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# Collected Papers on U.S. Postal Policy

James I. Campbell Jr.

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COLLECTED PAPERS ON U.S. POSTAL POLICY

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# 1

## H.R. 22 in Perspective (1997)\*

Glendower. *I can call spirits from the vasty deep.*

Hotspur. *Why so can I, or so can any man;*

*But will they come when you call for them?*

- Henry IV Part I, 3.1.53

**B**ill number 22, introduced by Congressman John McHugh in the first session of the 105th Congress of the United States, proposes the most fundamental changes to American postal laws since 1970, when Congress abolished the Post Office Department and established the United States Postal Service.<sup>1</sup> Since Mr. McHugh chairs the only congressional committee devoted to postal policy<sup>2</sup> and the United States carries about 40 percent of the world's mail, H.R. 22—called the “Postal Reform Act of 1997”—has attracted a degree of attention in postal policy circles. The United States Postal Service, representatives of the large American direct mail industry, and competitors like United Parcel Service have all offered their alternatives to H.R. 22. This paper views H.R. 22 in the perspective gained by a consideration of these other proposals as well as a consideration of postal reform measures being implemented or studied in other developed countries.

### 1. POSTAL REFORM PROPOSALS IN THE UNITED STATES

In the United States, as elsewhere, scholars and political activists have urged a variety of fundamental postal reforms ranging from repeal of the postal monopoly

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\*Paper presented at Rutgers University, Center for Research in Regulated Industries, The Evolving Structure of Postal and Delivery Industries, Helsingør, Denmark, June 1997.

<sup>1</sup>McHugh's proposal was H.R. 3717, introduced in the 104th Congress on June 25, 1996. When the 105th Congress succeeded the 104th Congress in January 1997, H.R. 3717 was reintroduced as H.R. 22. HR 22 is identical to H.R. 3717 except that a provision establishing an independent Inspector General within the Postal Service was deleted from H.R. 22 because it was enacted into law by the 104th Congress.

<sup>2</sup>The Subcommittee on Postal Service of the Committee on Government Reform and Oversight, U.S. House of Representatives, 105th Congress (1997-1998). In the U.S. Senate, the Subcommittee on Security, Proliferation, and Federal Services of the Committee on Governmental Affairs can devote only a small portion of its time to postal affairs.

to sale of the Postal Service to private shareholders to breakup into regional units. To date, however, none of these final solutions have received serious attention from the Congressional committees that write postal legislation. In addition to H.R. 22, only three alternative models that have been advanced seriously so far; these are described after a brief review of H.R. 22.

#### 1.1. H.R. 22: REGULATION ADAPTED TO NON-COMPETITIVE AND COMPETITIVE MARKETS

In broad concept, H.R. 22 reflects the approach of a craftsman rather than an ideologue.<sup>3</sup> H.R. 22 seeks to preserve existing public benefits in the face of changing technology and commercial realities and to correct flaws in current law revealed by experience. Compared to 1970, the Postal Service has become more business-like, with activities spanning two distinctly different commercial environments. In some areas—such as first class mail—the Postal Service faces little or no direct competition but increasing indirect competition. In other areas—such as express and parcels—the Postal Service faces strong direct competition from companies such as Federal Express and United Parcel Service. In each area, abuse of governmental power poses a threat to the public interest, but the nature of the threats differs. The basic idea of H.R. 22 is to establish regulatory regimes for the Postal Service's non-competitive and competitive products that are appropriate to the times and reflective of the differences in their commercial environments.

In the non-competitive area, H.R. 22 proposes pricing flexibility within a regulatory regime that tightens oversight in many respects. Rate changes would no longer be delayed by the need to obtain specific approval of the independent Postal Rate Commission.<sup>4</sup> Instead, every five years, the Rate Commission would establish a price index formula that limits, or "caps", the *maximum* postage rates that can be charged. The Postal Service would then be allowed to change rates at its own discretion provided the rates remained below the price caps set by the Rate Commission. Authorizing the Rate Commission to limit maximum postage rates represents an extension of regulatory controls; under current law the Rate Commission regulates only the fairness of *differences* between rates charged classes

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<sup>3</sup>John McHugh represents a rural district in upper New York State in the U.S. House of Representatives. Prior to election to Congress in 1992, John McHugh served as staff member and legislator in the unglamorous but important vineyards of state and local government. When the Postal Service urged Congress to address postal reform in 1995, McHugh eschewed the role of instant expert and invited the Postal Service, the Postal Rate Commission, and a variety of mailers, suppliers, private competitors, and scholars to offer their ideas on postal reform. Only after a year of exploratory hearings did McHugh offer his proposal for reform in June 1996.

<sup>4</sup>Under current U.S. law, changes in domestic postage rates must be reviewed by a second federal agency, the Postal Rate Commission, before implementation. The Rate Commission holds public hearings on whether the proposed rates unreasonably discriminate between groups of mailers. If the Rate Commission deems it necessary, it recommends revisions in the proposed rates to the Postal Service. The Postal Service must follow the recommendations of the Rate Commission unless the 11-member Postal Service Board of Governors unanimously decides otherwise, a rare occurrence.

of mailers. Under H.R. 22, the Rate Commission would apply price caps to four “baskets” of products: single-piece letters, bulk letters, publications, and advertisements. Dividing postal products into baskets prevents the Postal Service from satisfying the caps by charging more on a product in one basket in order to make up for revenues lost by lowering rates for products in another basket.

In the competitive area, H.R. 22 focuses on the problem of protecting competitors from unfairly low prices rather than protecting mailers from unfairly high prices. HR 22 would set limits on the *minimum* rates that can be charged: prices of competitive products must cover “attributable costs”<sup>5</sup> and make a “reasonable contribution” to overhead. By means of an annual audit of the books, the Rate Commission would confirm that the Postal Service had allocated costs to competitive products correctly. Compared to current law, the Postal Service would gain greater flexibility in setting competitive prices but lose some legal benefits which shield the Postal Service from the full effects of competition. For example, competitive postal products would be subject to the antitrust laws.<sup>6</sup> If competition develops for postal products currently classified as “non-competitive,” their status would be changed to “competitive” by the Rate Commission. To encourage greater competition, HR 22 would also establish a two-dollar price limit on the postal monopoly, subjecting a few percent of Postal Service revenues to new competition.<sup>7</sup> H.R. 22 would also allow the Postal Service to introduce new products for up to three years without review by the Rate Commission.

H.R. 22 would strengthen the powers of the Rate Commission and Postal Service management in certain respects. The Rate Commission is given new legal authority to compel the production of data from the Postal Service. The Postal Rate Commission is also given a role in monitoring and enforcing compliance with quality of service standards set by the Postal Service, although the Rate Commission is not authorized to revise these quality of service standards. Postal Service management’s authority is enhanced by authorizing the Postal Service to earn profits and to distribute them as bonuses to managers and employees, provided the Rate Commission certifies that quality of service standards are met and price caps respected.

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<sup>5</sup>“Attributable costs” refers, roughly, to costs that vary with the volume of mail carried over the period of a year. *See* Bradley, Colvin and Smith, 1993.

<sup>6</sup>Fred Smith, chairman of Federal Express, has argued that HR 22 must do more to ensure that the Postal Service is required, as nearly as possible, to live by the same laws and economic principles as its competitors when it competes with private companies.

<sup>7</sup>Unique among developed countries, the United States restricts private operator access to a “mailbox”, a privately owned box typically located on the side of a street at the point nearest a suburban residence into which mail is delivered by the Postal Service. The mailbox access restriction significantly enhances the competitive position of the Postal Service in suburban areas. Under HR 22, the Postal Service would be required to conduct a three-year experiment in allowing unrestricted access to mailboxes in three areas of the country. This experiment is designed to provide information about possible modification or repeal of the mailbox access rule. The Postal Service alternative to H.R. 22 would not include this experiment; the “minimalist” alternative would include the experiment.

## 1.2 POSTAL SERVICE: MANAGERIAL AUTONOMY

The Postal Service's idea of reform differs markedly from H.R. 22. "*What this is about,*" declared Deputy Postmaster General Michael Coughlin recently, "*is striking the right balance between the role of governance and the role of regulation, one suited to the modern communications era. It is about providing the maximum amount of freedom and flexibility to perform, while ensuring that the public interest is truly protected and well-served.*"<sup>8</sup> Put simply, reform means greater managerial autonomy for Postal Service management. Hence, when Postmaster General Marvin Runyon called upon Congress in early 1995 to enact a major postal reform bill, his list of reforms consisted only of three items in which postal management sought greater authority: wage negotiations, price flexibility, and the entry into new markets.<sup>9</sup>

The Postal Service's vision of postal reform is clarified by recalling the proximate cause of the Postal Service's call for legislation. In January 1991, the Rate Commission rejected a proposal by the Postal Service to increase the basic rate for first class letters from 25 cents to 30 cents. The Rate Commission considered that a 30-cent stamp represented too great a burden on first class mailers in view of modest rate increases proposed for printed advertisements. Accordingly, the Rate Commission held the first class letter rate to 29 cents and recommended higher rates for advertisements. Although this decision maintained the historic allocation of overhead costs between first and third class mail, the Postal Service was outraged. An outside think tank was quickly retained to articulate the case for more managerial freedom in the ratemaking process. After five months, the Institute for Public Administration declared that lack of managerial freedom "inhibits innovation and service improvement, impedes competitive performance, and is leading the Postal Service into declining financial condition."<sup>10</sup> Legislative reform was prescribed unless the Rate Commission learned to "cooperate" with the Postal Service. By late 1994, it was clear that the Rate Commission considered the level of "cooperation" sought by Postal Service management to be contrary to law and inconsistent with the public interest. So the Postal Service determined to take its case for greater managerial autonomy to Congress.

Unhappy with H.R. 22, in May 1997, the Postal Service proposed an alternative bill whose thrust would be to insulate Postal Service management from outside oversight. The Postal Service proposal eliminates the dual regulatory

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<sup>8</sup>Remarks by Michael S. Coughlin, Deputy Postmaster General, United States Postal Service, Before the Advertising Mail Marketing Association (AMMA) and Envelope Manufacturers Association (EMA) Executive Conference on Legislative Reform, Washington Airport Hilton, Arlington, Virginia (May 5, 1997).

<sup>9</sup>General Oversight of the U.S. Postal Service: Hearings Before the Subcomm. on the Postal Service of the House Comm. on Government Reform and Oversight, 104th Cong., 1st Sess., pp. 6-7 (1995).

<sup>10</sup>Institute for Public Administration, 1991, vol. 1, pp. 1-2.

structure of HR 22. Price caps would be established by legislative formula without adjustment by the Rate Commission. Unlike H.R. 22, the Postal Service would group bulk letter mail and advertisements in one basket so that price caps could be satisfied by raising rates on the one and lower rates on the other, precisely the pricing strategy blocked by the Rate Commission in 1991. The Postal Service would also gain enhanced authority to offer discounts and contract rates subject only to a vague minimum price rule that such rates must make a “net contribution to revenue” over an indefinite period of time, a test that seems to permit virtually unlimited downward flexibility before it can be invoked. The Postal Service bill also departs from H.R. 22 by leaving international mail unregulated. Rather than strengthening the Rate Commission’s investigative authority as proposed in H.R. 22, the Postal Service’s bill would allow the Postal Service to withhold data from the Rate Commission if it deems such data to be commercially sensitive. The Postal Service bill would eliminate the provision in H.R. 22 that gives the Rate Commission new authority to monitor quality of service standards and, similarly, authorizes the Postal Service to distribute profits to managers and employees without the need for Rate Commission certification of compliance with the quality of service standards or price caps. In addition to limiting the regulatory authority of the Rate Commission, the Postal Service’s bill does away with proposals in H.R. 22 to extend the reach of competitive markets and the antitrust courts; both the proposed \$2 price limit for the postal monopoly and application of the antitrust laws to competitive postal products are dropped.

In short, the Postal Service’s model of postal reform would give the Postal Service management flexibility to manage the Postal Service by freeing management from both regulatory and normal market constraints.

### 1.3 MINIMALISM: REFORM AS THE LEAST POSSIBLE CHANGE

Another model of postal reform has been dubbed “minimalism” by one of its chief proponents, Gene Del Polito of the Advertising Mail Marketing Association. The starting point of minimalism is a pessimistic view of postal politics. As Dr. Del Polito put it in a memo to his members:

No legislative reform is worth pursuing if the proposed bill has little chance of ever being executed . . . . Any bill that greatly upsets the present balance of powers between the Postal Service and the Postal Rate Commission is unlikely to win the kind of support that will be necessary for enactment. . . . [A]ny measure that disturbs greatly the balance of interests among the classes of postal users large and small will fail to pass legislative muster.

With this dour call to arms, minimalism has attracted large mailers of printed advertisements and parcels who share a desire for one particular type of reform, the possibility of discounts and contract rates for large mailers with relatively elastic demand.

Although there is no agreed minimalist proposal yet, a discussion document suggests the following provisions. Bulk letter mail, advertisements, and parcels

would be included in a single basket with all prices capped according to an inflation formula fixed by legislation, i.e., without the possibility of adjustment by the Rate Commission. The Postal Service would be allowed to provide volume discounts for large mailers provided the discounts cover attributable costs and other prices do not exceed the price caps. As in HR 22, Postal Service management could earn and distribute profits and offer new products without Commission review for three years.

#### 1.4 POST OF LAST RESORT: RESTRICTION TO NON-COMPETITIVE MARKETS

A fourth model for postal reform is reminiscent of Ockham's Razor, the philosophical principle that complications should be kept to a minimum.<sup>11</sup> If the Postal Service is viewed as a strictly public service rather than a commercial service, it could be argued that the Postal Service should provide only those services which normal commercial markets fail to provide, a last resort in a competitive economy. Viewing the post office as a service of last resort implies that the Postal Service should be removed from markets that are presently competitive—such as the parcel and express markets—and from future markets as they become competitive. Under this approach, it appears likely that the Postal Service would be phased out entirely as changing technology and business practices eliminate the uniqueness of its services.<sup>12</sup> Confining the Postal Service to non-competitive products eliminates the possibility of distorting competitive markets by cross-subsidy from monopolies markets, but it does not prevent unfair discrimination among users. Hence, the present regulatory structure would still be maintained less to oversee Postal Service rates.

This approach to postal reform has some supporters. Its main proponent has been an economist, Gregory Sidak, who has undertaken postal policy studies for United Parcel Service. As the largest parcel service in the United States, UPS is a significant “player” in the postal policy debate. Moreover, this approach gained credibility in 1996 when the Canadian Mandate Review report endorsed removal of Canada Post from the express market. The Canadian government, however, has declined to implement this recommendation. Finally, Congressman Duncan Hunter of San Diego has argued strongly for a variation of this approach, a provision banning the Postal Service from any business that it was not providing on the first day of 1994.

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<sup>11</sup>William Durand of Ockham, an early 14th century English philosopher, debunked many of the occult fancies and grandiose abstractions that weighed down philosophy and theology of the day by arguing that a plurality of entities or causes should not be assumed unnecessarily.

<sup>12</sup>Sidak argues, “In any market where private firms already provide adequate mail services, there is no need for the Postal Service. Congress should remove the Postal Service by statute from any such market, or delegate such removal power to the Postal Rate Commission, for no market failure is present that could justify government intervention, let alone intervention in the extreme form of a publicly owned enterprise.” Prepared Statement of J. Gregory Sidak Before the Subcommittee on the Postal Service of the House Committee on Government Reform and Oversight (Apr. 16, 1997) at 9-10.

## 2. POSTAL REFORM IN OTHER DEVELOPED COUNTRIES

While countries differ in traditions and cultural values, there are substantial similarities among developed countries in the public policy issues posed by economic regulation. In all developed countries, the same changes in technology are producing the same possibilities for greater efficiency and new competition. In all cases, new regulatory structures are resisted by vested interests who demand protection for existing revenues and jobs. In all developed countries, governments must choose between short term political gain and long term public benefits. Because of these similarities, a regulatory approach that works well in one country may, with appropriate adaptation, work in another. Wise men in each country are aware that there are also wise men in other countries, and they try to learn from each other. Reforms in the aviation and telecommunications sectors that were tested and proven in the United States have been adapted to the needs of other developed countries.

Cross pollination of regulatory insights is no more unlikely in the postal sector than in other sectors. Indeed, the modern national post office is a leading example of international reform by national example; reorganization of the post office by the United Kingdom in 1840 established a model copied by virtually all countries in the world. To place H.R. 22 in proper perspective one must consult not merely the alternative models under consideration in the U.S. Congress but also the alternatives which other developed countries have implemented or seriously studied.

Over the last decade, indeed, there has been a flowering of postal reform studies and proposals in other developed countries to a degree far exceeding that occurring in the United States (Ranganathan and Dey, 1996). The primary stimulus for this global outburst of postal reform activity was a four-year review of postal policy by the European Commission that led to publication of the 370-page "Postal Green Paper" in June 1992. In preparing the Green Paper, the Commission had the benefit of extensive and contrasting statements of position from many different postal administrations, private operators, users, and think tanks. While the European Union has found it politically impossible to agree on meaningful postal policy legislation at the European level, the reform movement initiated by the Green Paper has continued in legislation and legislative proposals at the Member State level, particularly in Sweden, Finland, the Netherlands, Germany, and the United Kingdom.

New Zealand and Australia have also subjected their postal policies to comprehensive review and reform (Toime, 1991 and 1993; Castro, 1995). New Zealand led the way in 1986 when the government ordered a review of postal policy; the resulting 1988 report of the Officials Committee<sup>13</sup> led to major reforms in 1989. In Australia, in 1992, the Industry Commission conducted a year-long inquiry into public and private postal services and recommended increased accountability and

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<sup>13</sup>Officials Committee, "Review of the Letter Post Monopoly" (unpub. October 1988).

reductions in the postal monopoly (Industry Commission, 1992). Many of these changes were enacted in 1994.<sup>14</sup>

These various postal reform movements have equated “reform” with several types of changes in postal policy. In general, five models of reform can be distinguished.

## 2.1 DEFINITION OF UNIVERSAL SERVICE

A leading theme of the European Postal Green Paper was that reform implied a more specific definition of the universal service postal services which Member States should ensure for the benefit of all citizens. This concept derives from the view that postal service is a “public service” provided by the state as an element in a compact of citizenship. As the Green Paper explained:

The cornerstone of the Community’s policy for the postal sector should be the universal service. The universal service required throughout the Community needs to be defined. . . . This universality implies certain more specific requirements: that the prices for the services should be affordable to all, that the service should be of good quality and it should be readily accessible to all.

The Green Paper further urged that the definition of universal service should include specific quality of service criteria: “ *It is insufficient simply to state that universal service must be provided. The quality of the universal service must also be stipulated, using whatever criteria of quality are appropriate* [page 215].” For example, a quality of service standard might declare that 80 percent of letters should be delivered by the end of the day after mailing. Quality of service standards might also include criteria for mailbox access, responsiveness of complaints, and other factors. The Green Paper called on Member States to monitor compliance with quality of service performance and publish the results.<sup>15</sup> While commenters argued for different definitions of universal service, few have questioned the premise that universal services need to be more carefully defined and monitored by governmental authorities.

New Zealand and Australia have also devoted much thought to the universal service obligations of their post offices. In 1989, New Zealand formalized its universal service obligation into a “deed of understanding” agreed between the post office and the government. The post office was allowed to close three-fourths of its retail offices, although these closures were more than offset by arrangements with private stores to sell postal services. To the dismay of rural citizens, New Zealand Post introduced an annual fee for the home delivery of mail to addressees in rural areas (discontinued in 1994). Similarly, in 1992, an Industry Commission in Australia recommended that “The Commonwealth Government more clearly specify and make public the extent of the community service obligations it expects Australia Post to satisfy [page xv].” As a result, in 1994, Australia amended its postal law to

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<sup>14</sup>Australian Postal Corporation Amendment 1994, No. 142.

<sup>15</sup>Green Paper, chapter 9, recommendation 8.1, page 252.

authorize the minister to set specific quality of service standards and to provide for an annual audit of Australia Post's compliance with those standards by the Auditor-General.<sup>16</sup>

## 2.2 LIMITATION OR ABOLITION OF THE POSTAL MONOPOLY

In European Postal Green Paper, the second major element of reform was reduction of the postal monopoly by application of the "principle of proportionality." The Postal Green Paper explained this principle as follows:

The objective is to seek the least restrictive solution that will safeguard the standard service network that provides universal service to all the citizens and organisations of the Community.

