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NOMINATION OF MARK D. ACTON

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

ON THE

NOMINATION OF MARK D. ACTON, TO BE COMMISSIONER, POSTAL RATE COMMISSION

MARCH 31, 2006

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NOMINATION OF MARK D. ACTON

FRIDAY, MARCH 31, 2006

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 11:01 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Susan M. Collins, Chairman of the Committee, presiding.

Present: Senators Collins, Coburn and Akaka.

OPENING STATEMENT OF CHAIRMAN COLLINS

Chairman COLLINS. The Committee will be in order.

The Committee will now consider the nomination of Mark Acton to be a Commissioner of the Postal Rate Commission.

This Committee is very familiar with the many serious issues facing the U.S. Postal Service and has spent a great deal of time crafting postal reform legislation. Our legislation has been passed by the Senate, and it is my hope that the conference with the House will begin shortly.

The Postal Rate Commission will play an important role in ensuring the success of postal reform.

As an independent regulatory agency, the Commission reviews Postal Service requests for new domestic mail rates, fees, and classifications, and for major changes in service.

The five commissioners review these requests in public proceedings and then make recommendations to the Governors of the Postal Service. They provide a forum for postal customers to be heard, and their proceedings provide the transparency and accountability that are necessary to justify changes in rates or service.

In addition, the Commission also investigates complaints from postal customers concerning rates, fees, classifications, and service changes.

Mark Acton, our nominee, has been a Special Assistant to the Chairman of the Postal Rate Commission since March 2002. As such, he has been involved in managing the operations of the Commission and participates in its briefings and deliberations. He also serves as the Commission's liaison to the White House, Congress, the Postal Service, and other government and private sector entities, and he represents the Commission at the Postal Service Board of Governors meetings.

If confirmed, he would fill the remainder of a term that expires in the year 2010.

From his work as an Assistant to the Commission Chairman, I am sure that Mr. Acton is very aware of the challenges facing the Postal Service and of the challenges facing the Commission as a partner in reform. Under the legislation that I authored with our colleague, Senator Carper, the Postal Rate Commission will be renamed the Postal Regulatory Commission. As that change suggests, the powers and responsibilities of the Commission will be expanded considerably.

Under the current law, the Rate Commission has very narrow authority. Among other changes, our postal reform bill would grant the Postal Regulatory Commission the authority to regulate rates for noncompetitive products and services, ensure financial transparency, establish limits on the accumulation of retained earnings by the Postal Service, obtain information from the Postal Service if need be through the use of a new subpoena power, and review and act on complaints filed by those who believe that the Postal Service has exceeded its authority.

As the members of this Committee know, the U.S. Postal Service is a vital part of our society and our economy. We know that the fiscal challenges facing the Postal Service threaten the future of affordable universal service unless reform legislation is enacted and implemented.

I look forward to discussing these challenges with Mr. Acton today. I am very pleased that the President has appointed an individual with a great deal of experience on these very issues, and I welcome him to the Committee. Senator Akaka.

OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. Thank you very much, Madam Chairman.

I want to add my welcome to you to the Committee, Mr. Acton. And I want to commend you for accepting the nomination to serve as a Commissioner on the U.S. Postal Rate Commission.

Mr. Acton, I know it is so easy to say to a nominee that his tenure comes at the pivotal time for the agency to which he has been nominated. However, today I can say to you that your nomination comes at a significantly critical time.

As you know, the Postal Rate Commission will be strengthened under the two postal reform bills that are now awaiting conference action.

Having served as a Chairman and Ranking Member of the Committee's former Postal Subcommittee, and as a Member of the upcoming conference on postal reform, I believe that the flexibilities granted to the U.S. Postal Service demand strong accountability. Both postal reform bills would significantly strengthen the Postal Rate Commission.

That is an important step to me because I believe the continued stability and viability of the U.S. Postal Service will depend on a strong Postal Rate Commission. Reaching that goal will require the dedication of individuals such as you, Mr. Acton, who, if confirmed, will be called on to make some really tough decisions.

Madam Chairman, I also wish to note the critical vacancies that exist on the U.S. Postal Board of Governors, and I call on the President to select nominees as soon as possible.

There are nine members of the Board, of which no more than five may be affiliated with the same political party. Currently, there are only five sitting board members, four of whom are from the President's party. A Republican nominee and a Democratic nominee have been referred to this Committee. However, given the critical role that the Postal Service plays in the Nation's economy, it is imperative that the U.S. Postal Service Board of Governors, which directs and controls expenditures and controls postal policy, have nine members.

Thank you very much, Madam Chairman, and I look forward to our discussion with Mr. Acton.

Chairman COLLINS. Thank you. Senator Coburn.

OPENING STATEMENT OF SENATOR COBURN

Senator COBURN. Madam Chairman, just a short opening statement.

First of all, I want to welcome Mr. Acton and congratulate him on his nomination. I am going to have several questions that came up in the staff briefing with my staff, and I will hold those.

It is an important thing, and I will say again, we do need postal reform and the Chairman's bill. Other than one little small part of it that I had a problem with, it is a great step forward. But we are not going to be there to bail you out, I can just tell you that, if you look at the long-range financial projections for the Congress in terms of appropriating money.

So I am very interested in how aggressive we can become in making the changes that make it viable, efficient, and effective in surviving.

Chairman COLLINS. Thank you.

Mr. Acton has filed responses to a biographical and financial questionnaire, answered pre-hearing questions submitted by the Committee, and had his financial statements reviewed by the Office of Government Ethics.

Without objection, this information will be made part of the hearing record, with the exception of the financial data that are on file and available for public inspection in the Committee's offices.

Our Committee's rules require that all witnesses at nomination hearings give their testimony under oath, so Mr. Acton I would ask that you stand and raise your right hand.

Do you swear that the testimony you are about to give to the Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. ACTON. I do.

Chairman COLLINS. You may proceed with your statement.

TESTIMONY OF MARK D. ACTON,[1] TO BE COMMISSIONER, POSTAL RATE COMMISSION

Mr. ACTON. Thank you, Madam Chairman, and Members of the Committee.

I am honored to be here with you today to thank you for holding this hearing to consider my nomination as Postal Rate Commis-

[1] The prepared statement of Mr. Acton appears in the Appendix on page 13.

sioner. I want to thank President Bush for his confidence in me and for the honor of nominating me for this appointment.

I am grateful, too, for the support of my home State senators, Mitch McConnell and Jim Bunning, as well as the Senate Majority Leader, Bill Frist.

My thanks to the Committee staff for their expert guidance. And I also would like to acknowledge the loving support of my family and my friends.

As many of you know, I spent most of the past 4 years on staff at the Postal Rate Commission, assisting the Agency Chairman in administering Postal Rate Commission operations. I believe that this experience has afforded me a clear appreciation of the key postal rate issues, as well as a close familiarity with the concerns of the postal community stakeholders.

If confirmed, I pledge to work with this Committee in advancing the vital element of fair and impartial due process for all that Congress has tasked the Postal Rate Commission to ensure.

Madam Chairman, I look forward to working with you and other Members of the Committee, and I would be pleased to answer any questions you may have.

Chairman COLLINS. Thank you very much.

The Collins-Carper bill establishes the Consumer Price Index (CPI) as the rate cap on each class of mail, as you are well aware. And it only allows for exigency rate changes in "unexpected and extraordinary circumstances."

