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The Legislative Recommendations of the President's Commission on the United States Postal Service: A Brief Overview

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Summary

The President's Commission on the United States Postal Service, in its report released on July 31, 2003, made 35 recommendations for reforming the Postal Service and resolving its long-term financial problems. Many of the recommendations were addressed to postal management, urging it to downsize in anticipation of shrinking revenues, standardize mail processing across facilities, and share more of its work with the private sector. Seventeen of the recommendations were addressed to Congress, including 15 that would require alterations to law. These recommendations cover the Postal Service mission, governance, business model, rate-setting procedures, excess facilities, and – most controversially – reining in workforce costs. This report provides an overview of the Commission's 15 recommendations that would require congressional action.

This report will not be updated. Legislative action on the Commission's recommendations, if any, will be covered in CRS Issue Brief IB10104, *Postal Reform.*

Background

On December 11, 2002, President Bush signed Executive Order 13278, establishing the President's Commission on the United States Postal Service (PCUSPS). The nine-member Commission was charged with examining the condition of the United States Postal Service (USPS) and its financial viability. The Commission was to report its findings along with recommendations on the Postal Service's role in the 21st century, its governance structure, efficiency, ability to continue universal mail delivery in the future, and whether the USPS's monopoly powers advance the public interest.

In its July 31, 2003 report, the PCUSPS confirmed what has been widely reported by the General Accounting Office, postal stakeholders, and USPS itself: the institution faces severe long-term financial challenges.[1] While its short-term outlook has been improved by three rate increases in 2001 and 2002, and by congressional passage of legislation relieving USPS of $9.2 billion in civil service retirement obligations in fiscal years 2003-2005,[2] USPS revenues are in a long-term decline. This is due, in large part, to a decline in First-Class mail volume over the past 5 years. First-Class mail accounts for more than half of all postal revenues. There is evidence that suggests First-Class volume will continue to slide as a greater proportion of personal and business communications are transmitted via the Internet.[3]

Overview

The PCUSPS endorsed the continued relevance of the statutory construct established by Congress in the Postal Reorganization Act of 1970, that of a government corporation operating as a self-sustaining commercial enterprise. It abjured the alternative of privatization as "far too risky" and a threat to universal service.[4] However, the Commission also found that universal service was at risk from ballooning costs, and recognized that continual rate increases, combined with the ever-expanding size of the delivery network as the country grows, would only accelerate a financial downward spiral. The PCUSPS rejected the idea, advanced by USPS itself in the past as a reaction to the decline in its traditional market, that USPS should attempt to boost revenues by providing new products and services. Rather, the PCUSPS said that for universal service to survive, "fiscal stabilization must come from reduced costs through the modernization of every element of its operations, service delivery and asset management." While complimenting the postmaster general on cutting $2.5 billion of a promised total of $5 billion in annual cost savings by 2006, the Commission said "the Postal Service requires reform on a far grander scale."[5]

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[1] For background information, see CRS Report RL31069, *Postal Service Financial Problems and Stakeholder Proposals,* by Nye Stevens.

[2] For information on passage of P.L. 108-18, the Postal Civil Service Retirement System Reform Act of 2003, see CRS Report RL31684, *Funding Postal Service Obligations to the Civil Service Retirement System,* by Patrick Purcell and Nye Stevens.

[3] A paper prepared for the commission sketches the financial ramifications of both a slow and rapid increase in the use of electronic bill-paying and communications. In both scenarios postal revenues decline dramatically over the next 15years. See Greg Schmid, "Two Scenarios of Future Mail Volumes, 2002-2017," (Palo Alto, CA: Institute for the Future, May 2003).

[4] President's Commission on the United States Postal Service, *Embracing the Future: Making the Tough Choices to Preserve Universal Mail Service: Report of the President's Commission on the United States Postal Service*, p. ix. (Hereinafter referred to as *Report.)*

[5] *Report*, pp. 2, 4.

Legislative Recommendations

About half of the PCUSPS recommendations relate to matters for which USPS already has statutory jurisdiction.[6] For example, USPS can improve the management of its real estate assets to enhance their value, maximize the use of private sector resources through outsourcing, expand the application of technology, and standardize its work processes to manage the flow of mail more efficiently, without further legislative authorization from Congress. For two recommendations – improving financial transparency by voluntary compliance with Securities and Exchange Commission reporting requirements, and procurement reform – the Commission suggests a congressional role in an oversight capacity.

But in six key areas, the PCUSPS believes that only revisions to the USPS governing statute, Title 39 of the United States Code, can achieve needed reforms. These areas are mission, governance, business model, rate-setting, facilities, and workforce.

Mission. The co-chairman described as a "core recommendation" of the Commission that USPS should "stick to [its] knitting," that is, "the acceptance, collection, sorting, transportation and delivery of letters, newspapers, magazines, advertising mail and parcels."[7] The Commission noted that many private corporations have failed because they entered unfamiliar business lines. The General Accounting Office (GAO) has been critical of past USPS efforts to diversify its line of products and services.[8] The Commission also strongly endorsed the enduring relevance of universal service in its proposed mission statement: "to provide high-quality, essential postal services to all persons and communities by the most cost-effective and efficient means possible at affordable and, where appropriate, uniform rates." It also recommended retention of mail delivery six days a week.

