



## **I. Background: The Regulatory and Economic Environment.**

Throughout the last several decades there has been a movement in the United States to eliminate government-sanctioned monopolies. While that movement grew for a number of years, in recent years it has been receding, as the results of opening up certain monopolies have been less than positive. The movement started with airline deregulation, went onto telecommunications deregulation, and then on to electricity and natural gas deregulation. Airline deregulation arguably has not worked very well in the long term, and electric deregulation in California and other areas of the country has reduced the quality of the electric grid, with rolling blackouts being necessary to sustain the system.<sup>1</sup> Natural gas deregulation has become quite controversial and arguably has created more problems than it solved.<sup>2</sup>

Eliminating—or at least severely reducing the monopoly arguably has worked in the telecommunications industry. That is because 1) the technological evolution of computers so radically reduced the relative cost of telephone and internet service<sup>3</sup> that the industry outgrew the old regulatory structure and lost his natural monopoly characteristics, 2) the technological evolution and development both of cell phone service and voice service via cable have created real competition at affordable rates, and 3) various interconnect fees and taxes were levied to support the national interexchange and intraexchange system.

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<sup>1</sup> See e.g., <http://blackoutstatus.sdge.com/reo/>; <http://www.pbs.org/wgbh/pages/frontline/shows/blackout/california/timeline.html> ; see also [www.redcross.org/static/file\\_cont1359\\_lang0\\_609.pdf](http://www.redcross.org/static/file_cont1359_lang0_609.pdf) .

<sup>2</sup> See <http://www.buildings.com/articles/detail.aspx?contentID=875>

<sup>3</sup> Today, one circuit board can switch as many telephone calls as hundreds of mechanical switches that were housed in one building forty or fifty years ago could. With such a radical change in the telecommunications industry, a new approach to regulation was required.

No such changes have evolved in either the electricity or the natural gas industries. Moreover, unless and until machines replace men and women as letter carriers, no such changes are going to evolve in the delivery function of the postal industry. Thus the factual predicate that has supported reducing the monopoly in the telecommunications industry is not present in the postal industry.<sup>4</sup>

As such, the basic premise of these comments are that one should not try to fix something if it isn't broken. And, while the Postal Service does face great challenges, our postal system nevertheless is functioning fairly well today, providing acceptable service at acceptable rates. While there is room for improvement, the critics that suggest that the sky is falling on the postal system have by no means proven their case and they have been trying to do so for a very long time. Indeed, the critics started predicting that technological innovation would undercut the Postal Service in the mid 1800s, with the invention of the telegraph.<sup>5</sup>

Although, the postal system is far from “dead,” the one possible “real” danger to the system could come from allowing—through opening up the private express statutes—the Postal Service’s financial base to be undercut by companies cream-skimming profitable routes, leaving the less profitable ones to the Postal Service. In that instance, the cost of maintaining universal postal service could increase to such a point that the entire system would be endangered.

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<sup>4</sup> Note that the postal industry has experienced radical changes in its sortation function over the last thirty years, with the development of postal automation and postal sorting machines. The result of that evolution has been the growth of a new industry and the birth of presorted bureaus, letter shops, and other co-mingling operations. That growth, which is the result of the market responding to the financial incentives that postal discounts created, was effectively a type of deregulation that satisfactorily evolved within the confines of the existing structure. Indeed, a new industry was created, the pre-sort and co-mingling industry, and it is one that is highly developed and the source of significant cost savings for DFS.

<sup>5</sup> See Richard R. John, *Spreading the News, The American Postal System from Franklin to Morse*. 88-89 (Harvard University Press 1995) (“Spreading the News”).

The current postal system works relatively well, but is a rather finely honed and delicate system. That balance should not be upset, particularly when the system is in the middle of adapting to a new statutory and regulatory scheme.

