

**STATEMENT OF  
COMMISSIONERS PAMELA JONES HARBOUR  
AND JON LEIBOWITZ CONCURRING IN PART**

**Congressional Postal Study  
Commission File No. P071200**

Today, the Commission released a Report to Congress entitled, *Accounting for Laws that Apply Differently to the United States Postal Service and Its Private Competitors*<sup>1</sup>. This Report responds to a Congressional directive in the Postal Accountability and Enhancement Act,<sup>2</sup> which required the Commission to identify federal and state laws that apply differently to the United States Postal Service<sup>3</sup> than they do to private firms offering comparable products, e.g., FedEx, UPS, and DHL. The Commission was directed to report on the “net economic effects provided by those laws,”<sup>4</sup> and to make recommendations for the elimination of those legal differences. The Congress asked the FTC to evaluate whether the USPS enjoys a net competitive advantage relative to other firms which market competitive products.<sup>5</sup>

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<sup>1</sup> Hereinafter cited as “Report.”

<sup>2</sup> Pub. L. 109-435, 120 Stat. 3198 (Dec. 20, 2006), codified as 39 U.S.C. §§ 101 *et seq.*

<sup>3</sup> Hereinafter cited as “USPS” or “Postal Service.”

<sup>4</sup> *Id.* at § 703(b).

<sup>5</sup> See, e.g., *Statement for the Markup of the Postal Accountability and Enhancement Act House Committee on Government Reform by Rep. Henry A. Waxman*, available at <http://oversight.house.gov/documents/20040824121851-66621.pdf> (May 12, 2004) (“Our bill has the primary goal of allowing the Postal Service to continue to fulfill its universal service mission at a reasonable cost. To achieve this goal, the legislation establishes a modern system for regulating rates, gives needed flexibility to the Postal Service, and includes provisions to ensure a level playing field for the Postal Service and its competitors.”).

We join in the Commission's finding that the USPS, because it is an agency of the government of the United States, "enjoys" a net competitive disadvantage versus other firms selling competitive products.<sup>6</sup> The differential application of various federal and state laws to the USPS's sale of competitive products provides more burdens than benefits for the Postal Service.

Having answered the question posed to the Commission by the Congress, we would have ended the Report by observing that the USPS could only be placed on a level competitive playing field (1) if the Congress reduced the burdens imposed only on the USPS in the sale of competitive products, and (2) if the Postal Regulatory Commission required the USPS's pricing of competitive products to reflect the value of the benefits it receives from differential application of the laws to it, *i.e.*, its implicit subsidies.<sup>7</sup>

The Commission has, however, chosen to go further and provide analysis of a related, but different question: whether society's postal resources are allocated efficiently.<sup>8</sup> We would not have included this additional analysis in the Report for two separate reasons.

First, the Report relies almost completely on information and data submitted voluntarily by various interested parties, including many competitors of the USPS. We appreciate that the Commission was only given one year within which to complete this Report. That, in turn, virtually

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<sup>6</sup> See Report at 8.

<sup>7</sup> See Report at 9-10.

<sup>8</sup> "Whether the USPS enjoys a net economic advantage or disadvantage by virtue of its unique status ultimately is irrelevant to the issue of efficient allocation of the resources in the economy as a whole." Report at 70-71.

foreclosed the use of compulsory process<sup>9</sup> to seek potentially more complete and reliable information. We also appreciate that the USPS's competitors will be hard put to criticize the Commission for relying on their data to estimate the likely value of the USPS's implicit subsidies. We are not, however, certain that the information obtained by the Commission through voluntary submissions was sufficiently robust to support any broader conclusion regarding alternative business models for the Postal Service.

Second, the Congress explicitly tasked the Government Accountability Office (not the Commission) with studying and reporting on alternative business models for the Postal Service, and has given that agency five years to do so.<sup>10</sup> For these reasons, we would have ended the Report without any analysis of the broader questions of economic resource allocation.

That being said, we commend staff for their excellent work in preparing the entire Report. We expect that all of the Report's analytical methodology will inform the debate over the future evolution of the Postal Service, even if some of the Report's conclusions are not eventually supported by future analyses conducted with more robust information.

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<sup>9</sup> 15 U.S.C. § 46(b).

<sup>10</sup> *See Report at 1 n.3.*