over 200 years, that it would not deliver mail to an address for which the carrier was capable of doing so.

- The Postal Service created a precedent for migrating the Nation's *address-driven* mail delivery system to a *recipient-driven* system requiring identification and residence verification, a scenario with immense privacy consequences.

- The Postal Service discriminated against a law-abiding class of mail patrons, characterizing them as criminally suspect, while arbitrarily and without cause relegating their constitutional and statutory *right* to receive mail to *privilege* status, granted only at the pleasure of postal management.

- The Postal Service executed a nationwide multimedia *smear campaign* defaming its private mailbox competitors. CMRAs were referred to as *"relatively safe havens for crooks conducting illegal mail fraud"* in videos played for waiting customers in Post Office lobbies around the country during the summer on 1999. Then, in March of 2000, the Postal Service made-for-TV partnership with the Showtime Network, ***Inspector's II, Shred of Evidence***, (currently re-airing on Showtime) characterized a private mailbox operation as *"Not a glossy operation. Low budget, the distinct whiff of criminality in the air"*.

- The Postal Service exceeded its authority by projecting its regulatory powers outside the *mail-stream* in an attempt to control the disposition of mail after delivery.

- The Postal Service, lacking any statutory authority, asserted jurisdiction as to the determination, definition and prevention of what it, arbitrarily and without foundation, deemed *deceptive* practices, clearly the jurisdiction of the Federal Trade Commission and U.S. Justice Department.

- The Postal Service organized anticompetitive administrations of pricing and service offerings in cooperation with its dominant market competitors.

- The Postal Service abused its absolute power over the U.S. Mail to force upwards of one-million American citizens to succumb to its will, incur substantial expense, forgo personal privacy, expose loved-ones to physical risk and enter into contracts between two private parties with governmentally dictated terms.

Enormous time, effort and government money has been wasted on this issue over the past two years, however one simple, frightening and compelling fact remains; **there has been no demonstration of any factual basis for these regulations.** Notwithstanding a postal official's statement, to the contrary in a Treasury-Postal Appropriation Subcommittee hearing held in April of 2000, there is no factual evidence as to any disproportional or significant criminality emanating from CMRAs. A fact, stipulated to by postal officials in an October 1999 hearing before this Committee, and later confirmed by the Postal Inspector General's April 2001 report on the CMRA proceedings.

Mr. Chairman, I have brought with me today, transcript excerpts from these hearings and copies of the Inspector General's report, which I would be happy to provide to the Committee.

Additionally, Postal officials, in a statement to this Committee during the October 1999 hearing, charged that an estimate of the cost of the CMRA regulations that I had previously prepared in conjunction with a Cato Institute Briefing Paper published in July of 1999 was *"fraught with unreasonable assumptions"*. The agency in making these claims, failed however to provide the Committee accurate data in its possession regarding these "assumptions" which is information known only to the Postal Service. The Postal Service failed to provide this important information and continues to neglect its public policy responsibility to create a record of its own as to the impact of these regulations.

In the interest of clarity, I have prepared a document detailing the assumptions and methodologies originally used to arrive at the July 1999 estimate and with your permission Mr. Chairman; would like to submit it for the record at this time.

I would remiss if I failed to bring to the attention of the Committee an extremely important and relevant issue concerning the Postal Service and the small business community. The Postal Service has recently embarked on a massive *public affairs* campaign to influence Postal reform legislation currently under consideration by

Congress. The agency has retained a lobbying consultant and is actively promoting a version of *Postal Reform,* which would leave in place; its monopoly status, regulatory power over competitors and exemption from the Administrative Procedures Act, while giving it *"more commercial freedom, pricing flexibility and less oversight"*. The *Postal Reform* being promoted by the Postal Service would surely be a recipe of disaster for small businesses everywhere.

Under the Postal Service's version of *Reform*, it would actually be encouraged by Congress to enter any number of non-postal markets, would be free to move in and out of markets at will and could easily cross subsidize predatory pricing in one market with profits from another. With *reduced oversight*, regulating competitors for advantage and forming alliances with other market dominate partners could become commonplace. With *pricing flexibility*, the Postal Service would likely give large mailers volume discounts on postage while charging full price to consumers and small businesses.

CONCLUSION

In conclusion, government competition with the private sector and small businesses in particular is extremely poor public policy, founded in flawed logic and ultimately destined to fail. Those supporting expansion of governmental competitive enterprises may see the revenues from such activities as new money, as if somehow the mere entry of a federal competitor into a market magically increases demand within that market to meet the new supply available. Mature markets however, are to a large degree, zero-sum-games; when Coca-Cola sales go up, Pepsi sales go down, and visa versa. When the Postal Service started selling passport photos, it did not inspire increased overseas travel and demand for passports, it merely diverted the existing sales of passport photos from the small merchant down the street and virtually every dollar of revenue it generated came at the direct expense of nearby small businesses.

The concept that any federal bureaucracy might successfully compete by delivering goods and services more efficiently than a far more nimble and entrepreneurial small business competitor, <u>without the competitive advantages inherent to its governmental status</u>, is clearly counterintuitive. Further, no government establishment can be divorced from its competitive advantages, as these advantages are inherent to its governmental status and as such, the *level playing field* so frequently discussed is in reality a fallacy.

Adding insult to injury, governmental competitive initiatives rarely, if ever produce substantive benefit for the agency involved, an irony of little consolation to the small businesses destroyed in the process. For example, a 1998 Government Accounting Office report concluded the Postal Service had lost in excess $84 million on nineteen competitive initiatives during a three-year period and fifteen of those initiatives either continued loosing money or had been abandoned. Recently the Associated Press reported that government subsidized Amtrak had posted a record loss of $944 million despite obtaining 46% of its entire revenue ($886 million) from non-core (non-passenger) commercial related endeavors.

In fact, one is hard pressed, to find a single example of this commercialization of government, which has not eventually resulted in a major public policy nightmare; as the culture, mission, power and structure of governmental establishments are fundamentally incompatible with free markets and the pro-competitive principals on which our economy is based.

Government competition in private markets is not, the politically painless *Win-Win* that some might believe, in fact it is a highly destructive *Lose-Lose* that damages small businesses and the economy while eventually proving to be little more than expensive distractions for the governmental establishments involved.

Mr. Chairman, this concludes my statement to the Committee. I would be happy to answer any questions the Committee may have at this time.

Statement pursuant to rule IX; clause 2(g)(4) of the Rules of the House of Representatives: Neither PostalWatch Incorporated, nor any entity representing it or Mr. Merritt has received any contract, subcontract, or grant from any federal source during the last two fiscal years.

Assumptions used in Cost of CMRA Regulations Estimate
Cato Institute Briefing Paper
"The U.S. Postal Service War on Private Mailboxes and Privacy Rights"

In July of 1999 the Cato Institute published a Briefing Paper entitled "The U.S. Postal Service War on Private Mailboxes and Privacy Rights. Contained in this paper is a table entitled "Cost of New Postal Service CMRA Regulations" ("Estimate") which estimates the potential range of the "direct first year" costs of these regulations to be between $639 million and $1.066 billion dollars. **(Exhibit A)**

Since its publication the Postal Service has attempted to discredit this "Estimate" characterizing it as "unsubstantiated" and "not reliable or realistic." The most notable attempt, a three page appendix **(Exhibit B)** located at the end of Anthony J. Crawford's (Inspector in Charge, Mid-Atlantic Division, U.S. Postal Inspection Service) written statement presented to the Subcommittee on Regulatory Reform and Paperwork Reduction Committee on Small Business, U.S. House of Representatives, on October 19, 1999 entitled "*USPS ANALYSIS OF REPORT ON THE DIRECT COSTS OF CMRA REGULATIONS*." In this "Analysis" Crawford liberally uses such phrases as "*fraught with unreasonable assumptions, not realistic, excessive, simply unreasonable and unsupportable calculations*" to characterize the "Estimate."

Nowhere in this so-called "Analysis" does Inspector Crawford challenge or dispute a single numeric assumption used in the "Estimate" as being an incorrect assumption. He instead repeatedly attacks what he erroneously believes to be the methodology used in reaching a particular assumption, never stating what the Postal Service knows or believes a particular assumption to be. This is particularly curious considering the fact that some of the assumptions that we were forced to reach through extrapolation are readily available and known quantities to the Postal Service. For example, the Postal Service maintains a "Delivery Sequence File" database **(Exhibit C)** which identifies every CMRA location in the country. We also believe internal studies exist that quite accurately estimate the total number of box holders and CMRA mail volumes. When presented the opportunity to discredit the "Estimate" with facts, Inspector Crawford instead chose to engage in rhetorical attacks based on what his misperceptions of the methods used to prepare the "Estimate."

The USPS has challenged these assumptions without offering any alternative estimates or assumptions. Why is that? We believe that the Postal Service has in it's possession a very accurate count of total CMRAs and private box holders, which if released, would significantly improve the accuracy of these cost estimates. The Postal Service has not however, offered any alternative estimates as to the economic impact of these regulations on the private sector. **Could it be that the Postal Service doesn't want anyone to know the actual magnitude of impact these regulations will have on their private sector postal competitors.**

The assertion that the assumptions used in the "Estimate" are "unsupported" and somehow "inflated" is in fact an "unsupported claim." We would contend that these assumptions, taken in the aggregate, are extremely conservative and have led to an understatement of the impact of these regulations on CMRAs and their customers.

PURPOSE AND SCOPE OF THE "ESTIMATE"

The "Estimate" in the Cato Briefing Paper comprised of a single page table and was intended only to provide some idea of what might be the economic impact of these regulations. The "Estimate" is not, nor was it ever intended to be a comprehensive detailed analysis of the total costs associated with these regulations. **It is quite obvious by the structure of the "Estimate" and subsequent discussion that its purpose is only to estimate a range of first-year direct costs associated with these regulations based on certain assumptions.** The use of assumptions was necessary given the lack of available data.

Merritt, the author of the Briefing Paper and the "Estimate" is not trained in the field of statistical analysis. Merritt, PostalWatch nor the CMRA industry posses the financial resources necessary to perform or commission a comprehensive economic model or impact analysis of these regulations. **Conducting such studies is the "shirked" public policy responsibility of the Postal Service.** As a safeguard to prevent regulatory abuses, other agencies of the federal government are required to perform economic impact and effectiveness studies by no less than five federal statutes prior to such rulemaking. The Postal Service has however exploited its exemption from the Administrative Procedures Act to totally ignore this very important rule making responsibility.

Merritt with over twenty years experience in operating small businesses however, is quite well qualified to discuss and evaluate the time and effort required accomplishing a particular task within the burden rich and resource starved environment of a small business.

THE ASSUMPTIONS:

In the interest of clarification and refuting Postal Service claims that the "Estimate" contained in the July 1999 Cato Briefing Paper are somehow unsupported, inflated and unreliable, we have prepared the following discussion of various methodologies used in obtaining the assumptions.

Publishing limitations of the format and available space precluded in-depth detailing of all of the various aspects that went into the development of the assumptions used in the "Estimate." A re-formatted table entitled Breakdown of Assumptions **(Exhibit D)** identifies the eighteen (18) underlying assumptions used to prepare the "Estimate" in the left-most column. These eighteen assumptions are discussed in-depth below:

1. The estimated number of CMRAs affected by these regulations is 10,600.

Original assumption methodology:

- A May 4th, 1999 Wall Street Journal article by Rodney Ho entitled "Post Office Rule Incenses Renters of Private Boxes" stated "*Renters of more than one million private rental mailboxes in the nation and the owners of the 10,600 pack-and-send stores assert that the Postal Service is acting out of self-interest.*" **(Exhibit E)**
- During a phone conversation on May 19,1999 Rachel Heskin, Senior Communications Manager for Mailboxes Etc (MBE) indicated that they represent about a third of the total CMRA market and that they had 3,300 franchise stores with roughly 800,000 total mailboxes (average 242 boxes per store).
- Several individual CMRAs concurred with this estimate.

What supports this assumption as a conservative estimate:

- The "United States Postal Service Five-Year Strategic Plan" published in November of 1997 states, *"Starting with a few hundred stores in 1980, this industry has grown to include about 7,800 commercial mail receiving agencies…"* Assuming the estimate of 7,800 CMRAs was based on 1996 data and assuming a 10% annual CMRA industry growth rate one could reasonably expect the total number of CMRAs to exceed 10,500 by the October 25, 1999 effective date of the regulations. **(Exhibit F)**
- It is highly unlikely that either the Wall Street Journal, Mail Boxes Etc. or the Postal Service included the roughly 4,000 executive suites to which the USPS extended CMRA requirements in April of 1999 in their above reference estimates. The Executive Suite Association indicates that there are approximately 280,000 executive suite customers serviced by approximately 4,000 executive suite operations in the United States. The Postal Service refers to these operations as Corporate Executive Centers (CECs). Accounting for industry growth and the inclusion of executive suite operations, the current number of CMRAs and CECs affected by these CMRA regulations could approach 14,500.
- Inspector Crawford's written testimony **(Exhibit B)** provided to the House Small Business Subcommittee hearings held on October 19, 1999 states "*In the section entitled, Direct Costs of Regulation, Mr. Merritt includes assumptions and costs that we feel are simply unreasonable.*" Inspector Crawford goes on to imply a flawed methodology, "*… the study assumes that there are approximately 10,600 CMRAs and 1.5 million private mailboxes. This figure is used as the lower range for determining the impact of the regulations.*"

  We find it highly suspect that Inspector Crawford chose to challenge the methodology used and not the actual assumptions considering the USPS has in its possession the actual facts. If in fact there are less than 10,600 CMRAs or less than a minimum of 1.5 million private mailbox holders why did he not say so? By Inspector Crawford allowing the assumptions to "stand" unchallenged, one might deduce that these assumption are in fact correct.

2. There is a Minimum of 1,500,000 box holders (an average of 141 per CMRA)

Original assumption methodology:
Next we attempted to determine what is likely to be the least number of box holders affected by these regulations. Unfortunately, only the Postal Service knows exactly how many CMRAs or CMRA customers there are in total. Considering they have not, to our knowledge released this information, there is no definitive way for anyone else to know exactly how many box holders exist at any given time.

We first asked, is the Wall Street Journal's estimate *"more than one million private rental mailboxes in the nation"* a credible base number? Considering that 3,300 MBE stores collectively have roughly 800,000 boxes, in order for the minimum total number of boxes to be less than one million would mean that the remaining 7,300 non-MBE CMRAs would only share 200,000 boxes or average less than 30 boxes each. We concluded that an average of only 30 private mailboxes per non-MBE CMRA or a total of anything less than one million mailboxes would be an improbably low number. It is highly unlikely that very many CMRAs would go to the expense of purchasing mailboxes, dedicate retail floor space, go though the hassle of complying with all the regulations and spend time every day sorting mail for an income stream of $450 (30 boxes at $15) per month.

After establishing, at the very least, there are *"more than one million"* box holders, we attempted to establish how many *"more than one million"* box holders would be a reasonable "Minimum" base line number. Our conversations with CMRAs operators at the time revealed that many of the smallest CMRAs were totally independent and not affiliated with any franchise organization such as MBE. Conversely we discovered many of the largest CMRAs also remain totally independent from any franchise organization. Inspector Crawford's depiction in his testimony of how we arrived at the assumed Minimum 1.5 million private mailboxes is totally inaccurate. We arrived at this assumption by concluding that on average, each of the roughly 7,000 non-MBE CMRAs would need at least 100 private mailboxes in order to obtain the necessary economies of scale in order to make it worthwhile for them to be in the private mailbox business. 700,000 non-MBE plus 800,000 MBE equals 1.5 million private mailboxes.

What supports this assumption as a conservative estimate:

<see discussion in section #3 below>

3. It is "Probable" that there are 2,500,000 box holders (average 236 per CMRA)

Original assumption methodology:
As previously stated only the Postal Service knows exactly how many CMRAs or CMRA customers there are in total. The wide range used in the "Estimate" of between 1.5 and 2.5 million box holders was used to accommodate this as well as several other unknown factors including vacancy rates and wide disparities in total boxes installed versus rented from one CMRA to another.

After determining that each non-MBE CMRAs would have, on average a "Minimum" of 100 boxes (700,000 total) we then attempted to estimate what would be the more "Probable" number of box holders non-MBE CMRAs would have. Considering MBE stores make up a third of the total market and that many of the largest CMRAs we encountered were not affiliated with any franchise organization, we found no reason to assume that the average of 242 boxes per MBE store would not be representative on the entire industry. This average was then applied to the 7,300 independent CMRAs for a total of 1,766,600 which was added to the 800,000 MBE boxes for a total of 2,566,600. This number was then rounded down to 2.5 million and used as the "Probable" or high-side number, an average of 236 boxes per store or 2.5% less than the average MBE store.

What supports this assumption as a conservative estimate:

- One might argue that the typical Mail Boxes Etc. store is more sophisticated and established than the typical independent store and consequently their stores would tend to be larger and have more mailboxes than independent stores. We have found no evidence to support this speculation. As a matter of fact, many of the largest CMRAs in the country remain independent such as a 1,000 box operation in Southern California and a 3,000 box facility in Alaska. There are also very large mail forwarding services such as a recreational vehicle (RV) club in Texas that has over 20,000 mail service clients negatively impacted by these regulations.
- It is common for CMRAs in entrepreneurial "hotbeds" such as New York City, Dallas, Atlanta, Austin and San Jose to have well over 500 boxes in each location with zero vacancies, long waiting lists, or "virtual" boxes.
- The estimated 280,000 executive suite customers that became subject to the regulations in April of 1999 were not included in the "Estimate". The Executive Suite Association estimates that there are roughly 280,000 customers served by 4,000 executive suite operators now affected.
- We believe the United States Postal Service has in its possession retail or marketing study(s) that very accurately estimate both how many private mailbox holders exist and how much mail volume they receive. When presented with the perfect opportunity during the October, 1999 congressional hearings to set the record straight and dispute the assumed range of between 1.5 and 2.5 million box holders, Inspector Crawford instead chose to attack the methodology he believed was utilized to reach these important assumptions. This blatant omission my very well lead one to conclude that the assumed range of between 1.5 and 2.5 million box holders is in fact a credible assumption and quite possibly underestimates the total holders affected.

- **Vacancy Rates:** In his October 1999 testimony Inspector Crawford stated "*The study makes no adjustment for box vacancy rates, assuming that all 1.5 to 2.5 million boxes are rented. The Postal Service is confident that the CMRA industry would find this assumption to be unreasonable.*" Inspector Crawford has erroneously concluded that just because a vacancy factor was not specifically detailed in the limited space available on the single page published "Estimate" that vacancy factors were ignored in the preparation of the "Estimate". This is not the case. Inquires conducted with CMRA operators at the time the "Estimate" was produced indicated a wide range of vacancy rates of between 0–25%. These inquires did not however, indicate any clear consensus on what might be a typical vacancy factor.

  These inquiries also revealed that in many cases 30-40% of the physical boxes were being utilized by more than one person or entity. For example, one person or family may operate two or more small businesses out of the same physical box. Some CMRA operators indicated that they averaged more than two box holders per physical box. This factor if applied to the range of assumed total box holders would dramatically increase the number of box holders and thus the total "Estimate". Because including this factor in the published "Estimate" would require considerably more explanation than space allowed, and because of its huge potential impact on the overall estimated cost, we chose to omit the impact of multi-holder boxes from the "Estimate."

  In the final analysis we concluded that the fundamentally wide range of the initial assumption in conjunction with not including the effects of multi-holder boxes would more than offset any reasonable vacancy rates and would, if anything, produce an even more conservative estimate.

4. Each box holder will have to send out 40 change-of-address notifications.

Original assumption methodology:
This assumption was determined by speculating as to what might be the very least number of contacts a small business owner would have to notify. We concluded that even the smallest and newest business would have at least 10 past or present customers, 10 future prospects, 10 vendors and 10 administrative contacts for a minimum of 40 total notifications.

What supports this assumption as a conservative estimate:

- This assumption, in all probability, is so conservative that it borders on the ridiculous. Logic dictates that someone is not going to pay $15.00 to $20.00 per month for a mail box in which they receive virtually no mail.
- Many of the small businesses affected by these regulations have been in business and using the same address for the past 10, 15 or even 20 years. It is likely that these people will have accumulated hundreds, if not thousands of business contacts over the years. **(Exhibit G)**
- Many small business people leave a large company after several years to start a business in a related field. In all likelihood they will have hundreds if not thousands of past contacts from which they will grow their business.
- Many private box holders are in the recruiting, publishing, direct marketing or consulting fields. These professionals typically rely heavily on advertising, conventions and industry directories as a source of new business. They may have hundreds if not thousands of contacts to notify. More problematic is the countless contacts that may have picked up a business card or brochure at a trade show that they will be unable to notify.
- Computer professionals and consultants are frequently private mailbox customers. It is not uncommon for these people to receive upwards of 10 – 15 technical publications monthly, which are vital to maintaining their professional skills.
- In his October testimony Inspector Crawford states "*These figures are based on the author's unsubstantiated personal estimates that CMRA customers will have to contact 40 individuals or entities that mail regularly to their boxes.*" Inspector Crawford again allows the assumption to stand unchallenged only to attack it as an "*unsubstantiated personal estimate*" without offering any alternate figure. We believe the Postal Service has very good data on the total mail volume at CMRAs and that this information could play a significant role in clarifying this particular assumption, however Inspector Crawford again provided no such information.

5. 10% of the change-of-address notifications will require a second notification.

Original assumption methodology:
A certain level of second notices is required on all change-of-address notifications. To our knowledge there are no statistics readily available to the public on first attempt change-of-address failure rates. We anticipated this failure rate based in part on the unique format of the PMB address designator. As it turns out we correctly anticipated a high rate of rejection by automated systems that lacked the programming to accept the PMB designator and by humans unfamiliar with the designator.

What supports this assumption as a conservative estimate:

- The failure rate appears to be in practice far higher than we originally anticipated. We receive messages from box holders on a weekly basis reporting extreme cases where they have attempted to change their address to the PMB designator only to be rejected in some cases 3 and 4 times.
- It is now quite apparent that there are a significant percentage of computer systems that will not accept the PMB designator in the address field and will have to be reprogrammed. This is a potentially huge hidden cost that could quite literally affect hundreds of thousands of third party organizations nationwide and was not accounted for in the "Estimate."
- Inspector Crawford's October 1999 testimony neither challenges nor confirms this assumption. Despite the high probability that the Postal Service has in its possession statistical data on change-of-address rejection rates he again failed to provided any insight on this subject to the Subcommittee.

6. 70% of the box holders use their box for business purposes. In the interest of conservatism and simplicity, the assumed 30% non-business box holders were treated as though they had no cost of compliance in the "Estimate"

Original assumption methodology:
During the preparation of the "Estimate" CMRAs operators interviewed overwhelmingly indicated that they estimated 70 – 80% of their boxes were used for business purposes. We chose the lesser percentage for this assumption.

What supports this assumption as a conservative estimate:

- While it is true that many different people find the use of a private mailbox advantageous for a multitude of reasons including survivors of domestic abuse, private mailboxes are overwhelmingly advantageous to small business owners who either work out of their homes or travel extensively. Prior to these regulations, one of the primary selling points for a private mailbox was that it gave a home based businessperson a larger established appearance and a street address.
- Who other than small businesses, survivors of domestic abuse seeking anonymity, individuals that travel extensively or those who perceive their residential mailbox as unsecured would spend $20.00 per month for mail receiving services?

7. The cost of replacement (new) office supplies and marketing materials averages $307.00 per box holder

Original assumption methodology:
The means by which box holders have dealt or will deal with the various aspects of these regulations are numerous. When establishing this assumption we considered that there would be some box holders that would only incur a small cost associated with the replacement of the various office and marketing supplies. Some may opt to just have stickers printed to put over the address on their existing materials. On the other hand we recognized that a potentially larger group would incur significant expense ranging into thousands of dollars replacing high-end office and marketing materials such as color brochures, custom business cards, stationery, envelopes, address labels, notes pads, multi-part forms, imprinted marketing specialties, etc. Given the high cost, low consumption rate and large volume discounts of these high-end materials in conjunction with the apparent misconception of a stable address, many small businesses may have purchased these materials in quantities large enough to last several years prior to the enactment of the regulations.

In an attempt to reconcile this wide disparity between various box holders, and remain highly conservative in establishing this assumption, we only included a "short" list of the most common office supplies that most small businesses could be expected to replace as a result of these regulations.

A) Business cards: (1) set of 500 business cards at a cost of $28.00
B) Stationery: 250 pieces of stationery at a cost of $78.00
C) Envelopes: 250 envelopes at a cost of $70.00
D) Invoices: 250 at a cost of $70.00
E) Bank checks: 250 at a cost of $45.00
F) Rubber stamp: 1 at a cost of $16.00

For current market pricing of similar items see Exhibits H1 through H5

What supports this assumption as a conservative estimate:

- To assume anything significantly less than the above for office and marketing supplies would imply that the average small business owner utilizing a private mailbox is operating without business cards, letterhead or a checking account, an assumption we find highly unlikely.
- Box holders may incorporate custom logos or utilize two and three colors in their printed materials. The cost of custom artwork and multi-color printing is several orders-of-magnitude higher than standard one color printing. Large fixed-cost per custom print job significantly increases the prudence of purchasing in large multi-year quantities.
- There are box holders who have estimated these material replacement costs to be in the thousands of dollars. **(Exhibit G)**
- In his October 1999 testimony Inspector Crawford stated [of the "Estimate"] "*... the assumption used is that all stationery, business cards, and checks will be reprinted immediately. There is no allowance for stock depletion and replacement during the one-year transition period. Such allowance would reduce these costs significantly.*" This concept, that somehow the cost to

small businesses of these regulations is reduced by the depletion of office and marketing stocks over time has been proffered by the Postal Service on numerous occasions and demonstrates a particularly flawed "Postal Logic." Many box holders may have purchased a several years' supply of office and marketing materials prior to the enactment of these regulations. These materials were immediately rendered worthless the day the Postal Service announced the regulations. The Postal Service has stated repeatedly that a 6 to 12 month transition period should be ample time for box holders to deplete supplies of materials. This concept is fraught with misconception. **No prudent business person would hand out a business card or send out a marketing letter with an address they know will be obsolete in 6 to 12 months, especially considering there will be no forwarding of their mail after that date**. Consequently, all of the office and marketing materials (excepting possibly bank checks) containing the non-PMB address were in effect worthless the day the Postal Service enacted these regulations

8. The hard cost of each box holder change-of-address is $.94

Original assumption methodology:

- We assumed that the typical box holder using their box for business would compose and print a letter on their ink-jet or laser printer (.02 toner) using their new PMB stationery (.31 each) put it in one of their new PMB envelopes, and send it First Class mail (.33 postage). **(Exhibits H1 - I3)**

What supports this assumption as a conservative estimate:

- These regulations in effect require all of small businesses utilizing a private mailbox to "announce" to their vendors, customers and prospects that the address the business uses for correspondence is a private mailbox (PMB). This will prove to be a sensitive issue for several of these small businesses. If this is not explained correctly in a detailed letter it could lead to the loss of clients, vendors, open lines of credit and bank loans.
- Inspector Crawford stated in his October 1999 testimony "*However, a 20-cent post card preprinted with the address change information, which is what many small businesses would use, would reduce supply cost and postage by 79%.*" Although we did consider some box holders would choose this option when preparing the "Estimate," we can't help but wonder what particular small business experience qualifies Inspector Crawford to make this unsubstantiated claim about what "*many small businesses would use*" in this particular situation. In many normal change-of-address situations a simple post card may be sufficient. This situation is however is far from a normal "change-of-address." The confusing nature of the address change ("PMB" on a separate line) combined with the threat of returning incorrectly addressed mail and the negative image created by the stigmatizing "PMB" designator strongly suggests the prudence of sending a detailed explanation of these very specific and stringent address requirements.
- Many companies, large and small, go to extreme effort and cost to "announce" the relocation of their facilities when they are "proud" of their new address. Many times they will send expensive gold-embossed invitation-styled announcements, take out large newspaper ads and throw lavish grand-opening parties. A business changing its address is a big event and even a bigger event when the change-of-address will have devastating repercussions. We find it highly unrealistic that the majority of box holding businesses will find a simple post card sufficient in this situation.

9. Complying with the regulations will require 12.5 hours of box holders' time, estimated at a value of $16.64 per hour totaling $209.94.

Original assumption methodology:
The time portion of this assumption was reached by thinking through all of the varied tasks that a typical small business owner would be required to perform in order to comply with these regulations. Regrettably the format and size limitations imposed during the publication of the "Estimate" restricted the space available for detailing all of these tasks. Additional tasks factored into this assumption not detailed on the "Estimate" are discussed below. The hourly rate of $16.64 was based on an annual amount of $35,000.00 which after self-employment tax (and considering the lack of any fringe benefits) would equate to an annual salary in the mid twenties.

What supports this assumption as a conservative estimate:

- It may only take 45 seconds for the box-holder to notify their long distance carrier of the address change, however it may take several hours of thought, searching and compiling to make sure those four or five customers from three years ago get properly notified.
- Many contacts may require multiple notifications within a single organization for example a client's customer contact and accounts payable department or a vendor's sales representative and billing department.
- Aggregated into this assumption is the time required to acquire the new office and marketing materials including locating artwork, soliciting quotations, travel to the printer, placing the order and a return visit to pay for and pick up the new materials. This one task alone will certainly account for two to three hours of box holder time.
- As noted earlier, this is not a normal run-of-the-mill address change. If not handled correctly the stigmatizing PMB designator or the return of mail without the PMB designator could result in the loss of client and vendor relationships. Crafting a letter(s) that accomplish the change-of-address goal without jeopardizing the relationship will prove to be no small-task, and could very well require several hours. This task will not be helped by the Postal Service's impending campaign to "educate" consumers as to the meaning of the "PMB" address designator. Composing a letter to a valued client requesting that they change your address to include the PMB designator and still continue to do business with you will surely prove to be a challenging and time consuming project, especially when the client receives the letter after having spent the last half hour standing in line at their local post office watching a video tape of the Postal Inspection Service referring to private mailboxes as ***"relative safe havens for criminals conducting illegal mail fraud."*** **(Exhibit J)**
- Time, not money is the most valuable and scarce commodity to a small business. Most small businesses have no support staff, thus the man-hours required to achieve compliance with these regulations will be that of the business owner themselves.
- Any time spent by the business owners' on these regulations is time taken away from growing their business and results in direct "lost opportunity costs", which were not factored into the "Estimate."

CMRA ASSUMPTIONS

10. Cost of CMRA Owner/Manager Labor $16.84 per hour

Original assumption methodology:
This assumes that the CMRA owner's time, like that of the box holder is worth at least $35,000 per year which after deducting self-employment taxes and the lack of fringe benefits would be equivalent to earning a salary in the neighborhood of $25,000 to $28,000 per year.

What supports this assumption as a conservative estimate:

- This assumption, as is the one above for box holders, is so conservative that it borders on the ridiculous. Any lesser amount would imply that small business owners are unable to secure well paying jobs and just decide to go into business for themselves as a matter of last resort. Many small business owners leave well paying jobs to start their business in an attempt to build something of value.
- The value of a small business owner's time can not be measured in terms of an hourly rate, but must instead be viewed in terms of lost opportunity cost. If a CMRA owner or box holder could have acquired one new customer instead of complying with these regulations, assuming the new customer would generate a modest $10 per month in revenue for the next twenty years, the lost opportunity cost (future value) of that time wasted is over $4,300.

11. Cost of CMRA Employee Labor $10.00 per hour

Original assumption methodology:
This assumption was based on discussions with several CMRA operators and represents a general consensus of the hourly rate for their lowest paid employees.

What supports this assumption as a conservative estimate:

- This represents total cost of the employee not their pay rate. After deducting "burdens" this pay rate is close to $7 to $8 dollars per hour.
- These employees perform many of the same tasks (sorting mail, retail customer service and shipping packages) as their counterparts employed by the Postal Service. The 892,873 postal workers cost the United States Postal Service an average of $51,057.65 per year or roughly $24.50 per hour.

12. CMRAs must photocopy 5 (page sides) forms for each box holder.

Original assumption methodology:
The Form 1583 that the regulations require the CMRA provide to the box holder has (2) sides, the CMRA had to compose and print a notice to the box holders (1 page side assumed) and the CMRA had to supply the Postal Service with a complete copy of the Form 1583 (2 page sides).

What supports this assumption as a conservative estimate:

- The regulations additionally mandate that the box holder and CMRA enter into a written agreement with specified terms, which could add several page sides to the total, assumed in the "Estimate".
- Many CMRAs photocopy box holders identification for their files.
- Many CMRAs have given their box holder several notices relative to these regulations, particularly given the multitude of changes that have taken place over the last 12 months.

13. Cost to Photocopy forms $0.03 per page side

Original assumption methodology:
This figure represents the competitively advertised price for offset black and white letter sized printing of in quantities of less than 5,000.

What supports this assumption as a conservative estimate:

- Many CMRAs lacked the quantity of box holders to utilize inexpensive offset printing and were forced to use their copy machines. The cost of consumables and expendables for a Xerox Model 5114 copier with toner (.03375) and drum replacement (.02772) totaling $.06147 per page side, plus paper at $.006398 per sheet. At an average of over .065 per side, this is over twice the amount of the assumption. **(Exhibit K1 – K4)**
- Neither the printing or copier scenarios account for any cost of time or labor on the part of the CMRA or their employees.

14. Total CMRA time to comply will be 21 minutes ($5.78) per box holder.

Original assumption methodology:
This assumption was reached by talking with several CMRAs, thoroughly reading the regulations and thinking through all of the tasks that a CMRA operator and or their employees would have to perform in order to comply with the regulations. Again the published format of the original "Estimate" did not lend itself to detailing all of the individual tasks and thus only select tasks were detailed and assigned a relative portion of the aggregate 21 minutes per box holder.

A) Distribute forms to each box (1) minute/ box holder
B) Explain to / argue with customers (5) minutes/ box holder
C) Follow up, collect, and file forms (10) minutes/ box holder
D) Prepare reports and transmit forms (5) minutes/ box holder

What supports this assumption as a conservative estimate:

- The following details some of the "aggregated" sub-tasks that were considered in arriving at this assumption. **(Exhibit L)**
  1) Distribute forms to each box (1) minute / box holder at $10.00 / hour.
     a) Photocopy, collate and distribute (5) pages of forms
     b) Travel to the printer, order, and pick up the completed print job
     c) Training of CMRA employees on various aspects of the regulations
  2) Explain to / argue with customers (5) minutes/ box holder ($16.84 / hr)
     a) Draft box holder notice
     b) Draft required preliminary box holder agreement
     c) Meet with attorney to review box holder agreement
     d) Legal fees for agreement or other legal aspects of the rules
     e) Locating a copy of the Federal Register "final rule" for clarification
     f) Reviewing the Privacy Act Statement with concerned customers
  3) Follow up, collect and file forms (10) minutes/ box holder at $16.84
     a) Low initial box holder compliance levels will require several notices
     b) Completed forms (identification) need to be photocopied and filed
     c) Time to develop a system to track box holder compliance
     d) Auditing and tracking box holder compliance
     e) Re-contacting box holders whose forms were rejected by USPS
     f) Meeting with local postal officials for rule clarifications and disputes
     g) Printing, sending, filing and postage for address verification post cards
  4) Prepare reports and transmit forms - 5 minutes/ box holder ($16.84 /hr)
     a) Most CMRA operators will be forced to computerize records
     b) Some CMRAs will be required to purchase computer systems
     c) Time necessary to program computers for quarterly reports
     d) Time tracking which holder's forms have been supplied to the USPS
- Many CMRAs report the second largest cost, second only to lost revenue, will occur as a result of them being forced to stockpile or forward at their expense, former customer's mail for a period of six-months following the end of their relationship. CMRAs indicate this problem could result in them holding thousands of pieces of undelivered, yet not-returned first-class mail monthly.
- Constant modifications and clarifications to the regulations have required the CMRAs to spend considerably more time and money complying than was originally anticipated.

15. Average cost per mixed hour of CMRA labor $16.51

Original assumption methodology:
After conversations with CMRAs and given the complexity of the regulations it was determined that the majority of the tasks required for compliance would wind up being performed by the CMRA owner themselves. Consequently the average cost per hour was weighted heavily towards the assumed value of the owners time versus the value of their lowest paid employees.

What supports this assumption as a conservative estimate:
- In cases where CMRAs may have management personnel capable of administering these more complex tasks, the hourly cost of those management persons would approach the assumed time value of the CMRA owner.
- If the CMRA owner would choose to delegate these tasks to less expensive personnel they would be required to invest more of their time and their employees' time to training.

16. Annualized additional reporting burden of 10 minutes/ box holder

Original assumption methodology:
The regulations require CMRA operators to provide accurate and up-to-date quarterly lists including all current customers as well as prior customers who have left during the prior six-month period. They must acquire, copy and furnish to the USPS the required 1583 forms for all new CMRA customers and for those existing customers who have relocated their residency.

What supports this assumption as a conservative estimate:
- CMRAs will have to reprogram their computers to produce quarterly reports.
- CMRA operators will have to collect and then enter information on new and relocated customers into their computer system.
- CMRA operators will spend time and money generating and delivering the quarterly reports to the Postal Service.
- With new or prospective mailbox customers, CMRAs will spend considerably more time going over the various aspects of the regulations, photocopying forms and box holder's identification than they did under the previous rules.
- CMRAs who did not previously own a computer will need to purchase and learn to operate a computer and then enter all the data into the new system(s).

17. Percentage of loss of box-rentals 15%

Original assumption methodology:
CMRA operators interviewed during the preparation of the "Estimate" generally indicated that they expected to lose between 10 – 20 % of their box holders due to the negative aspects of these regulations. Many box holders that rented their boxes primarily for privacy reasons were being "stripped" of the privacy benefits and thus might not see the value in continuing to spend money every month to protect privacy they would not longer have. Many small businesses would perceive the PMB designator so damaging to their business that they would chose to either spend significantly more money renting an office or simply close their box and redirect their mail to their home or P.O. Box.

What supports this assumption as a conservative estimate:

- After years of steadily increasing demand for box rentals, numerous CMRAs report declines in box rentals ranging from 13% to 15% since these regulations were enacted by the Postal Service in March of 1999.
- This sharp decline in box rental demand is particularly disturbing given that it has occurred prior to the enforcement of the PMB address designator aspect of the regulations. This tends to indicate that total box rental losses will far exceed the originally assumed 15% after the full impact of these regulations are absorbed. **(Exhibit L)**

18. Annual per box rental revenue $180.00 (an average of $27.00 per box holder)

Original assumption methodology:
Discussions with CMRA operators revealed a wide range of pricing for mailbox rentals. Some very small operators in rural areas rent mailboxes as a sideline and may charge as little as $5 - $8 per month. Conversely large operators in active markets where boxes are in short supply may charge upwards of $30 per month. The general consensus appeared to be in the $15 to $20 range among typical CMRA operators. We chose the lower value of $15 per month or $180 per year in the interest of obtaining a conservative "Estimate".

What supports this assumption as a conservative estimate:

- With new business startups at record levels, particularly within internet start-up "hotbeds", the demand for private mail boxes will (if unfettered by Postal regulations) increase, putting pressure on supply and in turn drive rental rates upward.
- Private mailboxes provide box holders a secure location to receive eCommerce shipments from the Postal Service as well as private carriers such as FedEx and UPS. As more people purchase products on the Internet there will be an increased (again if unfettered by Postal regulations) demand for a secure address to which these purchases can be delivered, further increasing demand and placing upward pressure on box rental pricing.

THE ESTIMATE'S DIRECT COSTS ARE ONLY THE TIP OF THE ICEBERG

The scope of the "Estimate" was to estimate ONLY the "direct costs" during the first year of these regulations. These are by far the easiest to get a handle on, but only represent a fraction of the total long-term economic burden of these regulations. The largest costs will be the long-term future costs. No one can accurately predict what these long term costs will ultimately add up to, however no one can deny they exist. The following represents what is believed to be an extremely conservative guesstimate of just a few the additional costs not included in the original "Estimate."

- **$215 million in CMRA net worth equity loss due to lost box rental income.** Over the last few months we have received numerous reports from CMRA operators indicating they have already experienced significant cancellations of box rentals due to these regulations. These reports range from approximately 5-50% loss rate in box rentals. It appears the consensus is somewhere between 10-15%. At the lower 10% number, the ten-year value of this lost revenue stream is a collective loss in net worth of over $215 million dollars alone. This figure was achieved by applying the universally accepted formula for calculating the "future value" of an income stream (FV=c*[(1+r)((t-1)]/r) to the following modest assumptions: 1.5 million total boxes rented, 10% loss due to regulations, 10 year life, average interest rate at 5.5%, and an ultra conservative box rental rate of $9 dollars per month.

- **$1.5 billion in box holder lost opportunity and future revenue**. For sake of argument let's say 1 million small business box holders each lose just (1) customer due to undelivered mail or the "stigmatizing" PMB designator, or fails to get (1) new customer while off buying new office supplies or sending out change of address notifications. Let's say that customer would have generated a modest $120 per year of revenue for the next ten years. Using the same universally accepted formula and interest rate assumptions for calculating future value, these regulations will have cost them an astounding $1.5 billion dollars in lost future revenues.

- **$1.3 billion in CMRA business closures**. It is not a question of whether or not these regulations will put some CMRAs out of business, it is only a question of how many and how soon they will close their doors. Some CMRAs have already gone out of business as a direct result of these regulations. These regulations are so punitive to CMRA operators that they are referred to in the industry as the "Death Regs." Again for sake of argument let's say the weakest 10% of the CMRAs close their doors as a direct result of these regulations. Let's say that those operators earned a modest $35,000 per year running their business and in the interest of simplicity and conservatism we assume absolutely no growth for the next twenty years despite a historically high industry growth rate. At an interest rate of 5.5% these 1,060 small business people will have collectively suffered a 1.3 billion-dollar loss in future value!

IN CONCLUSION:
Although the original "Estimate" was based on a limited number of assumptions, those assumptions are quite well founded, rational and realistic. The "Estimate" is highly credible and significantly understates the impact these CMRA regulations are imposing on some two million American small business owners.

It is entirely plausible, if not likely, that the economic impact of these regulations could exceed 5 billion dollars over the next few years. The exact economic impact of these regulations is unknown at this point. It is however clear that they will impose a significant hardship on the one to two million small business owners affected. It is imperative that the Postal Service not "shirk" its public policy responsibility and that it commission independent impact and effectiveness studies prior to proceeding with enforcement of these regulations.

We find it ludicrous and outrageous that the Postal Service would attack the "Estimate" based on ill-conceived ideas about methodology and not by challenging a single assumption as being incorrect. We find charges that the underlying assumptions are "unsubstantiated" more than slightly hypocritical given the Postal Service's failure to produce any statistical data indicating these regulations are necessary in the first place.

The Postal Service, exploiting an exemption from the Administrative Procedures Act, has neglected its responsibility by failing to conduct ANY impact or effectiveness studies and by not providing any statistical data whatsoever to suggest that these regulations serve any "compelling public interest." **It is in fact these CMRA regulations themselves which are totally "unsubstantiated."**

ONE FINAL THOUGHT:

The Postal Service's position *assumes, without any documentation*, that the impact of these regulations is so slight as to not warrant any study or quantification. Conversely, the small business owners who have already documented enormous expenditures of time and money as a direct result of these regulations contend that the impact will be staggering! **Exactly whose position is "unrealistic, invalid and simply unreasonable?"**

Exhibit A

Table 1
Costs of New Postal Service CMRA Regulations

Description	Qty.	Hourly	Each	Minimum	Probable
Assumptions					
Estimated number of CMRAs				**10,600**	
Estimated number of box renters				**1,500,000**	**2,500,000**
Address-change notifications required per box renter					
Customers			10		
Prospects			10		
Vendors			10		
Official or support contacts (IRS, state, accountant, bank, lawyer, etc.)			10		
Total number of notifications required			**40**	**60,000,000**	**100,000,000**
Initial direct costs to box renters					
Hard costs for address-change notifications					
Letterhead			$0.31	18,720,000	31,200,000
Envelope			$0.28	16,800,000	28,000,000
Ink/toner			$0.02	1,200,000	2,000,000
Postage			$0.33	19,800,000	33,000,000
Subtotal for hard costs			**$0.94**	**56,520,000**	**94,200,000**
Labor costs for address-change notifications					
Find name, address, acct. #, etc.	5	$16.84	$1.40	84,200,000	140,333,333
Write/print notification	4	$16.84	$1.12	67,360,000	112,266,667
Address envelope	2	$16.84	$0.56	33,680,000	56,133,333
Insert notice and apply postage	1	$16.84	$0.28	16,840,000	28,066,667
Mail	1	$16.84	$0.28	16,840,000	28,066,667
Track if notice resulted in proper change	4	$16.84	$1.12	67,360,000	112,266,667
Subtotal for labor costs	**17**		**$4.77**	**286,280,000**	**477,133,333**
Percentage requiring second notification	10%		$5.71	34,280,000	57,133,333
Subtotal for combined notification costs			**$6.28**	**377,080,000**	**628,466,667**
Costs for new office supplies					
Business cards per person	500		$28.00	42,000,000	70,000,000
Stationery	250		$78.00	117,000,000	195,000,000
Envelopes	250		$70.00	105,000,000	175,000,000
Invoices	250		$70.00	105,000,000	175,000,000
Bank checks	250		$45.00	67,500,000	112,500,000
Rubber stamp	1		$16.00	24,000,000	40,000,000
Subtotal for new office supplies			**$307.00**	**460,500,000**	**767,500,000**
Subtotal for combined costs to box renters			**$558.39**	**837,580,000**	**1,395,966,667**
Deduct for boxes not used for business	30%			-251,274,000	-418,790,000
Total initial direct costs to box renters				**586,306,000**	**977,176,667**
Initial direct costs to CMRAs					
Photocopy forms (pages)	5		$0.03	225,000	375,000
Distribute forms to each box (minutes)	1	$10.00	$0.17	250,000	416,667
Explain to/argue with customers (minutes)	5	$16.84	$1.40	2,105,000	3,508,333
Follow up, collect, and file forms (minutes)	10	$16.84	$2.81	4,210,000	7,016,667
Prepare reports and transmit forms (minutes)	5	$16.84	$1.40	2,105,000	3,508,333
Annualized loss of box-rental revenue	15%		$180.00	40,500,000	67,500,000
Annualized additional reporting burden (minutes)	10	$16.84	$2.81	4,210,000	7,016,667
Total initial direct costs to CMRAs				**53,605,000**	**89,341,667**
Average cost per CMRA				5,057	8,428
Total initial direct costs to CMRAs and their customers				**639,911,000**	**1,066,518,333**

Sources: The number of CMRAs (10,600) and the figure of approximately 1.5 million renters are from Rodney Ho, "Post-Office's Rule Incenses Renters of Private Boxes," *Wall Street Journal*, May 4, 1999. The 2.5 million figure for the number of box holders is based on the requirement of Mail Boxes Etc., the largest franchiser, that new franchises have a minimum of 250 boxes, multiplied by the 10,600 total for CMRAs, which rounds off to about 2.5 million. The amounts of time needed by CMRA box holders to process address changes are the author's estimates. The labor costs are based on an annual salary of $35,000. The costs of new stationery, business cards, and the like are based on the lowest costs and minimum quantities from Kinko's price list. For the CMRAs, it is assumed that labor costs will be $10 per hour for distribution of forms, done by a CMRA employee. Other CMRA labor costs will involve the CMRA manager's time, which is assumed to be $16.84 per hour; the same cost is assumed for a small-business owner's time. These are only direct costs to CMRAs and their box holders.

Exhibit B - 1

satisfaction of most of the participants. There is still some disagreement, and given the wide range of views, it seems unlikely that we will ever be able to reach a 100 percent consensus on all of the issues. We do believe, however, that our efforts to reconcile the many interests involved have brought everyone to a better understanding of each other's needs and concerns.

I want to commend the representatives of the CMRA industry in particular. Most CMRAs do not condone or promote fraud. But the industry acknowledges that fraud does take place in their establishments. They want to curb these abuses and improve the image of their industry, and have worked very cooperatively to achieve workable resolutions.

I believe that we have struck a fair balance between privacy, business, and customer needs, without weakening the integrity of the regulations. When the new rules take full effect, the Inspection Service will have gained important new tools in curbing criminal activities involving the mail. We will probably never be able to eliminate them entirely, but the steps we are taking will go a long way towards helping to stop crime before it even takes place.

In the end, we hope that everyone will come to understand that the sacrifices we are making—and I believe that everyone involved has made a sacrifice of some kind—are for a greater collective good that transcends all of our individual interests. Together, we have fashioned a set of rules that will help create a safer, stronger, and more enjoyable America. That is something we all agree is a worthy cause.