Governance. In an apparent repudiation of perceived "micromanagement" by the current USPS Board of Governors,[9] the PCUSPS proposes replacing the "distinctly public-sector leadership" of the present Board with a corporate-style board of directors that would have broad authority to oversee postal operations.[10] The board would consist of three directors appointed by the President, the postmaster general, and eight independent directors initially selected by the three presidentially-appointed directors with the concurrence of the Secretary of the Treasury. Members of this board would be selected on the basis of their "business acumen" and experience and would serve 3-year

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[6] The 35 recommendations of the Commission are consolidated in appendix C of its *Report*, pp. 171-178, and responsibility for each is assigned to either USPS or Congress, or in five cases, to both. The *Report* is available at http://www.treas.gov/offices/domestic-finance/usps, as of Oct. 7, 2003.

[7] Testimony of James A. Johnson before the Senate Committee on Governmental Affairs, *U.S. Postal Service: What Can Be Done to Ensure Its Future Viability?*, hearings, 108th Cong., 1st sess., Sept. 17, 2003 (Washington, FDCH Transcripts) pp. 8, 17.

[8] U.S. General Accounting Office, *U.S. Postal Service: Development and Inventory of New Products*, GAO Report GGD-99-15, Nov. 1998.

[9] *Report*, p. 36.

[10] *Report*, p. 38.

terms. There is some question whether this largely self-perpetuating board would violate the Appointments Clause of the Constitution.[11]

While the Board of Directors would concentrate on operational matters, the current Postal Rate Commission would be transformed into a new Postal Regulatory Board (PRB) that would deal with issues of public policy, charged with protecting the public interest and promoting fairness and transparency of postal operations. The powers of the regulatory board would include: establishing postal rate ceilings, ensuring financial transparency, reviewing service changes or alterations to the Postal Service's monopoly and the definition of universal service, preventing the USPS from cross-subsidizing unprofitable products and services with revenues from monopoly products and services, and reviewing complaints from the public that USPS has exceeded its authority. The three members of the regulatory board would be appointed by the President with the advice and consent of the Senate.

Business Model. The PCUSPS concluded that the concept of universal service requires USPS to retain its monopoly on mail delivery and sole access to mailboxes. However, it stated that changes might some day be needed in either universal service or what is covered by the monopoly, and recommended that the PRB be authorized to re-define either concept. The Commission followed up on the work of postal reform advocates in Congress (H.R. 22 in the 105th and 106th Congresses, H.R. 4970 in the 107th, and S. 1285 in the 108th Congress) by recommending the separation of postal services into "competitive" (parcels and express mail, for example) and "non-competitive" or monopoly products such as First Class Mail. To increase its similarity to private sector corporations, the Commission would allow USPS to retain earnings and increase executive compensation to levels competitive with the private sector.

Rate-Setting. Among a number of increased flexibilities recommended by the PCUSPS was a major change in the way postage rates are set. The current process, heavily laden with litigation before the Postal Rate Commission, commonly takes 18 months and makes it impossible for USPS to respond to shifting market conditions. Under the PCUSPS proposal, the new Postal Regulatory Board would set base-line rates and ceilings for noncompetitive products and services, allowing USPS to change rates within those parameters, reviewing in advance only those rates that exceed the ceilings. The PRB would also ensure that competitive products are not subsidized by revenue from products protected by the monopoly, including by investigating complaints of cross-subsidization. The PRB would limit public participation to written submissions, and require a final determination within 60 days of all filings.

The PCUSPS further recommended that Congress expand the authority for USPS to enter into negotiated service agreements, which offer large mailers volume discounts as

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[11] The proposed method of selection would have three members appointed by the President with advice and consent of the Senate, and eight directors by the Board itself. This new Board of Directors would have some of the same powers the present Board of Governors possesses (e.g., hiring and removing the postmaster general). This is pertinent because a federal court ruled that the Board of Governors, by virtue of its powers (including the appointment ability) and the nature of the USPS, collectively constituted a head of department. Under Article II, Section 2, Clause 2 of the Constitution, heads of department must be appointed by the President with the advice and consent of the Senate. See *Silver v. U.S. Postal Service*, 951 F. 2d 1033 (9th Cir. 1991) at 1038.

an incentive for greater use of the mails. USPS has one such agreement now, with credit services company Capital One, but it took eight months to secure regulatory approval. And the Commission also endorsed greater use of worksharing discounts, which offer lower postage rates for mail that has been sorted, barcoded, drop shipped, or otherwise processed by private sector "partners" before entering the mailstream. In recognition of the argument of the American Postal Workers Union (APWU) that such discounts (already amounting to $15.2 billion) are a cause of rather than a cure for USPS financial problems, the PCUSPS would authorize the Postal Regulatory Board to perform an expedited, after-the-fact review of any allegations that such discounts do not exceed savings to the Postal Service.

