

BEFORE THE UNITED STATES SENATE
COMMITTEE ON GOVERNMENTAL AFFAIRS

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Postal Rate Commission
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Thank you for the opportunity to testify before this distinguished Committee on Governmental Affairs regarding the recommendations of the President's Commission on the U.S. Postal Service. It is an honor and privilege to share my views with you.

Postal reform is a matter of great importance to our economy, and of vital interest to the users of postal services. This includes, of course, the many large mailers and their associations and representatives who have and will continue to regularly present their views to you; but users of postal services also include the hundreds of millions of consumer and small business mailers who depend on regular mail delivery to their residences and places of businesses. In addition, consumer and small business mailers rely on easy access to the purchase of vital postal services through retail facilities and other means. Above all else, they seek affordable and high quality postal services.

Role of the Consumer Advocate Currently and Under Postal Reform

As Director of the Office of the Consumer Advocate at the Postal Rate Commission, I am charged with representing the interests of senders and recipients of mail who otherwise would not be represented in Commission rate, classification, and complaint proceedings. While individuals and small businesses generate or receive nearly 80% of postal volume (approximately 160 billion pieces of mail in 2002), their

individual expenditures for postage and other services – on the order of \$7/month – are likely to be too small a percentage of their household and business budgets either to cause them to participate individually in Postal Regulatory Board proceedings, or, alternatively, to associate as a group to represent their interests. This has certainly been the case in the three and a half decades since the Postal Reorganization Act was passed by Congress. There is every reason to believe that this condition will persist after postal legislative reform.

In enacting the Postal Reorganization Act of 1970, your predecessors had the foresight to assure participation by an “officer of the Commission who shall be required to represent the interests of the general public.” The requirement for such participation eventually led the Commission to establish an office – the Office of the Consumer Advocate – to always be on the ready to protect individuals and small businesses in the conduct of regularly filed major and minor classification cases and periodically filed omnibus rate cases and complaint cases set for hearings.

On July 12, 1999, the Commission adopted a Mission Statement that clarified the role of the Office of the Consumer Advocate. According to the terms of that Statement, my office has the following responsibilities:

- Be a vigorous, responsive, effective advocate for reasonable and equitable treatment for the general public in Postal Rate Commission proceedings
- Give a strong voice to consumers, especially those whose interests are not otherwise represented in Commission proceedings
- Present evidence and arguments on behalf of consumers in Commission proceedings
- Promote fair competition between the Postal Service and its competitors for the ultimate benefit of consumers

I must emphasize that the Office of the Consumer Advocate at the Postal Rate Commission is the only entity in the nation that represents the distinct interests of consumers and small businesses before the Postal Rate Commission. In numerous proceedings before the Postal Rate Commission, the Office of the Consumer Advocate has litigated on behalf of low-volume mailers to ensure their access to benefits proposed only for high-volume mailers. I will describe two examples. In 1999, the Postal Service requested that the Postal Rate Commission issue a recommended decision for a new, low-cost Bulk Parcel Return Service. The Postal Service proposed a mailer threshold of 50,000 pieces annually. Before entering into a settlement with the Postal Service to conclude the proceeding without hearings, the Office of the Consumer Advocate convinced the Postal Service to allow mailers that were one-fifth the size of those originally targeted by the Postal Service to participate, thereby securing access to the service by the small business community.

Recently, in the Negotiated Service Agreement (“NSA”) case that the Postal Service and Capital One brought before the Postal Rate Commission, at the insistence of the Office of the Consumer Advocate, the Postal Service agreed to establish a formal process allowing First-Class Mailers smaller than Capital One to negotiate NSAs along the same lines as the Capital One agreement. Without Consumer Advocate representation of small mailer interests, it is doubtful that this process would have been put in place.

