



Report On Universal Postal Service
and The Postal Monopoly
October 2008



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Preface

The Postal Accountability and Enhancement Act of 2006 requires the Postal Regulatory Commission to submit a report to the President and Congress on universal postal service and the postal monopoly in December 2008. The Commission's report must include the scope of universal service and the postal monopoly under current law, the scope likely required in the future to meet the needs of the American public, and any recommended changes. The Postal Act of 2006 requires the Commission to consult with and solicit written comments from the Postal Service. In addition, Section 710 of the Postal Act of 2006 requires the GAO by 2011 to make a broad range of recommendations and to include experiences of other countries. Therefore, the dialogue on universal postal service and postal monopoly, in many respects, is just beginning. Given the economy and significant dynamics in the marketplace for mailers and the Postal Service, this dialogue may need to occur sooner rather than later. This report represents the Postal Service's initial effort to inform that dialogue.

I. Executive Summary

The mission of the U.S. Postal Service is to provide the American public with trusted, affordable, universal service. Congress and the President set forth this mission by recognizing the Postal Service's critical role in commerce and in binding the nation together. While not explicitly defined, the Postal Service's universal service obligation (USO) is broadly outlined in multiple statutes and encompasses multiple dimensions: geographic scope, range of products, access to services and facilities, delivery frequency, affordable and uniform pricing, service quality, and security of the mail. While other carriers might offer *delivery* on a universal basis, the Postal Service is the only carrier *obligated to provide all aspects* of universal service at affordable prices. To ensure funding of the USO, Congress and the President established the Private Express Statutes (PES) and the mailbox access rule, which together comprise the postal monopoly. Since any obligation must be matched by the capability to meet that obligation, the USO, the PES, and the mailbox rule are inextricably linked.

Recent growth in the American population and the number of delivery points has led to a significant increase in the Postal Service's fixed costs, while over the last few years, volumes have taken a very visible downward turn. Recent economic trends certainly account for a good share of that downturn. So, too, does the acceleration of electronic diversion. Increasingly, personal correspondence is sent via the internet, financial statements arrive online, and bills are received and paid electronically. Online alternatives have become more prominent for news publications and advertising, and competition thrives in the package delivery arena. While the Postal Service may have a limited statutory monopoly, the reality is that there are alternatives to every piece of mail.

The Postal Service believes that the broad definition of USO should be maintained. First, there has been no impetus for change towards a more strictly defined USO. As discussed in Section XI, surveys and hearings indicate that the American public and the mailing industry do not want any changes at this time. Compared to other posts, the Postal Service is providing a high level of service and doing so at low, affordable prices.¹ Second, due to declining mail volumes and higher energy prices, the Postal Service and the mailing industry as a whole are under great financial stress. The Postal Service needs increased flexibility to examine how it can be increasingly responsive in serving Americans into the future as circumstances continue to change. A more rigidly defined USO would unduly restrict the Postal Service and ultimately harm the American public and businesses it serves.

¹ Appendix B. Accenture Report: International Postal Liberalization – Comparative Study of US and Key Countries, p 43.

The USO should apply to market dominant products only, with competitive products subject to the market. Competitive products do not need to be included within the USO because the market provides alternatives. Security for all products and services will continue to be paramount.

The PES and mailbox access rule should be preserved as is. As mentioned above, any *obligation* must be matched by the financial *capability* to meet that obligation and the Postal Service requires adequate funding for the USO even at its current levels. The purpose of the PES and the mailbox rule for over one hundred years has been to fund and support the various obligations. Eliminating or reducing the PES or mailbox rule would have a devastating impact on the ability of the Postal Service to provide the affordable universal service that the country values so highly. The impact of relaxing the mailbox rule is estimated to result in a loss in *profit* in the range of \$1.5 billion to \$2.6 billion per year. The estimated USO cost of the uniform price requirement, under the scenario of relaxing the PES for Standard Mail along with the relaxation of the mailbox rule, is \$1.4 billion to \$3.3 billion per year. Furthermore, the estimated delivery cost savings of allowing the Postal Service to reduce delivery days to five days a week is at a minimum \$3.5 billion per year. In addition, the estimated range of cost savings of closing the smallest Post Offices is \$500 million to \$1.4 billion per year.² These are just a few of the estimated revenue impacts and obligation costs to consider in order to preserve affordable universal service.

Likewise, potential changes to the mailbox access rule would have impacts far beyond losing a funding source to fulfill the USO. Relaxing access to the mailbox will also have adverse impacts on security. As discussed in Section XI, the Commission's public outreach has shown that Americans greatly value the security and sanctity of the mail. As explained in Section VI, opening access to the mailbox would hinder the ability of postal inspectors to keep the mail secure. Additionally, opening the mailbox will greatly impact customer service and increase delivery costs.

As a further word of caution against immediate change, liberalization is not necessarily beneficial for all parties. There has already been some evidence that liberalization efforts in the United Kingdom have been detrimental to households and small businesses. In addition, in a presentation to the Commission, Philippe de Donder, visiting assistant professor at Yale University and a research fellow at the National Centre for Scientific Research at the Toulouse

² These estimates are discussed briefly in Section VII and in more detail in Appendix C. IBM Report: Quantitative Analysis of the Universal Service Obligation.

School of Economics, stated that while large businesses may benefit from liberalization, “household senders always suffer from opening to competition.”

The U.S. Postal Service has some important differences compared to foreign posts. Liberalization in foreign posts originated from a larger political context such as EU unification or a need to improve efficiency and service. As discussed in Section X, there is little upside potential from postal liberalization in the United States. The Postal Service is already efficient and provides record levels of service. Unlike other posts, the Postal Service has greatly improved efficiency over the last 30 years through automation and workshare programs that encourage efficient access to the postal system by means of price incentives. Also, foreign posts often are able to rely on revenue from nonpostal services, such as logistics or financial services, while the Postal Service is currently limited to providing only postal and ancillary services.

In summary, no changes should be made to more strictly define the USO or alter the PES or mailbox rule until the full impact of any potential changes can be thoroughly studied. The USO, PES, and mailbox rule are inextricably linked. A change in one will most certainly impact the others. And these changes will impact not only the Postal Service, but also the entire American public and the trillion dollar mailing community. Therefore, before any changes are recommended, the potential effects of such changes on these interrelated matters should be carefully studied, fully analyzed, and thoroughly supported. As Murray Comarow, who served as executive director of President Johnson’s Commission on Postal Organization in 1967-68 and President Nixon’s Advisory Council on Executive Organization in 1970-71, eloquently stated, “extraordinary change requires extraordinary evidence.”³

In addition, the Postal Accountability and Enhancement Act of 2006, from hereon referred to as the Postal Act of 2006, has been in place for less than two years; and therefore it is premature to judge the full effect of the changes on the question of whether these basic and longstanding characteristics of postal service in the U.S. should be altered. Given the recent implementation of the Postal Act of 2006, the new presence of price caps, and the severity of the current broader economic challenges, a dialogue may need to begin sooner rather than later to ensure sufficient flexibility in order to continue affordable, universal service into the future.

³ Docket. No. PI2008-3, USO Field Hearings, TR. Washington D.C. p 96, line 18.

II. Introduction and History

Today, the United States Postal Service provides service to American households and businesses six days a week, 52 weeks a year, and delivers over 40 percent of the world's mail. The American public reports high levels of satisfaction with its mail service. The Postal Service provides trusted universal service at affordable prices. It is committed to continuing to fulfill this mission and to maintain the high level of trust that the American public has placed in it as the most trustworthy Federal agency,⁴ based in large part on a panoply of legal protections often referred to as the security and sanctity of the mail.

The Postal Service has an over 230 year history, but has not been a static entity⁵. It has evolved as the needs of the Nation have changed. For the Postal Service to maintain its extensive, unique obligations, the special protections that enable it to meet these obligations must be maintained.

The concept of a universal service obligation (USO) is embedded in the U.S. Constitution. Even prior to the Constitution, the Continental Congress viewed a robust postal network as critical to nationhood, naming Benjamin Franklin – one of its most accomplished members – as Postmaster General in 1775. Guided by the Constitution, which authorized Congress to both “establish post offices and post roads” and “promote the general Welfare,” Congress first extended the postal network geographically, to embrace communities coast to coast. In 1845 and 1851, Congress passed laws slashing postage prices, which increased access to the mail system by making its use more affordable. In 1863, Congress dropped distance-based letter rate categories, ensuring that all Americans could mail letters at the lowest rate, and at the same time introduced the convenience that most Americans now expect – free home delivery of mail. The 1863 Act provided for free home delivery only in cities; Congressional authority for free delivery in the countryside came in 1893, although the first experiments did not start until 1896. In 1912, Congress opened up a new, cheaper world of merchandise to rural Americans when it authorized Parcel Post, effective January 1, 1913.⁶

In 1970, Congress transformed the Post Office Department into the United States Postal Service, a self-supporting independent establishment within the executive branch of the

⁴ Ponemon Institute, “Ponemon Institute Announces 2008 Privacy Trust Rankings of U.S. Government Agencies” (April 7, 2008), available at http://www.ponemon.org/press/Ponemon_2008%20Govt%20PTS%20Study%20FINAL.pdf.

⁵ A detailed discussion of the history can be found in Appendix A.

⁶ For further information on the development of specific services, see U.S. Postal Service, Pub. 100, *The United States Postal Service: An American History, 1775-2006* (2007).

government with increased authority over its own operations. The role of the Postal Service as a public service – its core mission – was not changed, as stated in 39 U.S.C. 101(a):

The Postal Service shall have as its basic function the obligation to provide postal services to bind the Nation together through the personal, educational, literary, and business correspondence of the people. It shall provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities.

To enable the Post Office Department to serve all Americans, no matter how remote, yet still finance its operations largely from its own revenue, in 1845, Congress restricted the private carriage of letter-mail⁷ by means of a group of federal laws known as the Private Express Statutes (PES). For at least 150 years, Congress has voiced the concern that private express companies would siphon off the most profitable delivery routes and customers, leaving only high-cost routes and communications to the Post Office Department, which in turn would either face financial ruin or encumber the public fiscally.⁸ By protecting postal revenue, the PES helped the Post Office Department extend its mail network nationwide, slash postage prices in the mid-1800s, and offer free home delivery of mail beginning in the mid- to late- 1800s.

Restriction of the private carriage of letters is key to the Postal Service's ability to maintain universal service. In 1782, the Continental Congress gave the federal Post Office the exclusive right of carrying and delivering letters for compensation,⁹ and this prohibition was continued after the Constitution with criminal penalties.¹⁰ In 1825, Congress limited the scope of private express liability, which previously extended to any "other person whatsoever,"¹¹ specifically to operators and owners of vehicles and vessels transporting private letters.¹² The 1825 Act also omitted prohibitions against horse and foot posts, which Congress restored two

⁷ The following discussion concerns the general scope of the private carriage proscription. For a discussion of changes to the types of items covered by the PES, see generally Roger P. Craig & William T. Alvis, *The Postal Monopoly: Two Hundred Years of Covering Commercial as Well as Personal Messages*, 12 U.S.F. L. Rev. 57 (1977).

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

⁹ Act of Oct. 18, 1782, 23 J.C.C. 670, 672-73; see Craig & Alvis, *supra* note 7, at 70 n.31 (noting that the Act "clearly" incorporates the colonial postal monopoly).

¹⁰ Act of Sept. 22, 1789, ch. 16, 1 Stat. 70 (expired 1792) (continuing in force previous postal legislation until the end of the First Congress); Act of Feb. 20, 1792, ch. 7, § 14, 1 Stat. 232, 236. The 1792 Act's requirement that arriving vessels present all letters to the local post office is now codified in 18 U.S.C. 1698-1699 and 39 U.S.C. 602(c). Act of Feb. 20, 1792, ch. 7, §§ 12-13, 1 Stat. 232, 235-36.

¹¹ See Act of Oct. 18, 1782, 23 J.C.C. 670, 672-73.

¹² Act of March 3, 1825, ch. 64, § 17-19, 4 Stat. 102, 106-107 (repealed 1872).

years later;¹³ even this reinstatement proved ineffective against couriers operating by railroad.¹⁴ This trend of leniency resulted in a tide of start-up private expresses which challenged the Post Office's financial viability and, with it, the ability of Americans newly residing in high-cost-to-serve, frontier areas to access efficient communication with the rest of the country.¹⁵ Because Congress found these measures insufficient to stem the threat that private expresses posed to the provision of universal service,¹⁶ it restored the general prohibition on private letter carriage in 1845¹⁷ and extended penalties to users of private expresses,¹⁸ while at the same time slashing the price of using the U.S. Mail.¹⁹ These provisions of the 1845 Act were codified without material revision in 1872, and they were not substantially altered with the Postal Reorganization Act of 1970 (PRA).²⁰

Allowances for certain activities in the public interest evolved along with the scope of the prohibition on private carriage. The 1825 Act introduced the exceptions for letters relating to cargo,²¹ and special messengers.²² In addition to sustaining these exceptions, the 1845 Act instituted the exception for private carriage without compensation.²³ In 1852, to accommodate mailers wanting private delivery while still protecting postal revenue, Congress allowed for the private carriage of letters in prepaid stamped envelopes, provided the envelopes were sealed and marked with the date.²⁴ In 1864, Congress allowed the Postmaster General to "suspend

¹³ Act of March 2, 1827, ch. 61, § 3, 4 Stat. 238.

¹⁴ *United States v. Kimball*, 26 F. Cas. 782 (D. Mass. 1844).

¹⁵ See Craig & Alvis, *supra* note 7, at 72 n.42 and accompanying text (citing historical discussion in legislative history of the 1845 Act and in 1973 Congressional hearings).

¹⁶ See, e.g., *Air Courier Conf. of Am. v. Am. Postal Workers Union*, 498 U.S. 517, 526-27 (1991) (citing, *inter alia*, S. Doc. No. 66, 28th Cong., 2d Sess., 3-4 (1845); H. R. Rep. No. 477, 28th Cong., 1st Sess., 2-3, 5 (1844); Cong. Globe, 28th Cong., 2d Sess., 213 (1845) (remarks of Sens. Simmons and Breese)); Craig & Alvis, *supra* note 7, at 60 n.8, 72-74.

¹⁷ Act of March 3, 1845, ch. 43, §§ 9-13, 5 Stat. 732, 735-737.

¹⁸ *Ibid.* at § 12, 5 Stat. at 736.

¹⁹ See, e.g., *ibid.* at § 3, 5 Stat. at 733.

²⁰ See Craig & Alvis, *supra* note 7, at 74-77.

²¹ Act of March 3, 1825, ch. 64, § 19, 4 Stat. 102, 107, now codified in 18 U.S.C. 1694; see also Act of March 3, 1845, ch. 43, §§ 10, 13, 5 Stat. 732, 736-737 (applying exception to carriage by steamboat, packet boat, or other vessel).

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

²³ Act of March 3, 1845, ch. 43, § 11, 5 Stat. 732, 736, also now codified in 18 U.S.C. 1696(c).

²⁴ Act of August 31, 1852, ch. 113, § 8, 10 Stat. 121, 141-42. This exception has evolved into that which is now codified at 39 U.S.C. 601(a).

the operation” of all or part of this rule on any mail route if it was in the public interest to do so.²⁵ The statutes were recodified in 1909 with an additional exemption for letters relating to "the current business of the carrier."²⁶

In 1934, Congress established the “mailbox rule,” restricting mailboxes to properly paid U.S. Mail.²⁷ Both the PES and the mailbox rule were maintained by the PRA and, with the exception of some changes to the civil portion of the PES, the Postal Act of 2006.

Under the authority that Congress vested in it in 1864, the Post Office Department has suspended the enforcement of the PES in certain circumstances throughout its history. The Department has not enforced the PES against carriers of magazines and newspapers since 1881. The Department allowed private carriage during the New York City postal strike of 1970,²⁸ and it suspended the restriction several times with respect to prisoners of war in North Vietnam. With these events fresh in the public memory, Congress declined to rescind, restrict, or clarify the scope of the Department’s suspension authority when it enacted the PRA. In light of Congress’s tacit approval for the existing interpretation of the suspension authority, the newly renamed Postal Service enacted the six suspensions codified in 39 C.F.R. Part 320 between 1979 and 1986.²⁹ With the Postal Act of 2006, Congress codified these suspensions into statute and replaced the Postal Service’s suspension authority with a directive to the Postal Regulatory Commission to adopt any regulations necessary to implement 39 U.S.C. 601.³⁰

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

²⁶ Act of March 4, 1909, P.L. 60-350, § 184, 35 Stat. 1088, 1124

²⁷ Act of May 7, 1934, P.L. No. 73-209, 48 Stat. 667.

²⁸ See Post Office Department, Private Express Statutes: Suspension in New York Area, 35 Fed. Reg. 4973 (Mar. 21, 1970); Post Office Department, Private Express Statutes and Embargo on Mail, 35 Fed. Reg. 5015 (Mar. 24, 1970); Post Office Department, Resumption of Applicability in Certain Areas Where Suspended, 35 Fed. Reg. 5187 (Mar. 27, 1970).

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

³⁰ 39 U.S.C. 601(b) (2006); P.L. No. 109-435, section 503, 120 Stat. at 3234-35.

III. Definition of Universal Service Obligation and Postal Monopoly

A. Universal Service Features

The obligations of the Postal Service in providing postal services are defined in 39 U.S.C. 101 and 403. These obligations can be classified in the following groups.

- Range of Product Offerings
 - “receive, transmit, and deliver written and printed matter, parcels, and like materials”³¹
 - “provide types of mail service to meet the needs of different categories of mail and mail users”³²
 - “establish reasonable and equitable classes of mail”³³
 - “maintain one or more classes for the transmission of letters sealed against inspection”³⁴

- Uniform Prices and Affordability³⁵
 - “costs of establishing and maintaining the Postal Service shall not be apportioned to impair the overall value of such service to the people”³⁶
 - “[p]ostal rates shall ... apportion ... costs of all postal operations to all users ... on a fair and equitable basis”³⁷
 - “provide ... postal services at fair and reasonable rates and fees”³⁸
 - “in establishing classifications, rates, and fees under this title, the Postal Service shall not ... make any undue or unreasonable discrimination among users of the mails”³⁹
 - “reasonable and equitable rates of postage and fees for postal services”⁴⁰
 - “[p]ostal rates and fees shall be reasonable and equitable”⁴¹
 - “[t]he rate for [mail sealed against inspection] shall be uniform throughout the United States, its territories, and possessions”⁴²

- Frequency of Delivery
 - not specifically mentioned in 39 U.S.C., but is currently mandated at six days a week by yearly appropriations bills.⁴³

³¹ 39 U.S.C. 403(a).

³² *Ibid.* at (b)(2).

³³ 39 U.S.C. 404(b).

³⁴ *Ibid.* at (c).

³⁵ “Affordability,” which is a subjective characteristic that may vary by user, is not mentioned.

³⁶ 39 U.S.C. 101(a).

³⁷ *Ibid.* at (d).

³⁸ 39 U.S.C. 403(a).

³⁹ *Ibid.* at (c).

⁴⁰ 39 U.S.C. 404(b).

⁴¹ *Ibid.*

⁴² *Ibid.* at (c).

- Quality and Economical Efficiency of Services
 - “prompt, reliable and efficient services”⁴⁴
 - “the requirement for the most expeditious collection, transportation, and delivery of important letter mail”⁴⁵
 - “prompt and economical delivery of all mail”⁴⁶
 - “maintain an efficient system”⁴⁷

- Access to Services and Facilities
 - “basic and fundamental service provided to the people ... to bind the Nation together”⁴⁸
 - “maximum degree of effective services to rural areas, communities, and small towns where post offices are not self-sustaining”⁴⁹
 - “effective postal services be insured to residents of both urban and rural communities”⁵⁰
 - “the need for facilities and equipment designed to create ... a maximum degree of convenience for efficient postal services”⁵¹
 - “establish and maintain postal facilities of such character and in such locations, that postal patrons throughout the Nation will, consistent with reasonable economies, have ready access to essential postal services”⁵²

- Geographic Coverage
 - “basic and fundamental service provided to the people ... to bind the Nation together”⁵³
 - “to patrons in all areas and ... to all communities”⁵⁴
 - “maximum degree of effective services to rural areas, communities, and small towns where post offices are not self-sustaining”⁵⁵
 - “effective postal services be insured to residents of both urban and rural communities”⁵⁶
 - “serve as nearly as practicable the entire population of the United States”⁵⁷

⁴³ Another characteristic, frequency of delivery, is not specifically mentioned in those sections, but is currently mandated at six days a week by yearly appropriations bills. See, e.g., Consolidated Appropriations Act, 2008, Title V, P.L. No. 110-161, 121 Stat. 1844 (2007).

⁴⁴ 39 U.S.C. 101(a).

⁴⁵ *Ibid.* at (e).

⁴⁶ *Ibid.* at (f).

⁴⁷ 39 U.S.C. 403(b)(1).

⁴⁸ 39 U.S.C. 101(a).

⁴⁹ *Ibid.* at (b).

⁵⁰ *Ibid.*

⁵¹ *Ibid.* at (g).

⁵² 39 U.S.C. 403(b)(3).

⁵³ 39 U.S.C. 101(a).

⁵⁴ *Ibid.*

⁵⁵ *Ibid.* at (b). See also 39 U.S.C. 404(d)(2)(A)(iii) (requiring the Postal Service to consider this policy before making a determination to close or consolidate a post office).

⁵⁶ 39 U.S.C. 101(b).

⁵⁷ 39 U.S.C. 403(a).

