

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

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Report on Universal Postal Service	)	Docket No. PI2008-3
and the Postal Monopoly	)	
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INITIAL COMMENTS  
OF  
DIRECT MARKETING ASSOCIATION, INC.,  
ASSOCIATION OF POSTAL COMMERCE  
AND  
MAILING & FULFILLMENT SERVICE ASSOCIATION  
PURSUANT TO PRC ORDER NO. 71  
(June 30, 2008)

The Direct Marketing Association, Inc. (“DMA”) and the Association of Postal Commerce (“Post Com”) respectfully submit these Initial Comments pursuant to PRC Order No. 71 in this proceeding on the subject of “universal service” and the Postal Service’s “universal service obligation.” These Comments are intended to inform the Commission’s deliberations as it prepares its report pursuant to Section 702 of the Postal Accountability and Enhancement Act (“PAEA”).<sup>1</sup>

**Introduction**

As the Commission requested, we set forth below our comments on the six aspects of “universal service” that the Commission identified in Order No. 71, as well as comments on several other issues that we believe are relevant to the Commission’s report.

Before we address these issues, however, we believe that a few preliminary comments would be appropriate.

**A. The Context of the Report**

At the threshold, there are three critical considerations that form the backdrop against which the specific topics enumerated in section 702(a) and (b) of the PAEA (and reprised in the Commission’s Discussion Memorandum) must be viewed.

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<sup>1</sup> Public Law 109-435.

The first of these considerations relates to timing. Although two years will have elapsed between the enactment of the PAEA and the submission of the Commission's report, implementation of the PAEA is today, and will be at that time, very much in its infancy. The Commission and the Postal Service have done an extraordinary job of implementing the central ratemaking provisions of the new law, but there is much that remains to be done. No less importantly, there needs to be time for the rules, policies and practices that have been implemented to take full effect. For example, this report will have been submitted to Congress before the first annual compliance audit analyzing PAEA-based rates.<sup>2</sup> It will be difficult, therefore, for the Commission to shed meaningful insight as to how well (or poorly) a universal service obligation can be carried out under the PAEA. In short, this is not a time for the Commission to recommend or for Congress to consider changes to universal service and the postal monopoly. Indeed, the Congress recognized as much by specifically permitting the Commission to consider these matters in its reports under section 701, which are required to be presented to the President and Congress at least every five years.

The second consideration relates to the very nature of the Postal Service monopoly as it exists today. The Private Express Statutes are, undoubtedly, designed explicitly to protect the Postal Service's ability to provide universal service or, as the academic literature calls it, to avoid the "graveyard spiral." See, e.g., Crew and Kleindorfer, *Competition Universal Service and the Graveyard Spiral* and *Regulatory and Economic Challenges in the Postal and Delivery Sector*, Crew and Kleindorfer, edit (Kluwer Academic Publishers, 2005). The core problem with the academic discussion (and the modeling that generally accompanies it) is that it is predicated on competitive entry into the postal system *itself*. However, the primary competition facing the U.S. Postal Service today (*i.e.*, electronic communication) is simply not, nor ever was intended to be, addressed by the Private Express Statutes. There is no meaningful way for this Commission to alter the effects on the Postal Service of electronic media, which are subject, in varying degrees, to regulation by other agencies and to universal service requirements under other statutes (both federal and state).

The third consideration is that the policies underpinning the other part of the "postal monopoly," *i.e.*, the "mailbox rule," are wholly distinct from those underpinning the Private Express Statutes. The literature suggests that the restrictions imposed upon access to the mailbox may have

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<sup>2</sup> The Commission and the Postal Service both recognized that the initial compliance audit was based upon rates, product definitions and duties defined under prior law.

originally been designed to “protect postal revenue by preventing delivery of unstamped matter to mailboxes.” GAO Report “*Information About Restrictions on Mailbox Access*” at 2 (May 1997). However, it was clear, even in 1981, when the Supreme Court upheld the constitutionality of the mailbox restrictions, that revenue protection was not the primary basis for the court’s decision. These non-economic, social considerations are – especially in the aftermath of the events of September 11 – of considerably greater importance than they were at the time of the Supreme Court decision in *Town of Greenburg*, 27 years ago.

