

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

Report on Universal Postal Service and the
Postal Monopoly

Docket No. PI2008-3

COMMENTS OF THE UNITED STATES POSTAL SERVICE
(June 30, 2008)

In response to Commission Order No. 71, the United States Postal Service hereby provides its initial comments to assist the Commission in the preparation of its report to Congress and the President on “universal postal service and the postal monopoly in the United States ... including the monopoly on the delivery of mail and on access to mailboxes” pursuant to Section 702 of the Postal Accountability and Enhancement Act of 2006, Public Law 109-435 (“PAEA”). The Postal Service’s comments on each topic listed in Order No. 71 are contained in the attachment.

The topics on which the Commission sought comments raise complex issues at the intersection of law, economics, and public policy. We regard this stage of the proceeding as an effort in information gathering by the Commission. There are ongoing studies that will provide additional information on these topics in the coming months. The Postal Service intends to carefully consider the reports resulting from those studies and the comments filed by other participants in this docket before it presents its policy views in a subsequent filing.

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Topic No. 1: Scope of “Universal Postal Service” and “Universal Service Obligation”

Scope of the Universal Service and Universal Service Obligation

Before delving into the specific universal service issues that are set forth in the various topics enumerated in Order No. 71, the Postal Service would like to emphasize an overarching and essential characteristic of the services it provides, namely the security and sanctity of the mail. Although this characteristic encompasses the feature of certain classes’ being “sealed against inspection”¹ and is mentioned below under “range of product offerings,” it is also rooted in various federal statutes that protect the mail, the postal system, postal employees, postal property, postage stamps, and the postal brand from theft, interference, fraud, forgery, and the like.² This panoply of protections, which applies to all mail carried by the Postal Service, regardless of the scope of any universal service obligation (“USO”), underlies the public’s perception of the Postal Service as the most trustworthy agency of the Federal government.³

The obligations of the Postal Service in providing postal services are defined in 39 U.S.C. §§ 101 and 403. These obligations can be classified in the following groups. Another characteristic, frequency of delivery, is not specifically mentioned in those sections, but is currently mandated at six days a week by yearly appropriations bills.⁴

- availability of and access to services and facilities
 - “basic and fundamental service provided to the people ... to bind the Nation together”⁵
 - “maximum degree of effective services to rural areas, communities, and small towns where post offices are not self-sustaining”⁶
 - “effective postal services be insured to residents of both urban and rural communities”⁷
 - “the need for facilities and equipment designed to create ... a maximum degree of convenience for efficient postal services”⁸
 - “establish and maintain postal facilities of such character and in such locations, that postal patrons throughout the Nation will, consistent with reasonable economies, have ready access to essential postal services”⁹

¹ 39 U.S.C. § 404(c)

² 18 U.S.C. §§ 1691 – 1737.

³ Ponemon Institute, “Ponemon Institute Announces 2008 Privacy Trust Rankings of U.S. Government Agencies” (April 7, 2008), *available at*

http://www.ponemon.org/press/Ponemon_2008%20Govt%20PTS%20Study%20FINAL.pdf.

⁴ Another characteristic, frequency of delivery, is not specifically mentioned in those sections, but is currently mandated at six days a week by yearly appropriations bills. *See, e.g.*, Consolidated Appropriations Act, 2008, Title V, Pub. L. No. 110-161, 121 Stat. 1844 (2007).

⁵ 39 U.S.C. § 101(a).

⁶ *Id.* at (b).

⁷ *Id.*

⁸ *Id.* at (g).

⁹ 39 U.S.C. § 403(b)(3).

- quality and economical efficiency of services
 - “prompt, reliable and efficient services”¹⁰
 - “the requirement for the most expeditious collection, transportation, and delivery of important letter mail”¹¹
 - “prompt and economical delivery of all mail”¹²
 - “maintain an efficient system”¹³

- geographic scope
 - “basic and fundamental service provided to the people ... to bind the Nation together”¹⁴
 - “to patrons in all areas and ... to all communities”¹⁵
 - “maximum degree of effective services to rural areas, communities, and small towns where post offices are not self-sustaining”¹⁶
 - “effective postal services be insured to residents of both urban and rural communities”¹⁷
 - “serve as nearly as practicable the entire population of the United States”¹⁸
 - “receive, transmit, and deliver throughout the United States, its territories and possessions, and ... throughout the world”¹⁹
 - “establish and maintain postal facilities ... in such locations [to allow] postal patrons throughout the Nation ... ready access to essential postal services”²⁰

- rates²¹
 - “costs of establishing and maintaining the Postal Service shall not be apportioned to impair the overall value of such service to the people”²²
 - “[p]ostal rates shall ... apportion ... costs of all postal operations to all users ... on a fair and equitable basis”²³
 - “provide ... postal services at fair and reasonable rates and fees”²⁴
 - “in establishing classifications, rates, and fees under this title, the Postal Service shall not ... make any undue or unreasonable discrimination among users of the mails”²⁵

¹⁰ 39 U.S.C. § 101(a).

¹¹ *Id.* at (e).

¹² *Id.* at (f).

¹³ 39 U.S.C. § 403(b)(1).

¹⁴ 39 U.S.C. § 101(a).

¹⁵ *Id.*

¹⁶ *Id.* at (b). See also 39 U.S.C. § 404(d)(2)(A)(iii) (requiring the Postal Service to consider this policy before making a determination to close or consolidate a post office).

¹⁷ 39 U.S.C. § 101(b).

¹⁸ 39 U.S.C. § 403(a).

¹⁹ *Id.*

²⁰ *Id.* at (b)(3).

²¹ “Affordability,” which is a subjective characteristic that may vary by user, is not mentioned.

²² 39 U.S.C. § 101(a).

²³ *Id.* at (d).

²⁴ 39 U.S.C. § 403(a).

²⁵ *Id.* at (c).

- “reasonable and equitable rates of postage and fees for postal services”²⁶
- “[p]ostal rates and fees shall be reasonable and equitable”²⁷
- “[t]he rate for [mail sealed against inspection] shall be uniform throughout the United States, its territories, and possessions”²⁸
- range of product offerings
 - “receive, transmit, and deliver written and printed matter, parcels, and like materials”²⁹
 - “provide types of mail service to meet the needs of different categories of mail and mail users”³⁰
 - “establish reasonable and equitable classes of mail”³¹
 - “maintain one or more classes for the transmission of letters sealed against inspection”³²

Because these universal service features are stated as legal requirements and, prior to the Postal Accountability and Enhancement Act of 2006 (“PAEA”) were stated without qualification, they essentially obligated the Postal Service to provide postal services on a universal basis: a “universal service obligation.” Although the obligations enumerated above were not substantively changed by the PAEA, other provisions of the PAEA provide qualifications that change the former equivalence between these requirements to provide universal postal services and a universal service obligation. The PAEA divides postal services into two broad groups, market-dominant products and competitive products, and treats them differently in respects that have a significant effect on determining the scope of the universal service obligation under the PAEA. The PAEA subjects competitive products to significantly less regulation than market-dominant products. In addition to restricting annual prices changes at the class level to the Consumer Price Index, the PAEA specifies numerous “objectives,” “factors,” and “requirements” for pricing and classifying market-dominant products,³³ including that rates and classifications be “just and reasonable.”³⁴ The service standards for market-dominant products are set through a regulatory process.³⁵

By contrast, the PAEA gives the Postal Service significant leeway in managing and pricing competitive products. The Postal Service’s authority is subject to the general

²⁶ 39 U.S.C. § 404(b).

²⁷ *Id.*

²⁸ *Id.* at (c).

²⁹ 39 U.S.C. § 403(a).

³⁰ *Id.* at (b)(2).

³¹ 39 U.S.C. § 404(b).

³² *Id.* at (c).

³³ 39 U.S.C. § 3622.

³⁴ *Id.* (b)(8).

³⁵ 39 U.S.C. §§ 3622(b)(3), 3691.

requirement that competitive products be self-supporting.³⁶ In order for competitive products to be successfully self-supporting, the prices that the Postal Service sets need to respond accurately to market conditions. The Postal Service's authority is also subject to the requirement that competitive products as a whole make an appropriate contribution to the institutional costs of the Postal Service³⁷ and the Commission's oversight of this requirement is subject to reevaluation based on "prevailing competitive conditions in the market."³⁸ In order for new products to be established as competitive or for existing market-dominant products to be reassigned as competitive, the Postal Service must not exercise sufficient market power that it can set prices substantially above costs, raise prices significantly, or decrease quality or output, without risk of losing business to other firms offering similar products.³⁹ Service standards for competitive products are left to the Postal Service to determine. The Commission has the authority to order the Postal Service to discontinue "loss-making" products and to make up for revenue shortfalls in competitive products.⁴⁰

Accordingly, while the enumerated features of universal service remain "obligations" with respect to market-dominant products, and particularly with respect to those subject to the "postal monopoly,"⁴¹ those service features can no longer be deemed obligatory with respect to competitive products. Success in the marketplace and profitability will require the Postal Service to define the service provided to competitive products in response to market forces. For example, offering a specific service feature for a competitive product involves choosing how that product should be positioned vis-à-vis the competition with respect to such features as access to services, geographic scope, range of offerings, and frequency of service, as well as price and "affordability" of prices if that is deemed to be a universal service feature. The required features and scope of product offerings are thus regulated by the market for competitive products and are dynamic and subject to change, as dictated by the marketplace. If the Postal Service is not in the marketplace, competitive product alternatives will still exist and there is no reason to impose a universal service obligation on the Postal Service if the same obligation is not imposed

³⁶ 39 U.S.C. § 3633(a)(1), (2).

³⁷ *Id.* at (a)(3).

³⁸ *Id.* at (b).

³⁹ 39 U.S.C. § 3642(b)(1). Products subject to the postal monopoly are also excluded from the competitive products group.

⁴⁰ 39 U.S.C. § 3662(c). Although this provision is not explicitly limited to competitive products, it cannot logically be applied to market-dominant products, since the requirement to cover costs for market-dominant products applies on a class basis, not a product basis. *Compare* 39 U.S.C. § 3622(c)(2) *with* 39 U.S.C. § 3633(a)(2).

⁴¹ Those market-dominant products not covered by the Private Express Statutes include Periodicals and merchandise sent using a market-dominant product.

on private carriers. If adequate market protections for customers are not provided for a competitive product (*i.e.*, universal service is deemed necessary and the competitive market does not provide an adequate level of service), then a reevaluation of whether the product is truly “competitive” may be necessary. The statute provides for such an assessment in the provision allowing a product to be moved from the competitive to the market-dominant category.⁴²

Scope of the “Postal Monopoly”

The contours of the so-called “postal monopoly” reside in a series of criminal and civil statutes, 18 U.S.C. §§ 1693-1699 and 39 U.S.C. §§ 601-606, known together as the Private Express Statutes. The Title 18 sections prescribe fines and/or imprisonment for various sorts of “conveyance” of “any letters or packets,” “otherwise than in the mail,” “on any post route, or from one place to another between which the mail is regularly carried.”⁴³ These terms are not defined by statute, but the Postal Service has defined them in its regulations. “Letter” means “a message directed to a specific person or address and recorded in or on a tangible object,” subject to various specific qualifications.⁴⁴ A “post route” is any route on which mail is carried by the Postal Service.⁴⁵

The Title 18 provisions contain five exceptions:

(1) letters or packets that “relate to some part of the cargo of such conveyance”⁴⁶;

⁴² 39 U.S.C. § 3642.

⁴³ 18 U.S.C. §§ 1694, 1696(a). *See also* 18 U.S.C. §§ 1695 (prohibiting the carriage of a “letter or packet on board any vessel which carries the mail, other than in such mail”), 1697 (prohibiting knowing conveyance of “any person acting or employed as a private express for the conveyance of letters or packets, or actually in possession of the same for the purpose of conveying them contrary to law”), 1698-1699 (requiring vessels to deliver to the local post office “all letters and packages brought by him or within his power or control and not relating to cargo, addressed to or destined for such port or place,” within certain time limits, and to certify such delivery). *See also* 39 C.F.R. § 310.2(a) (unlawful for person other than USPS to send or carry letters on a “post route”).

⁴⁴ 39 C.F.R. § 310.1(a). For purposes of the Private Express Statutes, “letters” do not include telegrams, financial instruments sent between financial institutions, certain legal papers, newspapers and periodicals, books and catalogs exceeding certain page limits, telephone directories, matter sent from a printer to its customers, letters sent for records storage, tags and other labels primarily intended to be attached to other objects for reading, photographic material between a customer and a processor, copy sent to or from a printer or compositor, audiovisual media or packets of identical printed letters for public dissemination, and computer programs designed for direct input. *Id.* at (a)(7). “Packets” consist of two or more letters or packets of letters bound together under a single cover. *Id.* at (b).

⁴⁵ *Id.* at (d). Although this subsection contains a comprehensive list of byways, it would appear to exclude intra-campus or -facility routes not intersected by a public road or other post route.

⁴⁶ 18 U.S.C. § 1694; *see* 39 C.F.R. § 310.3(a).

(2) those that “relate to . . . the current business of the carrier, or to some article carried at the same time as such conveyance”⁴⁷;

(3) “receiving and delivering to the nearest post office, postal car, or other authorized depository for mail matter any mail matter properly stamped”⁴⁸;

(4) “the conveyance or transmission of letters or packets by private hands without compensation”⁴⁹; and

(5) “the conveyance or transmission of letters or packets . . . by special messenger employed for the particular occasion only.”⁵⁰

The title provisions lend further definition to some aspects of the criminal Private Express Statutes. Sections 603 through 606 authorize Postal Inspection Service officers, customs officers, and United States marshals to search for, seize, and detain letters, bags, packets, and parcels that may be involved in a violation of the Private Express Statutes or other laws. Section 602 prohibits vessels from transporting mail out of or into the United States, other than in accordance with the Private Express Statutes.

Perhaps the most significant of the title provisions is section 601. Subsection (a) sets forth the postage and preparation requirements for permissible carriage outside of the mails that does not fall under any other exception.⁵¹ As amended by the PAEA, subsection (b) provides

⁴⁷ 18 U.S.C. § 1694; see *Regents of the Univ. of Cal. v. Public Employment Relations Bd.*, 485 U.S. 589, 594-97 (1988); 39 C.F.R. § 310.3(b). The carrier must be the sender, the addressee, or a regular, salaried officer or employee of either, as determined by certain factors. 39 C.F.R. § 310.3(b)(1)-(2).

⁴⁸ 18 U.S.C. § 1696(a); see 39 C.F.R. § 310.3(e). Carriage to or from a place where the letters in question are consolidated, opened, read, separated, or otherwise utilized does not qualify for this exception. 39 C.F.R. § 310.3(e)(1).

⁴⁹ 18 U.S.C. § 1696(c); see *Regents of the Univ. of Cal.*, 485 U.S. at 597-602; 39 C.F.R. § 310.3(c). “Compensation” may consist of monetary payment for services rendered or of non-monetary valuable consideration and good will. 39 C.F.R. § 310.3(c).

⁵⁰ 18 U.S.C. § 1696(c); see 39 C.F.R. § 310.3(d). Carriage by special messenger of twenty-five or more letters or packets falls outside of this exception, however, and may only be performed under one of the exceptions in 39 U.S.C. § 601. 18 U.S.C. § 1696(c); 39 C.F.R. § 310.3(d)(1).

⁵¹ 39 U.S.C. § 601(a). These requirements are as follows:

- (1) [the letter] is enclosed in an envelope;
- (2) the amount of postage which would have been charged on the letter if it had been sent by mail is paid by stamps, or postage meter stamps, on the envelope;
- (3) the envelope is properly addressed;
- (4) the envelope is so sealed that the letter cannot be taken from it without defacing the envelope;
- (5) any stamps on the envelope are canceled in ink by the sender; and
- (6) the date of the letter, of its transmission or [of its] receipt by the carrier is endorsed on the envelope in ink.

Id.; see also 39 C.F.R. § 310.2(b).

three further exceptions to the Private Express Statutes:

(1) the amount paid for private carriage of the letter equals at least six times the current rate for the first ounce of a single-piece First-Class Mail letter (also known as the “base rate” or “base tariff”),⁵²

(2) the letter weighs at least 12.5 ounces,⁵³ or

(3) the carriage falls within one of the six suspensions to the Private Express Statutes that the Postal Service voluntarily promulgated in regulations.⁵⁴ These suspensions cover certain data processing materials,⁵⁵ letters of *bona fide* college and university organizations,⁵⁶ international ocean carrier-related documents,⁵⁷ extremely urgent letters,⁵⁸ advertisements accompanying parcels or periodicals,⁵⁹ and international remailing.⁶⁰

Congress’s primary motive in enacting and maintaining the Private Express Statutes was to ensure revenue for the Postal Service’s fulfillment of the USO and for the maintenance of the post road infrastructure necessary to that fulfillment.⁶¹ Specifically, the Private Express Statutes

prevent[] private competitors from offering service on low-cost routes at prices below those of the Postal Service, while leaving the Service with high-cost routes and insufficient means to fulfill its mandate of providing uniform rates and service to patrons in all areas, including those that are remote or less populated.⁶²

⁵² 39 U.S.C. § 601(b)(1). At the current base rate of \$ 0.42, this exception applies if the amount paid to the carrier is \$ 2.52 or more per item.

⁵³ *Id.* at (b)(2).

⁵⁴ *Id.* at (b)(3). Those regulations are codified at 39 C.F.R. §§ 310.1 and 320.2-320.8, as in effect on July 1, 2005.

⁵⁵ 39 C.F.R. §§ 320.2-320.3.

⁵⁶ 39 C.F.R. § 320.4.

⁵⁷ 39 C.F.R. § 320.5.

⁵⁸ 39 C.F.R. § 320.6. As described in this regulation, the “extremely urgent letters” suspension applies to letters whose delivery is accomplished within particular time-frames. Subsection (c) also establishes a conclusive presumption of extreme urgency where “the amount paid for private carriage of the letter is at least three dollars or twice the applicable U.S. postage for First-Class Mail (including priority mail) whichever is the greater.” The “six times base rate” exception in 39 U.S.C. § 601(b)(1) appears to render this presumption temporarily ineffective, until such time as the base rate exceeds \$ 0.50.

⁵⁹ 39 C.F.R. § 320.7.

⁶⁰ 39 C.F.R. § 320.8; see also *Air Courier Conf. of Am. v. Am. Postal Workers Union*, 498 U.S. 517, 519-520 (1991).

⁶¹ See *Air Courier Conf. of Am.*, 498 U.S. at 519, 526-28; *Regents of the Univ. of Cal.*, 485 U.S. at 594, 598 (1988).

⁶² *Air Courier Conf. of Am. v. Am. Postal Workers Union*, 498 U.S. at 519, 527-28 (citing legislative history of the 1845 Postal Act, as well as *Report of the President's Commission on Postal Organization, Towards Postal Excellence*, 94th Cong., 2d Sess., 129 (Comm. Print 1968); John Haldi, *Postal Monopoly: An Assessment of the Private Express Statutes* 9 (1974); Roger P. Craig & William T. Alvis, *The Postal Monopoly: Two Hundred Years of Covering Commercial as Well as Personal Messages*, 12 U.S.F. Law Rev. 57, 60 & n.8 (1977)). The

Moreover, the Private Express Statutes were intended to affirm the principle of the USO that the Postal Service must serve and integrate all areas of the nation.⁶³ If the Private Express Statutes were reduced or eliminated, then the Postal Service would be doubly hampered in its ability to provide universal service, due to the diversion of postal revenue and the disproportionate loss of business in profitable areas over high-cost areas. The loss in revenue and rise in expense would require the Postal Service to cover its costs either through an increase in rates or through an end to the statutory universal price requirement.⁶⁴ Ultimately, however, reduction or elimination of the Private Express Statutes would render the Postal Service financially unsustainable and would severely undermine the public interest in efficient, frequent, accessible service in all areas at low cost.

