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U.S. POSTAL SERVICE

Postal Activities and Laws Related to Electronic Commerce





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General Government Division

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The Honorable Thad Cochran
Chairman, Subcommittee on International Security, Proliferation, and
Federal Services
Committee on Governmental Affairs
United States Senate

The Honorable John M. McHugh
Chairman, Subcommittee on the Postal Service
Committee on Government Reform
House of Representatives

This letter responds to your requests to review electronic commerce (e-commerce) initiatives of the U.S. Postal Service (USPS). Members of Congress and postal stakeholders have raised issues related to the merits of USPS' development of nonpostal products and services, including those that are e-commerce related. As USPS has recently developed and implemented a number of e-commerce initiatives, you requested us to provide information on the status of USPS' e-commerce activities and related legal and regulatory matters. Specifically, our objectives were to describe USPS' (1) e-commerce initiatives that have been implemented or are being developed, (2) goals and strategies for the e-commerce area, (3) processes for approving these initiatives, and (4) expected performance and results to date related to e-commerce initiatives. During the course of our review, we identified areas where USPS can improve its management of its e-commerce activities, and this report discusses these areas as well. An additional objective was to describe USPS' views on how major federal laws and regulations apply to its e-commerce initiatives and to identify legal issues that have been raised concerning its e-commerce activities.

USPS is in the early stages of developing its current e-commerce program. We previously reported on USPS' new products and services, including several e-commerce activities piloted or implemented during fiscal years 1993 through 1997.¹ Since then, USPS has discontinued its earlier e-commerce activities, some of which have helped USPS develop new e-commerce-related products and services.

¹ U.S. Postal Service: Development and Inventory of New Products (GAO/GGD-99-15, Nov. 24, 1998).

To address the objectives of this review, we reviewed USPS documents and the information available on USPS' Internet site. We also held discussions with USPS officials responsible for e-commerce activities. We reviewed the material obtained for internal consistency and completeness, but we did not verify the information provided by USPS. We also obtained legal information and analysis from USPS on laws and regulations that may apply to USPS' e-commerce activities. We did not verify or evaluate the legal information, although we checked the citations to laws and regulations that were used in this report. A more detailed description of our scope and methodology for this review is included in appendix I.

We conducted our review at USPS headquarters in Washington, D.C., between January 2000 and August 2000 in accordance with generally accepted government auditing standards. We requested comments on a draft of this report from the Postmaster General and from the Chairman of the Postal Rate Commission (PRC). USPS' and PRC's written comments are discussed near the end of this letter.

Results In Brief

Since the beginning of 2000, USPS has taken a number of steps to develop and implement its e-commerce activities. Some key actions included developing a definition of its e-commerce initiatives, identifying its e-commerce and related initiatives, outlining its overall goals and strategies, establishing expected performance, and providing some information on results to date.

How USPS defines its e-commerce activities is fundamental when determining what USPS is doing in the e-commerce area. USPS defined its e-commerce initiatives to include products and services that (1) require the use of the Internet and (2) generate revenues for USPS from user charges or license fees. USPS defines its e-commerce initiatives as a subset of its broader eBusiness activities that involve the use of new technology. USPS identified seven e-commerce initiatives that were either planned or implemented as of September 2000. These seven initiatives are generally intended to facilitate the movement of messages, merchandise, and money. For example, to facilitate the movement of messages, USPS introduced the PosteCS initiative, an Internet-based global document delivery system implemented in May 2000. To facilitate the movement of merchandise, USPS introduced the Stamps Online initiative in December 1998 that enables customers to purchase stamps, philatelic products, and other USPS products. USPS also plans to expand this initiative to include a Virtual Store that would offer USPS merchandise and other stamp products for sale via the Internet. To facilitate the movement of money,

USPS introduced its eBillPay initiative, an electronic bill presentment and payment service, in April 2000.

USPS also identified three initiatives that it refers to as gray area initiatives. Gray area initiatives are related to e-commerce initiatives but either would not generate revenues for USPS from user charges or license fees or would not require use of the Internet. USPS is also developing other initiatives, which it refers to as infrastructure initiatives, to support its e-commerce and related initiatives. For example, USPS has identified an electronic mailbox, which is a concept in the early development stage that could link electronic and physical addresses, as an infrastructure initiative.

USPS outlined the purpose and direction for its eBusiness and e-commerce areas and stated that its overall goal is to use the best technology, including the Internet, to provide customers with expanded universal access and choices on how they do business with USPS. USPS also explained that the criteria for these initiatives are that they be universally available, designed to fulfill customer and marketplace needs, offer customers voluntary choices, be secure and private, provide financial benefits to customers and USPS, and be consistent with the USPS' mission. USPS identified eight strategies for accomplishing its eBusiness goal and its related e-commerce goal. Examples of these strategies were using the Internet as a cost-effective channel, providing security and privacy for customers, minimizing USPS investments and risks, and pursuing partnerships and alliances with industry.

In May 2000, USPS established a management process for reviewing and approving e-commerce initiatives that is different from the review and approval process for other new products. The e-commerce review process was designed to result in quicker approval of initiatives than USPS' review and approval process for new products. The new process requires a business proposal and plan, a public affairs/communication plan, periodic monitoring, and approval by top management or USPS' Board of Governors (BOG). Some e-commerce initiatives were launched before the new process was introduced and were therefore subject to USPS' former approval process. USPS also provided information on its performance expectations and results achieved for e-commerce initiatives implemented to date.

During our review, we identified a number of problems and inconsistencies in the information provided by USPS. We are making recommendations to USPS that address these issues. First, during the

course of our review, USPS inconsistently applied its definition of e-commerce in identifying its initiatives and provided inconsistent information on the status of its initiatives. These inconsistencies made it difficult to ensure we had a complete and accurate picture of USPS' e-commerce activities. Second, USPS did not consistently adhere to its process requirements and did not always document the review and approval of its e-commerce initiatives. Consequently, it is not clear whether USPS management properly reviewed and approved e-commerce initiatives to ensure that they support USPS' overall mission and goals. Finally, we identified deficiencies in the financial information USPS provided for its e-commerce activities that raised concerns about the accuracy and completeness of USPS' financial reporting for its e-commerce activities. Further, we do not believe the e-commerce financial data that USPS provided was sufficiently complete and reliable to be used to assess USPS' progress toward meeting its overall financial performance expectation that revenues generated by e-commerce products and services in the aggregate are to cover USPS' direct and indirect costs as well as make a contribution to overhead.

USPS believes that it has broad statutory authority to offer e-commerce products and services in ways that it finds appropriate to its assigned functions and in the public interest. USPS also believes that the law provides discretion to its BOG to determine whether particular new services are appropriate and in the public interest. According to USPS, numerous federal laws and regulations apply to its e-commerce products and services, but it has a different legal status from its private sector competitors in some respects. For example USPS has reported that federal privacy laws afford USPS e-commerce customers greater protection than is provided for customers of private sector providers. Further, USPS told us that public interest, universal service, antidiscrimination, and other policy provisions of the Postal Reorganization Act of 1970² provide consumer protections in connection with its e-commerce products and services, but many other federal consumer protection laws are inapplicable. However, some federal consumer protection laws may apply to USPS in certain circumstances, and others may apply to USPS contractors or financial institutions that help USPS offer e-commerce products and services. Further, USPS reported that the Postal Inspection Service, a part of USPS that is responsible for enforcing postal laws, has authority and responsibility to investigate violations of law that involve USPS e-commerce products and services. In addition, USPS told us that the antitrust laws and general competition-related statutes do not apply to

² P.L. 91-375.

USPS, with the exception of the advertising and competition provisions of the Lanham Act.³ However, USPS stated that the Postal Reorganization Act of 1970 prescribes competition-related factors that must be considered with regard to USPS e-commerce activities.

USPS also said that in some cases, major federal regulations apply to its e-commerce products, including regulations adopted by USPS and other federal agencies, such as Department of the Treasury and Federal Reserve regulations related to USPS' eBillPay initiative. However, it also noted that the ability to make generalizations about how regulations apply to USPS is somewhat limited. Finally, USPS reported that its activities in the e-commerce area are generally not subject to administration policies that apply to other executive branch agencies.

We did not evaluate USPS' legal analysis or attempt to obtain others' views within the scope of this review. However, we note that USPS, some competitors, and other stakeholders have conflicting views on the extent of USPS' legal authority to offer e-commerce products and services and under what circumstances it should offer such services. The appropriate role of USPS has been debated for many years and continues to be debated in the context of proposals for comprehensive legislation to reform the nation's postal laws. In addition, some specific concerns have been raised about USPS e-commerce activities that also relate to emerging e-commerce issues, such as the privacy of consumer information and what new e-commerce products are subject to PRC review.

In commenting on our draft report, USPS generally agreed with the facts and endorsed the report's recommendations. However, USPS noted differences in perspectives related to some of the concerns we discussed. Specifically, USPS stated that its senior management had reviewed and approved all of its e-commerce initiatives before implementation. If so, such approvals were not fully documented. PRC generally agreed with the report's analysis of the issues and further commented on USPS' pricing policy for its e-commerce initiatives.

Background

We have reported that USPS may be nearing the end of an era as it faces growing challenges from competition, notably from private delivery companies and electronic communications alternatives such as the Internet.⁴ USPS and other stakeholders agree that growth in USPS' core

³ 15 U.S.C. § 1125(a).

⁴ U.S. Postal Service: Challenges to Sustaining Performance Improvements Remain Formidable on the Brink of the 21st Century (GAO/T-GGD-00-2, Oct. 21, 1999).

business of delivering First-Class Mail has already been affected by the rapid growth of the Internet, electronic communications, and electronic commerce. USPS expects that competition will lead to substantial declines in its First-Class Mail volume in the next decade and a consequent loss of revenues. Should this occur, USPS will likely face unprecedented challenges as it seeks to fulfill its primary mission of providing universal postal service at reasonable rates while remaining self-supporting from postal revenues.

Thus, USPS may be at a crossroads in its ability to meet its mission of providing affordable, readily accessible, universal postal services over the long term. Although USPS has achieved its best ever financial and service performance over the past 5 years, it has fallen short of its revenue targets for the first three quarters of fiscal year 2000. USPS recognizes that it faces challenges from a dynamic and versatile marketplace, changing customer demands, and more alternative delivery options that provide greater choices for customers.

As an example of trends that have affected USPS' mail volumes, at the federal level, government agencies are mandated to move as quickly as possible to reduce paperwork and to adopt electronic billing and payment. Of the 880 million Social Security checks, tax refunds, and other payments sent by the Department of the Treasury in fiscal year 1999, 68 percent were sent electronically, not mailed. According to USPS, this cost \$180 million in lost First-Class Mail revenue. Further, according to a postal operations survey conducted by the American Bankers Association, the banking industry reduced its mail volume in 1999 by almost 18 percent compared to its 1996 level.

Although it is difficult to predict the timing and magnitude of further mail volume diversion and potential financial consequence, USPS has begun to plan how it would address such a scenario. The Postmaster General recently explained that USPS' strategy to deal with its competitive challenge is a combination of aggressive cost-cutting and new revenue generation.⁵ According to USPS, in addition to minimizing costs, the Internet offers unparalleled opportunities to grow long-term revenue through enhanced and new services.

⁵ The Annual Report of the Postmaster General, Hearing before the Subcommittee on International Security, Proliferation, and Federal Services of the Senate Committee on Governmental Affairs, July 13, 2000.

The history of USPS' involvement in e-commerce related products and services began with a brief foray in 1982 when it introduced its Electronic Computer-Originated Mail (E-COM) service.⁶ However, E-COM generated much controversy and scrutiny from PRC, the Federal Communications Commission (FCC), and Congress. In a report by the House Committee on Government Operations, the oversight committee concluded that the rates charged did not cover the cost for this initiative.⁷ USPS discontinued E-COM service in September 1985. More recently, during fiscal years 1993 through 1997, as noted in our 1998 report, USPS engaged in research and development efforts related to e-commerce activities.⁸ Since our previous report was issued, the exploratory e-commerce efforts have been discontinued or evolved into more recent initiatives, which are discussed later in this report along with other new e-commerce initiatives.⁹

The nature of the competition that USPS faces in the e-commerce area is broader than its competition in other service delivery areas, such as for domestic letter mail and parcels. Not only does competition in the e-commerce area include USPS' traditional competitors, such as the major private express delivery companies—FedEx, and United Parcel Service (UPS)—it also includes such competitors as technology companies, financial institutions, and foreign postal administrations. Further, within the e-commerce area, competitors may differ for different types of services, such as electronic messaging, or e-mail, electronic bill presentment and payment services, and electronic retail sales involving the purchase and return of goods. For example, in the electronic bill presentment and payment area, competitors are numerous and often include partnerships among financial institutions, billers, consolidators, and technology companies.

In the retail area, on-line sales are expected to grow substantially over the next few years, which would entail a dramatic rise in parcel shipments and returns. Thus, although USPS expects more opportunities to expand in this

⁶ This service preceded current hybrid mail services, such as Mailing Online, and allowed mailers to transmit the text of letters over telephone lines to computers located in 25 specially equipped post offices. The letters were printed, stuffed into envelopes, and mailed as First-Class mail so they could be delivered within 2 days.

⁷ Postal Service Electronic Mail: The Price Isn't Right, Forty-First Report by the Committee on Government Operations, House Report No. 97-919, 97th Congress, 2d Session, Oct. 1, 1982.

⁸ Our previous report (GAO/GGD-99-15) discussed USPS e-commerce-related initiatives under which the Electronic Postmark and Certificate Authority systems were developed.

⁹ Discontinued e-commerce related initiatives that were described in our 1998 report included the following: Deliver America, Electronic Commerce Services, Global ePost, Post Office Online, and WEB Interactive Network of Government Services (WINGS).

area, it also faces competition from its traditional competitors—FedEx and UPS—and newly emerging alternative delivery options. For example, private start-up dot.com companies are also competing for this retail delivery business by providing same-day delivery, particularly on a regional basis, for Internet purchases of goods, such as groceries, CDs, videos, and books. The competitive landscape is very fluid in the e-commerce area, where new competitors may rapidly appear and disappear.

Another challenge for USPS in the e-commerce area is keeping up with changing customer demands. USPS' customers are generally categorized into two major groups: households and businesses. Although businesses generate most mail, households are the recipients of most of the mail generated by businesses.¹⁰ USPS recognizes that its customers are becoming more demanding and selective and are interested in expanding their access to choice, convenience, service, and value. For example, some mailers have noted that mail-based billings and payments are more costly to process than electronic versions.

As the dynamic development of electronic commerce continues to unfold, consumers, businesses, and governments are working hard to understand and adapt to the many benefits and challenges associated with the Internet and related new technology. For USPS, the challenges include providing more convenient access to its products and services and thus rethinking how to change the organization to adapt old processes and practices to new technology, as well as addressing new customer expectations and greater competition in providing customer services. Congress is closely monitoring how government organizations adapt in this new environment and has held numerous oversight hearings to discuss emerging issues, such as privacy, consumer protection, open access, and competition.

USPS Activities in the E-Commerce Area

USPS has taken a number of steps since the beginning of 2000 to develop and implement its e-commerce activities. Some key actions taken include developing a definition of its e-commerce initiatives, identifying its e-commerce and related initiatives, outlining overall goals and strategies, establishing processes for approving and implementing e-commerce initiatives, and providing some information on expected performance and results to date. How USPS defines its e-commerce activities is fundamental when determining what USPS is doing in the e-commerce area and what

¹⁰ In 1998, in the United States about 53 percent of mail traffic was from businesses to households, 5 percent from households to businesses, 3 percent between households, and 38 percent between businesses, according to USPS.

process is to be followed in reviewing and approving e-commerce initiatives. The development of goals and strategies is key to understanding what USPS expects to achieve in this area. The review and approval processes are to establish accountability for management and oversight of the e-commerce initiatives. Information on performance targets and results is to provide a basis for determining if the actual performance of the e-commerce initiatives is meeting intended targets.

USPS Definition of E-Commerce Initiatives

USPS' definition of its e-commerce initiatives has two components—those products or services that (1) require the Internet to do business and (2) generate revenue to USPS through user charges or licensing fees. USPS defined its e-commerce initiatives as a subset of its broader "eBusiness" environment, which included other categories of related initiatives that may involve use of new technology. For example, related initiatives include "eService" initiatives that are to be value-added services or enhancements to existing services, and for which revenues are to be reported with existing products and services. Other related initiatives referred to as "gray area" initiatives did not meet the requirements of the e-commerce definition. Another category called "infrastructure" initiatives included information technology systems and other technology initiatives that are required to support eBusiness initiatives. USPS' distinctions among these categories illustrate that USPS activities involving the Internet include more than just its designated e-commerce initiatives.

In May 2000, USPS provided us the following information on how its e-commerce initiatives relate to its broader eBusiness activities and strategy:

"Our eBusiness strategy is voluntary and is intended to improve capabilities not only for our customers, but also for our 800,000 employees, business partners, and suppliers, too. Our eBusiness initiatives will have an ePeople, eService, and eCommerce component. ePeople efforts will keep employees better informed, provide a full range of 'self-services,' reduce administrative tasks, and increase access to development opportunities. eService initiatives will enhance features, access, and information about core products and services. eCommerce initiatives are new, Internet-based products and services for consumers, businesses, and government entities. All will be supported using an infrastructure that will link our core production processes, equipment and complete the development of a common information platform."

In a July 14, 2000, letter to us, the Deputy Postmaster General explained the category referred to as gray area initiatives as initiatives that "have a current revenue model or financial arrangement that does not accurately meet today's definition for eCommerce." He stated that "These initiatives that fall into the 'gray area' today may, in response to the changing needs

of our customers and the marketplace, become clearer as to direct financial contribution in the future.”

USPS does not consider products and services to be e-commerce initiatives if they involve use of the Internet but either do not generate revenues or the revenues generated are related to existing core products and services. USPS considers these products and services to be value-added services or enhancements to existing services. For example, customers can use the Internet to access information about USPS products and services, look up ZIP codes and post office locations, download labels for mailing packages, and check the status of certain items mailed without paying any fees. Customers can also use the Internet as an alternative channel to access existing core products and services, such as Priority and Express Mail, to confirm delivery or arrange for package return. The revenues from these enhancements are to be reported with those from existing core products and services.