The President’s Commission Report contains no explicit recommendation for a statutorily required consumer/small business representative, with funds for representation provided by postal revenues. However, the current Postal

Reorganization Act does so provide, and it is my position that the Office of the Consumer Advocate (or a similar office) should be designated explicitly in postal reform legislation. I should add that the Postal Rate Commission addressed the need for consumer representation in Comments submitted to this distinguished Committee on November 19, 2003. The Commission stated that there might be sound policy reasons for ensuring a meaningful role for “captive customers,” especially in those instances when the Postal Service might seek increases in captive customer rates above the rate of an inflation-based cap. As explained earlier, meaningful participation on behalf of captive customers will only be possible with a statutorily designated, postal funded consumer advocate. Of course, the role of the consumer advocate in the postal reform environment should parallel the role of the Postal Regulatory Board. In the new era, the consumer advocate should represent captive mailer interests in proceedings to increase their rates; proceedings to change or add new mail classifications; and proceedings to define postal service standards and level of performance. In addition, the consumer advocate should be given the power to file complaints about unauthorized rate increases; cross-subsidization by them of other non-captive classes of mail; and possible degradation in the quality of postal services.

The Postal Service’s Mission: to Fulfill Consumer and Small Business
(as Well as Large Business) Needs for Postal Services

The President’s Commission recognized the importance of the Postal Service to consumers and small businesses. In Recommendation B-2, the President’s Commission recommended that the mission of the Postal Service be “to provide high-quality, essential postal services to all persons and communities by the most cost-

effective and efficient means possible at affordable and, where appropriate, uniform rates.” This is an excellent summary of what the Postal Service means to consumer and small business users of the Postal Service.

Traditional, Core Postal Services. The first distinct element of the President’s Commission recommendation is to limit the activities of the Postal Service to core, traditional activities. These are the accepting, collecting, sorting, transporting, and delivering of letters, newspapers, magazines, advertising mail, and parcels. I am in full agreement with this limitation.

At the time of Postal Reorganization in 1970, Congress was comfortable in delegating its constitutional power to provide postal services to the nation in a form, and within the limits, known to it at that time. The Postal Service had not yet embarked on a course of competition with providers of electronic communication services in the private sector. Examples of partially electronic services that the Postal Service now claims are outside the jurisdiction of the Postal Rate Commission or *any* agency are ebill-Pay, a bill-paying service that members of the public may use to have their bills paid electronically or by mailed checks, and Netpost Card Store, a service available through the Postal Service’s website that consists of greeting card purchases made by typing in the message for the card, paying by credit card, and eventually having a private company print and mail the greeting card for processing, transportation, and delivery by the U.S. Postal Service. Both of these products are in direct competition with private sector services.

GAO reports issued in the last five years indicate that the Postal Service is not an effective competitor in areas outside its traditional expertise. As a representative of

consumer interests, I do not see any benefit in having the Postal Service compete with efficient, innovative entrepreneurs in the private sector. The harm done to consumers when the Postal Service ventures into new, unfamiliar commercial activities is to force captive consumers to fund money-losing experiments that discourage efficient, innovative private companies from offering comparable services. In the absence of the distortions in the marketplace produced by a government monopolist cross-subsidizing experimental commercial ventures, the forces of competition should work to produce high quality, inexpensive, innovative products that may be purchased by individual consumers and small businesses.

The clearest evidence of my commitment to this view is the role my office played to support the efforts of a San Francisco-based organization, Consumer Action, to petition the Postal Rate Commission to clarify its jurisdiction over non-traditional services and, at the least, to establish detailed accounting and reporting rules for any non-traditional commercial activities (such as all-electronic communications products) that the Postal Service claims are not subject to the authority of the Postal Rate Commission. In response to the Consumer Action petition, the Postal Rate Commission commenced two new rulemaking proceedings: the first proposes a definition of services subject to Postal Rate Commission jurisdiction; and the second proposes the institution of new accounting and reporting requirements for non-jurisdictional products and services.

In comments on the Postal Rate Commission's proposed rulemaking to define postal services, the Association for Postal Commerce ("PostCom") wrote that the addition of the word "physical," as in *physical* delivery, acceptance, collection, sortation,

and transportation of mail would make it very plain that the Postal Service has not been given license to engage in electronic communication services. I agree that the addition of the word “physical” would be a crucial addition because it would keep the Postal Service out of marginally related and non-related commercial activities.

