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Comptroller General

OF THE UNITED STATES

Opportunities To Improve The Postal Ratemaking Process

At the request of the Chairman, Subcommittee on Civil Service, Post Office and General Services, Senate Committee on Governmental Affairs, GAO reviewed the current processes for setting postal rates (the ratemaking process) and determining the mail services to be offered (the classification process).

GAO found the postal ratemaking process works reasonably well. The ratemaking process currently provides all interested parties an opportunity to participate in ratemaking proceedings, develops an evidentiary record upon which rate decisions are based, and normally produces Postal Rate Commission recommendations to the Postal Service Governors for new postal rates in a reasonable amount of time. However, GAO did identify opportunities to improve the ratemaking process.

GAO's review of the classification process found the Commission's current procedures are appropriate for resolving mail classification cases.



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COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON D C 20548

B-204264

The Honorable Ted Stevens
Chairman, Subcommittee on Civil Service,
Post Office and General Services
Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

In response to your March 3, 1982, request, this report is the first in a series of reports addressing different aspects of postal operations. This report offers recommendations to enhance the postal ratemaking process.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of the report. At that time we will send copies to the Postal Service, the Board of Governors, and the Postal Rate Commission. We will also make copies available to others upon request.

We are available to discuss our findings and to provide any further assistance you may need.

Sincerely yours,

A handwritten signature in cursive script, reading "Charles A. Bowsher".

Comptroller General
of the United States

COMPTROLLER GENERAL'S REPORT TO
THE CHAIRMAN, SUBCOMMITTEE ON
CIVIL SERVICE, POST OFFICE,
AND GENERAL SERVICES
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

OPPORTUNITIES TO
IMPROVE THE POSTAL
RATEMAKING PROCESS

D I G E S T

The Chairman of the Senate Subcommittee on Civil Service, Post Office and General Services requested that GAO review the postal ratemaking and classification processes to determine whether opportunities exist to improve these processes. In making its assessment, GAO considered the impact changes might have on the current powers of process participants.

GAO found that although the current ratemaking process can be lengthy, it works reasonably well. The ratemaking process provides all interested parties an opportunity to participate in ratemaking proceedings, develops an evidentiary record upon which rate decisions are based, and normally produces Postal Rate Commission recommendations to the Postal Service Governors for new postal rates in a reasonable amount of time. However, GAO did identify opportunities to make the ratemaking process more efficient.

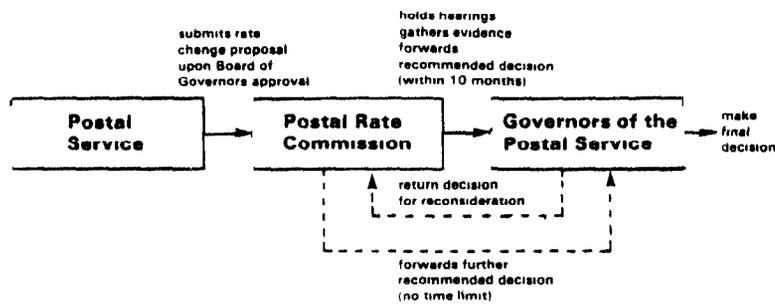
GAO's review of the classification process--used to establish and/or modify the distinct mail products or services to be offered by the Postal Service--found that the Commission's current procedures are appropriate for resolving mail classification cases.

HOW THE PROCESSES WORK

Under procedures established by the Postal Reorganization Act of 1970, any change in postal rates which the Postal Service proposes must be reviewed by the Postal Rate Commission before it can be adopted. The Commission holds hearings, gathers evidence, and, within 10 months, forwards a recommended decision to the Governors of the Postal

GAO/GGD-84-10

Service for their consideration. The Governors have a variety of options they may use in dealing with a Commission-recommended decision, including adopting all or part of the Commission's rate recommendations or sending the recommended decision back to the Commission for further review--a procedure known as reconsideration. Finally, if no agreement is reached, they can, by unanimous written consent, establish rates which they have determined are appropriate. Somewhat simplified, the procedure for change may be illustrated as follows:



Classification cases--cases involving a determination of what mail services are to be offered--are also submitted by the Service to the Commission and are normally processed in much the same manner as described for rate cases. See appendix I, page 63 for a complete description of these processes.

RECONSIDERATION PROCESS MAY NEED TO BE SHORTENED

If the Governors disagree with a Commission recommended decision, they may ask the Commission to reconsider its recommendations. The law does not set a time limit on the reconsideration process, which was used for the first and only time in the last general rate case in 1981. That reconsideration process took almost 6 additional months and resulted in no significant changes in the positions of either the Governors or the Commission. The Governors' final rate decision took place 6 months into the operating year in which the proposed rates were

originally planned to take effect. Cost data were updated, further increasing the length of the process. Case participants also incurred additional cost, and mailers were uncertain for months as to what final rates would be put into effect. (See p. 17.)

The Governors, the Service, and the Commission all agree that the timeliness of the reconsideration process is a problem. However, they disagree on the remedies for the problem, with the Commission favoring a flexible approach rather than a rigid time limit. GAO agrees that the reconsideration process can become lengthy, as no time limit exists for the process. However, since there has been only one rate case to date where reconsideration was used, GAO believes it is currently unclear what kind of a remedy may be needed. The need for process flexibility must be balanced against process efficiency. If future reconsiderations raise problems, GAO believes the Congress should consider amending the Postal Reorganization Act to limit the number of reconsiderations and the length of the process. (See p. 25.)

RESOLVING RECURRING COST
ISSUES BEFORE RATE CASES
COULD POTENTIALLY REDUCE
CASE LENGTH

The Postal Reorganization Act requires that each class or type of mail service bear its full share of direct or indirect costs attributable to that class or type. During rate cases, cost procedural issues, such as the proper classification of certain types of expenditures, are considered simultaneously with rate issues. According to the Commission, the simultaneous consideration of these issues complicates and lengthens rate cases. GAO believes an effort should be made to resolve recurring cost procedural issues outside, and in advance of, rate cases through informal discussions leading to formal rulemaking proceedings. (See p. 25.)

GOVERNORS SHOULD CLARIFY
USE OF TECHNICAL ASSISTANCE

In the last general rate case, the Governors' considerations of both the initial rate proposal and the Commission's recommended decision were criticized by the Commission and private mailing interests as appearing to show bias in favor of the Service. Over a period of 5 months, the Governors held several closed door meetings with Service officials prior to their approval of the Service's filing. After receiving the Commission's recommended decision, the Governors, again in closed sessions, received ratemaking advice from the Service that included an explanation of the Commission's decision. The Governors protested the Commission's recommended rates and then rejected the Commission's recommended decision, adopting essentially the Service's initial proposal.

The Governors should not appear to be biasing the process by receiving undue assistance or advice from any advocate in the proceeding. To strengthen the integrity of the ratemaking process, GAO makes recommendations to the Governors to define and clarify their use of technical assistance both before and during rate cases. (See p. 25.)

DISAGREEMENTS OVER REPORTING
REQUIREMENTS SHOULD BE
ADDRESSED

The Commission needs and normally receives timely data from the Service to analyze the Service's financial condition and operations between rate filings and to evaluate the merits of proposed rate requests. Nevertheless, disagreement exists between the Service and the Commission over when data is to be provided during cases and the reporting milestones for certain periodic reports, which require data to be regularly reported by the Service outside of Commission proceedings. For example, the Service currently disagrees with the Commission's required reporting date for an important revenue and cost report and

has consistently missed--by as much as 600 days--the required reporting date. In addition, disagreements over the provision of specific case-related data during Commission proceedings continue between the Service and the Commission. In one instance in the last rate case, the Commission had to wait for over 3 months before the Service provided the requested data. The Commission's current powers to compel the timely provision of data during a case are limited. GAO recommends that the disagreement over periodic reporting be resolved using rulemaking and that the Congress consider giving the Commission subpoena authority to facilitate closure on information requests during rate cases. (See p. 38.)

CLARIFY THE ROLE OF THE
CONSUMER ADVOCATE

The Office of the Consumer Advocate (formerly known as the Office of the Officer of the Commission) has normally represented the public interest by reviewing and testing the proposals of other participants and also by proposing its own alternative comprehensive rate proposals. Its alternative proposals have normally consisted of a completely new rate structure. Although the Office has been successful in developing, formulating, and sponsoring testimony on postal issues such as electronic mail, the Office's alternative proposals have been subjected to extensive criticism. These criticisms centered on the lack of sufficient evidence for several major alternative proposals the Office offered during rate cases, particularly during the last general rate case. Critics also contend that the Office has no way of knowing what the "general public" wants. (See p. 42.)

In reaction to the criticism, the Commission has taken a number of actions, including establishing formal policy guidelines for the Office and reducing the Office staff. The new guidelines, however, simply cite historical responsibilities assumed by the Office without clarifying these responsibilities. GAO believes the Commission should clearly define the role of the Office as one of primarily

critiquing the proposals of the Service and other participants to insure the full consideration of these proposals. GAO also believes that, once this redefinition is completed, the Office's staffing should be examined to insure it is sufficient to carry out its responsibilities. (See p. 51.)

MAIL CLASSIFICATION
PROCEEDINGS ARE APPROPRIATE

Although various proposals have been recommended to streamline current mail classification proceedings, GAO's review indicates that current proceedings are appropriate for resolving mail classification issues. (See p. 61.)

AGENCY COMMENTS AND
GAO'S EVALUATION

The Commission called the report "particularly valuable," and the Board termed it "thorough and generally positive." Both, however, disagreed with some of GAO's specific recommendations.

In commenting on the reconsideration issues raised in GAO's draft report, the Commission acknowledged that the reconsideration process was a problem and suggested that any changes to the process should address the need to avoid conflict "between a rigid time limit and the legal requirements of procedural fairness." The Board did not comment on GAO's position but has publicly advocated that the reconsideration process be limited to 30 days. Upon a review of the Commission's comments, GAO changed its position on establishing a limit now. GAO feels that the Congress should consider this issue if future reconsiderations raise problems. The current experience of only one rate case does not allow a sufficient base for GAO to recommend specific time limits at this time.

The Board strongly protested GAO's position that the Commission be given subpoena power, arguing that the power could potentially be abused. GAO continues to believe that sub-

poena power would enhance the Commission's ability to insure that relevant information is exchanged among participants in a timely manner. GAO has no basis for believing the Commission would abuse this power. Any subpoena issued under this power would require Court enforcement, thereby providing any party wishing to contest the subpoena all the protections afforded by the court system. (See p. 40.)

On the Governors' use of technical assistance, the Board declined to allow the Commission an additional opportunity to explain its recommended decision in an open Board session. The Board argued that such a proceeding might become adversarial if other parties were given the same opportunity. GAO believes this possibility could be forestalled by restricting the participation of other parties to written comments. GAO points out that if the process is left unchanged, its integrity may continue to be questioned. (See p. 27.)

In response to GAO's recommendation that the Commission better define the role of the Office of the Consumer Advocate, the Board expressed the view that the role of the Office be abolished. GAO believes the Office can play an important role in helping the Commission develop a complete and accurate hearing record, thus supplementing its work. (See p. 52.)

Further details of these and other comments can be found on pages 26, 40, 52, and 62.

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ABBREVIATIONS

DMCS	Domestic Mail Classification Schedule
GAO	General Accounting Office
BOG	Board of Governors
PRC	Postal Rate Commission
OOC	Officer of the Commission
PRA	Postal Reorganization Act

GLOSSARY

Discovery	The procedure used by a participant in a proceeding before the PRC to obtain pertinent information and/or documents from another participant or witness. Participants, may, for example, file written questions (interrogatories) which must be answered by another party's witness, unless the Presiding Officer rules otherwise.
Ex parte communication	Oral or written communication not on the public record with respect to which reasonable prior notice to all participants is not given.
Information request	A formal request by the PRC to a participant in a postal proceeding for documents, workpapers, or other data deemed pertinent to the proceeding.
Initial brief	A document filed with the PRC at the completion of evidentiary hearings which presents a party's position and supporting legal and/or policy arguments.
Interrogatories	Written questions, requesting relevant nonprivileged information, submitted to a participant in a proceeding by another participant.
Intervenor	A person or organization whose petition for leave to intervene in a Commission proceeding has been granted. The petition sets forth the person's or organization's interest in appearing before the Commission.

Library references	Documents that provide information helpful to understanding certain segments of the Service's or another party's proposal and additional detail in response to interrogatories.
Motion	A party's request that the Presiding Officer issue a specific ruling, or that the Commission issue a specific order.
Motion to compel	A request that the Presiding Officer order another party to take a specific action in regard to discovery questions, such as provide a more complete response to an interrogatory.
Notice of inquiry	A PRC request for all parties' views on a particular issue.
Participant	The Postal Service, a complainant, an appellant, the officer of the Commission, or a person who has been permitted to intervene in a proceeding before the Commission.
Presiding Officer	The Chairman of the Commission in proceedings conducted by the full Commission or the Commissioner with duties similar to an administrative law judge designated to preside at hearings or conferences.
Request for reconsideration	A Postal Service request to the Postal Rate Commission for a reevaluation of an opinion and recommended decision in a postal proceeding. It follows a Governors' decision to return a Commission-recommended decision.

Technical conference

An informal meeting held off the record for hearing participants to discuss and clarify the technical details of a case.

Workpapers

Data and calculations used to support testimony.

CHAPTER 1

INTRODUCTION

In designing the postal ratemaking process, the Congress created separate roles for the Postal Rate Commission (PRC) and the U.S. Postal Service. The Congress expected that the PRC and the Service would achieve a cooperative relationship to produce a timely, due process oriented ratemaking process. The PRC and the Service have yet to achieve such a relationship. Since the inception of the process, disputes have continued over the PRC's jurisdiction as well as the timeliness, level, and content of data needed for ratemaking purposes. We have reviewed this issue two times in the past, concluding both times that a bureaucratic struggle existed between the PRC and the Service.¹ This review was requested by the Chairman of the Subcommittee on Civil Service, Post Office and General Services, Senate Committee on Governmental Affairs.

PRC AND SERVICE ROLES AND RESPONSIBILITIES

The Postal Reorganization Act (Title 39 U.S.C.) divides postal ratemaking roles and responsibilities between two independent executive agencies, the U.S. Postal Service and the Postal Rate Commission. The Service's Board of Governors (BOG) initiates the process by authorizing the Service's filing for proposed changes in rates, fees, or classifications. The PRC, as an expert body, is charged with rendering a recommended decision on the Service's proposal. Upon receipt of the PRC's recommended decision, the Governors establish the final rates, fees, or classifications.

The BOG is composed of nine Governors, the Postmaster General, and the Deputy Postmaster General. The President appoints the Governors, who are confirmed by the Senate, for 9-year terms. The Governors elect a Chairman of the Board from the members of the Board. In addition, the Governors appoint the Postmaster General, and the Governors and the Postmaster General appoint the Deputy Postmaster General. The Board votes on the authorization for the Service to file a rate or classification case, while only the Governors vote on the final decisions.

¹GAO issued two reports on this issue: The Role of the Postal Rate Commission Should Be Clarified (GGD-77-20, Apr. 7, 1977) and A Case Study of Why Some Postal Rate Commission Decisions Took As Long As They Did (GGD-81-96, Sept. 8, 1981).

The PRC is composed of 5 Commissioners and has a staff of 70. The President appoints the Commissioners, who are confirmed by the Senate, for 6-year terms. In addition, the President designates one Commissioner as Chairman. The PRC's current authorized staffing is as follows:

Commissioners, Special Assistants, Secretaries	16
Office of the General Counsel	18
Administrative Office	12
Office of Technical Analysis and Planning	22
Office of the Officer of the Commission	<u>7</u>
Total	<u>75</u>

Annually, the PRC submits a proposed budget to the Governors. Since fiscal year 1981, the PRC requested and the Governors did not object to PRC budget requests of between \$3.6 and \$4.7 million.

In accordance with the Postal Reorganization Act (PRA), the PRC renders a recommended decision on Service proposals for changes in rates, fees, or classifications to the Governors. Prior to rendering its recommended decision, the PRC is required by the act to provide an opportunity for on the record hearings for the Service, an officer of the Commission, and mail users. The PRC, in compliance with the Administrative Procedure Act, allows a party to present its own witnesses, cross-examine those of other parties, and make its views known through briefs and oral argument. The presentations are part of the evidentiary record upon which the PRC must base its recommended decision.

Upon receipt of the PRC's recommended decision, the Governors may approve, allow under protest, reject, or modify the decision. If the Governors allow the recommended decision under protest, they may submit the case either to the courts for adjudication or to the PRC for reconsideration. If the Governors reject the recommended decision, the Service may resubmit the case to the PRC for a further reconsideration. Upon receiving a second recommended decision from the PRC, the Governors, with the unanimous written consent of all the Governors, may modify a previously rejected PRC-recommended decision if they find that

--such modification is in accord with the hearing record and the appropriate sections of the act, and

--the PRC's recommended rates are not adequate to provide sufficient total revenues so that total estimated income and appropriations will equal as nearly as practicable total estimated costs.

If appealed by a party to PRC proceedings, the Governors' decisions are subject to judicial review. See appendix I for a complete description of the process. In addition, several court decisions have ruled on various aspects of the ratemaking process. A summary of selected recent court decisions is contained in appendix VI.

Since its inception, the PRC has rendered decisions on 6 rate cases with case lengths ranging from 9 to 23 months, and 23 mail classification cases ranging from 2 to 39 months in length. See appendix III for a list of these cases.

OBJECTIVES, SCOPE, AND METHODOLOGY

In March 1982, the Chairman, Senate Subcommittee on Civil Service, Post Office and General Services, Senate Committee on Governmental Affairs, requested a "study of the history of the Postal Service since reorganization with the view to informing Congress where the Act has been beneficial and what parts may need revising in order to make the delivery of mail more efficient and less costly." In addition, the Chairman noted that he wanted "particular attention paid to the role of the Postal Rate Commission and the ratemaking structure."

In subsequent meetings with the Chairman's office, we agreed that we would address the request in three separate reviews. The first review would address the role of the PRC. In performing this assessment, we agreed with the Chairman's office to look at the:

- need to alter the current final ratemaking decision process;
- PRC's ability to get accurate, necessary cost data;
- role of the PRC's Officer of the Commission (OOC); and
- current trial-like proceedings used by the PRC for classification cases.

For each of these areas, we agreed to identify potential opportunities to make these processes more efficient. We also assessed whether our suggested process changes might affect the relative powers of the parties participating in the process.

To accomplish these review objectives, we used a variety of evaluation approaches. We employed the services of three consultants with extensive experience in the postal ratemaking process.

To assess the current ratemaking process, we surveyed the opinions of all the full participants in the last completed omnibus rate case, R80-1. These participants had the opportunity to participate in all phases of the process and represented all classes of mail. We did not consider all limited participants, since they were normally exposed to only part of the process. We sent questionnaires to all 35 full participants, asking their opinions on process accessibility, timeliness, and fairness. Followup procedures were employed where necessary. We received responses from 33 of the 35 (94.3 percent) participants. In addition, we reviewed prior studies of the postal ratemaking process; interviewed current and/or former officials of the Service, the BOG, and the PRC; reviewed applicable PRC rules and regulations; and performed an in-depth analysis of PRC Docket R80-1. This analysis included reviews of the Service's initial proposal, the formal docket register for the case, the PRC's recommended decisions during the case, and the Governors' final actions. Our analysis concentrated on R80-1 because the last omnibus rate case before R80-1 ended more than 5 years ago, making a full analysis of prior cases of limited value due to subsequent procedural changes.