- “receive, transmit, and deliver throughout the United States, its territories and possessions, and ... throughout the world”⁵⁸
- “establish and maintain postal facilities ... in such locations [to allow] postal patrons throughout the Nation ... ready access to essential postal services”⁵⁹

These above obligations exist in the context of the overarching and essential characteristic of the security and sanctity of the mail. Although this characteristic encompasses the feature of certain classes being “sealed against inspection”⁶⁰ and is mentioned above under “range of product offerings,” it is also rooted in various federal statutes that protect the mail, the postal system, postal employees, postal property, postage stamps, and the postal brand from theft, interference, fraud, forgery, and the like.⁶¹

Because the universal service features discussed above are stated as legal requirements and, prior to the Postal Act of 2006 were stated without qualification, they essentially obligated the Postal Service to provide postal services on a universal basis: a “universal service obligation.” Although the obligations enumerated above were not substantively changed by the Postal Act of 2006, other provisions provide qualifications that change the former equivalence between these requirements to provide universal postal services and a universal service obligation (USO). The Postal Act of 2006 divides postal services into two broad groups, market dominant products and competitive products, and treats them differently in respects that have a significant effect on determining the scope of the USO under the Act. The Postal Act of 2006 subjects competitive products to significantly less regulation than market dominant products. In addition to restricting annual price changes at the class level to the Consumer Price Index, the Postal Act of 2006 specifies numerous “objectives,” “factors,” and “requirements” for pricing and classifying market dominant products,⁶² including that prices and classifications be “just and reasonable.”⁶³ The service standards for market dominant products are set through a regulatory process.⁶⁴

By contrast, the Postal Act of 2006 gives the Postal Service leeway in managing and pricing competitive products. The Postal Service’s authority is subject to the general requirement that competitive products be self-supporting.⁶⁵ In order for competitive products to be successfully self-supporting, the prices that the Postal Service sets need to respond

⁵⁸ *Ibid.*

⁵⁹ *Ibid.* at (b)(3).

⁶⁰ 39 U.S.C. 404(c).

⁶¹ 18 U.S.C. 1691 – 1737.

⁶² 39 U.S.C. 3622.

⁶³ *Ibid.* (b)(8).

⁶⁴ 39 U.S.C. 3622(b)(3), 3691.

⁶⁵ 39 U.S.C. 3633(a)(1), (2).

accurately to market conditions. The Postal Service's authority is also subject to the requirement that competitive products as a whole make an appropriate contribution to the institutional costs of the Postal Service⁶⁶ and the Commission's oversight of this requirement is subject to reevaluation based on "prevailing competitive conditions in the market."⁶⁷ In order for new products to be established as competitive or for existing market dominant products to be reassigned as competitive, the Postal Service must not exercise sufficient market power that it can set prices substantially above costs, raise prices significantly, or decrease quality or output, without risk of losing business to other firms offering similar products.⁶⁸ Service standards for competitive products are left to the Postal Service to determine. The Commission has the authority to order the Postal Service to discontinue "loss-making" products and to make up for revenue shortfalls in competitive products.⁶⁹

Accordingly, while the enumerated features of universal service remain "obligations" with respect to market dominant products, and particularly with respect to those subject to the Private Express Statutes (PES),⁷⁰ those service features can no longer be deemed obligatory with respect to competitive products. Success in the marketplace and profitability will require the Postal Service to define the service provided to competitive products in response to market forces. For example, offering a specific service feature for a competitive product involves choosing how that product should be positioned vis-à-vis the competition with respect to such features as access to services, geographic scope, range of offerings, and frequency of service, as well as price and "affordability" of prices if that is deemed to be a universal service feature. The required features and scope of product offerings are thus regulated by the market, for if postal competitive products were not in the marketplace, competitive product alternatives would still exist. There is, therefore, no reason to impose a USO on the Postal Service for competitive products if the same obligation is not imposed on private carriers. If adequate market protections for customers are not provided for a competitive product (*i.e.*, universal service is deemed necessary and the competitive market does not provide an adequate level of service), then a reevaluation of whether the product is truly "competitive" may be necessary. The statute

⁶⁶ *Ibid.* at (a)(3).

⁶⁷ *Ibid.* at (b).

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

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

⁷⁰ Those market dominant products not covered by the Private Express Statutes include Periodicals and merchandise sent using a market dominant product.

provides for such an assessment in the provision allowing a product to be moved from one category to the other.⁷¹

B. Private Express Statutes

The contours of the letter monopoly reside in a series of criminal and civil statutes, 18 U.S.C. 1693-1699 and 39 U.S.C. 601-606, known together as the PES. The Title 18 sections prescribe fines and/or imprisonment for various sorts of “conveyance” of “any letters or packets,” “otherwise than in the mail,” “on any post route, or from one place to another between which the mail is regularly carried.”⁷² These terms are not defined by statute, but the Postal Service has defined them in its regulations. “Letter” means “a message directed to a specific person or address and recorded in or on a tangible object,” subject to various specific qualifications.⁷³ A “post route” is any route on which mail is carried by the Postal Service.⁷⁴

The Title 18 provisions contain five exceptions:

- (1) letters or packets that “relate to some part of the cargo of such conveyance”⁷⁵;
- (2) those that “relate to . . . the current business of the carrier, or to some article carried at the same time as such conveyance”⁷⁶;

⁷¹ 39 U.S.C. 3642.

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

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

⁷⁴ *Ibid.* at (d). Although this subsection contains a comprehensive list of byways, it would appear to exclude intra-campus or -facility routes not intersected by a public road or other post route.

⁷⁵ 18 U.S.C. 1694; see 39 C.F.R. 310.3(a).

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

(3) “receiving and delivering to the nearest post office, postal car, or other authorized depository for mail matter any mail matter properly stamped”⁷⁷;

(4) “the conveyance or transmission of letters or packets by private hands without compensation”⁷⁸; and

(5) “the conveyance or transmission of letters or packets . . . by special messenger employed for the particular occasion only.”⁷⁹

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

Perhaps the most significant of the title provisions is Section 601. Subsection (a) sets forth the postage and preparation requirements for permissible carriage outside of the mails that does not fall under any other exception.⁸⁰ As amended by the Postal Act of 2006, subsection (b) provides three further exceptions to the PES:

(1) the amount paid for private carriage of the letter equals at least six times the current rate for the first ounce of a single-piece First-Class Mail letter (also known as the “base rate” or “base tariff”),⁸¹

(2) the letter weighs at least 12.5 ounces,⁸² or

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

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

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

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

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

Ibid.; see also 39 C.F.R. 310.2(b).

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

(3) the carriage falls within one of the six suspensions to the PES that the Postal Service voluntarily promulgated in regulations.⁸³ These suspensions cover certain data processing materials,⁸⁴ letters of *bona fide* college and university organizations,⁸⁵ international ocean carrier-related documents,⁸⁶ extremely urgent letters,⁸⁷ advertisements accompanying parcels or periodicals,⁸⁸ and international remailing.⁸⁹

Congress's primary motive in enacting and maintaining the PES was to ensure revenue for the Postal Service's fulfillment of the USO and for the maintenance of the post road infrastructure necessary to that fulfillment.⁹⁰ Specifically, the PES are to

prevent[] private competitors from offering service on low-cost routes at prices below those of the Postal Service, while leaving the Service with high-cost routes and insufficient means to fulfill its mandate of providing uniform rates and service to patrons in all areas, including those that are remote or less populated.⁹¹

Moreover, the PES were intended to affirm the principle of the USO that the Postal Service must serve and integrate all areas of the nation.⁹² If the PES were reduced or eliminated, then the Postal Service would be doubly hampered in its ability to provide universal

⁸² *Ibid.* at (b)(2).

⁸³ *Ibid.* at (b)(3). Those regulations are codified at 39 C.F.R. 310.1 and 320.2-320.8, as in effect on July 1, 2005.

⁸⁴ 39 C.F.R. 320.2-320.3.

⁸⁵ 39 C.F.R. 320.4.

⁸⁶ 39 C.F.R. 320.5.

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

⁸⁸ 39 C.F.R. 320.7.

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

⁹⁰ *See Air Courier Conf. of Am.*, 498 U.S. at 519, 526-28; *Regents of the Univ. of Cal.*, 485 U.S. at 594, 598 (1988).

⁹¹ *Air Courier Conf. of Am. v. Am. Postal Workers Union*, 498 U.S. at 519, 527-28 (citing legislative history of the 1845 Postal Act, as well as *Report of the President's Commission on Postal Organization, Towards Postal Excellence*, 94th Cong., 2d Sess., 129 (Comm. Print 1968); John Haldi, *Postal Monopoly: An Assessment of the Private Express Statutes* 9 (1974); Roger P. Craig & William T. Alvis, *The Postal Monopoly: Two Hundred Years of Covering Commercial as Well as Personal Messages*, 12 U.S.F. Law Rev. 57, 60 & n.8 (1977)).

⁹² *Ibid.* at 527 ("Thus, the revenue protection provisions were not seen as an end in themselves, nor in any sense as a means of ensuring certain levels of public employment, but rather were seen as the means to achieve national integration and to ensure that all areas of the Nation were equally served by the Postal Service.").

service, due to the diversion of postal revenue and the disproportionate loss of business in profitable areas over high-cost areas. The loss in revenue and rise in expense would require the Postal Service to cover its costs either through an increase in prices or through an end to the statutory universal price requirement.⁹³ Ultimately, however, reduction or elimination of the PES would render the Postal Service financially unsustainable and would severely undermine the public interest in efficient, frequent, accessible service in all areas at reasonable prices.

C. Mailbox Rule

The “mailbox rule” is based on a single criminal statute, 18 U.S.C. 1725. This provision prohibits the

knowing[] and willful[] deposit[of] any mailable matter, on which no postage has been paid, in any letter box established, approved, or accepted by the Postal Service for the receipt or delivery of mail matter on any mail route with intent to avoid payment of lawful postage thereon.⁹⁴

In accordance with this section, the Postal Service has defined “any letter box established, approved, or accepted by the Postal Service” to include “every letterbox or other receptacle intended or used for the receipt or delivery of mail on any city delivery route, rural delivery route, highway contract route, or other mail route.”⁹⁵ Excluded from the mailbox rule are door slots, nonlockable bins and troughs used with apartment house mailboxes, letterbox posts or other supports, and newspaper receptacles attached to a curbside mailbox post.⁹⁶ Postal regulations further establish that “no part of a mail receptacle may be used to deliver any matter not bearing postage, including items or matter placed upon, supported by, attached to, hung from, or inserted into a mail receptacle.”⁹⁷ The Act did not alter or amend 18 U.S.C.

⁹³ The latter option could produce a price structure more narrowly tailored to area-specific costs, which would inevitably raise rates in precisely those high-cost areas most dependent on the Postal Service. Ironically, customers in these high-cost areas would likely view this as “monopolistic”, since the Postal Service would be raising its rates in precisely those areas that competitors would not find it cost-effective to serve.

⁹⁴ See also *Mailing Standards of the United States Postal Service, Domestic Mail Manual* (hereinafter “DMM”) 508.3.1.3 (2007).

⁹⁵ *Ibid.* at 508.3.1.1. This also includes customer-designed mailboxes approved by the local postmaster for mail service. DMM 508.3.2.2.

⁹⁶ *Ibid.* at 508.3.1.2, 508.3.2.11.

⁹⁷ *Ibid.* at 508.3.1.3. *But see ibid.* at 508.2.2.5 (permitting rural route customers to place unstamped mail matter in rural mailboxes for collection along with money equal to the required postage), 508.2.3.3 (same for highway contract route customers), 508.3.2.10 (permitting unstamped newspapers regularly mailed as periodicals to be placed in rural route and highway contract route subscribers’ boxes on Sundays and national holidays, provided that the copies are removed before the next scheduled day of mail delivery).

1725,⁹⁸ and Congress left undisturbed the Postal Service's existing regulations that define and apply the mailbox rule.⁹⁹

In addition, Congress has extended federal protection to mail through statutes criminalizing the theft or obstruction of mail, 18 U.S.C. 1701, 1702, and 1708. Congress also granted postal customers the ability to control non-receipt of sexually explicit materials, 18 U.S.C. 1735; 39 U.S.C. 3010. Opening up the mailbox, either to other delivery companies or to all parties, could undermine efforts to enforce these laws and could increase vulnerability to items such as explosive devices, other non-mailable hazardous materials,¹⁰⁰ and firearms.¹⁰¹

As discussed in Section 6, the mailbox rule promotes the provision of efficient service. If 18 U.S.C. 1725 were eliminated, the resulting grant of uncontrolled access to private carriers could cause the overcrowding of mailboxes, which would in turn impede the delivery of the mails.¹⁰² The restriction on mailbox access furnishes other significant consumer benefits regarding the security of the mail and the trust that security engenders. It is somewhat misleading to characterize the mailbox rule as a "monopoly," because the enforcement of 18 U.S.C. 1725 leaves customers with ample alternative means of delivering their messages. Customers can deliver their messages either by paying postage, by placing messages on or under a door or a doormat, by using newspaper or nonpostal boxes, by telephoning or emailing, by engaging in person-to-person delivery in public areas, by tacking or taping their notices on a door post, or by placing advertisements in local newspapers. These methods are comparable in efficacy to communication via the mailbox.¹⁰³

⁹⁸ Nor did Congress appear to foresee a role for the Commission, whose jurisdiction is otherwise confined by 39 U.S.C. 503 to functions under title, as described in the previous section.

⁹⁹ See DMM 508.3.1, 508.4.4.2, 604.6.2, 604.8.3 (2007).

¹⁰⁰ 18 U.S.C. 1716.

¹⁰¹ 18 U.S.C. 1715.

¹⁰² See *U.S. Postal Service v. Council of Greenburgh Civic Ass'ns*, 453 U.S. 114, 141-42 (1981) (White, J., concurring) ("The Government's interest in defraying its operating expenses remains, and it is clear that stuffing the mailbox with unstamped materials is a burden on the system.")

¹⁰³ *Council of Greenburgh Civic Ass'ns*, 453 U.S. at 119 (describing a survey that showed an "incidental difference" in the percentage of materials found by homeowners that were placed under doors or doormats or hung from doorknobs, as opposed to in letterboxes). As noted in response to Topic 2 below, electronic communication media have indeed resulted in a substantial diversion of mail volume in the past decade.

IV. Dimensions of the Universal Service Obligation

The universal service obligation (USO) has multiple dimensions. Traditionally these include range of products, uniform prices and affordability, frequency of delivery, quality of service, access to services and facilities, and geographic scope. Additionally, the Commission's public outreach has revealed that customers also view security as an important aspect of the USO.

A. Range of Products

As discussed above, the universal service obligation should apply to market dominant products only, with competitive products subject to the market. Competitive products do not need to be included within the USO because the market provides alternatives. The Private Express Statutes (PES) apply only to certain market dominant products, which are covered by the USO. It may make sense at some point in the future for the USO to only include those products covered by the PES. But, at this time the Postal Service supports that the USO applies to all market dominant products.

B. Uniform Prices and Affordability

A USO by its very nature requires that some identified products be provided at prices deemed affordable for customers. The challenge in meeting any USO requirement is the delicate balance between the cost of providing the USO and the funding mechanism needed to support the USO. From a public policy and economic standpoint, mandating a postal USO without supporting measures to ensure adequate revenue, such as the PES and the mailbox rule or potentially other public funding mechanisms, can only serve to put substantial economic pressure on the Postal Service and the many consumers and businesses that rely on mail. Such pressure may undermine the ability to provide any level of universal service. The price cap established by the Postal Act of 2006 provides an adequate guarantee of affordability for the Postal Service's customers and, in accordance with the statute, will be revisited by the Commission ten years after enactment. At that time, lessons learned can be evaluated, and a determination will be made as to whether any modifications to the market dominant pricing system need to be made to continue to ensure the adequate provision of this USO aspect.

The prohibition against undue or unreasonable discrimination does not mean that differences cannot exist in the prices for USO products. That is, there is no reason that different prices should not apply to customers with different characteristics even for market dominant products.

The Postal Act of 2006 has established a mechanism for review of prices of market dominant products. With only one market dominant price change under the new rules so far, it is premature to make an assessment whether the system should ultimately be changed or whether the pricing system for bulk products should differ from that for single-piece products. However, any restraints on pricing flexibility should be based on a careful assessment of the potential impact of those restraints on the overall ability to provide USO products in a cost effective manner. In challenging economic times, the trade-off between additional restrictions on pricing and operations, and the ability to provide services in a cost-effective manner is made even more problematic.

The current statute requires that *one* class of mail be provided at prices uniform throughout the domestic service area.¹⁰⁴ Additional restrictions should be evaluated carefully to determine whether the burdens of complying with those restrictions are vital to the USO.

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

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

C. Frequency of Delivery

Currently, the Postal Service delivers all mail to most customers six days a week, excluding Sunday and federal holidays. Delivery of Express Mail pieces on Sunday is available to many addresses. In practice, however, the status quo is more complex. Depending on local operations and conditions, some customers receive delivery only five days a week by choice (for example, businesses open fewer than six days a week). Also, seasonal delivery or delivery of less than six days a week may occur in resort areas populated seasonally or in remote areas difficult to access (including areas where traversable roads do not exist and delivery must be made by boat, plane, mule or snowmobile). One example mentioned in the Commission's field hearings is a seasonal water route providing dockside delivery service in northern Minnesota.¹⁰⁵

¹⁰⁴ 39 U.S.C. 404(c).

¹⁰⁵ Docket No. PI2008-3, USO Field Hearings, TR. St. Paul, p 25.

In addition, in certain extraordinary and emergency situations, e.g., post-Katrina operations, deviations from normal frequency may be encountered.

Whether it would be appropriate to detract from or add to current frequency would depend on a careful balancing of a variety of considerations. These would encompass such factors as specific mailer needs, public policy objectives, geographical and physical conditions, and Postal Service finances and operations, including sources and uses of needed revenues and the overall goal of operational efficiency. While the range of options for varying frequency beyond the status quo is not limited in theory, discussion has tended to focus on six-day versus five-day delivery. Some customer groups, such as businesses that are only open Monday through Friday might not have a major concern with a reduction in delivery frequency to five days per week. Other business customers could be adversely affected. The choice of which day might be eliminated, and customer reaction to the elimination of that day might not be clear cut.

Customer reaction to a reduced delivery frequency will be dependent on customers' perceptions of the usability of mail. If the mail becomes more difficult to use or does not provide the service level required, customers might increasingly turn to non-mail alternatives, thereby exacerbating the decline of mail volume, which in turn would increase the prices customers would be required to pay. As the President's Commission on the United States Postal Service noted in their 2003 report:

Postal Service leaders have indicated that the rising popularity and sophistication of e-mail correspondence may ultimately lead to a reduction in the demand for mail services and may allow for the relaxation of the six-day delivery requirement. If that time does arrive, the Commission believes that the Postal Service should have flexibility to adapt with the changing postal needs of the nation.¹⁰⁶

Evaluating customer needs and interests for a given level of delivery frequency must be balanced against the requirement that the Postal Service provide its products in a cost-effective and market-responsive way. Considering whether to provide fewer (or more) days of delivery cannot be answered without considering the cost and revenue effects, including the impacts on pricing and operations. If the cost of providing six-day-per-week delivery becomes uneconomic or unsustainable under the price cap (particularly if volume continues to decline), hard choices will need to be made. As noted elsewhere in these comments, a universal service requirement generally should provide for adequate and affordable levels of service. "Adequate" can only be

¹⁰⁶ "Embracing the Future: Making the Tough Choices to Preserve Universal Mail Service" p. 29. President's Commission on the United States Postal Service. July 2003.

evaluated in the context of both customer needs and the ability to fund the provision of service meeting those needs. With respect to competitive products, the market should dictate what frequency of service meets the needs of the users of those products.

Varying frequency according to volume or geographic density of mailing patterns, or according to particular content (letter communications, advertising, etc.), are options that should be open for consideration. In fact, private couriers deliver 2 to 5 days a week dependent upon volume and geography. Universal service does not dictate any level or mix of frequency. The key is to find the most efficient combination of operations, finances, and service that maximize achievement of universal service goals. The particular market responses of mailers to such specific approaches have not been studied extensively, and should be explored through well-conducted research in appropriate circumstances.

Finally, the Postal Service does not believe that current legal standards that define the Postal Service's USO, the PES, and the mailbox rule necessarily constrain or demand specific choices. The main exception relates to limits on service levels embodied in appropriations riders every year. The language in those amendments has dictated "[t]hat 6-day delivery and rural delivery of mail shall continue at not less than the 1983 level" as much as practicable.¹⁰⁷ The Postal Service believes that this restriction should be removed, and that any construction of the legal standards governing universal service, the Private Express Statutes or the mailbox rule should allow the Postal Service the flexibility to meet future needs for delivery frequency, in accordance with a careful balancing of the various considerations discussed above.

D. Quality of Service

On December 19, 2007, the Postal Service published service standard regulations for its market dominant products, in response to the Postal Act of 2006 requirement.¹⁰⁸ To reliably measure the service performance, the Postal Service has been developing and implementing either expanded or new product-specific measurement systems, in consultation with the Commission.¹⁰⁹ These measurement systems will generate data that reflect the percentage of mail delivered or service completed within applicable standards.

The goal of the Postal Service is to continuously improve service performance. On at least an annual basis, the Postal Service Board of Governors will establish market dominant product "percentage on-time" service standard performance targets for which the Board will hold

¹⁰⁷ P.L. 110-161, December 26, 2007, 121 Stat 1844, 2012-13 (HR 2764).

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

¹⁰⁹ Under the terms of 3691(b)(1)(D) and (b)(2).

postal management accountable.¹¹⁰ The targets established by the Board and the data generated by these measurement systems will be reported publicly and to the Commission, so that it can fulfill its service standard compliance review responsibilities.¹¹¹

If universal service only applies to market dominant products and one defines “quality of service” in terms of service standard achievement, then universal service quality could be measured by using the service performance measurement systems currently being established.¹¹² Reliance on the data generated by these systems is expected to impose a relatively minor burden on the Postal Service, since these measurement systems will generate dividends for the Postal Service and its customers in the form of a rich array of data regarding service performance and mail preparation quality.

Regarding the establishment of service requirements for universal services, the Commission observes that, “[i]n the European Union, the regulator is typically required to both (1) establish quality of service standards and (2) ensure independent monitoring of performance.”¹¹³ Nevertheless, it is the Postal Service’s view that the regulatory scheme reflected in the Postal Act of 2006 does not adopt that model even though it will have independent reporting of the service results.

The Postal Service Governors are authorized to establish reasonable and equitable classes of mail.¹¹⁴ The Government Performance and Results Act requires the agency leadership to establish and approve its corporate goals. The Postal Service is responsible for planning and maintaining the system of facilities for the collection, transportation, sortation and delivery of mail.¹¹⁵ It is responsible for planning, developing, promoting and providing adequate and efficient services; and for providing types of mail service to meet the needs of different categories of mail and mail users.¹¹⁶ Concurrent with these powers is the necessary authority of the Postal Service to establish the service features and standards that define the quality of the

¹¹⁰ At page 9 of Order No. 71, the Commission comments that, prior to the Act, postal services were not subject to service standards that define the percentage of items that must be delivered within specified periods after posting. However, it should be observed that, based on data generated by several existing measurement systems, the Postal Service Board of Governors, in consultation with postal management, has established annual percentage on-time targets for First-Class Mail, Priority Mail and Express Mail service standard achievement for which it has held postal management accountable for the last decade.