In the November 19 Comments submitted to this Committee by the Postal Rate Commission, the Commission stated that clarifying national policy on appropriate areas of Postal Service business would answer vexing policy questions and reduce (or eliminate) contentious Postal Rate Commission proceedings on the Postal Service’s authority to enter into non-traditional commercial areas. I fully agree with the Postal Rate Commission that clear guidelines in postal reform legislation would resolve this unsettled legal question.

Just two weeks ago, a complaint was filed with the Postal Rate Commission by a small business called DigiStamp. DigiStamp has been an early provider of electronic time/date stamps for electronic files. DigiStamp is very concerned about a nearly identical, new, U.S. Postal Service product called Electronic Postmark. DigiStamp voiced understandable concerns that a \$70 billion enterprise, with captive customer revenues, can compete unfairly with DigiStamp. The Postal Service claims that Electronic Postmark is outside the Commission’s jurisdiction and has resisted attempts to make a full accounting for the costs of developing and operating this service. If the Postal Service is cross-subsidizing Electronic Postmark with captive customer revenues, a small startup company like DigiStamp may easily be driven out of business unfairly; and captive customers will sustain a double injury: they may be cross-subsidizing Electronic Postmark to their disadvantage as mailers, and they may be

deprived of innovative, high quality, low cost private sector services that cannot compete with a \$70 billion monopoly-funded enterprise.

I agree with the President's Commission that the Postal Service should not be permitted to continue such non-traditional competitive forays in the future. The President's Commission's recommendation for resolution of the question, i.e., to limit the Postal Service to its traditional postal activities, is the best way to prevent such conflict in the future.

The President's Commission also recommends a Postal Regulatory Board complaint mechanism that would allow members of the public to file complaints with the Postal Regulatory Board on the ground that the Postal Service is engaging in activities that fall outside its core mission. In my opinion, a statutorily designated consumer representative should be among those who may file such a complaint.

Universal Service. While I would limit the Postal Service to traditional postal activities, I believe that the interests of consumers, particularly those living in non-urban regions of the United States, are best served if the Postal Service is obliged to provide delivery services and to continue to offer the sale at retail of letter, package, and ancillary special services. Rural consumers may not have ready access to the private delivery services that are more plentiful in densely populated areas. Even urban consumers may be unable to gain ready access to private delivery services. For this reason, it is important to preserve consumer and small business access to postal letter, package, and ancillary special services.

Consumers, small and large businesses, and federal, state, and local governments all need regular, timely delivery to their home and business addresses. In

view of the great need for retail and delivery services across the nation, I support the President's Commission recommendation that the Postal Service continue to be charged with a universal service obligation.

Governmental Services. The second element of the President's Commission recommendation on an appropriate mission for the Postal Service is to allow the Postal Service to engage in one additional set of limited activities: providing other governmental services when in the public interest and where the Postal Service is able to recover the appropriately allocated costs of providing such services. At the time of Postal Reorganization, Congress regularly enlisted the aid of the Post Office to furnish services to the public through postal retail facilities. The Post Office was uniquely positioned to provide such assistance. A postal historian from Oxford University, Gerald Cullinan, explains the reason for giving the Post Office (later the Postal Service) this role. In the "Nonpostal Functions" section of his historical account,¹ Cullinan states that "because of its ubiquity in American life" the Post Office "was called upon to perform a bewildering number of nonpostal functions *pro bono publico*." Also, Mr. Cullinan explains, "there has been a steady accretion of minor federal functions . . . mainly because, in many communities, the post office is the only federal office in town and the center of local activities." These included the sale of Liberty bonds and war savings certificates; registration of aliens; sale of U.S. savings bonds; sale of documentary stamps; notary public services; and accepting passport applications.

¹ *The United States Postal Service* (1973 ed., Praeger Publishers) at pages 196 – 199.

I concur with the President's Commission's formulation of a suitable role for the Postal Service in providing governmental services to the public on behalf of other governmental agencies, and commend the President's Commission for couching this role in terms of *governmental* services. The use of "nonpostal" in the Postal Reorganization Act has produced widespread confusion and contention in the postal community, particularly since the Postal Service has used the term in a manner the legislative history indicates was never contemplated by your predecessors in 1970, i.e., to engage in a wide range of nonmail, non-traditional, nongovernmental activities that are in competition with the private sector.