That concludes my statement. We would be happy to answer any questions that you might have.

USPS ANALYSIS OF REPORT ON THE DIRECT COSTS OF CMRA REGULATIONS

The following is an excerpt from the Executive Summary of the Cato Institute Briefing Papers of July 30, 1999, entitled, "The U.S. Postal Service War on Private Mailboxes and Privacy Rights," by Rick Merritt:

> "... the new regulations will foist enormous costs on some

1.5 million to 2.5 million private mailbox holders, which include many of the country's smallest businesses. CMRAs will also incur expenses, not only of compliance with and notification to box holders of the new regulations, but also of lost business.

A conservative estimate of the direct costs alone of the new regulations could approach $1 billion."

In the section entitled, "The Direct Costs of Regulations," Mr. Merritt

Exhibit B - 2

includes assumptions and costs that we feel are simply unreasonable.

Quoting from a Wall Street Journal article of May 4, 1999, the study assumes that there are approximately 10,600 CMRAs and 1.5 million private mailboxes. This figure is used as the lower range for determining the impact of the regulations.

The upper range is based on a requirement of Mail Boxes, Etc. (MBE), the largest CMRA business in the industry, that new franchises have a minimum of 250 boxes. The author simply multiplied the approximately 10,000 CMRAs by 250 boxes and arrived at the 2.5 million box figure, which became his upper range.

There are several problems with this approach. First, even if MBE's 250 minimum is followed in every situation, that requirement applies to new, not current, franchises. Also, while MBE is the largest franchise, they have only about 3,500 outlets in the United States. Therefore, to apply the 250 box minimum to all other CMRAs is unrealistic and invalid.

The study then assumes, without any documentation, that 70 percent of CMRA box holders are entrepreneurs and 30 percent are individuals. The study also makes no adjustment for box vacancy rates, assuming that all 1.5 to 2.5 million boxes are rented. The Postal Service is confident that the CMRA industry would find this assumption unreasonable.

In reviewing the various elements of the cost calculations, one will find the following figures. Total costs for address changes (supplies, labor, etc.) range from $377 million to $628 million. These figures are based on the author's unsubstantiated personal estimates that CMRA customers will have to contact 40 individuals or entities that mail regularly to their boxes.

It also assumes that it would take an average of 17 minutes to prepare the notices, at an average labor cost per hour of $16.84. The unit costs for notification supplies are also excessive---31 cents per piece for letterhead and 28 cents for an envelope, plus postage and toner, for a total of 94 cents per notice. These figures produce a total estimate of $56.5 million to $94.2 million for notification supplies, depending on the number of boxes assumed. However, a 20-cent postal card preprinted with the address change information, which is what many small businesses would use, would reduce the supply cost and postage by 79%.

The labor costs to prepare the notices are calculated to be $4.77 each, with the 17 minutes assumed per notice charged at $16.84 per hour. Adding in the supplies' cost of $0.94 per notice produces a total of $5.71 for each notice. The study assumes a 10 percent second notice rate, bringing the cost to $6.28 per notice.

Therefore, the combined notification costs (supplies and labor) for all entrepreneurs are between $264 million and $440 million. This equates to a one-time cost of $251 per entrepreneur box holder to notify 40 customers when using the unrealistic assumptions contained in the study.

Exhibit B - 3

The analysis, moreover, did not include any reference to the fact a small business receives monthly billings and orders at various frequencies throughout the year. Typically, bills give recipients the ability to update change of address information. Given the one-year transition period for address compliance, there would be many such opportunities to minimize notification costs.

Costs of new office supplies were estimated for all entrepreneurs to be between $322.5 and $537.3 million. Without going into the per unit numbers, the assumption used is that all stationery, business cards, and checks will be reprinted well before the compliance deadline, if not immediately. There is no allowance for stock depletion and replacement during the one-year transition period. Such an allowance would reduce these costs significantly.

In addition, the author is assuming that all box renters (1.5 million to 2.5 million, of which 70% are entrepreneurs) are current renters and will be renters at the end of the transition period. There apparently is no assumed normal turnover. Therefore, no allowance is made for new renters, who would not have to change stationery because of the regulations. This omission is not realistic and also contradicts an assumption used in the section entitled, "Initial Direct Costs to CMRAs." In this section, it is assumed that CMRAs will lose 15 percent of their box rental revenues due to the regulations, or $40.5 million to $67.5 million. This

15 percent is not reflected as an adjustment to the direct costs to box holders nor is it used to assume a vacancy rate and a turnover rate in previous calculations.

One of the more curious factors in the analysis of CMRA costs is the assumption of 5 minutes to either explain or argue about the new regulations for each of the 1.5 to 2.5 million box holders. At $16.84 per hour, the author calculates each explanation or argument at $1.40, bringing the grand total for arguing and explaining to an additional $2.1 to $3.5 million.

In summary, the Cato Institute study appears fraught with unreasonable assumptions, unsupportable calculations, and unexplained contradictions. Therefore, we believe it is not a reliable or realistic figure for determining the costs of the revised CMRA regulations.

Return to Hearing Summary

Return to Home Page of House Small Business Committee

The United States House of Representatives
Committee on Small Business
2361 Rayburn House Office Building

Exhibit C - 1

FEDERAL REGISTER VOL. 59, No. 84 Notices

UNITED STATES POSTALSERVICE (USPS)
Privacy Act of 1974, System of Records 59 FR 22874
DATE: Tuesday, May 3, 1994

ACTION: Notice of new routine use applicable to a system of records.

SUMMARY: The purpose of this document is to publish notice of a new routine use applicable to the Postal Service's Privacy Act system of records USPS 010.050, Collection and Delivery Records-Delivery of Mail Through Agents. The new routine use will authorize the disclosure of information for the purpose of identifying addresses as Commercial Mail Receiving Agencies. DATES: This proposal will become effective without further notice 30 days from the date of this publication, unless comments are received on or before that date which result in a contrary determination. ADDRESSES: Comments may be mailed to Records Office, United States Postal Service, 475 L'Enfant Plaza SW., room 8831, Washington, DC 20260-5240, or delivered to the above address between 8:15 a.m. and 4:45 p.m., Monday through Friday. Comments received may be inspected during the above hours in room 8831. FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office, (202) 268-2924.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (e)(11) of the Privacy Act of 1974, 5 U.S.C. 552a, the Postal Service is publishing a notice of a new routine use applicable to its system of records USPS 010.050, Collection and Delivery Records-Delivery of Mail Through Agents. The new routine use will authorize disclosure of information for the purpose of identifying addresses as belonging to Commercial Mail Receiving Agencies (CMRAs). CMRAs are private entities which receive mail on behalf of other persons. Often, the address provided for a person by a CMRA appears to be a typical residential or business address. The Postal Service, primarily through its law enforcement branch, the Postal Inspection Service, has been working with the credit card industry to prevent credit card fraud. One form of credit card fraud consists of submitting an application for a credit card under a fictitious name. Perpetrators of this type of fraud may use an address provided by a CMRA as a means of avoiding detection. Credit card companies have asked the Postal Service to help them detect such fraud by identifying CMRA addresses, and the Postal Service has concluded that the identification of CMRA addresses would be an effective tool in combatting credit card fraud and other types of consumer fraud. The routine use will authorize disclosure of information only for the purpose of identifying an address as belonging to a CMRA, and no other information concerning CMRAs or their customers will be disclosed pursuant to the routine use. Because the routine use will not authorize the disclosure of the PAGE 3 59 FR 22874 identities of CMRA customers, disclosures under the routine use will not invade the legitimate privacy interests of persons who receive mail through CMRAs. The information will be disclosed primarily by means **of annotations to the Postal Service's Delivery Sequence File (DSF)**. DSF data, the use of which is made available to the public through authorized licensees, contains delivery-point addresses, and it does not include the identities of individuals. New Routine Use This notice adds routine use No. 1 to Postal Service system of records USPS 010.050, Collection and Delivery Records-Delivery of Mail Through Agents, as follows: "1. Information may be disclosed for the purpose of identifying an address as an address of an agent to whom mail is delivered on behalf of other persons. This routine use does not authorize the disclosure of the identities of persons on behalf of whom agents receive mail." Stanley F. Mires, Chief Counsel, Legislative. [FR Doc. 94-10544 Filed 5-2-94; 8:45 am] BILLING CODE 7710-12-M PAGE 4 2ND ITEM of Level 1 printed in FULL format. FEDERAL REGISTER VOL. 59, No.

Exhibit C - 2

84 Rules and Regulations UNITED STATES POSTAL SERVICE (USPS) 39 CFR Part 265 Release of Information 59 FR 22756 DATE: Tuesday, May 3, 1994 ACTION: Interim rule.

SUMMARY: This interim rule amends the Postal Service regulation which prohibits the disclosure to the public of information contained in Postal Service Form 1583, "Application for Delivery of Mail Through Agent." The amendment will authorize the disclosure of information from Form 1583 for the purpose of identifying addresses as Commercial Mail Receiving Agencies. The intended affect of this amendment is to provide an effective tool in combating credit card fraud and other types of consumer fraud. DATES: This interim rule will become effective June 2, 1994. Comments are invited and must be received on or before June 17, 1994. ADDRESSES: Comments may be mailed to Records Office, United States Postal Service, 475 L'Enfant Plaza, SW., room 8831, Washington, DC 20260-5240, or delivered to the above address between 8:15 a.m. and 4:45 p.m., Monday through Friday. Comments received may be inspected during the above hours in room 8831. FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office, (202) 268-2924.

SUPPLEMENTARY INFORMATION: Commercial Mail Receiving Agencies (CMRAs) are private entities which receive mail on behalf of other persons. Both CMRAs and their customers are required to sign Postal Service Form 1583, "Application for Delivery of Mail Through Agent," a copy of which is filed with the postmaster responsible for the delivery address. Under 39 CFR 265.6(d)(10), the disclosure to the public of any information contained in Form 1583 has been prohibited. The Postal Service, primarily through its law enforcement branch, the Postal Inspection Service, has been working with the credit card industry to prevent credit card fraud. One form of credit card fraud consists of submitting an application for a credit card under a fictitious name. Perpetrators of this type of fraud may use an address provided by a CMRA, which often appears to be a typical residential or business address, as a means of avoiding detection. PAGE 5 59 FR 22756, *22756 Credit card companies have asked the Postal Service to help them detect such fraud by identifying CMRA addresses, and the Postal Service has concluded that the identification of CMRA addresses would be an effective tool in combating credit card fraud and other types of consumer fraud. As amended by the interim rule, 39 CFR 265.6(d)(8) will authorize disclosure of information only for the purpose of identifying an address as belonging to a CMRA, and no other information concerning CMRAs or their customers will be disclosed pursuant to the regulation. Because the regulation will not authorize the disclosure of the identities of CMRA customers, disclosures under the regulation will not invade the legitimate privacy interests of persons who receive mail through CMRAs. The information will be disclosed primarily by means of annotations to the Postal Service's Delivery Sequence File (DSF). DSF data, the use of which is made available to the public through authorized licensees, contains delivery-point addresses, and it does not include the identities of individuals. Copies of Form 1583 on file with the Postal Service are records protected by the Privacy Act of 1974, 5 U.S.C. 552a, and they are maintained in the Postal Service's Privacy Act system of records USPS 010.050, Collection and Delivery Records-Delivery of Mail Through Agents. In a separate notice published elsewhere in this issue of the Federal Register, the Postal Service is adding a routine use to system of records USPS 010.050 which will authorize the disclosure of the information that may be released pursuant to the interim rule.

Although the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding rulemaking (5 U.S.C. 553), the Postal Service invites interested persons to submit written comments concerning the interim rule. These comments will be considered before a

Exhibit C - 3

final rule is adopted.

List of Subjects in 39 CFR Part 265 Disclosure of
information, Postal Service.

For the reasons set forth in this document, the Postal Service is amending
39 CFR Part 265 as follows:

PART 265-DISCLOSURE OF INFORMATION
1. The authority citation for 39 CFR part 265 continues to read as follows:
Authority: 39 U.S.C. 401; 5 U.S.C. 552; Inspector
General Act of 1978, as amended (Pub. L. 95-452, as amended), 5 U.S.C. App. 3.

2. Paragraph (d)(8) of @ 265.6 is revised to read as follows: @

265.6 --
Availability of Records.

* * * * *
(d)
* * *
(8) Form 1583, Application for Delivery of Mail Through Agent.
Except as provided by this paragraph, information contained in Form 1583 may
not be disclosed to the public. Information contained in Form 1583 may be
disclosed
to the public only for the purpose of identifying a particular address as an
address of an agent to whom mail is delivered on behalf of other persons. The
identities of persons on whose behalf agents receive mail may not be disclosed.

* * * * *
Stanley F. Mires, Chief Counsel, Legislative.
[FR Doc. 94-10543 Filed 5-2-94; 8:45 am] BILLING CODE 7710-12-M

PAGE 6 59 FR 22756, *22757

Breakdown of Assumptions Used in CMRA Cost Estimate

Exhibit D

DESCRIPTION	ASSUMPTION	UNIT	MIN QTY	MIN BUY	SUPPLIES	NOTICE	EXTENDED	MINIMUM	PROBABLE
ASSUMPTIONS									
1 Estimated number of CMRAs	10,600								
2 Minimum Estimated number of Box Holders	1,500,000	average of	142	box holders / CMRA					
3 Probable Estimated number of Box Holders	2,500,000	average of	236	box holders / CMRA				1,500,000	2,500,000
4 Total notifications required per Box Holder	40								
5 Second notification, percentage required	10%	2nd notices	44						
6 Boxes used for business	70%							1,050,000	1,750,000
Business cards per person	$ 0.08	each	500	$ 28.00	$ 28.00				
Stellonery	$ 0.31	each	250	$ 78.00	$ 78.00	$ 13.73			
Envelopes	$ 0.28	each	250	$ 70.00	$ 70.00	$ 12.32			
Invoices	$ 0.28	each	250	$ 70.00	$ 70.00				
Bank checks	$ 0.18	each	250	$ 45.00	$ 45.00				
Ink / toner	$ 0.02	each	5,000	$ 100.00		$ 0.88			
Postage	$ 0.33	each	1	$ 0.33		$ 14.52			
Rubber stamp	$ 16.00	each	1	$ 16.00	$ 16.00				
7 New office supplies required					$ 307.00		$ 307.00		
8 Hard cost of box holders' COA notification	$ 0.94	each	44			$ 41.45	$ 41.45		
Boxholder time per notification	17	minutes	44	12.47	total hours				
9 Boxholders Time to Comply	$ 16.84	per hour		12.47		$ 209.94	$ 209.94		
Total cost to (businesses only) box holders							$ 558.39	$ 586,306,000	$ 977,176,667
CMRA ASSUMPTIONS									
10 Cost of CMRA Owner/Manager Labor	$ 16.84	per hour							
11 Cost of CMRA Employee Labor	$ 10.00	per hour							
12 Number of forms to Photocopy per box holders	5	page sides							
13 Cost to Photocopy forms	$ 0.03	per page side	5				$ 0.15		
Distribute forms to each box (minutes)	1	minutes/ boxholder	$ 10.00	$ 0.17					
Explain to / argue with customers	5	minutes/ boxholder	$ 16.84	$ 1.40					
Follow up, collect, and file forms	10	minutes/ boxholder	$ 16.84	$ 2.81					
Prepare reports and transmit forms	5	minutes/ boxholder	$ 16.84	$ 1.40					
14 Total CMRA time to comply	21	minutes/ boxholder							
15 Average cost per mixed labor hour	$ 16.51	per hour	21				$ 5.78		
16 Additional reporting burden, first year	10	minutes/ boxholder	$ 16.84				$ 2.81		
17 Percentage of loss of box-rentals	15%								
18 Lost box rental revenue, first year only	$ 180.00	rev/yr/box		$ 27.00	per box holder		$ 27.00		
Total per box holder based first year cost							$ 35.74	$ 53,605,000	$ 89,341,667
TOTAL FIRST YEAR COST RANGE								$ 639,911,000	$ 1,066,518,333

ENTERPRISE

Post-Office Rule Incenses Renters Of Private Boxes

By Rodney Ho
Staff Reporter of The Wall Street Journal

A strategy used by small businesses to make themselves look bigger is colliding with the might of the U.S. Postal Service. The post office is prevailing.

The strategy: using private boxes at mailing-service stores such as Mailboxes Etc. and tacking on a "suite" or other number to the store's street address – without mentioning the store's name. That gives customers the impression that the business operates in a big office building.

Last week, however, the Postal Service began requiring mail to these private rental mailboxes to include the designation PMB, for private mailbox, in the address. After a six-month grace period, mail addressed without a PMB may not be delivered, the new rules state.

Renters of the more than one million private rental mailboxes in the nation and owners of the 10,600 pack-and-send stores assert that the post office is acting out of

Please Turn to Page B2, Column 3

WSJ
05/04/99

Exhibit E

ENTERPRISE

Postal Service Irks Private-Mailbox Renters

Continued From Page B1

self-interest. After all, its own mailboxes compete with the private ones.

But Postal Service officials say the agency is simply trying to cut out deception. Michael Spates, manager of delivery for the Postal Service, says the use of PMB will inform senders that the address is not an office or home. He says criminals increasingly use private mailboxes for illegal activities such as credit-card fraud and identity theft.

Michael Mansfield, an assistant district attorney in Queens, N.Y., says he found rampant crime during a 1997 sting operation in which his office operated a mailbox store. "Because of the anonymity, it attracts the criminal element," he says. "PMB takes away that cloak of apparent legitimacy."

Removing the "cloak" is rankling the small-business owners who don it for legitimate purposes. Gaylan Hayes, owner of a Virginia Beach, Va., business that sells more than $500,000 a year in maintenance supplies, says he likes his private-mailbox address at Mail Depot on 3419 Virginia Beach Boulevard. "It gives us a good face so we don't look Mickey Mouse," he says. "PMB degrades us in the eyes of potential customers."

Owners of the pack-and-mail stores don't deny the existence of mail fraud but say they keep police informed of any unusual activity, track customer identification and report such information to the post office. Leanne Jewett, owner of the Post-Tel Business Center in Beverly Hills, Calif., says she has already lost a couple of customers who feel the PMB designation is akin to a scarlet letter. She calls the new rules "incredibly harsh."

The Postal Service's Mr. Spates says the post office won't necessarily penalize private mailbox holders whose senders fail to use PMB by refusing such mail after the October deadline. "We're not trying to make it like a police state," he says. "We won't slam the door."

Mr. Spates says the USPS will make a good-faith effort to deliver mail, similar to pieces missing ZIP Codes. But PMB isn't all that's angering private-mailbox stores these days. Another new Postal Service rule prohibits the stores from returning to senders – postage-free, as has been customary – first-class mail addressed to former customers who have moved. Instead, for a six-month period, the stores will have to forward that mail to the former customer with new first-class postage.

Mr. Spates says the change helps stores because they have been required to forward former customers' mail forever.

Not so, says Belinda Buras, owner of Parcel Place Plus in Newtown, Pa. "It's a ridiculous rule," she says. Ms. Jewett, who has 1,000 mailboxes, is fishing for extra space in her building to store mail for former customers for the six months that must elapse before she can return it free of charge.

The Postal Service first proposed the new rules in mid-1997 and received more than 8,000 complaints. Mr. Spates says most were form letters as part of a campaign spearheaded by the industry lobbying group, Associated Mail and Parcel Centers in Napa, Calif. The group's executive director, Charmaine Fennie, says that now that the Postal Service has made the rules official, the only avenue of protest would be legal action, but her organization lacks the resources to take it.

The relationship between these stores and the Postal Service is complicated because they simultaneously act as rivals and allies. Pack-and-send stores alleviate labor burdens on the post office by presorting mail and selling stamps. Yet many of their services – ranging from mailboxes to overnight delivery – are in competition.

Although the Postal Service reported its fourth consecutive profitable year in 1998, officials worry that its primary source of income – mail delivery – is gradually losing out to alternatives such as automated bill payment, electronic mail and faxes.

In 1994, the post office began offering packaging services on a trial basis in seven states. Pack-and-ship stores howled, calling this unfair competition. An industry lobbying group persuaded the Postal Rate Commission, an independent government body that decides rates of any postal-related service, to stipulate what prices the Postal Service should charge for packaging. The resulting rates were higher than the Postal Service wanted, ending the foray into packaging.

More successfully, many post-office branches now offer copying services, phone cards and a host of stamp-related products from posters to neckties with embossed Bugs Bunny stamp images. The pack-and-mail stores have no quarrel with the merchandising.

Lechters Approves Buyback Plan

HARRISON, N.J. – Lechters Inc., a retailer of housewares and kitchen products, said its board authorized the repurchase of up to one million, or about 5%, of its 20.4 million shares outstanding as of Jan. 30. In Nasdaq Stock Market trading, Lechters rose 25 cents, or 16%, to $1.7813.

Exhibit F

The structure of the international postal market has changed dramatically as a result of increased competition, which resulted from deregulation in transportation industries and suspension of the international postal monopoly. Deregulation allowed the entry of additional mailers into the market by reducing restrictions on transportation methods, which became more readily available and less costly. The suspension of the international postal monopoly on all classes of mail paved the way for increased competition in the Express Mail and parcel markets. Competition has also intensified due to the expansion of private delivery companies, re-mailers and even foreign postal administrations. The major express delivery companies are continuing to expand operations in Europe and Asia. Globalization of business communications has enhanced the value of electronic tracking and Internet services.

The international posts in many industrial countries have become revitalized competitors that are improving the quality of the services they offer. Several posts have been granted commercial freedoms that allow diversification. Foreign postal administrations, such as the United Kingdom's Royal Mail and the Dutch and Danish Posts, have expanded their operations across borders in order to target non-domestic customers, and some are even investing in private delivery companies to increase their international business. For example, Netherlands' PTT Post recently purchased TNT Ltd., a major international delivery company. As the United States accounts for a substantial amount of the world's mail, Postal Service customers are being increasingly targeted by these competitive service providers. Whether the foreign posts become partners or competitors will likely depend on the verdict of the customers of their international mail and special services.

Special services and retail products. The Postal Service offers more than 20 Special Services that can be purchased for a fee either separately or as an added feature to a core mail delivery service. Most of these services still conform to the original design and features that suited mailer needs in the much less competitive environment of 25 years ago. For more than 20 years, sales for some of the Special Services have thrived while others have diminished as long-term changes occurred in customers' mailing needs and expectations. For example, customers have increased use of Certified Mail at unprecedented rates to meet the legally-recognized delivery confirmation needs of an increasingly litigious society, while other services, such as Special Handling, have all but disappeared in a market with numerous speed and quality delivery options.

The retail function is both a business and a channel of distribution, supplying the Postal Service product and service needs of consumers and small firms. Full-service retail is provided through a network of approximately 40,000 postal facilities. Stamps-only sales are available at 30,000 supermarkets and drug stores, 40,000 postal-owned stamp vending machines, and 10,000 automated teller machines (ATMs). Stamps are also available by mail order.

Substantial competition from private mail and parcel franchises has emerged in recent years. Starting with a few hundred stores in 1980, this industry has grown to include about 7,800 commercial mail receiving agencies, such as Mailboxes, Etc. FedEx, United Parcel Service and other package delivery services have another 5,300 outlets that are focused primarily on business shippers. UPS also has contract arrangements with another 28,000 "agents." Together, these companies generate over $5 billion in revenues.

Exhibit G

Date: May 29, 1999

To: Senator Jon Kyl
2200 East Camelback Road
Suite 120
Phoenix, Az 85016

Re: US Postal Service
PMB Requirement

Dear Senator:

Thank you so much for your letter dated May 17, 1999 with enclosures. In response to their comments:

"The purpose of these revised requirements is to increase the safety and security of the mail."

Enclosed is a copy of the paperwork we had to fill out.
See Exhibit A.
If we do not fill this out, we do not get a mailbox. Period.
There is no reason to CHANGE our address.

"The requirements also ensure that mailers are confident that the addresses provided by prospective customers…are actually used by these customers."

What on earth does this have to do with CHANGING our address from
J+R Enterprises, Inc.
12629 North Tatum Blvd
Suite 431
To
J+R Enterprises, Inc.
PMB #431
12629 North Tatum Blvd

"Owners of CMRA's were advised of the proposed rules and were afforded the opportunity to comment prior to the final ruling."

Yes, they were and 90% of them objected to this ruling,
yet the Postal Service didn't care to listen

and imposed this severe financial burden upon us anyway.

"The Post Office is not imposing financial burdens solely on private mailbox holders."

Baloney!
Exhibit B Paragraph One acknowledges the severe cost burden this will be.
Exhibit C Paragraph One solicits business.

"One purpose…is to strengthen the identification process at the time of application to receive mail through the CMRA".

This was accomplished when we filled out the enclosed paperwork.
This has nothing to do with CHANGING our address.

"The Postal Service has adopted safeguards in other instances where the mails may be used for fraudulent purposes.

Now that we've filled out the enclosed paperwork, they know who we are, what we look like, where we live and so forth.
This has nothing to do with making us CHANGE our address.

"In the past, CMRAs have been required to submit a customer list to their local Post Office on an annual basis. They are now required to update the list on a **quarterly basis**.

Nobody has a problem with this.
This still is no reason to make us all CHANGE our address format.
Even the Post Office's change of address cards are not set up to compensate for the PMB # to be listed UNDER the recipient's name
And OVER the street address!

I have been in business for 17 years. Over those years, I have acquired approximately **THREE HUNDRED THOUSAND** (300,000) clients, businesses, vendors, and such. Listed below are some of the costs that will effect my business because of this:

New Letterhead	$ 188.50
New Envelopes	$ 216.50
New Business Cards	$ 109.45
New Brochures	$ 292.75
New Brochure Style Envelopes	$ 55.00
New Invoices	$ 182.95
New Letters Of Transmittals	$ 87.50
New Change Orders	$ 178.00
New Invoice Style Envelopes	$ 55.00
New Proposal Forms	$ 147.50
New Checks	$ 131.00
New Check Style Envelopes	$ 55.00

New Bank Deposit Tickets		$ 178.50
New Shipping Labels		$ 153.00
Address Change Notices	300,000 @ .33	$99,000.00

Not to mention having to reprint our company promotional products like:

T-shirts
Pen & Pencil Sets
Coffee Mugs
Calendars
Day Timers
Letter Slitters
Scratch Pads

This also means that these **THREE HUNDRED THOUSAND** (300,000) **people are going to have to** go into their computers and **change my address**. Including people like

IRS
My Bank
Credit Card Companies
Magazine Companies
All Federal and State Taxing Agencies
US West Communications
US West Dex

Any anyone, who has sent me preprinted forms, will have to reprint all new forms for me. People like:

Internal Revenue Service
Arizona Corporation Commission
Arizona Dept. of Revenue
Federal Express
Arizona Dept. Of Economic Security
Arizona Corporation Commission
State Of Arizona Trade Name Division
United Parcel Service
My Accountant

I am only one person, but what I do affects **THREE HUNDRED THOUSAND** (300,000) people. At the mail box center where I get mail, there are about another 200 people like me. If they've been in business as long as I have, or longer, that means approximately **SIXTY MILLION** (60,000,000) **MORE PEOPLE** are affected because of this. And that's just **ONE** mailbox center we're talking about here!

Just to notify these people in address change notice postage
will be a **PROFIT TO THE UNITED STATES POST OFFICE of**

NINETEEN MILLION EIGHT HUNDRED THOUSAND DOLLARS
($19,800,000.00)

This is highway robbery at its best.
I thought there were laws to prevent monopolies like this!

THREE HUNDRED THOUSAND CHANGE OF ADDRESS FORMS
AT 1 MINUTE PER FORM WILL COST ME
FIVE THOUSAND HOURS OF MY TIME.

Not too long ago, Arizona changed our one area code to two. So everybody had to redo all his or her letterhead and advertising all over again.

Then a couple of months ago, Arizona changed our area codes AGAIN. So, everybody had to redo all his or her letterhead and advertising allllllll over again.

Now, the post office comes along and says fill out this form. They want to know EVERYTHING about you except the color of your kitchen sink AND they want you to change your addresses and advertising. What on earth is going on here?

This regulation needs to be stopped immediately. I respectfully request your intervention on this matter. **Please support Rep Ron Paul in his effort to pass HJR 55.**

Sincerely,

Rhonda Manley
President

INCREDIBLE VALUE BUSINESS CARDS OFFICE DEPOT

Exhibit H - 1

ANY SPECIFICATIONS OTHER THAN DISPLAYED IS CUSTOM ORDER

(602) 518-2403
Fax (602) 518-7792
Hours: Mon.– Fri. 9-6
Saturday 10-4

Spokes Bike Shop
Bike Sales
Parts & Repair
Accessories & Clothing

Blazer Plaza
P.O. Box 231
4628 Brazon Street
Scottsdale, Arizona 85250

TANNER DEMKY
Owner
Pager: 1-800-518-3659
E-mail: tdemky@spokes.com

LAYOUT B1

Good Earth
Natural Foods
Nationally Advertised Vitamins and Minerals
Natural Based Products • Homeopathic Remedies
Essential Oils • Herbs
Phone (919) 782-6053
264 East Cumber Street
Kinston, NC 28501

LAYOUT B2

1-Week Trial Period
Personal Fitness Plan
TASHA KAPLAN
Personal Trainer

Training
Aerobics
Weights
Whirlpool

Fitness 4 U
Monthly Fitness Seminars
Organized League Sports

(410) 783-3844
Fax (410) 783-4267
Mon. – Sat. 5 a.m. – 11 p.m.
Sun. 6 a.m. – 8 p.m.

Corner of So. Main & 42nd Street
755 South Main Street
P.O. Box 6008
Bentley Springs, MD 21120

LAYOUT B3

*LAYOUT CHOICES SHOWN ABOVE.
SEE PAPER SAMPLES FOR PAPER SELECTION!
PAPER AND INK COLORS MAY VARY.

GOOD

- 1000 BUSINESS CARDS
- ANY PAPER OR LAYOUT*
- ANY ONE INK COLOR (SEE BELOW)

3¢ PER CARD

1000 MINIMUM. SKU# 386112

ONLY $29.99 PER 1000

OR, FOR ONLY $10 MORE, DESIGN YOUR OWN CARD! SKU# 385220

(ADDITIONAL CHARGES MAY APPLY.)

BETTER

- 1000 BUSINESS CARDS
- ANY PAPER OR LAYOUT*
- BLACK + ONE INK COLOR (SEE BELOW)

4¢ PER CARD

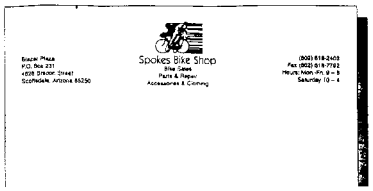
1000 MINIMUM. SKU# 386121

ONLY $39.99 PER 1000

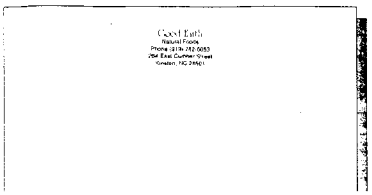
OR, FOR ONLY $10 MORE, DESIGN YOUR OWN CARD! SKU# 385239

(ADDITIONAL CHARGES MAY APPLY.)

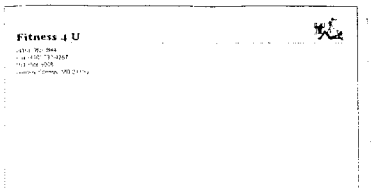
Exhibit H - 2



LAYOUT L1



LAYOUT L2



LAYOUT L3

GOOD

- 500 LETTERHEAD
- ANY PAPER OR LAYOUT*
- ANY ONE INK COLOR (SEE BELOW)

$79.99

500 MINIMUM. SKU# 385569

OR FOR ONLY $10 MORE, DESIGN YOUR OWN LETTERHEAD!
SKU# 385845

ADD'L 500...$39.99 500 BLANK $19.95
(ADDITIONAL CHARGES MAY APPLY.)

NOTE: LETTERHEAD WILL BE FLAT PRINTED UNLESS REQUESTED TO BE RAISED. IF USING ITEMS WITH RAISED INK IN YOUR LASER PRINTER OR COPIER, PLEASE SPECIFY "LASER-COMPATIBLE RAISED INK." ($8.00 CHARGE)

BETTER

- 500 LETTERHEAD
- ANY PAPER OR LAYOUT*
- BLACK + ONE INK COLOR (SEE BELOW)

$89.99

500 MINIMUM. SKU# 385603

OR FOR ONLY $10 MORE, DESIGN YOUR OWN LETTERHEAD!
SKU# 385621

ADD'L 500...$49.99 500 BLANK $19.95
(ADDITIONAL CHARGES MAY APPLY.)

INCREDIBLE VALUE
ENVELOPES
OFFICE DEPOT

Exhibit H - 3

GOOD

- 500 ENVELOPES
- ANY PAPER OR LAYOUT*
- ANY ONE INK COLOR (SEE BELOW)

$89.99

500 MINIMUM. SKU# 385578

OR FOR ONLY $10
MORE, DESIGN YOUR
OWN ENVELOPE!
SKU# 385863

ADD'L 500...$49.99

(ADDITIONAL CHARGES MAY APPLY.)

NOTE: ENVELOPES WILL BE FLAT PRINTED UNLESS REQUESTED TO BE RAISED. IF USING ITEMS WITH RAISED INK IN YOUR LASER PRINTER OR COPIER PLEASE SPECIFY "LASER-COMPATIBLE RAISED INK." ($8.00 CHARGE)

LAYOUT E1

LAYOUT E2

LAYOUT E3

BETTER

- 500 ENVELOPES
- ANY PAPER OR LAYOUT*
- BLACK + ONE INK COLOR (SEE BELOW)

$99.99

500 MINIMUM. SKU# 385907

OR FOR ONLY $10
MORE, DESIGN YOUR
OWN ENVELOPE!
SKU# 385925

ADD'L 500...$59.99

(ADDITIONAL CHARGES MAY APPLY.)

*LAYOUT CHOICES SHOWN ABOVE.
SEE PAPER SAMPLES FOR PAPER
SELECTIONS

INK
CHOICES

Exhibit H - 4

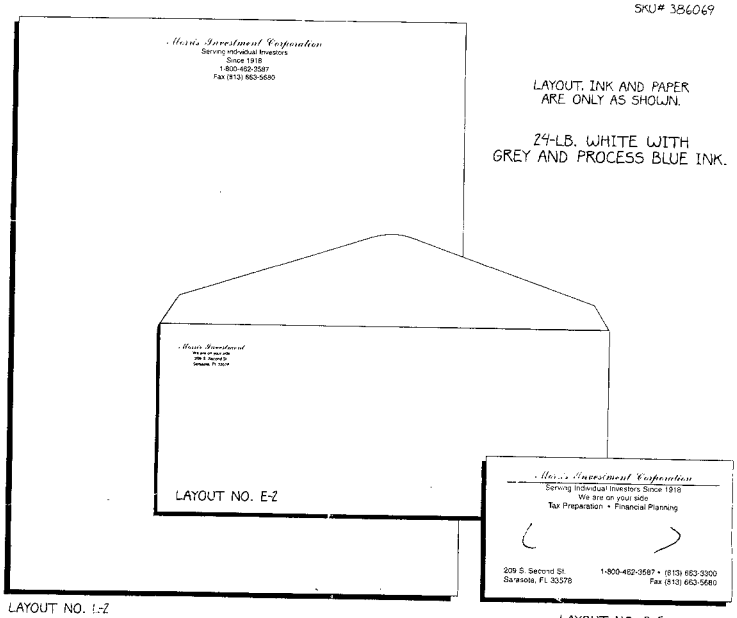
BEST

1000 BUSINESS CARDS
500 LETTERHEAD • 500 ENVELOPES

ALL FOR ONLY

$199.99

SKU# 386069



LAYOUT, INK AND PAPER ARE ONLY AS SHOWN.

24-LB. WHITE WITH GREY AND PROCESS BLUE INK.

LAYOUT NO. E-2

LAYOUT NO. B-5

NOTE: LETTERHEAD AND ENVELOPES WILL BE FLAT PRINTED UNLESS REQUESTED TO BE RAISED.
IF USING ITEMS WITH RAISED INK IN YOUR LASER PRINTER OR COPIER,
PLEASE SPECIFY "LASER-COMPATIBLE RAISED INK." ($8.00 CHARGE FOR EACH)

PAPER AND INK COLORS MAY VARY.

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Exhibit H - 5

Quicken FINANCIAL SOLUTIONS

Winter/Spring '97 CATALOG

Checks

Checks & supplies to help you get the most out of Quicken.

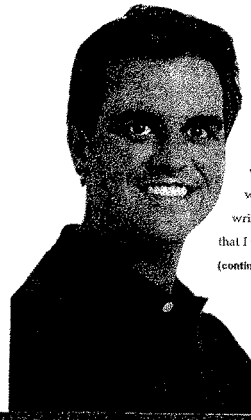
INSIDE:

NEW Multi-Part Deposit Slips
[see page 13]

NEW Quicken Wearables
[see page 8]

NEW Check Storage Box
[see page 16]

"With Quicken Checks, my bills are paid in no time!"



Max Applegarth
Owner, Caffe Centro
Amateur Pilot, Backpacker

"About five years ago, I had just opened my small café in the South of Market area of San Francisco, and I was desperate for help! I was spending so much time writing and signing checks that I thought...

(continued on page 3)

ADD YOUR LOGO OR MONOGRAM TO YOUR CHECKS! See page 14 for details

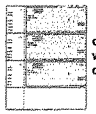
Intuit For Fastest Service Call 1-800-433-8810 FREE Shipping!

Classic Standard Checks

Great for general-purpose bill paying, these tear apart as single checks with no attachments. Three checks (8½" x 3⅔") per 8½" x 11" sheet.

Classic Voucher Checks

Ideal for accounts payable or payroll. One check (8½" x 3⅔") plus two stubs per 8½" x 11" sheet. Continuous check has one stub.



Classic Wallet Checks

Convenient to print or carry with you. Fits most bill payment envelopes without folding. Side stub for easy record-keeping. Three checks (6" x 2¼") per 8½" x 11" sheet.

It's Easy to Order Classic Checks!

Save Up to 60% When Ordering in Quantity.

Classic Standard	Item #	Color	250	500	1000	2000
Single Sheet One Part	☐728 ☐127 ☐179	Blue Maroon Green	47.95	67.95	89.95	149.95
Continuous One Part	☐101 ☐597	Blue Green	47.95	67.95	89.95	149.95
Continuous Duplicate	☐905 ☐309	Blue Green	67.95	83.95	114.95	182.95
Classic Voucher	**Item #**	**Color**	**250**	**500**	**1000**	**2000**
Single Sheet One Part	☐785 ☐542 ☐872	Blue Maroon Green	59.95	79.95	112.95	198.95
Single Sheet Duplicate*	☐491 ☐325 ☐218	Blue Maroon Green	98.95	135.95	203.95	335.95
Single Sheet Triplicate*	☐625 ☐717 ☐842	Blue Maroon Green	124.95	159.95	269.95	424.95
Continuous One Part	☐879 ☐470	Blue Green	49.95	71.95	94.95	154.95
Continuous Duplicate	☐243 ☐881	Blue Green	69.95	96.95	141.95	235.95
Continuous Triplicate	☐934 ☐648	Blue Green	87.95	112.95	188.95	298.95
Classic Wallet	**Item #**	**Color**	**250**	**500**	**1000**	**2000**
Single Sheet One Part	☐316 ☐962 ☐582	Blue Maroon Green	39.95	62.95	83.95	125.95
Continuous One Part	☐976 ☐270	Blue Green	39.95	62.95	83.95	125.95
Double-Window Envelopes	**Item #**	**Color**	**250**	**500**	**1000**	**2000**
Standard Use with standard or voucher checks.	☐873	White	27.95	38.95	59.95	99.95
Wallet Use with wallet checks.	☐438	White	24.95	35.95	56.95	96.95
New Wallet Plus Use with wallet checks.	☐191	White	27.95	38.95	59.95	99.95

* Duplicate and Triplicate checks: For sheet-fed printers, Quicken prints a copy for you on pre-collated checks. Original check is followed by a separate yellow non negotiable copy for duplicate, then a separate pink non negotiable copy for triplicate.

TIP **Try our double-window envelopes.** You'll save time by eliminating typing or hand-addressing of envelopes, and there's an envelope designed to work perfectly with each check format. See pages 14 and 15.

For Fastest Service Call **1-800-433-8810** **FREE Shipping!**

Exhibit I - 1

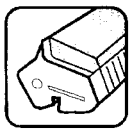
HP LaserJet IIIP Printer User's Manual

HEWLETT PACKARD

HP Part No. 33481-90901
Printed in Japan

Exhibit I - 2

Using Toner Cartridges



The toner (EP-L) cartridge in your Hewlett-Packard HP LaserJet IIIP printer has been designed to simplify the replacement of your printer's "consumable" items. The toner cartridge contains a print drum and a supply of toner.

A toner cartridge will print approximately 3500 pages if you are using a typical word processing application, with text covering about 5% of the page. If you regularly print pages with less text coverage, such as short memos, your toner cartridge should print more than 3500 pages. However, if you routinely print both text and graphics, your cartridge probably won't print the full 3500 pages.

Caution

Refilling a used toner cartridge is not recommended. Damage to the printer may occur if an improperly refilled cartridge is used. Service required as a result of using refilled cartridges will not be covered by the HP warranty or service agreements.

Storing the Toner Cartridge

If the toner cartridge must be removed from the printer, always store the cartridge in:

- The aluminum bag in which it was originally packaged.
- A dark cabinet, away from direct sunlight.
- A horizontal position, not on its end.
- Temperatures between 32° and 95°F (0° and 35°C).

Caution

Never expose the toner cartridge to direct sunlight. In addtion, never expose the toner cartridge to room light for more than a few minutes. Light can cause the electrophotographic drum inside the cartridge to degrade and become damaged.

Exhibit I - 3

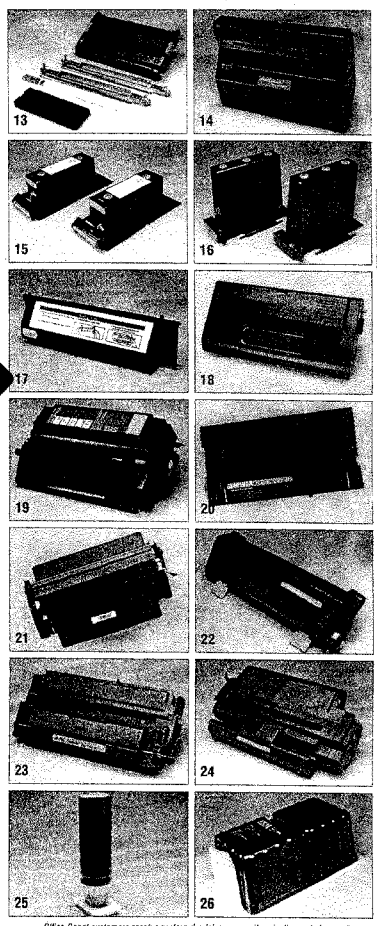
Laser Printer Supplies

How to Order:

3 Locate the key number for your required product and view the corresponding picture.

4 To place your order, use the 6-digit item number.

Key #	Item #	Brand	Mfg. #	Code	Unit	List
		DecLaser 1100, 1150, 1152				
5	713-420E	Nu-kote	NUKLT73R	ICR	EA	74.95
NS	434-811E	Hewlett-Packard	HP92275A	IC	EA	111.00
		LN03, LN03+				
13	960-045E	DEC	DECLN09X-AC	TK	EA	65.00
NS	980-052E	DEC	DECLN09X-AD	OPC	EA	165.00
NS	954-764E	Ricoh	RIC5997-30	TK	EA	84.00
NS	954-735E	Ricoh	RIC6705-52	OPC	EA	199.00
		PrintServer 17, PrintServer 17/600				
3	162-305E	Nu-kote	NUKLT75R	ICR	EA	128.95
NS	980-088E	DEC	DECLPS1X-AA	IC	EA	135.00
14	512-423E	Hewlett-Packard	HP92291A	IC	EA	150.30
		PrintServer 20, PrintServer 20 Turbo				
15	980-094E	DEC	DECLPS2X-AA	TC	EA	125.00
NS	980-102E	DEC	DECLPS2X-AB	SK	EA	66.00
NS	980-128E	DEC	DECLPS2X-AC	OPC	EA	205.00
NS	980-087E	DEC	DECLPSXX-AD	CU	EA	155.00
		PrintServer 32, PrintServer 32+				
16	980-136E	DEC	DECLPS3X-AA	TC	EA	170.00
NS	980-110E	DEC	DECLPS3X-AC	OPC	EA	340.00
		EPL 6000, ActionLaser, ActionLaser+				
17	162-271E	Nu-kote	NUKLT60	TK	EA	24.85
		ActionLaser 1000, ActionLaser 1500				
18	964-302E	Epson	EPSOS1011	IC	EA	249
		Laserjet, Laserjet+, Laserjet 500+				
5	326-525E	Nu-kote	NUKLT75R	ICR	EA	
19	397-351E	Hewlett-Packard	HP92285A	IC		
		Laserjet II, IID, III, IIID				
NS	162-297E	Nu-kote	NUKLT71R	ICR		69.95
10	371-426E	Nu-kote	NUKLT72R			74.95
11	392-399E	Hewlett-Packard	HP92235A		EA	100.00
20	232-827E	Lexmark	LEX140195A		EA	95.00
NS	450-973E	Lexmark	LEX140195X		EA	127.50
		Laserjet IIP, Laserjet IIP+, Laserjet IIIP				
6	713-420E	Nu-kote	NUKLT73R	ICR	EA	74.95
7	434-811E	Hewlett-Packard	HP92275A	IC	EA	111.00
		Laserjet IIISi, Laserjet IIISi/PS, Laserjet 4Si, Laserjet 4Si/MX				
NS	162-305E	Nu-kote	LT75R	ICR	EA	128.95
14	512-453E	Hewlett-Packard	HP92291A	IC	EA	150.30
NS	980-086E	DEC	DECLPS1X-AA	IC	EA	135.00
NS	104-033E	Hewlett-Packard	LEX140191A	IC	EA	135.25
		Laserjet 4, Laserjet 4M, Laserjet 4+, Laserjet 4M+, Laserjet 5, Laserjet 5M, Laserjet 5N				
2	542-423E	Hewlett-Packard	HP92298A	IC	EA	130.50
NS	426-284E	Hewlett-Packard	HP92298S MP	IC	3-PK	592.50
1	350-988E	Nu-kote	NUKLT75R	ICR	EA	129.00
21	735-337E	Lexmark	LEX140195A	IC	EA	129.25
NS	735-797E	Lexmark	LEX140195X	IC	EA	132.50
		Laserjet 4L, Laserjet 4ML, Laserjet 4P, Laserjet 4MP				
NS	553-743E	Hewlett-Packard	HP92274A	IC	EA	92.00
		Laserjet 4V, Laserjet 4MV				
22	239-285E	Hewlett-Packard	HPC3900A	IC	EA	185.40
		Laserjet 5P, Laserjet 5MP, Laserjet 6P, Laserjet 6MP, Laserjet 6Pxi				
23	239-921E	Hewlett-Packard	HPC3903A	IC	EA	108.50
		Laserjet 5Si, Laserjet 5Si/MX, Laserjet 5Si Mopier				
24	427-294E	Hewlett-Packard	HPC3909A	IC	EA	219.00



NS in key # indicates photo not shown.

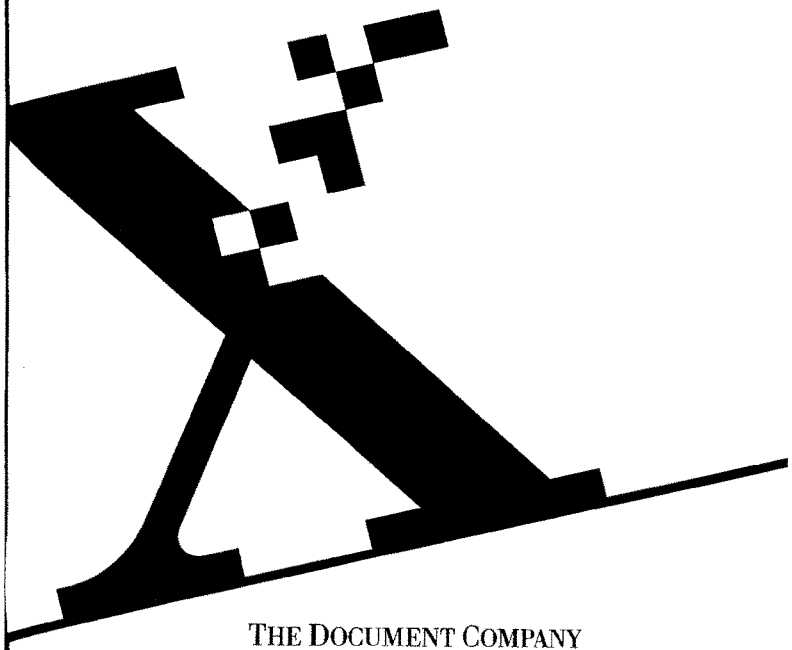
Office Depot customers receive preferred pricing - every item is discounted.

