



Testimony of  
The Honorable Edward J. Gleiman, Chairman  
on behalf of the  
Postal Rate Commission  
Before the  
U.S. House of Representatives  
Committee on Government Reform  
Subcommittee on the Postal Service

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Chairman McHugh, members of the Committee on Government Reform, Subcommittee on the Postal Service, thank you for the opportunity to provide testimony on H.R. 22, the Postal Modernization Act of 1999. With me today are my colleagues, Vice Chairman W.H. "Trey" LeBlanc, George A. Omas, Ruth Y. Goldway and Dana B. Covington, Sr.

I appeared before this subcommittee almost three years ago to testify on an earlier postal reform proposal introduced in the 105<sup>th</sup> Congress as H.R. 3717. The current proposal to modernize the Postal Service and alter the way it participates in the nation's economy is a substantially improved version of that earlier piece of legislation. That said, we intend to offer several suggestions that we think would improve it still more.

One reason that I preface my remarks here today with a reference to my earlier testimony is that a lot has happened since this subcommittee's response to the initial impetus for postal reform. In the early 1990s, mailers were reeling from the Postal Service practice of imposing large rate increases every three or four years, there were claims of unfair competition, and the Service was incurring year after year of multi-million dollar deficits. On top of that, there was the serious fear that technological advances in communication, in particular the widespread acceptance of facsimile and e-mail messages, might make the Postal Service obsolete.

This subcommittee responded to concerns that the Postal Service was in serious difficulty by initiating a dialogue on ways to solve its problems, and by developing draft legislation. Today's hearing represents a continuation of that dialogue. As the Chairman has frequently commented, he views postal reform as a work in progress. Since this effort began, low inflation, a strong national economy, the development of new mail processing technology, and recently improved productivity have allowed the

Postal Service to limit itself to moderate rate increases and still enjoy an unprecedented string of profitable years.

Despite the financial and operational accomplishments of the Postal Service over the past three years, the future still does not look particularly rosy. There is a consensus that it is just a matter of time before the large portion of the First-Class mailstream made up of bills and bill payments is susceptible to electronic diversion. This mail makes up nearly half of First-Class Mail. It tends to be "clean mail," that is, regular sized, letter envelopes that are accurately addressed, and it makes a disproportionate contribution to the \$20 billion institutional cost burden of the Postal Service. If a significant portion of this mail leaves, the Postal Service will be forced to impose steep rate increases unless it can sharply reduce its costs, find sources of substantial new profits, or both. The question all of us must face is whether H.R. 22 can help that process. We believe that with some adjustments, it may.

H.R. 22 has three major innovations. First, it would establish a new, "price cap" rate setting mechanism applicable to "noncompetitive" mail, that is, mail not currently subject to direct, effective competition. Second, it would allow the Postal Service freedom to set rates for its "competitive" products, while attempting to establish a level playing field. Third, it would authorize the Postal Service to establish a private corporation to operate subject to normal commercial laws.

I will discuss each of these three innovations in turn. In addition to commenting on the system that would result if H.R. 22 was enacted in its present form, I will discuss amendments to this legislation recently proposed by the Postal Service. Copies of the Postal Service amendments were provided to the Commission only recently, and we understand that revisions may still be under consideration. Nonetheless, it appears to

us that the Postal Service amendments are directly contrary to the bedrock principles of H.R. 22. These amendments would, by and large, erase many of the checks, and decalibrate many of the balances, that have been carefully and thoughtfully incorporated into the bill in response to the concerns of interested parties.

Before addressing the specifics of the three innovations in H.R. 22, let me briefly set out these bedrock principles. The first and foremost of these principles is that the Postal Service remains a basic and fundamental service provided to the people by the Government of the United States, and as such, it should be operated in a fair and nondiscriminatory manner. Mailers, suppliers, competitors, and other interested citizens should have assurances that the Service will perform its functions consistent with the policies set forth in Title 39.

The second principle contains two interrelated parts. If the Postal Service can be operated more efficiently, rates will not increase as fast as they would otherwise, and this will benefit both mailers and the nation as a whole; and, management and labor are most likely to operate more efficiently if they can receive personal, financial rewards, in the form of bonuses, for doing so.

A third principle is that competition between the Postal Service and private enterprises should be as fair as possible. In colloquial terms: competition should take place on a level playing field. H.R. 22 contains numerous provisions designed to level the competitive playing field.

H.R. 22 ties these three complementary principles together in a compact between mailers and the Postal Service. The consistent themes of H.R. 22 are to level the playing field for competition between the Postal Service and private enterprise, and

to provide mailers with lower rates by restraining price increases through the imposition of statutory price caps and rate ceilings that will hold price increases below the rate of inflation. It allows substantial bonuses to be paid if the Postal Service is operated profitably under these price caps. These themes explain H.R. 22, and the suggestions we offer here today are designed to foster those themes.

### **PRICE CAP RATEMAKING**

The first innovation I will discuss is the substitution of price cap ratemaking for the current cost of service ratemaking system. Price cap ratemaking allows management the freedom to set rates, so long as rates remain below a fixed ceiling. H.R. 22 establishes a price cap that holds rate increases below inflation by allowing the Postal Service to change rates for noncompetitive postal products each year within a percentage range surrounding the previous year's change in the Consumer Price Index (CPI) less a factor to account for likely productivity improvements.

Private utilities operating under price cap regulation are motivated to operate efficiently because they are allowed to retain any profits they earn while providing service under capped rates. The Postal Service does not have residual claimants who demand a reasonable return for their equity investment. To motivate the Postal Service to operate efficiently, H.R. 22 establishes the opportunity for postal employees to earn substantial bonuses if profits are realized while providing promised services under capped rates.

H.R. 22 also includes a ceiling on rate increases so that, on a cumulative basis, they may never exceed the price cap. If, over time, the Postal Service holds increases below the price cap, it may recoup the difference in subsequent years, so long as no

increase is ever more than two percent above the applicable price cap for the current year. This assures that mailers will not be subject to large, difficult to absorb increases.

### ***Price Cap Ratemaking Applied to Noncompetitive Products***

H.R. 22 gives management authority to change rates for noncompetitive products without obtaining a recommended decision from the Postal Rate Commission. Its flexibility is not unlimited — there would be several important new statutory constraints, but within those constraints it can adjust rates more quickly to meet changing circumstances. Meanwhile the Commission's main role changes from recommending rates to exercising regulatory review and taking appropriate action in response to complaints from the public.

At the same time, the price cap regime proposed in the bill preserves many of the basic tenets of current law designed to prevent undue discrimination between groups of mailers, including the requirement that every postal product pay rates at least equal to the attributable costs of the service they receive. This is an essential protection that must be retained. We think that the balance of freedoms and restrictions on rate changes set out in the bill is fair, and that if agreement emerges from within the many segments of the postal community that price cap ratemaking will provide better and less expensive mail service than cost of service ratemaking, then H.R. 22 provides a sound basis for going forward.