USPS also identified another category of initiatives related to Internet activities—infrastructure initiatives—which includes information technology systems or services that are required to support eBusiness initiatives. One example of a proposed infrastructure initiative would be an electronic mailbox that could link electronic and physical addresses. This initiative is currently in the early development stage and is identified by USPS as an infrastructure, not an e-commerce, initiative. USPS explained that its proposed electronic mailbox would not generate revenues as a free-standing service, but it may be offered in conjunction with other e-commerce services in the future.

USPS Identified Seven Current E-Commerce Initiatives

USPS identified seven e-commerce initiatives as well as three gray area initiatives planned or implemented as of September 2000 to facilitate the movement of messages, merchandise, and money in ways that require the use of the Internet and generate revenues for USPS. Table 1 provides a list and descriptions of USPS’ e-commerce initiatives as well as gray area initiatives. As discussed later, however, it appears that USPS may not have consistently applied its e-commerce definition in identifying those initiatives.

Table 1: USPS E-Commerce and Gray Area Initiatives as of September 2000

Initiative	Description of initiative	Intended customers	Status
E-Commerce initiatives			
Electronic Postmark (EPM)	Creates a secure electronic time and date stamp for electronic communications and provides evidence of any tampering. USPS is seeking business partners to integrate EPM into their products, services, and systems. Revenue to date has been generated from businesses that incorporated EPM with their services. EPM also has been used with the PosteCS initiative.	Financial, legal, medical, governmental, and educational organizations	Implemented 4/00.
ePayments	Provides integrated ePayment solutions: (1) eBillPay—consumers paying bills, (2) businesses sending bills, (3) consumers paying each other, and (4) consumers receiving financial statements. eBillPay services are currently offered through a partnership with a private company. The eBillPay service is to be offered to new customers at no charge for the first 6 months. Revenue is to be generated by user fees.	Consumers and businesses	eBillPay was implemented 4/00. The rest of the services are in the planning stage.
Internet Change of Address and Move-Related Products and Services (MoversNet)	MoversNet includes three products and services: the hard copy publications—Movers Guide and Welcome Kit—and the Internet application called MoversNet.com. Currently MoversNet.com allows downloading a form for customers to submit changes of physical addresses and is accessible via the USPS Web site and via direct link. It is offered through a strategic alliance with a private company. Future MoversNet enhancements, which are to involve integration into a proposed MoversGuide Web site, are to allow additional services, such as electronic changes to physical addresses, e-mail addresses, and electronic accounts; ordering various services (e.g., power, electric, water, cable, newspaper, and long-distance telephone service); and new security features, such as credit card verification. Revenue to date has been generated by commissions from USPS' partner.	All postal customers	MoversNet was implemented summer 1996. Enhancements to MoversNet were scheduled for implementation in 9/00.
NetPost.Certified	Is to provide confidential, ensured delivery of electronic documents to the government. A completed electronic delivery is to be certified back to the sender via an electronic receipt containing a USPS electronic postmark that provides legal proof of filing. Revenue is to be generated from transaction fees from government agencies.	Organizations that file information with the government	Not implemented.
NetPost Mailing Online	Is to allow mailers to electronically transmit their documents, correspondence, newsletters, and other First-Class Mail and Standard A mail (primarily advertising mail), along with mailing lists, to USPS. Electronic files would then be securely distributed to printing contractors who print documents, insert them into addressed envelopes, sort the mailpieces, and transport the mailing to post offices for processing and delivery. Revenue is to be generated by printing and mailing fees paid by users.	Small Office and Home Office (SOHO) customers	To be implemented 9/00.

Initiative	Description of initiative	Intended customers	Status
PosteCS	Provides a secure, private, Internet-based document delivery system. Users establish secure links using Secure Socket Layer (SSL) protocol. They then upload a file(s) to the PosteCS server using desktop software. To receive PosteCS messages, the recipients need only to have access to e-mail and an Internet browser. USPS has joined with Canada Post and LaPoste of France to provide this service globally. Also, the EPM initiative was used as part of PosteCS. Revenue is to be generated by user fees.	Large to medium-size businesses and SOHOs	Implemented 5/00.
Stamps Online/Virtual Store	Stamps Online allows the purchase of stamps and other existing USPS products. After the Virtual Store is implemented, postal customers are to be able to purchase stamps, philatelic products, phone cards, and other USPS merchandise via the Internet, including new products not currently available. Revenue to date has been generated from the face value of postage stamps and from other existing USPS products ordered via the Internet.	All postal customers	Stamps Online implemented 12/98; Virtual Store implementation planned in 2000.
Gray area initiatives			
Returns@ease	Enables customers to return Internet-purchased merchandise. Using a Merchandise Return Application Program Interface, businesses can authorize customers to download a postage-paid label directly from their Internet sites. The program is designed to make returning items bought via the Internet, through catalogs, and by phone easier for both buyers and sellers. Revenue is generated from user fees and postage.	Online merchants	Implemented 11/99.
Dinero Seguro™	Allows electronic fund transfers from the U.S. to Mexico. Dinero Seguro™, which means "Sure Money," is a money-by-wire service that can be used to transfer money from designated U.S. postal locations to more than 1,300 Bancomer Bank branches in Mexico. This initiative uses telephone lines instead of the Internet and is to become part of a planned Sure Money® service. ^a Revenue is generated by Dinero Seguro™ through money-wire transfer fees.	Americans of Mexican origin, most recently immigrants	Implemented 6/96.
PC Postage	Allows customers of private companies to purchase and print stamps onto labels and envelopes using their computers and the Internet. Private companies sell PC Postage products after USPS certifies that these products meet USPS standards. USPS receives revenue from the face value of postage stamps.	SOHO market	Implemented 8/99.

^aUSPS has identified additional target countries, which it plans to include in an expansion effort to this initiative, referred to as Sure Money®.

Source: USPS documents.

USPS Goals and Strategies for E-Commerce Area

USPS provided several reasons for its involvement in e-commerce activities. Some of these reasons are echoed in the overall goals and strategies that USPS has developed for its eBusiness and e-commerce areas. To carry out these goals and strategies, USPS has established an eBusiness Integration team that is responsible for eBusiness implementation planning and for developing an eBusiness strategic plan. In addition, the eBusiness Opportunity Board (e-BOB) was established to provide operational oversight in the eBusiness area and to review the performance of e-commerce initiatives.

Many postal stakeholders are interested in how USPS sees its e-commerce activities relating to overall USPS mission and goals. To better understand USPS' purpose and expectations for the e-commerce area, we asked postal officials why USPS is involved in the e-commerce area. USPS officials and documents cited the following reasons for its participation in the e-commerce area:

"USPS involvement in eCommerce is responsive to its obligations as a public service. Like other government agencies, it must use information technologies to provide traditional services to the citizens of the United States more effectively and efficiently."

"USPS involvement follows from the mission of the United States Postal Service, as established by the Postal Reorganization Act of 1970 . . . The use of modern communications technology such as the Internet to provide traditional postal services such as delivery of bills or messages is little different from adopting the new technologies of the railroad or the airplane to provide prompt, reliable and efficient delivery services."

"In addition to gaining new efficiencies, our eCommerce initiatives seek to grow the revenue of the USPS to replace some of the revenues from traditional mail volume lost to the competition from technological substitutes. This revenue is essential to maintaining the ability of the USPS to support the infrastructure developed to provide universal service."

"USPS participation in this market is seen by many as critical to addressing the issue of the 'digital divide', or the significant portion of the American population that will not have complete access to the Internet. This is the core of the USPS mission of binding the nation together and providing services to all communities."

"The Postal Service is a national institution, known and trusted by Americans; it is a neutral party with a universally understood public service mandate; it protects the privacy of customer's information; it is a long-lived, stable institution that can be relied on for the long term as an EBP [electronic bill payment] provider; and it is known for providing value."

"The Postal Service is uniquely positioned to preserve the security and privacy of confidential information. The Postal Service has in-house law enforcement personnel who can investigate criminal or civil offenses that occur in connection with transactions sponsored by the Postal Service."

To better understand USPS' direction for its e-commerce activities, we asked USPS officials about their goals and strategies for the e-commerce area. In response, USPS provided us with some general guidance that e-BOB had recently approved for the eBusiness and e-commerce areas. In a June 21, 2000, internal memorandum, the Deputy Postmaster General outlined the overall criteria, goals, and strategies for USPS' eBusiness area as follows:

- USPS eBusiness Criteria: “New USPS initiatives will be universally available, designed to fulfill customer/marketplace needs, offer customers voluntary choices, be secure and private, provide financial benefits to our customers and the USPS, and be consistent with the mission of the Postal Service.”
- USPS eBusiness Goal: “To increase the value, availability, and affordability of our products and services for all customers (both senders and receivers) by continuing to use the best available and emerging technologies, including the Internet. Provide customers with expanded universal access and choices on how they elect to interface and do business with the U.S. Postal Service.”
- USPS eCommerce Goal: “Use the internet channel to offer new and enhanced products and services that provide the U.S. Postal Service with revenue such as license fees and user charges.”
- USPS eBusiness Strategies:
 1. Develop and implement a customer interface/channel to the USPS, which provides seamless physical and electronic mailbox coverage.
 2. Use the Internet as a cost effective communications channel for customers, suppliers, business “partners,” and employees.
 3. Capitalize on USPS' tradition of providing security and privacy for customers.
 4. Leverage USPS' brick and “motor” assets, i.e., 38,000 postal facilities and 200,000 vehicles, as well as USPS' daily delivery infrastructure.
 5. Pursue eCommerce and eService opportunities that meet USPS criteria and have the potential for business growth.
 6. Minimize (especially in the short term) USPS investments and financial/business risks.

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7. Pursue partnerships/alliances with industry leaders having “unique” technology, management, marketing, and sales skills and resources necessary to be successful in this marketplace, including “Quick to Market” capabilities.
 8. Establish structures to assure that costs and revenues associated with electronic services and products are tracked and allocated.

To better understand how USPS is implementing and managing its e-commerce activities, we asked how responsibilities were assigned. The Postmaster General explained organizational responsibilities in a memorandum dated February 24, 2000, in which he announced that e-BOB would be responsible for the following:

- reviewing eBusiness opportunities and approving those that meet a set of established criteria;
- allocating resources against approved eBusiness pursuits;
- ensuring that complete, cross-functional implementation plans are in place;
- providing oversight by measuring performance against established goals; and
- seeing that the organization reacts rapidly to changes in the marketplace.

The Postmaster General also announced that the Deputy Postmaster General would chair e-BOB, and the Chief Technology Officer would serve as vice chairperson. Several other postal officers with direct e-commerce responsibilities included the E-Commerce Vice President, the Corporate/Business Development Senior Vice President, and the Chief Financial Officer/Finance Executive Vice President. According to USPS, other USPS officers with responsibilities for core products and services may also be involved in certain cross-functional activities related to the e-commerce area.

USPS Processes for Approving E-Commerce Initiatives

In May 2000, USPS established an approval and implementation process for its eBusiness initiatives called the eBusiness Development Review and Approval process (e-BOB process). This process covers e-commerce initiatives and is different from the New Products and Service Review and Approval (New Products) process that is to be used for other new USPS products and services. The new e-BOB process was established in recognition of the fast-paced changes in eBusiness and in the e-commerce marketplace.

The e-BOB review and approval process was set up as an expedited 120-day, four-step process under which a sponsoring officer guides the proposed initiative through the process. The sponsoring officer, in conjunction with a cross-functional team, is required to develop a business proposal and business plan for each initiative. The business proposal is to be reviewed and approved by the sponsoring officer and e-BOB. The business plan is to be approved by e-BOB and the Management Committee¹¹ and, when considered necessary, the Board of Governors (BOG). Final approval of the initiative is determined by e-BOB and the Management Committee and, when considered necessary, by BOG. In instances in which a project contains significant capital investments, the initiative is also to be subject to the headquarters review and approval process for capital projects, which involves approval, if appropriate, by area officials, the headquarters Capital Investment Committee, and final approval by BOG.¹²

The New Products process was to be used to review and approve new products, including initiatives to develop new e-commerce products and services, prior to the establishment of the e-BOB approval process. According to USPS officials, the principles of USPS' *CustomerPerfect!* Annual Management Cycle guided the development of new e-commerce initiatives.¹³ The New Products process required initiatives to have a business proposition statement—reviewed and approved by the Chief Marketing Officer (CMO)—and a business plan—reviewed and approved by the BOG Strategic Planning Committee and the full BOG. Under this process, initiatives were to undergo a market test. The results of the market test were to be reviewed by the CMO, the Management Committee, the BOG Strategic Planning Committee, and the full BOG before the initiative was implemented.

¹¹ The Management Committee includes the Postmaster General, Chief Executive Officer; Deputy Postmaster General; Vice President, General Counsel; Senior Vice President, Human Resources; Chief Financial Officer and Executive Vice President; Senior Vice President, Government Relations and Public Policy; Senior Vice President, Chief Technology Officer; Senior Vice President, Chief Marketing Officer; Chief Operating Officer and Executive Vice President; Senior Vice President, Operations; and the Inspector General.

¹² Applies to all capital projects exceeding \$10 million in total project costs.

¹³ The *CustomerPerfect!* Annual Management Cycle is USPS' Malcolm Baldrige Award criteria-based management system. The *CustomerPerfect!* management cycle of planning, implementation, and review consists of activities intended to give direction to the organization and to build and sustain improved performance against set goals. The *CustomerPerfect!* process is intended to ensure effective management control through a formalized system of checks and balances that require top management buy-in at four critical stages: (1) concept stage, (2) business plan stage, (3) test stage, and (4) implementation stage.

Table 2 compares the e-BOB process with the New Products process. Both approval processes are similar in that they require preliminary proposals for e-commerce initiatives to be presented for approval by USPS officers before further action can be taken on the initiatives. Differences between the two processes are primarily in the business plan and market testing stages. For example, as shown in table 2, under the New Products process, the preliminary business plan is to be approved by the Management Committee, the CMO, and finally sequentially by the BOG's Strategic Planning Committee and the full BOG. However, under the e-BOB process the preliminary eBusiness plan is to be reviewed first by a cross-functional team, the sponsoring officer, and e-BOB, which is to determine whether Management Committee or BOG action is necessary. In addition, the New Products process has a formal market testing stage—involving approvals by the CMO, Management Committee, and BOG—which is not included in the e-BOB approval process.¹⁴

¹⁴ USPS may conduct research and pilot tests and incorporate the results into the business plan, but these steps are not required under the e-BOB process.

Table 2: USPS' Processes for Review and Approval of E-Commerce Initiatives

eBusiness Development Review and Approval process (5/00) (e-BOB process)			New Products and Service Review and Approval process (New products process)		
Stage	Requirements	Approval	Stage	Requirements	Approval
eBusiness proposal	<ul style="list-style-type: none"> •Present proposal and supporting documentation (e.g., financial statements/preliminary break-even analysis) for review and approval. •Present proposal and any recommendations for approval. 	Sponsoring officer e-BOB ^a	Business proposition statement	<ul style="list-style-type: none"> •Present proposition for new initiative to Chief Marketing Officer (CMO) for review and approval. 	CMO
eBusiness plan	<ul style="list-style-type: none"> •Cross-functional team reviews preliminary business plan, includes independent analysis/external consultant review, if appropriate. •Plan and supporting documentation are then revised and submitted for approval by (1) the sponsoring officer and (2) e-BOB. •As necessary, the Management Committee reviews business plan, supporting documentation, and e-BOB minutes and determines whether BOG consideration is warranted. 	Sponsoring officer Sponsoring officer and e-BOB ^b Management Committee/ BOG ^c	Business plan	<ul style="list-style-type: none"> •Present preliminary business plan (with Management Committee feedback) for review and approval to Management Committee. •Conduct proof of operations test to validate initiative/present results to CMO for review and approval. •Present preliminary plan, including test results, for sequential review and approval by BOG's Strategic Planning Committee (SPC) and the full BOG. 	Management Committee CMO SPC/BOG
	Not Applicable		Market testing	<ul style="list-style-type: none"> •Present results of limited market test to CMO for approval to proceed with major market test. •Present proposal to proceed with major market test for sequential review and approval. •Submit major market test results for CMO review and approval to move to initiative implementation. 	CMO Management Committee/ SPC/BOG CMO
Public affairs/ communications event plan	<ul style="list-style-type: none"> •Follow event planning guide if announcement or event is to announce new initiative. (Minimum of 6 weeks is required for effective and properly handled announcement.) 	Public Affairs/ BOB	Implementation roll out	<ul style="list-style-type: none"> •Finalize plan using market test results and Management Committee feedback. •Present plan, including test results, for sequential review and approval to implement/ roll out. 	Management Committee Management Committee/ SPC/BOG

eBusiness Development Review and Approval process (5/00) (e-BOB process)			New Products and Service Review and Approval process (New products process)		
Stage	Requirements	Approval	Stage	Requirements	Approval
Initiative monitoring	<ul style="list-style-type: none"> Track quarterly (or more frequently if directed by e-BOB); resulting suggestions and recommendations will affect initiative's future direction. 		Initiative monitoring	<ul style="list-style-type: none"> Track continuously against the business plan, perform annual reviews, and improve initiative as indicated. 	

^aApproval by e-BOB at proposal stage authorizes seed funding for testing, if applicable, and business plan development.

^be-BOB is to (1) approve the plan (2) defer for additional information, or (3) disapprove the plan.

^cGenerally, eBusiness initiatives, including e-commerce initiatives, are within management's approval authority. Therefore, unless specified in the bylaws, these initiatives require only BOG notification or consideration from an advisory standpoint prior to their contractual commitment or implementation.

Source: USPS documents.

The Deputy Postmaster General explained to us how resource allocation for e-commerce initiatives was unlike that for all other areas in the USPS budget. He said that all of the funding for USPS e-commerce activities was budgeted and kept in one overall fund. He said these funds were not allocated to specific managers until program managers justified the use of funds for specific projects.