The Postal Service Board of Governors has expressed support for the CPI-based rate cap but wants a far lower standard which, in my opinion, would render the rate cap meaningless. They are advocating language more similar to the House version of the Postal Reform bill and that there be a standard of reasonable and necessary.

My concern is that a reasonable and necessary standard is so easy to meet and so ill-defined that the CPI cap on rates would be easily breached and it would essentially be meaningless. Obviously, reasonable and necessary is very different from the language in our bill, which is unexpected and extraordinary.

What is your opinion of the circumstances under which an exception should be allowed under a CPI-based rate cap?

Mr. ACTON. I think that the term exigent holds meaning and that there are at least three competing assessments of what that meaning is. There is the Senate version, the House version, and the Postal Service version, as well.

It seems to me that a key element in this legislation is an exchange of greater pricing freedoms for the Postal Service and, in return, adherence to a strict exigency standard. And I abide by the Senate language in this regard.

I think that, in terms of examples of types of exceptions that may qualify, you can look to the last two rate cases. Certainly the September 11 circumstance, I think, would be an exceptional case. And perhaps even the compelling argument that the Postmaster General made on behalf of the escrow obligations could also be considered.

So in light of this history and in keeping with the spirit, I think, of the Senate language, I would agree that going forward we would

want to work to ensure that the Senate language is used in the final form of the legislation.

Chairman COLLINS. Thank you.

In your answer to written questions, you expressed the importance of the Postal Service providing high-quality, timely data to the Postal Rate Commission. The Senate-passed postal bill increases the Postal Service's obligation to provide additional data, including requiring annual cost, revenue, rates, and service reports, requiring SEC-type reporting, and granting the Postal Rate Commission subpoena power that could be used to get other information if necessary.

Do you support those changes?

Mr. ACTON. I do support it. I think that the accountability provisions in the new legislation are particularly important. Transparency and sharing information is key to a successful rate-making process.

History has shown us at the Postal Rate Commission that when the Postal Service develops new data and shares it in a timely way with the Postal Rate Commission then the postal rate setting process is enhanced.

I also believe that subpoena power is a useful tool for any regulatory authority, but one that should be used prudently and only in an instance of last resort.

Chairman COLLINS. I actually think that just having the authority to subpoena information often makes its use unnecessary.

Mr. ACTON. I think there is considerable truth in that view.

Chairman COLLINS. In a recent Postal Service filing at the Postal Rate Commission, the Postal Service included as part of its testimony information on its service standards. As I understand it, with the exception of first-class mail, the Postal Service has not updated those standards since the 1970s.

In addition, the Postal Service does not appear to track or measure its performance against those standards. It is fine to establish service standards, but if you are not measuring your performance against them, they really do not have much meaning.

The need for standards and new measurement systems is an issue that is of great importance to the mailing community. I was giving a speech in Maine last week, and a local newspaper publisher came up to me, and he said, "It is not really the rates. It is the service. It is ensuring on-time delivery of our products that matters even more to us."

This is an issue of great importance to all of us who have been working on the postal bill, and we have included language in our bill to improve the process by which service standards are set. We have also asked for GAO to take a look at this issue.

My question for you, Mr. Acton, is what do you believe is the appropriate role for the Postal Rate Commission in defining requirements for performance standards for postal products and services and for monitoring compliance with those standards? How well is the Postal Service doing in meeting those standards?

Mr. ACTON. Performance standards are a key concern. My experience is similar to yours in the sense that when I visit the various postal forums and functions, one clear message that comes through on regular occasion is the need for better performance measures.

And not just for first-class mail but also for business-class mail. It is an important piece of information for a business mailer to know when a given piece of mail in the mailstream arrives at its destination. There is real value in that information.

And I think the Postal Service needs to contemplate that going forward, given the fact that standard mail is such a growing portion of total revenue.

As far as how the Postal Rate Commission may participate, or the Postal Regulatory Commission, in facilitating that process, performance standards are met or established in answer to demand. And I think that the Postal Regulatory Commission is well-positioned to solicit what the consumer needs are, to work with the Postal Service in establishing suitable standards, and then making sure that those standards are met.

Chairman COLLINS. Thank you. Senator Akaka.

Senator AKAKA. Thank you, Madam Chairman.

Mr. Acton, the ability of the Postal Service to carry out its universal service's obligation is critically important to my State of Hawaii, which has over 628,000 delivery points throughout the State.

My question to you is, in serving as a Commissioner of the Postal Rate Commission, how will you address the preservation of this important function of the Postal Service?

Mr. ACTON. The universal service obligation is a key concern regardless of whether we reform or not. It is an important dynamic that acts to tie the Nation together by making affordable Postal Service available in even the most remote regions of the country.

I think a good start in terms of how we might advance its preservation would be offering a real definition of exactly what constitutes the obligation. I am not sure that an official definition of the universal service obligation exists.

And I believe that the Postal Regulatory Commission holds the expertise to offer some guidance and advice and a leadership role in terms of developing a definition that would help preserve the obligation in the long term.

Senator AKAKA. Thank you, Mr. Acton. The Senate's postal reform bill, which as you know passed unanimously on February 9, balances rate flexibility for the Postal Service while ensuring financial accountability and transparency of operations. Concerns have been expressed about this bill in its current form, that it would allow the new Postal Regulatory Commission to become too involved in the day-to-day operations of the Postal Service.

My question to you is do you agree with that assumption?

Mr. ACTON. Senator, I am familiar with those concerns. I would respectfully disagree. I think that the legislation, as it is drafted, provides the Postal Service management, including the Postmaster General and the top executives, with both the responsibility and the authority to manage the daily operations of the Postal Service.

I think the concerns that you describe stem from worries about the complaint process. People are concerned that under the new program, individuals who are interested in what is happening can bring complaints before the Postal Regulatory Commission and then the Agency would go about intervening in the daily minutiae of the operations of the Postal Service.

I think history proves that concern unwarranted from the standpoint that there is already a complaints process in place. The Postal Rate Commission has properly imposed certain rules that limit our intervention to those instances of complaints brought on issues of national scope only. I see no indication that going forward our approach in that regard would be any different than it is now.

Senator AKAKA. Under the Senate bill, the Postal Rate Commission will be required to develop rules for carrying out its new responsibilities in a number of areas. For example, our bill provides the Commission with 12 months to develop a system for adjusting rates while the House version allows 24 months.

Has the Commission begun thinking about what resources, including personnel, will be needed to carry out the new responsibilities? In particular, how much time will be necessary to develop the rules for charging rates?

Mr. ACTON. As you would imagine, there has been considerable discussion and thought and energy applied at the Postal Rate Commission about how to manage the transition to the Postal Regulatory Commission. The Chairman has appointed an internal working group of individuals, including our General Counsel, Steve Sharfman, as well as our Human Resource Director, our Chief Administrative Officer, and a number of other key personnel to advise the Commission on how best to go about managing this transition.

We have been searching for a qualified organizational management consultant with expertise in Federal reform. We have been engaged in informal discussions with other agencies that have undergone similar type legislative reform to get an indication on what the important pitfalls are and what worked best and what did not.

