Remarks to the National Postal Policy Council

May 7, 2015

Tampa, FL

Thank you, Art for that kind introduction, and Chuck and the NPPC for inviting me to be with you today. I always appreciate an opportunity like this, mostly because I get to hear your concerns, which is essential in the Postal Regulatory Commission being able to do our job. I will make time for questions and comments after my remarks so I can find out what issues you are dealing with.

When I was asked to be here today, I took time to look back at the first time I spoke to the NPPC. It was eleven years ago (2004). I had received my recess appointment to the old Postal Rate Commission by President Bush and was still service my first partial term.

The Postal Service was cost-of-service based and the rate case that had been approved just before I joined the Commission had resulted in an 8.8% increase in first class rates. The Postal Service remained profitable, but it had recorded the first back-to-back decline in first class mail volume for the only time since the Great Depression. First class mailers had mailed 99 billion pieces in 2004, as opposed to about 64 billion pieces this last fiscal year. You can see why they made billions of dollars in profit, as opposed to their current financial situation.

However, the Postal Service still has strength. Today, it is a 67 billion dollar operation, with over half a million employees, delivering to 150 million American households and businesses on a typical day, so there is good news even if it seems overwhelmed by their current financial predicament. But my point is mostly to remind us how much the mail system, and what this country expects from a Postal Service, is constantly changing.

Based on the information the Postal Service reported to us in its Annual Compliance Report, we know that 2014 was its eighth consecutive year in the red. The total loss in 2014 was $5.5 billion, which is $500 million more than the loss in 2013. The total net deficit since 2007 has been almost $52 billion.

Now, if you ignore for a moment non-operational expenses, there is some good news. In 2014, the Postal Service had a net operating income of $1.4 billion, the first time it has had a positive net operating income since 2008. While this is a positive development, we cannot ignore that the Postal Service remains in financial crisis, and that something must be done to right the ship.

As you know there is the new leadership at the U. S. Postal Service, with Megan Brennan replacing Pat Donohoe as Postmaster General.   Pat, I believe, did a good job as PMG at one of the most difficult times the Postal Service has ever had. While there were disagreements between the USPS and the PRC, I found Pat to be straightforward with us and he tried to be responsive to our concerns.

The PAEA required the Postal Service, in consultation with the PRC, to establish modern service standards for market-dominated products. Since those standards were established the Postal Service has continued reporting to the PRC. About every two months, Pat and the entire Commission would set through those reports. It was an indication of the importance he placed on our playing our respective roles in the process. The only time we would suspend those meetings was when the Board of Governors had a rate case pending before us.

Megan indicated she wanted to continue the service standards meetings and we are meeting with her next week. I believe we will have a productive relationship with the formal restrictions that the PRC and USPS must follow.

While we are on the topic of new postal leadership, as you know, along with Commissioner Langley and I returning to the Commission toward the end of last year, President Obama named Robert Taub as Acting Chairman of the PRC to replace Ruth Goldway who is now in her hold-over year as a Commissioner and is not seeking appointment to an additional term. As you know from his visit with NPPC in February, Robert has worked closely with the postal leadership in Congress to make sure that they, and postal stakeholders, know that the PRC is a reliable regulator there for you—the people who use the mail.

I would like to talk for a moment about issues before the PRC, including some that Art specifically mentioned to me that the NPPC members would want me to touch on. I will be glad to get into more detail during the Q&A if asked. We might as well start with the Exigency.

Right before my last term on the Commission expired in October 2013, the Postal Service filed an Exigent Rate Case to raise rates beyond the statutorily mandated CPI restrictions because of extraordinary circumstances. A few days after that, I left the Commission awaiting confirmation daily by the U. S. Senate to return as a member of the PRC. It turned out that both Commissioner Langley and I ended up not returning to the Commission until December of 2014. In the meantime, a divided Commission approved a temporary price adjustment beyond the CPI to last until later this year.

Many people have asked me since that time how I would have voted on that decision and what I thought of the Opinion as rendered by my colleagues. I can tell you this: That decision was actually a continuation of the original exigent case the Postal Service had filed with the Commission in July of 2010. I opposed an exigent increase at that time and voted against its approval. I was not at the Commission during the time the exigency matter was briefed and deliberations made, so I do not want to guess about what my conclusion would have been at that time about any possible decision. However, now that the matter has been appealed to the DC Circuit Court, I expect to take part in future deliberations and briefings on the case pending the Court's decision in the matter.

I do not want anyone to say that I had pre-formed a judgment if we get the case back. So, I should comment no further on how I would have voted by advice from our PRC legal counsel.

Now, turning to the temporary exigent rates; the Commission is expecting to receive another quarterly report from the Postal Service at the end of next week. In that report, the Postal Service will tell us how much extra revenue they've recovered from the exigent surcharges through the end of the last quarter, which ended March 30th. Based on what we see in that report, we believe that we will be getting close to the point where the Postal Service will need to begin filing biweekly revenue collection reports with us. As you know, the last quarterly report was filed very late, and we've instructed the Postal Service to ensure that all reports going forward are filed on time.

At this point, our Office of Accountability and Compliance staff has not changed their estimate of when the Postal Service will finish collecting all of the exigent revenue. We are still looking at sometime around August, but we will have a much better idea once we see the new quarterly report. Of course, anything could change when we get a court ruling on the pending exigent appeal. None of us expected a ruling to take this long, and just like you, we all check the court website every Tuesday and Friday. So who knows, maybe we will see something from the court tomorrow.

