



UPS-FUNDED PAPER¹ RECYCLES MISLEADING AND DISCREDITED ARGUMENTS TO HARM THE POSTAL SERVICE

As part of its continuing efforts to influence postal policy and raise package prices, UPS paid Sonecon to write a paper on the Postal Service. The UPS paper is plagued by legal and factual errors and omissions. Contrary to UPS claims, the Postal Service's package delivery business is profitable, vital and contributing billions over and above its cost. UPS's policy recommendations benefit UPS alone, at the expense of the Postal Service and the millions of American businesses and consumers who rely on the Postal Service for affordable package delivery services.

The UPS paper is out of sync with the lessons of the pandemic and the current market realities. For many American businesses and consumers, especially those in rural and remote parts of the country, the Postal Service is the only affordable alternative. To the extent private competitors, like UPS, serve rural and remote communities they charge steep delivery surcharges. The experience of the past 18 months of the pandemic has demonstrated that the Postal Service is a “lifeline” for many Americans who need affordable delivery services for mail-order medicines, ecommerce and other essential goods. Current market dynamics underscore that businesses and consumers need more competition, choice and capacity in critical supply chains, including package delivery services, not less.

UPS’s policy proposals in the paper would actively harm the Postal Service and mailers. The UPS paper tries to create the impression that the Postal Service’s universal mail service is threatened by the Postal Service’s success with a growing and profitable package business. That makes no sense. The package business is contributing billions of dollars annually above costs to help support universal mail service. The proposal to allow UPS to access Postal Service last mile delivery services “at cost” would deprive the Postal Service and mailers the benefit of a profitable package business, including contributions from the package business to help defray the costs of preserving affordable universal mail service.

The purported relationship between increased package volumes and mail service issues is little more than a spurious correlation. The USPS Office of Inspector General has found that service performance issues over the course of the past several years have had multiple causes.² The UPS paper ignores the key factors identified by the OIG (e.g., critical pandemic-related limitations on transportation and employee availability). The UPS paper also incorrectly suggests the increase in package delivery services is in conflict with the Postal Service’s universal service obligation, in fact, affordable mail and package delivery services have always been an essential part of the Postal Service’s universal service mission.

The cross-subsidy allegations are demonstrably false. The paper rests on the false premise that the Postal Service improperly cross subsidizes its competitive package delivery business. The authors provide no evidence to support this claim because there is none. In 2006, Congress included statutory guardrails to protect fair competition, including an express prohibition on cross subsidization and the requirement that *each* package product must cover its costs. Congress also directed the Postal Regulatory Commission, the

¹ The authors of the paper, *The U.S. Postal Service’s Increased Focus on Parcel Deliveries and The Impact on Universal Mail Delivery and the Economy* (Sept. 2021), Robert Shapiro and Isaac Yoder, Sonecon, acknowledge that the work was paid for by UPS (p. 5, n.1).

² See USPS OIG Audit Report No. 21-120-R21, Nationwide Service Performance (Sept. 20, 2021), <https://www.uspsoig.gov/sites/default/files/document-library-files/2021/21-120-R21.pdf>.



expert independent federal agency responsible for regulating the Postal Service, to affirmatively review the costs and prices of each such package delivery service. The Commission's most recent annual compliance determination stated that: "there is no evidence to suggest that Competitive products [packages] are being illegally cross-subsidized by Market Dominant products."³ The Commission reached the same finding in each of the previous 14 annual compliance determinations.

The Postal Service is not losing money on its package delivery business; the Postal Service's package business is growing, profitable, and helping to support universal mail service. In FY2020, the Postal Service's competitive products revenues were \$30.5 billion with costs of \$19.4 billion; therefore, last year alone the Postal Services competitive package delivery business contributed \$11.1 billion in profits to help defray the costs of providing nationwide universal mail service.

The UPS paper mischaracterizes the Postal Service's network efficiencies as unfair competition. The paper tries to argue that because USPS labor productivity is less than the private carrier, that the only possible explanation for the Postal Service's successful, growing, profitable package business is unfair competition. This argument ignores the fact that the Postal Service enjoys the inherent cost efficiencies by delivering mail and packages together at least six days a week. Congressional policy has consistently reaffirmed the benefits of an integrated delivery network that allows the Postal Service to pass through those network efficiencies in the form of lower prices to businesses, consumers, and even competitors like UPS who use the Postal Service's nationwide delivery network. The six day integrated delivery network provision (Sec. 202) of the Postal Reform Act of 2021 would reaffirm and codify these benefits.