¹¹¹ 39 U.S.C. 3652(a), 3653(b).

¹¹² In accordance 39 U.S.C. 3691(b)(1)(D) and (b)(2).

¹¹³ Order No. 71, at 9.

¹¹⁴ 39 U.S.C. 404(b).

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

¹¹⁶ *Ibid.* 403(a) and (b)(2).

services it will offer – based upon the manner in which it determines that its capital and other resources will be utilized, deployed, or otherwise managed.¹¹⁷

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

The service standard performance targets established by the Board and the data generated by the measurement systems discussed earlier should permit the Commission to fulfill its responsibility to assess and report whether service standards have been met for market dominant products,¹¹⁸ and to react to any non-compliance.¹¹⁹ Assuming congruence between the USO and the provision of market dominant products, Commission monitoring of the performance of universal services may largely be a redundant exercise.

Universal service implies the provision of some form of postal delivery to every customer. Delivery is an integral component of every mail product.¹²⁰ There are approximately 148 million delivery points in the postal network.¹²¹ While the existence of delivery for each delivery point would seem to be relevant to whether universal service is being provided, the Postal Service is not persuaded that the various types of delivery receptacles and modes of delivery present universal service issues.

Postal delivery operations reflect a complex balancing of customer wants and needs, and the requirement that the Postal Service provide quality service in an efficient and cost-effective manner. The delivery experience can vary from route to route, point to point, and day to day. The location of mail receptacles, their proximity to the entry at each residential or business address, whether they are separate from each other or clustered, and whether they are accessed by postal carriers on foot or while seated in delivery vehicles depends on postal delivery policies that take into account such factors as local conditions and historical practice. A

¹¹⁷ *Ibid.* 401(10) authorizes the Postal Service to exercise all powers incidental, necessary, or appropriate to the carrying on of functions or the exercise of its specific powers.

¹¹⁸ *Ibid.* 3653(b)(2).

¹¹⁹ *Ibid.* 3653(c).

¹²⁰ But so are the acceptance of mail, and varying forms and degrees of processing and transportation of mail. Accordingly, there is no self-evident basis for concluding that universal service issues are raised on the basis of the different modes of delivery experienced at the 148 million delivery addresses served by the postal system.

¹²¹ Free Group E Post Office Box delivery is offered to relatively remote addresses for which rural delivery routes are not established.

determination that universal service required particular forms of delivery would limit the ability of local postal managers to employ flexible solutions that respond to local conditions and would undercut an efficient post.

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

E. Access to Services and Facilities

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

The Postal Service today finds itself with a network consisting of over 400 large mail processing facilities and tens of thousands of smaller retail facilities, most of which came into existence when the Postal Service was the primary or exclusive facilitator of exchanged messages, product fulfillment and economic growth. With the advent of nearly two million new delivery points each year, network growth is still very much a part of the picture. Yet growing awareness that the current network of facilities provides class-specific abilities to speed mail to nationwide delivery points in three days or less, to place Periodicals and catalogs in homes often on a certain day, and to deliver parcels every day to any delivery point requires examination of redundancies in the respective networks that afford opportunities for efficiency gains. Redundant capacity can and is being identified and reduced in a paradigm-busting world of diminishing mail volume and more volume entering the postal system farther downstream, bypassing upstream facilities. So while delivery network growth challenges Postal management, so too, does the necessity for improved efficiency.

In accordance with Section 302 of the Postal Act of 2006, the Postal Service has submitted its Network Plan for rationalizing operations at mail processing and logistics facilities to Congress. A core component of that plan involves postal management's use of its Area Mail Processing (AMP) guidelines as a basis for consolidating operations at Processing & Distribution Centers (P&DCs). Postal management's ability to rely on the AMP guidelines for operational consolidation decision-making is currently constrained by the Consolidated Appropriations Act, 2008.¹²² As a result, the Postal Service has been unable to act upon a

¹²² P.L. 110-161, 121 Stat. 1844 (December 26, 2007).

handful of pending AMP consolidation proposals, which are expected to generate approximately \$14 million in cumulative annual savings.

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

What Postal Service management most needs to meet the challenges inherent in a world of stagnant or diminishing mail volume is the flexibility to open or close; buy, sell or lease; and manage its full range of facilities. On one hand, the Congress has encouraged the Postal Service to streamline its network. In the Postal Act of 2006, Congress recognized the Postal Service has more facilities than it needs and strongly encouraged "...the Postal Service to expeditiously move forward in its streamlining effort."¹²³ The Congress found that this streamlining effort could "...pave the way for ...the elimination of excess costs."¹²⁴ However, on the other hand, the Congress, acting jointly and severally, has chosen to increase management's challenge. Small, rural Post Offices can only be closed after a lengthy notice and comment proceeding that, after several decades of evolution and collaborative work involving the postmaster organizations, works relatively well. Offices for which a consensus develops regarding the need for closure get closed, while most others do not. Today, management, mailers, and households all recognize the Postal Service's nationwide network of facilities as a strategic asset without which universal service could not exist.

The Postal Service and its customers – mailers and addressees both – today embrace modern forms of retail access to postal services. A customer can file a change of address, for example, without having to visit a Post Office in person by submitting it over the internet.

¹²³ P.L. 109-436 302. This is consistent with the 2003 President's Commission's recommendations.

¹²⁴ *Ibid.*

Stamps can be purchased in so many different ways that few buyers ever experience them all. The continued decline in single-piece First-Class Mail volume lessens the need for stamp transactions at retail facilities. In addition, free shipping materials, and carrier pickup of outgoing mail and parcels can be had without any need to visit a retail location.

The list of reasons why a customer must visit a retail Postal Service facility continues to be reduced. When shippers use Express Mail Hold for Pickup and Parcel Select Hold for Pickup, the addressee (or authorized agent) visits a (usually retail) facility to receive the mail piece. A customer who wants to initiate Post Office box service, Premium Forwarding Service or Sure Money / Dinero Seguro money transfer must visit a retail facility to commence service; the need to guard the sanctity of mail (and avoid fraud) means that all such applicants must furnish appropriate identification before service commences.¹²⁵ Money order purchases, Certificate of Mailing, and Registered Mail all require a visit to a retail facility by a customer, due to the requirement that the payee must provide proof of identity, although customers on rural or HCR routes can obtain these services from their carrier.

In many locations, customers prefer to visit the local Post Office even if they can use alternate access channels because the Post Office has become a locus for socializing. The need to support local communities in this way reflects the USO.¹²⁶

The mix of facilities needed for postal services over time is always changing. The direction of change over the last century has been a decrease in the total number of Postal Service operated facilities. The number of Post Offices peaked at 76,945 in 1901, although the number diminished substantially over the ensuing decade as rural free delivery was rolled out. At the end of FY 2007, 27,276 independent Post Offices were in operation. Today, the number of CPUs is increasing slowly.¹²⁷

Contract Postal Units (CPUs) support USO by providing access to postal services. As of April 30, 2008, 4169 CPU contracts are active. Almost without exception, CPUs provide retail products and services at postal-approved prices. As of March 2008, CPUs had generated \$331 million in sales this year, 14.6 percent of all retail sales. Current law recognizes and allows for use of CPUs as one of several tools to provide the public access to postal and nonpostal

¹²⁵ Passport applicants must similarly provide proof of identity in a personal appearance if an application is made through the Postal Service.

¹²⁶ As a legal matter, the Postal Service's universal service obligation to support local communities is anchored by 39 U.S.C. 101, 404(d).

¹²⁷ Current information can be found in the Operating Statistics portion of the USPS Annual Report at http://www.usps.com/financials/_pdf/AR2007_final.pdf

services,¹²⁸ so no change in requirements is necessary or appropriate for CPUs as well as for stamps on consignment, PC postage, or other methods of accessing service.

Today the number of access points to retail services grows steadily, ranging from the internet, telephone and mail, to unstaffed units, kiosks, CPUs, and Post Offices. This broad range of options for retail service helps meet the USO and has become well accepted by customers, who migrate to the channels they find most convenient.

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

The network of Postal Service facilities and carrier routes reaches deeply into less populated areas of the domestic service area. Isolated villages in Alaska and residents on the floor of the Grand Canyon get regular mail delivery, as do apartment building residents in New York City. The daily frequency with which delivery service is provided has diminished over time; the only customers who now get their mail more than once per day typically are large mailers – recipients whose large mail volume exceeds the capacity of a single vehicle or who pick up their mail several times a day through caller service for a fee. The vast majority of residences receive delivery six days a week, while many businesses get mail delivered the five days a week they are open. Some geographically remote customers receive three deliveries per week and a few of those are not afforded any carrier delivery.¹²⁹

Approximately ten years ago, the Postal Service instituted a shift in delivery policy by recognizing publicly that carrier delivery is not provided to all residential customers everywhere in the domestic service area. Indeed, the need for change was driven by the fact that it was sometimes difficult to articulate why carrier delivery was provided in one place but not in another. While, as a general policy, each residential customer was and is understood to be eligible for one form of free delivery, one of the possible delivery modes, general delivery service¹³⁰, had become disfavored. It can be expensive to administer and typically is available

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

¹²⁹ Approximately 25,000 customers receive three day per week delivery out of 148 million delivery points.

¹³⁰ General Delivery Service refers to when mail is held at a Post Office for customers to pick up at the retail window.

at just one facility in a multiple facility (*i.e.*, big) city Post Office.¹³¹ Mail sent to general delivery customers also cannot be sorted using delivery order schemes, so it cannot be put through delivery point sequencing (DPS). Policy decisions during the 1980s and 1990s had made general delivery primarily a temporary option.¹³²

Postal Service management determined to maintain the policy of one free form of delivery for residential customers. No fee (Group E) Post Office box delivery was introduced for residential customers to whom the Postal Service chooses not to deliver.¹³³ Instead of paying a carrier to transport mail to a delivery receptacle proximate to a residence, the Postal Service provides a Post Office box. Today, approximately 9 percent of residential Post Office box delivery points (nearly 1.4 million) are in Group E, using a box of the smallest size that accommodates a residence's normal mail volume. Group E box service has been well accepted by customers who often obtain their boxes in locations convenient to their everyday routines.

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

¹³¹ Availability of general delivery at a single facility in a larger Post Office comports with international expectations driven by the UPU, so a traveler can tell associates to send mail to Jean Q. Publique, general delivery (or *poste restante*), Seattle, Washington, USA and expect to locate the single facility where that service is provided. (A ZIP Code also helps.)

¹³² Homeless customers constitute the largest group to whom indefinite general delivery service is provided. Such customers face a wide range of special challenges; Postal Service retail associates often end up providing them special accommodations not needed by others. The factual record underlying the *Carrier v. Potter* Ninth Circuit decision cited by the Commission in Order No. 71 (note 18 on page 14) shows some of that accommodation. That decision was the result of an unsuccessful effort by Seattle Legal Services, a public interest law firm, to require the Postal Service to provide Group E Post Office box service and/or indefinite general delivery service for the homeless at all postal facilities in Seattle. The Postal Service is aware that the abilities to send and receive mail can have Constitutional ramifications; as such, it had some sympathy for Seattle Legal Services' interest in helping the homeless, even if the specific remedies sought were not tenable.

¹³³ Docket No. MC96-3. Some communities make their own choice, by one method or another, to exclude carrier delivery. Garrett Park, Maryland, and Carmel, California, are two examples where local officials in effect preclude carrier delivery to foster social interaction among residents.

F. Geographic Scope

With respect to market dominant products, the law requires the Postal Service to provide services throughout the United States, serving all areas and communities, especially rural, and as nearly as practicable the entire population of the United States, and also to provide service to and from military personnel abroad. In the United States, this dimension can be understood to involve, on the one hand, customer access to postal services and, on the other hand, the breadth of the postal delivery network.¹³⁴ In general, the Postal Service must “render postal services to all communities” and “provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining.”¹³⁵ Title 39 gives the Postal Service broad discretion over these aspects of its operations. Among the Postal Service’s specific powers are “*to provide for the collection, handling, transportation, delivery, forwarding, returning, and holding of mail*” and “*to determine the need for post offices [and] postal facilities . . . and to provide such offices [and] facilities as it determines are needed.*”¹³⁶ The Postal Service may also discontinue service on post roads “when, *in its opinion*, the public interest so requires.”¹³⁷ With respect to competitive products, the Postal Service’s exercise of its powers and execution of its responsibilities with regard to geographic scope is now subject to the conditions of the market.

As discussed earlier, the Postal Service is subject to qualified limitations when exercising its powers over Post Office locations. With respect to closure or consolidation of Post Offices, its discretion is cabined by the principle that the Postal Service may not close a Post Office merely for operating at a loss¹³⁸ and by the administrative procedures outlined in the statute.¹³⁹ Among these procedures is a requirement that the Postal Service consider certain factors to balance the effects on customers, employees, and the Postal Service,¹⁴⁰ including the

¹³⁴ See 39 U.S.C. 101, 403(a)-(b). The extraterritorial scope of the statutory obligation appears to be limited to U.S. Armed Forces installations and arrangements with other government agencies. 39 U.S.C. 403(a) (obligating the Postal Service to “receive, transmit, and deliver [mail matter and incidental services] pursuant to arrangements entered into under sections 406 and 411 of this title, throughout the world”). It is unclear what the Commission intends with its citation of 39 U.S.C. 407, PRC Order No. 71, Attachment A, at 9-10; far from obligating the Postal Service to perform any particular services, 39 U.S.C. 407(a) at most establishes a general policy of promoting communications between peoples and competitive markets for international delivery and postal services.

¹³⁵ 39 U.S.C. 101(a),(b).

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

¹³⁷ 39 U.S.C. 5004.

¹³⁸ 39 U.S.C. 101(b).

¹³⁹ 39 U.S.C. 404(d).

¹⁴⁰ 39 U.S.C. 404(d)(2).

consistency of the proposed action on the provision of universal service.¹⁴¹ The Postal Service may also face scrutiny by members of the public or Congress with an interest in a Post Office's sustained operation. In essence, the Postal Service maintains statutory freedom, within certain guidelines, to determine the scope of its geographic offerings, although political considerations may limit the degree to which the Postal Service exercises that freedom.

The Commission exercises only limited review and advisory functions in this context. First, postal customers of certain retail facilities the Postal Service determines to close or consolidate may appeal the determination to the Commission.¹⁴² The Commission may only rule on whether the Postal Service's actions, in light of the administrative record, were arbitrary, capricious, an abuse of discretion, not in accordance with the law or any required procedure, or unsupported by substantial evidence on the record.¹⁴³ The Commission may not conduct its own evidentiary findings, and it may not modify the Postal Service's determination.¹⁴⁴ Second, the Commission may give an advisory opinion on any change proposed by the Postal Service that would generally affect nationwide, or substantially nationwide, service, based on a hearing on the record.¹⁴⁵ Congress designated this role as advisory only, not one that binds or controls the Postal Service's determination.¹⁴⁶ Finally, the Commission must report annually on the estimated costs of providing service to "areas of the Nation where, in the judgment of the . . . Commission, the Postal Service either would not provide services at all or would not provide such services in accordance with the requirements of this title if the Postal Service were not" subject to the USO.¹⁴⁷ Thus, while the Postal Service retains the primary responsibility for determining the scope of its service responsibilities, the Commission's oversight role is confined to procedural review, advising, and reporting; the Commission does not appear to have any direct authority to define or affect the geographic dimension of the USO.

As mentioned earlier, with respect to delivery of the mail, it is the policy of the Postal Service that every resident be eligible for one form of free delivery, whether a form of carrier

¹⁴¹ *Ibid.* at (2)(iii).

¹⁴² *Ibid.* at (5).

¹⁴³ *Ibid.*

¹⁴⁴ *Ibid.*

¹⁴⁵ 39 U.S.C. 3661(b)-(c).

¹⁴⁶ Although "interested person[s]" and the Commission's Public Representative may submit complaints on the Postal Service's "conformance with the requirements of" Section 3661(b)-(c), 39 U.S.C. 3662(a), the only such requirements are that the Postal Service submit a proposal to the Commission within a reasonable time after a relevant determination and that it request an advisory opinion.

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

service, a group E Post Office box, or general delivery. Some do not utilize those forms of free service, but that is the customer's choice. Most deliveries are to a box at the customer's door or on the sidewalk or curb in front of the customer's residence, or to an individually assigned box in the lobby of an apartment building. However, there are other forms of delivery, such as neighborhood delivery and collection box units (NDCBUs) and other central deliveries, as well as single drops, such as at universities, student housing, some trailer parks, some apartments, prisons, hotels, some military bases, where delivery is made in bulk for distribution by management at that location. Such procedures are proper deliveries under Postal Service policy, and are consistent with the statutory responsibility to create an efficient system delivery and collection system.

G. Security of the Mail

While security of the mail was not considered an element of the USO in the Commission's Notice and Order Providing an Opportunity to Comment, the importance of security of the mail was brought to light during the Commission's USO field hearings. As stated by Chairman Blair at the Washington D.C. hearing "It was made clear that preserving the security and sanctity of the mail remains an integral part of providing universal mail service."¹⁴⁸

The Postal Service agrees that security is an important aspect of the mail. However, the level of security offered is not a matter for the Commission's discussion, and instead is a function of statutory requirements and is overseen by the United States Postal Inspection Service. As discussed in detail in Section VI of this document, the mailbox rule is an essential component in keeping mail secure. Opening access to the mailbox will most likely lead to an increase in theft and will hinder the Inspection Services ability to deter crime. Security and sanctity of the mail is also rooted in various federal statutes that protect the mail, the postal system, postal employees, postal property, postage stamps, and the postal brand from theft, interference, fraud, forgery, and the like.¹⁴⁹

In its Notice and Order Providing an Opportunity to Comment, the Commission raised the question of whether there is a relationship between the USO and the "sealed against inspection" requirement. The "sealed against inspection" feature is stated as a legal requirement:

The Postal Service shall maintain one or more classes of mail for the transmission of letters sealed against inspection. ... No letter of such class of domestic origin shall be opened except under authority of a search warrant authorized by law, or by an officer or employee of the Postal Service for the sole

¹⁴⁸ Docket No. PI2008-3, USO Field Hearings, TR. Washington D.C. p 10, lines 2-5.

¹⁴⁹ 18 U.S.C. 1691 – 1737.

purpose of determining an address at which the letter can be delivered or pursuant to the authorization of the addressee.”¹⁵⁰

This provision carries forward *verbatim* former law,¹⁵¹ and is rooted in policies that pre-date the Postal Reorganization Act of 1970 (PRA).¹⁵² Among current market dominant products, First-Class Mail is required to be sealed against inspection.

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

V. Public Service Requirements on the Postal Service

The Postal Service provides a variety of public services beyond the universal service obligation (USO). The Postal Service provides these services as a function of being a governmental agency. It is unclear who would provide these public benefits if the Postal Service was unable to stay financially viable.

A. Social Function / Preferential Pricing

One long-standing aspect of the Postal Service’s duty “to provide postal services to bind the Nation together through the personal, educational, literary, and business correspondence of the people” has been the provision of preferential prices to certain mailer groups who as a matter of social policy have been deemed as deserving special consideration by Congress. These special prices have been provided to certain mailers to support and encourage the wide dissemination of educational, cultural, literary, and charitable materials.¹⁵³ Today, title 39 requires that preferential prices be accorded to several types of mailers for reasons of social

¹⁵⁰ *Ibid.* 404(c).

¹⁵¹ 39 U.S.C. 3623(d).

¹⁵² See former 39 U.S.C. 4057, P.L. 86-682, 74 Stat. 657 (September 2, 1960).

¹⁵³ In the Postal Policy Act of 1958, for instance, Congress noted that “special postal rates” have been historically used to support and encourage the “communication of intelligence, and the dissemination of information.” 72 Stat. at 134.

policy, including nonprofit organizations, small newspapers, and libraries. In addition, title 39 also requires the conveyance of mail free of postage for certain types of mailers. Over time, the majority of the financial burden of providing these preferential prices has been shifted to other mailers.

Newspapers were the first type of mail to receive preferential prices from Congress for reasons of social policy. In the 1790s, Congress saw the distribution of news, particularly political news, as essential to fostering national unity as the nation continually extended westward. It therefore promulgated unzoned prices for newspapers that were well below the prices charged for the conveyance of letters, designed to promote the long-distance circulation of political news. As one postal historian has observed, “The encouragement given to newspapers through cheap postage was the most striking innovation in early U.S. postal policy.”¹⁵⁴ Over time, the preference for the dissemination of political news via newspapers was also extended to magazines that dealt with politics, as well as to publications dealing with other socially desirable topics such as literature, the sciences, the arts, and industry. Ultimately, Congress created second-class mail (now Periodicals), which encompassed these materials.

Within second-class mail, Congress over time created a number of categories that were accorded even more preferential prices than were commercial publications. Perhaps the most prominent is the Within-County Periodicals subclass, which was created in the mid-nineteenth century to protect small, rural newspapers against competition from the large city newspapers, and to therefore protect “small, rural voices in the national marketplace of ideas.”¹⁵⁵ More recently, Congress created preferential prices for publications designed specifically for use in classrooms (Classroom Periodicals), and agricultural publications devoted to the promotion of farming (Science of Agriculture Periodicals).

Congress also enacted preferential prices for nonprofit organizations, as compared to the prices applicable to commercial mailers. First, in 1917 Congress created a subclass within second-class mail for nonprofit publications. Later, in 1951, Congress created a subclass within third-class (now Standard Mail), in order to support and encourage charitable fund-raising through the mails. The Postal Service is therefore required to provide lower Periodicals and Standard Mail prices (compared to commercial mailers within those classes) for religious, educational, scientific, philanthropic, agricultural, labor, fraternal, and veteran’s organizations. In addition, these organizations are also eligible for the Library Mail rate, as discussed below.

¹⁵⁴ Richard B. Kielbowicz, *A History of Mail Classification and its Underlying Policies and Purposes*, at 9 (Prepared for Postal Rate Commission in connection with Commission Docket MC95-1).

¹⁵⁵ *Ibid.* at 71.

Congress has also required the Postal Service to provide preferential prices for books, in order to promote the diffusion of knowledge. In 1928, Congress adopted a preferential rate for books sent by or to libraries. A little over a decade later, Congress endorsed an earlier Presidential decision to create a preferential, unzoned rate for books in general. These preferential prices have over time been gradually expanded to include other materials of educational and cultural value, including film, printed music, test materials, and sound recordings. The library rate was also expanded to encompass not only the conveyance of these materials to or from libraries, but to similar organizations such as schools, colleges, universities, museums, herbariums, and nonprofit organizations.

