



School of Public Policy

Study on Universal Postal Service and the Postal Monopoly

Appendix B

**Universal Service Obligation:
History and Development of Laws Relating to the
Provision of Universal Postal Services**

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Summary

The purpose of this study to provide a comprehensive description of the development and current status of federal laws that *oblige* the United States Postal Service to provide a *universal postal service* throughout the United States. This study is one of several studies required by the postal reform act adopted by Congress in 2006, the Postal Accountability and Enhancement Act or PAEA.

Defining the "universal service obligation"

There is no official definition of the terms *universal service* or *universal service obligation* so the first step must be to try to clarify these terms, at least for purposes of this study. In defining the subject of this study, the PAEA refers to sections 101 and 403 of the postal laws, Title 39 of the United States Code, as providing some standards for universal service. Likewise, in considering the bill that became the PAEA, the Senate Governmental Affairs Committee explained the idea of universal service obligation as follows: "The Committee believes that sections 101(a), 101(b) and 403 of title 39 fully define the universal service obligation." The subject of this study is the "universal service obligation" in this sense.

This study uses these indications as its starting point. In sum, the study addresses such questions as: What do sections 101 and 403 of Title 39 oblige the Postal Service to do with respect to the provision of universal postal services? Why did Congress enact these laws in the first place? What other laws or regulations, if any, impose similar or related obligations on the Postal Service? To what extent do these laws and regulations fail to address elements of universal postal service that should logically be addressed?

A review of the service requirements set out in sections 101 and 403 suggests that, for purposes of this study, universal service may defined as follows:

Universal service. A postal service or set of postal services that is characterized by seven service elements that are attained to such a degree or in such a manner that the postal service provided may be considered "universal." The seven service elements and the level or manner of attainment presently considered characteristic of universal service are:

1. *Geographic scope.* Universal service provides services throughout the United States, serving all areas and all communities, especially rural areas, and as nearly as practicable the entire population of the United States and also providing service to or from military personnel abroad.
2. *Range of products.* Universal service transmits a range of postal items including written and printed matter, parcels, and like materials suited to the needs of different categories of mail and mail users.
3. *Access.* Universal service provides mailers ready access to the postal system through an appropriate level of post offices and other access facilities consistent with reasonable economies, especially in rural areas.
4. *Delivery services.* Universal service provides for the receipt, transmission, and delivery of postal items.
5. *Rates.* Universal service charges prices that are fair, reasonable, non-discriminatory, and based on a fair and equitable apportionment of costs.
6. *Quality of service.* Universal service provides for the prompt, reliable, efficient, and adequate transmission of postal items, with particular attention to the most expeditious transmission of letters.
7. *User protection.* Individual users should have adequate means to ensure they receive universal services that are consistent with the universal service obligation.

Similarly, for purposes of this study, the *universal service obligation* or USO may be defined as follows:

Universal service obligation. A legal requirement that sets specific minimum levels of attainment for service elements of a postal service (or a set of postal services) that serves substantially all persons in the Nation. A universal service obligation may be imposed upon one or more postal operators directly or upon a government agency with authority to regulate postal operators.

It should be noted that this definition of the USO reaches well beyond the words of sections 101 and 403. It includes all legal obligations imposed on the Postal Service relating to the seven service elements of universal service identified above: the

geographic scope of services, the range of products, access facilities, delivery services, level and structure rates, quality of service, and user protection. Under current law, there are four types of legal measures that define obligatory standards for universal postal service: Title 39, appropriations and budget acts of Congress, the Universal Postal Convention, and regulations adopted by the Commission.

Legal Evolution of National Postal Services

The Post Office was established in 1775 by the Continental Congress and continued by the first Congress elected under the Constitution. The first act of Congress specifying the organization and duties of the Post Office was adopted in 1792. Following the British practice, the Post Office was created as an office within the Treasury Department. The Post Office quickly assumed an important role in the federal government. In 1829, the Postmaster General became a member of the President's cabinet. In 1872, Congress formally established the Post Office Department.

The nature and geographic scope of services offered by the Post Office likewise evolved. Until the Civil War, the Post Office was an intercity, post office-to-post office transportation service. In the 1860s, the Post Office began to provide city delivery services on a significant scale, both for intercity mail and, increasingly, for local, intracity mail. Gradually, collection and delivery of mail, rather than intercity transportation, became the main activity of the Post Office. In the 1890s, Congress extended the mission of the Post Office to include delivery to private mailboxes placed along roads in rural areas where the majority of Americans lived. The RFD program was intended to serve areas sufficiently settled to support postal routes serving approximately a hundred households. It was largely completed by 1906, although it continued to expand incrementally thereafter. In 1912, Congress authorized the Post Office to provide delivery in villages of less than 10,000 residents. Until the Postal Reorganization Act of 1970, the postal laws retained vestiges of a system built up from four distinct services: intercity postal service, city delivery, village delivery, and rural delivery.

Statutes defining the reach of the postal system varied with the nature of the service. In the early days, a "postal" system was literally a series of posts, or relay stations, located along a "post road." From 1792 to 1884, Congress designated individual

post roads by law and authorized the Postmaster General to nominate suitable persons and facilities along the post roads to serve as post offices. After the start of free city delivery in 1863, collection and delivery grew in importance as features of postal service, and the scope of service came to be defined by the extent of the delivery system. In 1865, Congress mandated delivery services in every city with a population of 50,000. The Postmaster General was authorized, but not required, to provide delivery services in cities with more than 20,000, later reduced to 10,000, residents. The scope of the rural delivery system was established in answer to petitions from rural residents provided the petitions met conditions established by the Postmaster General. The location of village delivery services were also determined by the Postmaster General. Thus, beyond the network of cities with more than 50,000 residents, the scope of the delivery system was determined by the Postmaster General. In 1916, however, Congress became frustrated with efforts of Post Office improve the efficiency of the rural free delivery and adopted a rider to appropriations legislation dictating key elements of the program. This legislation included an order to the Postmaster General to extend the program, so far as permitted by appropriations, “to serve, as nearly as practicable, the entire rural population of the United States.”

The range of services offered by the Post Office also grew by accretion. Although in colonial times the British Post Office was focused on carriage of official and commercial letters, after the Revolutionary War, the U.S. Post Office became first of all a medium for the inexpensive distribution of newspapers between cities. Very high postage rates on letters paid for the distribution of newspapers but also discouraged casual use of letter services. Magazines and pamphlets were admitted to the mails in 1794, but only when they could be transported conveniently. Postal acts adopted in 1845 and 1851 radically reduced letter rates and based them on weight rather than the number of sheets of paper, paving the way for the first use of envelopes (early letters were folded sheets of paper sealed with wax). The Post Office became a means for people generally to communicate across distances, and social and commercial communications were revolutionized. In the same period, transmission of magazines became a regular postal service, and economical rates for advertisements and books were introduced. Classes of mail were first established in 1863, and the traditional four classes of mail were fixed in

1879. After the mid-1800s, the Post Office became a conduit for transmission of seeds, bulbs, and other things weighing up to three or four pounds. In 1912, Congress authorized the Post Office to provide parcel services, and the parcel post was rapidly expanded to admit fifty-pound packages. After 1912, the definitions of services were revised but not fundamentally changed.

Postage rates in the early nations of the nation preferential rates for newspapers reflected a strong commitment by the founding fathers to a public policy of keeping the citizenry informed about the events of the day. This public policy preference gave rise to a perpetual political debate over what types of items deserved similar preferential treatment and which did not. Magazines and pamphlets were given preferential rates in 1794, although they were less favorable than newspaper rates until 1852. Local newspapers were transmitted for free in 1845, a privilege that later became the a preference for "in-county newspapers." In the early-to-mid-nineteenth century, books and advertisements were considered commercial items inappropriate for preferential rates. Over time, however, improving technology and changing business practices, stimulated at least in part by distinctions in postage rates, blurred the line between news media and commercial text. Newspapers and magazines begin to include voluminous advertising and serializations of books and novels. Congressional reforms, such as higher rates for advertising in newspapers and magazines (1917) and redefinition of the third and fourth classes (1925), precipitated counter reactions in the form of preferential rates for nonprofit publications (1917) and library books (1928), as well as bulk rates for third class advertising (1928).

By the mid-twentieth century, American postal law was an uncoded jumble of statutory provisions mandating or authorizing a variety services with rate preferences enacted to answer different needs at different times. Since the ultimate manager of the postal system was the Congress, parties affected by the postal laws, especially those dependent on preferential rates, were of necessity well versed in how to make their cases to government officials and the general public.

Postal Policy Act of 1958

By the middle of the twentieth century, the postal system had become too large and complex for Congress to administer without articulated objectives. After the end of World War II in 1945, Congress readily provided long-delayed wage increases for postal employees, but raising postage rates to cover higher costs was more difficult. A long and fiercely fought debate over methods of cost allocation, the propriety of a public subsidy for postal services, and the role of the Post Office in the national life ensued. The outcome was Public Law 85-426, adopted in 1958, which raised the price of a first class stamp for only the second time since 1885 and adopted the first ever statement of national postal policy to guide future Congresses in their rate-setting debates. The postal policy title, separately named the “Postal Policy Act of 1958,” is the ultimate source for much of what is now considered to be the universal service obligation of the Postal Service.

The Postal Policy Act of 1958 attempted to resolve the rate debates bedeviling Congress for a decade. To restate using current postal terminology, the basic decisions were as follows. First, a portion of postal costs were deemed public service costs that should be paid for from public funds. The 1962 amendment clarified and expanded the scope of public service costs so that they included more than 15 percent of all costs. Second, the act directed that the overall level of postage rates should be set so that total postal revenues—including compensation for public service costs—would be “approximately equal to” total postal costs. Third, first class rates were set to pay more than a proportional share of institutional costs but not required to cover all institutional costs. Fourth, it was decided that the relationships between the rates for different classes of mail should reflect the eight statutory factors set out in section 103(c)(1). The 1958 act left unresolved the issue (strongly contested in the case of magazines) of whether rates for each category of mail should cover attributable costs.

The Postal Policy Act of 1958 did not, however, define what would today be termed a universal service obligation. The 1958 act addressed only rate policy. The 1958 act did not specify criteria for the geographic scope of postal services, access to postal services, mode or frequency of delivery, or quality of service. Nor, indeed, did the Postal Policy Act of 1958 impose rate-related obligations on the Post Office. Since Congress retained the authority to set postage rates, the 1958 act addressed future Congresses, not the Post Office, much less a non-existent independent rate commission. As Senator

Johnston conceded, one Congress cannot bind future Congresses, so the Postal Policy Act of 1958 was intended only to articulate guidelines, not to establish mandatory ratemaking principles. The fact that Congress would relinquish its authority over postage rates in only a dozen years was wholly unforeseen in 1958.

At the same time, the postal policy debates of the 1950s explored in detail the scope and financing of “public services.” The major public services were portions of universal postal services that were thought to be not commercially viable, such as the operation of small and rural post offices and the provision of free or reduced rates for certain types of mail. While there was some question about how to calculate public service costs, there was widespread agreement that once defined, public service costs should be charged to taxpayers, not mailers. During the four-year debate leading to the Postal Policy Act of 1958, there was virtually no mention of the postal monopoly as a means of financing public service costs, and none at all during the Senate debate over the five cent stamp in early 1958. No one suggested that the purpose or effect of the postal monopoly was to cover the cost of universal service or that monopoly mail rates should be set to this end. On the contrary, the extensive and vigorous arguments about the relative increases in the rates for one class of mail versus another were based solely on issues of fairness and equity, while making due allowance for the limitations of the Post Office's accounting system, the presumed costs of giving priority to first class (and perhaps some second class) mail, and the general educational benefits of second class mail.

Postal Reorganization Act, 1970

The Postal Reorganization Act transformed the Postal Policy Act of 1958 into the basic, if skeletal, universal service obligation found in current postal law. When Congress and the Administration decided to give the Post Office more independence—primarily independence from Congressional control of rates and wages—it was deemed necessary to include directions about what postal services were to be provided. In using the text of the 1958 act for this purpose, the language from the earlier act was given a significantly different, more normative, meaning than originally intended in 1958. While Congress in

1958 could not bind future Congresses with a statement of principles, Congress in 1970 could and did bind the Postal Service with the same language.

The legislative evolution of the 1970 act explains the overlapping sets of policy pronouncements found in the final act. In the beginning of the legislative process, the Administration was thinking in terms of replacing the Post Office Department with an independent corporation. The bill included a specification of “general duties” drawn from the policy principles of the 1958 act and the 1916 act requiring rural mail service “serve as nearly as practicable the entire population of the United States.” As the legislation evolved, the Senate insisted that the Post Office Department must be succeeded by two institutions, an independent regulatory commission as well as a more operational Postal Service. The Senate bill therefore added a statement of ratemaking principles for the Commission and a set of overall policy principles for both institutions. These, too, were also derived from the 1958 act. In this manner, the provisions of the Postal Policy Act of 1958 were used three times in the Postal Reorganization Act.

Despite substantial reliance on the principles of the 1958 act, the Postal Reorganization Act also added several new USO principles for which there are no clear antecedents in U.S. postal statutes, including the following

- requirement to provide an efficient system of collection, sorting, and delivery of the mail nationwide;
- prohibition against undue or unreasonable discrimination among users of the mails;
- specific obligation to receive, transmit, and deliver throughout the United States, its territories and possessions;
- prohibition against closure of small post office closed solely for operating at a deficit;
- requirement to provide a uniform rate for all letter classes;
- requirement to maintain a class of mail for letters sealed against inspection;
- and

- requirement that the rate for each class or type of mail cover attributable costs.

While the Postal Reorganization Act transformed the ratemaking principles of 1958 into universal service obligations and added new obligations on top of these, the 1970 act does not provide an evident means of compensating the Postal Service for meeting these obligations over the long term. Congress rejected the permanent public subsidy which, in 1958, was deemed necessary to pay for the public services implied by the Postal Policy Act of 1958. No alternative means of financing was provided. Nor did Congress clearly embrace the logical conclusion that, as the public service financing is withdrawn, the Postal Service should reduce the scope of postal services correspondingly. Unlike in 1958, in adopting the 1970 act, Congress and Administration did not estimate the cost of public services required of the postal service.

Evolution of USO

The major statutory modifications in the universal service obligation between 1971 and 2006 were:

- addition of a procedural requirement that the Postal Service consider public interest factors and the views of local customers before closing any post office and a provision for Commission review of Postal Service to ensure compliance;
- addition of a requirement that Commission consider “the educational, cultural, scientific, and informational value to the recipient of mail matter” in setting postage rates;
- marginal expansion of eligibility for reduced rates for preferred classes of mail;
- marginal reduction in the degree of rate reduction for preferred classes of mail;
- elimination of appropriations for revenue forgone due to reduced rates for preferred classes of mail;
- marginal expansion of free mailing privileges;
- addition of a requirement that the six-day delivery and rural delivery of mail shall continue at not less than the 1983 level;

- prohibition against use of annually appropriated funds to consolidate or close small rural and other small post offices;
- addition of a commitment in the 1999 Universal Postal Convention to permanently provide quality basic postal services at all points in the United States for all customers at affordable prices.

In brief, although the statutory universal service obligations set out in Title 39 have changed little since enactment of the Postal Reorganization Act, there have been some significant legal developments. In the mid-1970s, Congress considered enacting specific criteria for universal postal service for delivery and the establishment of post offices. The Postal Service objected strongly, however, and Congress did not so. In the early 1980s, however, Congress again became alarmed at the possibility of service reductions due to government budgetary restrictions. Since the 1980s, Congress has included provisions in the annual appropriations acts that were intended to prevent reductions in delivery frequency and closure of small town post offices, although the practical effects of these proviso are unclear. Another legal development outside of Title 39 and of uncertain import is the progression of the Universal Postal Convention into an agreement that places more legislative authority in the hands of postal officials and addresses domestic as well as international postal services.

The Postal Reorganization Act established two main funding programs to cover the costs of non-business-like universal services. The first was the public service appropriations program. It was scheduled to decline from \$ 920 million in fiscal 1971 to \$ 460 million in fiscal 1985 and thereafter continue at that level. In the late 1970s and early 1980s, Congress reduced or eliminated the scheduled public service appropriations due to fiscal problems of the federal government. Since fiscal 1985, the Postal Service not received any public service subsidy, apparently because it has determined that such funds "are no longer required to operate the Postal Service in accordance with the policies of this title."¹ The second funding program was the revenue forgone subsidy. It continued with adjustments, until questions arose in the mid-1980s about the correctness

¹ 39 U.S.C. § 2401(b)(2) (2006).

of the methods of calculation used by the Postal Service. In 1993, Congress ended the revenue forgone subsidy, except for an annual payment of \$ 92 million that will last until 2035. Congress has not, however, eliminated the requirement to maintain reduced rates for certain types of mail.

Interpretation and administration of the USO to 2006

A review of the interpretation and administration of legal provisions relating to universal service since 1971 has suggests that the Postal Service has not been obliged by law, to any significant degree, to extend service or a product to an unserved area, to locate a post office or collection box in a particular place, to provide delivery in specific manner, to change the quality of a given service, or to redress a user for lapses in universal service. The only service element where USO requirements do have seem to have a practical effect is price. Statutory requirements for rates have been attained because they have been enforced by the Commission in each rate case.

Postal Accountability and Enhancement Act, 2006

The Postal Accountability and Enhancement Act did not explicitly address the concept of a universal service obligation. The PAEA did not modify the main statutory provisions associated with the “universal service obligation” under current law. The PAEA left unchanged key provisions of Title 39, including section 101 (postal policy), section 403 (general duties of the Postal Service), section 404(c) (uniform rate requirements for letters) and section 3683 (uniform rate for library and media mail). Nor did the PAEA affect the annual appropriations rider which prescribes six-day delivery and prohibits closure of small post offices.

Nonetheless, the PAEA modified several statutory provisions which affect service elements of universal postal services. These changes include the following:

- division of domestic and international postal products into two categories: market dominant and competitive;
- requirement that rates for market dominant products comply with a new “modern system of regulation” to be devised by the Commission in accordance with statutory principles;

- relaxation of price controls over competitive products while requiring that competitive products cover attributable costs and make a collective contribution to institutional costs; addition of obligation to pay an assumed federal income tax;
- modification of the rate preference for in-county newspapers to give the Postal Service and Commission more flexibility in defining the preference;
- adoption of more flexible size and weight limits for postal products;
- requirement that the Postal Service establish quality of service standards which meet statutory criteria;
- adoption of a statement of national policy with respect to international postal services and other international delivery services and limitations on the scope of international postal agreements; and
- requirement for the Postal Service to consult with interested parties before closing or consolidating any processing or logistics facility.

Current Status of the USO

The United States Postal Service was established “to provide postal services to bind the Nation together” through the supply of “prompt, reliable, and efficient services to patrons in all areas” with particular attention to ensuring “a maximum degree of effective and regular postal services to rural areas, communities, and small towns.” The Postal Service must transmit “written and printed matter, parcels, and like materials” and “provide types of mail service to meet the needs of different categories of mail and mail users” by establishing a postal system that serves “as nearly as practicable the entire population of the United States.” This is no question that the Postal Service is legally “obliged” to provide a “universal postal service” throughout the United States even though Title 39 does not once use the term “universal service.”

At the same time, Title 39 and other U.S. laws do not currently provide a complete or coherent description of the universal postal services which the Postal Service is obliged to supply to the nation or which the government is otherwise prepared to guarantee. Current postal laws were never intended to do so. The bulk of the statutes

which are now interpreted as creating a universal service obligation were enacted in 1958 as an attempt by one Congress to influence the ratemaking decisions of future Congresses. These statutory phrases were reenacted in the Postal Reorganization Act of 1970 as a statement of general goals and objectives, not as a set of specific service requirements to be met by the Postal Service. Indeed, ever since enactment of the Postal Reorganization Act, there has been strong opposition to the adoption of specific service requirements for the Postal Service. This opposition has been grounded at least in part in the view that such operational requirements would hamstring the ability of the Postal Service to manage postal operations and indicate a retreat from the achievement of establishing a more “business-like” Postal Service. In the face of such opposition, Congress has not tried to define precisely what types and levels of postal services the Postal Service is obliged to provide and how such an obligation might be enforced. Nor has Congress delegated to the Commission (or other government agency) authority to give specific definition to the generalized obligation found in current statutes.

Although Congress has not sought to provide a complete definition of the universal service obligation, it adopted some statutes that specific obligations to deal with specific circumstances. Principally, it appears that the Postal Service is obliged to provide “six day delivery and rural delivery of mail” at no less than the 1983 level, to provide postal services for certain types of types at reduced or geographically uniform rates, to follow certain procedures in closing post offices, and to price market dominant products in accordance with price caps defined by reference to services and prices existing in December 2006.

The result is what might be termed a “quasi-USO”—a set of broadly stated objectives whose implementation is left to the discretion of the Postal Service (but subject to political oversight) supplemented by a set of specific legal requirements in certain areas. At no point has Congress tried to balance the costs and benefits of the different elements of universal service. Instead, the Postal Service can, and is in some measure legally obliged, to sacrifice the quality of some elements of universal service in order to adhere to the constraints placed on other elements of universal service. If, as generally expected, mail volumes per capita continue to decline due to the use of electronic alternatives, the pressure on the vaguely defined elements of the universal

service obligation will only increase. Congress may therefore to consider developing a more specific and deliberately balanced definition of the universal service obligation in the future.

1 Introduction: Defining "Universal Service Obligation"

The purpose of this study² to provide a comprehensive description of the development and current status of federal laws that *oblige* the United States Postal Service to provide a *universal postal service* throughout the United States.

In considering the bill that became the Postal Accountability and Enhancement Act of 2006, the Senate Governmental Affairs Committee explained the idea of universal service obligation as follows: "The Committee believes that sections 101(a), 101(b) and 403 of title 39 fully define the universal service obligation."³ The subject of this study is the "universal service obligation" in this sense. The purpose of this study is to address such questions as: What do sections 101 and 403 of Title 39 oblige the Postal Service to do with respect to the provision of universal postal services? Why did Congress enact these laws in the first place? What other laws or regulations, if any, impose similar or related obligations on the Postal Service? To what extent do these laws and regulations fail to address elements of universal postal service that should logically be addressed?

1.1 Objectives and Organization of This Study

This study has been prepared for the Postal Regulatory Commission (the Commission) pursuant to instructions set out in the Postal Accountability and Enhancement Act (PAEA) enacted by Congress in 2006.⁴ Section 702 of the PAEA requires the Commission to prepare a report for Congress and the President on "universal postal service and the postal monopoly in the United States." The report must include "a comprehensive review of the history and development of universal service . . . , including

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³ S. Rep. No. 318, 108th Cong., 2d Sess., at 22 (Aug. 25, 2004).

⁴ Postal Accountability and Enhancement Act, Pub. L. No. 109-435, 120 Stat. 3198 (2006).

how the scope and standards of universal service and the postal monopoly have evolved over time for the Nation and its urban and rural areas.” The report must also delineate “the scope and standards of universal service and the postal monopoly provided under current law (including sections 101 and 403 of Title 39, United States Code), and current rules, regulations, policy statements, and practices of the Postal Service.”⁵

This study is divided into eight chapters. The remainder of this chapter deals with the definition of the terms, particularly the terms *universal service* and *universal service obligation* (or USO) that guide this study. Chapter 2 summarizes the laws that, prior to World War II, shaped the development of a government postal service that ultimately reached every corner of the nation. Chapter 3 describes how, after World War II, Congress drew together historical practices into the first formal statement of national postal policy, the Postal Policy Act of 1958. Chapter 4 explains how the Postal Reorganization Act of 1970 developed what is currently considered a “universal service obligation,” largely by borrowing from the Postal Policy Act of 1958, but also by introducing new concepts. Chapters 5 and 6 describe how the universal service obligation of 1970 was reshaped by subsequent statutes and by regulatory or judicial interpretations. Chapter 7 reviews the development of the PAEA and how it affected the universal service obligation. Chapter 8 summarizes the current status of the laws creating a universal service obligation.

1.2 Definition of “Universal Service Obligation” in This Study

At the beginning of the twenty-first century, it is readily apparent that the United States is served by a national system of collection and delivery services that is “universal” in many respects. Almost every person in every corner of the country can, at reasonable cost and with reasonable effort, send a letter or document or parcel to almost everyone else in every other corner of the country and expect the letter, document, or parcel to arrive within a reasonable period of time and almost complete security. In many cases, the sender may choose among different price and service options offered by the

⁵ Postal Accountability and Enhancement Act, Pub. L. No. 109-435, § 702, 120 Stat. 3198, 3243-44 (2006).

Postal Service and private delivery services. For purposes of this study, however, it is not self-evident which of these services should be regarded as “universal services” and which should be regarded as “non-universal services,” however widely available. Are only services offered by the Postal Service to be considered “universal services” despite the national reach of several private delivery services individually and the network of private delivery services collectively? Should an evaluation of the “needs and expectations of the United States public” consider only services provided by the Postal Service? Indeed, considering the Postal Service alone, are all of its services “universal services” or only some? Neither the PAEA nor postal laws as a whole offer a definitive answer to these questions.

1.2.1 Defining “Universal Postal Service”

The permanent code of postal laws, Title 39 of the United States Code, does not use the term *universal service* even once. The PAEA uses *universal service* in only two places: the provision requiring a study of universal service and the postal monopoly (section 702) and the provision requiring a study of the future business model of the Postal Service (section 710). Neither is included in Title 39. For purposes of this study, however, the term *universal service* must be defined in some manner and that definition must be consistent with the requirements of section 702 of the PAEA and the intent of Congress in requiring this report.

For purposes of this study, the necessary starting point for defining *universal service* must be the text of the PAEA. Section 702 employs *universal service* or *universal postal service* nine times. This section provides in pertinent part:

(a) Report by the Postal Regulatory Commission.—

(1) In general.—Not later than 24 months after the date of enactment of this Act, the Postal Regulatory Commission shall submit a report to the President and Congress on universal postal service and the postal monopoly in the United States (in this section referred to as “universal service and the postal monopoly”), including the monopoly on the delivery of mail and on access to mailboxes.

(2) Contents.—The report under this subsection shall include—

(A) a comprehensive review of the history and development of universal service and the postal monopoly, including how the

scope and standards of universal service and the postal monopoly have evolved over time for the Nation and its urban and rural areas;

(B) the scope and standards of universal service and the postal monopoly provided under current law (including sections 101 and 403 of title 39, United States Code), and current rules, regulations, policy statements, and practices of the Postal Service;

(C) a description of any geographic areas, populations, communities (including both urban and rural communities), organizations, or other groups or entities not currently covered by universal service or that are covered but that are receiving services deficient in scope or quality or both; and

(D) the scope and standards of universal service and the postal monopoly likely to be required in the future in order to meet the needs and expectations of the United States public, including all types of mail users, based on discussion of such assumptions, alternative sets of assumptions, and analyses as the Postal Service considers plausible.