The unfair competition arguments are premised on legal and factual errors and misreading of current law. Many of the unfair competition arguments are premised on a misinterpretation or misstatement of current law. For example:

- The UPS paper incorrectly argues that cross subsidies are prevalent because the Postal Service is not subject to antitrust law. This is wrong as a matter of law.⁴ The 2006 Postal Accountability and Enhancement Act (PAEA) expressly subjected the Postal Service's competitive package business to generally applicable antitrust laws.⁵ The UPS paper states that if the Postal Service were subject to the antitrust laws, private competitors like UPS could sue, but the Postal Service has been subject to the antitrust laws for 15 years and despite UPS's incessant protestations, *no* formal complaint has ever been filed, much less proven.
- The UPS paper incorrectly argues that cross subsidies are prevalent because the Postal Service does not allow outside parties to examine its cost accounting systems. This is also wrong as a matter of law and fact. As an initial matter, the Postal Regulatory Commission as an independent, expert agency has complete visibility to, sets the methods for, and approves all Postal Service's costing systems used for regulatory reporting purposes. Additionally, while the 2006 law included appropriate confidentiality provisions for commercially-sensitive information on competitive

³ PRC Dkt. No. ACR2020, Annual Compliance Determination Report (Mar. 29, 2021) at 70, https://www.prc.gov/docs/116/116399/2020_acd.pdf.

⁴ The case law cited throughout the UPS paper for the proposition that the Postal Service is not subject to antitrust laws predate the passage of the 2006 postal reform law.

⁵ See 39 U.S.C. § 409(e)(1).



products, the 2006 law also established procedures to ensure transparency and accountability, including allowing third-parties to access to non-public data under protective conditions. Private competitors, particularly UPS, routinely request and are granted access under these procedures. The UPS paper promotes the misimpression that costing is a black box; the Commission's procedures are among the most transparent of any postal regulatory system in the world and USPS discloses substantially more information than its private competitors.

- The UPS paper argues a study by the Federal Trade Commission (FTC) is necessary to assess and quantify any competitive advantages the Postal Service enjoys via its governmental “privileges and subsidies.” Inexplicably, the UPS paper fails to disclose that as part of the 2006 law Congress directed the FTC to report to Congress whether the Postal Service’s governmental status conferred a net competitive advantage or disadvantage and that the FTC concluded that the Postal Service because of unique burdens imposed upon it as a governmental body was operating at a net economic disadvantage relative to private competitors.⁶ The Postal Regulatory Commission is statutorily required to reassess the ongoing validity of the FTC’s findings every five years. In its most recent report the Commission held that “the FTC’s conclusion regarding the Postal Service’s operation at a net economic disadvantage continues to be valid.”⁷

The UPS paper embraces a discredited costing approach that mainstream economists have rejected for more than half a century. The UPS paper argues in support of setting minimum price floors on competitive products based on a “share of USPS revenues, volume, or weight.” This is “fully distributed costing” by another name. Fully distributed costing has been rejected as an economically unsound approach because it would arbitrarily assign costs not caused by providing a service.⁸ Private competitors, like UPS have for many years pushed fully distributed costing approaches as a means of forcing the Postal Service to set prices above competitive levels so that they can raise their own prices, take market share, or both. Imposing artificial price floors on the Postal Service is good for the private competitors like UPS; bad for competition and the businesses and consumers who rely on the Postal Service for affordable delivery services.



⁶ See Federal Trade Commission, *Accounting for Laws that Apply Differently to the United States Postal Service and its Private Competitors* (Dec. 2007), <https://www.ftc.gov/sites/default/files/documents/reports/accounting-laws-apply-differently-united-statespostal-service-and-its-private-competitors-report/080116postal.pdf>.

⁷ PRC Dkt. No. RM2017-1, Order No. 4963 (Jan. 3, 2019) at 187, <https://www.prc.gov/docs/107/107901/order4963.pdf>.

⁸ See John C. Panzar, *Protecting the Package Delivery Market and the Economy from Distortions Resulting from Fully Distributed Cost Pricing*, Geo. Ctr. for Bus. and Pub. Pol'y, at 1 (Oct. 2020), <https://georgetown.app.box.com/s/ominwn7tjaqm8617v83j7bs72n5tfs5s>.