Performance Expectations and Results

USPS provided some information on the performance targets and results of its e-commerce initiatives to date. USPS also gave us the following explanation in July 2000 of why performance targets for fiscal year 2001 were not provided:

“It is important to recognize that performance targets provided in business plans, DARs [decision analysis reports], and business proposals are projections. They are dependent on Board of Governors’ approval of the FY 2001 budget in October 2000, as well as on approval of the business plans, where annotated. Until approval occurs, we think that it is premature to publicly report quantitative plans or targets for the specific initiatives. However, the aggregate FY 2001 planned revenue for eCommerce initiatives that is being submitted for approval and to PRC totals \$104.0 million. Projected expenses specific to eCommerce initiatives total \$67.2 million. This does not include infrastructure and other costs associated with eCommerce, which will be calculated as part of our ongoing obligation to appropriately report those incurred costs. Similarly, it will differ from the total estimate of \$146 million, provided to the Postal Rate Commission, which encompasses our other eBusiness initiatives.”

Evaluation of the results of USPS’ e-commerce initiatives, according to USPS, is generally based on the service performance provided to consumers and businesses and on the basis of revenue, cost, and contribution to financial performance. Postal officials explained that the e-BOB, Management Committee, and depending on the level of investment or potential liability, the Headquarters Investment Committee and BOG, are responsible for evaluating the USPS e-commerce program as a whole as well as the individual initiatives. A BOG resolution adopted in June 2000 specifies that “significant new types of e-commerce initiatives, which have not been previously presented to the Board [of Governors] for review, shall be presented to the Board before being launched.” Initiative reviews by e-BOB are to be conducted on at least a quarterly basis, and quarterly status reports are to be sent to BOG.

Table 3 includes information on the performance targets and results, when applicable, for USPS e-commerce initiatives.

Table 3: Targets and Performance of E-Commerce Initiatives, Fiscal Years 1996 Through 2000**Targets and Performance by Fiscal Year**

Initiative	Status of initiative	1996	1997	1998	1999	2000 ^a
Electronic Postmark (EPM)	Implemented 4/00					
Target		Not applicable	Not applicable	Not applicable	Not applicable	\$60,000 ^b
Performance		Not applicable	Not applicable	Not applicable	Not applicable	\$30,000 ^b
ePayments	Not implemented (except eBillPay)					
Target		Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
Performance		Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
(eBillPay)	Implemented 4/00					
Target		Not applicable	Not applicable	Not applicable	Not applicable	Number of users
Performance		Not applicable	Not applicable	Not applicable	Not applicable	Proprietary
MoversNet ^c	Implemented 1996					
Target		Not provided	Net contribution	Net contribution	Net contribution	Net contribution
Performance		Not provided ^d	\$6,107,000 ^{de}	\$2,720,000 ^e	\$5,458,000 ^e	\$11,104,000 ^e
Enhancements to MoversNet	To be implemented 9/00					
Target		Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
Performance		Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
NetPost Mailing Online	To be implemented 9/00					
Target		Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
Performance		Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
NetPost.Certified	Not implemented					
Target		Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
Performance		Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
PosteCS	Implemented 5/00					
Target		Not applicable	Not applicable	Not applicable	Not applicable	\$493,000 ^b
Performance		Not applicable	Not applicable	Not applicable	Not applicable	Not provided
Stamps Online	Implemented 12/98					
Target		Not applicable	Not applicable	Not applicable	\$4,000,000 ^f	\$10,158,000 ^f
Performance		Not applicable	Not applicable	Not applicable	\$5,710,000 ^f	\$10,561,000 ^f
Virtual Postal Store	Not implemented					
Target		Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
Performance		Not applicable	Not applicable	Not applicable	Not applicable	Not applicable

Note: "Not applicable" means that the initiative was not implemented.

^aThrough February 2000.

^bRevenue.

^cInternet Change of Address and Move-Related Products/Services (MoversNet) included the Movers Guide, Welcome Kit, and Moversnet.com.

^dContribution for fiscal year 1996 was included in data for fiscal year 1997.

^eRevenues toward net contribution were generated from two hard copy publications: the Movers Guide and the Welcome Kit.

¹Revenues generated from postage stamps and other existing USPS products ordered via the Internet.

Source: USPS documents.

Opportunities for Improving Implementation of E-Commerce Initiatives

During our review, we identified a number of inconsistencies and other problems in the information provided by USPS that indicated areas in which it can improve implementation of its e-commerce initiatives. These deficiencies indicate that more effective management and oversight is needed in this area. First, during the course of our review, USPS inconsistently applied its definition of e-commerce in identifying its initiatives and provided inconsistent information on the status of its initiatives. These inconsistencies made it difficult to ensure we had a complete and accurate picture of USPS' e-commerce activities. Second, USPS had not consistently adhered to its process requirements and did not always document the review and approval of its initiatives. Consequently, it is not clear that USPS management properly reviewed and approved e-commerce initiatives to ensure that they would support USPS' overall mission and goals. Finally, we identified deficiencies in the financial information provided for the e-commerce activities that raised concerns about the accuracy and completeness of USPS' financial reporting for its e-commerce activities.

Inconsistencies in Identifying E-Commerce and Related Initiatives

As a result of inconsistencies in the information provided by USPS, we are not sure that USPS provided complete and accurate information on the identification and status of its e-commerce initiatives. Throughout this review, USPS provided numerous documents related to its e-commerce initiatives that included conflicting information about the identification and status of its e-commerce initiatives. USPS was able to reconcile some of the inconsistencies, but consistency across the organization will be necessary for USPS to provide accurate and complete information on the status of its e-commerce initiatives. As previously mentioned, BOG is to receive quarterly status reports on USPS' e-commerce initiatives.

USPS has struggled to properly classify its e-commerce and other initiatives that relate to its broader eBusiness environment. The initial list of e-commerce and associated infrastructure initiatives that USPS provided to us in April 2000 included 28 initiatives. As of July 2000, the list had been reduced to seven e-commerce initiatives. Some of the initiatives on the initial list were dropped because they were identified as infrastructure or enhancements to core products and services, and others are now called gray area initiatives because they did not fit the definition of e-commerce initiatives. In addition, some initiatives are in various stages of development, and their classification may change as their

product features evolve. As we discussed the rationale for the classification of specific initiatives with USPS officials, we noted several apparent inconsistencies where initiatives that seemed to have similar characteristics were not treated similarly. Some examples of apparent inconsistencies in the application of USPS' e-commerce definition—for products and services that (1) require the Internet to do business and (2) generate revenue to USPS through user charges or licensing fees—that we brought to the attention of USPS officials were as follows:

- GAO: Advertising revenue generated by MoversNet does not appear to be a user charge or a licensing fee—the two kinds of revenue specifically listed in USPS' definition of e-commerce.
- USPS Response: MoversNet is a part of the strategic alliance between USPS and its partner. The net contribution generated by the strategic alliance, which is split between USPS and its partner, is treated as revenue to USPS. USPS currently views and treats this form of revenue as commissions received from USPS' partner for this service, which could be classified as a licensing fee for the use of USPS' infrastructure, name, and good will. It has seemed to make sense to manage this initiative as a part of the e-commerce management process.
- GAO: According to the explanation provided, MoversNet includes the Movers Guide and the Welcome Kit—traditional hard copy postal products that do not require use of the Internet. Thus, these components would not appear to fit the e-commerce definition.
- USPS Response: MoversNet also includes the MoversNet.com application. The components of all three aspects of MoversNet are related and are being managed in conjunction with the electronic application. USPS has found it useful to manage together various aspects of some of these e-commerce initiatives, which are being developed as part of the same effort, even though some of the subparts might not independently fit the definition of e-commerce initiatives if considered independently. It makes internal business sense to proceed in this way. USPS recognizes that where charges need to be set and revenues and costs reported and evaluated, care is needed to attribute costs and revenues to the proper activity.
- GAO: The Stamps Online component of the Stamps Online/Virtual Store initiative appears to fit the definition of an enhancement—that is, providing front-end or back-end Internet access to core or existing USPS

products and services. Revenues from enhancements are to be reported with core or existing products.

- USPS Response: StampsOnline revenue was previously reported as revenue diverted from other channels. However, USPS plans to expand both product lines and product markets through launch of the Virtual Store. Therefore, USPS continues to include StampsOnline/Virtual Store with listed e-commerce initiatives.
- GAO: USPS sold philatelic collectibles on the Internet via eBay from July 7 to July 16, 2000. This initiative appears to fit the definition of a USPS e-commerce initiative in that it required use of the Internet and generated revenue to USPS.
- USPS Response: These are regarded as asset sales rather than user charges. This program has more in common with other philatelic initiatives than with electronic commerce initiatives. Accordingly, it is managed in tandem with other philatelic programs, rather than passing through the e-BOB and related processes for the management of e-commerce initiatives.

Our questions and comments and USPS' responses to them illustrate the potential for differences in interpretation that may occur. In some cases, it was difficult to understand the rationale for the identification of the initiatives without more clarification from USPS on how it intended to treat the revenue from these initiatives. Also, some initiatives were provided in conjunction with other products and services, and it was not clear how the revenues would relate to e-commerce versus other core products or services. Finally, some initiatives were not currently generating revenues, such as eBillPay, but USPS planned to generate revenues from these initiatives in the future. USPS' consistent application of its e-commerce definitions is important so that it can maintain complete and accurate information about its e-commerce and related activities.

USPS also provided conflicting information related to the status of certain e-commerce activities that made it difficult for us to determine when some of the e-commerce initiatives had been implemented. For example, USPS documents provided in April 2000 reported that the Electronic Postmark (EPM) and MoversNet initiatives had been implemented, that is, were made publicly available. USPS documents provided in July 2000 showed that EPM had not been implemented, but USPS has since reported that it was implemented in April 2000. Likewise, the July 2000 USPS documents showed that MoversNet was scheduled to be implemented in July 2000.

USPS documents provided on August 4, 2000, stated that MoversNet had been implemented in the summer of 1996. USPS officials explained that the MoversNet implemented in the summer of 1996 consisted of access via the MoversNet Internet site to a form that could be used to order the hard copy Movers Guide and Welcome Kit and that enhancements to MoversNet were scheduled to be implemented in September 2000. The July 2000 documents showed that of the seven e-commerce initiatives, only two—eBillPay and PosteCS—had been implemented. The August 4, 2000, USPS documents stated that five of its seven initiatives—eBillPay, EPM, MoversNet, PosteCS, and Stamps Online/Virtual Store—had been fully or partially implemented. Subsequently, BOG approved implementation for NetPost Mailing Online to take effect in September 2000. We recognize that activities in this area continue to evolve. However, USPS has had difficulty providing complete and accurate information on initiatives that have been ongoing for some time.

USPS Has Not Consistently Followed its Processes for Approving E-Commerce Initiatives

USPS has not consistently followed its current or former processes for approving and reviewing e-commerce initiatives. Based on information provided by USPS, none of the five e-commerce initiatives fully or partially implemented to date have had all of the required documents or formal approvals from appropriate officials. Without business plans and documented approvals, USPS cannot ensure that its e-commerce initiatives are being appropriately planned and reviewed so that they will support USPS' overall mission and goals.

Based on the documentation provided by USPS, USPS did not follow all of the requirements of either the applicable e-BOB or New Products review and approval processes. USPS initiatives introduced before the new e-BOB review and approval process was finalized in May 2000 were subject to the New Products process. Thereafter, the initiatives were subject to the e-BOB review and approval process. For example, USPS reported that its PosteCS initiative was launched on May 9, 2000. The required documents to approve this initiative prior to implementation, and thus prior to the e-BOB review and approval process, should have included a business proposition statement, preliminary business plan, market test results, and a finalized business plan. However, the documentation USPS provided to us for this initiative was a business proposition statement to the CMO in May 1998, a preliminary business plan in March 1999, and a business proposal presented to e-BOB for approval in July 2000—after the initiative was publicly launched in May 2000. Likewise, USPS launched its Electronic Postmark initiative in April 2000 and provided a business proposal that was presented to e-BOB in July 2000. Table 4 shows the

documentation and approvals USPS provided to us for each of its e-commerce initiatives. However, we did not assess the substance of these documents.

Table 4: USPS Documentation of Its Review and Approval of E-Commerce Initiatives

Initiative (Date implemented)	Business proposition statement^a	Business plan	Market test	Implementation approval
Electronic Postmark (Implemented 4/00)	Yes – business proposal - 7/00	Not provided	Not provided ^b	Not provided
ePayments • (eBillPay) (Implemented 4/00)	Not provided	Yes – draft business plan – 3/00	Not provided	Yes – BOG – 4/00
Internet Change of Address and Move- Related Products and Services • (MoversNet) (Implemented 1996); • Enhancements to MoversNet (To be implemented 9/00)	Not provided	Not provided	Not provided	Not provided
	Yes — business proposal presentation to e-BOB – 4/00	Not provided	Not applicable ^c	Not implemented
NetPost.Certified (Not implemented)	Yes – 3/00	Not provided	Not applicable ^c	Not implemented
NetPost Mailing Online (To be implemented 9/00)	Not provided	Yes – preliminary business plan – 12/96	Not applicable ^c	Yes – BOG – 8/00
PosteCS (Implemented 5/00)	Yes – business proposition statement to CMO – 5/98; business proposal to e-BOB – 7/00	Yes – preliminary business plan – 3/99; plan approved by e-BOB – 8/00	Not provided ^b	Not provided
Stamps Online (Implemented 12/98)	Not provided	Not provided	Yes –12/97, 7/98, 9/98	Not provided
Virtual Store (Not implemented)	Not provided	Not provided	Not applicable ^c	Not implemented

^aBusiness proposition statement required under the New Products process; business proposal required under the new e-BOB process.

^bNo individual market testing was done on EPM, other than USPS offering it in conjunction with PosteCS. USPS provided an Electronic Commerce Services Product Market Study dated June 1997 prepared by an outside consultant that focused primarily on examining the market potential for an electronic postmark as well as other electronic commerce services under consideration. According to USPS' 1998 Comprehensive Statement on Postal Operations, p. 70, EPM was integrated into one messaging service and both fully functional services were then to be used in limited market tests.

^cThe e-BOB process was applicable in May 2000; thus, market testing was not required for this initiative.

Source: USPS documents.

Problems and Inconsistencies in USPS Reported Financial Results for E-Commerce Area

We requested available data on financial results for fiscal years 1995 through 2000 for USPS e-commerce initiatives as part of our work to report on results from these initiatives. In response to our request, USPS provided information on revenues and expenses generated by its e-commerce initiatives, although some did not have reported revenues because they had not been implemented by USPS' cut-off date of February 2000.¹⁵ In April 2000, USPS provided data on its revenues and expenses to date for its current e-commerce initiatives, based on USPS' list of e-commerce initiatives that was provided at that time. We did not independently verify or audit the overall integrity of USPS' data. However, we examined the data to see whether they appeared to be consistent with USPS' e-commerce definition and criteria, clear as to what was included, and complete. We notified USPS of several concerns we had with the April 2000 data; USPS acknowledged our concerns and provided revised data for some of its current e-commerce initiatives as well as its discontinued e-commerce initiatives on June 15 and June 27, 2000. We advised USPS of similar problems with the June data, and USPS provided another set of substantially revised data in July. However, our review of the July data continued to raise concerns about their consistency, clarity, and completeness.

Due to the data deficiencies, we do not have confidence that the revenue and expense data USPS provided for its individual e-commerce initiatives are accurate and complete. Consequently, we do not believe the financial data that USPS provided could be used to reliably assess USPS' progress toward meeting its overall financial performance expectation that revenues generated by e-commerce products and services in the aggregate are to cover their direct and indirect costs as well as make a contribution to overhead.

We recognize that USPS has recently implemented many of its current e-commerce initiatives; thus, it may be premature to assess its progress against its financial goal. As we noted in our 1998 report on new postal products, it may not be reasonable to expect all new products to become profitable in their early years, because new products generally take several years to become established and recover their start-up costs.¹⁶ In this regard, several e-commerce initiatives, such as the Electronic Postmark,

¹⁵ USPS provided data for current and discontinued initiatives from inception, which predated fiscal year 1995, through fiscal year 1999 and partial results for fiscal year 2000. The cut-off date in fiscal year 2000 appeared to vary for some initiatives for the data that USPS provided to us in April 2000. In July 2000, USPS provided revised data with a February 2000 cut-off date for revenues and expenses generated by each e-commerce initiative.

¹⁶ GAO/GGD-99-15.

eBillPay, and PosteCS, were launched earlier this year. USPS' Virtual Store and its NetPost.Certified initiatives were not implemented as of August 2000. Nonetheless, without accurate and complete information on the revenues and expenses associated with USPS' e-commerce initiatives, USPS and other stakeholders will not be able to assess progress toward meeting USPS' financial goal in the e-commerce area.

We noted apparent inconsistencies in the e-commerce expense data that USPS provided. For example, problems included apparent inconsistencies between the data USPS provided to us and to PRC for its Mailing Online initiative. In July 2000:

- USPS reported to us about \$2.2 million in Mailing Online expenses through fiscal year 1998, up from about \$112,000 that was reported to us in April and June 2000. USPS also reported that there was no available breakdown of Mailing Online expenses from inception through fiscal year 1998, although such breakdowns were made for other e-commerce initiatives (i.e., expenses through fiscal year 1997 and for fiscal year 1998).
- USPS clarified that data for Mailing Online expenses (and revenues) did not include associated expenses under USPS' discontinued PostOffice Online initiative to develop and conduct the first test of Mailing Online. In this regard, USPS provided data to us on PostOffice Online expenses that differed from the expense data USPS reported to PRC. For example, on June 15 and June 27, 2000, and on July 2000, USPS reported to us expenses for PostOffice Online of \$0.8 million for fiscal year 1997, \$4.5 million in fiscal year 1998, and \$0 in fiscal year 1999. In comparison, USPS reported to PRC in April 2000 expenses of \$0 for fiscal year 1997, \$9.6 million for fiscal year 1998, and \$18.2 million for fiscal year 1999.
- USPS reported to us that capital commitment data were not available for Mailing Online before fiscal year 2000. Yet, on June 15 and June 27, 2000, USPS reported to us that its capital commitment for Mailing Online in fiscal year 1999 was \$3.5 million.

Also, in April and June 2000, USPS reported to us that there were no expenses in some years for certain e-commerce initiatives, even though it reported that USPS staff had been working on those initiatives in the same time periods. Conversely, USPS reported no USPS staff had worked on certain e-commerce initiatives in some years, even though it reported operating expenses in the same years.