Scope of the “Mailbox Monopoly”

The so-called “mailbox monopoly” or “mailbox rule” is based on a single criminal statute, 18 U.S.C. § 1725. This provision prohibits the

knowing[] and willful[] deposit[of] any mailable matter, on which no postage has been paid, in any letter box established, approved, or accepted by the Postal Service for the receipt or delivery of mail matter on any mail route with intent to avoid payment of lawful postage thereon.⁶⁵

In accordance with this section, the Postal Service has defined “any letter box established, approved, or accepted by the Postal Service” to include “every letterbox or other receptacle intended or used for the receipt or delivery of mail on any city delivery route, rural delivery route, highway contract route, or other mail route.”⁶⁶ Excluded from the mailbox rule are door slots, nonlockable bins and troughs used with apartment house mailboxes, letterbox posts or other

concern about “cream-skimming” by competitors is borne out by the recent experience with liberalization in the United Kingdom, discussed in response to Topic No. 11 below.

⁶³ *Id.* at 527 (“Thus, the revenue protection provisions were not seen as an end in themselves, nor in any sense as a means of ensuring certain levels of public employment, but rather were seen as the means to achieve national integration and to ensure that all areas of the Nation were equally served by the Postal Service.”).

⁶⁴ The latter option could produce a price structure more narrowly tailored to area-specific costs, which would inevitably raise rates in precisely those high-cost areas most dependent on the Postal Service. Ironically, customers in these high-cost areas would likely view this as “monopolistic”, since the Postal Service would be raising its rates in precisely those areas that competitors would not find it cost-effective to serve.

⁶⁵ See also *Mailing Standards of the United States Postal Service, Domestic Mail Manual* (hereinafter “DMM”) § 508.3.1.3 (2007).

⁶⁶ *Id.* at § 508.3.1.1. This also includes customer-designed mailboxes approved by the local postmaster for mail service. DMM § 508.3.2.2.

supports, and newspaper receptacles attached to a curbside mailbox post.⁶⁷ Postal regulations further establish that “no part of a mail receptacle may be used to deliver any matter not bearing postage, including items or matter placed upon, supported by, attached to, hung from, or inserted into a mail receptacle.”⁶⁸ The PAEA did not alter or amend 18 U.S.C. § 1725,⁶⁹ and Congress left undisturbed the Postal Service’s existing regulations that define and apply the mailbox rule.⁷⁰

The mailbox rule promotes the provision of efficient service. If 18 U.S.C. § 1725 were eliminated, the resulting grant of uncontrolled access to private carriers could cause the overcrowding of mailboxes, which would in turn impede the delivery of the mails.⁷¹ The Postal Service would incur additional expense if mailbox access were expanded, because mail carriers would be confronted with a larger amount of unstamped mailable matter which they would be obliged to separate from outgoing mail for collection. Mail carriers would also be obliged to remove and examine individual unstamped items found in letterboxes to determine if their deposit there was otherwise lawful. A glut of nonmail matter in a mailbox would hamper the carrier’s delivery of mail to the mailbox and, if the mailbox is full, might force a carrier to retain mail and try delivery again at the next opportunity; this delay would impede the frequency and quality of service. Even if a carrier is able to place mail in an overstuffed box, the carrier’s efforts could result in disfigurement or damage to mail items, as could similar efforts by an individual subsequently stuffing nonmail matter into the same box. The extra time resulting from these additional activities, when computed on a nationwide basis, would add substantially to the daily cost of mail delivery. In addition to raising costs, the opening of mailboxes to unstamped mail matter would substantially reduce the revenue with which the Postal Service funds its

⁶⁷ *Id.* at §§ 508.3.1.2, 508.3.2.11.

⁶⁸ *Id.* at § 508.3.1.3. *But see id.* at §§ 508.2.2.5 (permitting rural route customers to place unstamped mail matter in rural mailboxes for collection along with money equal to the required postage), 508.2.3.3 (same for highway contract route customers), 508.3.2.10 (permitting unstamped newspapers regularly mailed as periodicals to be placed in rural route and highway contract route subscribers’ boxes on Sundays and national holidays, provided that the copies are removed before the next scheduled day of mail delivery).

⁶⁹ Nor did Congress appear to foresee a role for the Commission, whose jurisdiction is otherwise confined by 39 U.S.C. § 503 to functions under title, as described in the previous section.

⁷⁰ See DMM §§ 508.3.1, 508.4.4.2, 604.6.2, 604.8.3 (2007).

⁷¹ See *U.S. Postal Service v. Council of Greenburgh Civic Ass’ns*, 453 U.S. 114, 141-42 (1981) (White, J., concurring) (“The Government’s interest in defraying its operating expenses remains, and it is clear that stuffing the mailbox with unstamped materials is a burden on the system.”).

provision of universal service.⁷² As with the Private Express Statutes, the Postal Service's financial health and the public's expectation of efficient, accessible, low-cost, universal service would be the true victims of injury to the mailbox rule.

The restriction on mailbox access furnishes other significant consumer benefits regarding the security of the mail and the trust that security engenders. It provides postal customers the means to send and receive mail without fear of their correspondence becoming known to third parties.⁷³ It enables the investigation of mail theft and other mail crimes by postal investigators, because anyone other than certain authorized persons, such as a postal carrier or a householder, who opens a mailbox might furnish a basis for suspicion.⁷⁴ With unrestricted mailbox access, the precipitous rise in unsolicited advertising mail would only increase customer frustration. The mailbox rule also improves the environment and local residents' quality of life, by concentrating otherwise redundant, largely petroleum-based mail delivery operations in a single fleet of vehicles.

Finally, it is somewhat misleading to characterize the mailbox rule as a "monopoly," because the enforcement of 18 U.S.C. § 1725 leaves customers with ample alternative means of delivering their messages. Customers can deliver their messages either by paying postage, by placing messages on or under a door or a doormat, by using newspaper or nonpostal boxes, by telephoning or emailing, by engaging in person-to-person delivery in public areas, by tacking or taping their notices on a door post, or by placing advertisements in local newspapers. These methods are comparable in efficacy to communication via the mailbox.⁷⁵

Topic No. 2: Historical Development of Universal Service, the Universal Service Obligation, and Monopoly Laws

History of the USO

The concept of a universal service obligation is embedded in the U.S. Constitution. In its preamble, the Founding Fathers pledged to "promote the general welfare." The Constitution gives Congress the power to collect taxes to pay debts and "provide for the common Defence

⁷² See *id.* at 141 ("A self-evident justification for postage is that the Government may insist that those who use the mails contribute to the expense of maintaining and operating the facility.")

⁷³ 18 U.S.C. § 1725

⁷⁴ See 18 U.S.C. §§ 1701-1702, 1708.

⁷⁵ *Council of Greenburgh Civic Ass'ns*, 453 U.S. at 119 (describing a survey that showed an "incidental difference" in the percentage of materials found by homeowners that were placed under doors or doormats or hung from doorknobs, as opposed to in letterboxes). As noted in response to Topic 2 below, electronic communication media have indeed resulted in a substantial diversion of mail volume in the past decade.

and general Welfare of the United States,”⁷⁶ providing that “all Duties, Imposts and Excises, shall be uniform throughout the United States,”⁷⁷ and that “the Citizens of each State shall be entitled to all Privileges . . . of Citizens in the several States.”⁷⁸ These constitutional principles form the bedrock for the federal government’s provision of postal services at universally applicable rates across the United States.

From the start, Congress viewed a robust postal network as critical to nationhood, naming Benjamin Franklin – one of its most accomplished members – as Postmaster General in 1775. A healthy postal network facilitated the communication of both army commanders and the first elected representatives with each other and their constituents, and newspapers sent through the mail enabled Americans to participate in political life. Guided by the Constitution, which directed Congress to both establish post roads and “promote the general Welfare,” Congress first extended the postal network geographically, to embrace communities coast to coast. In 1845 and 1851, Congress passed laws slashing postage rates, which increased access to the mail system by making its use more affordable. In 1863, Congress dropped distance-based letter rate categories, ensuring that all Americans could mail letters at the lowest rate, and at the same time introduced the convenience that most Americans now expect – free home delivery of mail. The 1863 Act provided for free home delivery only in cities; Congressional authority for free delivery in the countryside came in 1893, although the first experiments did not start until 1896. In 1912, Congress opened up a new, cheaper world of merchandise to rural Americans when it authorized Parcel Post, effective January 1, 1913.⁷⁹ Today, the United States Postal Service is the most trusted government agency, charging equal rates and providing service to American households and businesses six days a week, 52 weeks a year.

In 1970, Congress transformed the Post Office Department into the United States Postal Service, a self-supporting supporting independent establishment within the executive branch of the government with increased authority over its own operations. The role of the Postal Service as a public servant – its core mission – was not changed, as stated in 39 U.S.C. § 101(a):

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,

⁷⁶ U.S. Const., art. I, § 8.

⁷⁷ *Id.*

⁷⁸ *Id.* at art. IV, § 2.

⁷⁹ For further information on the development of specific services, see U.S. Postal Service, Pub. 100, *The United States Postal Service: An American History, 1775-2006* (2007).

reliable, and efficient services to patrons in all areas and shall render postal services to all communities.

History of the Private Express Statutes and the Mailbox Rule

To enable the Post Office Department to serve all Americans, no matter how remote, yet still finance its operations largely from its own revenue, Congress gave it a monopoly over the carriage of letter-mail⁸⁰ by a group of federal laws known as the Private Express Statutes. For at least 150 years, Congress has voiced the concern that private express companies would siphon off the most profitable delivery routes and customers, leaving only high-cost routes and communications to the Department, which in turn would either face financial ruin or encumber the public fisc.⁸¹ By protecting postal revenue, the letter-mail monopoly helped the Post Office Department extend its mail network nationwide, slash postage rates in the mid-1800s, and offer free home delivery of mail beginning in the late 1800s.

The postal monopoly is as fundamental as our nation's establishment of mail service. In 1782, the Continental Congress gave the federal Post Office the exclusive right of carrying and delivering letters for compensation,⁸² and this prohibition was continued after the Constitution with criminal penalties.⁸³ In 1825, Congress limited the scope of private express liability, which previously extended to any "other person whatsoever,"⁸⁴ specifically to operators and owners of vehicles and vessels transporting private letters.⁸⁵ The 1825 Act also omitted prohibitions against horse and foot posts, which Congress restored two years later;⁸⁶ even this reinstatement proved ineffective against couriers operating by railroad.⁸⁷ This trend of laxity resulted in a tide of upstart private expresses, both legal and illegal, which threatened the Post Office's financial viability and, with it, the ability of Americans newly residing in high-cost-to-

⁸⁰ The following discussion concerns the general scope of the private carriage proscription. For a discussion of changes to the types of items covered by the monopoly, see generally Roger P. Craig & William T. Alvis, *The Postal Monopoly: Two Hundred Years of Covering Commercial as Well as Personal Messages*, 12 U.S.F. L. Rev. 57 (1977).

⁸¹ *Id.* at 60 n.8 (citing legislative history of the 1845 Act and the 1977 Commission on Postal Service Report commissioned by the Postal Reorganization Act of 1970).

⁸² Act of Oct. 18, 1782, 23 J.C.C. 670, 672-73; see Craig & Alvis, *supra* note 80, at 70 n.31 (noting that the Act "clearly" incorporates the colonial postal monopoly).

⁸³ Act of Sept. 22, 1789, ch. 16, 1 Stat. 70 (expired 1792) (continuing in force previous postal legislation until the end of the First Congress); Act of Feb. 20, 1792, ch. 7, § 14, 1 Stat. 232, 236. The 1792 Act's requirement that arriving vessels present all letters to the local post office is now codified in 18 U.S.C. §§ 1698-1699 and 39 U.S.C. § 602(c). Act of Feb. 20, 1792, ch. 7, §§ 12-13, 1 Stat. 232, 235-36.

⁸⁴ See Act of Oct. 18, 1782, 23 J.C.C. 670, 672-73.

⁸⁵ Act of March 3, 1825, ch. 64, § 17-19, 4 Stat. 102, 106-107 (repealed 1872).

⁸⁶ Act of March 2, 1827, ch. 61, § 3, 4 Stat. 238.

⁸⁷ *United States v. Kimball*, 26 F. Cas. 782 (D. Mass. 1844).

serve, frontier areas to access efficient communication with the rest of the country.⁸⁸ Because Congress found these measures insufficient to stem the threat that private expresses posed to the provision of universal service,⁸⁹ it restored the general prohibition on private letter carriage in 1845⁹⁰ and extended penalties to users of private expresses,⁹¹ while at the same time slashing the price of using the U.S. Mail.⁹² These provisions of the 1845 Act were codified without material revision in 1872, and they were not substantially altered with the Postal Reorganization Act of 1970 (PRA).⁹³

Allowances for certain activities in the public interest evolved along with the scope of the prohibition on private carriage. The 1825 Act introduced the exceptions for letters relating to cargo,⁹⁴ and special messengers.⁹⁵ In addition to sustaining these exceptions, the 1845 Act instituted the exception for private carriage without compensation.⁹⁶ In 1852, to accommodate mailers wanting private delivery while still protecting postal revenue, Congress allowed for the private carriage of letters in prepaid stamped envelopes, provided the envelopes were sealed and marked with the date.⁹⁷ In 1864, Congress allowed the Postmaster General to “suspend the operation” of all or part of this rule on any mail route if it was in the public interest to do so.⁹⁸

⁸⁸ See Craig & Alvis, *supra* note 80, at 72 n.42 and accompanying text (citing historical discussion in legislative history of the 1845 Act and in 1973 Congressional hearings).

⁸⁹ See, e.g., *Air Courier Conf. of Am. v. Am. Postal Workers Union*, 498 U.S. 517, 526-27 (1991) (citing, *inter alia*, S. Doc. No. 66, 28th Cong., 2d Sess., 3-4 (1845); H. R. Rep. No. 477, 28th Cong., 1st Sess., 2-3, 5 (1844); Cong. Globe, 28th Cong., 2d Sess., 213 (1845) (remarks of Sens. Simmons and Breese)); Craig & Alvis, *supra* note 80, at 60 n.8, 72-74.

⁹⁰ Act of March 3, 1845, ch. 43, §§ 9-13, 5 Stat. 732, 735-737.

⁹¹ *Id.* at § 12, 5 Stat. at 736.

⁹² See, e.g., *id.* at § 3, 5 Stat. at 733.

⁹³ See Craig & Alvis, *supra* note 80, at 74-77.

⁹⁴ Act of March 3, 1825, ch. 64, § 19, 4 Stat. 102, 107, now codified in 18 U.S.C. § 1694; see also Act of March 3, 1845, ch. 43, §§ 10, 13, 5 Stat. 732, 736-737 (applying exception to carriage by steamboat, packet boat, or other vessel).

⁹⁵ Act of March 3, 1825, ch. 64, § 19, 4 Stat. 102, 107, now codified in 18 U.S.C. § 1696(c); see also Act of March 3, 1845, ch. 43, § 11, 5 Stat. 732, 736 (clarifying that the special messenger must be “employed only for the single particular occasion”). Congress introduced the 25-letter restriction on private delivery by special messenger in the 1934 Act. Act of June 22, 1934, Pub. L. No. 73-455, 48 Stat. 1207.

⁹⁶ Act of March 3, 1845, ch. 43, § 11, 5 Stat. 732, 736, also now codified in 18 U.S.C. § 1696(c).

⁹⁷ Act of August 31, 1852, ch. 113, § 8, 10 Stat. 121, 141-42. This exception has evolved into that which is now codified at 39 U.S.C. § 601(a).

⁹⁸ Act of March 25, 1864, ch. 40, § 7, 13 Stat. 36, 37 (repealed 2006). Congress sustained this authority in the Postal Code until enactment of the PAEA. See Act of June 8, 1872, ch. 335, § 239, 17 Stat. 283, 312; Act of June 29, 1938, Pub. L. No. 75-771, 52 Stat. 1231, 1232; Act of September 2, 1960, Pub. L. No. 86-682, 74 Stat. 578, 586; PRA, Pub. L. No. 91-375, § 2, 84 Stat. 719, 727 (1970); *but see* PAEA, Pub. L. No. 109-435, § 503, 120 Stat. 3198, 3234-35 (2006).

The statutes were recodified in 1909 with an additional exemption for letters relating to "the current business of the carrier."⁹⁹ In 1934, Congress established the "mailbox rule," restricting mailboxes to properly paid U.S. Mail.¹⁰⁰ These provisions survived through enactment of the PRA and, with the exception of some changes to the civil portion of the Private Express Statutes, the PAEA.

Under the authority that Congress vested in it in 1864, the Post Office Department suspended the enforcement of the Private Express Statutes in certain circumstances throughout its history. The Department did not enforce the Private Express Statutes against carriers of magazines and newspapers since 1881. The Department allowed private carriage during the New York City postal strike of 1970,¹⁰¹ and it suspended the restriction several times with respect to prisoners of war in North Vietnam. With these events fresh in the public memory, Congress declined to rescind, restrict, or clarify the scope of the Department's suspension authority when it enacted the PRA. In light of Congress's tacit approval for the existing interpretation of the suspension authority, the newly renamed Postal Service enacted the six suspensions codified in 39 C.F.R. Part 320 between 1979 and 1986.¹⁰² With the PAEA, Congress codified these suspensions into statute and replaced the Postal Service's suspension authority with a directive to the Postal Regulatory Commission to adopt any regulations necessary to implement 39 U.S.C. § 601.¹⁰³

⁹⁹ Act of March 4, 1909, Pub. L. 60-350, § 184, 35 Stat. 1088, 1124

¹⁰⁰ Act of May 7, 1934, Pub. L. No. 73-209, 48 Stat. 667.

¹⁰¹ See Post Office Department, Private Express Statutes: Suspension in New York Area, 35 Fed. Reg. 4973 (Mar. 21, 1970); Post Office Department, Private Express Statutes and Embargo on Mail, 35 Fed. Reg. 5015 (Mar. 24, 1970); Post Office Department, Resumption of Applicability in Certain Areas Where Suspended, 35 Fed. Reg. 5187 (Mar. 27, 1970).

¹⁰² 44 Fed. Reg. 52,834 (Sept. 11, 1979) (data processing materials, letters of college and university organizations, international-ocean carrier-related documents); 44 Fed. Reg. 61,181 (Oct. 24, 1979) (extremely urgent letters); 45 Fed. Reg. 59,874 (Sept. 11, 1980) (advertisements accompanying parcels or periodicals); 51 Fed. Reg. 29,638 (Aug. 20, 1986) (international remailing). Soon after the PRA's enactment, Postmaster General also suspended the restriction several times for letters sent to prisoners of war in North Vietnam. See, e.g., Postmaster General Order, "Suspension of Private Express Statutes," Jan. 20, 1971 (temporarily suspending Private Express Statutes for letters gathered by the Committee for American Prisoners of War and intended for delivery to North Vietnamese officials in Paris, France).

