Postal Regulatory Commission
Submitted 8/1/2008 2:40:45 PM
Filing ID: 60622
Accepted 8/1/2008

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268–0001

REPORT ON UNIVERSAL POSTAL SERVICE AND THE POSTAL MONOPOLY	Docket No. PI2008–3

REPLY COMMENTS OF THE UNITED STATES POSTAL SERVICE
(August 1, 2008)

In response to Order No. 71, the Postal Service and other interested parties provided initial comments to assist the Commission in the preparation of its report to Congress and the President on "universal postal service and the postal monopoly in the United States … including the monopoly on the delivery of mail and on access to mailboxes" pursuant to Section 702 of the Postal Accountability and Enhancement Act of 2006 (PAEA). Twenty comments were filed by mailers or mailer associations, two by private shipping companies, two by postal unions, eleven by federal departments or agencies, ten by individuals, and one by the Public Representative appointed by the Commission.

The Postal Service notes that there appears to be broad consensus concerning a number of topics set forth in Order No. 71. Most parties urge the Commission to avoid making any sweeping recommendations in its report, for reasons such as the relative newness of the PAEA regulatory regime, and the uncertain effects of liberalization in Europe. Submitters of seventeen comments specifically support the maintenance of the monopoly on the final-mile delivery of letters, and twenty-one attest to the value of the mailbox monopoly, including the

Commission's Public Representative. Sixteen comments recommend a universal service obligation (USO) that is defined flexibly to allow the Postal Service to respond to changed circumstances in the future.

These issues should be viewed with an eye on the long-term trends evident in the postal sector. As electronic substitutes to the mail continue to mature, it will become increasingly difficult for the Postal Service to finance the USO without engaging in aggressive cost-savings activities and seeking additional revenue. This will be the case even if the monopolies are maintained. However, the challenges facing the Postal Service would be significantly exacerbated if the monopolies were eliminated, or if the USO was specified in an inflexible manner. The need for "flanking measures" (discussed below) to support the continued provision of the USO would also become vitally important.

Given the broad consensus evident in the first round of comments, these reply comments are limited to a few points raised by other parties that the Postal Service believes merit some further discussion at this time. As the Postal Service noted in the introduction to its Initial Comments, it currently intends to provide further policy views at a later date, to allow consideration of some ongoing studies that will provide additional information on the topics raised by this docket.

I. The UPU Acts Are Not a Source of the Postal Service's Universal Service Obligation

In its comments, the U.S. Department of State focuses on the relationship between, on the one hand, universal service and the USO applicable to the

Postal Service and, on the other hand, the services that member countries to the Universal Postal Union (UPU) are obligated to provide under the UPU Acts. With this submission, the Postal Service presents its views on the distinction between the USO and fulfillment of the universal postal service prescribed in the UPU Acts.

As the “member country”, the United States Government as a whole is primarily responsible for ensuring compliance with the United States’ UPU commitments. In contrast with title 39 of the United States Code, however, nothing in the UPU Acts obligates the Postal Service to perform particular operations by virtue of some other, objective criterion such as its status as a public postal operator. As a result, title 39 remains the sole source of definition for the precise scope of the Postal Service’s USO.

II. FedEx Overstates the Commission’s Task with Respect to Implementing the PAEA Limitations on the Letter Monopoly

FedEx asserts that the Commission has the ability to revise the fundamental scope of the Private Express Statutes, and it urges the Commission to reconsider existing Postal Service regulations pertaining to those Statutes.[1] FedEx overstates the Commission’s task in three chief respects. First, the PAEA limits the Commission's authority to implementation of 39 U.S.C. § 601; the title 18 Private Express Statutes, including those to which FedEx apparently refers as dating to 1872, are beyond the scope of the Commission's authority under either 39 U.S.C. § 601 or § 503. Second, the meaning of the Private Express Statutes

[1] FedEx Comments at 9.

is anything but "far from clear," in light of a comprehensive body of active regulations, court opinions, policy statements, and advisory opinions elaborating on the statutes' application. Finally, far from being merely "based on a repealed statutory provision," the provisions of 39 C.F.R. Parts 310.1 and 320.2-320.8, as in effect on July 1, 2005, are now essential statutory provisions themselves,[2] and the Commission's authority to implement them does not translate into the ability to void or revise this Congressional enactment.

III. To the Extent the Commission Wishes to Consider Eliminating the Letter Monopoly, It Should Address the Issue in a Comprehensive Fashion

As noted above, nearly all of the comments that discuss the topic of the letter monopoly urge its continuation. Two exceptions to this general consensus were the comments submitted by FedEx and Professor Richard Geddes, both of whom propose that the delivery monopoly be gradually eliminated.[3] Both assert that elimination of the letter monopoly would spur benefits such as improved efficiency and increased innovation. FedEx points generally to the EU as a favorable example of the gradual elimination of postal monopolies, while Professor Geddes notes that countries such as Sweden and New Zealand have completely eliminated their letter monopolies while also ensuring the continued provision of the universal service obligation.