To address the issue of the PRC's ability to get accurate, necessary cost data, we asked our survey participants to give us their opinions on selected data issues; interviewed appropriate Service, BOG, and PRC officials; and reviewed current and pending PRC rules and regulations. We performed an in-depth analysis of data exchange activities in R80-1, which included identifying and categorizing all of the interrogatories exchanged, obtaining and reviewing all information requests and notices of inquiry, and analyzing all instances where a data exchange disagreement resulted in an attempt to formally compel a response from a party.

To gain insight into the data exchange process, we also performed a detailed analysis of a randomly selected sample of interrogatories sent from the OOC to the Service during R80-1. We chose this exchange because the OOC was the most active intervenor in R80-1, and the Service has been critical of the OOC's past data requests. Initially we identified 635 interrogatories that the Service responded to without objection. Objections were reviewed separately. We noted that the 635 interrogatories varied substantially in scope, with some containing multiple requests.

In order to address this issue, we identified the total number of individual requests contained in the interrogatories. For the 635 interrogatories, we identified 1,313 requests. The requests were identified by examining each interrogatory for the assignment of a symbol or number by the OOC signifying a discrete interrogatory subcomponent, such as a, b, c, etc. Each subcomponent was considered a request. Arranging the requests in order by witness and number, we then drew a random sample of 324 requests in order to achieve a 95 percent confidence level,

To assess the performance of the OOC, we interviewed OOC and PRC officials; asked our survey participants to comment on the OOC's performance in R80-1; reviewed the PRC policy guidelines for the OOC; and obtained and reviewed all OOC budget submissions since the PRC's inception. We also performed an extensive analysis of the OOC's participation in R80-1, including reviewing OOC testimony, selected interrogatories and motions, cross-examinations, and initial and reply briefs. We also reviewed the PRC's Opinion and Recommended Decision in R80-1 for comments relating to the OOC's performance. On a selective basis, we also reviewed the performance of the OOC in previous rate and classification cases.

We reviewed the need to change the current trial-like proceedings used by the PRC for classification cases by reviewing the disposition of the last five completed classification cases (as of June 1, 1983); interviewing PRC and Service officials; obtaining and reviewing the PRC's policies and procedures relative to classification cases; and reviewing prior studies of the issue.

Our evaluation efforts were supplemented by a limited survey of other Federal regulatory agencies. We reviewed the Administrative Procedure Act (5 U.S.C. 551 et seq.), various agency laws and regulations, GAO reports, court decisions, and studies and articles on regulatory procedures.

Our review was performed from January to April 1983 in accordance with generally accepted government audit standards.

CHAPTER 2

THE CURRENT RATEMAKING PROCESS SHOULD BE RETAINED--WITH SOME REFINEMENTS

The process created by the Congress to deal with the problems associated with postal ratemaking has worked reasonably well. Several policy refinements could, however, improve the process. In addition, a legislative refinement may be needed to limit the reconsideration portion of the process.

Currently, the process provides an opportunity for representatives of all affected interests to make effective presentations on their behalf. These presentations are used to produce a logical, well-developed record of facts upon which the rate decision must be based. In the opinion of most of the mailers who fully participated in the last major rate case (R80-1), the initial decision is produced in a reasonable amount of time.

While the process is working reasonably well, we did identify potential opportunities to make the process more efficient. A significant portion of R80-1 dealt with the consideration of recurring cost procedural issues. These kinds of recurring cost issues can be dealt with in separate forums, thereby creating an opportunity to settle general rate cases more quickly. In addition, there is no time limit for resolving Governors'¹ disagreements with PRC-recommended decisions. Placing a time limit on the reconsideration process may be needed to improve its efficiency and effectiveness.

In addition to efficiency issues, the Governors' consideration of the recommended decision provided by the PRC and the use of technical assistance provided by the Service has created an impression that the Governors rely much more on the Service for ratemaking technical advice than they do on the PRC, a rate expert by statute. Because the Service also has an advocacy role in defending its proposal during the proceedings, this appearance of reliance has led to charges by the PRC and other intervenors of undue Service influence. They question the integrity of the current ratemaking decision process. The PRC advocates that it replace the Governors as final decisionmaker.

¹The Postmaster General and the Deputy Postmaster General are members of the BOG and participate in the deliberations on the PRC's recommended decisions. However, only the Governors vote and render a final decision on rate changes.

CONGRESS ESTABLISHED THE CURRENT
PROCESS TO DEAL WITH THE PROBLEMS
ASSOCIATED WITH CONGRESSIONAL
RATEMAKING PROCEDURES

In establishing the current ratemaking process, the Congress attempted to address the problems associated with congressional postal ratemaking. These problems, as described in the 1968 Kappel Commission report, were: insufficient technical ratemaking support for the decisionmakers, little organized testing of ratemaking proposals, strong political influences, and delays in rendering final postal rates.

On April 8, 1967, Executive Order 11341 created the President's Commission on Postal Organization to determine the feasibility and desirability of transferring the Post Office Department to a government corporation or some other organization. The Commission, known as the Kappel Commission (named after its Chairman, Frederick R. Kappel), studied six major areas of postal operations, including rates and ratemaking. In June 1968, the Commission issued a report on its findings. In drafting the Postal Reorganization Act, the Congress followed many of the recommendations of the Kappel Commission report.

In assessing the procedures used in the congressional ratemaking process, the Kappel Commission developed and used the following criteria:

- Decisionmakers must have access to specialized understanding and the time and motivation to benefit from it. The postal ratemaking process involves complex issues which require familiarity with such subjects as law and economics. Consequently, the decisionmakers must have either the specialized background or staff support to review and analyze these ratemaking issues.
- The process must allow effective presentations from and on behalf of all the major interests. Due to the breadth of a postal rate proposal, a number of parties with divergent views generally express interest in the proceeding. The procedure should allow all interested parties an opportunity to effectively develop the pros and cons of all relevant issues.
- Each presentation on behalf of a major interest should withstand testing through cross-examination, rebuttal, and argument. To protect the public interest, views about policy, matters of interpretation, adequacy of data, and other evidence should be subjected to a formalized testing process. This process exposes weaknesses, clarifies the issues, and sharpens views, thus leading to the development of all the relevant facts.

--The decision process must be insulated from the influence of and contamination by any of the advocates. To ensure objectivity, the decisionmaker should independently derive the final decision. Parties should not have the opportunity to present further arguments that no other party has an opportunity to comment on. Therefore, no interested party should privately counsel the decision-maker during this phase of the process.

--The whole process should be reasonably efficient and occur within a short period of time. Any ratemaking procedure is bound to be time-consuming, but if the time is excessive, then it becomes cumbersome and counterproductive. If proceedings become lengthy then the data on which arguments and conclusions will be based may become obsolete, requiring a reinitiation of the process. Moreover, the regulated entity needs a prompt decision to provide good service in the long run.

The Kappel Commission concluded, on the basis of the above criteria, that the congressional postal ratemaking process was ineffective and did not satisfy the basic ratemaking procedural criteria. See appendix II for a chart illustrating the Commission's full analysis. To ensure an effective process, the Commission said that a proper balance was needed among these five criteria.

Although the Congress did not adopt the Kappel Commission's recommended organizational structure for ratemaking, it put provisions in the Postal Reorganization Act in an attempt to address the Kappel Commission's criteria. The act established both the PRC and BOG. It created the PRC as an independent establishment of the executive branch to issue an opinion and recommended decision on postal rates and fees to the Governors. The act requires the PRC, before rendering a decision, to hold administrative hearings for the Service, the OOC, and users of the mail to develop an evidentiary record on which it must base its decisions. The PRC must render its decision within 10 months of the Service's filing. The BOG has the power to authorize the filing for, and the Governors the authority to render a final decision on, postal rates and fees. The Governors can modify a previously rejected PRC-recommended decision by unanimous vote if they find that the PRC's recommended rates result in a revenue shortfall.

THE CURRENT PROCESS IS HIGHLY ACCESSIBLE

The current process provides an opportunity for all affected parties to make effective presentations to protect their interests. Although participation can require an inter-venor to spend several hundred thousand dollars, many parties

participate and most full participants in R80-1 believe that the PRC allows them sufficient access to the process.

The Congress stipulated in the Postal Reorganization Act (39 U.S.C. §3624(a)) that the PRC shall not render a recommended decision until the opportunity for a hearing on the record has been accorded the Service, users of the mail, and the OOC. In meeting this requirement the PRC has established rules which require interested parties, seeking participation in a ratemaking proceeding, to file a notice of intervention indicating the extent of the party's participation in the proceeding. The notice enables the filing party to immediately participate in the ratemaking proceeding. Unless a notice of intervention is rejected, all interested parties can participate.

Parties are actively participating in ratemaking proceedings

Since the inception of the current ratemaking process, numerous parties have intervened in postal ratemaking proceedings. The following chart displays the level of participation in the first five omnibus rate cases.

Number of Intervenors in Postal Ratemaking Proceedings

<u>Docket number</u>	<u>Number of intervenors</u>
R71-1	39
R74-1	44
R76-1	65
R77-1	62
R80-1	42

All classes of mail users are normally represented by more than one intervenor, as the following table illustrates for R80-1.

Distribution of R80-1 Intervenors by Class of Mail

<u>Mail class</u>	<u>Number of intervenors</u>
First	23
Second	19
Third	27
Fourth	19

Most intervenors satisfied with access to ratemaking proceedings, although intervention may be expensive

Our survey of R80-1 intervenors shows that most are satisfied with their access to the process, even though their participation may require the spending of several hundred thousand dollars. An explanation of our survey design is in the scope and methodology section of chapter 1. The following chart displays the extent to which responding intervenors agreed or disagreed that the PRC allowed everyone to participate in the proceedings.

Statement: "The PRC Allowed Everyone to Actively Participate in the Proceedings"

<u>Response</u>	<u>Intervenors</u>	
	<u>Number</u>	<u>Percent</u>
Strongly agree	16	48.5
Agree	12	36.4
Agree as much as disagree	0	0
Disagree	2	6.1
No basis to judge	2	6.1
No response	1	3.0

As shown above, 28, or 85 percent, of the intervenors who responded to our questionnaire agreed that the PRC allowed everyone to participate in the proceeding. One intervenor commented:

"The Commission and the Presiding Officer made a substantial effort to organize the proceeding in such a way that each party was given the opportunity to present testimony and cross-examine other witnesses."

Although intervenors generally agree that the proceedings are open to everyone, participation in ratemaking proceedings can cost several hundred thousand dollars, as illustrated in the following table.

R80-1 Intervenor Expenses

<u>Expenses</u>	<u>Intervenors</u>	
	<u>Number</u>	<u>Percent</u>
Less than \$5,000	5	15.2
\$5,000 and under \$25,000	1	3.0
\$25,000 and under \$50,000	3	9.1
\$50,000 and under \$100,000	8	24.2
\$100,000 and under \$250,000	6	18.2
\$250,000 and above	5	15.2
Unknown	2	6.1
No response	3	6.1

At least 19, or 58 percent, of the responding intervenors spent \$50,000 or more. One intervenor expanded on his views about the cost to participate in ratemaking proceedings by stating:

"Participation in Postal rate proceedings, if an organization hopes to do a reasonably effective job, is an awesome time-consuming and expensive proposition, beyond the capacity of all but a handful of interested mailers."

THE PROCESS HAS PRODUCED A WELL-DEVELOPED RECORD TO USE AS A BASIS FOR RATEMAKING DECISIONS

In accordance with the Postal Reorganization Act and the Administrative Procedure Act, the PRC has established rules which institute formal procedures for the development of an evidentiary record. Each participant is provided an opportunity to cross-examine, rebut, and argue the presentations of other participants. This process aids in the development of the evidentiary record. The majority of intervenors expressed satisfaction with the evidentiary record produced by the rate-making process, as shown by the following responses provided by R80-1 intervenors.

Statement: "The Evidentiary Hearing Process was Efficient and Effective"

<u>Response</u>	<u>Intervenors</u>	
	<u>Number</u>	<u>Percent</u>
Strongly agree	2	6.1
Agree	17	51.5
Agree as much as disagree	7	21.2
Disagree	5	15.2
Strongly disagree	0	0
No basis to judge	1	3.0
No response	1	3.0

As shown, 19, or 58 percent, of the responding intervenors believe that the procedures for developing the evidentiary record are efficient and effective. Two intervenors expanded on their positive responses by stating:

--"For the most part, the evidentiary hearing process was efficiently conducted . . ."

--"Postal ratemaking is in the open and freed of the type of politics in which it was entangled before 1970. Changes in rate and classification must now be made only in accordance with stated criteria supported by findings of fact based on a public record."

OPPORTUNITIES EXIST TO MAKE THE
RATEMAKING PROCESS MORE EFFICIENT

It took 16 months to settle rate case R80-1--10 months to develop the PRC's initial recommended decision and 6 months for reconsideration of the initial decision. Given the complexity and scope of the issues addressed, the 10-month period needed to assemble the record and prepare the PRC's initial recommended decision was viewed as reasonable by the full participants in R80-1. However, the resolution of cost procedural issues prior to and outside of the proceedings represents an opportunity to reduce the time it takes to settle rate cases. Also, limiting reconsideration to a specific time period may be needed to reduce the length of the overall process. These refinements could reduce participants' costs and provide more certainty to mailers without impacting on the fairness of the process.

Congress wants an expeditious process

The legislative history of the Postal Reorganization Act emphasized that the Congress wanted an expeditious as well as a

fair ratemaking process. Subsequent congressional concern about the length of time required to complete rate cases lead to the act being amended in 1976 to establish 10 months as the limit on the rendering of PRC's recommended decision and the earliest date the Service could institute temporary rates.

In addition, one of the criteria the Kappel Commission study developed and used was that the ratemaking process should be reasonably efficient and occur within a short period of time. In particular, the study noted that the process should not become so lengthy as to possibly make the data under consideration obsolete. If the data becomes outdated, a reinitiation of the process may be required.

The PRC has taken action
to reduce case length

The legislative history of the Postal Reorganization Act emphasizes that the Congress wanted the PRC to have rules which would permit expeditious as well as fair proceedings. After the first two rate cases took 16 and 23 months to complete, respectively, the PRC made a significant change that appreciably streamlined its proceedings. Rather than having the hearing conducted by an administrative law judge, the Chairman presided with all the PRC Commissioners hearing the case. Thus, there was no initial decision by the administrative law judge. After this change, the PRC completed the third rate case in 9.5 months. In 1976, the Congress amended the Postal Reorganization Act by establishing 10 months as the limit on the rendering of the PRC's recommended decision. The PRC met the 10-month time limit in the next two rate cases.

Postal rate cases have
large scope and involve
complex issues

To illustrate the scope and complexity of postal rate cases, we compiled the following data from R80-1.

--The Service requested an increase in rates and fees for more than 4,000 rate categories² to obtain an additional \$3.75 billion annually.

--The Service requested 5 changes in the domestic mail classification schedule and 23 changes in the methodologies the PRC used in the prior rate case to attribute and assign costs.

²Includes all subdivisions within subclasses of mail and services.

- During the proceeding, the PRC received six and approved three intervenors' motions to consider additional issues beyond the scope of the Service's filing.
- More than 5,000 written interrogatories were exchanged during the discovery (defined in glossary) process.
- The Service, OOC, and 42 intervenors had 91 witnesses who appeared in 58 days of hearings.
- The transcript of the evidentiary record was 20,846 pages long.
- The PRC's opinion and recommended decision was 1,300 pages long.

Most intervenors believe the 10-month period given the PRC to render its recommended decision is not excessive

Our survey of R80-1 intervenors shows that most intervenors believe that the 10-month statutory period given the PRC to render its recommended decision on postal rate proposals is not excessive. The following chart displays the extent to which intervenors agreed or disagreed that the statutory 10-month period was excessive.

Statement: "The Time Elapsed From the Start to the Finish of the Case was Excessive"

<u>Response</u>	<u>Intervenors</u>	
	<u>Number</u>	<u>Percent</u>
Strongly agree	3	9.1
Agree	3	9.1
Agree as much as disagree	1	3.0
Disagree	14	42.4
Strongly disagree	10	30.3
No basis to judge	0	0
No response	2	6.1

As shown in the table, 24, or 73 percent, of the responding intervenors believe the 10-month statutory time limit is not excessive. On the other hand, responding intervenors did not believe the 10-month period was too restrictive, as shown in the following chart.

Statement: "The Statutory Ten-Month Period for a Postal Rate Case Was Too Restrictive"

<u>Response</u>	<u>Intervenors</u>	
	<u>Number</u>	<u>Percent</u>
Strongly agree	1	3.0
Agree	3	9.1
Agree as much as disagree	5	15.2
Disagree	17	51.5
Strongly disagree	5	15.2
No basis to judge	1	3.0
No response	1	3.0

Consideration of recurring cost procedural issues prior to rate cases may improve efficiency

The handling of cost procedural issues during rate cases can be time-consuming. Rate decisions could be rendered more quickly if cost procedural issues could be settled by rulemaking proceedings. While we recognize this procedure may not completely eliminate the consideration of cost procedural issues during the rate process, we do believe it could be potentially beneficial and should be tried.

In considering rate requests from the Service, the PRA requires the PRC to make its recommended decision in accordance with a set of factors, which include "the requirement that each class or type of mail service bear the direct and indirect postal costs attributable to that class or type plus that portion of all other class costs of the Postal Service reasonably assignable to such class or type."

In carrying out this mandate, many issues concerning costing procedures have arisen, sometimes requiring judicial intervention. Courts have been involved in resolving disputes over techniques and approaches to be used in identifying and measuring the costs associated with a specific mail service, and the relative jurisdiction of the Service and the PRC over costing related issues. Recently, the Supreme Court (NAGCP v. USPS et al., 51 U.S.L.W. 4877, June 22, 1983) reaffirmed the PRC's role in setting costing methodologies and cost allocations to be applied in a rate case.

Within the context of the PRA, the Service establishes and can make unilateral changes to its own system of accounts. Cost data from these efforts are introduced and used extensively in combination with special cost studies in rate proposals. These systems and special studies, which identify and measure costs, are continuously changed from rate case to rate case. These changes have included refining the estimation of city carrier street-time costs based on a study, adjusting window service

clerk costs to reflect revisions in data collection approaches, and adjusting supervisory costs to reflect the results of updating prior costing methods.