Accordingly, the European Postal Green Paper proposed two types of postal monopoly reforms. First, the postal monopoly should be capped by means of weight and price limits. Second, specific types of activities should be liberalized where monopolization has been shown unnecessary for universal service. Demonopolization of four types of activities was proposed: international mail, printed advertisements, upstream activities such as collection and sorting of mail, and document exchanges.

It now appears likely that price and weight caps for the postal monopoly laws will be agreed at European level for all Member States. Draft postal legislation accepted by the European Council in May 1997 limits the postal monopoly to items priced less than 5 times the basic stamp price and weighing less than 350 grams (12.5 ounces).<sup>17</sup> European agreement on the specific exemptions to the postal monopoly has proved more difficult. While few challenge the principle of proportionality, many argue that specific liberalizations recommended by the Commission will jeopardize universal service.

Despite being stalled at the European level, it appears that demonopolization is being pursued at Member State level. Finland (1991) and Sweden (1993) have abolished their postal monopolies entirely (Leskinen and Palmgren, 1997). In 1997, Germany announced plans to abolish its postal monopoly at the end of 2002 and to finance the costs of universal service by taxing all non-express carriage of letter mail items weighing less than 2 kilograms (4.4 pounds).

Reduction of the postal monopoly has also been considered a necessary element of reform in New Zealand and Australia. In 1989, New Zealand enacted legislation to lower the weight limit on the monopoly from 500 grams to 200 grams and reduce the price limit for the monopoly in three stages to NZ\$ 0.80, 2 times the

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<sup>16</sup>Australian Postal Corporation Amendment 1994, No. 142, sec.10.

<sup>17</sup>That is, exceeding *either* criteria would suffice to exempt an item from the postal monopoly. The carriage of items weighing more than 350 grams would be exempt from the postal monopoly regardless of whether the carrier charged more than 5 times the postage rate; similarly, if a carrier charged more than 5 times the basic stamp price, private carriage would be allowed regardless of whether the item weighed more than 350 grams.

basic stamp price. In April 1997, the government introduced further legislation to abolish the postal monopoly entirely. Similarly, in 1994, Australia lowered the weight limit of the postal monopoly from 500 grams to 250 grams, reduced the price limit of the monopoly from 10 times to 4 times the basic stamp price, and exempted addressed advertisements and outgoing international mail from the postal monopoly. In June 1997, the Australian government announced that it will undertake a further review of the remaining limits on competition with Australia Post.

### 2.3 SEPARATE REGULATORY AND OPERATIONAL FUNCTIONS

The third major element of reform identified by the European Postal Green Paper was the need, as expressed in Europe, to “separate regulatory and operational functions [page 247].” The Postal Green Paper envisioned a regulator who would ensure that the scope of the postal monopoly was consistent with the principle of proportionality and monitor compliance with specific universal service obligations:

In order to ensure that the user’s interests are best served through the impartial treatment of all operators, it is essential that regulatory and operational functions should be separated. The independence of the regulatory function will better enable it to achieve the best balance between public and private operators, and between reserved and non-reserved service providers. It will monitor the effectiveness of the reserved services, in terms of the service provider both maintaining a good universal service and meeting its other obligations. [page 247]

Indeed, in Europe, independent regulation of anti-competitive activities by the post offices has long been taken for granted because the post offices are subject to the competition laws in the same manner as private undertakings. As result, mergers and joint ventures between post offices and private companies must be reviewed by European antitrust authorities before consummation. In 1991, several European post offices and Canada Post formed a joint venture with a large private express company (TNT) to provide international express services. The European Commission approved this agreement only after insisting that it include provisions explicitly denying the joint venture any legal privileges enjoyed by the post offices. In its order approving the joint venture, the Commission specifically noted that it had considered

whether the JVC [Joint Venture Company] would benefit from certain legal privileges which are available only to postal administrations and not to private companies. These legal privileges relate, inter alia, to VAT exemptions, customs privileges, exemptions from legal liability and special provisions for air or road operations such as night flights. *To the extent such privileges would be extended to the JVC they would distort competition between the JVC and the private operators. However, insofar as such privileges continue to exist in relation to express delivery services, they cannot apply to the JVC since it will have the status of a private operator only.* In addition, the agreement now obliges the shareholders not to seek any postal privileges for the JVC in the

future.<sup>18</sup>

The European concept of separating regulatory and operational functions is closely related to what many countries call “corporatization” of the post office; that is, transforming the post office into a normal company and setting out public service requirements in a formal agreement between the government and the postal company. In his study for the World Bank, Kumar Ranganathan explains corporatization as follows:

*Corporatization . . . is the process of giving postal administrations an independent legal status and subjecting them to the same legal requirements as private firms. Thus, the entity is subject to standard commercial and tax laws, accounting criteria, labor laws, etc. More important, the explicit separation of ownership and management responsibilities (e.g., through a board of directors or other body) renders the postal service less susceptible to government influence. This process enhances managerial autonomy by insulating the postal service from noncommercial pressures and constraints. It also clearly demarcates the role of government as owner of the enterprise, which is distinct from the operation of the enterprise. Managerial and organizational autonomy does not imply complete freedom, however. The government, as owner of the corporation, continues to set sectoral policies and goals while leaving detailed planning and implementation of the service to the administration. In addition, the enterprise is subject to regulatory oversight. [page 63 (emphasis added)]*

Postal corporatization has been implemented in many countries. New Zealand launched the trend by corporatizing the national post office in 1987. In 1989, Australia did likewise. In Europe, the Netherlands led the way, transforming its post office into a stock company in 1993. In 1994 and 1995, the post offices of Denmark, Germany, Sweden, and Finland were transformed into ordinary corporations whose stock was held by the government. Although the British government, with the support of the U.K. Post Office, proposed to corporatize the post office and sell 51 percent of the shares to the public, this proposal was narrowly defeated in Parliament. In February 1997, a British postal union proposed corporatization of the post office with all shares to be held by the government; the union recognized that a necessary corollary of corporatization was establishment of an independent regulator to establish price caps for monopoly products and monitor quality of service.<sup>19</sup>

#### 2.4 PRIVATIZATION

A fourth reform strategy studied in various countries is the sale of some or all

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<sup>18</sup>TNT/Canada Post and Others, Case M-102 (Decision of 2 December 1991, pars. 54-55 (emphasis added)).

<sup>19</sup>Communications Workers Union, “Freedom to Deliver - Postage the Way to Greater Success” (London, February 1997). The newly elected Labour Government has recently announced its intention to seek greater commercial flexibility for the U.K. Post Office.

of the ownership of the post office to private parties. To date, the only major post office whose majority ownership is in private hands is the Dutch Post Office, or more precisely, KPN, the holding company which owns both the postal and telecommunications services (Ranganathan and Dey, 1996). To date, about 60 percent of KPN is owned by private shareholders with the Dutch government holding the remainder. Privatization of a portion of ownership has, however, been seriously studied in other countries such as Argentina, Germany, Sweden, and the United Kingdom.

### 2.5 EXPANSION INTO NEW MARKETS

Another model of reform under consideration in some countries is aimed less at direct improvement of postal services and more at making the post office a commercial entity less dependent on the traditional mail business. While such commercial expansion is primarily a matter for Postal Service management, it requires an implicit or explicit policy decision by the government to allow such expansion to proceed.

A few examples will suffice to illustrate the sorts of market expansion underway. The most spectacular is the Dutch Post Office. In 1991, the Dutch Post Office and four other post offices (Canada, Germany, France, Sweden) bought one half of a major international express company, TNT. In 1996, the Dutch Post Office bought out its postal partners except Sweden Post and TNT's parent company in Australia. The Dutch Post Office has also aggressively pursued extensions of its domestic postal system (Overdijk, 1997). Another pioneer in market expansion has been the French post office, La Poste. In 1986, La Poste established a holding company, Sofipost, through which it invests in joint ventures with private companies. Today, Sofipost engages in express services, banking and insurance services, freight transport, and armored car services. A late but enthusiastic convert to expansion is the German post office, Deutsche Post A.G. DPAG seems intent on becoming a leading European parcel service. DPAG recently announced that it has purchased private parcel companies in Austria, Belgium, and Poland. In addition, during the last year, DPAG has made a determined attempt to get into the banking business like many other post offices; DPAG's strategy has been aimed at acquiring a controlling interest in its former sister agency, Postbank. Many post offices—including the post offices of Canada, Finland, and Sweden—are entering various forms of electronic messaging services as a hedge against electronic diversion.

### 3. U.S. POSTAL POLICY DEBATE RECONSIDERED

H.R. 22 is thus one of several models for postal reform under consideration in the United States and these in turn comprise only a subset of the postal reform models being considered by the developed economies of the world. Table 6.1 schematically compares the American approaches to postal reform to the types of reforms being considered in developed countries generally. Based on this comparison, I would like to suggest three observations about H.R. 22 and the postal reform debate in the United States.

Table 1. U.S. and global models of postal reform

Reform models in developed countries	Reform models in the United States			
	Minimalism	USPS	H.R. 22	Service of last resort
Define and monitor universal service	No position	No definition or monitoring	Monitor	
Separate regulatory/ operational functions; corporatization	Managerial autonomy under fixed caps	Managerial autonomy under fixed caps	Dual regulatory structure; apply antitrust	No change
Limit postal monopoly: apply principle of proportionality by price, weight, function	No statutory limit	No statutory limit	Price limit (\$2)	
Privatize in part or in whole	None	None	None	
Expand into new markets: freight, express, email, banking, etc.	No position	Expand into new markets	No position	Removal from competitive markets

3.1 H.R. 22 IS PROGRESSIVE BY U.S. STANDARDS BUT TIMID BY INTERNATIONAL STANDARDS.

What is immediately striking from figure 1 is the wide gap between the postal policy debates in the United States and in other developed countries. H.R. 22 is relatively progressive and pro-competitive compared to alternatives proposed by the Postal Service and large mailers, yet it stops short of reforms which lie at the core of postal policy debates in other developed countries. Unlike reformers of other countries, American reformers are not calling for a more explicit definition of the universal services expected from the national post office. H.R. 22 proposes merely to authorize the Rate Commission to monitor Postal Service compliance with service standards set by the Postal Service itself and even this reform is opposed by the Postal Service and not endorsed by major mailers. Similarly, H.R. 22 proposes a statutory price limit on the postal monopoly equal to about 6 times the domestic stamp price. While this would be a new limit on the American postal monopoly, it is hardly stringent compared to price limits already in effect in countries such as New Zealand (2 times), Canada (3 times), United Kingdom (about 4 times), and Australia (4 times). Moreover, in other developed countries, it is common to limit the postal monopoly by weight as well as by price and to adopt legal or administrative mechanisms to ensure that the postal monopoly does not exceed that justified by a “principle of proportionality.” Indeed, total abolition of the postal monopoly is now considered a necessary ingredient of postal reform in several countries, including Sweden, Finland, Germany, and New Zealand. In the United States, none of these more pro-competitive reforms are even accorded serious discussion.

While the United States pioneered independent regulation of the national post office in 1970, the current American postal policy debate has overlooked entirely the possibility of more formal separation of regulatory and operational functions as implied by corporatization; privatization has been mentioned, but not seriously. Outside the United States, corporatization has become almost the conventional wisdom and privatization is contemplated with increasing seriousness. While H.R. 22 would extend the antitrust laws to the Postal Service's competitive products—a legal principle opposed by the Postal Service and accepted in Europe for more than 15 years—H.R. 22 does not address the many other laws that grant special treatment to the Postal Service's competitive products. While many post offices—including the U.S. Postal Service—are talking of expanding into new markets, H.R. 22 offers no legislative proposal for addressing this trend except a proposal to forbid it.

In one aspect of regulation, however, H.R. 22 might fairly claim a more sophisticated solution than evolved in other developed countries. The most important contribution of the United States to global postal policy has been development of the analytical tools independent regulation.<sup>20</sup> While postal officials decry the costs and delays associated with Rate Commission review of Postal Service rates, other developed countries are finding that they have no alternative but to adopt some form of independent postal regulation if post offices are to be held accountable to public interest standards and the criteria of competition law. As other countries consider the problem of regulation in detail, they are finding that the U.S. Postal Rate Commission has developed many reasoned, practical and transparent tools for identifying and allocating the common costs of postal services.<sup>21</sup> H.R. 22 proposes to fine tune American regulatory mechanisms by introducing a dual regulatory scheme which will, I submit, also prove interesting to countries that grant their post offices both substantial reserved areas and significant freedom to compete with private operators. Countries which choose to abolish their postal monopolies entirely will, of course, find less to learn from American postal regulation. Nonetheless, the analytical tools of the Postal Rate Commission will still be useful in considering recurring problems such as “interconnection”, “downstream access”, and “cross-subsidy.”

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<sup>20</sup>Rate Commission review does not appear to have materially inhibited development of postal services in the United States. Assuming an absence of Rate Commission review—but an alternative check on abuse of monopoly power—there is no reason to conclude that the Postal Service would have been more commercially successful in its competitive products in the 1970s and 1980s or that the United States would have enjoyed a better quality delivery services sector. In the international mail arena, the Postal Service has faced no Rate Commission review, yet it has neither shown marked innovation nor experienced great commercial success.

<sup>21</sup>Compared to the American practice, European legislation has been far less sophisticated in addressing the mechanics of regulation. *See, e.g.*, Article 14 of Common Position (EC) No \_\_\_/97 Adopted by the Council on \_\_\_\_\_ With a View to Adopting Directive 97/\_\_\_/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 (Draft of 21 April 1997) or Article 18 of the German Draft Postal Law (Draft of 8 May 1996).

### 3.2 H.R. 22 IS PROBABLY ON THE RIGHT TRACK BUT MAY BE AT THE WRONG STATION

Of the four models for postal reform now being considered in the United States, only H.R. 22 can claim affinity with the broad themes of postal policy reforms underway in other developed countries. The dual regulatory structure proposed by H.R. 22 would adapt the current regulatory scheme to the two main reform themes evident in other developed countries: more careful supervision of non-competitive services and greater flexibility in competitive markets. H.R. 22's proposal to place a \$2 price limit on the U.S. postal monopoly also reflects the movement towards reduction of postal monopolies.

Viewed against the backdrop of international postal reform, the three alternatives to H.R. 22 proposed in the United States offer little promise of sustained vitality. Outside the United States, all developed countries that have considered postal reform have concluded that they must either (i) require greater accountability from the post office or (ii) subject it to increased competition. Most are determined to do both. The Postal Service's proposal for greater managerial autonomy would do neither; the Postal Service demands reduced regulatory accountability and no increase in market discipline. It seems clear that the Postal Service's model of postal reform would be deemed unacceptable in every developed country that has undertaken a comprehensive review of postal policy in the last decade. The Postal Service's vision is unlikely to prove acceptable as the basis of reform in the United States as well.

On the other side of American postal policy debate, the idea of removing the post office from competitive markets likewise finds little support in the community of developed countries. Post offices have been too important to the history of their countries to be closed down like temporary government programs, and they employ too many persons to be consigned to a lesser chance of survival than their private competitors. If post offices are willing to compete with private operators on fair and equal terms, it is hard to believe that governments will deny them a "fighting chance" to adapt to a competitive world.

Minimalism has an air of *realpolitik* in an exclusively American context that fades rapidly when viewed from a broader international perspective. No developed country that has studied postal policy seriously has settled for the sorts of minor changes envisioned by minimalism. Minimalism fails to appreciate the fundamental nature of the forces reshaping the delivery services sector or the extent of legal reform needed to cope with these new forces.

While H.R. 22 may be the right track, the global postal reform movement suggests that it may not yet be the right station. Even if reform of a major post office requires more than one legislative step, H.R. 22 may not go far enough. When H.R. 22 is compared to reform in other developed countries, several missing pieces suggest themselves. First, it may prove necessary to grant the U.S. government or the Postal Rate Commission authority to specify minimum levels for the universal service obligation. Second, a larger reduction in the postal monopoly may be

desirable. Third, it seems obvious that corporatization of some or all of the Postal Service's functions should be considered, possibly as a prelude to partial privatization; indeed, some scholars have argued that privatization of a portion of the Postal Service will be necessary to make price caps work.<sup>22</sup> Fourth, a legal framework is needed to govern the provision of non-postal goods and services. Before postal reform is finally adopted in the United States, it seems likely that Congress will have to look down the path of reform further than suggested in H.R. 22 and find a rationale for the length of the first stage of reform.

### 3.3 THE POVERTY OF THE POSTAL POLICY DEBATES IS DUE LARGELY TO AN ILL CONSIDERED EMPHASIS ON MANAGERIAL AUTONOMY IN THE POSTAL REORGANIZATION ACT OF 1970

The impoverished state of the postal reform debate in the United States requires a more basic explanation than the failings of the current participants. I suggest that the consideration of postal policy in the United States has been seriously handicapped by a fundamentally misguided emphasis on managerial autonomy that derives from the Postal Reorganization Act of 1970, the law that replaced the Post Office Department with the Postal Service.

An analysis of the 1970 act by Professor John Tierney concluded that “*The reorganization of the Post Office Department in 1971 was, above all else, an effort to increase the managerial autonomy of the mail agency.* [page 1]” The central role of postal management in developing the 1970 act was described by Prof. Tierney as follows:

*the whole postal reform movement was essentially an attempt to secure managerial autonomy—independent authority to decide about financing, personnel, services, and other basic policy matters. Thus, from the time of its earliest conception with the department itself, the reorganization plan was vigorously supported by the highest reaches of the postal bureaucracy—a prominent vantage point from which the basic outlines of the reorganization idea were drafted and coalitions built supporting it.* [Page 24]

The formal blueprint for postal reorganization was developed by a special high level committee appointed by the president. This committee was dominated by chairmen and chief executives of large companies; it was chaired by Frederick Kappel, retired chairman of AT&T, a regulated private company which monopolized the telephone service in the United States. Unsurprisingly, the “Kappel Commission” sympathized the Post Office's call for managerial autonomy: “*Although the Post Office is one of the nation's largest businesses, it is not run as a business but as a Cabinet agency of the United States Government.* [page 1]” Accordingly, the Kappel Commission proposed a Postal Service directed by a board consisting of 6 part-time directors appointed by the President and 3 Postal Service officers. Aside from the

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<sup>22</sup>Prepared Statement of M.A. Crew and P.R. Kleindorfer Before the Subcommittee on the Postal Service of the House Committee on Government Reform and Oversight (April 16, 1997) at 3-4.

ability to appoint one part-time board member every year, the U.S. government would have virtually no control over Postal Service management.

The reform plan produced by postal management and the Kappel Commission is a management plan; it is not an exercise in what the American founding fathers called the “science of politics.” The government of the United States is founded on a deep distrust of unchecked official authority.<sup>23</sup> In contrast, the Kappel Commission proposed a government agency with a vast legal monopoly and police authority but virtually no outside check on its power. According to the Kappel Commission’s plan, postage rates should be reviewable only by a congressional resolution rejecting new rates *in toto* within 60 days of proposal by the Postal Service. The Kappel Commission dismissed the idea of an independent Rate Commission checking the power of the Postal Service because “*regulation of a Government-owned Postal Corporation by such an agency would be anomalous.* [page 61]” Although Congress ultimately insisted upon the establishment of an independent Postal Rate Commission, the Postal Service retained unchecked authority in other key policy areas: authority to establish and monitor standards for universal services, authority to adopt legally binding regulations, authority to define the scope of the postal monopoly,<sup>24</sup> and authority to negotiate and conclude international agreements on behalf of the United States.

Since the thrust of the 1970 act was to maximize managerial autonomy, no executive department was vested with responsibility to review the Postal Service’s exercise of governmental authority or to recommend improvements in postal policy. There is no office in the U.S. government that corresponds to the offices responsible for drafting reform proposals in other governments—e.g., the Telecommunications Directorate (DG XIII) in the European Commission, the Ministry of Posts and Telecommunications in Germany, the Department of Trade and Industry in the United Kingdom, and the Ministries of Communications in New Zealand and Australia. Since 1970, there has been no significant study of postal policy by the executive branch of the U.S. government. By the same token, Postal Service management has for a generation been raised in the idea that “postal reform” begins and ends with managerial autonomy.