(b) Recommended Changes to Universal Service and the Monopoly.—The Postal Regulatory Commission shall include in the report under subsection (a), and in all reports submitted under section 701 of this Act—

(1) any recommended changes to universal service and the postal monopoly as the Commission considers appropriate, including changes that the Commission may implement under current law and changes that would require changes to current law, with estimated effects of the recommendations on the service, financial condition, rates, and security of mail provided by the Postal Service;

(2) with respect to each recommended change described under paragraph (1)—

(A) an estimate of the costs of the Postal Service attributable to the obligation to provide universal service under current law; and

(B) an analysis of the likely benefit of the current postal monopoly to the ability of the Postal Service to sustain the current scope and standards of universal service, including estimates of the financial benefit of the postal monopoly to the extent practicable, under current law; and

(3) such additional topics and recommendations as the Commission considers appropriate, with estimated effects of the recommendations on the service, financial condition, rates, and the

security of mail provided by the Postal Service.⁶

Judging from context, it is apparent that “universal service” may be characterized by scope and constrained by legal standards set out in current laws and rules, regulations, policy statements, and/or practices of the Postal Service. “Universal service” may be said to “cover” geographic areas and/or groups of persons, and some areas or groups may be said to be not now covered by universal service. An obligation to provide “universal service” may result in costs for the Postal Service. Section 710, the only other provision of the PAEA to refer to “universal service,” uses the phrase twice, most significantly in reference to “continued availability of affordable, universal postal service throughout the United States.” It is also apparent from section 702(2)(A) that sections 101 and 403 of Title 39 set out standards for “universal service.” These provisions offer the most specific statutory indications of what is meant by the term *universal service* in section 702.

1.2.2 Elements of Universal Service: §§ 101 and 403 of Title 39

Section 101⁷ defines postal policy for purposes of the proper implementation of Title 39 by all government agencies, not only to guide the operations of the Postal Service. Section 101 provides in full,

§ 101. Postal policy

(a) The United States Postal Service shall be operated as a basic and fundamental service provided to the people by the Government of the United States, authorized by the Constitution, created by Act of Congress, and supported by the people. The Postal Service shall have as its basic function the obligation to provide postal services to bind the Nation together through the personal, educational, literary, and business correspondence of the people. It shall provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities. The costs of establishing and maintaining the Postal Service shall not be apportioned to impair the overall value of such service to the people.

⁶ Postal Accountability and Enhancement Act, Pub. L. No. 109-435, § 702, 120 Stat. 3198, 3243-44 (2006) (emphasis added).

⁷ In this study, the “section X” refers to a section of Title 39 as amended by the Postal Accountability and Enhancement Act unless otherwise indicated by context or citation. For example, “section 101” refers to 39 U.S.C. § 101 (2006). Note that *this study refers to several different versions of the United States Code* (U.S.C.). See the bibliography at the end for details.

(b) The Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. No small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities.

(c) As an employer, the Postal Service shall achieve and maintain compensation for its officers and employees comparable to the rates and types of compensation paid in the private sector of the economy of the United States. It shall place particular emphasis upon opportunities for career advancements of all officers and employees and the achievement of worthwhile and satisfying careers in the service of the United States.

(d) Postal rates shall be established to apportion the costs of all postal operations to all users of the mail on a fair and equitable basis.

(e) In determining all policies for postal services, the Postal Service shall give the highest consideration to the requirement for the most expeditious collection, transportation, and delivery of important letter mail.

(f) In selecting modes of transportation, the Postal Service shall give highest consideration to the prompt and economical delivery of all mail and shall make a fair and equitable distribution of mail business to carriers providing similar modes of transportation services to the Postal Service. Modern methods of transporting mail by containerization and programs designed to achieve overnight transportation to the destination of important letter mail to all parts of the Nation shall be a primary goal of postal operations.

(g) In planning and building new postal facilities, the Postal Service shall emphasize the need for facilities and equipment designed to create desirable working conditions for its officers and employees, a maximum degree of convenience for efficient postal services, proper access to existing and future air and surface transportation facilities, and control of costs to the Postal Service.

Section 101 was enacted as part of the Postal Reorganization Act of 1970,⁸ and is the best known statement of postal policy. One other provision of Title 39 addresses national postal policy. In 2006, the overall postal policy objectives of section 101 were supplemented by section 407(a), a declaration of national policy objectives for international postal arrangements.

⁸ Postal Reorganization Act, Pub. L. No. 91-375, 84 Stat. 719 (1970). Section 2 of the Postal Reorganization Act enacted a complete revision for Title 39 of the United States Code.

Section 403, also enacted by the Postal Reorganization Act, defines the “general duties” of the Postal Service. It provides in full as follows,

§ 403. General duties

(a) The Postal Service shall plan, develop, promote, and provide adequate and efficient postal services at fair and reasonable rates and fees. The Postal Service shall receive, transmit, and deliver throughout the United States, its territories and possessions, and, pursuant to arrangements entered into under sections 406 and 411 of this title, throughout the world, written and printed matter, parcels, and like materials and provide such other services incidental thereto as it finds appropriate to its functions and in the public interest. The Postal Service shall serve as nearly as practicable the entire population of the United States.

(b) It shall be the responsibility of the Postal Service—

(1) to maintain an efficient system of collection, sorting, and delivery of the mail nationwide;

(2) to provide types of mail service to meet the needs of different categories of mail and mail users; and

(3) to establish and maintain postal facilities of such character and in such locations, that postal patrons throughout the Nation will, consistent with reasonable economies of postal operations, have ready access to essential postal services.

(c) In providing services and in establishing classifications, rates, and fees under this title, the Postal Service shall not, except as specifically authorized in this title, make any undue or unreasonable discrimination among users of the mails, nor shall it grant any undue or unreasonable preferences to any such user.

A review of sections 101 and 403 suggests that *universal service* refers to a postal service or set of postal services that is characterized by several features or service elements that are attained to such a degree or in such a manner that the service may be considered “universal.” In sum, it appears that *universal service* can be characterized by six service elements with an expected level of attainment in each case approximately as follows:

1. *Geographic scope.* “Universal service” provides services “throughout the United States” (§ 403(a)) that serve “all areas” and “all communities” (§ 101(a)), especially rural areas (§ 101(b)), and “as nearly as practicable the entire

- population of the United States” (§ 403(a)) and also provides services to or from military personnel abroad (§ 403(a)).
2. *Range of products.* "Universal service" transmits a range of postal items including “written and printed matter, parcels, and like materials” (§ 403(a)) suited to “the needs of different categories of mail and mail users” (§ 403(b)(2)).
 3. *Access facilities.* "Universal service" provides mailers “ready access” to the postal system through an appropriate level of post offices and other access facilities “consistent with reasonable economies” (§ 403(b)(3)), especially in rural areas (§ 101(b)).
 4. *Delivery services.* "Universal service" provides for the receipt, transmission, and delivery of postal items (§ 403(a)).
 5. *Rates.* "Universal service" charges prices that are fair, reasonable (§ 403(a)), non-discriminatory (§ 403(c)), and based on a “fair and equitable” apportionment of costs (§ 101(d)).
 6. *Quality of service.* "Universal service" provides for the prompt, reliable, efficient (§ 101(a)), and adequate (§ 403(a)) transmission of postal items, with particular attention to the “most expeditious” transmission of letters (§ 101(e)).
 7. *User protection.* "Universal service" should not only meet the needs of the nation as a whole, but should “meet the needs of different categories of mail and mail users” (§ 403(b)(2)) and should prevent “any undue or unreasonable discrimination among users of the mails” and not grant “any undue or unreasonable preferences to any such user” (§ 403(c)).

This seven-pronged concept of universal service appears to be consistent with the manner in which the term *universal service* is used in section 702.

Simplifying this amalgam of statutory objectives found in sections 101 and 403 leads to the following definition of *universal service* for purposes of this study:

Universal service. A postal service or set of postal services that is characterized by seven service elements that are attained to such a degree or in such a manner that the postal service provided may be considered “universal.”

The seven service elements and the level or manner of attainment presently considered characteristic of universal service are:

1. *Geographic scope.* Universal service provides services throughout the United States, serving all areas and all communities, especially rural areas, and as nearly as practicable the entire population of the United States and also providing service to or from military personnel abroad.
2. *Range of products.* Universal service transmits a range of postal items including written and printed matter, parcels, and like materials suited to the needs of different categories of mail and mail users.
3. *Access.* Universal service provides mailers ready access to the postal system through an appropriate level of post offices and other access facilities consistent with reasonable economies, especially in rural areas.
4. *Delivery services.* Universal service provides for the receipt, transmission, and delivery of postal items.
5. *Rates.* Universal service charges prices that are fair, reasonable, non-discriminatory, and based on a fair and equitable apportionment of costs.
6. *Quality of service.* Universal service provides for the prompt, reliable, efficient, and adequate transmission of postal items, with particular attention to the most expeditious transmission of letters.
7. *User protection.* Individual users should have adequate means to ensure they receive universal services that are consistent with the universal service obligation.

This definition is deliberately open-ended. Different observers could come to different conclusions about when universal postal service was first attained in the United States or whether the Postal Service presently provides prompt, reliable, efficient, and adequate services in all cases or serves as nearly as practicable the entire population of the United States. This definition also leaves unresolved whether private operators may be considered to provide a portion of the universal service. This open-endedness appears to be consistent with way the term *universal service* is used in section 702 of the PAEA. In other words, in this study *universal service* refers to a general concept and not to a

specific pattern of national postal service.

Despite its open-ended quality, this definition of *universal service* offers guidance for the report required by section 702 of the PAEA. The proposed definition determines what aspects of national postal service should be included in the “history and development” and “scope and standards” of universal service. Guided by this definition, this study will address the history, development, standards, and future of the seven service elements identified and how they ultimately became melded into the present concept of universal service. Other aspects of national postal policy, even though very important in many cases, will be considered outside the scope of the present study. It should be noted that this approach to defining the concept of “universal postal service” is proposed only *for the purposes of putting bounds on the scope of the study required by section 702*. In particular, the proposed definition should *not* be interpreted as a proposed statutory definition of “universal postal service.”

1.2.3 Defining “Universal Service Obligation” in This Study

In other industrialized countries that have addressed postal reform, the concept of universal postal service is closely related to a second concept, a “universal service obligation” or USO. The USO is a *legal standard*. That is, the USO is a legal command from a law maker to a person or organization requiring that person or organization to ensure that a minimum acceptable level of universal service is maintained—by directly providing the necessary service or by contracting with or ordering others to provide the necessary service.

In countries where an explicit USO has been enacted, the USO provides legal assurance that a *basic* level of universal postal services will be maintained. The USO differs from a management plan which sets operational goals that the provider of services should strive to achieve. The scope or quality of universal postal services actually provided may, and generally should, exceed minimum standards set by the USO. For example, in a given country the USO might require delivery to all addresses at least five days per week, but the provider (or providers) of universal services might deliver six days a week to some addresses because it considers six-day service good business. Similarly, the USO might require that at least 80 percent of postal items must be delivered by the

end of the first business day after posting, whereas the provider (or providers) of universal services may in fact deliver 90 percent of postal items within that period. *Universal service* refers to an operational concept, whereas *universal service obligation* refers to a legal concept.

Section 702 of the PAEA appears to distinguish between the legal obligation and actual operation in this manner. Paragraph (b)(2)(A) refers to an “obligation to provide universal service.” It requires the Commission to prepare “an estimate of the costs of the Postal Service attributable to *the obligation to provide universal service*.” This paragraph also requires a description of how such costs would change with “*recommended changes to universal service*.” In this passage, section 702 appears to require not an estimate of the costs actually incurred by the Postal Service in providing universal postal service, but rather an estimate of the net costs that the Postal Service would be required to incur as a result of changes in a universal service obligation, i.e., changes in a *legal obligation* to provide services that the Postal Service would not provide in the absence of such obligation. This calculation is to be repeated for each change in the USO recommended by the Commission. Thus, the phrase “recommended changes to universal service” in section 702(b)(1) appears to refer to changes in the legal requirements for universal service and not to changes in the actual level of service that the Postal Service provides.

In sum, in section 702 of the PAEA Congress appears to be asking for the Commission’s recommendations on changes to the *legal* standards for universal service and not for advice on what services the Postal Service should provide within existing legal standards. Similarly, other references to “standards of universal service and the postal monopoly” in section 702 appear to refer to legal standards.⁹ In referring to legal obligations and standards shaping universal service, section 702 thus appears to be making the same distinction as used in other industrialized countries, i.e., the distinction between the scope of universal postal service actually provided and the scope of the “universal service obligation.”

In this study, therefore, section 702 of the PAEA will be interpreted as requiring

⁹ See §§ 702(a)(2)(A), 702(a)(2)(B), 702(a)(2)(D), 702(b)(2).

an account of the historical development of, the current status of, and the future need for the USO. For purposes of this study, the *universal service obligation* or USO may be defined as follows:

Universal service obligation. A legal requirement that sets specific minimum levels of attainment for service elements of a postal service (or a set of postal services) that serves substantially all persons in the Nation. A universal service obligation may be imposed upon one or more postal operators directly or upon a government agency with authority to regulate postal operators.

It should be noted that this definition of the USO reaches well beyond the words of sections 101 and 403. It includes all legal obligations imposed on the Postal Service relating to the seven service elements of universal service identified above: the geographic scope of services, the range of products, access facilities, delivery services, level and structure rates, quality of service, and user protection.

1.3 Legal Measures Establishing the USO

Under current law, there are four types of legal measures that define obligatory standards for universal postal service: Title 39, appropriations and budget acts of Congress, the Universal Postal Convention, and regulations adopted by the Commission.

Title 39. Title 39 of the United States Code includes several standards which relate to the seven prongs of *universal service* as provided by the Postal Service. For example, section 404(d) requires the Postal Service to follow certain procedures before closing post offices. Sections 3001 to 3010, 3014, and 3015 declare certain items to be non-mailable items. Section 3691 requires the Postal Service to establish standards for quality of service. Section 404(c) requires the Postal Service to offer nationwide service for letters sealed against inspection. Section 3683 requires uniform rates for books and films. Sections 3403, 3404, 3626, and 3629 provide for free or reduced rates for certain items. Sections 3621 to 3634 require the Postal Regulatory Commission to control rates according to certain standards. The net costs incurred by the Postal Service as a result of such legal obligations and restrictions would seem to be properly considered the costs of the USO.

Table 1. Elements of the universal service obligation

| Service element | Objectives in §§ 101 and 403 | Related obligations |
|-----------------------|---|--|
| 1. Geographic scope | “Throughout the United States” (§ 403(a)) serving “all areas” and “all communities” (§ 101(a)), especially rural areas (§ 101(b)) and “as nearly as practicable the entire population of the United States” (§ 403(b)(1)); to or from military personnel abroad (§ 403(a)). | Appropriations acts: 6-day/rural delivery at 1983 level; maintain small/rural offices § 406. Military mail Universal Postal Convention |
| 2. Range of products | A range of postal items including “written and printed matter, parcels, and like materials” (§ 403(a)) suited to “the needs of different categories of mail and mail users” (§ 403(b)(2)). | § 404(c). Letter services § 407. International mail Universal Postal Convention §§ 3621-22. Market dominant products §§ 3626, 3682. Preferred rate products §§ 3001-10, 3014, 3015. Nonmailable items § 3682. Size and weight limits |
| 3. Access | “Ready access” to the postal system through an appropriate level of post offices and other access facilities “consistent with reasonable economies” (§ 403(b)(3)), especially in rural areas (§ 101(b)). | Appropriations acts: maintain small/rural offices § 404(d). Post office closing procedures |
| 4. Delivery | Receipt, transmission, and delivery of postal items (§ 403(a)). | Appropriations acts: 6-day/rural delivery at 1983 level |
| 5. Rates | Fair, reasonable (§ 403(a)), without “undue or unreasonable discrimination” (§ 403(c)), and based on a “fair and equitable” apportionment of costs (§ 101(d)). | § 404(c). Uniform letter rates § 3638. Uniform rates for books and films. §§ 3403, 3404, 3626, 3629. Reduced rates §§ 3621-3634. Standards for PRC review PRC Modern System of Rate Regulation |
| 6. Quality of service | Prompt, reliable, efficient (§ 101(a)), and adequate (§ 403(a)) transmission of postal items, with particular attention to the “most expeditious” transmission of letters (§ 101(e)). | § 3661. PRC report on changes in services § 3691. Quality of service standards |
| 7. User protection | Postal services suited to “the needs of different categories of mail and mail users” (§ 403(b)(2)) and without “undue or unreasonable discrimination” (§ 403(c)). | § 3662. Complaint procedure |

Appropriations and budget acts of Congress. Almost all of the funds used to operate the Postal Service come from postage receipts. Although technically revenue of the United States government (because the Postal Service is an agency of the government), this money has been appropriated to the Postal Service on a permanent basis.¹⁰ On top of this, Congress annually appropriates additional funds to the Postal Service to pay for certain services ordered by Congress. Under the Congressional budget

¹⁰ 39 U.S.C. § 2401(a) (2006).

process, appropriations acts are supplemented by budget resolutions and acts which reconcile existing statutes with budgetary constraints. Provisions added to these appropriations and budget acts can significantly affect the provision of universal service in two ways. First, the amount of money appropriated for the Postal Service may affect the scope of services that can be offered. Second, the appropriations and budget acts may include substantive provisions (often called “riders” if attached to an appropriations act) that direct the Postal Service to provide or not provide certain services. For example, in the 2006 postal appropriations bill, Congress included two riders related to universal service. One directed that Postal Service to maintain six-day delivery and rural delivery of mail at not less than the 1983 levels. The other declared that none of the funds provided could be used to consolidate or close small rural and other small post offices.

Universal Postal Convention. In the Universal Postal Convention (2004), the United States agreed with other member countries of the Universal Postal Union to provide universal services under certain conditions until December 31, 2009. These commitments relate primarily to the geographic scope of services, rates, and quality of services. In addition, the United States government is obliged to provide delivery of inbound international mail and transit services for international mail crossing the territory of the United States. The government has imposed these obligations on the Postal Service.

Regulations of the Postal Regulatory Commission. The Postal Regulatory Commission adopts regulations which create standards for universal services, primarily with respect to rates and classifications and associated accounting practices.

Table 1 provides a summary of the universal service obligations set out in sections 101 and 403 of Title 39 with a list of specific statutory and regulatory elements which impose, or arguably impose, additional or related obligations on the Postal Service. The main body of this study explains the development of sections 101 and 403 and the related statutory and regulatory provisions listed in Table 1. The final chapter will consider to what extent these various elements add up to a *universal service obligation* for the Postal Service.

1.4 *Legal Obligations of the Postal Service Outside the Scope of the USO*

The seven-pronged definition of “universal postal service” adopted for the purpose of this study does not include all of the public service activities of the Postal Service or all of the characteristics of postal services offered by the Postal Service. This definition does not, for example, include the assistance that the Postal Service renders to the Department of State in the processing of passport applications (other than the provision of postal services for such applications). Nor does it include law enforcement activities of the Postal Inspection Service. Such activities are “public services,” but they do not seem to be “universal postal service” as that term is used in section 702 of the PAEA.¹¹

Likewise, the proposed approach to “universal postal service” does not include attributes of the Postal Service which are not elements of the services actually provided to the public. For example, section 101 refers to at least two objectives of national postal policy that are not included in the seven-pronged approach described above: (i) fair conditions of employment (§§ 101(c), 101(g)) and (ii) a fair and equitable distribution of mail transportation contracts (§ 101(f)). While these goals affect the *manner* in which the Postal Service operates, they do not relate to the *service* provided to mailers and addressees. According to normal usage, a “service” is the “helping or doing work for someone else.”¹² In this study, the term *universal service* as used in section 702 of the PAEA is interpreted to refer to *services* provided by the Postal Service and not to non-service attributes of the Postal Service.¹³

¹¹ Section 3651(b)(1)(C) of Title 39, added by the PAEA, appears to draw a similar distinction when it refers to “other public services or activities which, in the judgment of the Postal Regulatory Commission, would not otherwise have been provided by the Postal Service but for the requirements of law.”

¹² See *The New Oxford American Dictionary*, s.v. “service.”

¹³ This view appears to be supported by a review of legislative history. Committee reports leading to the PAEA treat universal service and employment as separate issues. The House report states, “The legislation creates a modern system of rate regulation, establishes fair competition rules and a powerful new regulator, addresses the Postal Service’s *universal service obligation* and the scope of the mail monopoly, and institutes *improvements to the collective bargaining process*.” H.R. Rep. No. 66, 109th Cong., 1st Sess., at 43 (Apr. 28, 2005) (emphasis added). Thus, the universal service obligation seems

Similarly, the definition of the universal service obligation adopted for this study excludes many legal obligations imposed on the Postal Service. While the Postal Service has been established by law to provide postal services to the Nation and must supply these services in accordance with a host of statutory requirements, not all of these requirements are “universal service” requirements. Many requirements—for example, treatment of employees according to certain governmental standards or rules with respect to federal contracting—do not relate to the elements of universal service. The Postal Service would presumably remain bound by these requirements even if it were not obliged to provide universal postal service. Such requirements, although legal constraints imposed on the Postal Service, are not considered universal service requirements or part of the universal service obligation.

Finally, the concept of a “universal service obligation” in this study does not include requirements which the Postal Service imposes on itself. For example, the *Domestic Mail Manual* describes rates and standards for domestic mail services; it is essentially a set of instructions from Postal Service management to the employees. Because the Postal Service is a government agency, it has adopted the *Domestic Mail Manual* as a federal regulation.¹⁴ By its nature, however, an “obligation” appears to refer to an externally-imposed requirement not an internal management practice. In this study,

distinguishable from the collective bargaining process. Likewise, the Senate report refers to “the basic features of universal service—affordable rates, frequent delivery, and convenient community access to retail postal services.” S. Rep. No. 318, 108th Cong., 2d Sess., at 1 (Aug. 25, 2004).

In Congressional debates, leaders in the preparation of the PAEA also seemed to indicate an understanding that universal service and employment practices were different matters of concern. *See, e.g.*, 151 Cong. Rec. H6512 (daily ed., Jul. 26, 2005) (remarks of Mr. Davis of Illinois) (“For consumers it preserves universal service, maintains high-quality standards, and eliminates unfair mailing costs so that they have an affordable and reliable means of communication. For workers it protects collective bargaining and offers whistleblower protections that are needed to ensure safe employment.”); 151 Cong. Rec. H6513 (daily ed., Jul. 26, 2005) (remarks of Mr. T. Davis of Virginia) (“Universal service. First and foremost, the bill preserves the Postal Service’s commitment to universal service, the guaranteed delivery 6 days a week to each and every address in the United States.”); 152 Cong. Rec. H9179 (daily ed., Dec. 8, 2006) (remarks of Mr. Davis of Illinois) (“This bill has many highlights. It provides for ratemaking flexibility, rate stability, universal service, high quality standards, and collective bargaining.”); 152 Cong. Rec. H9180 (daily ed., Dec. 8, 2006) (remarks of Mr. McHugh of New York) (“The universal service mission of the Postal Service remained the same, as stated in Title 39 of the U.S. Code: ‘The Postal Service shall have as its basic function the obligation to provide postal services to bind the Nation together through the personal, educational, literary, and business correspondence of the people. It shall provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities.’”).

¹⁴ 39 C.F.R. § 111.1 (2007).

therefore, standards which the Postal Service imposes on its operations will be considered standards of universal service but not elements of the universal service obligation.

2 Legal Evolution of National Postal Services

Although the idea of a “universal service obligation” is relatively new in American postal law, there is a long history of laws that have shaped development of national postal service. In the nineteenth and early twentieth centuries, Congress functioned more or less as the top management committee of the Post Office. Each Congress considered and enacted multiple postal acts dealing with postal routes, annual appropriations, employee wages, changes in rates and services, international postal agreements, and other topics. Until the end of World War II, each house of Congress maintained a full standing committee devoted exclusively to post offices and post roads.¹⁵ This legal history formed the starting point when Congress, in the 1950s, decided to adopt a formal statement of national postal policy, a first step towards defining a universal service obligation. This chapter summarizes the legal development of the Post Office and its services to approximately the beginning of World War II.

2.1 *Establishment of the Post Office*

On July 26, 1775, three months after the battles of Lexington and Concord and almost a year before the signing of the Declaration of Independence, the second Continental Congress founded the American post office by adopting a simple motion creating the position of Postmaster General:

That a postmaster General be appointed for the United Colonies, who shall hold his office at Philad^a, and shall be allowed a salary of 1000 dollars per an: for himself, and 340 dollars per an: for a secretary and Comptroller, with power to appoint such, and so many deputies as to him may seem proper and necessary.

That a line of posts be appointed under the direction of the Postmaster general, from Falmouth in New England to Savannah in Georgia, with as many cross posts as he shall think fit.

¹⁵ House Committee on Post Office and Post Roads (1808-1946) and the Senate Committee of Post Offices and Post Roads (1816-1947). See National Archives, Legislative Branch, The Center for Legislative Archives, "Guide to the Records of the U.S. House of Representatives, 1789-1989," and "Guide to the Records of the U.S. Senate, 1789-1989" available from <http://www.archives.gov/legislative/finding-aids/index.html>.

Table 2. Major statutes in of development of universal services, 1775 to 1960

| | |
|------------|---|
| 1775 | Post Office founded by Continental Congress. Letters only. |
| 1781 | First postal act, an ordinance of Continental Congress. |
| 1792, 1794 | First postal acts of Congress. Post Office established as an office in Treasury. Newspapers admitted (1792). Magazines admitted on space available basis (1794). |
| 1825 | Codification of postal laws. |
| 1836 | Reorganization of the Post Office. Fiscal controls tightened; funds to be appropriated by Congress. |
| 1845, 1851 | "Cheap postage" brings reduction in letter rates, weight-based rates, envelopes, pre-paid stamps. Rate for miscellaneous printed matter like advertisements (1845). 3¢ per half oz for intracity letters up to 3000 miles (1851). |
| 1847 | Outbound international mail service begins. |
| 1863 | Free city delivery begins in large cities (first significant collection and delivery services). Mail divided in "classes" (3 classes). |
| 1872 | Codification of postal laws. Post Office established as Post Office Department. |
| 1874 | Revised Statutes (codification of all U.S. laws). Universal Postal Union founded (U.S. is charter member). |
| 1879 | Four classes of mail adopted (lasts until 1996). |
| 1885 | 2¢ per oz. stamp for letters. First uniform letter rate for intercity and intracity letters. |
| 1896, 1902 | Rural free delivery begins (experiment, 1896; made permanent, 1902) |
| 1912 | Parcel post begins. |
| 1912, 1916 | Village delivery begins (experiment, 1912; made permanent, 1916). |
| 1932, 1933 | 3¢ stamp for letters in 1932; local rates reduced to 2¢ in 1933 |
| 1958 | 4¢ stamp for letters; Postal Policy Act of 1958 |
| 1960 | Codification of postal laws |

That the allowance to the deputies in lieu of salary and all contingent expences, shall be 20 per cent. on the sums they collect and pay into the General post office annually, when the whole is under or not exceeding 1000 Dollars, and ten per cent. for all sums above 1000 dollars a year.

That the rates of postage shall be 20 p^r cent less than those appointed by act of Parliament.¹⁶

¹⁶ 2 J. Cont. Cong. 208 (Jul. 26, 1775).

Benjamin Franklin, a printer and until 1774 one of top officials of the British Post Office in North America, was chosen to be the first Postmaster General.

On July 4, 1776, Congress declared independence from England and began work on a legal framework for the new government. Articles of Confederation were not approved by Congress until November 15, 1777, and did not become effective until ratification by Maryland in March 1781. Under the Articles of Confederation, the federal government was granted *exclusive* authority to establish an *interstate* post office. Article IX provided as follows:

The United States in Congress assembled shall also have the sole and exclusive right and power of . . . establishing or regulating post offices from one State to another, throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office.¹⁷

Pursuant to the Articles of Confederation, Congress formally established and organized a national post office in the ordinance of October 18, 1782. The ordinance was a jumbled text drawn mainly from the British postal law of 1710 and consisting of eighteen unnumbered paragraphs. Establishment of the Post Office was set out as follows:

Be it therefore ordained by the United States in Congress assembled, and it is hereby ordained by the authority of the same, that a continued communication of posts throughout these United States, shall be established and maintained by and under the direction of the Postmaster General of these United States, to extend to and from the State of New Hampshire and the State of Georgia inclusive, and to and from such other parts of these United States, as from time to time, he shall judge necessary, or Congress shall direct.