The consideration of these changes to costing procedures currently consumes a significant portion of the overall rate case. For example, in rate cases R77-1 and R80-1, 48 of the 95 (51.6 percent) library references (explanatory material supporting testimony) supplied by the Service dealt with the introduction of new costing procedures and studies. Of the 2,428 R80-1 interrogatories directed to the Service's witnesses, roughly 25 percent dealt with new costing procedures. In addition, a review of major case activities of the Postal Service and the Officer of the Commission--the most active intervenor in R80-1--shows that the consideration of cost procedural issues consumed a significant portion of their case activity. The following chart illustrates their R80-1 activities:

<u>R80-1</u> <u>CASE ACTIVITY</u>	<u>POSTAL SERVICE/OOC COST</u> <u>PROCEDURE-RELATED ACTIVITY</u>
Oral Testimony	Three of eleven Service witnesses dealt extensively with cost procedural issues; Four of eight OOC witnesses dealt extensively with cost procedural issues.
Discovery	Roughly 25% of the interrogatories addressed to the Service dealt with cost procedural issues. Over 20% of the interrogatories addressed to the OOC dealt with cost procedural issues.
Preparation of briefs	Over 30% of the Services initial brief dealt with cost procedural issues. Over 20% of the OOC's initial brief dealt with cost procedural issues.

In addition, the PRC's R80-1 Recommended Decision cited the introduction of 23 Service proposals, designed to simultaneously alter costing procedures during the rate consideration process as "time consuming." The PRC noted:

"Our analysis of costing issues in this proceeding has been more difficult and time consuming than it has been in any previous case. Not only have we had to deal with the stale and simplistic proposal of the OOC, but we have had to evaluate innumerable, unilateral changes in costing procedures included in the Postal Service's initial filing."

The discussion and resolution of recurring cost issues does not necessarily have to take place during a rate proceeding. As noted earlier, the Service introduces costing procedure changes through their inclusion in the Service's rate proposal. These changes may be formulated years in advance of an actual filing by Service management. Even though the PRC determines the costing methodology to be applied in a rate case, it has no direct input into the formulation of these changes by the Service, except through suggestions in its recommended decisions to the Governors. The PRC can not act unilaterally to require that the Service change its costing systems.

Regulatory reformers--such as the Administrative Conference of the United States--have suggested that these types of issues be resolved in other types of forums, such as rulemaking proceedings. For example, such issues as the appropriate treatment of specific cost items have been addressed in other rate consideration processes through rulemaking procedures. By separating these issues, rate consideration times may be reduced.

We believe that the Service should seek PRC input into the formulation and establishment of costing procedure changes in a forum outside of specific rate proceedings. The Service and the PRC should attempt to reach agreement informally. The agreement should then be made the subject of a rulemaking proceeding. If costing procedure issues can be discussed, examined, and resolved in a rulemaking, the time now required for postal rate-making could be reduced. These rulemakings would not change the relative powers of the participants as all proposed changes could be reviewed and commented on by all parties. If agreement cannot be reached, then we believe the PRC should seek the authority to compel the production of data in a form consistent with costing procedures which the Commission considers acceptable.

PRC reconsideration may
need to be limited

The PRA places no time limit on the reconsideration process. The Congress provided for a reconsideration process prior to a Governors' modification of a PRC-recommended decision to give the Governors and the PRC an opportunity to agree on postal

rates and fees. The PRC's recommended decision is to be supported by substantial evidence in the record. Because the record often contains substantial evidence to support differing points of view and policy positions, disagreements can be expected--including disagreements between the PRC and the Governors. The Postal Reorganization Act does not specify a time limit for the reconsideration process. Consequently, the entire reconsideration process could take longer than the statutory 10-month time limit prescribed for the initial consideration.

Upon receipt of a PRC-recommended decision, the Governors have four options. First, the Governors may approve the recommended decision and the Board may set the effective date for the increase or classification change. Second, the Governors may, under protest, allow a recommended decision to take effect and either seek judicial review or return the recommended decision to the PRC for reconsideration. Third, the Governors may reject the PRC's recommended decision and have the Service resubmit its request to the PRC for reconsideration. Fourth, the Governors, with unanimous written consent, may modify a previously rejected PRC-recommended decision. In R80-1, the Governors, under protest, allowed the PRC's recommended decision to take effect, except for third class bulk and expedited second class mail, and returned the case to the PRC for reconsideration.

Although reconsideration has been used in previous classification cases, R80-1 was the first omnibus rate case in which the Governors and the PRC used the reconsideration process.

The Governors initially requested reconsideration in March 1981, stressing the need to act quickly, as they believed the differences in the PRC's rates (which the Board put into effect after the Governors' initiated reconsideration) and the Service's proposed rates would result in revenue shortfalls. The PRC decided to reconsider the soundness of its initial recommended decision supplemented by updated information on the status of Postal Service appropriations and updated postal financial and operational reports. Earlier versions of these reports were considered in the initial 10-month proceeding. The PRC gave the parties 20 days for comment and 7 days for reply comment. After the expiration of the comment period, the PRC rendered its further recommended decision upon reconsideration. The PRC made no significant changes to its initial recommended decision.

In June 1981, the Governors again asked the PRC to further reconsider its recommended decision, stressing the need to act expeditiously because of its concern over revenues. The PRC used notice and comment procedures similar to the first reconsideration. The PRC again considered updated information--actual Service revenue and expense information. Once again, the PRC made no significant changes to its initial recommended decision.

The reconsideration process took over 6 months for all rates except third class bulk mail.³ The following table shows the time frames for each phase of the R80-1 reconsideration process.

Analysis of Total Time for
Reconsideration Process During R80-1

<u>Action</u>	<u>Date</u>	<u>Days to complete</u>
PRC renders initial recommended decision to Governors	2/19/81	
Governors file protest of PRC initial recommended decision	3/10/81	19
PRC renders recommended decision upon reconsideration	6/4/81	86
Governors file rejection of PRC's recommended decision upon reconsideration	6/29/81	25
PRC renders recommended decision upon further reconsideration	9/17/81	80
Governors modify PRC's recommended decision upon further reconsideration	9/29/81	12

The long period used for reconsideration resulted in part from the initial case record being updated, as it had become obsolete. The Service aimed its proposal at having new rates authorized by March 21, 1981. However, the final modification decision did not take place until September 29, 1981, more than 6 months after the date anticipated in the proposal. When the second reconsideration began, the case was already 3 months into the test year--the hypothetical future year upon which the rate proposal is based--and estimates were replaced by actual financial figures. As described earlier, these new figures were reviewed using notice and comment procedures, rather than hearings, in order to expedite the reconsideration.

The Governors and the PRC disagree on the time required for the reconsideration process. The Governors believe the lack of a provision in the PRA to limit the PRC's reconsideration is a

³The issue of the third class bulk mail rates was subsequently taken to court, where the PRC was instructed to recommend rates consistent with the existing classification structure.

"significant problem." They have recommended that the Congress consider limiting the time for reconsideration by the PRC of rate cases to 30 days. The PRC believes that a straight time limit may be one of a number of alternatives that could be considered. The PRC stresses the need for (1) its careful and complete analysis of all issues raised by the Governors and (2) the opportunity for the parties to comment on the Governors' request for reconsideration.

In summary, the reconsideration process in R80-1 did not produce any significant changes in the positions of either the Governors or the PRC and resulted in

- the need to update case data,
- additional expenses for participating parties, and
- months of uncertainty for mailers as to what final rates would be put into effect.

If future reconsiderations prove troublesome, we believe that the Congress should consider placing a time limit on reconsideration and restricting the process to one reconsideration. This would maintain the strengths of the initial 10-month proceeding and insure that the process is completed in a timely and efficient manner.

GOVERNORS' USE OF TECHNICAL ASSISTANCE
IN CONSIDERING RATEMAKING DECISIONS
SHOULD BE CLARIFIED

Although the Governors' decisions have generally embraced PRC omnibus rate case recommended decisions, their use of Service technical assistance and their consideration of the PRC's recommended decision has created an impression that they rely heavily on Service management for technical ratemaking advice. An adversarial relationship exists between the Service and the PRC, the body set up by statute to provide expert advice on postal ratemaking. In R80-1, where the Governors disagreed with the PRC's recommended decision and adopted many of the Service's original proposals, the technical assistance being provided by the Service to the Governors led to charges of undue influence from both the PRC and some intervenors. They question the integrity of the current process. The PRC advocates that it be given final ratemaking authority, as a way to overcome the appearance of bias in the current process.

Decisionmakers should have technical support and be insulated from advocate influence

The Kappel Commission report noted that the ratemaking decisionmakers must have both access to specialized understanding and the time and motivation to benefit from it. In addition, the report noted that these decisionmakers should be insulated from the influence of, and contamination by, any advocates in the proceeding.

In establishing the postal ratemaking process, the Congress was sensitive to these issues. The Governors serve part-time and have final ratemaking authority. The Postmaster General and his Deputy were made Board members without voting rights for final rate and classification decisions. For each rate and classification case, the independent PRC was to provide the Governors with a recommended decision, which the Governors could not easily modify.

During the first four general rate cases, the Governors generally relied on both the Service staff and the PRC's formal recommended decisions for technical ratemaking support and approved the PRC's recommended decisions. In each of the cases, the PRC's recommended rates were equal or close to the rates initially proposed by the Service. The Governors used Service legal and technical staff for advice and support. To develop the R80-1 rate proposal, the Governors held several "closed door" sessions with Service officials. In addition, when the PRC rendered its recommended decision, Service attorneys, who litigated the rate case, briefed the Governors on the PRC-recommended decisions. Moreover, Service staff drafted the Governors' final decision.

Governors' R80-1 modification action has been heavily criticized

In R80-1, for the first time since the enactment of the Postal Reorganization Act, the Governors modified a PRC-recommended decision on postal rates. Pursuant to 39 U.S.C. §3625(d), the Governors, with unanimous agreement, modified the PRC's further recommended decision, finding that their modification was in accord with the record. The Governors also found that the PRC-recommended rates were not adequate to provide sufficient revenues for the Service to break even. The Governors placed into effect a set of rates which were generally the same as the Service's initial proposal.

As the following table shows, our survey of R80-1 intervenors found that the majority of intervenors were dissatisfied with the extent of the Governors' participation in R80-1.

Intervenor Satisfaction with Governors'
Participation in R80-1

<u>Response</u>	<u>Intervenors</u>	
	<u>Number</u>	<u>Percent</u>
Very satisfied	0	0.0
Satisfied	4	12.1
Satisfied as much as dissatisfied	4	12.1
Dissatisfied	10	30.3
Very dissatisfied	8	24.2
No basis	4	12.1
No answer	3	9.1

As shown in the table, 18, or 55 percent of the responding intervenors were dissatisfied with the Governors' participation. One intervenor expanded on his negative response by noting:

". . . The Governors must rely upon the analysis by the Postal Service of a recommended decision and any independent review must be influenced by their approval of the original Postal Service filing There is a problem, in that the Postal Service does have an opportunity to influence the Governors in their consideration of a recommended decision."

The PRC also believes the process currently provides the appearance of unfair advantage to the Service. A characterization of the Service as having the same advocacy status as the participating mailers would not be entirely correct. The Service does not direct its efforts at fulfilling stockholder objectives and has the responsibility for providing adequate mail service and fair prices to the general public. Nevertheless, the Service does aggressively advocate the adoption of its rate proposal during the proceedings, using all the rights available to intervenors.

Governors' ratemaking relationships
should be clarified

Currently, the extent of the Governors' reliance on both the Service and the PRC is unclear. The Governors have no written operating policies or procedures explaining their use of technical assistance in considering rate proposals and making final rate decisions. The BOG's bylaws currently reserve for the Board the "authorization of the Postal Service to request the Postal Rate Commission to submit a recommended decision on changes in postal rates, including specific authorization of the amount of revenue estimated to be required so that total estimated income and appropriations will equal total estimated

costs as nearly as practicable." In addition, the bylaws state that the Governors will make the final ratemaking decision. However, the manner in which the Service's request is to be authorized is not described. More importantly, the explicit roles of the Service in providing technical assistance to the Governors and the Governors' consideration of the PRC's recommended decision are not addressed.

Given the sensitive nature of postal ratemaking, we believe the process would benefit from stated policies on the authorization of rate proposals and final ratemaking decisions. Such policies should explicitly address the role of the Service and the PRC in providing the Governors with ratemaking assistance and the Governors' consideration of the PRC's recommended decision. In particular, these policies should address the Governors' modification of a PRC-recommended decision.

Given the "closed door" nature of significant portions of the Governors' R80-1 rate deliberations, it is not difficult to see how an image of significant Service influence could arise. Consider the following events in R80-1:

- For 5 months prior to the submission of the rate proposal to the PRC, the Governors met with Service staff periodically in mostly closed sessions to discuss the rate proposal.
- The Governors' rejection of the PRC's recommended decision upon reconsideration was made in a closed session. A high level Service official and the Service attorney who litigated the rate case briefed the Governors on the PRC's recommended decision. In a closed session, the Postmaster General met with the Governors to discuss the Governors' decision.
- The Governors' modification established a set of rates similar to the initial Service proposal. Service staff assisted in the preparation of the modification decision.

Governors' actions to become
less dependent on Service staff

To become less dependent on Service technical staff, the Governors hired an attorney and established an Office of the Board of Governors. In June 1980, the Governors appointed an outside attorney whose responsibilities include providing legal counsel and assisting with the drafting of the Governors' decisions. Effective December 1982, the Governors established an Office of the Board of Governors in Washington, D.C. In April 1983 the Governors hired the Secretary of the BOG to head the Office and handle administrative matters. Currently, this office is staffed with two people and there are no plans for

increasing the staff. Even with their own attorney and Office of the BOG, the Governors continue to rely on Service staff for some legal and technical advice on ratemaking matters.

PRC emphasizes need for
final ratemaking authority
rather than working within
the existing system

The legislative history of the Postal Reorganization Act emphasizes that the PRC is to be a true partner of the BOG. The Congress expected that the PRC would work in harmony with the BOG, acting in a timely and responsive manner to the BOG's requests for recommended decisions for changes in rates, fees, and classifications. However, this has not been the case.

In addition, the PRC and the Service have not developed a cooperative relationship, as the Congress intended. The PRC believes the Service has repeatedly failed to comply with PRC rules and orders. On the other hand, the Service believes the PRC has often overstepped its established jurisdictional boundaries.

On several occasions, the PRC has testified before the Congress on its need for final ratemaking authority. In December 1981, the Chairman of the PRC testified before the Congress on changes needed in the ratemaking process. She said the Governors have conflicting roles, that of setting the final postal rates and managing the Service. To relieve this difficulty, she said the Congress should give the PRC final decisional authority on postal rates, subject to the Governors' right to return the decision to the PRC for reconsideration.

CONCLUSIONS

The current ratemaking process has worked reasonably well. The process provides an opportunity for all affected parties to make effective presentations of their views and uses these presentations to produce a well-developed record of facts upon which decisions are based. Given the current scope of the proceedings, the process also produces an initial decision within a time period considered reasonable by the participants.

While the process works reasonably well, we did identify potential opportunities to make the process more efficient. The current scope of the proceedings includes a number of recurring cost procedural issues. These kinds of issues can be dealt with in separate rulemakings, thereby creating an opportunity to finish general rate cases more quickly.

Since no time limit exists for the reconsideration process, it can be lengthy--taking about 6 months in the most recent rate case. However, since this is the only rate case where

reconsideration was used, it is unclear what kind of remedy is needed. If future reconsiderations continue to raise problems, we believe the Congress should consider amending the PRA to limit the number of reconsiderations and the length of the process.

Neither cost procedural rulemakings nor a fixed reconsideration time frame would change the relative roles of the participants. The Governors and the PRC would still retain all their relative powers.

In reaching their final ratemaking decision, the Governors' use of technical assistance provided by the Service and their consideration of the PRC's recommended decisions have also created an impression that they rely as much or more on the Service for ratemaking technical advice than they do the PRC, a rate expert by statute. We recognize that some discussion between the Governors and the Service is desirable and necessary; however, it should be limited to avoid the appearance of the Service having undue influence. The PRC believes it should replace the Governors as final decisionmaker.

MATTERS FOR CONSIDERATION BY THE CONGRESS

If future reconsiderations raise problems, the Congress should consider amending the PRA to reduce the extent of the reconsideration process by limiting the time for reconsideration. In addition, the Congress should consider limiting the number of reconsiderations prior to the Governor's either approving, allowing under protest with judicial review, or modifying the recommended decision.

RECOMMENDATIONS TO THE BOG

In order to clarify the roles of the Governors, the Service, and the PRC in the ratemaking process, we recommend that the BOG amend its bylaws to:

- Define the nature and scope of the Governors' and the Service's participation in considering postal rate proposals. In defining these roles, the Governors should establish specific ground rules supporting their general delegation of the responsibility for proposal strategy, design, and preparation to the Postmaster General. In addition, the BOG should limit the practice of having "closed door" sessions to discuss the Service's rate proposals.
- Establish the policies and procedures the Governors will follow when considering modifications to the PRC's recommended decision. These policies should provide for the

use of the PRC to provide additional explanations of its recommended decision to the Governors in meetings open to the general public. The policies should also clearly establish the relative responsibilities for the drafting of a modification decision between the Board's counsel and the Service's legal staff.

RECOMMENDATION TO THE
POSTMASTER GENERAL

In order to streamline and clarify the provision and use of cost data in the rate consideration process, we recommend the Service seek informal Commission comments on proposed changes in cost procedures and special cost studies as they are being formulated. Should this process prove constructive, we recommend the Service request periodic rulemaking proceedings from the PRC to formalize the agreed upon procedures. This type of activity could redirect the primary consideration of such procedures out of the rate consideration process, thereby creating opportunities to lessen the time used by the proceedings.

RECOMMENDATION TO THE CHAIRMAN,
POSTAL RATE COMMISSION

We recommend that the Chairman, Postal Rate Commission, seek specific legislative authority to compel the production of data in a form consistent with costing procedures which the Commission considers acceptable, should our recommendation to the Postmaster General not result in agreement between the Service and the Commission.

AGENCY COMMENTS AND OUR EVALUATION

In connection with its consideration of proposed guidelines on ex parte communications, the Board agreed to consider our recommendations on clarifying its role in the ratemaking process. The Board disagreed with our recommendation to provide the PRC an opportunity to give additional explanations of its recommended decisions to the Governors in open meetings. The Board asserted that if the PRC was given this opportunity, then mailers and other interested parties would want the same opportunity. Thus, the Board believes its deliberations would be converted into another adversarial proceeding. Although the Board did not comment on our position on streamlining the reconsideration process, it has publicly advocated that the PRC should be limited to 30 days for reconsideration.

In commenting on our costing recommendation, the Board stated that the Service would try to establish informal procedures to permit the PRC and others to comment on new costing procedures and special cost studies being developed by the

Service. However, it believes at this time that separate rule-making proceedings for costing issues would be ineffective, costly, and duplicative. It believes that costing issues resolved during rulemaking would be raised during ratemaking and that issues settled by rulemaking would be outdated by the time a rate case arose. The Board also disagreed with our conditional recommendation that the PRC seek legislative authority to compel the production of data if our rulemaking recommendation failed to produce any resolutions of the problems cited in the chapter. See appendix VII for the Board's comments.