Facilities. The question of closing some of the 38,000 post offices in the nation, particularly those in rural areas and small towns, has long been politically sensitive.[12] The Postal Reorganization Act of 1970 orders that "no small post office shall be closed solely for operating a deficit," and the annual Treasury/Postal Service appropriations act has for decades carried a prohibition on closing or consolidating small rural or other small post offices. The PCUSPS chose to sidestep the issue, recognizing that many "low activity" post offices are necessary for fulfillment of the universal service obligation and should not be closed. It does recommend that Congress withdraw its restrictions on closing post offices, however, and pointed out that USPS could be more imaginative in working with communities to make better use of unneeded facilities.[13]

Where PCUSPS chose to focus its attention was on the 446 processing, bulk-mail, and distribution plants or centers. In the Commission's view, which it claims is backed up by everyone familiar with mail processing and logistics, this is far too many. The system of facilities grew by aggregation over many decades and has created what the report refers to as a "legacy network" that obstructs efforts to streamline and standardize the back end of mail processing to boost efficiency and productivity. But these facilities are all major regional employment centers, and closing them has always proven to be politically hazardous.

In a recommendation that mirrors provisions in S. 1285, a postal reform measure introduced this year by Senator Thomas Carper, the PCUSPS proposes the creation of a Postal Network Optimization Commission (P-NOC).[14] The 12-member commission would be appointed by the President with the advice and consent of the Senate (four members to be recommended by congressional leaders and postal unions). P-NOC would hold hearings, take testimony, and draw up a list of facilities to be closed. The list would be submitted to the President (who can suggest alterations), and then to Congress, which would have to vote for or against it without amendment.

Workforce. The PCUSPS recommendations relating to the 843,000-person postal workforce are the most controversial issues in the report, and the only ones on which the

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[12] See, for example, U.S. Congress, House Committee on Post Office and Civil Service, *GAO's Recommendation That 12,000 Small Post Offices Be Closed,* hearings, 94th Cong., 1st sess., Sept. 23, 24, and Oct. 8, 1975 (Washington, GPO, 1975.)

[13] *Report,* p. 81.

[14] P-NOC is modeled on the military base closure commissions. For more information, see CRS Report 97-305F, *Military Base Closures: A Historical Review, 1988-1995,* by George Siehl.

Commission was not unanimous. Because 76% of Postal Service costs are attributable to employee salaries and benefits, however, an examination of postal finances focusing on the need to reduce costs must necessarily deal with workforce issues. USPS has shed approximately 38,000 postal jobs between July 2002 and July 2003. This has been done through attrition and offers for early retirement. PCUSPS compliments this initiative but believes that the present workforce is still too large.

Referring to "persuasive testimony" that a postal compensation premium may exist, the Commission (with the one member from the labor movement dissenting) recommended that Congress authorize the Postal Regulatory Board to redefine the present concept of "comparable pay" to the private sector, and include in the definition such public employment advantages as stability of employment, generous annual and sick leave, and health care and early retirement benefits. The new definition of comparability would be treated as a cap on the compensation of new employees.

The PCUSPS also recommends major revisions to the current practice of binding arbitration of wage bargaining disputes, substituting a streamlined mediation-arbitration process with a "Last Best Final Offer" mechanism designed to force the parties toward the middle rather than the extremes. The arbitrator would be required to select one of the two offers, rather than develop an entirely new package as has happened in the past. The Commission would also put the value of fringe benefits such as health care and early government retirement on the collective bargaining table, and open the possibility of USPS having fringe benefits systems separate from the rest of government.

Less controversial among postal stakeholders is a recommendation that Congress transfer back to the Treasury the responsibility to fund pension benefits arising from former military service of postal workers. This would reverse a provision of the Postal Civil Service Retirement System Reform Act of 2003 that transferred these costs, which USPS says will amount to $27 billion in future years, from taxpayers to postal ratepayers.

The president of the American Postal Workers Union, William Burrus, said the Commission's workforce recommendations "shredded collective bargaining," were "fundamentally dishonest" and "a disaster," and said the union would use every tool at its disposal to assure that none of them becomes law.[15]

It should be noted that there is at least one recommendation in the text of the report that is not included in the formal list of recommendations in Appendix C of the *Report*:

> The Commission recognizes that the Postal Inspection Service plays a vital law enforcement function. Only those activities of the Postal Inspection Service that directly support the safety and security of the nation's mail and postal systems should be assumed by the ratepayers. The cost of law enforcement operations that track broader crimes committed through the mail should be borne by taxpayers, generally.

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[15] American Postal Workers Union, "Senate Committee Holds Hearing on Postal Reform," Sept. 17, 2003, [http://www.apwu.org/burrusupdates/2003/UPDATE%2019-2003.htm], visited Sept. 30, 2003.