H.R. 22 is closer in spirit to postal reforms in other developed countries because McHugh has, like officials in other governments, approached postal reform as an exercise in government rather an exercise in management. In this sense, H.R. 22 may be seen as a return to an American tradition of government by checks and

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<sup>23</sup>As Alexander Hamilton wrote in Federalist Paper No. 9: “The science of politics . . . has received great improvement. . . . The regular distribution of power into distinct departments; the introduction of legislative balances and checks; the institution of courts composed of judges holding their offices during good behavior; the representation of the people in the legislature by deputies of their own election: . . . They are means, and powerful means, by which the excellences of republican government may be retained and its imperfections lessened or avoided.”

<sup>24</sup>The Postal Service claims broad legal authority to define the scope of the postal monopoly; however, the extent of such authority is an unsettled point of U.S. law.

balances and a necessary antidote to an ill considered emphasis on managerial autonomy in the Postal Reorganization Act of 1970.

#### 4. CONCLUSION

For many in the United States, calling for postal reform legislation is no more likely to produce results than calling for mythical gods to intervene in the affairs of man. Skeptics argue that the postal business is too large and bound up with vested interests to reform and have urged Congressman McHugh to pare back the provisions of H.R. 22. Yet all developed countries share a similar postal tradition and face essentially the same economic and political problems in adapting their post offices to new technologies and changing demands. In light of policy judgements made by developed countries with more experience in postal reform, H.R. 22 appears reasonable and modest, perhaps too modest. As its appreciation of the underlying issues deepens, Congress may conclude that adapting the Postal Service to the next century requires a bolder step from the status quo than proposed in H.R. 22.

# 2

## Statement to the President's Commission on the United States Postal Service (2003)

### EXECUTIVE SUMMARY

This statement addresses several topics which appear pertinent to the President's charge to the Commission to articulate "a proposed vision for the future of the Postal Service" and the "legislative and administrative reforms needed to ensure the viability of postal services." My statement is divided into three parts as follows.

*Regulatory reform issues.* First, I consider issues of regulation and economic policy. I support the President's focus on the long term because I believe the Postal Service today faces challenges as far reaching as those posed by the first industrial revolution in the mid-nineteenth century. I summarize policy trends which provide the context for reform of long term postal policy: deregulation of the U.S. communications and transportation infrastructure, reevaluation of government sponsored enterprises, and postal reform in other countries. Finally, I suggest an outline of regulatory framework options for the U.S. delivery services sector of the future.

*Postal policy issues.* Second, I review the history and key features of several topics central to postal law and reform: universal service, the postal monopoly, rate regulation, "the business model," the idea of a level playing field between the Postal Service and private companies, and international postal policy.

*Postal reform.* Third, I consider the timing and strategy of postal reform. I believe that fundamental postal reform is urgently required in light of the pace of change and length of time it will take to reform the Postal Service. However, defining a final regulatory framework for postal services in the twenty-first century in seven months seems unrealistic. I therefore encourage the Commission to recommend measures that will permit the regulatory framework to evolve in fundamental ways while retaining the basic foundations of current institutions: the government-owned Postal Service, the universal service obligation, and the postal monopoly. To illustrate this approach I outline several possible steps: corporatizing

the Postal Service while retaining government ownership; reestablishing the Postal Rate Commission as a more definitively regulatory body; authorizing the Postal Rate Commission to implement and refine the current statutory universal service obligation; retaining and recasting the postal monopoly in simpler, less extensive terms; permitting appropriate flexibility in ratemaking; authorizing the Postal Rate Commission to review economic aspects of international postal conventions; and creating an office of delivery services policy within an Executive Department.

## 1. INTRODUCTION

It is an honor and a pleasure to appear before the distinguished members of the Commission. This statement presents my personal views only. It is based on my experience in efforts to reform postal laws in the United States, Europe, and other countries during the last twenty-five years. Since 1995, I have been involved in initiatives to reform American postal policy, and at various times, I have advised private express companies (principally Federal Express), the Postal Service, the Postal Rate Commission, and Republican and Democratic staff of the House Committee on Government Reform. I am not presently employed in any significant capacity by any member of the U.S. postal community.

The purpose of my statement is to offer a survey of topics which appear pertinent to the tasks assigned the Commission. In each case, I try to call to the attention of the Commission salient points which are likely to escape mention or highlight in statements of others. At the end, I suggest an approach to postal reform based on the introduction of flexibility in the regulatory framework rather than establishment of a new permanent institutional framework. To illustrate this strategy, several possible steps are described.

I thank the Commission in advance for consideration of my statement and for its efforts to advance national policy for this important and often underappreciated sector.

## 2. REGULATORY POLICY ISSUES

### 2.1 THE LONG VIEW

The Executive Order instructs the Commission to take a long view on reform of the United States Postal Service: to determine “the role of the Postal Service in the twenty-first century and beyond.” I agree that a long term perspective is necessary and appropriate at this time, one that looks both backwards and forwards.

At the outset, respect for the Postal Service as a national institution demands a long view backwards. For over two centuries, the post office has been one of the most important programs of the federal government, a vital medium for the social life and commerce of the nation, and an employer for millions of Americans—an “enlarger of the common life,” as historian Wayne Fuller has aptly declared. Without an appreciation of this long history, postal policy is unintelligible.

A long view forward is necessitated by the extraordinary nature of the times facing the Postal Service. In addition to once-in-a-generation organizational issues,

the Postal Service is faced with the unfolding implications of a still rarer and more fundamental shift in the nature of the communications market, a second industrial revolution impelled by increasingly sophisticated use of computers linked by modern telecommunications. In 2001, for the first time in its 122-year history, the *Statistical Abstract of the United States* placed postal data in the *transportation* section rather than the *communications* section. For the Postal Service, the future will not be like the past. Since basic reform of an institution as large as the Postal Service will take many years to implement, policy decisions of today must anticipate commercial and technological developments over the next decade or two.

The last occasion on which the national post office faced a comparable challenge was in the 1840s, when the steam-powered railroads and ships of the first industrial revolution slowly but inexorably rendered irrelevant what was then the basic mission of the Post Office, transportation of letters and newspapers between cities by contracting for relay stations and the riders and stage-coaches who moved between them. At the beginning of the twenty-first century, the harbingers of change are surprisingly similar to those that appeared in the 1840s: stagnating mail volumes, concerns about long term postal finances, introduction of new technologies, and the rise of great private express companies. In the 1840s, the first wave of reform—the “cheap postage” movement— failed to apprehend and respond to the deepest currents of the time. In retrospect, it is apparent that the most important implication of the first industrial revolution was not reduction in the cost of long distance letter transmission but the shift from transportation to delivery as the core function of the national postal system. Today, likewise, undue emphasis on immediate measures may respond inadequately to fundamental trends.

## 2.2 DEREGULATION OF THE U.S. COMMUNICATIONS AND TRANSPORTATION INFRASTRUCTURE

The Postal Service does not operate in a vacuum. It is one actor, albeit the largest, in a sector that includes large and small private express companies; delivery services for newspapers, parcels, pizzas, and other goods; a variety of messenger services; and diverse sorters, consolidators, and forwarders. The delivery services sector, in turn, is a component of the national infrastructure of communications and transportation services that facilitates production and consumption of virtually all other goods and services and makes possible much of the exchange of knowledge and sentiments among citizens.

Since the late 1960s, improvements in technology have reshaped the national and international infrastructure of communications and transportation services. Resulting changes in commerce stimulated, and have been further stimulated by, a wholesale revision of the federal laws that governed such services since the 1930s and before. Evolution of the communications and transportation infrastructure and its regulatory framework over the last twenty-five years serves as the necessary starting point for reconsideration of long term postal policy. For this reason, it is worthwhile to review briefly regulatory reform in three sectors closely related to the postal system: aviation, telecommunications, and express.

“Deregulation” of the U.S. airline industry in the late 1970s came about because of the increasing disparity between improvements in aviation technology, on the one hand, and the inefficient output of a too-protected and over-regulated airline system, on the other. Introduction of commercial jet aircraft in the 1960s substantially reduced costs of long distance travel, yet instead of falling prices, regulatory protection of incumbent airlines led to excessive service competition, including empty seats, free drinks, and fashion shows. Even on short haul routes, low cost intrastate carriers in Texas and California demonstrated how inefficient the national airline system had become. Economic studies cast doubt on the claim of incumbent airlines that allowing new entry in major routes would jeopardize service to small towns. As a result, in 1978, after four years of deliberation, Congress began the process of deregulating most of the national airline system. At the same time, federal protections for small town service were increased.

Deregulation of long distance telephone service was likewise stimulated by technological advance. As in the aviation industry, better technology lowered the cost of long distance service while prices remained high. But high prices in long distance telecommunications markets did not translate into service competition since one company, AT&T, was the sole carrier. Instead, high prices generated funds which AT&T used to subsidize low rates in local telephone markets. The extent of this cross-subsidy was unclear, but the specter of higher local telephone rates thwarted reform legislation. Then the courts stepped in. By the 1960s, microwave technology had reduced the cost of bulk long distance telecommunications services and created opportunities for new entry. In a series of decisions in the 1970s, the courts forced a reluctant Federal Communications Commission (FCC) to allow microwave operators to compete in the long distance telephone market. In 1984, the courts ordered AT&T to divest its local telephone companies because AT&T was using control over “local loops” to handicap competitors in the too-lucrative long distance market. As the D.C. Circuit of Appeals said in explanation of judicial intervention: “The ultimate test of industry structure in the communications common carrier field must be the public interest, not the private financial interests of those who have until now enjoyed the fruits of de facto monopoly.” With entry barriers down, several new long distance telephone companies emerged. Nevertheless, the FCC continued to subject AT&T to strict regulatory controls for so long as AT&T retained the market power to set rates without fear of competition. In 1995, the FCC ruled that AT&T had become “non-dominant” and could be treated like any other long distance telecommunications carrier.

Deregulation of private express services followed a roughly similar path. In the early 1970s, Federal Express married the possibilities of falling aviation costs with improvements in computing and telecommunications to create a new type of hub-and-spoke cargo airline dedicated to the rapid and reliable distribution of parcels and spare parts. At the international level, couriers such as DHL did likewise, using the expanded cargo capacity of jumbo jet aircraft and (originally) the international telex system. These efforts ran afoul of both aviation and postal laws. Federal Express could not expand to larger, more efficient aircraft because federal aviation

regulation protected existing cargo airlines and their antiquated point-to-point services. Neither Federal Express nor DHL could transport urgent business documents because the Postal Service claimed that the postal monopoly prohibited such services even though the Postal Service itself offered no comparable service. In 1977, Congress, as precursor to general aviation reform, deregulated air cargo service. In the same year, a joint presidential-congressional commission, the Commission on Postal Service, recommended modification of the postal monopoly to permit private carriage of urgent documents. The Postmaster General darkly predicted billions of dollars in losses if urgent letters were excepted from the monopoly. Nonetheless, in 1979, the Postal Service, under pressure from Congress, adopted a regulation demonopolizing express letter delivery services.

Each of these steps encountered fierce resistance from incumbent service providers. In each case, it was argued that competition would jeopardize the existing satisfactory pattern of national service. Each reform took many years to accomplish. Yet in each case, reduction in regulatory control and increased competition yielded enormous economic benefits in ways not fully foreseeable at the time. Aviation and telecommunications services are more extensive, more efficient, and more innovative than they would have been under earlier modes of regulation. Private express and parcel services have blossomed to such an extent that it is difficult to imagine the modern American economy without them. What Fred Smith of Federal Express presciently termed “the symbiotic relationship between improved information management systems and modern logistics systems” has yielded a general decrease in the costs of manufacturing and retailing. An explosion in direct marketing has broadened the range of products available to citizens and expanded marketing opportunities for specialized producers.

These regulatory reforms have not been wholly painless. Managers have been forced to learn new skills or give way to others. Overstaffed units have been slimmed down, and excess workers retired or shifted to other jobs. In some cases, small towns have felt poorly served. With the benefit of hindsight, it is possible to imagine measures that could have mitigated these problems. The bottom line, however, is that virtually no one today would urge a return to preexisting regulatory controls.

Deregulation, better termed “regulatory reform,” has been the most important development in national policy towards the communications and transportation infrastructure since the Postal Reorganization Act of 1970. It has been a significant factor in the economic prosperity of the country during this period. While the postal sector may be different from other communications and transportation industries, it is difficult to believe that a new long term national policy towards postal services can be devised without taking into account lessons from the deregulation movement.

### 2.3 GOVERNMENT SPONSORED ENTERPRISES

Another pertinent long term trend in governmental policy has been an evolution in thinking at home and abroad towards government sponsored enterprises (GSEs).

A survey of the American experience with GSEs is provided in Appendix T of the *Transformation Plan*. Of the case studies described, the most relevant to the Postal Service are GSEs providing transportation or communications services: Conrail, Amtrak, and Comsat. Conrail and Amtrak, in particular, offer contrasting examples of how to adjust governmental policy towards an industry with substantial sunk costs and declining business due to a shifting technological and commercial environment. The persistent problems faced by government-run Amtrak, compared to the relative success of privatized Conrail, strongly imply that government-style decision making could prove inadequate to a transformation such as that facing the Postal Service. These stories also underscore the time and effort needed to effect sector reform in a declining industry. In the case of Conrail, it took five major acts of Congress over a sixteen-year period. Then, too, it could be argued that the relative excellence of passenger rail service in other countries suggests that the United States, the world leader in railroad service for a century, might have managed the transformation of the passenger rail system more successfully. The history of American GSEs seems to reflect lost opportunities as well as successes.

In assessing the possibilities and perils of GSE reorganization, it is also appropriate to look to foreign experience. Reform of government enterprises is more common outside the United States for the simple reason that government enterprise has been the exception rather than the rule in the U.S. Outside the United States, governments have been steadily relinquishing direct control of the “commanding heights” of the economy. The vitality of this global trend was recently impressed upon me in working with the government of Jordan to reform its post office as part of a broader program to privatize and reform all government enterprises.

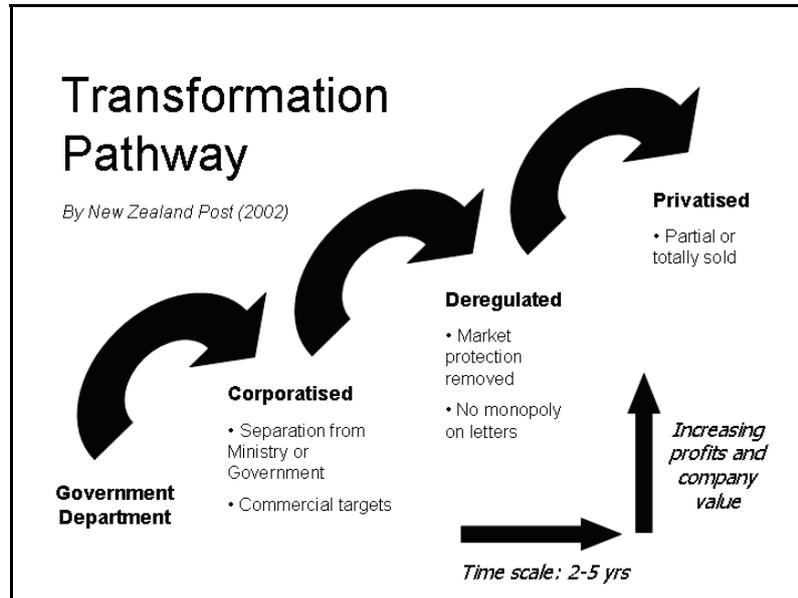
Both domestic and foreign experiences with GSE reform are reflected in reform of Comsat and Intelsat, also described in the Appendix T. In brief, Intelsat was created in 1964 as an intergovernmental cooperative to provide international satellite services. Comsat, the U.S. participant, was established as a private company with a monopoly on access to Intelsat’s services. As satellite and telecommunications technologies developed, the United States and other nations concluded that a government-based approach, although necessary in the beginning, had become too slow and restrictive. In 2000, Congress adopted legislation to privatize Comsat and essentially force privatization of Intelsat by threatening to bar access to the U.S. market.

The overall trend is one of growing skepticism about the viability of government enterprise as a way of managing economic activity and supplying necessary infrastructure services. These insights, as well, must be considered in developing a new long term policy towards the postal sector in the U.S.

#### 2.4 POSTAL REFORM IN OTHER COUNTRIES

As the Commission is aware, several other industrialized countries have proceeded further down the road of postal reform than the United States. This international movement began about 1988. In several cases, foreign governments have produced thoughtful formal reports on long term postal policy roughly

Figure 1. Transformation pathway for post offices (NZ Post, 2002)



comparable to that asked of the Commission. In particular, I have been impressed with reports from New Zealand (1988), the European Union (1992), Australia (1992, 1998), and the U.K. Postcomm's analysis of entry reform (2001).

In other industrialized countries, postal reform is moving towards greater commercial flexibility for the national post office, reduction or elimination of monopoly protection, and separation of commercial and governmental functions, including privatization of ownership in some cases. In every country, universal postal service is defined and ensured in some manner. This international movement and its implications for U.S. postal policy lessons rightly permeate much of the analysis presented in the *Transformation Plan*. See Appendices H (international experience) and U (universal service and monopoly in other countries). Figure 1 presents a graphic summary of the "transformation pathway" for post offices prepared last year by one of the leaders in the postal reform movement, New Zealand Post.

While an appreciation of the general course of reform in other countries is useful, the most instructive lessons emerge from a comparative study of differences in approach. Three strategies towards reorganization of the post office may be discerned, combined in different degrees in different countries.

*Commercial flexibility.* One approach to postal reform focuses on commercial flexibility: that is, to what extent can postal executives manage their activities in the same manner as other commercial concerns? Commercial flexibility tends to be the perspective of postal officials and businessman called in to advise the government. Today, postal managers increasingly find themselves in competition with private companies, yet legal restraints prohibit them from conducting business like managers of private companies. "Commercial flexibility" implies greater latitude for postal managers. Calls for more commercial flexibility must be weighed against the "universal service obligation." In many cases, for reasons of public policy,

governments have deliberately limited the authority of postal managers to reduce services to rural areas or give discounts to the largest mailers.

*Separation of governmental and commercial functions.* A second approach to postal reform emphasizes separation of governmental and commercial functions. This is a more legalistic or governmental approach. The objective is not so much to give the postal services sector the same commercial flexibility as a normal market as it is to ensure that the exercise of governmental power is not infected with commercial interest. To this end, governmental functions and privileges formerly vested in the post office are administered by an independent regulator, whose decisions are, in theory, uninfluenced by concern for the commercial fortunes of the post office. The regulator distributes the privileges and obligations of the postal sector to all participants in the sector in a manner calculated to serve the public interest, typically by means of a licensing scheme. The regulator may permit postal operators more or less commercial flexibility. The regulator could, for example, require all postal operators to maintain certain universal services, to comply with accounting rules, and to contribute to a universal service fund.

*Privatization.* A third approach to postal reform is privatization. If commercial flexibility is the businessman's reform, and separation of functions is the lawyer's, then privatization is the economist's. Only privatization creates "residual claimants" (shareholders) motivated by self interest to ensure that the company is managed in the most efficient manner. No governmental organization can provide the same ultimate institutional incentives. Privatization is related to, but distinct from, other approaches. A post office may be privatized but not granted the commercial freedom of a normal company. Likewise, a privatized post office may retain a degree of governmental authority, such as a monopoly over the carriage of letters and an obligation to provide universal service.