With respect to revenues, as the examples that follow indicate, we also have continuing concerns with the completeness and accuracy of these data, partly because of the substantial revisions that were made from one report to another. For example:

- USPS substantially lowered reported revenues for its MoversNet initiative from \$41.0 million in its April 2000, June 15, 2000, and June 27, 2000, reports to \$25.4 million in July 2000. USPS provided no explanation for this revision.
- USPS reported Electronic Postmark (EPM) revenues for fiscal year 2000 of \$90,000 in April 2000, \$0 on June 15, 2000, \$60,000 on June 27, 2000, and \$0 in July 2000. In July 2000, USPS also reported that EPM generated revenues of \$30,000 after the February 2000 cut-off date for fiscal year 2000 data.
- USPS revised reported revenues from its ePayments initiative from \$3.8 million in its April and June 2000 reports to \$0 in July, apparently because the revenues that were initially provided for fiscal year 2000 were based on expected revenues instead of actual revenues.

Without reliable revenue and expense data, USPS and others will not be able to assess USPS' progress toward its goal that USPS e-commerce products and services are to cover their direct and indirect costs. In addition, in order for such an assessment to be made, additional data would be needed. For example, data would be needed on expenses associated with its e-commerce initiatives, such as (1) expenses related to information systems required to support e-commerce initiatives and (2) some expenses for other infrastructure initiatives that supported e-commerce initiatives. As USPS recognized in its July 20, 2000, letter to us, it plans to calculate "infrastructure and other costs associated with eCommerce . . . as part of our ongoing obligation to appropriately report those incurred costs."

USPS provided us in July 2000 with a "Summary of e-Commerce Initiatives" that included "Total Revenue" of \$41.8 million from USPS' current e-commerce initiatives, "Total Expenses" of \$21.1 million from these initiatives, and "Capital Commitment" of \$5.2 million from these initiatives. However, such data would not be sufficient to tally all revenues and the direct and indirect expenses needed to calculate the net contribution to date from USPS e-commerce initiatives. First, these data do not include \$37.4 million in expenses and \$1.2 million in capital commitment reported in July 2000 for discontinued e-commerce

initiatives.¹⁷ Second, 99.8 percent of USPS' revenues for e-commerce initiatives reported to us in July 2000—specifically, revenues from Stamps Online and Movers Net—appeared to be based on revenue that fit the definition of revenues generated by core and existing postal products and services or Internet enhancements to provide front-end or back-end access to these products and services. As USPS had told us on June 15, 2000, such revenues are to be included with revenues from the core and existing products. Specifically:

- **Stamps Online:** USPS reported in April 2000 that this initiative had generated \$16.3 million in “existing revenue diverted from other USPS channels,” such as revenue from the on-line sale of hard copy stamps. However, as we noted to postal officials in July, such revenue appeared to fit the USPS definition of “our web presence through ‘front-end’ or ‘back-end’ internet access to our core or existing USPS service or products that . . . do not fall within the Postal Service’s definition of ‘electronic commerce initiatives.’ The resources for these functions are reported with other core or existing US Postal Services.” In July, USPS revised its data for Stamps Online to report \$16.1 million in “re-channeled” revenue that was included from hard copy stamps ordered via the Internet in the \$41.8 million in total revenues generated from current e-commerce initiatives. According to USPS officials, the other \$163,000 in Stamps Online revenue was generated through the sale of existing USPS products ordered via the Internet.
- **MoversNet:** USPS reported in April and June 2000 that this initiative generated \$41.0 million in revenues from advertising fees paid by commercial enterprises to have products and services included in MoversNet. When we questioned the inclusion of the hard copy—Movers Guide and Welcome Kit—publications, USPS told us that the three components of this initiative are related and are being managed in conjunction with the electronic application. However, USPS also said that these components “might not fit the definition of eCommerce initiatives if they were considered independently.” In July, USPS reduced revenues from this initiative to \$25.4 million. In August, USPS clarified that these revenues were generated exclusively by the hard copy publications, which could either be picked up at postal locations or ordered via the Internet. In our opinion, revenues generated by hard copy publications that do not require use of the Internet would be inconsistent with USPS’ definition of e-commerce. If these publications were ordered via the Internet, they

¹⁷ These discontinued e-commerce initiatives included Electronic Commerce Services R&D, PostOffice Online, WEB Interactive Network of Government Services (WINGS), Deliver America, and Global e-Post. See GAO/GGD-99-15 for a description of these initiatives. USPS reported expenses through fiscal year 1998 for these initiatives in June and July 2000. USPS reported no revenues from these initiatives.

would fit USPS' definition of front-end or back-end access to an existing product.

USPS Views of its Authority in the E-Commerce Area

USPS has a unique status as an independent establishment of the executive branch, and, as such, some laws and regulations may apply differently to USPS from how they apply to other federal agencies or private sector companies involved in similar e-commerce activities. To provide Congress with information on USPS' legal authority in this complex and emerging area, we asked USPS a series of questions about how it views the application of certain laws and regulations to its e-commerce activities. USPS' General Counsel provided written responses to our questions. Other postal stakeholders or competitors may have interpretations different from those of USPS. We did not evaluate USPS' legal analysis or attempt to obtain others' views within the scope of this review.

USPS believes it has broad statutory authority to offer e-commerce products and services in ways that USPS finds appropriate to its assigned functions and in the public interest. USPS believes this authority is grounded in several provisions of the Postal Reorganization Act of 1970, not just the provision relating to its specific power to offer nonpostal services. According to USPS, numerous federal laws and regulations apply to its e-commerce products and services, but it has a legal status that differs in some respects from the status of its competitors in the private sector. Appendix II summarizes USPS-provided information on laws, regulations, and policies, including information in such areas as (1) USPS statutory authority to offer e-commerce products and services, (2) privacy, (3) consumer protection, (4) criminal statutes, (5) the application of regulations, and (6) the possible application of administration policy.

USPS competitors and others have raised questions on the extent of USPS' legal authority to offer e-commerce products and services and under what circumstances it should offer such services. To put these concerns into context, the appropriate role of USPS has been debated for many years and continues to be debated in the context of proposals for comprehensive legislation to reform the nation's postal laws. In addition, some specific concerns have been raised about USPS e-commerce activities that also relate to emerging e-commerce issues, such as the privacy of consumer information.

Prior GAO Reports That Discussed USPS Legal Authority

We have issued reports in three areas that may relate to the application of laws and regulations to USPS e-commerce activities: (1) USPS' authority to develop and market new products; (2) applicable federal privacy laws that relate to change-of-address information reported by USPS customers; and (3) proposed postal reform legislation that would change USPS' current statutory authority to develop, test, approve, and market new products in a number of ways. As noted in appendix I, due to time constraints, we did not update this past work for the purposes of this review, which pertains to specific USPS e-commerce activities.

We reported in 1998 that "The statutory and regulatory authorities governing the Postal Service provide the Service provide broad latitude to develop and market a wide variety of new products, including both postal and nonpostal products. Under these broad authorities, USPS has developed an array of new products" ¹⁸ However, we also reported that "Our analysis shows that the Service is subject to at least three constraints in developing and marketing new products." These constraints were:

- First, because it is the underlying statutory mission of USPS to provide postal services to bind the nation together, USPS needs to be able to explain how any new product it develops will further that mission. Citing 39 U.S.C. § 101, we reported that USPS' basic mission is to provide postal services to bind the nation together and provide those services in a prompt, reliable, and efficient manner, at reasonable rates, to all communities and patrons.
- Second, under its statutory authority, before marketing (including test marketing) a new domestic postal product, which necessarily involves classification ¹⁹ of mail, USPS must request a recommended decision from PRC regarding the propriety of USPS' proposed classification, rates, or fees for the new product. Prior to issuing its recommended decision, PRC is required to hold hearings on USPS' proposal. The Postal Board of Governors, however, may reject or modify PRC's recommended decision. USPS is not required to request a recommended decision from PRC in the case of nonpostal products, such as telephone cards and retail merchandise.

¹⁸ GAO/GGD-99-15.

¹⁹ Classification refers to a grouping of mail matter for assigning it a specific rate or method of handling.

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- Third, USPS' ability to market new products can be constrained or influenced by congressional oversight, restrictions imposed during the appropriations process, or other legislative actions.

We also reported in 1996 and 1999 that we and USPS have differing interpretations of federal privacy protections that relate to change-of-address information reported by USPS customers.²⁰

- In 1996 and 1999, we reported that through its National Change of Address (NCOA) program, USPS collects and widely disseminates change-of-address information reported by postal customers to a number of private firms licensed by USPS to provide address correction services. We reported that postal customers' change-of-address data are protected from inappropriate release or use under applicable federal privacy laws. However, in our view, USPS collects change-of-address information from postal customers for the limited purposes of address list correction and mail forwarding, not for the purpose of creating and maintaining new-movers lists. Thus, in our view, use of NCOA-linked data to create or maintain new-movers lists by USPS licensees, who are viewed under the Privacy Act as if they were USPS employees, would not be consistent with the limitations imposed by the Privacy Act.

USPS disagreed with our assessment. USPS officials told us:

- USPS does not provide names to be included on any licensee or customer lists. NCOA information provided to licensees, and by licensees to their customers, is limited to the new addresses of persons whose names and addresses are already on the licensee's or the customer's list. Thus, the NCOA program does not violate the prohibition in the Privacy Act against unauthorized disclosure of an individual's name and address.
- Neither the Privacy Act nor the Postal Reorganization Act of 1970 limit in any way licensees' and customers' use of address data that have been properly updated or corrected through the NCOA service. Releasing the NCOA file to licensees to provide address-correction services and licensees' subsequent release of new addresses of postal customers—whose names and old addresses are already on a licensee's or its customer's lists—is lawful when done in accordance with the provisions and conditions of the licensing agreement. After a licensee performs

²⁰ See U.S. Postal Service: Improved Oversight Needed to Protect Privacy of Address Changes (GAO/GGD-96-119, Aug. 13, 1996); and U.S. Postal Service: Status of Efforts to Protect Privacy of Address Changes (GAO/GGD-99-102, July 30, 1999).

address correction services as a USPS agent, it is then free under the Privacy Act to use NCOA-linked data to create or maintain new-movers lists. With regard to the licensees' customers, USPS has no responsibility to attempt to restrict the use of NCOA-linked data by a private business with which it has no legal relationship.

Our 1999 report disagreed with this assessment. It raised as a matter for congressional consideration that Congress may wish to amend the Postal Reorganization Act of 1970 to (1) expressly prohibit the use of change-of-address data by licensees and their customers in the creation or maintenance of new-movers lists; or (2) specifically require USPS to have its licensees and their customers acknowledge in writing that they have been informed and understand that change-of-address data may not be used for any purpose not authorized by law, including the creation and maintenance of new-movers lists. As of August 2000, Congress had not acted on this matter.

Finally, our 1998 report on new postal products discussed how proposed comprehensive legislation known as postal reform legislation would have amended USPS' current statutory authority to develop, test, approve, and market new products in a number of ways.²¹ The legislation, H.R. 22, introduced by the Chairman of the Subcommittee on the Postal Service, House Committee on Government Reform, was based on the premise that USPS participation in competitive markets should be, to the maximum extent possible, on the same terms and conditions as those faced by its private sector competitors. As of July 2000, H.R. 22 was pending in the House Committee on Government Reform.

USPS Reported It Has Broad Statutory Authority to Offer E-Commerce Products and Services

USPS told us that it has broad statutory authority to offer e-commerce products and services in ways that USPS finds appropriate to its assigned functions and in the public interest. According to USPS, several provisions of federal law individually and collectively provide the necessary legal authority for it to offer e-commerce products and services. In exercising its authority in the e-commerce area, USPS told us that the law provides discretion to BOG to determine whether particular new services are appropriate and in the public interest. USPS told us that several provisions of title 39 of the U.S. Code, which establishes the basic legal framework for USPS, give it the authority to offer e-commerce products and services. Specifically:

- Under Section 401, which provides USPS with "general powers" that USPS described as "broad businesslike powers," USPS may enter into

²¹ GAO/GGD-99-15.

agreements, make expenditures, obtain property rights, or perform other transactions useful to accomplish its functions, such as the authority to contract, expend resources, acquire property, or perform other transactions useful to accomplish its functions, whether or not involving the Internet in some respect.

- Section 404 states that without limiting its more general powers, USPS may exercise certain specific powers, such as handing mail, prescribing how postage is paid, selling postage, and providing special nonpostal or similar services. According to USPS, “These provisions are stated in the language of broad inclusion, rather than of narrow constraint. Where the Internet would be useful to the Postal Service and its customers in the performance of its functions, this section does not limit access to that medium along with other methods for getting the job done.”
- Section 403, relating to “general duties,” outlines mandatory USPS functions to which USPS may apply its general and specific powers. USPS stated that most of the Internet-related services that it has considered to date fall inarguably within the scope of its mandatory general duties. For the most part, these services involve channels or avenues intended to make postal services more accessible or convenient for customers who use the Internet.

USPS specifically stated that three subsections of title 39 are each broad enough to empower USPS to provide any service, conduct, or activity (not prohibited elsewhere) that appropriately serves its purposes as reflected in title 39:

- subsection 401(3), which gives USPS the authority to determine the character of, and necessity for, its expenditures;
- subsection 401(10), which gives USPS “all other powers incidental, necessary, or appropriate to the carrying on of its functions or the exercise of its specific powers;” and
- subsection 404(a)(6), which authorizes USPS “to provide, establish, change, or abolish special nonpostal or similar services.”

In this context, USPS discussed how it sees e-commerce products and services as appropriately serving its purposes:

- USPS’ understanding is that section 101(a) of title 39, in describing the “basic function” of USPS as an “obligation to provide postal services to

bind the Nation together,” by “postal services” means the postal system as a whole, not a select group of discrete service offerings in isolation. USPS uses many means to perform the collection of statutory functions described in title 39. It has both the “basic function” generally summarized in section 101(a), and a myriad of supportive functions necessary or appropriate to its work. All of its functions and activities in concert should help to “bind the Nation together.”

- Since “binding the Nation together” is part of the basic function of the postal system as a whole, this is also an appropriate objective to be served by supporting functions in their own right, where feasible, even though section 101(a) itself only specifically enunciates this goal in terms of a “basic function.”
- Technological improvements associated with the Internet offer many opportunities for improved interaction between the postal system and its customers. USPS makes no claim that all-electronic products and services, or any kind of eCommerce products and services, are becoming the “basic function” of USPS. USPS does consider that the particular electronic services being introduced have been carefully configured to serve as logical, supporting, ancillary, incidental enhancements of the postal system for the benefit of USPS customers, in ways that comport well with USPS’ basic function. These services help USPS to meet the needs of USPS customers within the context of the kinds of personal and business correspondence that USPS has traditionally facilitated for them. USPS considers that these services are necessary and appropriate incidents to the performance of postal functions, and are thus within the authority of USPS.
- The remainder of section 101 and scattered other portions of title 39, such as Section 2010,²² further define the mission and methods of USPS in terms emphasizing service, accessibility, efficiency, modernization, and essential relevance to the needs of customers. Nothing in the law gives any indication that USPS is intended to neglect any developing new medium, methods, or technology, or to allow itself to become outmoded, antiquated, difficult to use, too expensive, or irrelevant to its customers. To the contrary, any of these outcomes would seem to be inconsistent with the broad imperatives of service to the public written into the law.
- The Nation’s current postal services are both deeply rooted in the traditions of this country and embedded in the current economic and

²² 39 U.S.C. § 2010 states that USPS shall promote modern and efficient operations, among other things.

social fabric. USPS' challenge is to improve and build upon the services, capability, role, and customer relationships that it already maintains, in sensible, businesslike, appropriate, evolutionary steps. Its authority is to take advantage of electronic commerce, like other methods and technology, in ways it finds appropriate to the performance of its functions and in the public interest.

According to USPS, it has been delegated considerable discretion to apply its experience and judgment in evaluating what seems appropriate for its job and in the public interest. USPS reported that there is no bright-line test of the furthest extent of its authority, but federal law offers a number of useful indicators or points of reference in this regard. According to USPS, a product or service is more likely to be appropriate or in the public interest if the product or service:

- relates to personal, educational, literary, or business correspondence and communication;
- improves or updates an existing or previous USPS service through use of more modern evolving methods or technology;
- improves the efficiency, economy, simplicity, speed, consistency, security, equity, or any other characteristic of its mail or philatelic services so as to add value for customers;
- enables customers to use mail or philatelic services more efficiently, economically, or in greater volume, or to any other advantage to them, to other customers, or to the postal system as a whole;
- is similar, supplementary, integrated or in some way connected to or an extension of a service USPS already provides or has provided;
- is derived in a logical way from an existing service, property interest, stamp design, or other attribute belonging to or identified with USPS;
- as a matter of economic reality or good business practice, is well performed in a multipurpose way in combination with some existing USPS service or operation;
- makes fuller or more efficient use of property or resources, such as using excess or unused capacity so that the addition of some lesser, secondary application would enable the property or resources to be used more productively;

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- adds a particular new service to USPS' menu of offerings, where good business practice demonstrably counsels such an addition;
 - reflects demonstrated demand from the postal customer base;
 - is supported by private or international experience in combining or integrating particular services;
 - assists another federal agency to perform its functions; or
 - advances the policies of the United States.

USPS stated that none of the above factors would necessarily be the sole basis for determining whether an e-commerce product or service would be appropriate or in the public interest. However, USPS noted that the fact that a service is different from previous services, or is nonpostal, is not in itself a bar to USPS offering the service, "although we do not think that means unrelated or inappropriate services are permitted."

Privacy Laws Reportedly Protect the Privacy of USPS E-Commerce Customers More Than They Protect Customers of Private Sector Competitors

USPS has reported that federal privacy laws afford USPS e-commerce customers greater protection than is provided for customers of private sector providers. First, USPS reported that the Privacy Act,²³ which applies to USPS and restricts disclosures of private information maintained about individuals to third parties without their consent, does not apply to private providers of e-commerce services. Second, under the Electronic Communications Privacy Act,²⁴ a "remote computing service"²⁵—a description that USPS reported applies to itself and its contractors—may not disclose stored electronic communications to a governmental entity without either a search warrant or, under limited circumstances, certain subpoenas. USPS told us that "The combined effect of the Privacy Act and the Electronic Communications Privacy Act is to afford customers greater protection from invasions of privacy than they could expect with a private sector provider."