In terms of the time frames, it is so much a matter of timing. And the two key elements are when will the rate case be filed? And when will the legislation be enacted? If the rate case is filed early and nearly completed by the time that the bill is made law, then there is really not much of a competition in resources. But if they coincide, then we are going to have a real challenge on our hands.

I know that Congress has spelled out two specific time frames, 12 and 24 months. We will pursue the goal at hand in the time frame that Congress deems best. Twelve months is a very ambitious schedule. Twenty-four would allow for a more thoughtful review.

In preliminary discussions with the Chairman and with our General Counsel, the general thought is that we could accomplish and manage the transition well in approximately 18 months if allowed.

Senator AKAKA. Mr. Acton, strengthening financial transparency and accountability at the Postal Service is a longtime goal of mine. The Rate Commission and the public benefit from timely and accurate data. If confirmed, how will you address the related objectives of Postal Service accountability and transparency as outlined in the postal reform legislation?

Mr. ACTON. The accountability provisions are key to the success of the new ratemaking process. Of course, the Postal Rate Commission has a wealth of experience in accepting data from the Postal Service. Sometimes not as much as we would like.

But in terms of what is called for under the new obligations, it is SEC-type reporting and auditing of certain expertise that we do

not presently have a lot of experience in. In order for us to deal effectively with the new obligations, we likely would have to hire a small staff of individuals with professional experience in SEC-type auditing and reporting.

Senator AKAKA. Thank you very much, Madam Chairman.

Chairman COLLINS. Thank you. Senator Coburn.

Senator COBURN. Thank you. You are obviously well qualified for this position, so there are no doubts about that.

Your bachelor's degree is in what field?

Mr. ACTON. Chemistry.

Senator COBURN. And you are working on a MBA, I understand.

Mr. ACTON. That is right, University of Maryland.

Senator COBURN. My only concern I have is when you have a monopolistic process—and I am not talking about parcels, I am talking about first-class mail and on down—you have two events of control. One is cost control and the other is price increase.

We have a commission established, and we will have the Regulatory Commission. We have that. But when you are in that type of environment, the easiest thing to do is to raise prices. And so I really want to hear your philosophy about innovation and competition and streamlining and budgeting and how does the Postal Service establish the cost reductions and the efficiencies that are going to be necessary?

When I look at what I think is going to happen with mail, there is going to be a whole lot less of it, other than advertisement, newspapers, and that type of thing, and a markedly increased number of parcels. How do we handle that? And how do you stimulate the type of competition within the Postal Service?

And I know you do not manage it, you just regulate it. But how do you set the expectation from your position that you are going to hold, so that that is integrated within the Postal Service?

Mr. ACTON. It is a sensitive question, of course, Senator, for a lot of individuals, particularly the Postal Service and the interested stakeholders. I think that a lot of these issues were explored in the greater context of the work that Congress has done here in crafting the legislation that is currently pending. I know that the President's Commission was involved in a thorough assessment of all the different options.

But I do think that the price cap scheme that you are contemplating in this present legislation is going to go a long way toward forcing new efficiencies in the Postal Service. I think that sort of default response that you described on how to deal with rising costs is raising the rates is going to have to be thrown by the wayside when you introduce a situation where you have a mechanism in place such as the price cap, which forces the development of new efficiencies to meet cost rather than raising the price of the product.

Senator COBURN. What happens when, if we have the new postal reform bill, and you do not have—there is no exigent circumstances for a rate increase and yet you do not have the cost controls? What happens?

Mr. ACTON. Well, it is a worst-case scenario, of course. I think the Postal Service is recognizing the new challenge. I think that they understand the inevitability of the passage of this legislation,

as much as anyone else. I think part of their efforts to reoptimize their networks, the realignments and changes in the way that they are dealing with post offices and postal facility arrangements is an indication that they are looking to increase efficiencies that meet the sort of requirements that are pending.

Senator COBURN. Do you think there is ways to have postal reform in a way that costs are borne by those utilizing the service instead of the taxpayers?

Mr. ACTON. Do I think that there is a way that can be done?

Senator COBURN. Yes.

Mr. ACTON. I would have to give that some thought, Senator. A successful approach does not come immediately to mind. I know that there have been a number of theories in this regard, certain new approaches in terms of how they go about doing pricing and particularly rate review, in general. But I do not know offhand what specific approach we would want to engage in.

Senator COBURN. One final question, one of the things that I would worry about as a Commissioner would be would we price ourselves out of business based on technology? That would be one of the things that I would think everybody working in the Postal Service would be concerned with, that as technology advances further and further that, in fact, even under the reform bills many of the people who have well served the Postal Service for years and are new into the Postal Service may, in fact, find that there is not a market there any more because technology has superseded them. Any comments on that?

Mr. ACTON. Yes. What you are describing is the postal death spiral phenomena, and it is attributed, in large part, to what is called electronic diversion, which is people using e-mail rather than postal services.

But it has been my impression and I think there have been some interesting studies done on this by Pitney Bowes and others that show that the expectation on how technology is going to impact the postal mail stream is not necessarily predictable.

It seems to be as you describe, but on the other hand more people using the Internet, for instance, means more packages to be delivered, which means more product and service deliveries for the Postal Service. Now it is not an even exchange in terms of first-class versus parcel delivery, but I think there are some uncertain dynamics at work that are difficult to anticipate.

Senator COBURN. Just one little comment before my time runs out. I can envision somebody innovating, say come to us. We will, in fact, print all of your catalogs and all of the junk mail I get every day. And we will package them in a box. And we will use somebody outside the postal—we will use another competitive market, or the parcel service of the post office, rather than that class of mail today.

And in fact, we do not have mail as we know it today. What we have is packages.

And so in that area you are competing effectively. And the question I would have is as a revenue stream, are you profitable in that? And is that subsidizing the other? Or is one subsidizing that? Because if that kind of thing happens, will you be in the position

where you are competitive enough in the parcel business to compete if that were to happen?

Mr. ACTON. I think it is important to point out that the Postal Service has been very active in terms of dealing with what is happening with new technology. In fact, the situation you describe is comparable to their online mailing service, which has been a big success for them. And I think that they are realizing that they are going to have to do more of that sort of innovative thought across the board, not just in terms of how they approach their service obligations but also in terms of the rate-making process.

So I am hopeful that the Postal Service, particularly under the leadership of someone like General Potter, is going to see what the vision of the future is and come to terms with it in a positive, productive, profitable way.

Senator COBURN. Thank you very much.

Mr. ACTON. Thank you, Senator.

Chairman COLLINS. Mr. Acton, I just want to clarify an exchange that you just had with Senator Coburn because I think it is based on an outdated perception.

It is my understanding that the Postal Service has not received a taxpayer subsidy for a number of years, except for services provided to the blind and for overseas mailing. Is that correct?

Mr. ACTON. I would have to research that to know the answer in a definitive way, Senator, but I do believe I have heard that.

Chairman COLLINS. That is correct.

Senator COBURN. Can I raise a question? Not all of the costs of the Postal Service are borne by the Postal Service, especially when it comes to health care, retirement, benefits, and everything else. So my question just relates—not implying that there was but under the reform that preceded this one that is coming when it was reorganized, not all of it is a cost center within it.

So when decisions are made within it, it does not truly reflect necessarily all of the costs associated with the U.S. Postal Service.