Postal laws in leading reform jurisdictions manifest different mixes of these philosophical ingredients. Australia and the Netherlands, for example, have granted their post offices substantial commercial freedom without wholly repealing monopoly privileges or strictly separating commercial and government functions. However, in the Netherlands privatization of roughly 60 percent of ownership has given the post office a less governmental status than in Australia, and the Dutch regulator has recently called for repeal of the monopoly. In Germany, the post office, also partially privatized, has been given substantial freedom to conduct business outside the postal sector but only limited freedom to modify universal postal service. The German postal monopoly has been substantially reduced and is scheduled for elimination at the end of 2006. In contrast, the United Kingdom has placed the process of demonopolization in the hands of a strong, independent postal regulator, the Postal Services Commission ("Postcomm"). The U.K. legislation emphasizes strict separation of commercial and governmental functions. The postal monopoly is replaced by a licensing scheme in which the regulator has broad discretion to fashion conditions to ensure universal service. Postal reform in Sweden, which abolished the postal monopoly in 1993, is similar to the British law but less fully developed. Still another approach is evident in New Zealand where the law has

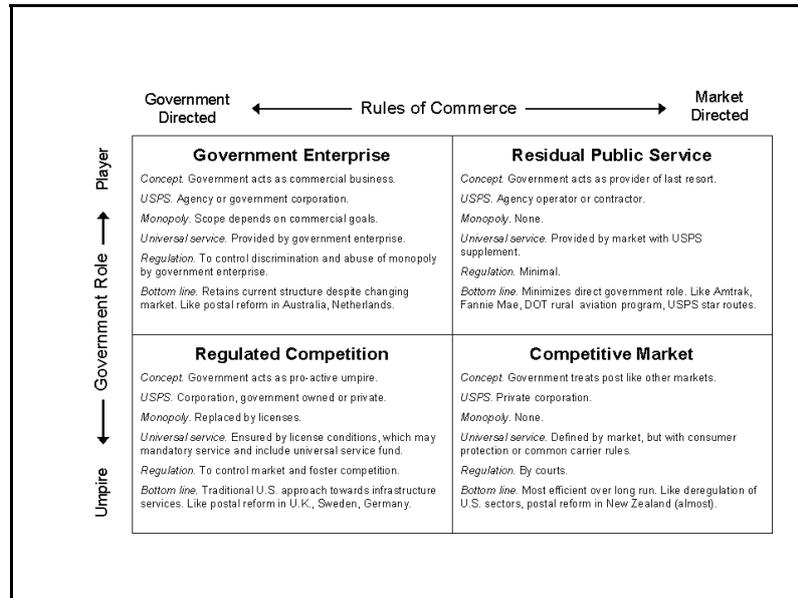
moved furthest towards treating the postal sector like any other commercial activity. In New Zealand, there is no postal monopoly, no regulator, and no statutory universal service obligation, but all postal operators are required to observe legal provisions designed to protect consumers. Differences between these approaches are significant. Some are wiser or more viable than others. Some are better adapted to American legal and commercial traditions than others. Overall, I suggest aspects of the British, German, and New Zealand laws deserve particular study.

## 2.5 REGULATORY FRAMEWORK OPTIONS

Technological and policy developments since 1970 thus imply a range of possibilities for long term national policy towards the Postal Service and the delivery services sector. Chapter 3 of the *Transformation Plan* addressed this subject by focusing on the Postal Service as an institution. It described three organizational models for the post office of the future: government agency, commercial government agency, and privatized corporation. In my view, however, before considering the organization of the post office, one must consider more basic questions of government policy. Government will determine the rules of commerce for the delivery services sector. Should the rules shape the sector to serve public interest requirements or allow the forces of competition free play? Government also inevitably appears on the field of play, but should its role be that of active player or neutral umpire? Answers to these two questions imply four general approaches to the regulatory framework of the sector: (i) government enterprise, (ii) regulated competition, (iii) residual public service, and (iv) competitive market. See figure 2.

*Government enterprise.* If a normal competitive market will not produce delivery services fully consistent with the social and economic needs of the country, then government can impose special rules on the sector such as a “universal service obligation” and a “uniform rate” requirement. Moreover, government can fulfill these requirements itself by establishing a government enterprise in one of several legal forms: an executive department, an independent agency, or a government-owned corporation. This is the historic approach towards the postal sector in the United States. A government enterprise operating in a market partially serviced by the private sector necessarily implies a government monopoly or other legal privileges. If the mission of a government post office were to compete with the private sector on precisely equal terms in all activities, then the post office would behave no differently than a private company and no public purpose would be served by government involvement. Legal privileges allow the government post office to provide services to some mailers at non-compensatory rates that would otherwise be unavailable. Losses can be funded from monopoly rents charged other mailers, from the monetary value of other legal privileges (such as exemption from taxes), and from additional funds supplied from general revenues. “Universal service” is the politically determined scope of the government enterprise’s mission. In this model, the purpose of regulation is to prevent abuses of authority by the financially interested government post office.

Figure 2. Alternative regulatory frameworks for the delivery services sector



Within the general framework of government enterprise, a variety of specific scenarios may be imagined. As suggested in the *Transformation Plan*, the Postal Service could concentrate on “a uniformly priced, homogenous letter mail delivery service” (government agency) or adopt a more aggressively commercial approach with broad flexibility to modify prices and service (commercial government enterprise). Another variation, proposed by Representative John McHugh, would be to limit the Postal Service proper to traditional postal services and authorize the Postal Service to set up an arm’s length corporate subsidiary to engage in non-postal activities. Or, as indicated in the New Zealand Post’s transformation pathway (figure 1), the Postal Service as a whole could be transformed into a normal corporation and, within limits, authorized to operate like a normal company. Under any of these scenarios, the level of the postal monopoly and other legal privileges could be set higher or lower than current law. Similarly, regulation of the government post office could be more or less strict than at present.

Among industrialized countries that have modernized their postal laws, Australia offers an example of a national post office that is still largely directed by government for governmental purposes, although Australia Post operates with a significantly smaller monopoly and universal service obligation than the Postal Service (see the discussion of postal monopoly, below). The post offices of Germany and the Netherlands likewise have monopoly privileges and substantial universal service obligations, but these rights and obligations appear to be transitional steps on the way to a more open, demonopolized environment.

*Regulated competition.* If government imposes special rules on the sector but confines its role to that of umpire, the result is regulated competition. In the United States, outside the postal sector, government regulation of private sector competition was the usual means of ensuring that communications and transportation services met public interest after creation of the Interstate Commerce Commission in 1887.

Although economic regulation by the government has been greatly reduced by the “deregulation” movement of the last twenty-five years, it has not been eliminated entirely. One could imagine such a traditional regulatory approach in the delivery services sector. “Were the postal system being started today,” wrote the Kappel Commission in 1968, “it might well be operated by a privately-owned regulated corporation not unlike the companies which operate other communications and transportation services.”

In a system of regulated competition, the Postal Rate Commission could be, for example, empowered to license carriers to provide delivery services for letters weighing less than 12 ounces and priced less than \$2.00. To protect universal service, the Postal Rate Commission could be authorized to regulate rates by dominant carriers and attach conditions to licenses to ensure continuation of affordable, reliable, and non-discriminatory services in and out of the licensed area. Licensees might be required to contribute to a universal service fund to underwrite the cost of non-compensatory universal services ordered by the Commission. Under this approach, the universal service obligation would become a requirement imposed on the sector as a whole rather than a mission assigned to a single government enterprise. The postal monopoly would be replaced by the system of licenses, and after a long or short period of transition, the Postal Service would be treated like any other operator. In such a regulatory scenario, it would be reasonable to restructure the Postal Service as a normal corporation, possibly owned partly or wholly by members of the public or postal employees. Regulated competition is the regulatory model adopted, in some cases after still incomplete periods of transition, in the postal laws of Germany, Sweden, and the United Kingdom.

*Residual public service.* If most postal services will be produced satisfactorily by the market, then the role of the government could be limited to provider of last resort. The Postal Service could provide “fill-in” delivery services required by the public interest but not provided by the market. A postal monopoly would be unnecessary since by definition the role of government would be to do what the private sector does not. Where services are offered at less than compensatory prices, the revenue shortfall could be funded from general revenues or an excise tax on the sector. In this model, the role of government is similar to that originally envisioned for Fannie Mae, created to serve as a dealer in household mortgages shunned by private financial markets. Similarly, Amtrak today provides passenger railroad services largely abandoned by private railroads. Alternatively, the government might use contracts with private companies to supply residual public services. For example, the essential air service program introduced by the Airline Deregulation Act of 1978 is a federal program of contracts with private airlines to provide rural airline services. Likewise, the Postal Service manages a network of private contractors to provide delivery service in rural areas (“star route” carriers). As private sector delivery services or suitable electronic substitutes expand, the government’s role under a residual public service approach should logically diminish.

*Competitive market.* A fourth approach to regulation would be to treat delivery services like any other competitive market, regulated by laws that govern business

conduct generally. In the post-deregulation era, this is the regulatory model adopted for most transportation and many communications activities. Under such an approach, the Postal Service would be transformed into a normal corporation owned by private shareholders. There would be no universal service obligation imposed on the sector, but carriers could be required to conform to consumer protection or common carrier provisions. For example, carriers might be required to stamp all letters and parcels to indicate the date and time of collection and the identity of the carrier. In this way, an addressee could ascertain which company to hold responsible for late delivery or damaged goods. Such rules would be enforced by the courts or, perhaps, by a quasi-judicial regulatory agency. As noted above, among industrialized countries, New Zealand comes the closest to treating the postal sector as an ordinary competitive market, although New Zealand Post is still owned by the government.

### 3. POSTAL POLICY ISSUES

#### 3.1 UNIVERSAL SERVICE

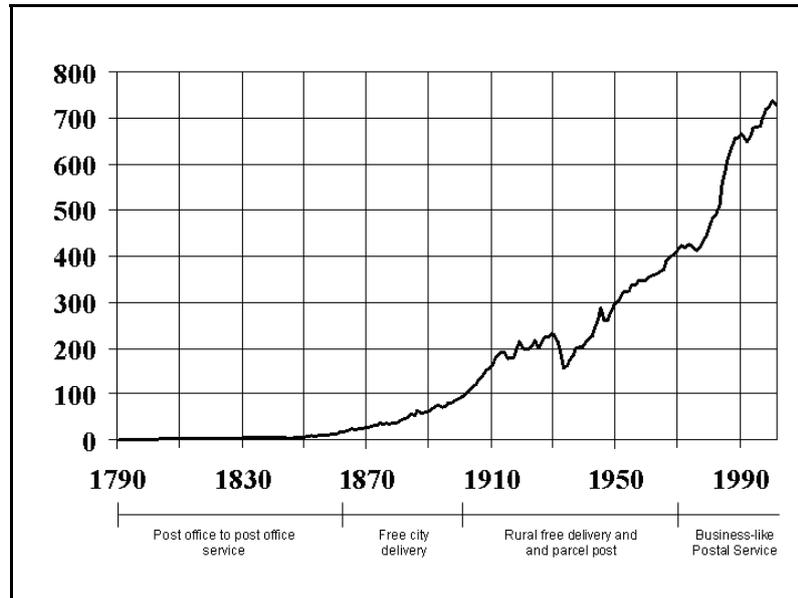
The concept of *universal service* is deeply embedded in current postal policy discussions. Policy advocates often rest their arguments on the premise that maintaining the present pattern of universal postal service should take priority over all other considerations. In evaluating the role of universal service in the future, it is helpful to understand how postal service in the United States has evolved.

A quick sense of the development of national postal service may be obtained by considering the growth in the number of mail items per capita transmitted by the national post office each year since 1790. Annual mail volume per capita has risen dramatically but unevenly. Annual mail volume did not reach 10 items per person until the 1850s and did not exceed 100 items per person until the beginning of the twentieth century. Annual mail per capita was 737 items in 2001, but the mass mail volumes that characterize modern postal service did not develop until after World War II. See figure 3 (based on my rough estimates of mail volume prior to 1886).

Looking behind these numbers, it may be seen that over two centuries there has been no set of services permanently associated with the national post office even as an ideal. As the needs of the nation have changed, Congress has continually revised the mission of the post office and the attributes of its national service. Four basic missions may be discerned, each being added on to preexisting missions.

*Post office to post office service*. In pre-industrial times, the Post Office operated what we today might call an intercity express transport service. It provided regular transmission of letters, newspapers, and other items between city post offices by contracting with private individuals and companies for the establishment of lines of “posts” or relay stations that served traveling foot messengers or horse riders. Messengers or riders carried letters in a locked pouch or “mail.” Newspapers were at first carried “outside the mail” on a space available basis. Postage was paid by the addressee, not the sender. The Post Office did not collect or deliver letters and newspapers or offer local intracity service; these were not “postal” services. In the

Figure 3. Estimated annual mail per capita, 1790-2001



early democracy, the primary public purpose of the Post Office was to provide an inexpensive means for national distribution of newspapers. Postage rates for letters were so high as to be inaccessible for ordinary personal and business correspondence.

In the 1840s, this network of postal relay stations was sorely tested by the emergence of railroads and steam boats. In the age of steam, anyone could board a train with a satchel full of letters and transport them from city to city as fast as humanly possible. Suddenly there was no need for a laboriously maintained line of posts joining towns along a “post road.” Many persons did in fact board railroads and steamboats with satchels of letters, and the first private express companies were born. Their progeny include companies like Wells Fargo and American Express. More importantly, as the private expresses demonstrated, technological advances had sharply reduced the cost of long distance postal transmission. In England, a far-sighted reformer named Rowland Hill advocated low uniform postage rates for letters prepaid by means of “postage stamps.” The English postal law of 1840 revolutionized the concept of a national postal service and was copied around the world. Americans followed the English reforms closely. Petitions for “cheap postage” deluged Congress. In acts adopted in 1845 and 1851, Congress reduced postage rates for letters from 50 to 88 percent or more (depending on distance and weight), and the Post Office became a national medium for exchanging correspondence.

*City delivery service.* The basic mission of the Post Office remained post office to post office service until 1863 when “free city delivery” was introduced. “Free delivery” meant delivery without a separate charge for a messenger to fetch letters from the local post office, a rarely used luxury. For the first time, the Post Office seriously entered the business of collecting and delivering intercity and, increasingly, intracity letters, newspapers, and other documents. Free city delivery

began in 49 cities, although only 13 cities had more than three letter carriers, and three-quarters of all carriers were located in just four cities: New York (including Brooklyn), Philadelphia, Boston, and Baltimore. Free city delivery was available to about 30 percent of the population by 1890.

*Rural delivery services.* At the turn of the twentieth century, the Post Office's mission was enlarged dramatically to include delivery to rural areas, where the majority of Americans still lived and worked. Rural free delivery became a permanent service in 1902. Village free delivery, in towns of less than 10,000 inhabitants, began in 1912. Parcel post service was started in 1913 to bring big city goods to farm residents. By 1917, the Post Office was delivering to about 80 percent of rural Americans. Nonetheless, as late as 1950, when the second daily delivery to city residents was ended, mail delivery to the door or curbside was unavailable for 23 million persons living in small towns, about 15 percent of the total population. Some rural routes still had delivery only three days per week.

*Business-like postal services.* In 1970, the Post Office was transformed into a more "business-like" Postal Service. The Postal Service has focused increasingly on "last mile" delivery services by allowing discounts for presorted mail that is transported by private carrier and "drop shipped" at a downstream processing facility. Today's "last mile" service represents an almost complete reversal in mission from the days when the Post Office provided intercity transportation without delivery. As the "gateway to the household," the Postal Service has also become more of an advertising medium. In three decades, advertising mail has grown from 25 to 44 percent of total mail. As a restraint on business-like tendencies, the 1970 act added a statutory universal service obligation for the first time. It is found primarily in sections 101 and 403 of the postal code. These provisions are derived from a 1958 statute that was intended to articulate rate guidelines for future congresses. Bound by statute after 1970, the nature of national postal service has evolved more slowly than previously, when Congress was free to tinker with standards for national postal service each time it revised rates or other postal practices.

Today everyone supports the goal of maintaining universal nationwide postal service in some sense. The key questions relate to how broad and rigid the definition of universal service should be. Some consider universal service to include not merely the notion of regular, reliable, and affordable delivery of mail to every address in the country, but more specifically to connote a delivery service characterized by elements such as: (i) uniform prices for certain types of mail; (ii) uniform levels of service for certain types of mail; (iii) collection and delivery six days per week; (iv) a minimum number of post offices and street collection boxes; and/or (v) end-to-end delivery times within certain standards. Others would argue that "universal service" also entails still other dimensions, such as a requirement to buy American and a duty to treat employees fairly and non-discriminatorily. However broadly or narrowly defined, some would take the position that universal service represents a great social achievement that should be guaranteed for all time. Others would urge flexibility. In general, the more broadly and rigidly universal service is defined, the more firmly the government must control the operations of the market.

One point of potential flexibility deserves highlighting: the uniform rate rule. The Executive Order asks the Commission to consider how to protect universal mail delivery at *affordable rates*. Postage rates may be affordable for all even if the Postal Service reduces rates in some areas to reflect lower costs or meet the prices of competitors. Many argue, however, that affordability is not enough, that postage rates must be kept *uniform* across the country so that every mailer gets the same rate to every domestic destination. The social justification for this conviction is unclear. The concept of uniform nationwide postage rates first appeared as part of the English postal reforms of 1840. The rationale was economic: Rowland Hill demonstrated that the cost of transportation between major cities varied insignificantly so that uniform rates properly reflected costs. By the same logic, if, in a different age and country, the cost of local service turns out to be higher than the cost of national service, different rates should be charged. In fact, the U.S. Post Office charged different local and national postage rates as late as 1944, and the Senate supported differentiated rates as late as 1958. The statutory requirement for uniform letter rates was not adopted until 1970. (Today, as a matter of economics, a return to a local/national structure for *retail* postage rates seems unlikely, although the possibility of other variations has been suggested by some).

The uniform rate rule is the prime candidate for the often assumed but ultimately elusive link between universal service and the postal monopoly. According to some economic analyses, a legal obligation to maintain uniform postage rates necessitates monopoly protection. Otherwise, the Postal Service will find itself unable to respond to price competition in low cost areas and suffer losses. The force of this argument depends on how large the losses would be. The Postal Rate Commission estimates that relatively little mail would be lost to low cost competitors even if the Postal Service rigidly maintains uniform rates. Moreover, many economists would question the underlying premise that the public interest is served by a slavish adherence to price uniformity. After all, price competition reflects a continual process of seeking out new configurations of cost, service, and price to meet the evolving needs of mailers. If the Postal Service is permitted to adjust rates to costs and competition, almost no one would claim that postal monopoly is needed to maintain universal service. The postal monopoly does not even seem to be a net money maker. Inefficiencies induced by the monopoly more than offset plausible economic benefits.

A more general issue raised by a rigid definition of universal service is: "Is the universal service definition properly attuned to the needs of the nation?" In some European countries, the post office charges high rates for a high level of postal service. In the United States, the Postal Service charges a lower rate for a service that virtually never fails to deliver but may not be as rapid and predictable as in Europe. Is universal postal service in these European countries better than in the United States? There is no clear answer (assuming equal levels of efficiency). It is at least arguable that a sensibly priced, plain vanilla postal service is better suited to the needs of modern America than a high-priced, gold-plated postal service, but unless mailers are given a choice in services it is impossible to know for sure.

### 3.2 POSTAL MONOPOLY

The postal monopoly law lies at the very heart of postal policy. Wise veterans of the Postal Service concede privately that unless the postal monopoly is changed nothing fundamental about the Postal Service will change. I have long thought that the biggest victim of the postal monopoly law is the Postal Service itself. The postal monopoly robs good men and women of the Postal Service of incentive and pride. It engenders a tangible (and unjustified) aura of self-doubt about whether the Postal Service would be able to succeed in the “real world.” The monopoly corrodes labor relations at the Postal Service by depriving managers and employees of the Postal Service of a common commercial opponent. The monopoly intimidates customers who will not criticize the Postal Service too loudly for fear of being put at the end of the delivery queue. The monopoly necessitates time consuming regulation. It excuses endless political interference from members of Congress who feel, with some justification, that a government program should attend to the particular concerns of their constituents. As the staunchest commercial rivals of the Postal Service well understand, the postal monopoly law is the chain that binds the Postal Service hand and foot.

Despite such insidious effects, the dominant perception in postal circles is that the postal monopoly is the foundation of national postal service. The postal monopoly law has achieved the status of ancient wisdom. Has not Congress, since the birth of the nation, repeatedly endorsed a broad postal monopoly law—today spelled out in Postal Service regulations—to sustain affordable postal service throughout the United States? An affirmative answer is generally assumed, but given the central importance of the postal monopoly to the long term future of the Postal Service, a better understanding of history and purpose of the postal monopoly law is desirable.

The original American postal monopoly law was derived from English precedents. The postal monopoly was introduced into English law in 1635 when the royal messenger service was briefly opened to the public. The public post office and postal monopoly became a fixture in English law in 1660 upon the restoration of Charles II. The original purpose of the English monopoly was to prop up Stuart kings by allowing them to enrich their friends and spy on their enemies. Up to the time of the American revolution, the English postal monopoly was essentially a tax, not unlike the stamp tax, that was used to raise general revenues for the government and, not so incidentally, to facilitate surveillance of suspicious persons. The Continental Congress established a colonial post office in 1782. The ordinance of 1782 included a sloppy replication of English postal monopoly provisions.

