

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

INQUIRY CONCERNING SCOPE OF PUBLIC
SERVICE OR ACTIVITY COST REPORTING

Docket No. PI2014-1

UNITED STATES POSTAL SERVICE REPLY COMMENTS
(October 1, 2014)

By enacting 39 U.S.C. § 3651(b)(1)(C), Congress sought the Commission's aid in evaluating the consequences of postal policy. As the Public Representative has written, "[t]he appropriate forum for . . . concerns in these areas is Congress,"¹ which is precisely why Congress perceived a need for objective, quantitative information to use in evaluating potential changes in postal policy.² As befitting this task, the Commission uses a "profitability approach," whereby it compares the Postal Service's profitability before and after a hypothetical change in the status quo.³ This approach would serve the Commission equally well in informing Congress about the costs of an expanded range of unfunded legal mandates.⁴

¹ Public Representative Comments Concerning the Scope of Public Service or Activity Cost Reporting Under 39 U.S.C. § 3651(b)(1)(C) (hereinafter "PR Comments"), PRC Docket No. PI2014-1 (Sept. 17, 2014), at 8.

² H.R. Rep. No. 109-66, part 1, at 44 (2006) (explaining the rationale for Commission's annual reports as allowing Congress to "better understand how to provide the necessary protections [for funding of universal service] in the future").

³ See POSTAL REG. COMM'N, REPORT ON UNIVERSAL POSTAL SERVICE AND THE POSTAL MONOPOLY (hereinafter "USO Report") 112-13 (2008).

⁴ It might also help to inform the Commission's own forthcoming evaluation of the market-dominant rate regulation system under 39 U.S.C. § 3622(d)(3), in which one consideration will be whether that system has "assure[d] adequate revenues, including retained earnings, to maintain financial stability." 39 U.S.C. § 3622(b)(5).

At the Commission's request, the Postal Service has offered its evaluation of a number of items that logically qualify for reporting under Section 3651(b)(1)(C).⁵ Commenters have submitted five sets of initial comments, four of which largely disagree with the Postal Service's suggestions (with a few exceptions),⁶ and one of which appears to broadly support the Postal Service's approach.⁷ These reply comments will focus on the deficiencies in the first category of comments.

I. COMMENTERS FAIL TO ASSIGN ANY MEANING TO CONGRESS'S USE OF THE KEY TERM "ACTIVITIES"

In its initial analysis, the Postal Service explained that the statute asks the Commission to report on the costs of legally-mandated "public services *or activities*." The Postal Service further pointed out that "activities" is a broad term, and even "public . . . activities" can encompass all sorts of legal requirements, since Acts of Congress are predicated on promoting particular conceptions of the public welfare.

While the commenters clearly have a problem with the Postal Service's premise, they offer no principled alternative. Their best offering is to urge the Commission to ignore the phrase "or activities" and act as if the statute refers solely to "public

⁵ United States Postal Serv., Analysis of Additional Postal Service Activities That Could Qualify for Reporting Under 39 U.S.C. § 3651(b)(1)(C) (hereinafter "USPS Analysis"), *attached to* Order No. 2163, Notice Establishing Docket Concerning the Scope of Public Service or Activity Cost Reporting Under 39 U.S.C. § 3651(b)(1)(C), PRC Docket No. PI2014-1 (Aug. 20, 2014).

⁶ See *generally* PR Comments; Initial Comments of United Parcel Service on Scope of Public Service or Activity Cost Reporting Under 39 U.S.C. § 3651(b)(1)(C) (hereinafter "UPS Comments"), PRC Docket No. PI2014-1 (Sept. 17, 2014); Comments of the National Association of Letter Carriers, AFL-CIO (hereinafter "NALC Comments"), PRC Docket No. PI2014-1 (Sept. 17, 2014); Comments of the National Association of Postmasters of the United States and the National Association of Postal Supervisors (hereinafter "NAPUS/NAPS Comments"), PRC Docket No. PI2014-1 (Sept. 17, 2014).