**B. The System Works Reasonably Well**

With limited exceptions,<sup>3</sup> the Postal Service delivers mail to every address in the country, six-days a week, free to the recipient. In order to defray its costs, it requires a certain critical mass of (sender-paid) mail. Although the USPS faces significant challenges on both the cost and the revenue fronts, the Postal Service today handles a sufficient volume of mail at sufficiently compensatory prices that the USPS system “works.” In fact, in spite of the many challenges the Postal Service faces today and expects to face in the future, in most respects the current system is working reasonably well, and there does not appear to be a compelling reason to make any major changes in the services it provides . . . at least not at the present time.

**C. “Universal” Service**

The Commission in its Order No. 71 has, in our view, interpreted correctly the primary issue to which Section 702 of the PAEA is addressed, *i.e.*, the character of the Postal Service of the future and, in particular, the importance of the postal monopoly and the mailbox rule to the smooth functioning and the economic viability of the Postal Service of the future.

We would like to highlight, however, a potential source of semantic confusion in the way Section 702 is phrased. Section 702 requires that the Commission’s report address “universal postal service and the postal monopoly in the United States . . . including the monopoly on the delivery of mail and on access to mailboxes.”<sup>4</sup>

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<sup>3</sup> For example, some businesses receive deliveries only 5 days a week.

<sup>4</sup> PAEA, Section 702(a)(1) (emphasis supplied). The PAEA enumerates a number of subjects that the report must address, including “a comprehensive review of the history and development of universal service and the postal monopoly,” “the scope and standards of universal service and the postal monopoly under current law,” “a description of any geographic areas . . . that are receiving services deficient in scope or quality or both,” “the scope and standards of universal service and the postal (continued...)

As the Commission points out, the term “universal service” is not defined in the U.S. postal laws. Indeed, the Commission refers to the lack of such a definition as “[t]he essential problem” and recognizes that “one of the Commission’s fundamental tasks in preparing its report will be to define the concept. . . .”<sup>5</sup> Citing a 2004 Supreme Court decision, the Commission states that “universal postal service” is “the term commonly used to refer to postal service to all parts of the country,” thus emphasizing the geographic (not demographic) aspects of the concept.<sup>6</sup>

In order to bridge the logical gap between “universal” service (the term used in Section 702) and the services that the Postal Service will need to provide in the future (and that therefore need to be supported by the postal monopoly and the mailbox rule), the Commission turns to principles that have been developed in Europe and elsewhere. Thus, the Commission goes on to state that the Postal Service’s obligation to provide “universal service,” sometimes referred to as the “universal service obligation” or “USO,” is “often thought of”

“. . . as an obligation with characteristics or features such as: (1) geographic scope, (2) range of product offerings, (3) access to postal facilities and services, (4) frequency of delivery, (5) rates and affordability, and (6) quality of service.”<sup>7</sup>

While we agree that the six elements are relevant to the service that the Postal Service provides, we have serious doubts that the term “universal” can properly be applied to each of them. Moreover, the Postal Service does not have clearly defined obligations in each of these six areas.

To express the same point another way, in analyzing the merits of the postal monopoly and the mailbox rule, the Commission should not be constrained to consider only the Postal Service’s ability to deliver services that everyone agrees are “universal.” Universality is not the ultimate goal. The ultimate goal is the viability of the Postal Service and its ability to provide services that the country

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monopoly likely to be required in the future,” “an estimate of the costs . . . attributable to the obligation to provide universal service under the current law,” “an analysis of the likely benefit of the current postal monopoly,” and “any additional topics and recommendations the Commission deems appropriate.” In its Order No. 71, the Commission states that it is soliciting comments from all interested persons “. . . on any or all aspects of the subjects to be included in the Commission’s report and any additional topics and recommendations.” PRC Order No. 71 at 5.

<sup>5</sup> *Id.* at 6. See also Discussion Memorandum, Attachment A to Order No. 71, (hereinafter “Discussion Memorandum”) at 2-8.