¹⁰³ 39 U.S.C. § 601(b) (2006); Pub. L. No. 109-435, § 503, 120 Stat. at 3234-35. This grant of authority is discussed further in response to Topic No. 10.

Current Trends Affecting the Universal Service Obligation

Over the last five years, the mail mix has, in general, shifted away from bill payments, transactions and correspondence, and toward advertising. The revenue share of First-Class Mail has decreased from nearly 54 percent in 2003 to 50 percent in 2007. Standard Mail's revenue share increased from 25 percent to 27.7 percent. Periodicals revenue continued its long gradual decline as a share of total revenue.

The share of revenue from International Mail and from Special Services also increased. Priority Mail's share increased owing to the fact that Priority Mail volume in 2003 had fallen precipitously from its all time high in 2000.

On the volume side the pattern is similar. The volume share loss from First-Class Mail was replaced by Standard Mail.

The increased dependence on advertising also appears in Household Diary Study data. Advertising mail received by households grew 9.4 percent from 2003 to 2007. Households received 142.3 million pieces of mail in total in 2003, of which 64.4 percent included advertising. In 2007, households received 151.6 million pieces of mail, of which 66.2 percent was advertising. Household use of mail for correspondence fell by nearly 22 percent in the same period.

Advertising is a significant portion of the First-Class Mail stream. About 29 percent of First-Class Mail received by households contains advertising.

Over the last five years, the major positive factors on the demand for universal service have been adult population growth, household growth, and economic factors. The major negative factors have been electronic diversion, real price increases, and long-term trends such as the decline in reading as a pastime.

Adult population growth is a self-evident driver of mail demand. As the number of adults increases, the number of bank accounts, utility customers, automobile loans and the like increases. Household growth also means additional utility customers.

Various economic factors affect mail volume. Gross Domestic Product (GDP) is the most widely used measure of economic activity. Other metrics are more important empirically. Growth in employment, real retail sales, and real investment are all strongly correlated with mail volume growth.

As discussed in some detail in Topic No. 9 below, electronic diversion reduces mail volume among several products. Electronic diversion can be passive, as is the case with automatic deductions, or active, as when one is downloading an MP3 file. The presence of and growth the internet can affect the demand for mail in a range of ways. For example, advertising

budgets now allow for spending on websites, pop-up ads, spam and all manner of internet marketing initiatives. Spending on this new channel is expected to crowd out traditional media spending.

And of course, increases in the real price of postal products, including the costs of non-postal products that are needed to produce mail items, tend to suppress the demand for postal services, while increases in competitor real prices increase the demand for postal services.

In general, the internet has reduced the demand for postal services. This is particularly evident in single-piece First-Class Mail. The typical household paid 11 bills per month in 2003. Of these 8.1, about 74 percent, were paid by mail. In 2007 the typical household paid 12.1 bills per month, but only 7.5, about 62 percent, were paid by mail.

The growth in bill payments over the internet is the major source of this change. Five years ago only 14 percent of households paid at least one bill via the internet; in 2007 that had risen to 30 percent. Other electronic methods of payment showed gains as well. Automatic deductions were used by 43 percent of households in 2003, and by 53 percent of households in 2007.

Moreover, the demographics of bill payment are not encouraging. The Household Diary Study tracks bill payment methods by age of the head of household. In 2007 the Study reports:

Younger households [*i.e.*, with a head of household under 35 years of age] pay a little less than 50 percent of their bills by mail, and about 45 percent electronically. Compare that to older households [with a head of household over 54 years of age] who pay almost 70 percent of bills by mail, and only about 26 percent electronically.

For many years, the estimated demand for single-piece letters has shown a persistent loss of volume on the order of 4 to 5 percent per year as a result of electronic diversion. By any measure this loss of volume and revenue places an enormous strain on Postal Service finances.

Empirically, electronic diversion accounts for measurable volume and revenue loss in several other products, including workshared First-Class Mail, Express Mail, Media Mail, and outside county Periodicals Mail. Interestingly, the effect of the internet on Standard Mail seems to be quite complex. Given a limited advertising budget, business must find a way to finance spending on internet-based advertising. It is reasonable to assume that some of this e-marketing spending comes at the expense of more traditional media such as direct mail advertising. Standard Mail volume, however, does not yet seem to be adversely affected by the internet. Studies show that Standard Mail catalogues, in general, are both compliments and

substitutes for the internet. “Do Not Mail” discussions at the state level are also affecting the volume of Standard Mail.

It is also true that the internet allows customers to access postal services in different ways. Click-N-Ship, PC Postage, and the eBay postage software interface are but three examples. The internet also allows the Postal Service to employ more efficient business practices. Electronic filings of documents at the Postal Regulatory Commission are an obvious example.

Additional discussion of the effect of the internet and, more broadly, electronic diversion can be found in the testimonies of Postal Service witness Peter Bernstein in the last several omnibus rate cases. The recent testimonies of Postal Service witness Thomas Thress included econometric estimation of the effects of electronic diversion on various postal products. Their most recent testimonies were filed as part of the Postal Service’s case in Docket No. R2006-1.¹⁰⁴

Topic No. 3: Universal Service Obligation: Geographic Scope

With respect to market-dominant products, the law requires the Postal Service to provide 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 to provide service to and from military personnel abroad. In the United States, this dimension can be understood to involve, on the one hand, customer access to retail facilities and other collection points and, on the other hand, the breadth of the Postal Service’s delivery network.¹⁰⁵ In general, the Postal Service must “render postal services to all communities” and “provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining.”¹⁰⁶ Title 39 gives the Postal Service broad discretion over these aspects of its operations. Among the Postal Service’s specific powers are “to provide for the collection, handling, transportation, delivery, forwarding, returning, and

¹⁰⁴ USPS-T-7 (Thress); USPS-T-8 (Bernstein).

¹⁰⁵ See 39 U.S.C. §§ 101, 403(a)-(b). The extraterritorial scope of the statutory obligation appears to be limited to U.S. Armed Forces installations and arrangements with other government agencies. 39 U.S.C. § 403(a) (obligating the Postal Service to “receive, transmit, and deliver [mail matter and incidental services] pursuant to arrangements entered into under sections 406 and 411 of this title, throughout the world”). It is unclear what the Commission intends with its citation of 39 U.S.C. § 407, PRC Order No. 71, Attachment A, at 9-10; far from obligating the Postal Service to perform any particular services, 39 U.S.C. § 407(a) at most establishes a general policy of promoting communications between peoples and competitive markets for international delivery and postal services.

¹⁰⁶ 39 U.S.C. § 101(a), (b).

holding of mail” and “to determine the need for post offices [and] postal facilities . . . and to provide such offices [and] facilities as it determines are needed.”¹⁰⁷ The Postal Service may also discontinue service on post roads “when, in its opinion, the public interest so requires.”¹⁰⁸ With respect to competitive products, the Postal Service’s exercise of its powers and execution of its responsibilities with regard to geographic scope is now subject to the conditions of the market.

The Postal Service is subject to qualified limitations when exercising its powers over Post Office locations. With respect to closure or consolidation of Post Offices, its discretion is cabined by the principle that the Postal Service may not close a Post Office merely for operating at a loss¹⁰⁹ and by the administrative procedures outlined in the statute.¹¹⁰ Among these procedures is a requirement that the Postal Service consider certain factors to balance the effects on customers, employees, and the Postal Service,¹¹¹ including the consistency of the proposed action on the provision of universal service.¹¹² The Postal Service may also face scrutiny by members of the public or Congress with an interest in a Post Office’s sustained operation. In essence, the Postal Service maintains statutory freedom, within certain guidelines, to determine the scope of its geographic offerings, although political considerations may limit the degree to which the Postal Service exercises that freedom.

The Commission exercises only limited review and advisory functions in this context. First, postal customers of certain retail facilities the Postal Service determines to close or consolidate may appeal the determination to the Commission.¹¹³ The Commission may only rule on whether the Postal Service’s actions, in light of the administrative record, were arbitrary, capricious, an abuse of discretion, not in accordance with the law or any required procedure, or unsupported by substantial evidence on the record.¹¹⁴ The Commission may not conduct its own evidentiary findings, and it may not modify the Postal Service’s determination.¹¹⁵ Second, the Commission may give an advisory opinion on any change proposed by the Postal Service that would generally affect nationwide, or substantially nationwide, service, based on a hearing

¹⁰⁷ 39 U.S.C. § 404(a)(1), (3) (emphasis added).

¹⁰⁸ 39 U.S.C. § 5004.

¹⁰⁹ 39 U.S.C. § 101(b).

¹¹⁰ 39 U.S.C. § 404(d)

¹¹¹ 39 U.S.C. § 404(d)(2).

¹¹² *Id.* at (2)(iii).

¹¹³ *Id.* at (5).

¹¹⁴ *Id.*

¹¹⁵ *Id.*

on the record.¹¹⁶ Congress designated this role as advisory only, not one that binds or controls the Postal Service's determination.¹¹⁷ Finally, the Commission must report annually on the estimated costs of providing service to "areas of the Nation where, in the judgment of the . . . Commission, the Postal Service either would not provide services at all or would not provide such services in accordance with the requirements of [title] if the Postal Service were not" subject to the universal service obligation.¹¹⁸ Thus, while the Postal Service retains the primary responsibility for determining the scope of its service responsibilities, the Commission's oversight role is confined to procedural review, advising, and reporting; the Commission does not appear to have any direct authority to define or affect the geographic dimension of the USO.

With respect to delivery of the mail, most deliveries are to a box at the customer's door or on the sidewalk or curb in front of the customer's residence, or to an individually assigned box in the lobby of an apartment building. However, there are other forms of delivery, such as neighborhood delivery and collection box units (NDCBUs) and other central deliveries, as well as single drops, such as at universities, student housing, some trailer parks, some apartments, prisons, hotels, some military bases, where delivery is made in bulk for distribution by management at that location. Such procedures are proper deliveries under Postal Service policy, and are consistent with the statutory responsibility to create an efficient system delivery and collection system.

It is the policy of the Postal Service that every resident be eligible for one form of free delivery, whether a form of carrier service, a group E Post Office box, or general delivery. Some do not utilize those forms of free service, but that is the customer's choice.

Topic No. 4: Universal Service Obligation: Range of Product Offerings

As discussed in response to Topic 1, the universal service obligation applies to market-dominant products, with competitive products subject to the market. The postal monopoly applies only to certain market-dominant products, which are covered by the USO. The postal monopoly should not affect the range of products, since the products it covers are included within the USO. With regard to whether the USO requires a certain weight limit for parcels,

¹¹⁶ 39 U.S.C. § 3661(b)-(c).

¹¹⁷ Although "interested person[s]" and the Commission's Public Representative may submit complaints on the Postal Service's "conformance with the requirements of" Section 3661(b)-(c), 39 U.S.C. § 3662(a), the only such requirements are that the Postal Service submit a proposal to the Commission within a reasonable time after a relevant determination and that it request an advisory opinion.

¹¹⁸ 39 U.S.C. § 3651(b). The Postal Service is obligated to provide any information necessary to this reporting task. *Id.* at (c).

Congress has determined to include Single-Piece Parcel Post within the market-dominant group. This product has a weight limit of 70 pounds, previously set by Congress, and now subject to regulation by the Commission.¹¹⁹

Topic No. 5: Universal Service Obligation: Access to Postal Facilities and Services

For good reason, the Postal Service is given broad authority over the number, type and locations of its facilities. The mix of facilities necessary to support the Postal Service mission of binding the nation together will continue to change over time, and the Postal Service must continue to exercise its broad authority unencumbered by local or other parochial interests.

Several vectors of change affect today's decisions regarding the necessary mix of facilities. The dawn and rapid growth of the information age entails the evolution of alternate channels through which customers can and do avail themselves of postal services; so, in addition to traditional channels such as Post Offices and mail carriers, postage is available over the internet – both PC postage and via the Stamp Fulfillment Center – by telephone, at Contract Postal Units (CPUs) and from stamp consignees. Through USPS.com, customers can locate nearby Post Offices, those with available Post Office boxes, and those that can process a passport application.

Sections of the domestic service area that were populated during the 19th century in the height of the industrial age have lots of small Post Offices, each of which once served a thriving economic community. Some of those now serve a diminished customer base in a world where messages travel electronically, materiel flows out from large communities and big box retailers, and alternatives to the Postal Service abound.

The Postal Service today finds itself with a network consisting of over 400 large mail processing facilities and tens of thousands of smaller retail facilities, most of which came into existence when the Postal Service was the primary or exclusive facilitator of exchanged messages, product fulfillment and economic growth. With the advent of nearly two million new delivery points each year, network growth is still very much a part of the picture. Yet growing awareness that the current network of facilities provides class specific abilities to speed mail to nationwide delivery points in three days or less, to place periodicals and catalogs in homes often on a certain day, and to deliver parcels every day to any delivery point requires examination of redundancies in the respective networks that afford opportunities for efficiency gains. The Postal Service still intends to pursue efficiency improvements within its facilities

¹¹⁹ 39 C.F.R. § 3020.111 *et seq.*

network.¹²⁰ Many experienced observers also think that redundant capacity can and must be identified and reduced in a paradigm-busting world of diminishing mail volume. So while network growth challenges Postal Service management so, too, does the necessity for improved efficiency.

In accordance with PAEA § 302, the Postal Service has submitted its Network Plan for rationalizing operations at mail processing and logistics facilities to Congress. A core component of that plan involves postal management's use of its Area Mail Processing (AMP) guidelines as a basis for consolidating operations at Processing & Distribution Centers (P&DCs). Postal management's ability to rely on the AMP guidelines for operational consolidation decision-making is currently constrained by the Consolidated Appropriations Act, 2008.¹²¹ As a result, the Postal Service has been unable to act upon a handful of pending AMP consolidation proposals, which are expected to generate approximately \$14 million in cumulative annual savings.

Network rationalization decisions are designed to make the Postal Service's mail processing and transportation networks more efficient and, thus, better able to support fulfillment of its universal service obligations. Unavoidably, system-wide rationalization can result in changes to operations at some postal facilities in the network, but not others. However beneficial such changes may be for the postal system as a whole, they may be perceived – by customers in the service area of an affected P&DC, the employees who work there, and elected officials who represent them – as disadvantageous, to be avoided and/or prevented. It is premature to assess what impact, if any, the mandated GAO reviews will have on the Postal Service's ability to move forward with the handful of currently suspended P&DC operational consolidation proposals or on any that may emerge as part of its Network Plan. In the interest of being able to fulfill its universal service obligation as fully as possible, the Postal Service will work with Congress to eliminate and prevent any barriers to the pursuit of the goals of PAEA § 302.

Examination of the network of local Postal Service facilities that matured in geographic areas where the populations have undergone most of their growth in the last couple of decades provides a constructive contrast with segments of the network built during the industrial age. Rather than a Post Office every few miles, we see a network of small, medium and large facilities, automated postal centers (APCs), CPUs, delivery and collection box units, stations

¹²⁰ See *Postal Accountability and Enhancement Act § 302 Network Plan, Section III*, submitted formally to Congress on June 19, 2008.

¹²¹ Public Law 110-161, 121 Stat. 1844 (December 26, 2007).

and branches, internet tools that enable efficient use of the mail, and somewhat greater reliance on rural carriers (“post offices on wheels”), all of which contribute to providing universal access to postal services.

What Postal Service management most needs to meet the challenges inherent in a world of stagnant or diminishing mail volume is the flexibility to open or close; buy, sell or lease; and manage its full range of facilities. The Congress, acting jointly and severally, has already chosen to increase management’s challenge. On the one hand, small, rural Post Offices can only be closed after a lengthy notice and comment proceeding that, after several decades of evolution and collaborative work involving the postmaster organizations, works relatively well. Offices for which a consensus develops regarding the need for closure get closed, while most others do not. Today, management, mailers, and households all recognize the Postal Service’s nationwide network of facilities as a strategic asset without which universal service could not exist.

The Postal Service and its customers – mailers and addressees both – today embrace modern forms of access to postal services. A customer can file a change of address, for example, without having to visit a Post Office in person by submitting it over the internet. Stamps can be purchased in so many different ways that few buyers ever experience them all. After all, the goal is to eliminate barriers to access, so most stamp purchasers figure out what works best for them and continue using those channels to the exclusion of others. Of course, stamps are still available via rural carriers, Postal Service facilities, and CPUs, whether at retail counters, APCs, or vending machines. Stamps can be ordered by telephone, mail, or internet. Many buy their stamps when doing other shopping at grocery, big box, and other retail consignees, whose access points are more numerous than any other channel. Customers need not go to a Post Office retail counter to buy stamps, although that channel still works best for some. Thousands of small businesses, including eBay sellers, also avoid the need to visit a Post Office to fulfill customer orders. Postage purchases, free shipping materials, and free carrier pickup of outgoing mail can be accomplished by these businesses without any need to visit a retail store.

The list of reasons why a customer must visit a retail Postal Service facility continues to be reduced. When shippers use Express Mail Hold for Pickup and Parcel Select Hold for Pickup, the addressee (or authorized agent) visits a (usually retail) facility to receive the mail piece. A customer who wants to initiate Post Office box service, Premium Forwarding Service or Sure Money / Dinero Seguro money transfer must visit a retail facility to commence service; the need to guard the sanctity of mail (and avoid fraud) means that all such applicants must

furnish appropriate identification before service commences.¹²² Money order purchases, Certificate of Mailing, and Registered Mail all require a visit to a retail facility by a customer, although customers on rural or HCR routes can obtain these services from their carrier. A money order payee must generally provide proof of identity to get paid, whether from a Post Office, carrier, or bank. The broad range of all other interactions among the Postal Service, mailers and recipients do not require a personal visit to a retail postal facility since other channels such as the internet, telephone, mail, mail carrier, personal agent, or other combination provide alternate means to complete respective transactions.

In many locations, customers prefer to visit the local Post Office even if they can use alternate access channels because the Post Office has become a locus for socializing. The need to support local communities in this way reflects the universal service obligation.¹²³

Order No. 71 queries whether the universal service obligation should operate to tie management's hands still further: The short answer is that additional constraints would only be counterproductive. The only way that the necessary mix of facilities needed for postal services over time is consistent is that it is always changing.

The direction of change over the last century has been a decrease in the total number of Postal Service operated facilities. The number of Post Offices peaked at 76,945 in 1901, although the number diminished substantially over the ensuing decade as rural free delivery was rolled out. At the end of FY 2005, 27,385 independent Post Offices were in operation. Today, the number of CPUs is increasing slowly.¹²⁴

Contract Post Offices (CPU) allow the Postal Service to meet its universal service obligations in areas where a full post office is not feasible. As of April 30, 2008, 4169 CPU contracts are active. Almost without exception, CPUs provide all retail products and services at approved prices. As of March 2008, CPUs had generated \$331 million in sales this year, 14.64 percent of all retail sales. Current law recognizes and allows for use of contract post offices as one of several tools to provide the public access to postal and nonpostal services,¹²⁵ so no change is necessary or appropriate.

¹²² Passport applicants must similarly provide proof of identity in a personal appearance if an application is made through the Postal Service.

¹²³ As a legal matter, the Postal Service's universal service obligation to support local communities is anchored by 39 U.S.C. §§ 101, 404(d).

¹²⁴ See <http://webpmt.usps.gov/pmt017.cfm>.

¹²⁵ 39 U.S.C. §§ 101(a), (g), 401(3), (4); see also Pub. L. 109-435, 120 Stat. 3526, § 1004 (implement ... best practices ... to achieve greater efficiency and cost savings by taking full advantage of private sector partnerships").