⁷ See *generally* Initial Comments of the Greeting Card Association (hereinafter "GCA Comments"), PRC Docket No. PI2014-1 (Sept. 17, 2014).

services.”⁸ But the Commission cannot be so blithe about Congress’s deliberate choice to include “activities” as well as “public services.” As the Commission has explained elsewhere, “[e]ach word [of a statute] must be presumed to have a purpose. Each word must, if possible, be given an operative effect.”⁹ Barring any express definition in the statute itself, it is well-established that “identical words used in different parts of the same act are intended to have the same meaning.”¹⁰ Throughout Title 39, including in several provisions enacted at the same time as Section 3651(b)(1)(C), “[a]ctivities’ is a term with a broad meaning . . . and refers to Postal Service operations generally.”¹¹

Absent any competent textual arguments, the Public Representative, NALC, and UPS cast about in vain for interpretive tools to rebut the Postal Service’s view. To the extent that the legislative history cited by the commenters is relevant, it is of little use: it mentions only “public service costs” and offers no insight into what Congress meant by referring both to “public services” and “activities” in the statutory text.¹² UPS offers

⁸ NALC Comments at 6; PR Comments at 3-4. While the Public Representative at least gives lip service to the inclusion of “activities” as well as “services,” it is not clear how his “narrow interpretation” does anything other than conflate the two terms.

⁹ See Order 547, Order Denying Request for Exigent Rate Adjustments, PRC Docket No. R2010-4 (Sept. 30, 2010), at 24-25.

¹⁰ *Adena Reg. Med. Ctr. v. Leavitt*, 527 F.3d 176, 180 (D.C. Cir. 2008) (citing, *inter alia*, *Atl. Cleaners & Dyers, Inc. v. United States*, 286 U.S. 427, 433 (1932)); see also PRC Order No. 547 at 25 (“The meaning of words should be determined by specific context in which they are used *and within the broader context of the statute as a whole.*” (emphasis added and citations omitted)).

¹¹ USPS Analysis at 2; see also 39 U.S.C. §§ 409(c) (“tort claims arising out of *activities* of the Postal Service”), 409(h) (“judgment[s] against the Government of the United States arising out of *activities* of the Postal Service”), 2009 (budget program to allow the Postal Service to “properly carry out *its activities as authorized by law*,” and financial statements to include “estimates of *operations by major types of activities*”), 3013 (reports on “*investigative activities* of the Postal Service,” excluding “*activities of the Inspector General*”), 3634(a)(2)(A)-(B) (defining assumed taxable income for competitive products as relating to “*activities of the Postal Service*” attributed to competitive products and “assets of the Postal Service allocable . . . to *such activities*”) (emphases added).

¹² H.R. Rep. No. 108-672, part 1, at 9 (2004). In discussing legislative history, the commenters ignore the more sweeping statement of purpose in H.R. Rep. No. 109-66, as cited in footnote 2 above.

dictionary definitions of “public” and “public service,” yet conspicuously overlooks how dictionaries define the key term under discussion: the patently generic “activity.”¹³

Nor do the commenters’ objections make policy sense. Congress enacts laws, including federal employment laws, on the basis of its view that doing so promotes a public purpose. In the case of federal employee benefits, for example, that purpose is to ensure the government’s ability to attract and retain high-quality personnel to serve the public interest.¹⁴ In addition, Congress enacted the interest-arbitration statute specifically to stave off the disruption that mailers and the public at large would otherwise suffer from strikes.¹⁵ Thus, the costs of the Postal Service’s employment activities, as well as other manifestations of postal policy, are premised on Congress’s determinations of the public interest. The Commission should not engage in a problematic and ultimately false line-drawing exercise as to whether the Commission thinks that a given Congressional mandate does or does not provide a public benefit.¹⁶

Finally, it should be noted that the Commission’s existing reports already reflect a broader view of Section 3651(b)(1) than that of the commenters. The commenters’ purported “direct benefit to the public” test does not square with the existing reporting

¹³ Compare UPS Comments at 4-5 with BLACK’S LAW DICTIONARY 36 (8th ed. 2004) (“The collective acts of one person or of two or more people engaged in a common enterprise.”); AMERICAN HERITAGE DICTIONARY 77 (2d ed. 1982) (“A specified form of supervised action or field of action.”).

¹⁴ *E.g.*, Pub. L. No. 99-335, § 100A(5) (1986) (describing a purpose of the Federal Employees’ Retirement System as “to assist in building a quality career work force in the Federal Government”).

¹⁵ See H.R. Rep. No. 91-1104 at 14 (1970).