<sup>6</sup> *Id.* at 5, citing *United States Postal Serv. v. Flamingo Indus. (USA) Ltd.*, 540 U.S. 736, 741 (2004) (hereinafter, the “*Flamingo* decision”).

<sup>7</sup> *Id.* at 5 (emphasis supplied).

needs. The merits of the postal monopoly and the mailbox rule should be viewed from this perspective.

**D. Service “Obligation”**

In its Order No. 71, the Commission raises an interesting issue when it introduces the concept of a “universal service obligation,” or “USO.” We agree that the Commission will need to define the features of “universal service” before it can analyze the postal monopoly in relation to “universal service.” There is a nice question, however, concerning the obligation of the Postal Service to provide any particular feature of “universal service” as that term is ultimately defined by the Commission.

The current state of the law concerning the obligations of the United States Postal Service is an amalgam of generalizations and some rather specific requirements.

The basic “obligation” of the Postal Service was established by Congress as part of the Postal Reorganization Act of 1970 (“PRA”) and is stated in general terms in the very first paragraph of Title 39 of the United States Code:

“The Postal Service shall have 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. It shall provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities. The costs of establishing and maintaining the Postal Service shall not be apportioned to impair the overall value of such service to the people.”<sup>8</sup>

One finds in this language references (albeit rather vague) to each of the six features of “universal service” identified by the Commission and quoted above.

Section 403 of Title 39 contains additional general references to these themes:

“The Postal Service shall . . . receive, transmit, and deliver throughout the United States . . . written and printed matter, parcels, and like materials and provide such other services incidental thereto as it finds appropriate to its functions and in the public interest. The Postal Service shall serve as nearly as practicable the entire population of the United States. . . . [T]he Postal Service shall not . . . make any undue or unreasonable discrimination among users of the mails, nor shall it grant any undue or unreasonable preferences to any such user.”<sup>9</sup>

The Supreme Court in its *Flamingo* decision identified Sections 101 and 403 as the source of what it termed “the obligation to provide universal service to all parts of the country.”<sup>10</sup> Section 702

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<sup>8</sup> 39 U.S.C. §101(a).

<sup>9</sup> 39 U.S.C. §403.

<sup>10</sup> 540 U.S. at 741.

of the PAEA also refers to Sections 101 and 403 as “current law” relevant to the issue of “universal service.”<sup>11</sup>

In addition to these general provisions, the postal statutes contain some quite detailed requirements relevant to some of the six elements of “universal service.” For example, on the subject of affordability, the PAEA enacted specific standards governing the setting of postal rates, including the CPI Cap. Similarly, on the subject of access to postal services, there are specific procedures relating to the closure of post offices. There are also specific provisions relating to the measurement of the quality of service, but (by contrast) the level of service standards is not addressed.

In this connection, it is important to note that the U.S. legal structure underlying the provision of postal services is quite different from that of the European Union, which has adopted a directive that imposes a “universal service obligation” on each EU member.<sup>12</sup> While Section 702 uses the term “universal service,” it does not use the term “universal service obligation.” Ultimately, we believe that the choice of terms is of minor importance, as long as the terminology does not detract from the ultimate goal of the Commission’s report. We would like to make clear that, while we will use the term “universal service,” we are really addressing the characteristics of “postal service” that we believe are important (and in some instances essential) to the future success of the U.S. Postal Service, which we believe is an institution critical to social and economic fiber of this country.

As the foregoing discussion makes clear, there is no global and comprehensive definition of the term “universal service obligation” that legally compels the Postal Service to provide a certain set of “universal” services.<sup>13</sup> The term USO is not a “brooding omnipresence in the sky” (to quote Justice Holmes). For this reason, among others, the attempt to define the costs of a USO is an arid exercise. Rather, the six elements are simply aspects of postal services that are in some respects interrelated and in other respects are discrete. We urge the Commission not to try to define in its report a cohesive set of legal obligations as the USO. To do so would, at best, be misleading and, more importantly, would pose a serious risk of contradicting the specific standards that are embedded in the PAEA. Thus, while

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<sup>11</sup> PAEA, Section 702(a)(2)(B).

<sup>12</sup> See Discussion Memorandum at 4.