In addressing the topic of liberalization, and whether liberalization of the delivery monopoly is appropriate for the U.S. postal sector, the Postal Service urges the Commission to take a comprehensive approach, which takes into

[2] *See* 39 U.S.C. § 601(b)(3).
[3] FedEx Comments at 8-9; Geddes Comments at 2-6.

account a number of issues that may not have been fully aired in the comments advocating liberalization. These issues should play a part in any deliberations on whether to eliminate the Postal Service's monopoly on the final-mile delivery of letters. The Postal Service briefly touches on some of these issues below.

First, it is vital to recognize that the elimination of the monopoly in other countries, such as EU Member States, has been one part of a comprehensive reform of the entire postal sector, and has been accompanied by changes in the business model of the incumbent operator and in the manner by which the sector is regulated (such as the introduction of regulatory oversight for alternative providers). As discussed by the Postal Service in its Initial Comments, these and other flanking measures have accompanied liberalization to ensure the continued provision of universal service and to allow incumbent operators to develop sustainable business models in a newly liberalized environment.[4] One such strategy has been to give the incumbent operator increased commercial flexibility to pursue alternative lines of business and to restructure its network in order to fund its universal service obligation. Indeed, flanking measures were employed in both Sweden and New Zealand, wherein the incumbent posts were transformed into state-owned enterprises with broad commercial freedoms, which are subject to only minimal regulation.

Thus, any liberalization of the Postal Service's delivery monopoly should be in the context of a comprehensive re-examination of the entire U.S. postal sector, addressing issues beyond simply the restrictions on the private carriage of letters. Liberalization would, for example, necessitate a close examination of

[4] Postal Service Initial Comments at 41-42.

the limitations on the ability of the Postal Service to pursue cost savings and sources of additional revenue. In this regard, it is important to recognize the numerous legal constraints that apply only to the Postal Service and that inhibit the Postal Service's ability to operate on a level playing field with private competition.[5] This issue is of particular relevance to the question of whether elimination of the monopoly would truly lead to the entry of efficient, innovative competitors, or simply competitors who are able to undercut the Postal Service only due to its constraints, or due to the ability to cream-skim in low-cost-to-serve markets.[6] In the end, it would not be a coherent policy to mandate considerable inefficiencies on the part of the Postal Service, while at the same time opening the market to full competition and still expecting the Postal Service to maintain its USO.

Second, in weighing the relevance of other countries' experience with liberalization (including the nascent European experience with postal liberalization), it is necessary to understand the context in which such liberalization has occurred, and consider whether the prevailing situation in the United States is sufficiently analogous to warrant comparison.[7] The benefits of liberalization may have been especially prominent in some countries that have

---

[5] As the Federal Trade Commission (FTC) recently recognized, the Postal Service is subject to a host of restrictions that do not apply to private firms, which inhibit its ability, among other things, to manage its labor costs or to configure its network. Federal Trade Commission, *Accounting for Laws that Apply Differently to the United States Postal Service and Its Private Competitors* (hereinafter "FTC Report") 6, 37-46 (2007). Indeed, the FTC concluded that the "USPS's unique legal status likely places it at a net competitive disadvantage relative to private carriers." *Id.* at 55-77; *see also id.* at 8-9.

[6] The Postal Service could lose this competition even if its costs for serving these markets alone are lower than its competitors. This would not improve efficiency.

[7] Also, to the extent it is deemed fruitful to undertake a comparison with liberalization in non-postal sectors, it is necessary to have a clear understanding of the costs, nature, and funding sources of any form of USO in those sectors (if a USO exists), and how those issues compare with the postal sector.

been historically characterized by less efficient operators, higher prices, and less consumer choice. It is important to note that, unlike Europe, the upstream market has long been liberalized in the United States; indeed, the downstream access that has characterized the U.S. postal sector for years has become the predominant achievement of recent liberalization in many European countries, such as the UK. It is also relevant to note that the Postal Service is very efficient relative to other posts, and has some of the most affordable prices in the world.

Third, it is important to recognize the distributive effects of liberalization. As discussed in the Postal Service's Initial Comments, studies of the European experience have reported that, while business customers have benefited through lower prices and increased service quality, liberalization has accorded little or no benefits for households and small businesses, who have in some cases witnessed higher prices and lower quality of service.[8] In this regard, two considerations are noteworthy. To begin with, business mailers in the United States have for a long time received lower prices through the worksharing services offered by the Postal Service; therefore, the expected gains for these mailers from complete liberalization may be less than what has been seen in Europe. Moreover, it is notable that none of the business mailers who have commented in this proceeding – the most likely supposed beneficiaries from liberalization — have endorsed eliminating the monopoly. Instead, most parties urge the Commission to avoid making any sweeping recommendations about the monopolies. Waiting for liberalization to proceed in other countries, so that its costs and benefits become more certain, provides support for such an approach.

