



POSTAL REGULATORY COMMISSION
Washington, DC 20268-0001

Michael M. Kubayanda
Chairman

The Honorable Carolyn Maloney
Chairwoman, Committee on Oversight and Reform
U.S. House of Representatives
Washington, DC 20515

The Honorable James Comer
Ranking Member, Committee on Oversight and Reform
U.S. House of Representatives
Washington, DC 20515

February 23, 2021

Dear Chairwoman Maloney and Ranking Member Comer:

I am writing to you on behalf of the Postal Regulatory Commission (Commission). As a separate and independent federal regulatory agency, the Commission determines the legality of the Postal Service's prices and products, adjudicates complaints and fair competition issues, and oversees the Postal Service's delivery performance consistent with statutory requirements. Its mission is to ensure transparency and accountability of the Postal Service and foster a vital and efficient universal mail system. The Commission is composed of five commissioners, each appointed by the President and confirmed by the Senate.

I have served on the Commission since January 2019, and was designated chairman in January 2021. I have assumed my new position at a critical time in the history of the Postal Service. On one hand, over the past year the Postal Service served its critical mission of binding the nation together during the pandemic. Postal workers kept Americans connected during extensive lockdowns, allowed large and small businesses to reach their customers, enabled citizens to safely receive crucial supplies, and served an essential role in the fall elections. The growth in ecommerce over this period uncovered upside potential for the Postal Service and other organizations. Analysts have estimated the total addressable market for ecommerce to be in the trillions of dollars – far above even its presently elevated level, and providing opportunities for continued growth in the package delivery market. In order to keep the nation connected through the pandemic and help the Postal Service capture these new opportunities, the postal workforce persevered through unique and unprecedented challenges and upheld

a tradition of service as old as the nation itself, dating back to Benjamin Franklin, our first Postmaster General.

On the other hand, the same time period has brought troubling issues in the postal network under a harsh spotlight. On-time service performance was uneven in the spring and summer, and has reached historically poor proportions since the holiday season. Anecdotes regarding woeful performance are becoming ubiquitous, and quantitative evidence is confirming the situation. Financial instability continues to haunt the postal system and has delayed needed investments including, but not limited to, replacing the aging fleet of delivery vehicles, which have been in service for as long as 30 years.

Pursuant to the 2006 Postal Accountability and Enhancement Act (PAEA), the Commission addresses service issues primarily through its annual compliance process. The Postal Service is currently in the middle of this process. The Annual Compliance Determination (ACD), due at the end of March, will include detailed analyses of the Postal Service's compliance with a number of legal requirements in the prior fiscal year, including performance in on-time delivery of market dominant mail against published service standards. The upcoming ACD, for example, will address compliance for FY 2020, which concluded on September 30th of last year. The Commission has previously provided remedies for noncompliance in the ACD, including requiring corrective action, increased transparency, and ongoing monitoring.

Following the release of the ACD, the Commission also issues an annual Financial Analysis of the Postal Service, in which the Postal Service's financial position is analyzed in terms of profitability, solvency, and stability using tools such as trend analysis and financial ratios. The Commission also issues a separate annual review of the Postal Service's performance plan for the current fiscal year and whether the Postal Service met its performance goals for the prior fiscal year. This document provides a customer-centric view, evaluating Postal Service surveys that measure customer experience. While the law directs management of operational and pricing matters to the Postal Service's Governors, the Commission's role in providing transparency and accountability remains vital as we are faced with new, acute challenges.

Stakeholders have called for the Postal Service, the Commission, and policy makers to act on postal matters, and have demanded greater transparency of the postal network. I should note here that the Postal Service, after prodding from the mailing community, announced that it will create a dashboard to provide up-to-date information on facility backlogs and operational issues, in addition to ongoing communications on pandemic related matters. These measures could allow postal customers to adjust their own operations and assist in relieving some of the bottlenecks in the postal network. I consider these to be positive steps and encourage further measures to provide transparency and assurances to stakeholders.

Reform and Remedies

From the Commission's perspective, a key priority is addressing the astonishing asymmetry between the resources of the Postal Service and the Commission, and preventing this situation from creating negative repercussions. The Commission is a \$17 million micro agency overseeing a complex \$80 billion behemoth and its interactions with numerous stakeholders. The Postal Service has over 600,000 employees and more than 200 lawyers, while the Commission regulates the Postal Service with 73 full time equivalent employees, including administrative and support staff.