<sup>13</sup> It is relevant in this connection that Section 702 uses in several places the phrase “scope and standards of universal service.” The clear implication of this phraseology is that the “scope” of “universal” service is not immediately clear, *i.e.*, that the detailed attributes of “universal service” are both (1) not determined by statute, and (2) subject to change over time. Thus, the Postal Service does not necessarily have a legal obligation to provide the “universal service” that we will be advocating.

we may use the term "USO" in these comments, what we are referring to is postal services that are essential or important to users and recipients of mail and that the Postal Service is authorized or required to provide by the PAEA and other Congressional enactments.

#### **E. Differences Between USPS Today and USPS in the Future**

We would like to emphasize one final preliminary point. The Postal Service is operating in a constantly changing social and economic environment. All of us can identify forces currently at work, and all of us can estimate trends. However, the chances are virtually nil that we, or the Commission, or the Postal Service, will be able to predict the attributes of this environment and its effect upon the Postal Service five years hence, much less ten years hence. That is why Congress allowed the Commission the scope to evaluate these issues in its 701 reports and why, in our view, this is not the venue or time for consideration of any change to the USO as it is commonly understood today.

## **II. Defining “Universal Service”**

The Commission has suggested that it should adopt a “working definition” of “universal service,” the opening portion of which would read as follows:

*“Universal service refers to a postal service or set of postal services that is characterized by six features or service elements that are attained to such a degree or in such a manner that postal service may be considered ‘universal.’ The six service elements are as follows, and in each case the level or manner of attainment presently considered characteristic of universal service are noted:”*<sup>14</sup>

As discussed above, the Commission needs to close the logical gap between the subject of the Section 702 report and the term (*i.e.*, “universal”) chosen by Congress to describe that subject.<sup>15</sup> We understand that the Commission’s definition means that a particular feature or service element is an important aspect of the role that the Postal Service plays in American society and therefore should be considered an integral part of the services provided by the Postal Service.

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<sup>14</sup> Discussion Memorandum at 2.

<sup>15</sup> This logical gap, of course, occurs in the text of the statute itself. Section 702(a)(2) uses the phrase “scope and standards of universal service” in several places. The fact that Congress directed the Commission to examine the “scope” of a “universal” standard means that Congress did not intend that “universal” as used in Section 702 meant “universal” as used in common parlance.

Our comments on the six features/elements of “universal service” are based on that understanding.

**A. Geographic Scope**

The first element is “geographic scope,” which the Commission proposes to define as follows:

*“Geographic scope. Universal service provides services throughout the United States, serving all areas and all communities, especially rural areas, and as nearly as practicable the entire population of the United States and also providing service to or from military personnel abroad.”*

If there is any attribute of the services currently offered by the Postal Service that deserves to be called “universal,” or that deserves to be treated as an “obligation” of the Postal Service, it is the delivery of mail to every address in the United States,<sup>16</sup> and, indeed, the participation in logistical arrangements that permit the delivery of mail as broadly as possible outside the United States.

It is this feature of current USPS operations that helps “bind the Nation together,”<sup>17</sup> that permits the communication of ideas throughout our land, and that permits residents in even the remotest corners of our country to feel connected with their countrymen. We strongly support a wholly inclusive geographic scope within the concept of “universal service.”

From an economic point of view, as well, a wholly inclusive geographic scope is an important attribute of current USPS operations. Mailers, the people who pay the cost of our postal system, count on the Postal Service to deliver their mail to whatever address they send it and to deliver it without cost to the recipient. Mailers do not, nor should they, worry about whether the Postal Service will deliver to a particular place in this country, as long as it has a valid address. Any change in the universality of the ability and obligation of the Postal Service to deliver to every valid address in this country could have serious economic consequences. It would force mailers to re-think the ways in which they should transmit their messages (be they “personal, educational, literary [or] business”)<sup>18</sup> and could easily result in a loss of volume serious enough to cripple current USPS operations.<sup>19</sup>

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<sup>16</sup> In some cases, of course, the Postal Service does not deliver to the addressee at his/her street address, but to a postal box or “cluster box.” To this extent, the “universality” of even the geographical scope of the service provided is not without some exceptions.