Today the number of access points to retail facilities grows steadily, ranging from the internet, telephone and mail, to unstaffed nonpersonnel units, vending machines, APCs, CPUs, classified stations and branches, and Post Offices. This broad range of options for retail service helps meet the universal service obligation and has become well accepted by customers, who migrate to the channels they find most convenient.

The network of Postal Service facilities and carrier routes reaches deeply into less populated areas of the domestic service area. Isolated villages in Alaska and residents on the floor of the Grand Canyon get regular mail delivery, as do apartment building residents in New York City. The frequency with which delivery service is provided has diminished over time; the only customers who now get their mail more than once per day typically are large mailers – recipients whose large mail volume exceeds the capacity of a single vehicle or who pick up their mail several times a day. The vast majority of residences get carrier delivery six days a week, while a lot of businesses get mail delivered by a carrier the five days a week they are open. Some geographically remote customers may get fewer deliveries per week and a few of those are not afforded any carrier delivery.

All things considered, additional constraints on necessary change cannot help improve system wide efficiency, although they may well impact localities. Alternate channels of access to postal services will continue to grow, but they will not entirely supplant the need for bricks and mortar. Such facilities provide access to postal services, regardless of whether some but not other are deemed contributors to or necessary for universal service.

Approximately ten years ago, the Postal Service instituted a major shift in delivery policy by recognizing publicly that carrier delivery is not provided to all residential customers everywhere in the domestic service area. Indeed, the need for change was driven by the fact that it was sometimes difficult to articulate why carrier delivery was provided in one place but not in another. While, as a general policy, each residential customer was and is understood to be eligible for one form of free delivery, one of the possible delivery modes, general delivery service, had become disfavored. It can be expensive to administer and typically is available at just one facility in a multiple facility (*i.e.*, big) city Post Office.¹²⁶ Mail sent to general delivery customers also cannot be sorted using delivery order schemes, so it cannot be put through

¹²⁶Availability of general delivery at a single facility in a larger Post Office comports with international expectations driven by the UPU, so a traveler can tell associates to send mail to Jean Q. Publique, general delivery (or poste restante), Seattle, Washington, USA and expect to locate the single facility where that service is provided. (A ZIP Code also helps.)

delivery point sortation (DPS). Policy decisions during the 1980s and 1990s had made general delivery primarily a temporary option.¹²⁷

Postal Service management determined to maintain the policy of one free form of delivery for residential customers. No fee (Group E) Post Office box delivery was introduced for residential customers to whom the Postal Service chooses not to deliver, in Docket No. MC96-3.¹²⁸ Instead of paying a carrier to transport mail to a delivery receptacle proximate to a residence, the Postal Service could pay a clerk to put mail in a Post Office box (and sometimes a retail associate to effectuate delivery of larger parcels). General delivery usually has mail for all customers in one location, making it more costly to administer than box service. Today, approximately 10.4 percent of Post Office box delivery points (nearly 1.6 million) are in Group E, using a box of the smallest size that accommodates a residence's normal mail volume. Group E box service has been well accepted by customers who often obtain their boxes in locations convenient to their everyday routines.

In Order No. 71, the Commission inquires whether, as in the EU, delivery to all addresses in the nation should be mandated. The much more varied terrain in the Postal Service's domestic service area than exists in the densely populated EU effectively precludes such a mandate, at least absent some additional means of paying for it. While residents of certain parts of the USA live in environments similar in many respects – including population density – to the EU, there is a great deal of land in this country where population density verges on zero persons per square mile. Given these geographic realities, and the leveling of the playing field for residential customers by the provision of Group E Post Office box service, no mandate for carrier delivery to all addresses is reasonable or practical.

¹²⁷ Homeless customers constitute the largest group to whom indefinite general delivery service is provided. Such customers face a wide range of special challenges; Postal Service retail associates often end up providing them special accommodations not needed by others. The factual record underlying the *Carrier v. Potter* Ninth Circuit decision cited by the Commission in Order No. 71 (note 18 on page 14) shows some of that accommodation. That decision was the result of an unsuccessful effort by Seattle Legal Services, a public interest law firm, to require the Postal Service to provide Group E Post Office box service and/or indefinite general delivery service for the homeless at all postal facilities in Seattle. The Postal Service is aware that the abilities to send and receive mail can have Constitutional ramifications; as such, it had some sympathy for Seattle Legal Services' interest in helping the homeless, even if the specific remedies sought were not tenable.

¹²⁸ Some communities make their own choice, by one method or another, to exclude carrier delivery. Garrett Park, Maryland, and Carmel, California, are two examples where local officials in effect preclude carrier delivery to foster social interaction among residents.

Topic No. 6: Universal Service Obligation: Frequency of Delivery

Mail serves a wide variety of purposes for a diverse array of postal customers. Among other uses of mail, Postal Service customers communicate with family, friends, and business associates; send bills, statements and payments; provide information through magazines, newspapers and other periodicals; ship and receive merchandise; and inform customers about product offerings of interest. As with any service attribute, furthermore, different customer groups have differing opinions about the value of frequency of delivery. The factors that influence those opinions are as varied as the activities that give rise to mailing.

From the standpoint of assessing universal service, especially as it might relate to market-dominant products, or those falling within the postal monopoly, no particular factors in the abstract would either support or limit the appropriateness of varying frequency of delivery beyond the status quo. Currently, the Postal Service delivers all mail to most customers six days a week, excluding Sunday. For Express Mail, delivery on Sunday is available to many addresses. In practice, however, the status quo is more complex. Depending on local operations and conditions, some customers receive delivery only five days a week, and, in certain extraordinary and emergency situations, *e.g.*, post-Katrina operations, deviations from normal frequency, are encountered.

Whether it would be appropriate to detract from or add to current frequency, within the framework for universal service created by statute and the Postal Service's responsibilities, would depend on a careful balancing of a variety of considerations. These would encompass such factors as specific mailer needs, public policy objectives, geographical and physical conditions, and Postal Service finances and operations, including sources and uses of needed revenues and the overall goal of operational efficiency. In this regard, while the range of options for varying frequency beyond the status quo is not limited in theory, the most common topic of consideration among mailers and other observers has tended to focus on six versus five day delivery. Some customer groups would not have a major concern with a reduction in delivery frequency to five days per week. For example, businesses that are not open on Saturday may not view the elimination of Saturday delivery negatively. However, other business customers, including those targeting Saturday delivery to meet a specific need (*e.g.*, delivery on Saturday for a sale which begins on Sunday) could be adversely affected. The choice of which day might be eliminated, and customer reaction to the elimination of that day, is also an element that must be considered. As noted, many business customers might prefer the elimination of Saturday delivery. The choice might not be as clear cut for other customers; Wednesday typically has lower mail volume than other days

From the Postal Service's perspective, furthermore, customer reaction to a reduced delivery frequency, whether to five days or even fewer, must also include an evaluation of the potential longer-term effect on customers' perceptions of the mail as a mechanism for accomplishing various objectives. If the mail becomes more difficult to use, customers might increasingly turn to non-mail alternatives, thereby exacerbating the decline of mail volume, which in turn would increase the prices customers would be required to pay.

Evaluating customer needs and interests for a given level of delivery frequency at some point in the future is an inherently speculative exercise and must be balanced against the requirement that the Postal Service provide its products in a cost-effective and market-responsive way. There are costs associated with any given level of delivery frequency. The abstract question "should the Postal Service provide fewer (or more) days of delivery," therefore, cannot be answered without also considering the cost and revenue effects, including the effects on pricing and operations, if delivery frequency were modified. If the cost of providing six-day-per-week delivery becomes uneconomic or unsustainable under the price cap (particularly if volume continues to decline), hard choices would need to be made. As noted elsewhere in these comments, a universal service requirement generally should provide for adequate and affordable levels of service. "Adequate" can only be evaluated in the context of both customer needs and the ability to fund the provision of service meeting those needs through either postage revenues or other mechanisms. And as noted above, with respect to competitive products, the market should dictate what frequency of service meets the needs of the users of those products.

Similar factors must be considered when analyzing the full range of variation for frequency changes, as applied to specific mailers and recipients of mail in specific situations. In this regard, varying frequency according to volume or geographic density of mailing patterns, or according to particular content (letter communications, advertising, etc.), are options that should be open for consideration when developing a balanced assessment of the types of all critical factors. The Postal Service does not believe that universal service necessarily dictates or should *a priori* constrain any level or mix of frequency. The key is to find the most efficacious combination of operations, finances, and service that maximize achievement of universal service goals. Universal service, or the Postal Service's legal responsibilities under it, do not drive ineluctably to any particular set of options. The particular markets for such specific approaches have not been studied extensively, and should be explored through well-conducted research in appropriate circumstances.

Finally, the Postal Service does not believe that current legal standards that delineate the Postal Service's universal service obligations and define the postal monopoly necessarily constrain or demand specific choices. The main exception relates to limits on service levels embodied in appropriations riders every year.¹²⁹ The language in those amendments in the past and currently has dictated "[t]hat 6-day delivery and rural delivery of mail shall continue at not less than the 1983 level" as much as practicable.¹³⁰ The Postal Service strongly believes that this restriction should be removed, and that any construction of the legal standards governing universal service and the monopoly should allow the Postal Service to meet future needs for delivery frequency, in accordance with a careful balancing of the various considerations discussed above. In other words, the Postal Service's firm commitment to pursuing its universal service objectives must be afforded flexibility in line with the Postal Service's responsibilities to maintain and manage the nation's postal system in a fair and efficient manner.

Topic No. 7: Universal Service Obligation: Rates and Affordability of Service

A universal service obligation by its very nature requires that some identified products be provided at prices deemed affordable for customers. The challenge in meeting any USO requirement is the delicate balance of the cost of providing the USO and the funding mechanism needed to support the USO. From a public policy and economic standpoint, mandating a postal USO without supporting measures to ensure adequate revenue, such as the current PES and the mailbox monopoly or potentially other public funding mechanisms, can only serve to put substantial economic pressure on the Postal Service and the many consumers and businesses that rely on mail. Such pressure may undermine the ability to provide any level of universal service. The price cap established by the PAEA provides an adequate guarantee of affordability for the Postal Service's customers and, in accordance with the statute, will be revisited by the Commission ten years after enactment. At that time, lessons learned can be evaluated, and a determination will be made as to whether any modifications to the market-dominant pricing system need to be made to continue to ensure the adequate provision of market-dominant products.

The prohibition against undue or unreasonable discrimination does not mean that no differences can exist in the prices for universal service obligation products. That is, there is no

¹²⁹ See note 4, *supra*. The statutory framework for universal service is described in response to Topic No. 1; the statutes establishing the monopoly are outlined in the discussion of Topic No. 10.

¹³⁰ Pub. L. 110-161, December 26, 2007, 121 Stat 1844, 2012-13 (HR 2764).

reason that different prices should not apply to customers with different characteristics even for market-dominant products.

The PAEA has established a mechanism for review of prices of market-dominant products. With only one market-dominant price change under the PAEA so far, we cannot fully assess whether the system should ultimately be changed. It is too early to determine whether the pricing system for bulk products should differ from that for single-piece products. However, any restraints on pricing flexibility should be based on a careful assessment of the potential impact of those restraints on the overall ability of the Postal Service to provide the USO products in a cost effective manner. In challenging economic times, the trade-off between additional restrictions on the Postal Service's pricing and operations and the ability to provide services in a cost-effective manner is made even more problematic.

The current statute requires that *one* class of mail be provided at rates uniform throughout the domestic service area.¹³¹ Additional restrictions should be evaluated carefully to determine whether the burdens of complying with those restrictions are vital to ensure the provision of USO.

The USO should focus on what minimum level of service is provided without adding unnecessary restrictions on how that service is provided. Varying rates by the cost of delivery or transportation from origin (zoned rates) are tools that are used today to ensure that the USO continues to be provided at affordable prices. However, the decision on how to use these tools should be left to the discretion of the Postal Service. Mandating (or forbidding) specific pricing structures runs the risk of codifying price relationships that may not be appropriate over the long run and may ultimately threaten the ability of the Postal Service to meet the universal service obligation.

With respect to competitive products, the primary driver of prices will be the market, subject to the statutory criteria of 39 U.S.C. § 3633.

Topic No. 8: Universal Service Obligation: Quality of Service

On December 19, 2007, the Postal Service published service standard regulations for its market-dominant products, in response to the PAEA mandate.¹³² To reliably measure the service performance, the Postal Service has been developing and implementing either expanded or new product-specific measurement systems, in consultation with the

¹³¹ See note 8 *supra*.

¹³² 39 U.S.C. § 3691(a); see 72 Fed. Reg. 72216 (December 19, 2007).

Commission.¹³³ These measurement systems will generate data that reflect the percentage of mail delivered or service completed within applicable standards.

The goal of the Postal Service is to continuously improve service performance. On at least an annual basis, the Postal Service Board of Governors will establish market-dominant product “percentage on-time” service standard performance targets for which the Board will hold postal management accountable.¹³⁴ The targets established by the Board and the data generated by these measurement systems will be reported to the Commission, so that it can fulfill its service standard compliance review responsibilities.¹³⁵

If one assumes a general congruence between the universe of market-dominant postal products and the concept of universal service, and one defines “quality of service” in terms of service standard achievement, then universal service quality could be measured by using the service performance measurement systems currently being established.¹³⁶ Reliance on the data generated by these systems is expected to impose minimal additional burden on the Postal Service. The cost of these systems will be borne by mailers in the prices that they pay and will generate dividends in the form of a rich array of data regarding service performance and mail preparation quality.

There remains the question of whether universal service quality should be represented on the basis of service standard achievement scores, or on the basis of performance target achievement. As reflected in its PAEA § 302 Network Plan submitted to Congress on June 19, 2008, the Postal Service established a market-dominant product service standard performance goal of continuous improvement. Achievement of this goal will be measured on a product-specific basis by comparing the “percentage on-time” scores for the various products to “percentage on-time” performance targets established by the Postal Service Board of Governors.

The Commission raises the question of whether there is a relationship between the universal service obligation and the “sealed against inspection” requirement. As indicated in the

¹³³ Under the terms of §§ 3691(b)(1)(D) and (b)(2).

¹³⁴ At page 9 of Order No. 71, the Commission comments that, prior to the PAEA, postal services were not subject to service standards that define the percentage of items that must be delivered within specified periods after posting. However, it should be observed that, based on data generated by several existing measurement systems, the Postal Service Board of Governors, in consultation with postal management, has established annual percentage on-time targets for First-Class Mail, Priority Mail and Express Mail service standard achievement for which it has held postal management accountable for the last decade.

¹³⁵ 39 U.S.C. §§ 3652(a), 3653(b).

¹³⁶ In accordance 39 U.S.C. §§ 3691(b)(1)(D) and (b)(2).

Postal Service's discussion of Topic 1, the "sealed against inspection" feature is stated as a legal requirement:

The Postal Service shall maintain one or more classes of mail for the transmission of letters sealed against inspection. ... No letter of such class of domestic origin shall be opened except under authority of a search warrant authorized by law, or by an officer or employee of the Postal Service for the sole purpose of determining an address at which the letter can be delivered or pursuant to the authorization of the addressee."¹³⁷

This provision carries forward *verbatim* former law,¹³⁸ and is rooted in policies that pre-date the Postal Reorganization Act of 1970.¹³⁹ Among current market-dominant products, First-Class Mail is required to be sealed against inspection.

This longstanding policy serves as a fundamental pillar of the national postal system. It reflects the Congressional determination to protect the privacy of persons engaged in personal, educational, literary and business correspondence against intrusion by the very government to whom they have entrusted the task of delivering such correspondence. Accordingly, it seems beyond dispute that the obligation to maintain a mail service of such character is part of the Postal Service's universal service obligation. If the purpose of this inquiry is to explore whether "sealed against inspection" should be considered a USO attribute, the Postal Service responds in the affirmative. If, on the other hand, the objective of this inquiry is to go further and assess the degree of quality with which this service attribute is being provided, such an inquiry would seem to raise very complex and sensitive issues regarding Postal Inspection Service mail security operations and interaction with other law enforcement investigative agencies.

Regarding the establishment of service requirements for universal services, the Commission observes that, "[i]n the European Union, the regulator is typically required to both (1) establish quality of service standards and (2) ensure independent monitoring of performance."¹⁴⁰ Nevertheless, it is the Postal Service's view that the regulatory scheme reflected in the PAEA does not adopt that model.

The Postal Service Governors are authorized to establish reasonable and equitable classes of mail.¹⁴¹ The Postal Service is responsible for planning and maintaining the system of facilities for the collection, transportation, sortation and delivery of mail.¹⁴² It is responsible for planning, developing, promoting and providing adequate and efficient services; and for providing

¹³⁷ *Id.* § 404(c)

¹³⁸ 39 U.S.C. § 3623(d).

¹³⁹ See former 39 U.S.C. § 4057, Public Law 86-682, 74 Stat. 657 (September 2, 1960).

¹⁴⁰ Order No. 71, at 9.

¹⁴¹ 39 U.S.C. § 404(b)

¹⁴² 39 U.S.C. §§ 101(e) – (g), 403(b)(1) and 404(b)(1).

types of mail service to meet the needs of different categories of mail and mail users.¹⁴³

Concurrent with these powers is the necessary authority of the Postal Service to establish the service features and standards that define the quality of the services it will offer – based upon the manner in which it determines that its capital and other resources will be utilized, deployed, or otherwise managed.¹⁴⁴

Congress has specifically given such decisionmaking authority to postal management, which – under the watchful gaze of the Postal Service Governors – is responsible and accountable for implementing postal policies and plans, and conducting day-to-day operations. Market forces provide the Postal Service sufficient motivation to give appropriate consideration to customer perceptions of service quality in planning and executing the operations that undergird the provision of universal service.

The service standard performance targets established by the Board and the data generated by the measurement systems discussed earlier should permit the Commission to fulfill its responsibility to assess and report whether service standards have been met for market-dominant products,¹⁴⁵ and to react to any non-compliance.¹⁴⁶ Assuming congruence between the universal service obligation and the provision of market-dominant products, Commission monitoring of the performance of universal services may largely be a redundant exercise.

Universal service implies the provision of some form of postal delivery to every customer. Delivery is an integral a component of every mail product.¹⁴⁷ There are approximately 148 million delivery points in the postal network.¹⁴⁸ While the existence of delivery for each delivery point would seem to be relevant to whether universal service is being provided, the Postal Service is not persuaded that the various types of delivery receptacles and modes of delivery present universal service issues.

Postal delivery operations reflect a complex balancing of customer wants and needs, and the requirement that the Postal Service provide quality service in an efficient and cost-

¹⁴³ *Id.* § 403(a) and (b)(2).

¹⁴⁴ *Id.* § 401(10) authorizes the Postal Service to exercise all powers incidental, necessary, or appropriate to the carrying on of functions or the exercise of its specific powers.

¹⁴⁵ *Id.* § 3653(b)(2).

¹⁴⁶ *Id.* § 3653(c).

¹⁴⁷ But so are the acceptance of mail, and varying forms and degrees of processing and transportation of mail. Accordingly, there is no self-evident basis for concluding that universal service issues are raised on the basis of the different modes of delivery experienced at the 148 million delivery addresses served by the postal system.