Although the first substantive postal act of Congress was adopted in 1792, the U.S. postal monopoly did not assume stable contours until the act of 1794. The American version of postal monopoly was less strict than the British. It reserved to the federal government the right to establish lines of posts for foot messengers or horse riders and prohibited similar staged carriers, such as stage-coaches and packet boats, from carrying letters. Unlike the British law, the American postal monopoly

did not prohibit carriage of letters by individuals even if compensated. In fact, private carriage of letters by travelers was common.

The reason that Congress transplanted such an originally anti-democratic concept to American soil is unclear. Unlike the British, Congress did not use the postal monopoly as a means of raising general revenue. Nor did the Congress take advantage of the law to spy on the citizenry. Congress did, from the beginning, encourage national distribution of newspapers by keeping rates below cost. Losses on newspaper distribution were covered by revenue from high postage rates on letters. Thus the original intent of postal monopoly law may have been to protect distribution of newspapers by preventing private companies from establishing lines of posts and undercutting high official rates for letters. However, I have discovered no indication that private postal systems were truly considered a threat to the Post Office. Writing in 1833, Joseph Story, a member of the Supreme Court and author of the leading commentary on the Constitution, implied that the original purpose of the federal postal monopoly was to prevent a multiplicity of state post offices. Perhaps that was it.

The first major revision of the postal monopoly law came in 1845 when, as noted above, private express companies began to compete with the Post Office. Although undefined in the act of 1845, the term “private express” referred to a company that carried letters between cities primarily by means of passengers traveling on railroads and steamboat lines. Earlier in the decade the courts had ruled that such activities were not akin to horse posts and similar staged services and therefore not prohibited by traditional postal monopoly laws. Congress replied by extending the postal monopoly law to include carriage of letters by private express as well as by traditional postal-type services.

So far as official records now reveal, this was the first and last occasion in which Congress debated the postal monopoly at any length. Today, the 1845 act is often cited as evidence that Congress deliberately adopted an extensive postal monopoly in order to protect and promote universal postal service. Indisputably, the postal monopoly provisions of the 1845 act are the source for much of the language in today’s postal monopoly law. The thrust of the 1845 act, however, was an attack on the high letter postage rates that subsidized low newspaper rates and extravagant contracts for stage-coaches. Proponents of high letter rates and generous cross-subsidies, mainly from the South and the West, lost the day to supporters of “cheap postage” from Eastern and Middle Atlantic states. The second priority in the bill was reform of the much abused franking privileges. Revision of the postal monopoly law, the third major element of the bill, drew the least attention. Fervent pleas to extend the monopoly to all mailable matter were rejected, even though the law was updated by inclusion of private expresses in the scope of the monopoly prohibition. To the extent that it makes sense to interpret the motives of Congress in 1845 in modern postal policy terms—a highly dubious practice—the postal act of 1845 represented a retreat, not an advance, in use of the postal monopoly to fund universal postal service.

Despite textual paternity, the 1845 act was not, as commonly thought today,

the foundation of the modern postal monopoly. The 1845 act barred private expresses from transporting letters and certain otherailable matter “from one city, town, or other place, to any other city, town, or place in the United States” where already served by the Post Office. Yet today private companies routinely provide intercity transport for letters after which they either deliver the letters themselves or tender them to the Postal Service for delivery at “drop ship” rates. Today, the crucial element of the postal monopoly law is the prohibition against private local delivery, that is, protection for the Postal Service’s “last mile” service. The 1845 act did not address collection and delivery services within city limits. In major cities, private “penny posts” flourished and introduced many of the attributes of what we now think of postal service: door-to-door service, adhesive stamps, street collection boxes, special delivery, and local parcel service.

The postal monopoly law was not extended to local services until February 1861. In that month, as Southern states were seceding from the union, a lame duck House of Representatives, elected in November 1858, added an obscurely worded rider to the postal appropriations bill just as debate was drawing to a close. The rider declared that an 1827 ban against setting up horse posts and foot posts between cities would henceforth apply to intracity post-routes. The Congressional purpose underlying this provision is obscured not only by the absence of debate or committee reports, but also by the fact that the Post Office itself did not offer a passable local postal service until “free city delivery” was started in 1863, two years later. In 1861, a local post-route was a route designated by the Postmaster General for establishment of “suitable and convenient places of deposit” from which letters were collected by carriers appointed by the postmaster.

In 1872 Congress codified the postal laws for the first time since 1825. The postal monopoly provisions of this code were an amalgam of the provisions of 1794 (as reflected in acts of 1825 and 1827), 1845, and 1861, as well as other less significant provisions adopted over the years. Congressional sponsors and the Post Office proclaimed that the draft bill made no unnoted changes in substance to the postal laws. In fact, however, the 1872 code introduced, without explanation or debate, several important modifications to the postal monopoly provisions. In brief, the 1872 act provided that no person should establish a “private express” for the carriage of “letters and packets” nor should any stage-coach or similar common carrier convey “letters and packets.” Private expresses were barred from operating between cities and over local post-routes.

The postal monopoly of 1872, with minor amendments, is the postal monopoly of today. Key prohibitory provisions have been rephrased slightly and reenacted three times, in the Revised Statutes of 1874, the criminal code of 1909, and the criminal code of 1948. Related civil provisions have been reworded and reenacted in the only two codifications of postal law since 1874: the postal acts of 1960 and 1970.

Whatever monopoly Congress intended to codify in 1872, its scope and purpose have been muddled by a long history of confusing administrative interpretation. In the decades after 1872, the scope of the monopoly over “letters and

packets” was interpreted, as Attorney General Wayne MacVeagh ruled in 1881, to cover only “letters” since the term “packet” was taken to mean a bundle of letters. MacVeagh considered the definition of “letter” was plain enough from “the idea which common usage attaches to that term.” Hence, he ruled, the letter monopoly did not include all first class matter—i.e., all matter in writing—but only items commonly termed “letters.” In particular, MacVeagh held that the postal monopoly did not include “written matter which is by law subject to letter postage when sent by mail, such as manuscript for publication, deeds, transcripts of records, insurance policies, and other written or partly written documents used by insurance and other companies in the transaction of their business.”

Over the years, MacVeagh’s ruling and other narrow interpretations of the monopoly were supplanted by a series of inconsistent but expansive opinions issued by Post Office lawyers with scant legal justification. For example, postal lawyers claimed in 1916 that the monopoly included third class mail (advertising), retreated from this position in 1919 in the face of congressional inquiry, and then assumed a vague middle ground during the 1930s. In 1974, the Postal Service swept aside prior rulings and adopted regulations declaring that the statutory term “letter” includes all textual matter, including letters, newspapers, magazines, printed advertisements, books, checks, blueprints, and electronic media bearing textual data. The effective scope of the postal monopoly was then crafted by means of administrative regulations “suspending” this all-inclusive statutory monopoly for certain classes of users or certain types of services under conditions specified by the Postal Service. Suspensions were adopted for such items as newspapers, books (but only if more than 24 pages), checks (but only when sent between financial institutions), data processing materials (under certain conditions), and in 1979, urgent letters (under certain conditions).

What most mailers now think of as an ancient statutory monopoly is in truth a set of administrative regulations bearing little relationship to the acts of Congress. The postal monopoly law enacted by Congress refers only to “letters and packets.” The legal keystone to the Postal Service’s monopoly regulations—the so-called “suspension power”—rests on even more questionable legal grounds than its expansive interpretation of the term “letter.” At best, the purpose and scope of the postal monopoly law are uniquely murky.

Legal doubts aside, and taking the postal monopoly regulations at face value, the scope of the American postal monopoly is extensive by the standards of leading postal reform countries. In the U.S., the monopoly includes letters and other first class mail, advertising mail and non-periodic publications of less than 24 pages, and parcels containing textual material such as blueprints or computer programs. There is no weight limit, but there is a price limit. The monopoly does not apply if a private carrier charges more than twice the domestic postage that would have been charged on a given item, provided the charge is at least \$ 3.00. Thus, for example, the postal monopoly prohibits private carriage of a two-pound parcel of documents unless the private carrier charges at least \$7.80. In contrast, in postal reform jurisdictions, the postal monopoly, if not repealed, is limited to items weighing roughly 4 to 8 ounces

and priced less than 3 to 5 times the price of a basic stamp (i.e., \$1.11 to \$1.85 in U.S. terms). See table 1.

Table 2. Postal monopoly in postal reform countries

Country	Weight limit (oz)	Price limit (multiple of basic stamp)	Comments
European Union	3.5	3	1 Jan 2003. Deadline for all EU countries to reduce monopoly from 5x stamp/ 12.3 oz.; most have not yet done so, but all meet prior limit. 1 Jan 2006. Deadline for reduction to 2.5x stamp/ 1.8 oz.
Finland	No monopoly		Monopoly replaced by license system, 1994.
Germany	7.0 (letters); 1.8 (ad mail)	5	Monopoly replaced by license system with statutory exclusive license for Deutsche Post, 1997. In 2002, the exclusive license was reduced and extended to 31 Dec 2006 when it expires.
Netherlands	3.5	3	Monopoly excludes ad mail, outward international mail.
Sweden	No monopoly		Monopoly replaced by license system, 1993.
United Kingdom	No monopoly		Monopoly replaced by licence system, 2000. Full competition to be introduced by 31 March 2006.
Australia	8.8	4	Monopoly excludes intra-company, advertising, and outward international mail
New Zealand	No monopoly		Monopoly repealed 1998.

### 3.3 RATE REGULATION

For most of the last decade, postal reform debate in the United States has focused on how postal rates are regulated. This is not so in other countries. In Europe and other places where postal reform has progressed, public debate has concentrated on issues affecting market structure: definition of universal service, scope of the postal monopoly, and rules governing international competition. American preoccupation with rate regulation arises in part because the Postal Reorganization Act subjects the Postal Service to more detailed rate regulation than in other countries. The House Government Reform Committee took up postal reform in 1995 in response to the Postal Service's insistent demands for greater price flexibility. Even today, disputes over fine points of rate regulation dominate the "policy" dialog

among members of the postal community.

To understand rate regulation, the first step is to recognize what the Postal Rate Commission does not regulate. The Commission does not regulate the overall *level of postage rates*. The level of rates is determined by the “total revenue need” of the Postal Service. If the Postal Service determines that it needs, say, annual revenue of \$75 billion, the Postal Rate Commission cannot decide that \$65 billion is sufficient given efficient methods of production. In my opinion, failure to provide outside review of the level of rates charged by a monopoly enterprise represents a basic, logical flaw in the 1970 act. Nor does the Commission regulate the *quality of universal service*. In other countries, a regulator or minister determines parameters of universal postal service such as the minimum number of post offices and collection boxes, the maximum distance between households and the nearest collection box or post office, the percentage of mail that must be delivered within certain time parameters, and procedures for handling complaints. The regulator monitors how well the post office meets these standards, and regulation of price and service are related. In the United States, detailed regulation of prices without more attention to service standards might be considered unbalanced.

What the Postal Rate Commission does regulate is *price structure*, that is, relationships between rates charged for different classes and subclasses. A “class” of mail is a definition of who can justly be charged a different postage rate from someone else. Each class of mail must pay a price that covers the costs that can be directly attributed to the carriage of such mail (“attributable costs”). In addition, about one-third of Postal Service costs are overhead costs that cannot be attributed to classes of mail. These are called “institutional costs.” Institutional costs are allocated to different classes according to several factors, including the ability of the mailer to find another way to transmit his message and the likelihood that the mailer will send more mail at lower rates. In each rate case, the Postal Service attributes direct costs to each class of mail and proposes rates based on a discretionary allocation of institutional costs. The Commission reviews the allocation of institutional costs and other technical issues in a contentious ten-month rate case in which major mailers and competitors participate.

In simple terms, the positions of the major players with respect to rate setting can be summarized easily. Each mailer believes that, for various reasons of public policy, increases in his postage rates should be reduced by shifting more institutional costs to other mailers. The Postal Service maintains that it should have greater flexibility to determine rates, classes, discounts, and individual contracts because it will be able to earn more money from the same set of customers, primarily, but not exclusively, by setting rates more in line with each mailer’s willingness to pay. Large mailers like price flexibility because they believe they can obtain rates more specifically tailored to their needs and generally negotiate lower rates by virtue of their market power. Small mailers fear that price flexibility means higher rates for them because they are unable to bargain or find alternatives to the mail. Competitors oppose price flexibility because it will allow the Postal Service to compete more effectively for large customers and might allow the Postal Service to use monopoly

revenues to “cross-subsidize” competitive prices. The Postal Rate Commission has been skeptical about the fundamental fairness of price flexibility for noncompetitive postal products and takes the position that discounts for large mailers should be cost-based and not imply higher rates for other mailers. There is some merit in each position and no economically scientific way to resolve such disputes. In rate cases, the Postal Rate Commission, an impartial if not all-wise umpire, allocates institutional costs based on ratemaking principles declared in the 1970 act.

For seven years, the House Government Reform Committee sought to develop a more modern approach towards postal ratemaking. The last version was fashioned by Representatives Burton, Davis (Danny), McHugh, and Waxman in spring 2002. The ratemaking provisions of this proposal reflected a long and careful look at the economics and politics of ratemaking. Broadly speaking, the House bill would give the Postal Rate Commission authority to develop a new more flexible approach towards regulation of noncompetitive postal products, that is, products in which the Postal Service faces no significant competition (the ultimate outcome would likely be a price cap regime). The bill would also give the Postal Service substantially more discretion to adjust rates for competitive products subject to limits designed to protect private companies from cross-subsidy and unfair competition.

Standing alone, revision of ratemaking principles—while desirable and extremely important to individual parties—will have only limited effect on the future of universal service and the Postal Service itself. The current statutory framework implies firm outer boundaries to rate flexibility. So long as the Postal Service has a dominant market position protected by law, the government must regulate rates to prevent the Postal Service from overcharging Aunt Minnie and other small mailers or undercharging products that compete with private companies. Given such constraints, only so much rate flexibility is politically feasible or economically justifiable.

#### 2.4 THE BUSINESS MODEL

In February 2002, the General Accounting Office (GAO) summarized its conclusion that the fundamental long term concern in regard to the Postal Service is an inappropriate “business model.” GAO declared:

*USPS’s basic business model, which assumes that rising mail volume will cover rising costs and mitigate rate increases, is increasingly problematic since mail volume could stagnate or decline further. USPS has also had difficulty in making and sustaining productivity increases. Moreover, USPS’s framework of legal requirements, which form the foundation of USPS’s business model, as well as practical constraints impede USPS’s ability to ensure its own financial viability. For example, USPS’s statutory framework, which includes a monopoly on letter mail, a break-even mandate, and a cost-based rate-setting structure, provides limited incentives to cut or restrain costs or to be innovative. Furthermore, USPS faces structural, legal, and practical constraints related to its infrastructure, including closing or consolidating postal facilities and realigning its workforce as its operations change. Other structural issues have been raised, such as USPS’s governance structure—for*

example, what type of governing board is appropriate for USPS, given the complex mission and role of this \$70 billion entity with nearly 900,000 employees. [GAO-02-355 at 4 (emphasis added)]

The validity of this diagnosis was brought home to me not long ago when I was asked to assist on a report for a senior Postal Service manager responsible for functions similar to services provided in the private sector. He wanted to know, in essence, "How can I organize my department so that I can legally hire, fire, pay, budget, contract out, partner, borrow, invest, and explore new business opportunities like the manager in a private company?" The short answer was, "You can't."

Today the Postal Service operates in a qualitatively different competitive environment from the 1970s. In 1968, the 200-page report of the Kappel Commission described the problems and prospects for postal reorganization without mentioning private carriers or other alternatives to mail service. In the ensuing three decades, the private sector has built what is virtually a second Postal Service. In terms of revenue, the network of private delivery services is now approximately as large as the Postal Service. And electronic alternatives pose a still more serious competitive threat. It is not surprising, then, that the "business model" of 1970 is proving inadequate.

Although competition is coming to the Postal Service, postal and other federal laws make it difficult for the Postal Service to reply in kind. The most visible of these restraints is the rate regulation of the Postal Rate Commission, which requires lengthy litigation before changing rates for competitive as well as noncompetitive products. The Postal Service is also barred from engaging in price negotiation with individual customers, an important competitive tactic in normal markets. However, the most fundamental competitive handicaps faced by the Postal Service are those that shape the organization. The postal monopoly, as noted above, inhibits innovation and corrodes morale. Statutory caps on executive salaries undermine the capacity of top management. The political process for selection of Governors limits the commercial acumen of the governing board. Federal procurement laws and regulations (some adopted by the Postal Service in self-defense) restrict the ability of the Postal Service to contract for certain goods and services. Financial provisions limit the ability of the Postal Service to borrow, invest, and enter into joint ventures.

Much activity in the postal world today is aimed at circumventing these institutional limitations. Conferences of mailers help to develop rates and solve technical problems. Consultants are brought in to advise on a range of management issues. Government agencies critique everything from employee relations to the capital budget. Much of this advice is undoubtedly well considered and useful, but is this any way to run a post office? There is no UPS Shippers Technical Advisory Committee. Government agencies do not prepare reports telling Fred Smith how to run Federal Express. Conceptually, the proper business model is not a new and better list of recommendations by outside experts but an organizational framework that gives the Postal Service the tools and incentives to operate more efficiently without outside support.

More fundamentally, the "business model" of the Postal Service is really the

regulatory framework for the delivery services sector viewed from the standpoint of the Postal Service (see the italicized portions of the GAO quotation above). In my opinion, this point of view is not entirely fair to Postal Service management. In the 1970s, airlines strove to outdo each other with more flights, snazzier amenities, and smarter lawyers. Prices soared and production was inefficient. One could have said, correctly, that the airlines were all pursuing the wrong “business model,” but such a conclusion would have unfairly implied that airline executives were inept or misguided. In fact, skilled airline managers were diligently responding to the wrong incentives, incentives created by outdated federal regulation. Senior airline executives took that system for granted. It was neither helpful nor reasonable to ask them to articulate their vision of a wholly different regulatory framework. Today in the postal sector, one can call on postal management to exert more leadership to modernize the “business model,” but one must also appreciate the limits to how much responsibility can be reasonably placed on the Postal Service itself. To reform the incentives, regulation, privileges, and governance of the Postal Service, the regulatory framework must be altered. This is primarily the responsibility of lawmakers and policymakers, not the Postal Service.

## 2.5 A LEVEL PLAYING FIELD

It is tempting to imagine that competitive issues presented by the postal laws begin and end with the postal monopoly law. In reality, obstacles to competition posed by the postal laws are more subtle and complex. Repeal of the postal monopoly law will not automatically create a competitive framework that is fair either to private companies or to the Postal Service. Nor are competitive distortions induced by current law limited to the range of monopoly products (however defined). The fundamental problem is this: the Postal Service and its private competitors have been established under wholly different sets of laws and any difference is prone to favor one side or the other. The Postal Service is an agency of the federal government, and the private companies are creatures of state corporate law.

The most prominent of these ancillary laws is the mailbox access rule which prohibits private companies from using personal mailboxes to deliver “any mailable matter” including items not covered by the postal monopoly. Since the 1970s, the Postal Service has required householders in new service areas to erect curbside mailboxes at their own expense to receive mail delivery. Only a government agency with a legal monopoly could accomplish this laudable feat. The curbside mailbox system provides a very efficient means of delivering small items to the household for the benefit of all. By virtue of the mailbox access rule, however, only the Postal Service can make use of the mailbox to deliver competitive products. Private companies must incur the added cost of stopping and delivering non-monopoly documents and parcels to the door. There is no obvious reason why reputable companies like Federal Express and United Parcel Service should be barred from use of the mailbox. A study by the GAO indicates that most householders would welcome mailbox delivery by such companies. Steep federal criminal penalties (5

years imprisonment and/or \$500,000 in fines) are available if anyone should take advantage of such access to interfere with mail delivery.

Private express companies also cite other legal factors which favor the Postal Service. These include laws that grant the Postal Service (apparent) immunity from antitrust laws, special treatment under U.S. customs law, freedom from corporate taxes, a right of eminent domain, access to loans from the Federal Financing Bank at low government rates, and immunity from parking tickets and state vehicular licensing laws. Private express companies have also argued for a better accounting of postal costs and revenues and a clearer separation between accounts for competitive and noncompetitive products. For example, they suggest that the Postal Service should be required to price competitive products so that they bear a proportional share of common overhead costs and that losses incurred in the sale of competitive postal products should be covered out of revenues from other competitive postal products.