USPS noted that the Privacy Act prohibits it from identifying USPS customer information to other private companies, such as for marketing or market research. In addition, USPS told us that its contractors, such as its

²³ 5 U.S.C. § 552a.

²⁴ 18 U.S.C. § 2701 *et seq.*

²⁵ A remote computing service entails providing computer storage or processing services to the public by means of an electronic communications system. 18 U.S.C. § 2711(2).

business partner in offering eBillPay, are bound by contract to the same nondisclosure requirements that apply to USPS.

USPS also reported that the Trade Secrets Act²⁶ generally precludes USPS from releasing certain confidential, business-sensitive information about a customer from its computer files without the customer's express permission. USPS reported that although it is subject to the Freedom of Information Act (FOIA),²⁷ and private providers of e-commerce products are not, several specific exemptions to mandatory FOIA disclosures protect USPS e-commerce information from disclosure.

USPS reported it has adopted specific postal regulations that limit and govern possible disclosure of its e-commerce customer information under the Privacy Act. According to USPS, information protected by the Privacy Act may not be disclosed except in accordance with this act and postal regulations, which allow disclosure pursuant to "routine uses" for the system of records as published in the Federal Register.²⁸ USPS said it discloses such routine uses to its e-commerce customers through Privacy Act statements placed on its Internet site so they can read the statements before transmitting information to USPS. For example, USPS eBillPay customer information could be provided to a payee, a financial institution, or a credit bureau when necessary to, and as an integral part of, the eBillPay service being provided, according to USPS.

However, USPS told us that although it is subject to FOIA requests for information, USPS would not release information collected from e-commerce customers. USPS said that FOIA does not compel disclosure that is otherwise prohibited by law. Also, FOIA does not compel disclosure of names and addresses of USPS customers prohibited by law.²⁹ USPS said that FOIA does not require the disclosure of information of a commercial nature, whether or not obtained from a person outside USPS, that under good business practice would not be disclosed.³⁰ In this regard, USPS told us that "in our opinion, it would not be good business practice to disclose private information obtained in the provision of electronic services."

²⁶ 18 U.S.C. §1905.

²⁷ 5 U.S.C. § 552.

²⁸ According to USPS, "Routine uses are those situations in which information may be disclosed to third parties without the written consent of the subject of the records, but only for a purpose compatible with the purpose for which the information was collected."

²⁹ 39 U.S.C. § 410(c)(1).

³⁰ 39 U.S.C. § 410(c)(2).

Further, USPS stated that title 39 prohibits USPS and its employees from making any mailing or other list of names or addresses of postal patrons or other persons available to the public.³¹ On the matter of possible use of USPS customer change-of-address information, which we have reported on and is discussed earlier in this report, USPS provided us with this response:

“USPS will not use address information obtained from its electronic commerce products and services to compile new movers lists, nor will its contractors or consultants be authorized to do so. However, change of address information may be submitted electronically for mail forwarding and address correction purposes in the near future; this information will be added to the National Change of Address File in the same way as changes of address that are submitted in the conventional manner. USPS adds change of address information to the NCOA file for forwarding and address correction purposes only when the customer submits a change of address order for that purpose.”³²

USPS Reported That Many Consumer Protection Laws Do Not Apply to its E-Commerce Initiatives

USPS told us that the public interest, universal service, antidiscrimination, and other policy provisions of the Postal Reorganization Act of 1970 provide consumer protections in connection with its e-commerce products and services,³³ while many other federal consumer protection laws are inapplicable. However, some federal consumer protection laws may apply to USPS in certain circumstances, and others may apply to USPS contractors or financial institutions that help USPS offer e-commerce products and services. Further, USPS said it administers certain consumer protection laws relating to U.S. mail, and these laws may be applicable in some circumstances to USPS e-commerce products and services.

³¹ 39 U.S.C. § 412.

³² In July 2000, the USPS Internet site for MoversNet contained a form for customers to submit changes to physical addresses and also referenced the following: “Privacy Act Note: Filing this form is voluntary. However, your mail cannot be forwarded without an order. If filed, your new permanent address will be provided to individuals and companies who request it, but this will occur only when the requester is already in possession of your name and old mailing address. Use Form 3576 to tell correspondents and publishers of address changes. Authorized 39 U.S.C. 404.”

³³ USPS stated that the Postal Reorganization Act of 1970 is the principal federal consumer protection law relating to its e-commerce products and services. USPS noted that 39 U.S.C. § 202(a) specifies that the USPS Governors are appointed by the President to represent the public interest generally; and 39 U.S.C. § 403(a) states, among other provisions, that USPS “shall serve as nearly as practicable the entire population of the United States.” USPS views of how its public interest, universal service obligations, and other postal policy provisions of the Postal Reorganization Act of 1970 relate to its e-commerce activities are discussed further in the section of this report on USPS statutory authority in the e-commerce area. USPS views on the applicability of antidiscrimination provisions are discussed in the section of this report on competition-related laws.

Like other federal activities under the control of presidential appointees,³⁴ many consumer protection laws that address the activities of organizations outside the controls of federal management do not apply to USPS e-commerce products and services, according to USPS. For example, USPS noted that some consumer protection laws dealing with debt and credit do not apply because USPS does not extend credit. However, USPS said that some federal consumer protection laws might apply to USPS contractors or financial institutions that work with USPS to help provide USPS e-commerce products and services.

USPS told us that it is charged with enforcing consumer protection laws known as the “nonmailability laws,”³⁵ which include false representation and lottery laws, and which incorporate the criminal nonmailability statutes.³⁶ USPS told us it would be responsible for enforcing the nonmailability laws to the extent that any USPS e-commerce product or service could be used to violate them. USPS provided the following three examples:

- If a USPS e-commerce product or service is the means to promote a “solicitation of money or property through the mail by means of false representations” or a lottery (e.g., if remittances were solicited electronically and received through the U.S. mail), then the nonmailability laws would apply.
- If a physical product is ordered and paid for electronically, and then delivered by USPS, the nonmailability provisions relating to hazardous materials, as well as other restrictions, would apply.
- If a postal e-commerce product is used to both promote and deliver a product or service that would violate the written, printed, or graphic matter restrictions, it does not seem that the USPS civil consumer protection statutes would apply. However, an entirely electronic scheme

³⁴ The Board of Governors is the governing body of USPS. It consists of 11 members, including 9 Governors appointed by the president, with the advice and consent of the Senate; the Postmaster General (PMG), who is appointed by the Governors; and the Deputy Postmaster General, who is appointed by the Governors and the PMG. By law, Governors are chosen to represent the public interest and can not be representatives of special interests. See U.S. Postal Service: Issues Related to Governance of the Postal Service (GAO/GGD-97-141, Aug. 14, 1997).

³⁵ 39 U.S.C. §§ 3001-3017.

³⁶ USPS said that, in general, these laws limit using the U.S. mail to solicit money or property through the mails by means of false representation; the conduct of illegal lotteries, sweepstakes, or skill contests involving written, printed, or graphic matter; or the promotion or distribution of various physical items, such as hazardous or dangerous items, that are unfit by law to be sent through the mail.

or device with the fraudulent attributes of a false representations or lottery scheme would fall under the criminal statutes prohibiting wire fraud.³⁷

USPS Said It Investigates Violations Relating to Its E-Commerce Offerings

USPS reported that the Postal Inspection Service, a part of USPS that is responsible for enforcing postal laws, has the authority and responsibility to investigate violations of law that involve USPS e-commerce products and services. USPS discussed two interrelated matters: (1) which federal laws define and apply to unlawful activity involving USPS e-commerce products and services, and (2) how the authority of the Inspection Service and other federal law enforcement agencies is defined with respect to enforcing those laws. In addition, USPS reported that the Inspection Service also has an interest in other crimes that make use of the Internet.

First, USPS reported that a large number of federal statutes, regulations, and policies are in place to ensure that USPS provides secure and reliable services that are free of fraud, waste, and abuse. These federal laws reportedly apply not only to U.S. mail, but also to USPS operations, equipment, and employees.

Concerning specific USPS e-commerce offerings, USPS told us:

- The USPS Electronic Postmark (EPM) is protected by postal laws and regulations. Thus, interfering with or misusing the EPM or electronic documents handled by a private company that incorporates the EPM would violate the law. However, the EPM does not have the same legal status as the physical postmark on U.S. mail, which is a byproduct of USPS processing and indicates USPS possession of an item for handling and delivery. As evidence that an item is “mail,” the physical postmark may trigger a number of criminal statutes in the case of obstruction or theft. To the extent a physical postmark has additional legal significance, such as indicating the date when an item is deemed to have been delivered, that effect is the result of nonpostal federal and state laws and regulations, as well as contracts between private parties.
- PosteCS communications do not have the same legal status as U.S. mail, because they are not physical mail. Thus, although a number of laws apply to and protect such messages, other laws applicable only to physical U.S. mail do not.
- The electronic portion of hybrid mail—which includes the electronic portion of Mailing Online communications—does not have the same legal

³⁷ 18 U.S.C. § 1343.

status as physical U.S. mail because it is not yet physical mail. Once it is converted to physical mail, it would have the same status as physical mail. While a number of laws apply to and protect such electronic messages, other laws applicable to physical mail do not.

- If USPS offered a universal “electronic mailbox,” which postal officials have said might be done in conjunction with some of its e-commerce initiatives, the electronic mailbox would not have the same legal status as a physical mailbox because is not a physical mailbox. Thus, although a number of laws apply to, and protect, an electronic mailbox, others applicable to physical mailboxes would not apply.³⁸
- If eBillPay bills are presented only electronically, laws protect them in a different manner from the protections afforded to physical mail. Legal protections relating to electronic communications would apply. Laws and regulations that apply specifically to physical U.S. mail, and only to such mail, would not apply.

USPS told us that the Inspection Service has broad authority to investigate any criminal or civil offenses that affect the use or delivery of mail, occur on USPS property, or otherwise impair the efficient operation of USPS. The authority of the Inspection Service was further enhanced in 1998 by a delegation of authority from the U.S. Attorney General and MOUs with the Federal Bureau of Investigation (FBI) and the U.S. Secret Service that gave the Inspection Service limited jurisdiction to investigate certain crimes such as wire fraud.³⁹ USPS told us that the Inspection Service’s role in investigations concerning postal e-commerce products and services promotes efficient law enforcement and eliminates duplication of efforts, which was one of the primary purposes of the delegation and the MOUs. USPS also said that the basis for the delegation and the MOUs was uncertainty concerning whether the mail fraud statute would apply to USPS e-commerce products and services, which had not been addressed in court, but that the wire fraud statute could be assumed to apply on the

³⁸ USPS reported that the specific statutes relating to the theft, tampering, or misuse of physical mailboxes, generally 18 U.S.C. §§ 1705, 1707, and 1708, would presumably not apply. In their place, the criminal statutes prohibiting electronic tampering, 18 U.S.C. §§ 1029 (access device fraud); 1030 (computer fraud and abuse); 1343 (wire fraud); and 2701 (unlawful access to stored communications) would appear to apply.

³⁹ The delegation of authority gave the Inspection Service a limited delegation of jurisdiction to investigate violations of 18 U.S.C. §§ 1029, 1030, 1343, and 2701. The delegation of authority recognized the concurrent jurisdiction of the FBI and the U.S. Secret Service as the principal law enforcement agencies responsible for the enforcement of 18 U.S.C. §§ 1029 and 1030, and the FBI as the principal enforcement agency responsible for the enforcement of 18 U.S.C. §§ 1343 and 2701.

basis of existing case law. The delegation and the MOUs covered the following:

- criminal conduct in which USPS is an actual or intended victim;
- conduct that directly affects electronic messages conveyed by USPS and the counterfeiting or misuse of any Electronic Postmarks used by USPS; and
- criminal conduct directed against any computer, computer system, communication system, delivery system, payment system, or other similar property owned or leased by or provided to USPS.

For example, USPS told us that under its recent delegation of authority from the Attorney General, the Inspection Service would investigate illegal interception or tampering involving the USPS electronic postmark (EPM), including cases where the USPS EPM is used by a private company that recently purchased the EPM for inclusion with some of its electronic communications. Any such efforts would be based on the provision in this delegation that specifically defines “criminal conduct that has a detrimental effect upon the operations of the Postal Service” to mean “conduct that directly affects the counterfeiting or misuse of any electronic postmarks used by the Postal Service.” In this regard, USPS told us that the Inspection Service has no authority to investigate electronic communications that do not “have a postal nexus.” Finally, USPS said that violations of federal law relating to electronic communications without the EPM would be investigated by other federal law enforcement agencies.

In addition to these activities, USPS told us that it has enforcement interests in other crimes making use of the Internet. For example, USPS noted its longstanding relationship with the Federal Trade Commission (FTC) to protect consumers, in which the Inspection Service has jurisdictional responsibility regarding traditional mail fraud schemes that originate with an Internet solicitation and result in the mailing of a payment or merchandise. USPS estimated that currently, roughly 45 percent of Inspection Service consumer fraud cases in which the underlying offense is mail fraud originate on the Internet.

USPS Reported That Antitrust and Competition Laws Generally Do Not Apply to USPS

USPS told us that the antitrust laws and general competition-related statutes do not apply to USPS, with the exception of the advertising and competition provisions of the Lanham Act.⁴⁰ However, USPS told us that the Postal Reorganization Act of 1970 prescribes other competition-related factors that must be considered. Specifically, USPS told us:

- In ratemaking for postal services, the effect of rate increases on competition is among the statutory factors for consideration, and competitors have a formal opportunity to question and contest USPS rate and classification proposals—a right not ordinarily available to USPS with respect to the prices and services of its competitors.
- Some provisions of the Postal Reorganization Act of 1970 prescribe certain requirements for USPS that relate to competition, which would apply to some USPS e-commerce products and services. Specifically, USPS stated that with respect to “postal” services such as Mailing Online, USPS is specifically prohibited under 39 U.S.C. § 403(c) from making undue or unreasonable discrimination among mail users or from granting undue or unreasonable preferences.
- USPS does not think it could be seriously contended that the public interest would support the provision of nonpostal services having unreasonable objectives or applying irrational methods. Accordingly, while section § 403(c) of title 39 in terms seems inapplicable to nonpostal services, USPS assumes that general principles akin to those underlying that section are implicit in the policies of title 39 and thus should be applied to nonpostal services.
- Competition concerns are taken into account by USPS and its Board of Governors, who are appointed by the president and who are required by law to represent the public interest. This control mechanism, which is not present in private firms, brings to bear in USPS a standard of fairness both broader and stricter than any fair competition legislation applicable to private firms. USPS does not conceive of a situation in which the Governors would let stand a USPS offering of a service on terms legitimately shown to be contrary to unfair competition requirements applied in the private sector. In practice, opponents of USPS introduction of particular new services rarely attempt to establish a violation of particular fair competition requirements applicable to themselves. Instead, broad policy arguments are advanced concerning the degree to which

⁴⁰ The Lanham Act, among other things, protects businesses from such anticompetitive acts as false advertising and false representation about a product or service. 15 U.S.C. § 1125(a).

USPS, uniquely, should refrain from direct competition with private firms. It is this kind of basic policy issue that the Board of Governors finds it necessary to evaluate in considering whether to approve a particular initiative or how it should be structured. In some cases the Board has found it appropriate and in the public interest, for policy or prudential reasons, to hold USPS' activities well short of any considerations that private firms would observe.

Further, PRC decisions on proposed rates for USPS e-commerce products that are domestic postal products, such as Mailing Online, are subject to the requirement that each class of mail or type of mail service bear the direct and indirect postal costs attributable to it plus that portion of all other costs reasonably assignable to such class or type.⁴¹ Concerning nonpostal and e-commerce products and services, USPS told us:

- For nonpostal services, failure to cover costs could unfairly shift costs to users of other services. Further, while section 101(d) of title 39 deals specifically with mail services, the cost apportionment policy reflected in that provision⁴² seems appropriately applied to nonpostal services as well. USPS believes that it must seek to price its nonpostal services in a fair and reasonable way, including coverage of attributable costs plus a reasonable contribution to overhead.
- In providing eCommerce products and services, USPS will ensure that in the aggregate, the revenues generated by such products and services will cover their direct and indirect costs as well as make a contribution to overhead. Further, eCommerce products and services in the aggregate are to cover their incremental costs and thus not be cross-subsidized. Also, it is intended that each eCommerce product and service should cover its costs.

Major Federal Regulations Apply to USPS E-Commerce Offerings in Some Cases, But Not in Others

USPS told us that, in some cases, major federal regulations apply to its e-commerce products, including regulations adopted by USPS and other federal agencies. However, USPS said that the ability to make generalizations about how the regulations apply to USPS is somewhat limited. According to USPS, as a general matter, legal relations between USPS and other agencies are governed by provisions of the Postal Reorganization Act of 1970. These provisions specify, among other things, the application of laws to USPS, cooperation between USPS and other

⁴¹ 39 U.S.C. § 3622(b)(3).

⁴² 39 U.S.C. § 101(d) states that "Postal rates shall be established to apportion the costs of all postal operations to all users of the mail on a fair and equitable basis."

government agencies, and the relationship between USPS and the Department of the Treasury.⁴³ Further, USPS reported that it has authority to issue regulations pertaining to its own e-commerce products and services.

USPS provided the following examples of how the regulatory authority of other federal agencies applies or does not apply to its e-commerce products and services:

- USPS eBillPay is generally subject to the jurisdiction of the Department of the Treasury and the Federal Reserve, because the jurisdiction in question applies to USPS, its private contractor, or both. The regulations are extensive and complex.
- Laws and regulations governing Automated Clearinghouse (ACH) transactions do not apply to USPS, except when USPS chooses to make financial transactions using the National Automated Clearinghouse Association (NACHA). In those cases, the NACHA rules apply to the transactions.
- USPS' participation in NetPost Mailing Online apparently does not invoke the jurisdiction of the Federal Communications Commission (FCC). Postal electronic services do not involve USPS directly in common carriage of basic electronic information, which is regulated by FCC. Instead, these services can be classified as "enhanced" services, which currently are not regulated by the FCC.
- There are no written regulations or guidelines that require USPS to comply with FTC guidelines. USPS' established practice is for advertising initiatives to be reviewed by attorneys within its law department for legal and public policy advice. USPS may refer to various FTC regulations, for instance, the use of the word "free" (16 C.F.R. § 251.1) and on pricing comparisons (16 C.F.R. § 233.1 – 233.5). Also, USPS may go beyond what is required by FTC guidelines where it seems appropriate to assure fairness or avoid controversy.