¹⁴⁸ In addition, free Group E Post Office Box delivery is offered to relatively remote addresses for which rural delivery routes are not established.

effective manner. The delivery experience can vary from route to route, point to point, and day to day. The location of mail receptacles, their proximity to the entry at each residential or business address, whether they are separate from each other or clustered, and whether they are accessed by postal carriers on foot or while seated in delivery vehicles depends on postal delivery policies that take into account such factors as local conditions and historical practice. A determination that universal service required particular forms of delivery would limit the ability of local postal managers to employ flexible solutions that respond to local conditions and would undercut the pursuit of efficiency.

Accordingly, the Postal Service does not consider the type or mode of delivery to present a universal service obligation subject to quality of service assessment.

Topic No. 9: Methods of Calculating the Cost of the Universal Service Obligation and the Postal and Mailbox Monopolies

There are a variety of proposed methods for measuring the cost of the universal service obligation. Although the different methods have different computational algorithms, they share a common foundation. All are attempting to measure the cost associated with the provision of a service to a group of customers for which the received revenues are insufficient to cover the incremental cost, given various attributes of the USO. This implies that the measured cost of universal service is typically less than the total resource cost of providing the covered services. In other words, computing the cost of universal service requires taking both incurred costs and revenues into account.

In addition, it is important to recognize that the cost of the USO under competitive conditions may be very different from the USO cost under monopoly protection. In fact, it is the cost of the USO under competitive conditions that is most useful in understanding the financial impact of changes to the scope of the postal monopoly. Hence, a good method of measuring the USO cost will be sufficiently flexible to allow for calculations in both monopoly and liberalized worlds.

The generally preferred approach to measuring the cost of the USO, known as the 'profitability approach,' attempts to account for the changes that take place as a USO is imposed upon the universal service provider (USP). This approach takes as its starting point the financial position of the post in a specific environment (liberalized or not liberalized) *without* a universal service obligation. The USO has many dimensions, e.g., delivery frequency, ubiquity, price affordability. The profitability approach can be employed to calculate the burden associated with any dimension of the USO, or set of dimensions, upon the USP's financial

position. In essence, the approach calculates the difference in the USP's profit with and without the USO, taking into account both the revenue and cost effects of the USO. The reduction of profit that results from the obligation is the cost of the USO.

The profitability method is superior to methods previously developed, such as the Net Avoided Cost method or the Entry Pricing method. These methods are discussed in some detail in Appendix 1.

Topic No. 10: The Implications of the Universal Service Obligation for the Postal and Mailbox Monopolies

Authority to Affect the Scope of the USO

Because the universal service obligation is essentially coextensive with the market-dominant product category, any authority to modify the scope of the USO corresponds to the authority to determine whether a product is market-dominant or not. The Postal Service and the Commission share responsibility for determining the rates and classes of market-dominant products. Although the Commission may add to or subtract from the statutory list of market-dominant items set forth in the statute¹⁴⁹ on its own initiative, the Postal Service is also entitled to propose changes.¹⁵⁰ Because the Postal Service has a direct stake in the consequences of classification, the Postal Service will likely initiate many, if not all, classification actions.

The Commission's ultimate authority to classify products as market-dominant is constrained to only those products

in the sale of which the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.¹⁵¹

While this definition would appear to hinder the Commission from reclassifying some non-monopoly products as competitive, the statute explicitly proscribes the reclassification of a product that falls within the statutory postal monopoly.¹⁵² The Commission must also give "due

¹⁴⁹ 39 U.S.C. § 3621(a)(1)-(10).

¹⁵⁰ 39 U.S.C. § 3642(a); see 39 U.S.C. § 3621(a) (subjecting the applicability of Chapter 36, Subchapter I, to "any changes the . . . Commission may make under section 3642").

¹⁵¹ 39 U.S.C. § 3642(b)(1).

¹⁵² *Id.* at (b)(2). This provision defines "product covered by the postal monopoly" by reference to 18 U.S.C. § 1696 and, via citation of 39 U.S.C. § 409(e)(1), the exceptions contained in 39 U.S.C. § 601. Curiously omitted from this definition are the remainder of 18 U.S.C. §§ 1693-99 and 1725 and 39 U.S.C. § 602, which have historically been recognized as comprising the "postal monopoly". This omission would appear to indicate that even letters carried under the longstanding statutory exemptions for letters pertaining to cargo and "letters of the carrier" may be considered part of the monopoly and immune from reclassification.

regard” to certain market factors that might be affected by a classification change.¹⁵³ In sum, the Commission controls the list of what is or is not a market-dominant product and, therefore, what is or is not subject to the USO, subject to definitional limitations and criteria for consideration.

Authority to Affect the Scope of the Private Express Statutes

Under the PAEA, neither the Commission nor the Postal Service may add to, subtract from, or otherwise alter the substance of the Private Express Statutes. The Commission is permitted to promulgate “regulations”, in the sense of “substantive” or “legislative” rules, within the strict boundaries of 39 U.S.C. § 601. Outside of that authority, the Postal Service may continue to issue any rules or other instruments necessary to its role in administering the Title 18 Private Express Statutes, 39 U.S.C. §§ 602-606, or its other functions under title.

In passing the PAEA, Congress charged the Commission with promulgating “[a]ny regulations necessary to carry out this section [*i.e.*, 39 U.S.C. § 601].”¹⁵⁴ It is undisputable that Congress intended the Commission to have a role in filling gaps that may arise in the application of Section 601. At least three limitations are apparent, however. First, Congress limited the Commission’s role only to regulating under 39 U.S.C. § 601; it conspicuously declined to indicate that the Commission had a similar role in administering 39 U.S.C. §§ 602-606 or the Title 18 Private Express Statutes. Second, the Commission’s authority is limited to promulgating regulations “necessary to *carry out*” Section 601. The Commission may, by regulation, resolve questions about how the Section 601 exceptions may be applied. In accordance with well-settled administrative law principles, however, the Commission is limited to acting within its statutory bounds; it is not empowered to repeal or alter the substantive scope of the exceptions, including those prior regulatory suspensions now codified by 39 U.S.C. § 601(b)(3), nor to adopt new exceptions.

Finally, the Commission’s authority is limited to issuing “regulations”. This word choice must be contrasted with 39 U.S.C. § 503, wherein Congress granted the Commission general authority as to “rules[,] regulations[,] procedures[, and] any other action they [*sic*] deem

¹⁵³ *Id.* at (b)(3).

¹⁵⁴ 39 U.S.C. § 601(c) (emphasis added). See also H.R. Rep. No. 108-672, pt. 1, at 18 (2004) (“The Postal Regulatory Commission is authorized to adopt regulations necessary to carry out *the exceptions to the postal monopoly set out in section 601* as amended.” (emphasis added)). Congress also permitted “interested person[s]” and the Commission’s Public Representative to submit complaints to the Commission regarding Postal Service noncompliance with section 601. 39 U.S.C. § 3662(a).

necessary and proper to carry out their [sic] functions and obligations . . . under this title.”¹⁵⁵ In accordance with the principle that the expression of one item indicates the exclusion of alternatives,¹⁵⁶ Congress’s exclusive use of the word “regulations” in Section 601 manifests an intent to deny the Commission access to the other administrative tools Congress granted it in Section 503. Although “regulations” are not defined in the Administrative Procedure Act (“APA”), to which the Commission is subject in this regard,¹⁵⁷ the distinction between “regulations” and “rules” suggests something different and, by necessity, narrower¹⁵⁸ in scope than “rules.” The former term has historically been understood as synonymous with “substantive” or “legislative” agency rules, as distinct from “interpretative” rules or other “general statements of policy, or rules of agency organization, procedure, or practice.”¹⁵⁹ “Substantive” rules, in turn, have been defined by four criteria: their absence would supply an inadequate statutory basis for agency enforcement; they are published in the Code of Federal Regulations; they explicitly invoke the agency’s legislative authority; or they effectively amend a prior substantive rule.¹⁶⁰ In sum, Congress clearly granted the Commission only the power to promulgate binding, substantive, published “legislative rules”¹⁶¹ to “carry out”, but not to repeal,

¹⁵⁵ 39 U.S.C. § 503.

¹⁵⁶ This canon is sometimes known by the Latin phrase “*expressio unius est exclusio alterius*.”

¹⁵⁷ 39 U.S.C. § 503(a).

¹⁵⁸ The APA defines “rule” to encompass almost any conceivable action by a federal entity. 5 U.S.C. § 551(4).

¹⁵⁹ 5 U.S.C. § 553(b)(3)(A); see *Gibson Wine Co. v. Snyder*, 194 F.2d 329, 331 (D.C. Cir. 1952) (“Generally speaking, it seems to be established that ‘regulations’, ‘substantive rules’ or ‘legislative rules’ are those which create law, usually elementary to an existing law; whereas interpretative rules are statements as to what the administrative officer thinks the statute or regulation means.”).

¹⁶⁰ *Am. Mining Congr. v. Mine Safety & Health Admin.*, 995 F.2d 1106, 1112 (D.C. Cir. 1993).

¹⁶¹ As a practical matter, the Commission’s exercise of its functions may necessitate some issuance of informal guidance or other nonsubstantive, “interpretative” rules. The authority to do so is not explicitly granted in 39 U.S.C. § 601, however, and it therefore must be assumed that this residual authority falls upon the Postal Service as well, to the extent that it is empowered to “adopt, amend, and repeal such rules and regulations . . . as may be necessary in the execution of its functions under this title.” 39 U.S.C. § 401(2). It would be absurd to construe 39 U.S.C. § 601(c) to exclude Postal Service personnel from advising each other about the content of 39 U.S.C. § 601 in the course of determining whether and how to collect unpaid postage revenue, see, e.g., 39 U.S.C. § 404(a)(2) (obligation to prescribe amount of postage and manner of postage payment), or to detain mail carried in violation of postal laws, 39 U.S.C. §§ 603-606. The same functions inhere the ability to offer similar guidance to postal customers in the course of their interaction with the Postal Service. It is difficult to fathom why Congress created Commission authority over complaints that “the Postal Service is not operating in conformance with the requirements of [39 U.S.C. §] 601,” 39 U.S.C. § 3662(a), unless one understands the Postal Service as having some discretion over operations in ways pertaining to 39 U.S.C. § 601.

augment, or otherwise alter the substantive scope, of the exceptions provided in 39 U.S.C. § 601, including the regulatory suspensions previously promulgated by the Postal Service.

Unlike under 39 U.S.C. § 601, the Commission has no explicit role in the administration of the Title 18 Private Express Statutes. As discussed above, Congress limited the Commission's 39 U.S.C. § 601(c) authority only to issuing regulations necessary to carry out Section 601. Moreover, the Commission's general administrative powers are limited to "the functions and obligations . . . as prescribed *under this title* [*i.e.*, title]."¹⁶² In passing the PAEA, Congress did not amend these provisions or any other provisions, such as those in Title 18, to grant the Commission a role in implementing the Title 18 Private Express Statutes.

Rather, under 39 U.S.C. § 401(2), the Postal Service maintains the authority to promulgate rules or regulations that apply the Title 18 Private Express Statutes, to the extent that such administration does not conflict with the Commission's authority to implement 39 U.S.C. § 601. Numerous key aspects of these criminal law provisions rest on matters that it is only natural to construe as implicitly "assigned to" the Postal Service within the meaning of 39 U.S.C. § 401(2), such as "post routes", "letter or packet", "mail matter", and "post office".¹⁶³ Such terms must be defined, by regulation if necessary, in order to provide fair notice, avoid vagueness, and avert the risk of unenforceability.¹⁶⁴ Congress cannot have intended to leave questions as to the practical operation of these statutes in an administrative vacuum, subject only to further legislative amendment, after-the-fact judicial interpretation, and unreviewable prosecutorial discretion. In notable contrast to its disapproval of the Postal Service's exercise of its former suspension authority, Congress did not codify, overturn, or otherwise supersede the Postal Service's existing regulations that implement the exceptions in Title 18.¹⁶⁵ Because Congress granted the Commission no role in administering the Title 18 Private Express Statutes, the only reasonable construction is that the Postal Service may continue to do so.

Even if the Postal Service's inherent role in defining aspects of the Title 18 Private Express Statutes would not suffice to satisfy 39 U.S.C. § 401(2), the Postal Service's exercise of its powers to adopt rules or regulations to fulfill its title functions would necessitate

¹⁶² 39 U.S.C. § 503 (emphasis added).

¹⁶³ To construe "assigned", as it is used in 39 U.S.C. § 401(2), as requiring an explicit delegation would deprive the Postal Service of its authority to administer other criminal statutes with respect to which its jurisdiction is both practical and well-established. *E.g.*, 18 U.S.C. § 1716(f) (nonmailability of "intoxicating liquors"); 18 U.S.C. § 1720 (prohibition on reuse of cancelled stamps and envelopes); 18 U.S.C. § 1733 (prepayment requirement for periodicals).

¹⁶⁴ *Cf. Liparota v. United States*, 471 U.S. 419, 425-29 (1985) (holding that ignorance of collateral legal definitions may relieve a defendant from liability for certain general intent offenses).

¹⁶⁵ 39 C.F.R. §§ 310.1-310.5.

interpretation and administration of the Title 18 Private Express Statutes. For example, without a determination as to whether certain activity falls within one of the Title 18 exceptions, the Postal Service would be hard-pressed to assess postage revenue due for private carriage, and it would be unable to advise its inspectors as to the range of “violation of law” situations in which they may search, seize, detain, and dispose of mail under 39 U.S.C. §§ 603-606.¹⁶⁶ Nor could a postmaster or postal inspector at a port of entry ascertain when a master of a vessel has failed to deposit letters at the local post office under 39 U.S.C. § 601(c), if the postal officer were unable to make a determination, seek internal guidance, or look to standardized rules of practice as to the applicability of 18 U.S.C. §§ 1698 and 1699.¹⁶⁷ In addition, the Postal Service is specifically empowered “to investigate postal offenses and civil matters relating to the Postal Service,”¹⁶⁸ which inheres some discretion as to how to apply the underlying substantive laws. Hence, there is no indication that the Postal Service may not continue to adopt, amend, or repeal rules or regulations that implement the Title 18 Private Express Statutes.

The Postal Service’s retention of administrative authority does not mean that its discretion is unbounded, however. Although the Postal Service is not subject to the Administrative Procedure Act,¹⁶⁹ it is constrained to exercise its authority reasonably and in accordance with constitutional due process. As a specific policy guideline, the Postal Service must take care to avoid anticompetitive effects and should ensure that there is no unfair competitive advantage to itself.¹⁷⁰ The Commission may issue regulations to implement this policy.¹⁷¹ The Commission also retains jurisdiction to resolve complaints regarding the Postal Service’s exercise of its rulemaking authority, as well as its compliance with the policy of avoiding competitive harm.¹⁷²

¹⁶⁶ Needless to say, Congress declined to extend the Commission’s grant of regulatory authority to the title Private Express Statutes outside of 39 U.S.C. § 601. In light of that fact, there is nothing to suggest otherwise than that these provisions, which expressly prescribe Postal Service functions, fall within the Postal Service’s general rulemaking authority under 39 U.S.C. § 401(2), as well as its specific authority “to investigate postal offenses and civil matters relating to the Postal Service.” 39 U.S.C. § 401(6).

¹⁶⁷ See 39 U.S.C. § 602(c) (“Except as provided in section 1699 of Title 18, the master of a vessel arriving at a port of the United States carrying letters not regularly in the mails shall deposit them in the post office at the port of arrival.”). This inquiry would also intrinsically involve a determination as to 18 U.S.C. § 1698, which parallels 39 U.S.C. § 602 and undergirds 18 U.S.C. § 1699’s certification criteria.

¹⁶⁸ 39 U.S.C. § 404(a)(6).

¹⁶⁹ 39 U.S.C. § 410(a) (exempting the Postal Service from, among other laws dealing with federal administrative matters, chapters 5 and 7 of Title 5, U.S. Code).

¹⁷⁰ 39 U.S.C. § 404a(a)(1).

¹⁷¹ *Id.* at (b).

¹⁷² 39 U.S.C. § 3662(a).

The PAEA did not alter or amend 18 U.S.C. § 1725. The Postal Service's authority to implement this statute resembles its authority to interpret and administer the Title 18 Private Express Statutes, as discussed in the previous section.¹⁷³ In particular, the phrases "in any letter box *established, approved, or accepted by the Postal Service*" and "on any *mail route*" admit no reasonable interpretation other than that the scope of 18 U.S.C. § 1725 is subject to Postal Service administration. It should be noted that, as with the Postal Service's regulations implementing the Title 18 Private Express Statutes, Congress left undisturbed the Postal Service's existing regulations that define and apply the mailbox rule.¹⁷⁴ Finally, the same limitations apply to the Postal Service's administrative authority in this context as to its residual authority to implement or interpret the Private Express Statutes, as discussed in the previous section.

Relation Between the Scope of the USO and the Scope of the Monopolies

As described in response to previous topics, one important purpose of the Private Express Statutes and the mailbox rule is to protect postal revenue that supports the USO. Therefore, the scope of the so-called postal and mailbox monopolies should be regarded as intertwined with the USO in two respects. First, any increase in the scope of the USO would increase the cost to the Postal Service of providing universal service. As a result, Congress should not expand the USO without providing some additional funding mechanism along the lines of the "flanking measures" available to liberalized European posts. The inverse proposition is also true: if Congress undertakes to reduce or eliminate the monopolies, it will put financial pressure on the USO, including both services subject to the letter monopoly and those not subject, such as Periodicals and Single-Piece Parcel Post.

The Postal Service should not be expected to maintain consistently low and uniform prices or consistently high-quality service if it is exposed to being undercut by competition in relatively profitable areas and to new impositions on its infrastructure, such as overcrowding of mailboxes. Such burdens might be mitigated by the addition of some new funding mechanism. Apart from the two alternatives described above, changes to the USO would not necessarily require change to the monopolies, and *vice versa*. In principle, the Postal Service could serve the public all the more efficiently under a narrower USO with the funds assured under the

¹⁷³ One difference, of course, is that the mailbox rule establishes a statutory scheme wholly independent from the Private Express Statutes, and it therefore need not be reconciled with the Commission's authority under 39 U.S.C. § 601(c). Congress does not appear to have foreseen a role for the Commission in administering 18 U.S.C. § 1725, whose jurisdiction is otherwise confined by 39 U.S.C. § 503 to functions under title, as described in the previous section.

¹⁷⁴ See DMM §§ 508.3.1, 508.4.4.2, 604.6.2, 604.8.3 (2007).

existing monopolies or, alternatively, under the existing USO in conjunction with expanded monopolies.¹⁷⁵ In other words, any change to the USO or monopolies should account fully for the unidirectional relationship between the two.

To the extent that the question is whether the monopolies must be altered in order to *limit* particular dimensions of the USO, it appears that they need not. First, change to the USO's product dimension would not require change to the monopolies. The existing law allows the Commission to add products to or remove them from the market-dominant category according to factual economic criteria. If price elasticity for a certain market-dominant product increases such that it no longer fits the definition in 39 U.S.C. § 3642(b)(1), then the Commission may terminate it or reclassify it as competitive, either of which would end the USO with respect to that product. Thus, it is objective market factors, not the legal monopoly, that determines the USO with respect to at least some market-dominant offerings. Disruption of the legal monopoly would therefore be irrelevant to whether such products fall within the USO.