Chairman COLLINS. There are issues on allocating costs to various users and classes of mail, and how much should be allocated. But it has been a number of years since the Postal Service has received an appropriation.

Senator COBURN. I understand that.

Chairman COLLINS. One of the problems that our bill, which Senator Akaka is a cosponsor of, is intended to help with are those unfunded liabilities for workers compensation claims and for retiree health insurance, which amount to billions of dollars.

The legislation that we have advanced makes a big dent in those unfunded liabilities by requiring three-quarters of the funds from the escrow account to be used to prefund the health insurance obligations that are due to future retirees.

Moreover, the debt that the Postal Service did owe to the U.S. Treasury has largely been eliminated in the past few years by being paid down. I just wanted to clarify the record on that point.

Mr. Acton, in my haste to discuss policy issues with you, I skipped over the standard questions that we ask of every nominee. So let me do that now.

First, is there anything you are aware of in your background which might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. ACTON. No.

Chairman COLLINS. Second, do you know of anything personal or otherwise that would in any way prevent you from fully and honorably discharging the responsibilities of the office?

Mr. ACTON. No.

Chairman COLLINS. And finally, do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress, if you are confirmed?

Mr. ACTON. Yes.

Chairman COLLINS. Thank you. Senator Akaka.

Senator AKAKA. Thank you, Madam Chairman.

Mr. Acton, given the new responsibilities we discussed in the previous question, I am curious what additional funds will be needed by the Postal Rate Commission? Has this aspect been examined by the Commission?

Mr. ACTON. This aspect of the transformation has not been thoroughly defined, Senator. Presently our budget is near $10 million. I think we are going to need more than that perhaps to accomplish the goals in the new legislation.

But I would hesitate to offer you a guess without more information. But this is one of the questions that the working group is planning on advising the Chairman of the Agency soon in very close term, hopefully prior to the filing of the next rate case.

Senator AKAKA. Mr. Acton, it is expected that the Postal Service will file a new rate case sometime this spring or summer. If the Postal Rate Commission is considering a rate increase under existing law when the legislation is enacted, how will this impact the Commission's ability to meet all of its additional responsibilities as proposed in the current legislation?

Mr. ACTON. It will be a great challenge. I think I mentioned earlier a lot of it is dependent upon timing, the two factors being when the bill is enacted and when the rate case is filed. If we are able to complete most of the work that is required in terms of fully litigating the case prior to the enactment of the bill, then the conflict of resources will not exist as predominantly as they would if the circumstances were different.

It is really an instance by instance sort of assessment. We will have to deal with it as it comes, but certainly there will be a stretch of resources if we are asked to not only complete the existing final cost-based omnibus rate case but also implement the new obligations of the new legislation.

I just want to add that the key consideration here, Senator, is understanding, as I know you do, that the final omnibus rate case set under the old scheme will act as the baseline going forward under the new price cap regimen. It is important that we have a fully litigated case so we can resolve any inequities and go forth with a fully balanced and equitable rate plan so that the implementation of the new legislation can be met with great success.

Senator AKAKA. I thank you so much for your responses. Thank you, Madam Chairman.

Chairman COLLINS. Thank you. Senator Coburn.

Senator COBURN. No questions.

I would note, however, my question regarding taxpayer liability was really about the future, not really about the past. That is our worry and that is the Postal Service's worry. They have to become totally self-sufficient and independent given the fiscal situation. So mine is really about the future, not the past.

Chairman COLLINS. That is a helpful clarification. One of the motivations for the postal reform legislation is to prevent the need for a taxpayer bailout.

Senator COBURN. I will get there, Madam Chairman, I promise.

Chairman COLLINS. Eventually I am going to get a yes vote from you on something.

Senator COBURN. You are.

Chairman COLLINS. I want to thank our witness for appearing before the Committee today.

Senator Akaka, I should ask if you have any further questions?

Senator AKAKA. I am fine. Thank you.

Chairman COLLINS. Without objection, the record will be kept open until 12 noon on Monday, April 3, for the submission of written questions or statements for the record.

And again, Mr. Acton, I would encourage you to turn around those questions as rapidly as possible because it will help us move your nomination along.

I thank you very much for your willingness to serve. This hearing is now adjourned.

[Whereupon, at 11:39 a.m., the Committee was adjourned.]

APPENDIX

PREPARED STATEMENT OF MARK D. ACTON
March 31, 2006

THANK YOU MADAME CHAIRMAN AND MEMBERS OF THE COMMITTEE. I AM HONORED TO BE WITH YOU AND I THANK YOU FOR HOLDING THIS HEARING TO CONSIDER MY NOMINATION AS POSTAL RATE COMMISSIONER.

I WANT TO THANK PRESIDENT BUSH FOR HIS CONFIDENCE IN ME AND FOR THE HONOR OF NOMINATING ME FOR THIS APPOINTMENT. I AM GRATEFUL FOR THE SUPPORT OF MY HOMESTATE SENATORS MITCH MCCONNELL AND JIM BUNNING, AS WELL AS THE SENATE MAJORITY LEADER BILL FRIST. MY THANKS TO COMMITTEE STAFF FOR THEIR EXPERT GUIDANCE AND I WOULD LIKE ALSO TO ACKNOWLEDGE THE LOVING SUPPORT OF MY FAMILY AND FRIENDS.

AS MANY OF YOU KNOW, I'VE SPENT MOST OF THE PAST FOUR YEARS ON STAFF AT THE POSTAL RATE COMMISSION ASSISTING THE AGENCY CHAIRMAN IN ADMINISTERING PRC OPERATIONS. I BELIEVE THAT THIS EXPERIENCE AFFORDS ME A CLEAR APPRECIATION OF KEY POSTAL RATE ISSUES, AS WELL AS A CLOSE FAMILIARITY WITH THE CONCERNS OF THE POSTAL COMMUNITY STAKEHOLDERS.

IF CONFIRMED, I PLEDGE TO WORK WITH THIS COMMITTEE IN ADVANCING THE VITAL ELEMENT OF *FAIR AND IMPARTIAL DUE PROCESS FOR ALL* THAT CONGRESS HAS TASKED THE PRC TO ENSURE.

MADAME CHAIRMAN I LOOK FORWARD TO WORKING WITH YOU AND THE OTHER MEMBERS OF THE COMMITTEE AND I WOULD BE PLEASED TO ANSWER ANY QUESTIONS.

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

1. **Name:** (Include any former names used.) Mark David Acton

2. **Position to which nominated:** Postal Rate Commissioner

3. **Date of nomination:** November 7, 2005

4. **Address:** (List current place of residence and office addresses.)

   901 New York Ave. NW, Postal Rate Commission, West Tower 2nd floor, Washington DC 20001 (office)

5. **Date and place of birth:** 11/09/1959 Louisville, KY

6. **Marital status:** (Include maiden name of wife or husband's name.) Single

7. **Names and ages of children:** None

8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.