These issues, save for mailbox access, were carefully considered by the House Committee on Government Reform. The proposal developed by Representatives Burton, Davis (Danny), McHugh, and Waxman would generally apply major business laws (such as antitrust, customs, tax, and zoning laws) to the Postal Service's competitive products in a manner similar to the way they are applied to products of private competitors. The proposal also sought to strengthen accounting and financial provisions to prevent unfair use of monopoly revenues and assets. In addition, the proposal directed the Federal Trade Commission to prepare a survey of all federal laws that apply differently to competitive products offered by the Postal Service and private competitors.

It is difficult to argue with the proposition that, when the Postal Service competes with private companies, the laws should apply equally to all and the Postal Service should have no resort to monopoly revenues or other governmental privileges. At the same time, there is at least some merit in the claim that the "business model" of the Postal Service creates such handicaps that it cannot compete on equal terms with private companies. No private express company would have succeeded in the marketplace while laboring under the organizational impediments burdening the Postal Service. In general, in markets where the Postal Service and private companies have competed, the Postal Service has come off second best. The appropriate approach, however, would seem to be to fix the "business model" rather than to preserve, or exacerbate, an unlevel playing field.

## 2.6 INTERNATIONAL POSTAL POLICY

A review of postal policy for the twenty-first century should consider international as well as domestic issues. Unfortunately, the international postal world is characterized by an arcane and bewildering cacophony of rules, fees, and politics quite different from the domestic postal world. International mail accounts for only about 0.5 percent of mail volume and 3 percent of postal revenue. Nonetheless, international postal policy is important, although it may be more important to the national economy generally than to the Postal Service specifically.

Development of global communications and transportation networks is inevitable. Not long ago, the declining cost of long distance telecommunications prompted poetic souls at *The Economist* to predict the “death of distance.” The United States has rightly sought to steer the emerging global economy into openly competitive channels that will promote efficiency, opportunity, and democracy. In such an environment, the American delivery services sector, like most American industries, can be expected to thrive. The U.S. is home to two of four private global delivery networks and the world’s largest direct marketing industry. The Postal Service, despite its focus on the domestic market, has more international traffic than any other national post office. Postal affairs beyond the water’s edge cannot be ignored.

The basic issue presented by international postal policy is whether the legal framework for international postal services should hinder or facilitate development of global delivery systems. As explained in Appendix I of the *Transformation Plan*, the current legal framework for international postal services is derived from the nineteenth century. The Universal Postal Union (UPU), an intergovernmental organization, was established in 1874. Like the International Telecommunications Union founded two years earlier, the UPU was organized on the premise that international communications is a matter of exchanging traffic between national administrations, each a public service sustained by monopoly rights. In modern times, these international legal frameworks have hindered development of global services because they created special rules and privileges for traffic handled by public undertakings. Global services require rules that do not discriminate between international and domestic traffic and do not favor local public administrations over foreign operators, public or private.

For international telecommunications, the nineteenth century paradigm was revised in 1997. Led by the U.S., the World Trade Organization endorsed an operator-based, rather than nation-based, framework for international commerce. In announcing the WTO Basic Telecommunications Services Agreement, U.S. Trade Representative Charlene Barshefsky observed that henceforth international operators would be “providing seamless end-to-end services, not handing calls off to monopoly providers elsewhere.” In a nutshell, the issue is whether the international framework for postal services should follow this same path.

For a decade or more, the economic and commercial logic of an international postal law that is more receptive to global services has become increasingly apparent. In terms of volume, the international postal system is about the size of the Canadian post office, yet it is managed by a committee of postal officials from more than 180 nations. The rise of international express companies was credited by friend and foe alike as a demonstration of the superiority of unified central management over coordination among many national managers. In 1988, twenty major post offices began to explore supra-national management structures. In 1994, five post offices (Canada, France, Germany, Netherlands, and Sweden) entered into a worldwide joint venture with a major international express company, TNT. In the last five years, as described in Appendices G and I of the *Transformation Plan*,

several European postal operators have combined with private international express companies and other national post offices to form global operators providing international mail, express, and parcel services.

In Europe, legal and policy developments have further highlighted the shortcomings of traditional UPU cross-border arrangements. In the 1980s, the rise of international *re-mail*—mail produced in one country and posted in a second country—brought matters to a head because suddenly post offices were competing with one another for international traffic instead of peacefully administering a shared monopoly. Among other innovations, re-mail took advantage of non-economic rates and fees arising from the UPU's system of *terminal dues*, fees post offices charge each other for the delivery of inbound international mail. When European post offices conspired to suppress re-mail competition, the European Commission condemned their efforts as violative of European antitrust law. The prospect of intra-European postal competition prompted a review of European postal policy and ultimately stimulated a more procompetitive approach. For cross-border operations, European post offices adopted a terminal dues agreement, called "REIMS," that, unlike the traditional UPU system, aligns terminal dues with domestic postage rates. Gradually, the production, printing, transport, and delivery of cross-border mail in Europe is becoming a more transparent and competitive market.

Within the Universal Postal Union, some European countries, usually joined by Australia and New Zealand, have sought to transform the organization into a neutral framework for the international transmission of documents and parcels by all sorts of carriers, global as well as national, private as well as public. As a practical matter, UPU reform comes down to a handful of key issues: (i) separating governmental and commercial functions; (ii) making terminal dues consistent with domestic postage rates and available to all public and private operators; (iii) ending legal provisions that allow post offices to hinder re-mail; and (iv) modifying UPU-based customs rules so that, for equivalent items, they apply equally to all public and private carriers. While many countries opposed such measures, lack of progress was, in my judgement, due principally to the opposition of the United States.

In 1999, as a result of legislation in 1998, the Department of State took charge of the U.S. delegation to the congress of the Universal Postal Union held in Beijing. The UPU congress meets every five years to revise international postal conventions. In preparation for the Beijing Congress, the State Department consulted affected American parties, including mailers and private express companies. For the first time, the Department added a representative each from the mailing and private express companies to the U.S. delegation (compared to more than 30 delegates from the Postal Service).

In Beijing, two views emerged on the future of international postal law. Some, led by the U.S. Department of State, while eschewing specific reforms, argued that the UPU should convene an extraordinary congress in 2002 or 2003 to consider a new legal framework for international postal service that better reflected the trends of liberalization, globalization, and consolidation of public and private international services. On the other side, the majority, led by France, Canada, and Japan, argued

that the proper role of the UPU was to act as the champion of public postal operators. According to this view, justified by the "universal service obligations" placed on post offices, the UPU should fashion national post offices into a successful competitor in the global marketplace through coordination, legal prescription, market research, and developmental aid. In the end, the opponents of reform triumphed. The only gesture towards reform was creation of a High Level Group to continue discussion of reform issues.

Since 1999, there has been much talk but little action regarding UPU reform. The United States, under pressure from the Postal Service, has not pursued aggressively the liberal global vision it announced to the Beijing Congress.

#### 4. POSTAL REFORM

##### 4.1 WHY REFORM NOW?

Although I have not studied postal finances carefully, my perception is that the timetable for postal reform is not driven primarily by immediate fiscal problems. The Postal Service has large untapped financial resources. It can raise postage rates substantially before they become out of line with those in other industrialized countries. Judging from the experiences of other industries and other post offices, the Postal Service can also eliminate a significant fraction of total costs if truly hard pressed. Moreover, the economics of postal service are such that the Postal Service can lose a significant fraction of first class mail (e.g., 25 percent) without drastic rate increases. Despite political unpopularity, neither a 50 cent stamp nor a 25 percent reduction in employment would jeopardize "universal mail delivery" or the "viability of postal services."

In my mind the case for reform rests on broader, more solid grounds. It seems fair to conclude that the regulatory framework established by the postal monopoly of 1872 and the Postal Reorganization Act of 1970 does not today provide for an efficient and innovative supply of postal and delivery services appropriate to the economic and social needs of the nation. We can do better. This observation alone would justify fundamental reform now. Looking ahead a decade or two or three, it seems clear that the volume of letters will decline sharply, that physical and electronic alternatives for the distribution of all types of physical text will continue to develop, and that major portions of the delivery services infrastructure will be organized on a global rather than a national basis. The pace of change is unpredictable, but the capacity of the current regulatory framework to accommodate such fundamental change is surely limited. A second reason for reform is therefore that presently foreseeable changes now threaten to overwhelm the current regulatory framework and leave behind a large, expensive, inefficient, and inadequate government postal organization. We should be able to do better than that.

It is, of course, the pace of change, even more than ongoing inefficiency, that lends special urgency to postal reform. To illustrate this point, let us (recalling developments since 1990) imagine the delivery services world of, say, 2015. By 2015, the postal monopolies in most industrialized countries will probably have been

abolished for five years or more, and several major post offices will be fully or mostly privatized. Mergers and alliances between public and private operators will likely be continuing in a manner foreshadowed by events in the last decade. One can speculate about such combinations as Deutsche Post and Airborne or R.R. Donnelly, UPS and TNT Post Group, or FedEx and the French or British Post Office—and in each case, add one or more large operators from the Far East to the mix. While these groupings are purely hypothetical, they illustrate how the logic of global systems could lead to further consolidation among large players. However organized, global companies are likely to operate major parcel and express systems throughout the United States, Europe, and Japan and to manage postal services in a number of countries. Moreover, by 2015, one can imagine that in all industrialized countries, including the United States, traditional postal markets will have changed significantly. By this time, a sizeable fraction of letter mail may be lost to electronic alternatives. Growth in advertising mail may have continued but more slowly due to higher rates. The majority of the traditional mail stream by this date will almost certainly be advertising mail, rendering the “universal service obligation” far less politically compelling.

Commercial success during this period of technological advance and globalization will test the capabilities of even the best management teams. It is possible that one or more of the leading public or private operators of today will stumble. How well is the present Postal Service equipped to prosper in such a commercial and technological environment? Considering the Postal Service's response to change and new markets over the last three decades, the answer must be “Not very well.” How long would it take to transform the Postal Service into a commercial entity adjusted to such an environment? Keeping in mind the records of companies like Penn Central, AT&T, Pan Am, and United Airlines, as well as the experiences of national postal administrations in the leading postal reform countries, the answer is probably “A decade or longer.” From this perspective, reform of the U.S. postal laws may be not merely urgent, it may already be too late.

#### 4.2 AN EVOLUTIONARY REFORM STRATEGY

To identify and define the regulatory framework for the Postal Service and the delivery services sector that will best serve the social and commercial needs of the United States for the twenty-first century represents an exceedingly complex legal, economic, and political undertaking. To pave the way for legislative agreement represents an even greater challenge. In many countries, policymakers have found postal reform to be one of the most politically intractable of economic policy issues. In the European Union, for example, the European Commission took five years to develop a vision for postal services suited to the goal of a single European market. It then took another five years before, in 1997, the Council and Parliament were able to agree on a much reduced reform package. After a second set of marginal reforms, adopted last year, the European Commission is now due to submit a proposal for a permanent regulatory framework in 2006 with a target date for implementation in 2009. Agreement on sector reform takes a long time, and agreement on postal sector

reform seems to take forever.

Therefore, rather than seeking immediate consensus on a permanent solution, I would suggest the Commission consider measures that will introduce into the postal regulatory framework a new capacity for evolution. A capacity for evolution does not require agreement on the final shape of the regulatory framework. Nor would it necessitate an abrupt dismantling of the familiar foundations of the current system. To prepare for the long term, however, the capacity for evolution must be more than incremental. It must be suited to the large scale of economic policy reforms adopted in related sectors since 1970 and to the enormous commercial challenges for the Postal Service now looming on the horizon. Some steps that might advance such a reform strategy are described below. They are offered by way of illustration only.

1) *Regulatory framework/business model: reorganize the Postal Service as a private law corporation with all shares owned by the government.* Corporatization should enhance present efficiency and prepare the Postal Service for more fundamental transformation in the future. Corporatization will empower postal managers to operate with the same tools employed by any other corporate officer, free of contracting and employment constraints placed on federal agencies. A corporatized Postal Service will be better able to adjust to major changes in the technological and commercial environment, such as a drastic decline in the volume of letter mail. In many respects, corporatization is merely a continuation of the process of commercialization begun in 1970. Although a corporatized Postal Service would remain a government enterprise, corporatization could serve as preparation for transition to a different regulatory framework if later deemed appropriate by Congress. For example, a corporatized Postal Service would be amenable to a licensing scheme in a framework of regulated competition or to a transfer of ownership, in part or in whole, to postal employees or the general public.

The essence of corporatization is a clear separation of commercial and governmental responsibilities, and this separation will take time. As a normal corporation, the Postal Service would be divested of all but a few specified governmental privileges and responsibilities, and these would be administered by the PRC. Corporatization will demand rethinking many of the muddled quasi-governmental, quasi-commercial aspects of the Postal Service such as debt and financing arrangements, the police powers of the postal inspection service, criminal laws relating to the mail and postal operations, the rights of postal employees, the rulemaking power, and the selection process for members of the governing board. Transitional mechanisms will be needed. Nonetheless, because a corporatized Postal Service should be better managed, more commercially flexible, and more adaptable to long term changes in the commercial environment or regulatory framework, corporatization could now be considered prudent preparation for an uncertain future.

2) *Regulatory framework: reestablish the Postal Rate Commission as the Postal Regulatory Commission.* To permit evolution of the regulatory framework, authority to make adjustments in basic regulatory norms must be delegated to one or more regulatory agencies. In the nineteenth century, substantive amendments to

the postal laws were a regular part of the business of each Congress. In the twenty-first century, postal policy no longer enjoys the same prominence and reliance on continual legislative adjustment is tantamount to a strategy of inflexibility. Unless Congress delegates authority to update elements of the regulatory framework to a regulatory agency, key provisions like the universal service obligation and the postal monopoly must remain antiquated legislative orders frozen in time or vague commands interpreted at will by a business-like Postal Service too vulnerable to commercial pressures.

Although other agencies could play a role in regulating the postal sector, the most appropriate repository for most authority to adjust the regulatory framework would seem to be the Postal Rate Commission. Yet such an approach implies a regulatory role well beyond that envisioned for the Rate Commission in the Postal Reorganization Act of 1970. To fortify the Rate Commission for new responsibilities, members of the House Government Reform Committee proposed reestablishing the Rate Commission as the *Postal Regulatory Commission*. Members of the new PRC would be required to meet standards of professional competence. The new PRC would also be given enhanced budgetary and investigative authority. The House proposals should be considered seriously, and perhaps expanded upon, to equip the PRC for overseeing the necessary evolution of the regulatory framework of the postal sector.

3) *Universal service: authorize the PRC to issue regulations implementing the current statutory universal service obligation and to grant limited exceptions.* Consistent with corporatization, the government, not postal management, should bear responsibility for imposing added costs on some mailers in order to underwrite losses incurred in providing services to other mailers. The current statutory definition of universal service is broad but vague. An impartial body like the PRC should be authorized and responsible for interpreting this congressional mandate. To reintroduce pre-1970 flexibility into the universal service obligation, the PRC should also be authorized to issue exceptions to statutory guidelines, provided such exceptions are demonstrated to advance the public interest. For example, the Postal Service might be relieved of the uniform letter rate requirement for bulk mailings. To better inform future policy analysis, the PRC should annually determine the cost of fulfilling the universal service mandate and the quality of services provided.

4) *Postal monopoly: recast in simpler, more limited terms and authorize the PRC to grant limited exceptions.* The postal monopoly of 1872 is antiquated. It should be replaced by a simpler, more limited formula similar to that used in postal reform countries that have not repealed the monopoly. The new formula should place a desirable measure of added competitive pressure on the Postal Service without casting doubt on its survivability. To maintain current flexibility, the PRC should be authorized to create new exceptions to the postal monopoly, similar to the Postal Service's "suspensions," on condition that they do not undermine universal postal service. In addition, the PRC could permit individual private carriers to deliver to the mailbox. Such authority could lay the groundwork for a future licensing system as adopted in several postal reform countries.

5) *Rate regulation/level playing field: revise more or less as set out in the 2002 proposal of the members of the House Government Reform Committee* . The Burton-Davis (Danny)-McHugh-Waxman proposal was the result of many years of consideration and compromise. This proposal provides a rate setting process that is more flexible than the current system and authorizes the PRC to make ongoing improvements. Mechanisms to prevent unfair treatment of small mailers and private competitors were a central concern. There are no absolutely right answers to these issues. The thoughtful proposal of the members of the House Government Reform committee deserves substantial consideration.

6) *International postal policy: authorize the PRC to review economic aspects of international postal conventions* . While the Department of State should have ultimate authority to determine foreign policy and national security elements of international postal conventions, the PRC should review and approve economic aspects of international postal conventions for consistency with the national economic policy. The role of the PRC should be patterned after the international regulatory responsibilities of the FCC and the old Civil Aeronautics Board. The FCC and the CAB were instrumental in making international commerce in their respective sectors more transparent and cost-based; the PRC could play a similar role in international postal affairs. At the same time, the Postal Service should be entirely free to negotiate and conclude normal commercial arrangements with foreign postal operators, public and private, without review.

7) *Regulatory framework: create an office of postal and delivery services policy within an Executive Department*. To lay the groundwork for further revision in the postal laws, an office within an Executive Department—perhaps, the Department of Transportation—should be established to monitor development of the delivery services sector and develop new policy proposals. The new office would serve as a focus and spokesman for administration policy.

Again, the foregoing steps should be regarded as illustrations of a strategy of evolutionary reform rather than specific proposals. In sum, the aim of this strategy would be to allow the postal sector to become fundamentally more adaptable, commercial, and competitive over time while, for the present, retaining the main pillars of the current system: the government-owned Postal Service, the universal service obligation, and the postal monopoly.

Introducing a capacity for evolutionary reform of the regulatory framework falls short of a final solution. Over the course of the twenty-first century, I suspect that trends in the delivery services sector will require the United States to consider seriously privatization of the Postal Service, in part or in whole, and shifting to a system of regulated competition in the delivery services sector or even to unregulated competition. Alternatively, it seems possible, although less likely, that the United States may want to shrink the role of Postal Service to that of provider of residual services. These changes, however, are so far reaching and affect so many people that a second special commission may be needed to develop the necessary political consensus. Introducing a capacity for evolutionary reform in the short term will set in motion the groundwork necessary for a final regulatory framework and

give the American people more time and better information to make that decision.

In view of the great tasks assigned the Commission, I would like to close with the final words of Rowland Hill's seminal 1837 pamphlet, addressed to a similar government commission. As mentioned above, postal reforms advocated by Hill, realized in the English postal act of 1840, were the genesis of the modern, universal, affordable postal services of today. Hill finished his pamphlet on an optimistic note that, even today, may not be entirely misplaced:

Let the Government then, take the matter in hand; let them subject these proposals to the severest scrutiny, availing themselves of the information possessed by able men who constitute the present Commission of Inquiry; let them proceed with boldness which the present state of [affairs] justifies and requires, and they will add another claim—not inferior to any they now possess, nor one which will pass unregarded—to the gratitude and affection of the people.

Thank you.

#### FOR FURTHER INFORMATION

Many points in this statement are discussed at greater length in papers that I have posted on the internet at [www.jcampbell.com](http://www.jcampbell.com). In particular, I have drawn on the following: "An Introduction to the History of Universal Postal Service" (Aug. 2002); "Evolution of Terminal Dues and Remail Provisions in European and International Postal Law," in *The Liberalisation of Postal Services in the European Union*, edited by D. Geradin (Kluwer: Brussels, 2002); "Modern Postal Reform Laws: A Comparative Survey," in *Postal and Delivery Services: Pricing, Productivity, Regulation and Strategy*, edited by M. Crew and P. Kleindorfer (Kluwer: Boston, 2002); "The Roots of Deregulation: Why Aviation and Telecommunications But Not the Post Office?" in *Managing Change in the Postal and Delivery Industries*, edited by M. Crew and P. Kleindorfer (Kluwer: Boston, 1997). Further material on the history of postal reform in the United States, Europe, and the Universal Postal Union may be found in my book, *The Rise of Global Delivery Services* (2001), available from Amazon.com or my website. I have also made use of an unpublished, comprehensive history of U.S. postal monopoly law, which I will provide the Commission on request.