And be it further ordained by the authority aforesaid, that the Postmaster General for the time being, shall, from time to time, superintend and direct the Post Office in all its various departments and services throughout the extent aforesaid¹⁸

In 1789, a new federal government was established under a Constitution that superseded the Articles of Confederation. The Constitution authorized Congress “[t]o

¹⁷ *Articles of Confederation*, art. IX (1781) (emphasis added).

¹⁸ Ordinance of Oct. 18, 1782, 23 J. Cont. Cong. 670.

establish Post Offices and post Roads,”¹⁹ but unlike the Articles of Confederation did not grant Congress the sole and exclusive power to do so nor limit the federal government to the operation of interstate postal services. In its first three sessions, Congress continued in effect the post office established by the ordinance of 1782 while it considered how to implement its new authority.²⁰ The main issue was how much Congress should involve itself in management of the postal system and how much discretion should be delegated to the President. In the end, Congress decided to retain control over the main features of the post office.

The Post Office and national postal service were then organized by the act of 1792. Following English practice, the office of the Postmaster General was located within the Department of the Treasury.²¹ Salaried staff consisted of only the Postmaster General and a handful of assistants. Until the second half of the nineteenth century, the major function of the Post Office was contracting for intercity transportation of the mails.²² Postmasters were akin to franchisees; they were appointed by the Postmaster General or the President (after 1829) and compensated from commissions on postage they collected from *addressees* (senders rarely prepaid postage) when they called for their letters (letters were rarely delivered).²³

In the 1820s, the prestige of the Post Office rose under the leadership of a capable and strong-minded Postmaster General, John McLean. McLean began to refer to the “Post Office Department” and insisted that the proper role of the Post Office was public service, not collection of general revenues as in the British system.²⁴ The notion of the

¹⁹ U.S. Const. art. I, § 8.

²⁰ Act of Sept. 22, 1789, ch. 16, 1 Stat. 70; Act of Aug. 4, 1790, ch. 36, 1 Stat. 178; Act of Mar. 3, 1791, ch. 23, 1 Stat. 218.

²¹ Act of Feb. 20, 1792, ch. 7, § 3, 1 Stat. 232, 234.

²² Act of Feb. 20, 1792, ch. 7, § 6, 1 Stat. 232, 234. Until 1829, contract transportation accounted for almost 60 percent of total expenses. Rich, *History of the Post Office* App. C, Tables III, VIII.

²³ See, e.g., Act of Mar. 3, 1825, ch. 64, § 14, 4 Stat. 102, 105-06 (specifying commissions allowed postmasters).

²⁴ See John, *Spreading the News* 107-09; Rich, *History of the Post Office* 112-13, 164-65. Rich writes, “A careful examination of the letter-books of the Postmaster General shows that the heading ‘General Post Office’ was in use December, 1821, when it was replaced by ‘General Post Office Department.’ After September 1, 1823, letters were headed ‘Post Office Department.’” *Ibid.*, 112-13.

Post Office as a separate department caught on. A important codification of the postal laws in 1825 was entitled “An Act to reduce into one the several acts establishing and regulating the Post-office Department.”²⁵

In 1829, the newly elected President Andrew Jackson took over appointment of postmasters earning more than \$1,000 in commissions as a way of rewarding his supporters. President Jackson moved McLean to the Supreme Court because he opposed politicization of the Post Office. Jackson then appointed William T. Barry to be Postmaster General and included him in his cabinet. In this manner, the Postmaster General became a cabinet official.²⁶

In 1836, Congress reorganized the Post Office to improve accounting controls.²⁷ Revenues were required to be transferred to the Treasury instead of disbursed directly by the Postmaster General. The Postmaster General was directed to submit an itemized budget to Congress each year, and Congress authorized funds for postal activities as it deemed appropriate. The Postmaster General was also required to make regular reports to Congress on the operation of the Post Office. A new office, the Auditor of the Post Office, was created within the Treasury to oversee the accounts of the Post Office. The Auditor was appointed by the President with the advice and consent of the Senate. The President’s authority to appoint postmasters earning more than \$1,000 in commission was confirmed by statute, but appointments were made subject to the advice and consent of the Senate.

In 1872, Congress codified the postal laws for the first time since 1825 and formally established the Post Office Department as its own department of government. The four principal officers, the Postmaster General and three Assistant Postmasters General, were to be appointed by the President with the advice and consent of the Senate and could only be removed by the same process. Their terms of office were aligned with the President’s.²⁸ The body of postal laws was not codified again by Congress until

²⁵ Act of Mar. 3, 1825, ch. 64, 4 Stat. 102.

²⁶ See Roper, *The United States Post Office* 55, 295; John, *Spreading the News* 213-18.

²⁷ Act of July 2, 1836, ch. 270, 5 Stat. 80; See Roper, *The United States Post Office* 57-58.

²⁸ Act of June 8, 1872, ch. 335, §§ 1-2, 17 Stat. 283, 283-84. Terms of office for the officers of the

1960,²⁹ and the Post Office Department was not fundamentally reorganized until the Postal Reorganization Act of 1970.

2.2 Evolution of the Geographic Scope of Postal Service, 1789-1945

2.2.1 Intercity Postal Systems: Post Roads and Post Offices

Early postal laws were grounded in a pre-industrial concept of a “postal” system. Before about 1840, a “postal” system was literally a series of posts, or relay stations, located along a “post road.” In eighteenth-century England and colonial America, the “mail” (or pouch) was originally carried by walking messengers (a “foot post”) or by mounted riders (a “horse post”). In the late eighteenth century, as roads improved and the volume of mail increased, “stage coaches” were employed on main roads. On water routes, the mail was carried by regularly scheduled “packet boats.” The key characteristic was the regular schedule, for ships normally sailed only when there was sufficient cargo to justify a voyage.

For early Congresses, specifying the geographic reach of the national postal service was a matter of designating which roads would be used as “post roads” along which “post offices” would be located for collection and distribution of letters and newspapers. In the first section of the first postal act, enacted in 1792, Congress listed the post roads to be established. The act begins by establishing the route of the main North-South post road from Maine to Georgia as follows:

From Wiscasset in the district of Maine, to Savannah in Georgia, by the following route, to wit: Portland, Portsmouth, Newburyport, Ipswich, Salem, Boston, Worcester, Springfield, Hartford, Middletown, New Haven, Stratford, Fairfield, Norwalk, Stamford, New York, Newark, Elizabethtown, Woodbridge, Brunswick, Princeton, Trenton, Bristol, Philadelphia, Chester, Wilmington, Elkton, Charlestown, Havre de Grace,

Post Office Department extended one month after the President’s.

²⁹ In 1926, Congress codified all prior statutes of a permanent nature into a topically organized consolidation called the United States Code. The United States Code was not, however, positive law, only “prima facie” evidence of the law. Act of June 30, 1926, ch. 712, 44 Stat. 777. The law remained the original statutes unless Congress enacted specific titles of the code as positive law and repealed the original statutes. Congress did not enact Title 39, the postal title of the United States Code, into positive law until 1960.

Hartford, Baltimore, Bladensburg, Georgetown, Alexandria, Colchester, Dumfries, Fredericksburg, Bowling Green, Hanover Court House, Richmond, Petersburg, Halifax, Tarborough, Smithfield, Fayetteville, Newbridge over Drowning creek, Cheraw Court House, Camden, Statesburg, Columbia, Cambridge and Augusta; and from thence to Savannah³⁰

Other post roads branched off the main route, for example, “from Baltimore, by Fredericktown and Sharpsburg, to Hagarstown; and from thence to Chambersburg” and “from New York, by Albany, Bennington, Manchester and Rutland, to Burlington, on Lake Champlain.”³¹ In addition to the post roads established by Congress, the Postmaster General was authorized to enter into contracts to extend the lines of posts for up to eight years.³²

The length of post roads rose rapidly from about 1,875 miles in 1790 to 343,888 in 1880. In 1792, the list of post roads took up two pages in the *Statutes at Large*, the official compilation of the acts of Congress. Each Congress considered numerous post road bills. In 1810, Congress repealed previous post road laws and codified the list of post roads in an act that took 10 pages of the *Statutes at Large*.³³ In 1854, the same exercise required 198 pages.³⁴ In the Revised Statutes adopted in 1874, codification of the list of post roads was placed in a separate part, requiring 343 pages.³⁵

Congress continued to designate individual post roads in legislation until 1884. Previously, Congress has used a generic designation of post roads to authorize the Postmaster General to contract for carriage of mail by non-road modes of travel. In 1823, Congress declared “all waters on which steamboats regularly pass from port to port” to be post roads.³⁶ In 1838, Congress declared all railroads to be “post routes.”³⁷ In 1884,

³⁰ Act of Feb. 20, 1792, ch. 7, § 1, 1 Stat. 232.

³¹ Act of Feb. 20, 1792, ch. 7, § 1, 1 Stat. 232, 233.

³² Act of Feb. 20, 1792, ch. 7, § 2, 1 Stat. 232, 233.

³³ Act of Apr. 28, 1810, ch. 30, 2 Stat. 579.

³⁴ Act of Aug. 8, 1854, ch. 230, 10 Stat. 349.

³⁵ Revised Statutes, Part 2 (1875).

³⁶ Act of Mar. 3, 1823, ch. 33, § 3, 3 Stat. 764, 767.

³⁷ Act of July 7, 1838, ch. 172, § 2, 5 Stat. 271, 283. It is unclear why this provision uses the term “post route” instead of the traditional term “post road.”

Congress declared “all public roads and highways while kept up and maintained as such are hereby declared to be post routes.”³⁸

Table 3. Post roads and post offices, 1790 to 1900

| | Post roads | Post offices | Post roads per 1000 sq. mi. | Post roads per 100,000 pop. | Post offices per 1000 sq. mi. | Post offices per 100,000 pop. |
|------|------------|--------------|-----------------------------|-----------------------------|-------------------------------|-------------------------------|
| 1790 | 1,875 | 75 | 2 | 48 | 0 | 2 |
| 1800 | 20,817 | 903 | 24 | 392 | 1 | 17 |
| 1810 | 36,406 | 2,300 | 22 | 503 | 1 | 32 |
| 1820 | 73,492 | 4,500 | 42 | 762 | 3 | 47 |
| 1830 | 114,780 | 8,450 | 66 | 892 | 5 | 66 |
| 1840 | 155,739 | 13,468 | 89 | 912 | 8 | 79 |
| 1850 | 193,751 | 18,417 | 66 | 835 | 6 | 79 |
| 1860 | 240,594 | 28,498 | 81 | 765 | 10 | 91 |
| 1870 | 231,232 | 28,492 | 78 | 600 | 10 | 74 |
| 1880 | 343,888 | 42,989 | 116 | 686 | 14 | 86 |
| 1890 | | 62,401 | | | 21 | 99 |
| 1900 | | 76,688 | | | 26 | 101 |

Sources: Rich, *The History of the United States Post Office 182*; *Postmaster General Ann. Rept.* 1829 to 1880), Carter et al., *Historical Statistics of the United States: Millennial Edition*, tables Aa1-2; Dg181.

Although there was little opposition to the bill relinquishing congressional control over the designation of post roads, Senator Preston Plumb (Repub., Kansas) was concerned. He precipitated a revealing discussion that indicates how little control Congress actually exerted over the geographic scope of the national postal service. In the following passage, the other speakers were Senator Nathaniel Hill (Repub., Colorado), Chairman of the Committee on Post Office and Post Roads, Senator Eugene Hale (Repub., Maine), and Senator M.C. Butler (Dem., South Carolina).

Mr. PLUMB. . . . This simply takes out of the hands of Congress all control of the postal service of the United States except so far as relates to the carriage on railroads. The Postmaster-General having before him that ganglion of tracts called township roads, county roads, State roads, national roads, may at his own sweet will put on daily service, weekly service, tri-weekly service, semi-monthly or monthly or any other service he pleases, obligating the Government to pay for it, and Congress will know nothing about it until after the contracts have been made and they

³⁸ Act of Mar. 1, 1884, ch. 9, 23 Stat. 3.

shall be reported to Congress with a polite request to have the necessary money appropriated to pay obligations already incurred.

While I can think of a great many cases where this power would be justifiable, it seems to me it is wise to consider that heretofore Congress has never given to the Postmaster-General power to put on temporary service, that is, service over a route not established by law, for a longer period than twelve months, and I think now the limit is six months by law. For a long time there was no provision whatever for service of that kind. I only speak of that to show how cautiously and conservatively Congress has heretofore guarded the power of the establishment of postal service.

Mr. SAWYER. I should like to ask the Senator from Kansas if he has ever known a case where a member or a Senator asked to have a road put in as a post-road where it was not done? This is to save us from passing a large post-route bill every year.

Mr. PLUMB. There is no doubt our methods of legislation are cumbrous, but that is one of the inevitable accompaniments of republican government anyhow; and even if we do legislate as a matter of course, that is to say, if we do put on post-routes simply at the request of anybody who chooses to offer an amendment to that effect, that is a better guard than it is to throw open the entire road system of the United States to the Postmaster-General with a continual discretion to him that he shall wherever he sees fit put on service not limited to daily or weekly or tri-weekly, but to make it just as much and as often as he pleases.

Mr. BUTLER. If the Senator will pardon me, I think the Postmaster-General practically does that now. We pass a post-route bill every session embracing a number of post-routes, and the Postmaster-General puts postal service on or not as he sees fit. He puts weekly service or tri-weekly service or daily service on what are known as the star routes, or no service at all, just as he sees proper. It seems to me he has just as much power now for all practical purposes as he would have under the operation of this bill.

Mr. PLUMB. He can not put service on a route that is not established by law.

Mr. BUTLER. Of course he can not, but he does put it or not on all that are established by law, as he chooses.

Mr. PLUMB. It is true he does; but if we open to him not only the number of routes named in the statute, but all the other traveled roads in the United States, and say to him he has that power, how do we know he will not exercise it improvidently? It is simply abdicating the whole control of the postal service in favor of the Postmaster-General. That is all it is.

Mr. HILL. I should like to ask the Senator from Kansas if he is not aware that there are thousands of post-routes now established in the

United States on which no service has been ever put, so that the mere fact of establishing more routes will not in the slightest degree increase the amount of service which shall be put on the routes?

Mr. PLUMB. If that is true it is a confession that this bill is not necessary; and inasmuch as we have got along reasonably well under the old system, why not maintain it?

Mr. HILL. It has been the custom in Congress for many years at every session to pass a post-route bill. It involves a great deal of labor and a great deal of expense, and it has appeared to the committee to be an entirely unnecessary labor. We put upon those bills in every case every route that is offered, no matter from what source it comes; we see that the route is put on the bill, and never of my knowledge has there been an objection made to any route being put upon one of those bills. I can see no harm that can possibly result from the passage of this bill and a great deal of good.

Mr. HALE. I suppose that what the Senator from Colorado has alluded to is precisely the object of this bill. Every year there is an annual post-route bill and every Senator who wants a route put on in his State and every Representative in the other branch who wants a route put on in his district puts it on; nobody ever objects; it goes into the post-route bill; it goes through without an objection; and the Postmaster-General puts as much service as he chooses, after investigation, on those routes.

Mr. BUTLER. And as little as he chooses.

Mr. HALE. And as little as he chooses. The operation practically is that if there is a new route to be established it frequently has to wait a year or a session of Congress before it can be got into the post-route bill, but it always goes in in time, nobody objecting. I take it the principle of this bill is to take away the necessity for that delay, and instead of doing it piecemeal as we always do nobody objecting, to give general authority to the Postmaster-General to put on service wherever he deems it essential without waiting for this annual post-route bill. It seems to me that it is a good measure and that it will save something by avoiding the passage of the annual bill which is practically useless.³⁹

Congress did not exercise the same level of control over establishment of post offices. The 1792 act authorized the Postmaster General to appoint “deputy postmasters, at all places where such shall be found necessary.”⁴⁰ Each deputy postmaster was to “keep an office in which one or more persons shall attend at such hours as the Postmaster

³⁹ 15 Cong. Rec. 1113 (Feb. 14, 1884).

⁴⁰ Act of Feb. 20, 1792, ch. 7, § 3, 1 Stat. 232, 234.

General shall direct, for the purpose of performing the duties thereof.”⁴¹ In the post act of 1799, authority to establish post offices was clearly vested in the Postmaster General:

The Postmaster General shall appoint an assistant, and such clerks as may be necessary for performing the business of his office; he shall establish post-offices, and appoint postmasters, at all such places as shall appear to him expedient, on the post roads that are or may be established by law . . .

⁴²

This delegation of authority remained essentially unchanged through the Revised Statutes of 1878⁴³ and was incorporated in similar terms in the postal code of 1960.⁴⁴

While the authority to establish a post office presumably implied the authority to discontinue a post office, in February 1861, on the eve of Civil War, Congress explicitly authorized the Postmaster General to discontinue post offices when in his judgment,

the postal service cannot be safely continued, or the post office revenues collected, or the postal laws maintained, on any post route, by reason of any cause whatsoever, the Postmaster General is hereby authorized to discontinue the postal service on such route, or any part thereof, and any post offices thereon, till the same can be safely restored, and shall report his action to Congress.⁴⁵

This authority, too, was retained in the postal law with little change through the post code of 1960.⁴⁶

Establishment of post offices may be distinguished from the erection of post office *buildings*. Early post offices were not separate, monumental buildings. With the exception of a few major cities, post offices were usually located in leased quarters of buildings such as hotels or mercantile exchanges. Not until the Civil War did Congress

⁴¹ Act of Feb. 20, 1792, ch. 7, § 7, 1 Stat. 232, 234-35.

⁴² Act of Mar. 2, 1799, ch. 43, § 1, 1 Stat. 733.

⁴³ Revised Statutes § 3829 (2d ed., 1878).

⁴⁴ Act of Sept. 2, 1960, Pub. L. No. 86-682, § 701(a)(1), 74 Stat. 578, 582 (“The Postmaster General may— (1) establish post offices as he deems expedient”).

⁴⁵ Act of Feb. 28, 1861, ch. 61, 12 Stat. 177.

⁴⁶ Act of Sept. 2, 1960, Pub. L. No. 86-682, § 701(a)(2), 74 Stat. 578, 582 (“The Postmaster General may . . . (2) discontinue post offices when the efficiency of the service requires or revenues are endangered from any cause”).

begin to build substantial federal buildings to house the post office, federal court, customs agents, and other federal offices.⁴⁷

Since 1900, the role of post offices has declined as a measure of the extent of the national postal service. Most postal patrons today receive most postal services by means of collection and delivery services. In 2000, the United States had fewer post offices per million residents (99) than it did in 1794 (101). The high water mark for the system of post offices was attained in 1894, when there were 1,022 post offices per million residents, or one post office for every 987 residents. In absolute terms, the maximum number of post offices was 76,945 in 1901. Today, the Postal Service has about half that number.

2.2.2 Early City Delivery Services, 1792-1862

Before the Revolutionary War, intercity letters were occasionally delivered to recipients in the environs of a post office by messengers informally appointed by the postmaster.⁴⁸ Section 28 of the postal act of 1794 explicitly authorized the Postmaster General to continue this practice. Local “letter carriers” were not salaried employees of the Post Office but paid 2¢ per letter by the addressee in addition to the postage due, which the letter carrier collected for the postmaster. Although it was possible for a sender to pre-pay postage, it was not the custom and rarely happened. The 1794 act also provided that a person could drop a letter at a post office for later collection by someone residing in same city. For each “drop letter,” a postmaster received 1¢. Custody of drop letters and delivery by letter carriers were not considered “postal” services, and letters so handled were not “in the mail” or “carried by post.”

Section 28 of the 1794 act provided in full:

⁴⁷ John, *Spreading the News* 112-15. In 1917, a prominent postal official suggested that extravagant buildings were unnecessary to providing an efficient postal service: “It is short-sighted for the people in any locality to strive to secure the expenditure of Government money in the unnecessary construction or elaborate ornamentation of Federal buildings for post offices, when this money might be spent to better advantage, in the interest not only of the whole country but also the community concerned, in the extension and improvement of mail facilities.” Roper, *The United States Post Office* 90. Daniel Roper was the First Assistant Postmaster General from 1913 to 1916.

⁴⁸ Rich, *History of the Post Office* 104.

SEC. 28. And be it further enacted, That letter carriers shall be employed at such post-offices as the Postmaster General shall direct, for the delivery of letters in the places, respectively, where such post-offices are established; and for the delivery of each such letter, the letter carrier may receive of the person to whom the delivery is made, two cents: Provided, That no letter shall be delivered to such letter carrier for distribution, addressed to any person who shall have lodged at the post-office a written request, that his letters shall be detained in the office. And for every letter lodged at any post-office, not to be carried by post, but to be delivered at the place where it is so lodged, the deputy postmaster shall receive one cent of the person to whom it shall be delivered.⁴⁹

Statutory provisions relating to letter carrier delivery and local drop letters remained unchanged through the postal code 1825 act.⁵⁰

Given the high cost of delivery, almost all addressees went to the post office for their letters. In major cities, merchants asked the postmaster to establish private letter boxes at the post office so they could collect their mail without waiting in the public queue. Despite official discouragement of private boxes, in 1825 the New York City Post Office had 900 private boxes compared to six city delivery carriers. By 1850, the number of private boxes had risen to more than 3,000.⁵¹ In 1825, the postmaster of New York unofficially agreed to collect the letters of certain merchants from a designated store, saving them the trouble of taking the letters to the post office.⁵² The postal act of 1836 first sanctioned use of letter carriers to collect mail and deliver local drop letters, albeit for an additional fee.⁵³

Notwithstanding these early steps, true local postal services were pioneered not by the Post Office, but by private companies called “penny posts” operating in New York City and other major cities. In the 1840s, penny posts inaugurated many of the services that later became standard attributes of government postal service, including house

⁴⁹ Act of May 8, 1794, ch. 23, § 28, 1 Stat. 354, 366.

⁵⁰ Act of Mar. 3, 1825, ch. 64, § 36, 4 Stat. 102, 112.

⁵¹ Harlow, *Old Post Bags* 396-400.

⁵² Rich, *History of the Post Office* 105.

⁵³ Act of July 2, 1836, ch. 270, § 41, 5 Stat. 80, 89.

delivery, street collection boxes, prepayment by adhesive stamps, special delivery, and local parcel post. At least 140 private local posts operated in the United States.⁵⁴

By June 1842, City Despatch Post was delivering 450 local letters per day in New York City compared to the Post Office's 250. In August 1842, Postmaster General Wickliffe bought City Despatch Post, hired its former owner as manager, and went into the local mail business under the name United States City Despatch Post.⁵⁵ For each local letter, United States City Despatch was required to charge the 1¢ drop letter charge plus a charge of 2¢ for delivery to the addressee, for total charge of up to 3¢ per local letter. Meanwhile, the main rival, Boyd's City Express, charged only 2¢ per letter.⁵⁶ The Post Office's experiment operating United States City Despatch Post lasted four and a half years. In late 1846, United States City Despatch Post closed. It was apparently brought down by an increase in drop letter rates from 1¢ to 2¢ in 1845.⁵⁷ After 1845, private penny posts flourished in New York, Boston, and Philadelphia, and other cities.

The Post Office's first significant foray into local delivery was taken in the wake of the postage reduction act of 1851.⁵⁸ The 1851 act halved the drop letter rate to 1¢. The act also provided for a fee of 1¢ for delivery of local or intercity letters; a portion of the delivery charge, set by the Postmaster General, was allowed for the letter carrier as a commission.⁵⁹ In addition, section 10 of the act gave the Postmaster General authority to establish "convenient places of deposit" and to designate new "post routes" within cities.⁶⁰ By 1859, the Post Office had established delivery systems in fourteen of the

⁵⁴ See Perry, *Byways of Philately* 1; Patton, *Private Local Posts* xiii.

⁵⁵ See 1842 *Postmaster General Ann. Rept.*, in S. Doc. No. 1, 27th Cong., 3d Sess., at 727, 755-62 (1843). See also Scheele, *Short History of the Mail Service* 72.

⁵⁶ Patton, *Private Local Posts* 52-53, 118.

⁵⁷ Act of Mar. 3, 1845, ch. 43, § 1, 5 Stat. 732, 732-33. This increase was apparently adopted to discourage intercity private expresses from dropping letters with the local post office for delivery.

⁵⁸ Act of Mar. 3, 1851, ch. 20, 9 Stat. 587.

⁵⁹ Act of Mar. 3, 1851, ch. 20, § 1, 9 Stat. 587, 588.

⁶⁰ Act of Mar. 3, 1851, ch. 20, § 10, 9 Stat. 587, 591 ("[I]t shall be in the power of the Postmaster-General, at all post-offices where the postmasters are appointed . . . to establish post routes within the cities or towns, to provide for conveying letters to the post-office by establishing suitable and convenient places of deposit, and by employing carriers to receive and deposit them in the post-office; and at all such offices it shall be in his power to cause letters to be delivered by suitable carriers, to be appointed by him for that

largest cities. That year, the Post Office delivered over 11 million letters, newspapers, and pamphlets,⁶¹ but it appears that almost all were intercity items, for Postmaster General Joseph Holt complained that, with respect to local letters, “[t]his correspondence is now almost entirely in the hands of private expresses.”⁶²

In 1861, Congress extended the postal monopoly to forbid private carriage on postal routes within any city or town.⁶³ Nonetheless, the Post Office was unable to make significant headway in local postal services until the introduction of free city delivery two years later.

2.2.3 Free City Delivery Service, 1863

In the important postal act of 1863, Congress initiated what is regarded as the beginning of true local postal service by the Post Office by authorizing “free” city delivery in major cities. “Free” referred to the delivery of *intercity* letters, the only letters “in the mails,” without a separate delivery charge added to the prepaid *postage* charge of 3¢ per half ounce.⁶⁴ The scope of the city delivery system was left to the discretion of the Postmaster General. It could be established wherever he thought the city carrier system was “perfected”:

SEC. 12. And be it further enacted, That whenever the Postmaster-General shall have perfected the carrier system in any postal district so as, in his judgment, to justify him therein, he is authorized to make delivery, within any prescribed postal district, of mail matter by letter-carriers, as frequently as the public convenience in such district shall require, and shall make all proper regulations for that purpose.⁶⁵

At the same time, the 1863 act required prepayment of local letters, “letters not transmitted through the mails,” at a standard rate of 2¢ per half ounce.

purpose”).

⁶¹ 1859 *Postmaster General Ann. Rept.*, in S. Exec. Doc. No. 36-2, at 1476 (1859) (Report of the Officer of the Auditor of the Treasury for the Post Office Department).

⁶² 1859 *Postmaster General Ann. Rept.*, in S. Exec. Doc. No. 36-2, at 1399 (1859).

⁶³ Act of Mar. 2, 1861, ch. 73, § 4, 12 Stat. 204, 205.

⁶⁴ Act of Mar. 3, 1863, ch. 71, § 22, 12 Stat. 701, 705.

⁶⁵ Act of Mar. 3, 1863, ch. 71, § 12, 12 Stat. 701, 703.