¹⁶ Of course, there is a difference between the exercise at hand – evaluating the costs of current directives – and taking a position on whether those directives are the best way to promote the public interest as a policy matter. See USPS Analysis at 3 (“The advisability of these activities as a public policy matter is a subject for another forum, and in many instances the Postal Service has proposed reforms to Congress that will ensure that it can continue to perform several of these activities in a more effective and efficient manner. We understand the purpose of Section 3651(b)(1)(C)’s reporting requirement to be simply to inform Congress and the President of the mandates under which the Postal Service operates, so that policymakers may make better-informed decisions in these areas.” (footnote omitted)).

elements from which they purport to distill it: free and reduced-rate mail, Group E Post Office Boxes, small Post Offices, and the Alaska air subsidy. Each of these provides a direct benefit to only a discrete class of persons, not the public at large; in fact, the direct effect on the majority of the mailing public is to subsidize each of these more narrowly-enjoyed benefits. Yet no one disputes the notion that each of these historically reported items reflects a broader, more abstract policy determination by Congress about *indirect* public good. That principle is equally true for the legal mandates discussed in the USPS Analysis.

II. COMMENTERS' ARGUMENTS AGAINST REPORTING COSTS OF EMPLOYMENT-RELATED MANDATES ARE MISLEADING

While UPS accuses the Postal Service of “tr[ying] to change the test,”¹⁷ it is UPS, along with NAPUS/NAPS, that engages in sleight-of-hand. These commenters characterize the Postal Service as saying that it would not provide employee benefits and workers’ compensation at all without the mandates discussed in the USPS Analysis.¹⁸ Clearly, that is not the point that the Postal Service is making. Rather, what is at issue are the more specific legal mandates to provide benefits that are *more costly* than the mandates applicable to private employers. These include the mandates to provide health benefits that do not require integration with Medicare, to offer retiree health benefits (RHB) and prefund 100 percent of those benefits, to offer a defined-benefit pension plan,¹⁹ to pay pension contributions on the basis of calculations pegged

¹⁷ UPS Comments at 6. Ironically, UPS nowhere indicates any awareness of the actual test from the Commission’s USO Report. *Compare id. with* USPS Analysis at 2.

¹⁸ NAPUS/NAPS Comments at 3; UPS Comments at 6-7.

¹⁹ NAPUS/NAPS’s own figures about private-sector pensions prove the Postal Service’s point: 76 percent of Fortune 500 employers and 70 percent of transportation employers *do not* provide defined-benefit or hybrid plans. See NAPUS/NALC Comments at 3; *see also* USPS Analysis at 8.

in large part to someone else's workforce, and to over-fund pensions with no possibility of recoupment.²⁰ The USPS Analysis catalogs other specific, material differences between its workers' compensation and employment obligations and those of private employers.²¹ As the Public Representative observes, these programs are a result of the Postal Service being a part of the Federal government, rather than subject to the laws that would affect a private entity, and yet the Postal Service does not receive taxpayer funding to support these mandates, as other Federal agencies would.²² That is precisely why these legal differences are fit for reporting.²³

The commenters do not, and cannot honestly, contest the fact that these legally-required activities are significantly more expensive than their private-sector counterparts (whether the latter are a result of other legal requirements or business judgment). For example, publicly-reported data indicates that FedEx and UPS's total RHB liability per employee is 98.5 and 94.7 percent lower than the Postal Service's, respectively, and their total pension liabilities per employee are 86.6 and 88.0 percent lower, respectively.²⁴ In other words, the Postal Service's total RHB and pension liabilities

²⁰ USPS Analysis at 4-10.

²¹ *Id.* at 11-14.

²² PR Comments at 8.

²³ See GCA Comments at 7-8.

²⁴ Compare UNITED PARCEL SERV., INC., ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE FISCAL YEAR ENDED DECEMBER 31, 2013 (hereinafter "UPS 2013 FORM 10-K") 10, 78 (2013) (reporting 395,000 employees, total RHB liability of \$4.046 billion, and total pension liability of \$29.503 billion in 2013) and FEDEX CORP., ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE FISCAL YEAR ENDED MAY 31, 2014 (hereinafter "FEDEX 2014 FORM 10-K") 6, 9-11, 87 (2014) (293,900 employees, \$0.883 billion RHB liability, and \$24.578 billion pension liability) with USPS 2013 FORM 10-K at 33, 38, 106 (491,017 employees, \$95.614 billion RHB liability, and \$306.2 billion pension liability). The comparison is even more dramatic considering, based on the same sources, that FedEx and UPS pre-fund only 0 and 8.8 percent of their respective RHB liabilities, compared with the Postal Service's current 49.5 percent funded status and 100-percent funding obligation, and 89.1 and 88.9 percent of their respective pension

would have been **\$90.6-\$94.1 billion** and **\$265.1-\$269.5 billion** lower, respectively, if it had been in the shoes of FedEx or UPS during FY2013. Moreover, the Office of the Inspector General (OIG) recently estimated that federal workers' compensation laws saddle the Postal Service with **\$477 million** more in annual cost than what it would bear under the laws applicable to private employers.²⁵ Far from being "imprecise"²⁶ or "highly speculative [and lacking] hard evidence,"²⁷ these figures make it easy to calculate the cost burden of the Postal Service's legal mandates.

