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February 5, 2003

WLF BLASTS POSTAL SERVICE FOR OPERATING COMMERCIAL ACTIVITIES

The Washington Legal Foundation (WLF), along with WLF's Economic Freedom Law Clinic at George Mason University School of Law, filed formal comments with the Postal Rate Commission urging the Commission to determine whether the United States Postal Service has the statutory authority to engage in a variety of commercial activities offered to the public that fall outside the Postal Service's mandate to deliver the mail. WLF further argued that even if the Postal Service can legally engage in some of these commercial activities without the Commission establishing the rates for these services, the Commission should, at a minimum, establish rules to require the Postal Service to provide a full accounting of the costs and revenues of these services, particularly in light of the fact that many of these activities are operating at a financial loss. These losing commercial ventures are being subsidized by postal patrons who pay for first-class postage. At the same time, the Postal Service is unfairly and illegally competing with the private sector who sell these same products and services.

WLF's 13-page filing was submitted in support of a petition filed by Consumer Action, a nonprofit consumer organization, and the Office of Consumer Advocate, an office within the Postal Rate Commission. The petition identified at least fourteen non-traditional retail and commercial services and products that are now being offered by the Postal Service that have not been, but should be, subject to review by the Commission: Liberty Cash, Sure Money, Online Payment Services – eBillPay; Pay @ Delivery and USPS Send money, ePayments, NetPost CardStore, NetPost Certified Mail, Electronic Postmark, Unisite Antenna Program, Returns @ ease, Mall Package Shipment Program, First Class Phone Cards, and Retail Merchandise, including mailing supplies and novelty items, such as T-shirts or neckties. In addition, WLF discovered that some post offices are offering photographic services for passport photos.

WLF argued in its comments that a proper construction of the Postal Reorganization Act (PRA) clearly demonstrates that the Postal Service does not have statutory authority to offer e-commerce and other services to the public without prior authorization by the Commission. Indeed, these activities are *ultra vires*, that is, the Postal Service is acting beyond the powers that Congress granted to it. The Postal Service maintains that Congress gave it the authority to offer "nonpostal" services; but the legislative history makes it clear that "nonpostal" means services provided to other federal agencies, not commercial activities offered to the public. WLF argued that if the Postal Service could engage in any commercial enterprise, then nothing would prevent the Service from selling pizza, operating a bowling alley, or conducting any other business.

Even assuming that the Postal Service has the power to establish the challenged services, it is clear that *rates and fees* for postal services are necessarily subject to review by the Postal Rate

Commission. Heretofore, the Postal Service has unilaterally decided what products or services to sell, and at what price, without effective oversight or control. For example, the Online Payment Services incurred operating expenses of \$11.5 million in FY 2001, but only took in \$1.1 million in revenues, thereby losing \$10.4 million in FY 2001. In addition, as WLF noted, the General Accounting Office (GAO) has investigated the Postal Service's new commercial ventures and found the Postal Service to be less than cooperative and accountable. The Postal Service has been so secretive about how it has spent its money to launch the commercial services in question that GAO censured the Postal Service for failing to report the total planned costs associated with total planned revenues.

"It is outrageous that the Postal Service is not only unfairly and illegally competing as a monopoly with vendors in the private sector by offering these commercial activities, but also is operating without any accountability and transparency with respect to the costs associated with these activities," said Paul Kamenar, WLF's Senior Executive Counsel. "It's about time that the Postal Rate Commission exercise its well-established authority in this area, and that the Postal Service cease carrying out these activities," Kamenar added.

WLF also noted that the White House has recently established a commission to investigate and review the operations of the Postal Service, thereby underscoring the importance of the issues raised in the petition. A report from that Commission is expected later this year.

WLF is a non-profit, public interest law and policy center with supporters in all 50 states. WLF devotes a substantial portion of its resources to defending and promoting the principles of free enterprise, individual rights, and a limited and accountable government. WLF has appeared before numerous federal courts and administrative agencies, opposing attempts by regulatory agencies to exceed the authority granted to them by Congress.

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