The PRC noted our report's valuable guidance to those involved in the ratemaking process and offered suggestions for consideration. The PRC believes the report is particularly valuable in that it presents a scientifically conducted survey of participants' views on the ratemaking process. In addition, the PRC welcomes requests for appropriate explanatory aids which may help the Governors in considering their recommended decisions. However, the PRC believes our recommendation should be addressed to both the PRC and the Governors so that mutually acceptable procedures are developed. In addition, although the PRC does not disagree with the principle of our position that there may be a need to streamline the reconsideration process, it suggested two options. The PRC proposes that either a qualified time limit or no time limit be established. A qualified time limit would establish a fixed time limit, but would permit the PRC to extend the time for a set period if necessary. Instead of a time limit, a legislative policy of maximum expedition could be established. The PRC believes any of these options, including our position, could be made operable, but it preferred the more flexible approach. The PRC is also in general agreement with our cost procedural recommendations. See appendix VIII for the PRC's comments.

We continue to believe the PRC should be given an opportunity to provide additional explanations to the Governors of PRC-recommended decisions in open session. Currently the Service explains the PRC's decisions to the Governors, sometimes in closed sessions. Providing the PRC with an opportunity to participate in this function should not turn the Governors' deliberations into another adversarial proceeding if proper procedural controls are established, such as restricting mailer and other interested parties' participation to written comments. Continuing the current arrangement will make the Governors vulnerable to charges of appearing to be unduly influenced by the Service. We continue to believe that every effort should be made to enhance the perceived credibility of the ratemaking process. In addition, while we could easily address this recommendation to both the PRC and the Governors, we believe that it should be directed solely to the Governors because they have final ratemaking authority. Prior to adopting this recommendation, the Governors would use notice and comment

procedures to give all interested parties an opportunity to express their views. During this procedure, the PRC would have ample opportunity to raise any issues concerning the process.

We also continue to believe a time limit on the reconsideration process may be needed to improve the effectiveness and efficiency of the process. The PRC's concern with maintaining procedural fairness must be balanced against the Service's needs for a stable ratemaking process. We believe this balance can be achieved by simply allowing the PRC a sufficient time frame for reconsideration. The PRC's proposal to establish qualified time limits for reconsideration may also be viable, provided that process time frames are predictable. However, additional information on the Commission's proposal is needed before its feasibility can be fully evaluated.

Regarding the Board's comments on our recommendation aimed at reducing the recurring consideration of issues of costing procedures during ratemaking proceedings, we continue to believe that the use of the rulemaking process to establish costing procedures represents a viable opportunity to reduce the overall time spent in considering rate cases. Procedures used to determine costs are an integral part of rate cases, but their consideration can be separated from rate cases, as illustrated by the many other rate determination processes which have done it. While it is true, as the Service contends, that parties could continue to raise these costing issues in ratemaking proceedings, the PRC's presiding officer, armed with an established set of costing procedure rules, would also have the opportunity to quickly dispose of these issues. Prudent selection by the Service of costing issues for rulemaking could prevent the rules from becoming out-of-date. In summary, while rulemakings may involve time and money, they remain a viable opportunity to reduce the significant amount of time currently devoted to these issues during the rate case.

Finally, our other recommendation aimed at giving the PRC legislative authority to compel the production of various data for use during PRC consideration of costing procedures is a conditional recommendation. If the recommendation, which emphasizes using informal consultation, later formalized through rulemaking to resolve problems, is successfully implemented, there will be no need for any legislative alterations. On the other hand, the failure of the Service and the PRC to reach agreement on these problems would signal that the current process cannot arrive at workable solutions to very basic issues. Legislative alteration of the process, in our opinion, would then be necessary.

CHAPTER 3

THE PRC CURRENTLY RECEIVES AN EXTENSIVE AMOUNT OF POSTAL SERVICE DATA--BUT ACTIONS SHOULD BE TAKEN TO DEAL WITH INSTANCES OF DELAY IN DATA EXCHANGE

Although the Service has normally provided the PRC with an extensive amount of data on a timely basis, instances of delay in data exchange between the Service and the PRC continue during cases.

The PRC and the Service also disagree over the reporting time frames contained in the PRC's periodic reporting rule, designed to facilitate the flow of certain financial and other data during the periods between rate cases. As a result, several important reporting milestones have not been met.

THE SERVICE NORMALLY PROVIDES LARGE AMOUNTS OF TIMELY DATA

Throughout the course of recent general rate cases, the Service has normally provided large and timely amounts of data to the PRC and other intervenors. However, instances of disagreement over data availability have occurred between the PRC, other parties, and the Service. The PRC does not have a full range of enforcement authority to effectively deal with these instances of delay.

The Service provided extensive amounts of data in the last two general rate cases

The PRC's Rules of Practice and Procedure prescribe specific data the Service must provide with its rate proposal initiating a rate proceeding. According to the rules, each proposal shall include information and data bases necessary and appropriate to fully inform the PRC and the parties of the nature, scope, significance, and impact of the proposed changes or adjustments in rates or fees and to show that the changes or adjustments are in the public interest and in accordance with the policies and applicable criteria of the PRA. During the proceeding, the rules also permit the PRC and other participants to request additional data necessary to either understand the Service's proposal or formulate their own proposals. Data filed with a rate proposal or provided during a rate proceeding can have many formats, including written testimony, workpapers, library references, oral testimony, interrogatories, responses to information requests and notices of inquiry, and technical conferences. See the glossary for definitions of each of these formats.

The following table shows the amount and type of information provided by the Service in the last two rate cases.

Data Provided by the Service in Last Two Rate Cases

<u>Information format</u>	<u>R80-1</u>	<u>R77-1</u>
Written testimony	1,500 pages	1,750 pages
Workpapers	About 4,000 pages	Over 1,500 pages
Library references	54	41
Oral testimony	11 witnesses	11 witnesses
Responses to information requests	8	18
Interrogatories	2,428	1,584
Responses to notices of inquiry	1	6
Technical conferences ¹	10	Not available

Service generally provided complete and timely data in R80-1

To provide a recommended decision on a Service rate proposal within the statutory 10-month period, the PRC needs both timely and complete information from the Service. As a result, the PRC has established timeliness criteria for all of its major information sources, including responses to interrogatories, notices of inquiry, and information requests. For example, interrogatory responses must be filed within 20 days of receipt or within the time period set by the Presiding Officer. (See glossary.)

The PRC's Rules of Practice and Procedure also contain criteria that describe the required completeness of the information to be submitted by the Service and others prior to and during the ratemaking proceeding. For example, the Service's initial filing for a rate increase must adhere to criteria in PRC Rule 54, which contains 4 general and 17 specific requirements that discuss the level of detail and contents of a proposal.

If any party feels that a response to an interrogatory is insufficient, the party may file a motion to compel a response, send a followup interrogatory, or attempt to get the answer

¹For intervenors only, not available to PRC.

during the public hearing. An order by the Presiding Officer to compel a response is the clearest indication of unresponsiveness on the part of the receiving party, as followup interrogatories may be caused by a poorly designed initial inquiry. Failure of the Service to comply with an order can result in the PRC formally determining that the Service has unreasonably delayed the PRC's consideration of the Service's initial request. The PRC can then delay the proceeding until the needed information is provided.

Although our survey of participants in R80-1 showed that 52 percent believe the Service did not provide sufficient information during the case, our case analysis shows that

- of the 2,428 interrogatories sent to the Service, only 9 motions to compel involving 52 interrogatories were either fully or partially granted by the Presiding Officer; and

- the Service responded to all 8 information requests, 6 within the time frames established by the Presiding Officer, and 2 within a few days after.

Although, as described above, the Service has responded to most interrogatories and information requests, there were instances where information relevant to the case was not provided in a timely manner.

Strong disagreements over provision of data continue

The Service, in its comments on a prior GAO study, stated, "much of the massive data in PRC proceedings is unneeded and irrelevant." The PRC disagrees with this characterization. To gain insight into these data requests, we reviewed the OOC interrogatories sent to the Service during case R80-1. We looked at the OOC because it sent more interrogatories to the Service than any other intervenor. For a complete description of our methodology, see chapter 1, page 3. Our review of a randomly selected sample of the 1,313 data requests contained in the 635 OOC interrogatories is summarized in the following table.

Categorization of OOC R80-1 Data Requests
to the Postal Service

<u>Type of request</u>	<u>Percent of total requests (note a)</u>
Additional methodology explanation	42.0
Clarification of previously supplied data	17.0
Additional data	30.2
Identification of data source	11.1
Other (including requests for definitions of terms)	14.2

a/At the 95 percent confidence level, the sampling error ranges from + 3.0 percent to + 4.7 percent. Percentages will also not add to 100 percent as some requests fell into more than one category.

As shown above, most requests were aimed at clarifying and explaining previously supplied data and analysis, not at providing new data. Normally, the Service responded by either supplying additional narrative explanations or referring the OOC to a previous Service response.

Disagreement over the supplying of specific data continued in R80-1. To illustrate, we developed three case examples taken directly from the proceeding in R80-1.

Case 1

This case illustrates an instance where several motions (see glossary for definition) and PRC orders were used before the Service provided complete information about its computerized forecasting system, which was used to formulate its revenue requirement projections made in R80-1.

On February 20, 1980, the Service filed a motion for a waiver of certain PRC filing requirements. The PRC granted this motion under the condition that the Service provide the computer tapes, including the data and computer programs, used to generate its forecasts. However, the Service did not provide the computer tapes with its initial filing, as directed by the PRC.

From May to September 1980, the PRC ordered the Service to provide the requested tapes six separate times. In lieu of providing the requested information, the Service offered other information it believed would

meet the PRC's needs. Finally, on October 15, 1980, the Service agreed to provide the requested computer tapes. However, according to the PRC, the Service never provided usable code listings which would have enabled the PRC to execute the computer program.

Case 2

In this case, the Service objected to providing information not used by one of its witnesses in his testimony. The Service's objections were, however, overruled.

A Service witness testified to making several "unsuccessful" statistical analyses which were not included in his testimony. The OOC filed an interrogatory requesting these analyses' results.

The Service, in its objection to the interrogatory, said that the "unsuccessful" analyses were irrelevant information because the witness did not use them in his testimony. The OOC filed a motion to compel, suggesting that PRC rules allowed discovery of information that might be of some use to any party, whether the Service used the information in its own proposal or not. The OOC said he needed the "unsuccessful" analyses to help evaluate the significance of the witness' unused statistical studies. The Service responded that the witness had already provided the required information and further asserted that the OOC's request could result in a "boundless inquiry" into analyses the witness did not perform.

The Presiding Officer granted the OOC's motion to compel. He found that the PRC's rules allowed production of the "unsuccessful" analyses, even if the witness did not use them in his testimony, and he dismissed the Service's concern over an "endless inquiry."

Case 3

In this case, the Service objected to providing specific dates of certain Service actions. The Service's objections were sustained.

A Service witness mentioned in his testimony that the Service "has struggled to come to terms with peak-load costs for several years." The OOC directed several interrogatories on the basis of this statement to the witness: one interrogatory asked for the precise date when the Service began to deal with "peak-load costs."

The Service objected to providing the data requested. It called the statement in question only a "general introductory passage" from the witness' testimony and called the OOC's interrogatories irrelevant and meaningless. The OOC, in his motion to compel, countered that the data requested was relevant as a logical starting point for questions on how the Service dealt with "peak-load problems." The OOC believed this information would thus help "focus" his inquiry on a reasonable time frame.

The Presiding Officer denied the OOC's motion to compel. He saw no relevance in requiring the Service to provide the precise date requested by the OOC.

PRC authority to deal with
instances of delay in rate
proceedings would be enhanced
with specific subpoena authority

As illustrated by Case 1 on page 32, instances of significant delays in receiving information from the Postal Service can and have occurred. In this instance, the Service did not respond to repeated PRC Orders to provide the requested data until well after the completion of hearings.

The PRC's enforcement authority to deal with instances of delay in rate proceedings would be enhanced if it had subpoena authority. Subpoena authority was not specifically provided by the PRA. The PRC believes specific subpoena authority is necessary but would be seldom used. The Service believes the PRC does not need subpoena authority.

To solve any data problems that arise, the PRC has several alternative penalties it can impose on an uncooperative party. During the case, if the PRC receives an inadequate initial filing from the Service, it has adopted a rule (which is disputed by the Service) that gives it the authority to refuse the filing. In addition, if the Service fails to adequately respond to a PRC lawful order for data, the PRC can extend the 10-month period for a recommended decision for 1 day for each day of the Service's delay. Lastly, if any party fails to respond to a PRC order, the PRC can refuse to hear the party's witnesses and/or exclude the party's testimony from the proceeding.

We believe the nature of the current authority is, however, impractical for dealing with instances of refusal to provide information since it requires the PRC to delay its proceeding without assuring production of the information. Subpoena authority, on the other hand, would enhance the PRC's enforcement authority because recalcitrant parties would know they

would be subject to court imposed sanctions. Therefore, we continue to support the position we took in an earlier report (GGD-77-20, Apr. 7, 1977) that the PRC be given specific subpoena authority.

The majority of the PRC's Commissioners believe the PRC should be given specific authority to subpoena relevant information and documentation during rate proceedings. During her December 1981 congressional testimony, the Chairman of the PRC made the following statement:

". . . subpoena authority will not subject the Service to additional or burdensome data requests, but will allow the Commission to enforce reasonable requests for informative material addressed to any party in formal Commission proceedings, and thereby promote expeditious, informed decisionmaking."

More recently, the Chairman emphasized that subpoena authority would enhance the PRC's ability to get necessary information with minimal delay. She reasoned that the authority would seldom, if ever, need to be used in a rate proceeding since the parties would know the PRC has and can use this authority and would respond promptly to data requests. Of course, if subpoenas are contested the proceedings can be delayed.

The Service believes, however, that the PRC should not be given subpoena authority because it has neither supervisory nor investigatory responsibilities over the Service. In addition, the Service believes the PRC would abuse subpoena authority by making unreasonable requests for information and requesting privileged information from it and other parties. Moreover, the Service believes the use of subpoenas would unnecessarily delay the proceedings.

We have no evidence that indicates the PRC would abuse the implementation of subpoena authority. To date the PRC has not imposed its current penalties capriciously. Furthermore, the PRC would have to petition the court before a subpoena could be enforced to obtain data from the Service. This should eliminate any concerns that the Service would be subjected to the inappropriate use of subpoenas.

AGREEMENT NEEDED ON PERIODIC REPORTING

The Service has not consistently met the periodic reporting requirements of PRC Rule 102, a rule requiring the Service to submit certain existing Service reports on a periodic basis. The PRC believes the timely receipt of these reports is important to its mission. The Service disagrees with the PRC's current periodic reporting milestones for five important reports and has not consistently met these milestones.

Periodic reports are
important to the PRC

The PRC's authority to require periodic reports is taken from the general powers afforded the agency in the Postal Reorganization Act (39 U.S.C. §3603). The act instructs the PRC to adopt rules and regulations, establish procedures, and take any other action it deems necessary and proper to carry out its functions and obligations. The PRC's technical staff uses these reports to analyze the Service's financial condition and operations between rate filings, achieve an understanding of Service operations, and respond to outside parties' inquiries. We supported the PRC's periodic reporting efforts in an earlier report (GGD-77-20, Apr. 7, 1977), noting that these efforts could reduce the large number of interrogatories exchanged during a case.

PRC Rule 102 (Filing of Reports) lists the reports to be filed by the Service annually, quarterly, and on an accounting period basis (11 annual, 4 quarterly, 4 accounting period, and 2 miscellaneous reports). Each report must be filed within a specific time frame set by the PRC. See appendix V for a detailed list of periodic reports included in PRC Rule 102.

To establish PRC Rule 102, the PRC held two rulemaking proceedings. During the second proceeding, the PRC requested the Service, other interested parties, and the OOC to comment on the feasibility of establishing rigid time frames for submission of reports and to suggest report formats where necessary. The Service opposed reporting milestones but, in response to the PRC request, provided estimates on when it could reasonably supply the reports to the PRC.

A full assessment of the PRC's initial decision supporting the establishment of Rule 102's reporting milestones was not possible, as 7 years have passed since the last rulemaking and existing records do not detail the underlying support for the milestones. In addition, new reporting systems, which could effect these milestones, have been subsequently initiated by the Service. Available documents show that the PRC adopted milestones which it believed were reasonable and, for the most part, consistent with production schedules already being met by the Service. For five reports, however, the Service strongly objected to the reporting milestones adopted by the PRC.

The Service has not consistently
met the requirements of the
periodic reporting rule

The Service has not consistently met the periodic reporting requirements of the PRC Rule 102. In February 1982, the PRC's Secretary sent the Service a list of 11 reports the PRC had not

received. These reports were overdue by 12 to 772 days, according to PRC Rule 102 reporting time frames. The Service responded by providing five reports that were readily available and pledging to provide the others once they became available.

The Service's stated position on periodic reports is three-fold: (1) deadlines in PRC Rule 102 are unrealistic, (2) submission of data is coordinated with deadlines whenever possible, and (3) reports are filed with the PRC as soon as they become available. In response to a PRC request for late reports, the Service "strenuously objected" to the arbitrary filing date contained in the rule. The Service noted that the deadline for transmittal of the Revenue and Cost Analysis Report 120 days after the close of a fiscal year "does not mean that it is possible for the Postal Service to produce a Revenue and Cost Analysis Report by 120 days after the close of a fiscal year." The Service also stated that "it is merely an exercise in unreality to describe the Postal Service as overdue in filing a report as to the time of filing of which there never was agreement." The Service's filing record for this report--one of the best pieces of information available to the PRC on Service revenue and cost--is shown below.

Service Filing of the Revenue
and Cost Analysis Report

<u>Fiscal year</u>	<u>Due date</u>	<u>Date filed</u>	<u>Number of days overdue</u>
1976	10/28/76	7/13/78	623
1977	1/28/78	9/16/78	221
1978	1/28/79	2/14/80	382
1979	1/28/80	4/16/80	79
1980	1/28/81	2/17/82	385
1981	1/28/82	10/12/82	257
1982	1/28/83	8/4/83	188

As shown above, the timing of the Service's filing of this data has varied considerably. According to responsible Service officials, this variation reflects the relative priority given to this information based on Service management needs.

As illustrated by their disagreement over the reporting time frames for the above report, periodic reporting disagreements reflect conflicting values between the Service and the PRC as to the relative importance of these reports. The PRC believes this information is very valuable to its ongoing effort. The Service believes the preparation of this data should conform to the set of managerial priorities established by the Service to run its organization.

The mechanism set up to resolve the differences between these conflicting values is the rulemaking process. We believe the rulemaking process should be used again to attempt to resolve this issue. If rulemaking fails to effectively get the PRC the data it needs in a timely fashion, the Congress should be called upon by the PRC to resolve the conflict.

CONCLUSIONS

The PRC normally receives an enormous amount of data from the Service before and during a general rate case. This data is usually provided in a complete and timely manner. Nevertheless, instances of disagreement over the timing of access to data during a rate case can and have occurred. Resolving these disagreements under the PRC's current authority can be lengthy which in turn can cause delays in rate case proceedings. In addition, disagreements exist between the Service and PRC over certain periodic reporting requirements, which were implemented over 7 years ago. We continue to support the position that the PRC be given subpoena power as a tool to use to resolve data disagreements during cases. Subpoena power would provide the PRC with access to court enforcement and the Service could legally challenge requests they felt were inappropriate. We believe a new rulemaking is necessary to resolve the existing disagreements on periodic reporting requirements.