NALC frets that, by reporting on these differences, the Commission would "create yet another venue for litigating these endless controversies" and "enter the debate over the 'comparability' of [Postal Service] wages and benefits."²⁸ Such hyperbole misses the mark. For one thing, many of the elements of the Postal Service's analysis – workers' compensation, pensions, current retirees' health care benefits, RHB prefunding, employment litigation – are not amenable to "litigating" through a labor-dispute-resolution "venue" in the first place; rather, they are imposed by specific statutory mandates that cannot be changed through collective bargaining. Moreover, Congress has asked the Commission simply to report on certain cost differentials, not to determine their appropriateness or devise a solution to them. No commenter disputes

liabilities, compared with the Postal Service's 93.7 percent.

²⁵ UNITED STATES POSTAL SERV. OFFICE OF THE INSPECTOR GEN., REPORT NO. HR-WP-14-003-R, FEDERAL EMPLOYEES' COMPENSATION ACT REFORM 8 (2014). While this figure differs from the Congressional Budget Office (CBO) figure in USPS Analysis at 14, the USPS Analysis also cautions that the CBO estimate pertains to legislation that would only reform certain aspects of the federal system. It was not intended as an overall comparison of Postal Service cost with private-employer cost, as the OIG figure is, nor is its methodology as transparent as the OIG's.

²⁶ UPS Comments at 8.

²⁷ NALC Comments at 3.

²⁸ *Id.* at 5.

that the items in the Postal Service analysis impose greater cost on the Postal Service than on a comparable private employer.²⁹ Thus, for the Commission to inform Congress about the measure of those cost burdens should be no more fraught an exercise than when the OIG, Government Accountability Office, and Federal Trade Commission (FTC) have done the same.³⁰ That an item is a “subject of ongoing controversy and debate” has not stopped the Commission from providing Congress with cost information about six-day delivery, Alaska bypass mail, reduced-rate postage, or rural mail delivery, and no commenter has objected to the Commission “wad[ing] into [those] controversial matters.”³¹ Like employment activities, all of these items are the subject of ongoing policy debate; that is precisely why Congress sought to be informed of their costs.

The commenters’ assertion that employment-related costs should be excluded from this analysis also fails to account for the fact that such costs are already included within the Commission’s report: for instance, the employment costs incurred in providing a sixth day of delivery. Indeed, employment costs are the primary element in the Postal

²⁹ It is not clear what “evidence” NALC is invoking for its “conclusive[]” “show[ing]” that FEHBP premiums are lower than private-sector premiums. NALC Comments at 4. NALC’s expert testified about the *percentage of premiums contributed by participants* for some selected FEHBP plans and the “*value*” of certain plans based on a valuation tool by the Department of Health and Human Services’ Office of Consumer Information and Insurance Oversight. His testimony included no comparison of the *premiums* for FEHBP and private-employer plans. Moreover, NALC’s current hypothesis seems highly implausible, unless FEHBP and private-employer premiums are first adjusted for several key differences between the two, such as Medicare integration, the provision of RHB at all (which most private employers do not do), and FEHBP’s blended rate structure: significant differences about which the NALC agreed with the Postal Service in the very same arbitration to which NALC refers. Of course, those differences are exactly what is at issue here.

³⁰ As one example, the FTC provided Congress with a precise estimate of the wage premium that has resulted from interest arbitration. FED. TRADE COMM’N, ACCOUNTING FOR LAWS THAT APPLY DIFFERENTLY TO THE UNITED STATES POSTAL SERVICE AND ITS PRIVATE COMPETITORS (hereinafter “FTC REPORT”) 39, 56 (2007) (explaining the wage premium’s origin in interest arbitration and estimating it at 21.2 percent, or \$5.567 billion, in FY2006).

³¹ Cf. NALC Comments at 3, 5.