However, the system described in H.R. 22 is not without potential problems. Current rates incorporate an extensive system of cost-based mailer worksharing rate incentives developed over time with the support of the Commission, mailers, and the Postal Service. These worksharing discounts embody the economic principle of efficient component pricing, under which postal rates foster efficient use of society's

resources. If future rates cease to reflect actual cost distinctions, mailers will receive inappropriate price signals.

If future rate discounts fall below actual savings to the Postal Service, mailers may stop performing worksharing that benefits the Postal Service and society as a whole. If future discounts exceed actual savings to the Postal Service, other mailers will have to generate revenues to offset these excessive discounts. This is a type of burden shifting. Currently, the Commission strives to fairly balance the amount of revenues over and above attributable costs that each type of mail must provide. When discounts exceed cost savings, what really occurs is that the mailers eligible for those discounts make smaller contributions to institutional costs.

Because the Service generally supports cost-based worksharing discounts, hopefully the fact that H.R. 22 does not require that discounts reflect cost differences, and continue to pass through identifiable cost savings, will not have any negative impact on rates. Nonetheless, the subcommittee may wish to consider adding language that requires worksharing discounts to reflect cost savings.

Although price cap ratemaking can be applied to postal rates, the system laid out in H.R. 22 is fairly complex. Let me say here that your staff has been exceptionally helpful in providing assistance to us as we have reviewed this legislation. Nevertheless I want to be certain that all of us — the Commission, the Postal Service, and affected private sector entities — understand how the bill intends this system to work.

Rate changes under new Chapter 37 would be applied to “products.” Products is a new term, and we are not entirely certain of the extent that it is intended to

incorporate the current divisions of a class, a subclass, a rate category, a rate cell, a rate element, or some combination of those terms as they are understood by mailers and the Commission in developing rates. The definition in § 3701 refers to the next level of subordinate unit below a subclass as a product. The levels of subordinate units below a subclass are rate categories in some instances and rate cells in other instances, yet in most discussions there has been an assumption that the same level (category, cell, or other) should be applicable to all items in a basket. It is our current understanding that each rate cell is a product.

This is important because H.R. 22 protects mailers of products from rate changes that exceed the price cap and implicitly imposes limits on shifting the overhead/institutional cost burden directly protected by these limitations.

The Postal Service also views the term product as difficult to interpret. It proposes to remedy the situation with an amendment that would equate products and current subclasses. This amendment would allow the Service additional flexibility to shift rate burdens among mailers by eliminating the protections of price caps and rate ceilings that H.R. 22 accords to subordinate units and further subordinate units of classes and subclasses.

In our opinion, a clarification that preserves the protections of H.R. 22 at the rate cell level is a more responsible way to proceed and eliminate potential confusion.

The Postal Service proposal to redefine products is part of a package of Postal Service amendments that would change the very essence of the system for setting rates for noncompetitive products laid out by H.R. 22. As I mentioned earlier, the essential goal of the current Postal reform legislation is to cause rates for all mail to



rise less quickly, as a result of improved productivity, and to provide a means to reward those who cause that improved productivity to occur.

The Service has presented a package of amendments to the ratesetting process that would: (1) eliminate those provisions that would provide an impetus for improved productivity and lower rates, (2) eliminate those provisions assuring that the benefits of improved productivity would be enjoyed by all mailers fairly, and (3) modify standards so that bonuses would almost certainly be available even if the Service became less productive.

Amendments of this nature subvert the purpose of postal modernization and reform legislation, and should be rejected.

Another amendment in this category is the Postal Service proposal that the "cap" on rate increases be changed. H.R. 22 limits rate increases to the change in the CPI less an adjustment factor to account for expected productivity gains. The Postal Service suggests statutory language that provides the adjustment factor would ordinarily be zero, and that would allow a negative adjustment only when "compelling" evidence indicates postal productivity will "consistently" exceed private non-farm sector productivity. Moreover, the Postal Service proposes adjustments that would allow rate increases to exceed growth in the CPI. Some circumstances would require that the adjustment factor be in excess of the change in CPI under its proposals. In sum, the Postal Service would eliminate those provisions that protect mailers from unjustified, excessive rate increases.

Additionally, the Postal Service's price cap regime appears to allow all cumulative banked increases to be applied to rates in any year. Thus, rate increases in

any year could substantially exceed the CPI for that year. The Postal Service's amendments further exacerbate this problem by permitting, through the application of so-called banding, an additional amount of up to 1.5 percent over the cumulative increase, depending on the basket. This approach would undermine the inherent H.R. 22 philosophy of small predictable rate increases for the mailers.

One might ask why the Postal Service would want the price caps to be less restrictive. Recall that H.R. 22 provides substantial bonuses to postal employees if the Postal Service operates at a profit while adhering to the specified price caps. If price caps are set above the rate of inflation instead of below the rate of inflation, it will be far easier for the Postal Service to qualify for bonuses.

For example, assuming a change in CPI of 3%, the H.R. 22 approach with an adjustment factor of 1% would permit Standard A rate increases between 0 and 2%. The Postal Service scheme, with no adjustment and a banding range of minus 2% through plus 1.5% would permit rate increases of between 1 and 4.5%. It is much simpler to show profits when rates can be increased up to 4.5% than when increases are limited to 2%.

Over the twenty-nine year history of operations under the Postal Reorganization Act, postal rates have generally tracked the CPI. By making price caps less restrictive, rather than more restrictive as proposed in the bill, the Postal Service would eliminate assurances that rate increases would be restrained; by making its employees eligible for extraordinary bonuses simply for meeting a standard that it has already beaten, it lowers the bar for earning bonuses to the ground.

Before leaving the subject of price cap ratesetting for noncompetitive products, I do have a modest proposal that I believe would improve H.R. 22. The current legislation provides that every five years the Commission is to convene a proceeding to determine the appropriate adjustment factor to be subtracted from the change in CPI. It contemplates that this single adjustment factor would then be used in each of the next five years. I suggest that instead, the Commission be directed to set annual adjustment factors to reflect the evidence before it, so that if, for example, a new processing system is expected to result in large productivity gains during the last two years of a rate cycle, the Commission could set different adjustment factors for years 1 - 3 and years 4 and 5.

### ***Negotiated Service Agreements***

Section 202 of the bill would add a new provision allowing the Postal Service to enter into negotiated service agreements with users of monopoly and noncompetitive postal services. Allowing these bilateral agreements would mark a major departure from current ratemaking procedure, because the Postal Service would be authorized to offer customized reduced rates to individual mailers by contract, rather than by making discounts available to all potential users of a service under a uniform published schedule of rates.