<sup>17</sup> See 39 U.S.C. §101(a).

<sup>18</sup> *Id.*

<sup>19</sup> We recognize that the principle of universal geographic scope is contrary to the “Do Not Mail” initiatives that have appeared in various jurisdictions around the country. Without getting into the (continued...)

If there is any sense in which the “service” of the Postal Service is “universal,” it is in the geographic sense – that all parts of the United States must receive service *sufficient to satisfy local needs*, and the Commission’s report should make that point absolutely clear.

**B. Range of Product Offerings**

The second element is “range of product offerings,” which the Commission proposes to define as follows:

*“Range of products.* Universal service transmits a range of postal items including written and printed matter, parcels, and like materials suited to the needs of different categories of mail and mail users.”

This is one of those issues where the term “universal service obligation” could lead to unnecessary confusion. The Postal Service does not have an “obligation” to deliver each of the products that it offers today.

Based on a long series of postal statutes, most recently the PAEA, and postal policy decisions, the Postal Service offers a relatively broad range of products, offerings that may make sense in today’s environment but may not in five years’ time. While the Postal Service surely should not be permitted completely to withdraw a product, whether market dominant or competitive, from service without very careful scrutiny by this Commission – because of concerns of the impact on universality of service – the USO equally must not be used to fossilize products merely because the product has been offered in the past.

**C. Access to Postal Facilities and Services**

The third element is “access to postal facilities and services,” which the Commission proposes to define as follows:

*“Access.* Universal service provides mailers ready access to the postal system through an appropriate level of post offices and other access facilities consistent with reasonable economies, for both urban and rural areas.”

We support the general proposition that all Americans should have reasonable access to USPS facilities and services. At the same time, we believe that the Postal Service should have substantial flexibility to determine how individuals and businesses will gain access to postal services, in

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(multiple) reasons why these initiatives are misguided, suffice it to say that they could be a threat to USO and could create the need for the recipient to pay for USPS delivery services.

connection both with respect to the entry of mail into the postal system and with respect to delivery of mail to the addressee. For example, we do not believe that the use of cluster boxes is contrary to the general proposition that the Postal Service should deliver mail to every valid address in the country.

More generally, we believe that the Postal Service should undertake a thorough analysis of its retail network and other service outlets with the view of determining whether its facilities are structured in a manner that optimizes the balance between costs and convenience to USPS customers.

On the subject of closing post offices, Congress has provided sufficient legislative guidance to the Postal Service with respect to access to postal facilities. Section 403 prescribes that the Postal Service establish and maintain facilities of such character and in such locations that postal patrons throughout the land will, *consistent with reasonable economies of postal operations*, have ready access to essential postal services. Section 404(a)(3) further provides the Postal Service with *specific power to determine the need* for post offices, postal and training facilities and equipment, and provide such as needed. As a check on the Postal Service's powers, Congress granted the Commission the further authority to review such determinations on a case by case basis. 39 U.S.C. § 404(d)(5).

#### **D. Frequency of Service**

The fourth element is “frequency of service,” which the Commission proposes to define as follows:

*“Delivery services. Universal service provides for the receipt, transmission, and delivery of postal items.”*

Again, the PAEA sets the standard. The Postal Service is generally charged with giving “the highest consideration to the requirement for the most expeditious collection, transportation and delivery of important letter mail.” 39 U.S.C. § 101(e). The PAEA framework further provides for the Postal Service to establish service standards, with consultation with the Commission, and the Postal Service's requirement to meet established service standards is sufficient to govern frequency of delivery. The standards should be established in a manner to ensure that all of the public policies contemplated by Title 39 can be achieved.

Over the past several decades, there has been desultory discussion of establishing a national standard that reduces the frequency with which the Postal Service delivers the mail. This discussion has focused on many sub-topics of this general subject, including the merits of delivering mail to certain businesses more than once each business day. However, the issue that has been raised most often in this regard has been the question of whether 6-day delivery should be reduced to 5-day delivery.