RECOMMENDATION TO THE CHAIRMAN, POSTAL RATE COMMISSION

Given the Service's current position, in order to resolve the current disagreements between the Commission and the Service over periodic reporting needs and reporting milestones, we recommend that the Chairman:

- Initiate a rulemaking proceeding to reconsider periodic reporting requirements. If the new periodic reporting requirements are not complied with, we recommend that the Chairman of the Commission seek specific legislative authority to enforce realistic periodic reporting requirements.

MATTER FOR CONSIDERATION BY THE CONGRESS

To strengthen the enforcement authority of the PRC to get necessary information with minimal delay in its proceedings, the Congress should consider amending the Postal Reorganization Act, title 39, U.S. Code, by adding the following new section to specifically provide subpoena authority:

"§3605. Production of existing documents subpoena.

"(a) For the purpose of any proceeding under this chapter, any member of the Postal Rate Commission, or any officer designated by it, is empowered to administer oaths and affirmations, take evidence, and require the production of any existing books, papers, correspondence, memoranda, contracts, agreements, or other records which the Commission finds relevant or material to the inquiry.

Such production of any such records may be required from any place in the United States or at any designated place of hearing.

"(b) In cases of contumacy by, or refusal to obey a subpoena to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the production of books, papers, correspondence, memoranda, contracts, agreements, and other records. Such court may issue an order requiring such person to appear before the Commission there to produce records, if so ordered, and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found or may be doing business. Any person who willfully shall fail to refuse to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, or agreements, in obedience to the subpoena of the Commission, shall be subject to a fine of not more than \$1,000 or to imprisonment for term of not more than one year, or both.

"(c) The testimony of any witness may be taken by deposition upon authorization by the Commission or the presiding officer on application of any party in any proceeding or investigation pending before the Commission. Any person may be compelled to produce documentary evidence before the Commission, as hereinbefore provided."

AGENCY COMMENTS AND
OUR EVALUATION

The PRC is in general agreement with our views on how to resolve data disputes between the PRC and the Service.

The Board strongly disagreed with our position that the PRC be granted subpoena power, on the grounds that the Service has never failed to provide relevant data. The Board also disagreed with our conditional recommendation that the PRC seek legislative authority to compel the production of data if our rulemaking recommendation failed to produce any resolutions of the problems cited in the chapter. The Board stated that no enforcement authority is needed if realistic due dates are enacted.

Regarding the Board's concern with our recommending that the PRC seek legislative authority to enforce periodic reporting requirements, we note that this recommendation is conditioned upon the failure of revised reporting requirements to produce the necessary information. Since the Service has already expressed its willingness to meet reasonable periodic reporting dates, a rulemaking devoted to resolving disagreements over current periodic reporting requirements should result in revised requirements acceptable to all parties. This would negate the need for any legislative authority in the area.

Regarding the Board's strong protest to granting the PRC subpoena power, the issue is not only whether or not all relevant information has been provided but also when it was provided. We believe subpoena power would give the PRC an additional way to facilitate the prompt exchange of data during rate proceedings. Any abuses of this subpoena power can be challenged in court.

CHAPTER 4

THE FUNCTIONS/ROLE OF THE OOC SHOULD BE CLARIFIED

Although the PRC's public interest representative, the Officer of the Commission (OOC), has achieved some successes in its representations, the OOC's performances have also drawn criticism.¹ In particular, in the last major rate case, the OOC was criticized by the Service, other case participants, and in some instances, the PRC. These criticisms centered on the lack of sufficient evidence for several major alternative proposals the OOC offered during the case. Critics also contended that the OOC has no way of knowing what the "general public" wants.

The PRC has attempted to respond to some of these criticisms by establishing formal guidelines for the OOC, changing the OOC's leadership, attempting to increase the OOC's contact with public interest groups and other intervenors, and reducing the size of the OOC's staff. While the guidelines represent a positive step, they simply list the tasks the OOC has traditionally assumed. Reducing the OOC's staff limits the OOC's abilities to prepare for future cases and increase contacts with public interest groups and other intervenors. Prior OOC leadership changes have not necessarily produced satisfactory performance in the PRC's view.

HISTORICALLY THE OOC HAS ACHIEVED MIXED SUCCESS IN ITS REPRESENTATIONS

Although the OOC has historically been a source of controversy, it has also achieved some success in its representations.

Before recommending decisions on rate and classification matters, the PRC is required by the PRA to provide an opportunity for a hearing on the record to "the Postal Service, users of the mails, and an officer of the Commission who shall be required to represent the interests of the general public." (39 U.S.C. §3624(a).) Although the legislative history on the PRA contains no additional clarifications on the role of the "Officer of the Commission," the Kappel Commission report cited a lack of an "organized first-class mail lobby" as a problem in the congressional postal ratemaking process.

With seven authorized positions, including three attorneys, two postal rate and classification specialists, and

¹The Commission's public representation staff is located in the Office of the Consumer Advocate (formerly Office of the Officer of the Commission), which the Officer of the Commission directs.

one statistician, the OOC provides representation for the interests of the general public in PRC proceedings. The OOC prepares and litigates legal and evidentiary presentations in all formal PRC ratemaking and classification cases. These presentations normally include a review and evaluation of the proposal under consideration and the filing of comprehensive alternative rate and cost proposals.

The OOC also maintains a continuing litigation capability, including preparation for consideration of issues likely to impact on the interests of the general public in subsequent proceedings. Administratively, the OOC is like any other office within the PRC, with all budget and professional staffing level decisions requiring the approval of the PRC. During the course of the proceedings, however, the OOC maintains complete independence from the members of the PRC and the PRC's advisory staff.

The OOC has achieved mixed success

Over the years, the OOC has been a focus of controversy within the ratemaking process. A primary source of this controversy has been the major alternative cost and rate proposals advanced by the OOC in its representation of the public. For example, in rate case R76-1, the OOC advocated the adoption of a costing system in direct opposition to prior PRC decisions. Because of this opposition, the PRC subsequently changed OOC's. In another instance, the Commission on Postal Service, which was established by the Congress in 1976 to identify and study the problems facing the Service, was so concerned by an OOC mail classification proposal that it recommended that the Congress intervene and pass legislation to ensure that the proposal would not be adopted.

The OOC has, however, achieved some successes over the years. For example, it formulated and sponsored testimony on an alternative electronic mail system design which served as the basis for subsequent PRC and Governors' decisions. In another instance, the OOC proposed a discrete per-piece, per-pound rate structure for third-class mail which the PRC found superior to the pre-existing structure and recommended a variant of that structure for future use. Although the per-piece, per-pound rate structure has not been adopted by the Governors, it is currently the subject of a group Postal Service/PRC/mailer study.

THE OOC'S PERFORMANCE IN R80-1 HAS DRAWN SUBSTANTIAL CRITICISM

The Service, other case participants, and the PRC were severely critical of the OOC's performance in the last major rate case, R80-1. These criticisms centered on the lack of sufficient evidence for several major alternative proposals offered

by the OOC during the case. Critics also contend that the OOC has no way of knowing what the "general public" wants.

In recommending the adoption of any rate or classification proposal to the Governors, the PRC must assure the proposal is supported by substantial evidence properly introduced on the record. As defined by the Supreme Court, "substantial evidence" is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Within the context of recommending or rejecting specific proposals, the PRC has stressed that such proposals should include accurate estimates of cost, volume, and revenue data.

The OOC was very active in R80-1

In intervening in R80-1, the OOC sharply criticized most of the proposals of the Postal Service and offered alternative rate proposals for every class of mail and for the special services. The OOC was the only intervenor to file a complete rate proposal, other participants limiting themselves to presenting testimony on selected issues. In support of his proposal, the OOC sent 655 interrogatories to the Postal Service and 212 more interrogatories to the other parties, filed more than 500 pages of testimony and exhibits, presented 8 witnesses to defend his testimony during 6 days of hearings, cross-examined Postal Service and other intervenor witnesses, and filed a 338 page initial brief and a 158 page reply brief with the PRC. The OOC also received 1,121 interrogatories from the Postal Service and other parties. In R80-1, the OOC either sent or received 1,988 (39.5 percent) of the 5,033 interrogatories exchanged among all parties.

Approximately 32 percent of the OOC's testimony was devoted to the presentation of its alternative rate proposals. In the 140 calendar day interval between the initial submission of the Service's proposal and the submission of the OOC's alternative rate proposal, 3 OOC staff members, with assistance from 11 other staff members, assembled and presented a complete alternative rate proposal addressing all rate categories. The staff used data that were submitted primarily by the Service in its initial proposal together with cost allocation analyses being developed simultaneously by the other OOC staff. During this same time period, these same 3 staff members also reviewed and critiqued more than 100 pages of Service testimony and prepared and sent more than 200 interrogatories to Service witnesses. One of these staff members also simultaneously assembled and presented more than 100 pages of testimony on mail volume estimates. In contrast, the Service used 8 to 9 full-time staff for 7 months to prepare its rate design portion of the case. Moreover, the Service's Revenue and Cost Analysis Division used a full-time staff of about 100 for 6 to 8 months to prepare its entire rate proposal.

OOC's R80-1 actions drew
substantial criticism

The OOC's proposals in R80-1 provoked a strong reaction from the PRC. In the costing area, the PRC specifically cited the OOC's "stale and simplistic proposal" as one of the factors making the PRC's analysis "more difficult and time consuming than it has been in any previous case." In several places in its recommended decision, the PRC expressed its displeasure with the OOC's costing efforts.

--"The proposal of the OOC is a severe disappointment to us. In essence, the OOC proposes scrapping 10 years of progress in the identification of cost-causal relationships and substituting a crude, superficial allocation of costs based on a three-page, non-analytical exhibit of the Postal Service."

--"The OOC costing presentation in this case was not based on cost causation. It was based on labels. Perhaps the most troublesome aspect of the OOC's costing approach was its lack of analytical content. The other parties to this case found themselves in the position with little more than a table of allocations and forced to ask, over and over, why witness (name removed) made particular allocations, with no useful response forthcoming."

Although the PRC accepted several OOC rate proposals in several special service areas, it generally criticized and did not adopt the OOC's rate design proposal. In the OOC's rate design proposal, it criticized the Service's measurement of value of service and developed its own measurement. The PRC noted that "a major defect in this approach is the problem of how to define and measure 'value' as that term is used by the OOC" and concluded that ". . . the OOC offers no method of measuring the subjective worth . . . of mail."

On a class-by-class basis, for the six areas where the PRC made "major adjustments to the Service's rate design," the PRC:

--adopted the same first-class, first-ounce rate as the OOC but ". . . for reasons that differ substantially from those advanced by the OOC";

--recommended a surcharge for expedited second-class mail based on service-related costing, while specifically rejecting an OOC surcharge proposal, calling the OOC's arguments "strained";

--adopted the same third-class bulk rate approaches as the OOC but "substantially moderated" the OOC's proposed rates to ease the detrimental effects associated with them;

- recommended a discount for third-class bulk regular carrier route presort mail, which was more than 50 percent larger than the discount recommended by the OOC;
- modified the intra-Bulk Mail Center rate differential for parcel post to include differences in attributable and assignable costs only, rejecting an OOC proposal as unduly complex; and
- modified the nonmachinable surcharge for parcel post to include inter-Bulk Mail Center parcels only, rejecting an OOC proposal to adjust the steps in the rate schedule instead.

In considering the OOC's overall effort in R80-1, the PRC unanimously agreed to reject the OOC's case as overall "not useful, not helpful and absolutely unacceptable."

As might be expected in an adversary situation, the OOC's performance in R80-1 also provoked a strong reaction from the Postal Service. On a class-by-class basis, the Postal Service also asserted that the OOC's proposed first class rates were "illogical," "internally inconsistent," and "put together in a slipshod, careless way that belittles the importance of this ratemaking proceeding"; that the OOC's rate design testimony for second and third class rates was "unsupported and unsupportable"; and that their fourth class mail rate design testimony was "replete with inconsistencies and discrepancies."

The OOC's participation in R80-1 also precipitated a strong negative reaction from other intervenors. As the following table illustrates, most of the full intervenors we surveyed (see chapter 1, page 3, for a description of the survey) were not satisfied with the OOC's participation in R80-1.

Intervenor Satisfaction/Dissatisfaction
with OOC Participation in R80-1

<u>Category</u>	<u>Absolute frequency</u>	<u>Relative frequency (percent)</u>
Very satisfied	1	3.0
Satisfied	4	12.1
Satisfied as much as dissatisfied	4	12.1
Dissatisfied	13	39.4
Very dissatisfied	7	21.2
No basis	1	3.0
No answer	3	9.1

This level of dissatisfaction was consistent for all classes of mailers responding. Mailers were particularly concerned with

the OOC's ability to adequately represent the public, the expertise of the OOC's staff, and the level of information supplied by the OOC to support its case. Specifically, more than 70 percent of those responding believed that the OOC did not adequately represent the public, more than 65 percent did not believe that the OOC had the expertise to properly represent the general public, and only 15 percent agreed that the OOC supplied sufficient explanatory information with its proposal. These opinions were consistent for all classes of mailers responding.

A majority of the survey respondents also expanded upon their responses in the comment section of our survey document. Eleven of those making comments elaborated on their problems with the OOC. The following response illustrates the general nature of these comments.

--"Dissatisfaction with the OOC stems primarily from [the] advocacy of proposals alleged to be 'in the public interest.' In fact, the OOC has no constituency and no basis for knowing what, if any, part of the public would approve or benefit from these proposals. The public is so diverse, including those represented by other parties, that there is a common public interest in only the most general of concepts, such as efficient and reliable service and fair rates. While the OOC might legitimately analyze how different proposals would impact on different parts of the public, this is a far cry from the advocacy role attempted to be played by the OOC. Put another way, no 'public' has requested the OOC to advance these proposals."

While acknowledging these criticisms, the R80-1 OOC believes that presenting major alternative proposals can provide useful information to the process. He also noted that the standard of substantial or convincing evidence is subjective and may change as the PRC's membership changes. However, in his Initial Brief in R80-1, the OOC noted that parties, besides the Postal Service, are generally unable to justify their costing methodology because they do not have the necessary data.

THE PRC HAS TAKEN ACTION--
BUT MORE IS NEEDED

The PRC has attempted to respond to some of the recent criticisms by establishing formal guidelines for the OOC, changing the OOC's leadership, attempting to increase the OOC's contact with public interest groups and other intervenors, and reducing the OOC's staff. Although these guidelines represent a positive step, the OOC's historical responsibilities are merely listed. In addition, reducing the OOC staff level most likely

will not improve the OOC's performance. Prior OOC leadership changes have not produced satisfactory performance, as judged by the PRC, and attempts to broaden the OOC's contacts with the public have been inconclusive.

We believe the PRC should further delineate the OOC's functions. The OOC's staff level should also be reexamined to insure that it does not restrict the OOC's ability to prepare for future cases.

Commission guidelines neither change
nor focus the OOC's responsibilities

In June 1982, after considering the issue for more than 15 months, the PRC adopted "Policy Guidelines for Representation of the Interests of the General Public in Commission Proceedings." The purpose of adopting the guidelines was to apprise the general public of the OOC's role in the work of the PRC and the opportunities available for public input.

The OOC's responsibilities in PRC proceedings were identified in the guidelines as follows:

- "1. The OOC shall assist, using the means and procedures available to parties before the Commission, the development of a complete and accurate record by:

Identifying information or data that are needed in addition to those presented by other parties;

Identifying inaccuracies or fallacies in submitted data or information; and

Sponsoring relevant and material evidence which presents needed data or information, which critiques record evidence, or which supports proposals of the OOC or other participants not inconsistent with Commission precedents and judicial decisions reviewing Commission precedents. The preceding shall not preclude the OOC from offering testimony on a methodology which the Commission has previously considered but not adopted, if a fair reading of the Commission opinion(s) concerned shows that such methodology offers potential benefits and new data are available to remedy the defects cited by the Commission."

- "2. To argue for equity on behalf of the general public and principally those segments of the general public who are not otherwise represented in PRC proceedings. In so doing, the OOC shall consider both long and short term consequences."

"3. During the course of proceedings the Officer of the Commission, in accordance with Commission rules, shall maintain complete independence from the members of the Commission and the agency's advisory staff."

According to the former OOC, these guidelines merely put into writing what he understood to be his responsibilities in R80-1 and previous cases. Our review of the OOC's testimony in R80-1 supports this conclusion. As mentioned earlier, about 32 percent of the OOC's testimony was devoted to the presentation of its alternative proposals. The remainder of its testimony dealt with presenting evidence to challenge various parts of the Service's proposal. Throughout R80-1, the OOC operated independently of the PRC, formulating its own case, conducting its own discovery and cross-examination, and presenting its own witnesses.

Although the policy guidelines are numerically listed, they establish no relative emphasis among the OOC's responsibilities. For example, the guidelines establish no clear priority between the OOC's responsibilities for critiquing record evidence and sponsoring new proposals, including full alternative proposals.

The effect of PRC efforts to increase OOC contacts with public interest groups and other intervenors cannot be determined

In June 1982, the PRC sent inquiries to more than 150 consumer groups nationwide inviting them to express their interest in postal rate and classification matters to the OOC and offering to notify them of future cases. Only 15 groups expressed an interest in being put on the notification list. For the first major case to be held since the list was established, no responses were received from those 15 groups.

In 1982, the PRC also revised its ex parte communication rules to encourage the OOC to talk to more intervenors during case proceedings. For the first major case to be held since the rule was revised, the OOC believes the rules have helped him, although he acknowledges that there is no objective way of assessing the impact of the change. To date, OOC contacts with other intervenors have been on an ad hoc basis. While contacts with other intervenors can be positive, increasing the level of ad hoc communication among the OOC and other intervenors does not provide more focus to the OOC's mission and does not address the requirement of accumulating a substantial level of evidence necessary to effectively support alternative proposals.

OOC leadership changes have been frequent and have not insured satisfactory performance

Although changing the leadership of any organization can certainly alter its direction, past leadership changes have not necessarily produced satisfactory performance from the OOC, as judged by the PRC. Currently, the act requires the approval of a majority of the members of the Commission to assign or reassign the Officer of the Commission. The PRC changed the head of its public representation effort because of dissatisfaction with his performance in cases R74-1 and R76-1. In the opinion of the PRC Chairman presiding in R77-1, the new OOC performed well. However, that OOC left for private law practice shortly after the case was completed. Dissatisfaction with the next OOC's R80-1 performance caused the PRC to change OOC's again in May 1981. The Acting Chair initially discussed the assignment with four different staff members, each of whom expressed no interest in the position.

OOC staffing practices limit opportunities for better case preparation and more public interest group contact

Although the OOC's fiscal year 1983 budget called for a professional staff of 13, the current OOC was given a staff of only 7 professionals when he assumed office. This staff reduction was a result of the PRC's perception that the staff was not being efficiently used. As the workload increased, the OOC was told, so would his staff. However, the PRC's fiscal year 1984 budget calls for a staff of only 6 professionals. The OOC believes that this staffing arrangement allows him to concentrate only on the cases before the PRC, leaving him little time to prepare for the next major rate case. The OOC now has a computer, which, due to staffing shortages, he can make only limited use of to analyze Postal Service financial data. Finally, public interest contacts remain on an ad hoc basis, performed only when time is available.