In principle, negotiated service agreements could provide a new avenue of benefit sharing between the Postal Service and mailers who are willing to undertake additional cost-saving activities, as the Joint Postal Service/PRC Task Force on Postal Ratemaking found in its 1992 report. However, as that report also found, NSAs are desirable only when they depart from established rates and classification schedules "in ways which add value both for the customer and for the postal system as a whole." (Joint Task Force Report at 54.) In practice, this means that NSAs make sense only if

they are justified by demonstrable cost savings, operational benefits, and protection of the contribution to institutional costs made by the monopoly and noncompetitive mail categories to which they would apply. In short, the Postal Service has to be made better off.

As H.R. 22 recognizes, the availability of negotiated service agreements does not eliminate the need for classification cases. If the Postal Service believes that it may be appropriate to offer reduced rates for an activity that many mailers can perform, it should propose a classification case to establish a new discount category. Then the impact on revenues can be evaluated together with the other applicable statutory standards, and affected mailers will have the opportunity to express their views.

The new § 3641 contained in the current version of H.R. 22 addresses these concerns by imposing several protective criteria for negotiated service agreements. These conditions include requiring the performance of additional mailer functions, recovery of both attributable costs and an average unit amount of institutional cost contribution, liquidated damages to be paid by contracting mailers who breach minimum volume commitments or other material terms, a 3-year term limit, equal access to NSAs by similarly situated mailers, and the production of net benefits to the operation of a nationwide postal system. Most importantly, § 3641 requires the Postal Service to submit proposed NSAs to the PRC for advance consideration in a public, notice-and-comment proceeding. Implementing these requirements would be a challenging task for the PRC. In particular, it would be necessary to develop a cost base for each NSA that would fully quantify cost savings that would not impose new cost burdens on other users of the same service. Nevertheless, NSAs could yield net benefits to all mail users and the postal system as a whole if the conditions set forth in H.R. 22 are retained.

The Postal Service proposes an amended version of § 3641 that would retain most of the substantive criteria applicable to NSAs, but would also subvert the new provision in a fundamental way. Under its proposed amendment, the Postal Service would be authorized to enter into NSAs without any prior review by the PRC, or even public notice. In place of a Commission notice-and-comment proceeding to consider proposed NSAs as contemplated by the bill's current provision, the Service's amendment would *only* allow an interested party an opportunity to file a complaint with the Commission after the fact, if the interested party somehow found out about the unpublished agreement. I emphasize the word "only," because another portion of the Service's proposed amendment would provide that, except for a complaint to the PRC and court litigation on the contract between the Service and its NSA partner, these agreements "shall not otherwise be subject to review by any court or administrative body."

There is nothing in current postal policy, the recommendations of the Joint Task Force on Postal Ratemaking, or what I understand to be the objectives of H.R. 22 that would justify a program of secret, non-tariff rates for monopoly and noncompetitive services to be negotiated entirely outside public scrutiny. The potential for abuse would be unacceptably high. Furthermore, requiring that defective NSAs be rectified only through complaints after the fact is procedurally inferior to prior public review, and would improperly shift the onus from the Postal Service to potentially aggrieved mail users. For these reasons, we urge the subcommittee to reject the Postal Service's proposed amendment on negotiated service agreements. We also would encourage the addition of clarifying amendments to § 3641 stating: (1) that the negotiation of individual service agreements is not intended to become a substitute for broad-based changes in mail classification; and (2) that NSAs are subject to a requirement of

producing net financial, as well as operational, benefits to the Postal Service and mail users generally.

One additional important point requires clarification. That is: are pieces subject to an NSA still considered part of their former “product” when applying price cap based rate increases and the “all products must recover attributable costs” standards to that product; or does each NSA constitute a separate product exempt from price caps?

### ***Baseline Rate Case***

An essential prerequisite to price cap rate setting is an initial schedule of rates that accurately reflects costs of service. H.R. 22 envisions a baseline rate proceeding within 18 months of enactment to establish a baseline rate schedule that fairly reflects current attributable costs and fairly allocates institutional cost burdens consistent with the criteria included in § 3622 of the existing law. There are no provisions for subsequent cases to realign rates in accordance with § 3622 criteria.

The Postal Service’s proposed amendments to H.R. 22 do not contemplate any rate realignment proceedings at any time. Those amendments assume the rates in effect eight months after enactment of H.R. 22 are the rates to be modified by the first exercise under the price cap adjustment mechanism, and that any changes in CPI since the previous rate case (*e.g.* R97-1) would be banked and available as justification for rate adjustments. There would be no review of the Postal Service’s revenue requirement and, thus, no opportunity to exclude amounts previously built in for contingencies.

Based on our experience with postal ratemaking, we have concerns about a process that jumps directly to the price cap mechanism without first realigning rates in a

baseline proceeding. The Commission has found that cost and rate relationships of the various subclasses and rate categories are subject to rapid distortion, particularly in periods of technological change and modification of mail preparation requirements. Docket No. R94-1 provides helpful instruction on this point. The Postal Service proposed an across-the-board 10.3 percent increase for almost all rates which would have preserved rate relationships established in Docket No. R90-1. The Commission found that subclass costs and mail characteristics had altered rate relationships to the point that the proposed across-the-board rates failed to conform to the criteria of the Act. The Commission was required to recommend rates that adjusted subclass relationships significantly from those proposed by the Postal Service. More recently we have seen the introduction of advanced flat sorters that probably alter the costs that supported imposing certain surcharges in the R97-1 rate case. We have also seen reports of advanced OCR software that will read most handwritten addresses successfully, which may significantly lower the costs of processing some types of First-Class Mail.

Another factor suggesting the need for a baseline case is the influence of the three major classification reform cases, beginning with Docket No. MC95-1. Those cases resulted in a significant change in philosophy regarding mailer preparation of the mail prior to entry into the postal system. Mailers were required to do much more than formerly to ensure and improve the compatibility of their mail with Postal Service processing equipment and procedures. However, the recently enacted rates, the result of Docket No. R97-1, only partially reflect this new environment. R97-1 was filed using FY 1996 as the base year, the period for which actual operating data are projected to the test year. The rates and classification changes resulting from MC95-1 were in effect for only one full quarter of FY 1996. Despite attempts by the Commission and the parties, efforts to update R97-1 data for the effects of the new operating

environment were only moderately successfully. A baseline proceeding should occur before the price cap mechanism is implemented so that rate relationships reflect current mailer preparation requirements. Absent such a baseline case, any rate distortions caused by the changed environment will be enshrined in future rates.