Full references for foreign government reports mentioned in the statement are: Australia, Industry Commission, *Mail, Courier and Parcel Services: Report No. 28* (Canberra: Gov't Pub. Serv., 1992); Australia, National Competition Council, *Review of the Australian Postal Corporation Act 1989* (Australia: AGPS, 1998); European Union, Commission, *Green Paper on the Development of the Single Market for Postal Services* (COM[91]476 final) (Brussels: EU, 1992); New Zealand, "Report of Officials Committee to Cabinet State Agencies Committee" (Oct. 1988); United Kingdom, Postal Services Commission, "Promoting Effective Competition in UK Postal Services: A Decision Document" (May 2002).

More generally, the following sources of information are especially fruitful, among others:

- Hearings by the House Subcomm. on the Postal Service (1995-2000).
- Economic studies by Robert Cohen and others (c. 1992 to present); available from the Postal Rate Commission, [www.prc.gov](http://www.prc.gov).
- Reports on U.S. and foreign postal services by the General Accounting Office (c. 1995 to present); most are available from GAO's website, [www.gao.gov](http://www.gao.gov).
- Nine books on postal policy, variously titled, edited by Michael Crew and Paul Kleindorfer (Kluwer Academic Publishers, 1991 to 2002) ([www.wkap.nl](http://www.wkap.nl)). Articles are contributed by leading figures from academia, government, and industry in and out of the U.S.
- Books and articles on U.S. postal history by Richard R. John ([www.uic.edu/depts/hist/Faculty/john.html](http://www.uic.edu/depts/hist/Faculty/john.html)) and by Richard B. Kielbowicz ([www.com.washington.edu/Program/](http://www.com.washington.edu/Program/)

Faculty/Faculty/kielbowicz.html). Some of Prof. Kielbowicz's papers are available from [www.prc.gov](http://www.prc.gov).

Finally, I will be glad to provide the Commission with specific references for any particular point in the statement on request. Please email [jcampbell@jcampbell.com](mailto:jcampbell@jcampbell.com).

# 3

## Beyond the Monopoly: Other Legal Restraints on Entry into U.S. Postal Markets (2004)\*

**H**ow does the law protect the United States Postal Service from potential competitors? The most visible barrier to market entry is the postal monopoly law.<sup>1</sup> This ancient federal statute makes it a crime, with some exceptions, to transport letters in competition with the Postal Service. So apparent and absolute is the postal monopoly that discussions of postal policy often assume that repeal of the monopoly law would permit the Postal Service and private delivery services to compete like normal companies. This assumption is incorrect. The commercial position of the Postal Service is fortified not only by the postal monopoly but also by a broad range of legal privileges. This article offers a short survey of legal handicaps, other than the postal monopoly law, faced by those who would compete in Postal Service markets.

Several caveats are in order at the outset. First, "the law" is not a simple list of rules. The law is a tapestry woven from federal statutes and administrative regulations, international treaties, judicial decisions, state and local laws, and even contractual provisions. Reasonable men may differ on what body of rules constitutes "the law". While this article necessarily adopts one view, others may adopt a different view. Second, legislative effects should not be confused with legislative intent. Many, indeed most, of the legal measures described in this article were not adopted for the purpose of restraining competition. Rather, these provisions generally predate the modern (and still not universally embraced) perspective that

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<sup>1</sup>See 18 U.S.C. §§ 1693-99 (2000); 39 U.S.C. §§ 601-02 (2000). Since the 1930s, postal officials have referred to these statutory provisions—together with the search and seizure provisions found in 39 U.S.C. §§ 603-606—as the "Private Express Statutes", in capitals. See 39 C.F.R. § 310.1(f) (2002). This characterization is historically inaccurate. Statutes relating to private express, adopted in 1845, form but one of several themes incorporated into the postal monopoly law over the years. Capitalization implies a unity of legislative design or purpose that never existed.

the national post office is a commercial entity competing with other commercial entities and should compete fairly.<sup>2</sup> Third, U.S. law places many extra burdens on the shoulders of the Postal Service that are not carried by private companies. A catalog of such legal impedimenta would be useful but is beyond the scope of this article.<sup>3</sup> This article offers no assessment of whether the economic value of the Postal Service's burdens outweighs the economic value of its benefits, an inquiry that is probably fruitless in any case.

For purposes of exposition, it appears helpful to group the laws that create significant obstacles to entry into postal markets into three categories: (1) direct and indirect financial assistance given to the Postal Service, (2) exceptional treatment of the Postal Service under regulatory laws, and (3) effects of the governmental status of the Postal Service. This categorization is artificial, however, and in some degree arbitrary.

#### 1. FINANCIAL ASSISTANCE

As a federal agency, the Postal Service has received, and continues to receive, financial support from the government. Financial support takes the form of (1) capital transfers, (2) contributions towards operating expenses, and (3) indirect financial benefits.

Unlike an ordinary corporation, the Postal Service did not raise its initial capital from private financial markets. Instead, Congress declared that "The initial capital of the Postal Service shall consist of the equity . . . of the Government of the United States in the former Post Office Department."<sup>4</sup> The value of this initial "investment" was officially set at \$ 1.7 billion, a figure that substantially understates its true value because the Post Office's extensive real estate holdings were valued at original cost. Moreover, the president is authorized to transfer additional property

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<sup>2</sup>In the last general revision of U.S. postal law, adopted in 1970, the presidential commission which laid the foundations of the new law gave almost no thought to the scope of the postal monopoly or the regulatory framework appropriate to fair competition. The President's Commission on Postal Organization—usually referred to as the "Kappel Commission" after its chairman, Frederick Kappel—devoted only one page in its 212-page report to the rationale and scope of the postal monopoly. *Towards Postal Excellence* 128-29. The only postal service which the Commission considered to be competitive was parcel post. The Commission discussed fair treatment of private parcel companies, but only in respect to rates and only briefly. *Ibid.* 63, 90, 135, 173.

<sup>3</sup>For example, the Postal Service is obliged by law to provide certain services and to keep up an array of offices that a private company might choose to revise. Similarly, the Postal Service cannot engage in aggressive customer-by-customer pricing like a private company and must seek approval of the Postal Rate Commission before changing domestic postage rates. *See generally* U.S. Postal Service, "United States Postal Service: Business/Government Status" (Jan. 1995).

<sup>4</sup>39 U.S.C. § 2002(a) (2000). This transfer apparently included some property which was not used entirely for postal purposes: "The following properties shall be included in the transfer: . . . all real property 55 percent or more of which is occupied by or under control of the former Post Office Department immediately prior to the effective date of this section . . ." *Ibid.* (c).

to the Postal Service "with or without reimbursement".<sup>5</sup> Congress, too, can make additional capital contributions at any time. As of the end of 2002, total capital contributions to the Postal Service amounted to \$ 3.0 billion.<sup>6</sup>

Government payments to defer the operational expenses of the Postal Service are provided under different labels. From 1972, the Postal Service's first year of operation, until 1983, the Postal Service received a "public service subsidy". It was provided "as reimbursement to the Postal Service for public service costs incurred by it in providing the maximum degree of effective and regular postal service nationwide, in communities where post offices may not be deemed self-sustaining."<sup>7</sup> The public service subsidy was set at \$1.3 billion in 1972 (ten percent of the operating budget of the Postal Service in 1971) and reduced in stages until it was ended in 1984.

The Postal Service also receives operational funds denoted as "revenue forgone" payments. In principle, this payment is set equal to "the difference between the revenues the Postal Service would have received . . . and the estimated revenues to be received"<sup>8</sup> for the carriage of mail for which Congress has mandated special rates of postage. Since 1993, Congress has sharply limited eligibility for preferential postage rates, and revenue forgone payments have been on the order of \$60 to \$100 million per year.<sup>9</sup>

A third type of operational subsidy comes in the form of specific ad hoc grants by Congress. For example, Congress appropriated a total of \$ 1.0 billion to cover "accumulated operating indebtedness" in the years 1976 and 1977. In 2002, Congress gave the Postal Service \$ 0.5 billion to help pay for increased security costs after terrorist activities in 2001.<sup>10</sup>

Although governmental contributions towards the operational expenses of the Postal Service may be granted under different rubrics, the competitive effect appears to be the same. By paying for part of the cost of providing some or all classes of mail service, Congress makes it easier for the Postal Service to compete with companies which provide alternative communications and distribution services. Even revenue forgone payments distort competition by subsidizing the customers of one delivery service while denying a similar subsidy if those customers choose a competing delivery service.

In addition to direct payment of capital and operating expenses, the federal

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<sup>5</sup>39 U.S.C. § 2002(d) (2000).

<sup>6</sup>U.S. Postal Service, *2003 Annual Report* 60.

<sup>7</sup>39 U.S.C. § 2401(a) (2000).

<sup>8</sup>39 U.S.C. § 2401(c) (2000).

<sup>9</sup>Library of Congress, Congressional Research Service, "The Postal Revenue Forgone Appropriation: Overview and Current Issues" (Mar. 1, 2004) at 1.

<sup>10</sup>Congress has also gave U.S. airlines \$9.4 billion to help pay for security-related costs. See General Accounting Office, "Commercial Aviation: Legacy Airlines Must Further Reduce Costs to Restore Profitability" (Aug. 2004) at 1.

government provides the Postal Service with indirect financial assistance. Most importantly, the government makes available to the Postal Service a substantial line of credit at low interest rates. By statute, the Postal Service is authorized to borrow up to \$15 billion.<sup>11</sup> By way of collateral, the Postal Service may pledge its assets and future revenues—i.e., public property, including revenue earned from the postal monopoly.<sup>12</sup> The Postal Service's banker is the Federal Financing Bank, a special government bank for federal agencies. The FFB lends money to federal agencies at lower rates than available to most companies because it is able to obtain money from capital markets at better rates than private companies due to the large size and stability of government borrowings.<sup>13</sup> By the end of 2002, the Postal Service had borrowed about \$ 11 billion from the FFB.

Government also pays for certain expenses that a normal company would incur on its own account. The Department of Justice provides legal representation for the Postal Service.<sup>14</sup> The Department of State pays for U.S. membership in the Universal Postal Union, an intergovernmental body devoted primarily to promoting the international business of the Postal Service. The Department of the Treasury trains police officers for the Postal Service.<sup>15</sup> The Postal Rate Commission, the General Accounting Office, and other government analysts provide independent analyses and studies similar to those that a management consultant would perform for a private company.

A final category of indirect financial benefits are byproducts of the postal monopoly. As a brand name, the "Postal Service" has a degree of public recognition and trust that would a private company would pay a large fortune to replicate. The Postal Service's brand, however, is mainly derived from its status as the monopoly supplier of letter services. The monopoly mail stream also yields enormous economies of scale which can be exploited in the production of nonmonopoly services. For example, when the Postal Service purchases air transportation, it says to the airlines in effect, "If you want to contract to carry monopoly mail, you must provide top boarding priority to all mail, including competitive products like express mail."<sup>16</sup> A similar advantage applies in the purchase of virtually all other inputs that

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<sup>11</sup>39 U.S.C. § 2005 (2002).

<sup>12</sup>39 U.S.C. § 2005(b). In addition, repayment may be guaranteed by the "full faith and credit" of the U.S. government if requested by the Postal Service and agreed by the Secretary of Treasury. 39 U.S.C. § 2006(c).

<sup>13</sup>See 12 U.S.C. § 2285 (2000).

<sup>14</sup>39 U.S.C. § 409(d) (2000).

<sup>15</sup>See, e.g., Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681-483.

<sup>16</sup>See U.S. Postal Service, "Solicitation ASYS-99-01: Air System Contract" (1998) § B(1)(a)(1) provides, "Mail Boarding Priority: During the term of this contract the Postal Service will require the supplier to provide transportation service . . . for all mail tendered to it . . . after the boarding of (listed in order of priority): (a) Passengers' baggage; (b) Human remains. . . ; (c) Critical repair parts for aircraft on the ground . . .".

are used in the joint production of monopoly and nonmonopoly services, from paperclips and mailbags to advertising and buildings.

The postal monopoly has also given rise to a system of post office boxes commonly used by organizations which receive large volumes of mail. Since the Postal Service will not accept privately carried shipments for deposit in post office boxes,<sup>17</sup> widespread use of post office boxes gives the Postal Service a competitive advantage in the carriage of some types of documents and parcels.<sup>18</sup>

Still another byproduct of the postal monopoly is the Postal Service's familiarity with addresses and addressing systems. As the sole provider of letter delivery services, the Postal Service possesses the most extensive and current database of personal addresses in the nation. This database can be used, in turn, to enhance the reliability of delivery services for nonmonopoly shipments. The Postal Service's role in addressing is so important that some localities delegate to the local postmaster the authority to assign addresses to new buildings.<sup>19</sup>

## 2. REGULATORY EXCEPTIONS

In addition to financial assistance, the Postal Service benefits from special treatment under laws which regulate the conduct of commercial activities. These privileges, too, give the Postal Service a measure of protection from competition that extends beyond the four corners of the postal monopoly.

Antitrust and fair trade laws govern the conduct of most commerce in the United States. As the Supreme Court has declared, "Congress mandated competition as the polestar by which all must be guided in ordering their business affairs".<sup>20</sup> All except the Postal Service. Antitrust law does not apply to the Postal Service because it is federal agency.<sup>21</sup> Similarly, the Postal Service's governmental status immunizes it from "any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter" or any other "claim based upon an act or omission of an

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<sup>17</sup>U.S. Postal Service, *Domestic Mail Manual* (Issue 58) § 910.3.2 declares, "Only mail and official USPS notices may be placed into a post office box".

<sup>18</sup>Specifically, the Postal Service has a competitive advantage in the carriage of documents and parcels that are routinely addressed to post office boxes. Although this has long been a matter of concern to the Postal Service's competitors, the economic value of this advantage is unclear. A mailer can avoid the Postal Service's exclusive access to the post office box of his addressee by using a private carrier to deliver the document or parcel to the physical address of the addressee. Likewise, the addressee can circumvent the post office box system by making use of private post office service. The Postal Service's advantage appears to lie in the cost of these opt-out procedures.

<sup>19</sup>*See, e.g.*, Voorhees, N.J., Ordinance "§ 98.39 Assignment of Numbers. House numbers shall be assigned by the United States Postal Service. Every owner, occupant or lessee of a building constructed or to be constructed in the Township shall apply to the United States Postal Service for an authorized number."

<sup>20</sup>*City of Lafayette v. Louisiana Power & Light Co.*, 435 U.S. 389, 406 (1978).

<sup>21</sup>*United States Postal Service v. Flamingo Industries (USA), Ltd.*, 540 U.S. \_\_ (2004).

employee of the Government, exercising due care".<sup>22</sup>

Other federal regulatory laws likewise give favorable, or at least different, treatment to the Postal Service. Unlike a private company, the Postal Service is not subject to federal corporate income tax. Until 1998, the Postal Service was exempt from regulation by the Occupational Safety and Health Administration, a federal agency whose workplace rules have been the subject of much complaint from American business.<sup>23</sup> Aviation security regulations likewise give special consideration to the Postal Service.<sup>24</sup>

Some statutes grant privileges to the Postal Service that are akin to special regulatory treatment. The most commercially significant of these privileges is the criminal law to prohibits anyone but the Postal Service from delivering mailable matter to a mailbox located on the side of the road.<sup>25</sup> Since delivery to the mailbox is widespread in the United States and substantially less expensive than delivery to the door of the addressee, the mailbox access law gives the Postal Service a significant competitive advantage in competitive as well as monopoly products. The Postal Service is also the only delivery service permitted to issue pre-payment stamps "of the kind authorized and provided by" the Postal Service.<sup>26</sup> Similarly, the Postal Service is the only delivery service whose employees and facilities are singled out for protection from harm under federal criminal laws.<sup>27</sup> Only the Postal Service

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<sup>22</sup>39 U.S.C. § 2680 (2000). On the other hand, the Postal Service is liable for violation of federal laws prohibiting infringement of trademarks or unfair competition by means of false or misleading advertisements. *See* Federal Express Corporation v. United States Postal Service, 151 F.3d 536 (6th Cir. 1998) (Lanham Act, 15 U.S.C. § 1127 (2000)).

<sup>23</sup>In 1998, the definition of "employer" was amended to exclude the Postal Service from the general exemption for the U.S. government. *See* 29 USC 652(5)(2000).

<sup>24</sup>From the standpoint of aviation security, the Postal Service is a large freight forwarder or "indirect air carrier", that is, an entity that collects packages and tenders them to an airline for transportation. Federal regulations except the Postal Service from the rules applicable to all other freight forwarders. *See* 49 C.F.R. § 1540.5 (definition of "indirect air carrier"). Nonetheless, because of security concerns, the Postal Service has substantially reduced the amount of mail transported by passenger aircraft since the terrorist attacks of September 2001. *See* U.S. Postal Service, 2002 *Comprehensive Statement on Postal Operations* at 25.

<sup>25</sup>18 U.S.C. § 1725 (2000) provides, "Whoever knowingly and willfully deposits any mailable matter such as statements of accounts, circulars, sale bills, or other like 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, shall for each such offense be fined under this title." *See also* General Accounting Office, "U.S. Postal Service: Information About Restrictions on Mailbox Access" (May 1997).

<sup>26</sup>18 U.S.C. § 501 (2000) provides, "Whoever makes or prints, or authorizes to be made or printed, any postage stamp, postage meter stamp, stamped envelope, or postal card, of the kind authorized and provided by the Post Office Department or by the Postal Service, without the special authority and direction of the Department or Postal Service . . . Shall be fined under this title or imprisoned not more than five years, or both."

<sup>27</sup>*See, e.g.*, 18 U.S.C. § 2114 (2000) which provides, "A person who assaults any person having lawful charge, control, or custody of any mail matter . . . with intent to rob, steal, or purloin

can offer a delivery service whose privacy is guaranteed by law.<sup>28</sup> Only the Postal Service enjoys a legal presumption that a letter which has been dispatched is as good as delivered.<sup>29</sup> And, in most localities in the United States, only the Postal Service enjoys the right to place collection boxes on public streets.<sup>30</sup>

International postal services are regulated by two main systems of law: postal conventions and customs law. International postal conventions originated as a byproduct of the postal monopoly. When national governments insisted that letters could be transported across their territories only by their own public officials, postal service between countries became impossible without agreement between the governments concerned. In 1874, a multilateral postal convention, the Universal Postal Convention, replaced a patchwork of bilateral agreements.<sup>31</sup> The Convention is revised every five years by a general Congress of member governments. The present Convention was agreed in Beijing in 1999.<sup>32</sup>

Based as it is on the premise that an exchange between government monopolists is the natural way to provide international delivery services, the Universal Postal Convention establishes a legal framework that favours post offices

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such mail matter . . . shall, for the first offense, be imprisoned not more than ten years; and if in effecting or attempting to effect such robbery he wounds the person having custody of such mail . . . or puts his life in jeopardy by the use of a dangerous weapon, or for a subsequent offense, shall be imprisoned not more than twenty-five years."

<sup>28</sup>39 U.S.C. § 3623 (2000) provides, "(d) The Postal Service shall maintain one or more classes of mail for the transmission of letters sealed against inspection. . . . No letter of such a class of domestic origin shall be opened except under authority of a search warrant authorized by law." *See also* Ex parte Jackson, 96 U.S.727 (1878). Of course, a private delivery service can promise not to open an item entrusted to it, but breach of the promise is merely breach of contract. In contrast, consider the postal law of New Zealand which requires all carriers of letters to be licensed and to respect the privacy of letters carried. *See* Postal Services Act 1998 § 23.

<sup>29</sup>See, e.g., Federal Rules of Civil Procedure, Rule 5(b)(2)(B) (2003) ("Service by mail is complete on mailing"). In an exception that proves the rule, in 1996 Congress amended the tax law to extend this traditional presumption to tax returns carried by designated private delivery services. 26 U.S.C. § 7502 (2000).