USPS July 99 Lobby Video "Slams" CMRA Industry

Exhibit J

Xerox 5114 User Guide

Exhibit K - 1



THE DOCUMENT COMPANY

XEROX

Exhibit K - 2

Technical data

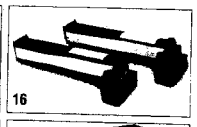
Original Size	Maximum 10 x 14" (B4 – 250 x 353 mm)
Copy Ratio	1:1 ± 1% Preset Percentage: 1:64, 1:78, 1:100, 1:110, 1:129
Copy Paper Size and Weight	**Tray 1** 5.5 x 8.5"(A5) to 8.5 x 14" (B4) 16 – 24 lb (60 – 90 gsm) **Bypass Tray** 5.5 x 8.5" (A5) to 8.5 x 14" (216 x 353 mm) and 10 x 14" (B4) 14 – 43 lb. bond, 60 lb. cover stock, 90 lb. index, 110 lb. offset **Set Document Feeder** 5.5 x 8.5" (A5) to 10 x 14" (B4) 16 to 24 lbs (60 - 90gsm)
Copy Rate	13 copies / minute (8.5 x 11 and smaller) 10 copies / minute (8.5 x 14) 5.8 copies / minute (when copying from books and SDF is open)
Paper Tray Capacity	**Tray 1:** 250 Sheets **Bypass Tray:** 10 Sheets
First Copy Output Time	8.5 x 11" (A4): 5.9 Seconds
Warm Up Time	Less than 30 Seconds
Electrical Requirements	Single phase (two wires plus ground) Current service – 15A Line to neutral – 115 VAC (nominal) Frequency – 60 Hz (+/-1.2 Hz) Range (line - to - neutral) – 107 V (min) to 127 V (max)
Environmental Requirements	Minimum: 50° F (10°) at 15% Relative Humidity Maximum: 90° F (32°) at 85% Relative Humidity
Machine Dimensions	Height, 14.5" (368 mm), Width, 19.7" (500 mm), Depth 19.4" (492 mm)
Machine Weight	71.7 lbs. (32.6Kg) (Includes Drum and Toner Cartridges)
Noise Level	Standby – 27 dBa Run – 49 dBa
Power Consumption	Run – 725 Watts Standby – 105 Watts Power Saver recovery time – 10 seconds, 55 Watts / 30 seconds, 19 Watts Machine off – 12 Watts
Heat Output	Run – 2,474 BTU/ hr Standby – 358 BTU/hr Power Saver recovery time – 10 seconds, 188 BTU/hr / 30 seconds, 65 BTU/hr Machine off – 41 BTU/ hr
Consumables	Toner cartridge yield - 4,000 copies/cartridge with a 6% area coverage original Drum cartridge yield - 18,000 copies. Warranty guarantee is 16,000 copies.

Exhibit K - 3

OEM Copier Supplies

Item #	Mfg. #	Description	Unit	List
		DC111, 111C, 112C		
317-238E	MIT37002305	Toner Cartridge	EA	15.00
		DC152Z, 1655, 1785		
317-220E	MIT37002810	Toner Cartridge	2-PK	43.00
		DC211, 213RE, 313Z, 313ZD, 2105		
317-212E	MIT37002137	Toner Cartridge	2-PK	40.00
		DC1001		
318-822E	MIT37030011	Toner Cartridge	EA	10.00
		DC1205, 1255, 1415, 1435		
317-204E	MIT37041013	Toner Cartridge	EA	12.00
		DC1605, 1656, 1657, 1685, 1855		
342-415E	MIT37046011	Toner Cartridge	2-PK	53.00
		DC2055, 2254, 2255, 2285		
318-055E	MIT37037011	Toner Cartridge	2-PK	60.00
		DC2555, 2585, 3255, 3285		
318-054E	MIT37040011	Toner Cartridge	EA	30.00
		DC4055, 4085		
353-365E	MIT37033011	Toner Cartridge	2-PK	55.00
		DC555, 5585, 5585H		
32-035E	MIT37042011	Toner Cartridge	EA	100.00
		FP1300, 1301R		
37-195E	PANFP-TC100CP	Toner Cartridge	EA	22.00
		FP1520, 2560, 2625		
37-188E	PANFP-T20C-P	Toner Cartridge	EA	39.00
		FT5050, 5070, 5540, 5570, 5590, 6629		
37-121E	RIC887141	Toner Cartridge	EA	41.00
		FT4410, 4430, 4480, 4490, 5010, 5520, 5560		
37-136E	RIC887143	Toner Cartridge	EA	44.00
		7060, 7770, 7870		
32-014E	RIC887462	Toner Cartridge	EA	62.00
		SF750, 770, 771, 780, 781		
7-030E	SHRSF77T	Toner Cartridge	EA	22.00
		SF755, 756, 760, 761, 7100		
7-022E	SHRSF76LT	Toner Cartridge	EA	21.00
		SF200		
7-014E	SHRSF720T1	Toner Cartridge	EA	22.00
		SF7300, 7320, 7350, 7370		
7-005E	SHRSF730NT1	Toner Cartridge	EA	44.00
		SF7700, 7750		
8-090E	SHRSF770NT1	Toner Cartridge	EA	32.00
		SF7800, 7850		
7-121E	SHRSF780NT1	Toner Cartridge	EA	33.20
		SF7900, 8300, 8350, 8400		
8-357E	SHRSF830NT1	Toner Cartridge	EA	37.00
		SF8100, 8260		
8-362E	SHRSF810NT1	Toner Cartridge	EA	37.00
		SF8200		
8-074E	SHRSF80T1	Toner Cartridge	EA	28.00
		SF8500, 8800		
8-038E	SHRSF880NT1	Toner [redacted]		[redacted]
		SF9500, 9510, 9550, 9560, 9700, 9750, 9800		
8-046E	SHRSF960NT1	Toner Cartridge	EA	70.00
		Z50, 52, 55, 57, 70, 72, 75-77, 85		
8-040E	SHRZTS07D1	Toner Cartridge	EA	129.99
		Z50, 52, 55, 57, 70, 72, 75-77, 85		
8-072E	SHRZT50DR	Drum	EA	139.99
		SF2214/2014		
8-025E	SHRSF214MT1	Toner Cartridge	EA	31.00

15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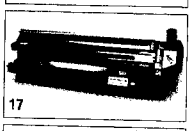
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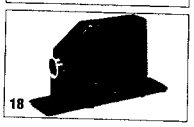
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19

Item #	Mfg. #	Description	Unit	List
		BD3110		
9 453-423E	TOST61P	Toner Cartridge	EA	19.00
		BD3301, 5501, 5511, 7800, 8612		
NS 416-933E	TOST50P	Toner Cartridge	EA	30.00
		BD4111, 4121		
NS 416-925E	TOST56P	Toner Cartridge	EA	23.60
		BD5110, 5120		
NS 453-415E	TOST80P	Toner Cartridge	EA	31.00
		5008		
10 508-549E	XER6R343	Toner Cartridge	EA	142.00
11 508-556E	XER13R50	Drum	EA	152.00
		5009		
12 508-564E	XER6R359	Toner Cartridge	EA	189.00
13 508-572E	XER13R55	Drum	EA	209.00
		5011RE		
NS 451-146E	XER6R332	Toner Cartridge	EA	59.00
14 451-153E	XER13R44	Drum	EA	411.00
		1012, 5012, 5014		
NS 653-727E	XER6R730	Toner Cartridge	EA	59.00
		5016		
NS 497-933E	XER6R708	Dry Ink	EA	122.00
NS 497-941E	XER13R74	Copy Cartridge	EA	599.00
		5018, 5028		
NS 625-805E	XER6R744	Toner Cartridge	EA	69.00
		5220, 5222		
15 451-138E	XER6R333	Toner Cartridge	EA	135.00
		5313		
16 611-335E	XER6R380	Toner Cartridge	EA	119.00
17 611-343E	XER13R61	Copy Cartridge	EA	498.00
		5113/5114		
NS 654-780E	XER6R751	Toner Cartridge	EA	135.00
NS 669-150E	XER13R65	Drum	EA	499.00
		XC560		
NS 440-160E	XER113R614	Drum	EA	249.00
		5201, 5203, 5305, 5306		
NS 631-465E	XER6R737	Toner Cartridge	EA	135.00
		XC820, XC830, XC1020, XC1040		
NS 140-319E	XER6R881	Toner Cartridge	EA	189.00
NS 140-350E	XER13R544	Drum	EA	199.00

NS in key # indicates photo not shown.

Office Depot customers receive preferred pricing - every item is discounted.

Exhibit K - 4

Copy Paper

Call For Our Low Price

HEWLETT-PACKARD MULTIPURPOSE PAPER

A high brightness, everyday paper engineered for crisp, sharp imaging in plain paper office equipment. 20 lb., 87 brightness, 500 sheets per ream, 10 reams per case.

Item #	Description	Mfg. #	Unit	List	Depot Price
251-668	8-½" x 11"	HPM1120	CS	†	CALL*
805-226	8-½" x 11"	HPM1120	RM	†	CALL*

HEWLETT PACKARD
Authorized Dealer

XEROX PREMIUM HIGH SPEED COPY PAPER

Dependable, consistent 20 lb., 84 brightness, white bond premium paper. Provides outstanding quality in any copier or printer. Takes copier productivity to the maximum. 500-sheet ream available in 2 sizes and letter size 3-hole. 10 reams per case.

Item #	Description	Mfg. #	Unit	List	Depot Price
275-474	8-½" x 11", Case	XER3R2047	CS	†	CALL* #31.99
345-603	8-½" x 11"	XER3R2047	RM	†	CALL*
345-511	8-½" x 14"	XER3R2051	RM	†	CALL*
345-529	11" x 17"	XER3R3751	RM	†	CALL*
348-938	8-½" x 11", 3 Hole	XER3R2641	RM	†	CALL*

Call For Our Low Price

*Call 1-800-685-8800 For The Current Low Price.
On products that frequently fluctuate in price, please call for the current low price. † Manufacturer's list price not available.

Did You Know?

How To Choose The Right Paper For The Job

For everyday use **- Choose a medium to heavyweight (20 lb. or 24 lb.) soft bright or high bright (84 or 86 brightness) paper. That's all you need for most black and white text documents: reports, faxes, memos, file copies and more.**

For important documents and color printing **- Choose a presentation quality paper that is extra bright (91 brightness) so contrast is sharp and colors print true. A heavyweight (24 lb.) paper will make your documents look and feel more substantial. This will also ensure that your paper will have adequate opacity for your color prints. These projects include: customer presentations, color graphs and charts.**

For printing photographs and detailed, high-resolution graphics **- Choose a coated paper with extra brightness (91 or higher) to make your pictures shine. Coating prevents ink from being absorbed into the paper, where dots that form the image can spread, reducing clarity. Instead, ink dries on top of the coated surface, so details stay precise and colors have added depth and brilliance. Photographs and high-resolution graphics will look as close to your originals as possible.**

GENERAL OFFICE SUPPLIES

POST-TEL

MAIL RECEIVING • MAIL FORWARDING • VOICEMAIL • PAGERS • PRINTING • PACKING & SHIPPING • PACKING MATERIALS • FAX • NOTARY • COPIES

BUSINESS CENTER

Exhibit L

March 3, 2000

Mr. Rick Merritt
PostalWatch

Dear Mr. Merritt:

Regarding the direct costs of implementing the new regulations of the CMRA industry, following is a list of our costs, not including loss of revenue (which, of course, was the highest cost).

Photocopying and printing of notices and forms	$259.90
Photocopying of forms after completion, for our records (at 10¢ per form, front & back & copy of ID, approximately 1200 forms).	$360.00
Postage to send new forms to Post Office (5X$3.20)	$16.00
Time spent notifying customers, helping customers to fill out forms, verifying addresses, copying, filing, renotifying those rejected and those who used ID's which were later changed by Post Office. Estimated at 20 minutes per mail name. We had 2539 mail names as of October 1, 1999 (an average of 2.67 names per box). Time was estimated at $10.00 per hour. This is the cost of our lowest paid employee, though about 2/3 of the time spent was that of the two owners, who generally bill their time at $50.00/hour.	$8463.40
Postage for post cards used to verify addresses. 125 post cards at 20¢ postage each	$31.25
Direct Costs	$9130.55

These direct costs are conservative and don't take into account increased uncompensated input of owners' time or the cost of customers' time. The time to complete each form varied greatly. The Post Office kept changing their minds about the type of ID that could be used which required each person to search for something suitable, often forcing them to return on another day. We had hundreds of forms in various stages of completion with notes pasted to each one. We hired one person who only reviewed forms for completeness and accuracy and kept track of who had complied and who hadn't. Some forms took as little as 10 minutes but most took much more. Many took more than an

2118 Wilshire Boulevard. Santa Monica, CA 90403-5784 tel (310) 828-8645 fax (310) 828-0427

Exhibit L

hour because of the time needed to discuss the privacy issues and basically convince them that the new form was absolutely required.

I cannot submit this without commenting on loss of revenue. In the previous 9 years that we owned the store, the number of mailboxes rented increased every year. Since the regulations were implemented in March of 1999 our number of mailboxes rented has plummeted from 950 rented to 817 rented. That is a loss of 133 mailboxes which generate revenue of $200.00 per mailbox per year (133 X 200 = $26,600 revenue lost per year. The average rental is more than 6 years, 6 X $26,600= $159,600.00).

This is a mailbox store in which, to my knowledge, there has never been even one case of mail fraud prosecuted in the ten years we've owned it. We had 1583s properly executed for every mailbox BEFORE these regulations went into effect, with 2 IDs. We had been audited by the Postal Inspection Service in January of 1999. The Postal Inspector told us and our local Post Office that we ran the finest facility he had ever seen, including United States Post Offices and he found no fault with our records.

I hope this information is of use to you.

Following is a copy of a letter that I wrote to Congressman Waxman's office which I think illustrates the pointlessness of the regulations from a store owner's point of view.

Thanks for your help.

Regards,

Leanne Jewett

PostalWatch

POSTAL POLICY BRIEFING

An Anti-Trust Case for the Next Millennium The U. S. Postal Service Uses its Monopoly and Immunities to Burden Competition and Cartelize Private Markets

by C. Jack Pearce

No. 19 May 31, 2000

Executive Summary

The Postal Service is attempting to use its congressionally granted monopoly over first class mail to burden its competitors in mail receiving businesses with substantial costs and unnecessary operating requirements. It seeks to control the way these businesses characterize their addresses, influence the prices many would charge their customers, and allocate customers to the competitive advantage of the Postal Service and its strategic allies.

It has established a price fixing scheme with a private sector trade association, a classic *per se* violation of the anti-trust laws but for its immunities. Simultaneously, USPS seeks to force its competitors to become, at their expense, and to their competitive disadvantage, its agents to monitor the living and corporate arrangements of millions of Americans, in a policing and data gathering system unprecedented in its own history or the history of the nation.

Repeatedly asked by Committees and individual Members of Congress to show systematically gathered, statistically significant evidence of any particular propensity to commit fraud in the small business and citizen population the USPS seeks to monitor and control, the USPS has been able to produce no such showing.

The entire scheme lacks any foundation in the Postal Service's authorities related to mail delivery. It has no substantiated foundation in any specific USPS authority relating to mail fraud.

The scheme does have foundation in the agency's own competitive interests. However, this agency's own competitive interest is not an acceptable basis for use of public authority to further its competitive ambitions

Any competitive disabilities the USPS may have should be addressed by the same means available to private sector companies, without recourse to its economic power as the sole deliverer of first class mail and to its governmental immunities.

The entire USPS program constitutes a major abuse of the USPS's authorities, privileges and immunities. If not completely withdrawn by the USPS, it should be stopped by legislative or court action.

This program reveals a flaw in the Postal Service's legislative charter. The USPS should not be in a position to use government authorities to regulate private sector competitors to the agency's own advantage, while enjoying immunities from laws designed to protect competition in the economy.

At the very least, the USPS should be subject to the same laws as its competitors, including the antitrust laws. Ultimately, the postal service should be privatized, and made to compete on a fair footing with rivals in the message transmission and receiving markets.

Jack Pearce currently operates OSI Management, an Office Business Center in Washington DC. Prior to founding OSI, Pearce served as staff attorney and Assistant Chief of the Public Counsel and Legislative Section of the US Justice Department's Antitrust Division, and as Deputy General Counsel of the White House Office of Consumer Affairs. He went on to form a Washington law firm specializing in antitrust issues where he practiced for eighteen years. He coordinated the first private sector coalition supporting deregulation of the transportation industry. He also served as the first Washington counsel to the Computer and Communications Industry Association.

Home-based businesses have grown to about 11 million in number.

Over 60% of new businesses start at home.

THE ALTERNATIVE OFFICING MARKET WHICH THE USPS ATTACKS

To appreciate the anti-competitive thrust and effects of the USPS's scheme, we need to bring into focus some developments in the American economy in recent decades which are impacted by the USPS program - the evolution of "alternative officing" systems, which are rapidly increasing in utility and scope.

In recent decades the traditional officing arrangement has been evolving. Organizations of all sizes, ranging from the federal government to home-based businesses, public and private sectors alike, have embraced these changes.

There are now approximately 19.6 million telecommuters in the U.S. workforce.[1] Federal and state governments have been pushing these programs, frequently citing justifications such as higher job satisfaction, lower central office support costs, equal worker output, lower transportation costs, and less highway congestion.

Large corporations have developed telecommuting programs, as well as "hotelling" or "hot desk" systems in which the organization's mobile work force makes occasional use of a limited number of workstations at various corporate facilities.

In addition, large, medium and small firms have begun to use "new placemakers", in the words of the International Workplace Studies Program at Cornell.

On the other end of the spectrum, "home-based businesses" (HBBs) have grown to about 11 million in number.[2] Over 60% of new businesses start at home.[3]

A recent study commissioned by the Small Business Administration[4] concluded: "*Home-based businesses represent 52 percent of all small (<500 employee) firms, and provide 10% of all receipts in the economy.... Over 55,000 HBBs had sales of over one million dollars in 1992. These same firms employed over 3.5 million persons... the home -- previously thought to be the location of only marginal small firms - has become a hub of business activity... The use of technology allows HBBs to work in teams without the need for daily face to face interaction... Laws drafted to restrict commerce in the home are outdated in this electronic era and need updating....*"

Information technology and telecommunications developments, including the Internet, have obviously helped drive these developments throughout the economy. These technological advancements have stimulated such concepts as the "virtual corporation", while fostering such corporate strategies as a concentration on "core competencies" combined with extensive outsourcing and leveraging webs of "strategic alliances". These commercial developments feed back on officing systems, and have extensively modified the nature of officing.

Three types of business have grown extensively in recent years to facilitate these new developments in officing.

The Kinko's type of store, where individuals and businesses have access to easy copying, computer, Internet and similar services, outside the traditional office.

Pack, Ship and Mail (PSM) organizations. The Postal Service, seeing these operations through the narrow prism of its own functions, likes to characterize these stores as "Commercial Mail Receiving Agencies" (CMRAs), but they are substantially more than that.

Office Business Centers (OBC) also known as "Executive Suites". OBC operations offer "instant offices", where a firm can obtain reception, secretarial, mail, messenger, word-processing, videoconferencing, and other office supports either as a full time lessee or an as needed basis.

The user of an OBC need not make a lease with a building, hire staff, or buy large scale office equipment, as would often have been the case prior to the development of this form of office system.

These new forms of entrepreneur support have been expanding rapidly. PSM stores have expanded from a few hundred in the early 1980s to over 10,000 today. One large franchisor, Mailboxes, Etc., has about 3,300

affiliates.

Gross revenues for the PSM service sector are estimated at over $2.3 billion, with mailbox rental revenues estimated at about $350 millions. Such stores serve in excess of 1.5 million mailbox clients, of which over a million are home-based businesses.

For the home-based business, the PSM store can be seen as a sort of off-site shipping department. The stores can handle high volume and bulk mail, and they can be used to package and send mail and other materials.

In addition, PSM stores provide the home-based business's owner a business address other than that or his/her home. The off-site address gives the home-based entrepreneur a degree of separation of home and business contacts, which many find desirable. Running a business out of your home does not mean you want all the business inside your home.

The Postal Service competes directly with the PSM stores, and has recognized this for some time. PSM stores have several competitive advantages over the USPS. They stay open longer hours. They accept deliveries from the private carrier companies who compete with the USPS in physical message transport (UPS, FedEx, Airborne, DHL, etc). They forward mail, do packaging, and undertake other services the USPS does not provide.

Some have also had an advantage which appears to have been particularly bothersome to the USPS - they would refer to their mailboxes as "suite" instead of mailbox - as in "4500 Wisconsin Ave, Suite 104" instead of "4500 Wisconsin Ave, Box 104". This appears to have been the catalyst for the extraordinary USPS campaign which will be detailed later.

The OBCs offer a much more extensive set of services. They form a sort of "next step up" support for home-based business, and businesses migrating from their home-based origins.

They also provide services to large, medium and small businesses which need officing arrangements more flexible and economical than the traditional system of making a long term lease with a building and installing their own equipment and staff.

According to surveys of the Executive Suite Association (ESA), the OBC form of business has grown from a few hundred office suites in the early 1980s to about 4000 locations in the United States, and has spread worldwide. The Executive Suite Association estimates total revenues in the United States to be about $3 billions, derived from serving over 280,000 clients.

OBC operations have developed an office-on-demand component, which is particularly convenient to many small and home-based businesses.

A business owner need not spend all his or her time in the office center to have as-needed access to any and all of the office services - mail service, offices and conference rooms for meetings, phone answering and call relay, secretarial services, copying, teleconferencing, etc.

OBC operations often adopt a menu approach to such services, much like a restaurant, where you can buy individual servings, or full meal combinations - take and use just what you need when you need it. As at restaurants, the services vary widely in price and packaging. The physical meeting space portion of these on-demand services is used in a wide variety of ways.

One can imagine the international consultant who leaves his or her Colorado lakeside home to undertake a round-the-world client-servicing trip, seeing clients in well appointed offices in a string of cities, for a few hours or days as needed, dispatching and receiving e-mail and files on the planes, in rental cars, in hotel rooms, and in offices all the way. This is possible today. Such on demand offices are indeed used by highly mobile entrepreneurs.

But the bulk of the use is more prosaic and closer to home. Attorneys, who often need to be in court, use the offices and conference rooms for client meetings, depositions, and the like. Therapists use them to see clients a few hours a week, or month, in professional settings. Fledgling entrepreneurs who maintain full time jobs until their enterprise makes some headway will use them for lunchtime,

For the home-based business, the Pack, Ship & Mail (PSM) store can be seen as a sort of off-site shipping department.

The Postal Service competes directly with the PSM stores, and has recognized this for some time.

evening or weekend office hours. Small civic, cultural and business associations use them for Board meetings. Sales organizations use them for occasional sales staff meetings. Computer firms use them for displays of software products. The uses are as various as the needs of the extremely ingenious American business population.

If the PSM stores could be analogized to off-site shipping department for the home-based business, then OBCs can be seen as, in part, the off-site reception and conference center for the home-based business - and for geographically remote businesses needing a local presence.

Visionaries in the "on-demand" officing field project the extension of this type of office services support to a much larger segment of the business and entrepreneurial workforce in the United States - and indeed the world.

They see it as complementing the rapid advances in work flexibility and personal mobility made possible by computer and communications developments, so as to change significantly the way small, medium and even large-scale firms function.

These on-demand officing services have the potential to provide small and medium sized businesses operational flexibility and geographic range they have not heretofore had.

The visionaries see the office of the future as ubiquitous, a private sector competitive utility where the entrepreneur, or firm, can plug-in, when, if, and as needed, for a few minutes, an hour, a day, or months, with full office capabilities on tap at all times. Some firms are now putting in place systems to realize these possibilities. As these systems become more widely used and understood, an office address will take on much of the character of a phone number - simply a coordinate for contact, for use at the mutual convenience of the business and its client.

At the basic end of the range of offerings of OBCs -- the mail receipt and forwarding functions -- there is a degree of competition between the USPS and the OBC.

These on-demand officing services have the potential to provide small and medium sized businesses operational flexibility and geographic range they have not heretofore had.

THE PACK, SHIP AND MAIL STORE PORTION OF THE USPS REQUIREMENTS

The USPS's proposals of September 1997 would have the PSM stores register with the USPS. The registration form, 1583A, requires of the store owner or manager two forms of identification, a telephone number and permanent home address.

1. The Addressing Requirements. The PSM store is required to have all its customers use in their addresses the initials "PMB", meaning private mailbox. Any use of address designations like "suite" or "apt" which would, in the USPS's view, indicate a physical presence at the location, are strictly prohibited.

In its announcement of March 13, 2000, the USPS proposed modifying its requirement of "PMB" for addresses of persons receiving mail through a PSM stores. The March 2000 proposal would allow the PSM clients to use, at their option, a pound (#) sign followed by a number, in their addresses, for example,

Mr. John Doe
#234
10 Main, Street Suite 11
Herndon VA 22071-2716

The USPS would then conduct an "informational" campaign using, inter alia, a website and 800 number to inform the mailing public that an address in this form may indicate the address is that of a Commercial Mail Receiving Agency and the recipient has no physical presence at the location.

2. Other Requirements; All PSM store customers using the store's address would be required to furnish a USPS Form 1583(b) which appoints the store as a mail receiving agent for the customer - an individual citizen or business. As to Form 1583(b), the store-owner or manager would be required to:

- obtain internal data on any corporate clients - the names and addresses of officers, and the

place of registration of the business name;

• confirm the actual home or business addresses of their clients. If a piece of client identification (such as a driver's license) does not correspond to the address on the USPS form 1583 the store owner or manager must "substantiate to the USPS that the applicant resides or conducts business at the address shown";

• obtain from the clients and file a revised USPS form 1583 "when any of the information required on the form changes or becomes obsolete";

• account to the USPS when any client terminates service and;

• provide lists of clients to the USPS every three months, including all new and current customers as well as those customers who terminated over the last 6 months;

• be required to accept mail for a terminated client for six months after termination, and either store or forward it at the store's expense. In the event the store could not find the terminated client, then the store would be required to stockpile all first class mail for six months.

The stated penalty for noncompliance with any of these requirements is loss of mail delivery for the entire PSM store.

This is an extraordinary set of requirements for any a government agency to impose upon private sector businesses. The USPS has singled out the PSM stores for treatment not given any other class of mail recipients.

No other mail patron, including other places which receive mail in bulk for internal distribution or forwarding - such as hotels, apartment buildings, hospitals, corporations with large office staffs, and the like - is subject to similar requirements. The USPS does not require such data on the operators or customers of these locations, or the persons to whom they distribute the mail. Nor does the USPS impose anything like the same mail holding and forwarding requirements on such bulk mail receiving points.

The USPS does not assume all these burdens even in its own Post Box operations. Interviews with clerks at randomly chosen post offices indicate that:

• the USPS does not routinely attempt to verify home addresses of box holders;

• Though the box holder is supposed to keep his or her residence information current, the USPS makes no effort to monitor home addresses of customers, and visits no penalty on them if they move without advising the post office;

• The USPS forms for post box rental do not require internal information on a corporation renting a post box, and postal clerks make no inquiries;

• Post box customers pay in advance, and within eleven days after an account renewal is due, absent payment the USPS immediately either forwards or sends back the mail it receives.

In effect, in this "CMRA" program the USPS attempts to convert a program for assuring itself that the receiver of the mail is an agent for the addressee (itself probably unnecessary, see the following section comparing postal message services with e-mail procedures) into something far broader and more intrusive.

The USPS in effect seeks to make the CMRA (PSM) an agent of the USPS for gathering the data to enable it to compile and maintain lists on over a million and a half Americans -- who happen to use a service competitive with its own. This data could help it control the operations of these competitive stores in important respects not related to the integrity of mail delivery.

THE OFFICE BUSINESS CENTER PORTION OF THE PROPOSALS

The 1997 proposals did not explicitly apply to OBCs. However, in April 1999, without any rulemaking procedures, the USPS universally extended all CMRA requirements to the OBC industry. OBCs would be classified as CMRAs, and they and their customers would have to comply with all requirements including use the "PMB" address designation as well as client registra-

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tion and reporting requirements.

The Executive Suite Association, an association of OBC operators, objected. This led to a series of consultations between ESA representatives and USPS officials.

The USPS modified its proposals. ESA representatives announced to its OBC members that it believed it had reached an accord with the USPS. Following this, the USPS announced the substance of the agreement, in a publication issued on February 2, 2000.

The revised proposals set up a product description with an associated price to distinguish between OBC clients that would and those that would not be subject to the CMRA regulations. If a client of an OBC receives mail and phone service while renting conference rooms and obtaining other business services on a "demand basis", and has agreed to pay $125 or more per month for such services, the OBC and their client would be exempt from all of the CMRA requirements.

On the other hand if the client obtained the exact same "bundle" of services but paid less than $125 per month, both the OBC and the client would forced to comply with all of the CMRA requirements, including use of the "PMB" or pound (#) sign address designation, as well as client registration and reporting requirements.

In addition, the proposed regulation states that "Notwithstanding any other standards, a customer whose agreement provides for mail services only, or mail and phone services only, will be considered a CMRA customer (without regard for occupancy or other services that a CEC may provide and bill for on demand)."

In other words, without regard to whatever services the client actually used and paid for, as it needed them (on demand), it would have to use the address designators indicating to the public that it had only a mailbox. Both it and the OBC would be subject to all the "CMRA" requirements.

The ESA announced this agreement prior to the USPS February publication of the proposed rule. The ESA urged its members to provide comment to the USPS in support of the proposal.

In effect the USPS and the trade association (ESA) representing the office business centers made an agreement on this arrangement, and a part of the deal was that the ESA would attempt to get its members to support the arrangement.[3] The ESA did so.

COMPETITIVE ANALYSIS

To make an analysis of effects on competition, we must deal with the economic substance of the arrangements that the USPS is seeking to create. For this purpose, we will treat the USPS in its role as a market participant, offering message-related services.

The USPS operates in two distinguishable markets.

It is in the market for message transmission. USPS competes with other means of message transmission (e-mail, fax, courier services, etc.). It has a congressionally granted monopoly as to first class mail.

Any discretionary ability USPS has to provide or withhold first class mail delivery provides it market power over parties which do not have ready alternatives to first class mail delivery.

Though e-mail, fax and courier services have diminished the USPS share of message transmission services, the USPS's monopoly of first class mail still carries with it substantial leverage.

Another relevant market for present purposes is mail receiving services. Here USPS has a market entry - postal boxes for first class mail, at its Post Office locations. Not having been given a statutory monopoly in mail receiving functions, the USPS faces substantial competition. Its competitors include the PSM stores and the OBCs. However, these businesses are dependent on first class mail receipt, and have no ready substitute for it.

The USPS is using its ability to provide or withhold first class mail delivery, where it has monopoly power, to affect competition in the mail receiving services market.

COMPETITIVE EFFECTS BETWEEN THE USPS AND RIVAL PSM STORES

The USPS's "CMRA" plans impact the PSM competitors two ways - in how the addresses dispensed by PSM operators are characterized, and in administrative burdens on the PSM operations.

1. The address requirements: As to the form of address, the USPS seeks to remedy a disability it has had in competing with the PSM operations - or if you prefer a different phrasing, remove a competitive advantage held by a competitor -- by requiring the PSM stores to use addresses like those used by the USPS post office box holders.

The USPS has its mail receiving clients identify their addresses as post office boxes (PO Box). Many of the PSM stores allow the use of addresses such as "suite", which create the impression of something more substantial than a post box.

The CMRA requirements as initially published would have eliminated this competitive advantage of PSM operations, in requiring that their addresses be characterized as private mailboxes (PMB).

The modification to allow use of the pound (#) sign designator and number characterizations at PSM rivals diminishes some of the competitive gain USPS sought. USPS still seeks to characterize the PSM operations as substantially equivalent to its PO box service, but by less direct and probably somewhat less effective means.

Whether the PSM stores should have the competitive advantage of a "Suite" address designator can be broken down into two parts - the merits of the question, and the proper means of addressing this competitive issue.

a) As to the merits of the question, USPS is in effect arguing that its proposals were justified, in competitive language, because the competitors had an unfair advantage, in using deceptive forms of addresses.

Some law enforcement officials, state attorneys general, also believe that the use of terms "Suite" or Apt" for mailboxes is deceptive, and do not provide consumers accurate information. For example, in *Commonwealth of Pennsylvania v. Mail Boxes, Etc., USA*, No. 298 M.D., 1990, the attorney general of Pennsylvania obtained a consent decree from Mailboxes, Etc. that it would no longer use the "suite" description for the mailboxes at its locations within Pennsylvania.

Some advocates for small business, including the House Small Business Committee, seem to argue that this type of address is not always, or not materially, deceptive.

b) As to the proper means of resolving the question, it would be far better for both the deceptiveness question and the linked unfair competition issue to be addressed by impartial bodies, such as courts or consumer protection agencies. These issues should not be addressed by economic self-help - the use of market power on the part of a market participant with its own economic interests at stake.

In addition, given the ambiguity-creating modifications that the USPS has made to its address designation requirements, it appears that submitting these questions to an impartial body might produce clearer results.

2) The USPS administrative burdens on PSM stores: The administrative burdens USPS would put upon competing PSM stores are substantial, and are likely to have an effect on their ability to compete with the USPS. These burdens include the costs associated with the major citizen-monitoring program the USPS seeks to institute. Others - the mail holding and forwarding requirements - simply load costs on competitors for reasons that cannot be distinguished from USPS convenience or competitive advantage.

Protestants to the CMRA regulations have questioned sharply the justifications the USPS has advanced for these requirements - in particular, any need to subject over a million Americans who use the services of USPS rivals to intrusive, detailed monitoring.

The section analyzing USPS justifications, following, will conclude that the critics are right. When analyzed, the USPS justifications do not stand up.

The USPS is using its ability to provide or withhold first class mail delivery, where it has monopoly power, to affect competition in the mail receiving services market.

In economic substance, the arrangement is a price fixing agreement between members of the association and the USPS.

Price fixing is a *per se* violation of the antitrust laws because it interferes directly with the heart of the competitive market process.

EFFECTS ON COMPETITION AMONG OBC FIRMS

In economic substance, the arrangement agreed to between the Executive Suite Association and the USPS is a price fixing agreement between members of the association and the USPS. The victims of the price fix would be the businesses using OBC operations. The price fix would be enforced by the USPS's ability to deny first class mail to any OBC attempting to depart from its terms.

In *United States v. Socony Vacuum Oil Co, 310 U.S. 150, at 223,* the Supreme Court articulated the meaning of price fixing, and its legal status under the Sherman Act: *"Under the Sherman Act a combination formed for the purpose and with the effect of raising, depressing, pegging or stabilizing the price of a commodity in interstate or foreign commerce is illegal per se..."*

See also *Schwegmann Bros v. Calvert Distillers, 341 U.S. 384 (1951)* and *Kiefer Stewart v Jos. E seagrams, 340 U.S. 939, 1951,* for the general approach taken to agreements by competitors made so as to influence pricing in the market.

Price fixing is a *per se* (that is, no excuses, no justifications accepted) violation of the antitrust laws because it interferes directly with the heart of the competitive market process. Price and product bidding among competitive vendors is central to the efficiency of free markets, the efficient allocation of economic resources, and, over time the evolution of new products and services.

The parties participating in the formulation of this USPS proposal have complementary incentives. Those incentives are anti-consumer.

The agreeing OBCs get an inhibition on competitive pricing among them, enforced by the USPS. For example, the OBC that offered the package of services defined in the USPS/ESA formula at $124 would subject itself to the client induction procedures, record keeping, mail retention, and other USPS requirements. The OBC that sold the same package for $126 would not.

The business client buying the service package at $126 would be able to use a "suite", or the usual, business address. The client who bought the same package for $124 or less would have to use an address form which suggested to any inquirers of the USPS information system that it had no more office support available to it for business servicing purposes than a mailbox. This might well be untrue, given the range of support services offered on an on-demand basis at office business centers. **These are substantial price rigging incentives.**

More importantly, the price-rigging format would prejudice innovation in on-demand service formats. The preceding discussion of the alternative officing concept indicates that innovative firms have to date felt free to offer a large variety of business supports with a very low basic subscription charge - that is, a low fixed cost, variable cost charging system.

The ESA/USPS formula is designed to discourage that sort of innovation. It makes clear that what services the business client actually uses, and pays for upon use, has no relevance to what sort of address it will be allowed, or whether it will be subject to USPS monitoring.

EFFECTS ON COMPETITION BETWEEN OBC FIRMS AND MAILBOX OPERATIONS

The USPS/ESA arrangement also tilts the competitive playing field to the advantage of the post box type service, like USPS. Either a business client pays the pegged price, or the service package gets equated with the mailbox only service, even though it may be significantly broader (including phone service and as-needed office use).

This gives the USPS market protection. The USPS and ESA have in effect instituted a cartel pricing system covering the lower end of the OBC market, and the competitive interface between the OBC type of system and the mail store type of system. This cartel system would derive its effectiveness from the USPS's

monopoly in first class mail, and its immunity from antitrust suit.

THE ANTI-COMPETITIVE EFFECTS ARE AMPLIFIED BY THE USPS's PUBLIC STATUS AND IMMUNITIES

The subject of public agency/private cartel arrangements requires attention and concern beyond that which would be given a private cartel attempt. Were this cartel arrangement created by private sector firms, it would be promptly dissolved by antitrust action. Even if antitrust enforcers were asleep, the cartel would be sharply limited in effect by the large number of OBC firms in the U. S. market. Ambitious price competitors could be expected to undercut the system. The addition of a public enforcer makes the cartel much more effective.

The United States has had unfortunate experience with cartel arrangements, using group pricing enforced by public authority. When the transport cartels were dismantled by the "deregulation" legislation of the 1980's, business logistics users and analysts found that the transport system became much more flexible and dynamic, and the distribution systems of the nation improved in efficiency over 30%, saving hundreds of billions of dollars annually.[6]

The preceding discussion on the directions and potentials of alternative officing provide some context for appreciating how a cartel system of this sort could inhibit progress in a dynamic, developing commercial sector. But perhaps I can add a little color and life to the analytic language by juxtaposing the USPS proposal with an historic American innovation story.

Many Americans are familiar with the story of Ray Croc, who appreciated the low price/fast food/convenience appeal of a single hamburger store in California, developed the world's first fast food franchise, and invented an industry.

Suppose Croc's 21st century successor were to look at typical PSM store, conceive of the idea of adding some offices and office equipment to it, and starting a low-price, neighborhood access, in and out, as needed business center chain. He or she might even wish to try out ideas like machine reading the mail and e-mail forwarding it to clients, destroying the originals, by agreement with the clients.

This entrepreneur would face a trade association and the United States Postal Service requiring that the business charge $125 a month in advance, regardless of use, for any service involving a mail component, or be branded as nothing but a post box service. He/she would face a government-backed competitor, the Postal Service, monitoring every customer, controlling how the business acquired customers, and controlling the business's handling of internal organizational issues such as how to handle client messages.

This would-be innovator's pricing and product description arrangements would be subject to continual monitoring and control by the trade association rivals and USPS.

Would even Ray Croc have taken on that challenge?

This entrepreneur would face a government-backed competitor, the postal service, monitoring every customer...

USPS AUTHORITIES AND BASIC OPERATING PROCEDURES

To evaluate the USPS's justifications clearly, we need to know something about its basic responsibilities, and the basic patterns of its operations.

The USPS grounds its authorities in a statutory injunction to "adopt regulations to assure the safety and security of the mails".[7]

The straightforward interpretation of this mandate is that the Postal Service will take care that when it gets a piece of mail it will deliver it safely and securely to the address specified.

This is the general plan of operation of the postal service - it takes mail from the addresser and delivers it to the intended address. The exceptions have been clearly defined, and derive from the stated directions of the mail

sender - registered receipt mail, or so called "accountable mail".

The postal service delivers mail to home and business addresses without verifying the identity of the putative recipient.[8] It delivers mail to bulk mail receiving points, such as apartment houses, large corporate offices, government agencies, hotels, schools, hospitals, and the like, leaving distribution of the mail to named recipients to the persons accepting it at the bulk delivery point.

The USPS makes no organized effort to determine that the persons at a residence or other business are the persons named on the mail-piece. It also makes no organized effort to determine that the persons who accept and distribute mail at bulk delivery points, such as those listed above, are authorized by the addressees to accept their mail and distribute it to them.

As stated in the USPS's webpage explanation of the USPS's inability to provide comprehensive addressee information to inquirers: *"The Postal Service does not have a database giving it the current address of all its customers. It doesn't need that information, as it delivers to addresses, rather than to individuals"*

The USPS's "Domestic Mail Manual" (DMM) has a section on addressing standards (A010). These standards have to do with address intelligibility, and specification of formats so as to allow efficient hand and machine processing of mail to identified addresses. This system attempts no general classification of types of businesses at the mail receiving point.

The USPS has historically had a no-charge mail forwarding system. When an individual who has had a location at any address -- whether a bulk mail delivery point or not -- moves and files a change of address form with the USPS, the USPS will forward mail to a substitute address without additional cost to the mailer, the bulk mail receiving entity, or the mail receiver.

The USPS has also had a general operating practice of returning to the sender mail when the addressee is not at the address, and has left no forwarding address with the USPS. The entities at the point of receipt of the mail are not charged any fee for return of the mail.

The USPS has some law enforcement responsibilities. The Postal service has responsibility to administer the "False Representation Statute" (39 U.S.C. Sec. 3005), which deals with lotteries. Postal inspectors also assist law enforcement officials responsible for enforcing laws relating to mail frauds. The statutory definitions of fraudulent activities and the authorities for investigation and prosecution are spelled out in the relevant statutes.

The USPS does not rely on any of these authorities for any part of the CMRA regulations. (It could not properly do so because the statutes relate to individual fraudulent acts, not the "possibility" of fraudulent activities using the mail, cited in the USPS justification for the CMRA proposals.)

The USPS makes no organized effort to determine that the persons at a residence or other business are the persons named on the mail-piece.

The CMRA regulations continue and extend a USPS pattern of discriminating against its commercial rivals in mail receipt operations.

USPS JUSTIFICATIONS FOR THE CMRA PROPOSALS, RELATED TO ITS AUTHORITIES AND BASIC OPERATING PRACTICES

1. Overview of deficiencies of the justifications. In overview, none of the justifications which the USPS has advanced are grounded in its authorities to promote safe and secure delivery of mail to the address directed on the mail, or any specific authority to investigate or to prosecute any particular violation of any identified law.

Nor do the regulations conform to the general operating systems and procedures of the USPS as to bulk mail delivery sites that are not competitors with the USPS.

On the contrary, the CMRA regulations continue and extend a USPS pattern of discriminating against its commercial rivals in mail receipt operations as compared with its handling of mail to and from bulk mail receiving points not in competition with it. The discriminations are not based on differing costs in delivering mail to or receiving it from those points.

The justification for its CMRA proposals also are inconsistent with the USPS's stated

position that: *"The Postal Service completes delivery when the CMRA receives the mail for the intended addressee. The CMRA customers may make any arrangements they choose with the CMRA for the disposition of their mail."*[9]

2. The failure of the "safety and security" justification. The USPS's blanket statement of justification is that the "CMRA" regulations are to "increase the safety and security of the mail".[10] However, USPS has articulated no clear "safety and security" justification for going beyond its general policy of simply delivering the mail to the address specified on the mail-piece.

The USPS has made no case that a commercial mail receiver would be less likely than a corporation, apartment building operator, hotel, or other bulk mail disaggregator, to effect final delivery to the person(s) designated on the mail-piece. The USPS offers no data to support such a supposition, and there seems little reason to make the supposition.

The USPS has in place a system requiring receivers of mails for others to acquire a completed postal Form 1583, which in major, but not complete, substance records the addressee's designation of the mail receiver as the addressee's agent for receiving the mail. One could make an argument that this form is itself unnecessary. It is not required of the other bulk mail disaggregators.

However, this aside, the USPS has in the two years of controversy over the CMRA proposals attempted to make no case that there CMRA operations fail to deliver to their clients the mail sent to the CMRA operations.

This so, there can be no "safety and security" justification for the expanded registration and extensive reporting requirements in the CMRA regulations.

Implicit in the "safety and security" argument is the assumption, without any clear or stated basis, that the USPS has a role to play after the USPS has delivered the mail to a user-designated address -- as in governing terms of the contractual arrangements between mail receiving entities and their customers. There seems no basis for this assumption either.

3. The failure of the "reduction of opportunities to use the mails for fraudulent purposes" justification. The second justification is that the rules would "*...reduc(e) opportunities to use the mails for fraudulent purposes...*"[11]

This justification does not rest on such specific fraud prosecution investigation and prosecution responsibilities as the USPS may have. Each federal statute relating to fraud prosecution has its specific authorities spelled out, defining, along with constitutional inhibitions, the parameters of enforcement activity.

A general statement such as the USPS here assays could be used to justify anything up to requiring everyone who touches a piece of mail to sign a security oath before a federally chartered notary, and take a breathalyzer test to boot. This generalized form of justification would seem to imply USPS discretion to do whatever it wishes. This is not a permissible expansion of the specific enforcement authorities designated in specific fraud remedy statutes.

Let us address first the proposed USPS monitoring system. In addition to not showing any generalized authority relating to "reduc(ing) the opportunities to use the mails for fraudulent purpose", the USPS has shown no need for the monitoring system it envisages.

Several commenters have observed that the USPS has made no systematic showing at all that the CMRA clientele exhibits a higher incidence of fraudulent activity than exists in the general population, at hotels, apartments, or corporate addresses, or in households, or in using USPS post boxes.[12]

The following discussions of the "misleading address" justification shows that the "reduction in fraud possibilities" justification does not work for that portion of the USPS proposal. And there is obviously no relation between this justification and the disabilities the USPS puts on CMRA operations as to mail holding and forwarding.

The USPS has made no case that commercial mail receivers would be less likely than a corporation, apartment building operator, hotel, or any other bulk mail disaggregator, to effect final delivery to person(s) designated on the mail-piece.

The USPS in effect assumes that it has some generalized authority to control address forms so as to prevent misleading impressions. But again, the USPS's statute contains no such delegation of authority to it.

4. Failure of the "misleading" address justification. As to the form of address requirements, the USPS in effect assumes that it has some generalized authority to control address forms so as to prevent misleading impressions. But again, the USPS's statute contains no such delegation of authority to it.

Initially, the USPS did not articulate any general mission relating to control of address forms for consumer protection purposes. It initially addressed only a situation in which it had a specific competitive disadvantage - the competing pack, ship and mail store's use of an address form which made the mail box at the pack and ship store look like an office suite to the mailer.

In this situation, the USPS argued that *"...the requirement [that a CMRA customer should use a PMB address system] only specifies the true identity of the address..."*[13] The USPS proceeded to the assertion that *"Current use of APT, STE and other address designations by CMRA customers is misleading and does not identify the true location of the mail piece delivery."*[14] This became the core of the USPS justification of its "PMB" address requirement.

In assessing this justification, we need to distinguish between the USPS's roles as a mail deliverer, its role as a competitor in the commercial mail receiving market, and its role in enforcing specific laws dealing with mail fraud. The USPS has not kept these distinctions clear.

As a deliverer of the mail, the USPS has no role in imposing conditions on addresses other than to assure accurate mail delivery.

As a competitor with CMRA operations, the USPS had, in effect, an unfair competition complaint. It could have addressed that complaint to federal and state authorities concerned with unfair competition, or to such bodies concerned with consumer protection.

To the extent it has authority to enforce specific laws, the USPS could, as to a particular, specific fraudulent practice, where it would assert a violation of a specific statute dealing with mail fraud, take into account whether an address, and a form of address, has been used in a way furthering the fraud it sought to address. However, as noted above, the USPS has no general statutory directive to control forms of addresses to prevent "misleading" impressions.

As noted earlier and in a later section, federal and state authorities charged with consumer protection functions do have authority to propose to a court that the CMRA and its client are misleading the public with the use of a "suite" address form, where the client has only a mailbox. Thus, the Postal Service need not have gotten involved in this issue at all. Indeed, USPS's attempt to do so may impede actions by state and federal bodies that do have consumer protection authorities.