It is inevitable that institutional cost burdens will shift over time among the various subclasses and services. All interested parties, and the rate adjustment process, could benefit from knowing how much change has occurred over time. H.R. 22 directs the Commission to issue, at least every six years, a report to the President and Congress covering postal operations and the regulatory system then in place. The legislation also requires annual Commission reporting on various aspects of postal operations. I suggest that this legislation include a requirement that in one of the above reports the Commission present institutional cost burdens by subclass, the extent of any shift in burden since the baseline proceeding, and the extent to which rates for each of the various worksharing categories depart from cost based criteria and sound economic principles. This would provide all interested parties the opportunity to assess the need for future realignment rate proceedings. In addition, it would be in the interest of all parties if the legislation specifically authorized the Postal Service to file a realignment case. If the timing of this realignment case is at the Postal Service's discretion, flexibility for the Service, an objective of H.R. 22, is ensured.

### **SEPARATE TREATMENT FOR COMPETITIVE PRODUCTS**

The second innovation in H.R. 22 is the division of postal products into competitive and noncompetitive categories, and the development of separate rules for providing these distinct categories of products to the public. The legislation provides a specific list of existing products that are initially to be treated as competitive. A major



feature of this division is that several existing subclasses are split, with portions in the competitive category and portions in the noncompetitive category.

Perhaps the most striking division affects First-Class Mail. H.R. 22 essentially limits the Postal Service monopoly to letters mailed for \$2.00 or less. This opens to competition items weighing more than 8 ounces, and Priority Mail is placed in the competitive category. Other significant divisions affect parcel post and international mail. Apparently on the assumption that the majority of single piece mailings in these classes are sent by individuals with little opportunity to utilize alternative carriers, in most instances single piece mail is considered noncompetitive while bulk mailings are classified as competitive.

### ***Ratemaking for Competitive Products***

H.R. 22 gives the Postal Service broad latitude in setting rates and adjusting services for competitive products. Essentially, there are only two limitations: (1) that each competitive product cover its attributable costs; and (2) that competitive products in total have at least the same cost coverage as competitive and noncompetitive products collectively. These two standards are needed to assure that the playing field for competition is level.

The legislation also levels the playing field by clarifying that the panoply of fair trade laws and regulations are equally applicable to Postal Service competitive products and competing services offered by private enterprise. Within the ambit of those laws, the Postal Service is able to offer rate and service differentials between individual customers as private enterprises do. The legislation simultaneously adds provisions that enhance the Postal Service's ability to compete by allowing it additional flexibility to experiment with new products and develop special arrangements keyed to

the particular circumstances of individual mailers. It is hoped that this additional flexibility will help the Service to explore new markets and respond creatively to changes in the hard copy delivery marketplace. The Postal Regulatory Commission is charged with evaluating complaints that the Postal Service is failing to adhere to restrictions described in Title 39, and with collecting sufficient information to support appropriate reviews of Postal Service competitive operations.

This balanced approach of granting the Service almost complete freedom to set rates and adjust services while subjecting it to most of the controls applicable to private industry should extend the benefits of competition to the users of competitive products. However, the Postal Service again proposes amendments which would seriously skew the competitive balance in its favor. These Postal Service proposals should be rejected.

The Postal Service does not specifically eliminate the requirement that each competitive product must cover its attributable costs, but its proposed amendments substantially weaken that standard. As I mentioned in the discussion of the application of price caps to noncompetitive products, the Postal Service proposes eliminating the concept of subordinate units in defining products. Thus, all competitive parcel post or international mail would be a single product. This would allow the Service to price any of the various categories of parcel post below cost so long as revenue for the competitive portion of the subclass equals attributable costs. The Postal Service could then engage in protracted below cost pricing in attempts to capture competitive markets.

It is not in the public interest to allow the government to engage in destructive, below-cost pricing as a means of competing with private enterprises. The concept that

subordinate units of subclasses should generate sufficient revenues to recover attributable costs is consistent with the basic cost of service rate standard that has been the pre-eminent means for assuring fair and nondiscriminatory postal prices since enactment of the Postal Reorganization Act.

The Commission also considers as eminently reasonable the proposition that competitive products should have at least the same cost coverage as all mail services combined. Private sector firms must cover overhead costs and generate profits. Competitive postal products should generate at least a proportionate contribution to the institutional costs of the Postal Service. If the average contribution is so high that it reduces the Service's ability to compete effectively, either the Postal Service has excessive overhead costs, or the rates for monopoly products are too high and should be reduced. There is no valid reason for captive customers to have to pay more toward overhead than users of competitive services.

The Service would completely eliminate (after 5 years) the obligation of competitive products to make any contribution to the overhead of the Postal Service. It is unclear how users of monopoly products, or the Postal Service as an organization, would be assured of any benefits from its competitive products. The only beneficiary possible would be the private law corporation, which under H.R. 22 is funded from surplus competitive fund contributions. By eliminating the H.R. 22 equal contribution requirement, the Service would make any revenue above cost into excess profit available for transfer to the private law corporation.

Postal Service material suggests somehow separating the assets, liabilities, revenues, and costs between competitive and noncompetitive segments of the Postal Service, and implies that it would treat the provision of competitive products as an

independent enterprise; but it does not actually propose that a separate, tax-paying private corporation be established to offer competitive postal products through arms-length purchases of acceptance, processing, transportation and delivery services. To the contrary, its proposed amendments would preserve and expand benefits such as exemptions from lawsuits for its competitive products. Its brief discussion does not mention an allocation of a fair portion of the overhead burden to competitive products. Furthermore, in deciding during the first five years whether competitive products as a whole make a sufficient contribution, the Postal Service would remove attributable "purchased transportation costs and operational costs (such as those for dedicated processing networks) which are uniquely associated with a specific product" from the equation.

In sum, the Service has attempted to fashion a best-of-both-worlds environment for competitive products in which it would retain the protections of a government service but provide no certain contribution to the financial health of the organization. By excluding purchased transportation and dedicated processing costs, it would be able to claim that almost any subclass covered its costs while engaging in what would otherwise be forbidden as predatory pricing.

The Service also proposes to alter the review and reporting obligations of the Commission so that it would not be authorized to evaluate and report to Congress on whether the rates and fees for competitive products (individually or collectively) were in compliance with applicable provisions of Title 39. These Postal Service amendments to H.R. 22 should be rejected. We are also firmly opposed to a number of the amendments suggested by the Postal Service which seem designed to prevent either the Commission or the courts from exercising effective review of potentially

anti-competitive acts. There is no justification for exempting the Postal Service from the standards private companies must meet.