The Scope of the Postal Monopoly

The President's Commission recommends maintaining the current postal monopoly over written, personal and business mail correspondence, and preserving sole Postal Service access to customer mailboxes. However, the President's Commission envisions giving the Postal Regulatory Board the duty to clarify and review periodically the scope of the monopoly and sole access to mailboxes. Most importantly, the President's Commission would transfer the power to redefine the monopoly to the Postal Regulatory Board.

Over time, the President's Commission foresees a gradual narrowing of the monopoly with a corresponding opening up for private businesses. This is a worthy goal that, in many ways, will increase access to innovative, efficient alternative service providers. I have one important concern about a shrinking monopoly, however. The President's Commission recommended a full set of interdependent recommendations.

The shrinking of the monopoly, in particular, is highly dependent on dramatic new opportunities to reduce postal costs. If the efficiencies and cost reductions predicted by the President's Commission are not realized, then I fear that a shrinking monopoly will put increasing pressure on those captive mailers who remain in the monopoly to fund the universal service obligation. In other words, as a growing amount of postal volume is no longer subject to the monopoly, the captive customer volume subject to the monopoly becomes smaller. If costs do not experience a corresponding reduction, then those fewer mailers who are still subject to the monopoly (e.g., citizens of rural communities) will have to bear a higher cost per piece. I would ask this distinguished Committee to prevent such a result.

New Approach to Setting Rates

The President's Commission recommends dramatic changes to the system of changing rates. The newly established Postal Regulatory Board would construct a framework for rate increases along new lines.

Non-competitive products. Rates for non-competitive products – identified as First-Class Mail, Standard Mail, Periodical Mail, Media Mail, Library Mail, and Bound Printed Matter – will be set initially in a baseline rate case, probably applying the current pricing criteria of the Postal Reorganization Act. In view of the fact that First-Class Mail, Media Mail, and Library Mail are all heavily used by consumers and small businesses, I ask the distinguished Committee to provide explicitly for protection of these interests by a consumer representative, possibly the Office of the Consumer Advocate.

As part of the baseline case, the Postal Regulatory Board will devise an incentive-based scheme for non-competitive rates to rise, largely at the discretion of the Postal Service. The President's Commission envisions an escalator that will be comprised of an inflation factor that will allow the rates to rise, but with a productivity deflator that will moderate the inflationary impact. The President's Commission expects that the established rate ceilings will drive postal management in the direction of controlling costs and realizing new efficiencies, both laudable objectives. In addition, current Postal Reorganization Act-style rate hearings will be supplanted by highly streamlined new procedures that will give postal management the ability to increase rates within a small fraction of the current length of time expended in an omnibus rate case.

One scenario that is not specifically considered by the President's Commission is that the incremental costs of a particular non-competitive product may rise even faster than the escalator allows. Eventually the costs of the non-competitive product may exceed its revenues, and the deficit might grow even larger over time. I recommend that provision be made for an emergency rate request by the Postal Service to the Postal Regulatory Board to increase rates to a level that would cover the costs of the non-competitive product. If this correction is not made, then other non-competitive products might be forced to cross-subsidize the deficient non-competitive product, a condition that the President's Commission has found to be uneconomic and undesirable.

From time to time, the Postal Service may find that its costs have increased above the aggregate level of revenues allowed under the non-competitive product

escalator. In such cases, the President's Commission recommends an advance review by the Postal Regulatory Board of rate increases proposed by the Postal Service. It is not clear whether such requests must be granted. Under the current Postal Reorganization Act, following a request by the Postal Service, the Postal Rate Commission must always recommend rate increases for specific mail classes to be high enough to allow the Postal Service to break even. Would this still be the case after postal reform? As before, I recommend statutorily designated representation of consumer and small business interests.