Beyond the authority issue, the USPS has made modifications to its proposal which are inconsistent with its initial justifications. When the small business community protested strongly the forced use of "PMB" (private mailbox) address designation, the USPS offered to deliver mail to addresses at CMRA operations which had the form of a pound (#) sign, followed by a number (#104 vs PMB 104, 5400 K St, Suite 304). This form of address does not tell the mailer, on its face, whether the addressee has a mailbox or some other arrangement.

The USPS proposes a public information campaign designed to get across to inquiring mailers the impression that the pound (#) sign form of address does mean that the mail receiver has only a mailbox, at a PSM store.

But, as the Association of State Attorneys General have pointed out, the current USPS addressing scheme may complicate their own efforts to pose cleanly to the courts whether a mailbox should be designated in an address format as a mailbox, or not, as a matter of consumer protection.[15]

The USPS attempt to broaden its proposal to include in the scope of its program office business centers, or "Commercial Executive Centers" led the USPS into territory in which its initial justification did not apply. At an OBC, the physical location to which the mail is delivered is an office suite. The use of a suite number accurately reflects the physical reality at the address point.

The USPS has provided no explicit justification either for including OBC locations within the scope of its CMRA proposals or for the criteria used to distinguish between OBC clients who would be subject to the regulations and those which would not be.

Given the wide variety of office supports at OBC operations, and their flexibility, the USPS would have a very difficult task in going beyond the fact that the address is an office suite, in any attempt to characterize the nature of the business activity at the OBC. Indeed, that task is well beyond both the USPS's charter and its capability.

That the USPS settled upon a price fixing arrangement with its OBC competitors indicates that it has been interested primarily in its financial interests as a vendor of mail receiving functions rather than in an effort to work out address designations which conveys accurate information to the mailing public.[16]

5. The failure of the justifications relating to mail holding and forwarding requirements as to CMRA operations differing from those applicable to other bulk mail receiving points, and differing from USPS mail return practices at its own PO locations. The USPS arguments relating to these subjects consist of a series of non-sequiturs.[17]

The USPS made no effort to argue that allowing CMRA clients to file change of address forms would visit any more costs on it than it assumes for citizens at other bulk mail receiving points, including but not limited to PO box services. Nor has it offered any operational efficiency, mail security, or consumer protection argument for requiring CMRA operations to hold undeliverable mail for six months.

What emerges from the USPS justification statements is the logic that since citizens use CMRA operations rather than USPS operations, as a matter of choice, they will be required to pay for services which USPS provides free of charge to persons using other bulk mail delivery points, simply because they chose a service "external" to - read other than -- the Post Office.

As to the 6-month mail holding requirement of CMRAs, no logic is given -- simply the assertion that "this reasonably balances the interests of the senders of the mail, former CMRA customers, the CMRAs, and the Postal Service". There is no explanation of why this "balancing" of unspecified interests should differ as between a Postal Service PO box service and a CMRA service.

In one answer,[18] the USPS states that *"The Postal Service makes delivery when the CMRA receives the mail for the intended addressee. The CMRA customer may make any arrangements they choose with the CMRA for the disposition of their mail."* But then the text goes on to specify what the CMRA will do with the CMRA client's mail.

In two of its answers,[19] the USPS seems to argue that its imposition of costs on the CMRA customer is reasonable because the CMRA customer agrees to them in signing the USPS form 1583 recognizing the CMRA as agent for receipt of mail -- without noting that the CMRA customer agrees only because the USPS requires that he/she do so.

The USPS has simply determined that because mail service customers chose a mail receipt competitor to its P.O. Box service, it will not afford them the same forwarding services it affords all other persons, including those using bulk mail delivery points, and will impose costs on the competitor mail receipt service which it does not impose on its own.

In economic substance, this amounts to the use of the USPS's market power in first class mail delivery to load costs on competitive mail receipt services, and ultimately on their clients, which those clients would not incur had they used the USPS's mail receipt operations, all without any justification relating to USPS costs of operations.

AVAILABLE ALTERNATIVES TO THE CMRA REGULATIONS FOR SERVING LEGITIMATE PUBLIC PURPOSES

In its various pronouncements, the USPS

Nor has it offered any operational efficiency, mail security, or consumer protection argument for requiring CMRA operations to hold undeliverable mail for six months.

The USPS has simply determined that because mail service customers chose a mail receipt competitor to its P.O. Box service, it will not afford them the same forwarding services it affords all other persons.

The USPS has demonstrated that it has a proprietary agenda which warps its views of its own authorities and impels it to employ measures inconsistent with open, competitive markets, which markets themselves serve consumer interests.

has cloaked apparent efforts to control and burden competitors in language speaking to public goals - safety and security of the mails, and minimizing the opportunity for fraud in the use of the mails.

No "safety and security" problem has been shown to exist, and the CMRA proposals would do nothing significant to improve safety and security in mail transmission. Thus, no CMRA regulations are needed on these grounds.

Given the failure to demonstrate any public need for a comprehensive and intrusive monitoring of alternative officing system users or any statutory authority vested in the USPS for the actions it proposes, the entire CMRA proposal is without foundation, and no alternatives are warranted.

As to the USPS's disadvantage in competing with CMRA operations which use "suite" address forms, the USPS can initiate a complaint to a body concerned with controlling unfair competition, or remedy of consumer deception.[20] The USPS can, indeed, leave this issue to the state attorneys general, who have a precedent for action in the 1990 Pennsylvania action against Mail Boxes Etc.

Reliance on independent bodies - such as the courts -- to decide the consumer deception and unfair competition issues is essential. The USPS has demonstrated that it has a proprietary agenda which warps its views of its own authorities and impels it to employ measures inconsistent with open, competitive markets, which markets themselves serve consumer interests.

To evaluate the questions of alternatives, let's step out of the details of the USPS's proposals for a moment to compare the USPS's over-all approach to first class mail handling by its competitors with messaging markets which have flourished in recent years -- e-messaging in particular and e-commerce in general.

We can see in e-commerce analogies to mail communication markets, which instruct us as to what messaging systems do and do not need to function efficiently, and with adequate consumer protection. We need not be limited in our outlook to the historical precedents and predilections of an older form of message transmission, the Postal Service.

E-mail communication has, in a decade, far outstripped first class mail in message volume. Commercial Mail Receiving Agencies (CMRA) are physical message facilitators just as Internet Service Providers (ISPs) facilitate E-mail.

E-mail messaging and the supporting ISP operations are flourishing without any of the federalized, centralized user registration and message controls which the USPS seeks to impose in surface first class mail.

The analogy is striking. The telecommunications carriers simply deliver the messages to and from the servers on the Web, and the ISPs and clients manage message distribution and collection quite reliably and efficiently by contract between themselves.

That is really all we need as to the delivery of first class mail. In its mail delivery functions, the USPS needs to stick to delivering mail.

In attempting to institute a massive program to monitor users of alternative officing services, to burden competitors, and to rig the market in which operate firms whose services include mail receipt -- by controlling address descriptions and setting associated prices -- the USPS is both obstructing trade and adding to its own obsolescence.

The Internet analogy area may be fruitful in an additional way. Recently the United States Attorney General organized a Working Group to examine how to approach adapting law enforcement to the challenges involved in finding and prosecuting fraud in electronic commerce, while not interfering with the development of this hugely promising new form of commerce.

Alternative officing presents both new economic opportunities and new challenges to law enforcement officials. What is apparent from the USPS exercise, and more particularly from the comments of a group of state attorneys general, is a need to help law enforcement bodies understand the way commercial enterprises are being redefined and organized. The objective for law enforcement

is obviously to deal with such incidents of fraud as may exist in such a way as to help develop, rather than hinder, the useful potentials of this new way of organizing commerce - in this case, "alternative officing".

The USPS's CMRA initiative is an unfortunate case study in how not to proceed to address these issues. The United States Attorney General's Working Group on Cyber-crime provides an excellent model for how law enforcement officials can best approach a situation such as this, and how law enforcement officials and the private sector can cooperate to throw out any excess bathwater and keep a lusty, growing baby.

CONCLUSIONS

The Postal Service's "CMRA" regulations have apparent anti-competitive purposes and effects. They rest on no legislative authority. There is no public need for these actions. The justifications advanced do not withstand scrutiny.

The Postal Service's CMRA initiatives reveal a major flaw in the legislative charter for the Postal Service - a marriage of proprietary interests and public authority.

The USPS has been given market power, put in a position to attempt to regulate its competitors for its own advantage, and claim immunity from the laws which restrain anti-competitive activity. An organization should not be in a position to use government authority to regulate its competitors. Corruption of public authority for proprietary interest is the predictable result.

The CMRA initiative should be withdrawn or aborted, by act of Congress or the courts.

Beyond this, the charter for the USPS should be revised. At the very least, its immunity from the antitrust laws should be ended. Its ability to regulate competitors and misuse of a government granted monopoly power must be restrained.

Ultimately, the postal service should be privatized, and made to compete on a fair footing with rivals in the message transmission and message receiving markets.

NOTES

1) The 1999 Telework America Annual Survey, Joanne H. Pratt Associates

2) United States Small Business Administration, Office of Advocacy, Research Program

3) United States Small Business Administration, Office of Advocacy, 1999 Facts About Small Business

4) Joanne Pratt, "Home-based business, the Hidden Economy", contract SBA-HQ-97-M-0862, Office of Advocacy Research Program, Bruce Phillips, Director

5) The ESA advised its members that if they wished individual members could feel free to suggest a number lower than $125/mo. However, it clearly urged the members to support the arrangement.

6) 11th Annual State of Logistics Report (for the year 2000), Cass Information Systems, Inc. The costs of distribution dropped from 16% to 9.9% of the Gross Domestic Product of the United States.

7) USPS announcement of March 25, 1997, 64 Fed. Register, Issue 53, page 14385, and the USPS webpage publication "Questions and Answers on CMRA Rule Proposals" (USPS Q&A), item1.

8) The USPS has one specific authority to do otherwise, as follows. "Whenever the Postal Service determines that letters and parcels sent in the mail are addressed to places not the residence or regular business address of the person for whom they are intended, to enable the person to escape identification, the Postal Service may deliver the mail only upon identification of the person so addressed" 39 U.S.C. 3004.

9) USPS Q&A, item 10, first paragraph.

10) USPS Q&A, item 1.

11) USPS Q&A, item 1.

12) The Small Business Administration's Advocacy office pointed out that the USPS showed 1533 cases of mail fraud in fiscal year 1998, in its annual report. The USPS made no showing at all as to how many involved CMRA locations. There are about 1.5 million users of private mailboxes. If 10% of the mail fraud

At the very least, its immunity from the antitrust laws should be ended.

Its ability to regulate competitors and misuse of government granted monopoly power must be restrained

cases involved CMRA users, that is 1/10 of 1% of the CMRA user population.

The USPS has not made a statistical case for even that tiny fraction, though asked repeatedly, as detailed in the House Small Business Committee's April 12, 2000 letter to the USPS details.

13) This is buttressed by a brief argument to the effect that this is in accord with "the general policy of general addressing standards. PMB (private mailbox) simply specifies the location to which a piece of mail is delivered, like APT (apartment), STE (suite),and PO BOX (post office box) address designators. "

An examination of the Direct Mail Manual's section on address designations indicates that this set of procedures is organized to achieve address intelligibility and processing efficiency. There is in it no attempt to categorize addresses by form of activity at the location.

The addresses of CMRAs are entirely intelligible. That intelligibility, or simple physical description, is not the USPS objective is made clear in its effort to extend the CMRA regulations to apply to executive suites, or office business centers. The physical location to which mail is delivered at an office business center is an office suite. But USPS has proposed to use the same address identifiers for clients at the OBCs as it uses for mailbox-type CMRAs.

14) USPS Q&A, item 2.

15) April 7 letter of National Association of Attorneys General to USPS, commenting on the pound (#) sign proposal.

16) If the USPS had tried to have the "PMB" or #(number) designator apply to mailbox type service, it could have limited application of its regulations to a mailbox-only service at the OBC. Rather, the criteria settled upon suggest a meshing of USPS and ESA economic interests. The ESA group got a minimum price point well above the mail box level - including phone and a minimum amount of prepaid office use as well. The USPS got the economic benefits from having much more extensive services of competitors with its mailbox service labeled as equivalent to mailbox services. The USPS might have, but has not, argued that it has now moved on to determining what is the minimum level of office support that warrants the use of the "suite" label. But the USPS has no authority to undertake such a task. And even as to this argument, the line drawn is, basically, arbitrary.

17) USPS Q&A, items 6, 7, 8 and 10.

18 USPS Q&A, item 10.

19) USPS Q&A, items 7 and 8.

20) The federal statute that gives the Federal Trade Commission authority to prohibit unfair methods of competition, and unfair or deceptive acts or practices, is 15 U.S.C. 45(a). Of course, if the USPS were to petition the FTC to act, the USPS would have to be prepared to demonstrate that the practice complained of has "a direct, substantial, and reasonably foreseeable effect" on commerce, and that it causes "substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition." The USPS has not made these showings to date.

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National Association of
RV Parks & Campgrounds

TESTIMONY OF SCOTT N. REISLAND

Owner/Manager, Denali Grizzly Bear Cabins & Campground
Denali, Alaska
Vice Chair & Interior Representative, Alaska Campground Association
Member, National Association of RV Parks & Campgrounds

BEFORE THE

COMMITTEE ON SMALL BUSINESS
U.S. HOUSE OF REPRESENTATIVES

JULY 18, 2001

Good morning, Mr. Chairman and members of the committee. I am Scott Reisland from Denali, Alaska, and it is a great honor and pleasure for me to speak to you. My family and I have owned and managed for nearly 35 years a small RV park and campground just outside Denali National Park (DNP), called the Denali Grizzly Bear Cabins & Campgrounds. I am here today because my campground and eight neighboring campgrounds are being gravely threatened by my government, specifically by DNP.

I am also here today on behalf of the National Association of RV Parks and Campgrounds (ARVC), the national trade association that represents the private RV park and campground industry in the United States. ARVC wants you to know that the jeopardy facing campgrounds in Alaska is being repeated in many other locations throughout the country because of similar instances of unfair competition from campgrounds in the national parks, national forests and other Federal public lands.

For the record, I have received no Federal grant, contract, or subcontract in the current year or in the two preceding years.

Summary

For nearly four years, my campground and those of my neighbors have been threatened by DNP plans to build 50 new campsites (a 50% increase in DNP campsites) at its Riley Creek Campground, as well as new camper convenience services such as a general store, fast food deli, showers and a laundromat. All this would compete directly with private businesses

outside the Park and endanger their economic viability. Utilizing incomplete data and questionable assumptions, DNP has persisted in its plans despite strenuous objections from nearby campgrounds and other businesses, and even from the Denali Borough. Local campgrounds have emphasized to DNP that their occupancy rate rarely exceeds 60% and that they have ample room to expand to accommodate any reasonable future increases in visitation to the Park. This spring DNP cleared the land and began construction of these new campsites.

Incomplete Date and Questionable Assumptions

In 1997 DNP published an Entrance Area and Road Corridor Development Concept Plan. The DNP tourism growth management strategy proposed an addition of 50 dry RV-Tent sites in the existing Riley Creek Campground, a new store, liquor store, deli, laundry, and shower facilities. Even before expansion, DNP's Riley Creek campground, with 100 campsites, is the largest campground in the area.

DNP's graph of Rapid Growth & Finite Capacity for Visitors, projects visitation growth over the future increasing on into infinity. Yet, Alaska campground visitation has dropped about 40% this year. The Alaska State Travel Industry Association currently reports a drop in tourism statewide with Alaska falling below average for state visitation nationwide.

DNP was required to perform an environmental impact study and an economic impact study regarding new development inside the Park boundaries. The U.S. Wildlife Service performed the environmental impact study. The biologist team leader reported that the Denali Front Country, where the Riley Creek Campground is located, is one of the most critical moose calving grounds in Denali Park. Current and future development will negatively impact moose populations in this area. The Denali Front Country, due to low elevations, offers moose early spring fodder, early snow melt, and refuge from wolf predation. Hence, moose migrate from Denali's Back Country to calve in the Riley Creek area. The team leader also pointed out that not only moose would be affected but also lynx and coyote populations.

DNP has not performed the required economic impact study; its development plan simply states that camping and camper conveniences are under provided by the private sector.

Denali Area campground owners, small businesses, and the Denali Borough requested a meeting. DNP Superintendent Steve Martin heard the testimony of private business and the Denali Borough. Campground owners supplied Superintendent Martin with our occupancy rates, list of facilities, camper amenities offered, and letters urging DNP not to expand facilities. The hope was to provide DNP information for a valid economic impact study. Regrettably, a valid economic impact study has never been done.

The Threat to Small Businesses and the Community

There are nine private campgrounds in the Denali Area. Six of these campgrounds are within an 8-mile radius of Riley Creek. Private campground owners cannot compete with the campsite prices that DNP charges. Private campground owners support the Denali Borough that serves as a gateway to the Park through overnight accommodation taxes, from which DNP is exempt. We also have limited budgets to pay for campground maintenance and meet

our State and Federal tax obligations. DNP also benefits from our tax dollars through Denali Borough ambulance and fire services.

Superintendent Martin says that the proposed business activities are nominal. The Denali Borough Assembly and the private campground owners feel that this venture is everything but "nominal!" We stand to lose at least 5,500 camp nights over the season. This equates to a substantial loss of revenue for the Denali Borough in overnight accommodation taxes and for the private business sector in sales.

When tourists visit DNP they want to stay in the Park itself because there is a "mystique" about staying in Denali Park and the prices are lower. Hence, campgrounds get their business only after DNP is full. We survive off DNP's overflow.

Superintendent Martin says that DNP does not receive much revenue from the camper services and accommodations provided by the Park. The private campground industry agrees with this statement. It is the concessionaire who has the contract with DNP who benefits. The small private business owners in Alaska would like to keep the money in Alaska and not support "Big Outside Business."

My personal estimate of the economic impact of DNP's additional campsites on our future campground business is as follows:

1. 50 (minimum) additional campsites @ $17.00 per night x 110 day season = $93,500.00 of potential lost revenue for private campground owners in the Denali Area (The DNP engineer said they will be adding additional RV sites and not just tent sites as proposed in the EIS.)

2. Denali Borough will lose a minimum of $6,545.00 in overnight accommodation taxes.

3. There will be an added loss in ancillary benefits from DNP's construction of a laundry facility, and shower houses. Private campground owners have traditionally offered extra services and amenities in an attempt to draw tourists to their campgrounds. DNP will now offer all the extra amenities.

If Denali Park continues to expand campsites and to provide laundry, deli and other food services, and other conveniences, we will all be out of business. We do not want to see our government tax dollars going towards unfair competition and eventual loss of our businesses and livelihood. The Denali Borough Assembly Members have agreed with our concerns.

New private campgrounds have been established in the last couple of years and existing private campgrounds have expanded to deal with the increasing tourist load. DNP feels that our campgrounds are mostly for RVs and not rustic. This is untrue. Denali Grizzly Bear has more tent sites that RV sites, Otto Lake has more tent sites than RV sites, and McKinley RV Park has more tent sites than RV sites. Private enterprise is more than willing to develop more campsites, but we are hesitant to do so because of our current occupancy rates. (Statements and data documenting the concerns of small businesses near DNP about the expansion of Park campsites and services now underway will be provided to the Committee.)

Protecting DNP and Maintaining Competitive Small Businesses

We have urged Denali National Park Superintendent Martin to consider this occupancy rate factor. The private campground industry in the Denali Area is able to accommodate expected increases in tourism at DNP. We have specifically suggested that:

1. DNP should use its fee demo funds not to expand unneeded campgrounds but to expand hiking trails in Denali, build and staff the Discovery Center, and increase other educational programs such as the Junior Ranger Program.

2. DNP can increase its rustic camping by increasing the number of back country permits issued.

3. The proposed use of hundreds of thousands of taxpayer and feed demo dollars to build 50 more sites in Riley Creek seems an exorbitant expense. To reiterate, private campgrounds in the Denali Area are more than willing to accommodate increased visitors, and if need be, develop more camping areas. DNP can spend a fraction of the money on a couple of shuttle buses with scheduled stops at the private campgrounds in the Denali Area. This will eliminate the majority of parked cars in Denali's Front Country and give visitors access to Denali Park Visitors' Center, fire side chats, and other educational programs without adverse environmental impact on the Park and financial damage to private businesses.

The private campgrounds in the area will prosper or at least maintain the 60% average occupancy we currently hold. The Denali Borough will benefit from the overnight accommodation tax. Denali National Park will achieve the increased access to Denali Park and its many educational programs without the tax payer expense and environmental impact on the moose calving grounds in Denali's Front Country. This is a win-win situation for everyone! The unique nature of DNP – truly a national treasure – will be preserved while private businesses competing against one another will thrive by providing diverse, quality camping experiences.

In conclusion, I am concerned about the real mission of DNP. The Park is supposed to preserve and protect the wildlife and habitat inside the Park boundaries, not turn Denali Park into a money-making tourist machine. This does not benefit the animals or the environment, is contrary to the mission of the National Park Service, and definitely jeopardizes private enterprise. As I see it, the only entity that stands to gain from all this in the future is the DNP concessionaire with the highest bid!

On behalf of the small business campground owners near Denali National Park and other similarly situated private campgrounds elsewhere in the nation, ARVC and I respectfully request your help and assistance. Thank you for your attention and your consideration.

TESTIMONY OF TOM MACK

PRESIDENT, LANDMARK SERVICES TOURMOBILE, INC.
MEMBER, NATIONAL PARK HOSPITALITY ASSOCIATION

BEFORE THE

COMMITTEE ON SMALL BUSINESS
U.S. HOUSE OF REPRESENTATIVES

JULY 18, 2001

Mr. Chairman, I ask the consent of you and the committee to revise and extend my remarks and submit written documentation in support of my shortened preliminary statement. My name is Tom Mack. I am the owner and Chairman of Landmark Services Tourmobile, Inc. (Tourmobile) of Washington, DC. Thank you for the opportunity to appear before this committee to discuss the impact of business competition from government agencies on my small business. I will share with you and the committee an incredible real life example of how government can step-in and provide unfair financial subsidies and support for a non profit organization that intends to compete head-on with a longtime, tax paying, private company that is already under contract with an agency of the federal government to provide the same transportation service.

According to a longstanding federal government policy as expressed in OMB Circular A-76, " the Government should not compete with its citizens. The competitive enterprise system, characterized by individual freedom and initiative, is the primary source of national economic strength. In recognition of this principle, it has been and continues to be the general policy of the Government to rely on commercial sources to supply the products and services the Government needs."

I hope you, Mr. Chairman, and the members of the committee can relate to how distressing it becomes when a non tax paying competitor proposes to use federal and local government to almost completely underwrite a transportation system that could very well put a 30 year tax paying entity out of business.

My business, Tourmobile is currently facing this cruel reality. Tourmobile has been in operation in Washington, DC since 1969 after the National Park Service issued a prospectus seeking a concessions operation to

provide low cost interpretive shuttle services on the Federal Mall. Universal Interpretive Shuttle Corporation a subsidiary of Universal Studios (MCA), Inc. competed for the contract, was awarded the bid and began providing services. On August 1, 1981, after serving as Tourmobile's General Manger since the company's inception I was able to purchase the company from Universal Studios, MCA, Inc., making Tourmobile a locally-owned, Washington, DC corporation.

The company has grown from the original three tour buses and now includes 42 vehicles and served upwards of 1 million riders annually. The Tourmobile staff now includes approximately 300 seasonal and full-time narrators, drivers, ticket sellers, cashiers, and courtesy captains.

The Tourmobile provides narrated shuttle tours around the National Mall and in Arlington National Cemetery making 25 stops at more than 40 major historic sites and provides continuous reboarding at no additional cost. The red, white and blue Tourmobile signs are familiar and friendly fixtures on the Washington Mall.

Tourmobile has received consistently outstanding evaluations by the visitors to Washington, DC, the National Park Service, Arlington National Cemetery, and area tourism authorities. In fact, the Tourmobile narrators, drivers, ticket sellers, cashiers, and courtesy captains are known as the "Ambassadors of Washington" serving as the primary source of information to visitors.

In August, 1999 an organization called the D.C. Downtown Business Improvement District (BID) proposed the institution of a new government subsidized bus service, the Downtown Circulator that would provide two routes of bus services from the Mall to downtown and cross-town locations.

This low-cost commuter bus service proposal is based on the expedient concept that if the federal government and the District of Columbia government provide both the capital and operating funds to establish and maintain this new service during its formative years, it <u>might</u> succeed as a non profit business. In any event, it could certainly succeed in forcing Tourmobile out of business.

Under "capital costs" BID will look to the Department of Transportation, under TEA-21 to provide 25, "high quality unique buses," at an estimated cost of $300,000 a piece. Since the District of Columbia is the area of

operation of the proposed Circulator, the "District of Columbia will assume a major funding (i.e., $5/6 million a year) role."

RIDERSHIP SUMMARY

According to BID planners, tourists will account for most of the riders, convention attendees and some downtown employees are also expected use the proposed Circulator. (See chart below.)

Category of Rider	**Daily Trips**
Mall/Visitors/Tourists	6,402
Conventioneers	344
Downtown Workers	2,700
TOTAL	**9,446**

NOTE: Tourmobile clients represent two-thirds of the proposed "ridership."

The BID Downtown Circulator Plan hands the government a business start-up bill in excess of $30 million for an estimated annual revenue return of $688,000. The Mall tourist market of approximately 2.3 million trips each year (Tourmobile clients) would generate annual revenue of $467,000. Advertising posters on the Circulator bus sides would also provide additional marketing revenue.

PROPOSED OPERATION
The BID proposal calls for the establishment of two basic loop routes. The proposed north-south route would run through the heart of downtown DC and the east-west route proposal would "serve ... the National Mall and the Capitol." The Mall is the area where Tourmobile has an exclusive National Park Service franchise until January, 2006.

BID casually acknowledges this major conflict in its own "Downtown Circulator" publication:

"One issue affects the ability of the Circulator to operate in the area where it is most needed. The National Park Service has awarded a franchise to Landmark Services to operate the Tourmobile. The franchise could be interpreted as giving Landmark the exclusive right to operate service on the Mall, which could preclude the Circulator from operation, stopping or posting signs there. The purposes of the Tourmobile and the Circulator are different, however, as the Tourmobile is an interpretive

service to present and explain the area to visitors, while the Circulator's function is transportation and marketing.

This issue must be resolved (Insert--How – by destroying the existing National Park concessionaire?) because tourists are the primary market for the Circulator; connecting tourist attractions on the Mall with downtown is one of the greatest needs that the Circulator would meet. The estimates of ridership are based on the ability of the Circulator to service the tourist market. With that ability, the viability of the Circulator is questionable (p.9, Downtown Circulator)."

It is an incredibly arrogant attitude that assumes BID has an option to violate an exclusive concessions franchise contract with NPS. In 1968, the US Supreme Court upheld the right of the US Department of Interior and the National Park Service to make such firm contractual commitments on all transportation operations on federally-managed areas within the District of Columbia (WMATC v. the United States).

Mr. Chairman, this revealing quote from BID's own publication is the heart of a proposed Frankenstein. It cannot be created unless it takes the heart out of an existing able-bodied tax-paying government contracting business. Tourmobile has been in the business of serving Washington, DC and visitors for well over 30 years. Tourmobile holds a concessions contract with the National Park Service to provide exclusive transportation service on the National Mall. It is a small business that has consistently received praise from the National Park Service and its customers.

This longstanding small business is potentially imperiled by this BID proposal – the brainchild of a small group inside the beltway, creative thinkers that have figured out how to launch transportation service that is bankrolled by the US and DC tax payers.

In conclusion, Mr. Chairman, I earnestly believe that no level of government should ever engage in direct competition with the small businesses of this nation that are already providing the same goods and services.

I thank you, Mr. Chairman, for this opportunity to share an unfair competition plight in which I and my company are the intended victims.

UNIVERSAL INTERPRETIVE SHUTTLE CORP. *v.* WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

No. 19. Argued October 21–22, 1968.—Decided November 25, 1968.

Respondent Washington Metropolitan Area Transit Commission (WMATC) sued to enjoin petitioner, a concessionaire under contract with the Secretary of the Interior, from operating "minibus" guided tours of the Mall, a park area in the center of Washington, D. C., without obtaining from WMATC a certificate of convenience and necessity. The WMATC concedes the Secretary's substantial powers over the Mall under specific authority dating from 1898 and as part of the national park lands over which he has broad statutory jurisdiction. WMATC contends, however, that the interstate compact under which it was established to centralize responsibility over mass transit service in the Washington metropolitan area implicitly limits the Secretary's power to contract for provision of tour services by a concessionaire uncertified by WMATC. WMATC-certified carriers furnishing mass transit and sightseeing services in Washington, including D. C. Transit System, Inc., which contends that its franchise also limits the Secretary's power, intervened as plaintiffs. The District Court dismissed the suit and the Court of Appeals reversed. *Held:*

1. When Congress established the WMATC, it did not intend to create dual regulatory jurisdiction by divesting the Secretary of the Interior of his long-standing "exclusive charge and control" over the Mall, and the WMATC is without authority to require that petitioner obtain from it a certificate of convenience and necessity. Pp. 189–194.

2. D. C. Transit's franchise, which protects it from competition by an uncertified bus line transporting passengers over a given route on a fixed schedule in areas under WMATC jurisdiction, does not protect it against competition from petitioner's leisurely sightseeing service on the Mall outside WMATC jurisdiction. Pp. 194–196.

Reversed and remanded.

Jeffrey L. Nagin argued the cause for petitioner. With him on the briefs were *Allen E. Susman* and *Ralph S. Cunningham, Jr.*

Russell W. Cunningham argued the cause and filed a brief for respondent Washington Metropolitan Area Transit Commission. *Manuel J. Davis* argued the cause for respondent D. C. Transit System, Inc. With him on the brief was *Samuel M. Langerman.*

Assistant Attorney General Martz argued the cause for the United States, as *amicus curiae,* urging reversal. With him on the brief were *Solicitor General Griswold, Francis X. Beytagh, Jr., S. Billingsley Hill,* and *Thomas L. McKevitt.*

MR. JUSTICE WHITE delivered the opinion of the Court.

The Secretary of the Interior is responsible for maintaining our national parks, and for providing facilities and services for their public enjoyment through concessionaires or otherwise.[1] In meeting this responsibility, he has contracted for petitioner to conduct guided tours of the Mall, a grassy park located in the center of the City of Washington and studded with national monuments and museums. Visitors to the Mall may board petitioner's open "minibuses" which travel among the various points of interest at speeds under 10 miles per hour. Guides on the buses and at certain stationary locations describe the sights. Visitors may debark to tour the museums, boarding a later bus to return to the point of departure.

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[1] 16 U. S. C. §§ 1, 17b, 20 (1964 ed. and Supp. III). This responsibility is met principally through the National Park Service, which was created by the Act of August 25, 1916, c. 408, § 1, 39 Stat. 535, as an agency of the Department of the Interior. Since there is no conflict between them, we shall refer directly to the Secretary of the Interior rather than to the Director of the National Park Service.

Suit was brought by the Washington Metropolitan Area Transit Commission (hereafter WMATC) to enjoin petitioner from conducting tours of the Mall without a certificate of convenience and necessity from the WMATC. Carriers permitted by WMATC to provide mass transit and sightseeing services in the City of Washington intervened as plaintiffs, and the United States appeared as *amicus curiae*. The concessionaire and the United States contend that the Secretary's authority over national park lands, and in particular his grant of "exclusive charge and control" over the Mall dating from 1898,[2] permit him to contract for this service without interference. The carriers and WMATC argue that the interstate compact which created the WMATC implicitly limited the Secretary's authority over the Mall, and gave rise to dual jurisdiction over these tours in the Secretary and the WMATC. One carrier, D. C. Transit System, Inc., also argues that its franchise limits the Secretary's power. In a detailed opinion the District Court dismissed the suit. The Court of Appeals reversed without opinion. We granted certiorari and, having heard the case and examined the web of statutes on which it turns, we reverse, finding the Secretary's exclusive authority to contract for services on the Mall undiminished by the compact creating WMATC or by the charter granted a private bus company.

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[2] In the Act of July 1, 1898, c. 543, § 2, 30 Stat. 570, Congress placed the District of Columbia parks under the "exclusive charge and control" of the United States Army Chief of Engineers. This authority was transferred in the Act of February 26, 1925, c. 339, 43 Stat. 983, to the Director of Public Buildings and Public Parks of the National Capital. And in Executive Order No. 6166, June 10, 1933, H. R. Doc. No. 69, 73d Cong., 1st Sess., § 2, this authority finally devolved upon the agency now called the National Park Service. Act of March 2, 1934, c. 38, § 1, 48 Stat. 389.

I.

That the Secretary has substantial power over the Mall is undisputed. The parties agree that he is free to enter into the contract in question. They also agree that he is free to exclude traffic from the Mall altogether, or selectively to exclude from the Mall any carrier licensed by the WMATC or following WMATC instructions. Moreover, the parties agree that the Secretary could operate the tour service himself without need to obtain permission from anyone.[3] Yet the WMATC argues that before the Secretary's power may be exercised through a concessionaire, the consent of the WMATC must be obtained.

This interpretation of the statutes involved would result in a dual regulatory jurisdiction overlapping on the most fundamental matters. The Secretary is empowered by statute to "contract for services . . . provided in the national parks . . . for the public . . . as may be required in the administration of the National Park Service . . . ." Act of May 26, 1930, c. 324, § 3, 46 Stat. 382, 16 U. S. C. § 17b. Moreover, he is "to encourage and enable private persons and corporations . . . to provide and operate facilities and services which he deems desirable . . . ." Pub. L. 89–249, § 2, 79 Stat. 969, 16 U. S. C. § 20a (1964 ed., Supp. III). Congress was well aware that the services provided by these national park concessionaires include transportation. Hearings on H. R. 5796, 5872, 5873, 5886, and 5887 before the Subcommittee on National Parks of the House Committee on Interior and Insular Affairs, 88th Cong., 2d Sess., 151–159 (1964). In this case the Sec-

[3] D. C. Transit System, Inc., an intervening carrier, contends otherwise. But that position is not directly at issue in our view of the case.

retary concluded that there was a public need for a motorized, guided tour of the grounds under his control, and that petitioner was most fit to provide it.

The WMATC, however, also asserts the power to decide whether this tour serves "public convenience and necessity," and the power to require the concessionaire to "conform to the . . . requirements of the Commission" and the "terms and conditions" which it may impose. Pub. L. 86-794, Tit. II, Art. XII, § 4 (b), 74 Stat. 1037. The Secretary's contract leaves the tour's route under his control, but the WMATC would in its certificate specify the "service to be rendered and the routes over which" the concessionaire might run within the Mall. Pub. L. 86-794, Tit. II, Art. XII, § 4 (d)(1), 74 Stat. 1037. Moreover, the WMATC might require the provision of additional service on or off the Mall and forbid the discontinuance of any existing service. Pub. L. 86-794, Tit. II, Art. XII, §§ 4 (e) and (i), 74 Stat. 1038, 1039. The contract with the Secretary provides fare schedules, pursuant to statutory authority in the Secretary to regulate the concessionaire's charges. Pub. L. 89-249, § 3, 79 Stat. 969, 16 U. S. C. § 20b (1964 ed., Supp. III). The WMATC would have the power to "suspend any fare, regulation, or practice" depending on the WMATC's views of the financial condition, efficiency, and effectiveness of the concessionaire and the reasonableness of the rate. Pub. L. 86-794, Tit. II, Art. XII, § 6, 74 Stat. 1040. And under the same section the WMATC could set whatever fare it found reasonable, although a profit of 6½% or less could not be prohibited. The Secretary is given statutory authority to require the keeping of records by the concessionaire and to inspect those records, and the Comptroller General is required to examine the concessionaire's books every five years. Pub. L. 89-249, § 9, 79 Stat. 971, 16 U. S. C. § 20g

(1964 ed., Supp. III). The WMATC would also have the power to require reports and to prescribe and have access to the records to be kept. Pub. L. 86–794, Tit. II, Art. XII, § 10, 74 Stat. 1042. Finally, the Secretary is given by statute the general power to specify by contract the duties of a concessionaire, 16 U. S. C. §§ 17b, 20–20g (1964 ed. and Supp. III); the WMATC would claim this power by regulation and rule. Pub. L. 86–794, Tit. II, Art. XII, § 15, 74 Stat. 1045.

We cannot ascribe to Congress a purpose of subjecting the concessionaire to these two separate masters, who show at the outset their inability to agree by presence on the opposite sides of this lawsuit. There is no indication from statutory language or legislative history that Congress intended to divest the Secretary partly or wholly of his authority in establishing the WMATC. When the WMATC was formed there was in the statute books, as there is now, a provision that the "park system of the District of Columbia is placed under the exclusive charge and control of the Director of the National Park Service." Act of July 1, 1898, c. 543, § 2, 30 Stat. 570, as amended, D. C. Code § 8–108(1967). He was, and is, explicitly "authorized and empowered to make and enforce all regulations for the control of vehicles and traffic." Act of June 5, 1920, c. 235, § 1, 41 Stat. 898, D. C. Code § 8–109 (1967). And this extends to sidewalks and streets which "lie between and separate the said public grounds." Act of March 4, 1909, c. 299, § 1, 35 Stat. 994, D. C. Code § 8–144 (1967).[4] The creation

[4] The Secretary's power does not extend beyond these limits, however. In order to institute a transportation service from the Mall to a proposed Visitors' Center in Union Station he sought specific authorization from Congress to add to and confirm his existing authority and provide a service embracing both the Mall and its surroundings. S. Rep. No. 959, 90th Cong., 2d Sess., 8–10 (1968). Congress simply directed him to study the transportation

of the Public Utilities Commission—the predecessor of the WMATC—was not intended "to interfere with the exclusive charge and control . . . committed to" the predecessor of the National Park Service. Act of March 3, 1925, c. 443, § 16 (b), 43 Stat. 1126, as amended, D. C. Code § 40-613 (1967).

In this context the WMATC was established. After World War II, metropolitan Washington had expanded rapidly into Maryland and Virginia. The logistics of moving vast numbers of people on their daily round became increasingly complicated, and increasingly in need of coordinated supervision. Congress therefore gave its consent and approval through a joint resolution to an interstate compact which "centralizes to a great degree in a single agency . . . the regulatory powers of private transit now shared by four regulatory agencies." S. Rep. No. 1906, 86th Cong., 2d Sess., 2 (1960). These four agencies were "the public utility regulatory agencies of the States of Virginia, Maryland, and the District of Columbia and the Interstate Commerce Commission." Pub. L. 86-794, 74 Stat. 1031. The Secretary was not included in this listing. Moreover, Congress specifically provided that nothing in the Act or compact "shall affect the normal and ordinary police powers . . . of the Director of the National Park Service with respect to the regulation of vehicles, control of traffic and use of streets, highways, and other vehicular facilities . . . ." [5]

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needs of the entire area. Pub. L. 90-264, Tit. I, § 104, 82 Stat. 44 (1968); S. Rep. No. 959, 90th Cong., 2d Sess., 3 (1968); H. R. Rep. No. 810, 90th Cong., 1st Sess., 5 (1967).

[5] Pub. L. 86-794, § 3, 74 Stat. 1050. The term "police power" is a vague one which "embraces an almost infinite variety of subjects." *Munn* v. *Illinois*, 94 U. S. 113, 145 (1877) (economic regulation of grain storage an aspect of police power). It is broad enough to embrace the full range of the Secretary's power over the Mall, which even prior to the compact was ordinarily directed to ends quite different from that of the surrounding municipalities in regulating their streets. The Secretary sought explicit recognition

Finally, the House Report on the compact lists the federal legislation which was suspended to give effect to the compact, and the laws giving exclusive control of the Mall to the Secretary are not on the list. H. R. Rep. No. 1621, 86th Cong., 2d Sess., 29–30 (1960).

There is thus no reason to ignore the principle that repeals by implication are not favored [6] or to suspect that the Congress, in creating the WMATC, disturbed the exclusivity of the Secretary's control over the Mall either by extinguishing entirely his power to contract for transportation services or by burdening the concessionaire with two separate agencies engaged in regulating precisely the same aspects of its conduct. Congress was endeavoring to simplify the regulation of transportation by creating the WMATC, not to thrust it further into a bureaucratic morass. It therefore established the WMATC to regulate the mass transit of commuters and workers. A system of minibuses, proceeding in a circular route around the Mall at less than 10 miles per hour, and stopping from time to time to describe the sights before disgorging most passengers where it picked them up, serves quite a different function.[7] The Mall is, and was intended to be,

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of these differences through use of more specific language in the compact, but his clarification was not adopted. H. R. Rep. No. 1621, 86th Cong., 2d Sess., 20, 48–49 (1960).

[6] *E. g., Wood* v. *United States*, 16 Pet. 342, 363 (1842); *FTC* v. *A. P. W. Paper Co.*, 328 U. S. 193, 202 (1946).

[7] This transportation is undertaken by contract with the Federal Government to serve a purpose of the Federal Government, and so might be thought to fall within the specific exemption from the compact for transportation by the Federal Government. Pub. L. 86–794, Tit. II, Art. XII, § 1 (a)(2), 74 Stat. 1036. Moreover, it is not primarily designed to transport people "between any points" but rather back to the same point of departure, and might therefore be excepted from the WMATC's jurisdiction. Pub. L. 86–794, Tit. II, Art. XII, § 1 (a), 74 Stat. 1035. But we find it unnecessary to reach these arguments, which would involve much more severe limits on the power of the WMATC throughout the city.

an expansive, open sanctuary in the midst of a metropolis; a spot suitable for Americans to visit to examine the historical artifacts of their country and to reflect on monuments to the men and events of its history. The Secretary has long had exclusive control of the Mall and ample power to develop it for these purposes. We hold that the WMATC has not been empowered to impose its own regulatory requirements on the same subject matter.

II.

If the WMATC is without jurisdiction to issue a certificate of convenience and necessity in this case, as we have found, then the D. C. Transit System's interpretation of its franchise as protecting it from any uncertified sightseeing service on the Mall would give it an absolute monopoly of service there: the WMATC, lacking jurisdiction over the Mall, would have no authority to certify another carrier. The Secretary, if D. C. Transit is right, would have to take D. C. Transit or no one. Nothing in the statute confers so rigid a monopoly.

Section 1 (a), of D. C. Transit's franchise, Pub. L. 757, c. 669, Tit. I, pt. 1, 70 Stat. 598, confers the power to operate a "mass transportation system." [8] That this does not include sightseeing is clearly shown by

[8] "There is hereby granted to D. C. Transit System, Inc. . . . a franchise to operate a mass transportation system of passengers for hire within the District of Columbia . . . the cities of Alexandria and Falls Church, and the counties of Arlington and Fairfax in the Commonwealth of Virginia and the counties of Montgomery and Prince Georges in the State of Maryland . . . *Provided*, That nothing in this section shall be construed to exempt the Corporation from any law or ordinance of the Commonwealth of Virginia or the State of Maryland or any political subdivision of such Commonwealth or State, or of any rule, regulation, or order issued under the authority of any such law or ordinance, or from applicable provisions of the Interstate Commerce Act and rules and regulations prescribed thereunder."

the separate grant of power to operate "charter or sightseeing services" in § 6, 70 Stat. 599.[9] The section giving D. C. Transit a measure of exclusivity is § 3, 70 Stat. 598, which protects it from any uncertified "competitive . . . bus line" for the "transportation of passengers of the character which runs over a given route on a fixed schedule . . . ."[10] In determining what is "competitive" one must refer back to the sections which grant the franchise.

Even if §§ 1 and 3 together would protect "mass transportation" on the Mall from uncertified competition, and even if § 3 protects § 6 activity, it does not follow that D. C. Transit has a monopoly over sightseeing on the Mall. Section 6 explicitly saves the "laws . . . of the District of Columbia," including the "exclusive charge and control" of the Secretary over the Mall. D. C. Code § 8–108 (1967). D. C. Transit admits the Secretary could exclude its sightseeing service from the Mall; if so, surely the franchise protection does not extend there. Moreover, §§ 3 and 6 together cannot confer a monopoly of Mall sightseeing both because this would involve an impairment of the Secretary's power under District law contrary to § 6, and because it would be unreasonable to construe the protection of § 3 against carriers uncerti-

[9] "The Corporation is hereby authorized and empowered to engage in special charter or sightseeing services subject to compliance with applicable laws, rules and regulations of the District of Columbia and of the municipalities or political subdivisions of the States in which such service is to be performed, and with applicable provisions of the Interstate Commerce Act and rules and regulations prescribed thereunder."

[10] "No competitive street railway or bus line, that is, bus or railway line for the transportation of passengers of the character which runs over a given route on a fixed schedule, shall be established to operate in the District of Columbia without the prior issuance of a certificate by the Public Utilities Commission of the District of Columbia . . . to the effect that the competitive line is necessary for the convenience of the public."

320-583 O - 69 - 21

fied by the WMATC to apply where the WMATC has no powers of certification.

And even were § 3 so construed, its protection against "transportation of passengers of the character which runs over a given route on a fixed schedule" was evidently aimed at commuter service whose most important qualities are speed and predictability, not the service here whose most important qualities are interesting dialogue and leisurely exposure of the rider to new and perhaps unexpected experiences. The agenda of the tour will be varied by the Secretary according to the events of the day. The franchise does not protect D. C. Transit against competition in this sort of service on the Mall.

We reverse the judgment of the Court of Appeals and reinstate the judgment of the District Court. If the Congress, which has the matter before it, wishes to clarify or alter the relationship of these statutes and agencies, it is entirely free to do so.

Reversed and remanded.

MR. JUSTICE MARSHALL took no part in the consideration or decision of this case.

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE STEWART concurs, dissenting.

We have said over and again that we do not sit to review decisions on local law by District of Columbia courts where the reach of that law is confined to the District. *District of Columbia* v. *Pace*, 320 U. S. 698, 702; *Busby* v. *Electric Utilities Union*, 323 U. S. 72, 75.

That law is not only peculiarly local; it is a compendium of a variety of laws drawn from numerous sources,*

*The law of the District of Columbia is (1) the principles and maxims of equity as they existed in England and in the Colonies in 1776; (2) the common law of England and the Acts of Parlia-

with which the judges in the District are much more familiar than are we. No legal problem is more obviously peculiar to the District than the one posed by the present case. Traffic, including the movement of tourists, is a special concern of local government. The District Court held that the Secretary of the Interior, not WMATC, was the appropriate licensing authority. The Court of Appeals by a two-to-one vote reversed but did not file an opinion because "the interests of the parties and of the public would be better served" by a prompt disposition of the case. The Court of Appeals *en banc*, two judges dissenting, denied a petition for rehearing.

The contrariety of views below suggests that this question of local law is not free from doubt. Certainly it is not a case where the decision is so palpably wrong as to make it the exceptional case for review by this Court. Nor is this question of local law so enmeshed with constitutional questions as to make appropriate its resolution here. See *District of Columbia* v. *Little*, 339 U. S. 1, 4, n. 1; *District of Columbia* v. *Thompson Co.*, 346 U. S. 100.

These considerations make much more appropriate here than in *Fisher* v. *United States*, 328 U. S. 463, 476 (from which the quotation is taken), the following observation:

> "Matters relating to law enforcement in the District are entrusted to the courts of the District. Our policy is not to interfere with the local rules of

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ment which were in effect in the Colonies in 1776 (and which were not locally inapplicable); (3) the laws of Virginia and Maryland as they existed on February 27, 1801 (2 Stat. 103); (4) the Acts of the Legislative Assembly created by the Act of February 21, 1871 (16 Stat. 419); (5) all Acts of Congress applicable to the District. See District of Columbia Code (1940 ed.), Tit. 1–24, p. IX *et seq.*; Comp. Stat. D. C. 1887–1889, pp. V–VI.

law which they fashion, save in exceptional situations where egregious error has been committed.

"Where the choice of the Court of Appeals of the District of Columbia in local matters between conflicting legal conclusions seems nicely balanced, we do not interfere."

The present case could not be more precisely described.

TESTIMONY OF DAN R. MASTROMARCO

EXECUTIVE DIRECTOR

OF THE

TRAVEL COUNCIL FOR FAIR COMPETITION

BEFORE THE COMMITTEE ON SMALL BUSINESS

U.S. HOUSE OF REPRESENTATIVES

JULY 18, 2001

American taxpayer suffers from the proper allocation of government resources to where they are needed most. Consumers lose, because consumer choice and economic efficiency is hampered by monopolies. And business suffers death by economic injustice.