Finally, H.R. 22 provides the Commission with authority to require the Postal Service to cease offering a competitive service that consistently fails to recover attributable costs. The Postal Service proposal eviscerates this provision which protects both monopoly mailers and competitors. It would limit the Commission to responding to a complaint, if such complaint follows three successive years of failure to recover attributable costs by a competitive product. Furthermore, the Service seeks to limit the “remedies” following such a proceeding to a Commission public report and/or a recommendation that the Postal Service take some action. These remedies are obviously inadequate. Note too, that by adding a special provision titled “Complaints Regarding Loss-Making Products” the Service becomes able to argue its proposal pre-empts the right of a concerned competitor to file a complaint under § 3662 unless there are three successive years of below costs revenue, or to obtain any of the more useful forms of relief provided for in that section.

### ***The Division Between Competitive and Noncompetitive Products***

H.R. 22 includes provisions for moving products between the competitive and noncompetitive categories, and for placing new products within the appropriate category. The legislation appears to consider both monopoly products and products over which the Postal Service exercises market dominance as noncompetitive. The Commission would bear responsibility for applying these provisions.

The Postal Service proposes an amendment that would redefine the distinction between competitive and noncompetitive products so that mail not subject to the private express statutes could be reclassified as competitive, but only if the Postal Service

initiates such a transfer. This proposal is troublesome on its own. However, as mentioned previously, the Service also seeks to eliminate the requirement that competitive products would be expected to contribute a fair share of postal overhead. These amendments, when taken together, would permit the Service to burden a shrinking pool of captive customers with recovering all of its institutional costs.

The mechanism in H.R. 22 for allowing products to move in to or out of a particular basket successfully balances the need for flexibility to foster Postal Service innovations with the need for private enterprises to have some protection from unfair Postal Service actions. The Postal Service would eliminate the opportunity for the Commission or members of the public to initiate the process for moving products between baskets and between competitive and noncompetitive. It explains that it wants to retain control over its product line. However, the movement of products between baskets is accomplished by classification cases, which are subject to final decision authority of the directors. The Postal Service could not be forced to accept a change. We believe affected members of the public should retain the opportunity to obtain a meaningful public review of the Postal Service categorization of its products.

The question of whether a service is competitive or noncompetitive is also best left to independent outside review. Recall that the Postal Service proposes that the parts of a competitive subclass should be allowed to be priced below costs if the subclass as a whole covers its cost. If the Service has inherent advantages so that it has market dominance as to a portion of a subclass, it could use its position to compete unfairly. Affected mailers and competitors should have the right to seek reclassification.

A final disturbing aspect of the Postal Service comments and proposals is their complete focus on the competitive portion of its operation. The vast majority of the current mailstream is within the noncompetitive arena. Most of the individuals and businesses that rely on the Postal Service for essential services use noncompetitive products. The Postal Service states in comments explaining its legislative proposals that it expects all new products to be in the competitive arena. For the Postal Service to remain a valued and viable public service, it must focus its attention on providing service improvements the users of noncompetitive mail will need in the coming years. Mail users, and the nation, do not benefit if the entire intellect of postal management is focused on improving and supplementing its competitive product line and bolstering its private law corporation, leaving the majority of existing mail services to stagnate or even deteriorate.

### **PRIVATE LAW CORPORATION**

I now will turn to the third major innovation of H.R. 22, the provision allowing for the establishment of a private law corporation by the Postal Service. This is a concept that is new to postal reform. The former H.R. 3717 did not provide for a private law corporation, so no public record has been developed on its pros and cons.

The private law corporation in H.R. 22 can engage in both postal and nonpostal activities. It is intended to be separate from the Postal Service, and the Commission is charged with assuring that when the corporation purchases services from the Postal Service, the prices paid are fair to ratepayers and competitors. The directors of the Postal Service would select the directors of the corporation.

Our understanding is that in its original conception, the private law corporation was simply a means for the Postal Service to offer nonpostal products without having

them underwritten by monopoly revenues and without having the government, as such, entering new areas of competition with the private sector. The development of nonpostal products by the Postal Service was considered desirable by some as a means of generating profits which could then be used to offset losses incurred from the widely anticipated diversion of lucrative First-Class volume to electronic media.

The concept of the private law corporation has evolved, however. Some observers believe it is a mechanism for the Postal Service to acquire other companies and to form partnerships and alliances with firms in the private sector. As written, H.R. 22 permits the private law corporation to offer to the public every kind of postal and nonpostal product. In fact, the private law corporation is so broadly defined that it even could serve as a contractor to the Postal Service to perform collection, processing, transportation and delivery of monopoly products, thus allowing the Postal Service to become a "virtual" entity, hollowed out so that it consisted of little more than a contract and ratesetting shop. In addition H.R. 22 seemingly allows the private law corporation to engage in activities which have absolutely no nexus to the Postal Service.

Just as the mission of the private law corporation has evolved so has its funding. Initially, the monies available to the private law corporation were thought to be limited to the so-called surplus in the competitive products fund. The surplus would consist of overhead contributions from competitive products above what is required by the equal markup provisions of H.R. 22. Recently we have heard it suggested that the private law corporation could be funded by asset sales from the competitive product fund balance sheet. These might be in the form of sales to the Postal Service with a lease back provision. The Postal Service even goes so far as to propose that all competitive product revenues (not simply profits) could be injected into the private law corporation.



The Service also wants the bill amended to allow the private law corporation to sell stock to the public and to its own employees. As we understand it, the bill already allows the private law corporation to set up subsidiaries which could sell stock.

The desirability of the Postal Service engaging in nonpostal activities, the scope and effect of the private law corporation's activities, and the manner in which the private law corporation will be funded raise important issues of public policy which need to be examined.

### ***Scope and Effect of Private Law Corporation Activities***

Currently, the Postal Service offers a limited number of low-revenue, nonpostal products competing with the private sector under the mantle of the U.S. Government. We believe it is generally inappropriate for the government to enter into competition with the private sector. It is especially so when the government claims numerous special privileges such as exemption from taxes and fair trade laws. Nevertheless, if the Postal Service is going to engage in nonpostal activities, the private law corporation is an improvement over current practice. H.R. 22 recognizes the need for a level playing field and this is highly desirable.

We recognize that nonpostal activities can be far more glamorous than collecting, processing and delivering mail. It is more exciting to contemplate being a player in electronic commerce, buying stakes in publicly traded corporations, and entering into partnerships with private companies. Because the Postal Service has a large amount of fixed costs, profits earned by the private law corporation would be welcomed to offset a portion of its overhead burden. They would be especially welcomed if substantial volumes of highly profitable First-Class Mail are lost to electronic media. Nonetheless, we must question whether the potential for gain

exceeds the potential for loss to the Postal Service, and whether society and the general economy will be better or worse off if the Postal Service uses substantial postal revenues or assets to engage in nonpostal activities.

