Congress of the United States

Washington, DC 20515

November 7, 2003

The Honorable S. David Fineman
Chairman
United States Postal Service
Board of Governors
475 L'Enfant Plaza, SW
Washington, DC 20260

The Honorable Jack Potter
Postmaster General and CEO
United States Postal Service
475 L'Enfant Plaza, SW
Washington, DC 20260

Dear Sirs:

We are writing to bring to your attention the recent settlement in which the Vantage Group, Incorporated, agreed to pay $4.5 million to settle charges of a scheme to defraud the United States Postal Service. The actions alleged in this case are an example of the sort of abuses that will result from the change to the "cooperative mailing" rule that is set to go into effect on November 13.

In the case in question, the U.S. Postal Inspection Service investigated the commercial mailer Vantage, two of its subsidiaries, its Chief Executive Officer, and its Chief Financial Officer for sending illegal mailings using the nonprofit reduced postage rate. During the relevant time period, the cooperative mailing rule dictated that no for-profit company could share in the proceeds of any mail piece sent at the nonprofit rate. Yet, according to the government, Vantage improperly mailed 78 million pieces of mail at the reduced nonprofit rate, knowing it was not entitled to use the rate. The government also asserted that Vantage made false statements to cover up the improper use of the nonprofit rate.[1]

Even after paying a postal deficiency in 1990 for sending illegal cooperative mailings, Vantage did not appear to have learned its lesson. According to the government, although Vantage revised its standard contract to make clear that it would not have a financial stake in mailings conducted on behalf of nonprofits, Vantage entered into secret side agreements with many of its nonprofit clients that violated the cooperative mailing rule. As a result, the government maintained that Vantage improperly caused tens of millions of pieces of mail to be sent at the nonprofit rate, saving Vantage millions of dollars in postage.

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[1]U.S. Department of Justice, *Press Release: The Vantage Group, Inc., and its CEO and CFO, Agree to Pay the Untied States $4.5 Million to Settle Civil False Claims Act Allegations* (Oct. 28, 2003) (online at www.usdoj.gov/usao/ma/presspage/Oct2003/Vantage-civil%20settlement.htm).

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On top of the alleged fraudulent use of the nonprofit rate, consumers were misled. Most of the money raised by the Vantage solicitations went to Vantage, not to the nonprofits that were supposed to benefit from the mailings. According to the government, Vantage received 76% of all money donated to the relevant nonprofit organizations. In one example, over a two-year period, Vantage received approximately 86% of the donated money (Vantage received approximately $20.6 million out of $23.8 million donated).[2]

Unfortunately, this sort of abuse will be legal under the new cooperative mailing rule scheduled to take effect on November 13. Under the current regulation, consumers are protected from unscrupulous marketers who use little-known charitable organizations to raise funds that are siphoned off by the commercial entity. Under the new regulation, however, there is no longer any prohibition on commercial marketers sharing in the proceeds of nonprofit mailings. As a result, it will be perfectly legal for these marketers to enter into arrangements that allow them to keep the funds that consumers think they are giving to the nonprofit. According to the Alliance of Nonprofit Mailers, which represents over 400 charitable organizations:

> The anything-goes exemption will open the floodgates to abuse . . . . Unscrupulous commercial fundraisers, acting in the name of unsophisticated or captive nonprofit organizations, will flood the mails with fundraising solicitations designed primarily to line the fundraisers' own pockets.[3]

Vantage itself recognizes the impact of the new rule. It has stated: "We note with pleasure that the regulations at issue in this matter have recently been amended by the U.S. Postal Service and now reflect the position taken by Vantage throughout the proceedings."[4]

The "safeguards" added by the Postal Service between the draft and final issuance of the cooperative mailing rule are inadequate. They provide that a nonprofit be given a list of each donor, contact information, and the amount of the donation. Yet provision of this list is not necessary if the nonprofit waives in writing its receipt of this list. Ultimately, the single most important safeguard against abuses is to ensure that the charity has the right to solicit its donors independently, without being dependent on an unscrupulous direct mail firm. The safeguards in the rule do nothing to guarantee this right.

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[2]Amended Memorandum in Support of Motion of the United States for Summary Judgment, *U.S. v. Lewis*, C.A. No. 97-10052-MLW, 18 (D. Mass. Apr. 30, 2002).

[3]*A Boon for Commercial Mailers? Rule Change to Lower Postage for For-Profit Fundraisers*, Washington Post (Sept. 2, 2003).

[4]Direct Newsline, *Vantage to Pay $4.5 Million Postal Fraud Settlement* (Oct. 28, 2003) (online at http://directmag.com/ar/marketing_vantage_pay_million/index.htm).

We urge you to reconsider the rule, which is scheduled to take effect on November 13. Please consider the addition of greater protections against fraud and abuse. Clearly, the facts of the Vantage case demonstrate that the Postal Service has the authority to protect consumers from fraudulent fundraising practices. We believe the Postal Service has a responsibility to protect against abusive situations, thereby ensuring public confidence in nonprofit mailings.

We ask that this letter be made part of the public record. Thank you for your consideration of this important issue.

Sincerely,

Joseph I. Lieberman
Ranking Minority Member
Committee on Governmental Affairs
U.S. Senate

Henry A. Waxman
Ranking Minority Member
Committee on Government Reform
U.S. House of Representatives

David R. Obey
Ranking Minority Member
Committee on Appropriations
U.S. House of Representatives

John W. Olver
Ranking Minority Member
Subcommittee on Transportation, Treasury and Independent Agencies
Committee on Appropriations
U.S. House of Representatives