Mr. Chairman, TCFC members possess a fundamental philosophy that has as its roots the founding tenets of our Republic: government should not be engaged in activities that can be fulfilled by private enterprise. Government should leave to the private sector the business of business. The existence of small business are proof positive that government need not be duplicating their efforts. We maintain as well that absence of private enterprise does not prove the converse. In many instances, small businesses – the most efficient provider of services – are prevented from forming, growing or succeeding because the government stands to absorb their markets and repel their advance. Reliance on the private sector at every conceivable juncture should be a rule, not a relative standard.

These points are applicable to all small firms, but consider their particular germaneness to the travel and tourism industry. TCFC member companies literally represent the hospitality industry --- tour operators, travel agents, bus owners, campground owners, concessionaires, and outfitters. They offer services that are quintessentially commercial.

In our testimony, we will focus on three general areas of discussion. We will seek to place the issue of government competition into a broader conceptual and historical framework. Second, we will provide you a thumbnail sketch of the scope of the underlying problem, and how it has metastasized across our nation in the travel and tourism industry. Third, we will mention some possible avenues towards a solution which we would encourage your committee to consider at a later hearing.

We are very grateful for your attention to this issue. Understanding is the starting point for solution. And understanding can only emerge in the clutter of disparate voices in Washington if one is willing to listen, to focus and work towards a solution.

I. What is So Wrong About a Little Government Competition?

It is appropriate we begin with an observation. Most of us within your Committee room – and on your Committee -- would consider the position of TCFC painstakingly obvious. You would agree that government competition is wrong as a matter of principle, irrespective of equitable processes or cost comparisons processes. For small businesses, the only question is how to ensure the maximum reliance on the private sector.

But before we rush towards a solution, both the Congress and the small business community must not fail to understand why, time-and-time-again, such policies fail in the political sense. They fail because many out there do not yet agree with our fundamental premise, even those living under the benefits of free market economies. It behooves us, therefore, to start , as you have, with a cursory understanding of the need for limited government.

Commerciality Violates The Traditional View of Limited Role of Government
Both the FAIR Act and the A-76 Circular are part of a continuing discussion about the central role of government: its scope and its size. Our emphasis on private enterprise, and our efforts to preserve this emphasis has its roots in the founding or our republic.

Thomas Jefferson had this to say: "I predict future happiness for Americans if they can prevent the government from wasting the labors of the people under the pretense of taking care of them." In the celebrated verbiage of a letter of 1800 to Gideon Granger, he wrote:

> Let the general government be reduced to foreign concerns only, and let our affairs be disentangled from those of all other nations, except to commerce, which the merchants will manage the better, the more they are left free to manage for themselves, and our general government may be reduced to a very simple organization and a very inexpensive one; a few plain duties to be performed by a few servants.

To understand the centrality of this principal to our Republic, juxtapose Jefferson's words '"The merchants will manage [commerce] the better, the more they are left free to manage for themselves," – with no less an authority than the manifesto of the Communist party, by Karl Marx and Fredrick Engels. In chapter 2, the Communist Manifesto describes the measures that would come to fruition once communism takes root. They include:

> centralization of the means of communication and transport in the hands of the state, … extension of factories and instruments of production owned by the state, .. and establishment of industrial armies.

Jefferson's statements are echoed by those of Adams, Madison and other contemporaries. The central thesis of Adam Smith's 'The Wealth of Nations' is that capital is best employed for the production and distribution of wealth under conditions of governmental noninterference, or laissez-faire, and free trade. In Smith's view, the production and exchange of goods can be stimulated, and a consequent rise in the general standard of living attained, only through the efficient operations of private industrial and commercial entrepreneurs acting with a minimum of regulation and control by governments. The views of these founders form the cornerstone of our institutional reliance on the private sector, our belief in self-sufficiency, and our trust in private initiative over a benevolent government.

Government Competition is Fundamentally Unfair Because it Distorts Fair Competition
Government competition is fundamentally unfair because the government enjoys numerous, often unquantifiable advantages when competing in commercial markets.

- Government agencies enjoy the imprimatur of the agency – a "government approved" stamp so to speak. Government agencies are often perceived by the consuming public as the "official sponsor" or the vendor of first resort.
- Government agencies can use taxpayer resources to purchase capital assets, to market their commercial enterprises and to pay the salaries of the labor force.
- When Government agencies use taxpayer resources, they needn't compete in the highly competitive marketplace for capital. Rather, they force "investors" into investing, by requiring tax dollars be directed to them.
- Government agencies sidestep the laws of economics. It is not important that they be efficient producers. In fact, inefficiencies are rewarded by ensuring their competitors cannot keep up.
- Government agencies have enormously powerful lobbying interests and built-in constituencies which ensure increasing budgets each year.
- Government agencies can market, not only with nonprofit postage (which is subsidized by for-profit small firms against whom they compete), but actual franking privileges.

- Government agencies enjoy government mandated locations, real estate locations, web sites and on-the-spot commercial presence, that would cost a fortune for small firms to duplicate.
- Government agencies are seldom subject to regulations designed to protect health, safety and the environment.
- Government agencies do not pay taxes on the income they generate.

- Government agencies are not directly accountable to consumers, shareholders or even regulators.
- Government agencies have the inside angle, in that once established, government commercial enterprises seldom allow competitors.
- Government agencies do not have to worry about death taxes.

There is of course, the celebrated A-76 OMB Circular that seeks to level the playing field. Theoretically, under the magic of accounting, a government agency can be put in the shoes of a small firm so a government bureaucrat can determine if the agency would be able to provide the service more efficiently if it were actually a struggling entrepreneur. While the A-76 Circular explains how government departments must determine costs to ensure a level playing field, requiring the imputation of costs not normally considered a part of federal accounting (such as estimates of administrative overhead, insurance, taxes, rent, cost of capital, and depreciation) cannot possibly account for all these costs accurately. If it did, the government would be functioning at or near the level of the private sector by definition, unless the activity is a core function not being filled by the private sector.

There are other problems. OMB's Circular A-76, "Performance of Commercial Activities," describes only specific types of federal activities that can be subject to competitive contracting. Circular A-76 also provides an opportunity for federal workers to compete for their jobs under advantageous circumstances. Government employees currently performing a function under review for contracting can submit their own bids and compete for the contract. Private contractors need to demonstrate at least a 15 percent savings over prior costs to get the contract, while the existing federal workforce need only commit to a 10 percent cost improvement to win the contract. As a result of the management and cost efficiencies that such competition induces within the federal workforce, about half of the contracts awarded under A-76 remain with the existing employees.

Reliance on the Private Sector is More Cost Effective

Reliance on the private sector is also cost-effective. As comedian P.J. O'Rourke said, effectively translating Jefferson's words to the modern age, "You can't get good Chinese takeout in China and Cuban cigars are rationed in Cuba." He said this to make a point about communism, but it is equally applicable to our reliance on the private sector that is the hallmark of free market economies.

For the past several decades, Americans have realized cost savings and quality improvements by contracting out numerous government functions from school bus fleet operations; wastewater treatment and water supply; school maintenance and food service; highway maintenance, repair, and design; trash collection and recycling programs; janitorial services; facilities management; motor vehicle service and repair; operation of prisons and jails; oversight of welfare caseloads and child support payments; data processing; airport management; among others. Competitive contracting is based on the principle that what is most important is the cost, quality, and availability of the service, not who provides it. Shifting routine government services to the private sector allows government to harness the power of the competitive marketplace to encourage qualified businesses to offer the same or better service at lower cost.

What is the potential for savings? Substantial. Savings that have been realized through privatization average in excess of 25 percent based upon dozens of reports from state, local, and federal governments and the experience of countries that have implemented the process. For example:

- The U.S. General Services Administration (GSA) has reported saving as much as 40 percent to 50 percent during the early 1980s by contracting out much of the custodial services that its employees had provided at federal office buildings throughout the country.

- Since it began keeping detailed performance records in the late 1970s, the U.S. Department of Defense (DOD) has averaged cost savings of about 30 percent from the hundreds of operations and activities it has contracted out to private businesses.
- Application of the A-76 review process to federal activities has yielded annual savings that average 31 percent of what it cost the federal government to perform the function itself, or as much as $20,000 to $27,000 per full-time-equivalent (FTE) employee studied.[2]
- In March 1996, the Department of Defense reported to Congress that competitive contracting had resulted in annual savings of $1.5 billion and that more than 600,000 civilian and uniformed positions could be subject to competitive contracting in the near future in order to free additional resources to bolster America's defense capabilities.
- The CNA Corporation, a private, nonprofit research organization, conducted a study of 2,138 separate A-76 contracts completed by the DOD between 1978 and 1994 and found that these contracts, covering a total of 98,348 jobs, provided savings that averaged 31 percent over costs incurred before the A-76 review.[3]

Based upon these estimates, Ronald D. Utt, Ph.D, Senior Research Fellow in the Thomas A. Roe Institute for Economic Policy Studies at The Heritage Foundation, estimates that, if agencies raise their commercial full time equivalent staff estimates to 1,000,000 FTEs from and applied the A-76 process or equivalent to only 5 percent of them target, they could reap annual savings of between $1 billion and $1.4 billion per every 5 percent of the list competed.[4] He found that these savings will accumulate year after year. Moreover, he estimated that, if 50 percent of listed positions are competed within five years, annual savings will amount to between $10 billion and $14 billion. He concluded that no other spending restraint option now under consideration offers Congress or the Administration a level of savings of this magnitude with no reduction in the level or availability of government services.

II. The Problem is Not New

One would assume that if government competition is antithetical to our founding principles, against our notions of fair play and opposed to our economic interests, we would have no problem containing government commercial activity. Our historical experience is quite the opposite. Constant pressure created by an increasing size and scope of government has ensured government expansion into commercial domains. Small business have long struggled against this pressure, but have lost ground. Two laws of physics seem to apply with little modification to government agencies. The first is the law of motion: an object in motion tends to stay in motion, i.e. a commercial activity once started is hard to remove. Second, is the law of entropy, i.e. Federal bureaucracies will evolve from a state of core functions to commercial enterprises, unless an external force is applied.

Consider that as early as 1933, a Special House Committee reported on the growing number of commercial activities being performed by the government.[5] In 1954, the House Committee on Government Operations issued a reported entitled "Government in Business." The Committee's report

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[2] U.S. General Accounting Office, DOD Competitive Sourcing: Results of A-76 Studies over the Past 5 Years, GAO-01-20, December 2000, pp. 4, 6.

[3] Significantly, nearly half (48 percent) of the competitions were won by the in-house staff which submitted the winning bid in competition with private companies. In-house contracts averaged savings of 20 percent while contracts won by private firms averaged savings of 38 percent. 10 Another CNA study of the 210 DOD A-76 competitions completed between 1995 and 2000 found that the average savings amounted to an impressive 44 percent off previous costs and that 54 percent of the contracts were won by in-house staff in competition with private companies.

[4] http://www.heritage.org.

[5] House Special Committee, Government Competition with Private Enterprise, 72nd Congress, 1st Sess., House Report 235.

would not have to be radically altered to be filed today. The Committee stated: "The subject of Government in Business is wide in scope and extremely important in this era of ... heavy taxes, and complex intergovernmental relations." The Report liberally referred to the founding fathers, and their notions that the "federal government should [not] engage in business in competition with citizens striving for a livelihood." The Committee found that "Genuine efforts should be exerted to encourage rather than discourage industry to handle the government's business. A strange contradiction exists where the government gives lip service to small business and then re-enters into unfair competition with it."

The heightened attention by Congress in 1954 resulted in the Bureau of the Budget, later the OMB, issuing Budget Bulletin 55-4 in January 1955. The policy as stated in that Budget Bulletin was as follows:

> It is the general policy of the administration that the federal government will not start or carry on any commercial activity to provide a service or produce for its own use if such product or service can be procured from private enterprise though ordinary business channels. Exceptions to this policy shall be made by the head of any agency only where it is clearly demonstrated in each case that it is not in the public interest to produce such product or service from private enterprise."

Nearly thirty years later, the small business community offered its opinion on the effectiveness of the Budget Bulletin and its progeny, the A-76 process. In both the 1995 and 1986 (the last two conferences) White House Conference on Small Business, small firm used these fora to reiterate that unfair competition resulting from governmental activities was one of their top 15 issues. According to the more than 2000 delegates' 1995 recommendation:

> Support fair competition: Congress should enact legislation that would prohibit government agencies, tax-and antitrust-exempt organizations from engaging in commercial activities in direct competition with small business.[6]

President Ronald Reagan issued Executive Order (EO) 12615 on November 19, which required agencies to identify all commercial positions and each year to subject to the A-76 review process an amount equal to no less than 3 percent of the agency's entire civilian workforce. In 1992, attempting to revive the program, President Bush issued Executive Order 12803 to encourage and facilitate the privatization of federally funded infrastructure projects such as wastewater treatment plants and airports, but agency foot-dragging and OMB's diffidence stalled the initiative. President Clinton issued Executive Order 12893 to encourage the privatization of federally financed, but locally controlled, infrastructure. This executive order required the increased use of economic analysis and promoted public-private partnerships to help ensure the most cost-effective infrastructure investments.

Finally, in 1998, the Congress passed, and President Clinton signed into law, the FAIR Act, which required that all executive branch agencies and departments each year compile a list of all of their commercial positions and submit the list to OMB. The FAIR Act[7] -- the latest attempt to codify procedures was enacted to ensure that the federal government systematically identifies commercial activities that could be conducted by private firms at a lower cost and to prevent unfair competition by government against private firms. The FAIR Act requires each agency to submit to the Office of Management and Budget (OMB) "a list of activities performed by Federal Government sources for the executive agency that, in the judgment of the executive agency, are not inherently governmental

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[6]Report on the 60 Final Recommendations of the White House Conference on Small Business (1995).
[7] Public Law No. 105-270, 112 Stat. 2382, 31 U.S.C. 501 et seq.

functions."[8] The Act also requires the list to include the fiscal year for which the activity first appeared on the list, the number of full-time employees (FTE) (or its equivalent) necessary to perform the activity and the name of an employee responsible for the activity from whom additional information may be obtained. The Agency must then determine whether to seek bids from private enterprise for the performance of the activity. The Act was meant to enable businesses to identify federal activities that they might be able to perform. It also requires each agency explain why these activities have not been put out for a competitive bid (or to indicate that they have been).[9] Again, the small business community was disappointed at the final product.

Over more than seventy years, small firms have hoped to see a dismantling of competitive barriers, rather than to witness the endless construction of new ones. However, while the U.S. Small Business Administration and politicians of every party and level of government praise small firms as job generators, the agencies continue to ignore small firms complaints against competition. The more the government becomes vested in private enterprise, the more the special interests have a stake in maintaining these monopolies.[10]

III. Scope of the Problem

Specific data on the "commercial activities" of the government sector will someday be generated if the FAIR Act is taken seriously. In early 2001, the federal agencies estimated that as many as 850,000 of their employees were performing commercial-like functions commonly available in the private sector and not "inherently governmental" in any way. The $10-14 billion in annual savings estimated above by Dr. Utt are based on the conservative estimates of the reporting agencies.

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[8] Section 2 of the Act.

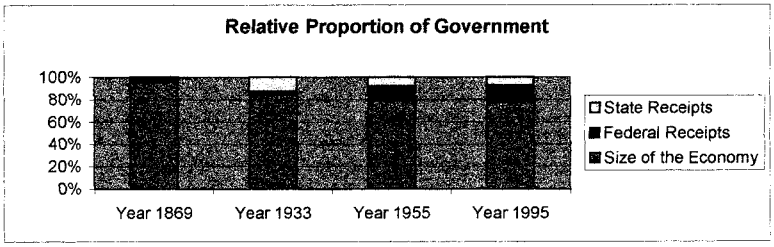
[9] The Commercial Activities Inventory is to include, for each activity, the following information:

a. The organizational unit performing the activity;
b. The State where the activity is performed;
c. The location where the activity is performed;
d. The full-time employees (FTE) (or equivalent) required to perform the activity;
e. The activity function code (using Department of Defense function codes);
f. The reason code;
g. The year the activity first appeared on the FAIR Act Commercial Activities Inventory;
h. The name of a Federal employee responsible for the activity from whom additional information may be obtained;
i. The year that a cost comparison was performed or conversion to contracting out occurred;
j. The savings achieved in full-time employees, if applicable;
k. The savings achieved in dollar terms, if applicable.

[10] The chief obstacles to their efforts most often are the existing federal workforce, including both labor and management; businesses that support the government's programs; and elected officials who have become financially or politically dependent upon a government activity as it currently exists. As noted earlier, all of these groups see privatization, or any fundamental change in the status quo, as a threat to the benefits they already receive. As a consequence, resistance to privatization is robust and successful.

Congress is no exception. Although there are abundant opportunities to use competitive contracting to achieve significant savings and service improvements, opposition to the effort is intense. Entrenched interests--largely the existing federal workforce and managers--will defend the status quo because they fear the competition. Reflecting an ongoing effort to discourage competitive contracting, Representative Albert Wynn (D-MD) in early 2001 introduced the Truthfulness, Responsibility and Accountability in Contracting Act (H.R. 721) to suspend the awarding of any new federal service contracts until certain changes are made that would benefit federal employees. As of June 2001, the bill had 158 cosponsors.

If the growth of government is any indication of the growth of government commercial activity, it is clear that government enterprise has outstripped private enterprise. Between 1869-1873, more than 70 years after Jefferson's admonition over limited government, the economy was only approximately $9.1 billion, and the Federal receipts were $411 million. In 1933, when the Congress sought to evaluate unfair government competition, the total economy was $55.6, Federal receipts were $1.997, and total government receipts, including state and local governments was $10.3. In 1955, when again the Congress undertook review of the issue, the GNP was $398; Federal receipts were $65.5 billion and all government receipts were $106.4 billion. In 1995, GNP was $7.4 trillion and government receipts were $1.4 trillion and 2.1 trillion at the Federal and total government levels respectfully. The Congressional Budget Office estimates total government revenue in FY 2002 to be 2.236 trillion, comprising about 20.5% of the economy – the largest percentage concentration of government services in the history of our nation.



Mr. Chairman, the three witnesses who represent travel and tourism here today will provide vivid detail of specific instances of unfair competition. There are many more examples:

- Municipalities are using Federal moneys to use transportation buses for tour activities.
- State agencies are selling airline tickets.
- The Air Force is now promoting tours, river rafting and sightseeing expeditions to the general public. The Army's Fort Carson, takes tours down the Arkansas River. The Navy takes rafting trips down the Kings River in California.
- The NPS is promoting a light rail service in the Grand Canyon to transport passengers already being served by buses.
- In North Carolina, the Forest Service has decided to operate a cave tour taking the business away from a concessionaire.
- In Payson, Arizona, the US Forest Service, in the 1996-98 time period, constructed a new campground within a mile of an existing KOA campground. The KOA park subsequently went out of business when it could not compete with the below market pricing and new, federally-funded modern facilities - including a $750,000 restroom including heated walkways - constructed by the Forest Service.

These and other examples occur on a daily basis. When you examine these abuses, ask yourself this question. Why is the government more cost-effective in operating a tour bus or means of transportation than competitive industries? Why is the government in such businesses as running campgrounds? Mass transit? Tours? Rafting trips? How are these core functions of agencies that annually seek funding increases to perform their essential tasks?

IV. Avenues Towards a Solution

While this hearing is meant to expose the problem, let me offer my observations on possible steps towards a solution.

Ensure Constant Vigilance by Zealously Liberally Using Your Oversight Function

We would encourage you to use your oversight function to expose the problem of government competition, as you have here today. Such oversight will have two benefits. First, it will raise needed public attention to the issue. The A-76 and the FAIR Act have failed to produce positive results because the efficiency or efficaciousness of these requirements is not a national priority. Take the time needed to hold hearings on unfair competition. Hear from small businesses on this issues. The more than 75 years of Congressional record on this issue argues that constant vigilance is the best defense.

Second, oversight may be the most effective means to address industry concerns while waiting for a broader solution. In policy debates, there is a tendency to emphasize a permanent solution, and to extrapolate that solution from anecdotes. The solution that does emerge sometimes fails to rectify the individual problems that gave rise to it. This Committee should understand that there will never be a true fix, only a more effective fix. We recommend aggressively and periodically reviewing specific remedies so that government agencies are kept at bay, and specific problems are solved. We encourage you not to look upon this hearing as an event, but as process towards rectifying abuses.

Concentrate on Specific Agencies

Many agencies, such as the Departments of Interior and Agriculture, historically have avoided opportunities to save money and improve services through competitive contracting of existing in-house operations. This is particularly true for the National Park Service (NPS), which performs a variety of commercial-like functions in its capacity as trustee of a valuable national resources and the operator of a far-flung multi-site entertainment complex.

The NPS illustrates the benefits and the versatility of competitive contracting. The National Park Service was established in 1916 as part of the Department of the Interior "to conserve the scenery and the natural and historic objects and the wild life of the nation's parks...leaving them unimpaired for future generations." Today, the NPS employs a staff of 20,000 to oversee 379 sites covering more than a million acres.

In recent years, NPS' role as trustee and host has left something to be desired. However, NPS's means of addressing a maintenance and repair backlog is to argue for more resources. Ironically, NPS's insists that it perform virtually all park functions with uniformed NPS personnel regardless of whether there is a less expensive alternative. NPS employees operate campgrounds, transportation, cut grass, clean toilets, collect fees, and repair roads--functions that virtually all other federal departments and state and local governments have competitively contracted out to private businesses at considerable savings. As a result, NPS spends more on routine efforts than necessary. On top of this, NPS's cost accounting makes it doubtful NPS could select the more efficient and cost-effective practices or to judge whether or not the private sector could be more efficient under the current A-76 process..

A model for NPS contracting reform might be the comprehensive competitive contracting programs implemented in the provincial park systems of Canada's two westernmost provinces, British Columbia and Alberta. Within four years, BC Parks had contracted out the entire operations and maintenance of each of its parks, leaving just a few government management employees to oversee the private

contractors. In return for operating the parks, contractors retain all camping and firewood fees and receive an "efficiency payment" to cover additional operating expenses. Savings under the program averages 20 percent, and these savings are reinvested in the system to enhance conservation goals.

Use the Appropriator's Power of the Purse

For years, the legislative process, particularly the appropriations process, has been effectively used by opponents to prevent privatization or worse to create public enterprises. By learning from these defeats, proponents have discovered that the same legislative vehicles and techniques can be used in support of privatization.

Work With the Administration to Develop a Cohesive National Strategy for Reliance on the Private Sector

Nearly a quarter of a century ago, a General Accounting Office Study recommended a single national policy endorsed and supported by both the legislative and executive branches. They said, "the national policy must be stable, understandable, and provide a chance among the many conflicting national issues." (GAO Study 78-118, September 25, 1978). This report's conclusion is as valid today as it was then. Extant tools used to promote privatization have significant infirmities and do not offer a stable and understandable strategy.

OMB Circular A-76, coupled with the FAIR Act and President Reagan's Executive Order 12615 comprise the trilogy of procedural guidelines that govern agency decisions over whether commercial activities should be performed under contract with commercial sources. Some problems with OMB Circular No. A-76 have already been mentioned above. Most notably is the underinclusivness of the Circular, the fictional basis for comparing a government entity to a private sector, and the built-in preference for government work. In addition, we would advise that the entire standard used in the Circular be reconsidered. The relative costs of government vs. private production was a conception introduced in Budget Bulletin 55-4 only as a consideration of last resort. The Report stated:

> The relative cost of government operation compared to purchase from private sources will be a factor in the determination those cases where the agency head concludes that the product or service cannot be purchased on a competitive basis and cannot be obtained at reasonable prices from the private industry.

Stated another way, we question why the private sector should have to compete against an artificial cost-benefit analysis from the Federal government. Why compare an agency's commercial activity with a private sector activity to see which is more efficient? Have we not reached a decision in the free market already about this question? Can we not do so with specific industries like travel or tourism?

The FAIR Act is a humble beginning in stemming the tide of government unfair competition against the private sector. It carries the seed of great promise in dislodging business opportunities now monopolized by the Federal government. It could eventually make a multitude of opportunities available to small tax-paying firms – firms that can provide these services more efficiently and effectively than the Federal government. However, the legislation was significantly watered down on enactment, and the purpose of the legislation has encountered resistance by agencies that seek to prevent privatization and see no benefit in enforcing its bothersome provisions.

There are several problems with the FAIR Act. First, the activity function codes used in the inventories are military function codes that result in a sort of "Hide-the-ball" method of disclosure. A reader of the lists will really have no idea what the activity in question is without a qualified cryptographer. By

extension, the public is unable to capitalize on the listing or to pursue private remedy or appeal. The description of commercial activity should have its own taxonomy based on plain language.

Second, the information is not easily accessible. The various agencies each release the information as they see fit. Some do post the information on the internet, but not always in a timely manner. Many of the releases in the federal register do not include the actual list but merely a contact person. There is no central place on the internet where the lists are available.

Third, the legislation enables "interested parties" to challenge listings. Interested parties include potential contractors and organizations representing those businesses and unions representing Federal workers.[11] However, this challenge must come within 30 days of release of the list. This challenge period is excessively short. It would be very difficult to obtain the FAIR Act inventory, contact the appropriate federal employee, obtain information about the activity in question, develop other facts relevant to the issue and craft a challenge within 30 days.

Fourth, neither the FAIR Act nor the Clinton Administration, in implementing it, required agencies to do anything more than compile this list. Congress needs to close the loop between an inventory and contracting out. Once the list is compiled, Federal departments and agencies should be required to subject these functions or jobs to competition from private-sector providers. Federal agencies should do more than just compile a list of commercial-type jobs. Legislation should be enacted that requires them to open up a percentage of these identified positions to the competitive contracting process and solicit bids from qualified private-sector businesses to provide a specific service currently performed by a government department.

Finally, Executive Order 12615 may have required departments and agencies to establish and fulfill ambitious privatization goals, but that EO is only as strong as the White House's will to enforce it.

While the current procedures meant to protect small firms have functioned dismally, there is a silver lining. There has seldom been a more propitious time to develop a cohesive strategy. President George W. Bush appears committed to greater use of competitive contracting in the federal government, having promised during the presidential campaign to open more federal positions involving commercial activities to competition from the private sector. The Bush Administration recognizes the impotent nature of the FAIR Act and its potential, as well as the lackluster performance of Federal agencies under the A-76 process. OMB Director Mitchell E. Daniels has sent a memo to agency and department heads in March 2001 summarizing the Administration's new performance goals and management initiatives, which included "Expanding A-76 competitions and more accurate FAIR Act inventories" of the commercial positions within their departments. In early March, OMB Director Daniels announced the Administration's detailed plan to encourage greater use of competitive contracting across the federal bureaucracy. Agencies will be required to develop an accurate list of all commercial activities and, next year, subject no less than 5 percent of those positions to competitive contracting, with the goal of covering 50 percent of these positions within five years.

For a cohesive strategy to emerge, it will be essential for the heads of federal agencies and departments to cooperate with the White House and OMB in the program's implementation. It will also be essential for the Congress to encourage the agencies to compile their comprehensive inventories of commercial-type positions and subject a portion of that list to the A-76 review process and develop legislation that codified the Executive Order, the A-76 Circular and the FAIR Act changes in a manner that harmonizes and addresses the infirmities of each process..

11

Look for Opportunities for Divestiture

One process by which routine public services can be transferred to the private sector is through divestiture, where a tangible asset or an operating enterprise such as a government run transportation service is sold to private investors. In transportation policies alone, the United States is far behind countries such as Great Britain, Canada, New Zealand, Australia, Mexico, and Argentina which have privatized airports, air traffic control systems, passenger rail, and public transit (both rail and bus service), and which are also creating public-private partnerships to construct and renovate highways funded by user fees.

Recognize the Derivative Effect of Government Funding Choices

For the most part, savings from state and local contracting appear to be on the order of those achieved at the federal level--usually in the range of 20 percent to 30 percent for most services contracted. A review of the results of competitive contracting of transit services in eight cities in the United States and Europe found that unit costs fell by an average of 27.9 percent and that savings ranged from a low of 19.8 percent (Stockholm, Sweden) to a high of 45.9 percent (London, England). Ensure that Federal moneys directed to the state level encourage core government functions and do not fuel the problem.

Appoint a Czar

Successful privatization requires focused leadership. Consider electing or appointing an official who considers privatization a priority, is willing to do battle with its traditional opponents, and is determined to persevere in the face of numerous obstacles and delays. We recommend a privatization Czar that can consolidate to the FAIR Act, the Executive Orders and the A-76 Circulars, improve upon them. We recommend that the Czar be charged with helping to respond to specific taxpayer complaints. To empower this Czar, he should be given authority to negotiate with agencies, so that they might keep a portion of the savings they realize through competitive contracting, and use some of these savings as financial rewards to the employees and managers involved.[12]

Conclusion

Exposing unfair competition and seeking to address policy failures that encourage it is a critical oversight role of your Committee. We encourage you to seriously undertake the effort needed to ensure the proper reliance on the private sector that will result not only in cost savings, but fundamental fairness, and a return to the "wise and frugal government" of which Jefferson spoke. As Thomas Jefferson stated about this role of government, "These principles form the bright constellation which has gone before us and guided our steps through an age of … reformation. The wisdom of our sages … have been devoted to their attainment. They should be the creed of our political faith … and should we wander from them … let us hasten to retrace our steps and to regain the road which alone leads to … liberty…." Perhaps he was a business owner.

[12] Executive Order 12615, which is still on the books, allows this to be done: A department or agency proposal may reflect retention of expected first year savings as negotiated with the Office of Management and Budget for use as incentive compensation to reward employees covered by the studies for their productivity efforts, or for use in other productivity enhancement projects.

TESTIMONY OF

CLYDE HART, JR.
VICE PRESIDENT OF GOVERNMENT AFFAIRS,
AMERICAN BUS ASSOCIATION

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON SMALL BUSINESS

JULY 18, 2001

On

The Extent, Impact, and Fairness of Direct Competition of Federal Agencies with Small Businesses

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Good morning, Mr. Chairman and Members of the Committee. My name is Clyde J. Hart, Jr., and I serve as Vice President of Government Affairs for the American Bus Association. Prior to joining ABA in February, I served as Administrator of the Federal Maritime Administration and Acting Administrator of the Federal Motor Carrier Safety Administration.

BACKGROUND

The ABA is a national trade association representing the interests of the private intercity motorcoach industry. ABA is comprised of approximately 3,400 member companies that operate buses and provide related services to the motorcoach industry. These buses are 40-45 foot touring style coaches with baggage bays under a passenger compartment. Some 800 of ABA's member companies provide charter, tour or commuter service, and of those, approximately 100 companies provide scheduled service over fixed routes. Another 2,400 ABA members include representatives of the travel and tourism industry, and the manufacturers and suppliers of products and services for the industry.

ABA members provide all manner of bus service to 775 million U.S. passengers annually. Our roster of members includes nationally known intercity passenger carriers like Greyhound Bus Company and Peter Pan Bus Lines; regional carriers such as Adirondack Trailways in New York, and family owned businesses such as Jefferson Bus Lines, which provide service throughout Minnesota, South Dakota, and Iowa; Eyre Bus Lines which operates out of Glenelg, Maryland; Paradise Travel in Brooklyn, New York;

Tri-State Travel in Galena, Illinois; and Academy Bus Lines in New Jersey. I am here today to make you aware of a serious problem that is affecting the private bus industry; specifically, the problem of unfair competition from publicly funded transit agencies, universities, and national parks.

First, I'd like to say a few words about the motorcoach industry represented by ABA. The industry serves more than 4,000 communities directly with scheduled or fixed route service, bringing affordable and convenient services to the door of Americans who, in many cases, have few alternatives to reach other towns and cities. Through charters and tours, motorcoaches can reach virtually every community. The industry is a small business success story, comprising almost 4,000 companies, of which 90% operate fewer than 25 buses. The industry serves leisure and business travelers, rural residents, and others seeking access to education, health care, and the rest of America's transportation network. Lastly, the motorcoach industry is part of a large and growing U.S. tourism industry, which employs one in eight working adults in the United States. The motorcoach industry accomplishes all this and more with the highest safety rating of any commercial passenger transportation mode and all without benefit of government subsidy.

This lack of subsidy is at the core of my testimony today. I am here because each day ABA members face increased competition from transportation providers that are subsidized. Much too frequently, our members face competition from Federal Transit Administration funded public transit agencies. These subsidized operations compete with charter operators (those who provide service to a related group of passengers who have purchased all of the seats on a bus for their exclusive use on a particular trip); with private operators that provide scheduled intercity service and that provide shuttle service to and from irregularly scheduled events such as sporting events or festivals. Not a week goes by without a call from an ABA member company complaining of a transit agency that has failed to provide proper notice (as required by federal law) of their intent to compete for a charter job or, worse, having lost that job to the subsidized carrier.

CHARTER SERVICE ISSUES

The Federal Transit Act ("the Act") currently excludes "charter and sightseeing transportation" from the definition of "mass transportation" for which FTA funding is available. 49 U.S.C. § 5302(a)(7). In addition, the Federal Transit Act prohibits a recipient of FTA funds from providing intercity charter bus operations if it will foreclose a private bus operator from providing the same service. *See* 49 U.S.C. § 5323 (d)(1). If there is a willing and able private carrier, the federal grant recipient must put the service out to bid and use a private charter service. In seeking to operate a charter service the grant recipient must publish a notice detailing the proposal and notify the ABA at least 60 days prior to beginning the charter operations. 49 C.F.R. § 604.11. In turn, ABA notifies its members of the charter opportunity.

Many times ABA is not notified of the charter bid. There are times when an operator's only notice is from a newspaper. It is then impossible for us to give timely notice to our members. In addition, there have been instances where the FTA has advised transit agencies how to structure proposed charter operations to circumvent the charter

regulations and pass legal muster. Finally, the audit and enforcement mechanisms relating to charter operations (49 C.F.R. Part 604) are not adequate for considering whether there is a finding of no "willing and able" private participant.

Additionally, part of the problem is the dual nature of the FTA. One of the FTA's functions is to promote transit and the public agencies that provide it. This promotional component of the FTA's mission overrides the desire to enforce charter regulations against public agencies. It simply may be too much to ask that the agency fulfill both roles.

The ABA keeps a record of some examples of public transit agency incursions into charter operations and there are many. Just a few examples include:

The Colorado Springs, Colorado Transit Agency has begun taking fans to the Denver Broncos football games at a price of $10 for a 150-mile round trip. This price was less than half of the price charged by the private bus carrier ($25) who had the business since 1994, and who had gone through an extensive proceeding at the Colorado Public Utilities Commission in order to obtain authority to provide the service. Quite apart from the price, it seems to us that the service was illegal since it was not the "regular and continuing transportation" within the definition of "mass transportation" in the Act. Needless to say the transit agency's service killed the ABA member's market.

In Oregon, local transit agencies have provided free passes and charters, compliments of local transit agencies, to conventioneers and guests. In North Carolina, a local transit agency provided charter transportation service for college basketball tournaments and conventioneers. In Maine, when a local transit agency bid out a fixed route service, private companies did not win the bid because the local transit agency's true overhead as well as higher tax exemptions on fuel were not calculated fairly.

These practices by public transit agencies have a deleterious effect on our members and on the riding public. Bus companies operate on small margins. Every dollar is important to the whole enterprise. Having one's business peeled away like an onion means that the operation will, in time, lose the ability to provide service elsewhere along its system. If this eventuality were the result of pure competition between equals, one would rightfully conclude that the free market had decided the issue. But that is not the case with public transit operators matched against private bus owners. Not with the agencies ability to subsidize buses, facilities, and operations to compete with the private bus industry.

The FTA has actively encouraged this subsidized competition in the past. For example, the charter restrictions do not apply to transit service that is scheduled service rather than charter. One ABA member in California was told by a local transit official that FTA personnel had advised the transit agency to create the fiction of "special routes" to get around the charter restrictions. As long as the transit agency can plausibly claim that the service falls outside the definition of charter service, then the private operator may not challenge the transit service.

This problem is exacerbated because the FTA is authorized to handle disputes under the charter regulations between private bus operators and transit agencies. 49 U.S.C. § 5323(d)(2). Challenges to subsidized charter bus service must be heard by the FTA Regional Administrator, with appeals heard by the FTA Administrator. 49 C.F.R. Part 604, Subpart B. There is an opportunity to appeal adverse decisions by the Administrator to federal court, but courts generally give great deference to agency decisions in these cases. *See, e.g., Blue Bird Coach Lines, Inc. v. Linton,* 48 F.Supp. 2d 47 (D.D.C. 1999) (dismissing a challenge to the Rochester, N.Y. transit agency's shuttle service from the Rochester area to football and basketball games in Buffalo (150 miles round trip) and Syracuse (190 miles round trip)).

ABA also believes that transit agency bus service to irregularly scheduled events like sporting events, music festivals and conventions is not eligible for federal funding as "mass transportation" because this service is not "regular and continuing" as required in the statutory definition of "mass transportation." 49 U.S.C. § (a)(7) ("The term 'mass transportation' means transportation by a conveyance that provides regular and continuing general or specific transportation to the public, but does not include school bus, charter, or sightseeing transportation.") Nevertheless, the FTA has no policy statement on this requirement for "regular and continuing" service, and does not require transit agencies to meet this standard when developing new service.

SCHEDULED SERVICES ISSUES

There is a growing problem with public transit agencies providing intercity service. While there is nothing in the law that allows public transit agencies to offer such service while receiving FTA grant money there is nothing in the law that expressly prevents it either. This is because there is simply no workable definition of "intercity service" in the law. Indeed, FTA has determined that "intercity service" is scheduled service for the general public with intermediate stops over fixed routes connecting two or more urban areas not in close proximity which has the capacity for transporting passenger baggage and which makes meaningful connections to scheduled bus service at more distant points. *See Blue Bird Coach Lines*, 48 F.Supp. 2d at 51. Given this limited definition it is no wonder that we are being treated to the spectacle of public transit systems offering intercity service.

This reasoning creates a loophole in the FTA funding mechanism. Using this approach, transit agencies may provide non-scheduled service over distances of hundreds of miles as long as the service does not meet the strict charter definition in 49 C.F.R. Part 604. Yet the FTA ignores the fact that service may be intercity in nature even though it is not charter service or scheduled service with limited stops over fixed routes. The FTA needs to expand its definition of "intercity bus service" to include this type of non-scheduled service.

Moreover, the *Blue Bird Coach Lines* court case held that the shuttle service in question did not fall outside the definition of "mass transportation" simply because it covers a considerable distance and has limited stops. The court noted that the FTA has funded public bus service between Atlantic City and New York City (approximately 100 miles one way); between New York City and Cape May, New Jersey (approximately 100

miles one way); and between Cape May and Philadelphia, Pennsylvania (approximately 80 miles one way). 48 F.Supp. 2d at 51.

Again, ABA asserts that the FTA's definition of "intercity bus service" is too limited. Clearly, a distance of 100 miles involves "two or more urban areas not in close proximity." Regardless of whether the service has the capacity to transport baggage or makes connections to distant points, service beyond the local boundaries of transit operations is intercity in nature. ABA needs Congress and the FTA to establish a workable definition of intercity service for all types of bus operations.

Greyhound Bus Lines has complained of local public transit systems linking together to provide intercity service in California. Indian Trails Bus Company has lodged a similar complaint in Michigan. Without a workable definition of "intercity service" we have no way to limit the reach of publicly funded transit systems. Without such a definition it may quite literally be possible for the New York Transit system to offer intercity service between New York City and Chicago, Illinois.

Even unlikely publically and subsidized organizations are beginning to encroach on the private market. Northern Arizona University provides transportation services to not only their registered students, but also others who are visiting on-campus or are attending a function on-campus. These non-students are defined as "invited guests" of the University and thus qualify for motorcoach transportation by the university.

Not only is transportation provided at a rate that equates to about 30% of the fair market value of the same private motorcarrier costs, but these groups do not pay entrance fees into the many national parks and monuments in Northern Arizona, including the Grand Canyon National Park.

Because of the increase in the University's "transportation business", they are purchasing new coaches.

The Flagstaff Public Schools, which owns and operates its own bus fleet, in cooperation with the University, also provides charter service. The School District states that they do this to "keep their drivers employed" during the summer.

TOURISM ISSUES

Another ongoing problem is that of national parks actually hindering the private motorcoach industry from serving the parks while offering more attractive terms to others.

For example, the Grand Canyon National Park not only regulates the entrance fees mentioned above, but also restricts where a commercial motorcoach may stop within the park, and which viewpoints a motorcoach and its occupants can visit. The East Rim Drive of the Grand Canyon consists of 26 miles and has many, many viewpoints yet, the commercial motorcoach may only stop at two stops, one of which is practically inaccessible due to the private recreational vehicles that block the traffic flow. Further, the most popular viewpoint at the Grand Canyon National Park, Mather Point, is open

only to private vehicles. This is a regulation that penalizes the motorcoach passengers, and the government entity is sanctioning direct competition from the commercial rental car industry against the motorcoach industry. The irony of this type of regulation is that the National Park constantly complains about the number of vehicles at the Grand Canyon and uses enormous amounts of money to provide parking and services to these vehicles. Yet it penalizes the motorcoach carrier who is helping to eliminate these smaller vehicles!

In all of the above cases, the private carrier cannot compete with rates, which are far below actual operating costs. In most cases, these public entities do not factor in the cost of the vehicle and many of the related overhead and operational costs of their services.

Again, and it bears repeating, the losses incurred by ABA members from competition with subsidized agencies is not the result of the free market. ABA members will compete and compete hard for business. But the "thumb is on the scale" so to speak. The private bus industry cannot offer rates below cost because the equipment is idle on weekends anyway, or we get a break on taxes or a flat-out subsidy. We are seeking a level field of play.

SOLUTIONS

Congress can resolve this concern in two ways. First, require FTA to establish a clear definition of intercity service that is not eligible for federal funding. Second, specifically provide that transit agencies may not provide regular route service beyond their urban area boundaries. Finally, DOT should establish means by which to more effectively enforce the law and perhaps give the Secretary of Transportation increased authority to bar a transit agency from receiving further assistance when the Secretary finds a continuing pattern of violations by that agency.

On behalf of the ABA and its members I want to thank the Committee for the opportunity to address these issues and we look forward to working with you on this and all other transportation issues that come before the Committee. I'd be happy to answer any questions at this time.

Statement of
C.Jack Pearce
President, O.S.I. Management, Inc.
before the
House Small Business Committee

July 18, 2001

First, please allow me to give you the credentials for addressing the question of postal service competition with private sector businesses. In prior years, I served in the Antitrust Division of the Department of Justice, first as a staff attorney and then as Assistant Chief of the Public Counsel and Regulatory Section. As Assistant Chief of that section, I had the responsibility of reviewing all the comments of the Department of Justice on legislation, which might adversely affect competition in the economy.

Our Section also intervened in regulatory agency proceedings, where we presented the national policy in favor of competition to agencies proposing to take regulatory actions, to warn against regulatory actions, which would prejudice competition in the economy, and to advocate actions, which would release competitive forces.

My work in this Section led to a good deal of interagency activity, and that led to becoming a Deputy General Counsel in the White House Office of Consumer Affairs. This post allowed me to apply the grounding in competitive policy I had acquired in the Division to the consumer interest in competitive markets, across a range of legislative and other issues.

Following that tour of duty, I opened an antitrust oriented law practice in Washington, where, over time, I represented a range of interests, including major corporations such as Sears, General Mills and others, national trade associations, and some smaller companies and groups. I endeavored to accept clients and issues which accorded with the pro-competitive policies in which I was grounded while with the government, and had some success in making that sort of match.

After some years, when my partnership underwent an amicable division and I was left with substantial empty office space, I developed a service to provide out of town attorneys with space and services when they had business in Washington. This led to discovering that a large number of local attorneys needed access to good downtown office facilities, with telephone, mail, offices and conference rooms, and other services, on a very flexible basis. Upon discovering this, we explored the needs of entrepreneurs and firms in lines of business other than law, and found a large local population, which had similar, needs.

Thus, in steps, over time, the service evolved into a Business Center serving a wide variety of professions and trades, offering them a broad range of office services on a very flexible, mix and match basis. In effect, we became, as to quite a substantial portion of our clientele, a sort of private sector business incubator. Entrepreneurs could come to us with very minimal needs, in their early stages, incurring accordingly modest costs, and then add, modify, and if necessary on occasion reduce services as their business needs evolved. At present we offer offices as needed and full time, telephone services tailored to the mobile entrepreneur, mail receipt and forwarding, high speed

internet access, secretarial services, fax, copying, and other ancillary services. Our clientele includes over 140 attorneys, but it is, over-all, a sampling of the small business sector in the Washington Metro area.

I found that the firm we incorporated to conduct this business, O.S.I. Management, had, in the topsy like manner described, become a part of a national phenomenon called 'alternative officing'. This service sector is substantial and growing.

The Small Business Administration has estimated that home based businesses exceed 11 millions in number, account for about 10% of all business revenues, and account for over 60% of new business start ups. Home-based businesses are extensive users of alternative officing services. In addition, other firms use them for branch offices, and ancillary services.

The providers of such services include the Kinko's type of store, the mail and package stores (like Mailbox Etc. stores), the Postal Service's mailbox service, and 'office business centers'. Business centers use distinctively different physical facilities from mailbox stores, to provide a broad range of support services, including exclusive use offices, offices and conference rooms as needed, reception, telephone answering and call forwarding, secretarial, teleconferencing, fax, computer use and others.

Gross revenues of package and mail stores have been estimated at about $2.3 billions, that of Office Business Centers at about $3.5 billions. Mailbox revenues at mail and package stores have been estimated at $350 millions. Revenues to Business Centers from clients other than full-time, exclusive use

clients have been estimated at about $150 millions. These revenue totals have been increasing steadily.

As a part of this mix, we find that our clients come to us for something distinctively different from the offerings of the Kinko, Postal Service mailbox, or package and mailbox stores. They have access to those services at significantly lower prices than ours, though we try to keep our charges modest. The clients seek us out for a combination of an attractive location and access to the broader range of office services we provide, on a flexible, mix and match, as needed basis.

This is my background for addressing the Postal Service's actions in the Commercial Mail Receiving Agency regulatory proceeding. I will not replicate all that Mr. Merritt of PostalWatch addresses. I will try to focus on two particular aspects of the problem. The first aspect is the competitive policy aspect, drawing on the antitrust and consumer affairs background. The second is the impact on the small business population, which we service.

In economic substance, the Postal Service has been engaged in using the monopoly power over first class mail services granted by Congress to alter to its liking competitive relationships in the mail receipt sector, where it has not been granted a monopoly.

This evolved. You may know the story, but let me put it in naked competitive terms. First, the postal service ordered the package and mail stores to use address descriptions equivalent to its own, to deprive them of an advantage they had in describing their locations as 'suites'. The Postal

Service also imposed on them substantial administrative requirements that would prejudice their competitive capacity. The economic lever used was the threat of loss of mail service to the stores.

The package and mail stores objected that if they had to use a mailbox address designator they would lose clients to the Business Centers, who do have office suites. The Postal Service's response to this was to try to protect the competitive interests of the complaining package and mail stores. It promptly declared that Business Center clients would have to use the same sort of address. The effect of this action would have been to use the mechanism at the Postal Service's disposal, address forms, to make the business centers appear in the market equivalent to the much narrower service systems of the postal service and package and mail stores.

Representatives of the business centers objected, of course. The Postal Service's response to this was to convene, in effect, a service provider's cartel to negotiate out competitive relationships.

These sessions excluded members of the public, consumers of the mailbox, mail and package store, and business center services, and some of the service providers as well. In these closed door sessions the chosen service provider representatives negotiated a price fixing agreement. They determined to make exemption from the mailbox-like address form contingent upon both using a specified range of services much broader than mailboxes and paying a significantly higher price. Because the range of services specified was much broader than mail receipt, this in effect would have given

the mailbox type stores, and the postal service, a substantial zone of market protection.

Our firm objected. We pointed out, in an analysis published by PostalWatch, which I submit with this testimony, that this amounted to an anticompetitive, anti-small business, anti-consumer price fix. The Postal Service briefly retrenched, apparently not wishing to appear to be seen a price fixer. However, using the same cartel group discussion mechanism, it recently evolved a new proposal to accomplish the same objective – that is, making a much broader range of services appear to be equal to its own services. It now proposes to use a slightly modified method – specifying the quantities and types of services, which would be represented to be equivalent to mailbox service, without explicit reference to prices.

Under the current proposal, a small businessperson must contract for a specified quota of office hours, a specified type of phone service, and other specified services. In the range between a mailbox service and the much broader set of services, which the Postal Service seeks to specify, the intent and the effect would be to make business center services look like a postal service or private sector mailbox. That is, if you used the offices, but contracted for less than the Postal service decrees, or if you used your cell phone instead of the office phone, or you used the office phone system but did not use the office voice mail, or if you did not elect to use a building directory listing, you would have to use an address marking you as a mailbox user.