The Postal Service also provides service free of postage to discrete types of mailers. Certain types of mail matter that are sent to blind or visually handicapped individuals are eligible to be sent without postage, including reading materials, musical scores, and sound recordings that do not contain advertising, and that do not require the individual to pay a rental, subscription, or other fee that exceeds the cost to the sender of providing the materials. Blind and visually impaired individuals are also allowed to send unsealed letters and sound recordings free of postage. In addition, certain diplomatic correspondence is entitled to free postage¹⁵⁶, as are balloting materials sent under the Uniformed and Overseas Citizens Absentee Voting Act.¹⁵⁷

Prior to the Postal Reorganization Act of 1970 (PRA), the preferential prices accorded to these mailers were often well below cost, with the losses either subsidized by other mailers or the Congress. With the passage of the PRA, Congress established a general policy that each class of mail should cover attributable costs and make a reasonable contribution to the institutional costs of the Postal Service. At the same time, however, Congress mandated the continuance of preferences for certain socially desirable mail, and detailed special pricing rules for that mail. These rules which apply to Nonprofit Standard and Periodicals mail, Within-County Periodicals, Classroom Periodicals, Science-of-Agriculture Periodicals, Media Mail, and Library Mail,¹⁵⁸ have evolved over time, and generally preclude the Postal Service from charging prices for this type of mail matter equivalent to the prices charged for non-preferred mailers.

In addition, in the PRA, Congress authorized appropriations for the difference between the revenue received by the Postal Service for free and reduced rate matter and the revenue

¹⁵⁶ 39 U.S.C. 3217.

¹⁵⁷ 39 U.S.C. 3406.

¹⁵⁸ 39 U.S.C. 3626.

which would have been earned were such mater not entitled to free or at reduced prices (this has become known as the “revenue forgone” appropriation). Congress did not, however, always appropriate sufficient funds to cover the amount for revenue forgone. In 1993, Congress amended the law so that only those categories entitled to free postage continued to receive a subsidy. The preferred categories of mail were required to cover their attributable costs and provide defined contributions to institutional costs, with other mailers covering the costs that had previously been provided by appropriations.

In addition, Congress also amended the PRA in 1976 to require that the Commission and Governors take the “educational, cultural, scientific, and informational value” of mail into account when setting prices. This generally led the Commission and Governors to propose small institutional cost coverages for Periodicals mail. This provision was carried forward by the Postal Act of 2006. Furthermore, because Periodicals is a “class of mail” for purposes of the price cap, its historically small institutional cost coverage will likely continue into the future.

B. Governmental Constraints

The Postal Service not only has a requirement to provide universal service , it also has additional obligations as a governmental agency. Although the Postal Service enjoys some benefits from being a government agency (*e.g.*, no sales tax), the Federal Trade Commission found that the Postal Service most likely has a net competitive disadvantage compared to private carriers.¹⁵⁹ While these constraints do not necessarily qualify as USO costs, they do increase the costs incurred by the Postal Service and therefore challenge the Postal Service’s ability to offer customers reliable service at affordable prices. These constraints are discussed in detail in Appendix G, Comments of the United States Postal Service to the Federal Trade Commission. The most important ones are briefly described below.

The Postal Service cannot simply decide to realign its facilities to make its operations more efficient as any private business would. Small Post Offices may not be “closed solely for operating at a deficit,” and a Post Office closing is subject to procedures for advance notice and public comment, written decision, and appeal to the PRC.¹⁶⁰ Furthermore, while there are no statutory restrictions on closing processing facilities, and Congress has even encouraged the Postal Service to create a more efficient network in the Postal Act of 2006¹⁶¹, closing specific facilities almost always is met with significant political resistance.

¹⁵⁹ Accounting for Laws that Apply Differently to the United States Postal Service And its Private Competitors. A Report by the Federal Trade Commission. December 2007.

¹⁶⁰ 39 U.S.C. 404(d).

¹⁶¹ P.L. 109-435 302(c).

Another operational expense the Postal Service incurs as a result of being a government agency is the cost of transporting mail to bush points¹⁶² in Alaska, referred to as Alaska bypass mail transportation. Extensive provisions in title 39 outline the type of transportation the Postal Service must use in providing this service.¹⁶³ The Postal Service incurs a significant net deficiency in providing this transportation, approximately \$100 million a year.

Another statutory restriction is that the Postal Service is limited in its ability to negotiate transportation rates for both market dominant and competitive international mail. By statute the Postal Service is required to pay rates set by the Department of Transportation (DOT) for the majority of its international mail.¹⁶⁴ ¹⁶⁵ Neither private firms nor foreign posts have this statutory restriction. Market-driven rates are far more competitive than DOT rates.¹⁶⁶ In a white paper issued by the USPS Office of Inspector General (OIG)¹⁶⁷, the OIG compared the existing DOT rates with the marginal cost of transporting mail, the established rates for freight carriage, and the average negotiated contract rates in instances in which the Postal Service is authorized to contract for air transportation of mail. The OIG found that DOT rates are significantly greater than the rates charged the Postal Service when it purchases air transportation services from the competitive market. In CY 2007, it is estimated that the Postal Service paid between \$46 million and \$63 million more for this transportation than if it had paid market rates.

The Postal Service also incurs labor and benefit-related costs due to legal restrictions, incurring additional cost through its federally regulated employee benefits. There is a statutory grandfather clause stating that the program for fringe benefits may not be less favorable to employees than the package in effect at the creation of the Postal Service on July 1, 1971.¹⁶⁸ In comparison, the overall trend in the private industry has been to reduce or look for more cost effective ways to offer employee benefits. In addition, organizations representing postal supervisors, postmasters, and other managers have formal statutory rights to participate directly through consultation in the planning and development of pay polices and schedules, fringe

¹⁶² This term is used in Alaska to refer to the portion of the state that is not connected by North America's interconnected system of roadways.

¹⁶³ 39 U.S.C. 5402.

¹⁶⁴ 39 U.S.C. 5402.

¹⁶⁵ DOD reimburses USPS for the transportation costs associated with international air transportation of military mail. Other types of international mail not subject to DOT rate-setting include mail moved by surface transportation and bulk air shipments whose rates are set through negotiated contracts.

¹⁶⁶ The methodology DOT uses to set these rates was established by the Civil Aeronautics Board (CAB) in a rate proceeding that concluded in the late 1970s and have not since been comprehensively updated. A bill to change this is pending the President's signature.

¹⁶⁷ [1] USPS OIG International Mail Air Transportation, MS-WP-06-002 (white paper).

¹⁶⁸ 39 U.S.C. 1005(f).

benefits programs not fixed by law, and other programs related to supervisors and managers.¹⁶⁹ Furthermore, the Postal Service is subject to statutory civil service requirements for certain cost-of-living adjustments for employees stationed outside the 48 contiguous states. Eligible employees receive a specified percentage adjustment ranging from 10.5 to 25 percent depending on locality.¹⁷⁰

Compared to the private sector, the Postal Service also faces a premium in retirement costs. The Postal Service is required to participate in the Federal Employee Retirement System (FERS) for most employees hired after December 31, 1983, and in the Civil Service Retirement System (CSRS) for most employees hired before 1984. The Postal Service also incurred greater costs for retirees due to the fact that it was formerly required to make certain unfunded liability payments related to CSRS not required of other agencies. It was discovered that the payment plan set out by the Office of Personnel Management (OPM) had put the Postal Service on pace to overpay its pension liability.¹⁷¹ When in 2003 OPM determined that the Postal Service has already more than fully funded its obligation, the Postal Service presented an analysis showing that it had paid an extra \$85 billion. However, OPM did not accept this analysis and the Postal Service did not have the right to litigate in front of a neutral judge. No private firm would ever be charged \$85 billion without a neutral decision backed up by full due process. Another area where the Postal Service incurs more retirement related costs as a governmental agency is health benefits for annuitants. The Postal Service employees can elect to continue Federal Employees Health Benefits (FEHB) coverage into their retirement and the Postal Service is required to prefund retiree health benefits.¹⁷² No private firm has this requirement. In addition, the Postal Service does not receive monetary incentive to maintain prescription drug programs for retirees as do private firms, which is estimated at \$250 million.

The Postal Service incurs additional costs in the form of workers' compensation. The Postal Service is covered by the Federal Employees Compensation Act (FECA). Private employers are covered by state workers' compensation laws. One key difference is that the Postal Service is precluded by law from settling workers' compensation claims. Another difference is the Postal Service pays 75 percent of pay (100 percent the first 45 days), while state laws tend to require payment of 67 percent. In addition, the Postal Service is required to

¹⁶⁹ 39 U.S.C. 1004(b)-(h).

¹⁷⁰ 39 U.S.C. 1005(b); 5 U.S.C. 5941.

¹⁷¹ U.S. General Accounting Office, "Review of the Office of Personnel Management's Analysis of the United States Postal Service's Funding of Civil Service Retirement Costs, GAO-03-448R (January 31, 2003).

¹⁷² 39 U.S.C. 8909a.

pay continued compensation for life while State laws only require a lump sum final payment to claimants who reach maximum recovery and are unable to return to work. Furthermore, the Postal Service is required to find a claimant work in a limited-duty position when a claimant cannot perform regular duty.

Equal Employment Opportunity (EEO) appeals are another area where the Postal Service faces a greater burden than private companies. The costs include official paid time for appellants and their representation in every stage of the process, plus the cost of investigating every cognizable EEO claim without the kind of summary judgment process that characterizes the private sector EEO process.¹⁷³

Another area of costs that private companies do not incur is related to the Inspection Service and the United States Postal Service Office of Inspector General (USPS OIG). While it is clear that the Postal Service derives benefits from the existence of the Inspection Service, by law, the Inspection Service is also assigned to address matters that go beyond the safety and security of the mail. These often include pursuing child pornography, much of which has now moved to the Internet, securities fraud investigations, and identity theft.¹⁷⁴ According to their website, the USPS OIG is the largest federal IG office, with a \$140 million budget and nearly 500 agents.¹⁷⁵

As a government agency, the Postal Service is also encumbered by its limited ability to invest and borrow.¹⁷⁶ While the Postal Service benefits from being able to borrow from the U.S. Treasury at preferential rates, this relationship also comes with disadvantages. To finance its capital, the Postal Service has no access to equity markets. It may borrow up to an annual cap of \$3 billion per year and a cumulative cap of \$15 billion, but even then it has limited access to private markets. The Treasury has the ability to preempt and since 1974 has used this authority to preclude the Postal Service from borrowing outside the Federal Financing Bank. The Postal Service is not allowed to invest its own funds directly. Instead it may request the Treasury to invest on its behalf, and in practice the Treasury will not invest in equities or in bond markets. The Treasury has invested for the Postal Service exclusively in special-issue, non-marketable Treasury notes.

Listed above are the major responsibilities the Postal Service faces as a government agency. This list is not meant to be an exhaustive list; there are many other regulatory and statutory requirements that apply to the Postal Service and not to private business entities (e.g.,

¹⁷³ 39 U.S.C. 2000e-16; 29 C.F.R. Part 1614.

¹⁷⁴ 39 U.S.C. 401(a)(6); 18 U.S.C. 3061.

¹⁷⁵ www.uspsoig.gov/fag.cfm?SECTION=GEN.

¹⁷⁶ 39 U.S.C. 2005-2006, 2011.

Davis-Bacon Act, Randolph-Sheppard Act). In addition to the substance of these obligations, the process by which obligations are established can also represent a significant challenge that should be considered. There is not simply one body of requirements, there are many. New requirements can appear (sometimes relatively quickly) in the form of riders, regulations, or other vehicles. Managing this process, therefore, can prove complex. These regulatory and statutory constraints make it more challenging for the Postal Service to offer the American public reliable service at affordable prices and increase the need for the Postal Service to have a dependable source of revenue to fund the obligations placed on it.

C. Community Presence

Not all services the Postal Service provides are quantifiable in straightforward economic terms. Postal employees support and make a difference in their communities everyday in many ways. From postmasters helping small businesses grow to employees volunteering in their towns, postal employees have time and again proven their commitment to public service and improving their communities. At a national level, postal stamps raise awareness and funds for important issues of nationwide interest, like breast cancer research. In towns across the country, the Postal Service provides high-quality employment opportunities.

Postal Service carriers are trusted individuals in the towns and cities they serve and play a vital role in their communities. There are advantages to having postal carriers out delivering mail in neighborhoods across the country. Protecting the sanctity of the mail and the mailbox, coming to the aid of customers, and promoting safe neighborhoods are at times all part of a carrier's typical day.

The Postal Service has an important role to play in national security. Carriers have agreed to participate in the Cities Readiness Initiative, a federally funded effort to prepare major U.S. cities and metropolitan areas to effectively respond to a large scale terrorist event by dispensing antibiotics to entire communities within 48 hours of the decision to do so.

Postal employees provide support during natural disasters such as flooding, tornadoes, earthquakes, hurricanes, wildfires, and other emergencies. The men and women of the Postal Service have historically worked through extreme weather conditions to deliver the mail. For example, following the unprecedented devastation of Hurricanes Katrina and Rita, the Postal Service worked to keep evacuees connected with friends and loved ones through the mail. Temporary Post Offices were set up in shelters throughout the nation. Where normal delivery was impossible, special arrangements were made for the distribution of Social Security checks. Mail was forwarded for more than 600,000 households in the affected areas of Florida, Alabama, Mississippi, Louisiana, and Texas.

The Carrier Alert Program recognizes carriers can help monitor the well-being of elderly and disabled customers. A carrier is exposed on a daily basis to what is happening throughout the community. Postal Service carriers often deliver to the same homes everyday and know when something has changed. For instance, when a car has not moved, a yard is overgrown, and above all when mail is piling up, a carrier knows there may be reason for concern. Carriers throughout the country have saved hundreds of lives. When carriers notice something out of the ordinary they can get help to people who have become ill or injured.

The Postal Service delivers to more than 148 million addresses. Many of the employees who accomplish this monumental task are everyday heroes in their communities. As a steady daily presence on America's streets, carriers are often at the right place at the right time to help their fellow citizens. Whether it's helping victims of traffic accidents, aiding lost children, reporting crimes, or extinguishing and reporting house fires, carriers have a broad definition of public service. Having more than 200,000 carriers on the streets every day is an invaluable way to keep watch on America's neighborhoods.

The annual "Stamp Out Hunger" food drive, supported by the Postal Service and the National Association of Letter Carriers, is conducted in towns and cities throughout America once a year. In its history, the drive has provided more than 750 million pounds of food to the hungry. The food collected is delivered to local food banks, pantries and shelters to help needy families in all 50 states.

The *Have You Seen Me?* program to recover missing children is made possible with the help of the Postal Service in partnership with Valassis and the National Center for Missing and Exploited Children. By featuring recent or age-progressed photos of children and their alleged abductors in mail circulars, *Have You Seen Me?* enables the American public to assist in the recovery of missing children. As a direct result of leads generated by the program, 148 missing children have been safely recovered since 1985.

The Postal Service binds small communities together. It provides services to the most isolated and remote places in the country. Some rural carriers' routes are so sparsely populated a single route can be longer than 150 miles. The average rural route is 45 miles long. In small island fishing towns or in rural farming communities, for example, communication with larger towns and cities is critical for everything from medicine to educational materials to conducting business. Within small towns, the Postal Service provides a method to spread community news through local newspapers. Businesses in remote locations depend on the Postal Service where no other full-service retail facilities exist.

In many small towns across the nation, the Post Office provides a place for residents and business people alike to congregate, and in many cases is the only governmental presence in the community. This community presence provides a significant convenience to small town residents and the businesses that operate there, allowing them to avoid driving long distances or paying additional fees to conduct their mailing and shipping business.

VI. Mailbox Access

The Postal Service strongly believes the mailbox rule should be retained in its current form. The criminal provision creating the mailbox rule, discussed in Section III of this document, provides safety and security to our customers and employees, by effectively restricting access to the mailbox. In addition to security concerns, the following are important considerations: public perceptions, potential impacts on customer service, potential impacts on costs and affordability, and environmental considerations.

A. Safety and Security of the Mail

The end result of the mailbox rule and other statutory provisions that exist to protect Americans is that, as the Vice President of the National Rural Letter Carriers stated: "... postal customers believe that what I put in their mailbox is safe. It doesn't matter if it's a check, a passport, a new credit card, medicine, or they are simply buying stamps from me; they trust their mailbox's security."¹⁷⁷

The Postal Service Inspection Service is charged with the responsibility of protecting the mail. The Inspection Service is a highly specialized, professional organization performing investigative and security functions necessary to maintain a stable and sound postal system. Through its security and enforcement functions, the Inspection Service provides assurance to American businesses for the safe exchange of funds and securities through the U.S. Mail. It also provides postal customers with the "sanctity of the seal" in transmitting correspondence and messages which are sealed against postal inspection, and provides postal employees a safe work environment. Postal Inspectors work closely with U.S. Attorneys, other law enforcement agencies, and local prosecutors to investigate postal cases and prepare them for court.

If the mailbox rule were diluted or diminished, the ability of the Inspection Service to protect the sanctity of the mail would be impeded. If U.S. mail bearing postage is co-mingled

¹⁷⁷ Docket No. PI2008-3, USO Field Hearings, TR. Washington D.C. p 24 (Don Cantriel, Vice President, National Rural Letter Carriers).

with other matter deposited into the mailbox it may be unclear which matter is mail, making the detection and prevention of crime more difficult. In addition, the Inspection Service presumably would not be responsible for policing matter deposited into the mailboxes by other entities and may not even maintain jurisdiction over mail once it is placed in a receptacle that contains other matter.¹⁷⁸ Therefore, criminal laws such as those prohibiting persons from removing matter from mail boxes and from depositing into mailboxes threatening communications, unsolicited sexually related matter, and prohibited lottery matter may need to be revised or rescinded. As the RAND Corporation found in their October 2008 analysis of the security issues surrounding the mailbox rule, “the other types of mail crime that are most likely to increase following relaxation of the Mailbox Rule are financial crime and the incidence of suspicious items.”¹⁷⁹ RAND also found that “relaxing the Mailbox Rule would likely impair the [Inspection Service’s] ability to detect and deter crimes and to conduct investigations by reducing Federal jurisdiction over crimes in or at the mailbox or crimes committed using private couriers.”¹⁸⁰

Opening access to the mailbox is made more complicated by the fact the Postal Service possesses keys to office and apartment building entrances to allow access to mailboxes. The Postal Service also has keys to a variety of models of centralized mailboxes. The Postal Service and the Inspection Service work together to keep those keys accounted for and secured. In addition, Postal Service employees and contractors who deliver mail are required to undergo background checks. It is unclear how access to mailboxes in office and apartment buildings would be provided or approved for other entities desiring to deposit matter in these boxes. It is also unclear what requirements would be placed on those entities to secure those keys and ensure their employees are responsible parties. As Ms. Linda Sherry, Director of National Priority at Consumer Action said before the Commission:

In many homes and buildings, mailboxes are locked, and the postal employee has a key to open them when delivering mail. To allow entities outside the post office to have keys would open residents to tampering, privacy violations, theft of mail, and identity theft.¹⁸¹

Because mail can contain personal correspondence, medical documents, financial statements, paychecks, and other sensitive material, customers frequently are concerned that

¹⁷⁸ Appendix E. RAND Report: The Role of the United States Postal Service in Public Safety and Security, Chapter 4.

¹⁷⁹ *Ibid.* Chapter 6.

¹⁸⁰ *Ibid.* Chapter 6.

¹⁸¹ Docket No. PI2008-3, USO Field Hearings, TR. Washington D.C. p 101.

open access to the mailbox would impact their privacy and increase theft, including identity theft. Results of surveys have consistently demonstrated this concern. Congressman John McHugh, who has been deeply involved in Postal issues for well over a decade, is well aware of the desire of much of the public to retain the mailbox rule.

Having in fact proposed in 1996 a very limited test by the Postal Service of allowing consumers the choice to open access to their mailbox, I can attest that the mailbox statute is not only viewed as essential to enforcing the monopoly; it is crucial to American's sense of privacy and the integrity of mail. The Postal Service is traditionally viewed as one of the most trusted federal agencies, and indeed many people believe that an accountable public agency is the only party that should be allowed access to mailboxes.¹⁸²

B. Public Perceptions

Public opinion surveys have consistently shown a strong support for the retention of the current mailbox rule. In fact, during the last of the Commission's public outreach efforts to gather information from stakeholders throughout the country on the universal service obligation (USO), the Private Express Statutes (PES), and the mailbox rule, Chairman Dan Blair noted, "most commenters to date oppose opening the mailbox to competition."¹⁸³

In the first comprehensive review of public attitudes toward opening the mailbox to entities other than the Postal Service, the General Accounting Office found that while 58 percent of those surveyed favored allowing recognized private express companies to put packages into mailboxes, 82 percent opposed letting "just anyone" (including individuals) put matter into their mailboxes.¹⁸⁴ A series of focus groups run by the Gallup Organization in September 2002 found that "participants were not generally favorable to granting access to the mailbox to other companies."¹⁸⁵

While these surveys found a consistency of responses and a continued desire to allow only the Postal Service to access the mailbox, the studies did not probe to determine the underlying rationale for these responses. Therefore, in July 2008, the RAND Corporation undertook a survey that was specifically designed to use questions that would provide consistency with the 1996 GAO study and a 2007 Postal Service study and to probe more deeply into the reasons for American's feeling for the mailbox. Overall, the respondents to the RAND survey had a "positive perception of the Postal Service, seeing the Postal Service as

¹⁸² Docket No. PI2008-3, June 30, 2008 Submission by Congressman John McHugh.

¹⁸³ Docket No. PI2008-3, USO Field Hearings, TR. Washington D.C. p 4.

¹⁸⁴ "U.S. Postal Service: Information About Restrictions on Mailbox Access", General Accounting Office, GAO/GGD-97-85, May 1997.

¹⁸⁵ Focus Groups on Universal Service, The Gallup Organization, September 2002.

reliable (89 percent of respondents agreed or strongly agreed), secure (77 percent), and private (70 percent).¹⁸⁶ RAND specifically notes that the feelings of privacy were supported by a series of surveys from the Ponemon Institute which found that in 2008 the Postal Service was trusted by 86 percent of the public.¹⁸⁷ The Ponemon Institute also noted that the level of trust in the Postal Service had increased every year and that the Postal Service was the most trusted Federal agency for four years in a row.