SEC. 23. And be it further enacted, That the rate of postage on all letters not transmitted through the mails of the United States, but delivered through the post-office or its carriers, commonly described as local or drop letters, and not exceeding one half ounce in weight, shall be uniform at two cents, and an additional rate for each half ounce or fraction thereof of additional weight, to be in all cases prepaid by postage stamps affixed to the envelope of such letter, but no extra postage or carrier's fee shall hereafter be charged or collected upon letters delivered by carriers, nor upon letters collected by them for mailing or for delivery.⁶⁶

Since they no longer were paid by mail recipients, letter carriers became salaried employees. The Postmaster General was authorized to establish branch post offices, collection boxes, and delivery services “when, in his judgment, the public interest or convenience may require it.”⁶⁷ Letter carriers became salaried employees of the Post Office.⁶⁸ Free city delivery was provided in 49 cities by the end of 1863.⁶⁹

Local postal service and intercity postal service were still not viewed as a unified service. The 1863 act retained the historic distinction between postal items “in the mail” and local postal items.⁷⁰ Although postage rates for local letters were established by law, delivery rates for local newspapers, periodicals, and circulars were negotiated between the local postmaster and publishers. The postmaster was furthered authorized to deliver local packages “exceeding the maximum weight ofailable packages.”⁷¹ In effect, the Post Office was operating two complementary businesses: the postal service and local delivery services.

In 1865, Congress made free city delivery mandatory in every city with more than 50,000 residents. The act also clarified that pre-1863 rules for local delivery remained in

⁶⁶ Act of Mar. 3, 1863, ch. 71, § 23, 12 Stat. 701, 705.

⁶⁷ Act of Mar. 3, 1863, ch. 71, § 13, 12 Stat. 701, 703-04.

⁶⁸ Act of Mar. 3, 1863, ch. 71, § 11 (letter carrier salaries), § 12 (local delivery services), § 13 (branch post offices and receiving boxes), §§ 19-20 (classes of mail), §23 (local letter rate; no carrier's fee for delivery), 12 Stat. 701, 703-05. The 1863 act also, for the first time, divided the mail into three “classes”: letters, regular printed matter, and miscellaneous matter.

⁶⁹ 1863 *Postmaster General Ann. Rept.*, in H.R. Exec. Doc. No. 38-1, at 4 (1863).

⁷⁰ For example, Act of Mar. 3, 1863, ch. 71, § 23, 12 Stat. 701, 705, referred to “the rate of postage on all letters not transmitted through the mails of the United States, but delivered through the post-office or its carriers, commonly described as local or drop letters.”

⁷¹ Act of Mar. 3, 1863, ch. 71, § 15, 12 Stat. 701, 704.

effect where free city delivery was not provided, except prepayment would be required for drop letters at the rate of 1¢ per letter.⁷²

In 1873, Congress authorized, but did not require, the Postmaster General to extend the city delivery system to cities with 20,000 or more residents.⁷³ The next year, however, Congress repented its extravagance and raised the minimum size of the cities eligible for free city delivery to 30,000.⁷⁴ Postal revenues improved, and in 1879 Congress authorized the Postmaster General to provide free city delivery in cities and towns with not less than 20,000 residents and from post offices with gross revenues of not less than \$20,000 the previous year.⁷⁵ In 1887, Congress authorized the Postmaster General to provide free city delivery in cities and towns with not less than 10,000 residents and from post offices with gross revenues of not less than \$10,000 the previous year.⁷⁶ At this point, political agitation for further extension of free city delivery came to an end, for city carrier service extended, at least potentially, to virtually every city and town of any size.⁷⁷

2.2.4 Rural Free Delivery, 1896

In 1890, about 19 million of the nation's 76 million inhabitants enjoyed mail delivery by virtue of the free city delivery system.⁷⁸ Members of Congress representing rural constituencies began to argue that it was inequitable to provide daily free delivery to city households while requiring country residents to travel, often many miles, to retrieve their mail.⁷⁹ The Post Office, however, resisted calls to develop a rural delivery service on the grounds that costs would greatly exceed revenues.

⁷² Act of Mar. 3, 1865, ch. 89, § 15, 13 Stat. 504, 507.

⁷³ Act of Mar. 3, 1873, ch. 231, § 1, 17 Stat. 556, 557.

⁷⁴ Act of June 23, 1874, ch. 456, § 1, 18 Stat. 231.

⁷⁵ Act of Feb. 21, 1879, ch. 95, § 5, 20 Stat. 317. The act restated the rule that free city delivery in cities and towns with more than 50,000 residents was mandatory.

⁷⁶ Act of Jan. 3, 1887, ch. 14, § 1, 24 Stat. 355.

⁷⁷ See generally Fuller, *American Mail* 71-74.

⁷⁸ Fuller, *RFD* 14.

⁷⁹ Fuller, *American Mail* 75.

In 1896, Postmaster General William L. Wilson launched an experimental “rural free delivery” or RFD service when Congress authorized \$10,000 in addition to previously authorized but unexpended sums, a total of \$40,000.⁸⁰ Congress did not prescribe the nature of the experiment nor where rural free delivery should be provided. In 1897, after testing the service in different states and along routes with various conditions, First Assistant Postmaster General Perry Heath pronounced rural delivery a success, “The general results obtained have been so satisfactory as to suggest the feasibility of making rural delivery a permanent feature of postal administration in the United States; not immediately, or in all districts at once, but in some gradual and graduated form.”⁸¹ The Post Office was deluged with petitions to be included in the RFD experiment, and Congress increased the appropriation for the program in each of the next several years.

There was never any thought that RFD would provide delivery to the door of the addressee as in city service. Rural free delivery was provided to a box located along a public road from which the recipient would have to retrieve his mail. Nor was there any idea that RFD would serve every household in rural America. RFD was limited to areas with improved roads that were sufficiently densely settled so that, in principle at least, a rural route would deliver to about 100 households in twenty-five miles, an average of four families per mile of postal route.

Special agents were instructed that, as a rule, where good roads prevailed no rural route should be less than 25 miles in length, and that no route ought to be started where the roads were not graveled or macadamized.

It was further required that there should be not less than 100 families within easy reach of each route, and a careful proviso was inserted that rural free delivery must not be made a mere adjunct to city delivery by giving a suburban service to residents within 2 or 3 miles at a post office

⁸⁰ 1896 *Postmaster General Ann. Rept.*, in H.R. Doc. No. 54-4, at 25, 129 (1896). See Act of June 9, 1896, ch. 386, 29 Stat. 313, 314 (“That ten thousand dollars of this amount may be used to defray the expense of experiments in rural free delivery under the direction of the Postmaster-General, and that the amount heretofore appropriated for this purpose and still unexpended be available for said experiments.”).

⁸¹ 1897 *Postmaster General Ann. Rept.*, in H.R. Doc. No. 55-4, at 105 (1897).

in a city in which rural free delivery prevails.⁸²

In 1902, Postmaster General Henry Payne declared that RFD had proved itself and should be adopted as a permanent part of the postal system. He reported that rural service was not the financial disaster predicted by opponents but that, on the contrary, it was apparently having a positive effect on the postal deficit:

In respect to the net cost of the service, which it was at one time thought would be greater than the postal revenues could bear, the facts are that while the appropriations for its development have increased from \$40,000 in 1897 to \$50,000 in 1898, \$150,000 in 1899, \$450,000 in 1900, \$1,750,000 in 1901, and \$3,993,740 in 1902, the annual excess of expenditures over revenue in the Post-Office Department for these respective years, as elsewhere shown, has been practically in inverse ratio to the expenditure for rural free delivery.

The effect of the extension of the service is twofold.

First, it causes increase in the postal receipts of the offices from which it starts.

Secondly, it is responsible in part, at least, for the increase in the receipts of city free-delivery offices with which it is brought into close communication.⁸³

The Postmaster General concluded that RFD could feasibly service about one-third of the national territory (excluding Alaska), and that it was already serving one-third of that area. He predicted completion of the rural free delivery system in three years.

Rural free-delivery service has become an established fact. It is no longer in the experimental stage and undoubtedly Congress will continue to increase the appropriation for this service until all the people of the country are reached, where it is thickly enough settled to warrant it. The estimates of the Department are to the effect that the available territory for this service embraces about 1,000,000 square miles, or one-third of the country's area exclusive of Alaska. The 11,650 routes now in operation cover about one-third of the available territory. From this it will be seen that it will require 27,000 employees additional to those now in the service to cover this territory. If Congress shall make the necessary appropriations, it is believed that within the next three years the extension of the service will have been completed.⁸⁴

⁸² 1899 *Postmaster General Ann. Rept.*, in H.R. Doc. No. 56-4, at 203 (1899).

⁸³ 1902 *Postmaster General Ann. Rept.*, in H.R. Doc. No. 57-4, at 16 (1902).

⁸⁴ 1902 *Postmaster General Ann. Rept.*, in H.R. Doc. No. 57-4, at 14 (1902).

In 1902, rural free delivery became a permanent postal service by simply removing the word "experiment" from the postal appropriations act. Congress appropriated \$7.5 million for RFD in fiscal year 1903. The act also required the Postmaster General to develop a standard for metal mail boxes for RFD delivery (previously, rural households used any sort of box they liked). The act also made it a crime to tamper with or steal mailboxes, prescribing a penalty of \$1,000 or imprisonment for up to three years.⁸⁵

The 1902 act did not, however, define the geographic scope of rural free delivery nor formally authorize the Postmaster General to do so.⁸⁶ Under Post Office regulations, expansion of the RFD system was initiated by homeowners, who petitioned the Post Office for service. Petitioners had to affirm that “not less than three-fourths of the heads of families and others to be supplied thereby shall agree to patronize the service and provide boxes for the reception of their mail.”⁸⁷

By 1906, the rural free delivery system was substantially in place. The Post Office operated 35,766 rural routes. Daily service was provided on almost all routes, but the Post Office reserved the right to reduce service to three days per week in case of lack of patronage.⁸⁸ The number of petitions for new routes had peaked in 1905 and was declining substantially. The Post Office began to focus more on inspection and improvement of existing routes than on establishing new routes. The Post Office also began to close small “fourth class” post offices (generally agencies operated in store) which were unneeded due the expansion of RFD. The fourth class postmasters fought this process by appealing to Congress so that the Post Office was often “forced to operate the

⁸⁵ Act of Apr. 21, 1902, ch. 563, § 1, 32 Stat. 107, 113.

⁸⁶ See 1906 *Postmaster General Ann. Rept.*, in H.R. Doc. No. 59-4, at 74 (1906) (“Even then [in 1902], though the aggregate sum provided for the service was increased several millions of dollars, no explicit regulations for its control were enacted by the Congress.”).

⁸⁷ 1902 *Postal Laws and Regulations (Supp. 1907)*, “Instructions for the Guidance of Postmasters and Carriers in the Conduct of the Rural Delivery Service,” in S. Doc. No. 59-394, at 5-6 (1907).

⁸⁸ 1906 *Postmaster General Ann. Rept.*, in H.R. Doc. No. 59-4, at 74-78, 327-34 (1906) (report of Fourth Assistant Postmaster General). This report includes a good review of the first ten years of rural free delivery. More than half of the mail delivered by rural free delivery was newspapers and magazines. See Kielbowicz, “Universal Postal Service,” at 28-29.

old mail service side by side with the new long after the old was unnecessary and so increased the cost of establishing rural free delivery.”⁸⁹

The pace of adding new rural routes slowed still more after the government ran into budgetary problems in 1909. This slowdown left the South, represented by Democrats, feeling aggrieved. The award of rural routes by the Post Office Department in the 1896 to 1906 period had been highly political. Republicans controlled the presidency and both houses of Congress until the election of 1910. The Republican areas in the North and Midwest were well supplied with rural postal routes while the Democratic South was often unable to get rural routes placed into operation even after they had been approved by the Post Office and funds had been appropriated by Congress.

In 1912, Democrat Woodrow Wilson was elected President. He appointed Albert Burleson to be Postmaster General. Burleson believed the Post Office should pay its own way and that the RFD program would be made more efficient by reorganizing and lengthening routes and encouraging delivery by automobile where feasible.⁹⁰ He declined to spend all of the money appropriated by Congress for extension of rural free delivery. Rural carriers were displaced and in some cases fired. Mailboxes had to be moved to different, sometimes more distant, roads. Both rural resident farmers and the rural carriers were unhappy with Burleson’s reforms. Many farmers particularly disliked the longer motorized routes in which the carrier’s vehicle started from a more distant post office because the result was that the farmer’s postal address was no longer associated with his local village. Congress was deluged with complaints.⁹¹

In 1916, Congress stepped in to control the rural free delivery program. The House added a provision to the postal appropriations bill for 1917 prohibiting the use of motor vehicles to serve rural routes unless approved by a majority of the households served.⁹² The Senate Committee on Post Offices and Post Roads added an amendment

⁸⁹ See Fuller *RFD* 82.

⁹⁰ See 1914 *Postmaster General Ann. Rept.*, in H.R. Doc. No. 63-1387, at 34-37 (1914); 1915 *Postmaster General Ann. Rept.*, in H.R. Doc. No. 64-358, at 22-25 (1915).

⁹¹ Fuller, *RFD* 148-56.

⁹² 53 Cong. Rec. 9625 (1916).

apparently authored by Senator Thomas Hardwick of Georgia, a Democrat and committee member. The amendment prescribed that horse-drawn routes should be between twenty-four and thirty-six miles in length and motorized routes between fifty and seventy-five miles, and it directed the Postmaster General to reorganize the RFD system accordingly. The Hardwick amendment also included the direction: “That rural mail delivery shall be extended so as to serve, as nearly as practicable, the entire rural population of the United States.”⁹³

In the Senate debate of the appropriations bill, Senator Reed Smoot of Utah (R) questioned Senator Hardwick closely on the breadth of the national postal service intended to be required.

Mr. SMOOT. . . . It seems to me that that is a very broad statement; and, if it is put into effect in good faith as it is worded here, it will cost an untold amount of money.

Mr. HARDWICK. I am glad the Senator asked me that question. I ought to have covered that already. It is only the expression of a general policy at which we are aiming. We did not undertake to increase the amount involved in this appropriation; but what we were after was to say to the department and to say to the country that it is not our policy to skim this particular branch of the service, to try to save money on it, so as to make up a loss somewhere else; but we wanted them to know that the goal we were striving for was a general service to all the rural people of the United States. That is a mere statement of policy; it is nothing else except that; we wanted the department to know that its own administration ought to be shaped so as to concur and accord with the policy of the legislative branch of the Government. That was all. It can have no more effect than merely to state a policy, because it is merely a general statement.

Mr. SMOOT. Well, supposing the Postmaster General taking the law—if it should become a law—literally, how would he discriminate as to where these routes should be established and where they should not be established?

Mr. HARDWICK. I will answer the Senator from Utah frankly by saying

⁹³ S. Rep. No. 459, 64th Cong. 1st Sess., at 6 (May 18, 1916). On March 24, 1916, Hardwick introduced an amendment to the Post Office appropriations bill “providing that the Rural Mail Delivery Service shall be extended so as to serve as nearly as practicable the entire rural population.” 53 Cong. Rec. 4739 (1916). When the bill came to the floor of the Senate on June 21, Senator Hardwick took the lead in defending the committee’s amendment until it was approved on June 22. 53 Cong. Rec. 9625-37, 9682-88 (1916). It is a reasonable inference that the committee’s amendment was essentially the amendment proposed by Senator Hardwick.

that, of course, the Postmaster General could not discriminate; that he must treat every section of the country fairly; that he must treat all sections of the Republic alike; and I take it that he will do so. He can use only every dollar that we give him, and, of course, he can spend no more.

Mr. SMOOT. That was going to be my next question.

Mr. HARDWICK. He is limited, of course, so far as practical efforts go, to the amount of money we give him for this purpose. . . .

Mr. HARDWICK. What we meant by this language, if the Senator will pardon me for a moment, was to say to the department, "Here we will give you, say, \$59,000,000 in round sum; we do not want you to skimp this service; we do not want you to be saving something out of it; we want you to spend every dollar of it to extend, to improve, and to maintain the service which is so important to the rural population of the United States." That is why we inserted that language. I call the attention of the Senator to the suggestion of my associate on the committee that there is a four-million-dollar unexpended balance in this fund from last year. Another unexpended balance is a million and a half of what we appropriated under the act of 1913, which is still in the Treasury unexpended. We want the Post Office Department to know that we do not mean it to skimp this service or to economize to the extent of endangering or imperiling the efficiency of the service in the Rural Free Delivery System; that we do mean for them to spend the money which we appropriate for it. and in the way we appropriate it. . . .

Now, let us proceed for just a moment. I realize the force of the question of the Senator from Utah [Mr. SMOOT], and the committee labored with that quite a while, but we thought, as everyone of us believed, that one of the most important things that this Government could do was to extend the Rural Delivery Service as soon as possible throughout the rural sections of this Republic, everywhere to all the people; that it was not a bad idea to put a general statement of that purpose into the law.

The Postmaster General could not misunderstand it. This debate would inform him, if nothing else did—but he could not misunderstand it—because, although that is our policy, we have only been able to appropriate \$59,000,000 for the purpose this year, although we hope to do better next year; or, if the party of the Senator from Utah should happen to be in power then, I hope they will do better. Whatever party is in power ought never to forget that this service is the most important and necessary service the rural people of America receive, and it ought never to be skimmed or starved. On the contrary, it should be steadily and constantly improved and increased, and efficiency should be its first and most

important consideration.⁹⁴

In sum, Senator Hardwick explains that the intent is to require the Postmaster General to extend the RFD program to as much of the rural population as Congressional appropriations and the route length and other restrictions in the bill would allow. Senator Hardwick stresses that this provision is only a “a mere statement of policy; it is nothing else except that,” but also notes that committee members believed “one of the most important things that this Government could do was to extend the Rural Delivery Service as soon as possible throughout the rural sections of this Republic, everywhere to all the people.”

After revision in a House-Senate conference, the final version of the RFD provision read in its entirety as follows:

And provided further, That rural mail delivery shall be extended so as to serve, as nearly as practicable, the entire rural population of the United States.

Hereafter all rural mail delivery routes shall be divided into two classes to be known as—

Standard horse-drawn vehicle routes, which shall be twenty-four miles in length, and

Standard motor-vehicle routes, which shall be fifty miles in length, and shall only be established hereafter when a majority of the proposed patrons who are heads of families residing upon such proposed routes shall by written petition ask the Post Office Department to establish the same.

Nothing herein contained shall be construed to prohibit the establishment of horse-drawn vehicle routes of less length than the standard of twenty-four miles: Provided, That if, in the discretion of the Postmaster General, in order to render more complete service, it should be necessary to do so the Postmaster General is hereby authorized to increase the length of routes not to exceed fifty per centum above the standards herein prescribed, and in such cases the compensation of the carrier on such horse-drawn vehicle routes shall be increased above the maximum pay heretofore fixed by law for rural carriers at the rate of \$24 per annum for each mile of said routes in excess of thirty miles, and any major fraction of a mile shall be counted as a mile: Provided further, That carriers in rural mail-delivery service shall furnish and maintain at their

⁹⁴ 53 Cong. Rec. 9630-31 (1916) (emphasis added).

own expense all necessary vehicle equipment for prompt handling of the mail: And provided further, That nothing herein shall be construed, and no order shall be issued, to prevent the use of motor vehicles on horse-drawn vehicle routes: Provided further, The Postmaster General in his discretion may require all carriers to furnish sufficient equipment to properly handle postal business on their routes: And provided further, That the Postmaster General may, in his discretion, allow and pay additional compensation to rural letter carriers who are required to carry pouch mail to intermediate post offices, or for intersecting loop routes, in all cases where it appears that the carriage of such pouches increases the expense of the equipment required by the carrier or materially increases the amount of labor performed by him, such compensation not to exceed the sum of \$12 per annum for each mile such carrier is required to carry such pouch or pouches.

The Postmaster General is hereby authorized and directed to reorganize and readjust existing rural mail delivery service where necessary to conform to the standards herein prescribed: Provided further, That in making appointments of rural carriers for service on new routes, which may be created by the reorganization herein ordered, preference shall be given to carriers who were formerly employed in rural-delivery service and who were separated therefrom on or after June thirtieth, nineteen hundred and fifteen, by reason of any previous reorganization of the service and without charges against them: And provided further, That the Postmaster General is authorized and directed to pay, out of the appropriations already made and still available and unexpended for rural free-delivery service for the fiscal year ending June thirtieth, nineteen hundred and fifteen, to all letter carriers in the Rural Free Delivery Service during the fiscal year ending June thirtieth, nineteen hundred and fifteen, their executors or administrators, the difference between what they received for their said services and the amount that would have been paid to them in accordance with the proviso contained in joint resolution making appropriations for the service of the Post Office Department for the fiscal year ending June thirtieth, nineteen hundred and sixteen, approved March fourth, nineteen hundred and fifteen: Provided, That no part of the money paid under this provision shall be paid to any agent or attorney, directly or indirectly, for any alleged services in connection with this appropriation.⁹⁵

In response to the 1916 RFD amendment to the Post Office appropriations bill, the Post Office Department, in its annual report for 1916, summed up the extent of rural service as follows:

⁹⁵ Act of July 28, 1916, ch. 261, § 1, 39 Stat. 412, 423-24.

In regard to the provision in the act making appropriations for the service for the fiscal year 1917, “that rural mail delivery shall be extended so as to serve as nearly as practicable the entire rural population of the United States,” it should be stated that rural delivery service covered, at the end of the fiscal year 1916, 1,037,259 miles of roads, while star-route service was operated over 139,634 miles. These figures represent the aggregate length of the routes, less an allowance of 5 per cent for duplication.

It is estimated that there are 2,199,646 miles of public roads in the United States, so that there remain 1,022,753 miles of roads on which no mail service is in operation.

At the end of the fiscal year 1916 an estimated population of 26,307,686 was served by rural routes, 520,000 by star routes, and approximately 10,000,000 by fourth-class post offices. The total rural population in the United States is placed at 43,991,722. It will be seen, therefore, that while 83 per cent of the rural population is receiving convenient mail service, 47 per cent of the rural road mileage is uncovered.

It would not be wise to alter the present practice to such an extent as to provide these uncovered roads with mail service at the existing rates of pay, as it would necessitate the establishment of 45,000 new routes, at a cost of \$51,800,000 per annum, thus raising the total annual cost of the rural delivery service to \$102,886,000. Expansion should be gradual as rural communities grow and meet the reasonable requirements adopted.⁹⁶

This statement by the Post Office is sometimes erroneously cited to show that the Post Office provided postal services—in the modern sense of postal delivery—to 83 percent of the population by 1916. In fact, the Post Office claimed only to deliver to 61 percent of the *rural* population; the other rural residents were served by fourth class post offices. Moreover, it is clear that postal delivery in villages was still relatively undeveloped in 1916 (see next section) and that city delivery was still far from its maximum extent (see previous). Thus, it is unknown what fraction of the population of the United States received household delivery to the door or to a rural mailbox in 1916.

The development of the 1916 amendment to the postal appropriations bill is recounted at length because it is the first and only time Congress specified the geographic coverage of the rural free delivery program. It appears to be the closest that Congress came to declaring a “universal service obligation” until 1970. Whether this provision was

⁹⁶ 1916 *Postmaster General Ann. Rept.*, in H.R. Doc. No. 64-1728, at 208-09 (1916).

interpreted at the time as a “mere statement of policy” or a binding legal obligation is not entirely clear. Historian Wayne Fuller commented on the practical effect of the language “to serve, as nearly as practicable, the entire rural population of the United States” as follows:

This, too, was ineffective. Hardwick and his friends had formulated a basic principle for route organizing to which Burleson and succeeding Postmaster Generals paid lip service but moved slowly and reluctantly to implement. Through the years rural route extensions were made and occasionally a new route laid down, but compared with the earlier period, the growth of the system was tortoise-paced. By 1920 rural mail routes extended over 1,151,832 miles of the nation’s roads; thirty years later only 341,533 additional miles had been added to the system, most of these only because of strong pressures from Congress.⁹⁷

In 1925, Congress revised the strict rules for RFD service laid down in 1916. In a bill prescribing wages for postal employees, Congress eliminated the distinction between payment for carriers driving horse-drawn and motorized routes and allowed the Postmaster General to establish rural routes of whatever length he deemed appropriate. The implications, if any, for the injunction in the 1916 appropriations act “to serve, as nearly as practicable, the entire *rural* population of the United States” were apparently not considered.⁹⁸

2.2.5 Village Delivery, 1912

“Village delivery” referred to delivery of mail in towns too small to qualify for free city delivery, i.e., having less than 10,000 residents or a post office earning less than \$10,000 in income. In the same year that Congress made rural free delivery a permanent service, Postmaster General Henry Payne noted a growing demand for delivery in villages.⁹⁹ Not until 1912, however, did Congress authorize the Post Office Department

⁹⁷ Fuller, *RFD* 79 (footnotes omitted).

⁹⁸ Act of Feb. 28, 1925, ch. 368, § 8, 43 Stat. 1053, 1063-64. Section 13 of this act repealed “[a]ll Acts and parts of Acts inconsistent or in conflict with this title.” Ibid., 1065. For the Post Office’s view as to the importance of this amendment to the rules for RFD service, see 1925 *Postmaster General Ann. Rept.*, in H.R. Doc. No. 69-63, at 34 (1925).

⁹⁹ 1902 *Postmaster General Ann. Rept.*, in H.R. Doc. No. 57-4, at 18 (1902) (“There is a popular demand, which is based on equity and reason, that the space which now intervenes between city and rural service should be diminished by extending free delivery to towns of not fewer than 5,000 population, or not

to experiment with deliveries in villages. Congress left the scope and parameters of service up to the discretion of the Postmaster General.¹⁰⁰ In 1916, Congress made village delivery permanent by omitting the word “experimental” in the authorization.¹⁰¹

Village delivery peaked in 1926 with service established in 859 villages. After this, village service was replaced by city delivery service. In 1927, 233 villages were converted into city delivery service.¹⁰² Although village delivery expanded somewhat in the late 1920s, it declined to 240 villages by 1945.¹⁰³ Nonetheless, until the Postal Reorganization Act of 1970, village delivery remained a distinct category of delivery services with flexible rules. Congress never required the Postal Service to provide delivery to all residents of a village, and the Post Office never did so.

2.3 Development of Rates and Classifications

The history of the development of mail classes is well described in a research paper prepared for the Commission in 1995 by historian Richard Kilebowicz.¹⁰⁴ The following section relies heavily to this paper.

2.3.1 Early Rates for Letters, Newspapers, and Magazines: 1792 to 1830s

The first postal act adopted under the Constitution, the Postal Act of 1792, provided that the Post Office would transmit two types of items: letters and newspapers. The term “letters” included documents such as banknotes or legal papers enclosed within a written correspondence that had been secured by a wax seal or tied with a string (there

less than \$5,000 gross postal receipts.”).

¹⁰⁰ The law stated only, “experimental mail delivery may be established, under such regulations as the Postmaster General may prescribe, in towns and villages having post offices of the second or third class that are not by law now entitled to free delivery service.” Act of Aug. 24, 1912, ch. 389, § 9, 37 Stat. 539, 559. A second class post office was a post office having annual revenues of more than \$8,000 and less than \$40,000; a third class post office had annual revenues of more than \$1,900 and less than \$8,000. See 1913 *Postal Laws and Regulations* § 270, in H.R. Doc. No. 62-935, at 131 (1913).

¹⁰¹ Act of July 28, 1916, ch. 261, § 1, 39 Stat. 412, 424.

¹⁰² 1927 *Postmaster General Ann. Rept.*, in H.R. Doc. No. 70-8, at 16 (1927).

¹⁰³ 1945 *Postmaster General Ann. Rept.*, in H.R. Doc. No. 79-405, at 5, 99 (1945).