Paragraph (b)(2) of 39 U.S.C. § 3642 appears to place monopoly products indelibly within the market-dominant category. At first blush, this might suggest that the monopoly serves as a floodwall that artificially restrains these services within the USO. This reading would belie the practical reality, however. Even if Congress removed the monopoly with respect to these services – primarily First-Class Mail and Standard Mail – the Postal Service would continue to exercise such substantial market power at least in the short run that the products would inevitably continue to fall within the market-dominant category and, correspondingly, the USO.

Topic No. 11: Universal Service, the Universal Service Obligation and the Postal Monopoly in Other Countries

In evaluating the liberalization of posts in other countries, it is important to understand the political and economic context within which such liberalization occurs. In the EU, for example, an underlying context has been a push for political and economic unification. A desire to separate posts from the telecom sector has been another backdrop. Additionally, the upside potential of liberalization is greater in countries with less consumer choice, higher prices, and less efficient service.

¹⁷⁵ Overextension of the funding nexus between the monopolies and the USO is checked by democratic oversight. If Congress or, under an appropriate delegation of authority, the Postal Service or the Commission were to expand the monopolies too far beyond the extent necessary to fund the efficient provision of universal service, the public would advocate a scaling back of the monopolies or an expansion of the USO. It is not apparent, however, that the current state of the monopolies and the USO is instilling such dissatisfaction among mail users.

In three European Directives in 1997, 2002, and 2008,¹⁷⁶ the EU has established a structured approach to gradual liberalization. In the 1997 Postal Directive, the EU directed its Member States to reduce postal letter monopolies to 350 grams or five times the basic postage rate. Under the 2002 and 2008 Directives, the scope of the letter monopoly was gradually reduced to 50 grams (1.8 oz.) or a multiple of 2.5 basic postage by 2006, and is to be completely eliminated by 2012. Liberalization in the EU has, however, been conducted with thoughtful regard for alternative sources for funding the USO. In particular, gradual demonopolization has been accompanied by other developments in the EU, including both corporatization of postal operators, as well as the recognition that postal operators subject to the USO must finance loss-making operations through alternative sources of revenue, such as new businesses, government subsidies, or compensation funds.

Many posts in the EU have been corporatized. This usually implies that the incumbent operator is no longer an arm of the government or ministry, but rather is a corporation with fiduciary responsibility to its shareholders, which serve as its residual claimants. While in most EU countries, governments are the majority or exclusive owners of the corporatized posts, in countries such as Germany and the Netherlands, the post may be partially or almost completely owned by private investors. These posts' financial disciplines are geared toward profit maximization and shareholder return. Further, as corporations, the posts in Europe may take advantage of additional commercial freedoms to pursue alternative lines of business (including financial services and logistics) to complement and support their core USO services. This contrasts significantly with the Postal Service, which continues to be structured as an independent establishment of the executive branch and has only the powers prescribed to it by federal statute.

In view of the liberalization efforts in Europe, posts have been accorded measures that are designed to enable them to develop sustainable business models in liberalized environments. These measures vary by country and are illustrated below:

- Relaxation of USO requirements, for example, exclusion of bulk mail; reduction in required number of daily clearances; or elimination of uniform pricing for bulk mail;
- Relaxation of service quality requirements;
- Corporatization with the ability of posts to conduct mergers and acquisitions;

¹⁷⁶ Directive 97/67/EC of the European Parliament and of the Council on Common Rules for the Development of the Internal Market of Community Postal Services and the Improvement of Quality of Service, 1998 O.J. (L 15) 14; Parliament and Council Directive 2002/39/EC, 2002 O.J. (L 176) 21; Parliament and Council Directive 2008/6/EC, 2008 O.J. (L 52) 3.

- Extension of commercial freedoms by allowing entry into new lines of business and diversification of product portfolio;
- Restructuring of assets, such as consolidating retail outlets, optimizing plants, and outsourcing;
- Borrowing authority in private markets;
- Licensing and regulation of new entrants and competitors;
- Compensation funds or subsidies for USO provision;
- Exemption from value added tax (such as the UK); and
- Application of special or minimum wage rates for postal industry participants.

While EU studies show that liberalization in the EU has been marked by increased choice for bulk business customers, other studies question the benefits of liberalization from the perspective of employees, individual consumers, and small business. A 2007 Hans Böckler Foundation study of liberalization and regulation of postal services in Austria, Belgium, Germany, Poland, Sweden and the United Kingdom found that “[a]ltogether, the liberalisation steps have led almost everywhere to higher prices and a lower degree in the availability of postal services. In general, liberalisation has not led anywhere to advantages for the consumers but has made complex new regulations necessary.”¹⁷⁷ The study also concludes that no country’s liberalization process has produced a significant increase, if any, in private competitors’ share of the letter market.¹⁷⁸

The Böckler Foundation study finds strong support in a recent report by an independent panel commissioned by the United Kingdom’s Secretary of State for Business, Enterprise, and Regulatory Reform. The U.K. study reports that postal liberalization in the U.K. has produced few of its expected benefits, yet has significantly increased costs for Royal Mail and consumers.¹⁷⁹ Almost all new market entrants have focused on high-volume business customers and the upstream market, leaving Royal Mail with 99 percent of the more costly

¹⁷⁷ Torsten Brandt, *Liberalisation, Privatisation and Regulation of Postal Services in Europe – First International Experiences in the Run-Up to New European Regulations* 33 (2007), available online at http://www.boeckler.de/pdf/wsi_pj_pi_q_post_europe.pdf. Germany was the only country in which consumer prices have decreased, while the number of post offices and letterboxes, particularly in rural areas, has dropped everywhere except the U.K., where it has remained stable. *Id.* at 20-28.

¹⁷⁸ *Id.* at 10-18, 33.

¹⁷⁹ See generally Richard Hooper *et al.*, *The Challenges and Opportunities Facing UK Postal Services: An Initial Response to Evidence* (2008).

market in end-to-end delivery of addressed letters.¹⁸⁰ Large businesses have indeed benefited from greater choice, more quality assurance, and prices that are estimated to be 5 percent lower than without competition.¹⁸¹ Nevertheless, large businesses are dissatisfied with the level of confusion about Royal Mail's flexibility under the regulatory framework, particularly in terms of negotiating arrangements that meet their needs.¹⁸²

The U.K. study finds that small- to medium-sized businesses and individual customers perceive no significant benefit from liberalization. On the one hand, these low-volume customers are unable to attract Royal Mail's competitors.¹⁸³ On the other hand, the need to compete for more profitable customer segments has forced Royal Mail to increase first- and second-class stamp prices, create a cost-based size and weight pricing methodology that customers find confusing, and reduce service by abolishing Sunday collections and moving to a single daily collection.¹⁸⁴ These cost-saving measures are necessitated by Royal Mail's inability to raise external capital, its labor and pension costs, and the need to submit adjustments in its product portfolio and prices to mandated preemptive regulation.¹⁸⁵

These factors lead the panel and Postcomm, the U.K. postal regulator, to estimate that Royal Mail's letter business will continue to make a loss, reaching £400m in annual negative cash flow by 2012-13.¹⁸⁶ In the face of the deleterious effects of liberalization, small- to medium-sized businesses and individual consumers are near-unanimous in their support for the existing USO.¹⁸⁷ Although the panel's review is not yet completed, it is clear that liberalization has not necessarily benefited Royal Mail, individual mail users, and small- to medium-sized businesses.

As suggested by the U.K. study, liberalization generally occurs in upstream activities. By contrast, in the U.S., the Postal Service has long embraced worksharing, the process by

¹⁸⁰ *Id.* at 5, 19-20. "Last mile" delivery service accounts for 60 percent of Royal Mail's costs. *Id.* at 5, 21.

¹⁸¹ *Id.* at 6, 22.

¹⁸² *Id.* at 6, 22.

¹⁸³ *Id.* at 6, 23.

¹⁸⁴ *Id.* at 6, 24. Customers find the perceived reductions in service more visible than Royal Mail's achievements in quality of service. *Id.* at 25.

¹⁸⁵ *Id.* at 6, 27-29.

¹⁸⁶ *Id.* at 6, 25, 29.

¹⁸⁷ According to a survey by the Federation of Small Businesses, 83 percent of small businesses and 92 percent of medium-sized businesses believe that Royal Mail's First-Class Mail service offers good value for money as it stands. Eighty-six percent of individual consumers agree (90 percent in rural areas), even though first- and second-class stamp prices have risen 7 and 14 percent, respectively, since 2005. Although few consumers (13 percent) are familiar with the concept of universal service, most of them defend the USO, particularly 6-day-a-week delivery, when explained. *Id.* at 23, 24.

which mailers undertake activities that reduce the amount of mail handling conducted by the Postal Service itself and for which the mailers receive a discounted price. Worksharing has been a key strategy used by the Postal Service to promote efficiency in the mail stream. This process of “liberalizing” the Postal Service by sharing work with the private sector dates to the early 1970s when worksharing in the form of presort discounts was first introduced. Today, extensive levels of prebarcoding (e.g., 95 percent of Standard Mail) and drop shipping are also significant examples of worksharing. The Postal Service continues to seek ways to open the mail-related supply chain to innovation and choice, thereby helping ensure that businesses and consumers have the lowest possible prices with continued high levels of service.

The results of opening access have been enhanced competition in the U.S. marketplace, improved product and service quality, and cost savings for postal intermediaries that are passed on to both senders and recipients. Against this backdrop, the Postal Service has been able to meet the USO requirements and respond to the emergence of new businesses. Without this historical experience, European posts are only now realizing the benefits of upstream liberalization; indeed, it appears that this might be the only beneficial aspect of liberalization in the U.K., if not other countries. The Postal Service wishes to emphasize, however, that any comparison to the European experience with postal liberalization should account for the fact that the upstream market segment has long since been liberalized in the U.S.

Using the regulatory mechanisms established nearly 37 years ago by the Postal Reorganization Act, the Postal Service has developed a broad-based program of worksharing discounts¹⁸⁸ to meet customers’ needs and to control Postal Service costs. The worksharing program and associated product enhancements have attained some of the goals that other nations’ postal administrations are now reaching through regulatory restructuring and postal reform. The billions of dollars offered in annual worksharing discounts are unparalleled even in the most “liberalized” postal administrations around the world, and the program has opened the mail value chain to private sector businesses in ways not even contemplated by any other postal administration.

Topic No. 12: Other Issues

The demand for universal services will be affected in different ways depending on which universal service is under consideration.

¹⁸⁸ Worksharing of market-dominant mail is defined as “presorting, prebarcoding, handling, or transportation of mail,” as further defined by the Commission. 39 U.S.C. § 3622(e).

For First-Class Mail, demand is positively affected by growth in adult population, households, and trends in economic growth. The primary negative factor in First-Class Mail volume has been and will continue to be electronic diversion. Up to now, electronic diversion has hit single-piece First-Class Mail the hardest. It is reasonable to assume that the preponderance of diversion in the latter years of the period under consideration will be in workshared mail. This result is likely for two reasons. First, single-piece mail is likely to reach a core level that is not divertible to electronic media. Second, the imbalance in diversion over the near term will reduce single-piece volumes relative to workshared volumes. Thus, workshared volumes will have a larger base of mail available for diversion in the future. Electronic bill payment, which affects single-piece First-Class Mail, is a well established method of completing routine household transactions, but it took many years to attain that status. Electronic bill and statement presentment, which affects workshared First-Class Mail, is in its infancy and may not as long a time to become commonplace.

For Periodicals, the story is similar. Growth in adult population and the economy will be the primary positive influences on mail volume. The diversion of content to the internet, available at little or no cost, is a primary negative factor. Diversity of the printed content that remains in the mail is likely to increase costs, as smaller niche publications are more costly to process than large-volume, general circulation publications. Long-term demographic trends in reading behavior may further erode sales of periodicals and, thereby, Periodicals mail.

For Standard Mail, positive trends in economic and adult population and household growth will drive increases in volume. Until now internet advertising has not had a measurable effect on mail volumes. Rather, internet advertising appears to be affecting newspapers. It is reasonable to expect, however, that internet advertising will start to erode volume growth in the not-too-distant future for two reasons. First, diversion of newspaper advertising is likely to run its course, leaving other media more susceptible to diversion. Second, as internet advertising takes an ever increasing share of advertising budgets, other media, including direct mail, are likely to suffer.

The impact of information technology on the demand for postal services is difficult to quantify historically. Advances in IT and their adoption by the public are very difficult to predict. Moreover, the substitution of new technologies from old can vary depending on the technologies involved.

New media have been replacing old media at a rapid pace since the 1960s. Consider the case of television. Broadcast was once the only means of obtaining television programming. Cable television has become widespread over the past three decades. Over the past decade,

cable transmission has lost some market share to satellite and fiber optic transmission. With the impending advent of digital-only broadcast transmission, the balance among competing transmission types may change again.

One way of thinking about the future of IT is to think about what IT in the home or office looked like 15 years ago. In 1993, terms such as floppy disk, parallel port, serial port, dot-matrix printer, and IBM AT personal computer were still in widespread everyday use. And the internet was still reserved for technophiles. Changes to the IT world of 2023 are likely to be every bit as dramatic.

Many characteristics of personal computing are likely to change the landscape of IT in the near future. Computers are becoming lighter and cheaper. Improvements to processors and storage media hold great promise for making computer technology increasingly integral to daily life. Access to the internet is becoming more and more widespread. We have already seen the expansion of WiFi access and may soon see WiMax become widely available.

Generational differences in the adoption of IT are clear. The Household Diary Study, as well as non-postal technology studies such as those performed by the Pew internet & American Life Project, clearly confirm that younger adults take IT as a given, much like their parents took local telephone service.

PC Postage, Click N' Ship, and Paypal are IT software applications that currently facilitate the use of mail. It may well be the case that advances in IT technology will add significant new value to the mail. The Intelligent Mail Barcode is an example of just such an IT development.

It is difficult to say what, if any, overall effect environmental issues will have on the mail. Certainly, conducting business by mail or via the internet may reduce reliance on trips to brick-and-mortar stores. With gasoline prices currently above \$4 per gallon in the United States, mail offers a way of ameliorating the strain on household and non-household finances while reducing the use of fossil fuels. Moreover, direct mail is an excellent way to communicate targeted messages, including "green" messages, to the public.

Of course, there remains the possibility of passage of "Do Not Mail" legislation. This could have a significantly adverse impact on the volume of mail produced.

Environmental issues should also be considered when evaluating the status of the postal monopoly laws. An unintended consequence of a potential reduction or elimination of the monopoly laws would be that the addition of new entrants means additional delivery vehicles on the roads, which in turn could mean a significant increase in carbon emissions.

The conventional wisdom of the impact of new technology on mail demand has been that it is a net negative factor. The reason for this is the simple fact that the growth in the internet has had a measurable negative correlation with the growth of First-Class Mail, Periodicals, and Media Mail. Quantitative estimates of the impact, positive or negative, on Standard Mail have been harder to come by.

Application of new technologies such as Click-N-Ship and PC postage have reduced the transactions cost of using the mail in recent years. Yet for every positive technological factor, there are negative factors as well. For example, today it is relatively easy to share photos using online sites such as Snapfish, Flickr, SmugMug, and Picasa, or simply as e-mail attachments, rather than put them in the mail.

In the future, the introduction of the Intelligent Mail Barcode is an example of innovative technologies that may positively affect mail volumes. The emergence of new technologies and their success in the marketplace are extraordinarily difficult to predict. Within the last forty years, for example, many “surefire” new technologies have come and gone in the areas of recorded music (LP records, 8-track tapes, cassette tapes), video media (Betamax and VCR), and digital storage (floppy disks).

The future promises all sorts of known emerging technologies. For example, the prospect of downloadable movies threatens the stream of DVDs in the mail. The dawn of digital broadcast television and high definition radio may change the landscape for media advertising in unknown ways. And the more distant future also will provide new technologies that have yet to be invented.

A definitive list of factors affecting the decision to use alternative means of communications would be hard to come by. However, the following factors are frequently raised as important ones.

Cost, including Transactions Cost: The cost of alternative means of communications varies by media and market. Alternative delivery services and private express companies must overcome economies of delivery density. That is, the unit cost of providing service declines as the use of the delivery network increases. This raises a significant barrier to entry in network industries. Electronic media may have a very low marginal cost. Advertising via email is a good example. The marginal cost of sending an electronic message is near zero (which helps to explain the proliferation of spam on the internet). Advertising goods or services for sale via the internet (e.g., Craigslist, internet message boards and listservs) is a low cost substitute for newspaper classified ads. Credit card companies know that the cost of obtaining a new account via the mail is inversely related to response rates. As credit card solicitations rose through the

1990s and 2000s, response rates gradually declined, making other media channels more attractive.

Perceived Security: The perceived security of the mailbox is widely viewed as a positive factor in the demand for mail services. Delivery with non-secure methods is an obvious competitive disadvantage. The Postal Service is repeatedly ranked as the most trusted government agency by the American public. This trust allows bill payers to be confident that their payments will be delivered with a high degree of reliability.

Concerns about identity theft span many media. Discarded mail, for example, is susceptible to so-called dumpster diving. The security of electronic communication such as the internet is perceived by many as a deterrent to adoption of bill payment and on-line credit card use.

Trackability: The effectiveness of advertising can only be discerned if it is tracked reliably. Direct mail advertising has a competitive edge in this regard. Recent incidents of distorted advertising-related metrics (such as newspaper circulation) have tainted the perception of other media's effectiveness.

Reliability and Speed: Mail, especially First-Class Mail, has an impressive track record in terms of its consistency and speed of delivery. Electronic communications are instantaneous and have an edge in terms of timeliness.

Catastrophic Events: Over the long term, the possibility of an adverse event on the mails such as the anthrax attacks cannot be dismissed. Conversely, the possibility of a widespread crippling attack on the internet is regarded as a top policy priority in security circles.

As should be obvious, any increase in postal prices will reduce the demand for postal services. The larger the increase in price, the larger the volume response. Of course, price elasticities vary by product. Measured postal price elasticities for universal services are generally in the -0.1 to -1.1 range.

Outsized price increases (or for that matter decreases) can result in unpredictable changes in demand. One example is the historically large increase in the price of flat shaped mail in May 2007. Changes in the design of prices can also affect demand in unpredictable ways. When destination entry discounts for third-class mail were introduced in 1991, a somewhat muted volume response was expected. This expectation was based in part on market research, and also in part on experience with adoption of other postal discounts for sortation and barcoding. The response of mailers to destination entry discounts was much more intense and rapid than expected, however.

Of course, price changes alone are not the only unpredictable elements of postal demand. The introduction of the Forever Stamp in April 2007 was met with a very strong customer response in spite of the fact that no monetary benefit was obtained by Forever Stamp purchasers until May 2008.

The importance of universal postal service relative to other services is shown in Table A in Appendix 2.

The Constitution of the United States established the Postal Service (or more specifically, its predecessor organizations) to help build a strong, secure, and thriving nation. As the young nation grew and national government became stronger, it was important to facilitate communications and commerce, “bind the nation together,” and securely connect citizens across disparate regions. U.S. infrastructure and innovation allowed it to become a superpower in the world. The Postal Service has been part of that history. To get the job done it has been mandated certain universal service obligations (USO) and monopoly protections to help fund the USO.

The question now in the 21st century is what is the role of the Postal Service? Has it really changed? What is its role today in an increasingly global economy with high-speed connections and citizenry that may become borderless—at least those that can afford it? Is there still a need for nation, location, and sense of place within the world (virtual and real)? Is everyone fairly easily e-connected? Are those messages private and secure?