The RAND Corporation found that there were several reasons why individuals supported the retention of the mailbox rule. They included concerns about making the mail less secure, and concerns about identity theft or making their home less secure.¹⁸⁸ RAND found that “the more concerned individuals were about security, the more likely they were to want to restrict access to their mailboxes.”¹⁸⁹

The Postal Service is in a unique position to provide secure service desired by the American public. The strong tradition of trusted delivery, supported by the Inspection Service and the criminal statutes, provide a high level of protection to the Postal Service’s customers. It is not at all clear whether or how this level of service could be maintained if the mailbox rule were relaxed or eliminated. In fact, the introduction of hazardous materials into the mails by alternate carriers has been a problem in other countries. The RAND Corporation notes that, hazardous materials that are not permissible in the mail have been discovered in the items given to the New Zealand Post to deliver by other parties.¹⁹⁰ To try to reduce this problem, New Zealand Post has tried to work with its competitors to improve the third party process and reduce hazardous materials. RAND states, however, “this strategy may not be feasible in the United States because of the sheer size of the USPS’s networks, the potential for numerous competitors in the market of varying capabilities, in their screening processes and procedures.”¹⁹¹

¹⁸⁶ Appendix E. RAND Report: The Role of the United States Postal Service in Public Safety and Security, Chapter 5.

¹⁸⁷ The Ponemon Institute, April 2008.

¹⁸⁸ Appendix E. RAND Report: The Role of the United States Postal Service in Public Safety and Security, Chapter 5.

¹⁸⁹ *Ibid.* Chapter 5.

¹⁹⁰ Despite the deregulation in that country, New Zealand Post is virtually the only entity that delivers mail, since most competitors give their mail to the New Zealand Post for delivery.

¹⁹¹ Appendix E. RAND Report: The Role of the United States Postal Service in Public Safety and Security, Chapter 3.

C. Potential Impacts on Customer Service

The Postal Service believes that its customers would not be well served by opening the mailbox to non-mail items. As Ted Keating, the President of the National Association of Postal Supervisors stated before the Commission, “The security of the current mail system would be threatened if the mailbox rule were liberalized to afford accessibility to competitors of the Postal Service to place materials in the mailboxes of Americans. Multiple materials belonging to multiple carriers in mailboxes would create endless confusion and debase the sanctity of the mail.”

As previously mentioned, this confusion could have several effects. Non-mail items placed in mailboxes by other entities could make it more challenging for customers to sort through the contents of their mailbox and find the First-Class Mail delivered by the Postal Service. Customers may also be concerned that if they place outgoing mail in their mailbox for collection, it will be obscured by non-mail items subsequently placed in their mailboxes. On the other side, if non-mail items were in the mailbox when the carrier arrives it would cause the carrier to have to sort through the items in the mailbox to determine if the customer placed outgoing mail in the mailbox. Another complication could arise if the mailbox is full with non-mail, and the carrier is unable to deliver that day’s mail. The mail may need to be returned to the Post Office. This could require the carrier to re-deliver the mail the next day and hope there is space in the mailbox for two days worth of mail or require the customer to pick up the mail at the local Post Office. Either solution would create decreased service and increased cost.

As noted by Robert Brinkman on behalf of the National League of Postmasters before the Commission:

The carrier is going to have to sort through to figure out what needs to be picked up to go to somebody else, what is mail and what is something else, and that would add a tremendous amount of cost to the system, and given the point several people have made about the need to be careful about costs, which I think are correct, that just seems to be something that really shouldn’t happen for costs sake, if for no other sake.¹⁹²

D. Potential Impacts on Cost and Affordability

In addition to the increased carrier handling costs, a reduction or elimination of the mailbox rule would impact volumes and revenues as well. If the mailbox rule is reduced or eliminated, the trust placed in the mail will likely fall. This could harm the perception of the Postal Service as a trusted brand, which would have an adverse overall effect on the entire postal industry. It could push customers who have electronic options to conduct their business

¹⁹² Docket No. PI2008-3, USO Workshop, TR. p 61-62.

to move to that route. It is important to note that the level of trust is not only on the side of the customer, but the mailer, as well. As Art Sackler for the National Postal Policy Council, which primarily represents large First-Class mailers, stated before the Commission,

I think the biggest single thing that would influence all of our members to consider taking much more volume out of the system and doing whatever it could electronically is to open up the mailbox. They are vitally concerned about the security of the mailbox, the security of their remittances, you know, theft of checks, identity theft, you name it, and to open up the mailbox in that way would, I think, imperil some of the ways that they have been doing business, and again would encourage them to go electronic as much as they could.

In addition to the volume and revenue loss driven by concerns regarding security, the Postal Service would be significantly hurt by the potential loss of volume caused by a reduction or elimination of the mailbox rule. As Rita Cohen with the Magazine Publishers of America testified before the Commission, “One of the things that we felt comfortable with is that the monopoly, in particular the mailbox rule, was a way to avoid having cream skimming, so that you would have threatened the viability of the Postal Service for the future and their ability to offer this universal service.”¹⁹³ That concern is supported by a research report produced by the ILO Institute, which found that if access were opened, new entrants would engage in cream skimming the most profitable regions.¹⁹⁴ The report also mentioned that “the Mailers Council, whose members produce 70 percent of all mail in the country, strongly opposes “opening” the mailbox”.¹⁹⁵

Another aspect of reducing or eliminating the mailbox rule is the effect that it would have on how a customer views the mail. The Postal Service’s Mail Moment research shows that households value mail and spend time with mail on a daily basis. To the extent a customer has a harder time weeding out non-mail items on a daily basis, this positive experience with the mail will diminish. This will impact customer response rates and the mailer’s return on investment from mailings, in turn, further reducing the value of mail.

E. Environmental Considerations

Eliminating or reducing the mailbox rule will undercut the benefits being realized by the Postal Service’s efforts to minimize its environmental impact. Without the mailbox rule, more vehicles will be on the road making non-postal deliveries to mailboxes, thereby increasing

¹⁹³ Docket No. PI2008-3, USO Workshop, TR. p 46.

¹⁹⁴ Appendix D. ILO Report: The Mailbox Monopoly: A New Look at the Last Mile, p 1.

¹⁹⁵ *Ibid.*

carbon dioxide emissions. Also, more material will be put into the mailboxes of consumers, some of whom are already concerned about volume.

Currently, only the Postal Service makes routine deliveries six days a week to virtually every address in the United States. This requires an extensive infrastructure of routes, vehicles, and human resources. Because of its size, the Postal Service can realize economies of scale in these areas. The Postal Service strives to minimize its impact on the environment through greater efficiencies, including maximizing cost-effective routing and the use of alternative fuel and energy efficient vehicles. The Postal Service is taking bold steps to reduce its impact in every community in the nation. A few of the current initiatives to reduce its environmental impact and promote sustainability include:

- The Greening of the Mail Task Force, whose membership includes mailers, industry groups, suppliers, other federal agencies, environmental organizations, and others;
- A peer-reviewed life cycle inventory analysis that identifies the environmental impact of different classes of mail to provide a baseline for future research and help us target specific areas for improvement;
- A pilot “Mail Back” program that provides customers with postage-paid packaging so they can easily and efficiently send to recycling locations such items as cell phones, PDAs, ink cartridges, carbon fluorescent light bulbs (CFLs) and possibly expired pharmaceuticals;
- A lobby recycling program launched at limited Post Offices nationwide in September 2008 that enables postal customers to easily recycle mail they no longer need;
- The testing and use of alternative fuel, hydrogen cell, advanced diesel, hybrid electric, and electric vehicles – in fact, the Postal Service has the world’s largest fleet of alternative fuel vehicles.

These and other programs, along with green purchasing and energy initiatives, and a newly-created Sustainability organization, demonstrate that in addition to its commitment to provide efficient, reliable delivery service, the Postal Service is committed to reducing its impact on the environment. In the past ten years alone, a period during which service scores reached record levels, the Postal Service received more than 70 major environmental awards, 39 of which are White House “Closing the Circle” awards recognizing outstanding environmental stewardship. And in 2007, the Environmental Protection Agency named the Postal Service its “Waste Wise Partner of the Year” for the eighth year in a row.

Opening the mailbox will invite the deposit of materials by others who lack the Postal Service’s efficiencies as well as its commitment to being environmentally responsible in the

transport and delivery of mail to consumers. Other entities are unlikely to make deliveries on foot, as many Postal Service carriers do, or to have the scope of operations necessary to successfully encourage the development of advanced processing and vehicle technology. Other entities will need to expand their own networks, their own processing systems for the materials given to them for delivery, and put their own vehicles on the road – all of which will duplicate what the Postal Service already has in place to meet its USO. Replication of the Postal Service network will unnecessarily increase carbon dioxide emissions. Even if only a small percentage of mail was diverted, it would result in large carbon dioxide emission increases if the diverted mail was: (a) delivered along the entire length of Postal Service delivery routes, and (b) diverted to more than one competitor, each of whom would have to establish its own delivery networks.

The Postal Service is working with the mailing industry to encourage the use of environmental best practices, including the use of recycled materials, renewable resources, and environmentally-friendly inks and product designs. It is also engaged in ongoing discussions with the industry leaders about how to best satisfy consumer interests regarding the nature and quantity of mail received. Members of the mailing industry are listening to their customers, adjusting the number and/or frequency of mailings, and better targeting the mail to the recipients. The Postal Service and the industry are also working to reduce undeliverable as addressed (UAA) mail, which will help to further alleviate environmental and consumer concerns.

Eliminating the mailbox rule will not benefit the environment. The perceived benefits of such action can not begin to justify the corresponding ecological and consumer harm that could result across the country.

F. Conclusion

Since the Postal Act of 2006 requires evaluation of the mailbox rule, several potential scenarios must be considered. Among these scenarios, continuation of the mailbox rule as is would best preserve customer service, safety, security, and the value of the mail. Customer surveys have revealed that customers, as well as most major users of the mail, generally do not favor opening access to their mailboxes, largely due to privacy and security concerns.

VII. Private Express Statutes

Over many decades, debates have raged regarding the alleged benefits and the alleged harms associated with potential alteration of the Private Express Statutes (PES).¹⁹⁶ The present effort will generate further contributions to these bodies of opinion.¹⁹⁷ Moreover, the research being conducted in association with this proceeding will bring to bear a broader foundation of information upon which to draw conclusions on these matters. Nonetheless, it may be useful to review conclusions reached by certain previous panels given the task of evaluating potential changes in the PES.

For example, in accordance with the requirements of Section 7 of the Postal Reorganization Act of 1970 (PRA), the Board of Governors of the Postal Service transmitted to the President and the Congress in June of 1973, a report entitled “The Private Express Statutes and Their Administration.” The report’s primary conclusion was that the PES should *not* be relaxed.¹⁹⁸ In support of this conclusion, the report cited a variety of factors:

If the Private Express Statutes were repealed, private enterprises, unlike the Postal Service, would be free to move into the most economically attractive markets while avoiding markets that are less attractive from a business standpoint. . . . Without abandoning the policy of self-sufficiency and reintroducing massive subsidies, it is hard to see how the Postal Service could meet rate and service objectives in the face of cream-skimming competition against its major product. But abandonment of this policy would impose an unjustifiable burden of costs on the tax-paying public and might lead to the erosion of universal public service.¹⁹⁹

The Board’s report also cited difficulties protecting the safety of the mails and the mailing public if restrictions were relaxed.²⁰⁰ The report stated that international mail arrangements might become more complicated.²⁰¹ The Board’s report also pointed to the economies that arise from declining unit costs associated with handling additional mail volume through the existing postal networks, and noted the consequent detrimental economic effects of any volume losses caused

¹⁹⁶ See pp. 13-16 for discussion of the legal definition of the Private Express Statutes, which cover, for example, letters less than 12.5 ounces.

¹⁹⁷ It is interesting to note, however, that the current iteration of the debate has become increasingly largely one-sided, at least among representatives of the organized mailing community. Based on the comments submitted in response to Order No. 71, in fact, mailers are virtually unanimous in their rejection of suggestions to eliminate or further limit the Private Express Statutes at this time.

¹⁹⁸ “The Private Express Statutes and their Administration; a Report to the President and the Congress, Pursuant to Section 7 of the Postal Reorganization Act,” United States Postal Service Board of Governors, 1973, p 9-10.

¹⁹⁹ *Ibid.* p 6.

²⁰⁰ *Ibid.* p 7-8.

²⁰¹ *Ibid.* p 8.

by a relaxation of the PES.²⁰² The Board concluded that, in its judgment, “the case for retaining the existing restrictions on the private carriage of mail is so clear that we see no need for extensive elaboration.”²⁰³

A substantially similar conclusion was reached by the Commission on the Postal Service, established under Section 7 of the PRA Amendments of 1976. The report of that Commission concluded that “a general relaxation of the Private Express Statutes is not in the public interest at this time because it would impair the ability of the Postal Service to meet its nationwide obligations.”²⁰⁴ The Commission’s Report cited:

The traditional argument ... that a nationwide postal system is a “natural monopoly,” an economic entity for which unit costs decrease as volume increases. The diversion of volume to private carriers with resultant increased postal unit costs is not in the public interest. The Postal Service believes that if the private express prohibitions were modified, unit costs would substantially increase to the point where they could not be borne by remaining postal patrons.²⁰⁵

Without actually using the term “cream skimming,” the Commission on the Postal Service also identified the likely negative consequences on postal finances flowing from scenarios in which potential competitors could employ a pick-and-choose strategy regarding high-cost and low-cost service areas.²⁰⁶

On July 1, 1982, a panel of the National Academy of Public Administration (NAPA) issued a report entitled “Evaluation of the United States Postal Service.” In that report, the panel concluded “that the public interest is best served by a continuation of the present postal letter monopoly.”²⁰⁷ The NAPA discussion focused on a number of factors:

The immediate savings to big mailers in metropolitan areas are insufficient compensation for the disruptions that would follow elimination of the letter monopoly. It would be more difficult for postal inspectors to fulfill their statutory functions of guarding against the use of the mails for fraud or for the mailing of pornographic matter, enforcing such other mail standards as the Congress may prescribe, or fining carriers for refusal to carry mail. The integrity and uniform rates of the national letter network would be broken. Remote areas and those with low population density would be economically severed from major metropolitan areas, and the private cost or public subsidy necessary to connect the two would rise. The individual citizen and taxpayer would bear most of the higher costs and suffer most of the deterioration of service as competitors concentrated on profitable services to mass mailers. When the government

²⁰² *Ibid.* p 9.

²⁰³ *Ibid.* p 2.

²⁰⁴ Commission on Postal Service Report (April 18, 1977) at 7, 72.

²⁰⁵ *Ibid.* p 72.

²⁰⁶ *Ibid.*

²⁰⁷ NAPA Report, p 151.

wished to communicate with all the people in an economic or national emergency, the integrated network which now enables it to do so would no longer exist...To shatter the network that binds the nation together is too great a price to pay for extending the principles of competition to an area that it has not occupied since the early years of the nation.²⁰⁸

The President's Commission on Postal Service was the most recent body to address the issue of the PES. In terms of its 2003 assessment of the current status of those statutes, the President's Commission likewise concluded that "a postal monopoly remains essential to the reliable, affordable provision of universal postal service today."²⁰⁹ Looking to the future, though, the Commission further posited "that this may not always be the case."²¹⁰ Additionally, to clarify what it viewed as unclear definitions of the scope of the reserved portion of the mail, the Commission specifically proposed "that the boundary lines be clearly and narrowly drawn by weight and by price (to permit private express carriers to handle mail of less than 12 ounces, so long as they charge at least six times the price of a First-Class stamp)."²¹¹ This recommendation appears to have been the basis for the Postal Act of 2006 standards incorporated into amendments to section 601(b) of title 39 and, in this sense, the primary thrust of the President's Commission's recommended changes have already been achieved. Beyond that, the President's Commission recommended no changes in the PES at this time.

The President's Commission did not fully state the reasoning behind its determination that immediate major changes in the PES and mailbox rule were not warranted. For example, the report posits that "[o]nce the conclusion is reached that the public interest is best served by the continuation of the Postal Service monopoly in the near-term,"²¹² certain consequences follow. Earlier sections of the report, however, do not shed much light on exactly how that conclusion was reached. Later portions, however, suggest an assessment by the Commission that continued suppression of competition is necessary "to the protection of universal service without undue risk to the taxpayer."²¹³

Thus, these varying bodies, conducting evaluations of the PES similar to that now required by the Commission, have over the years repeatedly struck certain common themes in rejecting suggestions to alter those long-standing provisions of postal law. There is, for

²⁰⁸ *Ibid.* p 150-51.

²⁰⁹ "Embracing the Future" Report of the President's Commission on the United State's Postal Service. 2003. Executive Summary. <http://www.treas.gov/offices/domestic-finance/usps/>

²¹⁰ *Ibid.*

²¹¹ *Ibid.*

²¹² *Ibid.*, p 22.

²¹³ *Ibid.*, p 65.

example, a clear consensus that relaxation of the PES would lead to cream skimming. Other common themes are the risks of triggering potential deterioration in universal service, causing jeopardy to the policy of uniform pricing, and impairing efforts to keep the mail safe and secure. Ultimately, there seems to be a shared perception that, if changes in the PES created financial hardship for the Postal Service such that some alternate financing mechanism were required, the additional burden might fall on the American taxpayer. All of these previous panels appeared to view the risk of such an undesirable development as sufficiently serious to warrant maintenance of the essence of the restrictions currently embodied in the PES.

VIII. Potential Financial Impacts

The Postal Service incurs *costs* associated with meeting its universal service *obligation* (USO). To fully analyze these costs, the Postal Service engaged a study team led by Dr. Michael Bradley, Professor of Economics at George Washington University, and IBM Global Business Services. The purposes of their study are two-fold:

- Provide quantitative insights into key aspects of the USO to assist in decision making.
- Provide a credible and effective tool to help the Postal Service and policy makers contribute to the ongoing USO debate.

A. Principles and Issues in Calculating Costs of the USO

For the purposes of this analysis, the USO was defined as a set of public policy restrictions on the actions of the Postal Service that restrict it from making financially optimal business decisions about operations and services. As discussed in Sections III and IV, examples include offering uniform prices and service, even when such service is costly and unremunerative, and operating suboptimal retail and delivery networks. The cost of the USO is thus the net reduction in the Postal Service's financial position as a result of having to follow the USO restrictions. It does not include the costs of the other public service requirements the Postal Service must fulfill that were discussed in Section V.

It is important to recognize that the worsening of the USPS financial position caused by the USO restrictions must be funded in some manner. Traditionally, and currently, the *obligations* are paid for by funds enabled by the protections of the Private Express Statutes (PES) and the mailbox rule. Therefore, changes in the scope of the PES and mailbox rule have important financial implications for the USO. If, for example, the PES and the mailbox rule were to be eliminated, and the USO maintained, then either tax revenues or some other source of

funding would have to be found. Moreover, the greater the cost of the USO (or other public service requirements), the greater the need for additional funding.

To estimate USO costs, IBM has constructed a detailed financial model that accounts for the volume, revenue, and cost effects of the USO. The model constructed for this study is a “bottom up” model in the sense that it captures the effects of the USO at a 3-digit ZIP Code level and then aggregates the results.

The financial model can calculate the cost of the USO for both the current regulatory environment and for a liberalized environment. It is important to do both because there are USO costs that arise *only* in the liberalized environment. These USO costs arise in addition to those existing in a regulated environment. The USO, the PES, and the mailbox rule are intricately linked. The cost of the USO depends not only upon its own definition but also upon the scope of the PES and mailbox rule. Thus, it will change with any liberalization. For example, if only a small portion of the overall mail volume is opened to competition, the financial impact on the postal operator, and thus the USO cost, could be significantly different from a scenario in which the PES and/or the mailbox rule are completely removed.

The financial tools constructed in this project are grounded in state-of-the-art methodologies, Postal Regulatory Commission approved costing methods, and official Postal Service data sets.

B. Approach to Defining the Costs of the USO

The USO is a set of public policy restrictions on the actions of a post that keep it from making its decisions on purely a business-like basis. For example, a post may be required to provide delivery service to a high cost area at the same price as delivery to a low cost area, even though the costs of that delivery exceed its revenue. A profit seeking business would not provide that service on an ongoing basis at a uniform price. This makes clear that the cost of the USO is the degradation in the post’s financial position resulting from the USO restriction. This approach to measuring the cost of universal service can be used in both a regulated environment and in a liberalized environment and is often referred to as the profitability approach.²¹⁴ Thus, in the analysis presented in this report, the cost of the USO is calculated as the net impact on the Postal Service’s financial position from following the USO.

²¹⁴ The profitability approach is presented in Cremer, H., Grimaud, A., and Laffont, JJ., “The Cost of Universal Service in the Postal Sector,” in Current Directions In Postal Reform, Crew, M., and Kleindorfer, P., (eds.), Kluwer, 2000.

Postal operators and policy makers should be wary of too much focus on analyses that claim to measure “THE” cost of the USO. As discussed above, the cost of the USO depends upon both how the USO is structured and the postal and regulatory environment in which it is imposed. Rather than providing just one answer, a more robust approach considers the cost of the USO for a variety of aspects of the USO and regulatory environments in order to draw useful insights about why the costs arise and the impact of changes in the USO and/or the monopolies.

Because the costs of the USO depend upon the environment in which those costs arise, the cost of the USO is most useful when the measurements are forward-looking, rather than historical. This requires constructing scenarios that predict how complex interactions between the postal operator, competitors, and their customers will likely occur. For these reasons, precise measurements of the costs of the USO are difficult, whereas reliable approximations are useful.

C. Costs of the USO under Current Environment

Although the costs of the USO should be considered in a future liberalized environment, it can be useful to understand the costs of certain aspects of the USO under the current environment, since it is possible that these could be modified without changes in the PES or the mailbox rule. The IBM team measured the cost of changing two aspects of the USO under the current conditions, delivery frequency and retail access. The approach and results for each are summarized below.

1. Reducing Postal Service Delivery Frequency

As part of its USO, the Postal Service is required to deliver mail virtually everywhere in the country six days a week²¹⁵. While there may be some benefits from “ubiquity” (going everywhere) as a general matter, observation of delivery frequency by private sector firms reveals that delivery frequency is a choice for those firms. For example, they do not deliver six days a week. This is not true for the Postal Service, as its delivery frequency is set by public policy, not business rules.