   University of Maryland, July 2005 to present, Masters of Business Administration, degree candidate 2006
   University of Louisville, Louisville, KY, 09/77-09/82, BA degree granted May, 2005
   University of the District of Columbia, 01/03-05/05
   Northern Kentucky University, 05/03-07/03
   Harry Doss High School, Louisville, KY, 1974-1977, degree granted August, 1977

9. **Employment record:** List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)

   United States Postal Rate Commission, Washington, DC
   Special Assistant to the Chairman - *March 2002 to present*
   - assist agency chief in managing the operations of this Executive Branch regulatory authority charged with independent review of domestic postal rates and service. Participate fully in briefings and deliberations of the Commission concerning all matters within agency purview. Advise the Chairman regarding all proceedings and related matters brought before the Commission for review and recommendation. Serve as agency liaison to the White House, U.S. Congress, U.S. Postal Service (USPS), the President's Commission on the United States Postal Service, and other governmental and private sector entities. Represent agency at USPS Board of Governors meetings, as well as various postal forums and functions.

   Committee on Arrangements for the 2004 Republican National Convention, New York, NY
   Deputy to the Chairman - *July 2003 to September 2004*
   - provided executive oversight in the planning for and management of a political party national convention. Served primarily as liaison between 2004 Republican National Convention and NYC Host Committee 2004 operations in New York City and Republican National Committee leadership in Washington, DC.

   Republican National Committee, Washington, DC
   Staff Director, Counsel's Office - *November 1996 to March 2002*
   Special Assistant to the Chief Counsel - *July 1993 to March 2002*

- assisted counsel in directing national political party committee legal support operations including representation before the Federal Election Commission and state campaign finance agencies, communications script and finance copy review, management of insurance and liability concerns, copyright and trademark and employment law issues, contract negotiations and administration, as well as fielding federal, state, and local party and campaign committee requests for assistance. Responsible also for divisional administrative and personnel matters, budget preparations, and convention and meeting arrangements.

Government Relations Officer, Counsel's Office - *March 2001 to March 2002*

- involved in national and state party organization efforts to manage federal and state legislative agendas including campaign finance and election administration reform. Coordinated legislative issue briefings for RNC officers, members, and staff, developed position papers and prepared strategic action recommendations. Liaison with National Conference of State Legislatures, American Legislative Exchange Council, Republican Governors Association, National Republican Senatorial Committee, National Republican Congressional Committee.

Redistricting Coordinator - *November 1997 to March 2002*

- engaged preparations to offer comprehensive GOP support concerning state and federal legislative redistricting, reapportionment, and the census. Coordinated situational briefings and media relations. Acted as RNC liaison on related issues with the various political entities and state and federal governmental agencies including the U.S. Department of Commerce, U.S. Bureau of the Census, and the Census Monitoring Board.

National Republican Congressional Committee, Washington, DC

Deputy Redistricting Director - *March 1989 to January 1993*

- worked with Republican Members of the U.S. House of Representatives and staff in preparing for the decennial congressional redistricting process.

Republican National Committee, Washington, DC

Assistant to the Computer Services Director - *August 1986 to February 1989*

- provided administrative and user-support supervision for data and word processing activities. Participated in the development and implementation of technical support for the 1988 Republican National Convention, national voter list program, and in-house databases.

Assistant Finance Director for the Major Donor Program - *January 1985 to July 1986*

- donor list development, maintenance and correspondence, event planning.

10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with federal, State, or local governments, other than those listed above.

None

11. **Business relationships:** List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

None

12. **Memberships:** List all memberships and offices currently or formerly held in professional, business, fraternal, scholarly, civic, public, charitable and other organizations.

Kentucky Society of Washington

13. **Political affiliations and activities:**

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Employed by Republican National Committee and National Republican Congressional Committee

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 5 years.

Bush-Cheney '04
7/03/03 $2,000

Holtzman Vogel for Senate (Republican candidate for Virginia Senate District 27)
3/24/05 $200
8/27/05 $200

14. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

None

15. **Published writings:** List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.

None

16. **Speeches:** Provide the Committee with four copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

None

17. **Selection:**

(a) Do you know why you were chosen for this nomination by the President?

On the basis of my professional qualifications.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

1. Expertise in postal industry issues and concerns, as well as familiarity with key stakeholders, through three years of public administration experience assisting the Postal Rate Commission Chairman in managing all aspects of agency operations.
2. Nine years of professional experience in the law including issues of legislative reform as Staff Director for the Republican National Committee Counsel's Office.
3. Direct mail marketing management experience as Assistant Finance Director for the Republican National Committee.
4. Graduate level technical training in Business Administration including Managerial Accounting, Financial Accounting, Business and Product Marketing Strategy, Data Analysis/Statistics & Decision Modeling, Information Systems Management, and Executive Skills Mastery.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

   I am employed by the Postal Rate Commission.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

   No

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

   No

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

   No

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

   I expect to serve out the full term.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

   None

2. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy other than while in a federal government capacity.

   On behalf of and in the employment of the Republican National Committee:
   - Election administration reform
   - Campaign finance reform
   - Legislative redistricting reform

3. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

   Yes

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee,

or other professional group? If so, provide details.

No

2. To your knowledge, have you ever been investigated, arrested, charged or convicted (including pleas of guilty or nolo contendere) by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, other than a minor traffic offense? If so, provide details.

No

3. Have you or any business of which you are or were an officer, director or owner ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

Small Claims and Conciliation Branch, Civil Division, Superior Court of the District of Columbia
Resolved by mutual settlement and release in February, 1992

4. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

None

E. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

AFFIDAVIT

Mark Acton being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Mark Acton

Subscribed and sworn before me this 17th day of NOV, 20 05.

Notary Public

JEONG E. LEE
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires January 1, 2010

U.S. Senate Committee on Homeland Security and Governmental Affairs
Pre-Hearing Questionnaire for the
Nomination of Mark Acton to be Commissioner, Postal Rate Commission

I. Nomination Process and Conflicts of Interest

1. Why do you believe the President nominated you to serve as Commissioner of the Postal Rate Commission (PRC)?
   - My professional history of active involvement in postal policy, regulatory, and legislative matters.

2. Were any conditions, expressed or implied, attached to your nomination?
   - No.

3. What specific background and experience affirmatively qualifies you to be Commissioner?
   - Professional expertise in postal industry issues and concerns, as well as familiarity with key stakeholders, through three years of public administration experience assisting the Postal Rate Commission Chairman in managing all aspects of agency operations.
   - Nine years of professional experience in the law, including regulatory and legislative issues as Staff Director for the Republican National Committee Counsel's Office.
   - Direct mail marketing management experience as an Assistant Director for Republican National Committee Major Donor Finance Programs.
   - Applicable graduate level technical training in Business Administration including Managerial Economics and Public Policy, Managerial Accounting, Financial Accounting, Business and Product Marketing Strategy, Data Analysis/Statistics and Decision Modeling, Information Systems Management and Executive Skills Mastery.

4. Have you made any commitments with respect to the policies and principles you will attempt to implement as Commissioner? If so, what are they and to whom have the commitments been made?
   - None.

5. If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? If so, please explain what procedures you will use to carry out such a recusal or disqualification.
   - None.

6. In responses to the Committee's biographical questionnaire, you state that you were a student at University of Louisville between September 1977 and September 1982, but did not receive a degree from the University until May 2005. Please elaborate on your

undergraduate education. Between September 1977 and September 1982 were you a full-time student? Were you employed during this 5-year time period?

- I attended the University of Louisville between September 1977 and September 1982 as a full-time and part-time student, completing all but one semester of undergraduate study. I was employed part-time during this period as a medical laboratory technician. I completed my remaining hours of undergraduate study and received a Bachelor's degree in May 2005.