The issue is very complex. For example, if a delivery day is going to be eliminated, which day should it be? Shippers of parcels argue strongly that it should not be Saturday, because that is the day when most people are most likely to be at home and able to receive packages. By contrast, mailers of daily periodicals would be adversely affected by the elimination of delivery on a weekday.

The most important aspect of this debate, however, is financial. At first blush, it would appear that substantial amounts of money could be saved by eliminating one delivery day each week. However, it is not at all clear that the Postal Service could actually realize the savings that cost-analysis principles would indicate. The USPS processing/delivery operations are tightly interwoven, and the ripple effect of eliminating one delivery day could impose costly inefficiencies on other aspects of USPS operations.

We believe that this is another area where Postal Service management should have substantial flexibility to respond to future developments such as changes in volumes and volume mixes, implementation of technological developments, shifts in demographics, and the like.

Until a strong case can be made that reducing the frequency of delivery would result in substantial savings, we believe that it would be premature to give serious consideration to changing current delivery schedules.

#### **E. Rates and Affordability of Service; Quality of Service**

The fifth element is “rates and affordability of service,” which the Commission proposes to define as follows:

*“Rates and Affordability of Service.* Universal service charges prices that are fair, reasonable, non-discriminatory, and based on a fair and equitable apportionment of costs.”

And the sixth element is “quality of service,” which the Commission proposes to define as follows:

*“Quality of service.* Universal service provides for the prompt, reliable, efficient, and adequate transmission of postal items, with particular attention to the most expeditious transmission of letters.”

Because of the close connection between the cost of service and the quality of service, we are addressing these two elements together.

In many respects, the obligations of the Postal Service in the areas of rates and quality of service are set forth in detail in the postal statutes, including the PAEA. Especially since the PAEA provisions are new, we believe that they form the basis of USO upon which the Commission should

base its report. This is especially true with respect to the definition of USPS products and the manner in which rates for the USPS products are to be set.

There is another aspect to the question of “quality of service” that is affected by the early timing of this report. Plainly, quality of service is inextricably intertwined with the matter of service standards, the establishment of which is, under the PAEA, principally remitted to the Postal Service. Equally clearly, quality of service cannot be assessed in the absence of a meaningful system of service performance measurements. The process by which service performance measurements will be established is ongoing; and the early establishment of a measurement system is crucial to a meaningful assessment of quality of service.

There is a legitimate concern that the economic, demographic and competitive considerations facing the Postal Service, as well as the cost of measurement itself, pose difficult questions balancing quality of service on the one hand and affordability on the other. It is clear that achieving and maintaining this balance and thereby preserving quality of service as a universal service obligation will require both the Postal Service’s willingness to use the flexibility and control it has over prices and products provided under the PAEA and an appropriate degree of regulatory forbearance by the Commission in the discharge of its oversight responsibilities under that statute. In particular, the microscopic examination of cost-causative factors and costs required under the 1970 Act have virtually no place under the PAEA.

We urge the Commission to make these points very clear in their report to Congress under Section 702. It is equally plain that any attempt by the Commission to quantify the cost of universal service and the Postal Service’s performance of its universal service obligations under the six criteria derived from the PAEA is at best a hypothetical exercise and, at worst, misleading. It is obvious that the cost of universal service, even if it could be isolated in some fashion from costs incurred by the Postal Service for non-essential services cannot be meaningfully separated from the nature and extent of the obligations imposed on the Postal Service by PAEA. And, any conceivable changes in the frequency, uniformity, and reliability of delivery or of access to the postal system carries with it other changes implicating imponderable questions as to whether the Postal Service’s variable and fixed costs have been correctly assessed. It seems to us that, at this stage in the history of the PAEA, the academic literature on the question of the “graveyard spiral” has it correct:

“In contrast to the academic world, where small stakes give rise to vitriolic arguments, there may be a case for accepting something close to the current system ... warts and all, rather than engaging in chaotic, costly and [potentially] unnecessary radical surgery.”

Crew and Kleindorfer, *supra*, at 19.