An alternative to six day delivery is five day delivery. Estimating the cost savings of moving to five day delivery requires calculation of delivery costs in a hypothetical five day delivery environment and comparing those calculated costs with the current costs under six day delivery. However, since a five day delivery environment has never existed in the U.S., an estimation of the delivery costs of the Postal Service in that situation must be made.

²¹⁵ This requirement is not in statute. Instead it is included in annual riders on appropriation bills.

The savings from a reduction in delivery frequency are of three types:

- Savings in **network costs**, which arise from the need for the carrier to traverse his or her route and are not related to volume. A reduction in the number of delivery days reduces the number of times that carriers must traverse their routes. As the number of trips around the network is reduced, network delivery costs are saved.
- Savings in **attributable costs** of delivery. Reducing the number of delivery days increases the average pieces per delivery point and reduces the delivery cost per piece. This leads to a reduction in the attributable (volume related) costs of delivery.
- Savings in indirect costs of delivery, including costs for supervisors, vehicle maintenance, building maintenance and service-wide benefits.

Elements not considered in the model at this time include mail processing and/or transportation cost changes, as well as any revenue reductions that might occur as a result of changes in delivery frequency. Anecdotal discussions with mailers indicate that revenue reductions would be significant (billions of dollars) moving to 5-day delivery and therefore would require additional study.

Scenario 1: Eliminate Saturday Delivery

The first scenario considered was a simple elimination of Saturday delivery across all delivery points nationwide. Saturday was chosen in this example since it is the lightest delivery volume day. The approximate cost savings (in billions) are:

Type of Costs	Actual Costs FY07	Costs Under 5 Day Delivery	Cost Savings
Network	\$11.5B	\$9.6B	\$1.9B
Attributable	\$11.1B	\$10.4B	\$0.7B
Indirect	\$7.4B	\$6.5B	\$0.9B
Total Cost Savings			\$3.5B

The model estimates the delivery cost of the additional delivery day obligation to be approximately \$3.5 billion per year.

Scenario 2: Differential Days of Delivery Based On Volume

In this scenario, the number of delivery days in a 3-digit ZIP Code is dependent upon the amount of volume delivered. The number of delivery days is set by a “pieces-per-delivery” standard, and can range from 2 days to 6 days per week with an average of 5 days.

The results of the analysis yield roughly very similar results to Scenario 1, with total delivery cost savings increasing to \$3.7 billion. This is to be expected, as differential delivery frequency would be more profitable, other things held equal. However, this example illustrates an important aspect of the debate on the USO. Differential delivery, though perfectly compatible with profitability as a business goal, would result in some recipient customers getting mail on two days/week while others receive six-day service. If it is a social goal to prohibit such private sector style outcomes, then there must be a source to fund the gap between the financial results of profit-making business practices and those of a more social orientation.

If the private express statutes and the mailbox rule were eliminated without changing the delivery frequency obligation, funding of over \$3 billion would be required. Note, however, that delivery is only one dimension of the USO. As shown below, other dimensions of the USO entail large costs as well.

2. Results of Closing Smallest Post Offices Locations

As discussed in earlier sections, as part of its USO, the Postal Service is required to provide retail services and access throughout the nation. While the USO does not explicitly specify the nature of retail access, the closure of existing Post Offices is governed by public policy, not business rules.

Identifying the optimal retail network is a complex and data-intensive problem that must at a minimum take into account customer demand, revenues, labor costs, facility costs, geographic location, population density factors, and delivery requirements. Only the results of preliminary investigations in this area have been completed and are included here.

This analysis focuses only on the potential cost savings associated with eliminating retail operations in the approximately 18,000 Post Offices in the lowest revenue groupings, regardless of individual profitability or proximity to other retail outlets. The number of Post Offices, total revenue and the average annual revenue associated with the Post Offices in each of the revenue groups are shown in the table below:

Revenue Groups	Number of Post Offices	Total Retail Revenue for Group	Average Annual Revenue per PO
1	4,061	\$701.5m	\$172,751
2	5,051	\$432.7m	\$85,664
3	8,282	\$278.4m	\$33,616
4	1,180	\$9.0m	\$7,605
Total	18,574	\$1,421.6m	\$76,537

Source: USPS Analysis

The analysis, described fully in Appendix C, finds that if retail operations at all 18,574 of the smallest Post Offices were eliminated, the Postal Service would save \$1.4 billion. However, if only the 8,420 Post Offices with no delivery functions were closed, the savings would be \$587 million.

D. Costs of the USO under Liberalized Environments

As previously discussed, the cost of the USO depends upon the regulatory environment in which the Postal Service is operating. For example, in a regulatory environment in which the market has been fully liberalized and there is no longer PES or a mailbox rule of any sort, entrants would be free to cream skim to capture the profitable volumes, leaving the Postal Service primarily with the unprofitable ones. This could cause the USO cost to rise. Thus, the extent, nature, and degree of liberalization must be considered and defined in the model. While it is difficult to predict exactly how liberalization will occur, the model requires assumptions about the nature of liberalization in order to define the degree and impacts of entry. These assumptions are partly drawn from the results of a Delphi survey conducted by IBM, which is described in Appendix C.

While survey participants described various entry scenarios, the overwhelming consensus was that entry would occur locally, regardless of whether entrants were national or local. Scenarios commonly described included:

- **Integrators** will target high density areas with local entry first, then national. Mail targeted would be heavyweight First-Class Mail originating at businesses.
- **Presort bureaus and printers** partner with integrators for delivery in high density areas. Mail targeted would be Standard Mail that is presorted, mainly saturation and drop-shipped.

- **Local delivery companies** will deliver mostly non-addressed mail in high density areas or take consignments from presort bureaus a few days a week for “day-certain” mailings.

1. Analysis of Removing the Mailbox Rule without Changes in the PES

This analysis examines the impact on the Postal Service of removing the mailbox rule without a change in the PES. There are two impacts of removing the mailbox rule. First, the Postal Service would lose revenue and volume. Second, because of congestion in the mailbox caused by the inclusion of non-mail items, the Postal Service may face higher delivery and collection costs. The analysis accounts for both impacts.

Potential responses to the relaxation of the mailbox rule by existing competitors, new entrants, and the Postal Service were considered and analyzed in order to quantify the impacts of an elimination of the mailbox rule. If existing competitors (e.g., UPS or FedEx) gain the ability to deliver to the mailbox, they may be able to offer a more competitive price on certain items for which they previously had to dismount from their vehicles. In addition, access to the mailbox may mean that some items that previously required a signature could now be left in the mailbox with greater security.

Opening the mailbox also provides an opportunity for new competition. The first type of competition is new unaddressed advertising mail that would compete with the Postal Service’s existing advertising products. While not protected by PES today, the current alternative of delivery in a plastic bag or hung on the customer’s door is not appreciated by most customers. Opening mailbox access would be a significant improvement to these efforts. Another source of direct competition is that of delivery of advertising materials that are not currently protected by the PES, which include advertising materials over 24 pages and Periodicals.

Additional costs could be incurred by the Postal Service due to the volume of non-mail items (competitors packages and flats) placed in mailboxes. The degree of this effect depends upon the amount and nature of the non-mail material put into the box. The additional volume in the mailbox could cause congestion and thus result in an increase in the amount of time the postal carrier spends collecting and delivering mail. This effect will occur even for mail products like First Class that do not directly face competition under relaxation of the mailbox rule. Examples of situations that may cause an increase in delivery cost are (1) if the carrier has to rearrange the competitors’ volume in the mailbox to fit USPS’ volume alongside or (2) if the carrier would have to make a trip to a front door to deliver the mail because the curbside mailbox is full or take mail back to the office and attempt redelivery the next day.

In addition, the collection of mail from customers’ boxes may become very expensive as the carrier must retrieve items from within a mailbox, finger through those items, make a

decision about whether each item was left for the Postal Service, and replace the items that were not left for the Postal Service.

The first scenario modeled, shown as the Low Entry Scenario in the table below, includes very conservative responses to relaxation of the mailbox rule and predicts only minimal entry by competitors. It is also important to get a sense of what happens when entry is more successful. Thus, an additional scenario was analyzed in which parameter values were changed to reflect a more successful reaction by entrants. In the High Entry Scenario, the parameter specifying entrant's network cost is reduced. This reflects the view that local entrants will have great flexibility in delivering unaddressed products and will not have to incur the fixed network costs associated with delivering addressed products and collecting mail. In addition, the productivity effect on the Postal Service from mailbox congestion is modestly impacted. Finally, the ability of entrants to attract volume from the Postal Service is increased.

Estimated Impact of Relaxing the Mailbox Rule

	3-Digit ZIP Codes With Entry	Eligible Volume Diverted	Resulting Lost Contribution (Annual Profit)
Low Entry Scenario	191 (25% of ZIPs)	6.8b pieces (12% of volume)	\$1.5b
High Entry Scenario	315 (41% of ZIPs)	11.2b pieces (20% of volume)	\$2.6b

Further sensitivities of the results demonstrate that the entrant network costs are a key variable, since entrants have limited volume with which to cover the costs. A key aspect of their ability to successfully enter is their ability to have low network costs. One of the other key impacts of opening the mailbox is the congestion effects. Sensitivities demonstrate that the congestion effect impacts results, but not significantly. These sensitivities can be found in Appendix C.

2. Cost of the Uniform Pricing USO under Standard Mail Liberalization

The uniform pricing aspect of the USO requires the Postal Service to charge the same prices across the country for certain products. This requirement creates a USO cost because the Postal Service is charging “too much” for delivery in low cost areas and “too little” for delivery in high cost areas. Relaxing the uniform pricing requirement of the USO would enable the Postal Service to charge differential pricing that more closely align its prices with its costs, potentially improving its financial position through increased revenue and/or reduced costs due to volume declining in high cost areas and increasing in low cost areas. One example of how competitive firms use differential pricing is their use of a residential and rural delivery surcharges to recover the increased costs associated with high-cost deliveries.

In the current environment with the PES and the mailbox rule, the cost of the uniform pricing still exists, but this cost is much larger in a liberalized environment. In the latter case, uniform pricing can lead to cream skimming. This occurs because entrants can gain volume by lowering price causing an erosion of revenue and contribution for the Postal Service. However, without a uniform pricing requirement the Postal Service could choose to match. This would reduce the losses from entry. The USO cost arises from not being able to match price on a local level. The difference between revenue minus delivery costs under uniform pricing and revenue minus delivery costs under differential pricing is the estimated cost of the uniform pricing aspect of the USO.

Calculating the USO cost of the uniform pricing is a two step process:

- Construct the liberalized environment with entry (using a methodology similar to that for the mailbox rule removal).
- Calculate the USO cost as lost profit from entry without price match (this is the value of this aspect of the PES) minus the lost profit from entry with the price match.

The first step in estimating the costs of the USO under this scenario is to model where and how much entry will occur when the market is opened to competition. The Delphi survey results predicted that entry would occur at a local level, but could be from a local or national competitor. Thus, entry is modeled at a local level in this scenario, with the assumption that there is no additional upstream competition. The combination of Standard Mail liberalization with local delivery competition means that the volume at risk is Standard Mail Enhanced Carrier-Route (ECR), which is virtually all drop-shipped, as well as the drop-shipped portion of Standard Mail Regular.

Under this scenario, the mailbox rule has been lifted for the impacted products. In addition, the Postal Service still can only price within the price cap and the other USO restrictions are still in place.

In order to calculate the cost of the USO, the model needs to assume the Postal Service could respond to the entrant by matching price and winning back the volume, or better yet preventing any volume from leaving initially. The Postal Service will match the entrant's price only if it improves its financial position by gaining back the lost volume. Overall though, the Postal Service financials are still worse because it is charging a lower price for this recaptured volume. Thus, the model first calculates the lost profit from entry without allowing price matching by the Postal Service. Second, the model calculates the lost profit from entry allowing price matching by Postal Service. The difference between the two is the uniform price USO cost.

The first scenario modeled, shown as the Low Entry Scenario in the table below, includes very conservative responses to relaxation of the PES for Standard Mail and predicts only minimal entry by competitors. It is also important to get a sense of what happens when entry is more successful. Thus, an additional scenario was analyzed in which parameter values were changed to reflect a more successful reaction by entrants. In the High Entry Scenario, the parameter specifying entrant's network cost is reduced. This reflects the view that local entrants will have great flexibility in delivering their products and will not have to incur the same level of fixed network costs that the Postal Service does. In addition, the ability of entrants to attract volume from the Postal Service is increased. Note that the results below are the cost of the uniform pricing USO rather than the total revenue or contribution lost due to the loss of volume resulting from liberalization.

	3-Digit ZIP Codes With Entry	Eligible Volume Diverted	Uniform Price USO Cost (annual)
Low Entry Scenario	252 (33% of ZIPs)	13.2b pieces (13.5% of volume)	\$1.4b
High Entry Scenario	586 (76% of ZIPs)	24.2b pieces (25% of volume)	\$3.3b

E. Conclusion

The IBM analysis introduces a sound methodology for estimating the cost of many of the Postal Service's obligations, and creates a valuable tool that can isolate such costs in a variety of liberalization scenarios and USO definitions. This section has discussed only a few applications of the tool, but it is apparent that funding the USO is not a financially trivial matter; just considering the dimensions analyzed in this section quickly leads to estimates in the billions of dollars. Further, this section doesn't address the other public service requirements the Postal Service must fulfil (see Section V).

Hence, the IBM analysis also demonstrates that if the PES and/or the mail box restrictions are relaxed, there are substantial impacts on the Postal Service's financial position. In addition, if the USO is not funded, relaxation of the PES and mailbox rule will likely lead either to degradations in the level of service and/or higher prices, either of which can have significant social implications. The IBM model is discussed further in Appendix C.

IX. Economic Efficiency Arguments

Liberalization in foreign posts has been touted by some as a way to increase efficiency as well as service. However, as discussed in detail in the next section, comparisons of the U.S. Postal Service to foreign posts must be made with caution. At least one expert has asserted that liberalization alone has not yielded benefits; that liberalization must be tied with privatization. Privatization, though, requires sweeping change and can entail pitfalls of its own. As an example, the Federal National Mortgage Association (Fannie Mae) was a federal government agency for decades before being privatized. In the wake of recent events in the mortgage industry, many now argue that Fannie Mae is a "vehicle of private profit but public loss", meaning that private stockholders benefit at the expense of taxpayers who must fund the government bailout of Fannie Mae and Freddie Mac.

As discussed throughout this report and in detail in Section V, the Postal Service plays an important governmental role in addition to its role of delivering mail. While it may be possible to find private firms willing to deliver the mail, it is unlikely that they will be willing to provide universal service at affordable and uniform prices. It is even more unlikely that private firms will be willing or even able to take on the governmental role of the Postal Service. Contrary to the view of some that monopolies are inherently inefficient, some monopolies can yield important benefits to the public. That is especially true for a monopoly that is a government agency with an objective to provide universal service at affordable prices. In his essay on *Representative*

Government (1861), economist John Stuart Mill wrote specifically about the role of mail delivery being under one federal entity:

"Again, it is a great convenience to the States to have but one coinage, and but one system of weights and measures; which can only be ensured if the regulation of these matters is entrusted to the Federal Government. The certainty and celerity of Post Office communication is impeded, and its expense increased, if a letter has to pass through half a dozen sets of public offices, subject to different supreme authorities: it is convenient, therefore, that all Post Offices should be under the Federal Government."²¹⁶

Traditionally in the United States, laws have changed in order to ensure that government helps the underserved public. For example, at the beginning of the 20th century, the Post Office Department by law could not carry parcels weighing more than four pounds. Private express companies delivered large packages. But rural American households especially were underserved and counted on packages containing food, medicine, and other commodities. When Congress considered enacting a law to allow Parcel Post service, express companies fought long and hard against it. But in 1912, Congress authorized Parcel Post for the public good. It was an instant success, with 300 million parcels mailed in the first six months the service was offered. The effect on the national economy was electric.

The lesson of Parcel Post in the early 20th century should be kept in mind today. The impact on American households must be weighed. Liberalization creates winners and losers. Creating such a divide would seem to run counter to various aspects of the Postal Act of 2006. As witnessed in the United Kingdom and as discussed in Philippe de Donder's presentation at the Commission, large businesses may benefit from liberalization while households and small businesses may suffer.

In the United States, substantial opportunities already exist for competitors to target strategically selected, highly profitable markets. This targeting can be achieved through decisions on where and how to provide service, or through discriminatory pricing mechanisms. This would leave only the highest cost, least profitable markets for the Postal Service to serve.

If the Private Express Statutes (PES) and mailbox rule were reduced or eliminated, the mailers who would abandon the Postal Service would most likely be high-volume, bulk mailers. Mailers remaining with the Postal Service would tend to be individuals or low-volume mailers who, in the absence of subsidies, would be required to fund disproportionately the fixed costs of operating the Postal Service network. The largest group most dependent on the system would be senders of single-piece First-Class Mail, which is a mail stream already experiencing a

²¹⁶ Mill, John Stuart. *Representative Government*. 1861.

sustained decline unrelated to the economy or pricing. Forcing this segment to shoulder additional, substantial financial burdens would further accelerate the volume declines. Eventually, government subsidies or other funding mechanisms would be needed in order to maintain service. It is difficult to argue that reverting back to a postal system that is dependent on government subsidies increases economic efficiency. Furthermore, changes to the PES and mailbox rule are not needed to encourage the Postal Service to increase efficiency. The existing requirements for efficiency gains have never been greater. These include the demands of the marketplace, the needs of customers, and technological changes such as the internet that continue to press the Postal Service to increase efficiency.

The Postal Act of 2006 includes powerful new mechanisms such as price caps for encouraging efficiency and enhancing accountability. Further, in this advanced technological world, market dominant services are subject to significant forms of direct and indirect competition. Email and telephonic communication compete with First-Class Mail correspondence. Transactions in First-Class Mail are now faced with direct competition in the form of options available on the internet or through automated pre-authorization for electronic statements, invoices, and bill-paying. Most households now pay at least some bills over the internet or use automatic payment programs. Taken as a group, these alternatives provide a major competitive thrust that spurs the Postal Service to continue increasing efficiency.

Also, virtually all Standard Mail is advertising, as is the remaining First-Class Mail aside from bills and statements. Competitive alternatives to advertising mail are plentiful and ubiquitous, including newspapers, magazines, targeted television and radio commercials, as well as email marketing and internet advertising. The competitive impacts of these alternatives are well known and provide yet another set of incentives to improve postal efficiency.

X. Postal Reforms Internationally

In evaluating the universal service obligation (USO) and postal monopolies in the United States, it is helpful to take a broad view by examining recent developments in the international postal arena. The liberalization experience of posts in certain countries, particularly in Europe, offers lessons and insights for potential changes in the U.S. To gain a broader knowledge of the international liberalization experience, the Postal Service engaged Accenture to conduct extensive research and prepare a written report.

In its report "*International Postal Liberalization – Comparative Study of U.S. and Key Countries*" (July 2008), Accenture provides a structured and objective overview of the USO and postal liberalization experiences in select countries. In their general approach, Accenture

focused on the rationale and conditions accompanying the liberalization of the postal industry sector outside the U.S. and its implications (including benefits, risks, and mitigating measures). After initial research of numerous countries, Accenture performed in-depth research of the current environment in Sweden, France, Germany, Italy, Netherlands, United Kingdom, Canada, and New Zealand.

Accenture's study includes four key comparison components, namely, (1) description and comparison of the universal postal service specifications, (2) relative upside potential of liberalization, (3) relative economic exposure in the context of liberalization, and (4) flanking measures put in place to manage liberalization. The full Accenture report is included as Appendix B.

A. Context of Liberalization

In recent years, a number of countries have liberalized or begun to liberalize their postal administrations. Such liberalization has included changes to the posts' reserved areas and universal service obligations. When analyzing international postal reforms, however, one must consider the different context for such reforms. For example, liberalization among European posts is driven by several forces. First, there is the context of the European Union's economic and political unification efforts. The European Union has sought since 1994 to achieve a gradual transition in the postal sector to foster a unified European market. As Accenture states in its report, "[a] driving force behind the EU's postal liberalization was an expectation that new scaled operators would create competition within a single European market."²¹⁷ Thus, this effort is dedicated to the EU's larger purpose of multilateral economic integration; the boundaries of the United States' internal market, by contrast, are well-settled.

Second, some posts have made fundamental changes to improve upon poor service, insufficient choice, and high prices (postage prices for a First-Class letter are over \$1.00 in Sweden and Italy, versus only 42 cents in the United States). Liberalization has generally occurred in upstream activities.²¹⁸ By contrast, in the United States, the Postal Service has long embraced worksharing, the process by which mailers undertake activities that reduce the amount of mail handling conducted by the Postal Service itself and for which the mailers receive

²¹⁷ Appendix B. Accenture Report: International Postal Liberalization – Comparative Study of US and Key Countries, p 19.

²¹⁸ According to an independent panel commissioned by the United Kingdom's Secretary of State for Business, Enterprise, and Regulatory Reform, almost all of the 19 new market entrants since full liberalization have concentrated on the "upstream" segment, ceding to Royal Mail the more costly end-to-end and final-delivery letter market segments. Hooper *et al.*, "The Challenges and Opportunities Facing UK Postal Services: An Initial Response to Evidence" (2008), at 5, 19-21.

a discount. Worksharing has been a key strategy used by the Postal Service to promote efficiency in the mail stream. This process of “liberalizing” the Postal Service by sharing work with the private sector dates to the mid 1970s, when worksharing in the form of presort discounts was first introduced. Today prebarcoding and drop shipping are key examples of worksharing. The Postal Service continues to seek ways to open the mail-related supply chain to innovation and choice, thereby helping ensure that businesses and consumers have the lowest possible prices with continued high levels of service. The results of opening access have been enhanced competition in the marketplace, improved product and service quality, and cost savings for postal intermediaries that are shared with their customers. Against this backdrop, the Postal Service has been able to meet its USO requirements and stimulate the emergence of new businesses and economic activity overall. The current level of worksharing discounts is unparalleled, even in the most “liberalized” postal administrations around the world, and the program has opened the mail value chain to private sector businesses in ways not previously contemplated by other postal administrations.