7. In the biographical information that you provided for the Committee you stated that you were at Northern Kentucky University between May 2003 and July 2003, while still employed by the PRC. Were you a full-time student during this period?
    - I enrolled in the Northern Kentucky University distance learning program as a part-time student.

8. In the biographical information that you provided for the Committee, there is nothing listed in your background for the period between September 1982 and January 1985. The first item listed under "Employment Record" is "Assistant Finance Director for the Major Donor Program" for the Republican National Committee beginning in January 1985, and under "Education" you state that you were no longer at University of Louisville after September 1982. Please explain to the Committee if you were employed, taking classes, or otherwise engaged between September 1982 and January 1985.
    - I was employed full-time at Jewish Hospital in Louisville, Kentucky as a medical laboratory technician between September 1982 and January 1985.

9. According to your biographical information, you have been employed as "Special Assistant to the Chairman" at the PRC from March 2002 until the present, and as "Deputy to the Chairman" at the Committee on Arrangements for the 2004 Republican National Convention between July 2003 and September 2004.

    a. This indicates that from July 2003 until September 2004 you were employed by the PRC and the Republican National Convention simultaneously. Please explain this discrepancy.
        - I was employed by the Republican National Convention from July 2003 until September 2004 while on unpaid leave of absence from the PRC.

    b. While employed by the Republican National Convention, what, if any, relationship did you maintain with the PRC?
        - I was on unpaid leave of absence from the PRC while employed by the Republican National Convention

    c. Between July 2003 and September 2004, did you continue to receive a salary from the PRC?
        - I received no salary from the PRC while employed by the Republican National

Convention.

d. Were you involved in any decisions at the PRC while employed by the Republican National Convention?
   - None.

e. Were you in contact with members or employees of the PRC while employed by the Republican National Convention?
   - I was in touch with members and employees of the PRC while employed by the Republican National Convention, because a number of individuals from the agency attended the event.

f. Were you on leave while employed by the Republican National Convention? What kind of leave?
   - I was on unpaid leave of absence from the PRC while employed by the Republican National Convention.

g. Did you receive a commitment that your job would still be available upon your return? Please explain the nature of any commitments you received.
   - There was no commitment that a position at the PRC would be available once my employment with the Republican National Convention was complete.

10. In the response to Question 17 in the Committee's biographical questionnaire, which asks about your qualifications for the position for which you were nominated, you state that you have: "Direct mail marketing management experience as Assistant Finance Director for the Republican National Committee."

    a. What was your role with respect to direct mail sent out by the Republican National Committee when you were Assistant Finance Director?
       - I was responsible for assisting the RNC Finance Major Donor Program Director with direct mail marketing development and targeting efforts as well as donor fulfillment and list management.

    b. How do you believe that this experience will help you fulfill your responsibilities if confirmed as Postal Rate Commissioner?
       - Having first-hand professional experience in the direct mail industry offers me a personal view of the issues and concerns that most impact postal ratepayers. Consequently, I hold a widened perspective and greater context in terms of appreciating the import to the industry stakeholders of the role of the PRC.

    c. If confirmed, how would your experience inform your decision-making about postal rates as applicable to large mailers?
       - I have a personal awareness from professional experience that postal costs can

be among large mailers' greatest operational expenses. I understand that an active PRC is a key player in promoting the due process consideration called for on behalf of all mailers, large and small, in order to participate meaningfully in the rate-setting process.

11. In the same section of the biographical questionnaire about qualifications, you state that you have: "Graduate level technical training in Business Administration including Managerial Accounting, Financial Accounting, Business and Product Marketing Strategy, Data Analysis/Statistics & Decision Modeling, Information Systems Management, and Executive Skills Mastery." Please elaborate on your background in these areas. Specifically, where and when did you receive technical training in each of the subjects that you listed?
    - Since June 2005 I have completed graduate level technical training in Business Administration including Managerial Accounting, Financial Accounting, Business and Product Marketing Strategy, Data Analysis/Statistics and Decision Modeling, Information Systems Management, Executive Skills Mastery, and Managerial Economics and Public Policy as a 2006 degree candidate for a Masters of Business Administration from the University of Maryland Robert H. Smith School of Business in College Park, Maryland.

II. Role of the Commissioner, Postal Rate Commission

12. What is your view of the role of a Commissioner of the PRC?
    - To forward an independent, executive branch agency review of domestic postal rates and classifications.

13. In your view, what are the major internal and external challenges facing the PRC and how would you, as Commissioner, address these challenges?
    - The internal challenge is in managing organizational resources to best address matters pending before the agency – particularly in the context of an omnibus rate case. Additionally, it is vital that the agency expertise and resources be adaptable and current with changing needs and priorities. As Commissioner, I would endeavor to address these concerns through working with colleagues and agency staff to assess competing demands and set related goals.

    - The external challenge is in maintaining an informed and current understanding of stakeholders' concerns– the postal service customer foremost. The pending postal reform legislation also is an important consideration in terms of preparing for whatever legislative mandate may be forthcoming.

14. What do you think should be the PRC's top priorities?
    - Fair and expeditious review of matters before the agency.
    - Cooperative approach in working with the Postal Service and mailing

community toward best service at fairest cost.
- Assisting Congress in maintaining a vital USPS.

15. If confirmed, how would you communicate with PRC staff to receive their input on the activities and policies of the office and to accomplish your priorities?
    - At regular staff meetings, as we do now, with both the senior management team and individually.

16. If confirmed, what contributions do you hope to make during your tenure at the PRC? During your time as Special Assistant to the Chairman, what contributions do you believe you have already made to the Commission?
    - The expeditious provision of fair due process for all postal stakeholders as called for by law, while bringing to the table an impartial evaluation of the issues.
    - During my tenure as Special Assistant to the PRC Chairman I have assisted in promoting the agency priority of fair and speedy due process consideration for all postal ratepayers. I have been involved in agency efforts to forward the introduction of new and innovative pricing arrangements such as Negotiated Service Agreements. I have been active also in facilitating a staff recruitment program designed to supplement the PRC's highly experienced but aging professional staff.

17. The Senate postal reform bill, S. 662, would establish a new Postal Regulatory Commission with greater responsibilities than the current Postal Rate Commission. The bill also provides that individuals who are members of the Postal Rate Commission will automatically become members of the new Postal Regulatory Commission when the bill is enacted. The qualifications in the bill for being nominated to the Postal Regulatory Commissioner are: "The Commissioners shall be chosen solely on the basis of their technical qualifications, professional standing, and demonstrated expertise in economics, accounting, law, or public administration. ... Each individual appointed to the Commission shall have the qualifications and expertise necessary to carry out the enhanced responsibilities accorded Commissioners under [S. 662]."

    a. If your nomination to the Postal Rate Commission is confirmed, and if S. 662 is enacted, would you intend to continue serving on the new Postal Regulatory Commission?
        - Yes.

    b. Please describe in detail your "technical qualifications, professional standing, and demonstrated expertise in economics, accounting, law, or public administration" needed to carry out the "enhanced responsibilities accorded Commissioners" that would satisfy the criteria set forth in S. 662 for nomination to the Postal Regulatory Commission.