In 2008, during the early days of the Postal Regulatory Commission, which the PAEA created from the old Postal Rate Commission, the agency's budget was \$14.985 million. Prior to 2006, the Postal Rate Commission, on average, reviewed major postal rate cases about once every three years. In 2008, the reconstituted Postal Regulatory Commission approved 17 specialized contracts, known as negotiated service agreements (NSAs), between the Postal Service and its customers such as businesses and nonprofit organizations. By FY 2020 the Commission was approving over 250 NSAs each year, while generally overseeing two annual rate cases, and managing the exhaustive annual compliance process, among other matters. The Commission has undertaken several massive and statutorily-mandated rulemakings, such as the ten-year review of the price cap on market dominant products, during which the Commission carefully considered thousands of pages of detailed and highly technical comments. The Commission also regularly reviews the rules governing the quantitative and qualitative data in reports filed by the Postal Service. During FY 2020, the Commission considered 16 proposals to update the "analytical principles" used in the reports. The Commission also is involved in reviewing regulatory petitions regarding service, and litigation brought by the Postal Service and postal stakeholders.

The consequences of meeting this robust agenda with such limited funds include delayed and unmet hiring needs; delayed or canceled investments in technological upgrades; and training needs that were not addressed for several years. The delayed and truncated priorities are troubling, as the Commission is a regulator in a fast-changing postal industry that overlaps with the communications, transportation, ecommerce, advertising, and retail markets. Postal stakeholders increasingly combine hard copy mail with utilization of the Internet, and the postal ecosystem has been bolstered by sophisticated organizations leveraging data analytics and application programming interfaces to facilitate transactions between the Postal Service and its customers. Meanwhile, the Commission perseveres, out of necessity, with older and more basic technologies to support its relatively tiny but hardworking staff.

The premise of the PAEA was to update postal regulation by building on the success of modern incentive regulation which had been deployed in other network industries such as telecommunications and electricity, with the Commission leading implementation of the regulations. Staying apprised of developments in regulatory economics, finance, and law, as well as changes in the market that the Commission is regulating, is not

optional. My predecessors and colleagues at the Commission, together with a dedicated staff, have been diligent and conscientious in working to meet the standards of a modern regulator despite essentially flat funding since passage of PAEA. As a new chairman, however, I would be remiss if I did not note that the Commission's lack of resources is another source of systemic risk to the postal system and its stakeholders.

The most immediate route for addressing this resource asymmetry is through the appropriations process. For FY 2021, the Commission requested \$19.2 million, but the final appropriation fell far short of this mark. A longstanding priority of the Commission under my immediate predecessor as chairman, current Commissioner Robert Taub, is to revert the Commission to its pre-PAEA funding methodology, aligning the treatment of the Commission with that of the Postal Service by pulling the Commission out of the appropriations process. Under the pre-PAEA approach, the Postal Rate Commission presented its budget request to the Governors of the Postal Service, with significant procedural protections for the Commission. For example, the Governors could only adjust the total amount of budget request through a unanimous written decision. These provisions worked well and were not abused from the creation of the Postal Service and the Postal Rate Commission in 1970 through the enactment of the PAEA in 2006. I agree with this priority and want to renew the call for aligning the Commission's budget framework with the agency it oversees, especially since the Commission's funding is drawn from Postal Service revenues (and thus postal ratepayers) rather than taxpayer revenues in the General Fund of the Treasury.

During the 2018-2019 federal government shutdown, the Commission ceased operations for two weeks while the Postal Service continued its operations. This disparity allowed the Postal Service to operate temporarily without regulatory oversight by the Commission. Moreover, the situation was damaging to the Postal Service as it was unable to file contracts or petitions with the Commission. The Commission's shutdown caused a backlog of NSAs, harming both the Postal Service and its customers who had agreed to mutually beneficial (and often commercially urgent) contracts. The Postal Service immediately filed for approval of several emergency NSAs following the shutdown. The shutdown also delayed the FY 2018 ACD, which is required by law to be completed within 90 days of the Postal Service reporting on its compliance.

The Postal Service and its stakeholders have long sought substantive legislative relief, and legislation will be necessary to right the ship and address the totality of the Postal Service's issues. This Committee is familiar with requests to address the pension and health care liabilities of the Postal Service through means such as reducing the prefunding targets, addressing the split of responsibility for pension obligations between the Postal Service and the pre-1971 Post Office Department, and integration with Medicare. These measures would help provide financial stability for the Postal Service, which should be a top priority alongside restoring service quality.

As part of comprehensive legislation, my immediate predecessor as chairman recommended that Congress grant the Commission authority to define the postal

universal service obligation. In the long term, a unified definition of universal service can provide coherence in postal policy, underpinning an alignment between resources and the needs of the American public. The issue is especially notable as disparate stakeholder groups have recently called for public service appropriations for the Postal Service, which would imply a need to define the types of services that would receive such funding. The Commission currently provides and updates annually an evaluation of the cost of universal service, which provides valuable information for policy makers.

Thank you for the opportunity to submit comments for this critical hearing.

Sincerely,

Michael Kubayanda

Michael Kubayanda
Chairman, Postal Regulatory Commission