Service's cost base and, therefore, in the cost of providing postal services to the public. As relevant as it is to consider employee costs incurred in providing specific postal services that the Postal Service may not otherwise perform (such as six-day delivery), it is just as relevant to consider legally-mandated employment costs that factor into the general provision of postal services to the public. In both cases, the relevant costs fit comfortably within the broad language of Section 3651(b)(1)(C).

III. THE PUBLIC REPRESENTATIVE'S RATIONALES FOR EXCLUDING THE INSPECTION SERVICE, THE OIG, AND SERVICE PERFORMANCE MEASUREMENT MAKE NO SENSE

The Public Representative overreaches in his zeal to dismiss costs related to the Postal Inspection Service, the OIG, and service performance reporting. With respect to the Inspection Service, he would have the Commission distinguish between activities that are aimed at "[g]eneral protection of the mails and Postal Service facilities," which he would exclude, and those that "directly benefit the public," which he would include.³² Apart from the practical and conceptual difficulties in drawing such lines among Inspection Service activities and their associated expenses, the Public Representative's proposal directly contradicts his argument elsewhere for *including* "activities that provide some direct benefit to. . . users of the mail" and *excluding* activities that, in his opinion, "are a result of the Postal Service being part of the federal government" and do not "provide a direct benefit to *mailers*."³³

³² PR Comments at 5-6, 10. It may be that, with respect to the Inspection Service, the Public Representative is attempting to express a point similar to one in GCA and UPS's comments: that a private entity would perform some margin of comparable internal security functions. GCA Comments at 4-5; UPS Comments at 7-8. As GCA says, the budget figure in the USPS Analysis is a starting point, and the Commission could reasonably come up with some appropriate adjustment method. That does not warrant outright dismissal of this cost element, however, as the Public Representative and UPS suggest.

³³ PR Comments at 4, 9 (emphases added).

On the OIG, the Public Representative's logic is similarly tortured. First, the OIG's mission of detecting and preventing fraud, waste, and abuse obviously provides a direct benefit to mailers and the public at large.³⁴ Contrary to the Public Representative's logic,³⁵ it is not true that the Postal Service's self-funded status bars taxpayer funding of its OIG: certain other self-funded agencies are situated in such a way that their OIG is supported by taxpayers, not ratepayers.³⁶ That argument is a red herring at any rate: the real question is how the Postal Service's profitability would be affected if it were not required to have an OIG, considering that private employers are not required to have OIGs. To be sure, it would likely – and currently does – perform some portion of the OIG's current functions internally. At most, however, this point warrants some marginal adjustment to the cost burden of the OIG requirement, not wholesale rejection of it, as the Public Representative apparently suggests.³⁷

On service performance reporting, the Public Representative begins on firm footing by acknowledging that “[r]eporting on service performance is required by statute,” that it “form[s] an integral part of ensuring that the Postal Service is not cutting costs by degrading service in order to live under the price cap system,” and that

³⁴ See S. Rep. No. 95-1071 at 9 (1978) (justifying the institution of Inspector Generals on the basis that “Congress and the public derive extraordinary benefits when an agency identifies its problems and management begins to confront them”). The same is true of the Postal Regulatory Commission, the “regulatory responsibilities” of which the Public Representative claims “do not provide a direct benefit to the public.” PR Comments at 11. Setting aside the sheer chutzpah in these remarks by the *Commission's Public Representative*, it should be obvious to the Commission that its regulatory functions, from complaints to compliance reports to Post Office closing appeals, are principally aimed at providing direct benefits to the public.

³⁵ PR Comments at 6.

³⁶ Examples include the self-funded power marketing agencies within the Department of Energy, such as the Bonneville Power Administration, and the self-funded Comptroller of the Currency within the Department of the Treasury. Those agencies are overseen by a department-wide OIG.

³⁷ *Id.* at 6, 10.

Commission orders have forced the Postal Service to modify its measurement systems.³⁸ All of those points would seem to support inclusion of this legally-mandated activity in the Commission's reporting. Yet despite having just described what seems to be a legally-mandated direct benefit to the mailing public, the Public Representative bafflingly concludes that service performance measurement provides no such thing.³⁹ The only rationale appears to be that the Postal Service supposedly could have proposed using less costly measurement systems: this overlooks the fact that the Commission's Order No. 465 required a far more granular level of measurement than the Postal Service's business needs had dictated. Indeed, the Commission itself (at another Public Representative's urging) insisted on certain of these requirements despite the cost to the Postal Service.⁴⁰ Notably, the Commission connected its extensive service performance reporting requirements to its reporting of universal service costs under Section 3651(b)(1).⁴¹

As for whether "service businesses would have system [sic] in place (with probably more extensive reporting than what is provided to the Commission) to measure the service that is being provided,"⁴² this blatant speculation is devoid of any

³⁸ *Id.* at 9; see also Comments of the Association for Postal Commerce and the Direct Marketing Association: Order No 552, PRC Docket No. RM2011-1 (Nov. 24, 2010), at 2 ("Service performance reporting for all products is critical to stakeholders and regulators to ensure the USPS does not engage in de facto price increases through service reduction.").