As before, the enforcement mechanism for these requirements would be use of the Postal Service's monopoly power to deny mail delivery.

As an observer of regulatory proceedings over the years, I find the Postal Service's procedures peculiar, aberrant, and indeed corrupt and corrupting.

The Postal Service is basically a production house, an operations organization. Its loosely stated regulatory powers have been devised in that context, with the operational goal of getting the mail delivered. Apparently, the Postal Service is accustomed to convening elements of 'the industry' – largely its major mail customers, or representatives thereof – to go over and hash out operational issues.

Postal management has employed the same techniques for a very different purpose -- to structure a market where it does not have a monopoly and has no Congressionally protected operational role. Apparently postal management is either unaware that it is inconsistent with standard regulatory practice and with pro-competitive policy to organize ex parte, off the record, cartel meetings to influence competitive markets, or it believes itself so insulated from effective check that it is indifferent to these considerations.

Unfortunately, the record suggests the latter possibility is the reality. As Mr. Merritt has described in more detail, Postal management has simply brushed aside an attempt by the Postal Service's own Inspector General to point out that postal management had no adequate basis for its regulations – as to any sort of mail receiving operation. In its most recent statement of regulatory intent as to business center operations, Postal management did not even deign to mention the concerns raised by the Inspector General. Postal

management, at least the management at the level involved in this proceeding, appears to be undisciplined by considerations broader than its own competitive interests, and to disdain any advice it gets from its Inspector General.

I used strong words to describe Postal Management's approach in this proceeding as 'corrupt' and 'corrupting'. If it is the public policy of the United States to prescribe civil and criminal penalties for the activity of organizing groups of vendors to suppress price competition, and to bias competition by manipulating other aspects of service offers – and it is – then the use of a public agency's proceedings to accomplish this – without explicit legislative authority and exemption – is a corruption of governmental authority, and a betrayal of the public trust.

To offer private parties, who would otherwise be subject to antitrust penalty, an assumed safe harbor for participating in such conduct amounts to corrupting those parties.

However, there are reasons to think that the assumed safe harbor for these activities is not so safe.

In comments to the Postal Service in a prior proceeding, the Antitrust Division has pointed out that only activities <u>commanded</u> by government as sovereign may enjoy only <u>some</u> immunity, and the Postal Service has no blanket immunity from civil suits.

The authority given the Postal Service to deliver mail, and the monopoly of mail delivery granted it attendant to that purpose, do not extend to any mandate to exert controls in the mail receiving market, and in the broader market of alternative officing systems. In the prior competitive analysis of the CMRA proceeding published by PostalWatch and appended to this statement, I pointed out that the Postal Service has no authority to control address forms to make distinctions between the type of business activities done at those addresses. (And any attempt to do this would entail massive problems, as is now being demonstrated).

If postal management is exceeding its authorities, in the attempt to control address forms in order to restrain competition in markets other than mail delivery – and I submit that it is exceeding its authorities -- then it has no immunity from the antitrust laws for this activity. Therefore, familiar antitrust rules prohibiting the use of monopoly power to suppress competition in related markets would apply. If this is so, and if private parties join with the postal service in anticompetitive concords in these related markets, then the private parties should not have the safe haven of *Knoerr Pennington* immunity for their conduct. And if, upon investigation, it were found that the private parties in effect used the postal service to crystallize restraints on which they substantially agreed but could not agree in complete detail, then both the private parties and postal management would – and should –be subject to penalties for antitrust law violation.

Let me return to the concerns of this small business committee. Does Postal Service regulation of its competitors outside the mail service monopoly pose a risk to small businesses? You better believe it. The CMRA proceeding

to date illustrates that undisciplined and insular postal management will willingly, and even doggedly, seek to prejudice large classes of small businesses in pursuit of its own proprietary interests. We are not talking about 'risk' in any generalized and abstract way -- we are observing actuality.

What is the harm threatened to the small business clients which our own firm serves, in this particular CMRA situation?

As I mentioned earlier, our firm has come to serve many entrepreneurs in the early stages of their development, and many personal businesses operating at a small scale. It is a mission, and a responsibility, which affords us considerable gratification, in the operation of the business center.

The thrust of the Postal Service's regulations is to raise the costs of service to our clients. The young – or seasoned – lawyer who needs to see his clients in a downtown office occasionally, but less than the number of hours the Postal Service would prescribe for him, would be told to contract for more office time than he needs, or to represent to the public, in his address form, that he has no office capability and has only a mailbox. The therapist who needs occasionally to see clients downtown, close to their work, and needs to have a downtown address to signify his or her ability to do so, but does not need the type and quantity of telephone answering service which postal service management in its postal wisdom deems suitable for him or her, would be told to represent that he or she has only a mailbox service. Believe it or not, any small business which did not think it needed a building directory listing would be told to get one and pay for it, or to represent to the public, by its address form, that it has only a mailbox service.

None of these requirements have anything to do with the provision of mail service, or protecting the public from mail fraud. The justifications given in the recent statement of Postal Service regulatory intent did not even mention these topics, concerning only views of competitive equity in the mail receiving and alternative officing sectors.

All of the proposed Postal Service requirements add up to – indeed are calculated and intended to add up to – costs, or a tax, on small businesses, to be levied if they wish to choose a service other than a United States Postal Service mailbox, or a mailbox of the co-opted competitors, the private package and mail stores. Our small business customers do not need this tax.

What would it do to your health to have a leech attached to you all day, siphoning off a bit of resource all the time? The blood might not fill a quart jar, but you need it, and if you are small and growing, or maybe not so healthy today, or even very sick -- we have clients in all these categories -- you need it even more. The competitor in the marketplace, which serves you, which is masquerading as a federal bureaucrat in prescribing the leech for you, needs to stick to his appointed business – which in this case is simply and solely delivering your mail.

I will be happy later to supply this Committee with copies of comments of our customers to the Postal Service, in their own words, on what this means to them.

Thank your for your attention.

Jack Pearce
Suite 304, 1730 K. St NW
Washington D.C. 20006
202 835 0680

Statement pursuant to rule IX; clause 2(g)(4) of the Rules of the House of Representatives: Neither O.S.I. Management, Inc., nor any entity representing it or Mr. Pearce has received any contract, subcontract, or grant from any federal source during the last two fiscal years.

STRATEGIC IMPACT, INC.

August 1, 2001

Matthew Szymanski
Special Counsel
Committee on Small Business
2361 Rayburn HOB
Washington, D.C. 20515

Dear Matthew:

Enclosed is testimony prepared by the Commercial Weather Services Association – an organization that my partner and I represent.

This testimony "for the record" is to be included in the official transcript for the July 18, 2001 Committee on Small Business hearing to examine the extent, impact, and fairness of direct competition by federal agencies with small businesses.

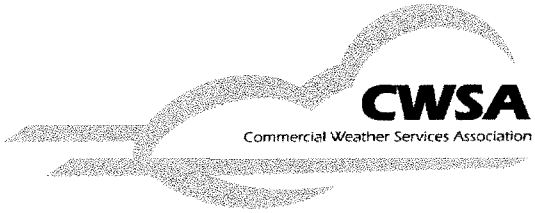
As you know, the National Weather Service's efforts to undermine the commercial weather service industry are not unique. Many federal agencies have recently ventured into commercial enterprises. But the appropriateness of such endeavors should be explored. Many private sector small businesses question – appropriately so – the legitimacy of using taxpayer dollars to "unfairly" compete with the private sector. But small business America is not the only one who loses. The real lost is suffered by the American taxpayer who is deprived of the innovations that the private sector can bring to this industry and the resulting improvements in safety.

Again, thanks for providing the Commercial Weather Services Association with the opportunity to respond to this serious problem.

Sincerely,

MICHAEL C. JIMENEZ

444 North Capitol Street, N.W., Suite 840, Washington, D.C. 20001
Phone: (202) 434-8010 ♦ Fax: (202) 434-8018



July 27, 2001

Chairman Manzullo and distinguished members of the Committee, I want to thank you for providing our organization – the Commercial Weather Services Association – with the opportunity to submit this testimony.

Are you aware of the fact that 85% of the general public receive their weather information from the Private Sector? And that over 90% of the Private Sector weather companies are considered small businesses based on annual revenue? And based on the number of graduating meteorologists and new business applications for weather information, that the commercial weather industry is one of the fastest growing industries in the US?

Well, those are just some of the statistics that represent the demographics of the US weather industry. As the trade organization representing a growing number of those businesses, the Commercial Weather Services Association (CWSA) is very interested in sharing this information with our lawmakers on the Hill.

Weather forecasts have been packaged and sold since 1945. There are close to 350 businesses offering a diverse range of services from specialized forecasting for agriculture, aviation, surface transportation and energy, tailored software, hardware and data services for broadcast and print media, consulting services for construction and film companies, weather and climate data and long range forecasts for the weather risk trading industry, and other services. There are private weather companies in every state, and within each state, in both rural and urban communities. In some regard this profession is no different than the Medical or Dental professions where degreed scientists conduct business with an entrepreneurial spirit.

After years of developing many markets for weather, we now find ourselves at risk of losing it all to the Federal Government. It was the Private Sector and our inherent need for innovation that stimulated the interest in weather products and services. We approached market segment after market segment with better ways to plan and operate using weather information. We designed specific products including forecasts to meet their needs and we delivered them reliably and efficiently using many different methods, i.e. satellites, telephone lines via voice and fax, and the internet.

CWSA c/o Rodger Getz P.O. Box 3267 Auburn, AL 36381-3267 Tel 334 826-2149
x104

We, in the Private Sector, embraced the internet before it became popular. Now we see our Government partners using it against us to undermine our efforts. The level and degree of competition has increased significantly in recent times due to the flood of weather data and forecasts made openly available on NWS web sites.

While we understand the NWS' need to disseminate their routine information via the internet, we are also aware of the impact of that action to the industry. Not only does it stifle growth by providing an outlet for businesses to access (thus becoming a lost opportunity for the industry to pursue) but it also presents an opportunity for the Government's field office to go the next step and tailor information for those parties. Is this the way Congress wishes to stimulate economic growth in the US? If it is, it has serious consequences to our industry.

This loss of potential business costs our industry significant revenue. The amount is unknown as the 118 NWS field offices scattered across the nation quietly provide services to our existing and prospective customers. Our knowledge about this is limited to potential customers that reveal to us that they have been obtaining services from their nearest NWS field office. It is against NWS national policy to provide products and services that can be provided by the private sector. However, this policy has been largely ignored by NWS offices who believe that they can operate autonomously. There is no effective mechanism in place to monitor and deal with this problem. The sending of memos from Washington headquarters has little effect on stopping the abuse.

Here are several specific examples of direct competition:

1. A NWS field office located in California routinely *faxes* their monthly weather data summary to individuals required to file construction progress reports. Commercial weather providers could not only sell customers the same data but also provide more detailed analysis as well as comparative data for multiple locations. Commercial providers could also try to market weather forecasts and consulting services to the contractor. The potential monthly revenue loss is substantial.

2. The weather risk trading industry is a new industry that trades weather risks worth billions of dollars. They require weather observations and forecasts for specific locations for which the risk is being traded. Nearly all of the weather risk trading industry consists of very small companies, many operating with only a few people much like day traders in the financial markets. One such small trading firm located in Houston, TX routinely downloads weather observations and forecasts from NWS field office web sites rather than contracting with a private weather company to provide

these services. Such contracts could be worth $500 to $1000 per trader each month.

3. Many small businesses now have web sites to serve their customers and to attract new business. Weather is a popular feature on most web servers. A number of commercial weather companies, large and small, offer customized local weather content for web servers. Recent changes in the design of NWS national and field office web sites now make it very convenient to get complete customized local weather content directly from the NWS rather than commercial sources. This is a problem around the nation. The loss of revenue is not just in the selling of weather content to web sites but in the loss of advertising revenue when the weather content is provided at no cost. The combined loss of direct content sales, as well as, advertising revenue is in the *millions of dollars*.

4. A small western state's utility routinely called their local NWS field office and obtained specific temperature forecasts for the next ten days from one of their forecasters. This forecaster was a "buddy" of the guy from the utility company. It wasn't until the utility decided that they required forecasts for longer than ten days in advance, not available from his NWS contact, that the utility finally decided that they would need to contract with a commercial weather provider. Similar situations are likely at every NWS field office and cost our industry millions of dollars in lost revenue.

The preceding is just a snapshot of the abuses perpetrated by our Federal partners. We in the industry have become somewhat of a watchdog on the 'steam train coming down the track' known as the NWS but our core business is providing weather information not implementing policy for the NWS.

We are sending this message to our colleagues on the Hill to heighten your awareness to this growing problem. We are not willing to watch our industry languish under the careless abuse of Government funded functions and we hope that you aren't either.

Respectfully yours,

Commercial Weather Services Association

Rodger Getz
Chair, Legislative Committee

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x104

House Committee on Small Business
United States Congress
Attn: Rep. Manzullo
Washington, D.C.

July 16, 2001

Dear Congressman Manzullo,

Late last week I was informed of your July 18th hearing on government incursion into the private sector. I very much wished to attend the hearing and testify regarding the outfitting activities of the US Army and Air Force on the Arkansas River in Colorado. I would gladly pay for such a trip from my own pocket but my business and community commitments demand my attention here at this busy time of year. I hope that this written testimony will carry some weight with the Committee and that you will be able to bring the powers of Congress to bear on this issue.

For the record, I am a river outfitter operating on the Arkansas River in Colorado. My company, Canyon Marine, hosts 6000-7000 guests each year and my fly-fishing guide service, ArkAnglers, hosts about 1500 guests. I have been an outfitter for 10 years and worked as a commercial guide for 7 years prior to that. I have served as Chairman of the Colorado River Outfitters Association, am Vice-Chairman of the Arkansas River Outfitters Association, serve on the Colorado Department of Natural Resources River Surface Recreation Forum, and am Chairman of the Arkansas Headwaters Recreation Area Citizens Task Force, the group which oversees Colorado State Parks and the BLM in their joint management of this recreation area. I had the good fortune to attend Yale University (BA 1989) and reside in Salida, Colorado with my wife and two young children.

The Arkansas River is the most popular rafting destination in the world. Over 250,000 commercial guests participated in raft trips here last year. There are currently 59 commercial permits for the Arkansas River, three of which are held by the military. The large number of permits has fueled serious competition on this river. Low trip prices attract more guests and the increasing volume of guests then allows the prices to stay low – something of a positive feedback loop that benefits the public with affordable rafting but keeps outfitter margins quite low. Within this economic environment, the Air Force Academy, Fort Carson, and Peterson Air Force Base/Norad each control commercial permits and operate rafting companies on the Arkansas River.

The military claims that these rafting companies exist solely to provide affordable recreation for our service people. In fact, they compete directly with the private sector by

offering their trips at severely reduced rates to the public and by providing a service to the members of the military that could be better accomplished through contracting with private companies.

While there is no question that members of the military should receive every opportunity to recreate at affordable rates, there is also no question that the private sector is well-prepared to provide the military with affordable rafting on the Arkansas. If the contracts to take service men and women were put out to bid among the other 56 commercial river outfitters, the military would receive a better trip for equal or less cost to our soldiers and without any of the overhead (vehicles, equipment, staff…etc.) they now incur. My colleagues and I find it extremely frustrating that our tax dollars, wrung from the low margins of this competitive business, go towards the purchase of new boats, vehicles, and equipment for the military and towards subsidizing trips for the military when we could provide those trips ourselves. As one of my competitors put it, " I don't outfit a platoon during the off-season and bid against the Army for border patrols in Korea. Why do they get to have a rafting company?" At the end of a river trip with me through the Royal Gorge in 1996(?), Colonel Tony Koren who was Deputy Base Commander of Fort Carson at the time (since retired) told me that he wanted all of his soldiers to raft with Canyon Marine, that the Fort Carson rafting program was an inferior product and a waste of tax dollars, and that he would work to change the system so that the military rafting contract would be awarded to a commercial outfitter bid and not run by the military in competition with the private sector. Unfortunately Colonel Koren took early retirement soon after our trip and nothing further happened.

The problem of military rafting is even more insidious than the issue of competing with the private sector for the opportunity to serve our military recreation needs. The military rafting companies compete with us to provide rafting to the general public as well. Simply standing at the put-in and watching these rafting companies would convince any member of Congress that their passengers are not solely military. But there is more evidence than that.

1) In 1997, the United States Air Force Academy had a fatality on a Browns Canyon rafting trip. After the accident, I spoke with then Park Manager Steve Reese regarding the particulars of the accident. Though the State Parks investigation focused on safety issues, it revealed that the deceased, a male in his mid-thirties, was not in any way affiliated with the military – the closest relation to the military they could establish was that the father of the victim's fiancé had served two years 30-some years prior to the accident. It is disturbing to note that Scottish Commandos on an exchange program to the area, and passengers on this raft trip, were the ones who performed CPR on the victim and commandeered a commercial outfitter's van to rush the victim to the hospital while the USAFA guides tended to other priorities.
2) Last summer (2000) I guided one of my regular fishing clients (Ron Marshall, Lt. Colonel (retired), US Air Force) on a float-fishing trip on the Arkansas. Since retiring, Ron has become an Olympic Volleyball Referee and does a lot of work with the US Women's Team at the Olympic Training Center in Colorado Springs. At the time of the trip, Ron mentioned that he wanted to

take the US Women's team rafting on a full-day trip through the Royal Gorge – 20 to 30 people in all. I told him that I would be glad to work up a proposal for a great deal on a trip for him. He said that he would love to go with us but that he sincerely doubted we could match the deal available through "Space Command" (the Peterson Air Force Base / Norad rafting company). He told me that the summer before, he had arranged a trip for the team that included a full-day Royal Gorge trip, wetsuit rental, lunch, and round trip transportation from Colorado Springs for $35/person. Commercially, the brochure rate for such a trip would be $85/person for the trip and lunch, $14 for the wetsuit rental, and transportation from Colorado Springs to the rafting office/meeting spot would have to be arranged through a charter service as PUC regulations prohibit rafting companies from charging to transport our guests. For a special group like this, I would have offered the trip for $65/person, wetsuits included. Even at this phenomenal discount, the Air Force price was half what mine was.

3) David Burch, recently retired owner of Echo Canyon River Expeditions in Canon City, recounts the experience of delivering brochures to the Ramada Inn in Colorado Springs and hearing from the manager that the Space Command people had been there earlier that day. Mr. Burch was told that Space Command had offered the manager a $5/person "rebate" for each guest he referred to the military rafting company.

I know that I could book myself on one of these raft trips at any time and would have done so as evidence for this hearing if I had had more advanced notice.

In the late 1980's, Dvorak's Expeditions was contracted by Fort Carson to provide their program with guide training as Fort Carson did not have guides with enough experience to qualify as instructors. As a senior guide with Dvorak's, I oversaw this guide training program. The state requires 50 hours of on-river training to be a guide in Colorado, though I don't know of any outfitter who requires less than 100 hours. When I trained the Fort Carson guides, the manager of the program insisted on providing only 50 hours of training and that 50 hours included 3 hours each day driving to and from Colorado Springs and an hour for lunch. At the end of the program I refused to "qualify" the guides based on their limited on-water time and provided simply a letter acknowledging the actual time they spent training. Their first "commercial" trip that season was a disaster with swimmers everywhere and a boat "wrapped" around a rock in the middle of a rapid.

The military rafting activity on the Arkansas River reflects poorly on the military, does not serve the taxpayer or the best interests of our service people, and competes directly with the private sector for both military recreation services and rafting services for the general public. On behalf of the 56 legitimate river outfitters on the Arkansas River, I urge you to use the powers of Congress to put an end to this activity and to allow the professional outfitters of Colorado to serve the public and our people in uniform.

Please feel free to contact me directly regarding this testimony. With better prior notification, I will gladly attend future hearings in Washington regarding this issue.

Thank you for your consideration of this testimony.

Sincerely,

Greg Felt
Canyon Marine, Inc.
PO BOX 545
Salida, CO 81201
Phone 719-539-7476
Fax 719-539-1265
e-mail canyonmarine@cs.com

Application Cards

Tear off this page, fill it out, and turn it in to your post office.

Application for Post Office Box or Caller Service – Part 1

Customer completes items 1, 3–7, 15, and 18. Post office completes shaded items 2, 8–14, 16, 17, and 19.

1. Name(s) to which box number(s) is (are) assigned

2. Box or caller number(s) _____ through _____

3. Name of person applying, title (if representing an organization), and name of organization *(If different from item 1)*

4. Will this box be used for soliciting or doing business with the public? *(Check one)*
   a. Yes ☐ b. No ☐

5. Address *(Number, street, apt. no.; city, state, and ZIP Code)*. When address changes, cross out address here and put new address on back.

6. Telephone number

7. Signature of applicant *(identified in item 3)*
   I agree to comply with all postal rules regarding post office box or caller services (as applicable).

8. Date application received

9. Enter two types of identification and ID nos.; one must be photo bearing *(Driver's license, military ID, other)*

10. Dates of service _____ through _____

11. Check eligibility for carrier delivery
    ☐a. City ☐b. Rural ☐c. HCR ☐d. None

12. Service assigned
    ☐a. Box ☐b. Caller ☐c. Receiver number

13. Box size needed

14. Identification and physical address verified by *(initials)*

PS Form **1093**, July 1998

Use a separate form for each number or consecutive group of numbers, and type of service. File part 1 alphabetically by customer's name.

Application for Post Office Box or Caller Service – Part 2

Special Orders

15. Postmaster: The following named persons or representatives of the organization listed below are authorized to accept mail addressed to this (these) post office box(es) or caller number(s). Valid identification and proof of physical address must be provided with each name. Continue on back if necessary.

a. Name(s) of applicant(s) *(Same as item 3)*

b. Name of box customer *(Same as item 1)*

Customer note: The Postal Service may consider it valid evidence that a person is authorized to remove mail from the box if that person possesses a key or combination to the box.

c. Other Authorized Representative

d. Other Authorized Representative

16. Signature of applicant (same as item 3)
    I have read the instructions and agree to comply with the applicable standards. I certify that the statements made by me are true and complete. I understand that anyone who furnishes false or misleading information on this form or who omits material information requested on the form may be subject to criminal sanctions (including fines and imprisonment) and/or civil sanctions (including multiple damages and civil penalties). See complete Privacy Act Statement on the reverse.

PS Form **1093**, July 1998

Use a separate form for each number or consecutive group of numbers, and type of service. File part 2 by box or caller number.

Privacy Act Statement: The collection of this information is authorized by 39 USC 403 and 404. This information will be used to provide the applicant with post office box or caller service. As a routine use, the information may be disclosed to anyone, when the box is used for the purpose of doing or soliciting business with the public; to persons authorized by law to serve legal process for the purpose of serving such process; to an appropriate government agency, domestic or foreign, for law enforcement purposes; where pertinent, in a legal proceeding to which the USPS is a party or has an interest; to a government agency in order to obtain information relevant to a USPS decision concerning employment, security clearances, security or suitability investigations, contracts, licenses, grants, permits, or other benefits; to a government agency upon its request when relevant to its decision concerning employment, security clearances, contracts, licenses, grants, or other benefits; to a congressional office at your request; to an expert, consultant, or other person under contract with the USPS to fulfill an agency function; to the Federal Records Center for storage; to the Office of Management and Budget for review of private relief legislation; to an independent certified public accountant during an official audit of USPS finances; to an investigator, administrative judge or complaints examiner appointed by the Equal Opportunity Commission for investigation of a formal EEO complaint under 29 CFR 1614; and to a labor organization as required by the National Labor Relations Act. Completion of this form is voluntary; however, if this information is not provided, the applicant will not be able to receive a box or use caller service.

United States Postal Service

Application for Delivery of Mail Through Agent

See Privacy Act Statement on Reverse

In consideration of delivery of my or our (firm) mail to the agent named below, the addressee and agent agree: (1) the addressee or the agent must not file a change of address order with the Postal Service upon termination of the agency relationship; (2) the transfer of mail to another address is the responsibility of the addressee and the agent; (3) all mail delivered to the agency under this authorization must be prepaid with new postage when redeposited in the mails; (4) upon request the agent must provide to the Postal Service all addresses to which the agency transfers mail; and (5) when any information required on this form changes or becomes obsolete, the addressee(s) must file a revised application with the Commercial Mail Receiving Agency (CMRA).

NOTE: The applicant must execute this form in duplicate in the presence of the agent, his or her authorized employee, or a notary public. The agent provides the original completed signed Form 1583 to the Postal Service and retains a duplicate completed signed copy at the CMRA business location. The CMRA copy of Form 1583 must at all times be available for examination by the postmaster (or designee) and the Postal Inspection Service. The addressee and the agent agree to comply with all applicable postal rules and regulations relative to delivery of mail through an agent. Failure to comply will subject the agency to withholding of mail from delivery until corrective action is taken.

This application may be subject to verification procedures by the Postal Service to confirm that the applicant resides or conducts business at the home or business address listed in boxes 7 or 10, and that the identification listed in box 8 is valid.

2. Name in Which Applicant's Mail Will Be Received for Delivery to Agent. *(Complete a separate Form 1583 for EACH applicant. Spouses may complete and sign one Form 1583. Two items of valid identification apply to each spouse. Include dissimilar information for either spouse in appropriate box.)*

3. Address to Be Used for Delivery Including ZIP + 4

4. Applicant Authorizes Delivery to and in Care of *(Name, address, and ZIP Code of agent)*

5. This Authorization Is Extended to Include Restricted Delivery Mail for the Undersigned(s)

6. Name of Applicant

7. Applicant Home Address *(Number, street, city, state, and ZIP Code)*

8. Two types of identification are required. One must contain a photograph of the addressee(s). Social Security cards, credit cards, and birth certificates are unacceptable as identification. The agent must write in identifying information. Subject to verification.

a.

b.

Acceptable identification includes: valid driver's license or state non-driver's identification card; armed forces, government, university or recognized corporate identification card; passport or alien registration card or certificate of naturalization; current lease, mortgage or Deed of Trust; voter or vehicle registration card; or a home or vehicle insurance policy. A photocopy of your identification may be retained by agent for verification.

Telephone Number ( )

9. Name of Firm or Corporation

10. Business Address *(Number, street, city, state and ZIP Code)*

Telephone Number ( )

11. Kind of Business

12. If Applicant Is a Firm, Name Each Member Whose Mail Is to Be Delivered. *(All names listed must have verifiable identification. A guardian must list the names and ages of minors receiving mail at their delivery address.)*

13. If a CORPORATION, Give Names and Addresses of Its Officers

14. If Business Name of The Address *(Corporation or Trade Name)* Has Been Registered, Give Name of County and State, and Date of Registration.

Warning: The furnishing of false or misleading information on this form or omission of material information may result in criminal sanctions (including fines and imprisonment) and/or civil sanctions (including multiple damages and civil penalties). *(18 U.S.C. 1001)*

15. Signature of Agent/Notary Public

16. Signature of Applicant *(If firm or corporation, application must be signed by officer. Show title.)*

Privacy Act Statement

"Privacy Act Statement: The collection of this information is authorized by 39 USC 403 and 404. This information will be used to authorize the delivery of the intended addressee's mail to another. The Postal Service may disclose this information to an appropriate government agency, domestic or foreign, for law enforcement purposes; where pertinent, in a legal proceeding to which the USPS is a party or has an interest; to a government agency in order to obtain or provide information relevant to an agency decision concerning employment, security clearances, contracts, licenses, grants, permits or other benefits; to a congressional office at your request; to an expert, consultant, or other person under contract with the USPS to fulfill an agency function; to the Federal Records Center for storage; and for the purpose of identifying an address as an address of an agent to whom mail is delivered on the behalf of other persons. Information concerning an individual who has filed an appropriate protected court order with the postmaster will not be disclosed in any of the above circumstances except pursuant to the order of a court of competent jurisdiction. Completion of this form is voluntary; however, without the information, the mail will be withheld from delivery to the agent and delivered to the addressee, or, if the address of the addressee is that of the agent, returned to the sender."

July 27, 2001

The Honorable Donald Manzullo
Chairman
Small Business Committee
United States House of Representatives
409 Cannon House Office Building
Washington, D.C. 20515-1316

Dear Mr. Chairman:

Thank you for the opportunity to testify at the July 18, 2001 Small Business Committee hearing on unfair competition by federal and federally assisted entities against private companies. At the hearing's conclusion you asked that I update my testimony with information concerning Blue Bird Coach Lines' unsuccessful fight against the unfair competition of the Rochester-Genesee Regional Transit Authority (RGRTA). This letter responds to your request.

In 1997, RGRTA, a recipient of Federal Transit Administration (FTA) funds, began a roundtrip service to carry passengers from the Rochester area to football and basketball games in Buffalo (150 miles roundtrip) and Syracuse (190 miles roundtrip). The $15 service was open to the general public and no advanced reservations were required. The buses departed Rochester several hours before game time. When the buses arrived at the stadium parking lot, passengers were reminded of their bus numbers so that they could return on the same bus. Buses would depart for the return trip forty-five minutes after the game ended, or when all passengers were accounted for.

In October 1997, Blue Bird Coach Lines, and Kemp Bus Service, private charter bus service providers, complained to the FTA Regional Administrator that the RGRTA service was a "charter service" that did not meet the requirements of the Federal Transit Act or the FTA's regulations. Specifically, they claimed that the service was charter service outside the urban area in which RGRTA regularly provided scheduled mass transportation service and also that the transit agency was engaging in charter service where private companies were "ready and willing to provide service" in violation of the law. Blue Bird and Kemp also alleged that the RGRTA was expanding its Federal funded services to intercity bus service well beyond the purpose for which funding was made available, in direct competition with private carriers.

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In February 1998, the Regional Administrator dismissed the complaint after concluding that the service was "mass transportation" that was not subject to the statutory prohibitions and charter regulations. The FTA Administrator upheld this determination in October of 1998.

Blue Bird and Kemp filed suit in United States District Court for review of the FTA order. In May 1999 the court found that as the order was not "arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law" it could only dismiss the case. *Blue Bird Coach Lines v. Linton,* 48 F. Supp. 2d at 48 (D.D.C. 1999). (A copy of the court's ruling is attached). The court's decision, while adverse to Blue Bird and the private bus industry, does not end the discussion of unfair competition. In fact, the decision highlights the need for Congress to act in two areas: (1) to provide a stronger and clearer definition of "charter service"; and (2) to prohibit transit agencies from providing intercity service outside their urban areas. As you are aware, in deciding the case, the court could not substitute its judgment for that of the agency but had to defer to it if there was a "reasoned explanation" for its decision. *Blue Bird, supra at 50.* The decision is wrong not because of the actions of the judge but because FTA's approval of charter services by transit agencies in competition with private companies should not be countenanced, particularly where the service is so far from the transit agency's area of operations.

I would like to offer one other example of this kind of unfair competition. This example was brought to my attention just after Wednesday's hearing. In 1988, the Massachusetts Bay Transit Authority (MBTA), a federally subsidized rail carrier began offering service between Providence, Rhode Island and Boston, Massachusetts. Lately, MBTA has added additional runs on the line going beyond its original commuter service. Attached hereto is a letter from the General Manager of Bonanza Bus Lines, the private operator that has seen a fifty percent decline in passengers on the route from Providence to Boston since the inception of the MBTA service.

As I stated at the hearing, if this outcome were the result of pure and fair competition between the modes there would be little reason for Bonanza to complain. But here, as in *Blue Bird,* the subsidized carrier charged far less than the fare charged by Bonanza on the same route. As a result, Bonanza and its employees, face an uncertain future. Ultimately, the riding public also is disadvantaged. Any private carrier faced with such competition will have no choice but to end service along unprofitable routes. As its route structure diminishes the carrier will offer less service to the public, leaving more consumers with fewer options and greater costs.

Mr. Chairman, ABA appreciates your interest in redressing the unfair competition our members face. We hope we have given you some appreciation of the need for legislative action to reverse the trend of ever more unfair competition by private bus owners. Congress should restrict publicly funded transit agencies from offering charter service and limit their ability to offer scheduled bus service outside of the agencies normal service areas. Please rely on us to do everything in our power to help you in this effort. On behalf of the ABA and its members, I remain

Sincerely yours,

Clyde J. Hart, Jr.
Vice President for Government Affairs
American Bus Association

Cc:

The Honorable Nydia Velazquez
2241 Rayburn House Office Building
Washington, D.C. 20515-3212

The Honorable Jim Langevin
109 Cannon House Office Building
Washington, D.C. 20515-3902

The Honorable Jennifer L. Dorn
Administrator
Federal Transit Administration
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Don Ross
General Manager
Bonanza Bus Lines
One Bonanza Way
Providence, Rhode Island 02904

*48 F. Supp. 2d 47, *; 1999 U.S. Dist. LEXIS 7952, **

BLUE BIRD COACH LINES, INC., et al., Plaintiffs, v. ADMINISTRATOR GORDON J. LINTON, Federal Transit Administration, Defendant.

Civil Action No. 98-1967 (JR)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

48 F. Supp. 2d 47; 1999 U.S. Dist. LEXIS 7952

May 26, 1999, Decided
May 26, 1999, Filed

DISPOSITION: [**1] Defendant's motion for summary judgment [# 30] granted and plaintiff's case dismissed with prejudice.

CORE TERMS: charter, transportation, shuttle service, bus, bus service, game, passengers, Fta Act, transportation service, recipient, miles, general public, fares, buses, capricious, route, regularly scheduled, fixed charge, memorandum, intercity, roundtrip, funded, summary judgment, judicial review, agency action, private club, open door, basketball, providers, scheduled

COUNSEL: Jeremy Kahn, Kahn & Kahn, Washington, DC, for Plaintiff.

Paul S. Padda, Assistant U.S. Attorney, Washington, DC, for Defendant.

JUDGES: JAMES ROBERTSON, United States District Judge.

OPINIONBY: JAMES ROBERTSON

OPINION: [*48] **MEMORANDUM**

The Federal Transit Administration ("FTA") Administrator determined that a public shuttle bus service to football and basketball games was "mass transportation" within the meaning of the FTA Act, 49 U.S.C. § 5301 et seq. (formerly known as the Urban Mass Transportation Act). Plaintiffs, who are providers of charter bus service, complain that the FTA determination was unlawful and that they have been injured by it. Both sides have moved for summary judgment. Because I cannot find that the FTA determination was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," 5 U.S.C. § 706 (2)(A), I must deny plaintiffs' motion and award judgment to the government defendant.

Background

In 1997, the Rochester-Genessee Regional Transit Authority ("RGRTA"), a recipient of FTA funds, launched a roundtrip "shuttle service" [**2] to carry passengers from the Rochester area to football and basketball games in Buffalo (150 miles roundtrip) and Syracuse (190 miles roundtrip) respectively. A.R. 176. The widely-advertised $ 15 service was open to the general public. No advance reservations were necessary. The buses departed Rochester several hours before game time. When the buses arrived at the stadium parking lot, passengers were reminded of their bus numbers so that they could return to Rochester on the same bus that carried them to the [*49] game. Shuttle buses would depart for the return trip forty-five minutes after the game ended, or when all the passengers were accounted for.

On October 28, 1997, plaintiffs Blue Bird Coach Lines, Inc. and Kemp Bus Service, Inc., private charter bus service providers, A.R. at 169-170, complained to the FTA Region 2

v. Camp, 397 U.S. 150, 153, 25 L. Ed. 2d 184, 90 S. Ct. 827 (1970). Plaintiffs' standing is indeed expressly recognized by the Charter Regulations, which permit an "interested party" -- "an individual, [*50] partnership, corporation, association, or public or private organization that has a financial interest which is adversely affected by the acts or acts of the recipient regarding charter service," 49 C.F.R. § 604.3(j)(emphasis added) [**6] -- to file a complaint if it "believes that a recipient [public transit authority] is in violation of the requirements of [the Charter Regulations]." § 604.15(a). See also § 604.21 ("The Regional Administrator's decision, or the Administrator's decision on appeal...is subject to judicial review pursuant to sections 701-706 of [the APA]."). That plaintiffs have standing is also supported by their allegation of an injury-in-fact and the FTA Act's lack of any provision barring judicial review. n2

- - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - -

n2 Plaintiffs thus satisfy this Circuit's "three-part test [for] determining whether a party has standing to obtain review of agency action: (1) the complaint must allege injury in fact; (2) the complainant must assert that arbitrary or capricious agency action injured an interest arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question; and (3) there must be no "clear and convincing" indication of a legislative intent to withhold judicial review." National Treasury Employees Union v. United States Merit Sys. Protection Bd., 240 U.S. App. D.C. 51, 743 F.2d 895, 910 (D.C. Cir. 1984).

- - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - - [**7]

In determining whether the Administrator's determination was arbitrary and capricious, I may not substitute my judgment for that of the agency, see Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43, 77 L. Ed. 2d 443, 103 S. Ct. 2856 (1983), but rather must "defer to [FTA's] experience provided that the agency has offered a reasoned explanation for its decision, and [the agency's] result is in accord with material facts contained in the administrative record." DSE, Inc. v. United States, 335 U.S. App. D.C. 105, 169 F.3d 21, 30 (D.C. Cir. 1999).

The FTA Act defines "mass transportation," § 5302(a)(7), n3 and the Charter Regulations define "charter service," 49 C.F.R. § 604.5(e). n4 The FTA has described three elements distinguishing "mass transportation" from "charter service":

> First, mass transportation is under the control of the recipient. Generally, the recipient is responsible for setting the route, rate, and schedule and deciding what equipment is used. Second, the service is designed to benefit the public at large and not some special organization such as a private club. Third, mass transportation is open to the public and is not closed door. [**8] Thus anyone who wishes to ride on the service must be permitted to do so.

52 Fed. Reg. 11916, 11920 (Apr. 13, 1987) (emphasis added). See also 52 Fed.Reg. 42248, 42252 (discussing "charter service").

- - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - -

n3 The FTA Act defines "mass transportation" as "transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include schoolbus, charter, or sightseeing transportation." 49 U.S.C. § 5302(a)(7)(emphasis added).

The FTA's determination that the RGRTA shuttle service satisfies its three-factor test that it is "mass transportation," and that it is not subject to the Charter Regulations, was not "arbitrary" or "capricious."

This conclusion is not undermined by the plaintiffs' argument that the shuttle service constituted "intercity bus service." Pl.'s Mot. Summ. J. at 15, 27. The FTA defines "intercity bus service" as "regularly scheduled bus services for the general public which operates with limited stops over fixed routes connecting two or more urban areas not in close proximity, which has the capacity for transporting baggage carried by passengers, and which makes meaningful connections with scheduled bus service to more distant points...." A.R. 1 (Administrator's Decision at [**12] 1) (citing Non-urbanized Area Formula Program Guidance, Ch. VII, P 6). The Administrator rationally noted that the shuttle service does not meet this definition because it is "designed to carry attendees to sporting events and not to transport baggage-carrying passengers to connections with long-distance bus service." A.R. 1. Nor is the shuttle service not "mass transportation" simply because it covers a considerable distance and has limited stops: FTA has funded public bus service between Atlantic City and New York City (approximately 100 miles); between New York City and Cape May, New Jersey (approximately 100 miles); and between Cape May and Philadelphia, Pennsylvania (approximately 80 miles). A.R. 1-2.

[*52] An appropriate order accompanies this memorandum.

May 26, 1999

JAMES ROBERTSON

United States District Judge

ORDER

For the reasons stated in the accompanying memorandum, it is hereby

ORDERED that the defendant's motion for summary judgment [# 30] is **granted**, and it is

FURTHER ORDERED that the plaintiff's case is **dismissed with prejudice.**

This 26th day of May, 1999

JAMES ROBERTSON

United States District Judge

Service: **LEXSEE®**
Citation: **48 F. Supp. 2d 47**
View: Full
Date/Time: Tuesday, April 25, 2000 - 4:14 PM EDT

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July 5, 2001

Mr. Raymond Simone
Chief of Staff, Senator Jack Reed
United States Senate
Washington, DC 20510

Re: Bonanza Bus Lines, Inc.

Dear Mr. Simone:

During your recent conversation with Cranston councilman, and Bonanza employee, John Lanni, you requested that Bonanza forward you some facts and figures on the adverse effects that federally subsidized Massachusetts Bay Transit Authority (MBTA) rail service has had and will continue to have on Bonanza. The purpose of this letter is to provide you the requested information.

In 1988, the MBTA began offering federally subsidized commuter rail service between Providence, Rhode Island and Boston, Massachusetts. This new service ran five (5) schedules between the cities with three (3) trips in the morning and (2) trips in the afternoon. The federal subsidization allowed the MBTA to charge a fare less than half the fare that Bonanza, a Rhode Island corporation that does not receive any federal or state subsides, charged on the same route.

As would be expected, Bonanza suffered a severe drop in ridership on the route following the implementation of the competing MBTA service. The loss of revenues forced the company to cut down on the services provided to the community by reducing the number of trips between Boston and Providence. However, Bonanza's load factors continued to drop even on the reduced trips. While an extension of Bonanza's Boston-Providence service to T. F. Green Airport in 1996 helped to reduce the financial hardship, Bonanza has still suffered a fifty percent (50%) decline in passengers handled on this route from 1988 through today.

On July 10, 2000, the MBTA, in cooperation with the state of Rhode Island, added three (3) new trips on the route, and on May 28, 2001, another four (4) trips were added. These seven new trips can not be characterized as commuter rail service. When combined with the original service, the effect is that a federally subsidized entity is systematically putting a non-subsidized business out of business in this route system. Federal law, as set forth in Sections 3(e) and 8(o) of the Federal Transit Act, codified at 49 U.S.C. § 5323(a)(1) and 5306(a), respectively, requires recipients of Federal funds to provide for the maximum feasible participation of private enterprise in the plans and programs funded under that Act.

Bonanza has been providing services in this community for over fourty five years and currently employs 150 local residents. The implementation of the federally subsidized competing

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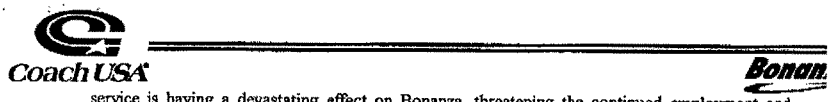

service is having a devastating effect on Bonanza, threatening the continued employment and livelihoods of its employees. Bonanza and its employees appreciates your time and attention to this matter.

Yours very truly,

Don Ross

Don Ross
General Manager
Bonanza Bus Lines

cc: Curt Lindeman, Esq.
Brian Schattle, Regional Vice President

One Bonanza Way • Providence, Rhode Island 02904 • Phone: (401) 331-7500 • Fax: (401) 331-7537 • www.bonanzabus.com

August 14, 2001

Mr. Michael Spates
Manager
Delivery Operations
U.S. Postal Service
475 L'Enfant Plaza, SW
Room 7142
Washington, DC 20260-2802

Re: USPS Regulation Concerning Commercial Mail Receiving Agencies

Dear Mr. Spates:

By way of introduction, the Office of Advocacy of the U.S. Small Business Administration (SBA) was established by Congress under Pub. L. No. 94-305 to represent the views of small business before Federal agencies and Congress. Implicit in our mission to represent small businesses is the duty to ensure that public policies do not erect barriers or harm competition.

On July 11, 2001, the United States Postal Service (USPS) published a proposed rule on *Delivery of Mail to a Commercial Mail Receiving Agency* in the Federal Register, Vol. 66, No. 133, p. 36224. The proposed rule revises USPS' regulations that govern procedures for delivery of an addressee's mail to a commercial mail receiving agency (CMRA).

The proposed regulation removes the monetary requirement for defining an Office Business Center (OBC) and sets forth procedures for identifying when an OBC or part of its operation is considered a CMRA for purposes of complying with the CMRA regulations. Specifically, under the proposed regulation, an OBC customer is considered to be a CMRA if its contract with the OBC provides for mail service only or mail along with other business services without regard to occupancy. Moreover, an OBC customer receiving mail at the OBC address is considered to be a CMRA customer for postal purposes if each of the following is true:

(1) The customer's written agreement with the OBC does not provide for the full-time use of one or more of the private offices within the OBC facility; and
(2) The customer's written agreement with the OBC does not provide all of the following:
(A) The use of one or more of the private offices within the OBC facility for at least 16 hours per month;
(B) Full-time receptionist service and live personal telephone answering service during normal business hours and voice mail service after hours;
(C) A listing in the office directory, if available, in the building in which the OBC is located; and

(D) Use of conference rooms and other business services on demand, such as secretarial services, word processing, administrative services, meeting planning, travel arrangements, and videoconferencing.

The CMRA Rule

On March 25, 1999, USPS published a final rule on *Delivery of Mail to Commercial Mail Receiving Agencies* (CMRA) in the Federal Register, Vol. 64, No. 57, p. 14385. The rule required CMRA customers to use the abbreviation PMB in their addresses rather than other terms such as "suite," "unit," "apartment," etc. It also required:

1) CMRA customers to provide an actual address to USPS on a PS Form 1583;
2) CMRA owners to verify and match information on an application for a private mailbox (PMB) with information provided on the PS Form 1583;
3) CMRA owners or managers and each addressee to complete and sign a PS Form 1583; and
4) CMRA owners to submit a quarterly report to USPS with the names of new customers, current customers, and customers terminated within the last 12 months.

On March 13, 2000, USPS published another proposed rule on *Delivery of Mail to Commercial Mail Receiving Agencies* in the Federal Register, Vol. 65, No. 49, p. 13258. The purpose of the proposal was to revise the requirement that private mailbox users use the term "PMB" in their addresses. The proposed rule amends the CMRA rule that was finalized in March 1999 by allowing CMRA users to use the "#" sign as an alternative to the PMB designator. The proposal also allows CMRA users to use three-line addresses.

On August 16, 2000, USPS published the final rule. Federal Register, Vol. 65, No. 159, p. 49917. The final rule requires all CMRA users to use either "PMB" or the "#" sign in their addresses. All CMRA users must comply with the rule by August 26, 2001.

At the time that the rule was finalized, USPS asserted that the rule was necessary to address mail fraud. The only evidence that fraud was occurring at CMRAs was anecdotal. There were no studies to indicate the rate of fraud or support the necessity of the rule. There was also no indication that USPS had considered the impact of the rule on competition.

On April 9, 2001, the USPS Office of Inspector General (OIG) issued a report on USPS' rulemaking process in the CMRA rule. The OIG found that USPS did not "demonstrate the need for regulatory change by presenting statistical or scientific data to support claims of mail fraud conducted through private mailboxes." Moreover, the regulations "did not show how the regulations would curb fraud, assess the impact of the proposed rules on receiving agencies and private boxholders, or consider alternatives to revising the rules." The OIG also found that the rules represented significant changes that could cost receiving agencies and their customers millions of dollars.

The Office of Advocacy's Involvement in the Issue

Concerned small business owners brought the CMRA issue to Advocacy's attention in May 1999. Since that time, the Office of Advocacy has been actively involved in representing the concerns of small businesses in USPS' deliberations and regulatory process. Advocacy has held roundtables and conference calls with small businesses and their representatives; attended meetings with officials from USPS; and submitted comments on the issue to the Postmaster General. (See attached exhibits 1-3)
In its letters, Advocacy raised several issues with USPS about the CMRA rule. These issues included:

1) the lack of data to support USPS' allegations of fraud at CMRAs;
2) whether USPS was using its monopolistic power to eliminate or reduce competition from the CMRA industry;
3) the discriminatory practices that were inherent in the regulation; and
4) the propriety of USPS promulgating a regulation that in effect institutionalized the contractual requirements of the largest CMRA competitor, Mailboxes Etc., and imposed it on non-Mailbox Etc. customers.

Advocacy's previous comments are incorporated by reference into this comment.

Requiring OBCs to Comply with the CMRA Rule Raises the Same Concerns Prevalent in the Promulgation of the CMRA Rule

Under the proposal, an OBC that is considered a CMRA for postal purposes would be required to comply with CMRA regulations such as the requirement that PMB or "#" sign be used in an address. Like the CMRA rule, there is no basis for requiring certain OBC customers to use a special term or symbol in an address. There is no evidence to suggest that OBC customers that fall within a certain definition are more likely to commit fraud than OBC users that do not fall within the definition. Likewise, there is no evidence to suggest that fraud occurs at OBCs at any greater rate than other addresses.

OBCs, like CMRAs, offer an alternative to the traditional USPS mailbox rental and traditional business practices. The OBC allows a home based business to select the level of services that it requires to fulfill its business needs. With today's technological advances, it may not be necessary to have secretarial services or a full time office space to be successful. Failure to utilize all of the options found in the traditional office is an indication of astute business planning, not fraud. To punish a business for only obtaining the services that it needs discriminates against smaller businesses that cannot afford a more extensive set-up.

