

BEFORE THE  
UNITED STATES POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C.

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Report to Congress and the President on  
Docket No. PI2009-1 Universal Postal  
Service and the Postal Monopoly

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Docket No. PI2009-1

COMMENTS OF  
FEDERAL EXPRESS CORPORATION

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Dated: March 19, 2009

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REPLY COMMENTS OF FEDERAL EXPRESS CORPORATION

Federal Express Corporation (FedEx) respectfully submits the following brief observations in reply to the initial comments filed in this proceeding

1) FedEx agrees with the Postal Service insofar as it maintains that competitive products *should not* be included in any future definition of a national "universal service obligation." If the market is working, it should be allowed to function according the demands of users without handicapping one or more operators by "designating" them as providers of universal services. FedEx does not challenge the Commission's conclusion that *current law* includes competitive products within the scope of some legal provisions setting out services expected from the Postal Service. Nonetheless, it appears that Congress has never systematically considered the appropriate scope of a national "universal service obligation." Hence, the important questions are whether Congress should do so and whether competitive products should be included within a formal definition of "universal service." On the latter point, we, like the Postal Service, believe the correct answer is "no."

2) FedEx agrees with the Public Representative that, at a minimum, the Commission should urge Congress to allow the Postal Service to experiment with five-day delivery in ZIP Codes that offer the most potential to improve the financial position of the Postal Service, subject to appropriate oversight by the Commission. The proposal of the Public Representative is plainly consistent with our initial comment which urged the Commission to support the Postal Service's call for an end to the annual appropriations rider mandating six-day delivery at 1983 levels.

3) FedEx believes that fundamental fairness -- not the scope of a "universal service obligation"-- implies that the mailbox monopoly should not include products outside the scope of the postal monopoly. Otherwise, the "universal service obligation" implies legal privileges in addition the monopoly laws per se. Opening the mailbox to competitive products is one of several plausible alternatives to the current mailbox monopoly law which the Federal Trade Commission rightly urged Congress to consider.<sup>1</sup> As a general principle, FedEx cannot agree with the argument that granting a legal privilege in the operation of non-monopoly markets is justified by increased efficiencies in the operation of monopoly markets (or competitive markets for that matter). Such reasoning could be used to extend a lawful monopoly into a related, non-monopolized market.

4) FedEx respectfully reiterates its position that before adopting any specific legal conclusions on the scope of current monopoly laws, the Commission should initiate a proceeding that is specifically devoted to such issues, includes a formal docket of proceedings, and provides all affected parties with a full opportunity to be heard.

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<sup>1</sup> Federal Trade Commission, "Accounting for Laws That Apply Differently to the United States Postal Service and its Private Competitors," at 86-91 (Dec. 2007)

Alternatively, the Commission should make explicit that, despite some unclear language, the present report is not purporting to address such legal questions.

Respectfully submitted



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