³⁹ PR Comments at 10.

⁴⁰ Order No. 745, Order Concerning Temporary Waivers and Semi-Permanent Exceptions from Periodic Reporting of Service Performance Measurement, PRC Docket No. RM2011-4 (June 16, 2011), at 19-23. While the proportional cost of these requirements led the Commission not to waive them, that is not a factor for whether the resulting mandated cost should be *reported* under Section 3651(b)(1)(C).

⁴¹ Order No. 465, Order Establishing Final Rules Concerning Periodic Reporting of Service Performance Measurements and Customer Satisfaction, PRC Docket No. RM2009-11 (May 25, 2010), at 11.

⁴² PR Comments at 9-10.

factual support. The Postal Service is unaware of any private delivery company that publicly reports data comparable to what the Commission has required. To the extent that the Public Representative is talking about the degree to which business judgment accounts for some of the Postal Service's service performance measurement activities, that point is fully addressed in the USPS Analysis, which proposes to include only those costs that the Postal Service has incurred as a result of *Commission-imposed requirements*, and not those associated with service performance measurement activities that the Postal Service undertook as a matter of business judgment.⁴³

IV. UPS'S PROPOSAL TO REPORT ON "LEGAL BENEFITS" LACKS A STATUTORY BASIS

The Commission should decline UPS's invitation to expand its reporting of "legal benefits" supposedly enjoyed by the Postal Service.⁴⁴ Whatever view the Commission takes of the scope of Section 3651(b)(1), it is obvious that that statute asks only for information about the *costs* of legal *requirements* on the Postal Service. UPS does not ground its request in the statute or legislative history. That much is apparent when one contrasts Section 3651(b)(1) with section 703 of the Postal Accountability and Enhancement Act of 2006, Pub. L. No. 109-435, which asked the FTC, not the

⁴³ The Public Representative's comments seem more focused on the issues in Docket No. PI2008-3 than those in PI2014-1. In its 2008 USO Report, the Commission rejected its consultants' proposal to include the general cost of the Postal Service's service performance measurement systems (then estimated at \$182 million), based on the rationale that – at that time – the associated activities were solely the result of the Postal Service's business judgment, not legal mandates. USO Report at 135, appx. F.3 at 25. Mindful of the Commission's previous decision (and consistent with the Public Representative's line of thinking), the USPS Analysis does not concern those or subsequent business-driven program costs. Rather, the current issue – of which the Public Representative seems oblivious – is how, after the USO Report, the Commission *did* impose legal mandates for measurement and reporting *beyond what the Postal Service was doing as a matter of business judgment*, and compliance with those mandates increased the Postal Service's costs by \$23.3 million in 2013. See USPS Analysis at 14-15.

⁴⁴ UPS Comments at 9.

Commission, to report on the subject.⁴⁵ Lacking any other statutory basis, UPS grasps at subsection 703(d), yet that provision expressly applies only in the context of the Commission's *competitive product regulations* and has no bearing on its annual reports.

V. CONCLUSION

The commenters offer no textually permissible alternative to the view that Section 3651(b)(1)(C) allows and even expects the Commission to inform Congress about the costs of various legal mandates. While there may be some merit in fine-tuning the quantification of the cost elements in the USPS Analysis, the Commission has before it no principled basis for rejecting them outright.

The Postal Service respectfully submits the comments above for the Commission's consideration.

Respectfully submitted,

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⁴⁵ The FTC found that the Postal Service's legal burdens were 8.4 to 10.7 times as large as its legal benefits, at least as allocated to competitive products. See FTC REPORT at 56-58. While the FTC's analysis did not include some key burdens, such as RHB prefunding or workers' compensation, it is notable that the FTC found that the Postal Service's legally-mandated activities resulted in a total cost burden of \$7.584 billion. *Id.* at 56.