USPS made the following points concerning its regulatory authority:

- Title 39 gives USPS the general power "to adopt, amend, and repeal such rules and regulations as it deems necessary to accomplish the objectives of

⁴³ 39 U.S.C. §§ 410(a), 411, and 2006.

this title.”⁴⁴ This general power applies to the exercise of all USPS functions, including any use made of e-commerce.

- USPS has the authority to issue regulations that define the terms of its e-commerce offerings in the Domestic Mail Manual as appropriate, such as for Mailing Online, or in other directives.
- USPS’ authority to adopt regulations defining the terms and conditions of its own nonpostal e-commerce services is functionally similar in most respects to the authority that any private company would exercise to prescribe the terms on which it is prepared to deal with its customers and suppliers.
- USPS has “no authority to act as a regulator over economic activity in general or over the Internet in particular.”

USPS Reported That its E-Commerce Activities Are Generally Not Subject to Administration Policies

USPS reported that its activities in the e-commerce area are generally not subject to administration policies that apply to other executive branch agencies. USPS observed that:

- According to President Nixon, one of the objectives of the Postal Reorganization Act of 1970 was that USPS be insulated from the direct control of the president and the Bureau of the Budget, the predecessor agency to OMB. USPS is, nevertheless, sensitive to broad administration policies in this area. President Clinton’s 1999-2001 budget submissions have included general policy discussions encouraging USPS’ cooperative efforts with the private sector in promoting the emergence of secure and reliable electronic messaging networks, and in leveraging its capabilities to help promote universal access. USPS’ new service offerings are consistent with those statements.
- The objective of insulating USPS from political control was reportedly implemented by organizing USPS as an independent establishment of the executive branch, headed by nine presidentially appointed Governors whose terms extend 9 years, beyond the term of any single administration. Since 1970, USPS has consistently maintained the view that executive orders and OMB instructions, unless grounded in separate statutory authorization covering USPS or by national security powers, do not apply as a matter of law, although the Governors, as representatives of the public interest, may find it appropriate to be guided by certain of them.

⁴⁴ 39 U.S.C. § 401(2).

- By and large, other federal authorities have respected USPS' independence, and USPS has also respected the responsibilities of those authorities and worked closely with them.
- None of the provisions of OMB Circular A-76 regarding "contracting out" of government services have been adopted. USPS has broad authority to enter into contracts, and follows the government policies in the Postal Reorganization Act of 1970 and other authorities incorporated therein.
- With regard to e-commerce, the President has included in his last three budget submissions a statement of general encouragement for USPS' cooperation with the private sector in promoting the emergence of secure and reliable electronic messaging networks and in leveraging its capabilities to help promote universal access. These presidential statements do not mention particular services or more specific policies for which USPS has responsibility.⁴⁵

Concerns Have Been Raised About USPS E-Commerce Activities

USPS competitors and others have raised concerns regarding USPS e-commerce activities. Some of these concerns relate to the broad statutory authority that USPS asserts it has to offer e-commerce products and services in ways that USPS finds appropriate to its assigned functions and in the public interest. Also, some USPS competitors and others have recently raised concerns that USPS has an unfair competitive advantage because it is subject to different legal and regulatory requirements than are its competitors in the e-commerce area. The appropriate role and mission of USPS continues to be debated, including the extent of USPS legal authority to offer e-commerce products and services, and under what circumstances it should offer such services.

Related concerns have been raised in the past. CRS has reported that "... since early in its post-1970 history, the USPS has been charged with overstepping its mandate by offering retail and service products that are not directly related to its primary mission—delivering the mail to all parts of the country at uniform rates."⁴⁶ We previously reported that some Members of Congress and some private sector companies have said that USPS is unfairly expanding its product line to compete in nonpostal-related markets, and they have manifested their concerns in various

⁴⁵ Budget of the United States Government, Fiscal Year 2001, Appendix, 1195-96 (2000); Fiscal Year 2000, Appendix, 1191 (1999); Fiscal Year 1999, Appendix, 1126 (1998).

⁴⁶ Postal Service Diversification into Non-Mail Activities, Congressional Research Service, May 1, 2000 (RS20567).

forms.⁴⁷ Concerns have continued to be raised with respect to USPS e-commerce products and services. For example:

- Participants in the recent PRC case on USPS' proposal for a Mailing Online experiment largely focused their attention on whether USPS' status as a statutory nationwide monopoly gave it an unfair advantage as it enters the mixed electronic/hard copy communications market, and on whether USPS accurately identified Mailing Online costs.⁴⁸ During the case, several participants reached a settlement agreement with USPS, under which USPS will allow functionally equivalent, competing electronic/hard copy services to mail their products at the same postage rates USPS intends to charge for Mailing Online. According to PRC, this settlement alleviated much of the concern about unfair competition. However, PRC found that competition considerations and antitrust laws were relevant to its decision. On this matter, PRC found that Mailing Online, as recommended by the terms of PRC decision, would not constitute unfair competition or result in an unfair competitive advantage for USPS.
- In October 1998, United Parcel Service (UPS) filed a complaint with PRC that PosteCS has constituted unfair competition and is a class of mail or type of mail service and thus a domestic postal service that USPS could legally establish only by requesting a PRC decision on its classification and rates. USPS disagreed with both charges. USPS stated that PosteCS is a totally electronic service for documents; does not use USPS' physical retail, mail processing, and delivery networks; conducts all transactions through electronic communications; and is an international service. USPS also said that PRC had no authority to review USPS' categorization of PosteCS as a nonpostal service. However, PRC ruled that it has the authority to consider the claim that PosteCS is a postal service⁴⁹ and directed the complaint case to initially focus on the issue of whether PosteCS is a postal service. In August 2000, this case remained under consideration. USPS also told us that PRC does not have authority to review USPS decisions of what services are postal and nonpostal. In USPS' view, hybrid service offerings that combine electronic communications and hard copy mail, such as Mailing Online, are "postal services" that

⁴⁷ GAO/GGD-99-15.

⁴⁸ Opinion and Recommended Decision, Mailing Online Experiment, Docket No. MC2000-2, Postal Rate Commission, June 21, 2000.

⁴⁹ PRC stated that it had the discretionary authority to consider a wide range of rate and service complaints and thus was obliged to interpret the Postal Reorganization Act of 1970 and its applicability as part of the complaint process. Order Denying Motion of United States Postal Service to Dismiss Complaint and Notice of Formal Proceedings, PRC Order No. 1239, Docket No. C-99-1, May 3, 1999.

involve aspects of the acceptance, processing, or delivery of mail. Conversely, USPS stated that electronic service offerings that do not involve an aspect of the acceptance, processing, or delivery of mail are not “postal services” for purposes of PRC review.

- Concerns have been raised that USPS’ dual role as a competitor and an entity with law enforcement responsibilities for its e-commerce products and services is inconsistent with fair competition. The Chairman of the House Subcommittee on the Postal Service has raised concerns that the Department of Justice (DOJ) delegation of authority to the Inspection Service in the e-commerce area gave USPS an unfair competitive advantage over private sector providers of electronic products and services who lack similar authority. DOJ defended its delegation of authority as not inconsistent with current law and stated the consideration of the issues did not negate the Attorney General’s responsibility to ensure that the Inspection Service has the enforcement tools it needs to carry out its federal law enforcement mandate. However, DOJ also said that it “understands the potential for abuse that exists as a result of the law enforcement powers and protections assigned to the Postal Service, and we concede that support for the enforcement activities of the Postal Inspection Service may be viewed as somewhat incongruous with this concern.” DOJ said that the drafters of the Postal Reorganization Act of 1970 did not provide safeguards against the possibility of conflicts between USPS’ goals in managing the Inspection Service and the law enforcement goals of the federal government.
- In a May 8, 2000, letter to Representative Christopher Cox that was also circulated to other Members, the Executive Director of the U.S. Internet Industry Association (USIIA)⁵⁰ expressed a number of concerns, including the view that given the entry of USPS into e-commerce, its historic role as a regulator and its current exemption from antitrust considerations, it remains to be resolved whether USPS should be permitted to dominate services it may also seek to regulate. On May 17, 2000, USPS responded in a letter to Representative John McHugh, Chairman of the House Subcommittee on the Postal Service, and other House Members rebutting the USIIA concerns, stating that USPS is not in a position of regulating any portion of electronic services offered by USPS competitors, nor does it seek to do so.

⁵⁰ USIIA is a nonprofit trade association that reported its mission is to foster the growth and development of Internet commerce, content, and connectivity.

-
- The President and CEO of the Computer & Communications Industry Association (CCIA)⁵¹ has recently objected to USPS offering competitive e-commerce products and services on the grounds that with an infrastructure established through taxpayer subsidies and its government-sponsored postal monopoly, USPS' entrance into these markets would be unfair and detrimental to competition and innovation. Similarly, the Chairman and CEO of UPS has also reportedly said that USPS wants to dominate the communications end of the e-commerce revolution, doing things like bill presentment and payment, but that a government monopoly should not be allowed to use the benefits of its government standing to attack the private sector.

In addition to these competition-related concerns, some specific concerns have been raised concerning USPS e-commerce products and services that relate to emerging e-commerce issues, such as consumer privacy. For example, USPS' Privacy Act statement for eBillPay was criticized this spring by the PRC's Chairman for permitting overly broad disclosure of customer information. USPS subsequently revised its eBillPay Privacy Act Statement to further restrict disclosure of customer information. In explaining the revisions, USPS noted that it had not provided, and did not intend to provide, information under its former Privacy Act statement.

During oversight hearings and in the debate over whether the nation's postal laws should be reformed, some in Congress have continued to raise questions about USPS' e-commerce activities and related legal authority, due in part to the conflicting views of USPS and some of its competitors and other stakeholders. Many of the competition-related concerns stem from the current USPS legal framework, which among other things, grants USPS a legal monopoly over the delivery of letter mail and requires USPS to provide service to all patrons in all communities and operate on a breakeven basis.

In addition, USPS stated that this framework allows USPS to develop new products and enter into markets currently being served by the private sector but exempts it from some of the laws and regulations that apply to private sector businesses. Consequently, some private sector businesses claim they are placed at a competitive disadvantage. On the basis of these concerns, some competitors and others contend that USPS should refrain from entering markets currently being served by the private sector and should limit its activities to providing hard copy delivery services. In

⁵¹ CCIA reported that it is an international, nonprofit association of computer and communications firms as represented by their most senior executives.

addition, some stakeholders assert that if USPS is to compete in these markets, the laws should be changed so that USPS must participate on the same terms and conditions as those faced by its private sector competitors.

On the other hand, the Postmaster General and some other stakeholders have said that current laws put USPS at a competitive disadvantage and have called for changes to give USPS increased flexibility to compete. He and other stakeholders have called for granting USPS greater pricing flexibility and more authority to introduce new products. The issue of USPS' authority to offer nonpostal products and services and its specific authority to offer e-commerce products and services continues to be raised in Congress.

Conclusions

USPS is in the early stages of implementing its current e-commerce program. Since the beginning of 2000, USPS has taken a number of steps to develop and implement its e-commerce activities, including developing a definition of its e-commerce initiatives, identifying its e-commerce and related initiatives, and establishing an organizational process for approving its e-commerce initiatives. USPS has identified seven e-commerce initiatives involving products and services that facilitate the movement of messages, merchandise, and money in ways that require the use of the Internet and generate revenues for USPS. USPS has also recently outlined overall goals and strategies for the e-commerce area and developed some performance targets for its e-commerce initiatives.

Despite these steps, we have identified three problem areas in which USPS needs to improve its management of its e-commerce area. These are:

- inconsistencies in identifying e-commerce and related initiatives and in reporting the status of these activities that made it difficult for us to ensure we had a complete and accurate picture of USPS' e-commerce activities;
- inconsistencies in following the required process for reviewing and approving its e-commerce initiatives; and
- deficiencies in the financial information USPS provided for its e-commerce activities that raised concerns about the accuracy and completeness of the financial reporting for e-commerce activities.

Without reliable information, it is difficult to obtain a complete and accurate picture of USPS' e-commerce activities. According to documents provided to us by USPS, some e-commerce initiatives were implemented

without required business plans and documented approvals, which raises questions as to whether the initiatives were appropriately planned and reviewed. Finally, we do not believe the financial data that USPS provided could be used to assess USPS' progress toward meeting its overall financial performance expectation that revenues generated by e-commerce products and services in the aggregate are to cover their direct and indirect costs as well as make a contribution to overhead. We are making several recommendations to USPS that address these key management deficiencies.

In the legal area, USPS has provided legal information and analysis that should be a valuable reference to Congress and other stakeholders interested in the application of laws and regulations to USPS' e-commerce activities. USPS reports that its unique status as an independent establishment of the executive branch gives it broad legal authority and discretion to offer e-commerce products and services in ways that USPS finds appropriate to its assigned functions and in the public interest. USPS, some competitors, and other stakeholders have conflicting views on the extent of USPS' legal authority to offer e-commerce products and services, and under what circumstances it should offer these services. The appropriate role of USPS has been debated for many years and continues to be debated in the context of proposals for comprehensive legislation to reform the nation's postal laws.

Recommendations

We recommend that the Postmaster General take the following actions to help ensure more effective management and oversight of USPS' e-commerce activities:

- take appropriate actions to help ensure that e-commerce and related initiatives are appropriately identified and maintain accurate and complete information related to the status of these initiatives;
- follow processes and controls that have been established for developing and approving e-commerce initiatives; and
- provide complete and accurate information on costs and revenues for the financial data on e-commerce initiatives.

Agency Comments and Our Evaluation

USPS provided comments on a draft of this report in a letter from the Deputy Postmaster General dated August 29, 2000. These comments are summarized below and included as appendix III. We also incorporated technical comments provided by USPS officials into the report where appropriate. The Postal Rate Commission (PRC) provided comments on a

draft of this report in a letter from the Chairman dated August 25, 2000; these comments are also summarized below and included as appendix IV.

USPS said that the draft report generally described its e-commerce program at the time of our review accurately and captured the normal growing pains that most organizations go through in developing and beginning to implement something not done before. Further, USPS stated that it accepted and endorsed the report's recommendations. However, USPS noted some differences in perspective, which we discuss below.

USPS said it appreciated our draft report's candid evaluation and identification of opportunities to improve how it manages its e-commerce activities. USPS said that it is already taking the necessary actions to implement our recommendations within a management structure that will provide long-term as well as day-to-day oversight of the e-commerce program. Specifically, USPS said it would more precisely identify its new e-commerce initiatives and more completely document their review and approval. USPS also said it will require that complete and accurate cost, revenue, and performance data be tracked and periodically reported to senior management so USPS can assess whether its e-commerce program is meeting its goal in this area.

With respect to USPS' characterization of differences in perspectives on the administrative history of USPS' e-commerce initiatives, this apparently refers to our concerns about USPS' inconsistencies in applying its e-commerce definition. We recognize that this is an evolving area and some differences in interpretation of USPS' definition of e-commerce initiatives can exist. However, in some cases, it was difficult to understand the rationale for the identification of e-commerce initiatives without more clarification from USPS on how it intended to treat the revenues from these initiatives. Also, some initiatives were provided in conjunction with other products and services, and it was not clear how the revenues would relate to e-commerce versus other core products or services. USPS' consistent application of its e-commerce definitions is important so that it can maintain complete and accurate information about its e-commerce and related activities and has implications for how USPS accounts for its revenues and expenses from various e-commerce initiatives.

Concerning USPS' statement that all of its e-commerce initiatives were thoroughly reviewed and approved by senior management before implementation; if so, such approvals were not fully documented. Without documented approvals, USPS management cannot ensure that its e-

commerce initiatives are being appropriately reviewed so that they will support USPS' overall mission and goals.

USPS commented that it has been challenged by a new and extremely dynamic marketplace and that its e-commerce efforts are still in the early stages. USPS noted that its e-commerce program's most substantial progress so far has occurred while our review was being conducted this year. In that regard, USPS commented that even with its more accelerated approval process for its e-commerce initiatives, it is still carefully evaluating projects, controlling their use of resources, defining how it will measure success, and continually measuring performance against those standards. We believe that these are important steps that need to be fully and effectively implemented. In this regard, we believe that effective implementation of our recommendations should aid USPS in improving its management and oversight in the e-commerce area.

USPS also noted, and agreed with our report, that it needed better mechanisms to track and report the revenues and expenses of its e-commerce initiatives. Accordingly, USPS said it is already instituting a standard financial reporting procedure that will allow it to better assess the progress of each e-commerce initiative toward meeting its expected performance goals. We believe that the financial data deficiencies we reported are significant. The steps USPS has reported taking in this area are important and need to be effectively implemented.

In the comments provided by PRC, the Chairman stated that overall, the draft report's analysis of the issues was thorough, well-documented, and objective in its presentation of USPS views and those of other interested parties. In addition, PRC commented on one specific feature of our draft report dealing with USPS' pricing policy.

As we reported, USPS told us that it must seek to price its nonpostal services in a fair and reasonable way, including coverage of attributable costs plus a reasonable contribution to overhead. Also, USPS said that in providing e-commerce products and services, it will ensure that in the aggregate the revenues generated by such products and services will cover their direct and indirect costs as well as make a contribution to overhead. However, PRC commented that setting fees for e-commerce or other nonpostal services to achieve a revenue criterion of recovery of direct and indirect costs, plus some non-zero contribution to overhead, provides no assurance that the fees would satisfy the incremental cost test, either

individually or collectively, and thus generate revenues sufficient to be free of cross-subsidy.⁵²

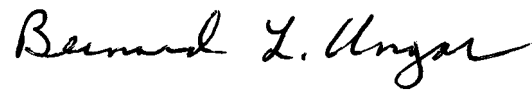
PRC also stated that even undertaking to satisfy the incremental cost test in the aggregate rather than individually could allow some e-commerce products to be cross-subsidized. Further, PRC said that it is not clear that it is good policy for a federal agency to offer any competitive product that is cross-subsidized. In this regard, USPS officials provided clarification during its review of our draft report that “eCommerce products and services in the aggregate are to cover their incremental costs and thus not be cross-subsidized. Also, it is intended that each eCommerce product and service should cover its costs.”