Having been on staff at the Postal Rate Commission for most of the past four years and actively involved in the unfolding legislative reform process affords me, I believe, an experienced perspective of Congressional intent with respect to the role of Postal Regulatory Commissioner. In detailing my qualifications for carrying out the responsibilities accorded Commissioners, I reference an earlier response including:

- Professional expertise in postal industry issues and concerns, as well as familiarity with key stakeholders, through three years of public administration experience assisting the Postal Rate Commission Chairman in managing all aspects of agency operations.
- Nine years of professional experience in the law including regulatory and legislative issues as Staff Director for the Republican National Committee Counsel's Office.
- Direct mail marketing management experience as an Assistant Director for Republican National Committee Major Donor Finance Programs.
- Applicable graduate level technical training in Business Administration including Managerial Economics and Public Policy, Managerial Accounting, Financial Accounting, Business and Product Marketing Strategy, Data Analysis/Statistics and Decision Modeling, Information Systems Management, and Executive Skills Mastery.

III. Policy Questions

Postal Ratemaking

18. The postal ratemaking process has been frequently criticized for being too cumbersome, taking too long, and being too adversarial to best serve the financial interests of the Postal Service. Do you agree and, if so, what administrative changes do you think the PRC could make under its existing authority to improve the postal ratemaking process?

    - Guaranteeing the opportunity for public input on decisions regarding a public monopoly is a good idea and in keeping with the greater goal of ensuring a vital USPS best suited to serve the needs of the customer. I would agree that in my experience due process does take time, and if done with proper expediency is typically worthy of the time involved. A cooperative, but arms-length rapport between the USPS and the Postal Rate Commission works best in promoting the financial interests of the Postal Service through a thorough review process that is completed as quickly as possible.

      The PRC has been proactive in fostering administrative and other changes toward improving the postal ratemaking process including periodic reporting of Postal Service operating results and the advent of omnibus case "roadmap"

testimony. Additionally, the agency has interpreted the present regulatory scheme to permit the use of innovative pricing approaches including negotiated service agreements as well as phased rate cases.

19. Congress is considering proposals to change the postal ratemaking process from the current cost-of-service model to other models such as a price-cap system. What are your views on the advantages or disadvantages of moving to a price-cap system to set postal rates?
    - From a mailer's perspective, one key advantage of this type of reform is to model a PRC designed to promote USPS efficiencies and cost effectiveness. Given that postal rate increases historically have generally mirrored the nation's Consumer Price Index (CPI), enhancing the Postal Service's flexibility in setting postal rates while restraining rate increases through the implementation of a price-cap system seems a likely advancement toward this goal.

      Disadvantages may include meeting the challenges of ex-poste review of rate changes once they already have been enacted.

20. Some parties have criticized the quality of data used by the Postal Service to support proposed rate increases. Are changes in the current ratemaking process needed to incorporate more timely information? What do you believe should be the role of the PRC in ensuring that the quality and timeliness of the Postal Service's data is adequate?
    - When the Postal Service moves to improve data quality and share that data in a timely manner, the current ratemaking process is able to incorporate more timely information. Periodic reporting outside the context of the major rate cases would enable better, faster data analysis. Once data is made available by the Postal Service for review, expert industry and PRC staff assess the data for quality and timeliness. Providing the agency subpoena power may be one way to strengthen any PRC role in this respect.

21. Some mailers have proposed changing the basis for setting rates for postal products and services from the current subclass-based costing method (under the current regulatory framework, rates are designed to cover attributable costs, plus a markup of a share of the non-attributable, institutional costs) to a "bottom-up" approach that would be based on the costs of resources consumed through services provided at various points of access to the postal network. What do you believe would be the advantages and disadvantages of such a "bottom-up" approach to setting rates? Do you think a "bottom-up" costing approach would be better than the current costing method - why or why not?
    - While the present approach works within given limits, bottom-up costing has not yet been presented thoroughly to the PRC. Bottom-up costing in theory may make for more refined postal pricing, but could be compromised in practical application by the circumstance that reliable use of the bottom-up approach requires cost data more refined than the present costing system may be able to accurately provide. I look forward to learning more about the feasibility of bottom-up costing.

22. Some have expressed concerns that the Postal Service's worksharing discounts may not be adequately covered by the actual cost savings achieved. How would you address these concerns - whether by legislation, or otherwise?
    - The PRC holds an obligation and does presently make every effort to ensure that worksharing discounts are adequately covering expected costs savings. A PRC with subpoena power may be better equipped to gather for consideration the USPS data needed to verify the validity of workshare discount arrangements.

Postal Reform

23. What are your views on whether changes are needed to the role of the PRC as part of postal reform to strengthen its regulatory oversight responsibilities?
    - One key responsibility tasked to the PRC by Congress as part of the legislative reform is assurance of USPS transparency. It is my view that greater postal pricing flexibility for the Postal Service comes hand-in-glove with greater organizational transparency. Under reform, the PRC would need to be suitably empowered to ensure proper Postal Service data collection and disclosure. The current provisions seem appropriate in this respect.

24. The Postal Service Board of Governors ("the Board") maintains that their primary issue with both S. 662 and H.R. 22 is that of governance. In particular, the Board believes the regulator should focus solely on the appropriateness of postal rates. Among other things, the Board believes the bills propose overly broad complaint processes which would allow the regulator to hear complaints on almost every aspect of postal business. The Board also opposes the proposed shift of final authority on rates from the Board to the regulator. Do you believe the governance changes contained in S. 662 and H.R. 22 are necessary, why or why not?
    - While I appreciate the Board's view in these concerns, I respectfully disagree in some key respects. It is my view that S. 662 and H.R. 22 work to encourage a more efficient and effective postal service system by diligently striking a careful balance of provision for USPS transparency, accountability, and oversight in exchange for increased pricing flexibility. Regarding the specific issue of governance, in my view, these legislative proposals afford the Governors both the responsibility and the authority to manage the Postal Service. Current law requires the PRC to consider rate and service complaints, however, the PRC has properly established rules limiting agency involvement to issues of substantial national consequence. I know of no indication that the new legislation would require deviation from this proven policy.

25. Do you think that universal postal service needs to be more precisely defined, and if so, what contribution could the PRC make to defining universal service?

- Universal postal service should be precisely defined and the PRC holds staff expertise that may be helpful in that endeavor. The ratepaying public is entitled to know the extent of the USPS universal service obligation.

26. Recent legislative reform proposals, such as S. 662, are intended to eliminate traditional rate cases, to set baseline rates for non-competitive postal services in an expeditious administrative process based on clear guidelines using a specified rate adjustment factor, and to make rate changes subject to after-the-fact review by an independent postal regulator. Would you be in favor of this reform proposal, why or why not?
    - In the interest of promoting USPS operational efficiencies and cost effectiveness, I favor reform proposals such as S. 662 that act to balance the Postal Service's need for greater pricing freedoms against proper oversight through enhanced transparency and disclosure.

27. What key statutory or regulatory mechanisms are needed in the postal rate-setting process to protect postal customers against undue discrimination and to ensure due process?
    - In the same sense that current language protects due process, clear and unambiguous criteria for the rate-makers to reference when engaged in postal pricing deliberations are appropriate.