After helping build the nation, the Postal Service still has a universal service role to play—one of enfranchising everyone and providing stability in communications and merchandise delivery in a rapidly changing world. It has a dual role, as it helps business and government effectively reach consumer-citizens in a multi-channel, data-rich, message intense environment. This dual role is:

- to support business and commerce with services that reach everyone, and overall, works well (but with rising prices and debt);
- to ensure access by and reach to all consumer-citizens in a participatory democracy;
- to maintain the infrastructure against major disruptions and some needed back-up systems (useful redundancy);
- to efficiently deliver private and secure government services; and
- to maintain citizen connection to place and nation—now more than ever.

If the USO were no longer required, then the access to the mailbox and private express statutes would probably not be in place either. Alternative services would pick the most profitable parts of the network, essentially fragmenting and dismantling the Postal Service

infrastructure that business and government still rely on into the future. Is the U.S. government willing to risk this effect, when it would be very difficult to gain the common political will to ever put the system effectively back together again? (Consider the state of Royal Mail in the U.K. today.)

This dual-role, public-private partnership is working (rate payers reaching consumer-citizens). However, the financial model needs some more adjustment, as costs for resources rise compared to alternatives that increasingly reach more (but not all) people at (in some cases) much higher prices.

The need for these services is the same, but the tools are different. The U. S. needs electronic and hardcopy tools – and the hybrid range in between. The types of tools consumer-citizens and businesses use have been shifting to hybrid and electronic versions. There will probably always be a minority that does not connect electronically, well into the future. Shipping services will depend on which firm can get there most cost-effectively, and who will be willing to pay more for similar services. Those needing a premium service will pay more.

The question has *always* been: *Who pays for* (and at what price) a potentially fully participative democracy and the infrastructure for commerce? That has been done to a great degree through a requirement to bind the nation together with hardcopy information and merchandise through the mail.

Selected trends that have a bearing on these questions are impacting society now and will into the future. These trends are shown in Table B in Appendix 2. The assumption is that each of these trends will likely hold true in the future, but that may not ultimately be so in every case.

APPENDIX 1 — Costing the USO

As noted in the main body of the comments, there are several proposed methods for measuring the cost of the universal service obligation in postal services. However, all are attempting to measure the cost associated with the provision of a service to a group of customers for which the received revenues are insufficient to cover the incremental cost. The measured cost of universal service is typically less than the total resource cost of providing the covered services. Said differently, computing the cost of universal service requires taking both incurred costs and revenues into account.

The method most appropriate for measuring the cost of the USO, as discussed in the main body of the comments, is referred to as the profitability approach. It takes into account the revenues and costs associated with a given USO, in the context of a defined liberalization scenario, to assess the difference in the financial position of the USP with and without the USO. To understand the development of this method, it will be useful to examine some of the earlier methods the profitability approach has supplanted in the literature on this topic.

To facilitate the exposition of the different methods of calculating the cost of universal service, we present a simple model of a postal operator. This model is chosen to be as simple as possible, yet still contain the essential characteristics associated with universal service. We assume that the postal operator provides a single product which is delivered to one of two types of areas, a high cost area (e.g., rural) and a low cost area (e.g., urban). While the marginal costs of delivery differ across areas, they are both assumed to be constant with respect to volume. In addition, the post incurs some fixed costs caused by setting up and running the delivery network, abstracted from “upstream” and administrative costs.

The total costs of the post are given by three components, the fixed cost (F), the variable cost of delivery in the high cost area ($c_{DH} v_H$), and the variable cost of delivery in the low cost area ($c_{DL} v_L$):

$$C = F + c_{DH} v_H + c_{DL} v_L .$$

The universal service obligation requires the post to deliver the mail to both areas at a uniform price. To ensure that a universal service obligation exists, we assume that the uniform price falls between the two marginal costs of delivery:¹

$$c_{DH} > p > c_{DL} .$$

¹ The necessity of this assumption to ensure that a USO cost arises highlights the role of pricing in determining a USO. In our example, if the post were able to charge a price that was high enough to cover both marginal costs ($p > c_{DH} > c_{DL}$), then no USO cost would arise.

The profit for the post is just the difference between total revenue and total cost:

$$\Pi = p(v_H + v_L) - F - c_H v_H - c_L v_L$$

The first method proposed for measuring the cost of universal service in the postal sector is the net avoided cost (NAC) method.² This method had been used in telecommunications, so it is natural that it was borrowed to measure the cost of USO for postal operators. The NAC approach is straightforward and is just a mathematical expression of the idea that the cost of universal service is the deficiency in revenue for a set of services provided by the post. Were it not for the universal service regulation, presumably the post would cease providing these services.³

For the model post, the NAC approach to measuring the cost of universal service would be the difference between the revenues earned on high cost routes and the cost of providing that service.

$$\text{NAC} = c_{DH} v_H - p_H v_H$$

The NAC approach has been harshly criticized on a number of grounds. First, it has been described as “the answer to the wrong question.” Measuring the cost of universal service is relevant for evaluating the value of its existence and determining how it should be funded. In the postal sector, it has been funded through the provision of a “reserved area” or monopoly product. This market restriction prevents cream skimming and allows the post to subsidize the high cost area with “profits” made on the service in the low cost area. A key question, then, is whether the monopoly is the right size to pay for the universal service cost and thus how large the universal service cost would be with a reduced or eliminated monopoly. The NAC approach does not provide an answer to this question, as it assumes no change in the monopoly. Thus, it provides little, if any, information about the cost of universal service in a liberalized environment. In addition, the NAC approach focuses on the cost effects of universal service but does not necessarily capture the revenue effects. That is, it does not account for the fact that the uniform

² For a more complete discussion and application of the NAC approach, see Bradley, Michael and Colvin, Jeff, “Measuring the Cost of Universal Service for Posts,” in *Current Directions In Postal Reform*, Crew, M., and Kleindorfer, P., (eds.), Kluwer, 2000.

³ Critics of the NAC approach argue that it ignores the potential benefits from providing ubiquitous services. In order to preserve ubiquity, a post might find it beneficial to serve an area even though the revenue earned does not cover the cost of such service. On the other hand, the post may wish to include a surcharge for said service, which it is precluded from doing by the universal service requirement.

price could cause revenue effects in the demand for products and the overall level of revenue received by the post.

In an effort to address some of the deficiencies of the NAC approach, a second approach was developed, the entry pricing cost (EPC) approach.⁴ The EPC approach attempts to investigate the cost of universal service in a liberalized environment. The EPC approach thus presupposes a liberalized environment in which cream skimming takes place. This means that, under uniform pricing, the post will lose services for which the revenue exceeds cost. In the model post, this is reflected by the post being under cut in its service to low cost areas. Because of the relatively high uniform price, competitors can take away the service to the low cost area and still make a profit. The result is that the post is left solely with service to the high cost area. Recall that the post also has the fixed cost of sustaining the network. According to the EPC approach, under liberalization and a universal service requirement, the post's financial position is given by:

$$p v_H - F - c_{DH} v_{DH} < 0.$$

This shows that without a subsidy, the post is unsustainable. Therefore, under the entry pricing approach, the subsidy needed to return the post to its pre-liberalization financial health is a measurement of the cost of universal service. Manipulation of the profit equation shows that:

$$p v_H - F - c_{DH} v_{DH} = p_L v_L - c_{DL} v_{DL}$$

In other words, the EPC of universal service is given by the pre-liberalization surplus generated in the low cost area:

$$EPC = p_L v_L - c_{DL} v_{DL}.$$

This is the simplest version of the EPC approach, in which it is assumed that *all* services providing a positive contribution are lost. This is not necessarily the case. For example, the post may have a cost advantage over a new competitor, allowing it to retain some of the volume in the low cost area. This can be modeled by supposing that the entrants are able to capture only θ percent of the surplus in the low cost area. Then, the post-liberalization financial position of the post is given by:

⁴ For a discussion of the Entry Pricing approach, see, Rodriguez, F, Smith, S. and Storer, D., "Estimating the Cost of the Universal Service Obligation in Postal Service," *Emerging Competition in Postal and Delivery Services*, Crew, M., and Kleindorfer, P., (eds.), Kluwer, 1999.

$$p v_H - F - c_{DH} v_{DH} + (1 - \theta)(p_L v_L - c_{DL} v_{DL}) < 0.$$

In this case, the EPC is given by:

$$EPC = \theta(p_L v_L - c_{DL} v_{DL})$$

While it may be considered an advance over the NAC approach, the EPC approach also has its drawbacks. First, it assumes that the demand for postal products is identical after liberalization as it was before. Second, it assumes that there is no reaction on the part of the post to the cream skimming behavior on the part of competitors. For example, would the post attempt to raise the uniform price as it loses volume in low costs areas? After all, its average marginal cost per piece is rising due to volume leakage. Finally, the EPC approach assumes that all losses occurring in the liberalized environment are due to the universal service requirement. This may not be true, as the post could lose some volume and revenue in a liberalized environment even without a universal service requirement.

In essence, both the NAC approach and the EPC approach attempt to take the financial results from a pre-liberalized environment and extrapolate what they mean for universal service in the liberalized environment. While this is computationally convenient it is not methodologically correct.⁵ To calculate the universal service cost in a liberalized environment, it is important to embed that cost calculation in the economic environment of the liberalized environment. Because they do not do this, both the NAC approach and the EPC approach are potentially misleading and could either overstate or understate the true cost of universal service in the liberalized environment.

An approach to measuring the cost of universal service which attempts to account for the changes that take place in the liberalized environment is the profitability approach.⁶ This approach takes as its starting point the financial position of the post in a liberalized environment *without* a universal service obligation. It allows for entry and reaction by the post, and does not impose a uniform pricing requirement. This financial position is given by:

$$\Pi^e = p_H^e v_H^e + p_L^e v_L^e - F^e - c_H^e v_{DH}^e - c_{DL}^e v_L^e$$

⁵ This is not to say that the NAC and EPC measures are valueless, but rather they should be viewed and interpreted with care.

⁶ The profitability approach is presented in Cremer, H., Grimaud, A., and Laffont, JJ., "The Cost of Universal Service in the Postal Sector," in *Current Directions In Postal Reform*, Crew, M., and Kleindorfer, P., (eds.), Kluwer, 2000.

Note that the “e” superscript refers to the fact that the parameter is from the liberalized environment in which entry is allowed. Once this benchmark financial position is derived, the cost of the USO measurement begins with the imposition of the universal service requirements on the post *in the liberalized environment*. In the case of the simple model, this is imposing a uniform pricing requirement charging the same rate for delivery to the high and low cost areas. (Note that this does not require the post charge the pre-liberalization uniform price.) As before, existence of a uniform service obligation requires this rate to be between the marginal costs of delivery to the two areas. This also ensures that the uniform price is between the liberalized prices for each of the two areas:⁷

$$p_H^e > c_{DH}^e > p^u > p_L^e > c_{DL}^e.$$

Imposing a uniform price will change the post’s volume in both the high and low cost areas. In the high cost area, the post will gain volume as the uniform price falls below the price it was charging under competitive entry. This additional volume implies that the post will incur additional cost in the high cost area:

$$v_H^u > v_H^e \Rightarrow c_{DH}^e(v_H^u - v_H^e) > 0.$$

This additional cost may be partially offset or enhanced by the revenue reaction to the lower uniform price. The lower price will attract additional volume and, depending upon the elasticity of demand, will cause the revenue earned on volume delivered to the high cost area to rise or fall. If the demand is relatively high, the lower price might stimulate enough additional volume to cause revenue to rise. If so, this additional revenue helps mitigate the associated additional cost. In contrast, if the elasticity is insufficient to permit a revenue gain, the loss in revenue associated with the price reduction increases the cost of the universal service requirement. Thus, the cost of universal service in the high cost area is given by the sum of cost and revenue effects:

$$c_{DH}^e(v_H^u - v_H^e) - (p^u v_H^u - p_H^e v_H^e).$$

However, the universal service cost should also include the reaction in the low cost area to imposition of the uniform price. In the low cost area, the higher uniform price will cause a loss of volume as competitors will be more able to undercut the post’s rate for delivery to that area.

⁷ The “u” superscript reflects the fact that the parameter is from the uniform price environment.

This loss in volume will save cost. But it will also imply a revenue change. A high elasticity of demand for mail destined to the low cost area means that a higher price will generate less revenue, offsetting and perhaps overwhelming the cost savings. As with the high cost area, the net effect of imposing a uniform price includes both the revenue and cost effects:

$$(p_L^e v_L^e - p^u v_L^u) - c_{DL}^e (v_L^e - v_L^u)$$

The profitability measure of the cost of universal service is found by combining the net effects from both the high cost and low cost area:

$$PC = c_{DH}^e (v_H^u - v_H^e) - (p^u v_H^u - p_H^e v_H^e) + (p_L^e v_L^e - p^u v_L^u) - c_{DL}^e (v_L^e - v_L^u).$$

Rearranging these terms yields:

$$PC = p_H^e v_H^e + p_L^e v_L^e - c_H^e v_{DH}^e - c_{DL}^e v_L^e - (p^u (v_H^u + v_L^u) - c_H^e v_{DH}^u - c_{DL}^e v_L^u).$$

This is just the difference between the profit earned in the liberalized environment without the USO and the profit earned in the liberalized environment when the USO is in place. (The fixed costs of the network are the same in both instances). This is the source of the title, the “profitability” cost.

While this approach is computationally difficult (because it requires estimating what would occur in a liberalized environment), it is methodologically preferred because it is producing the number required for calculating the cost of the USO in a liberalized environment. It also had the advantage of being flexible. The parameters of the both the liberalized environment and the universal service obligation can be varied and the impact on the cost of the USO can be assessed.

In recent years there have been a number of studies of the universal service obligation and its relationship to liberalization of the postal market. A summarization of those studies is presented below.

The studies employed range of methodologies including surveys of postal market participants, estimation of econometric models, operational analyses, evaluation of regulations and calibration and application of economic models of the postal market. In general, there was recognition of making use of both expert opinion and quantitative tools.

Not surprisingly, there was also a wide range of findings. All of the studies emphasized that there will be a continuing “demand” for universal services even in the face of complete liberalization and unfettered competition. The key questions then related to what should be

covered by the universal service obligation, what would be its cost, where and how much entry would take place and how should the USO be funded in a competitive environment.

Most of the studies identified potential vulnerabilities for universal service in a liberalized environment and discussed either supporting measures designed to mitigate the effect or alternative sources of funding. While there are currently few countries that follow compensation methods other than a reserved area, most of the studies did recognize that alternative funding measures may be necessary in a liberalized context. While increased efficiency is regularly described as one method of funding, there was a recognition that a combination of structural conditions and universal service restrictions could cause some posts to end up in an unsustainable financial situation. As a result, a number of studies mentioned modifying the universal service obligation as the nature of competition evolves. For example, there was recognition that, to the degree the postal market moves closer to traditional competitive outcomes, the prices for large mailers are likely to fall and the prices for individuals and small business are likely to rise and prices and service will differ for customers.

Study Name: Economics of Postal Services: Final Report

Study Author: NERA Economic Consulting

Country or Countries Studied: 25 European Union Countries as of May 1, 2004

Time Period(s): 2004

Methodologies Used: Surveys of the production methods and network characteristics in posts and estimation of an econometric cost function for European posts.

Focus or Slant of Study: The study focuses on explaining the economics of postal production and highlighting, with the use of descriptive statistics, the differences across European posts.

The study also estimates an econometric cost function for European posts and uses the results to make inferences about economies of scale and scope.

Main Findings: Postal operators in Europe have diversified into non universal service activities such as global express and logistics.

The collection activity is dominated by collections from business premises, although post boxes are still important to fulfill the USO.

Parcel and express services tend to share facilities (particularly retail facilities) with letter mail services except when volumes are high. Then, parcels and express delivery networks tend to be separate. Thus, there are some economies of scope between the two streams in non-delivery activities, and some in delivery in the low volume parts of the network.

Cost reduction strategies not only lower costs, but also make it more difficult for new entrants with lower volumes to compete.

Barriers to entry are low for small scale postal operations, but rise progressively as volume rises. They are high for a postal network with universal coverage and automated processing.

There is room for competition throughout the value chain particularly in the collection of business mail, the transportation of mail, and sorting. Competition in delivery is more difficult.

If access to the delivery network is provided where necessary, there is room for competition in postal services and that competition may be significant. A large part of the mail sent by businesses is potentially open to competition.

The market for consumer mail will likely be served by just the universal service provider (USP). This provides a competitive advantage to the USP because it provides the USP with scope economies in the provision of business mail services.

Study Name: The Impact on Universal Service of the Full Market Accomplishment of the Postal Internal Market in 2009

Study Author: PriceWaterhouseCoopers

Country or Countries Studied: 25 EU Countries ([Austria](#), [Belgium](#), [Cyprus](#), the [Czech Republic](#), [Denmark](#), [Estonia](#), [Finland](#), [France](#), [Germany](#), [Greece](#), [Hungary](#), [Ireland](#), [Italy](#), [Latvia](#), [Lithuania](#), [Luxembourg](#), [Malta](#), the [Netherlands](#), [Poland](#), [Portugal](#), [Slovakia](#), [Slovenia](#), [Spain](#), [Sweden](#), and the [United Kingdom](#) plus 5 additional countries (Romania, Bulgaria, Norway, Iceland and Lichtenstein)⁸

Time Period(s): 2005 and 2006

Methodologies Used: Surveys were conduct of member posts and other market participants. The results of the surveys were tabulated. Country-based empirical economic models based on the model developed by d'Alcantrara and Amerlynck.

Focus or Slant of Study: Focus in mainly on how to accomplish full liberalization, ("Full Market Opening") across the EU with recognition that there is a continued demand for a USO and the associated services. There is also recognition that some "flanking" measures may be necessary to sustain some posts in the face of full competition and to a lesser degree, preserve the USO.

Main Findings: Full market opening embodies "considerable" advantages as a source of discipline on posts. It is also a source of value for all participants in European postal markets.

Postal Services (particularly business services) that are now under the USO will increasingly be provided by "the market." This will lead to a better alignment of costs and prices by customer class.

There will be increasing pressure on posts to become more market oriented and commercial. The postal offerings will become more market oriented and the USO may need to be realigned to be consistent with this.

Despite its benefits, one should not underestimate "the complexities" of full liberalization. There are some unique aspects of postal economics that make full liberalization different from its predecessors. These include:

- A. Many posts have already faced competition in various aspects of their business.
- B. The postal market is not likely to expand.
- C. The European postal sector is very labor intensive and not particularly technologically intensive.
- D. Posts have traditionally been and will likely continue to be public entities with associated public service responsibilities.

⁸ There are currently 27 EU countries. Romania and Bulgaria joined in 2007 after the study was completed.

Full market opening across the EU is feasible but may face some serious consequences in some countries. These countries will need the assistance of “flanking measures.”

The main drivers of the financial impact of full liberalization include cost differences between the post and its competitors, the level of and stability of and demand for the post’s products, and structural factors affecting costs like geography and demography.

The introduction of full liberalization for posts should be accompanied by a new regulatory structure including:

- Non-uniform prices for bulk mail.
- Price cap regulation of the posts.
- Transparent and non-discriminatory access to the post’s network.

As full liberalization becomes more advanced, additional measures should be put into place to further reduce barriers to entry. These measures include regulated open access to PO boxes, letterboxes and address databases.