## **II. The Issues.**

### **A. Universal Service.**

The first section of this country's postal statute starts off by proclaiming that "The United States Postal Service shall be operated as a basic and fundamental service provided to the people by the Government of the United States, authorized by the Constitution, created by Act of Congress and supported by the people."<sup>6</sup> This institution has as its basic function "the obligation to provide postal services to bind the Nation together through the personal, educational, literary, and business correspondence of the people."<sup>7</sup> The Postal Service is commanded to "provide prompt, reliable, and efficient services to patrons in *all* areas and shall render postal services to *all* communities."<sup>8</sup>

No other turn of the phrase summarizing the mission and *raison-etre* of the Postal Service as well as the statements of this country's postal policy cited above. As postal historians Richard R. John and David M Henkin have shown in *SPREADING THE NEWS, THE AMERICAN POSTAL SYSTEM FROM FRANKLIN TO MORSE*<sup>9</sup> and *THE POSTAL AGE, THE EMERGENCE OF MODERN COMMUNICATIONS IN NINETEENTH CENTURY AMERICA*,<sup>10</sup> it was the growth of America's postal system that allowed the United States of America to

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<sup>6</sup> 30 U.S.C. §101(a).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* (emphasis added)/

<sup>9</sup> See footnote five above.

<sup>10</sup> David M Henkin, *The Postal Age, The Emergence of Modern Communications in Nineteenth Century America* (University of Chicago Press 2006) ("Postal Age").

grow, prosper and expand. Indeed, were it not for our postal system, the American political system and the American economy might not have survived the rigors of the frontier and the challenge of expansion. They certainly would not have prospered.

As one of America's most celebrated social and political analysts, Frenchman Alexis de Tocqueville, said in the early 1800s in his early work *JOURNEY TO AMERICA*:

There is an astonishing circulation of letters and newspapers among those savage woods . . . I do not think that in the most enlightened rural districts of France there is intellectual movement either so rapid or on such a scale as in this wilderness.<sup>11</sup>

In one of the first attempts at quantitative analysis of the postal mail stream, de Tocqueville found that the average inhabitant of the Michigan territory received a greater volume of nonlocal information than the average inhabitant of the Département du Nord.<sup>12</sup> As Professor John points out, this was startling because:

at the time [the] Michigan territory was a thinly populated agricultural district on the extreme western fringe of European settlement while the Département du Nord was a bustling commercial center in the very heart of France.<sup>13</sup>

This led de Toqueville, says Professor John, to the deceptively simple proposition that communication through the Postal Service could create culture, that the movement of information could spark the movement of ideas,<sup>14</sup> an view shared by Supreme Court Justice and Harvard Law Professor Joseph Story.<sup>15</sup>

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<sup>11</sup> Alexis de Tocqueville, *Journey to America*, ed. J. P. Mayer, Tran. George Lawrence (1835, 1840] Doubleday & Co. 1971) at 283.

<sup>12</sup> Alexis de Tocqueville, *Democracy in America*, ed. J.P. Mayer, Trans. George Lawrence (Doubleday & Co. 1969) at 304n

<sup>13</sup>Spreading the News at 1.

<sup>14</sup> Id.

<sup>15</sup> As Justice Story said in his *Commentaries on the Constitution*:

§ 1120. The post-office establishment has already become one of the most beneficent, and useful establishments under the national government. It circulates intelligence of a commercial, political, intellectual, and private nature, with incredible speed and regularity. It thus administers, in a very high degree, to the comfort, the interests, and the necessities of persons, in every rank and station of life. It brings the most distant places and persons, as it were, in contact with each other;

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There is little doubt therefore, that much of the economic vitality of America is owed to the development of the American postal system.

That, of course, was then, in the 19<sup>th</sup> century. We are, however, in another world today. Much has changed over the last thirty years, and much more will change over the next thirty years. The role of print and mail is and will be different in this era of electronic communications. The real question, therefore, is whether the Postal Service still plays serves a critical function in our economy and our society. If it does, then it still deserves the protection of the monopolies—both that of the letter and that of the mailbox.

Allowing monopoly is something that tends to goes against the grain of a free market society and it is a notion with which very few economists feel comfortable. Yet it is a notion that is at the very heart of the postal franchise, and an area where economists' free market inclinations has routinely been overridden.