In our opinion it is dubious that a private law corporation spun out of the Postal Service would be able to make a sizable contribution to the \$20 billion institutional costs of the Postal Service. We say this because it is hard to make profits in our competitive economy. The Postal Service's recent experience with new products, as described by the GAO, supports our concerns. Virtually every nonpostal product would have very significant competition. More importantly, nonpostal products would not benefit from the scope and scale economies of the Postal Service as do letters and parcels. We see few comparative advantages for the private law corporation in offering nonpostal products beyond the ability to get capital without meeting the tests that ordinary startup corporations must meet.

We see no justification for the private law corporation using Postal Service assets to finance businesses or products totally unrelated to providing postal services. A somewhat better case may be made for the private law corporation exploring opportunities to sponsor vertical or horizontal integration in the postal sector. Remitco is an example of vertical integration already put in place by the Postal Service. Other possible examples include purchasing transportation companies or letter shops. Examples of possible targets for horizontal integration would be small parcel delivery companies, overnight delivery firms, money order firms and alternative delivery firms.

Title 39 describes the Postal Service as “. . . a basic fundamental service provided to the People by the Government of the United States . . .” As such it must deal fairly with its customers and suppliers. Current law prevents the Postal Service

from unduly discriminating among its customers. Current law also limits the Postal Service's flexibility in choosing its suppliers. In short there is now a level playing field among the Postal Service's customers and suppliers. We believe that vertical and horizontal integration in the postal sector would be very likely to slant those level playing fields.

The logic behind the private law corporation purchasing another corporation presumably would be that the acquired company would become more profitable as a result of its new corporate alignment. If the company does not become more profitable, the private law corporation would not gain much from its acquisition assuming it paid a fair market price. We must ask: how will an acquisition by the private law corporation lead to greater profitability? The obvious answer is that it could become more profitable by exploiting special relationships with the Postal Service as a customer or as a supplier. It does not seem possible to have a level playing field while honoring special relationships.

Finally, we believe it is essential that the management of any private law corporation should have an arms length relationship with the Postal Service. Consequently, the private law corporation Board of Directors should not be selected by the Postal Service Board of Directors. For the same reasons, there also should be restrictions on postal management transferring to jobs in the private law corporation and vice versa.

Important issues also arise from the concept of allowing the private law corporation to offer postal products to the public that are currently being offered by the Postal Service. If the private law corporation drains mail that is making an overhead contribution from the Postal Service, it hurts the Postal Service financially and leaves

rate payers worse off. The only way rate payers could benefit would be if the private law corporation improved the profitability of postal products, and then returned these enhanced profits to the Postal Service in the form of dividends. Unless these dividends exceeded the contribution otherwise being made by the product, the Postal Service would be harmed.

Allowing the private law corporation to offer noncompetitive but nonmonopoly products not only has the potential to drain overhead contribution from the Postal Service, it also would eliminate the protection the bill provides to captive ratepayers. Furthermore, it would be in direct conflict with the market dominance test incorporated in H.R. 22. As we understand it, the private law corporation could offer nonmonopoly, noncompetitive products in spite of the fact that the Postal Service has market dominance in these areas. This would allow the private law corporation to serve profitable segments while leaving unprofitable segments to be served by the Postal Service. This could directly undermine the financial stability of the Postal Service. Thus we believe that *de facto* monopoly products such as publications mail should not be offered by the private law corporation.

### ***Financing of the Private Law Corporation***

H.R. 22 recognizes that the current law which allows the Postal Service to enter into nonpostal activities with an unlimited draw on monopoly revenues is unwise. The bill specifies that surplus monies from the competitive products fund and borrowing without the full faith and credit of the government are the sources of capital for the private law corporation. This is a great improvement over current practice.

H.R. 22, however, is not completely successful in insulating rate payers from becoming the implicit underwriter of the private law corporation. Under current law, all

the institutional contribution from competitive products is available to defray institutional costs. Under H.R. 22, surplus contributions from the competitive products fund could be directed to the private law corporation. Unless the stream of dividends returned to the Postal Service from the private law corporation exceeds the amount of funds the Postal Service invested in the private law corporation, the Postal Service and ratepayers are less well off.

Moreover, other options could be far more harmful. For example, assume the Postal Service were to purchase and lease back from the competitive products fund assets allocated to competitive products. The proceeds from these sales could provide a substantial source of funds for the private law corporation. Under any form of funding it is possible that the private law corporation might be able to manage to return only an anemic stream of dividends, or it might even go bankrupt. Under either circumstance, the Postal Service would fail to recover its investment.

The American economic landscape is littered with failed companies. There are no guarantees for new ventures. Thus, we are inevitably faced with an assessment of the risk to Postal Service rate payers. We must ask, does the private law corporation present a good risk-reward tradeoff for postal rate payers? At this point, we don't have an answer to this question. Until the concept of the private law corporation is further developed, no one can answer it. But surely we should answer this question before the private law corporation is enacted into law. The private law corporation will not be getting its capital in the normal manner; that is from investors willing to accept risks in order to reap rewards. The capital contribution to the corporation by postal rate payers will amount to an involuntary assessment.

We must also ask if it is in the public interest for a private corporation funded with involuntary contributions from postal rate payers to compete in the market place. With involuntary funding, the equity base of the private law corporation will be larger than if all funds came from voluntary investors. Such an enterprise would distort the competitive market.

If there is to be a private law corporation, we think H.R. 22 would be strengthened if it required the private law corporation to pay a significant portion of its earnings as dividends to the Postal Service. Paying dividends to the Postal Service is the only way the private law corporation can mitigate the impact on mailers of the expected decline in hard copy mail. Since postal rate payers will provide at least the initial capital of the private law corporation, it is appropriate that they be major beneficiaries of whatever financial success the private law corporation enjoys. Initial investors usually receive a disproportionately large ownership stake by virtue of being first and therefore taking the most risk.

While H.R. 22 would make surplus contribution from the competitive fund available to the private law corporation, a Postal Service proposed amendment would be much more liberal. It would allow all revenue from competitive products, not just surplus contribution, to be used to capitalize the private law corporation. We believe the Postal Service proposal violates important safeguards included in H.R. 22. Any financial firewall between the Postal Service and the private law corporation would be breached if the corporation is permitted to use competitive product revenues in this way.

Most importantly, the Postal Service's role changes from investor in the private law corporation, using surplus profits, to cash cow susceptible of being plundered by

the private law corporation. In addition, the Service's proposal would further diminish the likelihood that the competitive products side of the Service would be of benefit to noncompetitive products customers. Of course, the Postal Service amendment which eliminates the equal markup provision of H.R. 22 also frustrates this objective. Finally, the potential impact on the private sector could be very large. The amendment has the potential to significantly increase the capital base of the private law corporation in a manner that would distort even further the normal means of capital formation in the private sector.