¹⁰⁴ Kielbowicz, “A History of Mail Classification.”

were no envelopes). Letter postage was extremely high, varying from 6¢ to 25¢ per sheet, depending on distance.¹⁰⁵ Newspaper rates were set very low, a maximum of 1½ ¢ per sheet for transmission anywhere in the (then much smaller) nation.¹⁰⁶ At this time, a typical newspaper was a single sheet of paper printed on both sides by means of a hand press. Low postage rates for newspapers reflected a widespread belief that broad dissemination of the information was necessary to unify the country and educate the citizenry.¹⁰⁷

In 1794, magazines and pamphlets were admitted in the mail pouch, but only when there was sufficient room. Postage rates for magazines and pamphlets were substantially higher than for newspapers but much less than for letters. The 1799 postal act limited the weight of any letter “or other thing” transmitted by mail to three pounds. By default, all items transmitted by post were charged letters rates unless a specific rate applied.

In 1825, Congress divided pamphlets into two categories: periodical pamphlets (including magazines) and nonperiodical pamphlets (essentially small booklets).¹⁰⁸ Large differences in rates resulted in sharp controversies over the distinction between a “newspaper” and a “magazine or pamphlet.” A list of current prices or market information (a “price current”) could be considered a “newspaper” or not, and therefore subject to much higher letter rates, depending on the Attorney General. Books, which did not qualify for a special rate, were charged letter rates and essentially priced out of the market.

2.3.2 Cheap Letter Postage, 1845 and 1851

In postal acts enacted in 1845 and 1851, postage rates for letters were reduced drastically.¹⁰⁹ The new letter rates were based on weight rather than the number of sheets.

¹⁰⁵ Act of Feb. 20, 1792, ch. 7, § 9, 1 Stat. 232, 235.

¹⁰⁶ Act of Feb. 20, 1792, ch. 7, § 22, 1 Stat. 232, 238.

¹⁰⁷ Kielbowicz, “A History of Mail Classification,” at 9-12.

¹⁰⁸ Kielbowicz, “A History of Mail Classification,” at 12-14.

¹⁰⁹ Act of Mar. 3, 1845, ch. 43, 5 Stat. 732; Act of Mar. 3, 1851, ch. 20, 9 Stat. 587.

Weight-based rates, together with cheaper paper, led to the introduction of envelopes (early letters were folded sheets of paper sealed with wax). After 1851, the rate for a *half-ounce* letter was lowered to 3¢ for transmission up to 3,000 miles on condition that postage was prepaid.¹¹⁰ This was the first nationwide uniform rate for *intercity* letters (there were no significant intracity postal services). The rate for non-prepaid letters was 5¢, but prepayment was required after 1855.¹¹¹ “Cheap postage,” as the movement was called, precipitated a revolution in personal communications. Ordinary Americans could suddenly correspond with one other across the country practically and inexpensively; the social and commercial consequences were enormous.¹¹²

2.3.3 Development of International Postal Services, 1847-1874

The Post Office did not begin outbound international postal service until the mid-1840s. In June 1844, Congress adopted a resolution authorizing the Postmaster General to arrange for international transportation of letters to Canada and Europe and require prepayment of fees for international letters.¹¹³ In his annual report for 1844, however, Postmaster General Wickcliffe remarked that he still lacked specific authority to contract for international transportation.¹¹⁴ On March 3, 1845, Congress authorized the Post Office to contract for international transportation in American ships and established rates for outbound international mail: 48¢ per half ounce in addition to domestic postage.¹¹⁵ On June 1, 1847, the first international post left New York for Southampton, England, and Bremen, Germany, but in England, the American post was rudely received. The British government ordered that American letters should be charged the cost of trans-Atlantic transportation in British steamships (which never touched the mail) as well as British postage for domestic handling. The result was a diplomatic incident leading to the

¹¹⁰ Act of Mar. 3, 1851, ch. 20, § 1, 9 Stat. 587, 587-88.

¹¹¹ Act of Mar. 3, 1855, ch. 173, § 1, 10 Stat. 641, 641-42.

¹¹² See generally Henkin, *The Postal Age*.

¹¹³ Resolution of Jun. 15, 1844, no. 14, 5 Stat. 718.

¹¹⁴ 1844 *Postmaster General Ann. Rept.*, in H.R. Doc. No. 28-2, at 674 (1844).

¹¹⁵ Act of Mar. 3, 1845, ch. 69, §§ 1-3, 5 Stat. 748, 748-49. This act is distinct from the act to reduce postage, limit franking privileges, and restrict private expresses adopted on the same day.

cancellation of all postal agreements between the United States and Great Britain. The French and German posts were more cooperative.¹¹⁶

For twenty-five years, international postal services were gradually expanded through bilateral postal agreements. In 1872, the Postmaster General reported that 11.5 million letters had been dispatched to twenty foreign countries and territories, including Canada, the main Western European nations, Honolulu, several South American countries, and China and Japan.¹¹⁷

In 1874, the first multilateral postal convention was agreed by twenty-two nations, including the United States, in Berne, Switzerland. These nations agreed to form a “General Postal Union” that would act as “a single postal territory for the reciprocal exchange of correspondence between their post-offices.”¹¹⁸ The union was renamed the “Universal Postal Union” in a second convention agreed in 1878. The basic international postal framework developed in 1874—called the “Universal Postal Convention” after 1878—was modified and extended, but not fundamentally revised, in international congresses held approximately every six years until World War II.¹¹⁹

2.3.4 Advertisements, In-County Newspapers, and Books, 1845-1852

The 1845 act made other changes in rates that would have long-lived implications. First, a rate was established for “all printed or lithographed circulars and handbills or advertisements, printed or lithographed on quarto post or single cap paper.”¹²⁰ This was the first discount rate for advertising mail. Such miscellaneous printed matter was treated approximately like magazines and pamphlets, but the rates were higher.¹²¹ Second, the 1845 act ended the condition that magazines and pamphlets would be transmitted by post only when there was space available. It was replaced by a

¹¹⁶ 1847 *Postmaster General Ann. Rept.*, in H.R. Exec. Doc. No. 30-8, at 1324-27 (1847).

¹¹⁷ 1872 *Postmaster General Ann. Rept.*, in H.R. Exec. Doc. No. 42-1, pt. 4, at 264 (1872).

¹¹⁸ Treaty Concerning the Formation of a General Postal Union art. 1, Oct. 9, 1874, 19 Stat. 577.

¹¹⁹ See generally Coddington, *The Universal Postal Union* 25-72.

¹²⁰ Act of Mar. 3, 1845, ch. 43, § 3, 5 Stat. 732, 733.

¹²¹ Act of Mar. 3, 1845, ch. 43, § 3, 5 Stat. 732, 733.

provision giving letter mail priority over other types of mail.¹²² Third, the 1845 act established free postal transportation for newspapers transmitted less than thirty miles from the place where they were printed.¹²³ Congress withdrew the provision of free local circulation in 1847 but restored it in the 1851 act. The 1851 act permitted most weekly papers to circulate without charge in their county of publication.¹²⁴ This was the beginning of the “in-county newspaper” discount.

In 1852, rates for newspapers and magazines were consolidated into a single rate for periodic printed matter. The 1852 act also admitted books weighing up to four pounds into the mails at discount rates.¹²⁵

2.3.5 Establishment of Mail Classes, 1863 to 1879

In 1863, in the same act that introduced free city delivery, Congress divided postal items into categories called “classes” for the first time. The first class included letters and the second class included periodic publications. The third class included not only nonperiodic printed matter but also other mailable matter including seeds and bulbs. The third class thus replaced the letter category as the catchall category. Three classes were established as follows:

SEC. 19. And be it further enacted, That mailable matter shall be divided into three classes, namely: first, letters; second, regular printed matter; third, miscellaneous matter.

SEC. 20. And be it further enacted, That the first class embraces all correspondence, wholly or partly in writing, except that mentioned in the third class. The second class embraces all mailable matter exclusively in print, and regularly issued at stated periods, without addition by writing, mark, or sign. The third class embraces all other matter which is or may hereafter be by law declared mailable; embracing all pamphlets, occasional publications, books, book manuscripts, and proof sheets,

¹²² Act of Mar. 3, 1845, ch. 43, § 4, 5 Stat. 732, 733-34. Section 4 authorized the Postmaster General, wherever the amount of mail “is or may become so great as to threaten materially to retard the progress or endanger the security of the letter mail, or to cause any considerable augmentation of the cost of transporting the whole mail at the present rate of speed, to provide for the separate and more secure conveyance of the letter mail.”

¹²³ Act of Mar. 3, 1845, ch. 43, § 2, 5 Stat. 732, 733.

¹²⁴ Act of Mar. 3, 1851, ch. 20, § 2, 9 Stat. 587, 588.

¹²⁵ Act of Aug. 30, 1852, ch. 98, §§ 1-2, 10 Stat. 38, 38-39.

whether corrected or not, maps, prints, engravings, blanks, flexible patterns, samples and sample cards, phonographic paper, letter envelopes, postal envelopes, or wrappers, cards, paper, plain or ornamental, photographic representations of different types, seeds, cuttings, bulbs, roots, and scions.¹²⁶

In 1879, Congress replaced the 1863 classification scheme with the four classes of mail that would constitute the main categories of the national postal service until 1996.¹²⁷ Given their lasting significance to the development of postal services, the key classification provisions are set out in full:

SEC. 7. That mailable matter shall be divided into four classes:

First, written matter;

Second, periodical publications;

Third, miscellaneous printed matter;

Fourth, merchandise.

SEC. 8. Mailable matter of the first class shall embrace letters, postal cards, and all matters wholly or partly in writing, except as hereinafter provided.

SEC. 9. That on mailable matter of the first class, except postal cards and drop letters, postage shall be prepaid at the rate of three cents for each half ounce or fraction thereof; postal cards shall be transmitted through the mails at a postage charge of one cent each, including the cost of manufacture; and drop letters shall be mailed at the rate of two cents per half ounce or fraction thereof, including delivery at letter carrier offices, and one cent for each half ounce or fraction thereof where free delivery by carrier is not established. The Postmaster General may, however, provide, by regulation, for transmitting unpaid and duly certified letters of soldiers, sailors, and marines in the service of the United States to their destination, to be paid on delivery.

SEC. 10. That mailable matter of the second class shall embrace all newspapers and other periodical publications which are issued at stated intervals, and as frequently as four times a year and are within the conditions named in section twelve and fourteen. . . .

SEC. 12. That matter of the second class may be examined at the office of mailing, and if found to contain matter which is subject to a higher rate of postage, such matter shall be charged with postage at the rate to which

¹²⁶ Act of Mar. 3, 1863, ch. 71, §§ 19-20, 12 Stat. 701, 704-05.

¹²⁷ Act of Mar. 3, 1879, ch. 180, 20 Stat. 355. The mail classification provisions were included in the postal appropriations act.

the inclosed matter is subject: Provided, That nothing herein contained shall be so construed as to prohibit the insertion in periodicals of advertisements attached permanently to the same. . . .

SEC. 17. That mail matter of the third class shall embrace books, transient newspapers, and periodicals, circulars, and other matter wholly in print (not included in section twelve), proof sheets, corrected proof sheets, and manuscript copy accompanying the same, and postage shall be paid at the rate of one cent for each two ounces or fractional part thereof, and shall fully be prepaid by postage stamps affixed to said matter. Printed matter other than books received in the mails from foreign countries under the provisions of postal treaties or conventions shall be free of customs duty, and books which are admitted to the international mails exchanged under the provisions of the Universal Postal Union Convention may, when subject to customs duty, be delivered to addresses in the United States under such regulations for the collection of duties as may be agreed upon by the Secretary of the Treasury and the Postmaster General.

SEC. 18. That the term “circular” is defined to be a printed letter, which, according to internal evidence, is being sent in identical terms to several persons. A circular shall not lose its character as such, when the date and the name of the addressee and of the sender shall be written therein, nor by the correction of mere typographical errors in writing.

SEC. 19. That “printed matter” within the intendment of this act is defined to be the reproduction upon paper, by any process except that of handwriting, of any word, letters, character, figures, or images, or of any combination thereof, not having the character of an actual and personal correspondence.

SEC. 20. That mailable matter of the fourth class shall embrace all matter not embraced in the first, second, or third class, which is not in its form or nature liable to destroy, deface, or otherwise damage the contents of the mail bag, or harm the person of any one engaged in the postal service, and is not above the weight provided by law, which is hereby declared to be not exceeding four pounds for each package thereof, except in case of single books weighing in excess of that amount, and except for books and documents published or circulated by order of Congress, or official matter emanating from any of the departments of the government or from the Smithsonian Institution, or which is not declared non mailable under the provision of section thirty eight hundred and ninety three of the Revised Statutes as amended by the act of July twelfth, eighteen hundred and seventy six, or matter appertaining to lotteries, gift concerts, or fraudulent schemes or devices.¹²⁸

¹²⁸ Act of Mar. 3, 1879, ch. 180, §§ 7-10, 12, 17-20, 20 Stat. 355, 358-60 (emphasis added).

Much of the evolution of categories of mail between the act of 1845 and the act of 1879 derived from Congressional efforts to preserve preferentially low rates for the distribution of newspapers and other news media while maintaining higher rates for more commercial items. Writing in 1995, Professor Kielbowicz summarized this evolution as follows:

In the early nineteenth century, advertising circulars, pamphlets, and books paid postage as either letters or nonperiodical pamphlets—the two most expensive categories. Policy treated them less favorably for two reasons: first, they were regarded as akin to merchandise and less deserving of public support than the exchange of news or correspondence. Second, such species of mail matter strained the postal system: they appeared irregularly (as opposed to periodicals), burdened transpans with their bulk, and complicated postmasters' postage- collecting responsibilities. Postal law and practice became more accommodating by mid-century, however, and this nonperiodical matter was consolidated into the third-class in 1863: it embraced “all pamphlets, occasional publications, books, book manuscripts,” and small merchandise. . . .

The Act of March 3, 1879, laid the foundation for modern mail classification by creating the four basic categories still used today. In reality, though, the act had a much narrower purpose: to erect a wall between print matter in the second class and that in the third. A precise demarcation of print matter, Congress hoped, would channel a public resource, cheap postage, to only those publications that disseminated the most socially useful information. The Post Office Department had more prosaic reasons for helping Congress establish a proper boundary line: it wanted to staunch the revenue losses caused by heavy use of the cheapest rate and it needed administratively workable rules to conduct day- to-day business. Thus, the legislative history of the classification act deals almost entirely with defining the second and third classes; the first class remained largely unchanged, and the fourth class became a catchall for nonprint matter formerly in the third class. . . .

There was nothing in the law that major publishers had stridently opposed and much they had approved. Postal administrators failed to get the registration system they had sought, but prevailed in other respects. Printed matter now fell into either the second or third class. Qualifications for admission to the second class were those suggested by the department and approved by publishers in a few large cities. A publication had to appear at regular intervals at least four times a year; be issued from a known office of publication; formed of printed sheets without substantial binding; and disseminate “information of a public character, or be devoted to literature, the sciences, arts, or some special industry, and having a legitimate list of subscribers.” In addition, the definition specifically excluded from the second class “publications designed primarily for

advertising purposes, or for free circulation, or for circulation at nominal rates. “

The provisions governing the classification of second-class mail were largely synthesized from earlier laws and some administrative rulings. In one respect, however, the 1879 statutory language moved beyond earlier acts. For the first time the law spoke directly about the purpose of publications admitted to the second class--they had to disseminate information of a public character or serve a specific industry (trade journals). This articulated lawmakers' understanding of the public policy behind the low rate and, in fact, Bissell [Assistant Attorney General for the POD] had begun applying a similar standard administratively before 1879. The 1879 act made one other noteworthy change in second class: Congress extended the free in-county privilege from newspapers to all periodicals in the second class.¹²⁹

2.3.6 Postal Money Orders, 1864

In 1864, the Post Office was authorized to provide a postal money order system.¹³⁰ A person could purchase a “money order” at one post office and send it via the mail to an addressee who could redeem the money order for cash at a second post office. The money order system eliminated the risk that cash sent through the mail might be lost or stolen. It was introduced primarily to assist Civil War soldiers in sending money home.

2.3.7 Postal Savings Bank, 1911

In 1911, the Post Office introduced postal savings accounts to provide a convenient and secure depository for financially unsophisticated persons with small balances.¹³¹ Use of the postal savings system increased during the Depression, when many private banks failed, and peaked in 1947 with deposits of \$3.4 billion. Over the next two decades, federal deposit insurance for private banks and their increasing availability rendered the postal savings system unnecessary. In 1966, Congress terminated the program.¹³²

¹²⁹ Kielbowicz, “A History of Mail Classification,” at 31, 34, 44 (emphasis added) (footnotes omitted).

¹³⁰ Act of May 17, 1864, ch. 87, 13 Stat. 76. See Roper, *The United States Post Office* 72-74.

¹³¹ Act of June 25, 1910, ch. 386, 36 Stat. 814.

¹³² Act of Mar. 28, 1966, Pub. L. No. 89-377, 80 Stat. 92. See generally Daniel C. Roper, *The United States Post Office* 208-24; C.H. Scheele, *A Short History of the Mail Service* 171.

2.3.8 2¢ Letter Rate for Intracity and Local Delivery Letters

In 1883, Congress reduced the rate for intercity letters from 3¢ per half ounce rate to 2¢ per half ounce.¹³³ In 1885, Congress changed the rate for intercity letters to 2¢ per ounce and likewise set the drop letter rate at 2¢ for cities and towns where free city delivery was available (1¢ in other cities and towns).¹³⁴ In this manner, the 2¢ letter rate became applicable to all destinations, local or national, within the free city delivery system. The 2¢ rate for letters remained in effect almost five decades, until 1932. This was the beginning of what would now be termed a geographically uniform rate for letters.

2.3.9 Parcel Post, 1912

In 1912, Congress expanded fourth class to include parcels¹³⁵ exceeding the weight limit of four pounds set in 1879.¹³⁶ Introduction of parcel post was due to several factors. Parcel post was already provided in most other industrialized countries. The package services of private express companies, now controlled by the railroads, were widely perceived as inadequate and abusive. Rural residents, their appetites for city goods whetted by rural free delivery, now wanted to be able to order goods via the Post Office.

The 1912 act set an initial weight limit for parcel post of 11 pounds, but authorized the Postmaster General, with the approval of the Interstate Commerce Commission, to raise the weight limit “in order to promote the service to the public or to insure the receipt of revenue from such service adequate to pay the cost thereof.”¹³⁷ By 1918 the original eleven-pound weight limit had been increased to seventy pounds in zones one to three, and to fifty pounds in all other zones.¹³⁸

¹³³ Act of Mar. 3, 1883, ch. 92, 22 Stat. 453, 455.

¹³⁴ Act of Mar. 3, 1885, ch. 342, 23 Stat. 385, 387-88.

¹³⁵ Act of Aug. 24, 1912, ch. 389, § 8, 37 Stat. 539, 557-58.

¹³⁶ Revised Statutes § 3879 (2d ed., 1878).

¹³⁷ Act of Aug. 24, 1912, ch. 389, § 8, 37 Stat. 539, 558.

¹³⁸ Postmaster General Orders No. 7249 (July 25, 1913) (20 lbs in zones 1 and 2); No. 7706 (Dec. 6, 1913) (50 lbs. in zones 1 and 2, 20 lbs. in zones 3 to 8); 1140 (Feb. 26, 1918) (70 lbs. in zones 1 to 3; 50 lbs. in zones 4 to 8). These orders are reprinted in Post Office Department, *Postage Rates: 1789-1930* 19, 23 (1936). See generally Kielbowicz, “A History of Mail Classification,” at 56-65.

2.3.10 Second Class Advertising Rates and Nonprofit Publications, 1917

Between 1900 and 1920, Congress became increasingly concerned about mounting postal deficits and mushrooming quantities of second-class mail. Some members questioned whether a policy devised during the early years of the nation still made sense, especially when modern publications no longer resembled those of the 1790s. Was it necessary for government to help bind the nation together? If so, was subsidizing the circulation of advertisement-filled newspapers and magazines the best way to do so? Did distinguishing between publications in the second and third class make sense when second class periodicals included so much advertising? One advertising agent explained, “There is still an illusion to the effect that a magazine is a periodical in which advertising is incidental. . . . A magazine is simply a device to induce people to read advertising.”¹³⁹

In 1917, as part of a bill raising taxes to pay for war-related activities, Congress introduced higher zoned rates for the advertising content of second class publications.¹⁴⁰ The new law charged low postage on periodicals' reading matter and higher rates on advertising contents, with postage for the latter rising in proportion to distance. Zoned advertising postage narrowed the gap between the rates for advertising in the second and third classes. At the same time, Congress established preferential rates for publications issued by educational institutions, labor unions, and professional, literary, historical, and scientific societies¹⁴¹ by exempting such publications from the zoned rates for advertising. Hence, these periodicals became known as “exempt publications” or “exempt second-class matter.”¹⁴²

¹³⁹ See Kielbowicz, “A History of Mail Classification,” at 52-53.

¹⁴⁰ Act of Oct. 3, 1917, ch. 63, § 1101, 40 Stat. 300, 327-28.

¹⁴¹ In 1894, Congress amended the law to apply second class rates to publications issued by educational institutions, labor unions, and professional, literary, historical, and scientific societies. Act of July 16, 1894, ch. 137, § 1, 28 Stat. 104, 104. See Kielbowicz, “A History of Mail Classification,” at 46-54.

¹⁴² See Kielbowicz, “A History of Mail Classification,” at 54-56.

2.3.11 Redefinition of Third and Fourth Classes by Weight, 1925

In 1925, Congress redrew the line separating third and fourth class mail.¹⁴³ When designed in 1879, the third class embraced printed matter excluded from the second class. Introduction of parcel post in 1912 introduced inconsistencies in the rates for third and fourth class matter over eight ounces. In the 1925 act, Congress adopted weight as the dividing line between third and fourth class. Everything under eight ounces became third class mail; everything heavier, fourth. Within the third class, Congress retained the existing rate for books, catalogues, seeds and cuttings but raised the rate by half a cent on everything else, notably advertising circulars.

2.3.12 Airmail, 1928

As a practical matter, airmail service in 1928 became available to the public when the Postmaster General set a rate of 5¢ for the conveyance of letters weighing a half-ounce or less, but the legal history began little earlier.¹⁴⁴ Between 1925 and 1930, airmail service was regulated by a series of four statutes that fixed, or authorized the Postmaster General to fix, airmail postage and the rates of compensation for the airlines with little attention to actual costs.¹⁴⁵ The acts also gave the Postmaster General great power over the airlines since the Post Office was then the only buyer of air transportation. In 1930, Postmaster General Walter Brown forced the airlines to consolidate into four major carriers and gave generous contracts to each.¹⁴⁶ A series of sensational Congressional hearings ensued in which the Post Office's handling of the airmail contracts was severely condemned. In 1934, President Franklin D. Roosevelt canceled all mail contracts with the airlines and ordered the Army to carry the mail. After a series of makeshift arrangements,

¹⁴³ Act of Feb. 28, 1925, ch. 368, §§ 206, 207, 43 Stat. 1053, 1067.

¹⁴⁴ Postmaster General Order No. 7773 (June 7, 1928). *See* Post Office Department, "Postage Rates: 1789-1930," at 29 (1936). Airmail originated in an effort to find a civilian use for the army's experience with aircraft in the First World War. After the end of the war, the Aerial Mail Service was organized within the Post Office and supplied with Army planes, men, and expertise. A very limited airmail service was first instituted from Washington, D.C. to Philadelphia to New York on August 12, 1918.

¹⁴⁵ Act of Feb. 2, 1925, ch. 128, 43 Stat. 805; Act of June 3, 1926, ch. 460, 44 Stat. 692; Act of May 17, 1928, ch. 603, 45 Stat. 594; Act of Apr. 29, 1930, ch. 223, 46 Stat. 259.

¹⁴⁶ The Postmaster General thus created American Airlines, Eastern Airlines, TWA, and United Airlines, the companies that would dominate United States aviation for fifty years or more.

Congress created the Civil Aeronautics Board in 1938 and gave the Board the power to regulate the rates that the Post Office paid for airmail transportation.¹⁴⁷ Under the supervision of the Civil Aeronautics Board, the Post Office continued to subsidize portions of the airline industry until 1958.¹⁴⁸

2.3.13 Bulk Third Class Rates and Library Rate, 1928

In 1928, Congress adopted bulk pound rates for third class advertising circulars in a partial retreat from the 1925 act.¹⁴⁹ The Direct Mail Advertising Association had strongly protested that the 1925 act unfairly distinguished between advertising in the second and third classes. The 1928 act provided that bulk third class mail must be prepared according to presortation and handling regulations prescribed by the Postmaster General.

The 1928 act also created a preferential rate for library books.¹⁵⁰ The rate was introduced as a result of a long campaign by rural interests, educational groups, and libraries to persuade Congress that a preferential library rate would promote reading in rural areas. The library rate was limited to use by libraries and nonprofit organizations and their patrons.

2.3.14 Book Rate, 1938

In 1933, Congress authorized the President to modify postage rates, other than first class rates, as part of an emergency response to the Depression.¹⁵¹ On October 31,

¹⁴⁷ Civil Aeronautics Act of 1938, ch. 601, 52 Stat. 973.

¹⁴⁸ See generally *Staff of the Subcomm. on Administrative Practice and Procedure of the Senate Comm. on the Judiciary, 94th Cong., Civil Aeronautics Board: Practices and Procedures* 195-215 (Comm. Print 1978) and sources cited there. See also Kielbowicz, "A History of Mail Classification," at 69-70.

¹⁴⁹ Act of May 29, 1928, ch. 856, § 6, 45 Stat. 940, 941. See Kielbowicz, "A History of Mail Classification," at 79-81.

¹⁵⁰ Act of May 29, 1928, ch. 856, § 7, 45 Stat. 940, 942-43. See Kielbowicz, "A History of Mail Classification," at 82-83.

¹⁵¹ Act of June 16, 1933, ch. 96, § 2, 48 Stat. 254, 254. This act delegated to the President authority to establish postage rates for mail other than first class mail until the end of fiscal 1933. The effectiveness of the 1933 act was extended by the Revenue Act of 1934 and other subsequent acts. Act of May 10, 1934, ch. 277, § 515, 48 Stat. 680, 760 (1934 to 1935); Act of June 28, 1935, ch. 333, 49 Stat. 431 (1935 to 1937); Act of June 29, 1937, ch. 402, 50 Stat. 358 (1937 to 1939); Revenue Act of 1939, ch. 247, § 1, 53 Stat. 862 (1939 to 1941); Act of May 28, 1941, ch. 143, 55 Stat. 210 (1941 to 1943); Act of June

1938, President Franklin D. Roosevelt proclaimed a preferential rate for books of 1½ ¢ per pound “irrespective of the zone of destination.”¹⁵² The rate was applicable to “books consisting wholly of reading matter and containing no advertising matter other than incidental announcements of books, when mailed under such regulations as the Postmaster General shall prescribe.”¹⁵³

2.4 *Summary*

The Post Office was established in 1775 by the Continental Congress and continued by the first Congress elected under the Constitution. The first act of Congress specifying the organization and duties of the Post Office was adopted in 1792. Following the British practice, the Post Office was created as an office within the Treasury Department. The Post Office quickly assumed an important role in the federal government. In 1829, the Postmaster General became a member of the President’s cabinet. In 1872, Congress formally established the Post Office Department.