The purpose of the monopolies (both of them) is to protect the institution that provides universal mail service, to ensure that the Postal Service has a sufficient economic base to provide the mail service that is necessary to tie our country together, and to do so for *everyone, everywhere*, regardless of the vacillations in the marketplace.

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. . . and, by a wider diffusion of knowledge, enables political rights and duties to be performed with more uniformity and sound judgment. It is not less effective, as an instrument of the government in its own operations. In peace, it enables it without ostentation or expense to send its orders, and direct its measures for the public good, and transfer its funds, and apply its powers, with a facility and promptitude, which, compared with the tardy operations, and imbecile expedients of former times, seem like the wonders of magic.

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No one, accustomed to the retardations of the post in passing through independent states on the continent of Europe, can fail to appreciate the benefits of a power, which pervades the Union.

Joseph Story, *Commentaries on the Constitution of the United States, a Preliminary Review of the Constitutional History of the Colonies and States, before the Adoption of the Constitution*. Chapter 3:§1120 (Boston: Hilliard, Gray and Company. Cambridge: Brown, Shattuck, and Co. 1833), found at [http://www.constitution.org/js/js\\_000.htm](http://www.constitution.org/js/js_000.htm). See also [http://press-pubs.uchicago.edu/founders/documents/a1\\_8\\_7s7.html](http://press-pubs.uchicago.edu/founders/documents/a1_8_7s7.html)

This last point is crucial and it is at the core of the notion of universality that is contained in the universal service obligation.

As a large national mailer and as one of the companies at the heart of our financial system, we suggest that universal service still does matter and that the Postal Service still deserves protection.<sup>16</sup> DFS and many other companies would have very difficult time operating today without it.

DFS uses the mail not only to deliver its monthly statements throughout the United States, but DFS also receives a significant portion of its revenue from its customers via remittance in the mail. DFS additionally markets its cards and other products via the mail, and distributes its plastic credit cards via the mail. Operating on a national basis, it is critical that DFS have a way to reach every resident of the country, in every household in the country, if it wants to do business on a national scale. To do anything less would be to cut off national companies such as DFS from their customers and citizens from the opportunities that companies operating on a national scale can offer them.

While DFS is very active in the electronic arena, electronic communications simply has not developed to the point where it can replace the Postal Service. Whether that will happen or not, and when that might happen, we do not know. We do know that this point has not yet come, and that is the issue that this Commission squarely must face today.

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<sup>16</sup> David Henkin, an associate professor of history at the University of California at Berkeley, writing in the year 2006, agrees with this proposition: "it is sometimes hard to remember that we still rely on the U.S. Postal Service for much of our daily business and many of our daily pleasures. Even in an age of digital information, the postal system remains a central and almost wondrous institution. . . . Linking distant individuals in a web of regular exchanges and tethering them to networks of institutional power, the postal system fulfills several of the cultural functions attributed to newer media." *Postal Age* at ix.

Universal service is still critical to the well-being of the country and to the well being of mailers such as DFS. It still is the economic lifeline of the country, and is still the communications medium that binds the nation together. Universal Service It is something that still matters, and we urge the Commission to very strongly support it.

### **B. Continuation of the Letter Monopoly.**

The United States chose to create a nationwide postal system run by the government a long time ago. Congress could have chosen to create a nationwide postal system run by private entities, on a common carrier basis, licensed by the government, much as we ended up doing in telephone area. But it did not do that. To attempt to do that, and unravel more than two hundreds of postal service growth, evolution, and development and turn over the postal function to the private sector, would not make sense.

The purpose of the letter monopoly is to protect postal revenues and thus to ensure that a sufficient economic base exists to serve Americans everywhere. As discussed above, the need for universal service continues to exists. The question therefore becomes whether the Postal Service so strong financially that we could afford to open up part of the monopoly to competition, without endangering the system.