The PRC should clarify the role of the OOC

As noted earlier, the PRC has already recognized that the OOC's performance in R80-1--in particular its presentation of its full alternative rate and cost proposal--was not helpful to the Commission. In addition, a majority of the intervenors in R80-1--representing all classes of mail--believe the OOC did not play a constructive part in the case. While performance may temporarily improve because of differences in personnel, the PRC's steps to alter the OOC's performance neither clarify the inherently vague institutional mandate given to the OOC nor resolve the current mismatch between limited resources and broad performance expectations.

With the OOC's emergence as a major participant in rate cases, its duties and responsibilities must be made consistent with its resource level or the R80-1 results could be repeated. Given its status as a public representative, the OOC's responsibilities must be clearly articulated if its credibility is to be maintained.

Any clarification of the OOC's role begins with the recognition that it operates within a limited resource environment. It directly competes with other PRC offices for resources. As these other offices directly support the PRC, it is unrealistic to believe that the OOC's resource level will ever be increased significantly above the levels of the other major PRC operating offices. This has been the case historically. In addition, the PRC has been very sensitive to raising its overall budget. Taken together, these conditions make assertions that the OOC's resources could be dramatically increased over the R80-1 level unrealistic.

Given these constraints, the OOC has and will continue to have a very limited capacity to perform extensive evidence gathering--a key ingredient to obtaining PRC acceptance of a proposal. As a result, while the OOC may have a good idea, the gathering of enough evidence to support the idea will continue to be outside the resources of the OOC, except in instances where the issue is very narrowly defined. Nevertheless, the OOC has historically sponsored very broad proposals. When these proposals are advanced in the case, all the other intervenors must spend resources--the OOC received more interrogatories than anyone else in R80-1 with the exception of the Service--to examine and test the proposal.

With the inherent, institutional limitations placed on the OOC, the historical practice of consistently presenting full alternative rate and cost proposals in major rate cases is not consistent with the structure of the office. Given its mandate to watch out for the interests of the general public, the role of reviewing the record to insure that all of the Service's proposals are exposed to rigorous testing better fits the OOC's limited resources. With its expertise and broad mandate, the OOC is uniquely qualified to perform this important task. Indeed, the OOC has also attempted to do this historically. Clarifying the OOC's role, to make the generation of full alternative proposals clearly an exception, rather than the standard operating procedure during major rate cases, will bring the performance expectations for the Office into line with the resources given to the Office, and protect the process against the reoccurrence of the R80-1 performance.

CONCLUSIONS

Although the OOC has achieved some successes, it has historically been a source of controversy. The primary source of this controversy has been the major cost and rate proposals advanced by the OOC in its representation of the public. Its performance in R80-1 led to substantial criticism from intervenors, the Service and the PRC. Most of this criticism was directed at several alternative proposals advanced by the OOC, with critics asserting that the proposals were not well supported. Such assertions are to be expected and are probably valid considering the magnitude of the OOC's task in developing an alternative cost and rate proposal within a short period of time with limited resources. Since R80-1, the PRC has issued formal guidelines for the OOC, changed the OOC's leadership, cut back on the OOC's staff, and attempted to increase the OOC's contacts with other intervenors and public interest groups.

More should be done to focus the OOC's efforts and improve the OOC's performance. The new guidelines merely formalize the existing set of OOC responsibilities. Emphasis should, in our opinion, be placed on assisting the PRC in developing a complete, accurate, and unbiased record. Considering time and resource constraints faced by the OOC, such assistance could be better provided by validating and critiquing the Service's and other participants' rate proposals instead of developing a complete alternative proposal. Changing the OOC's leadership has not necessarily produced satisfactory performance in the PRC's view. Cutting back the OOC's staff may be more harmful than positive, as the OOC is thus deprived of resources needed to prepare for future rate cases.

RECOMMENDATIONS TO THE CHAIRMAN, POSTAL RATE COMMISSION

To improve the OOC's performance, we recommend that the Chairman of the PRC:

- Better define the role of the OOC, giving emphasis to validating and critiquing the Service's and other participants' rate proposals. Emphasis should be given to assisting the PRC in developing a complete, accurate, and unbiased record. The OOC should identify needed additional data, identify inaccuracies and fallacies in submitted data, and present supporting relevant and material evidence which critiques the record evidence. The generation of alternative proposals should be clearly identified as receiving less emphasis than critiquing other participants' and the Service's rate proposal.

Once the role of the OOC has been better defined, we recommend that the Chairman of the PRC:

--Initiate a reexamination of the Commission's reduction in the Officer of the Commission's professional staff resources to insure the cutback does not restrict the Office's ability to successfully perform its responsibilities.

AGENCY COMMENTS AND
OUR EVALUATION

The BOG, in commenting on this chapter, believed it was appropriate to abolish the OOC, rather than redefine its role. The PRC did not formally comment on the recommendations in this chapter, but the current OOC agreed that his professional staff resources should be reexamined and that our recommendation to de-emphasize alternative proposals may be appropriate for omnibus rate cases. He cautioned, however, that alternative proposals could be needed in classification cases.

The BOG considers the OOC's role "duplicative, inappropriate and unjustifiably expensive." This view is based on its beliefs that

- the diversity of interests represented in postal rate cases already assures that the general public is represented, and rate proposals will be "thoroughly critiqued," without need for the OOC, and
- the PRC's staff is already responsible for assuring a complete record, so the OOC is not needed for this purpose.

The current OOC agrees with our recommendation to initiate a reexamination of his staff resources and agreed that it may be appropriate to de-emphasize alternative proposals in omnibus rate cases. Noting our concentration on R80-1, he cautioned, however, that alternative proposals could be considered a higher priority in classification cases. The OOC also noted that the PRC's new ex parte rules, which allow more contact between the OOC and other intervenors during case proceedings, has helped him understand mailers' positions and obtain advance comments on alternative proposals.

We find nothing in the BOG's comments to lead us to recommend that the OOC function be abolished. While diverse interests may indeed be represented in PRC cases, this does not assure general public representation. The OOC is the only intervenor in PRC cases required by law to represent the general public: no other intervenor is obligated to do so. We cannot assume that public and private interests will always coincide. In addition, the OOC's ability to help complete the case record comes from its status as an intervenor, with the information discovery rights that all intervenors have. As a result, the

OOC supplements, rather than duplicates, the work of the PRC staff.

Regarding the current OOC's comments, the report does not focus solely on the OOC's performance in Docket R80-1, although much of this chapter is based on that case. Docket R80-1 does, however, highlight the criticisms of the OOC. In addition, while for some classification cases it may be appropriate for the OOC to suggest alternative proposals, we believe our recommendation allows the OOC the flexibility to respond to those situations.

As acknowledged in the chapter, we cannot measure the effects of changes in the PRC's ex parte rules. The OOC's comments on the positive effects of the changes are, however, testimony to the merits of allowing the OOC to talk to other intervenors.

CHAPTER 5

RESOLUTION OF MAIL CLASSIFICATION CASES-- ALTERNATIVE PROCEDURES OFFER NO SIGNIFICANT SAVINGS IN TIME OR COST

The PRC's procedures are appropriate for resolving both controversial and non-controversial mail classification cases. Non-controversial cases--those with little or no opposition from the mailing industry--can be resolved under current procedures almost as quickly as could be expected under "notice and comment" procedures--the most frequently suggested alternative for improving mail classification proceedings.

However, the PRC's efforts to provide the Service with more flexibility in testing experimental products remain at an impasse. The PRC has introduced expedited procedures in an attempt to give the Service more flexibility in test marketing new products. The Service, however, has not used these procedures as it believes that additional changes are needed to make the process productive.

EARLY CLASSIFICATION CASES DEALT WITH VERY BROAD ISSUES AND RE- QUIRED LENGTHY PROCEEDINGS

The PRA initially required the PRC to reevaluate the existing mail classification schedule and recommend a new one. Issues associated with the new schedule were the focus of the PRC's first six mail classification cases, which began in January 1973 and were not terminated until November 1978. Averaging about 29 months to complete, these cases considered both the scope and extent of the Domestic Mail Classification Schedule (DMCS).

Prior to the PRA, the Congress enacted mail classifications. Along with authorizing the PRC to submit recommended decisions on mail classification changes to the Governors, the act required that the mail classification schedule be reevaluated by the PRC and a new mail classification schedule be proposed within 2 years after the establishment of the Service. This massive undertaking was recommended by the Senate Committee on Post Office and Civil Service in its version of the act in 1970. All mail classifications and rates were to be subject to change. As the Senate Committee report stated:

"The Postal Rate Commission, . . . has the full authority without limitation and subject only to the general guidelines and policy of the act to establish classes of mail subject to the approval of the

Governors of the Postal Service. If the Commission in its assessment of the public interest determines that newsletters mailed by a church are, in fact, of such social benefit that they should pay less than a newsletter sent by the chamber of commerce, then the Commission is fully authorized to recommend a class recognizing that distinction and a rate in accordance with that preference. But in order to achieve true postal reform, as almost every witness before the committee has pledged himself to do, postal rates of [the] past, as they are reflected in the provision relating to mail classification and postal rates, must be made subject to change."

The establishment of a new DMCS became the subject of the PRC's first classification case, MC73-1. In this filing, the Service requested a recommended decision establishing a mail classification schedule. The Service proposed that the new DMCS consist of those provisions bearing on mail classification contained in former Title 39 of the United States Code plus six substantive changes. However, other parties in the proceeding had substantially different views on the proper contents of a classification schedule.

In order to resolve these differences, the parties reached a settlement wherein it was agreed that the proper scope and extent of the DMCS would remain an issue in future classification cases. Four cases (MC76-1 through -4) dealt with changes proposed in docket MC73-1 by participants other than the Service and the OOC. In addition, another case, MC76-5, dealt with potentially long range mail classification changes.

Throughout these proceedings, the PRC attempted to evaluate differences among the parties as to the proper scope and extent of the DMCS. The Service took the position that any postal regulation relating to the line operations of the Service should be excluded from the DMCS. The Service contended that the DMCS should be definitional, in that it should categorize products and services so that those products and services that are likely to bear different rates are clearly distinguished from one another. On the other hand, the OOC argued that the DMCS should contain considerable detail, including all Service regulations pertaining to class eligibility and conditions of mailability.

In considering these types of issues, the PRC needed an extensive amount of time. The following schedule shows the time needed for the first six classification cases.

<u>Case subject</u>	<u>Number of is- sues involved</u>	<u>Total time (months)</u>
MC73-1 - Mail classification changes	6	39
MC76-1 - Classification changes in 1st class	15	24-1/2
MC76-2 - Classification changes in 2nd class	22	30
MC76-3 - Classification changes in 3rd class	20	24-1/2
MC76-4 - Classification changes in 4th class	25	25
MC76-5 - Basic mail classification reform schedule	30	30

SUBSEQUENT CLASSIFICATION PROCEEDINGS HAVE VARIED, WITH CONTROVERSIAL CASES REQUIRING MORE TIME TO RESOLVE

Classification cases initiated after the first set of cases have varied substantially in nature and scope. Cases attracting large numbers of intervenors have required significantly more time to resolve.

The 16 classification cases initiated and completed between November 1976 and June 1983¹ have varied substantially in nature and scope. Controversial cases--where large numbers of intervenors presented views opposing all or part of the Service's initial proposal--took long periods to resolve, while cases with small numbers of intervenors took less time to resolve. As shown in the following table, as the number of full intervenors increases, the length of the case generally increases.

Comparison of Case Length To
Number of Full Intervenors

<u>Case length</u>	<u>Number of cases</u>	<u>Average number of full intervenors/ case</u>	<u>Range of full intervenors/ case</u>
5 months or less	4	2	0-4
More than 5 less than 10 months	6	5	2-10
10 months to 20 months	6	18	7-33

¹Excludes MC81-3, the initial ZIP + 4 case which was stopped due to congressional action.

As shown on the previous page, the number of full intervenors in a particular case has ranged from 0 to 33. In all cases in which the PRC took less than 5 months to complete, the parties agreed to an expedited settlement of the case. Illustrative of these cases was MC81-5 concerning express mail forwarding and address correction service. These changes were proposed by the Service on September 25, 1981, and published in the Federal Register on October 2nd. The case went directly into a Service initiated settlement conference between the Service and the OOC, as no parties requested participation in these proceedings. A settlement was reached by November 4th and approved by the PRC on November 19, 1981--only 54 days (1.8 months) from the initial proposal.

In the controversial cases taking more than 10 months to complete, the PRC held extensive hearings. For example, in case MC78-1 concerning parcel post, the PRC held 21 days of hearings, receiving testimony from 19 witnesses. Sixteen parties participated and directed almost 1,200 interrogatories to other parties resulting in a hearing record of almost 4,800 pages.

CURRENT "NOTICE AND COMMENT"
PROPOSALS MAY NOT RESULT IN
SIGNIFICANT SAVINGS

Various proposals have been made recommending the use of "notice and comment" procedures to streamline the process for handling simple classification cases. Under these proposals, the PRC could hold "notice and comment" proceedings before submitting a recommended decision to the Governors, or the Service could implement changes itself after "notice and comment" proceedings. The use of these proposals is urged as a means to streamline the current process. Our assessment found that these proposals may not result in significant savings, as the current process can resolve classification cases almost as quickly as could be expected under a notice and comment procedure. In addition, the low volume of cases makes large cumulative savings unlikely, and some cases, by nature, are not easily susceptible to notice and comment procedures. While both the Postal Service and the PRC believe they could successfully administer a notice and comment procedure, each opposes giving this power to the other party.

Use of notice and comment
procedure has been advocated
in various proposals

The idea of using simple procedures to dispose of simple issues is not new. The Service, the PRC, and others have advocated the substitution of notice and comment procedures for trial-like proceedings as a means of streamlining the classification process. This substitution rests on distinguishing the

issue under consideration as either (1) a legal or policy issue, which may be handled through notice and comment procedures, or (2) a factual issue, which may require a trial-type hearing. Legal or policy issues are essentially issues such as whether the PRC can expand an appropriation supported preferred rate mail category to include mail matter not specifically identified by Congress in the PRA. Factual issues usually involve issues relating to particular individuals or parties and normally involve questions of credibility or state of mind--matters which call for confrontation and cross-examination. In practice, the two types of issues are often interwoven into the same case and distinguishing policy issues from the circumstances or factual issues out of which they arise is not always easy.

In the context of the PRA, Section 3624 requires "the opportunity for a hearing on the record" before the Commission can recommend rates or changes in classification. Although other agencies with similar hearing requirements have adopted modified procedures--requiring only the submission of written evidence under oath and oral hearings only in certain instances--the PRC has convened oral hearings on most cases.

Various proposals have advocated that the PRA be amended to simplify the handling of minor mail classification legal or policy issues. Such issues could include making refinements to the scope and extent of the DMCS. For example, in commenting on legislative proposals for changes in the PRA, the PRC supported an amendment to Section 3624(a) of the PRA to provide it with the authority to conduct notice and comment type proceedings at its option for legal and policy classification issues. On the other hand, in a 1982 National Academy of Public Administration study, funded by the Service, one alternative recommendation favored by various members of the study panel was removal of the PRC from the consideration of classification issues, leaving these issues to be resolved by the Service. The Service favors this type of proposal, wherein the Service will use notice and comment procedures to resolve classification issues.

Notice and comment procedures
may not result in significant
savings

Our comparison of the current process to the historical use of notice and comment procedures by both the PRC and the Service did not show that significant savings would necessarily result by applying these procedures to legal and policy classification issues. Moreover, notice and comment procedures are not appropriate for controversial cases involving multiple parties and complicated factual issues.

As noted before, both the Service and the PRC proposed on several occasions to give themselves the authority to consider minor mail classification legal or policy issues by using a

notice and comment procedure--now used by both to change their internal operating rules. This procedure involves:

- publishing a notice of a proposed rule change in the Federal Register and soliciting comment on the proposal;
- analyzing all comments, to see if the proposed rule should be canceled, modified, or stand as is; and
- publishing the final rule in the Federal Register, along with a discussion of the comments received.

The Service's proposal would eliminate a formal role for the PRC in most instances and reserve final decision authority to itself, while the PRC's proposal would continue issuance of recommended decisions to the Governors.

Having such authority would limit either the Service's or the PRC's responsibilities to addressing only written comments on proposals in arriving at a final rule. A party not satisfied with the final rule could file a court appeal alleging that the rulemaking is not supported by substantial evidence, but, according to the Service, such appeals are rarely successful.

Current process resolution times for classification cases are comparable with existing PRC and Service internal uses of notice and comment procedures. Using the notice and comment procedures, time must be allowed for interested parties to prepare their comments in writing and for the PRC or the Service to analyze these comments before publishing the final decision. We believe such a process will take more than a month even if no comments are received because the Administrative Procedure Act requires a 30-day comment period. If comments are received, 1 or more additional months may well be needed to properly respond to them. Both the Service and the PRC average between 4 and 5 months to complete their internal rulemaking (which uses this method). Thus, the less controversial group of cases resolved by the PRC in 5 months or less (see table on bottom of p. 56) offers an indication of the time it would take to resolve these cases by a notice and comment procedure. In 1981 House hearings, the PRC's Chairman acknowledged that notice and comment procedures "are not necessarily any cheaper" than the current process.

Furthermore, we believe the low level of classification cases makes large cumulative savings unlikely. As of July 1983, the PRC had begun 23, and completed 21, mail classification cases over the last 10 years. Neither the Service nor the PRC sees this average of about 2 cases a year changing significantly in the future.

Some future cases might also be similar in nature and scope to the E-COM and ZIP + 4 cases, where the controversial issues resulted in extensive written and oral cross-examination and thus were not subject to significant abridgement using a notice and comment procedure. For example, the E-COM case primarily considered the contractor selection issue, which the PRC believed could not have been analyzed without extensive cross-examination. In addition, 33 parties participated in the case and directed almost 1,100 interrogatories to other parties resulting in a hearing record of nearly 7,400 pages. Thus, a proposed notice and comment procedure, whether performed by the Service or the PRC, could be used only on a portion of future cases.

The PRC and the Service
oppose giving notice and
comment authority to each other

While both the PRC and the Service favor amending the PRA to authorize the use of notice and comment procedures for classification cases, both strongly oppose giving the authority to conduct such proceedings to each other. The Service strongly opposes giving the PRC notice and comment authority for classification cases. A Service official noted that this authority, coupled with the PRC's authority to initiate classification cases, allows the opportunity for the PRC to intrude into management areas where it should not be. On the other hand, the majority of the Commissioners believe that giving notice and comment authority to the Service would seriously alter the balance of power carefully established by the PRA.

PRC PROCEDURES FOR "EXPERIMENTAL"
CLASSIFICATION PROPOSALS REMAIN
UNUSED

To provide the Service with more flexibility to test market new products, the PRC has attempted to provide more expeditious resolutions for experimental classification proposals. However, the Service has not made use of these procedures, asserting that additional flexibility is needed if the new process is to work effectively.

For several years, the Service has sought to test market new products. The Service believed that it was given the authority by the PRA to conduct limited experiments without seeking a PRC-recommended decision.