Although we did not address this issue within this review, these comments further illustrate the need for accurate financial information. In addition, some postal stakeholders have raised concerns about the potential for cross-subsidization of postal e-commerce products from the revenues of other USPS products and thus are likely to focus attention on USPS’ financial performance in the e-commerce area.

We are sending copies of this report to Senator Daniel Akaka, Ranking Minority Member, Subcommittee on International Security, Proliferation, and Federal Services, Senate Committee on Governmental Affairs; Representative Chaka Fattah, Ranking Minority Member, Subcommittee on the Postal Service, House Committee on Government Reform; Mr. William J. Henderson, Postmaster General and Chief Executive Officer, U.S. Postal Service; Mr. Edward Gleiman, Chairman, Postal Rate Commission; and other interested parties. We will also make copies available to others on request.

⁵² PRC defined the following criteria for the incremental cost test: “The revenues collected from any service (or group of services) must be at least as large as the additional (or incremental) cost of adding that service (or group of services) to the enterprise’s other offerings.”

Staff acknowledgments are listed in appendix V. If you have any questions about this report, please contact me on (202) 512-8387.



Bernard L. Ungar
Director, Government Business
Operations Issues

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Table II.1: Selected Federal Statutes, Regulations, and Policies That May Relate to USPS E-Commerce Initiatives According to USPS

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Abbreviations

DOJ	Department of Justice
ACH	Automated Clearinghouse
BOG	Board of Governors
CCIA	Computer & Communications Industry Association
CMO	Chief Marketing Officer
CRS	Congressional Research Service
eBillPay	Electronic Bill Payment Service
eBOB	eBusiness Opportunity Board
E-COM	Electronic Computer-Originated Mail
EPM	Electronic Postmark
FBI	Federal Bureau of Investigation
FOIA	Freedom of Information Act
FTC	Federal Trade Commission
FTCA	Federal Tort Claims Act
MOU	memorandum of understanding
NACHA	National Automated Clearing House Association
NCOA	National Change of Address (program)
OMB	Office of Management and Budget
PosteCS	Postal Electronic Courier Service
PRC	Postal Rate Commission
SOHO	Small Office and Home Office
SPC	Strategic Planning Committee
SSL	Secure Sockets Layer
UPS	United Parcel Service
USIIA	US Internet Industry Association
USPS	U.S. Postal Service

Objectives, Scope, and Methodology

For this report, our objectives were to describe the U.S. Postal Service's (USPS) (1) e-commerce initiatives that have been implemented or are being developed; (2) goals and strategies for the e-commerce area, (3) processes for approving these initiatives, and (4) expected performance and results to date related to e-commerce initiatives. During the course of our review, we identified areas where USPS can improve its management of its e-commerce activities, and this report discusses these areas as well. An additional objective was to describe USPS' views on how major federal laws and regulations apply to its e-commerce initiatives and to identify legal issues that have been raised concerning its e-commerce activities.

To describe USPS e-commerce initiatives, we obtained a definition from USPS of what it considered to be an electronic commerce initiative; USPS' listing of e-commerce initiatives that was to correspond to this definition; and a description of each initiative, along with available supporting documentation. USPS reported e-commerce initiatives that were planned, piloted, or implemented as of September 2000. We obtained additional information on USPS e-commerce initiatives from Postal Rate Commission (PRC) proceedings and other public sources, such as the USPS Internet site. Further, we attended USPS press conferences on its e-commerce initiatives and attended a conference that included presentations by USPS officials that discussed USPS e-commerce initiatives.

We also obtained documentation from USPS on its goals and strategies, expected performance, and results to date relating to its e-commerce initiatives. The documentation included, for example, preliminary performance plans for fiscal year 2001; available performance measures, targets, and results; documentation of the processes applicable to USPS e-commerce initiatives and the approval of specific initiatives under these processes; minutes of the USPS eBusiness Opportunity Board and relevant meetings of the USPS Board of Governors; and available staffing and financial data. We interviewed USPS officials responsible for USPS e-commerce initiatives including the Deputy Postmaster General, the Chief Technology Officer, and e-commerce program officials. The USPS General Counsel and other USPS legal officials also participated in these interviews. In all cases, we obtained, when possible, documentation to corroborate oral statements.

In the area of financial results, in response to our request, USPS provided information on revenues and expenses generated by its e-commerce initiatives, although some did not have reported revenues because they

had not been implemented by USPS' cut-off date of February 2000.¹ In April 2000, USPS provided data on its revenues and expenses to date for its current e-commerce initiatives, based on USPS' list of e-commerce initiatives that was provided at that time. We did not independently verify or audit the overall integrity of USPS' data. However, we examined the data to see whether they appeared to be consistent with USPS' e-commerce definition and criteria, clear as to what was included, and complete. We notified USPS of several concerns we had with the April 2000 data; USPS acknowledged our concerns and provided revised data for some of its current e-commerce initiatives as well as its discontinued e-commerce initiatives on June 15 and June 27, 2000. We advised USPS of similar problems with the June data, and USPS provided another set of substantially revised data in July. As with the data previously provided, we did not independently verify USPS' data, but examined its consistency, clarity, and completeness.

Concerning how major federal laws and regulations apply to USPS e-commerce initiatives and relate to emerging e-commerce issues, we did preliminary research on applicable sections of the U.S. Code, USPS regulations, federal regulations, PRC decisions and proceedings, relevant court decisions, Office of Management and Budget (OMB) Circulars, and administration policies relating to electronic commerce. We also reviewed information on USPS e-commerce initiatives and other relevant literature, such as our related reports, stakeholder correspondence and press releases, and other articles in the trade press. We then obtained written responses from USPS regarding the applicability of federal laws, regulations, and policies to USPS e-commerce products and services. We also summarized our past findings on how relevant federal laws apply to USPS from our 1998 report on USPS new products and services² and our 1996 and 1999 reports that discussed federal privacy protections that relate to change-of-address information reported by USPS customers.³ Due to time constraints, we did not update this past work for the purposes of this review. We also reviewed our 1995 report on government corporations⁴ as

¹ USPS provided data for current and discontinued initiatives from inception, which predated fiscal year 1995, through fiscal year 1999 and partial results for fiscal year 2000. The cut-off date in fiscal year 2000 appeared to vary for some initiatives for the data that USPS provided to us in April 2000. In July 2000, USPS provided revised data with a February 2000 cut-off date for revenues and expenses generated by each e-commerce initiative.

² GAO/GGD-99-15.

³ GAO/GGD-96-119, GAO/GGD-99-102.

⁴ Government Corporations: Profiles of Existing Government Corporations (GAO/GGD-96-14, Dec. 13, 1995).

Appendix I
Objectives, Scope, and Methodology

it related to the descriptions cited in appendix II of selected laws, regulations, and policies that may apply to USPS e-commerce activities. Further, we determined the views of some stakeholders on legal issues relating to USPS e-commerce initiatives based on public materials such as relevant PRC decisions.

We conducted our review at USPS headquarters in Washington, D.C., between January 2000 and August 2000 in accordance with generally accepted government auditing standards.

Selected Federal Laws, Regulations, and Policies That May Relate to USPS E-Commerce Initiatives According to USPS

Table II.1: Selected Federal Statutes, Regulations, and Policies That May Relate to USPS E-Commerce Initiatives According to USPS

Citation(s)	Description	USPS Comments
Selected statutes relating to USPS authority to offer e-commerce products and services		
Postal Reorganization Act 39 U.S.C. § 101(a)	Directs that USPS be operated as a basic and fundamental service provided to the people.	Provides generalized guidance about what USPS is intended to accomplish and is not intended as a comprehensive statement of powers and limitations.
	States that the basic function of USPS is the provision of postal services to bind the nation together through the personal, educational, literary, and business correspondence of the people.	The postal system as a whole is to bind the nation together. This includes the basic function of the carriage of goods, as well as supporting, ancillary, and nonpostal services.
	Directs USPS to provide prompt, reliable, and efficient services to patrons in all areas and render postal services to all communities.	This subsection applies to the postal system as a whole. USPS services should collectively provide services to all areas and communities.
Postal Reorganization Act 39 U.S.C. § 401(3)	Grants USPS powers to enter into and perform contracts, execute instruments, and determine the character and necessity of expenditures.	In conjunction with §§ 401(10), 403(a), and 404(a)(6), this subsection provides sufficient authority for USPS to offer e-commerce products and services.
		This subsection and §§ 401(10) and 404(a)(6) are each broad enough to empower USPS to provide whatever service or conduct whatever activity (not prohibited elsewhere) that appropriately serves the purposes set forth in law for USPS.
Postal Reorganization Act 39 U.S.C. § 401(10)	Grants USPS all other powers incidental, necessary, or appropriate to the carrying on of its functions or the exercise of its specific powers.	In conjunction with §§ 401(3), 403(a), and 404(a)(6), this subsection provides sufficient authority for USPS to offer e-commerce products and services.
		This subsection and §§ 401(3) and 404(a)(6) are each broad enough to empower USPS to provide whatever service or conduct whatever activity (not prohibited elsewhere) that appropriately serves the purposes set forth in law for USPS.
Postal Reorganization Act 39 U.S.C. § 403(a)	Directs USPS to provide other services, as it finds appropriate to its functions and in the public interest, incidental to the receipt, transmittal and delivery of mail.	In conjunction with §§ 401(3), 401(10), and 404(a)(6), this subsection provides sufficient authority for USPS to offer e-commerce products and services.
		However, this subsection is a summary of USPS duties rather than its authority.

Appendix II
Selected Federal Laws, Regulations, and Policies That May Relate to USPS E-Commerce Initiatives According to USPS

Citation(s)	Description	USPS Comments
Postal Reorganization Act 39 U.S.C. § 403(b)	Directs USPS to maintain an efficient system of collection, sorting, and delivery of the mail.	A service ordinarily will be appropriate to the functions of USPS if it will aid USPS to improve, among other things, the efficiency or any other characteristic of one or more of its mail or philatelic services so as to add value for customers.
Postal Reorganization Act 39 U.S.C. § 404(a)(6)	Grants USPS the power to provide, establish, change, or abolish special nonpostal or similar services.	In conjunction with §§ 401(3), 401(10), and 403(a), this subsection provides sufficient authority for USPS to offer e-commerce products and services. This subsection and §§ 401(3) and 401(10) are each broad enough to empower USPS to provide whatever service or conduct whatever activity (not prohibited elsewhere) that appropriately serves the purposes set forth in law for USPS.
Postal Reorganization Act 39 U.S.C. § 404(a)(5)	Grants USPS the authority to provide philatelic services.	The USPS provision of services other than the carriage of "letters" does not signify that such other services are necessarily outside the scope of the postal laws. As an example, philatelic services are not mail but have the protection of some postal laws.
Postal Reorganization Act 39 U.S.C. § 2010	Directs USPS to promote modern and efficient operations, and refrain from engaging in any practice that restricts the use of new equipment or devices that may reduce the cost or improve the quality of postal services.	Efficiency is one factor for consideration when determining if a service is appropriate to USPS functions.
Selected Privacy Related Statutes and Regulations		
Privacy Act of 1974 5 U.S.C. § 552a	Limits the collection, maintenance, use, and dissemination of personal information by agencies and grants individuals access to information about themselves.	Applies to USPS, including USPS e-commerce products and services.
Freedom of Information Act (FOIA) 5 U.S.C. § 552	Provides persons with the right of access to a broad range of records and materials related to the performance of agency activities, other than those specifically excluded by the act.	Applies to USPS, with some exceptions, such as those stated in 39 U.S.C. § 410(c)(1) and (2).
Right to Financial Privacy Act 12 U.S.C. § 3401 <i>et seq.</i>	Prohibits federal agencies from accessing financial institution customer records unless authorized by the individual or authorized under the law for specific judicial and law enforcement purposes.	USPS does not act as a financial institution within the meaning of this statute.
Children's Online Privacy Protection Act of 1998 15 U.S.C. § 6501 <i>et seq.</i>	Prohibits unfair and deceptive acts and practices in connection with the collection and use of personal information from and about children on the Internet.	USPS considers that it should follow the standards adopted by the Federal Trade Commission for child-oriented Web pages.

Appendix II
Selected Federal Laws, Regulations, and Policies That May Relate to USPS E-Commerce Initiatives According to USPS

Citation(s)	Description	USPS Comments
Trade Secrets Act 18 U.S.C. §1905	Prohibits disclosure of information by federal employees made with knowledge that information is confidential and its disclosure is forbidden by official agency policy, regulation, or law.	Applies to USPS, including USPS e-commerce products and services. Generally precludes USPS from releasing certain confidential, business-sensitive information about a customer from its computer files without the customer's express permission.
Electronic Communications Privacy Act 18 U.S.C. § 2701 <i>et seq.</i>	Prohibits the disclosure by certain computer storage or processing service providers of private electronic communications to a governmental entity without a search warrant or certain subpoenas.	Applies to USPS, including USPS e-commerce products and services. Applies to USPS-maintained e-commerce information prohibiting its disclosure to other federal agencies, including the Bureau of the Census and the National Archives and Records Administration.
Postal Reorganization Act 39 U.S.C. § 410(c)(1)	Exempts from FOIA disclosure the name or address, past or present, of any postal patron.	Applies to USPS, including USPS e-commerce products and services.
Postal Reorganization Act 39 U.S.C. § 410(c)(2)	Exempts from FOIA disclosure information of a commercial nature that would not be disclosed under good business practice.	Applies to USPS, including USPS e-commerce products and services.
Postal Reorganization Act 39 U.S.C. § 412	Prohibits the disclosure of lists of postal patrons or other persons by USPS employees or officers.	Applies to USPS, including USPS e-commerce products and services.
Selected Consumer Protection Related Statutes		
Fair Credit Reporting Act 15 U.S.C. § 1681 <i>et seq.</i>	Protects individuals from inaccurate or arbitrary information in credit reports that is used to determine eligibility for credit, insurance, or employment.	This statute does not apply on its own terms since USPS is not a consumer reporting agency within the definition of the act.
Equal Credit Opportunity Act 15 U.S.C. § 1691 <i>et seq.</i>	Prohibits the denial of credit based on race, color, religion, national origin, sex or marital status, age, or because the applicant receives public assistance.	Since USPS does not extent credit, this act does not apply to USPS e-commerce products and services. However, USPS considers itself bound not to discriminate in its programs.
Fair Debt Collection Practices Act 15 U.S.C. § 1692 <i>et seq.</i>	Prohibits abusive debt collection practices by debt collectors.	This act is meant for debt collection agencies and excludes debt collection by government employees. Since USPS does not extend credit, this act does not apply.
Electronic Fund Transfer Act 15 U.S.C. § 1693 <i>et seq.</i>	Establishes a framework of rights, liabilities, and responsibilities for consumers and other participants in electronic fund transfers.	Given the current form of USPS e-commerce programs, most of the act does not apply to USPS because fund transfers for USPS e-commerce services are currently not done by USPS or its agent.
Magnuson-Moss Act 15 U.S.C. § 2301 <i>et seq.</i>	Sets federal minimum standards and rules for the content and disclosure of warranties.	This act probably does not apply to USPS and USPS e-commerce products and services, which under this act do not seem to be consumer products. Under the act, "consumer product" means any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes.

Appendix II
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Citation(s)	Description	USPS Comments
Gramm – Leach – Bliley Act (also referred to as Financial Services Modernization Act) Pub. L. No. 106-102, Nov. 12, 1999, to be codified at 15 U.S.C. § 6801 <i>et seq.</i>	Obligates financial institutions to protect and preserve the confidentiality of customers' nonpublic personal information.	Any financial institutions contracting to assist USPS in the provision of any of its services would be covered by this legislation.
Title III of the Omnibus Crime Control and Safe Streets Act of 1968 18 U.S.C. § 2510 <i>et seq.</i>	Prohibits electronic surveillance by the federal government except under carefully defined circumstances and only after securing judicial authority.	Applies to USPS, including USPS e-commerce products and services.
Bank Secrecy Act 31 U.S.C. § 5311 <i>et seq.</i>	Requires financial institutions to report the import and export of monetary instruments for purposes of acquiring information for criminal investigations.	Applies to USPS, including USPS e-commerce products and services. However, none of USPS e-commerce products and services currently trigger the reporting requirements in the act, except for Dinero Seguro, involving money sent to Mexico. (See table 1 for more information on this initiative.)
Postal Reorganization Act 39 U.S.C. § 101(d), 202(a), 403(a)	Establishes postal policies, such as apportioning postal costs to all mail users on a fair and equitable basis; provides that USPS shall be directed by Board of Governors chosen to represent the public interest; and mandates USPS to provide postal services to all communities and serve as nearly as practicable the entire population of the United States.	Incorporates elements of consumer protection through issues of postal policy, the appointment of a Board of Governors that represents the public interest, and the mandate to provide universal service.
Postal Reorganization Act 39 U.S.C. §§ 3001-3017	In general, limits "solicitation of money or property through the mails by means of false representations"; the conduct of illegal lotteries, sweepstakes or skill contests; or the promotion or distribution of various items that are "nonmailable" by statute.	Specifically applicable to USPS e-commerce initiatives (1) if the offered service is used to solicit money or property through the U.S. mail by false pretenses or (2) if a physical product is ordered and paid for electronically and then delivered by USPS.
Selected Contract and Procurement Related Statutes		
The Rehabilitation Act of 1973 29 U.S.C. § 701, <i>et seq.</i>	Prohibits discrimination against disabled individuals in programs receiving federal financial assistance.	Applies to USPS, including USPS e-commerce products and services.
The Vietnam Era Veterans Readjustment Assistance Act of 1972 38 U.S.C. § 4212	Requires federal contractors and subcontractors to take affirmative action to employ certain veterans.	Applies to USPS, including USPS e-commerce products and services.
Postal Reorganization Act 39 U.S.C. §410(b)(2), (4), and (5)	Cites contracting and labor laws that apply to USPS.	Applies to USPS.
National Labor Relations Act 29 U.S.C. § 151 <i>et seq.</i>	Governs labor management relations.	To the extent that it is not inconsistent with 39 U.S.C. §§1201-1209, this act applies to USPS.
The Javits – Wagner – O'Day Act 41 U.S.C. §§46-48	Establishes policies for government procurement from qualified agencies for the blind.	Applies to USPS, including USPS e-commerce products and services.