The answer to this question is no. These are trying times for the Postal Service. Volumes are challenged; First Class revenue is down. The economy is not doing well. Although the postal system, overall, is working relatively well, it is challenged.

**C. Universal Mail Service Requires Dependable and Reliable Mail service at reasonable prices.**

Universal mail service requires dependable and reliable mail service at reasonable prices. What is dependable mail service and what are reasonable prices has never been precisely delineated and we urge the Commission not to attempt to do so now.

This is one of those times where a certain amount of ambiguity is good for the system, for it could provide flexibility that might be needed should a true postal crisis ever one day arise. Attempting to precisely address these issues today, when no postal crisis exists, could create a rigidity that the Commission could come to regret should it and the Postal Service ever be faced with a true postal crisis. Time Warner would appear to agree with this position. See Time Warner Comments at 7.

**D. Continuation of Six-Day Delivery.**

DFS sees no reason why six-day delivery should not continue. Reducing delivery by one day would have very serious repercussions. For one, DFS and other financial services companies would lose one day of float. As is well known, the financial services sector is struggling due to a variety of factors. Eliminating one day's float for every financial services institution in the country could have serious economic consequences.

Moreover, when a citizen deposits a check in the mail, he or she calculates that the check should arrive at the destination in one, two, or three days, depending upon the destination. Removing a day of delivery throws that calculation off and would add an

element of ambiguity into the mailstream that would create further incentives for citizens to use electronic transmissions instead of the mail.

### **E. The Mailbox Monopoly.**

There may be a temptation by some to support opening up the mailbox monopoly. However, the Commission should not recommend this for it would end up increasing security problems and raising rates.

The mailbox monopoly is supported by a security rationale and by a cost rationale. The security rationale focuses on theft of checks and other valuable mail (e.g., credit cards) from the mail box, while the cost rationale concerns the time that the carrier would waste sorting through whatever is already in the mailbox to see if there is a letter to pick up.

In Europe many countries do not have a mailbox monopoly. However, as Murray Comarow has pointed out, many residences in Europe don't have a mail box but have a mail slot.<sup>17</sup> Where there are mail slots going into residences, security is not a problem for no one can get through the mail slots to pick up anything that has dropped into the house. In America, however, where many residents have open mailboxes, either on the side of the house or at the curb, allowing anyone to poke around in a mail box could have serious security consequences, particularly for the credit card industry.<sup>18</sup> Indeed, DFS believes that opening up the mailbox would have a tendency to increase the theft

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<sup>17</sup> See Memorandum of Murray Comarow to the Postal Regulatory Commission filed as Comment to PRC Order NO 71, June 6, 2008 at 4 ("Comarow"); see also GAO's report, *Information About Restrictions to Mailbox Access*, Government Accounting Office (GAO/GGO) 97-85.

<sup>18</sup> There have been incidents of stolen Social Security checks, where the theft has simply followed the carrier around on the day the checks arrive in the mail and taken them out of the mailbox. See for example <http://www.it.utah.edu/leadership/security/identity.html>

of plastic credit cards. Such an action would give DFS and other credit card companies an incentive to stop using the Postal System to deliver their plastics.

There is also a cost reason not to open up the mailbox. In America the letter carrier picks up stamped letters from residential mailboxes.<sup>19</sup> If other material were allowed in the box, and the carrier had to sort through it to find if there were any letters to pick up, the carrier function would acquire a sortation element. This would increase rates, perhaps substantially, as all letter carriers would also become mail sorters.

For these reasons, DFS urges the Commission not only to recommend keeping the mailbox monopoly, but to advocate for it in no uncertain terms.

### **Conclusion**

For the reasons stated above, DFS urges the Commission to support the continuation of Universal Mail Service by the Postal Service, to point out that universal mail service requires dependable and reliable mail service, not to recommend the discontinuation of six-day delivery, and to support the continuation of the mailbox monopoly.

Thank you for considering our views.

Respectfully submitted,

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June 30, 2008

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<sup>19</sup> In Europe many carriers do not pick up letters from residential mailboxes. See Comarow at 4.