The nature and geographic scope of services offered by the Post Office likewise evolved. Until the Civil War, the Post Office was an intercity, post office-to-post office transportation service. In the 1860s, the Post Office began to provide city delivery services on a significant scale, both for intercity mail and, increasingly, for local, intracity mail. Gradually, collection and delivery of mail, rather than intercity transportation, became the main activity of the Post Office. In the 1890s, Congress extended the mission of the Post Office to include delivery to private mailboxes placed along roads in rural areas where the majority of Americans lived. The RFD program was intended to serve areas sufficiently settled to support postal routes serving approximately a hundred households. It was largely completed by 1906, although it continued to expand incrementally thereafter. In 1912, Congress authorized the Post Office to provide delivery in villages of less than 10,000 residents. Until the Postal Reorganization Act of 1970, the

17, 1943, ch. 129, 57 Stat. 157 (1943 to 1945); Act of June 30, 1945, ch. 211, 59 Stat. 295 (1945 to 1947). See Kielbowicz, “A History of Mail Classification,” at 84-85.

¹⁵² 3 Fed. Reg. 2588 (Nov. 1, 1938).

¹⁵³ *Ibid.*

postal laws retained vestiges of a system built up from four distinct services: intercity postal service, city delivery, village delivery, and rural delivery.

Statutes defining the reach of the postal system varied with the nature of the service. In the early days, a “postal” system was literally a series of posts, or relay stations, located along a “post road.” From 1792 to 1884, Congress designated individual post roads by law and authorized the Postmaster General to nominate suitable persons and facilities along the post roads to serve as post offices. After the start of free city delivery in 1863, collection and delivery grew in importance as features of postal service, and the scope of service came to be defined by the extent of the delivery system. In 1865, Congress mandated delivery services in every city with a population of 50,000. The Postmaster General was authorized, but not required, to provide delivery services in cities with more than 20,000, later reduced to 10,000, residents. The scope of the rural delivery system was established in answer to petitions from rural residents provided the petitions met conditions established by the Postmaster General. The location of village delivery services were also determined by the Postmaster General. Thus, beyond the network of cities with more than 50,000 residents, the scope of the delivery system was determined by the Postmaster General. In 1916, however, Congress became frustrated with efforts of Post Office improve the efficiency of the rural free delivery and adopted a rider to appropriations legislation dictating key elements of the program. This legislation included an order to the Postmaster General to extend the program, so far as permitted by appropriations, “to serve, as nearly as practicable, the entire rural population of the United States.”

The range of services offered by the Post Office also grew by accretion. Although in colonial times the British Post Office was focused on carriage of official and commercial letters, after the Revolutionary War, the U.S. Post Office became first of all a medium for the inexpensive distribution of newspapers between cities. Very high postage rates on letters paid for the distribution of newspapers but also discouraged casual use of letter services. Magazines and pamphlets were admitted to the mails in 1794, but only when they could be transported conveniently. Postal acts adopted in 1845 and 1851 radically reduced letter rates and based them on weight rather than the number of sheets of paper, paving the way for the first use of envelopes (early letters were folded sheets of

paper sealed with wax). The Post Office became a means for people generally to communicate across distances, and social and commercial communications were revolutionized. In the same period, transmission of magazines became a regular postal service, and economical rates for advertisements and books were introduced. Classes of mail were first established in 1863, and the traditional four classes of mail were fixed in 1879. After the mid-1800s, the Post Office became a conduit for transmission of seeds, bulbs, and other things weighing up to three or four pounds. In 1912, Congress authorized the Post Office to provide parcel services, and the parcel post was rapidly expanded to admit fifty-pound packages. After 1912, the definitions of services were revised but not fundamentally changed.

Postage rates in the early nations of the nation preferential rates for newspapers reflected a strong commitment by the founding fathers to a public policy of keeping the citizenry informed about the events of the day. This public policy preference gave rise to a perpetual political debate over what types of items deserved similar preferential treatment and which did not. Magazines and pamphlets were given preferential rates in 1794, although they were less favorable than newspaper rates until 1852. Local newspapers were transmitted for free in 1845, a privilege that later became the a preference for "in-county newspapers." In the early-to-mid-nineteenth century, books and advertisements were considered commercial items inappropriate for preferential rates. Over time, however, improving technology and changing business practices, stimulated at least in part by distinctions in postage rates, blurred the line between news media and commercial text. Newspapers and magazines begin to include voluminous advertising and serializations of books and novels. Congressional reforms, such as higher rates for advertising in newspapers and magazines (1917) and redefinition of the third and fourth classes (1925), precipitated counter reactions in the form of preferential rates for nonprofit publications (1917) and library books (1928), as well as bulk rates for third class advertising (1928).

By the mid-twentieth century, American postal law was an uncoded jumble of statutory provisions mandating or authorizing a variety services with rate preferences enacted to answer different needs at different times. Since the ultimate manager of the postal system was the Congress, parties affected by the postal laws, especially those

dependent on preferential rates, were of necessity well versed in how to make their cases to government officials and the general public.

3 Postal Policy Act of 1958 and Aftermath

By the middle of the twentieth century, the postal system had become too large and complex for Congress to administer without articulated objectives. After the end of World War II in 1945, Congress readily provided long-delayed wage increases for postal employees, but raising postage rates to cover higher costs was more difficult. A long and fiercely fought debate over methods of cost allocation, the propriety of a public subsidy for postal services, and the role of the Post Office in the national life ensued. The outcome was Public Law 85-426, adopted in 1958, which raised the price of a first class stamp for only the second time since 1885 and adopted the first ever statement of national postal policy to guide future Congresses in their rate-setting debates. The postal policy title, separately named the “Postal Policy Act of 1958,” is the ultimate source for much of what is now considered to be the universal service obligation of the Postal Service.

3.1 1951 Act Readjusting Postage Rates

By 1950, wage increases enacted by Congress in 1945, 1948, and 1949 had increased annual operating costs by approximately \$800 million, about one-third of the Post Office’s total budget in 1950.¹⁵⁴ In 1946, the Post Office lost \$129 million, 9.5 percent of total expenses, the largest percentage loss since 1936.¹⁵⁵ By 1950, the deficit was about \$590 million; in 1951 it was \$512 million, approximately 24 percent of total expenses.¹⁵⁶ According to the accounts of the Post Office, all classes of mail were losing money except for First Class Mail.¹⁵⁷

¹⁵⁴ In 1948, the Postmaster General estimated that the average wage for postal employees had risen by 69 percent. 1948 *Postmaster General Ann. Rept.*, in H.R. Doc. No. 2, 81st Cong., 1st Sess., at 2 (1948). Wages were raised again in 1949. In addition, higher rates for the transportation of mail by rail and aircraft were approved by the Interstate Commerce Commission and Civil Aeronautics Board and added about \$175 million in annual costs. H.R. Rep. No. 547, 82d Cong., 1st Sess., at 13 (Jun. 11, 1951) (quoting letter from President Harry S. Truman to Congress dated Feb. 27, 1951).

¹⁵⁵ U.S. Department of Commerce, Bureau of the Census, *Historical Statistics*, Series R163-71.

¹⁵⁶ H.R. Rep. No. 547, 82d Cong., 1st Sess., at 3 (Jun. 11, 1951)

¹⁵⁷ H.R. Rep. No. 547, 82d Cong., 1st Sess., at 13 (Jun. 11, 1951) (quoting letter from President Harry S. Truman to Congress dated Feb. 27, 1951).

President Harry Truman's Postmaster General, Jesse Donaldson, took office in December 1947. He believed that there should be a "proper business relationship between income and expenditures."¹⁵⁸ Donaldson annually urged Congress to raise rates, especially on classes of mail that were not covering costs, while he tried to trim costs. On April 17, 1950, Donaldson provoked a political firestorm by ordering an end to the second daily delivery of mail to about half of the nation's households. Congress failed to pass legislation overturning the Postmaster General's order by only a single vote in the Senate.¹⁵⁹

Congressional reaction to the Postmaster General's calls for higher postage rates was mixed. In 1949 and 1950, the House and the Senate were unable to agree on new rates.¹⁶⁰ In February 1951, President Truman underscored the need for higher rates by sending a formal message to Congress. The President asked Congress to raise an additional \$287 million in postal revenues by doubling rates for first class postcards, second class mail (newspapers and periodicals), and third class mail (advertisements).¹⁶¹ No change was requested in the rates for first class letters on the ground because these rates already exceeded costs.¹⁶² The House Post Office and Civil Service Committee proposed to increase non-letter rates by about half of what the Administration requested.¹⁶³ The Senate postal committee wanted to increase rates by more than requested by the Administration but proposed to do so by increasing the rate for first class letters from 3¢ to 4¢ and raising other rates by less than sought by the Administration. The Senate committee also wanted to restore the second daily delivery of

¹⁵⁸ 1949 *Postmaster General Ann. Rept.*, in H.R. Doc. No. 390, 81st Cong., 2d Sess., at 11 (1949)

¹⁵⁹ 96 Cong. Rec. 12548 (Aug. 15, 1950) (Statement of Postmaster General J. M. Donaldson, Aug. 11, 1950). The effort to maintain the second daily delivery was led by the letter carriers.

¹⁶⁰ S. Rep. No. 694, 82d Cong., 1st Sess., at 4 (Aug. 21, 1951) (quoting letter from Postmaster General Donaldson to the Vice President dated Feb. 28, 1951).

¹⁶¹ Rates for fourth class mail (parcels) could be set either by the Post Office with the approval of the Interstate Commerce Commission or by Congress in legislation.

¹⁶² H.R. Doc. No. 65, 82d Cong., 1st Sess. (Feb. 27, 1951).

¹⁶³ H.R. Rep. No. 547, 82d Cong., 1st Sess. (Jun. 11, 1951). The House committee estimated that its bill, H.R. 2982, would raise about \$138 million in new revenues.

residential mail, although a substantial majority of the Senate voted to strike this provision.¹⁶⁴

In short, while all agreed that the Post Office needed more revenue, there were sharp disagreements about how rate increases should be distributed among the mail classes. The Post Office allocated costs according to a “cost ascertainment” system initiated by Congress in 1925. This was a fully allocated costing system in which joint costs were attributed to specific products using statistical formulae.¹⁶⁵ The Administration's proposal to raise rates for periodicals and advertisements while leaving untouched the 3¢ stamp for first class letters was heavily influenced by the manner in which costs were allocated by the cost ascertainment system. Although the House committee broadly accepted the Post Office's approach to cost allocation, the Senate committee was skeptical of both the technicalities of the cost ascertainment methodology and the premise that rates should be based on costs.¹⁶⁶

Early in the spring of 1951, such concerns had motivated the chairman of the Senate postal committee, Olin Johnston (Dem., South Carolina), and the ranking minority member, Frank Carlson (Rep., Kansas), to introduce a resolution calling for creation of a joint congressional committee to investigate postal rates and postal policies.¹⁶⁷ In introducing the proposed resolution, Senator Carlson explained that the basic issue was “whether the Post Office Department is a service or a business”:

Some questions raised during current hearings on postal rate legislation involve spelling out whether the Post Office Department is a service or a business. An impartial study should reveal what definite proportion of the post office service rendered to each class of mail and to each major division of each class should be considered as a service that should be paid for out of Government funds and not be included in the rates charged for

¹⁶⁴ A motion to reconsider an earlier decision to strike this provision was defeated 46 to 17. 97 Cong. Rec. 11024 (Sep. 7, 1951).

¹⁶⁵ See Advisory Council, *Advisory Council Report* 36-37 (report by Price Waterhouse).

¹⁶⁶ See, e.g., 97 Cong. Rec. 11029-11031 (Sep. 7, 1951) (remarks of Senator Johnston, Chairman of the Committee on Post Office and Civil Service; remarks of Senator Carlson of Kansas, ranking minority member of the committee).

¹⁶⁷ See S. Rep. No. 41, 83d, Cong., 1st Sess. (Feb. 16, 1953).

postage.¹⁶⁸

The proposed resolution was included in the Senate version of a renewed attempt to legislate higher postage rates.

Table 4. Postal deficit, 1946–1958

| Year | Revenues | Costs | Profit/Loss | Percent of costs |
|------|----------|-------|-------------|------------------|
| 1945 | 1,314 | 1,145 | 169 | 14.8% |
| 1946 | 1,225 | 1,354 | -129 | 9.5% |
| 1947 | 1,299 | 1,505 | -206 | 13.7% |
| 1948 | 1,411 | 1,688 | -277 | 16.4% |
| 1949 | 1,572 | 2,149 | -577 | 26.9% |
| 1950 | 1,677 | 2,223 | -545 | 24.5% |
| 1951 | 1,777 | 2,341 | -565 | 24.1% |
| 1952 | 1,947 | 2,667 | -720 | 27.0% |
| 1953 | 2,092 | 2,742 | -650 | 23.7% |
| 1954 | 2,269 | 2,668 | -399 | 15.0% |
| 1955 | 2,349 | 2,712 | -363 | 13.4% |
| 1956 | 2,419 | 2,883 | -464 | 16.1% |
| 1957 | 2,497 | 3,044 | -548 | 18.0% |
| 1958 | 2,550 | 3,441 | -891 | 25.9% |

Source: Department of Commerce, Bureau of the Census, *Historical Statistics of the United States: Colonial Times to 1970* (Bicentennial Edition, 1975), Vol. 2, pp. 804-05 (series R 163-171).

This time, the House and Senate agreed on a rate increase, but only a limited one.¹⁶⁹ Senate proposals to increase rates for first class mail and air mail were not accepted by the House. The 1951 act only increased rates for postcards, second class mail, and third class mail and did so by less than requested by the Administration. Educational publications for classrooms were exempted from the increased second class rates.¹⁷⁰ The act also exempted nonprofit bulk mail from the increases in third class

¹⁶⁸ 97 Cong. Rec. 3712 (Apr. 12, 1951) (emphasis added).

¹⁶⁹ Act of Oct. 30, 1951, ch. 631, 65 Stat. 672.

¹⁷⁰ Act of Oct. 30, 1951, ch. 631, § 2, 65 Stat. 672 (“any religious, educational, or scientific publication designed specifically for use in school classrooms or in religious instruction classes”). See Kielbowicz, “A History of Mail Classification,” at 72-73.

rates.¹⁷¹ This was the origin of preferential rates for classroom publications and bulk third class nonprofit mail.

Section 13 of the 1951 act included the Senate plan to set up a joint Congressional committee to study postal rates and policies. The joint committee was to be given a study budget of \$100,000 and directed to report on:

(1) Postal rates and charges in relation to the reasonable cost of handling the several classes of mail matter and special services, with due allowances in each class for the care required, the degree of preferment, priority in handling, and economic value of the services rendered and the public interest served thereby.

(2) The extent to which expenditures now charged to the Post Office Department for the following items should be excluded in considering costs for the several classes of mail matter and special services:

(A) Expenditures for free postal services;

(B) Expenditures in excess of revenues for international postal services;

(C) Expenditures for subsidies for postal services pursuant to law or legislative policy of Congress;

(D) Expenditures in excess of revenues, pursuant to the Act of June 5, 1930 (39 U. S. C. 793), not enumerated in the preceding subparagraphs (A), (B), or (C);

(E) Expenditures for services of any character not otherwise enumerated herein which may be performed for other departments and agencies of the Government; and

(F) Expenditures which may be justified only on a national welfare basis and not primarily as a business function.

(3) Expenditures for the Post Office Department by other Government agencies which should be considered in connection with the cost for the handling of the several classes of mail matter and special services, such as employees' retirement, use of Government buildings, and maintenance services.

(4) The extent, if any, to which Post Office Department expenditures in excess of revenue, for its various services and for the handling of various classes of mail, are justified as being in the public interest.¹⁷²

¹⁷¹ Act of Oct. 30, 1951, ch. 631, § 3, 65 Stat. 672, 673-74. *See* Kielbowicz, "A History of Mail Classification," at 79-81.

¹⁷² Act of Oct. 30, 1951, ch. 631, § 13, 65 Stat. 672, 677-78 (emphasis added).

3.2 *Senate Advisory Council Report (1954)*

The joint Congressional committee established by the 1951 act never materialized. The 1951 act was not adopted until the end of October 1951, and the 82d Congress adjourned in July 1952 without funding the committee.¹⁷³ In the elections of 1952, the Republicans, led a popular presidential candidate, Dwight Eisenhower, won control of the Senate. Republican Senator Frank Carlson, former governor of Kansas, became chairman of the Senate Post Office and Civil Service Committee. On March 6, 1953, Carlson won approval of a Senate resolution to establish an Advisory Council that would operate under the direction of his committee.¹⁷⁴ The Advisory Council was given the same mandate and funding as the unfunded joint committee.

The Advisory Council was composed of ten prominent citizens. Although the ex-officio chairman of the Advisory Council was Senator Carlson, he was not listed as a member of the Council in its final report. The leader of the Advisory Council was vice chairman Walter D. Fuller, chairman of Curtis Publishing Co., a major magazine publisher (*The Saturday Evening Post*, *Ladies' Home Journal*, etc.). A majority of the other nine members were also second and third class mailers.¹⁷⁵ The Advisory Council also appointed three "subcouncils," which included persons who were not members of the full Council. The Council employed five professional staff members.¹⁷⁶

On January 18, 1953, the Advisory Council issued a 364-page report.¹⁷⁷ The main body of the report consisted of a summary of recommendations set out in seventeen

¹⁷³ S. Rep. No. 41, 83d Cong., 1st Sess., at 2 (Feb. 16, 1953).

¹⁷⁴ S. Res. 49, 83d Cong. (1953), agreed by the Senate, 99 Cong. Rec. 1717 (Mar. 6, 1953).

¹⁷⁵ Five members were directly interested in second and third class postal services: a second magazine publisher (Paul D. Sanders, publisher of the *Southern Planter*), two newspaper publishers (Ed M. Anderson and Eugene C. Pulliam), the vice president of a direct marketing company (Edward B. Rubin, Spiegel Company), and the director of the Associated Third-Class Mail Users (John E. Tillotson). The other four members were: Albert Linton, chairman of a life insurance company, William C. Doherty, head of the National Association of Letter Carriers, Robert Ramspeck, an airline executive and former Democratic congressman, and Helen Chapman, vice president of the General Federation of Women's Clubs. See 100 Cong. Rec. 1485 (Feb. 8, 1954).

¹⁷⁶ The positions of the members of the Advisory Council are not indicated in its report, but they are given in newspaper accounts. See Clayton Knowles, "5C Rate is Studied for Intercity Mail," *New York Times*, Sept. 18, 1953; "Electronics Urged to Speed U.S. Mail," *New York Times*, Nov. 24, 1953.

¹⁷⁷ Advisory Council, *Advisory Council Report*. See "Senate Unit Gets Postal Reforms," *New York*

pages. These were supported by separate studies by subcontractors Price Waterhouse, the National Industrial Conference Board, and the National Education Association, and by individual reports by the Subcouncils on Costs and Ratemaking, on Transportation, and on Personnel.

The Advisory Council's lead recommendation—considered so paramount that it was placed before the 28 numbered recommendations—was a call for adoption of a national postal policy. The report begins:

Any proposed solution to the many problems besetting the Post Office Department must reflect some assumption as to just what Congress expects the post office to be and do. Is the post office entirely a service designed to handle mail with the greatest possible convenience to the general public regardless of cost? Or is it entirely a business whose value is to be measured by the net revenue it returns each year to the United States Treasury? Or is it a combination of business and service? Is it designed primarily for the expeditious handling of first-class mail, or does it accord equal treatment to all classes? Is it operated with maximum efficiency so that any deficit can be reduced or eliminated only by further rate increases? Or are there areas where great cost reductions are possible without impairing service? Should all postal expenses be charged to users of the mail, or should certain postal activities be properly charged to other branches of Government or paid out of general funds?¹⁷⁸

To this end, the Advisory Council recommended that Congress consider the following draft statement of national postal policy:

- (1) That the Post Office Department is fundamentally a public service to the people of the United States and should be so considered;
- (2) That the postal service shall be conducted according to the highest standards of efficiency in either business or Government, and that constant efforts shall be made to improve the service in the interests of the public;
- (3) That the costs of services performed for the Post Office Department by other departments shall be added to postal costs, and that the costs of services performed by the Post Office Department for other departments, and of services which are justified only on a general welfare basis, shall be deducted from postal costs;
- (4) That mail rates shall reflect the fact that the Post Office

Times, Jan. 19, 1954.

¹⁷⁸ Advisory Council, *Advisory Council Report 7* (emphasis added).

Department was established and is designed primarily for the handling of first-class mail, and that it shall further reflect the contribution of each class of mail to the general welfare and the value of the service performed for each class;

(5) That Congress shall set all postal rates.¹⁷⁹

The Advisory Council's answer to the continuing postal deficits flowed naturally from its proposed postal policy. First, the report recommended that public funds should be used to compensate the Post Office for several types of costs:

Any sums expended for free postal services, for international postal services, and for services performed for other Government departments should be covered not from post-office revenue but from the general funds of the Treasury. Any loss of revenue due to preferential rates as described in the Price Waterhouse report should be offset by the general funds of the Treasury. Any expenditures which can be justified only on a national welfare basis, as described in the same report, should be reimbursed from the general funds of the Treasury.¹⁸⁰

In the view of the Advisory Council, “expenditures which can be justified only on a national welfare basis” included the costs of small (fourth class) post offices, rural delivery services, and “star route” services to rural areas.¹⁸¹ The Advisory Council estimated that, after appropriate public funding, the net deficit in 1952 would have been \$466 million instead of \$727 million (out of a total budget of \$2.7 billion).¹⁸²

The Advisory Council recommended that all postage rates should be set by Congress using an approach based on *incremental* costs and taking into account the social benefits of postal service. For Congress to take control of *all* postage rates would divest the Interstate Commerce Commission of authority over parcel post rates. The Advisory Council recommended that Congress should set rates in accordance with three basic

¹⁷⁹ Advisory Council, *Advisory Council Report* 7 (emphasis added).

¹⁸⁰ Advisory Council, *Advisory Council Report* 18 (Recommendation No. 22) (emphasis added).

¹⁸¹ Advisory Council, *Advisory Council Report* 33.

¹⁸² Advisory Council, *Advisory Council Report* 34. On the other hand, during this period government accounts failed to charge the Post Office Department for expenses incurred on behalf of the Postal Service, such as payments into retirement funds for postal employees that were assessed to the Civil Service Commission. According to the estimate of one independent economist, the value of services that other government departments provided the Post Office substantially exceeded the value of services that the Post Office provided other government departments. See Jane Kennedy, “Structure and Policy in Postal Rates,” *Journal of Political Economy* 65 (1957): 202.

criteria: first, the effect of each class of mail on the general welfare (e.g., the benefit of low rates for periodicals, newspapers, books, and mail for the blind); second, the value of the service rendered to each class (e.g., quality of service compared to other classes, availability of alternative services, and ability of the mailer to pay); and third, the incremental costs incurred by each class.

In broad terms, this approach implied that rates for third class mail and parcels should be set at incremental cost, rates for second class mail (newspapers and magazines) should be set below incremental costs, and rates for first class mail should be set to cover the remaining costs.¹⁸³ The approach to ratemaking favored by the Advisory Council was far more favorable to publishers and direct mailers than the traditional approach of the Post Office, which started from cost figures derived from the cost ascertainment system.¹⁸⁴ To justify the departure from past practice, the Advisory Council's report included detailed supporting analyses by the three subcontractors and reports of the three Subcouncils.

Contractor Price Waterhouse was asked to determine the costs for each class of mail based on the assumption that first class mail should bear all common costs while other classes of mail should bear only their incremental costs. Price Waterhouse was unable to develop precise figures since Post Office accounts were not designed to provide the necessary data. Nonetheless, Price Waterhouse estimated that roughly 68 percent of all costs could be directly attributed to specific classes of mail.¹⁸⁵ Applying this estimate to the financial results from 1952—a year in which postal revenues were only 73 percent of expenditures—Price Waterhouse concluded that the cost coverage (the ratio of revenues to expenditures) for first class mail was only 50 percent while the cost coverage for second class mail was 48 percent; for third class mail, 117 percent; and for fourth class, 134 percent. Under the cost ascertainment methodology of the Post Office, the cost coverages for first, second, third, and fourth class mail were 107, 19, 47, and 76 percent,

¹⁸³ Advisory Council, *Advisory Council Report* 18-21.

¹⁸⁴ Advisory Council, *Advisory Council Report* 36-39.

¹⁸⁵ For comparison, it may be noted that in the last general rate case the Postal Regulatory Commission was able to attribute only 56 percent of costs to specific classes of mail. Opinion and Recommended Decision, Docket R2006-1, Appendix G, Schedule 1 (2007).

respectively. In short, Price Waterhouse demonstrated that the assumption that first class mail should bear the common costs of the Post Office implied dramatically different postage rates compared to those derived from the assumptions underlying the cost ascertainment reports of the Post Office.

Contractor National Industrial Conference Board (NICB) was asked to describe the economic role of postal services. How are these services related to the levels and the maintenance of business activity and national income? What role do they play in the distribution of the Nation's output of goods and services? How do costs for postal services enter into and compare with other business costs? How do postal rates and changes in them affect business and the use business makes of postal services? To answer such questions, the NICB surveyed 5,800 businesses, of which 992 responded. The overall message of the NICB report was to highlight the importance of business mailers to the Post Office and visa versa. The tone of the study—and the absence of available information about the content of mail—is reflected in the following excerpts.

The economic values alone, for example, of having a post office in virtually every community and of a network of communications reaching to every door and to every individual in the land are far beyond the possible range of empirical assessment. And, limited as they are to the purely economic and to known statistical and factual data, these findings inadequately portray the full significance of an institution whose role stretches far beyond the economic, whose values include both tangibles and intangibles beyond the compass of this study. . . .

The channels afforded by the postal system for the dissemination of this information and for the pursuance of advertising efforts are clearly fundamental to their effectiveness, and, in turn, must stand in close relationship to their fruits. . . .

[I]t would appear that somewhere possibly in the neighborhood of three-quarters to four-fifths of total postal revenues may be attributable to business and related activities. Viewed another way, it seems reasonable that on a piece-of-mail basis somewhere over one-half of all mail originates in business—a substantial part of which either represents distributional-selling efforts or the results of such efforts. . . .

The questions of alternatives to present use of postal services and of the cost of such alternatives are briefly developed in this present study. Such an inquiry—pursued in greater detail—would go far toward

providing a necessary factual basis for a proper evaluation of the economic importance of postal services. . . .¹⁸⁶

The NICB survey particularly addressed two rate policy issues. The first was whether a local/non-local rate schedule for letters—e.g., 3¢ for local letters and 5¢ for non-local letters—would be preferable to a regular/airmail rate schedule—e.g., 4¢ for local and non-local regular letters and a 7¢ for airmail. On this question, the NICB reported mixed and inconsistent results suggesting a roughly even split among business mailers.¹⁸⁷ The second issue was whether raising postage rates helped or hurt the national economy. Overall, the NICB found that most business mailers were not sensitive to postage rate increases, although there were exceptions such as direct mail firms. The NICB was unable to determine whether subsidizing postage rates for advertising mail would produce enough stimulus to the national economy to offset the cost.¹⁸⁸

The National Education Association (NEA) was asked to the benefits derived by education from the activities of the postal service are of such value to the public as to justify government subsidization of postage rates for educational materials. In brief, the NEA's answer was "'Yes' both in terms of educational use as defined by this study as well as in the broadest sense of the 'educational.'"¹⁸⁹ To support its position, the NEA offered a lengthy survey of the history of national postal policy and declared.

The weight of legislative tradition and the whole history of postal operations in this country seem to come down heavily in favor of regarding the post office as a form of public service, partially subsidized from general revenue in the interest of the general welfare. It has been suggested by some that this tradition is unjustified and that it should be reversed. Whether or not the Nation is prepared to take this step is not for this study to decide. If the post office is to be a self-supporting enterprise it is imperative to separate the cost of the educational use of mails from other costs so that some form of subsidy can be made by congressional appropriation.¹⁹⁰

¹⁸⁶ Advisory Council, *Advisory Council Report* 48-50 (emphasis added).