[8] Postal Service Initial Comments at 42-43.

Furthermore, it is important to recognize that the Postal Service is subject to competitive pressures, even with respect to its monopoly products, because of the fact that there are ready substitutes to those products through email, online bill presentment and payment, and other advertising media. This means that the Postal Service has strong incentives to continue improving productivity and reducing costs. Even if the monopolies are maintained in their current form, it will still be increasingly difficult for the Postal Service to meet its USO, considering the trends evident in the postal sector. If, on the other hand, the monopolies were eliminated, the challenge facing the Postal Service would become significantly greater, as would the need for complimentary changes (*i.e.,* flanking measures) to allow the Postal Service to continue providing its USO over the long term.

In other markets, the decision to eliminate a postal monopoly has been accompanied by the consideration of alternative mechanisms to finance the USO. One approach that has been advocated in this docket would replace the monopoly with a system in which the federal government enters into contracts with private operators for the provision of services to areas that would otherwise be underserved in a fully liberalized market.[9] At this point in time, more detailed specification of how this proposal would work is required before its suitability to the postal sector can be addressed comprehensively.

[9] Geddes Comments at 4.

IV. There Are Strong Policy Rationales for the Maintenance of the Mailbox Monopoly

Also contrary to the view of most parties, the two commenters who urge the elimination of the letter monopoly also recommend the elimination of the mailbox monopoly.[10] Both point to the fact that no other country has a mailbox monopoly, and one in particular argues that this is significant because the lack of such a monopoly has not appreciably affected delivery operations or mail security in those countries.[11]

The fact that no other country has a mailbox monopoly comparable to that of the U.S. does not necessarily mean that the mailbox monopoly is inappropriate. There are significant contextual differences between the U.S. and other industrialized countries in this regard. For example, the vast majority of customer mail receptacles in other countries are slots (*e.g.*, door slots)[12] or locked mailboxes.[13] In addition, unlike in the U.S., universal service providers in those countries generally do not collect outgoing mail from the customer mailbox.

Moreover, there are strong policy rationales for retaining the mailbox monopoly. For example, the mailbox rule promotes efficient delivery, because it prevents the mailbox from becoming cluttered with items left by other parties. This is particularly relevant because the residential mailbox is a two-way communication device for the Postal Service and its customers, used for the entry and return as well as delivery of mail, and in some areas for ordering

---

[10] FedEx Comments at 6-8; Geddes Comments at 6.
[11] Geddes Comments at 6.
[12] The mailbox monopoly does not extend to door slots. *See* DMM § 508.3.1.2.
[13] *See* FTC Report at 90 (proposing that, even if mailbox access were liberalized in general, "the USPS should retain exclusive access to locked cluster boxes.").

postage stamps. As Justice White noted in *Greenburgh,* “it is clear that stuffing the mailbox with unstamped materials is a burden on the system.”[14] Furthermore, the mailbox rule protects the security of postal customers' correspondence, and facilitates the investigation of mail theft and other mail crimes by postal investigators.[15] Finally, an open, unsecure and overcrowded mailbox may also reduce the value of the mail, thereby exacerbating the difficulties that the Postal Service will face in providing the USO.

V. Conclusion

The Postal Service urges the Commission, to the extent that it decides to consider whether it is appropriate to recommend an elimination or reduction of the monopolies, to conduct a holistic examination of the monopolies that is tied closely to the social and economic needs of the U.S. postal sector. The mailbox and letter monopolies play very important roles in helping the Postal Service provide universal service to the American people. The recommendation of any changes to these monopolies would significantly exacerbate the difficulties that the Postal Service faces in providing the USO, difficulties that will only increase over time. It would be vitally important to tie any such recommendations to complimentary changes (i.e., “flanking measures”) that would enable the Postal Service to continue to provide its USO for the benefit of the nation.

[14] *U.S. Postal Service v. Council of Greenburgh Civic Ass'ns*, 453 U.S. 114, 141-42 (1981) (White, J., concurring).

[15] Allowing homeowners to choose whether to allow access to other parties by indicating their preference on the outside of the box (and requiring homeowners with overcrowded mailboxes to purchase a larger one), as has been suggested by FedEx at page 7 of its Comments, would not fully address this issue, or the issue concerning the need for carriers to sort through the items in a mailbox to see if anything is outgoing mail.

Furthermore, the Postal Service urges the Commission to define the USO in a flexible manner, which allows the Postal Service to respond and adapt to changed circumstances.

Respectfully submitted,

UNITED STATES POSTAL SERVICE
By its attorneys:

R. Andrew German
Managing Counsel
Pricing & Product Development

Daniel J. Foucheaux, Jr.
Chief Counsel
Pricing & Product Support

Anthony F. Alverno
Chief Counsel
International/UPU

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-3034, Fax -6187