### **III. Postal and Mailbox Monopolies**

Section 702 requires the Commission to address “the scope and standards of . . . the postal monopoly likely to be required in the future . . .”<sup>20</sup> It follows from the preceding discussion that our view on this subject is simple and straightforward: a high standard should be applied to any proposal that would change either the Private Express Statutes or the Postal Service’s monopoly over the mailbox.

One of the significant assets that the Postal Service possesses is a strong reputation for the preservation of the sanctity of the mail. The American public knows that the mail that arrives in the mailbox or through the mail slot has been delivered by their postman and that its handling prior to delivery has been subject to strict supervision. The vitality of the Postal Service would suffer unnecessary damage if the mailbox rule were loosened.

The efficacy of the Private Express Statutes and related regulations pose a somewhat more difficult question because of the emergence and explosive growth of e-commerce. To some extent, the Web and e-mail communications are complementary to hard copy delivery of information through the Postal Service or alternative service providers. On the other hand, although we know of no formal studies on the point, it seems obvious that Web-based marketing and e-mail communications are close substitutes for postal mail and that the competitive challenges faced by the Postal Service will remain for the foreseeable future. Especially in times of economic uncertainty and uncertainty as to the efficacy of the Private Express Statutes in enabling the Postal Service to carry out its universal service obligations, the principle articulated by Crew and Kleindorfer and quoted above seems compellingly applicable, at least at this point in the history of the PAEA.

### **IV. Other Issues**

#### **A. Environmental Issues**

The Commission has asked “What effect will environmental issues have on demand over the next 3, 5, 10, or 15 years.” As Americans become increasingly and justifiably concerned about their

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<sup>20</sup> Section 702(a)(2)(D).

environment, we worry that unfounded concerns about environmental aspects of mail could depress mail volumes over this time horizon. And, in fact, there are for-profits and NGO's who stoke these unfounded concerns.

While all human activity has some environmental consequences, the objective analysis performed to date strongly indicates that mail does not pose a major environmental insult. Following is a summary of the facts.

The paper used in the mail is made from a renewable resource – trees. Further, most of the trees used to make paper are grown on tree farms, and the forest industry ensures that the number of trees each year is increasing so trees are not a depleting resource. In fact, forest land in the United States has increased by 5.3 million acres in the last three decades. (EPA's 2008 Report on the Environment, p. 6-10) Currently, the forestry industry plants 1.7 million trees each day, which is more than it harvests. (Abundant Forest Alliance, accessed June 24 at <http://www.abundantforest.org/renew/html>)

According to the United States Environmental Protection Agency, in 2006 Standard Mail represented only 2.4 percent of America's municipal waste stream and 2.1 percent of the waste stream that is not recycled or composted. To set a perspective on this measure, food scraps represent 18 percent of the municipal waste stream and yard trimming are 7.3 percent. By contrast, 38.7 percent of Standard Mail was recovered, that is to say recycled or composted. Most of the mail that is not recovered goes to regulated municipal landfills where it poses no threat to human health and the environment.

Finally, we note that it is not only important to analyze the environmental consequences of mail, but also of the alternatives to mail. Less marketing mail may mean less mail but it also almost certainly will mean more of other forms of marketing – newspapers, Internet, TV, radio, magazines, etc. The 2006 USPS Household Diary study (citing McCann-Erickson estimates) reports that in 2006, the advertising spent on direct mail was \$59.9 billion while the total spent on US marketing was \$285 billion. Thus, direct mail represents about 21 percent of all marketing while the remaining channels, all of which are to some degree substitutes for mail, comprise 79 percent of all marketing.

Just as there is a dawning understanding that the consequences of switching from gasoline to corn ethanol should have been studied in advance of policies promoting that switch, so, too, should the consequences of switching marketing from mail to other channels be studied in advance of any policies that would promote that substitution. For example, if all marketing mail were replaced by newspaper inserts, we would at best simply shift one form of paper marketing to another, with probably about the

same environmental footprint. At worst, since mail is targeted, there would be more newspaper inserts than there was mail, which would increase the environmental footprint of the marketing. As a further example, Internet advertising requires server farms and transmission over phone lines and home computers and monitors, all of which consume electricity. Finally, servers, computers, and monitors must be built and then disposed of at the end of useful life. And while we are not asserting that e-marketing has a greater impact on the environment than mail, we are saying that it would be irresponsible to advocate a switch from one marketing channel to another without knowing the environmental footprint of either.