Third, some countries’ motivation for liberalization is tied to the process of breaking apart large, state-owned telecommunications providers, with which some posts were previously linked. As an example, a recent Hans Böckler Foundation report on liberalization in Europe describes the case in Austria:

In 1996 the Post and Telegraph Administration was hived off from the government administration structures and transformed into a private limited company: Post und Telekom AG (PTA). The telecommunications and the post-office areas were separated and divided into two separate legal entities (horizontal unbundling) in 1999. First Telekom was floated on the stock exchange, and a proportion of the shares were sold. The Postbus area was sold to the ÖBB (Austrian State Railways) in 2002. Like the majority of post offices in Europe, the Austrian post office owned a bank ... which in 2002 was sold[.]²¹⁹

In the United States, however, the telecommunications industry has historically been separate from the Postal Service and postal regulation with deregulation occurring in the mid 1980’s. As a result, telecommunications policy does not provide the same impetus for postal liberalization as it does in other countries.

Fourth, other cultural and regulatory predispositions have played roles in the liberalization context. For example, other posts’ mailing industries have traditionally been more heavily regulated at the Member State level. The coexistence of multiple incumbent postal

²¹⁹ Torsten Brandt, Liberalisation, Privatisation and Regulation of Postal Services in Europe – First International Experiences in the Run-Up to New European Regulations (2007), at 3, available online at http://www.boeckler.de/pdf/wsi_pj_pi_q_post_europe.pdf.

operators, each with its own traditional role in its home Member State's national consciousness, in the fledgling European market is altogether opposite Americans' familiarity with their common provider and universally applicable postal rules. The Postal Service must serve a population spread across an area more than twice that of the entire EU and almost eighteen times that of France, the largest EU Member State.²²⁰ Additionally, the prevalence of doorslots and locked mailboxes, as alternative means to ensure security and efficiency in the mails, have translated into little need for a mailbox rule in other countries as compared to the U.S.

In sum, the context for liberalization in other countries is far different from the situation in the United States. As T. Scott Mitchell, CEO of MackayMitchell Envelope Company, stated at the Commission's USO field hearing in St. Paul, Minnesota, on June 5, 2008:

While there is a great deal of insight to be gathered from the experience of the Asia Pacific area and Europe in their challenges in maintaining universal service and the USO, we feel that the United States stands alone due to its sheer geographic size and the distribution and size of its population. EMA [Envelope Manufacturers Association] has 37 nations in our membership and we have learned from postal operations in all those nations. We have learned that each situation is unique and that it is dangerous to make generalizations especially on USO issues.²²¹

B. Upside Potential of Liberalization

A key factor in any decision to liberalize must be the upside potential that liberalization offers. As discussed above, the rationale for liberalization in some countries has included the desire to improve upon inferior service quality, to reduce high postage prices, or to address a lack of customer choice by creating a range of choices.

In contrast, liberalization offers American consumers relatively little benefit, since the Postal Service has already evolved to or surpassed the targets that liberalizing countries are seeking to achieve in quality of service, efficiency, price competitiveness, and innovation. The Postal Service continues to respond to customers' evolving needs with technological improvements, such as the Flats Sequencing System, Intelligent Mail® Barcode, and Electronic Data Interchange. In the third fiscal quarter of 2008, the Postal Service's on-time delivery performance reached record highs for all three categories of First-Class Mail that the Postal Service tracked. Overnight service was 97 percent on-time, up from 96 percent, two-day

²²⁰ See CIA World Factbook: United States (last updated Aug. 7, 2008), <https://www.cia.gov/library/publications/the-world-factbook/geos/us.html>; CIA World Factbook: France (last updated Aug. 7, 2008), <https://www.cia.gov/library/publications/the-world-factbook/geos/fr.html>. This comparison includes only metropolitan France, not its overseas territories.

²²¹ Docket No. PI2008-3, USO Field Hearings, TR. St. Paul, p 11-12 (T. Scott Mitchell).

service was 95 percent on-time, up from 93 percent, and three-day service was 94 percent on-time, up from 91 percent compared to the same period last year. Regarding price competitiveness, the Accenture report determined that of the various countries studied, the United States has most affordable price for a First-Class stamp at \$0.42. By comparison, First-Class equivalent stamp prices are \$1.20 in Sweden, \$1.09 in Italy, and \$1.00 in France.²²²

A significant plank in the European Union's current liberalization platform is the promotion of "downstream access," whereby the mailing community performs processing and preparation functions in lieu of the postal operator. As discussed in the previous section, however, the Postal Service began this mode of "liberalization", under the term "worksharing", over thirty years ago and has provided and expanded its worksharing benefits since 1976. Worksharing offers customers opportunities to perform mail preparation, handling, and transportation that would otherwise be performed by the Postal Service. If anything, the U.S. process is more "liberalized" than that in some European countries, such as Italy and Sweden, where downstream access is linked to licensing through the regulator or payments to co-finance universal service.

Additionally, the U.S. market for letters has been gradually liberalized through Postal Service regulations that implement criminal and civil statutes regarding private carriage. In general, the Private Express Statutes (PES)²²³ make it unlawful for any entity other than the Postal Service to send or carry letters²²⁴ over post routes²²⁵ for compensation unless the private carrier pays an amount equivalent to the applicable postage on the matter or unless the carriage qualifies for an exception²²⁶ or suspension. In 1979, the Postal Service promulgated suspensions to enforcement of the general provisions of the PES for private carriage of

²²² Appendix B. Accenture Report: International Postal Liberalization – Comparative Study of US and Key Countries, pp 43, 88, 108, 112.

²²³ 18 U.S.C. 1693-1699; 39 U.S.C. 601-606.

²²⁴ Although the term is not defined in the statutes, Postal Service regulations have defined "letters" as messages directed to a specific person or address and recorded in or on a tangible object. 39 C.F.R. 310.1(a). Tangible objects include items such as paper, recording disks, and magnetic tapes. *Ibid.* at (a)(1).

²²⁵ Post routes include public roads, highways, railroads, water routes, air routes and letter-carrier routes within the territorial boundaries of the United States on which mail is carried by the Postal Service. 39 C.F.R. 310.1(d).

²²⁶ One notable exception to the PES is the private carriage of letters conducted prior or subsequent to mailing. In general, this exception permits private carriage of letters that enter the mailstream at some point between their origin and their destination. Examples of permissible activities under this exception include pickup and carriage of letters that are delivered to post offices for mailing, the pickup and carriage of letters at post offices for delivery to addressees, and the bulk shipment of individually addressed letters ultimately carried by the Postal Service.

“extremely urgent” letters. This suspension opened the expedited document delivery market to private competitors. In 1986, the Postal Service suspended the PES with respect to outbound international mail. This suspension permits uninterrupted private carriage of letters from a point within the United States to a foreign country for deposit for delivery to a destination not within the United States.

On December 20, 2006, a new statutory exception in the United States to the PES became effective. Under this exception, a letter may be carried privately if the amount paid for the private carriage of the letter is six times the rate charged for the first ounce (28.25 grams) of a single-piece First-Class Mail letter, and the letter weighs at least 12 1/2 ounces (353 grams).

As Accenture concludes after applying an analytical framework described in their report:

[t]he upside potential seems to be relatively lower for the US. This is especially true for price competitiveness (lower retail price at purchasing power parity), ... efficiency (higher percentage of mail handled by machinery and number of items processed by FTE), and customer choices (long history of work sharing).²²⁷

In addition to finding that the upside potential of liberalization is less in the U.S., Accenture also finds that the downside risks are greater in the U.S. than in other countries: “[t]he relative exposure of the U.S. on macro-economic criteria... appears to be relatively higher. The primary reason is market density, which exposes the U.S. to potential cream-skimming.”²²⁸ Finally, Accenture finds that USPS would face greater risk in terms of micro-economic exposure: “the U.S. has a significantly higher exposure, driven primarily by its dependency on mail revenue and relative cost disadvantages.”²²⁹

C. Experience to Date in Other Countries

The theory of liberalization must be balanced with the observed reality of the effects. It is, of course, still early in the liberalization process of some countries and more time is needed to ascertain the longer term impacts. In Accenture’s report, results to date are examined in Sweden, France, Germany, Italy, Netherlands, United Kingdom, Canada, and New Zealand.

The United Kingdom serves as a revealing case study of how well-intended liberalization rationales have resulted in a situation with significant unintended consequences. While EU studies show that liberalization in the EU has been marked by increased choice for bulk business customers, one study has questioned the effects of liberalization in the United

²²⁷ Appendix B. Accenture Report: International Postal Liberalization – Comparative Study of US and Key Countries, p 43.

²²⁸ *Ibid.* p 46.

²²⁹ *Ibid.* p 48.

Kingdom from the perspective of individual consumers and small business. An independent panel commissioned by the U.K.'s Secretary of State for Business, Enterprise, and Regulatory Reform recently reported that liberalization has produced few of its expected benefits, yet has significantly increased costs for Royal Mail and consumers.²³⁰ Almost all new market entrants have focused on high-volume business customers and the upstream market, leaving Royal Mail with 99 percent of the more costly market in end-to-end delivery of addressed letters.²³¹ Large businesses have indeed benefited from greater choice, more quality assurance, and prices that are estimated to be 5 percent lower than without competition. Nevertheless, large businesses are dissatisfied with the level of confusion about Royal Mail's flexibility under the regulatory framework, particularly in terms of negotiating arrangements that meet their needs.

The study finds that small- to medium-sized businesses and individual customers perceive no significant benefit from liberalization. On the one hand, these low-volume customers are unable to attract Royal Mail's competitors. On the other hand, the need to compete for more profitable customer segments has forced Royal Mail to reduce service and increase first- and second-class stamp prices, create a pricing methodology that customers find confusing.²³² These cost-saving measures are necessitated by Royal Mail's inability to raise external capital, its labor and pension costs, and the need to submit adjustments in its product portfolio and prices to preemptive regulation.

These factors lead the independent panel and Postcomm, the U.K. postal regulator, to estimate that Royal Mail's letter business will continue to make a loss, reaching £400m in annual negative cash flow by 2012-13.²³³ In the face of the deleterious effects of liberalization, small- to medium-sized businesses and individual consumers are near-unanimous in their support for the existing USO. Although the panel's review is not yet completed, it is clear that the only benefits of U.K. liberalization have occurred in the upstream sector, which is already

²³⁰ See generally Hooper et al., "The Challenges and Opportunities Facing U.K. Postal Services: An Initial Response to Evidence" (2008).

²³¹ *Ibid.* "Last mile" delivery service accounts for 60 percent of Royal Mail's costs.

²³² *Ibid.* Customers find the perceived reductions in service more visible than Royal Mail's achievements in quality of service.

²³³ According to a survey by the Federation of Small Businesses, 83 percent of small businesses and 92 percent of medium-sized businesses believe that Royal Mail's first-class mail service offers good value for money as it stands. 86 percent of individual consumers agree (90 percent in rural areas), even though first- and second-class stamp prices have risen 7 and 14 percent, respectively, since 2005. Although few consumers (13 percent) are familiar with the concept of universal service, most of them defend the USO, particularly 6-day-a-week delivery, when explained. *Ibid.*

liberalized in the United States, and that liberalization has only harmed Royal Mail, individual mail users, and small- and medium-sized businesses.

Further evidence that liberalization is not necessarily beneficial to consumers was presented to the Postal Regulatory Commission on April 17, 2008. In his presentation, economist Philippe de Donder²³⁴ argued that a main result of his model assessing the effects of liberalization is that “household senders always suffer from opening to competition.”²³⁵

While there have been benefits of liberalization in some countries, the greatest benefits occur in countries where liberalization is tied with privatization. Privatization of the United States Postal Service would be a drastic measure, and as discussed above, an unneeded measure at this time. The Postal Service already provides those aspects that are often the goal of liberalization, including access to the network through workshare discounts and reliable service at affordable prices.

D. Flanking Measures

As other posts have liberalized, they have received supporting measures, often referred to as flanking measures, to protect their ability to fund universal service obligations. Many posts are able to counter the effects of increased competition through alternate sources of revenue, including offering enhanced services such as banking, financial services, and logistics. Other posts cope with the effects of competition and USO requirements through receipt of direct governmental subsidies or licensing fees from competitors to ensure funding. Further, liberalization is often coupled with corporatization, thereby offering postal operators new commercial freedoms to compete outside their home markets in other countries, as well as freedom from regulatory pricing constraints, such as price caps on non-PES products.

Accenture’s report describes a wide variety of specific flanking measures adopted by various countries. There are several types of measures that are particularly noteworthy in terms of ensuring the incumbent universal service provider manages to remain financially viable as the markets are liberalized. One such measure identified is a relaxation of the scope and requirements of the USO. For instance, the Netherlands and UK have relaxed the scope of the USO concerning bulk items. In France and Canada, delivery frequency has been relaxed, while in the UK, collection frequency requirements have been reduced.²³⁶

²³⁴ Visiting assistant professor at Yale University and a research fellow at the National Centre for Scientific Research at the Toulouse School of Economics, Toulouse, France.

²³⁵ “Welfare Contributions of the Postal Service”, Philippe De Donder, Toulouse School of Economics, p 13.

²³⁶ Appendix B. Accenture Report: International Postal Liberalization – Comparative Study of US and Key Countries, p 51.

A second form of supporting measure is an increase in commercial freedom for the universal service provider (USP). Accenture describes this situation as follows:

Most countries also give their USP additional rights such as: (1) more flexible labor laws (e.g., all public contracts turned into private-sector contracts in Italy); (2) increased investment freedom (e.g., yearly budget for external acquisitions given to La Poste in France); (3) increased autonomy in profit allocation (e.g., board defines level of dividends vs. investment reserves for DPWN in Germany).²³⁷

Related to commercial freedoms is the ability to gain access to new sources of revenue. Most countries examined in the Accenture study allow their universal service providers access to new external growth mechanisms. Canada Post, Royal Mail (UK), DPWN (Germany), Post Italiane (Italy), La Poste (France), New Zealand Post, Sweden Post, and TNT Group (Netherlands) have structures that permit them to conduct mergers and acquisitions, create joint ventures, and create subsidiaries. The U.S. Postal Service, conversely, has not been given such freedoms.²³⁸

This ability to grow externally and access new revenue sources provides significant revenue diversification for many posts. These posts typically diversify into four primary areas: transport services, logistics, retail banking, and other retail services. Accenture's analysis indicates that "as of 2006, the major posts (excluding the US) derived an average of 40 percent of their revenue from outside the mail business."²³⁹ Japan Post derives 93 percent of its revenue from business outside of traditional mail (particularly via financial services); Deutsche Post (Germany) derives 76 percent from outside of traditional mail business particularly via logistics, while Poste Italiane derives 72 percent from alternative sources.²⁴⁰

In summary, as other countries liberalize their postal markets, they have taken steps to ensure that the incumbent posts have appropriate safeguards to manage the liberalization process and remain financially viable to ensure long-term fulfillment of the USO. While the supporting measures described in this document are not all inclusive, their importance is significant. If the Postal Service is to continue fulfilling its USO in a self-sustaining manner, then there must be a funding mechanism, either the PES and mailbox rule must be preserved or alternative compensation (including alternative revenue sources) must be provided.

²³⁷ *Ibid.* p 53.

²³⁸ *Ibid.* p 53.

²³⁹ *Ibid.* p 54.

²⁴⁰ *Ibid.* p 54.

XI. Customer Satisfaction and Sentiment

The Postal Service hears from customers through various sources, and the general consensus is that the American public is satisfied with the current level of service. The Postal Service will continue to listen to its customers in the future as there is still much to learn.

A. Customer Satisfaction Scores

One way in which the Postal Service measures customer service is through its Customer Satisfaction Measurement (CSM) process. The CSM process is an ongoing assessment of the customer experience with postal products and services and is focused on overall customer satisfaction.²⁴¹ The CSM process has shown customers have a high level of satisfaction with the Postal Service. The overall performance score for the last two quarters has been 92 percent “good, very good, and excellent” and there has been a sustained level of satisfaction for the last nine quarters. The satisfaction level remained constant even with rate increases in May 2008 and May 2007.

B. “Most Trusted Federal Agency”

The public’s trust in the Postal Service has been made evident through the results of two surveys. In the 2008 Ponemon Institute’s Privacy Trust Study of the United States Government, the Postal Service earned a score of 86 percent and was once again ranked by U.S. consumers as the most trusted government organization for privacy, a rank held by the Postal Service since the study began in 2005. Not only did the Postal Service rank the highest of all government agencies on trust, its scores have been improving for several years, 2005-78 percent; 2006-82 percent; 2007-83 percent; 2008-86 percent.

A survey done by Roper²⁴² found that the Postal Service was the most popular agency in the U.S. Government. The Postal Service had an 81 percent favorable rating, with nearly half of the ratings “highly favorable.”²⁴³

²⁴¹ Both business and residential customers are surveyed on a continuous basis across each quarter. An independent vendor hired by the Postal Service asks customers a series of rating and diagnostic questions that reflect their actual experience with the Postal Service. The measurement of customer satisfaction also includes event-based Business Mail Entry Unit (BMEU) and Business Service Network (BSN) surveys, surveys to measure performance of our sales force, and point-of-sale receipt surveys.

²⁴² The survey is conducted every one to two years. Researchers conduct in-person interviews with more than 2,000 Americans. They ranked dozens of federal agencies and departments on a four-point scale, ranging from “unfavorable” to “highly favorable.”

²⁴³ Federal Times, January 28, 2008. “Public praises Postal Service, slams FEMA.”

C. Public Outreach

The Postal Service has benefited from the public outreach effort of the Commission through public inquiry PI2008-3. In its public outreach efforts, the Commission has solicited comments in four public hearings around the country, hosted a public workshop, and given interested parties opportunity to submit written initial and reply comments on a myriad of topics surrounding the USO, the PES and the mailbox rule.²⁴⁴ The Commission also held a lecture by Philippe De Donder, Visiting Assistant Professor at Yale University and a Research Fellow at the National Centre for Scientific Research at the Toulouse School of Economics, Toulouse France.

Witnesses at the Commission's field hearings included representatives from a wide variety of mailers, mailing associations, and the Postal Service and its unions and management associations. While the testimonies of the witnesses varied, some broad themes stood out. The general consensus was that people are happy with the current level of service²⁴⁵ and that the Postal Service is still needed to reach and provide service to remote areas, as private carriers do not always provide viable alternatives.²⁴⁶ For example Jeanie Schnell, Postmaster of Monhegan, Maine, testified that the Postal Service provides essential communications and supplies between a small island and the mainland, while private carriers can sit for days waiting for volume to justify the trip.²⁴⁷ Several witnesses stated that hardcopy mail still offers great value.²⁴⁸ One witness commented that for nonprofits, hard-copy mail is a good source of contributions; and hardcopy mail is less intrusive and more trustworthy than soliciting by phone.²⁴⁹

Most of the concern was that declining volumes would eventually lead to a decline in service. Several parties commented that the Commission should not issue recommendations that strictly define the USO, because the Postal Service will need the flexibility to maintain its quality service at affordable prices.²⁵⁰ A few witnesses also commented there was too little time for good analysis due to the deadline of the report falling so close to the enactment of the

²⁴⁴ Federal Register. Volume 73, No 130. July 7, 2008.

²⁴⁵ Docket No. PI2008-3, USO Field Hearings, TR. St Paul, p 22, lines 4-9; TR. Portsmouth, p 47-48.

²⁴⁶ Docket No. PI2008-3, USO Field Hearings, TR St Paul, p 31; *ibid* p 75.

²⁴⁷ Docket No. PI2008-3, USO Field Hearings, TR. Portsmouth, p 42-43.

²⁴⁸ Docket No. PI2008-3, USO Field Hearings. TR. Flagstaff, p 93; TR. St. Paul, p 35; TR. St. Paul, p 36; TR. St. Paul, p 72; TR. Washington D.C., p 99.

²⁴⁹ Docket No. PI2008-3, USO Field Hearings, TR. Flagstaff, p 74-75.

²⁵⁰ Docket No. PI2008-3, USO Field Hearings, TR. Portsmouth, p 82; *ibid* p 91.

Postal Act of 2006.²⁵¹ Several parties also expressed caution about blindly following the path of foreign post liberalization, as there are some key differences between the Postal Service and other posts and that liberalization efforts have not had the best results for consumers.²⁵² There was a general agreement that the Commission should not simply make change for change's sake; and this thought was summarized nicely by the comment, "The Commission's recommendations should be based on compelling, objective evidence."²⁵³

The witnesses stressed that affordability and reliability are important concerns²⁵⁴ and ubiquity is an important aspect of the USO.²⁵⁵ Support for 6-day-a-week delivery was also expressed,²⁵⁶ although there was some understanding that less frequent delivery might be needed to control costs and protect the affordability of universal service.²⁵⁷

Another overriding theme was that the mailbox rule should be maintained to ensure USO funding.²⁵⁸ Several parties pointed out that if the mailbox rule were dropped, it would add costs through more cumbersome operations and reduce revenue.²⁵⁹ Several parties also commented that ensuring security of the mail is an aspect of the USO²⁶⁰ and that reducing or eliminating the Postal Service's exclusive mailbox access would erode a sense of security.²⁶¹

Written comments were submitted by a wide range of parties including customers, trade associations, economists, competitors, postal unions, other federal bodies, one member of Congress, and interested individuals. While the parties did not agree in all areas, there was an unprecedented consent in certain areas. Most parties urged the Commission to avoid making any sweeping recommendations in its report for reasons such as the relative newness of the Postal Act of 2006 regulatory regime, the current economy, and the uncertain effects of liberalization in Europe. A related theme is that the Commission should not recommend a strict

²⁵¹ Docket No. PI2008-3, USO Field Hearings, TR. Flagstaff, p 72-73.

²⁵² Docket No. PI2008-3, USO Field Hearings, TR. Washington D.C., p 13; TR. Washington D.C., p 22-23.

²⁵³ Docket No. PI2008-3, USO Field Hearings, TR. Washington D.C., p 97.

²⁵⁴ Docket No. PI2008-3, USO Field Hearings. TR. Portsmouth, p 17; TR. Portsmouth, p 18; TR. St Paul, p 18; TR. Portsmouth, p 35; TR. Portsmouth p 91; TR. St. Paul, p 14.

²⁵⁵ Docket No. PI2008-3, USO Field Hearings, TR. Portsmouth, p 17; TR. St Paul, p 14; TR. St Paul, p 15; TR. Portsmouth, p 90.

²⁵⁶ Docket No. PI2008-1, USO Field Hearings, TR. Portsmouth, p 17.

²⁵⁷ Docket No. PI2008-1, USO Field Hearings, TR. St Paul, p 71.