¹⁸⁷ Advisory Council, *Advisory Council Report* 54-55.

¹⁸⁸ Advisory Council, *Advisory Council Report* 55, 152-53.

¹⁸⁹ Advisory Council Report 231.

¹⁹⁰ Advisory Council Report 184.

Reports of the Subcouncils added further substance to these conclusions. The Subcouncil on Costs and Rate¹⁹¹ contributed a ninety-seven page report that strongly criticized the Post Office's cost ascertainment system,

Cost ascertainment assumes that the post office is purely a business operation in which every cost is chargeable to some type of mail or other postal service. As a Government monopoly operation designed primarily to offer a needed service to the entire public, the post office incurs many costs which no pure business would or could assume.¹⁹²

The Subcouncil argued that about half of the Post Office's deficit was the result of public service costs that should be paid out from public funds. The Subcouncil supported use of incremental cost allocation and transfer of joint costs to first class mail since other classes received deferred service. Using such an approach, only first class mail and second class mail were losing money and, the Subcouncil implied, losses on second class mail were justified "since the publications which comprise second class are conceded to serve the national interest through the dissemination of information."¹⁹³

The Subcouncil on Personnel¹⁹⁴ issued a short report, but its report included the seminal proposal to adopt an explicit national postal policy. The Subcouncil's first and most forcefully argued recommendation was, "There should be a clear definition of proper postal policy." The Subcouncil amplified on this recommendation:

The postal service has been the greatest single line of communication throughout our entire history, and it remains so today. Civilization itself rides on the back of good transportation and good communication. Good communication is the backbone of good family life. The greatest single line of communication in America today is the postal service. Telephone and telegram have exceeded the postal service in speed of communication, but they have not replaced it. . . . The Postal Establishment is the sole communication cord that ties every unit of the country together. . . .

The confusion that exists through attempts to operate the Postal

¹⁹¹ The Subcouncil on Costs and Ratemaking was chaired by Francis R. Cawley and included four other members. Its report may be found at Advisory Council, *Advisory Council Report* 237-336.

¹⁹² Advisory Council, *Advisory Council Report* 239 (emphasis added).

¹⁹³ Advisory Council, *Advisory Council Report* 242.

¹⁹⁴ The Subcouncil on Personnel was chaired by William C. Doherty, President of the National Association of Letter Carriers, and included two other members. Its report may be found at Advisory Council, *Advisory Council Report* 351-64.

Establishment as a business on one hand, and to conform to service standards on the other, has resulted in penalizing the efficiency of the postal service and the welfare of the employees. It is important to realize that postage rates are essentially a fee for services and not a source of revenue. The welfare of all has to be taken into consideration in determining proper postage rates. Low rates should be maintained when and were necessary for general welfare, but not to benefit profit-making institutions. . . .

The postal service has suffered with extremely low salaries, with improper equipment, and with inadequate space, principally because of the fact that administrators in the Post Office Department and legislators in the Congress have been misled by arguments that the postal service is essentially a business and should pay its own way. This philosophy has resulted in a declining postal service, in a severe decline in employee morale in the postal service, and in unfair treatment to postal employees.¹⁹⁵

The Subcouncil on Personnel thus brought to sharp focus the central issue raised by the postal deficits of the late 1940s and early 1950s: was the Post Office a public service to be provided without regard to cost or a public business that should be paid for by fees charged to those who use it and even make a reasonable return on the public's investment? As Subcouncil Chairman William Doherty would put it later in referring to this period:

We insisted, as we always have insisted and always will insist, that rates and wages should be considered separately, and that they should in no way be dependent on one another. We are also eternally committed to the principle that the post office is a service and should not be expected to make a "profit."¹⁹⁶

As is evident from the final report, other members of the Advisory Council broadly agreed with the proposition that the Post Office was a public service and not a public business.

The chairman and ranking minority member of the Post Office and Civil Service Committee were sympathetic with the public service concept of the Post Office advocated by the Advisory Council. Republican Chairman Carlson assured the *New York*

¹⁹⁵ Advisory Council, *Advisory Council Report* 357-60 (emphasis added). The Subcouncil also urged the Council to support higher salaries for postal employees and restoration of the second daily delivery. The Advisory Council did not support restoration of the second daily delivery.

¹⁹⁶ William C. Doherty, *Mailman U.S.A.* 244.

Times, “You can tell your readers that we are not going to saddle the user with the whole cost of carrying the mails.”¹⁹⁷ Democrat Olin Johnston, who was chairman of the committee in the previous Congress (as he would be again in the next Congress), declared:

I deeply trust that from our deliberations may come a statement of principle, so clear as to be unassailable through the generations to come, that the Post Office Department is a Government service to the people of the United States, established in the interests of the general welfare. From that principle all else proceeds. That principle this body must nail down.¹⁹⁸

3.3 *Position of the Eisenhower Administration*

President Eisenhower’s Postmaster General was Arthur E. Summerfield, former chairman of the Republican National Committee and a former businessman (owner of a large automobile dealership). Summerfield entered office in January 1953 determined to introduce a new era of modern management to Post Office Department, “to reorient completely the perspectives, methods of operation and working habits of the people” and replace “a system of postal management which had fostered little change in the status quo over successive decades.”¹⁹⁹ Summerfield’s reform agenda included an attack on the deficit, “Balancing the Post Office Department budget means matching income with outgo just as in the case of any commercial establishment.”²⁰⁰

Postmaster General Summerfield disagreed emphatically and fundamentally with the recommendations of the Advisory Council, “A so-called advisory council whose membership is dominated by representatives of these special interests, released a report with conclusions with which we violently disagree.”²⁰¹ In particular, the Post Office maintained the validity of its approach to cost allocation and rejected the “out-of-pocket” approach to costing non-letter products as historically false since newspapers, in

¹⁹⁷ Richard T. Baker, “U.S. Postal Deficit Is Contrasted With Profit in Most Other Lands,” *New York Times*, Feb. 12, 1954.

¹⁹⁸ 100 Cong. Rec. 1489 (Feb. 8, 1954).

¹⁹⁹ 1953 *Postmaster General Ann. Rept.*, in H.R. Doc. No. 252, 83d, Cong., 2d Sess., at 1 (1953).

²⁰⁰ 1953 *Postmaster General Ann. Rept.*, in H.R. Doc. No. 252, 83d, Cong., 2d Sess., at 8-9 (1953).

²⁰¹ 100 Cong. Rec. 1485 (Feb. 8, 1954).

particular, were provided since the beginning of the postal service. The Post Office declared further that the description of the second, third, and fourth classes of mail as “by-products” rested on the incorrect premise that the Post Office had idle facilities.²⁰²

To support its position, the Post Office launched its own policy offensive. On April 1, 1954, the Post Office issued a 350-page report on postal rates and policy. Most fundamentally, the Post Office proposed that Congress establish an independent commission to set postage rates in accordance with rate principles adopted by Congress. A key principle urged by the Post Office was that postage rates should cover costs. The Post Office also conducted its own survey, a public poll that concluded that 80 percent of Americans supported the notion that the Post Office should be self-supporting.²⁰³

3.4 Postal Policy Deadlock, 1954-1956

Following publication of the Senate Advisory Council Report and the answering shot by the Post Office, there was an extraordinary debate between Congress and the President over the appropriate public policy towards postal rates. In February 1954, a divided House committee approved a bill to increase postage rates, including an increase in non-local first class letters rates from 3¢ to 4¢.²⁰⁴ Over the summer, however, Congress failed to pass a postage rate bill while approving a new increase in wages for postal employees.²⁰⁵ President Eisenhower vetoed the wage increase citing, among other things, the failure to raise postage rates.²⁰⁶

In 1955, the Democrats gained control of both houses of the 84th Congress, having won slim majorities in the elections of 1954. In January, President Eisenhower

²⁰² Jane Kennedy, “Structure and Policy in Postal Rates,” *Journal of Political Economy* 65 (1957): 203.

²⁰³ 100 Cong. Rec. 1488 (Feb. 8, 1954). Summerfield agreed that some items in the Post Office's budget, like subsidies for airlines and services performed for other government departments, should be paid out of public funds.

²⁰⁴ H.R. Rep. No. 1252, 83d Cong., 2d Sess. (Feb. 25, 1954); John Fisher, “House Passes Postal Service Pay Boost Bill,” *Chicago Daily Tribune*, Aug. 10, 1954; C. P. Trussell, “5% Pay Rise Voted for Federal Aides,” *New York Times*, Aug. 21, 1954.

²⁰⁵ C. P. Trussell, “Postal Rate Rise Beaten by House,” *New York Times*, July, 22, 1954.

²⁰⁶ “Text of Eisenhower Statement on Veto,” *New York Times*, Aug. 24, 1954.

submitted to Congress a plan for increasing postage rates and establishing an independent commission to establish postage rates in accordance with principles set by Congress.²⁰⁷ In May 1955, however, Congress re-approved the pay increase for postal employees without consideration of postage rates. The President again vetoed the pay increase.²⁰⁸ In June 1955, Congress approved a third postal wage increase bill, which the President reluctantly accepted on the ground that it at least gave the Post Office more authority to change the classifications of postal employees.²⁰⁹

In 1956, the Eisenhower Administration made another effort to increase the postage rate. In his message on the state of the union in January 1956, President Eisenhower noted that the pay raise had increased the postal deficit and urged higher postage rates.²¹⁰ On February 1, 1956, the Administration sent Congress a proposal to increase postage rates substantially, including an increase in all (non-local as well as local) first class stamps from 3¢ to 4¢, but the Administration dropped demands for an independent commission to establish future postage rates.²¹¹ In May, the House committee approved a postal rate bill that would raise first class letter rates from 3¢ to 4¢.²¹² The House bill also responded to the Senate Advisory Council Report by including findings and a national postal policy. This bill was approved by the House over fierce opposition from Democratic leadership.²¹³ The Senate committee, however, did not report the bill²¹⁴ before the 84th Congress adjourned in July 1956.

²⁰⁷ "Eisenhower Pushes Postal Solvency," *New York Times*, Jan. 12, 1955.

²⁰⁸ "President Vetoes Postal Pay Rise, Urges Substitute," *New York Times*, May 20, 1955.

²⁰⁹ "Why This Postal Pay Bill Was Signed," *Los Angeles Times*, June 11, 1955.

²¹⁰ H.R. Doc. No. 241, 84th Cong., 2d Sess., at 12 (Jan. 5, 1956).

²¹¹ *Staff of H.R. Comm. on Post Office and Civil Service, 84th Cong., Communication From the President of the United States Relating to Postal Rates* (Comm. Print 1956).

²¹² H.R. Rep. No. 2237, 84th Cong., 2d Sess. (May 29, 1956). There were three minority reports.

²¹³ C. P. Trussell, "One-Cent Postal Rate Rise Voted in House, 217-165," *New York Times*, July 7, 1956.

²¹⁴ "Senate Unit Kills Postal Bill for Session," *Washington Post*, July 27, 1956.

3.5 4¢ Stamp and Public Law 85-426 (1958)

In the 85th Congress (1957–1958), the Democrats retained small majorities in both houses. In his January budget message, President Eisenhower again called for postage rate increases to put the Post Office on a “pay-as-you-go fiscal basis.” In March 1957, Postmaster General Summerfield sent to Congress a proposal for postage rate increases that was closely modeled on the House bill from the previous Congress. The Administration bill provided for an increase in the basic stamp price from 3¢ to 4¢ and in the airmail rate from 6¢ to 7¢.²¹⁵ In May 1957, the House postal committee reported the Administration’s bill, H.R. 5836, with minor amendments but substantial internal dissent.²¹⁶ The House approved the bill on August 13, 1957 and sent it to the Senate.

The The Senate Committee on Post Office and Civil Service, however, was in no hurry to address the postal deficit. In January, it announced that plans to develop a national postal policy before considering a rate increase.²¹⁷ In February, the Senate committee received the report of a second Citizens’ Advisory Committee, a group that included several holdovers from the first committee. The Citizens’ Advisory Council again opposed the pay-as-you-go approach towards financing the Post Office:

The Council agrees that it is time to settle once and for all this question: “To what extent is the Post Office primarily a public service which like other Federal departments and agencies is adjudged worth what it costs, or is the Post Office primarily a business which should take in at least as much money as it spends?” The Council has tackled this problem and concluded that the Post Office is, has been, and should continue to be primarily a service to the American public.²¹⁸

²¹⁵ *Staff of the H.R. Comm. on Post Office and Civil Service, 85th Cong., Explanatory Matter with Respect to the Recommendations of the Postmaster General for Legislation to Readjust Postal Rates* 1 (Comm. Print 1957).

²¹⁶ H.R. Rep. No. 524, 85th Cong., 1st Sess. (Jun. 3, 1957).

²¹⁷ “Mail Rate Rise Put Off,” *New York Times*, Jan. 18, 1957.

²¹⁸ Citizens’ Advisory Council, 85th Cong., *The Post Office as a Public Service: Report of the Citizens’ Advisory Council to the Committee on Post Office and Civil Service* 3 (Comm. Print 1957) (emphasis added). Postmaster General Summerfield noted, “The majority of the seven-man advisory council are in businesses which benefit financially from low postage rates.” Jay Walz, “Senators Flare Up Over Postal Policy,” *New York Times*, Mar. 22, 1957.

In April, the Senate Appropriations Committee declined emergency funds for the Post Office, and the Postmaster General stopped delivery of mail and closed post offices on Saturdays. The Senate relented two weeks later.²¹⁹ When the Senate Appropriations Committee threatened to trim the annual appropriations for the Post Office, President Eisenhower warned of substantial service reductions beginning July 1 and again urged increased rates.²²⁰ In late August, the Senate postal committee began hearings on the House-passed postal rate increases, but took no further action before the first session of the 85th Congress ended on August 30. On September 7, 1957, President Eisenhower again vetoed a bill that would increase wages for postal employees.²²¹

In January 1958, as the second session of the 85th Congress opened, President Eisenhower requested a larger increase in postage rates than previously sought, an increase in the rate for non-local first class letters to 5¢ instead of the 4¢ approved by the House.²²² In February, the Senate committee reported a substantially amended version of H.R. 5836.²²³ Over the objections of Chairman Johnston, the Senate committee supported a bill that increased the first class rate to 5¢ for non-local letters for three years, after which it would revert to 4¢. The rate for local letters was likewise increased to 4¢, while the rate for airmail letters was raised to 8¢, one cent more than approved by the House. Most support for the committee bill came from Republican senators.

The Senate debate on H.R. 5836 in early 1958 was an extraordinary in the development of national postal policy. This was only the second increase in stamp prices since 1885. The committee's proposal to raise the price for local first class stamps to 4¢ and for non-local first class stamps to 5¢ squarely presented basic questions of national postal policy. During Senate consideration of the committee bill, the main point of contention was the proposal to increase in the rate for non-local first class letters to 5¢ for

²¹⁹ "Postman Rings Once," *New York Times*, Apr. 14, 1957.

²²⁰ "President Asks Congress to Vote More Postal Funds Or Service Will Be Cut; Special Rates to Be Hiked," *Wall Street Journal*, May 28, 1957.

²²¹ "Presidents' Statement On Veto of Pay Raise," *Washington Post*, Sept. 8, 1957.

²²² "5-Cent Stamp for Out-of-Town Letters Proposed to Cut the Post Office Deficit: Local Rate Rise to 4 Cents Asked," *New York Times*, Jan. 14, 1958.

²²³ S. Rep. No. 1321, 85th Cong., 2d Sess. (Feb. 24, 1958).

three years. Senator Mike Monroney of Oklahoma and Senator John Pastore of Rhode Island led a strong Democratic effort to reduce this rate to 4¢. Two primary objections were made against the 5¢ rate. First, it was maintained that the non-uniform rate for first class letters would be unduly confusing to the “ordinary housewife,” who posts about 25 percent of first class letters. Second, it was suggested that the 5¢ rate unfairly charged the cost of modernizing postal facilities to mailers of first class letters without imposing a corresponding charge on senders of second and third class mail.²²⁴ Senator Wayne Morse of Oregon (Dem.) summed up, “users of the first-class mail should not be called upon to pay a nickel for postage on a letter when these great subsidies are available to publications and to those who advertise in them.”²²⁵ Republican supporters of the committee bill stoutly denied these arguments, however, and carried enough Democrats to win the day. The Senate’s forty-nine to forty-two rejection of the Democratic amendment to keep the increase in non-local first class letter rate to 4¢ was reported on the front pages of both the *Washington Post* and the *New York Times*.²²⁶ The Senate added a pay increase for postal employees to the bill and approved its version of H.R. 5836 on February 28.²²⁷

In May 1958, a House-Senate conference agreed on a compromise bill that included four titles: a national postal policy, an increase in postage rates, a “postal modernization fund” administered by Treasury, and a pay increase for postal employees. The conference generally agreed with lower rate increases approved by the House. First class rates for local and non-local letters were increased to 4¢; airmail letter rates were increased to 7¢. The 5¢ stamp for non-local letters that produced so much heat in the Senate was dropped. A 10 percent pay increase for postal employees was included in the package. Overall, the bill was expected to generate about \$547 million in additional

²²⁴ 104 Cong. Rec. 2862 (Feb. 26, 1958) (remarks of Senator Pastore).

²²⁵ 104 Cong. Rec. 2882 (Feb. 26, 1958) (remarks of Senator Morse).

²²⁶ C. P. Trussell, “Senate Approves 4C Local Postage, 5C Out-Of-Town,” *New York Times*, Feb. 27, 1958; “Senate Votes to Accept Ike’s Proposal For 5-Cent Stamp on Non-Local Mail,” *Washington Post*, Feb. 27, 1958.

²²⁷ 104 Cong. Rec. 3148 (Feb. 28, 1958).

postal revenues and \$265 million per year in increased employee costs.²²⁸ On May 27, 1958, President Eisenhower signed the bill into law as Public Law 85-426.²²⁹

3.6 *Postal Policy Act of 1958*

Title I of Public Law 85-426 was the “Postal Policy Act of 1958.” This was the first explicit national postal policy adopted by Congress. Title I consisted of five sections.

Section 101 provided the short title. The conference committee took the more inclusive short title from the Senate bill instead of using the more descriptive short title in the House bill, the “Postal *Rate* Policy Act.”

Section 102 set out the findings of Congress that justified the need for a declaration of policy. The conference committee followed the Senate version in the few cases where there were differences between the two bills.²³⁰ The fourth and fifth paragraphs declared, in effect, that there had been a traditional relationship among the rates for different classes of mail, that no mailer should be required to pay for incremental costs incurred by other mailers, and that some postal services should be paid for by public funds. While significant, these conclusions are repeated in more definitive terms in the next section. The conference committee discarded an explicit finding in the House bill that Congress had so far failed to distinguish between public service costs and the costs properly passed on to mailers in the form of postage rates:

notwithstanding the need for all users of the mails to be informed with reasonable certainty of the postal rates and fees which will be imposed upon them, the Congress heretofore has not laid down a firm policy (except for fourth-class mail and certain special services authorized by law) with respect to the identification and evaluation of those services rendered by the postal establishment in whole or in part for the benefit of the general public and those services which inure in whole or in part to the benefit of certain users of the mails . . .²³¹

²²⁸ Jerry Kluttz, “Senate Passes 4 Ct. Stamp, Pay Bill By a Veto-Stopping Vote of 88 to 0,” *Washington Post*, May 22, 1958.

²²⁹ Act of May 27, 1958, Pub. L. No. 85-426, 72 Stat. 134.

²³⁰ H.R. Rep. No. 1760, 85th Cong., 2d Sess. 45-47 (May 21, 1958) (conference report).

²³¹ Staff of the Conference Comm. on H.R. 5836, 85th Cong. 2d Sess., *Postal Rates and Postal Pay: Comparative Print of H. R. 5836 as Passed the House and Senate Amendment 22* (Conference Comm.

As ultimately enacted into law, section 102 provided as follows:

SEC. 102. The Congress hereby finds that—

(1) the postal establishment was created to unite more closely the American people, to promote the general welfare, and to advance the national economy;

(2) the postal establishment has been extended and enlarged through the years into a nationwide network of services and facilities for the communication of intelligence, the dissemination of information, the advancement of education and culture, and the distribution of articles of commerce and industry. Furthermore, the Congress has encouraged the use of these broadening services and facilities through reasonable and, in many cases, special postal rates;

(3) the development and expansion of these several elements of postal service, under authorization by the Congress, have been the impelling force in the origin and growth of many and varied business, commercial, and industrial enterprises which contribute materially to the national economy and the public welfare and which depend upon the continuance of these elements of postal service;

(4) historically and as a matter of public policy there have evolved, in the operations of the postal establishment authorized by the Congress, certain recognized and accepted relationships among the several classes of mail. It is clear, from the continued expansion of the postal service and from the continued encouragement by the Congress of the most widespread use thereof, that the postal establishment performs many functions and offers its facilities to many users on a basis which can only be justified as being in the interest of the national welfare;

(5) while the postal establishment, as all other Government agencies, should be operated in an efficient manner, it clearly is not a business enterprise conducted for profit or for raising general funds, and it would be an unfair burden upon any particular user or class of users of the mails to compel them to bear the expenses incurred by reason of special rate considerations granted or facilities provided to other users of the mails, or to underwrite those expenses incurred by the postal establishment for services of a nonpostal nature; and

(6) the public interest and the increasing complexity of the social and economic fabric of the Nation require an immediate, clear, and affirmative declaration of congressional policy with respect to the activities of the postal establishment including those of a public service nature as the basis for the creation and maintenance of a sound and equitable postal-rate structure which will assure efficient service, produce adequate postal

Print 1958) (emphasis added) (the conference met between March and May 1958).

revenues, and stand the test of time.²³²

Section 103 of the Postal Policy Act of 1958 set out the “Declaration of Policy.” The House and Senate differed markedly in their estimation of the significance of this policy statement. In the House, the postal committee and its chairman considered that the increase in first class rates, not the declaration of policy, was “the very heart of this bill.”²³³ The House committee report even questioned the need for an explicit postal policy:

It is the view of many members of the House Post Office and Civil Service Committee and students of postal rate problems that there always has been a postal policy. This policy is developed when rates are set. . . .

The committee points out that there is a well-established postal policy, one that is being changed and modified as conditions warrant.²³⁴

Nonetheless, the House committee added a list of congressional findings and a declaration of policy in the second title of its bill. In the House debate, while some congressmen objected to the principle that postal rates should cover postal expenditures, there was no discussion of the specific provisions of the postal policy declaration.²³⁵

In the Senate, the postal committee placed postal policy in the *first* title of its bill. Its report begins by noting the reports of the two Advisory Councils and the committee’s two-year effort to develop a statement of postal policy. The Senate report stresses the need for an explicit national postal policy, “probably the most important part of this bill”:

Title I of H. R. 5836, as amended, establishes a postal policy for the determination of postal rates. Enactment of this policy declaration will establish for the first time in over 100 years a comprehensive set of ground rules to serve as a guide for the Congress in its ratemaking legislation, and for the Post Office Department in making its rate recommendations to the Congress. From the long-term point of view, title I is probably the most important part of this bill.

Throughout the years, the Congress has legislated on rate matters to

²³² Act of May 27, 1958, Pub. L. No. 85-426, § 102, 72 Stat. 134, 134 (emphasis added).

²³³ 103 Cong. Rec. 14584 (Aug. 13, 1957) (remarks of Congressman Murray); H.R. Rep. No. 524, 85th Cong., 1st Sess., at 3 (Jun. 3, 1957).

²³⁴ H.R. Rep. No. 524, 85th Cong., 1st Sess., at 26 (1957) (emphasis added).

²³⁵ An amendment by Congressman Porter to strike the policy title entirely was rejected. 103 Cong. Rec. 14614-16 (Aug. 13, 1957).

meet specific needs as they arose. However, never before in recent history have these separate actions been viewed as a whole and put together as a composite guide not only for the present but for many years to come. This policy declaration, if enacted by the Congress, should vastly simplify the problem of adjusting postal rates in the future.²³⁶

In sum, declared the Senate committee, “Adoption of title I will be a milestone in postal ratemaking.”²³⁷

During consideration of the bill by the full Senate, some members expressed deep misgivings about the declaration of policy. Senator Frank Lausche of Ohio, a Democrat, asked whether the declaration would bind future congresses. Senator Olin Johnston of South Carolina, Democratic chairman of the postal committee, answered in the negative, “That is not so. The Congress does not give up one iota of its ratemaking authority.”²³⁸ But, countered Senator Wayne Morse of Oregon (D):

Yes; it could be pointed out that the Senator from South Carolina said, in his colloquy with the Senator from Ohio, that we cannot bind future Congresses, and that future Congresses always have the right to adopt whatever ratemaking policy they desire. We all know that; but we also know what happens so often in the legislative process when someone can say, “But in 1958 the Congress of the United States said this shall be the Post Office policy, by way of a declaration of policy set forth in section 103 of the act of 1958.”²³⁹

Senator Morse was especially concerned with the far reaching implications of paragraph (c)(2) of the policy declaration which read:

The collection, transportation, and delivery of first-class mail is the primary function of the postal establishment. The cost of first-class mail shall be (A) the entire amount of the expenses allocated to first-class mail in the manner provided by this title plus (B) an amount determined to be the fair value of all extraordinary and preferential services, specially designed facilities, and other factors relating thereto. The costs of other classes of mail and special services (except the fourth-class mail) shall be computed on an incremental or “out of pocket” cost basis.²⁴⁰

²³⁶ S. Rep. No. 1321, 85th Cong., 2d Sess., at 2 (Feb. 24, 1958) (emphasis added).

²³⁷ S. Rep. No. 1321, 85th Cong., 2d Sess., at 4 (Feb. 24, 1958) (emphasis added).

²³⁸ 104 Cong. Rec. 2858 (Feb. 26, 1958).

²³⁹ 104 Cong. Rec. 3105 (Feb. 28, 1958).

²⁴⁰ 104 Cong. Rec. 3105 (Feb. 28, 1958) (emphasis added).

“Why do we say that?” inquired Senator Morse, noting that the relative importance of different classes of mail had changed over time.²⁴¹ The first two sentences of this paragraph were similar to language in the House bill. Morse’s main concern was the last sentence (italicized in the quotation). This sentence would, argued Senator Morse, “freeze” forever the privileges of magazine mailers and unfairly relieve them of the duty to contribute to the overhead costs of the Post Office. Senator Lausche agreed, as did Senator William Proxmire of Wisconsin (Dem.) and Senator Everett Dirksen of Illinois (Rep.).

Morse's argument was so forcefully put and so well received that the chief sponsors of the bill did not attempt to defend the provision. Indeed, they pleaded inattention. Senator Johnston admitted that he was attending a speaking engagement in South Carolina when the committee report was completed and had only heard a version of the report read to him over the telephone. The ranking Republican on the committee, Senator Frank Carlson of Kansas noted that “we were forced, so to speak, by pressure from the Senate to report the bill in order that the pay-raise bill might be considered, before we really had a thorough opportunity to study these sections.”²⁴² Senator Morse wanted to strike the entire paragraph, but he offered, in the spirit of compromise, to delete the final sentence. All agreed and the sentence was deleted from the Senate bill. This exchange was the only substantial discussion of the policy declaration in the Senate consideration of the bill.

In the final law, section 103, the declaration of postal policy provided as follows:

SEC. 103. (a) The Congress hereby emphasizes, reaffirms, and restates its function under the Constitution of the United States of forming postal policy.

(b) It is hereby declared to be the policy of the Congress, as set forth in this title—

(1) that the post office is a public service;

(2) to provide a more stable basis for the postal-rate structure through the establishment of general principles, standards, and

²⁴¹ 104 Cong. Rec. 3107 (Feb. 28, 1958).