And to the extent that mail serves as a delivery channel for retail purchases that are induced through mail, internet, and other forms of marketing, under most circumstances it is likely that the environmental footprint of delivery through the mail or other delivery services is smaller than the alternative: driving to the mall or retail outlet. DMA points out that if each person would forgo two trips to the mall each year and replace those trips with shopping by catalogs or direct mail, there would be a reduction of some 3.3 billion miles driven and a corresponding reduction in carbon dioxide emissions of more than 3 billion pounds. Moreover, at current pump price of gasoline, the shopping public would save more than \$650 million on gas, alone.

Notwithstanding the fact that mail is not a major environmental issue, many industries can and do make the same claim. Overall environmental issues can be composed of many, many smaller ones. Because of this, DMA, its members, and the Postal Service are committed to improving the environment, usually in measurable, but cost-effective ways. Society's resources are scarce and must be used cost-effectively to solve the numerous problems confronting us.

In its just-issued June 2008 report, "U.S. Postal Service Mail-Related Recycling Initiatives and Possible Opportunities for Improvement," the GAO has recognized that the entire mailing industry is working on improvements: "USPS and the mailing industry have undertaken numerous initiatives to increase (1) the recycling rate of mail-related material and (2) the amount of mail with environmentally preferable attributes, such as mail that uses recycled paper."<sup>21</sup>

To this end, for example, DMA announced in May 2007 an Environmental Resolution, establishing its landmark Green 15, a set of environmental standards for continuous improvement throughout the life cycle of mail, from list hygiene to end disposal. As part of the Resolution, DMA

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<sup>21</sup> GAO Report 08-599 (June 2008) at 4.

called upon its members worldwide to implement and benchmark the Green 15 in their business operations, and indicated that it would begin setting goals in key areas of the Green 15 in June 2008. DMA is poised to announce its first green goal in the area of list hygiene and data management.

DMA, MPA, and EMA have also spearheaded a campaign to increase the amount of mail being recycled. We obtained approval from the Federal Trade Commission to place the words “please recycle” on our mail and a logo and are encouraging our members to use the logo and the words on mailings, so that mail recipients will understand that most of them can recycle mail. Finally, we and many of our members are participating in the United States Postal Service’s Greening the Mail Task Force, as we strive for continued and balanced improvement in our industry’s impact on the environment, an effort which, in and of itself, may alter the nature of the mail-stream.

## **B. Impact of New Technologies**

The Commission has asked, “To what extent will new technologies increase or alter the demand for universal service by changing the nature of postal services?” We can not foresee any better than anyone else the technologies that will affect the way people communicate in the future and, therefore, the manner in which these technologies will change the way in which, or the extent to which, people use the services provided by the Postal Service. We are confident that new technologies will continue to be developed and that they will have an impact on the Postal Service.

Of course, some of these technological breakthroughs can and will be used by the Postal Service, hopefully in ways that enable the Postal Service and its customers collectively to achieve the fundamental goal of the PAEA – realization of the lowest *combined* costs of the delivery of hard copy information and products to the American public. What this impact will be is a matter of pure speculation. In short, there is no meaningful way to assess – much less quantify – how or when technological progress will affect the Postal Service.

## **Conclusion**

The Private Express Statutes and the mailbox rule are integral elements of a postal system that, while under stress and facing serious economic challenges, is basically working. Under a new statutory regime, USPS management has flexibility that it is in only the very early stages of exercising. How management will fare under this new regime, and in particular whether it will be capable of living under the CPI Cap, are issues that can not be known at the present time.

We applaud the Commission for taking the Section 702 report as an opportunity to explore issues that will affect the Postal Service of the future, and we agree that this exercise should be viewed

as a first step in a continuing process. We caution, however, against recommending at the present time any changes in the postal monopoly or the mailbox rule, and we caution against defining a “universal service obligation” that imposes obligations upon Postal Service management that it does not have already under the present statutory regime.

Respectfully submitted,

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