<sup>30</sup>This privilege appears to derive from two legal sources. Federal postal law provides that public roads and letter carrier routes are "post roads". 39 U.S.C. § 5002 (2002) ("The following are post roads: . . . (4) public roads, highways, and toll roads during the time the mail is carried thereon; and (5) letter-carrier routes established for the collection and delivery of mail."). Although the purpose of this designation was originally to prohibit private carriage over such routes, it seems to be interpreted by the Postal Service and local authorities as conferring on the Postal Service authority to place collection boxes along public highways as it sees fit. In some cases, this authority is confirmed by local ordinance. For example, the city of Palm Beach, Florida, declares "Prohibited uses on any right-of-way within the city include, but are not limited to the following: mailboxes other than prescribed by the U.S. Postal Service . . .". Right-of-way Use Procedures & Requirements Manual § 3A (2002).

<sup>31</sup>Codding, *The Universal Postal Union* 1-24.

<sup>32</sup>The major acts of the Universal Postal Union, adopted in the Beijing Congress of 1999 and in force from the beginning of 2001 to the end of 2005, may be found in two publications, *Constitution* and *Letter Post Manual* (Berne, 2000), cited in the bibliography.

over private delivery services and, in each national territory, favours the local post office over foreign post offices. Under the Convention, post offices agree on a fixed price for the delivery of international mail. This scheme allows the Postal Service to purchase delivery of documents and parcels from post offices in industrialized countries at lower rates than available to a private delivery service. It is as though the United States agreed to an international aviation agreement provided lower landing fees for one U.S. airline to the detriment of all others. Special delivery rates for national postal monopolists are reinforced by another section of the Convention that authorizes post offices to intercept international mail that is posted in the "wrong" country; i.e., mail that is transmitted by private means from one country to another and tendered to a foreign post office that offers better service or lower rates. If U.S. antitrust laws were applicable, the Postal Service's participation in such price-fixing and market allocation arrangements would almost surely be illegal.<sup>33</sup>

Customs laws are the other major regulatory hurdle for international delivery services. These laws are not applied equally to shipments by the Postal Service and private carriers. In part, this is a result of administrative discretion. Federal law authorizes the Customs Service to issue regulations specifying procedures for shipments value less than \$2,500.<sup>34</sup> Pursuant to this authority, the Customs Service has adopted one set of procedures for low value shipments carried by the Postal Service and another set of procedures for identical shipments carried by private carriers.<sup>35</sup> For postal shipments, Customs officials prepare customs clearance documents using information provided by the mailer in a form attached to the package.<sup>36</sup> For private shipments, the Customs Service requires the private carrier to prepare customs clearance documents using information it has elicited from the shipper. The private carrier is responsible for the accuracy of the information it provides, whereas the Postal Service is not liable for the accuracy of information provided by the mailer. The amount of information provided by the mailer is generally less than that required of the private carrier, especially in respect to small packets weighing two kilograms or less and valued less than \$ 400. By imposing liability on the private carrier, the Customs Service forces the private carrier to do

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<sup>33</sup>Several of the anticompetitive features of the Universal Postal Convention have been condemned under the competition laws of the European Union, which does apply competition law to public post offices. See generally, D. Geradin, *The Liberalization of Postal Services in Europe* (The Hague, 2002) (especially chapters 1, 3, and 5). As Professor David Luff notes in chapter 2, anticompetitive provisions of the Universal Postal Convention also raise substantial questions under the General Agreement on Tariffs And Trade and General Agreement on Trade in Services. Although GATT and GATS apply to the United States and the Postal Service, there seems to be a gentlemen's agreement among nations not to press the issue.

<sup>34</sup>19 U.S.C. § 1498 (2000).

<sup>35</sup>*Cf.* 19 C.F.R. pt. 128 (express consignments) *with* pt. 145 (mail importations)..

<sup>36</sup>19 C.F.R. § 14512(b)(1) (2002) provides, "Customs officers shall prepare and attach a mail entry (Customs Form 3419 or 3419A) for each shipment not exceeding \$2,000 in value which is to be delivered by the Postal Service, and return the shipment to the Postal Service for delivery and collection of duty."

as much data collection and verification as possible, even for shipments yielding small amounts of duty. On the other hand, when it comes to documenting and checking low value postal shipments, Customs officials often find that they have more important tasks and low value postal items may be admitted without payment of duty, a virtual impossibility for privately carried shipments.

To the extent that such differences in customs procedures are grounded in law, they derive from two international treaties: the Kyoto Convention and the Universal Postal Convention. The revised Kyoto Convention <sup>37</sup> provides that for postal shipments, "When all the information required by the Customs is available from the CN22 or CN23 and supporting documents, the form CN22 or CN23 shall be the Goods declaration."<sup>38</sup> The CN22 and CN23 forms referred to are declaration forms for mailers established by postal officials under authority of the Universal Postal Convention.<sup>39</sup> In short, postal officials have adopted their own, standardized and simplified customs forms for worldwide use, while private operators struggle with diverse customs procedures required by each country. In addition, the Universal Postal Convention declares that "Postal administrations shall accept no liability for customs declarations in whatever form these are made or for decisions taken by the Customs on examination of items submitted to customs control."<sup>40</sup> As noted above, it is the potential liability for incomplete or inaccurate data that allows the Customs Service to demand extensive, and expensive, cooperation from private carriers.

### 3. GOVERNMENTAL AUTHORITY

The Postal Service's status as an agency of the federal government introduces another class of obstacles to ordinary competition.<sup>41</sup> Foremost among these is the power to make rules and regulations that carry the force of law. On various occasions, the Postal Service also acts a policeman, judge, and executive department.

Under the postal code, the Postal Service may "adopt, amend, and repeal such rules and regulations as it deems necessary to accomplish the objectives of [the

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<sup>37</sup>"Kyoto Convention" is the common shorthand name for the International Convention on the Simplification and Harmonization of Customs Procedures (Revised), June 1999. This treaty is presently in the final stages of ratification by a sufficient number of countries to bring it into force. It will replace an earlier version adopted on May 18, 1973.

<sup>38</sup>Annex J.2, Standard 9.

<sup>39</sup>Universal Postal Convention (1999), Reg. RE 601. Although postal officials exert primary influence in development of the Universal Postal Convention and, especially, its regulations, their influence may be tempered somewhat by governmental officials acting in the Council of Administration, a permanent body of the UPU, and the Congress, a convocation of plenipotentiaries held once every five years.

<sup>40</sup>Universal Postal Convention (1999) Art. 35(3).

<sup>41</sup> The Postal Service would, like the rest of the federal government, enjoy "sovereign immunity" from legal action except that the postal law waives this immunity by providing that the Postal Service may "sue and be sued". 39 U.S.C. § 401(1) (2000). *See United States Postal Service v. Flamingo Industries (USA), Ltd.*, 540 U.S. \_\_\_ (2004).

postal law]."<sup>42</sup> Using rulemaking authority, the Postal Service has adopted regulations that have the effect of improving its commercial position. It has, for example, expanded the scope of the postal monopoly by declaring that its monopoly over the carriage of "letters" includes as well the carriage of printed advertisements.<sup>43</sup> These regulations go on to lay down operating conditions for private delivery services that wish to carry tangible objects bearing information in competition with the Postal Service.<sup>44</sup> Other Postal Service regulations declare that undeliverable mail sent to a private post office, unlike mail sent to a regular post office, will not be returned to the sender or forwarded free of charge.<sup>45</sup> Another rule holds declares that a private delivery service may not attach an envelope or parcel to the outside of an addressee's roadside mailbox even though this mode of delivery may be agreeable to the householder and compatible with Postal Service access to the inside of the mailbox.<sup>46</sup> The Postal Service has also issued regulations limiting the right of charities to use discount postage rates established by Congress. Even if these regulations are patently contrary to Congressional intent, they limit access to discount postage rates until a charitable organization expends enough money needed to litigate the issue through the courts.<sup>47</sup>

The Postal Service exercises somewhat similar rulemaking authority in the field of international postal law.<sup>48</sup> From 1971 through 1998, the Postal Service

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<sup>42</sup>39 U.S.C. § 401(2) (2000).

<sup>43</sup>Associated Third Class Mail Users v. United States Postal Service, 600 F.2d 824 (D.C. Cir. 1979), cert. den. 444 U.S. 837 (1979).

<sup>44</sup>39 C.F.R. § 320.6 (2002) (suspension for urgent letter). For example, the regulations declare that a private carrier must keep records of its operations and "Carrier records must be sufficient to show that the delivery of the letters was completed within the applicable time limitations, if carried under the authority of paragraph (b) of this section, and must be made available for inspection at the request of the Postal Service." For the purpose of the regulations, a "letter" is defined as "a message directed to a specific person or address and recorded in or on a tangible object". 39 C.F.R. § 310.1 (2002).

<sup>45</sup>Postal Service, *Domestic Mail Manual* § F020.2.7 (2004) states, "Mail addressed to an addressee at a commercial mail receiving agency (CMRA) is not forwarded through the USPS. The CMRA customer may make special arrangements for the CMRA operator to remail the mail with payment of new postage." A CMRA is a company that, inter alia, receives mail on behalf of addressees and holds the mail for collection, i.e., a service equivalent to the "post office box" service provided by the Postal Service.

<sup>46</sup>U.S. Postal Service, *Domestic Mail Manual* (Issue 58) § D041.1.3 states, "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." See *Rockville Reminder, Inc. v. United States Postal Service*, 480 F.2d 4 (2d Cir. 1973).

<sup>47</sup>See, e.g., *Aid Association for Lutherans, V. United States Postal Service*, 321 F.3d 1166, 1176 (D.C. Cir. 2003) ("In short, the Postal Service's idiosyncratic use of the word "coverage" has no basis in the ordinary use of term. [It] also leads to an absurd result.").

<sup>48</sup>See generally General Accounting Office, "Postal Service: Unresolved Issues in the International Mail Market" (Mar. 1996); "Postal Issues: The Department of State's Implementation of Its International Postal Responsibilities" (Jan. 2000).

represented the United States at the Universal Postal Union with virtually no guidance from the U.S. government. Since the Universal Postal Convention and its regulations are binding on member governments,<sup>49</sup> the Postal Service was, in effect, one of the leading members of the legislative body that wrote the regulations for international mail. In 1998, under pressure from private delivery services, Congress amended the postal law and placed the Department of State in charge of the U.S. delegation to the UPU.<sup>50</sup> Even so, the U.S. position is strongly influenced by the Postal Service. Most U.S. representatives to the UPU on Postal Service employees.<sup>51</sup> Most fundamentally, since 1994, the UPU has shifted more and more legislative authority from the Congress to the Postal Operations Council, a permanent committee composed of 41 representatives "appointed by the postal administration of his country."<sup>52</sup> The Postal Operations Council, rather than the Congress, is thus becoming the main legislative body for the UPU. The Postal Service has been a member of the Postal Operations Council since it was created in 1994.

The Postal Service also exercises a limited amount of police authority. Postal inspectors and policemen may conduct investigations, arrest persons, and seize property in the enforcement of laws relating to use of the mails and such other laws as the Attorney General may designate.<sup>53</sup> Postal inspectors have played a prominent role in efforts to stop use of the mail to perpetuate fraud or promote immoral activities (e.g., dissemination of pornography). More prosaically postal inspectors and policeman guard postal facilities and investigate offenses such as theft from mails. In the past, the Postal Service has also used its police authority to intimidate customers of competitors.

The Postal Service even operates its own administrative courts. Under authority of the Judicial Officer, Postal Service officials adjudicate issues of potentially serious economic consequence for the persons involved. The Judicial Officer has adopted elaborate procedures for trying cases relating to offenses such as false representation, posting of non-mailable matter, and sending or carrying mail reserved under the postal monopoly. In an administrative hearing at the Postal Service, the presiding officer is typically the Judicial Officer or an administrative law judge. The General Counsel of the Postal Service acts as prosecutor or complainant. Final appeal is to the Postmaster General. While these quasi-judicial procedures seem little used, their existence underscores the Postal Service's capacity

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<sup>49</sup>Universal Postal Union Constitution (as amended to 1999), Art. 22.

<sup>50</sup>39 U.S.C. § 407 (2000) as amended by Postal Service Appropriations Act [1998], Pub. L. 105-277, § 633, 112 Stat. 2681-492, 2681-523.

<sup>51</sup>In 1999, the Department of State included, for the first time, a single representative from private delivery services in the U.S. delegation of the Beijing Congress of the UPU. More than thirty Postal Service representatives were named to this delegation.

<sup>52</sup>Universal Postal Union General Regulations (1999), Art. 104(3).

<sup>53</sup>18 U.S.C. § 3061 (2000).

to exercise governmental authority.<sup>54</sup>

The governmental mantle worn by the Postal Service yields less direct benefits as well. When the Postal Service is a litigant before a normal federal court, it enjoys the respect that the judicial branch accords the executive branch. For example, after losing a case in district court and either failing to appeal or losing on appeal, an ordinary litigant must accept defeat. However, the Postal Service, like the Internal Revenue Service, takes the position that it can refuse to "acquiesce" in the court's decision. In one remarkable series of cases, the Postal Service claimed that it was immune from wage garnishment actions under state law.<sup>55</sup> It relitigated the issue again and again, losing all final decisions. In the end, an exasperated Court of Appeals wrote:

For the sixth time in the courts of appeal, and for no less than the nineteenth time in the district courts, the government has sought to litigate the immunity of the United States Postal Service (USPS) to state garnishment proceedings. . . . [Such] circuit shopping by the government in quest of a favorable decision should not be allowed.<sup>56</sup>

More importantly, the Postal Service demands and receives judicial deference towards its regulations however self-interested. Under standard principles of administrative law, a federal court will uphold the regulations of a federal agency if the agency's ruling is based on a "permissible construction of the statute."<sup>57</sup> In one case, a court of appeals upheld the Postal Service's claim of monopoly over printed advertisements—a highly dubious reading of the statute—with the following words: "Because the statute is ambiguous, the Postal Service is well within its prerogatives in attempting to resolve the ambiguity by regulation."<sup>58</sup> To challenge the Postal Service in court, therefore, one must present not merely a better, sounder legal argument than the Postal Service but demonstrate that there is no possibility that Postal Service's administration of the law can be considered "permissible".

The supremacy of federal law to state law likewise accrues to advantage of the Postal Service. A state law may not, for example, interfere with the Postal Service's federally mandated obligation to provide deliver the mail.<sup>59</sup> Thus, a state or local law

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<sup>54</sup>See 39 C.F.R. pts. 951 to 966 (2002). The Postal Service even reserves the right to disqualify attorneys from practicing before it.

<sup>55</sup>That is, claims by a debtor of a Postal Service employee that wages due the employee should be paid directly to the debtor.

<sup>56</sup>*Goodman's Furniture Co. v. United States Postal Service*, 561 F.2d 462, 463 (3d Cir., 1977)

<sup>57</sup>*Chevron v. National Resources Defense Council*, 467 U.S. 837, 843 (1984).

<sup>58</sup>*Fort Wayne Community Schools v. Fort Wayne Education Association*, 977 F.2d 358, 366 (7th Cir. 1993).

<sup>59</sup>*See generally Johnson v. State of Maryland*, 254 U.S. 51 (U.S. 1920) (a postal employee could not be required by state law to obtain a driver's license to drive a mail truck); *United States Postal Service v. City of Hollywood*, 974 F. Supp. 1459 (D. Fla., 1997) (construction of leased facility that will be used exclusively by United States Postal Service is immune from local building permit

cannot prohibit a letter carrier from crossing across private property to deliver the mail.<sup>60</sup> Postal Service vehicles are immune from state sales taxes, real estate taxes, building codes, zoning ordinances, and vehicular licensing and parking regulations.<sup>61</sup> While a private company must live with the costs of doing business under the diverse rules of multiple state and local jurisdictions, the Postal Service can rely on its immunity from such costly inconveniences.

Then, too, the Postal Service's role as governmental agency yields the unique privilege of dealing with other governmental agencies as a colleague rather than as a petitioner. The Postal Service is privy to inter-agency policy deliberations inaccessible to a private company. The Postal Service can call upon other federal agencies for assistance. A government investigation of practices in the postal services market will typically be sent to the Postal Service in draft form for comment, a "courtesy" less likely to be accorded private parities.

#### 4. SUMMARY: THE UNEVEN PLAYING FIELD

The Postal Service is today a commercial enterprise. About 90 percent of mail is paid for by commercial enterprises and other types of organizations.<sup>62</sup> Of the remaining 10 percent of postal services, almost all are purchased by individual consumers in the same manner as they purchase any other consumer good, such as telephone service, cable-TV, or milk. For most mailers in most cases, use of the post is weighed against the cost, convenience, and effectiveness of some other means of communication or distribution.

Federal law, however, treats postal service as a government service. Potential substitutes for the government's postal service—whether private delivery services or other means of distribution—are discouraged by a web of laws that flow from the governmental status of the Postal Service and insulate it from many of the financial and regulatory challenges faced by private companies. The cumulative effect of these laws is to establish a significant barrier to entry that is quite distinct from the outright prohibitions of the postal monopoly. These legal measures not only reinforce the postal monopoly but also extend entry barriers—or at least entry inhibitions—beyond the scope of the monopoly.

It bears repeating, however, that the advantages of law are not all on the side of the Postal Service. There are disadvantages as well. These render the Postal Service a less efficient and aggressive competitor than it would be organized as a private company. At the end of the day, it is the private delivery services, not the

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requirements).

<sup>60</sup>United States v. Pittsburg, 661 F.2d 783 (9th Cir., 1981).

<sup>61</sup> In some cases, however, local postal officials comply with local ordinances voluntarily.

<sup>62</sup>In 2003, 3 percent of mail was sent from households to households and 8 percent from households to non-households. Postage for some of the latter, however, is prepaid the by the receiving organization. U.S. Postal Service, *The Household Diary Study: Mail Use and Attitudes in PFY 2003* (2004) at 3.

Postal Service, that have dominated most markets outside the postal monopoly. The legal measures discussed in this essay thus serve not only as restraints against entry but also, and perhaps to an even greater degree, as inhibitors of efficient and undistorted production by both the Postal Service and its private sector competitors.

#### BIBLIOGRAPHY

- Codding, George A., Jr., *The Universal Postal Union* (New York: New York University Press, 1964).
- Geradin, Damien, *The Liberalization of Postal Services in Europe* (The Hague: Kluwer Law International, 2002).
- United States, General Accounting Office, "Commercial Aviation: Legacy Airlines Must Further Reduce Costs to Restore Profitability" (Aug. 2004). Available from the GAO website, [www.gao.gov](http://www.gao.gov).
- , "Postal Issues: The Department of State's Implementation of Its International Postal Responsibilities" (Jan. 2000). Available from the GAO website, [www.gao.gov](http://www.gao.gov).
- , "Postal Service: Unresolved Issues in the International Mail Market" (Mar. 1996). Available from the GAO website, [www.gao.gov](http://www.gao.gov).
- , "U.S. Postal Service: Information About Restrictions on Mailbox Access" (May 1997). Available from the GAO website, [www.gao.gov](http://www.gao.gov).
- United States, Library of Congress, Congressional Research Service, "The Postal Revenue Forgone Appropriation: Overview and Current Issues" (Mar. 1, 2004). Available from the website of the Alliance of Nonprofit Mailers, [www.nonprofitmailers.org](http://www.nonprofitmailers.org).
- United States, President's Commission on Postal Organization, *Towards Postal Excellence*, (Washington, D.C., 1968) repr. U.S. Congress, House Committee on Post Office and Civil Service, 94th Cong., 2d Sess., Comm. Print No. 94-25 (1976).
- United States, U.S. Postal Service, *2002 Comprehensive Statement on Postal Operations* (2003). Available from the USPS website, [www.usps.com](http://www.usps.com).
- , *2003 Annual Report* (2003). Available from the USPS website, [www.usps.com](http://www.usps.com).
- , *Domestic Mail Manual* (Issue 58). Available from USPS Postal Explorer website, [pe.usps.gov](http://pe.usps.gov).
- , *The Household Diary Study: Mail Use and Attitudes in PFY 2003* (2004). Available from the USPS website, [www.usps.com](http://www.usps.com).
- , "Solicitation ASYS-99-01: Air System Contract" (1998). Available from the USPS website, [www.usps.com](http://www.usps.com).
- , "United States Postal Service: Business/Government Status" (Jan. 1995).
- Universal Postal Union, *Constitution, General Regulations: Resolutions and Decisions, Rules of Procedure, Legal Status of the UPU* (Berne, 2000). Available from the UPU website, [www.upu.int](http://www.upu.int).
- , *Letter Post Manual* (Berne, 2001). Available from the UPU website, [www.upu.int](http://www.upu.int).