## **OTHER ISSUES RAISED BY H.R. 22**

### ***Market Tests***

H.R. 22 would add a new Subchapter V to Title 39 to govern the subject of market tests to be conducted by the Postal Service. New sections 3751 and 3752 would allow the Service to freely conduct market tests of experimental noncompetitive and competitive products, respectively, that are anticipated to produce no more than \$10 million in total revenues in any year. For larger-scale market tests — with anticipated revenues not to exceed \$100 million — the Service would be authorized to conduct such tests under regulations to be established by the PRC.

The Commission endorses a two-tiered approach to Postal Service market tests, as well as the incorporation of limiting conditions and safeguards in the new subchapter. However, based on our experience with the dollar amounts in almost all Postal Service experiments, the threshold for the first tier may be too high. Moreover, it would be helpful to the Commission if some additional clarification were provided in the bill in order to forestall disputes in the rulemaking process and potential litigation over the intended operation of the new provisions.

For example, new sections 3751 and 3752 apparently intend to preclude market tests that would cause “unreasonable market disruption” either for competitive or noncompetitive products, while new section 3753 directs the PRC to consider “the public interest in preventing unfair or disruptive competition” in establishing regulations for larger-scale tests. It is unclear whether the cited language is intended to direct the Commission’s deliberations to apply established antitrust standards of fair competition, or some different measures of competitive behavior and market effect.

A more basic consideration is the nature of the Commission’s scrutiny of market tests intended by the new subchapter. Sections 3751 through 3753 provide for Commission orders that would cancel or terminate market tests if specified conditions are not met, within the ambit of authority provided in the amended PRC complaint provision, section 3662. Sections 3751 and 3752 allow the Commission’s issuance of a cancellation order “at any time.” However, it is unclear whether a complaint lodged by an interested party is intended to be a pre-condition of issuing such orders, or when the Commission’s scrutiny of market tests noticed by the Postal Service is otherwise intended to commence. If no prior review of Postal Service market tests is intended, as appears to be the case, it would be helpful if the timing and conditions under which the Commission should review ongoing market tests were clarified.

The Postal Service proposes amendments to the bill’s market test provisions that would considerably loosen, or even dissolve, some of the limits and protective conditions incorporated in H.R. 22. The Service’s amendments would eliminate the distinction between ordinary and large-scale market tests for experimental competitive products, replacing the \$10 million cap for the former with a uniform \$100 million limit. At the same time, the Service proposes to delete the protective condition that would



preclude the introduction or continued offering of experimental products which “cause unreasonable market disruption.” It does so on the grounds that this restriction is a “subjective criterion,” and that, after all, introducing any new postal product will inevitably impact on market conditions, particularly if the new product is well-received.

Mr. Chairman, when I testified on the market test provision in H.R. 3717, I noted that:

First, it should go without saying that \$100 million per year is a huge amount of money for most businesses. Gross revenues of this magnitude, if achieved by the Postal Service relative to a single product or service, could seriously disrupt many existing markets.

This observation is as germane today as it was when I testified in July of 1996. Moreover, the Postal Service’s rationale for its proposed amendments would appear to confirm the anticipated potential for market impact. Apparently the Service doesn’t want to have to worry about how its market tests are likely to affect conditions in pre-existing competitive markets, or to have Congress authorize the PRC to do its worrying for it.

We recognize the perceived need to equip the Postal Service to compete more effectively in today’s marketplace, and that competing often means setting your sights on someone else’s lunch. If the Postal Service is to be authorized to go after revenues of as much as \$100 million in a market test, we submit that some kind of oversight on competitive impact and fairness must be exercised. The alternative would be to leave affected competitors with no other recourse than a cumbersome private antitrust action in a Federal court.

For these reasons, we oppose the Postal Service's proposed amendments on market tests, and urge their rejection.

### ***Qualifications of Directors***

Directors are to be selected solely on the basis of their proven ability to manage organizations similar in size and scope as the Postal Service. We suggest that the subcommittee also consider other qualifications and thus expand the pool of talent from which selection could be made. Our first concern is that there are very few organizations similar in size and scope to the Postal Service in this country. In addition, we are mindful that the Postal Service is an organization that touches the lives of all Americans. Candidates that possess a wider variety of skills, experience, and exposure to different size organizations could provide valuable insight into the needs of all citizens. Private corporations frequently tap educators, civic leaders, and consumer representatives, as well as business men and women, to serve as directors.

### ***Bonuses***

Bonuses to officers and employees of the Postal Service are allowed under § 3773 of H.R. 22. The implicit objective of the bonus program, to provide incentives to officers and employees to improve institutional performance, is laudable. We do, however, have some thoughts on several aspects of this program.

First, the amount of profits in a particular year establishes the maximum amount of money available for distribution as bonuses for that year. We recognize this maximum amount can be reduced to some extent by Commission findings, and limited by Postal Service decisions regarding other uses for the profits, such as the need to retire debt. Nevertheless, total annual profit is the starting point. We believe it

improvident to make all profit available for distribution as bonuses. The Postal Service is an ongoing entity that operates in a dynamic environment. A more prudent course would be to reserve some portion of profits for modernization, emergencies, lower postage rates, or any number of other important business purposes. We recognize that H.R. 22 permits the Postal Service to retain profits for various purposes. But mandatory retention of some portion of profits would be a feature of the legislation that would assure that the Service would emulate the behavior of responsible parties in the business community.

An important related issue is the wisdom of using profit as the measure of the efficiency of performance of the Postal Service. The amount of profit in a particular fiscal year is sensitive to a large number of factors, many of which are outside the control of the Postal Service. Events such as a labor relations work stoppage by a major competitor, extreme weather conditions, or even legislative actions, can effect the amount of profit in a year, plus and minus. Even more important is the strength of the national economy as evidenced by the strong growth in postal volumes and revenues during recent years. In addition, planned spending on needed programs may not occur. This could increase profits in one year to the longer-run detriment of the Postal Service. Moreover, a standard accounting convention could require that a prior year's adjustment, such as has occurred for worker's compensation, be totally expensed in the current year. In this instance, current year profits are impacted by circumstances or misestimates that actually happened in the past. This could result in an understatement or an overstatement of current period profit from the point of view of how well the Postal Service performed in the current year.

A possible solution is to loosen the connection between current year's profit and the amount of money available for bonuses. For example, an annual moving average

of profits for a number of years might permit a fairer evaluation of Postal Service performance. There are undoubtedly other methods that would lessen the impact of one-time occurrences on current year's profit for purposes of determining the bonus pool and mitigate the influence of events that are outside Postal Service control during a particular year.