As with the CMRA rule, USPS has not demonstrated the need for regulatory change or that the change will in any way curb fraud. It has merely made an arbitrary decision that customers who do not spend a certain amount of time in an office environment are engaging in fraudulent activities. To say that a customer is more likely to commit fraud because its OBC does not provide, for example, voice mail after hours is ludicrous.

As Advocacy stated in its letters dated October 20, 1999 and April 12, 2000, a regulation or administrative practice is valid unless it is (a) unreasonable or inappropriate or (b) plainly inconsistent with the statute. The Rockville Reminder, Inc. v. USPS, 480 F. 2d 4, 6 (2nd Cir., 1973). (See, Ex. 2 and 3) Requiring OBC customers to use "PMB" or the "#" sign in the address, without any evidence that the action will deter fraud, is unreasonable and inappropriate in that it places an unwarranted stigma on OBC users and places OBCs that offer less extensive services at a competitive disadvantage. Prior to implementing such a regulation, USPS should have evidence that there is a problem that needs to be addressed and some evidence of whether the proposed solution will address the particular problem. Here, USPS has neither. The only thing achieved by the requirement is the imposition of an arbitrary decision on OBC customers.

Before expanding the CMRA rule to include certain OBC customers, USPS should follow the findings of the OIG and perform some sort of study to determine if these regulations are indeed necessary and, if so, whether they are the proper manner for addressing the problem. By failing to do so, USPS is continuing to engage in an arbitrary and draconian rulemaking process.

If you have any questions, please feel free to contact me at (202) 205-6534. Thank you for the opportunity to comment on this proposal.

Sincerely,

Susan M. Walthall
Acting Chief Counsel
Office of Advocacy

Jennifer A. Smith
Assistant Chief Counsel
for Economic Regulation

Enclosures

DONALD A. MANZULLO, ILLINOIS
CHAIRMAN

NYDIA M. VELÁZQUEZ, NEW YORK

Congress of the United States
House of Representatives
107th Congress
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515-6315

August 24, 2001

Mr. Michael F. Spates
Manager of Delivery Operations
United States Postal Service
Room 7142
475 L'Enfant Plaza
Washington DC 20260

VIA FACSIMILE
202-268-5293

Dear Mr. Spates:

On two occasions, the Committee on Small Business invited the United States Postal Service (USPS) to testify regarding regulations affecting Commercial Mail Receiving Agencies (CMRAs). I remain profoundly concerned that USPS actions in this regard seriously and adversely affected CMRAs and their box holders, who are overwhelmingly entrepreneurs and small business people. In light of the recent critical report of the USPS' own Inspector General, and what must be regarded as a scathing letter from the Small Business Administration's Office of Advocacy, USPS bears a significant burden to justify its continuing course of action.

It has come to my attention that only a week before implementation of the final rule,[1] USPS issued new guidelines never previously published. On July 26, 2001, USPS issued a Postal Bulletin stating:

> "The CMRA is obligated to enforce addressing requirements. If a CMRA customer fails to comply, the CMRA must terminate the relationship with that customer. Rather than returning mail, postal managers observing CMRA customer's mail that is improperly addressed, should notify the CMRA in writing and provide it with a reasonable time to correct the violation. However, the rule states that the Postal Service *may* return mail addressed to a CMRA customer with an improper secondary designator (e.g., suite, apartment) in the complete customer address."[2]

This guideline is disturbing. To my knowledge, this is the first time USPS issued regulations requiring CMRA operators to enforce the addressing requirements. I do not

[1] 65 *Fed. Reg.* 49,917 (August 16, 2000).
[2] *Postal Bulletin*, 22055, signed "Retail Operations Support, Retail, Consumers and Small Business, 7-26-01."

understand why, after USPS issued multiple proposed and final rules,[3] testified about the regulations multiple times before Congress,[4] and spent valuable time and resources working to implement the regulations, it published this new guideline for the first time less than a week before implementation of the Final Rule. This kind of unpredictable and inconsistent rule-making process reinforces the need for the kind of review required by the Small Business Regulatory Enforcement Fairness Act (SBREFA), to which you agreed in testimony before this Committee last month.[5]

This is a vague guideline with little instruction to assist CMRAs and Postmasters. CMRA managers are now instructed that, "[i]f a CMRA customer fails to comply, the CMRA must terminate the relationship with that customer." Because the context of the Postal Bulletin deals with the delivery of incorrectly addressed mail, I assume CMRAs are now forced to ensure all mail is addressed to box holders using the proper addressing standard (either # or PMB). However, a box holder might attempt to comply but still receive mail incorrectly addressed due to no fault of their own but because of old databases, mailing lists, catalogues and letterhead, and public ignorance of CMRA regulations.

This is an issue you mentioned before Congress at the Subcommittee on Regulatory Reform and Paperwork Reduction hearing on October 19, 1999:[6]

> "If I can alleviate some of your concerns about mail being returned, the original rule had a statement that mail without PBM will be returned. That has been rescinded. If you are making a reasonable effort--and we have to depend on our working relationship with the CMRA--no mail will be returned that doesn't have PMB, and if it still has 'suite' because some of your correspondents are responding to advertising literature which has been out there for some time, has a long shelf life, we are not going to return that.
>
> The CMRA industry has agreed when they are sorting the mail to their customers. If they see a customer that does not have a PMB on any of their mail, they will put a notice reminding them of their obligation. It is going to take time to get 100 percent.

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[3] 62 *Fed. Reg.* 45366 (August 27, 1997); 62 *Fed. Reg.* 62540 (November 24, 1997); 64 *Fed. Reg.* 14,385 (March 25, 1999); 64 *Fed. Reg.* 30,929 (June 9, 1999); 64 *Fed. Reg.* 46,630 (August 26, 1999); 65 *Fed. Reg.* 3,857 (January 25, 2000); 65 *Fed. Reg.* 4,918 (February 2, 2000); 65 *Fed. Reg.* 13,258 (March 13, 2000); 65 *Fed. Reg.* 32,136 (May 22, 2000); 65 *Fed. Reg.* 49,917 (August 16, 2000); 66 *Fed. Reg.* 36,224 (July 11, 2001); 66 *Fed. Reg.* 40,663 (August 3, 2001).

[4] Committee on Small Business Subcommittee on Regulatory Reform and Paperwork Reduction hearing, "The United States Postal Service's Regulations Regarding Commercial Mail Receiving Agencies (CMRAs)," October 19, 1999, Committee Hearing Publication 106-36; Committee on Small Business hearing, "Federal Government Competition With Small Businesses," July 18, 2001, Committee Hearing Publication 107-19. Questions were also raised at other general oversight hearings, such as an April 4, 2000 Treasury/Postal Subcommittee Appropriations hearing.

[5] Chairman Manzullo: "Would the post office mind, just as a matter of courtesy to the Chair, doing a cost impact analysis as if you had to comply with SBREFA?.... Mr. Spates: "We will do the cost analysis to the best of our ability. We will meet the requirements." This Committee intends to hold USPS to this commitment and will consider making SBREFA and similar laws fully applicable to USPS.

[6] See *supra* note 4.

> You know when you get Christmas or holiday cards, some people still have old addresses, so we are giving it plenty of time. We are not looking for excuses to return mail."

The latest policy change by USPS contradicts your written testimony to this Committee just last month, where you announced the policy "that mail without the PMB designation [and presumably the # sign] *may* be returned if the CMRA box holder does not make a reasonable effort to notify correspondents of the requirements." (Emphasis added.) It is imperative for small businesses with a large mail volume to know that they can make a "reasonable effort" to change their address designation and notify customers without losing business. Instead, the new USPS guideline encourages Postmasters to send back any incorrectly addressed mail. There is no reason to believe that local Postmasters will interpret the rule the same way as you stated to Congress.

Furthermore, although the guideline does reinforce the published rule[7] that mail may be returned to sender, it does not reinforce the proper endorsement, "Undeliverable as Addressed, Missing PMB or # Sign." This failure might lead a Postmaster to improperly return mail, leaving the mailer bewildered as to the reason and thus resulting in lost business or potential business to the small company.

In fact, this guideline encourages Postmasters to make it more difficult for small entities to receive mail. For example, a small entrepreneur that attempts to change his or her address and notify mailers might still receive a large amount of unsolicited mail with an older address. This person's Postmaster will either write a letter to the CMRA to demand compliance or return the mail to sender. The CMRA has no guidance on how to enforce compliance and the small entrepreneur who may have made more than adequate attempts to comply is provided no recourse should his relationship be abruptly terminated.

For entrepreneurs who rely on the mail for his or her livelihood, USPS has ruined the financial stability of the box holder. Therefore, I would appreciate your response to the following items:

1. When in the past has USPS published a regulation requiring that a "CMRA is obligated to enforce addressing requirements?" Please provide copies of the notices published in the Federal Register.

2. Please supply the Committee with the USPS definition of a "reasonable effort" of compliance and guidance on how entrepreneurs and other small business people can comply to ensure full delivery of their mail.

3. Please supply the Committee with all instructions or guidance provided to Postmasters on how to determine if a box holder is making a reasonable effort.

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[7] 65 *Fed. Reg.* 49,917 (August 16, 2000).

4. Please supply the Committee with all instructions or guidance provided to CMRAs on how to determine if a box holder is making a reasonable effort.

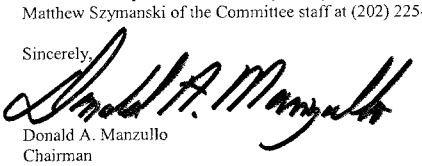
5. Please supply the Committee with all instructions or guidance on how a Postmaster should determine whether to notify the CMRA in writing about compliance or to return nonconforming mail to sender.

6. Please provide a form letter typical of what a Postmaster might send to a CMRA requiring the CMRA to enforce box holder compliance.

7. Please provide a schedule of USPS' timetable for conducting the SBREFA-like review of the CMRA regulations to which you agreed during your testimony to this Committee on July 18, 2001.

Due to the time-sensitive nature of the new regulations, please provide this information no later than September 5, 2001. If you or your staff have any questions, please contact Matthew Szymanski of the Committee staff at (202) 225-3924.

Sincerely,



Donald A. Manzullo
Chairman

cc: The Honorable John E. Potter, Postmaster General (Fax: 202-268-4860)

PostalWatch

August 28, 2001

The Honorable Chairman Donald A. Manzullo
United States House of Representatives
409 Cannon House Office Building
Washington, DC, 20515

Dear Mr. Chairman:

Thank you for the opportunity to participate and present testimony to the Committee during the July 18th hearing on Government Competition with Small Businesses.

The hearing was a major success for small businesses and serves as a testament to how truly important your continued efforts and those of the Committee are in championing the interests of the small business community.

You and fellow Committee members questioned Mr. Spates from the Postal Service regarding the Commercial Mail Receiving Agency (CMRA) regulations and obtained a commitment from Mr. Spates that the agency would conduct a SBREFA review of the regulations: a process the agency has steadfastly refused to follow, claiming exemption from the Administrative Procedures Act.

We fear however that the Postal Service does not intend to the conduct the SBREFA review of the rules. Two separate trade sources have reported that postal officials have commented that the Committee on Small Business lacks jurisdiction to compel the Postal Service to engage in the SBREFA review process and they appear to have no intention of doing so.

At this time, I feel compelled to take issue with several assertions and representations contained in Mr. Spates' statement to the Committee:

1) **The USPS is not a friend, but a competitor of small business.** Mr. Spates begins his statement by portraying the Postal Service as the friend and "*important enabler of small business*", citing "*internet access to postal information, forms, regulations*" as well as website links to "Tools to Help Small Businesses".

   A) **Information, forms and regulations are NOT easily accessible.** The Committee witnessed, first hand that the agency's claims of providing easy Internet access to "*information, forms and regulations*" are grossly exaggerated, has high level postal officials themselves, were unable to produce a copy of Postal Form ps-1093 (PO Box application) in a timely manner. Upon failing to locate the form on the agency's website, Postal officials leveraged the vast resources of Postal Headquarters to eventually produce a potentially out-of-date fax copy of a form from 1998.

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B) **USPS website links are nothing more than advertising targeted at small businesses.** The *usps.com links* which were touted as valuable small business resources are but mere advertisements for Postal Service products and services targeted at, and many times competing with the small business community.

C) **The Postal Service fiercely competes with small businesses.** Many of the non-mail products and services offered by the Postal Service and its strategic partners compete directly with small businesses. The agency and its partners compete in several traditionally small business markets by selling products and services including: specialty apparel, passport photos, stationery, shipping supplies: and printing, direct mailing list management and brochure development services.

D) **Many Postal Service actions are detrimental to small businesses.** USPS has driven up the cost of doing business for small enterprises by raising rates twice in one year, forcing many to either wait in long lines to obtain markup stamps or incur the cost and inconvenience of modifying postage meters in order to accommodate these rate changes. The Postal Service currently offers mail-automation discounts and is advocating Postal Reform that would allow it to offer volume discounts to large mailers. Volume and automation discounts disadvantage small businesses when competing with larger mailers.

2) **The Postal Service competes directly with CMRAs.** In his statement, Mr. Spates proffers the counterintuitive notion that the Postal Service doesn't actually compete with Commercial Mail Receiving Agencies (CMRAs) asserting, the agency's competitive interest is "*minimal and the impact, if any, small*".

A) **Competition with CMRAs is a fact of record.** The competition between the USPS and CMRAs is a matter of record, not supposition or debate. Two months following the initial CMRA rulemaking initiative, in November of 1997 the agency published its "Five-Year Strategic Plan" stating in a section entitled "Products, Marketshare and Competition", *"Substantial competition from private mail and parcel franchises has emerged in recent years. Starting with a few hundred stores in 1980, this industry has grown to include about 7,800 commercial mail receiving agencies, such as Mailboxes, Etc. FedEx, United Parcel Service and other package delivery services have another 5,300 outlets that are focused primarily on business shippers. UPS also has contract arrangements with another 28,000 agents. Together, these companies generate over $5 billion in revenues"*

B) **The USPS generates over $500 million in pure profit annually from box rentals. The impact of competition with CMRAs is significant.** The Postal Service generated $577 million in PO Box rental revenue during the fiscal year ending September 1997. Every dollar of revenue generated from PO Box rentals translates to more than a dollar of pure profit for the Postal Service. Any cost associated with the PO Box equipment or labor to deposit mail in PO

Boxes is more than offset by the savings in local carrier cost that would be required to deliver the same mail to individual physical address locations.

C) **USPS was losing ground to CMRAs prior to promulgating CMRA rules.** PO Box rental revenues increased a mere 1.3% in the fiscal year ending September 1997, the same month the CMRA regulations were first proposed. This represented a decrease of more than 80% in the growth rates of 8.7% and 7.2% for FY-1995 and FY-1996 respectively.

D) **USPS has a history of unfairly competing with CMRAs** . In the early 1990s, the Postal Service expanded their competition with CMRAs by offering packaging services and supplies such as boxes, tape, bubble wrap and peanuts under a program dubbed "Pack-n-Send". CMRAs charged that the USPS was quoting sub-market prices for Pack-n-Send services, the Postal Rate Commission (PRC) ultimately agreed however the Postal Service ignored the PRC recommendations and only terminated the program after being threatened with a lawsuit.

E) **The USPS competitive interest in CMRAs is far more significant than box rental revenues.** In addition to competing for mailbox rental business, CMRAs offer customers the option of sending and receiving shipments via the Postal Service's primary competitors, private parcel carriers. The CMRA industry is in effect a "feeder" network of more than 10,000 locations funneling an estimated 100,000 shipments weekly to postal rivals such as Federal Express and United Parcel Service. Consequently, the agency would derive multiple competitive benefits from a seriously damaged or destroyed CMRA industry.

3) **The CMRA rules were NOT created at the request of the CMRA industry.** Mr. Spates' states "in fact", that the Postal Service developed and promulgated the March of 1999 rules, in response to the CMRA industry requests to address procedures for "abandoned" CMRA operations.

A) **The March 1999 rules make NO mention as to procedures for "abandoned" CMRA operations**. The March 1999 publication of the CMRA rule does not refer whatsoever to procedures regarding the closure, abandonment or demise of CMRA operations.

B) **Procedures for abandoned CMRAs were in place since 1996.** Postal Bulletin 21932 dated November 7, 1996 states, "*Part 684 is added to clarify the procedures for handling mail addressed to CMRAs that have gone out of business.*" In addition to specific instructions to postal workers regarding mail handling and forwarding of past CMRA customers Postal Bulletin 21932 states, "***4). Use the opportunity when the former CMRA customers are picking up their mail at the delivery unit to promote the benefits of renting a post office box (i.e., cost, convenience, forwarding, access to postal products***

like Priority Mail, and the fact that the Postal Service doesn't go out of business). This assumes that post office boxes are available."

C) **The CMRA industry universally opposed the rules when first proposed in 1997.** Major CMRA franchisers organized grass roots campaigns to oppose the CMRA regulations when first proposed in September of 1997. This campaign resulted in the Postal Service receiving over 8,000 comments opposing the rules during the proposed rule comment period. It was not until the Postal Service initiated private negotiations and "strategic alliances" with various select interests within the CMRA industry that opposition from those involved diminished.

4) **The Tucci's small family owned CMRA did not fail due to private competition**. Mr. Spates asserts that small family owned CMRAs, inferring similarity to the business operated by Greg and Elaine Tucci, are forced out of business by private market forces and not the anticompetitive actions of the Postal Service. He seems to imply these operators somehow lack the sophistication, business acumen or capital to effectively compete with their private competitors.

A) **Tucci had NO local private competitors, only the Granville Post Office.** The Tuccis' operated the only CMRA in the small upstate NY town of Granville with the nearest private competitor an hour away. The Tucci's only competitor was the United States Postal Service, their sole mail delivery vendor, regulator, enforcer, judge, jury and executioner.

B) **The Tuccis went bankrupt because the USPS terminated their mail delivery.** The Tuccis' business was growing and well on it's way to becoming a viable source of livelihood for the Tucci household. Their business was abruptly destroyed solely due to the Postal Service's action to terminate mail delivery to their business. The Postal Service terminated the Tuccis' mail delivery because their customers unilaterally refused to execute a "revised" Postal Form ps-1583, which contained information disclosure provisions in direct conflict with the Privacy Act, provisions of 39 U.S.C. as well as the Postal Service's own privacy regulations (39 CFR, sections 265 and 266). Their customers provided signed written statements citing their privacy and personal safety concerns to the Granville Postmaster. Their mail was "cut-off" nonetheless. It is important to note that the Postal Service eventually revised the "information release" provisions on form ps-1583 in August of 2000, some 10 months after the Tucci's were forced out of business because their customers refused to accept the privacy invading terms of the earlier version of the form.

5) **The CMRA rules do not "mirror" PO Box rules.** Mr. Spates stated the Postal Service's intention in promulgating the CMRA rules was to have CMRA procedures "mirror" those of P.O. Boxes. In promulgating the CMRA rules the Postal Service

created or perpetuated several competitive advantages for its P.O. Box offerings as compared to the CMRA requirements:

A) **PO Box renters are NOT required to disclose the names and ages of children.** The Postal Service requires private mailbox renters to provide the "names and ages of minor children" on Postal Form ps-1583, the corresponding application form required for PO Box renters (ps-1093) contains no such requirement. In fact, minors are permitted to rent a PO Box without parental consent, "*Post office box service may be provided to a minor (a person under 18 years of age) unless the minor's parent or guardian submits a written objection to the appropriate postmaster*" (DMM 910.2.5 - Minor).

B) **PO Box customers are afforded mail-forwarding services and private box holders are NOT.** Private mailbox customers and store operators are strictly forbidden from forwarding mail without readdressing and affixing new postage. The only forwarding restrictions imposed on PO Box customers is *"post office box may not be used when the primary purpose is to have the USPS forward or transfer mail to another address free of charge"* (DMM 910.3.7 - Forwarding)

C) **PO Box renters are granted change-of-address services and private box holders are NOT.** Private mailbox users are strictly forbidden from filing a change-of-address order with the Postal Service: "*When the agency relationship between the CMRA and the addressee terminates, neither the addressee nor the CMRA will file a change-of-address order with the post office*" (DMM D042.2.7.a.). However PO Box customers enjoy the same change-of-address services afforded all other mail patrons: "*Only the box customer or authorized representatives of the organization listed on the Form 1093 may file change-of-address orders. Forwarding of mail for other persons is the responsibility of the box customer*" (DMM 910.3.8 - Address Change)

D) **Undeliverable mail addressed to previous PO Box holders is returned to sender, private box holder mail is NOT.** Private mailbox store operators are required to receive mail bound for previous customers for a period of six months following the termination of their relationship. "*The CMRA must re-mail mail intended for the addressee (customer) for at least 6 months after the termination date of the agency relationship between the CMRA and addressee. Mail that is re-mailed by the CMRA requires new postage... Written instructions from the customer regarding the handling of this mail must not stipulate that the CMRA refuse mail or return it to sender, or hold the mail during the 6-month re-mail period and return it to the post office, or redeposit mail in the mails without new postage*" (DMM- D042.2.7.b.).

E) **No USPS employees are threatened with loss of livelihood for failure to strictly enforce PO Box procedures.** These regulations charge the private

mailbox store operator with enforcing the Postal Form ps-1583 registration and address standards requirements, forcing the store operator to "terminate the relationship" with customers unable or unwilling to comply fully with the requirements. Store operators failing to terminate relationships with those customers found to be in violation risk suspension of all mail delivery to their entire operation, including mail bound for those customers that are in full compliance (7-26-01 - Postal Bulletin 22055 Page 70). This *ultra vires* abuse of the agency's mail delivery responsibility has the potential to destroy store operators' entire business enterprise, investment and ability to earn a living, as was the case with Gregory and Elaine Tucci.

F) **PO Box customers refused service are afforded an appeals process while CMRA operators or customers have NO redress of grievance.** The CMRA rules provide no appeals process, judicial review or redress of grievance for private mailbox renters or store operators when postal officials deny mail delivery under the CMRA regulations. Conversely, the *"applicant or box customer [PO Box] may file a petition appealing the postmaster's determination to refuse or terminate service within 20 calendar days after notice, as specified in the postmaster's determination and 39 CFR 958"* (DMM 910.8.3 – Customer Appeal).

G) **If the CMRA rules did in fact "mirror" PO Box procedures, it would constitute restraint of trade.** The Postal Service has no statutory mandate to provide PO Box services and as such, these are ancillary services representing a purely competitive enterprise for the United States Postal Service. Forcing CMRA operators to require client registration and special address designators purely for the purposes of "mirroring" P.O. Box procedures constitutes an attempt to restrain trade by eliminating its competitors' market benefits by means of regulatory dictum.

6) **The USPS has NO regulatory "consumer protection responsibilities" nor any authority to disrupt mail delivery.** During his statement to the Committee, Mr. Spates refers repeatedly to the Postal Service's "statutory consumer protection responsibilities" without citing any source for these supposed "statutory responsibilities".

A) **The USPS "consumer protection" role is strictly limited to enforcing existing federal statutes and investigating specific cases of mail fraud. The USPS has no authority to disrupt mail delivery except whereby Congress has deemed specific materials "nonmailable".** Congress has repeatedly, and with specific particularity, identified a very narrow scope of circumstances by which the Postal Service is instructed (allowed) to exercise its absolute control over the US Mail and intercede in the normal delivery of a citizen's mail. Mail addressed without a particular USPS mandated secondary address designator (PMB, Suite, #, Apt, etc.) is NOT one of the criteria identified by Congress in 39 U.S.C. Chapter 30 as depicting "nonmailable" material. It is important to note that the Postal Service did not exercise these supposed "statutory

consumer protection responsibilities" against large mailers of deceptive sweepstake offers who pay the Postal Service tens, if not hundreds of millions of dollars in postage every year. It was not until Congress enacted legislation classifying, with painstaking particularity, what characteristics of these mailing would cause them to be deemed "nonmailable" that the Postal Service interfered with such mailings.

B) **The Federal Trade Commission maintains jurisdiction over regulating unfair business practices, consumer protectionism and deceptive trade practices.** *"The [Federal Trade] Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, savings and loan institutions described in section 57a(f)(3) of this title... from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce (*15 U.S.C. 45.a.2).

7) **NO deference was given small business interests in promulgating the CMRA rules nor were small business interests "invited" to participate.** In his statement, Mr. Spates states, "*In promulgating the rules, the USPS paid deference to small business interests. In the course of developing and implementing the new standards, the Postal Service has continuously invited the relevant interest groups to present their views.*"

A) **Concerns over the damaging and anticompetitive effects of the rules were totally ignored by the USPS.** The Postal Service received over 8,000 comments opposing the CMRA rules during the initial comment period ending December 24, 1997. Many of these comments questioned the motives of the Postal Service and warned of discriminating and anticompetitive effects of the rules to CMRAs and their customers. The Postal Service never addressed these concerns, merely dismissing them out-of-hand as "erroneous" (Federal Register: March 25, 1999 Volume 64, Number 57 [Page 14385-14391]).

B) **Relevant interest groups were NOT "invited" to present their views on the CMRA rules.** Only after a ground swell of opposition to the CMRA rules published on March 25, 1999 did the Postal Service begin meeting with a select group of major CMRA franchisers and a privately owned CMRA consulting firm influential with independent CMRA operators. No non-profit group or trade association representing CMRA operators, their customers or the small businesses community was ever invited to any of these "closed-door" meetings.

C) **CMRA customers have had NO representation and small business interest groups were "uninvited" from "closed-door" meetings**. Upon learning of a meeting scheduled in September of 1999 between USPS officials and its select group proprietary CMRA interests, several interested parties opposed to the rules, including staff from the House Small Business Committee, the Small Business Administration Office of Advocacy, the National Federation of Independent Business, the National Association for the Self Employed, staff

from Congressman Ron Paul's office, the Cato Institute and PostalWatch attended without invitation. These groups returned after lunch for the afternoon session to discuss the possibility of modifying the rules to make acceptable the (#) pound sign secondary address designator despite being asked not to return. None of these groups were invited to any of the numerous closed-door meetings that followed.

D) **CMRA operators ("the industry") have NEVER had representation.** Mr. Spates indicates the rules include *"mutually agreed upon modifications and compromises, is the result of ongoing meetings with various interest groups and the positive support from CMRA industry representatives."* Not a single "representative" elected to represent either CMRA operators or their customers has ever been invited to participate in the creation or modification of the rules. The "CMRA industry representatives" the Postal Service claims to have "mutually agreed" consists exclusively of a group of franchisers and Associated Mail and Parcel Centers (AMPC). AMPC is NOT a trade association in which members (CMRAs) elect their representatives and have input as to policy positions. AMPC is a privately owned for-profit corporation. The CMRA franchisers are larger and in some cases subsidiaries of publicly traded for-profit corporations with proprietary interests, which potentially directly oppose those of their small business franchisees.

8) **The Department of Justice and Federal Trade Commission have NOT commented on the CMRA rules.** Mr. Spates seems to imply that the Postal Service had the support of the Department of Justice and the Federal Trade Commission in developing and promulgating the CMRA regulations stating, *"The department of Justice, the Federal Trade Commission ... keenly followed the development of these regulations"*. However, neither the Justice Department nor Federal Trade Commission has commented on the CMRA rules.

A) **The Department of Justice, Antitrust Division is now "keenly" studying the CMRA rules.** At the request of several Members of Congress, the Antitrust Division of the Department of Justice is reviewing the CMRA regulatory proceeding to determine if Postal Service actions were anticompetitive.

B) **The Federal Trade Commission has not stated a position on the CMRA rules** – The Postal Service claims that the CMRA rules are necessary for consumer protection and that the practice of private mailbox renters having their mail addressed to a "Suite" somehow constitutes a "deceptive trade practice". Jurisdiction over both consumer protection and deceptive trade practices resides clearly within the authority of the Federal Trade Commission. However, the Commission has never commented on the CMRA regulations and as such could lead one to believe that the Commission does not view the actions of private mailbox customers to be a threat to consumers or a deceptive practice that "materially affects commerce".

9) **The new CMRA rules seriously eroded privacy protections afforded private mailbox renters and survivors of domestic abuse.** Mr. Spates implies the CMRA rules enhanced privacy protections for private mailbox renters when in fact the privacy invading aspects of the rules continue to be a major source of concern for box holders and survivors of domestic abuse.

   A) **Prior to the CMRA rules, the USPS was banned from releasing private box holder personal information.** Mr. Spates proffers that the new regulations improved "privacy" protections for private mailbox renters stating, *"Prior to these regulations, this information was releasable upon request [personal identifiable information]."* The fact of the matter is that prior to the March 1999 rules the Postal Service was banned from releasing any personal information about private mailbox renters. *Form 1583, Application for Delivery of Mail Through Agent. Except as provided by this paragraph, information contained in Form 1583 may not be disclosed to the public. Information contained in Form 1583 may be disclosed to the public only for the purpose of identifying a particular address as an address of an agent to whom mail is delivered on behalf of other persons. No other information, including, but not limited to, the identities of persons on whose behalf agents receive mail, may be disclosed from Form 1583"* (39 CFR Sec. 265.6 Availability of records - (8) Release of Information, Revised as of July 1, 1999).

   B) **The Postal Service DID NOT follow the safeguards recommended by the National Coalition Against Domestic Violence.** Mr. Spates proudly boosts, *"Of utmost importance, working with the National Coalition Against Domestic Violence, the Postal Service issued stringent rules against the release of information, including release to law enforcement... [for] CMRA box holders submitting a protective/restraining order. The ability of law enforcement to submit oral requests was changed to require them to be written request"*. The "Coalition" repeatedly commented as to the need for requiring law enforcement to obtain warrants prior to releasing box holder information, citing domestic abuse statistics among members of law enforcement community, however the Postal Service flatly refused to institute such safeguards.

In conclusion, let me again thank the you and the Committee for your important work on behalf of the Small Business community and for inviting me to participate in this important hearing.

Sincerely,

Rick Merritt
Executive Director

Michael Tobias 8101 Eastern Avenue, A507, Silver Spring, MD 20910

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September 1, 2001

United States House of Representatives
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515

Fax: 202-225-3587

Re: Competition between the Postal Service and small businesses

Dear Sirs:

In July of this year, your committee held hearings on "Federal Government Competition with Small Business". The hearings included testimony by Rick Merritt of Postal Watch on competition between the Postal Service and Commercial Mail Receiving Agencies (CMRA's).

As a user of a CMRA, I wish to voice my agreement with the prepared remarks of Mr. Merritt. Like Mr. Merritt, I find the regulations of the Postal Service governing CMRA's to be anticompetitive, burdensome, and discriminatory against CMRA's and their users. Whereas the primary goal of the Postal Service should be to guarantee the efficient delivery of mail, the regulations are confusing to senders are are likely to increase the incidence of undelivered mail. All in all, the purpose of the regulations seems to be to make it as difficult as possible for CMRA's to function and to make CMRA's less desirable to users.

The monthly fee for using a CMRA is higher than the rental fee for a post office box at a post office, but CMRA's are nevertheless popular among individuals and small businesses because they provide valuable services not offered by the Postal Service, such as receipt of courier packages (FedEx, etc.). If the Postal Service does not wish to compete in providing such services, so be it, but the Postal Service should not be allowed to burden CMRA's by means of arbitrary anticompetitive regulations.

I hope that your committee will keep in mind the importance of CMRA's to small businesses and ensure that the Postal Service behaves in a reasonable, nondiscriminatory, and competitive

manner towards CMRA's.

Sincerely,

Michael Tobias

Michael Tobias

UNITED STATES
POSTAL SERVICE

September 5, 2001

The Honorable Donald A. Manzullo
House of Representatives
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515-6515

Dear Chairman Manzullo:

This is in response to your letter of August 24 regarding the Postal Service's testimony on regulations pertaining to Commercial Mail Receiving Agencies (CMRA). I would like to reiterate that the Postal Service believes it has acted responsibly in developing its CMRA regulations.

Included in your letter was the reference to the August 14 letter from the Small Business Administration, Office of Advocacy. As background, the then Chief Postal Inspector, Ken Hunter, chaired a series of meetings attended by representatives of various interested groups. The Office of Advocacy of the Small Business Administration, along with a number of other parties representing small business interests, was in attendance. The position advocated by the Small Business Administration was that the USPS should not prohibit the use of the designator "suite" for private boxholders. This was based on the premise these small businesses need to create the perception they are operating in a physical space to enhance consumer confidence, especially in a start-up business. The response to this premise by the supporters of the proposed rule, in particular the representative for the State Attorney's General, is that the use of "suite" is inappropriate and, often, deceptive. One example that has been related to us is fundraising through addresses of CMRAs. Local residents, seeing a suite address, may send donations to the organization or its representatives, on the assumption that it is a local charity and the funds contributed will serve local needs, when in fact that is not true. Accordingly, we were urged by the consumer protection interests to maintain our original proposal, which was to prescribe a "PMB" address. In the end, we adopted a suggestion for a middle ground; i.e. to allow boxholders the option to use either "PMB" or "#". Although this was not the preferred result for many of the parties, we believe it was acceptable to most of them and balances the competing interests. This is an example of the delicate balancing act between the needs of small businesses and consumer protection.

In my submitted testimony, I referred to the document, *"Mailbox Rental 101, the Complete Guide to Operating a CMRA (Legally, Profitably, Professionally)," 2001 Edition,* Charmaine M. Fennie, Associated Mail and Parcel Centers (AMPC), which is an association of CMRA operators. On page 33, paragraph 5, it reads ". . ., it is important

475 L'Enfant Plaza SW
Washington DC 20260

to note that CMRAs have historically been recognized as "safe harbors" for the criminal elements. Armed with the knowledge that the CMRA address will provide at least a temporary shield of the criminal's true address, the history of crooks and rip-off artists utilizing CMRA addresses is legion." Ms. Fennie is President and Executive Director of AMPC. She is also Chair of the Coalition Against Unfair USPS Competition (CAUUC), a non-profit organization founded in 1995 in an effort to keep the Postal Service from competing unfairly with small businesses. Ms. Fennie was a positive participant in each of the meetings with industry representatives and the Postal Service in developing the final rules and regulations for CMRAs.

You referred to the July 26, 2001 USPS Postal Bulletin, as "a new guideline for the first time less than a week before implementation of the Final Rule." As a result of working with representatives of the CMRA industry, it was agreed the CMRA operator is responsible for compliance by its customers. The CMRAs' industry representatives preferred that they be the primary contact with their customers as part of the joint cooperative effort with the Postal Service. This compliance includes addressing formats and properly completed Form 1583. Enclosed is the Postal Bulletin excerpt dated September 9, 1999 (Exhibit A) containing the initial publication of the guideline.

The July 26, 2001 Postal Bulletin, which was not new policy, was entitled "Reminder" and was issued because of the August 1, 2001 effective date of the addressing regulations. As a result of the ongoing working relationship with the CMRA industry and a request for additional clarification by the industry, a Postal Bulletin is being published (September 6, 2001), that provides further clarification of our respective responsibilities (Exhibit B). This bulletin was reviewed by CMRA industry representatives prior to publishing. This is not new policy, as I noted above; it was not developed unilaterally and is consistent with my written and verbal testimony.

In response to your numbered requests:

1. When in the past has USPS published a regulation requiring that a "CMRA is obligated to enforce addressing requirements?" Please provide copies of the notices published in the Federal Register.

   Response: Refer to Postal Bulletin 22006 (September 9, 1999). (Exhibit A)

2. Please supply the Committee with the USPS definition of a "reasonable effort" of compliance and guidance on how entrepreneurs and other small business people can comply to ensure full delivery of their mail.

   Response: This is covered in the clarification of responsibilities contained in Postal Bulletin (Exhibit B) previously mentioned.

3. Please supply the Committee with all instructions or guidance provided to Postmasters on how to determine if a boxholder is making a reasonable effort.

   Response: The Postal Service during its meeting with CMRA industry representatives developed the guidelines as outlined in this Exhibit B. All Postmasters receive the Postal Bulletin. Also, all Postal Bulletins are available to the public on the Internet.

4. Please supply the Committee with all instructions or guidance provided to CMRAs on how to determine if a boxholder is making a reasonable effort.

   Response: Since the CMRA industry preferred to be the primary contact with their customers on this issue, the specific CMRA franchises and industry organizations agreed to provide specific instructions to their member CMRAs. However, the local postal official, who works with the CMRA, will refer to the Postal Bulletin (Exhibit B) as part of their joint effort to improve compliance. Also, all Postal Bulletins are available to the public on the Internet.

5. Please supply the Committee with all instructions or guidance on how a Postmaster should determine whether to notify the CMRA in writing about compliance or to return nonconforming mail to sender.

   Response: Refer to Federal Register/Vol. 64, No. 57 (March 25, 1999) – (Exhibit C). Also, Postal Bulletin 22002 (July 15, 1999) – (Exhibit D) and Postal Bulletin 22002 (September 9, 1999) – (Exhibit A).

6. Please provide a form letter typical of what a Postmaster might send to a CMRA requiring the CMRA to enforce boxholder compliance.

   Response: The suspension of service procedures are covered in Exhibit D. Please refer to Exhibit E for sample letters provided to Postmasters.

7. Please provide a schedule of USPS' timetable for conducting the SBREFA-like review of the CMRA regulations to which you agreed during your testimony to this Committee on July 18, 2001.

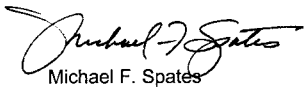
   Response: The Postal Service will provide a cost analysis no later than September 17.

In conclusion, while some critics charge that the enactment of the CMRA rules created the appearance USPS misused its regulatory authority to hinder competition, the Postal Service had no such motive. Rather, we strongly believe we acted responsibly in addressing the concerns of those impacted by the CMRA regulations. Small businesses

are critical to the ongoing success of the Postal Service. We are continuously looking for ways to strengthen our relationship with small businesses, not ways to diminish it. The end result is a stronger and more effective working relationship among the CMRAs, small businesses, law enforcement and the Postal Service resulting in enhanced protection for consumers.

If you or your staff have any questions, I can be reached on (202) 268-6854.

Sincerely,



Michael F. Spates
Manager
Delivery Operations

Attachments

cc: Postmaster General John E. Potter

List of Exhibits

A. Postal Bulletin 22006 (September 9, 1999); page 36.

B. Draft Postal Bulletin (to be published September 2001).

C. Federal Register/Vol. 64, No. 57, Thursday, March 25, 1999, Postal Service, Final Rule: Delivery of Mail to a Commercial Mail Receiving Agency.

D. Postal Bulletin 22002 (July 15, 1999); page 19.

E. Sample letters provided to Postmasters.

Addressing Format

Some CMRA customers have indicated that certain businesses cannot provide them with the four-line address format. The four-line address format with the PMB designation and number on the line above the primary delivery address line is the USPS recommended format. However, in those case when four-line format cannot be provided to the CMRA customer, the alternate three-line format may be used. Sample formats are:

Recommended Format

Name:	JOHN DOE
PMB and Number:	PMB 123
Primary Delivery Address:	1015 MAIN ST OR PO BOX 34 OR RR1 BOX 12
City, State, ZIP Code:	WASHINGTON DC 20001-1015

Alternate Format

Name:	JOHN DOE
Primary Delivery Address:	1015 MAIN ST PMB 123 OR PO BOX 34 PMB 123 OR RR1 BOX 12 PMB 123
City, State, ZIP Code:	WASHINGTON DC 20001-1015

CMRA customers must comply with the address requirement no later than April 26, 2000. Customers should be encouraged to take immediate steps to comply. After April 26, 2000, the Postal Service may return mail for failure to include PMB in the address. Mail returned to the sender will be endorsed "Undeliverable as Addressed: Missing PMB."

Form 1583

All PS Forms 1583, *Application for Delivery of Mail Through Agent*, were to be submitted by August 26, 1999. However, some CMRA customers objected to the disclosure of information policy as originally proposed. A proposed rule was published in the *Federal Register* August 26, 1999, that would prohibit the release of information contained in PS Form 1583 except to federal, local, and state government requesters, including those engaged in law enforcement activities, or pursuant to subpoena or court order. In addition, this proposal would amend the Postal Service's current policy for disclosing information contained in PS Form 1093, *Application for Post Office Box or Caller Service*. Until such time as the ASM is changed, information from Form 1583 must not be released to any member of the public, except for the limited purpose of identifying an address as the address of a CMRA.

The CMRA industry has expressed concern that postal managers will suspend delivery to a CMRA because a few CMRA customers have failed to complete and submit revised Form 1583. The revised CMRA regulations assign accountability and responsibility to the CMRA to ensure that its customers comply with the regulations. If a CMRA customer fails to complete and submit the revised Form 1583, the CMRA must terminate the relationship with that customer and re-mail to that customer's new address. In any case regarding non-compliance by a CMRA customer, the CMRA must be provided the opportunity to correct the violation. The postal manager is accountable and responsible for compliance by the CMRA, not its customer.

Compliance With Deadlines

All CMRAs and their customers must comply with all of the deadlines as established in previous notices. However, if a CMRA is not in compliance, the postmaster or station manager must notify the CMRA in writing and allow an appropriate period of time to correct the violation. If the CMRA fails to comply, the postal manager must receive approval from the next higher level, generally the district manager, before notifying the CMRA that certain action will be initiated by a certain date. Under no circumstances should a postmaster or station manager suspend service without following the guidelines outlined in *Domestic Mail Manual* D042.2.6h and i.

— Retail Operations Support, Retail, 9-9-99

Exhibit B

Clarification

Commercial Mail Receiving Agency (CMRA) – August 1, 2001, Compliance Date For Addressing Standards

This is a clarification to the *Reminder* published in Postal Bulletin 22055 dated July 26, 2001. In addition, this notice highlights key points of the regulations and procedures that are in effect.

Addressing Standards

On August 16, 2000, the Postal Service published a final rule in the *Federal Register* (65 FR 49917-49919) to amend *Domestic Mail Manual* (DMM) D042.2.6e to permit use of "PMB" or the alternative "#" sign as the secondary address designation for CMRA customers.

The Postal Service recognized CMRA customers could incur some out of pocket expenses and the inconvenience of notifying correspondents of the change in their address. Therefore, the Postal Service delayed the effective date of the requirement, until August 1, 2001, nearly a full year after the rule was adopted. This was designed to allow CMRA customers to minimize costs by allowing them to deplete existing stationery, to advise correspondents of the new address in the course of ordinary business, rather than through a special communication, and to make any other needed changes to comply with the address requirement.

The preferred address format for the CMRA customers consists of:

JOE DOE	JOE DOE
PMB 234	#234
10 MAIN ST	10 MAIN ST
HERNDON VA 22071-2716	HERNDON VA 22071-2716

If the four-line address cannot be used, a three-line format is acceptable in certain conditions. "PMB" or the alternative "#" sign must be included at the end of the street address line.

JOE DOE	JOE DOE
10 MAIN ST PMB 234	10 MAIN ST # 234
HERNDON VA 22071-2716	HERNDON VA 22071-2716

Exceptions: When the CMRA's physical address contains a secondary address element (e.g., rural route box number, "suite," "#," or other term), the CMRA customer must use the four-line format or "PMB" in the three-line format. In the latter case, the following must be used:

JOE DOE	JOE DOE
10 MAIN ST STE 11 PMB 234	RR 12 BOX 512 PMB 234
HERNDON VA 22071-2716	HERNDON VA 22071-2716

The CMRA customer must also use the four-line format if information being placed on the delivery address line contains more than 32 characters, the maximum number of characters allowed on the delivery address line. Characters include the numbers, letters and spaces in the delivery address. Example, delivery address 5800 Springfield BLVD STE 11 has a total of 28 characters. Inclusion of secondary address information "PMB 234" would add an additional seven characters and the delivery address line would have more than 32 characters. This requires use of the four-line format by placing the secondary information on the line above the delivery address line.

Addressing Standards Compliance

As a result of mutual efforts between the Postal Service and members and representatives of the CMRA industry, it has been agreed the CMRAs and the Postal Service will work together to ensure increased compliance with the addressing standards as follows:

Since the Postal Service delivers the mail to the CMRA in bulk, the CMRA, when distributing mail to its box holders, will review the addressing format being used. Should it notice any significant amount of non-compliance, the CMRA will work with the box holder to increase compliance with the standard. The CMRA should ensure that all of its customers notify their correspondents or customers of their new address. Customers could use one or more of the following based on the box holders' circumstances: include a notice of the proper address in outgoing correspondence, notification through updating Web sites, a specific or general postal card mailing to customer lists or correspondents, or other appropriate means.

If the CMRA does not receive cooperation from a particular box holder based on initial and follow-up efforts, it should consider terminating the agency relationship with the box holder.

The Postal Service will also review, from time to time, the addressing formats being used on the mail being delivered in bulk to the CMRA. This review can be accomplished by riffling the mail. If there appears to be a problem, the information will be shared with the CMRA.

Together, the Postal Service and the CMRA should demonstrate a spirit of cooperation and a positive working relationship resulting in a demonstrated increased level of compliance over time. It is not realistic to expect every piece of mail to be in compliance. For example, correspondents or prospective customers of the box holder may sometime inadvertently use an incorrect address or an old address from promotional

material printed before the new address standards. However, the percentage of customers and mail in compliance should indicate a significant increase, especially with new CMRA box holders, over a reasonable period of time. It is difficult to quantify a universally applied definition of "reasonable period of time" due to varied CMRA demographics, box holder turnover rates and mail volumes. Postal Service representatives must exercise good business judgement when reviewing a CMRA's compliance progress to date.

It is our responsibility to work with the CMRAs to help them improve compliance. They are our customers and the Postal Service's objective is to deliver their mail. However, if all efforts fail to demonstrate progress in compliance, refer to DMM D042.2.2.6 f through h regarding *Suspension of Delivery.*

Application

Form 1583-A – All CMRA owners must have completed and submitted a Form 1583-A, *Application to Act as Commercial Mail Receiving agency* (CMRA), in accordance with DMM D042.2.5b.

Form 1583 – All CMRA customers must have completed and submitted a Form 1583, *Application for Delivery of Mail Through Agent*, in accordance with DMM D042.2.6a.

Disclosure of Information

Information contained in Form 1583 will be disclosed only to a government agency, including law enforcement, upon written certification of official need or pursuant to a subpoena or a court order. Information about court order protected individuals may not be disclosed to any requester, including government agencies, except pursuant to the order of a court of competent jurisdiction. If a court order is received for information covered by a protective order or there are questions in other circumstances concerning the release of information, contact field counsel for advice.

Suspension of Delivery

The postmaster or station manager serving the CMRA address is authorized to make initial decisions regarding non-compliance of the CMRA regulations. Postal Service officials must adhere to the guidelines outlined in DMM D042.2.6f through h regarding violations of the regulations by the CMRA or its customers.

The postmaster or station manager must notify the CMRA in writing when the CMRA is not in compliance with the regulations. This notice must provide the CMRA an appropriate period of time to correct the deficiencies and an opportunity to provide evidence of such compliance.

If the CMRA fails to comply, the postal manager must receive approval from the next higher level, generally the district manager, before notifying the CMRA of any action that

will be initiated regarding suspension of delivery. A written notice of suspension signed by the district manager with reason(s) for the action, including an analysis of any evidence or arguments concerning compliance submitted by the CMRA, and the date the action will be initiated, must be provided to the CMRA. Under no circumstances should a postmaster or station manager suspend service without following the guidelines outlined in DMM D042.2.6f through h.

The Postal Service is working in cooperation with the CMRA industry to protect the interests of consumers and businesses by reducing opportunities to use the mail and CMRAs for fraudulent or deceptive purposes.

- Retail Operations Support,
Retail, Consumers and Small Business, 9-6-01

Exhibit C

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(b) *Special local regulations.* (1) All persons and vessels not authorized as participants or official patrol vessels are spectators. The "official patrol" consists of any Coast Guard, public, State, county, or local law-enforcement vessels assigned or approved by Commander, Coast Guard Activities Baltimore.

(2) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(3) The operator of any vessel in this area shall:

(i) Stop the vessel immediately when directed to do so by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(4) Spectator vessels may enter and anchor in areas outside the regulated area without the permission of the Patrol Commander. They shall use caution not to enter the regulated area. No vessel shall anchor within a tunnel, cable, or pipeline area shown on a Government chart.

(5) The Coast Guard Patrol Commander will announce the specific time during which the regulations will be enforced, by Broadcast Notice to Mariners on channel 22 VHF–FM marine band radio.

(c) *Effective dates.* The regulated area is effective from 11 a.m. EDT (Eastern Daylight Time) to 3 p.m. EDT on April 28, April 29, and April 30, 1999.

Dated: March 5, 1999.