Due Process in Postal Regulatory Board Proceedings. When rate increase cases take place before the Postal Regulatory Board, it is imperative that mailers who will be subject to rate increases be accorded full due process. Under the Postal Reorganization Act, requests by the Postal Service to increase rates or add new classifications are conducted under the provisions of the Administrative Procedure Act. Although the President's Commission does not raise the matter of due process, almost certainly this distinguished Committee will want to carry over the former due process guarantees from the Postal Reorganization Act into postal reform legislation. If that is the case, it is doubtful that the sixty-day proceedings recommended by the President's Commission can furnish due process to those who will be disadvantaged by Postal Service actions.

The Administrative Procedure Act requires agencies such as the Postal Regulatory Board to give all interested litigants the opportunity for submission of documentary or oral direct evidence, rebuttal evidence, cross-examination, and the submission of arguments. Furthermore, in most cases involving postal rate increases,

the Postal Service will be in sole possession of much of the material needed to dispute the Postal Service's request. Opponents of the Postal Service's position will need sufficient time to obtain this information through discovery. Once the record has been fully developed by the litigants, and arguments have been submitted, the Commission will then need time to consider the parties' evidentiary presentations and arguments. Completion of all of these essential procedural activities will require more than the sixty days recommended by the President's Commission. Rushing through a case in sixty days is likely to result in a denial of due process.

If the Postal Regulatory Board is given strong, comprehensive powers to require the collection and reporting of financial data necessary for an evaluation of the request for additional revenues, and these data are filed regularly with the Board, it may be possible to make some reduction in the length of time for a request for rate increases above and beyond the established price cap. This truncation of the rate increase proceeding may avert a denial of due process to litigants only if the Board, and the public, are kept fully and currently informed about the Postal Service's financial position. The only reason that it may be possible to make some reduction in the length of time for Postal Regulatory Board proceedings, as compared to Postal Rate Commission proceedings, is that the public availability of relevant data should shorten the time needed both by the Postal Service to prepare requests and by mailers to evaluate them. Nevertheless, it is impossible to imagine that due process can be fully accorded litigants in sixty days. I am confident that this distinguished Committee can strike the proper balance between providing additional revenues quickly for the Postal Service while

preserving due process for those mailers who will be faced with the imposition of higher rates.

Competitive products. Competitive products would include the current postal products of Express Mail, Priority Mail, and Parcel Post. (It is unclear whether Standard Mail packages, i.e., those less than 16 ounces, would be in the competitive or noncompetitive group). Changes in the rates of competitive products should be made at the discretion of the Postal Service, according to the President's Commission. The Postal Regulatory Board, however, would be charged with ensuring that aggregate non-competitive products do not cross-subsidize competitive products and that individual non-competitive and competitive products are not being cross-subsidized by other, non-competitive products. Furthermore, competitive products should be required to make a meaningful contribution toward overhead.

A complaint mechanism would provide for the filing of complaints from members of the public on the grounds that the rate of a non-competitive product exceeds its ceiling or that a competitive product is being cross-subsidized. To protect captive customers, the complaint procedure should also be available to those who have reason to believe that particular non-competitive products are being cross-subsidized by other non-competitive products. Consistent with my earlier suggestions, I would include a statutory provision authorizing a consumer representative to lodge such complaints. In addition, I would ask that this distinguished Committee establish a timeframe for such proceedings that ensures full due process to the litigants.

Cost Allocation. The President's Commission recommends that the Postal Regulatory Board take strong measures to ensure thorough, accurate cost allocation.

One of the key tools for obtaining such information is subpoena power for the Postal Regulatory Board. Subpoenas are necessarily available only for information that the Postal Service has previously collected. Unless specific, this power may not always ensure that all of the information necessary to allocate costs appropriately will be collected. I am of the opinion that Congress should confer explicitly on the Postal Regulatory Board the power to establish rules for the collection and reporting of the type of information required to discharge the allocation duty effectively.

In addition, the President's Commission urges the Postal Service to comply voluntarily with Securities and Exchange Commission ("SEC") reporting requirements. There are two distinct virtues of such voluntary compliance: 1) SEC reporting is well understood by the public, and 2) SEC reporting allows a ready comparison between the Postal Service's financial reports and those in the private sector. However, the Postal Regulatory Board should not be limited to SEC documents to fulfill its mission. It must have authority to require periodic reporting of needed data to meet the abbreviated timelines suggested by the President's Commission.