In October 1977, the Service, without following the classification process, initiated a 12-month bulk mailing experiment in a limited geographic area. The Service's authority to conduct this experiment was subsequently challenged by a competitor in court. In an August 1979 decision, the U.S. Court of

Appeals, Third Circuit (604 F. 2d 1370), found that the Service's power under the PRA to engage in market place experiments may not be exercised so as to impose rates or establish mail classifications absent compliance with the requirements over such changes in rates and classifications. The court ruled that the Service must process all changes in rates and classifications, even limited experimental ones, through the PRC.

In December 1980, the PRC established special procedures to help streamline mail classification proposals designated as "experimental" by the Service. These procedures (1) limit the issues on which the proposal would be reviewed in public hearings, (2) allow for limited data, thereby reducing the justification requirements for the experiment, (3) permit service changes during an experiment to be made using notice and comment procedures, and (4) place a 150-day (5-month) limit on PRC resolution.

However, the Service has determined that it will not use these procedures because they (1) allow unnecessary public participation, which could cause the case to go into hearings and preclude speedy resolution, (2) allow the PRC to dictate what data needs to be collected, (3) do not allow the interim rate changes necessary to meet competitive responses, and (4) provide too much data to the competition, which can then distort the experiment's results.

Since the Service has not used these special procedures, no conclusion can be made as to how well they will work.

CONCLUSIONS

Although early classification cases were lengthy, as cases have become less controversial--involving few participants and opposing argumentation--their lengths have shortened significantly. The current process can resolve noncontroversial cases in as little as 2 months. As a result, notice and comment proposals aimed at streamlining the process may not provide any significant savings, as the current process can resolve simple cases nearly as quickly as a notice and comment proposal would. Moreover, the low volume of cases makes large cumulative savings unlikely.

Efforts to provide the Service with additional flexibility to test market new products and services remain at an impasse. The PRC has introduced new "experimental" proposal procedures which it believes will expedite the handling of these initiatives. The Service believes that these procedures will not allow them the degree of management flexibility they need to conduct meaningful test market exercises. As a result, they have not used the new procedures, making it impossible to draw conclusions as to how well the process works.

AGENCY COMMENTS AND OUR EVALUATION

While the PRC was pleased with our conclusions, the Board disagreed, emphasizing the need to streamline the classification process. The PRC commented that it would remain committed to expeditious consideration of mail classification issues, even if the desired legislation (see p. 58) is not forthcoming.

The Board asserted that the Service should be given more management flexibility in the classification area. It believes the Service should have at least three options when it seeks mail classification changes. First, notice and comment procedures should be available for noncontroversial cases. Second, a rule-making hearing before a Service administrative law judge should be available for cases when factual issues are in dispute. Third, the current PRC procedure could be used for Service proposals to eliminate a major service. The Board further states that classification cases initiated by the Service would be appropriate for streamlining, and classification cases initiated by the PRC should be resolved using the existing PRC procedures.

While we appreciate the Board's concern with retaining the Service's management prerogatives, neither the Service nor the Board provided evidence to dispute our conclusion--that the nature and number of classification cases do not support the assertion that notice and comment procedures would result in significant savings. As we discussed in this chapter, the current resolution times for classification cases are comparable with existing PRC and Service internal uses of notice and comment procedures. Moreover, notice and comment procedures would not necessarily result in significant dollar savings. In addition, we believe that the complicated issues of fact that often occur in classification cases are better resolved in the context of a hearing on the record where parties have the opportunity for cross-examination. The law currently requires that parties be given an opportunity for a hearing on the record for all classification cases. We believe this procedure should be continued. Furthermore, if no party requests a hearing, settlement procedures may be quickly initiated under the current process. The Board's citation of the ZIP + 4 case as an example in which a quick resolution did not occur illustrates the limitations associated with their proposal. In this case the PRC granted 10 petitions to intervene and 9 requests to be heard as limited participators. The case also contained many controversial issues. We believe such issues are best resolved under the current hearing procedures.

THE REGULATORY PROCESS TO ESTABLISH
POSTAL RATES AND CLASSIFICATIONS

Formal rate case procedures

For rate cases, the process begins when the Postal Service, after receiving approval from the Board, files a formal request with the PRC for a recommended decision on postal rates or fees. This formal request includes that material considered to be the Service's direct testimony and must include such information and data and such statements of reasons and bases as are necessary to fully describe the nature, scope, significance, and impact of the proposed changes.

Within 5 days, the PRC provides notice of the proposed rate change in the Federal Register and gives interested parties a fixed period of time to file notices of intervention in the rate proceeding. Following the parties notice of intervention, they may immediately participate in the ratemaking proceeding. The intervenors and the OOC begin by discovery based on the Service's written testimony. Discovery includes three basic components:

(1) Interrogatories--Participants prepare written requests for relevant information from other participants in the proceeding which must be answered. Each interrogatory must be answered separately and fully in writing and under oath, unless the party objects to answering the interrogatory. If the latter occurs, the reasons for objection are stated in lieu of an answer.

(2) Requests for Production of Documents--Any participant may request any other participant to produce and permit the participant making the request to inspect and copy any documents which are relevant to the rate proceeding and which are in the custody or control of the participant upon whom the request is served.

(3) Requests for Admissions--Any participant may serve upon any other participant a written request for the admission of any relevant, unprivileged facts, including the genuineness of any documents or exhibits to be presented in the hearing.

In addition, the Service may set up informal technical conferences where its witnesses and technicians are made available to respond to questions about the development of testimony as long as those questions are of a technical nature.

Parties have 10 days in which to object to answering these requests. Otherwise, answers must be provided within 20 days to the PRC, the requesting party, and all other participants.

If a party fails to comply with another party's request to provide information, the requesting party may make a motion to the Presiding Officer to compel the requesting party to provide the information. The Presiding Officer rules on motions to compel answers (no time is established). Within 5 days of the ruling, parties may appeal to the Presiding Officer to request that all of the Commissioners consider the motion. (Note: Motions, rulings, and appeals could occur during all phases of the proceedings.)

After expiration of the time in which parties may file their notices of intervention, the PRC may schedule the first prehearing conference. Although not mandatory, prehearing conferences are strongly encouraged by PRC regulations to expedite the hearing process.

Since the Service files direct testimony in support of its application for a rate change, the OOC and intervenors first direct discovery to the Service. This process allows parties to (1) understand fully the Service's case and (2) select questions and answers they believe should be included in the record and submit them as their "written cross-examination" of the particular Service witness.

After this process is completed, the OOC and intervenors submit their written cross-examination for the record and orally cross-examine the witnesses to the extent necessary to round out the written cross-examination. (Under PRC rules, unlike court rules, permission must be granted to engage in oral cross-examination.) A second conference may be held prior to this hearing. On the basis of the OOC's and intervenors' views of the Service's request for a rate change and other data obtained during discovery, the OOC and intervenors file their direct written testimony with the PRC.

Following this filing, the Service has the opportunity for discovery concerning the presentations of the OOC and intervenors. During this stage, intervenors also begin discovery of the OOC and other intervenors and vice versa. This phase of discovery also leads to the filing of written cross-examination.

The Service files its written cross-examination and conducts any necessary oral examination of OOC and intervenor witnesses at further public hearings. Similarly, the OOC and intervenors cross-examine each other's witnesses. Before these hearings, a third prehearing conference may be held.

Any party--intervenors, the OOC, or the Service--may offer rebuttal testimony at another set of public hearings. This testimony is also subject to cross-examination. The PRC then closes the evidentiary record.

<u>Docket no.</u> (note a)	<u>Starting date</u>	<u>Finish date</u>	<u>Total months</u> (note b)	<u>Subject</u>
MC-76-4 (note d)	6-03-76	7-13-78	25	Classification changes in 4th-class mail
MC76-5	6-03-76	11/29/78	30	Basic mail classification reform schedule (matters formerly assigned to Phase III of Docket No. MC73-1)
MC77-1	11-10-76	2-23-77	3.5	Legislative changes in mail classification schedule
MC77-2	7-11-77	2-16-78	7	Minimum Size Prohibitions
MC78-1	9-08-78	12-05-79	15	Parcel Post Matters
MC78-2	9-08-78	11-28-79	14.5	Third-Class Carrier Route Presort Subclass
MC78-3	9-08-78	12-17-79	15.5	Electronic Computer Originated Mail
MC79-1	11-30-78	7-19-79	7.5	Minimum Height for Carrier Route
MC79-2	12-07-78	4-17-80	16	Express Mail Metro Service
MC79-3	1-04-79	5-16-80	16	Red Tag Proceeding
MC79-4	8-13-79	4-21-80	8	Merchandise Return Service
MC80-1	5-27-80	Pending	-	E-COM Forms of Acceptance

APPENDIX III

APPENDIX III

<u>Docket no.</u> <u>(note a)</u>	<u>Starting</u> <u>date</u>	<u>Finish</u> <u>date</u>	<u>Total</u> <u>months</u> <u>(note b)</u>	<u>Subject</u>
MC81-1	1-08-81	2-24-82	13.5	Second-Class Mail Eligibility Requirements
MC81-2	2-05-81	6-15-82	16	Attached Mail Classification Proceeding
MC81-3	4-21-81	8-31-81	4	ZIP + 4 (withdrawn by Postal Service)
MC81-4	6-08-81	10-16-81	4	Express Mail Insurance
MC81-5	9-25-81	11-19-81	2	Express Mail For- warding and Ad- dress Correc- tion Service
MC82-1	11-10-81	6-4-82	7	Express Mail Flexible Accep- tance Time
MC82-2	8-31-82	6-3-83	9	Elimination of the Aggregate Letter Rule
MC83-1	11-8-82	1-5-83	2	Uniform size and weight lim- itations for parcels
MC-83-2	12-8-82	9-23-83	9.5	ZIP + 4



U.S. GENERAL ACCOUNTING OFFICE

Survey of Opinions of Intervenors on the Postal Rate-Making Process

This survey is being conducted by the U.S. General Accounting Office (GAO), an agency of the United States Congress. The purpose of this questionnaire is to obtain the opinions of persons who have intervened in the postal rate-making process. In general, we are studying the postal rate-making process, particularly the role of the U.S. Postal Service and the Postal Rate Commission. For this survey we have selected the Postal Rate Commission Docket R80-1. When answering the questionnaire, please limit your responses to this case.

The questionnaire can be completed in about 10 minutes. Most of the questions can be completed by checking boxes or filling in blanks.

Please help us in this important study. A self-addressed postage paid envelope is provided for returning the completed questionnaire. We would appreciate it if you would return the questionnaire no later than 5 days after receipt. If you have any questions, please call John Stahl of the GAO collect at (202) 245-5397. Thank you for your cooperation.

Mail the completed questionnaire to:

Mr. John Stahl
U.S. General Accounting Office
441 G Street, N.W., Room 5741
Washington, D.C. 20548

1. To what extent, if at all, do you agree or disagree with the following statements concerning Postal Rate Commission Docket R80-1? (CHECK ONE BOX ON EACH LINE.)

STATEMENTS	Strongly Agree	Agree	Agree as Much as Disagree	Disagree	Strongly Disagree	No Basis To Judge ^{1/}
	1	2	3	4	5	6
a. The Postal Rate Commission case process allowed you to adequately present all the issues you believed to be critical.	24.2	48.5	18.2	6.1	-	3.0
b. The results from the "pre-hearing conference" expedited the proceedings.	-	27.3	24.2	12.1	3.0	33.3
c. The evidentiary hearing process was efficient and effective.	6.1	51.5	21.2	15.2	-	6.0
d. The data obtained from the presiding officer's "Formal Information Requests" of the Postal Service was important to your organization.	3.0	54.5	12.1	9.1	18.2	3.0
e. The Postal Rate Commission allowed everyone to actively participate in the proceedings.	48.5	36.4	-	6.1	-	9.1
f. The statutory ten-month period for a postal rate case was too restrictive.	3.0	9.1	15.2	51.5	15.2	6.0
g. Given the ten-month period, the time allotted for preparing and responding to interrogatories (questions) was too restrictive.	6.1	12.1	21.2	45.5	9.1	6.0
h. The time elapsed from the start to the finish of the case was excessive.	9.1	9.1	3.0	42.4	30.3	6.1

1/ For Questions 1, 2, 3 and 9 this column combines "No Basis to Judge" responses and no responses to the question.

2. To "represent the interests of the general public" the Postal Service Reorganization Act established, in the Postal Rate Commission, the position of "Officer of the Commission." To what extent, if at all, do you agree or disagree with the following statements concerning the Officer's participation? (CHECK ONE BOX ON EACH LINE.)

STATEMENTS	Strongly Agree	Agree	Agree as Much as Disagree	Disagree	Strongly Disagree	No Basis To Judge
	1	2	3	4	5	6
a. The Officer adequately represented the interests of the "general public" on this case.	3.0	9.1	6.1	30.3	42.4	9.1
b. The Officer's staff had the expertise to properly represent the "general public."	3.0	12.1	6.1	42.4	24.2	12.1
c. The Officer played an important role in determining the issues addressed by the case.	6.1	30.3	24.2	21.2	9.1	9.1
d. The Officer played an important role in clarifying the issues addressed by the case.	3.0	15.2	36.4	24.2	12.1	9.1
e. The Officer's proposal supplied sufficient explanatory information.	3.0	12.1	24.2	27.3	24.2	9.1
f. The efforts of the Officer and his staff did not duplicate the efforts of the private intervenors.	6.1	15.2	21.2	30.3	9.1	18.2
g. The Officer and his staff adequately coordinated their actions with those of private intervenors.	3.0	3.0	12.1	24.2	30.3	27.2
h. The private intervenors should be allowed to question the Officer's compliance with Commission Order 433 (Responsibility of the Officer of the Commission).	18.2	36.4	3.0	-	3.0	39.4

3. To what extent, if at all, do you agree or disagree with the following statements regarding the Postal Service's participation in Postal Rate Commission Docket R80-17 (CHECK ONE BOX ON EACH LINE.)

STATEMENTS	Strongly Agree	Agree	Agree as Much as Disagree	Disagree	Strongly Disagree	No Basis To Judge
	1	2	3	4	5	6
a. The Postal Service's proposal supplied sufficient explanatory information.	6.1	21.2	18.2	36.4	15.2	3.0
b. The Postal Service's "informal technical conferences" assisted in your understanding of the Postal Service proposal.	-	27.3	9.1	12.1	48.5	3.0
c. The Postal Service's use of a non-fiscal year "test year" resulted in significant data conversion problems for your organization.	6.1	21.2	12.1	33.3	-	27.2
d. The Postal Service cooperated with your organization in the conversion of fiscal year data to the test year period.	-	12.1	-	12.1	-	75.7
e. The Postal Service Board of Governors justified their decision with the case record.	-	12.1	15.2	21.2	45.5	6.1
f. The Postal Service Board of Governors had the expertise in rate-making matters.	-	12.1	12.1	21.2	39.4	15.2
g. The Postal Service Board of Governors took sufficient time to review the record before rendering their decision.	3.0	18.2	9.1	12.1	30.3	27.3

4. The Commission's Rules of Practice and Procedure (Subpart G) require the Postal Service to file annual and quarterly reports with the Commission. Since these reports are available to the public, how much of your case presentation was based on data from these reports? (CHECK ONE BOX.)
- 1. All or almost all....SKIP TO QUESTION 6
- 6.1 2. Great amount.....SKIP TO QUESTION 6
- 27.3 3. Moderate amount.....SKIP TO QUESTION 6
- 12.1 4. Some amount.....CONTINUE TO QUESTION 5
- 54.5 5. Little or none.....CONTINUE TO QUESTION 5
5. Which of the following best explains why you made limited use of the Postal Service's periodic reports? (CHECK ONE BOX.)
- 1. The periodic reports were not timely.
- 15.2 2. The periodic reports did not meet my data needs.
- 3.0 3. The periodic reports did not provide sufficient detail.
- 39.4 4. The periodic reports were not needed for our analyses.
- 42.3 5. Other (SPECIFY) _____
6. In the discovery procedures of the rate-making process, interrogatories (questions) could be sent by your organization to other parties. In addition, interrogatories can be sent by other parties to you or to another party.
- To what extent, if at all, did you obtain data for your analyses from the interrogatories? (CHECK ONE BOX.)
- 18.2 1. Very great extent
- 33.3 2. Great extent
- 24.2 3. Moderate extent
- 6.1 4. Some extent
- 18.2 5. Little or no extent

7. In general, how complete (if at all) were the responses received from each of the following parties to your interrogatories? (CHECK ONE BOX ON EACH LINE.)

	Not Applicable None Sent 1	Very Complete 2	Complete 3	Neither Complete Nor In-complete 4	In-complete 5	Very In-complete 6
OTHER PARTIES						
a. Postal Service	18.2	-	33.3	18.2	27.3	3.0
b. Officer of the Commission	45.4	-	30.3	12.1	12.1	-

8. About what percent of the interrogatories you received from each of the following parties had the following characteristics? ^{1/}

INSTRUCTIONS: USE PART A FOR THOSE PARTIES WHO SENT INTERROGATORIES TO YOU.
USE PART B FOR THOSE PARTIES WHO DID NOT SEND INTERROGATORIES TO YOU.

A. INSERT PERCENTAGE ON EACH LINE. PERCENTAGES DO NOT NEED TO TOTAL 100%.

B. IF A PARTY DID NOT SEND AN INTERROGATORY, CHECK THE APPROPRIATE BOX-- "NOT APPLICABLE--NO INTERROGATORIES RECEIVED."

A. INTERROGATORIES WERE SENT:

PERCENTAGE OF INTERROGATORIES SENT BY

CHARACTERISTICS

1. Asked for information provided in our statement or previous interrogatories.
2. Effort required to respond exceeded the value of the information requested.
3. The question was unreasonable and a burden to our organization.

	Postal Service	Officer of the Commission	Private Intervenors

B. NO INTERROGATORIES WERE SENT:

NOT APPLICABLE--NO INTERROGATORIES WERE RECEIVED

Postal Service	Officer of the Commission	Private Intervenors

^{1/} Responses to this question were insufficient to allow for development of composite statistics.

9. How satisfied or dissatisfied were you with the participation of each of the following groups on Postal Rate Commission Docket R80-1? (CHECK ONE BOX ON EACH LINE.)

	Very Satisfied	Satisfied	Satisfied As Much As Dissatisfied	Dissatisfied	Very Dissatisfied	No Basis To Judge
	1	2	3	4	5	6
a. Postal Rate Commission (except Officers of the Commission)	9.1	51.5	15.2	9.1	3.0	12.1
b. Postal Rate Commission-Officer of the Commission	3.0	12.1	12.1	39.4	21.2	12.1
c. Postal Service (except Board of Governors)	3.0	36.4	24.2	18.2	9.1	9.1
d. Postal Service-Board of Governors	-	12.1	12.1	30.3	24.2	21.2
e. Other private intervenors	-	39.4	39.4	3.0	-	18.2

10. In terms of employee salaries, consultants and other outside assistance, and administrative costs, about how much did participation in Postal Rate Commission Docket R80-1 cost your organization? (CHECK ONE BOX.)