The study reconfirms that the USO is “still considered an entitlement by the public across all Member States, particularly for households and other single-piece letter users.

The USO should “evolve” after full liberalization to a situation in which “the market” would be the provider of the USO for business customers instead of the post. This evolution has some related points:

- Smaller customers will see increases in price and larger customers can expect increases in product variety and decreases in price.
- A regulated access price may be necessary to prevent predatory pricing by the post.
- Pricing stability for smaller customers remains important to keep prices “affordable.”
- Under liberalization the USO will not be funded by a reserved area. Instead it will be funded by increased efficiency and added revenues from other new services.
- Alternatively, funding from compensation funds or direct subsidies could be used as a supplement.

Liberalization could threaten the financial viability of the post. In those cases an initial approach would be to increase the commercial freedoms of the post and adapt the scope of the USO to “market conditions.”

Study Name: Postal Services: Universal Services Obligations

Study Author: Jersey Competition Regulatory Authority

Country or Countries Studied: The Bailiwick of Jersey

Time Period(s): 2004-2005

Methodologies Used: Review of universal service conditions and policies in other countries.

Focus or Slant of Study: Development of USO standards for the Bailiwick

Main Findings: The JCRA proposed a very specific USO for Jersey:

- A. At least one delivery of relevant postal packets (postal packets whose weight does not exceed 20kg) posted in Jersey should be made on six days each week, except Bank Holidays, to each delivery point (the home or premises of every individual or other person in Jersey or to other persons in Jersey or to such identifiable points for the delivery of relevant postal packets as the Authority may decide).
- B. One collection of mail, generated within the Bailiwick of Jersey, from post boxes and post offices on six days each week, except Bank Holidays, including all working days. Collections from relevant access points shall be for all postal items up to a weight of 20kgs; Collections at one or more access points or post-boxes, on a district basis, should be made at latest times that will enable relevant postal packets to access key delivery and transport connections.
- C. Deliveries on a minimum of six days each week shall be for all postal items up to a weight of 20kgs;
- D. At least one service of conveying relevant postal packets from one place to another in Jersey by post and the incidental services of receiving, collecting, sorting and delivering such packets should be provided at affordable prices, determined in accordance with a public tariff which is uniform throughout the Island irrespective of access point or delivery point.
- E. Services for registered and insured mail;
- F. Preferential postage rates for literature for the blind;
- G. Have regard to individuals who are disabled or chronically sick, those of a pensionable age; those with low incomes and those residing in rural areas;
- H. Preferential rates in respect of mail to addresses within the BFPO (British Forces Post Office). Licensees must provide access, by use of Post Boxes, Post Offices and other appropriate means to allow the public reasonable access to the postal network.

The JCRA believes that the Jersey Post Office should “provide a universal service that involves daily delivery to, and collection from, addresses in the Bailiwick of Jersey at a uniform price.”

Finally, the JCRA states that “for Jersey Post as the SMP operator, the universal service obligation may not a burden but a benefit. It therefore proposes that the funding of the universal service obligation should be provided via the reserved area.”

Study Name: Regulation of Postal Services, Universal Service Obligation, Bulk Mail Access

Study Author: Commission for Communications Regulation (COMREG)

Country or Countries Studied: Ireland

Time Period(s): 2006

Methodologies Used: Determination of stakeholder opinions, operational review, and analysis of demographic data

Focus or Slant of Study: This study reflects a concern raised by mailers that An Post was not providing sufficient access points where it would accept bulk mail. In 2006, there were only four full service acceptance locations and a small number of restricted access locations in Ireland. The focus was on whether An Post was violating USO requirements to provide national postal service by having a restrictive list of access points for bulk mail.

Main Findings:

- Both full service and discounted bulk mail services are included in the Irish USO.
- COMREG found that An Post did not provide equal access to bulk mail customers.
- An Post provided prices and services that differed by access location. The offerings at the four full service acceptance sites were favorable in terms of rates and quality of service.
- An Post did not provide bulk mail acceptance at twenty-four mail processing facilities located where the population was in excess of 10,000.
- An Post was required to provide “full and unconditional access to all bulk mailers” at 43 access points within its postal network.

Study Name: Evaluation of the Impact of a Full Market Opening (FMO) on Swiss Post

Study Author: PriceWaterhouseCoopers

Country or Countries Studied: Switzerland

Time Period(s): 2006

Methodologies Used: An application of the 2006 PWC EU study methodology to Switzerland

Focus or Slant of Study: Although the methodology is not new, the study argues that Switzerland is a particularly interesting case because of its high level of volume per capita (700 mail items per person per year) and high level of universal service requirements.

Main Findings:

A full market opening is “incompatible” with the current level of universal service in Switzerland.

The study’s calculations show that Swiss Post would not remain viable under an FMO without receiving subsidies.

Swiss Post would lose significant volumes to liberalization and would be forced to downsize because:

- The USO requirements on Swiss post are extensive and impose a significant burden.
- The Swiss postal market is attractive for entrants because of its high volumes and USO restrictions. This raises a large potential for cream skimming.
- Swiss post is very labor intensive and pays relatively high wages. This provides a competitive opportunity for entrants.
- Business customers are quite responsive to price changes.

For Swiss Post to be sustainable under liberalization, a new balance is required between universal service obligations and opportunities to provide USO services by Swiss Post and new entrants. This will require reducing the scope of the USO and restructuring Swiss Post to adapt to its smaller role in the postal market.

Large business customers are likely to see the prices for their products fall and household and small businesses would likely see higher prices and cutbacks of existing levels of service. This would occur as the postal market becomes more aligned with the realities of the market.

Study Name: Funding Universal Service Obligations in the Postal Sector

Study Author: Oxera Consulting

Country or Countries Studied: No quantitative studies for specific countries. The study does provide a numerical example for each method of funding that it considers. Examples are drawn from many countries and a variety of industries.

Time Period(s): 2007

Methodologies Used: Review of previous studies and academic literature. Review of different approach to fund the USO in different industries.

Focus or Slant of Study: The study is primarily an assessment of alternative methods of funding the USO with an emphasis on the applicability to posts.

Main Findings:

The study compares the following alternative methods of funding the USO: a reserved area, a compensation fund, state funding, a pay or play requirement, increased access charges and competitive bidding.

The study evaluates these different approaches on the basis of their efficiency, competitive neutrality, social equity, transparency, practicability, and certainty.

Although it doesn't explicitly measure the cost of universal service, the study argues that defining the USO and measuring its cost are key questions that should be addressed before a postal market is liberalized.

Some funding mechanisms that have worked in other areas may not work in the postal sector due to the specificities of postal production and the characteristics of the national market.

The choice of funding mechanism should depend, in part, on the mail goals of postal regulation. For example, efficiency may be given a higher weight than safeguarding universal service. If so, funding mechanisms that promote efficiency should be preferred.

If certainty and practicability are important criteria, then the reserved area would provide an attractive approach.

APPENDIX 2

TABLE A: IMPORTANCE OF UNIVERSAL POSTAL SERVICE RELATIVE TO OTHER SERVICES

	Universal Postal Service	Universal Telephone System	Universal internet
How does one measure importance:			
<p>- What benefit does universal service create?</p>	<p>- people in high cost-to-serve areas can inexpensively stay in touch with friends and/or the government, and conduct business because mail enables them to send messages to anybody as long as they know the address. The communication can even happen if the two parties are not both available at the same time.</p>	<p>- enables people with low incomes or those in high cost-to-serve areas to communicate inexpensively with friends and business partners, and with the authorities in the event of an emergency</p>	<p>- would enable people in high cost-to-serve areas to have inexpensive access to information and email</p>
<p>- What is the closest substitute?</p>	<p>- correspondence and transactions: - email and online bill pay and presentment for soft copy - private delivery service for hard copy - advertising mail: - email and telemarketing for targeted ads - newspaper and yellow pages for hard copy ads - internet, radio and TV for other ads - packages: - private delivery services</p>	<p>- cell phone (if service available) - radio or TV for incoming communication - driving to a pay phone - mail</p>	<p>- dial up with long distance fees (this is only available because telephone service is universal)</p>
<p>- Who pays for service?</p>	<p>- sender</p>	<p>- recipient for local, sender for long distance, both for cell phone service</p>	<p>- recipient</p>

	Universal Postal Service	Universal Telephone System	Universal internet
- What would happen if the service weren't universal?	<ul style="list-style-type: none"> - correspondence and transactions: <ul style="list-style-type: none"> - hard copy delivery to people in high cost-to-serve areas would be more expensive and/or letters would need to be picked up from a central point. This would particularly impact official government communication (e.g., jury duty, letter from congressman) and hard copy documents that are difficult to print at home (e.g., family pictures, magazines) - households would likely receive more soft copy documents and use more online services and print their own hard copies - ties that bind the nation together would be weakened - advertising mail <ul style="list-style-type: none"> - targeted, hard copy advertising to customers in high cost-to-serve areas would be more expensive and alternatively, costs in low cost-to-serve areas would decline. - packages <ul style="list-style-type: none"> - sending packages to high cost-to-serve areas would be more expensive as private delivery services charge premiums for these zones 	<ul style="list-style-type: none"> - telephone service in high cost-to-serve areas would become more expensive, significantly so in some cases - those who chose not to pay the higher price would lose the ability to communicate with friends and with authorities in the event of an emergency - authorities would have to rely on households having a radio or TV on to communicate urgent messages - ties that bind the nation together would be weakened 	<ul style="list-style-type: none"> - dependent upon internet service providers' offerings and coverage
Economic analysis of universal service			
- What drives relative cost to serve between low and high cost areas?	<ul style="list-style-type: none"> - volume per delivery point - households per mile (fewer deliveries per hour drives up cost per delivery). The impact of this is mitigated by the fact that rural carriers are less expensive than city carriers. 	<ul style="list-style-type: none"> - households per mile (greater distance between households drives up cost of cable per household) 	<ul style="list-style-type: none"> - population within local calling area (cost is largely in access points)

	Universal Postal Service	Universal Telephone System	Universal internet
- Who subsidizes who in universal service?	- those mailing to and from low-cost-to-serve geographies subsidize those mailing to and from high cost-to-serve geographies	- those calling to and from geographies with high population density subsidize those calling to and from geographies with sparse population	- Those dialing out of low-cost-to-serve geographies would subsidize those dialing out of high cost-to-serve geographies
- Who wins from deregulation?	- those mailing primarily to low cost-to-serve geographies who are sophisticated enough to put different amounts of postage on mail pieces going to different parts of the country	- people making long-distance calls who currently pay a "universal service fee" to subsidize those who cannot afford phone service - people living in areas with high population density	- people living in areas with high population density
- Who loses from deregulation?	- people mailing primarily to and from high cost-to-serve geographies - low volume mailers having to deal with different prices for different geographies	- people living in areas with low population density	- people living in areas with low population density

TABLE B: SOCIETAL, ECONOMIC, AND TECHNOLOGY TRENDS

Demographics
<ul style="list-style-type: none"> ▪ <i>Population and Households:</i> By 2020, there will be about 50 million more people living in the United States. Households will be smaller and more diverse. The population will be relatively more educated and older.
<ul style="list-style-type: none"> ▪ <i>Elderly—the Fastest Growing Population Sector:</i> As longevity increases, the elderly will remain the fastest growing population sector. They will be less mobile and need access to services—public and private. Not all are comfortable with electronic substitutes for the mail.
<ul style="list-style-type: none"> ▪ <i>Growing Income Disparity:</i> The impact of the growing disparity on the "have-nots," and even on small businesspeople, is being felt more and more. Major trends usually do not change quickly—this one is expected to continue. According to the Congressional Budget Office, income for the bottom half of American households rose six percent since 1979 but, through 2005, the income of the top one percent skyrocketed - by 228 percent.
<ul style="list-style-type: none"> ▪ <i>Migration Patterns:</i> Within the U.S., migration patterns have shifted over the decades, typically following jobs. Earlier immigrant waves came and stayed mostly in the gateway and their city-regions (e.g. New York, San Francisco). The more recent waves came into the gateway cities, then migrated to the exurbs to follow jobs in construction and retail, as city-regions expanded into the suburbs.
<ul style="list-style-type: none"> ▪ <i>Delivery points:</i> Driven by household and business formation delivery points will continue to grow, but not necessarily always in places competitors will want to cover.
<ul style="list-style-type: none"> ▪ <i>Boomers versus Gen Y:</i> The Boomer generation (now turning 60) has set the trends for decades. But there is another group as large--Generation Y also has 80 million in its cohort. They will set some new trends as lifecycles move along. Consumer-citizens in this generation are predominantly "digital natives," where iPhones, iPods, text messaging on other wireless devices and to a smaller degree--emails--are first and frequent choice in communications.
<ul style="list-style-type: none"> ▪ <i>Boomers and Gen Y Migrations:</i> There has been a recent emerging trend of younger people moving back into the cities to be close to jobs and amenities (Gen Y). Meanwhile, some retirees have been moving to areas with good climate, medical facilities, universities and educational programs, entertainment, and recreation in preserved natural surroundings. (Boomer)

<p>Technology Adoption and Preferences</p> <ul style="list-style-type: none"> ▪ <i>Internet Connected:</i> Most, but not all, consumer-citizens will be connected to the internet with secure, high-speed access using a variety of devices. (By 2013, 80 percent heads of household will have access to the internet, up from 71 percent in 2007. Forrester Research) ▪ <i>Real-Virtual Lives:</i> People will continue to operate in the real, as well as the virtual world, and look for opportunities to move easily between the two worlds. Social networking will continue to be basic human behavior, but with more people using digital tools. ▪ <i>Privacy and Security:</i> These issues constrain many internet activities for some individuals now. This could continue unless online security increases and additional guarantees are provided against losses from fraud and identity theft.

<p>Business and Commerce</p> <ul style="list-style-type: none"> ▪ <i>Physical Backbone:</i> Commercial mailers still need a low-cost channel that helps them build business with consumers and other businesses. They will continue to need flexibility to move where the population is going. Business and commerce still need a physical backbone to move merchandise and some communications. Technological innovations will continue to enhance the effectiveness of the backbone. ▪ <i>Engines of Growth:</i> Small businesses will continue to be the engine of long term economic growth. They will continue to need assistance at various stages of their business lifecycles to grow and do business globally. ▪ <i>Costly to Reach:</i> Competitors will still want the most profitable sections of delivery and leave the more costly routes uncovered. Without such service, rural (and some urban) low income consumers-citizens will be disenfranchised from some communications and easier participation in society and commerce. Businesses will still need to reach these consumers and so will government. ▪ <i>Fuel-Efficient Transport and Trade-Offs:</i> The search for alternative, fuel-efficient transport will continue for moving people, goods, and information. The trade-off between price versus speed and convenience will become more fine-tuned depending on the specific transaction requirements. (In the case of Vote by Mail convenience and fuel savings converge.)

**Related Applications in the Mail
(Correspondence, Transactions, Advertising, Merchandise Delivery)**

- *Preferences and Requirements:* Some sectors of the public will still prefer, or require, paper-based communications and merchandise through the mail. Generations tend to prefer the technology they engaged with early-on, print or digital. Some consumer-citizens have been left out of the information technology boom due to income or access constraints. Private-public partnership efforts for pervasive and affordable electronic access in the end may not cover everyone.
- *Paper and Electronic:* Many consumer-citizens prefer paper bills and statements, even if they are also getting electronic ones. Billers are providing incentives for adopting electronic bill presentment and payment or adding fees for continued use of paper-based billing and statements. These incentives could increase, and erode more volume.
- *Fragmented Channels, Competing Messages:* Communications channels will continue to be fragmented and cluttered with competing messages. Some consumers-citizens will filter and select content more than in the past to keep messages relevant and reduce overload. However, important messages may not get through or receive attention as quickly as needed. Multi-channel use and message frequency will be important to reach people effectively.

Other Societal Issues Affecting Government Policy

- *Government Needs:* Federal, state, and local governments will continue to need to effectively reach every citizen and business, and to do more with less.
- *Major Disruptions:* Difficulty in physically reaching all businesses and consumer-citizens, maintaining communications, and helping to rebuild lives and the economy due to a natural disaster, health epidemic, or attack on the homeland will be a basic, ongoing requirement of government. (Note Postal Service role in Hurricane Katrina, 9/11, anthrax attacks, and current planning with DHS.)
- *Environmental Impact:* Climate change will continue to be a major factor for consumer-citizens. The strength and perceived logic of “Do Not Mail” efforts could greatly dampen mail volume.
- *Transportation Model for the Postal Service?:* Railroads used to be the primary transportation mechanism for both freight and passengers and have retreated into niches of high volume or non-time-sensitive freight and passengers. This could be the model for the future Postal Service.
- *Transportation Infrastructure Fixes and Funding - Another Model?:* There has been an emerging trend to fund renovation of the crumbling transportation infrastructure through private-public partnerships sponsored by DOT-FHWA. Some are funded by consortia of non-U.S. investors and banks. Some cash strapped states and municipalities appreciate the much needed capital, but critics have fought it to the State Supreme Court (Indiana). (www.fhwa.dot.gov/ppp)

Other Societal Issues Affecting Government Policy (continued)
<ul style="list-style-type: none"> ▪ <i>Fuels:</i> With rapidly growing demand and finite supply of fossil fuels, prices may cause former modes of transport back into somewhat higher use, coupled with other alternative, fuel-efficient local transport.
<ul style="list-style-type: none"> ▪ <i>Globalization and e-Commerce Growth:</i> These continue to provide challenges and opportunities for growth for the Postal Service and the U.S. The public policy question is: Who has access and opportunity for the benefits, who facilitates and invests for this access and benefits, and at what price (subsidized, or not, and by whom?)
<ul style="list-style-type: none"> ▪ <i>Workforce:</i> Labor intensive industries continue to reduce workforce through outsourcing or through technological innovation due to the rising cost of benefits and wages relative to other, particularly, emerging economies.
<ul style="list-style-type: none"> ▪ <i>Workforce in America:</i> A counter trend that may be emerging is an understanding of the need for jobs in America. In the global economy, U. S. consumer-citizens could continue to strongly support the local economy (as well as others), and dampen potential social unrest due to economic disparity over the long term. The Postal Service is part of a \$900 billion industry in the U.S. that employs 9 million people.
<ul style="list-style-type: none"> ▪ <i>Political Will:</i> Once the USO/Monopoly requirement for mail is gone—it would be difficult to gather the political will to put it back in place. (There has been a similar argument used by those in the philanthropic sector regarding elimination of the estate tax. It basically states America has a large charitable base for social good—particularly compared to other countries—supported by such tax policies. If eliminated, these public policies for the broader good would be very difficult to reinstate.)
<ul style="list-style-type: none"> ▪ <i>Political Influence:</i> Lobbying groups will continue to be a major influence in making public policy with more or less power depending on organizing and fundraising capability---and the make-up of Congress and the White House. (e.g. unions, competitors, customer-partner associations.)
<ul style="list-style-type: none"> ▪ <i>Disruptive Wildcards:</i> Emerging trends could gather steam or merge with others to cause bigger disruptions. These wildcard trends could include radically higher energy prices—or outright scarcity---or collapse of the global supply chain “disassembly line”) and new media (internet-based) infrastructure. Pressure would come from higher and increasing demand on commodity resources and natural or political disruptions in the current supply chain which some believe have insufficient redundancy. While fuel-based movement of communications and merchandise may not be ideal, it may be the most efficient at the time. Some redundancy in services may not be a bad idea. (Note past UPS strikes.)