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Citation(s)	Description	USPS Comments
The Contract Disputes Act of 1978 41 U.S.C. § 601 <i>et seq.</i>	Establishes rules for initiating and adjudicating contract claims against the U.S. government.	Applies to USPS, including USPS e-commerce products and services.
Title III of The Federal Property and Administrative Services Act 41 U.S.C. § 251 <i>et seq.</i>	Provides that federal agencies are to make purchases and contracts for property and services through full and open competition.	Does not apply to USPS.
The National Environmental Policy Act 42 U.S.C. § 4321 <i>et seq.</i>	Requires federal agencies to consider possible environmental consequences when performing their functions.	Applies to USPS, including USPS e-commerce products and services.
Selected Criminal Statutes		
18 U.S.C. § 201	Prohibits bribery of public officials and witnesses.	Applies to USPS, including USPS e-commerce products and services. Employees who accepted bribes or gratuities in exchange for information about postal customers would be subject to prosecution under this statute.
18 U.S.C. § 641	Prohibits the theft or embezzlement of public money, property, or records.	Applies to USPS, including USPS e-commerce products and services. The taking, conversion, or destruction of USPS tangible property would be a violation of this statute.
18 U.S.C. § 1029	Prohibits fraud and related activity in connection with access devices.	USPS investigative authority relating to this section is derived from 18 U.S.C. § 3061(b)(2) and a delegation of authority from DOJ.
18 U.S.C. § 1030	Prohibits fraud and related activity in connection with computers.	USPS investigative authority relating to this section is derived from 18 U.S.C. § 3061(b)(2) and a delegation of authority from DOJ.
18 U.S.C. § 1341	Prohibits frauds and swindles involving the use of the mails.	No court has yet addressed the issue of whether this statute would be applicable to USPS e-commerce products and services.
18 U.S.C. § 1343	Prohibits fraud by wire, radio, or television.	USPS investigative authority relating to this section is derived from 18 U.S.C. § 3061(b)(2) and a delegation of authority from DOJ. Based on existing case law, it can be assumed that this law would apply to certain USPS e-commerce products and services.
18 U.S.C. §§ 1691-1738	Prohibits theft, delay, and obstruction of mails, among other things	Applies to USPS, but does not apply to e-commerce products and services that do not involve hard copy mail. USPS believes that enforcement of these criminal statutes is limited to hard-copy mail, although no cases have addressed the issue.

Appendix II
Selected Federal Laws, Regulations, and Policies That May Relate to USPS E-Commerce Initiatives According to USPS

Citation(s)	Description	USPS Comments
18 U.S.C. § 2701	Prohibits unlawful access to stored communications.	USPS investigative authority relating to this section is derived from 18 U.S.C. § 3061(b)(2) and a delegation of authority from DOJ.
Selected Statutes Relating to Ratesetting and the Postal Rate Commission (PRC)		
Postal Reorganization Act 39 U.S.C. § 101(d)	Postal rates shall be established to apportion the costs of all postal operations to all users of the mail on a fair and equitable basis.	USPS believes that while this subsection deals specifically with mail services, the cost apportionment policy reflected in this provision seems appropriately applied to nonpostal services as well.
Postal Reorganization Act 39 U.S.C. § 401(2)	Grants USPS the power to adopt, amend, and repeal rules and regulations.	This subsection applies to the exercise of all USPS functions, including any use made of electronic commerce.
Postal Reorganization Act 39 U.S.C. § 403(c)	Prohibits USPS from making any undue or unreasonable discrimination among users of the mails, and also from granting any undue or unreasonable preferences to any such user.	While USPS believes this subsection on its terms seems inapplicable to nonpostal services, USPS assumes that general principles akin to those underlying that subsection are implicit in the policies of title 39 and thus should be applied.
Postal Reorganization Act 39 U.S.C. §§ 3621 and 407(b)(2)	Grants BOG authority to establish reasonable and equitable classes of domestic mail and reasonable and equitable rates and fees for domestic postal services except as otherwise provided by this statute.	Courts have regarded postal services in this context as those services involving aspects of the acceptance, processing, or delivery of mail. In USPS' view, the term "mail" involves hard copy and not electronic transmissions.
Postal Reorganization Act 39 U.S.C. §§ 3622 and 407(b)(2)	Establishes a system for USPS to request and the PRC to provide recommendations for changes in rates of postage and fees for domestic postal services.	Courts have regarded postal services in this context as those services involving aspects of the acceptance, processing or delivery of mail. In USPS' view, the term "mail" involves hard copy and not electronic transmissions.
Postal Reorganization Act 39 U.S.C. §§ 3623 and 407(b)(2)	Establishes a system for USPS to request and the PRC to provide recommendations for changes in domestic mail classification.	Courts have regarded postal services in this context as those services involving aspects of the acceptance, processing or delivery of mail. In USPS' view, the term "mail" involves hard copy and not electronic transmissions.
Postal Reorganization Act 39 U.S.C. § 3625	Establishes actions BOG may take upon receiving a recommended decision from PRC.	BOG actions would apply to PRC decisions on USPS e-commerce products and services that are subject to PRC decisions.
Postal Reorganization Act 39 U.S.C. § 3662	Enables parties to file complaints to PRC charging that USPS rates and fees do not comply with the policies and guidelines contained in the Postal Reorganization Act.	USPS does not know of any provision for direct review or modification by PRC of any determination by USPS about whether it regards particular services as "postal." In the course of PRC's own proceedings under chapter 36, however, which may depend upon a service being "postal" for purposes of that chapter, PRC asserts the authority to form its own position on that subject for that purpose. The final determination in a particular case or controversy may rest with the courts.

Appendix II
Selected Federal Laws, Regulations, and Policies That May Relate to USPS E-Commerce Initiatives According to USPS

Citation(s)	Description	USPS Comments
Selected Patent and Trademark Related Statutes		
Lanham Act or Trademark Act of 1946 15 U.S.C. § 1051 <i>et seq.</i>	Allows owners of trademarks to register them with the Patent and Trademark Office and prohibits others from using that trademark.	Applies to USPS, including USPS e-commerce products and services. Thus, as with other products and services, USPS can acquire trademark rights in the names used with e-commerce products and services and can register those names in the U.S. Patent and Trademark Office.
28 U.S.C. §1498	Allows patent and copyright holders to enforce patent rights against the federal government.	Applies to USPS, including USPS e-commerce products and services.
Patent Act of 1952 35 U.S.C. § 1 <i>et seq.</i>	Provides for the application for and enforcement of patent rights.	Applies to USPS, including USPS e-commerce products and services.
Other Selected Statutes		
Federal Tort Claims Act 28 U.S.C. § 2671 <i>et seq.</i>	Subjects the federal government to liability for injury or loss to the extent an individual would be liable under the law of the state in which the injury occurs.	Like the rest of the federal government, USPS is, for the most part, subject to tort liability only to the extent that immunity has been waived by this act. In 28 U.S.C. § 2680(b), the Federal Tort Claims Act (FTCA) excepts the loss, miscarriage, or negligent transmission of letters or postal matter. While application of this provision to electronic commerce services of various descriptions has not been litigated, to the extent that such services may involve "mail matter," the FTCA would bar tort liability in that arena. USPS has, with respect to specific guaranteed products, essentially waived that exception to a limited extent. Such specialized waivers would also be possible in the electronic commerce context.
The Paperwork Reduction Act of 1995 44 U.S.C. § 3501 <i>et seq.</i>	Sets policies and rules for minimizing the paperwork burden resulting from the collection of information by or for the federal government.	Does not apply to USPS.
The Government Paperwork Elimination Act of 1998 44 U.S.C. § 3504 note	Sets requirements for federal agencies to develop capabilities to permit, where practicable, electronic maintenance, submission, or disclosure of information, including the use of electronic signatures.	Does not apply to USPS.
The Chief Financial Officers Act of 1990 31 U.S.C. §§ 901-903	Establishes a Chief Financial Officer in each executive agency. Sets expectations for design, development, and deployment of modern financial systems, better performance and cost measures, and results-oriented reports on the government's operating performance.	Does not apply to USPS.

Appendix II
Selected Federal Laws, Regulations, and Policies That May Relate to USPS E-Commerce Initiatives According to USPS

Citation(s)	Description	USPS Comments
Selected Executive Orders, Regulations, and Directives		
Executive Order No. 11,246	Prohibits discrimination and establishes equal employment opportunity requirements for federal employers and contractors.	Applies to USPS, including USPS e-commerce products and services. However, USPS maintains that executive orders and Office of Management and Budget (OMB) instructions generally do not apply to USPS, although it may choose to be guided by certain of them.
39 C.F.R. § 211.3	States that certain executive orders, and other executive pronouncements and certain circulars, bulletins, and other issuances of the OMB or particular provisions thereof, or requirements therein, apply to USPS and certain others do not apply.	USPS maintains that executive orders and OMB instructions generally do not apply to USPS, although it may choose to be guided by certain of them.
16 C.F.R. §§ 233.1, 233.5, and 251.1	Federal Trade Commission (FTC) regulations concerning marketing and advertising.	Does not apply to USPS. There are no written guidelines or regulations that require USPS to comply with FTC guidelines.
39 C.F.R. 266	Establishes USPS Privacy Act regulations governing information collected about individuals through USPS operations.	Applies to USPS, including USPS e-commerce products and services. The terms in this regulation allow disclosure pursuant to a "routine use" for the system of records published in the Federal Register.
OMB Circular A-76	Establishes federal policy regarding the performance of commercial activities and implements the statutory requirements; the supplement to the circular states the procedures for determining whether commercial activities should be performed under contract with commercial services or in-house using government facilities and personnel.	Does not apply to USPS. USPS maintains that executive orders and OMB instructions generally do not apply to USPS, although it may choose to be guided by certain of them.
OMB Circular No. A-130	Establishes uniform government-wide information resource management policies.	Does not apply to USPS. The Postal Reorganization Act requires USPS to manage its information resources in an appropriate manner.
OMB Memorandum M99-18	Directs executive branch departments and agencies to post clear privacy policies on federal web sites and provides guidance for doing so.	USPS has published on its Internet home page a generic privacy policy that it believes is in accordance with OMB guidance.

Source: USPS.

Comments From USPS

JOHN M. NOLAN
DEPUTY POSTMASTER GENERAL



August 29, 2000

Mr. Bernard L. Ungar
Director, Government Business
Operations Issues
United States General Accounting Office
Washington, DC 20548-0001

Dear Mr. Ungar:

Thank you for providing the Postal Service with the opportunity to review and comment on the draft report entitled, U.S. Postal Service: Postal Activities and Laws Related to Electronic Commerce. We recognize that this study was a challenge for both groups. Our staff's challenge was to identify and assemble a large volume of information concerning our e-commerce initiatives and underlying laws while in the midst of structuring and organizing our internal processes and the management of these efforts. For your staff the challenge was to digest that financial, legal, and operational data for a dynamic, new technology area and then to quickly draft a report. Despite the vast amount of information we provided and the study's short time frame, your staff has done a professional job of presenting for the Congress the salient facts about our e-commerce program.

Discussed on p. 55.

We appreciate the report's candid evaluation and identification of opportunities to improve how we manage our e-commerce activities. The report examined the program carefully, and consequently, the report's observations and recommendations are relevant. Even though, as we have discussed with you, we have a somewhat different perspective regarding the administrative history of the e-commerce initiatives treated in the report, we acknowledge that the report generally describes the program at the time of the study accurately and captures the normal "growing pains" that most organizations go through in developing and beginning to implement something not done before. Virtually all organizations that have attempted to develop a corporate e-commerce structure have had similar challenges in their initial ventures into this emerging and rapidly changing business environment. At this point in the evolution of the business, there are few organizational standards or best practices against which any company can benchmark its efforts.

Discussed on p. 56.

We would emphasize, as does the report, that our e-commerce efforts are still in the early stages. We have already taken a number of key actions in the few months the current offerings have been in place. In fact, we think that the program's most substantial progress so far has occurred while the study was being conducted. For example, early this year we established and/or filled several senior management positions to focus specifically on setting the direction for and overseeing our emerging e-commerce initiatives. These officers, myself included, are tasked with ensuring that our involvement in the e-commerce arena is conducted in a manner that reflects our world-class reputation. Further, we had realized, and the study confirmed, that we need better mechanisms to track and report the revenues and expenses of our initiatives. We are already instituting a standard financial reporting procedure that will allow us to better assess the progress of each initiative toward meeting its expected performance goals. We will be able to clearly measure each initiative's success or failure and then make a fact-based decision to continue, modify, or terminate it.

Discussed on p. 56.

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**Appendix III
Comments From USPS**

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Discussed on p. 56.

Even before the study started, we had recognized that our existing process for senior management's review and approval of new products and services was not well-suited to e-commerce initiatives. In February, we set up an e-Business Opportunity Board (e-BOB), which I chair. It is comprised of our Chief Financial Officer, Chief Technology Officer, General Counsel, and other senior officers. Its role is to provide the essential senior-level oversight and decision-making for proposed e-commerce initiatives. In this way we are bringing new offerings "quick to market"—with discipline. We consider that our e-BOB approval process, while different, is fully as rigorous as that for our more traditional new product initiatives. It just allows us to introduce, as quickly as our competitors, new products and services into this highly competitive and dynamic marketplace. Even with this more accelerated approval process, we are still carefully evaluating projects, controlling their use of resources, defining how we will measure success, and continually monitoring their performance against those standards. All of our e-commerce initiatives have been thoroughly reviewed and approved by senior management before implementation.

Discussed on p. 56.

In the larger context of the e-commerce world, the Postal Service, like other businesses, has been challenged by a new and extremely dynamic marketplace. For all participants, this represents new opportunities, giving rise to new initiatives that require speed, flexibility, and innovation, both in their technical aspects and in how they are managed. We think that we have developed and are implementing an e-commerce model that balances the demands of a radically different business environment with a sound and responsive management approach.

Discussed on p. 55.

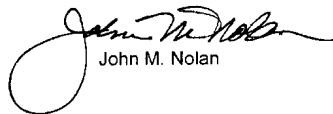
Concerning the report's three recommendations (page 85), we not only accept but endorse them. As noted above, we are already taking the necessary actions to implement them within a management structure that will provide long-term as well as day-to-day oversight of the program. We will more precisely identify our new e-commerce initiatives and more completely document their review and approval. And for every initiative, we will require that complete and accurate cost, revenue and performance data be tracked and periodically reported to senior management. With this essential information, we can assess whether the program is continuing to meet its goal of increasing the value, availability, and affordability of our products and services for all our customers.

Now on p. 54.

We consider that your report provides valuable documentation of our position that the Postal Service has a valid and appropriate role to play in the e-commerce arena. Our long history as a trusted provider of universal communication services for the American people and the unquestioned value of our presence in and service to every community make it logical and, we think, imperative that we continue to develop the e-commerce products and services that our customers will need and demand both now and in the future for their business and personal lives.

If you or your staff would like to discuss any of these comments further, I am available at your convenience.

Sincerely,


John M. Nolan

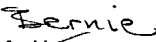
Comments From PRC

POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

EDWARD J. GLEIMAN
CHAIRMAN

August 25, 2000

Bernard L. Ungar
Director, Government Business Operations Issues
General Government Division
United States General Accounting Office
Washington, D.C. 20548


Dear Mr. Ungar:

I am responding to your letter of August 21, which invited comments on your draft report entitled *U.S. Postal Service: Postal Activities and Laws Related to Electronic Commerce* (GGD-00-188). The report addresses salient and timely issues raised by the Postal Service's development of e-commerce and related initiatives. Overall, I think the draft's analysis of those issues is thorough, well-documented, and objective in its presentation of the views of the Postal Service and the other interested parties cited.

Discussed on p. 56.

Certain portions of the draft report involve evidence presented in the omnibus rate case currently being litigated before the Commission, and legal positions taken in a pending complaint proceeding regarding the Commission's jurisdiction over an e-commerce initiative. It would, of course, be inappropriate to offer comments on any matters at issue in those cases.

Discussed on pp. 56-57.

As a matter of postal ratemaking theory, one feature of the draft report requires comment. The Postal Service reportedly told your staff that it acknowledges an obligation to price its e-commerce and other nonpostal products and services "in a fair and reasonable way, including coverage of attributable costs plus a reasonable contribution to overhead." Draft Report at 73. To satisfy this perceived obligation, the Postal Service reportedly also undertook to "assure that in the aggregate the revenues generated by such products and services will cover their direct and indirect costs as well as make a contribution to overhead." Ibid.

Now on p. 46.

This undertaking will not necessarily produce rates that satisfy the criteria applied to domestic postal services. The rates for each domestic subclass, to be considered fair and reasonable under the criteria of the Postal Reorganization Act, must generate sufficient revenues to be free of cross-subsidy. According to a ratemaking approach the Postal Service has espoused in the last two omnibus rate proceedings for pricing postal

Appendix IV
Comments From PRC

Bernard L. Ungar
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services generally, the proper economic measure of fairness and reasonability is the "incremental cost test," defined by the following criterion:

The revenues collected from any service (or group of services) must be at least as large as the additional (or *incremental*) cost of adding that service (or group of services) to the enterprise's other offerings.

Direct Testimony of John C. Panzar on Behalf of United States Postal Service in Docket No. R97-1, USPS-T11 at 8.

Setting fees for e-commerce or other nonpostal services to achieve a revenue criterion of recovery of direct and indirect costs, plus some non-zero contribution to overhead, provides no assurance that the fees would satisfy the incremental cost test, either individually or collectively. Even undertaking to satisfy the incremental cost test in the aggregate rather individually could allow some e-commerce products to be cross-subsidized. It is not clear that it is good policy for an agency of the Federal Government to offer any competitive product that is cross-subsidized.

Thank you for the opportunity to offer comments on the draft report.

Sincerely,



Edward J. Gleiman
Chairman

Discussed on pp. 56-57.

GAO Contacts and Staff Acknowledgements

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