Retained Earnings. The President's Commission recommends that the Postal Service be permitted to retain earnings up to a limit established by the Postal Regulatory Board. The President's Commission contemplates the accrual of retained earnings both from non-competitive and competitive products. The ability to retain earnings will reduce the need for management to seek emergency rate increases. Only after exhausting retained earnings could management justify an emergency rate increase.

Service Standards and Performance. Forces such as declining First-Class volumes, a narrowed monopoly, and price caps may combine to put the Postal Service in a position that makes it difficult for the Postal Service to meet established service standards. The natural tendency of any *monopoly* service provider in straitened circumstances is to allow its performance to deteriorate.

While the President's Commission recommends a mechanism for Postal Regulatory Board review of sweeping national changes in service standards, it does not propose a role for the Postal Regulatory Board to establish service standards for postal non-competitive products, require specified levels of performance, require the Postal Service to measure performance, and finally, require the Postal Service to submit the performance metrics to the Postal Regulatory Board for public dissemination. These powers should be granted the Postal Regulatory Board in order to ensure that the public has the level of postal services it needs.

I further request that a consumer representative, designated by statute, also be given a role in defining service standards to meet consumer needs. The consumer representative should be given the additional power to lodge complaints about service when the metrics show that performance has fallen below Postal Regulatory Board standards. Postal Regulatory Board powers and consumer representation are imperative to ensure high quality services by a *monopoly* provider like the Postal Service. When, by law, the Postal Service is the only entity empowered to provide personal and business correspondence services, it can risk a serious deterioration in quality of service because it can count on retaining most of its monopoly volume.

Service Standards and Performance for Noncompetitive Products. The best method for ensuring adequate service standards and high levels of performance is to give the Postal Regulatory Board the power to: (1) define and establish service standards for non-competitive products, (2) set minimum performance requirements, (3) require the Postal Service to measure its performance, (4) require the Postal Service to report the performance results to the Postal Regulatory Board, and (5) give the Postal Regulatory Board the power to initiate its own investigation of service and performance issues. These powers should be augmented by the power to subpoena any records in the possession of the Postal Service that are relevant to these measurements.

A model for the establishment of such service standards and measures may be found in the Postal Directive of the European Union. Under the directive, 85% of cross-border letter mail must be delivered in three days, and 97% must be delivered in five days.

At the present time, the Postal Service collects and reports performance information on First Class through two major data collection efforts: the Origin Destination Information System (“ODIS”) and the External First Class measurement system (“EXFC”). ODIS data are filed regularly with the Postal Rate Commission under the Commission’s rules. The Commission makes these data available to the public at its website. EXFC has a limited release by the Postal Service. Both of these data systems collect mail statistics chiefly on collection box mail, and the Postal Service is to be commended for doing so.

The Postal Service has elected not to collect information on much of the bulk business mail that it handles, including bulk First Class and Standard Mail, and

Periodicals. I am the recipient of weekly e-mailed reports of a planet-code tracking company called Mail Trak. Mail Trak collects the tracking information made available from Postal Service barcode readers at Processing and Distribution Center facilities through a new service called Confirm that the Postal Service offers. Purchasers of Confirm service, generally bulk First-Class Mailers and Standard Mailers, use the Mail Trak company to collect tracking information and relay it to them in a user-friendly form. Mail Trak aggregates performance information from its customers and distributes the aggregate results in a weekly newsletter. In the past year, Mail Trak reports that approximately 23% of Standard Mail letters were being delivered later than the service standard window of 7 – 10 days. This is valuable information that Mail Trak is able to provide only for its customers' mailings. The Postal Service, on the other hand, could collect and report tracking information for *all* postal Confirm customers. A Postal Regulatory Board power to require such collection and reporting could make important performance information available to the Postal Service's Standard Mail (and bulk First Class) customers.