Separately, I have been asked why the DC Court of Appeals has taken so long to make a decision. I actually don not know. Intelligent observers advised me when I returned to the Commission last December that a decision was coming “any day now” from the Court. We wait right along with stakeholders and the Postal Service every Tuesday and Friday to see if a decision comes down. I simply don’t know anything to say about the time involved in their consideration.

Now, with regard to the regular CPI rate case – right after this meeting, I'll probably be back on my email doing what I need to do to make sure an order goes out on those rates – hopefully today. Everyone knows that the CPI rates were a mess this year, and many have wondered why that was. From the Commission's vantage point, here's what we know:

The Postal Service’s usual practice has been to file a rate case in October and implement prices in January. This time, for whatever reason, they held off filing in October, and then decided to file in January, with implementation planned in April. What the internal deliberations were behind that change I do not know.

When we received the case in January, our technical staff began the same process they always go through with rate cases: validating the calculations, correcting the minor sort of errors that are bound to arise in any rate case, and then making sure all the rates meet the appropriate legal standards.

Unfortunately, this time around, there were far more errors, and far more serious errors, than we have ever seen in the past. We ended up issuing over 100 questions to the Postal Service. At the request of some of the interested parties, we extended the comment deadline to give parties the time needed to evaluate the Postal Service's responses to our information requests.

Ultimately, we had no choice but to send the Standard Mail, Periodicals, and Package Services rates back to the Postal Service for them to correct and re-submit. Even when we did that, we tried our best to give them enough time so that, when they re-submitted, they would still have enough time under the law to implement in April as planned. Needless to say, all of this was unprecedented. Unfortunately, when the Postal Service submitted corrected rates, our staff found that there were still significant errors and that some rates still did not meet the legal standards, so we sent the rates back a second time.

As you saw, the Postal Service went back and – wisely I think – spent several weeks making sure they got it right this time. They submitted a new round of corrections on April 17th with implementation planned on May 31st. Our staff again went through the rates to ensure compliance with the law. While I can't be too specific as to our conclusions, I will say that we are hoping to issue an order later today to put this all to rest. As for the future, has the Postal Service learned its lesson, and will it correct whatever it was that went wrong internally? We certainly hope so, and informally we have heard of some internal changes over there already.

Another area that the Commission is keeping an eye on is service performance. Every quarter, the Postal Service submits service performance reports to the Commission. We recently held a technical conference to review the Postal Service's new proposal for service performance measurement, and several parties filed comments.

I would like to note that we received reply comments in this docket from NPPC on Tuesday. I understand that your two concerns with the new system are, one, that it is transparent and unbiased, and two, that the results it produces be comparable to results from the old system. With regard to that second concern, I saw your suggestion that perhaps the two systems could be run concurrently for some period of time for comparison purposes.

As you know, I cannot comment specifically on the points you raised, but I would like to thank you for making them. They have added to our consideration of the issues, and will help inform us as we move toward making a final decision. It is always good to get input from the people who use the mail the most.

We are still learning about the new proposal. Rest assured, we will be spending a long time looking at this. Ultimately, the Postal Service cannot implement the new system for its service performance reports until the Commission "signs off."

Art also asked me to talk about postal elasticities. I like to leave the more technical stuff to our very competent technical people, but from a broader perspective, here's what I see. Last year, a group of mailers including NPPC filed a petition asking the Commission to reevaluate the elasticities that the Postal Service uses. While I was not on the Commission at the time, I think that is a useful idea – as I understand, some of the models underlying the elasticities date back to before PAEA and may benefit from updating.

The Commission held a technical conference and reviewed one study that some of our staff conducted with an outside economist, and we received comments from several parties.

Going forward, we would welcome studies from the mailing community as well. We have also heard informally from the Postal Service that they are planning some updates, so we will watch carefully to see what they come up with.

I would point out that, under the law as it is now, the Commission's role in using elasticities is rather limited. When we look at proposed rates, whether CPI or exigent, we have to ensure compliance with certain statutory factors, and those factors don't really touch on elasticities. At the same time, when the Postal Service itself comes up with rates, they are using elasticities as part of their internal pricing models. The subject is obviously of importance to everyone.

The one area where the Commission does have a legal role regarding elasticities is in NSAs. When the Postal Service submits a market-dominant NSA, our default rules ask them to submit mailer-specific elasticities to support the NSA. So far, the Postal Service has said that it's not practical to come up with mailer-specific elasticities.

We would welcome input from the mailing community as to whether that is accurate. In any case, we have encouraged and will continue to encourage the Postal Service to drill down as far as they can on elasticities; if that means perhaps industry-level elasticities, or subindustry level, that would be a big step forward from where we are now. We will continue to encourage the Postal Service on this, but ultimately it is on them to move forward on this issue.

I know that many in the mailing community are very interested in the PRC's 2017 review. Back when Congress passed the PAEA, it provided that ten years after enactment, the Commission would review the ratemaking system set up by the PAEA. Specifically, the Commission would evaluate whether the ratemaking system is achieving the objectives set forth by Congress.

For example—

Is it producing predictability and stability in rates?

Is it allowing pricing flexibility?

Is it assuring adequate revenues? And so on.

If the Commission finds that the objectives are being met, then it is to leave the system as is. On the other hand, if the objectives are not being met, then the Commission is empowered to make whatever changes are necessary to meet Congress' objectives.

This process will begin in December 2016 and likely continue through much of 2017. It will be an open and extensive process with plenty of opportunity for all interested parties to comment. I wish I could tell you more than that, but as we all know, a lot could change in the postal world between now and the end of 2016, particularly if Congress passes postal legislation. It would be premature to speculate as to what sort of changes, if any, will come out of 2017.

Now there are other issues to talk about, but this may be a good place to stop and discuss what is on your mind today.