²⁵⁸ Docket No. PI2008-1, USO Field Hearings, TR. Portsmouth, p 19-20; TR. Portsmouth, p 37; TR. Portsmouth, p 84; TR. Portsmouth, p 89; TR. St Paul, p 28.

²⁵⁹ Docket No. PI2008-3, USO Field Hearings, TR St Paul, p 18; TR. St Paul, p 70; TR. Washington. D.C., p 101.

²⁶⁰ Docket No. PI2008-3, USO Field Hearings, TR. Portsmouth, p 37; TR. Portsmouth, p 85.

²⁶¹ Docket No. PI2008-3, USO Field Hearings, TR. Flagstaff, p 94; TR. St Paul, p 18; TR. St Paul, p 27-28; TR. Portsmouth, p 89; TR. Washington, D.C., p 101.

definition for the USO, given that the Postal Service may need operational flexibility to keep prices affordable.

Affordability was a key issue for most parties, and most parties, including the Commission's public representative, agreed the Postal Service should maintain the PES and the mailbox rule in order to ensure continued reliable universal service at affordable prices. In addition, while parties seemed to favor 6-day-a week delivery, there was some support for flexibility to reduce the number of delivery days in the future if needed to maintain service at affordable prices.

The Universal Service Obligation workshop was held by the Commission on June 12, 2008. An important comment reiterated by several parties was that the Commission needs to understand that requirements around universal service are meaningless unless the Postal Service is financially viable and able to provide the service, and therefore, the Commission must evaluate the financial implications of any recommended changes.²⁶² A related discussion was that there are trade-offs between service and costs²⁶³ and if Congress wants the Postal Service to provide a particular level of service, an alternative source of funding may be needed to provide that service in the future.²⁶⁴ Another comment was liberalization in the United Kingdom has had disastrous consequences.²⁶⁵ One party asked the Commission to weigh in on giving the Postal Service the ability to realign its network as mail volume changes and allow it to become more efficient.²⁶⁶

While a few participants suggested that the PES had already been eroded, there was also support for the Postal Service to maintain the PES and mailbox rule in order to keep prices affordable and prevent cream-skimmers from taking the most profitable volume.²⁶⁷ When asked about the need for the mailbox rule, the response was that it was needed to keep prices affordable²⁶⁸ and the mail secure.²⁶⁹ Without it, customers – both senders and recipients – are more likely to start using the internet.²⁷⁰ Again it was pointed out that there was a trade-off between the service provided and the ability of the Postal Service to earn revenue and cut costs. As one commenter pointed out, if the PES and mailbox rule were dropped, “What does

²⁶² Docket No. PI2008-3, USO Workshop TR. p 13; *ibid* p 14; *ibid* p 17-18.

²⁶³ *Ibid.* p 82.

²⁶⁴ *Ibid.* p 38.

²⁶⁵ *Ibid.* p 36.

²⁶⁶ *Ibid.* p 86.

²⁶⁷ *Ibid.* p 50.

²⁶⁸ *Ibid.* p 61-62.

²⁶⁹ *Ibid.* p 69.

²⁷⁰ *Ibid.* p 62; *ibid.* p 68-69.

the Postal Service get to offset those possible losses?"²⁷¹ Another commenter stated, "...if you are going to be loosening the monopoly, there has to be some give on the other side so that the Postal Service will be able to maintain its universal service."²⁷²

The lecture by Philippe De Donder included complex economic models that estimated liberalization's impact on general and consumer welfare.²⁷³ One striking conclusion was that due to the loss in returns to scale, household senders always suffer from opening the market to competition.²⁷⁴ However, opening access to the delivery network, as the Postal Service currently offers through workshare discounts, increases welfare. He concluded by questioning why the U.S. would be better with a European model.²⁷⁵

The public outreach held by the Postal Service and the Commission is striking in its overall theme. The public is satisfied with the current level of universal service and has a high level of trust in the Postal Service. Given the high satisfaction of the American public, the upside potential of sweeping changes is very low. The impetus for change does not exist at this time. There is no great outcry for liberalization, and in fact, most interested parties caution against making sweeping changes right now. There has not been enough time to see how the Postal Act of 2006 will impact the Postal Service's ability to provide service. There needs to be more time to analyze the impacts of liberalization in foreign posts especially since there is concern that liberalization actually reduces service to households.

D. Consumer Research Results

To gain additional insight as to how household customers might perceive and react to potential changes to the USO, mailbox rule, and/or PES, the Postal Service contracted with Great Lakes Marketing to conduct qualitative market research. Focus groups of varying demographics were held in Baltimore, Maryland and Phoenix, Arizona in September 2008. While this research was not designed to be a robust, statistically significant survey, it is a focused sampling that may help provide direction for future research.

The focus groups were asked about how they would feel regarding potential changes to the various aspects of the universal service obligation. When questioned about reductions in the frequency of mail delivery, about 70 percent of the focus group members indicated reducing mail delivery from six to five days a week would be acceptable. However, those in the lower

²⁷¹ *Ibid.* p 64.

²⁷² *Ibid.* p 65.

²⁷³ Welfare is an economic term that refers to general well being.

²⁷⁴ "Welfare Contributions of the Postal Service", Philippe De Donder, Toulouse School of Economics, p 13.

²⁷⁵ *Ibid.* p 24.

income category were less likely to find the reduced delivery schedule acceptable. All of the rural customers found that reducing delivery to five days a week was acceptable.

Customers were notably less willing to accept mail delivery only four days a week. About half found a four-day delivery schedule to be unacceptable, with one-quarter neutral and one-quarter accepting. Eighty percent of lower-income customers said four-day delivery was unacceptable. Rural customers, as a group, were the most willing to accept a four-day schedule with only 30 percent finding it unacceptable and the remaining 70 percent split between neutral and acceptable. However, when the question was posed whether it would be acceptable to deliver mail six days a week in urban/suburban areas but only four days a week in rural areas, all customers living in rural and suburban areas as well as all low-income city dwellers were negative toward this concept.

Focus group members who have mail delivery to their home rather than to a cluster box or Post Office Box were asked how they would feel if their delivery was changed to cluster box delivery. Overall, only about 20 percent of the affected focus group members found such a change in delivery to be acceptable. Urban high-income customers were the least accepting of such a change. Rural customers were more amenable to cluster box delivery with just under two-thirds neutral or accepting. Those customers who have home delivery wanted to keep it because of its convenience. The focus groups also were asked how they would feel if there was a fee for home delivery and no fee for cluster box delivery. About 60 percent of the customers felt this would be unacceptable. Approximately 20 percent thought this would be an acceptable practice. Those who found this concept most unacceptable were concerned about the safety of the mail. Some customers stated they felt cluster boxes were more susceptible to vandalism. Others repeated their interest in retaining the high level of convenience of mail being delivered to their home.

The focus groups were also exposed to pricing options in which prices for First-Class Mail varied by distance, by seasonal demand, or by whether mail was originating or destinating in a rural area. All pricing scenarios different than the current uniform price schedule for First-Class Mail were met with resistance. Only 10 percent found distance-based pricing acceptable. Most found it unacceptable. Customers thought that all of the pricing options presented would be confusing.

Customers were asked several questions regarding access to postal services. They were asked how they would feel if they could access other postal services, beyond purchasing stamps, at locations other than a Post Office. Overall, the idea was well received because of the convenience it would offer. However, once the concept was further discussed, customers

were concerned about such things as the security of their packages, access to a knowledgeable person if they had questions, and access to help if the self-service machines were not functioning correctly.

When asked how they would feel if revenue-losing Post Offices were closed and were replaced with self-service kiosks in retail stores, focus group customers were neutral to negative. Only 25 percent found the concept in the acceptable range. Their attitudes were affected by past experience with both USPS and non-USPS self-service machines. However, when asked how they would feel if one of two Post Offices that were in close proximity to each other were closed and replaced with self-service kiosks in retail stores, about 50 percent were accepting of the idea. In both scenarios about closing Post Offices, replacing the closed Post Office with a postal employee at a counter in one or more retail stores, instead of with self-service machines increased the acceptance rate of each scenario to 75 percent of the focus group participants. Having a postal employee handle mail at retail stores was important to the customers for reasons of mail security and proper handling of mail.

Focus group members were asked to list what they felt were their "rights" with respect to the Postal Service. The four responses most often in the top three in importance for the majority of focus group members were: accurate delivery, proper handling (no damage), security/privacy of mail, and prompt/timely delivery (days in transit). It is noted that three of the top four are service related and that security of the mail was also very important. The next most frequent "right" cited by focus group members was delivery to all addresses in the U.S.

In regard to the mailbox rule, the focus groups were asked how they would feel if companies and individuals other than the Postal Service could deliver items in their residential mailbox. Almost all focus group members were opposed to opening up the mailbox. Customers were concerned about the privacy and security of their mail. They discussed identity theft, mail fraud, and other outcomes that could be associated when the security of their mail is breached. Others were concerned about an increase in unwanted advertising mail.

In regard to the PES, the focus groups were asked how they would feel if individuals or companies other than the Postal Service could deliver their personal correspondence, bills, statements, and checks. About 80 percent of focus group members said this would be unacceptable. Their concerns were around the security of the mail and who would be accountable for pieces that were not delivered.

This survey highlights that any potential USO or monopoly changes first need to be more thoroughly researched with consumers to understand the potential societal impacts. The entire

Consumer Research Report, including the demographics of the focus groups, can be found in Appendix F.

XII. Trade-offs and Stakeholder Impact

Changes to the Postal Service's universal service obligation (USO), the Private Express Statutes (PES), and the mailbox rule will not only impact the Postal Service. As discussed earlier, a more strictly defined USO, as well as a reduction or elimination in the PES or mailbox rule, will hinder the ability to preserve affordability. Any potential change will have far-reaching impacts that will be felt across the country by both the mailing industry and the general public. For this reason, caution should be taken and any potential changes need to be studied carefully and the impact fully understood.

A. Impact on the American Public

Potential changes to the USO, PES, and mailbox rule should be made only after careful consideration to their impact on the American public. Efforts should be made to prevent or reduce the negative impact on household consumers, many of whom would least be able to bear the burden of price increases or service reductions that would result from reducing or eliminating the PES and mailbox rule.

As discussed above, economist Phillippe De Donder provided a presentation on his research models on funding the USO. According to his modeling, only full pricing flexibility and the development of a compensation fund would allow the Universal Service Provider (USP) to break even in the case of postal liberalization. As a result, consumers lose under liberalization, because without alternative compensation, the USP would no longer be able to provide uniform pricing and remain financially solvent.

The PES and mailbox rule have been put in place as mechanisms to fund the USO, which includes aspects such as uniform prices, delivery frequency, and Post Office access. Already, declining mail volumes, electronic diversion, and the economic slowdown are factors which make the job of providing universal service at uniform, affordable prices a challenge, as the number of delivery points continues to grow. Eliminating or relaxing the PES and/or mailbox rule would cause further diversion, placing the funding mechanism in jeopardy and potentially resulting in a continued downward spiral, threatening the level of service Americans depend upon.

A question to ask is, if the PES and mailbox rule were relaxed, what would private companies be willing to provide, and what would they be unwilling to provide? It is widely accepted competitors would engage in an activity known as cream-skimming, which involves

offering service on low-cost, highly profitable routes while leaving the Postal Service with high-cost, unprofitable routes. This would put service in danger for areas of the country whose volumes do not justify the costs to serve, namely isolated rural areas and low income urban areas. This is precisely the portion of the America public who could least afford an increase in postal pricing or a decrease in service. Isolated regions of the country currently depend heavily on the Postal Service to transport prescription medicines, educational materials, and other supplies. Cutting off such areas from uniform, affordable service and access could be devastating for these Americans. What would be the affordable alternatives proposed for these areas?

As mentioned earlier in this report, changes to the mailbox rule would yield many potential unintended consequences to the American public. Opening up the mailbox not only would lead to diversion of volume, but also opens the possibility for mail theft, identity theft, privacy violations, and tampering.

The stakes are high for the American people when it comes to potential changes to the USO, the PES, and the mailbox rule. It would be wise to proceed cautiously, and to weigh small benefits for commercial mailers and businesses against the detrimental impact to the public. The USO, the PES and the mailbox rule are so tightly interrelated that the effects of any changes would be felt across many businesses and communities.

The Postal Service recognizes the importance of assessing the societal impact of potential changes to the USO, the PES, and the mailbox rule. While significant work has been performed over the years by a myriad of sources on the implications of liberalization of other posts and industries around the world, very few, if any, studies exist on what potential changes to the USO, the PES, and the mailbox rule might mean to various U.S. consumer segments and to the U.S. as a whole. While there has been no comprehensive study to date, the Postal Service desires the completion of such a study in the future to evaluate the economic and social impact of any potential changes in the USO, the PES and the mailbox rule. Such a study should include the value of mail for senders and recipients. This includes the value of mail accepted and delivered to most business and residential addresses, and the impact of any changes on residents, businesses, and the mailing industry (including impacts on employment). The study should analyze the value of the Postal Service's presence in nearly every town. The study should also include the impact of potential changes to the USO, the PES and the mailbox monopoly on the nation as a whole, as well as the impact on specific demographic, geographic, and economic segments.

B. Impact on the Mailing Industry

Potential changes to the USO, the PES, and the mailbox rule will not only impact the Postal Service and consumers; they will impact the entire mailing community. According to the 2008 Economic Job Study Final Report, the mailing industry in the United States supports 8.3 million jobs and is related to the production of goods and services worth \$1.2 trillion.²⁷⁶ In addition, the study found that this impact is compounded by the businesses that are supported through the purchases made by mailing industry businesses and employees. The report estimates – using analysis of the Department of Commerce economic impact factors for printing, advertising, Postal Service, and paper industries – that this purchasing power generates at least an additional 3.2 million jobs in the economy.²⁷⁷ Furthermore, any impact will be felt nationwide as mailing industry related jobs are found across the entire county, in every business sector and in every congressional district.²⁷⁸

Mailers will also be impacted by any changes. During the hearings and in the initial comments filed at the Commission, mailers expressed that they value universal reach and affordable prices. If the PES and the mailbox rule are reduced or eliminated and the Postal Service is unable to support the USO at affordable prices, mailers will lose the ability to reach their intended audience in a reasonable manner. This means that mailers will have to use higher cost alternatives to reach these audiences or not reach them at all. Not only do the mailers suffer, but the more remote or less affluent have fewer alternatives to satisfy their correspondence and commerce needs.

Postal Service employees will also be impacted by any changes. Even if the Postal Service is liberalized, it will still maintain its legacy costs and will need to finance its retiree benefits. For instance, the Postal Service is being required to extinguish by 2017 the unfunded liability for retiree health benefits of over \$55 billion. The ability to fund these kinds of obligations is dependent upon a substantial revenue stream. If the Postal Service is unable to support its financial obligations, future retirees will be harmed unless the federal government subsidizes these payments.

Given the size of the mailing industry, any change to the USO, the PES, and the mailbox rule must be studied carefully and the potential impacts must be fully understood. The Postal

²⁷⁶ Study was published by Institute for Postal Studies of the Envelop Manufacturers Foundation. Analysis was done by Transformation Strategy, Inc and Direct Communications, Inc. www.postal2020.com.

²⁷⁷ *Ibid.*

²⁷⁸ *Ibid.*

Service is at the core of this industry and adverse impacts to the industry could result in a burden that falls on the federal government.

C. Impact on the Competitors

The Postal Service relationship with private sector shipping companies is multi-faceted. While the Postal Service competes head-to-head for some business, it also provides other shippers last mile delivery through Parcel Select, first-mile pickup and consolidation through Parcel Return Service; and contracts for air transportation. On any given day, a private sector firm such as UPS interacts with the Postal Service as a competitor, a business partner, and a supplier. As a result, the effect on competitors of a change in the USO is not clear.

If the Postal Service is unable to provide reliable service at affordable prices, some competitors will actually suffer. Some of the Postal Service's competitors are actually large customers of Parcel Select dropped at destination delivery units. They utilize these workshare prices when it is more cost effective than delivering the packages themselves. Therefore, if the Postal Service is unable to provide affordable prices, in some cases it will become more difficult for competitors to provide affordable prices especially to rural areas, and it is the American public who would suffer.

Furthermore, to the extent that changes negatively impact market dominant products, "competitors" who also act as suppliers of air transportation largely used to transport market dominant products will be harmed. These firms use the Postal Service to leverage their infrastructure and employ assets that could otherwise be under utilized.

D. Supporting Measures / Flanking Measures

As reflected throughout this report, there is a delicate balance between the PES and mailbox rule and the ability of the Postal Service to fulfill its USO. Given its other governmental constraints and declining volumes, the Postal Service already faces a hefty challenge and will need a broadly defined USO in order to stay financially viable. Reducing or eliminating the PES and the mailbox rule could have a devastating impact on the ability to provide universal service at affordable prices. In that event, there would need to be an appropriate trade-off in terms of significantly relaxing the USO, providing other funding mechanisms to support the obligation, or both. The Postal Service would need the flexibility to produce revenue through alternate sources or would need to return to receiving government appropriations. If the Postal Service loses its funding mechanism and is not given an alternative funding source, its stakeholders – the American public, business customers, suppliers, and employees -- will be the ones who are ultimately harmed.

As other countries liberalized their posts, they implemented supporting (or flanking) measures to ensure that the incumbent providers could remain financially sound in the long term to ensure funds for providing universal service. As discussed in Section X, these measures include access to alternate revenue sources and other commercial freedoms. Access to lines of business such as logistics, transport services, banking and related financial services, and other retail services have afforded incumbent universal service providers with the revenue diversification needed to remain financially sound in the face of liberalization and new competition.

For the posts that have liberalized, the ability to diversify revenue sources has been significant. Accenture concluded from their research that “as of 2006, the major posts (excluding the US) derived an average of 40 percent of their revenue from outside the mail business.”²⁷⁹ Supporting measures provided to liberalized posts have not stopped at the ability to expand and diversify by entering other lines of business. Some countries have given their posts the ability to compete in other countries. For example, in 2006, TNT and Deutsche Post earned 60 percent and 59 percent, respectively, of their total revenues outside their domestic markets. Belgium, France, Sweden, Switzerland, and the U.K. also saw their posts earn at least 10 percent of their revenues outside their domestic markets.²⁸⁰

The concept of supporting measures, particularly the ability to diversify into other revenue sources, is not unique to other countries. In the U.S., airports (typically owned by state or local governments but required by the federal government to be as self-sustaining as possible²⁸¹) are increasingly seeking to remain financially viable through alternate revenue sources. According to a recent Conde Nast Portfolio.com business article, airports have found it necessary to derive revenues from alternate sources given that (1) revenues from the traditional sources of airlines are drying up as airlines are pinched by high fuel prices, and (2) the costs to run airports have risen significantly over the years.²⁸²

The amount of revenue derived by U.S. airports from alternate sources is significant and accounts for roughly half of total revenues. As the article states,

According to the Federal Aviation Administration, in fiscal year 2005, U.S. airports had total operating revenues of \$13.1 billion. Non-airline revenue represented \$6.1 billion, or about 47 percent, of that. By 2007, that figure had

²⁷⁹ Appendix B. Accenture Report: International Postal Liberalization – Comparative Study of US and Key Countries, p 54.

²⁸⁰ *Ibid.*

²⁸¹ As required by the 1994 FAA Authorization Act.

²⁸² Baskas, Harriet. “Airports Look to Land New Revenue Sources.” *Conde Nast Portfolio.com*. July 30, 2008. <http://www.msnbc.msn.com/id/25741006/>.

inched up: The \$6.5 billion airports earned from non-airline sources represented about 48 percent of overall airport revenues of \$13.6 billion.²⁸³

Specific examples abound. Dallas-Fort Worth International Airport derives approximately 65 percent of total revenues from alternate sources, including the sale of drilling rights for natural gas. Denver International Airport leases land for commercial real estate projects, agricultural uses, and natural gas deposits. Detroit Metro Airport sells advertising rights, including naming rights for a new terminal. While these revenue streams are diverse and not necessarily applicable to all airports, the basic point remains the same. In an age of downward revenue pressures and upward cost pressures, government-owned airports must seek new revenue sources to meet the self-sustaining mandate, while providing affordable service to their communities.

Whether examining the lessons of liberalized posts overseas or government-owned airports in the U.S., the inference for the Postal Service is straightforward. Any *obligation* must be matched by the financial *capability* to meet that obligation. If the Postal Service is to continue to fulfill its USO, then the PES and mailbox rule must be preserved or new sources of revenue should be allowed. The bottom line is that the Postal Service must remain financially viable over the long term to ensure future universal postal service at affordable prices for the American public.

With mail volumes steadily declining and the number of delivery points increasing substantially each year, there exists a distinct likelihood the original funding mechanisms for the USO will prove to be insufficient, even if the PES and mailbox rule remain unchanged. Given the financial losses experienced by the Postal Service recently, this may have already started to occur. Rather than being a dire future prediction, insufficient funding mechanisms for the USO may be today's reality, and additional funding mechanisms will need to be considered and approved in short order to address this unsustainable situation. A suggestion to alleviate this problem would be to allow the Postal Service the ability to expand or partner to offer logistics, freight, or retail banking services.

XIII. The Future, Summary and Recommendations

The American public has a continuing need for universal mail service. Mail works. While electronic diversion has eroded First-Class Mail volume, many people still want hard-copy delivery. The internet and mail delivery are often complementary, with many people, particularly

²⁸³ *Ibid.*

those in remote areas, relying on the Postal Service to deliver merchandise. Therefore, universal service at affordable prices remains an important interest of the American people. The current system has succeeded at increasing efficiency and keeping prices affordable. Recent statutory and regulatory changes should be given time to be evaluated. Changes in longstanding features of the postal system should not be made just for change's sake; any potential change needs to be carefully studied and the impacts fully understood. Reducing or eliminating the Private Express Statutes (PES) and mailbox rule will harm the Postal Service's ability to provide universal service at affordable prices, and it is the American public who will suffer. The Postal Service will need flexibility to ensure the long-term fulfillment of the universal service obligation (USO), particularly as volume continues to erode and finances become more challenging. The Postal Service recommends that for now, the status quo be maintained with respect to the PES and mailbox rule, and that the obligation to provide universal service be limited to market dominant products. The Postal Service also recommends that the USO be defined broadly so as not to prohibit or limit creating a more efficient network, replacing facilities with alternative access where appropriate, and reducing delivery days if necessary to continue affordable services as needed.