28. At present, the Postal Service periodically issues regulations that define the scope of its monopoly over the delivery of letter mail and access to mailboxes. Certain postal stakeholders believe such authority should be given to the regulator. Do you agree that such authorities should be given to the regulator? Why or why not? What principles should guide these decisions?
    - Having a monopoly enterprise unilaterally determine the scope of its monopoly is worrisome. I would agree that it is important to ensure that some third party representation on behalf of the mailing public be central to the process. Provided that the regulator is afforded sufficient oversight authority in reviewing USPS decisions in this regard when needed, the PRC could be suited to fulfill this third party role.

29. Some postal stakeholders have suggested that the PRC should have a stronger role in defining requirements for performance standards for postal products and services and for monitoring the Postal Service's results in meeting these standards. What are your views in this area? What do you believe are the advantages and disadvantages of allowing the Postal Service to sets its own service standards?
    - Because reasonable service standards should reflect consumer needs and as by law consumers have no alternate provider, meaningful consultation with stakeholders is paramount toward properly reflecting and then meeting this demand. The active participation of outside groups is key toward helping to ensure that the USPS meets performance goals, and the PRC could be active in facilitating this process. Provided that these considerations come in hand with

active sharing of service performance data, I find no inherent conflict in the USPS playing a leading role in defining its product performance standards. Organizational participation and buy-in when establishing these goals strengthens the likelihood that such commitments may be met.

30. Many postal stakeholders have raised concerns about the adequacy of the Postal Service's financial transparency. How can the Postal Service improve the transparency and accountability of its financial and operational performance?
    - Share more data more frequently outside the context of an omnibus rate case and make less use of "commercially sensitive" protective measures. One approach toward improved transparency and accountability, as provided for in proposed legislation, calls for the USPS to file publicly a level of information comparable to that presently required by the Securities and Exchange Commission for publicly traded enterprises.

31. Are there legislative changes, beyond those included in S. 662 and H.R. 22, that Congress should consider to enhance the Postal Service's transparency and accountability and if so, what changes may be needed? What should be the regulator's responsibilities in this area?
    - It is my view that the PRC, when asked by Congress to do so, has been an active partner in the development of the relevant provisions of the present legislation and I am satisfied that the current language is sufficient and appropriate.

32. One area of debate has focused on what type of new products and services the Postal Service should be allowed to provide. What are your views on this issue? What role do you believe that the PRC should play in the introduction or pricing of new products and services?
    - It is my general view that the Postal Service would meet with best success by focusing on the provision of its core "postal" products and related mail delivery operations. The PRC should continue to review any proposed USPS pricing of new products and services, including market tests, and offer recommendations.

33. Another concern has focused on the Postal Service's activities in the competitive marketplace. What role, if any, do you believe that the PRC should play in ensuring "fair competition?"
    - The PRC role is to ensure that no cross-subsidization exists. In the competitive marketplace, free market dynamics should dictate fair competition.

34. S. 662 requires that rate increases be capped by increases in the Consumer Price Index (CPI), with exceptions only for "unexpected and extraordinary circumstances." (This provision was intended to allow rate increases to exceed the CPI-based cap in response to such circumstances as the terrorist attacks of September 11, 2001 and the subsequent contamination of the mail with anthrax.) The members of the Postal Board of Governors

stated in September 13, 2005 letters to the Chairman and Ranking Member of this Committee that they support the CPI-based rate cap combined with the standard in the House bill that allows exceptions that are "reasonable and necessary." However, the Governors expressed concern that implementation of the CPI-based rate cap with a more stringent exigency standard could result in extensive downsizing of postal operations and services. What is your opinion of the appropriateness of combining a CPI-based rate cap with a strict exigency standard such as the one in S. 662, in comparison with combining the CPI-based rate cap with the less-strict exigency standard in the House bill?

- The term exigent holds meaning, and, in my opinion, under the proposed new regime USPS management brokers rate setting flexibility in exchange for a strict exigency standard. As the most recent two omnibus rate increases would seem to have qualified for implementation under the Senate language, the provision appears appropriately and practically purposeful.

35. The Postal Service has said that it should be able to retain earnings as well as request exigent rate increases. What level of retained earnings, if any, should be considered appropriate in an exigent rate case? Do you believe statutory criteria are necessary to guide decisions in this area?

- A clear understanding of how Congress frames and interprets "exigent" may prove helpful, but exigent rate cases are by nature an instance by instance assessment based on facts presented. In the most recent omnibus case for example, retained – though restricted - earnings in the form of escrow costs were permitted. More guidance from Congress with respect to the policymakers' views of retained earnings within this context may be helpful.

36. In a September 13 letter to Chairman Collins, the Postal Service Board of Governors expressed a need to "initiate a final, omnibus rate case under the current rules... If the Postal Service is unable to recover certain increases in costs...it would be at a significant deficit when moving into a price cap regime." Do you agree with the Postal Service that a final omnibus rate case in 2007 is necessary, why or why not?

- Yes, to establish a fair and equitable standard for recovery of costs going forward.

Post Office Closings and Relocations

37. In your opinion, does the existing process for closing and relocating post offices adequately protect the interests of postal customers and the affected communities?

- Yes, provided that USPS follows prescribed procedures and adequately accommodates community concerns. The existing process is designed to protect the interests of postal customers and the affected communities. One tactic toward better ensuring that these key interests are suitably addressed may be to make certain through careful review that the affiliated process procedures are observed in a thorough and timely fashion.

38. Do you believe it is appropriate for the Postal Service to be openly transparent about which post offices it plans to close and the reasons for closing them? Do you believe it is appropriate for the Postal Service to develop and publish the specific standards it plans to use to determine which post offices to close?
    - Yes and yes.

39. Does the process for closing and relocating post offices need to be improved? If so, how, and are legislative changes needed?
    - Careful adherence to the present process in concert with an improved solicitation and sharing of customer input may be one productive path toward process improvement. For instance, a thorough review of consumer concerns regarding the current practice could offer insight into how the Postal Service may better reflect and accommodate local and regional service needs and impact. It is my understanding that current law requires the USPS to observe certain rules and procedures when closing, but not when relocating, post offices. Clearer standards for both closing and relocating post offices could be helpful as well.

IV. Relations with Congress

40. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?
    - Yes.

41. Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if you are confirmed?
    - Yes.

V. Assistance

42. Are these answers your own? Have you consulted with the PRC or any interested parties? If so, please indicate which entities.
    - I have consulted with the Postal Rate Commission and staff.

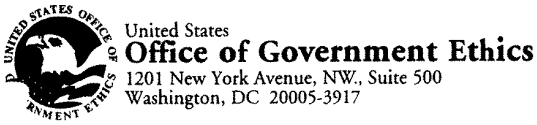
AFFIDAVIT

I, Mark Acton, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Subscribed and sworn before me this 1st day of FEB, 2006.

Notary Public

Agnes L. Soos
Notary Public, District of Columbia
My Commission Expires March 14, 2008



November 9, 2005

The Honorable Susan M. Collins
Chair
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510-6250

Dear Madam Chair:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Mark D. Acton, who has been nominated by President Bush for the position of Commissioner, Postal Rate Commission.

We have reviewed the report and have also obtained advice from the Postal Rate Commission concerning any possible conflict in light of its functions and the nominee's proposed duties.

Based thereon, we believe that Mr. Acton is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Marilyn L. Glynn
General Counsel

Enclosure