- 15.2 a. Less than \$5,000
- 3.0 b. \$5,000 and under \$25,000
- 9.1 c. \$25,000 and under \$50,000
- 24.2 d. \$50,000 and under \$100,000
- 18.2 e. \$100,000 and under \$250,000
- 15.2 f. \$250,000 and above
- 15.2 g. Unknown

List of Periodic Reports Prepared by USPSAnnual reports

1. Revenue and Cost Analysis Report
2. Cost Segment and Components
3. Statement of Revenue and Expense
4. Audited Financial Statements
5. Non-Volume Workload Changes
6. City Delivery Statistics National Totals
7. Rural Carrier National Statistics
8. Regional Operating Plans Summary for Applicable Cost Segments
9. Civil Service Retirement Fund Deficit Report
10. Workmen's Compensation Report
11. Annual Budget

Quarterly reports

1. Revenue, Pieces and Weight by Classes of Mail and Special Services
2. Origin/Destination Information Report National Service
3. Cost Reduction Programs/Tracking System
4. Investment Income Statement

Accounting period data

1. Cash Flow Statement
2. Investment Income
3. Summary Financial and Operating Report
4. National Payroll Hours Summary Report

Miscellaneous reports

1. Before/After Pay Increase Reports
2. Before/After COLA Cost Report

SUMMARY OF SELECTED RECENT COURT CASES
ADDRESSING THE RESPECTIVE ROLES OF THE
PRC AND THE BOG

Within the last few years, several court decisions have addressed the respective roles of the Postal Service and the Commission.

One such major court decision was Governors of the United States Postal Service v. Postal Rate Commission, 654 F. 2d 108 (D.C. Cir. 1981). In that case, the Postal Service sought to implement the proposed Electronic Computer Originated Mail (E-COM) service on a permanent basis, but the Commission recommended it as an "experimental" classification with a fixed termination date. The Court of Appeals for the District of Columbia Circuit held that by so doing, the Commission "exceeded its authority and strayed from its ratemaking and classification powers to intrude upon the management functions of the Board of Governors." Id. at 115. In another case out of the District of Columbia Circuit, the Court of Appeals held that the Commission had exceeded its statutory authority by initiating a rate proceeding. In Dow Jones & Co. v. United States Postal Service, 656 F. 2d 786 (D.C. Cir. 1981), the court held that since only the Postal Service is authorized to initiate a rate proceeding, a classification proceeding initiated by the Commission which resulted in recommended changes in rates as well was void in the absence of a rate request by the Service.

In another case, the Court of Appeals for the Second Circuit compared the function of the Commission to that performed in many administrative law contexts by an administrative law judge under 5 U.S.C. §557(b), with the exception that the action which the Governors can take on a Commission-recommended decision is carefully circumscribed by the Postal Reorganization Act, (39 U.S.C. §3625). Time, Inc. v. United States Postal Service, 667 F.2d 329 (2d Cir. 1981). The court alluded to the fact that while actions of the Governors do have final legal effect--i.e., change rates--actions of the Commission, in the guise of recommended decisions, do not. Id., at 334.

Several court decisions have also arisen out of the most recent rate proceeding, Docket No. R80-1. The first of these decisions, Newsweek, Inc. v. United States Postal Service, 663 F.2d 1186 (2d Cir. 1981), was the review of the Governors' allowance under protest of the Commission's first recommended decision in that docket. The Governors protested that the Commission had improperly disallowed nearly \$1 billion of the Postal Service's revenue requirement. The court agreed with the Governors and cautioned the Commission against making arbitrary reductions in the revenue requirement. The court characterized

the Commission's reductions in this case as an improper encroachment on the managerial authority of the Board of Governors. Id. at 1204.

In its review of the next stage of the rate proceeding, however, the Second Circuit likewise cautioned the Governors against straying into an area of expertise generally reserved for the Commission--cost allocation. Time, Inc. v. United States Postal Service, 685 F.2d 760 (2d Cir. 1982). When the Governors had modified the Commission's third recommended decision, one of the grounds they had cited for the modification was their rejection of a costing methodology upon which the Commission had relied. While the court conceded that an improper costing methodology could be a lawful basis for modification, the court further held that the Governors nonetheless bear a heavy burden to show that the methodology would lead to a revenue shortfall. Partially in order to give the Governors the opportunity to make such a showing, the matter was remanded to them by the court.

Subsequently, the court accepted the modifications made by the Governors, but essentially for reasons unrelated to the Governors' choice of costing methodologies. Time, Inc. v. United States Postal Service, Docket Nos. 81-4183, et al., (2d Cir. June 8, 1983). The court reiterated its position that while the Commission must respect management's authority to determine revenue requirements, the Commission has primary expertise in the areas of costing and pricing. Id., Slip opinion at 4291.

The approach set forth by the Second Circuit in the Newsweek decision and the two Time decisions is fully consistent with the recent Supreme Court decision also concerning postal ratemaking. National Association of Greeting Card Publishers v. United States Postal Service, ___ U.S. ___, 51 U.S.L.W. 4877 (June 22, 1983) (NAGCP IV). Although the case before it did not involve any conflicting statutory interpretation by the Commission and the Postal Service, the Supreme Court in its review of the Newsweek decision took the position that it is the Commission that is primarily entrusted with matters of costing and pricing, and hence, it is the Commission's interpretations of costing provisions which are due judicial deference. The court did note, however, that the Postal Service is expected to aid the Commission in allocating postal costs to the various classes of service by producing data the Commission needs.



BOARD OF GOVERNORS
Washington DC 20260-1000

October 7, 1983

Mr. William J. Anderson
Director
General Government Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

On behalf of the United States Postal Service, I am pleased to offer the following comments on your draft of a proposed General Accounting Office report, "Opportunities to Improve the Postal Ratemaking Process." At the outset, let me compliment you on a thorough and generally very positive report. Our comments concern five of the recommendations in the proposed report and one matter that is not the subject of a recommendation. This response reflects the views of the Postmaster General, to whom the second of the recommendations discussed below was specifically addressed.

1. Recommendation that the Board take steps to clarify the role of the Governors in the ratemaking process (p. 24)

The Board notes the concerns expressed in the draft report about the role of the Governors in the ratemaking process, including the scope of their participation in considering rate proposals, use of open meetings, participation of the Postal Rate Commission, and assignment of responsibility for drafting the Governors' decisions. The Board is now reviewing its rate-case procedures in connection with its consideration of proposed guidelines on ex parte communications, and we will consider the draft report's specific suggestions in that context.

I do want to take this opportunity, however, to comment on two specific points. The draft report states that "[a] characterization of the Service as having the same advocacy status as the other participating mailers is not entirely correct." In fact, that characterization is entirely incorrect. The Postal Reorganization Act provides in section 101 that the "United

States Postal Service shall be operated as a basic and fundamental service to the people by the Government of the United States." Its Governors are appointed, as provided in section 202, "to represent the public interest generally." Postmaster General William F. Bolger and its other officers and employees are public servants working to discharge "the obligation to provide postal service to bind the Nation together." (Section 101 of the Act.) They are compensated as Government employees and do not participate in any surplus earned by the Postal Service as a result of their efforts.

I should also comment briefly on the recommendation to provide an opportunity for the PRC to offer additional explanations of its recommended decisions to the Governors in public meetings. Each of the Governors receives a copy of every PRC recommended decision as soon as it is issued, plus the opinion and appendices. These materials should and do speak for themselves. If the Commission were given an opportunity to address the Governors in public meetings, mailers and other interested parties would almost certainly seek an opportunity to explain further their positions. The Governors' deliberations would be converted into another adversarial proceeding, which we consider unnecessary and inappropriate.

2. Recommendation that the Postal Service seek informal Commission comments on changes in cost procedures and, if that should prove constructive, periodic cost procedural rulemaking (p. 37)

The Postal Service will undertake to establish informal procedures -- probably a notice and comment process -- whereby the PRC and interested parties will be advised when we are preparing to develop new costing procedures or special cost studies relating to ratemaking, providing such disclosure will not jeopardize the Service's future business or competitive position in the areas concerned. The PRC and others will be invited to make recommendations regarding the scope and direction of our efforts.

After this initial opportunity for comments, final determination of the scope and direction of our cost development procedures and special cost studies and their day-to-day management must remain the sole responsibility of the Postal Service. Such efforts are dynamic and require continuous decision-making throughout. Once past the initial stages, a collaborative effort would not be conducive to completing the task quickly and efficiently.

At present, we believe separate rulemaking proceedings for cost procedural issues would probably be ineffective and duplicative.

Costing issues take on meaning primarily in the context of ratemaking. Participants' views on particular costing issues will change from the time of a rulemaking hearing to a subsequent rate proceeding. Parties who are dissatisfied with the outcome of rulemaking on a particular costing issue will simply raise the issue anew during ratemaking, claiming they have information not available when the issue was first considered. In addition, because of structural changes in postal operations or improvement in data collection, costing procedures established through such a rulemaking process might well be out-of-date by the time an actual ratemaking case arose.

Because costing issues are such an integral part of rate proceedings, considering them in a forum other than the rate proceeding may only add to the workload and costs of the Postal Service, the PRC, and interested parties. We are willing to reconsider the matter, however, after we gain experience with the informal procedures discussed above.

3. Recommendation that the PRC better define the role of the Officer of the Commission (OOC), giving emphasis to critiquing the Service's and other participants' rate proposals (p. 51)

We believe that the OOC's role is duplicative, inappropriate and unjustifiably expensive. The variety of interests represented in rate cases already insures that significant or controversial proposals are thoroughly critiqued. The PRC staff can and does review the record and identify inaccuracies and fallacies in submitted data. It would be entirely improper to assign such functions of the PRC, which the Act establishes as an impartial body, to the OOC, one of the litigating parties. If the OOC and the PRC staff were both to perform these functions, the result would be unnecessary and expensive duplication of effort.

The original purpose of the OOC -- representing the interests of the general public -- is already being served through the participation of public interest and other groups in rate proceedings. Rather than reshuffling the OOC's priorities, we believe it would be appropriate to acknowledge that the role is unnecessary and abolish it.

4. Recommendation that the PRC seek specific legislative authority to enforce periodic reporting requirements (p. 38)

Based on seven years of actual report preparation experience, we are confident that the Postal Service can and will meet due dates

that are reasonable (which they have not always been). We believe that no enforcement authority is needed.

5. Recommendations that the PRC seek specific legislative authority to compel the production of data for use in Commission proceedings (p. 38)

The crux of data production disputes between the Postal Service and the PRC is relevancy. The PRC's presiding officer, usually not a lawyer, has repeatedly asked the Service to produce data that are not relevant to the merits of the proceeding but that have considerable value to our competitors. Section 410(c) of the Postal Reorganization Act gives the Service the right to withhold such data, and sound business practice makes this a duty. We note that the GAO has made no finding that the Service has ever failed to produce relevant data. The recommended grant of subpoena power to the PRC would also raise troublesome questions about the scope of such power and its potential abuse. We strongly protest this recommendation.

6. Streamlining the classification processes

The draft report asserts that current classification procedures can resolve mail classification issues in as little as two months. On the basis of that finding, the draft report dismisses the need for any streamlining. In fact, quick resolution of mail classification cases has occurred only where the issues were not disputed and where the Postal Service initiated settlement procedures. The ZIP + 4 case, by contrast, was in process for 10 months.

We think streamlining is needed. If the Postal Reorganization Act is to be amended, it should provide the Postal Service with several options when it seeks changes in mail classification. One would be a notice and comment proceeding for the more straightforward, less controversial cases, such as the recent aggregate letter case. Another option would be to conduct a legislative-type hearing before a Postal Service administrative law judge where there are factual issues in dispute. Finally, for cases such as a Postal Service proposal to eliminate a major service, there would be the existing procedure before the PRC.

Classification cases initiated by the Postal Service are uniquely appropriate for streamlining because they are initiated by postal management, which understands their impact on operations and mailers. For cases initiated by the Commission, the present procedure should be maintained.

On behalf of the Postmaster General and the other members of the Board, I want to thank you for the opportunity to review this draft. Appendix VI of the report recognizes that within the last few years several court decisions have addressed the respective roles of the Postal Service and the PRC. This judicial guidance has provided both the Service and Commission with a better understanding of our respective roles. The result should be fewer time-consuming disagreements in the future and a much improved ratemaking process.

Sincerely,



Robert L. Hardesty
Chairman

RLH:mam

POSTAL RATE COMMISSION
Washington, D C. 20268

Janet D Steiger
CHAIRMAN

September 22, 1983

Mr. William J. Anderson
Director, General Government Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

This letter responds to your request for our comments on a draft report entitled Opportunities to Improve the Postal Ratemaking Process. We appreciate the opportunity to review the draft.

We believe the report is particularly valuable in that it presents a scientifically conducted survey of opinions on key questions. This Commission's function is to provide a public forum for the decision of some types of postal issues, and the views of those who litigate in that forum as to its adequacy are entitled to weight. It is largely for their benefit that Congress created the present ratemaking process; however, treating it for analytical purposes as an abstract problem in administration concerning only the Postal Service and the Commission tends to obscure this important fact and to lead to conclusions inadequately reflecting these interests. GAO's survey gives the views of these participants their proper recognition, and presents its results with welcome lucidity. We think it is a major contribution to the body of basic information on our present postal system.

In this letter, we restrict ourselves to discussing GAO's analyses and suggestions, and do not comment on the arguments of the Postal Service or other parties which GAO reports. Of course, our silence on these matters does not indicate acquiescence or agreement.

In identifying problems of ratemaking administration (ch. 2), the draft report rightly focuses on the "reconsideration" process. We believe it might be more useful still if the treatment of possible remedies (pp. 17-18) were broadened. The Commission believes that in addition to the solution sketched in the draft report, GAO should also consider a qualified time limit: for example, a provision allowing the Commission x days to decide upon reconsideration but also permitting it to extend the time by a further y days upon making a written finding, with

reasons, that the extension is necessary. This mechanism has been used in other regulatory contexts [see, e.g., the Intercoastal Shipping Act of 1933, as amended in 1978, 46 U.S.C. § 845(b)]. Another possibility, which would leave the Commission somewhat better able to adopt procedural schedules to the exigencies of particular cases, would be to establish a legislative policy of maximum expedition without fixing a time limit. The Commission believes that any of these changes, even including a fixed time limit, could be made operable; however, it would have a marked preference for the more flexible approaches, if it were found necessary to amend the Act at all. We would not like to create the risk that reconsiderations raising a large number of issues would lead to conflict between a rigid time limit and the legal requirements of procedural fairness.

With respect to GAO's specific recommendations in ch. 2, we have the following suggestion. The Commission welcomes requests for appropriate explanatory aids which may help the Governors in considering a recommended decision. As suggested in our recent comments (copy attached) on the Governors' proposed ex parte rule, it is appropriate for us to supply -- and we have supplied and made public -- explanatory workpapers in recent cases. Since the decision is the Commission's, however, it would seem appropriate for the Commission, or the Commission and the Governors by mutual agreement, to establish procedures for this purpose. Additionally, we believe it important that any such procedures preserve the open, public character of the decisional record. (Where GAO recommends "meetings open to the general public," we assume it is this value that GAO seeks to preserve -- rather than creating a "press conference" mechanism.) We would suggest, therefore, that the second sentence of the second recommendation to the Board of Governors be made an independent recommendation addressed to both agencies and so worded as to recognize the need for a mutually acceptable and legally sound procedure.

In ch. 3, dealing with the recurrent data problems of postal regulation, we find ourselves in general agreement with GAO's approach. To the extent that time and resources are diverted, during a rate case, to arguing over whether the Service has provided, or can or should provide, data in particular cost areas of interest to the parties or the Commission, the primary business of establishing fair, cost-based rates may indeed suffer.

At page 38, we suggest that the second recommendation to the Postal Rate Commission might be more accurately cast as ". . . specific legislative clarification of the Commission's authority" As §§ 3603 and 3624(b) indicate, the Commission is not lacking in authority, but it is very generally expressed.

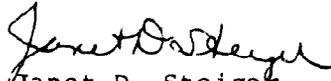
Chapter 4 of the draft report relied (p. 45) on statements from the Postal Service's brief in the R80-1 proceeding. While it is not inappropriate to record these views, we do believe that

reporting them in close proximity to the report of GAO survey responses may tend to obscure the fact that they were offered in litigation to advocate a position, not as balanced commentary on a question of public administration.

We are pleased that the draft report finds in Chapter 5 that classification procedures in place generally allow reasonably quick resolution of noncontroversial mail classification issues. We think the GAO appreciates that such expedition was the objective of our legislative proposal, even though GAO finds the latter unnecessary. The Commission remains committed to expeditious consideration of mail classification cases even if specific legislation is not forthcoming.

In closing, I would like to emphasize that I believe this GAO report provides valuable guidance to those of us involved in the day-to-day administration of postal matters.

Sincerely,


Janet D. Steiger
Chairman

POSTAL RATE COMMISSION
Washington, D C. 20268

Office of the
Consumer Advocate

September 21, 1983

William J. Anderson, Director
General Government Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

In your letter to Chairman Steiger dated August 23, 1983, you requested that the Officer of the Commission¹ be permitted to provide separate comments on the draft report entitled "Opportunities to Improve the Postal Ratemaking Process." My comments herein are confined to Chapter 4 of the report which concerns the functions and role of the OOC. With respect to the other chapters in the draft report I am deferring to the Commission.

As I understand it, the major focus of your research was directed at the last omnibus rate case, Docket No. R80-1. Although I was not the OOC during that case, I was a member of the General Counsel's office and understand the problems and controversies surrounding that case. While it was perfectly natural for your staff to focus on that case, I believe that this narrow focus has possibly distorted your view of the OOC's function. Your recommendation that the generation of alternative proposals be clearly identified as a lower priority is a result of this narrow focus. Since the language which you recommend to better define the role of the OOC is not confined to omnibus rate cases, I believe that the proposal, as presently drafted, goes too far. At the very least it requires clarification. While the generation of alternative proposals may be a lower priority in omnibus rate cases, in other cases, such as the on-going E-COM case, Docket No. R83-1, the generation of alternative proposals could be considered a higher priority. In fact, in one of the cases you cite as an OOC success, the OOC formulated an alternative electronic mail system.

¹ As you recognize in your report, my title has been changed to Director, Office of the Consumer Advocate.

Instead of attempting to prioritize the OOC's functions, perhaps a better approach would be to state that the generation of alternative proposals should not interfere with the duty to complete the record. In any case, if you continue to recommend the language contained in your draft, it should be limited to omnibus rate cases.

At page 49 there is a discussion of the revised ex parte rules designed to encourage the OOC "to talk to more intervenors during case proceedings." The draft further states that the impact of this change on the OOC's performance cannot be determined. While I agree that there is no objective basis for assessing the impact of this change from the perspective of an outsider, I can state unequivocally that the impact of this change has been positive. Allowing the OOC to discuss substantive issues with other intervenors during case proceedings enhances the role of this office, permits the OOC to better understand the positions of the mailers, and allows the OOC to obtain comments on alternative proposals prior to filing them with the Commission.

Except for the criticisms noted above, I believe that in chapter 4 the findings are accurate and the recommendations are constructive and well supported.

Thank you for the opportunity for allowing me to comment on this draft and if there are any further questions I would be happy to meet with you or your staff.

Sincerely,



Stephen A. Gold
Director, Office of the
Consumer Advocate

12/20/73

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