

II. The Relationship of the Updated Periodic Reporting Rule to Legislative Reform

The Relevance of the President's Commission on Postal Service

The Postal Service has chosen to depict the update to the Commission's Periodic Reporting Rule as an attempt to fundamentally alter the "balance of power" that the Act strikes between the Postal Service and the Commission, focusing almost all of its arguments on the CRA documentation that the rule requires. Substantive Comments at 20. The other commenters share the Commission's view that the updated Periodic Reporting Rule is a legitimate, restrained exercise of its § 3603 authority under the Act whose effect is to only modestly increase the regularity with which the Postal Service would otherwise disclose this information.

Based on the false premise that the rule attempts to rewrite the Act, the Postal Service criticizes the Commission's decision to go ahead with the update, rather than wait for the dust from the President's Commission on Postal Service to settle. The President's Commission was organized in December, 2002, and was charged with recommending a solution to what appeared to be the Postal Service's stagnating volumes and mounting losses. The Postal Rate Commission proposed to update its rule in January 2003, one month after the President's Commission began its work. At that time, nothing was known about the direction that the recommendations of the President's Commission might take.

Due to a series of Postal Service requests for extensions of time to comment on the proposed updates, the rulemaking was still pending in June of this year. At that time, the Postal Service asked the Commission to suspend this rulemaking until after the report of the President's Commission was due to be issued, apparently so that the recommendations in that report could guide the deliberations of this rulemaking. With the unanimous support of all of the other commenters, the Commission declined the Postal Service's request for such a lengthy, additional delay, and ordered the Postal Service to file its substantive comments. The Postal Service responded with some indignation, accusing the Commission of, in effect, attempting to trump the legislative reform effort. *Id.* at 19–20.

One of the dominant themes in the report of the President's Commission is the need for greater transparency of Postal Service operations and finances. Its proposed regulatory scheme would allow the Postal Service to retain its

monopoly over letter mail, at least initially, and give it great flexibility to set rates for competitive products. The President's Commission, however, made it clear that the price for combining monopoly power with pricing discretion over competitive products would be greatly strengthened regulatory oversight and accountability, entrusted to a new Postal Regulatory Board. First on the list of duties entrusted to the new Board would be the duty to "ensure the financial transparency of the Postal Service." Report of the President's Commission on Postal Service, issued July 31, 2003, at 53. The report elaborates, at page 66:

The Commission believes that the Postal Service has a responsibility to the public to be transparent in its financial reporting. Given its important public mission and central role in the nation's economy, changes in Postal Service economic health should not come as a surprise to those responsible for or impacted by its performance.

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As a unifying force in American commerce and society, and as a customer-financed government endeavor, the Postal Service should be setting the standard for financial transparency by which all other Federal entities are judged. While the Postal Service does, in many respects, conduct financial reporting over and above what is required of Federal agencies, it remains behind the level of disclosure offered by its corporate peers. [Emphasis in original.]

And at page 68:

In addition to SEC-like reporting, the Commission recommends that the Board of Directors be required to submit annually a detailed report to the Postal Regulatory Board on the financial viability of the institution, providing both significant financial insights as well as adequate explanation of related trends. The report should adhere to the 'no surprises' rule, ensuring that any major changes to the fiscal health of the institution are widely understood in advance, so appropriate responses can be anticipated and generated. The Commission further recommends that this report be made available to the public.

The new Postal Regulatory Board would be empowered to set baseline rates and price caps for non-competitive services, and empowered to review rates for competitive products to ensure that they are not cross-subsidized by non-competitive products. The Board would complete reviews of competitive product prices in 60 days. In order to make this streamlined rate regulation possible, the report recommends, at page 69:

For the Postal Regulatory Board to ensure financial transparency and make fully informed determinations on issues from rate ceilings to cross-subsidies, it must have access to the most reliable and current information possible. For this reason, the

Commission recommends that the Postal Regulatory Board have the authority to request accurate and complete financial information from the Postal Service, including through the use of subpoena powers, if necessary, to obtain a thorough and reliable snapshot of Postal Service operations.

At page 67, the report concludes:

Where the Postal Service participates in markets also served by private industry, effective oversight is essential to ensure that monopoly revenues are not manipulated to the benefit of the Postal Service's competitive offerings. *For this reason, the Commission recommends that the Postal Service periodically report on the allocation of costs among all products and services in accordance with form, content and timing requirements determined by the Postal Regulatory Board.* [Emphasis added.]

The guidance provided by the President's Commission could hardly be more direct in its support of the approach taken by the updated Periodic Reporting Rule. Indeed, the report of the President's Commission recommends going much further in mandating transparency both in general, and in the area of rate regulation. The Commission, however, is aware that the report of the President's Commission is only relevant to the extent that its recommendations are enacted into law. This may never happen, or may take years to accomplish. The Postal Rate Commission's proposal to update its Periodic Reporting Rule was conceived independently of the President's Commission, whose recommendations had not yet been formulated. The Commission's motive in persevering with its proposal was not to steer the legislative reform effort in any particular direction, or to trump it. The Commission motive was, and is, to make the existing regulatory regime more effective in achieving the objectives Congress set out for it.

The Report of the General Accounting Office

On November 13, 2002, the General Accounting Office issued a report entitled "U.S. Postal Service Actions to Improve Its Financial Reporting." GAO-03-26R Postal Financial Reporting. The report found that the Postal Service's financial reporting lacked the necessary transparency in general, and that its periodic reporting, in particular, was inadequate. At page 12 of the report, it states:

* * * it is clear from recently publicized problems in financial reporting that more detailed information and transparency are called for by both Congress and the public. Such transparency is critical for the Service because of the importance of its financial situation and the implications for