As an alternative to focusing on profits, we wish to suggest a system that incorporates productivity explicitly. The Postal Service total factor productivity (TFP) measure is a very sophisticated tool that takes into account many pertinent factors such as capital investment, skill level of the work force, and the changing workload content of the mail that has to be processed and delivered. This is an objective measure of institutional performance, and we suggest that this tool also be used to determine the amount of funds available for bonuses. As an example, the pool of profits available for bonuses could be reduced if the change in TFP is small. If TFP is negative, even with profits, consideration could be given to prohibiting any bonuses at all. Linking the bonus pool to Postal Service productivity would mitigate the impact of the vagaries that impact profit, and more directly relate bonuses to performance. Such a system could also reward postal employees in a year in which losses are incurred for reasons beyond their control but in which productivity improved.

### ***Judicial Review***

In keeping with the new division of responsibilities between the Directors of the Postal Service and the Postal Regulatory Commission, section 202 of the bill amends current § 3628 of Title 39, which governs judicial appeals of final actions on rate and mail classification matters. The amended version of § 3628 appropriately provides for appeals of final PRC decisions establishing adjustment factors and product transfers between the noncompetitive and competitive mail categories. It also provides for

appellate review of decisions of the Directors to approve, allow under protest, or modify PRC recommended decisions on mail classification changes, and on requests for establishment of new noncompetitive products.

The latter provision presents an opportunity to rectify an anomaly that has become apparent during the Commission's institutional history. Under the current wording of § 3628 — which the bill's amended provision preserves — decisions of the now-Governors to reject PRC recommended decisions with no further action are not explicitly appealable. This omission has provided the Governors with the equivalent of a "pocket veto" over Commission recommendations with which they disagree, and exercising this option can leave substantive recommendations — particularly recommended mail classification changes — suspended in a limbo that offers no recourse to affected parties. The Commission recommends that this procedural void be filled by adding the words "reject without further action under § 3625" to the list of appealable actions of the Directors in amended § 3628(a).

On another matter, H.R. 22 clarifies the situations where the Department of Justice provides legal assistance to the Postal Service. In past litigation concerning issues that affect both the Postal Service and the Commission, the Department of Justice has balanced the concerns of our two separate agencies. We suggest that language should be added to this legislation to make it clear that where the Postal Service is representing itself the Department of Justice will still provide representation for the Commission.

### ***Appeals under § 404(b)***

Finally, I want to take a minute to thank the subcommittee for adding a provision to § 404(b) to clarify the period allowed for appeals of Postal Service decisions to close

small post offices. As you know, the Postal Service is not currently pursuing a policy of closing offices. The Commission, nevertheless, has received a number of communications from individuals that indicate a problem may exist with the Postal Service exercise of its authority to suspend the operation of post offices in emergencies. The General Accounting Office did a report on this subject recently. The issue seems to be that in some instances the Postal Service does not act to replace or close a suspended facility for years, and this inaction leaves the community without service and effectively changes an emergency suspension into a closure without the procedures required in § 404. A remedy might be to allow interested persons to file an appeal of any suspension lasting more than 6 months.

### ***Implementation of H.R. 22***

The Commission's review of H.R. 22 has uncovered several areas where minor adjustments could be made to improve the smooth transition from current postal ratemaking to the price cap regime provided by the draft legislation. H.R. 22 calls upon the Postal Regulatory Commission to exercise review over numerous aspects of the transition. Each individual task assigned to the Commission is important, and feasible. However, the sheer number of tasks that must be accomplished during the first year of operation after enactment of the Postal Modernization Act of 1999 is quite daunting.

Attached as Appendix A to this testimony is a list identifying the rules that would have to be developed by the Commission, through open public processes, shortly after the legislation becomes law. Many of these obligations would have to be met within very short timeframes so that the Commission could exercise its review functions as required. While we understand the desire to move into the brave new world expeditiously, we suggest that a transition period follow enactment of this legislation so that the Postal Service, the public, and the Commission can conscientiously contribute

to developing effective and workable implementing regulations and, thus, mitigate the amount of confusion and litigation.

### **CONCLUSION**

Mr. Chairman, we realize our remarks today appear to be rather extensive. However, I have not addressed every provision in H.R. 22, nor even every significant amendment proposed by the Postal Service. We want to thank you again for the opportunity to present our views.

We will be happy to answer any questions you may have.

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## PRC ACTIONS TO IMPLEMENT H.R. 22 REQUIREMENTS

**Required Rulemakings.** *Most need to be completed immediately or by establishment of baseline rates.*

- Adopt regulations ensuring confidentiality of certain USPS information provided in reports or under subpoena—§ 3604(g)(3).
- Conduct notice-and-comment proceeding to determine net value of assets and liabilities attributable wholly or primarily to competitive products—§ 2011(j).
- Adopt regulations establishing a schedule and procedures for transferring non-postal products to USPS Corp.—§ 205(b)(2).
- Adopt regulations defining “commercial entity” to implement prohibition of certain USPS investments—§ 2011(d)(2)(B).
- Adopt regulations to implement the unfair competition prohibitions in § 404a—§ 404a(c).
- Adopt regulations specifying procedures for establishing adjustment factors (including “exigent circumstances” provisions)—§ 3733(b)(2)(B).
- Adopt regulations implementing cost coverage requirements for competitive products under § 3744(b).
- Adopt regulations providing procedures for extension and cancellation of market tests of experimental noncompetitive products [§ 3751(d) and (e)], and experimental competitive products [§ 3752(d) and (e)].
- Adopt regulations providing procedures for the conduct of large-scale market tests [§ 3753(d) and (e)].
- Adopt regulations applicable to proposed new competitive product introductions—§ 3763(c)(1).
- Adopt regulations establishing procedures for the transfer of products between the competitive and non-competitive categories under the requirements of § 3764(d).



- Adopt regulations prescribing the form and content of reporting requirements applicable to the private “USPS Corp.” for § 3772 purposes—§ 2012(g)(1).
- Adopt regulations establishing content of Postal Service annual reports § 3772(c); for public comment on those reports § 3773; providing for PRC access to USPS and USPS/IG materials supporting USPS annual reports to PRC—§ 3772(d); and for regulations to initiate changes and improvements § 3772(e).
- Adopt regulations providing for payment of judgments against USPS or U.S. Government arising out of USPS activities in the provision of competitive products—§ 2011(f).
- Adopt regulations for consideration of proposed Negotiated Service Agreements—§ 3641(b).
- Adopt regulations implementing “date of postmark” standard in § 404(b) appeals—§ 304(b).
- Adopt regulations establishing PRC Office of Inspector General—§ 701(c).

*Other new Commission activities during this time period.*

- Conduct baseline rate case § 3721.
- Draft and submit Annual Report to President and Congress on PRC operations and USPS public-service costs—§ 3771.
- Draft and submit annual written compliance determination for rates, satisfaction of performance goals, and service standards for non-competitive products—§ 3773.
- Maintain and publish updated lists of products by basket § 3731(c) and competitive products § 3741(c).
- Report (as necessary, but at least every 6 years) to Congress on how system is working, with recommendations for change § 3774.