The Postal Service does not regularly collect or report information on special services that are ancillary to the provision of non-competitive postal services like First Class. Certified Mail with Return Receipt serves as an important example. The Postal Service does not collect information on the percentage of Certified Mail pieces that actually carry the recipient's signature – the key feature of the service. In the case of Return Receipts, the Postal Service does not measure and report the average length of time for Return Receipt cards to be mailed to the recipient; and the Postal Service does not measure the percentage of such cards actually returned to recipients. These are

the essential features of the service being purchased, but the purchaser does not have a clear idea of how often the promised service is actually provided. The Postal Regulatory Board should be given the power to define the essential elements (or service standards) for each special service ancillary to non-competitive products, to require measurement of the performance of the service standard, require submission of the data collected, and to disseminate the performance results to the public.

Performance of the Universal Service Obligation. Other types of information relating to the universal service obligation should also be required of the Postal Service through the Postal Regulatory Board. Examples of this type of information are the length of time a typical mailer waits on line at a retail facility, how quickly a postal agent responds to a complaint, the number and placement of collection boxes in a community, the frequency of collection and collection times for such boxes, and the hours for access to services at postal retail facilities and alternative access in other retail businesses.

Defining service standards and minimal service performance levels should be added to the Postal Regulatory Board's powers to prevent service deterioration from becoming a recourse against declining volumes and growing pressure to reduce costs. Since the Postal Service will have a statutory monopoly on most of the noncompetitive mailpieces, the only way to ensure high quality performance is to have it regulated by the Postal Regulatory Board.

Service Quality for Competitive Products. In general, the Postal Regulatory Board will have no role in defining or monitoring quality of service for competitive products. The Postal Service is expected to compete in the marketplace on quality as well as price. However, the competitive playing field should be level with respect to

false advertising claims. The private companies with which the Postal Service will compete will be subject to Federal Trade Commission (“FTC”) laws and regulations prohibiting false advertising of products. Since the Postal Service will be acting as an ordinary business (not a governmental entity) in providing competitive products, it should be subject to FTC jurisdiction and to the same laws and regulations as other businesses.

Antitrust Laws. The reasoning set forth in the preceding paragraph applies with equal force to antitrust law and regulation. Although the Postal Service will be prevented from cross-subsidizing competitive products under the President’s Commission formulation, there is a broad range of anticompetitive activity that is not related to cross-subsidy that the Postal Service may be free to engage in. I respectfully ask that this distinguished Committee give serious consideration to making the Postal Service subject to antitrust laws with respect to competitive products.

Postal Insurance. This distinguished Committee may want to address separately the Postal Service’s sale of insurance as a service ancillary to the sale of competitive products such as Priority Mail and Parcel Post. Insurance sales by the Postal Service’s competitors will be subject to any state laws requiring shippers to provide minimal information on the nature of the insurance contract. There may be regulation by state insurance commissions of the terms and conditions of package insurance. Furthermore, courts will likely apply ordinary contract law in disputes between purchasers of insurance and the private shippers insuring their packages.

The Postal Service as a governmental entity under current laws is exempt from all of the regulations and limitations described above. In disputes between the Postal

Service and its claimants, courts have held that the Postal Service is essentially self-regulating, i.e., it writes its own regulations limiting its obligation under the insurance contract and it applies and interprets these rules when insurance purchasers submit claims. In court proceedings, the Postal Service enjoys a burden of proof standard much less onerous than its competitors. In a case involving a private shipper as defendant, the plaintiff will be required to prove his or her case by slightly more convincing evidence than that submitted by the defendant. In a case involving the Postal Service as defendant, the Postal Service's decision to deny an insurance claim will be upheld unless it is "plainly in error" or "clearly erroneous." This imposes a much higher burden of proof on plaintiffs of postal claims.

I would ask that the playing field between the Postal Service and its shipping competitors be leveled with respect to insurance and that the interests of postal insurance purchasers be protected.

Conclusion

In conclusion, I would like to give the President's Commission the highest praise for mastering a massive amount of technical material on the Postal Service's operations, cost structure, main sources of revenue, and the system of ratemaking used at the Postal Rate Commission. The recommendations made have obviously been reached after thoughtful, careful deliberation. I ask that the President's Commission recommendations be incorporated into postal reform legislation along the lines that I have suggested in my testimony. I thank the distinguished Committee for this opportunity to testify.