Roger T. Rufe, Jr.,

Vice Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 99–7323 Filed 3–24–99; 8:45 am]

BILLING CODE 4910–15–M

POSTAL SERVICE

39 CFR Part 111

Delivery of Mail to a Commercial Mail Receiving Agency

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends section D042.2.5 through D042.2.7 of the Domestic Mail Manual (DMM) to update and clarify procedures for delivery of an addressee's mail to a commercial mail receiving agency (CMRA). The rule provides procedures for registration to act as a CMRA; an addressee to request mail delivery to a CMRA; and delivery of the mail to a CMRA. This rule adopts with changes a proposed rule published for public comment on August 27, 1997, in the **Federal Register** (62 FR 45366–45368).

EFFECTIVE DATE: April 26, 1999.

FOR FURTHER INFORMATION CONTACT: Roy E. Gamble, (202) 268–3197.

SUPPLEMENTARY INFORMATION: On August 27, 1997, the Postal Service published in the **Federal Register** a proposed rule to amend sections D042.2.5 through D042.2.7 of the Domestic Mail Manual (62 FR 45366–45368). The proposed rule was in response to a need to clarify and revise current rules. Recent audits and follow-up reviews indicated a need for easy-to-understand rules to satisfy the different needs and requirements of the sender and the addressee of mail sent to CMRA addresses.

The proposed rule clarifies and updates the requirements to be consistent with other current postal rules, policies, and requirements. In many instances, these requirements are similar to those for obtaining post office box service. The requirements are protective of the sender's requirement for a secure mailstream. They are sensitive to the addressee's desire to have a CMRA receive delivery of his or her mail and hold it for pickup or re-mail it to the addressee, prepaid with new postage.

Comments on the proposed rule were due on or before September 26, 1997. The Postal Service reopened the public comment period for an additional 30 days with written comments due on or before December 24, 1997, (62 FR 62540 November 24, 1997). The Postal Service received a total of 8,107 comments. Of the total, 727 comments were from CMRA owners, 7,365 were from CMRA customers, four were from CMRA franchisers and associations, and one comment was from a Member of Congress. These comments were largely identical in content and format, and generally opposed the proposed rule. The Postal Service received 10 comments that generally supported the proposed rule. Large firms and associations, including financial institutions and trade associations of mailers, consumers, and law enforcement officials submitted these comments. The Postal Service also received a number of comments after the deadline that were similar in nature and content to those received on-time that generally opposed the proposed rule.

At the outset, it may be useful to address in more detail the purposes of this rulemaking. A number of commenters who opposed the new rule questioned the intent of the undertaking to amend the rule. There are assertions from the CMRAs that compliance with the regulations will "pu[t] CMRAs out of business." Customers of CMRAs assert that the rulemaking "appears to discriminate against them because of [their] choice of an address."

These claims are erroneous. The sole postal purpose of the rule is to increase the safety and security of the mail. The rule is designed to benefit both businesses and consumers by reducing the opportunities to use the mail for fraudulent purposes. The rule is intended to ensure that mailers are confident that addresses provided by prospective customers are actually used by these customers, and that the mail will reach the recipient, rather than be returned to the sender.

Comments from business, consumer, and law enforcement organizations recognize these purposes and indicate strong support for the rule. Indeed, in several cases, the commenters advocate even stronger provisions. The commenters describe a variety of problems addressed by the rule. For instance, several commenters refer to the term "identity theft," referring to criminal schemes with potential significant financial consequences to an innocent victim. The criminal may apply for new credit cards in the individual's name or request that the credit card issuers change the address of the legitimate cardholder. In each case, the criminal requests that future mailings are sent to an address that he or she controls.

One of the purposes of the rule is to strengthen the identification process at the time of application to receive mail through a CMRA. Thus, there are additional safeguards to ensure that a CMRA verifies that the applicant is the individual to whom mail will be addressed. The Postal Service has adopted safeguards in other instances where the mails may be used for fraudulent purposes, including strengthening the identification process for those applying to use post office box service as well as additional safeguards in change-of-address procedures. Thus the Postal Service is not "singling out" CMRAs.

Compliance with the prescribed procedures may, as noted by some commenters, impose additional burden on some CMRAs. It is true that CMRAs and their customers are, in the

overwhelming majority of cases, innocent of any wrongdoing. Indeed, one commenter who supported the rule referred to CMRAs as "unwitting conduits" in these frauds. Unfortunately, there are numerous instances in the modern world (e.g., airport security checks, custom searches, and restrictions on mailing parcels in collection boxes) where innocent people suffer inconvenience or expense due to the actions of a few lawbreakers. While the harms addressed in this rulemaking may not entail the physical dangers addressed in some of these examples, the potential financial consequences suffered by innocent victims can be devastating.

The Postal Service is not imposing administrative and financial burdens solely on the CMRAs or their customers. As noted above, the Postal Service undertakes similar administrative efforts with respect to persons using post office box service. Moreover, local postal officials are being asked to increase efforts to work with CMRAs to ensure knowledge of, and compliance with, these regulations. Finally, Postal Inspectors investigate complaints that CMRAs, post office boxes, or other addresses are being used in conducting fraudulent schemes. As observed by some commenters, the Postal Service and CMRAs act together to ensure that mail is delivered from the sender to the CMRA and then to the CMRA's customer, the addressee. This rulemaking extends this partnership by ensuring that the Postal Service and CMRAs work together for the equally important objective of ensuring that their customers are not the victims of fraud.

Numerous commenters, particularly CMRAs, oppose the updated requirement that assigns responsibility to the CMRA for verification of the addressee's permanent residential or business address entered on PS Form 1583, Application for Delivery of Mail Through Agent. The CMRAs asserted that this requirement is a huge burden that operators are unequipped to bear. The CMRAs said that the "Postal Service should not force CMRA operators to seek information that the Postal Service wants; operators are not police officers or private investigators."

In contrast, commenters who supported the rulemaking strongly favored this proposal and argued that, if anything, it does not go far enough. These commenters asserted that the requirements would reduce the number of persons who use a CMRA address to shield the user's identity and will help in the apprehension of individuals who use CMRAs for such purposes. These commenters suggested that the provisions be strengthened by requiring CMRAs to maintain a photocopy of the applicant's photo identification; and, by eliminating proposed section D042.2.6(a)(4) that permits the applicant's second item of identification "to be another credential showing the applicant's signature and a serial number or similar information that is traceable to the bearer."

The Postal Service has determined to adopt the proposed rule with certain clarifications. To a large degree, the proposed rule is similar to that in effect today in that an applicant for CMRA service must submit identification when applying for service. The proposed rule, with additional clarifying language, makes explicit the procedures that are implicit today; e.g., that the CMRA must review the identification to ensure that the applicant is the person he or she claims. These identification procedures are similar to those followed by the Postal Service for persons applying for post office box service. The Postal Service does not believe that these procedures are burdensome. Moreover, even if this was not true, we believe the procedures are necessary to prevent the fraud and mail security problems described by the mailers, consumers, and law enforcement groups supporting the rule. The proposal simply requires that the CMRA match the information on the application with that on the valid identification presented. If a discrepancy exists between the two, the CMRA must require that the addressee substantiate that he or she resides or conducts business at the address shown. The CMRA must deny the application if the addressee is unable to substantiate the address. This is an essential element in preventing mail delivery to a CMRA without verifiable consent of the actual addressee and reflects current practices to confirm that the identification belongs to the person presenting it. The information and the procedure will help the CMRA hinder fraud schemes involving identity theft. As an additional benefit, the verification of the address ensures that the CMRA has an address to re-mail mail or trace customers who terminate the relationship without prior notification.

The Postal Service has determined to retain the option to use "other credential" as one of the forms of identification (D042.2.6(a)(4)). The Postal Service believes that this provision is clear. The other credential could, for example, include a document such as a current lease, mortgage, deed, voter registration card, or a university identification card. In most instances these forms of identification would contain a signature and an address, and in some cases a photograph. The additional options will provide the CMRA with sufficient valid identification to confirm that the person presenting it is the addressee. Moreover, elimination of this provision could be burdensome to CMRAs and their customers of whom many may not have two of the other required forms of identification.

The comment recommending that the rule be amended to require the CMRA to retain a photocopy of the addressee's photo identification asserts that this would assist law enforcement officials to apprehend criminals and that it would only be a minor additional burden on the CMRA to maintain a photocopy. While the Postal Service does not disagree with this argument, we have determined, nevertheless, not to adopt this recommendation at this time. The Postal Service strongly believes that full compliance with procedures outlined in the proposed rule and due diligence by the CMRA owners will be sufficient to deter wrongdoing. The proposed rule does, moreover, permit CMRA owners to retain photocopies when they believe it appropriate. However, as part of its ongoing efforts to deter mail fraud at all addresses, including CMRAs, the Postal Service will continue to review its procedures and will propose adjustments where needed.

There is an additional clarification in this portion of the final rule. In general, each person receiving mail through a CMRA must complete a PS Form 1583, i.e., if three persons share a single CMRA private mailbox delivery address, each must submit a completed PS Form 1583. One CMRA commenter suggested a revision to the rule to allow spouses to execute and sign one PS Form 1583 and for parents or guardians to receive delivery of a minor's mail by listing the minor's name and age on their forms. The Postal Service adopted this suggestion.

Some CMRAs oppose the new provision, proposed D042.2.6(b), that requires addressees to disclose on PS Form 1583 when a private mailbox is being used for doing or soliciting business to the public. They expressed concern for their customers' privacy and about the lack of similar provisions for post office box service customers.

An identical requirement, noted in section 265(d) of title 39 of the Code of Federal Regulations, currently applies to users of post office box service. Under 39 C.F.R. 265.6(d)(3), parties may request information concerning the recorded name, address, and telephone number of the holder of a post office box

being used for doing or soliciting business with the public, or any person applying on behalf of a holder (see Administrative Support Manual 352.44(c)). Thus, the Postal Service, in adopting this proposal, is adopting the same provision that has been in place with respect to post office box service.

The CMRA commenters opposed the proposal to submit quarterly alphabetical listings to the postmaster of all new customers, current customers, and those customers who terminated within the past 12 months, including the date of termination (proposed D042.2.6(d) and D042.2.7(c)). The commenters asserted that these requirements are burdensome and unnecessary and that the current annual submission is sufficient. They also argued that submission of their copy of PS Form 1583 to the post office with the termination date should serve as immediate notification of the termination date and contended that this action should cease further delivery of the former customers' mail to the CMRA.

While generally supporting the submission of a quarterly list, one commenter recommended that the list also include the re-mail address of former customers.

After consideration of the comments, the Postal Service has determined to adopt the requirement that lists be submitted quarterly. The annual submission of the updated list of CMRA customers is inadequate. The average customer turnover rate at CMRAs is significant and recurrent. An accurate quarterly list of CMRA customers is necessary for the Postal Service to ensure mail security and compliance with CMRA requirements. The list will allow us to ensure that all addressees receiving mail at a CMRA have a completed PS Form 1583 on file at the Postal Service. We do not believe that the provision of a quarterly list will be unduly burdensome to CMRAs. In this respect, the Postal Service has eliminated the requirement to immediately notify the Postal Service of customers who have terminated their relationships with the CMRA. Instead, the CMRA will notify the Postal Service on a quarterly basis as part of the listing. The current procedure of notifying the Postal Service of the termination date of a customer relationship does not cease delivery of the customer's mail to the CMRA. The PS Form 1583 agreement obligates the Postal Service to deliver the intended addressee's mail to the CMRA. The Postal Service currently uses, and will continue to use, the termination date to determine the end of the retention period for the PS Form 1583.

The Postal Service has determined not to adopt the proposal that the CMRA provide the Postal Service, as part of the quarterly list, all addresses to which the agency re-mails mail. Requiring the CMRAs to include these addresses on the quarterly lists would impose an unnecessary burden on the CMRAs. The Postal Service has revised section D042.2.7(b) to require the CMRAs to provide these addresses on request, consistent with current policy.

The Postal Service is adopting a modification proposed by a CMRA. Noting the possible conflicts with other end-of-the month responsibilities, the commenter suggested that the lists be due on the 15th day of the applicable months. The Postal Service has revised section D042.2.6(d) to reflect this change.

The CMRAs and their customers opposed the regulation requiring the use of the delivery address designation "PMB" (private mailbox) that specifies the location to which a mailpiece is delivered. They perceive the use of the "PMB" designation as "unnecessary and a stigma that unfairly portrays the CMRA customer as somehow unsavory." Additionally, some CMRA customers will incur costs to print new stationery and to notify all current correspondents of the address change.

Commenters supporting the proposed rule, including business, consumer, and law enforcement associations, strongly endorsed the address designation. They believed that the designation would greatly assist business and law enforcement authorities in the prevention and detection of fraudulent activity with a minimum adverse effect on businesses or individuals; and suggested that adoption would be in the best interest of mailers and the general public. One commenter went on to assert that some of the proposed amendments did not go far enough and suggested even tougher requirements. The commenter expressed concern that many people would not recognize that "PMB" stands for private mailbox, and suggested using "private mailbox" or "rental mailbox."

After consideration of the comments, the Postal Service has determined to adopt the proposed rule. The comments supporting the proposal testify to the need for mailers to know the identity of the location to which a mailpiece is delivered. These comments also minimize the possibility of discriminatory treatment of CMRA customers. They indicate that businesses can adopt safeguards to protect themselves and their customers while continuing to provide credit card and other services to the addressee that receives mail at a CMRA.

The Postal Service believes that "PMB (private mailbox)" is the most appropriate description for the CMRA customer address designation. Use of the complete secondary designation name in the address might cause operational problems. The Postal Service uses automated equipment to sort and to distribute mail. The automated equipment identifies the word "box" in the address and associates it with a post office box number in the zone. In many instances, the automated equipment will code and sort this type of address to the post office box bearing that number. This causes an undue mail delay. The Postal Service designed the "PMB" acronym for "private mailbox" to prevent such mail delays while establishing the true address identity of mail delivered to CMRAs. The Postal Service also believes that the acronym "PMB" should not cause long-term confusion among customers.

As a further note, this proposal is consistent with the current policy of general addressing standards as required by Domestic Mail Manual A010.1.1 and A010.1.2, Address Content and Placement. PMB (private mailbox) simply specifies the location to which a mailpiece is delivered like APT (apartment), STE (suite), and PO BOX (post office box) address designations. Current use of APT, STE, and other address designations by CMRA customers is misleading and does not identify the true location of the mailpiece delivery. This misrepresentation of a mailing address is not in the best interest of and may cause irreparable harm to the sender. The sender has a primary right to know the true identity of the location to where his or her mail is delivered. Properly addressed mail serves the best interests of all.

While the Postal Service has determined to adopt the proposal, it is nevertheless sensitive to the needs of CMRAs and their customers. CMRA customers should begin making changes now but will receive up to 6 months after the Final Rule effective date to be in full compliance. The Postal Service recognizes that CMRA customers may need to print new stationery. This 6-month period is sufficient to advise correspondents and to make any other changes to comply with the address requirement. Accordingly, we urge the CMRAs and their customers to begin the notification process and conversion to the required address as quickly as possible. The Postal Service will require

strict adherence to the address requirement. At the end of this 6-month period, the Postal Service will return mail without a proper address to the sender endorsed "Undeliverable as Addressed."

Some CMRAs oppose the proposed regulation assigning authority to the postmaster to suspend delivery to a CMRA that fails to comply with Domestic Mail Manual regulations or other applicable postal requirements. The commenters believe there is no requirement or opportunity to allow the CMRA to come into compliance.

This provision is not new, but merely codifies current policy into the DMM. Current CMRA regulations assign authority to the postmaster to suspend mail delivery to a CMRA for noncompliance with DMM regulations (see 612.14, Compliance with Proper Procedures, of the Postal Operations Manual). The CMRA must receive written notification identifying the violation(s) and reasonable time to come into compliance. If the CMRA fails to comply with the written notification, the postmaster must receive approval from the next higher level and notify the Postal Inspector-In-Charge before suspending delivery service to a CMRA. Upon approval, the postmaster must provide the CMRA with written notification of the effective date and the reason(s) for suspension of delivery. If the CMRA fails to comply by the effective date, mail will be returned to the sender endorsed "Delivery Suspended to Commercial Mail Receiving Agency." The next higher level authority may disagree with the time allotted for compliance or with the severity of the violation(s) and not approve the action. This postal procedure is designed to prevent unnecessary delays in mail delivery and provide the postmaster with the means to maintain compliance. The Postal Service believes the regulation is fair and reasonable to the CMRA and its customers.

Provisions concerning the handling of mail after delivery to CMRAs attracted comments from CMRAs, their customers, a mailers association, and a consumer organization. The CMRAs, their customers, and a mailers association opposed the provision limiting the ability of former customers to file change-of-address orders with the Postal Service and the requirement to pay new postage when re-mailing pieces to former customers. The CMRAs also opposed the provision limiting their ability to refuse mail for their customers. The consumer organization questioned whether CMRAs should be permitted to re-mail pieces to current or former customers, even when that is the desire of the parties. This commenter asserted that there is "no compelling reason why a legitimate addressee would need to arrange for forwarding on a permanent basis." The commenter urged adoption of a rule that would restrict re-mailing to a period of several weeks while a current customer is out of town or for 3 months after termination of the agency relationship. The commenter asserted that these provisions are necessary to prevent fraud.

Some of the comments appear to be based on misconceptions. A number of comments asserted that all other customers receive mail-forwarding service. To the extent that these commenters seek the right to file change-of-address orders with the Postal Service, this assertion is incorrect. Anyone who receives mail at a single point or bulk delivery location, such as residents of universities, hospitals, and other institutions, and some apartment or mobile home parks, as well as at their places of employment, may not file change-of-address orders. In each of these cases, the institution must place the individual's new address on the piece in order to redirect the mail. The difference between the CMRAs and these other locations is that the CMRA must re-mail the piece and affix new postage to send it to the individual. The reasons for this distinction are further discussed below.

Many commenters appear to believe that the policies codified in these DMM provisions are new. The majority of these policies are not new. To the extent that there are changes, at least portions of them ease the current requirements on the CMRAs and their customers. For instance, the restrictions against CMRA customers filing change-of-address orders and requiring payment of new postage to re-mail items are consistent with long-standing policy. Indeed, these provisions have long been set forth in postal regulations and reprinted on PS Form 1583. More important, these provisions implement standards in 2025 of the Domestic Mail Classification Schedule (DMCS). They cannot be changed by the Postal Service without a request and proceeding before the Postal Rate Commission.

These policies are clearly consistent with the mandate that the Postal Service operates efficiently. As is the case with other entities receiving bulk delivery of mail, it is impractical for the Postal Service to accept change-of-address orders from former CMRA customers. To do so would require the Postal Service to manually inspect large quantities of mail to extract individual pieces addressed to customers filing change-of-address orders. This would entail significant time and expense for the Postal Service and delay the timely delivery of mail.

As noted above, other entities receiving bulk delivery of mail may redirect mail to former residents and other parties by writing the new address on the piece. No additional postage is required. Under the existing DMCS and DMM rules, CMRAs must affix new postage to re-mail mailpieces to former customers. This treatment is warranted. Unlike other bulk delivery points, CMRAs advertise and charge customers for mail service, which is a primary, rather than an incidental, part of their business. It is reasonable to expect CMRAs to perform this service completely by requiring CMRAs to ensure that mail continues to reach former customers. Many CMRAs already perform this same re-mailing service for customers not located in the same geographic area as the CMRA or who otherwise do not wish to travel to the CMRA to pick up mail.

The costs of re-mailing also should not be burdensome to the CMRAs. They are free to pass these costs on to their customers. The Postal Service understands that many, if not all, CMRAs already charge customers to re-mail their correspondence. The CMRA and the customers can make arrangements to reduce these costs by aggregating the pieces and paying postage on a single package rather than re-mailing each piece. The Postal Service believes it is appropriate that these costs be borne by the CMRA customer rather than be passed on to all postal customers, which would occur if the re-mailing costs were imposed on the Postal Service.

The Postal Service has determined not to adopt the suggestion by one commenter restricting CMRAs from re-mailing to current or former customers. The Postal Service understands that CMRAs routinely provide such services to customers. The suggestion would appear to prevent such persons from using CMRAs, and accordingly would have a significant adverse impact on these individuals as well as on the business of the CMRA.

The comments concerning the refusal of mail were generally received from CMRAs. These questions have arisen in the past and have been the subject of a number of rulings, some of which are potentially conflicting. This has included rulings that CMRAs may not refuse mail under any circumstances as well as rulings allowing CMRAs to refuse mail.

The issues concerning a CMRA's obligation to re-mail material to current or former customers (as opposed to redirecting it without affixing new postage) and their entitlement to refuse mail are linked in our view. A CMRA's obligation to re-mail matter may be circumvented by the expedient of returning mail without payment of new postage. Thus, a CMRA could avoid re-mailing pieces to a former customer if it could simply mark the piece "refused" and return it to the Postal Service. This adversely affects a number of parties: the sender whose mail does not reach the intended recipient, the addressee who does not receive it, and the Postal Service and its customers, which incurs the costs of returning the piece to the sender.

Accordingly, there are significant reasons to limit the refusal of mail by CMRAs. This conclusion is also consistent with the underlying relationship between the CMRA and its customer. By using PS Form 1583, the customer directs the Postal Service to deliver its mail to the CMRA, which is in the business of, and charges for, the receipt of such mail and holding it for pick up or re-mailing to the customer with payment of new postage. There is no provision to rescind this direction or for the CMRA to abandon its obligation to handle the individual's mail and to impose that responsibility on the Postal Service.

The Postal Service did, nevertheless, propose a limit on the obligation of CMRAs to re-mail mailpieces addressed to former customers and a limited authority to refuse mail. The Postal Service proposed to limit the period to 12 months for CMRAs to re-mail to former customers, after which the CMRAs could return only First-Class Mail to the Postal Service, with a specified endorsement. The proposed rule also clarified the conditions under which the CMRA can refuse mail and return it to the Postal Service with a specified endorsement.

In consideration of a comment, the Postal Service has determined to reduce the required period to re-mail to former customers to at least 6 months. This reasonably balances the interests and obligations of the senders of the mail, the CMRAs, former CMRA customers, and the Postal Service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual (DMM) which are incorporated by reference in the Code of Federal Regulations (see 39 CFR 111.1).

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

The Domestic Mail Manual is amended by revising modules A, D, and F as follows:

A Addressing

A000 Basic Addressing

A010 General Addressing Standards

1.0 ADDRESS CONTENT AND PLACEMENT

* * * * *

1.2 Address Elements

[Revise A010.1.2b as follows:]

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b. Street and number. (Include the apartment number, or use the post office box number, or private mailbox (PMB) number, or general delivery, or rural route or highway contract route designation and box number, as applicable.)

* * * * *

3.0 COMPLETE ADDRESS

* * * * *

3.2 Elements

[Revise A010.3.2d as follows:]

* * * * *

d. Secondary address unit designator and number (such as an apartment, suite, or private mailbox number (APT 202, STE 100, PMB 300)).

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5.0 RESTRICTIONS

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[Add new 5.3 as follows:]

5.3 Mail Addressed to CMRAs

Mail sent to an addressee at a commercial mail receiving agency (CMRA) must be addressed to their private mailbox (PMB) number at the CMRA mailing address.

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D Deposit, Collection, and Delivery

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D042 Conditions of Delivery

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2.0 DELIVERY TO ADDRESSEE'S AGENT

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2.5 CMRA

[Revise D042.2.5 as follows:]

The procedures for the establishment of a commercial mail receiving agency:

a. An addressee may request mail delivery to a commercial mail receiving agency (CMRA). The CMRA accepts delivery of the mail and holds it for pickup or re-mails it to the addressee, prepaid with new postage.

b. Each CMRA must register with the post office responsible for delivery to the CMRA. Any person who establishes, owns, or manages a CMRA must provide a Form 1583–A, Application to Act as Commercial Mail Receiving Agency, to the postmaster (or designee) responsible for the delivery address. The CMRA owner or manager must complete all entries and sign the Form 1583–A. The CMRA owner or manager must furnish two items of valid identification; one item must contain a photograph of the CMRA owner or manager. The following are examples of acceptable identification:

(1) Valid driver's license.

(2) Armed forces, government, or recognized corporate identification card.

(3) Passport or alien registration card.

(4) Other credential showing the applicant's signature and a serial number or similar information that is traceable to the bearer.

The postmaster (or designee) may retain a photocopy of the identification for verification purposes. Furnishing false information on the application or refusing to give required information will be reason for denying the application. When any information required on Form 1583–A changes or becomes obsolete, the CMRA owner or manager must file a revised application with the postmaster.

c. The postmaster (or designee) must verify the documentation to confirm that the CMRA owner or manager resides at the permanent home address shown on Form 1583–A; witness the signature of the CMRA owner or manager; and sign Form 1583–A. The postmaster must provide the CMRA with a copy of the DMM regulations relevant to the operation of a CMRA. The CMRA owner or manager must sign the Form 1583–A acknowledging receipt of the regulations. The postmaster must file the original of the completed Form 1583–A at the post office and provide the CMRA with a duplicate copy.

d. The approval of Form 1583–A does not authorize the CMRA to accept accountable mail (for example: Registered, Insured, or COD) from their customers for mailing. The only acceptable mailing point for this type of Accountable mail is the post office.

2.6 Delivery to CMRA

[Revise D042.2.6 as follows:]

Procedures for delivery to a CMRA:

a. Mail delivery to a CMRA requires that the CMRA owners or manager and each addressee complete and sign PS Form 1583, Application for Delivery of Mail Through Agent. Spouses may complete and sign one Form 1583. The requirement to furnish two items of valid identification will apply to each spouse. If any information that is required on Form 1583 is different for either spouse, include it in the appropriate box. A parent or guardian may receive delivery of a minor's mail by listing the name(s) and age(s) (block 13) of the minor(s) on Form 1583. The CMRA owner or manager, authorized employee, or a notary public must witness the signature of the addressee. The addressee must complete all entries on Form 1583. The CMRA owner or manager must verify the documentation to confirm that the addressee resides or conducts business at the permanent address shown on Form 1583. The address is verified if there is no discrepancy between information on the application and the identification presented. If the information on the application does not match the identification, the applicant must substantiate to the CMRA that the applicant resides or conducts business at the address shown. If the applicant is unable to substantiate the address, the CMRA must deny the application. Furnishing false information on the application or refusing to give required information will be reason for withholding the addressee's mail from delivery to the agency and returning it to the sender. When any information required on Form 1583 changes or becomes obsolete, the addressee must file a revised application with the CMRA. The addressee must furnish two items of valid identification; one item must contain a photograph of the addressee. The following are examples of acceptable identification:

(1) Valid driver's license.

(2) Armed forces, government, or recognized corporate identification card.

(3) Passport or alien registration card.

(4) Other credential showing the applicant's signature and a serial number or similar information that is traceable to the bearer.

The CMRA owner or manager may retain a photocopy of the identification for verification purposes. The CMRA owner or manager must list the two types of identification (block 9) and write the complete CMRA delivery address used to deliver mail to the addressee (block 3) on Form 1583.

b. The addressee must disclose on Form 1583 when the private mailbox is being used for the purpose of doing or soliciting business to the public. The information required to complete this form may be available to the public if "yes" in block 5 on Form 1583 is checked.

c. The CMRA must provide the original of completed Forms 1583 to the postmaster. This includes revised Forms 1583 (write revised on form) submitted by an addressee based on information changes in the original Form 1583. The CMRA must maintain duplicate copies of completed Forms 1583 on file at the CMRA business location. The Forms 1583 must be available at all times for examination by postal representatives and postal inspectors. The postmaster must file the original Forms 1583 alphabetically by the addressee's last name for each CMRA at the station, branch, or post office. The postmaster files the original Forms 1583 without verifying the address of residence or firm shown on Forms 1583. Verification is required only when the postmaster receives a request by the Postal Inspector-In-Charge, or when there is reason to believe that the addressee's mail may be, or is being, used for unlawful purposes.

d. When the agency relationship between the CMRA and the addressee terminates, the CMRA must write the date of termination on its duplicate copy of PS Form 1583. The CMRA must notify the post office of termination dates through the quarterly updates (due January 15, April 15, July 15, and October 15) of the alphabetical list of customers cross-referenced to the CMRA addressee delivery designations. The alphabetical list must contain all new customers, current customers, and those customers who terminated within the past 6 months, including the date of termination. The CMRA must retain the endorsed duplicate copies of Forms 1583 for at least 6 months after the termination date. Forms 1583 filed at the CMRA business location must be available at all times for examination by postal representatives and postal inspectors.

e. A CMRA must represent its delivery address designations for the intended addressees as a private mailbox (PMB). The CMRA delivery address must specify the location to which the mailpiece is delivered. Mailpieces must bear a delivery address, that contains at least the following elements, in this order:

(1) Intended addressee's name or other identification. Examples: Joe Doe or ABC CO.

(2) PMB and number. Example: PMB 234.

(3) Street number and name or post office box number or rural route designation and number. Examples: 10 Main St or PO BOX 34 or RR 1 BOX 12.

(4) City, state, and ZIP Code (5-digit or ZIP+4). Example: Herndon VA 22071–2716.

The CMRA must write the complete CMRA delivery address used to deliver mail to each individual addressee or firm on the Form 1583 (block 3). The Postal Service will return mail without a proper address to the sender endorsed "Undeliverable as Addressed."

f. A CMRA or the addressee must not modify or alter Form 1583 or Form 1583–A. Modified or altered forms are invalid and the addressee's mail must be returned to sender in accordance with Postal Service regulations.

g. The CMRA must be in full compliance with DMM D042.2.5 through D042.2.7 and other applicable postal requirements to receive delivery of mail from the post office.

h. The postmaster may, with the next higher level approval and notification to the Postal Inspector-In-Charge, suspend delivery to a CMRA that, after proper notification, fails to comply with D042.2.5 through D042.2.7 or other applicable postal requirements. The proper notification must be in writing outlining the specific violation(s) with a reasonable time to comply.

i. With the approval of suspension of delivery, the postmaster must provide the CMRA with written notification of the effective date and the reason(s). If the CMRA fails to comply by the effective date, return mail to the sender endorsed "Delivery Suspended to Commercial Mail Receiving Agency."

2.7 Addressee and CMRA Agreement

[Reviser D042.2.7 as follows:]

In delivery of the mail to the CMRA, the addressee and the CMRA agree that:

a. When the agency relationship between the CMRA and the addressee terminates, neither the addressee nor the CMRA will file a change-of-address order with the post office.

b. The CMRA must re-mail mail intended for the addressee for at least 6 months after the termination date of the agency relationship between the CMRA and addressee. When re-mailed by the CMRA, mail requires payment of new postage. At the end of the 6-month period, the CMRA may return only First-Class Mail received for the former addressee (customer) to the post office. The CMRA must return this mail to the post office the next business day after receipt with this proper endorsement: "Undeliverable, Commercial Mail Receiving Agency, No Authorization to Receive Mail for This Addressee." Return this mail without payment of new postage to the post office. The

CMRA must not deposit return mail in a collection box. The CMRA must give the return mail to the letter carrier or return it to the post office responsible for delivery to the CMRA. Upon request, the agent must provide to the Postal Service all addresses to which the agency re-mails mail.

c. The CMRA must provide to the postmaster a quarterly list (due January 15, April 15, July 15, and October 15) of its customers in alphabetical order cross-referenced to the CMRA addressee delivery designations. The alphabetical list must contain all new customers, current customers, and those customers who terminated within the past 6 months, including the date of termination.

d. A CMRA may not refuse delivery of mail if the mail is for an addressee that is a customer or former customer (within the past 6 months). The agreement between the addressee and the CMRA obligates the CMRA to receive all mail, except restricted delivery, for the addressee. The addressee may authorize the CMRA in writing on Form 1583 (block 6) to receive restricted delivery mail for the addressee.

e. If the CMRA has no Form 1583 on file for the intended addressee, the CMRA must return that mail to the post office responsible for delivery. The CMRA must return this mail to the post office the next business day after receipt with this proper endorsement: "Undeliverable, Commercial Mail Receiving Agency, No Authorization to Receive Mail for This Addressee." Return this mail without payment of new postage to the post office. The CMRA must return misdelivered mail the next business day after receipt.

f. The CMRA must not deposit return mail in a collection box. The CMRA must give the return mail to the letter carrier or return it to the post office responsible for delivery to the CMRA.

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F000 BASIC SERVICES

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[Revise Exhibit F010.4.1 to add an endorsement.]

* * * * *

Delivery Suspended to Commercial Mail Receiving Agency

Failure to Comply with D042.2.5–D042.2.7

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F020 FORWARDING

* * * * *

2.0 FORWARDABLE MAIL

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[Add new F020.2.7 as follows:]

2.7 Mail CMRA Customers

Mail addressed to an addressee at CMRA is not forwarded through the USPS. The CMRA customer may make special arrangements for the CMRA operator to re-mail the mail with payment of new postage. A CMRA must accept and re-mail mail to former customers for at least 6 months after termination of the agency relationship. After the 6-month period, the CMRA may refuse mail addressed to a former customer.

* * * * *

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 99–7352 Filed 3–24–99; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 201–0138a; FRL–6309–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan (SIP). This action is an administrative change which revises the emergency episode provisions in South Coast Air Quality Management District (SCAQMD) Rule 701.

The intended effect of approving this rule is to incorporate changes to the rule for clarity and consistency in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the approval of this revision into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This action is effective on May 24, 1999 without further notice, unless EPA receives adverse comments by April 26, 1999. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revisions and EPA's evaluation report for each rule is available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1189.

SUPPLEMENTARY INFORMATION:

Applicability

The rule being approved into the California SIP is SCAQMD Rule 701, Air Pollution Emergency Contingency Actions. This rule was submitted by the California Air Resources Board to EPA on September 8, 1997.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the South Coast Air Quality Management District. 43 FR 8964, 40 CFR 81.305. The requirements for the Prevention of Air Pollution Emergency Episodes for sulfur dioxide, carbon monoxide, nitrogen dioxide, ozone and particulate matter are located in 40 CFR Part 51, Subpart H. These requirements include provisions for classification of regions for episodes plans, significant harm levels, contingency plans and re-evaluation of episode plans. SCAQMD

Exhibit D

Domestic Mail

UPDATE

Commercial Mail Receiving Agency (CMRA) Regulations

On April 26, 1999, the Postal Service adopted revised standards concerning the operation of Commercial Mail Receiving Agencies (CMRAs). The following guidance is provided concerning application of these standards.

Disclosure of Information

A *Federal Register* notice will be issued to propose a modification that would prohibit the release of address information (except for law enforcement purposes) of individuals who use either private mailboxes (PMBs) or post office boxes for business purposes. In the interim, postal employees will not release to the public any information about holders of private mailboxes from PS Form 1583, *Application for Delivery of Mail Through Agent*. However, until the regulation change becomes effective, there will be no change in the current practice regarding disclosure of information about holders of post office boxes.

PS Form 1583

The deadline for CMRA customers to complete and submit PS Form 1583 has been extended for an additional 2 months, from June 26, 1999, until August 26, 1999. During this period, postal managers must continue to deliver mail to CMRAs for these boxholders.

Suspension of Service

The postmaster or station manager serving the CMRA address is authorized to make decisions regarding noncompliance of the CMRA regulations. Postal Service officials must adhere to the guidelines outlined in *Domestic Mail Manual* D042.2.6h regarding violations of the regulations by the CMRA or its customers. The postmaster or station manager must notify the CMRA in writing when the CMRA is not in compliance with the regulations. This notice must provide the CMRA an appropriate period of time to correct the deficiencies and an opportunity to provide evidence of such compliance. If the CMRA fails to comply, the postal manager must receive approval from the next higher level, generally the district manager, before notifying the CMRA that certain action will be initiated by a certain date. Written notice of suspension and the reason for the action, including an analysis of any evidence or arguments concerning compliance submitted by the CMRA, should be provided to the CMRA.

Accountable Mail

CMRAs must present all accountable mail, except Registered Mail and Certified Mail, to the post office for acceptance. Certified mail may be accepted for mailing at the CMRA. CMRA customers must take Registered Mail to the post office for acceptance.

CMRAs are authorized to accept accountable mail for delivery to their customers. CMRA customers may extend authorization to the CMRA to sign for their Restricted Delivery mail by signing in box 6 on the revised PS Form 1583.

PS Form 1093

PS Form 1093, *Application for Post Office Box or Caller Service*, was revised in July 1998 and is the only form post offices should use to verify identification when customers are applying for rental of a post office box. All PS Forms 1093 issued prior to the July 1998 date should be destroyed.

Acceptable Forms of Identification

CMRAs and their customers must present two forms of identification, one with a photograph. Social Security cards, credit cards, and birth certificates are not acceptable forms of identification. Following are examples of acceptable forms of identification: valid driver's license or non-driver's license state ID; armed forces, government, university, or recognized corporate ID; passport or alien registration card; current lease, mortgage, or deed; voter registration card; utility bill; home or vehicle insurance policy; and vehicle registration card.

The identification presented must confirm that the applicant is who he or she claims to be. By verifying identification, the Postal Service will protect against delivering mail to a CMRA without verifiable consent of the actual addressee.

Addressing Format

The CMRA must represent its delivery address designation for intended addressees as a private mailbox (PMB). The required address format for CMRA customers consists of four lines as indicated in the following example:

Name:	JOHN DOE
Designation and number:	PMB 100
Primary delivery address:	1015 MAIN ST or PO BOX 34 or RR1 BOX 12
City, State, ZIP Code:	WASHINGTON DC 20001-1015

Exhibit E

CMRA Notification of Non-Compliance and Suspension of Delivery Letters

Below are a description and explanation of the specific usage of each sample CMRA letter. Usage includes notification of non-compliance to DMM requirements; initial delivery suspension for failure to comply after notification and reasonable time to correct the deficiencies; the final letters affirming delivery suspension, rescission of the initial suspension letter and termination of the final suspension letter based on compliance evidence. The initial delivery suspension letter is issued and signed by the postmaster or station manager with approval from the district manager and notification to the Inspector-In-Charge. The district manager makes the decision and signs the final delivery suspension letters (appeal and no appeal filed). The postmaster or station manager signs the rescission letter and either the district manager, postmaster or station manager may sign the termination letter.

1) Notification Letter of Non-compliance - This letter notifies the CMRA that it or its customers are not in compliance with one of the DMM standards. Signed by the postmaster or station manager.

2) Initial Delivery Suspension Letter - This letter notifies the CMRA that it failed to comply with the notification letter and that delivery will be suspended by a certain date unless the CMRA provides evidence that it is now in compliance. Any appeal to this letter by the CMRA is routed through the postmaster or station manager. He/she may decide the suspension is not warranted based on the evidence provided. However, if it is believed the suspension is warranted, the matter is routed to the next higher level, generally the district manager, for decision. Signed by the postmaster or station manager with approval of the district manager and notification to Inspector-In-Charge.

3) Final Delivery Suspension Letter (no appeal filed) - This letter notifies the CMRA that delivery is suspended immediately because the CMRA failed to comply with or provide evidence of compliance or other response to the initial delivery suspension letter from the postmaster or station manager. Signed by the district manager who reviews any response or evidence presented to the postmaster or station manager by the CMRA and makes the final decision on suspension of delivery.

4) Final Delivery Suspension Letter (appeal filed) - This letter is issued when the CMRA provides a response or evidence of compliance to the initial delivery suspension letter but it did not demonstrate compliance with the regulation. Signed by the district manager who reviews any response or evidence presented to the postmaster or station manager and makes the final decision on suspension of delivery.

5) Rescission of Initial Delivery Suspension Letter - This letter is provided if the CMRA presents evidence to the postmaster or station manager in response to the initial delivery suspension letter that demonstrates that the CMRA is currently in compliance with each of the provisions cited in the letter. Signed by the postmaster or station manager.

6) Termination of Final Delivery Suspension Letter - This letter terminates suspension of delivery to a CMRA that has brought its agency into compliance with the requirements for operation of commercial mail receiving agencies. The postmaster, station manager or district manager may sign this letter.

SAMPLE NOTIFICATION LETTER OF NON-COMPLIANCE

Certified Mail
Return Receipt Requested

Date

Name of Owner
CRMA Name
Address

Dear Mr./Ms._____:

On August 16, 2000, the Postal Service published a final rule in the Federal Register (65 FR 49917- 49919) to amend Domestic Mail Manual (DMM) D042.2.5 through D042.2.7. The revised requirements permit CMRA customers to use "PMB" (private mailbox) or the alternative "#" sign, in certain conditions, for mail addressed to their private mailbox. The effective date of this ruling was delayed nearly one year until August 1, 2001, to give your customers adequate time for the transition to the new addressing standard. Postal officials have observed that a significant amount of your CMRA customer's mail is improperly addressed. **(Need to identify why it is improperly addressed and provide the approximate number of customers not in compliance and the approximate amount of mail with improper addressing).**

The requirement date for compliance with the "PMB" or alternative # format was August 1, 2001. Your mail was observed on **[Insert Date]** for compliance to this ruling. It was determined that approximately **[number of]** customer's are not in compliance because their address did not contain PMB or the alternative # in the proper format as outlined in D042.2.6e of the Domestic Mail Manual (DMM). You should ensure that all of your customers notify their correspondents or customers of their new address to increase compliance with the standard. Your customers could use one or more of the following procedures based on their circumstances: include a notice of the proper address in outgoing correspondence, notification through updating Web sites, a specific or general postal card mailing to customer lists or correspondents, or other appropriate means.

It is essential that your customers comply with the addressing standards or that you consider terminating the relationship with those customers that fail to comply within (**use a reasonable time to permit correction of deficiencies**). Failure to comply may result in suspension of delivery to your CMRA as outlined in D042.2.6f through h of the Domestic Mail Manual (DMM).

If you have any additional questions, please contact **[INSERT NAME]** in my office at **[Phone number]**. Thank you for your prompt attention to this matter.

Postmaster/Station Manager

cc: District Manager

SAMPLE INITIAL DELIVERY SUSPENSION LETTER

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Name of Owner/Manager
CMRA Name
Address

Dear Mr./Ms._____:

Based on a review of your agency, it has been determined that (name of CMRA) does not comply with applicable standards for the operation of commercial mail receiving agencies. These findings are discussed in detail below. In accordance with postal regulations, delivery service to name of CMRA will be suspended effective _____ days from your receipt of this letter unless it is demonstrated that your agency is in compliance with postal regulations.

[Cite and paraphrase each regulation with which the CMRA does not comply, including the provision allowing suspension of service for noncompliance. Example: "Under Domestic Mail Manual (DMM) _____, a Form 1583-A must be submitted by each customer receiving mail addressed to your agency", or "Under DMM _____, each commercial mail receiving agency must submit an alphabetical list of customers on a quarterly basis"]. Copies of each of these provisions are enclosed for your convenience.

A review of your agency's operations was conducted on [date][and also lists any follow-up reviews]. This review indicated a number of areas in which your agency fails to comply with postal standards. [Discuss each of the violations discovered, including the evidence supporting that determination. Example: "It was determined that numerous pieces of mail, totaling _____ pieces to _____ different addressees, were sent to individuals who did not have a Form 1583-A on file. A follow-up review, conducted on [date], disclosed more mail, totaling _____ pieces to _____different addressees, sent to individuals who did not have a Form 1583-A on file", or "your agency failed to submit its alphabetical listing of customers by [date]"). Based on this evidence, I find that your agency does not comply with DMM (list specific sections which the agency fails to meet).

In accordance with DMM _____, delivery service to your agency is suspended, effective _____ days from your receipt of this letter, unless you provide, by that date, a written statement and evidence demonstrating compliance with the standards applicable to the operation of commercial mail receiving agencies. This statement should be directed to the undersigned. Please call _____ at _____ if you have any questions concerning this determination or the standards applicable to commercial mail receiving agencies.

Postmaster/Station Manager

cc: District Manager
Inspector-In-Charge

Enclosures

SAMPLE FINAL DELIVERY SUSPENSION LETTER (NO "APPEAL" FILED)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Name of Owner/Manager
CMRA Name
Address

Dear Mr./Ms. _____:

This follows up on the letter of [date] sent to you by _____, Postmaster, city/state. That letter advised that delivery service would be suspended to your commercial mail receiving agency effective_____days from your receipt of the determination unless you presented, within that period, evidence that your agency is in compliance with postal standards for operating such agencies. The Postmaster's letter described in detail the relevant postal standards and the areas in which your agency failed to comply. A copy of that determination is enclosed.

In view of your failure to provide evidence of compliance or other response to the Postmaster's determination, delivery service to your commercial mail receiving agency is suspended immediately, in accordance with Domestic Mail Manual _____. (Explain what will happen to the mail). This suspension will be terminated when your agency is brought into compliance with the postal standards for commercial mail receiving agencies. Please contact your Postmaster, and provide (him/her) evidence of such compliance, when that has been accomplished.

District Manager

Enclosure

cc: Postmaster/Station Manager
Inspector-In-Charge

SAMPLE FINAL DELIVERY SUSPENSION LETTER ("APPEAL" FILED)

CERTIFIED MAILRETURN RECEIPT REQUESTED

Name of Owner/Manager
CMRA Name
Address

Dear Mr./Ms. _____:

This responds to your [date] letter to _____ concerning delivery service to name of CMRA. Your letter responds to a [date] determination by name, Postmaster, city/state advising that delivery service to your agency would be suspended unless you provided evidence of compliance with postal standards governing the operation of commercial mail receiving agencies. For the reasons discussed below, we have determined that your agency does not comply with these standards and delivery service to your agency is suspended immediately.

[Cite and paraphrase each regulation with which the CMRA does not comply. This may include all or some of the provisions in paragraph 2 of the form letter for initial decisions].

[Paraphrase and address each and every argument raised in the CMRA's "appeal" letter, explaining why it does not (or does) demonstrate compliance with the regulation. Example: "Your letter asserts that your agency now has on file a Form 1583-A for each individual to whom mail is addressed. However, following receipt of your letter, a representative of the city/state Post Office reviewed the operations of your agency. He/She determined that numerous pieces of mail, totaling _____pieces to _____ different individuals, were sent to individuals who did not have a Form 1583 on file. Accordingly, it remains clear that your agency does not comply with Domestic Mail Manual (DMM) _____" or "Your letter appears to argue that the regulations are invalid and may not be properly applied to commercial mail receiving agencies. We disagree. The regulations were adopted following notice and comment rulemaking and are a proper exercise of the Postal Service's regulatory authority."

[Summarize your conclusions. Example: "Based on a full review of your letter and the file in this matter, I find that Postmaster, city/state properly found that your agency does not comply with the standards for operation of a commercial mail receiving agency. Specifically, the information in the file demonstrates that your agency does not comply with DMM _____. Accordingly, the Postmaster's decision is affirmed and delivery service to your agency is suspended, effective _____, in accordance with DMM _____. (Explain what will happen to the mail). This suspension will be terminated when your agency is brought into compliance with the standards for operation of commercial mail receiving agencies. Please contact your Postmaster, and provide (him/her) evidence of such compliance, when that has been accomplished.

District Manager

cc: Postmaster/Station Manager
Inspector-In-Charge

Enclosure

SAMPLE LETTER RESCINDING INITIAL DELIVERY SUSPENSION

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Name of Owner/Manager
CMRA Name
Address

Dear Mr./Ms. _____:

This follows up on my letter of (DATE) in which I advised that delivery service to (CMRA NAME) would be suspended effective in ____days unless your agency demonstrated compliance with certain postal regulations.

As explained in that letter, my notice was based upon evidence that your agency did not comply with the following standards: (LIST AND SUMMARIZE APPLICABLE REGULATIONS)

Based on the information you have supplied and my review of your agency's operations, it appears that your agency currently complies with each of these provisions. Accordingly, I am pleased to advise you that I am rescinding my determination that your agency does not comply with postal standards. Thank you for your prompt efforts to resolve this matter and your continued attention to the standards.

Please do not hesitate to contact me if you have any questions or if I may be of any other assistance.

Postmaster/Station Manager

cc: District Manager
Inspector-In-Charge

SAMPLE LETTER TERMINATING FINAL DELIVERY SUSPENSION

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Name of Owner/Manager
CMRA Name
Address

Dear Mr./Ms. _____:

This follows up on my letter of (DATE) in which I advised that delivery service to (CMRA NAME) was suspended effective (DATE) due to your agency's failure to comply with certain postal regulations.

As explained in that letter, my notice was based upon evidence that your agency did not comply with the following standards: (LIST AND SUMMARIZE APPLICABLE REGULATIONS)

Based on the information you have supplied and my review of your agency's operations, it appears that your agency currently complies with each of these provisions. Accordingly, I am pleased to advise you that I am rescinding my determination suspending delivery service to your agency. Thank you for your efforts to resolve this matter and your continued attention to the standards.

Please do not hesitate to contact me if you have any questions or if I may be of any other assistance.

District Manager/Postmaster/Station Manager

cc: District Manager
Inspector-In-Charge