²⁴² 104 Cong. Rec. 3108 (Feb. 28, 1958).

related requirements with respect to the determination and allocation of postal revenues and expenses; and

(3) in accordance with these general principles, standards, and related requirements, to provide a means by which the postal-rate structure may be fixed and adjusted by action of the Congress, from time to time, as the public interest may require, in the light of periodic reviews of the postal-rate structure, periodic studies and surveys of expenses and revenues, and periodic reports, required to be made by the Postmaster General as provided by section 105 of this title.

(c) The general principles, standards, and related requirements referred to in subsection (b) of this section are as follows:

(1) In the determination and adjustment of the postal-rate structure, due consideration should be given to-

(A) the preservation of the inherent advantages of the postal service in the promotion of social, cultural, intellectual, and commercial intercourse among the people of the United States;

(B) the development and maintenance of a postal service adapted to the present needs, and adaptable to the future needs, of the people of the United States;

(C) the promotion of adequate, economical, and efficient postal service at reasonable and equitable rates and fees;

(D) the effect of postal services and the impact of postal rates and fees on users of the mails;

(E) the requirements of the postal establishment with respect to the manner and form of preparation and presentation of mailings by the users of the various classes of mail service;

(F) the value of mail;

(G) the value of time of delivery of mail; and

(H) the quality and character of the service rendered in terms of priority, secrecy, security, speed of transmission, use of facilities and manpower, and other pertinent service factors.

(2) The acceptance, transportation, and delivery of first-class mail constitutes a preferred service of the postal establishment and, therefore, the postage for first-class mail should be sufficient to cover (A) the entire amount of the expenses allocated to first-class mail in accordance with this title and (B) an additional amount representing the fair value of all

extraordinary and preferential services, facilities, and factors relating thereto.

(3) Those services, elements of service, and facilities rendered and provided by the postal establishment in accordance with law, including services having public service aspects, which, in whole or in part, are held and considered by the Congress from time to time to be public services for the purposes of this title shall be administered on the following basis:

(A) the sum of such public service items as determined by the Congress should be assumed directly by the Federal Government and paid directly out of the general fund of the Treasury and should not constitute direct charges in the form of rates and fees upon any user or class of users of such public services, or of the mails generally; and

(B) nothing contained in any provision of this title should be construed as indicating any intention on the part of the Congress (i) that such public services, or any of them, should be limited or restricted or (ii) to derogate in any way from the need and desirability thereof in the public interest.

(4) Postal rates and fees shall be adjusted from time to time as may be required to produce the amount of revenue approximately equal to the total cost of operating the postal establishment less the amount deemed to be attributable to the performance of public services under section 104(b) of this title.²⁴³

Section 103 is the direct ancestor of not only sections 101 and 403 of current law but also the list of ratemaking and classification principles found in section 3622 of current law (modern rate regulation) and former section 3622 (rates) and 3623 (classes).²⁴⁴

Section 104 of the conference committee bill provided that losses incurred in the provision of specific services should be considered public services and authorized payment for such losses from public funds. The list of services included: (1) mail for which the law provides free rates (e.g., mail for the blind) or reduced rates (e.g., certain periodicals and non-profit mail); (2) losses incurred in the provision of star-route service and the operation of small post offices (third and fourth-class); (3) losses incurred in the provision of non-postal services (such as sale of documentary stamps for the Treasury);

²⁴³ Act of May 27, 1958, Pub. L. No. 85-426, § 103, 72 Stat. 134, 135-36.

²⁴⁴ 39 U.S.C. §§ 3622, 2623 (2000 & Supp. V).

(4) losses incurred in providing special services (e.g., insured mail, special delivery, and money orders); and (5) the additional cost incurred in the payment of international air transportation rates set by the Universal Postal Union rather than air transportation rates prescribed by the Civil Aeronautics Board. Significantly, the conference committee dropped a costly item from the Senate's list of public services: rural postal service.

The House bill provided that the amount of losses—and hence the amount of public subsidy—was to be calculated using the Post Office's cost ascertainment system, i.e., using fully allocated costs. Thus, for example, the subsidy implied by reduced rates for nonprofit mail was to be the difference between the revenues actually collected and the *fully allocated* cost of handling such mail. This is quite different from the “revenue forgone,” i.e., the difference between the revenues actually collected and the revenue that would have been earned from the, invariably lower, third class rates that would have been charged. The Senate provision included no reference to cost allocation methodology and references to the cost ascertainment system were omitted in the final act. Nonetheless, the Senate committee was apparently thinking in terms of fully allocated costs because, relying on the work of the two Advisory Councils, it had estimated that the public service payments would amount to about 15 percent of total postal expenditures (about \$516 million in 1958).²⁴⁵

Section 105 of the Postal Policy Act of 1958 required the Postmaster General to report to Congress every two years on “the need for adjustment of postal rates and fees in accordance with the policy set forth in this title.”²⁴⁶ The Postmaster General was thus directed to propose new postage rates on a periodic basis.

3.7 Postal Code of 1960

In 1960, the 86th Congress codified the postal laws for the first time since 1872 and enacted Title 39 as positive law.²⁴⁷ Codification was first proposed in July 1955 by

²⁴⁵ S. Rep. No. 1321, 85th Cong., 2d Sess. 3 (Feb. 24, 1958).

²⁴⁶ Act of May 27, 1958, Pub. L. No. 85-426, § 105, 72 Stat. 134, 138.

²⁴⁷ Act of Sept. 2, 1960, Pub. L. 86-682, 74 Stat. 578.

Postmaster General Summerfield, who submitted a draft bill to the 84th Congress.²⁴⁸ Since consideration of this draft required a review of almost a century's worth of postal laws, the House Judiciary Committee was unable to report a bill to Congress until July 1958 in the second session of the 85th Congress.²⁴⁹ The committee's draft postal code included the Postal Policy Act of 1958 enacted a few months earlier. Although the House approved the draft postal code, the Senate did not act on it. In early 1959, the House Judiciary Committee reported an updated version of the postal code²⁵⁰ that was approved by the House and reported by the Senate Judiciary Committee without substantive change.²⁵¹ The new Title 39 was enacted on September 2, 1960.

Sections 102 through 105 of the Postal Policy Act of 1958 were reenacted as sections 2301 to 2305 of the postal code of 1960.²⁵² Reenactment introduced minor stylistic changes but no change in substance.²⁵³

3.8 5¢ Stamp and Revisions to the Postal Policy Act (1962)

The postal act of 1958 did not eliminate the shortfall in postal finances. Although rate increases raised annual revenues by \$550 million, increases in postal employee salaries of 10 percent in 1958 and 7.5 percent in 1960 raised costs by \$530 million. Moreover, some of the public service subsidies authorized by the 1958 act were unclaimed by the Post Office in 1960 (the first year of public service appropriations), 1961, and 1962 due to lack of adequate accounting data.²⁵⁴ Losses claimed by the Post Office as public service costs were calculated on a "revenue forgone" basis rather than a fully allocated cost basis. All in all, the postal deficit was \$605 million in 1959, \$597

²⁴⁸ 1955 *Postmaster General Ann. Rept.*, in H.R. Doc. No. 242, 84th Cong., 2d Sess., at 39-40 (Jan. 1, 1956).

²⁴⁹ H.R. Rep. No. 2318, 85th Cong., 2d Sess. (Jul. 30, 1958).

²⁵⁰ H.R. Rep. No. 36, 86th Cong., 1st Sess. (Feb. 17, 1959).

²⁵¹ S. Rep. No. 1763, 86th Cong., 2d Sess. (Jun. 28, 1960)

²⁵² Act of Sept. 2, 1960, Pub. L. No. 86-682, §§ 2301-06, 74 Stat. 578, 598-602 (1960). Section 101 of the Postal Policy Act of 1958, the short title provision, was omitted.

²⁵³ H.R. Rep. No. 36, 86th Cong., 1st Sess., A21-22 (Feb. 17, 1959)

²⁵⁴ *Post Office Department, Survey of Postal Rates*, in H.R. Doc. No. 391, 87th Cong., 2d Sess., at 4-5 (1962).

million in 1960 (after taking into account \$37 million in public service funds); and \$826 million in 1961 (\$49 million in public service funds); and estimated to be \$802 million in 1962 (\$63 million in public service funds). In April 1960, in the first biennial survey of rates required by the Postal Policy Act of 1958, Postmaster General Summerfield urged Congress to increase postage rates again, including an increase in the first class stamp from 4¢ to 5¢ and in the airmail rate from 7¢ to 8¢.²⁵⁵

In 1962, Congress not only raised postage rates but also modified the Postal Policy Act of 1958, i.e., sections 2301 to 2305 in the 1960 code.²⁵⁶ First class letter rates were increased to 5¢ and airmail rates to 8¢, as Summerfield requested. Rates for other classes were raised as well. Again, however, increased revenues were largely offset by increases in postal wages. Most significantly, from the perspective of postal policy, Congress revised the terms of the 1958 act to make clear that the Post Office was to calculate the losses on public services by subtracting the revenues earned from the fully allocated costs, not from the forgone revenues that would have been earned from similar postal services. Congress also added rural service to the list of public services and directed that 10 percent of the total cost of the star route system and third class post offices and 20 percent of the total cost of fourth-class post offices and rural routes should be considered public service costs.²⁵⁷ As a result of these changes, the public service cost of postal services jumped from \$63 million 1962 to \$413 million 1963 (17.4 percent of total costs).²⁵⁸ The 1962 act did not make any other changes declaration of policy of the Postal Policy Act of 1958.

²⁵⁵ *Post Office Department, Survey of Postal Rates*, in H.R. Doc. No. 381, 86th Cong., 2d Sess., at 16 (1960).

²⁵⁶ Postal Service and Federal Employees Salary Act of 1962, Pub. L. No. 87-793, 76 Stat. 832.

²⁵⁷ Postal Service and Federal Employees Salary Act of 1962, Pub. L. No. 87-793, § 201, 76 Stat. 832, 836, *amending* 39 U.S.C. § 2303 (1960).

²⁵⁸ *Post Office Department, Report on Post Office Department Relating to Survey of Postal Rates Structure*, in H.R. Doc. No. 97, 91st Cong., 1st Sess., at 25 (1969).

3.9 *Summary: Implications of the 1958 Act for the USO*

The Postal Policy Act of 1958 attempted to resolve the rate debates bedeviling Congress for a decade. To restate using current postal terminology, the basic decisions were as follows. First, a portion of postal costs were deemed public service costs that should be paid for from public funds. The 1962 amendment clarified and expanded the scope of public service costs so that they included more than 15 percent of all costs. Second, the act directed that the overall level of postage rates should be set so that total postal revenues—including compensation for public service costs—would be “approximately equal to” total postal costs. Third, first class rates were set to pay more than a proportional share of institutional costs but not required to cover all institutional costs. Fourth, it was decided that the relationships between the rates for different classes of mail should reflect the eight statutory factors set out in section 103(c)(1). The 1958 act left unresolved the issue (strongly contested in the case of magazines) of whether rates for each category of mail should cover attributable costs.

The Postal Policy Act of 1958 did not, however, define what would today be termed a universal service obligation. The 1958 act addressed only rate policy. The 1958 act did not specify criteria for the geographic scope of postal services, access to postal services, mode or frequency of delivery, or quality of service. Nor, indeed, did the Postal Policy Act of 1958 impose rate-related obligations on the Post Office. Since Congress retained the authority to set postage rates, the 1958 act addressed future Congresses, not the Post Office, much less a non-existent independent rate commission. As Senator Johnston conceded, one Congress cannot bind future Congresses, so the Postal Policy Act of 1958 was intended only to articulate guidelines, not to establish mandatory ratemaking principles. The fact that Congress would relinquish its authority over postage rates in only a dozen years was wholly unforeseen in 1958.

At the same time, the postal policy debates of the 1950s explored in detail the scope and financing of “public services.” The major public services were portions of universal postal services that were thought to be not commercially viable, such as the operation of small and rural post offices and the provision of free or reduced rates for certain types of mail. While there was some question about how to calculate public

service costs, there was widespread agreement that once defined, public service costs should be charged to taxpayers, not mailers. During the four-year debate leading to the Postal Policy Act of 1958, there was virtually no mention of the postal monopoly as a means of financing public service costs, and none at all during the Senate debate over the five cent stamp in early 1958. No one suggested that the purpose or effect of the postal monopoly was to cover the cost of universal service or that monopoly mail rates should be set to this end. On the contrary, the extensive and vigorous arguments about the relative increases in the rates for one class of mail versus another were based solely on issues of fairness and equity, while making due allowance for the limitations of the Post Office's accounting system, the presumed costs of giving priority to first class (and perhaps some second class) mail, and the general educational benefits of second class mail.

4 Postal Reorganization Act, 1970

In August 1970, the Postal Reorganization Act comprehensively revised Title 39. The 1970 act abolished the Post Office Department and established the United States Postal Service. In some respects, establishment of the business-like Postal Service might be seen as a reaction to the failure of the Postal Policy Act of 1958 to eliminate perennial postal deficits. Like the Postal Policy Act of 1958, the Postal Reorganization Act was developed amidst strong policy disagreements between the Administration and the Congress. In the end, what emerged was a business-like Postal Service guided by a set of policy objectives and obligations which were drawn, in large part, from the distinctly non-business-like Postal Policy Act of 1958 and, in smaller part, from other, often unclear, sources. Although there have been modifications since 1970, these objectives and obligations still form the basis of the current "universal service obligation."

4.1 6¢ stamp and the Kappel Commission

Between 1962 and 1967, the Post Office continued to run deficits in the range of \$ 200 to \$ 500 million despite public financing that amounted to about 11 percent of revenue.

In April 1967, the Johnson Administration coupled a request for higher postage rates and higher wages with a proposal to end Congressional management of the Post Office. On April 3, 1967 Postmaster General Larry O'Brien gave a speech proposing conversion of the Post Office Department into a nonprofit government-owned corporation.²⁵⁹ On April 5, 1967, the President Lyndon Johnson sent a message to Congress requesting for a 6¢ first class stamp and increases in other postage rates as well as increased wages for postal workers.²⁶⁰ On April 8, President Johnson established the President's Commission on Postal Organization, a committee of ten prominent citizens, to examine the need to transform the Post Office Department into "a Government

²⁵⁹ "Postal Boss Urges Office Be Abolished," *Chicago Tribune*, Apr 4, 1967.

²⁶⁰ "Text of Johnson Message on Pay and Mail Rates," *New York Times*, Apr 6, 1967.

corporation, or such other form of organization as the Commission may consider desirable.”²⁶¹

President Johnson's request for postal rate increases was approved by Congress in less than a year. Congress agreed to the Administration's request to raise the first class stamp rate from 5¢ to 6¢ and the airmail letter rate from 8¢ to 10¢. Other rates were likewise increased, as were postal salaries. No changes were made in basic postal policy. On December 16, 1967, President Johnson signed the Postal Revenue and Federal Salary Act of 1967 into law.²⁶²

President's Commission on Postal Organization was chaired by Frederick Kappel, former chairman of American Telephone and Telegraph Company.²⁶³ Other members of the “Kappel Commission” were also versed in the techniques of large scale commercial enterprise. The Commission included

- the president or chairman of five major companies (Fred J. Borch, President, General Electric Company; Ralph Lazarus, Chairman, Federated Department Stores; J. Irwin Miller, Chairman, Cummins Engine Company; W. Beverly Murphy, President, Campbell Soup Company; Rudolph A. Peterson, President, Bank of America);
- the dean of a major business school (George P. Baker, Harvard University Graduate School of Business Administration);
- a vice president of the Ford Foundation (David E. Bell);
- a leading Washington lawyer (David Ginsburg, Ginsburg and Feldman); and
- a prominent labor leader (George Meany, President, American Federation of Labor and Congress of Industrial Organizations).²⁶⁴

²⁶¹ Kappel Commission Report 195 (quoting Executive Order 11341).

²⁶² Postal Revenue and Federal Salary Act of 1967, Pub. L. No. 90-206, 81 Stat. 613 (Dec. 16, 1967).

²⁶³ Executive Order 11341, 32 Fed. Reg. 5765 (Apr. 11, 1967).

²⁶⁴ President's Commission on Postal Organization, *Towards Postal Excellence* ii (Jun. 1968) (hereafter, “Kappel Commission Report”).

In June 1968, the Kappel Commission issued its report. In brief, the Commission recommended that the Post Office Department should be transformed into a “postal corporation” that would be wholly owned by the United States government and governed by a board of directors composed of six outside directors appointed by the President and three corporate officers. The corporation should be self-supporting without public service financing from Congress, a major change from the Postal Policy Act of 1958. Postal salaries would be agreed by management and employees through negotiations and, if necessary, binding arbitration. Postal rates would be set by the corporation after review by a panel of experts appointed by the board, but rate changes would be subject to rejection by a concurrent resolution of Congress. Officers and employees of the corporation should be appointed on a wholly nonpolitical basis. The postal monopoly should be continued.²⁶⁵

In proposing creation of a postal corporation, the Kappel Commission concluded that the “public service” nature of the Post Office was no different from the public service rendered by any large commercial utility and attempted to reconcile this notion with the Postal Policy Act of 1958.

This essentially economic appraisal of the postal service is sometimes challenged by those who argue that Congress declared the postal service to be a “public service” in the Postal Policy Act of 1958. The Commission agrees that the Post Office is a “public service” in the sense that, like a utility, it serves the public at large without discrimination. The Postal Policy Act also states that the Post Office is not a business “conducted for profit.”

The public service nature of the Post Office is also found in the Postal Policy Act's definition of the public service allowance or statutory subsidy. Much confusion has arisen by failing to distinguish clearly between a subsidy

- to the postal service as a whole, and
- to specified individuals or groups using the postal service.

Congressional appropriations to meet the collective deficit of all mail classes (except those specifically designated for lower rates) are in fact subsidies to the postal service as a whole. In the light of the business nature of the mails and the impact of the postal deficit on management,

²⁶⁵ Kappel Commission Report 1-6, 53-64, 129.

such subsidies should be eliminated. Indeed, this form of subsidization finds no justification in the Postal Policy Act.

Rural “subsidies,” although set by the Postal Policy Act, really subsidize the entire postal service. Rural areas are just as much part of the postal system as cities, and the cost of serving them—even when they appear “unprofitable”—is a proper expense of the service as a whole. The Commission rejects the notion that every post office must take in sufficient revenue to pay its own costs or be terminated. Further, to look only at the revenues from rural operations is to ignore the value to both the urban and rural user of offering nationwide service. Rural costs are proper business expenses to be included in their entirety in the postal rate base and should not be considered, in any sense, a subsidy.

The second category of subsidies—subsidies to specific users of the service—is illustrated by special rates for charitable organizations and educational material. These are the real “public service” subsidies. At present, the method used to calculate them tends to overstate their amount and understate the extent to which the Treasury is supporting the postal system as a whole. As Figure 6 illustrates, when properly calculated these subsidies represent about 3.8% of total postal costs. Thus, the amount of the true public service subsidy is quite small, confirming once again the business character of the postal system.²⁶⁶

4.2 *Nixon Administration bill: H.R. 4 (as reported)*

In January 1969, the Nixon Administration succeeded the Johnson Administration and continued the postal reform effort but found rough going in Congress. By tradition, the House Post Office and Civil Service Committee began the legislative process for postal laws. The chairman of that committee, Thaddeus Dulski of New York (a Democrat), accepted much of Kappel Commission Report but disagreed with the main conclusion that the Post Office Department should be replaced by an independent, business-like postal corporation. When the 91st Congress convened on January 3, 1969, Chairman Dulski introduced H.R. 4, a bill to modernize the postal establishment by revising major portions of Title 39, but stopping short of wholesale replacement of Title 39. Under the Dulski approach, the Post Office would continue as a cabinet-level department under the direction of the President, but Congress would divest itself of authority to set wages or postage rates. Wages would be set by collective bargaining

²⁶⁶ Kappel Commission Report 48-50 (emphasis added)

subject to regulation by an independent Labor-Management Relations Panel composed of three members appointed by the President with the advise and consent of the Senate. A second commission, the Commission on Postal Finances, would be composed of eleven members, five appointed by the President (without Senate consent) and three each appointed by the Speaker of the House and the President pro tempore of the Senate, respectively. This commission would periodically review postage rates and postal policy objectives and make recommendations to the President. The President would then submit his recommendations to Congress, and they would supersede prior law unless disapproved by either House.²⁶⁷ In most other respects, Dulski's H.R. 4 would continue current law, including the public service subsidies of the Postal Policy Act of 1958 as amended in 1962. In short, Dulski proposed to keep the Post Office as a subsidized public service within government but transfer ratemaking to a small committee dominated by Congressional representatives.

The Nixon Administration strongly supported the idea of a subsidy-free, government-owned postal corporation. Since the Nixon Administration did not take office until January 1969, it did not complete its draft bill until May. On May 28, 1969, the Administration bill was introduced as H.R. 11750 by Congressman Mo Udall of Arizona (a Democrat), a member of the House postal committee.²⁶⁸ Section 2 provided a complete replacement for Title 39. The bill proposed creation of a “body corporate and an instrumentality of the United States” called the United States Postal Service. The Postal Service would be governed by a nine-member “Board of Directors.” Seven of the Directors would be appointed by the President for seven-year terms with the advise and consent of the Senate. The seven Directors would appoint a Postmaster General and collectively they would appoint a Deputy Postmaster General. The Postmaster General and Deputy Postmaster General would serve as members of the Board. Wages would be set by collective bargaining subject to regulation by an independent Postal Disputes

²⁶⁷ H.R. 4, 91st Cong., 1st Sess., reprinted in *Postal Modernization: Hearings Before the Senate Comm. on Post Office and Civil Service [Part I]*, 91st Cong., 1st Sess., at 2 (1969).

²⁶⁸ H.R. 11750, 91st Cong., 1st Sess. (introduced, May 28, 1969). For purposes of this study, the most important provisions (all sections of Title 39 as amended by section 2 of the bill) were: §§ 102 (findings of Congress and declaration of policy); 203 (Board of Directors); 205 (general powers); 1201 (rate policy); and 1251-54 (Rate Commissioners and changes in rates and classifications).

Panel. The Panel would be composed of nine members, three appointed by the Federal Mediation and Conciliation Director, three appointed by the American Arbitration Association, and three appointed by the first six. Postage rates would be proposed by the Postal Service and reviewed by three Rate Commissioners, persons appointed to that position for six-year terms by the Board of Directors. After review, the Board could adopt the recommendations of the Rate Commissioners, the original proposal of the Postal Service, or any other rates supported by the record. New rates would become final unless vetoed by a concurrent resolution of both houses of Congress. The public service subsidy established by the Postal Policy Act of 1958 (as amended in 1962) would be phased out over five years so that the only remaining public financing would be payments to make up for revenue which the Postal Service is forced to forego because Congress directs that certain types of mail must be transported free or at reduced rates.

The Administration bill included a legal innovation crucial to the development of what is today considered the universal service obligation. Section 401 of the new Title 39 specified the “general duties” of the new Postal Service. It provided:

401. General duties

(a) The Postal Service shall plan, develop, promote, and provide adequate and efficient postal service at fair and reasonable rates and fees. Except as provided in the Canal Zone Code, the Postal Service shall receive, transmit, and deliver throughout the United States, its territories and possessions, and, pursuant to arrangements entered into under sections 207 and 404 of this title, throughout the world, written and printed matter, parcels, and like materials and provide such other services incidental thereto as it finds appropriate to its functions and in the public interest. It shall serve as nearly as practicable the entire population of the United States.

(b) It shall be the objective of the Postal Service-

(1) to maintain an efficient system of collection, sorting, and delivery of the mail nationwide;

(2) to provide types of mail services to meet the needs of different categories of mail and mail users; and

(3) to establish and maintain postal facilities of such character and in such locations that postal patrons throughout the Nation will, consistent with reasonable economies of postal operations, have ready access to essential postal services.

(c) In providing services and in establishing classifications, rates, and fees pursuant to this title, the Postal Service shall not, except as specifically authorized in this title, make any undue or unreasonable discrimination among users of the mails, nor shall it grant any undue or unreasonable preferences [sic] to any such user.

The precise derivation of this “general duties” section is unclear. There was no corresponding provision in prior law, and the Administration did not provide a detailed explanation of the legal antecedents of its proposal.²⁶⁹ In September 1969, the staff of the House postal committee prepared a comparative analysis of H.R. 4 and H.R. 11750 that indicated that the “general duties” section in H.R. 11750 corresponded to various provisions of current law:

these duties and authorities are set forth both generally and specifically, with detailed requirements relating to various services and operational procedures in chapter 5 (General Provisions), chapter 7 (Post Offices, and chapter 9 [should be 91] (Delivery Service) of title 39, U.S. Code.²⁷⁰

In fact, this vague reference is not very helpful. Some of the sources for the “general duties” provision can be traced with confidence to earlier laws. The duty to “plan, develop, promote, and provide adequate and efficient postal service at fair and reasonable rates and fees” is surely derived from section 103(c)(1)(C) of the Postal Policy Act of 1958 (“promotion of adequate, economical, and efficient postal service at reasonable and equitable rates and fees”). The duty in paragraph (b)(2) “to provide types of mail services to meet the needs of different categories of mail and mail users” is broadly similar to section 103(c)(1)(B) of the Postal Policy Act of 1958 (“development and maintenance of a postal service adapted to the present needs, and adaptable to the future needs, of the people of the United States.”) Other portions of the general duties recall provisions of the Postal Policy Act of 1958 without reproducing the language. The requirement that postal system “serve as nearly as practicable the entire population of the United States” is clearly derived from the 1916 postal appropriations act. The 1916 provision was codified

²⁶⁹ See “Postal Service Act of 1969: H.R. 11750 Recommendations of the President of the United States,” House Comm. on Post Office and Civil Service, 91st Cong, 1st Sess. (Comm. Print, 91-8, May 29, 1969).

²⁷⁰ Staff of the House Comm. on Post Office and Civil Service, 91st Cong., 1st Sess., “Analysis of Postal Reform Legislation H.R. 4 (Mr. Dulski) and H.R. 11750 (Mr. Udall, et al.) H.R. 11751 (Mr. Cunningham, et al.) And Similar Bills,” at 8 (Comm. Print, Sep. 1969).

as section 6005 of the 1960 postal code²⁷¹ and stated “That rural mail delivery shall be extended so as to service, as nearly as practicable, the entire rural population of the United States.” Changing this phrase from a description of the rural free delivery program to a duty applicable to the entire postal system, however, represents a significant change in meaning.

Antecedents for other provisions in the general duties section are less clear. Nothing in the 1960 postal code refers to “an efficient system of collection, sorting, and delivery of the mail nationwide” or prohibits “undue or unreasonable discrimination among users of the mails.” While the general duty to “receive, transmit, and deliver throughout the United States, its territories and possessions” might have been based on the finding in the Postal Policy Act of 1958 that “the postal establishment has been extended and enlarged through the years into a nationwide network,” the new duty appears to be significantly broader than the earlier finding.

4.3 *Revised Nixon Administration-postal union bill: H.R. 17070*

From April until August of 1969, the House committee held hearings on first the Dulski bill and then both the Dulski and Administration (Udall) bills. In October 1969, the Senate postal committee lost patience with mixed signals coming from the House committee and began its own hearings. The chairman and ranking minority member of the Senate committee, Senator Gale McGee of Wyoming (Democrat) and Senator Hiram Fong of Hawaii (Republican), respectively, were likewise skeptical of the need to create an independent government corporation for postal services.²⁷²

Congressional deliberations were delayed and complicated by varying demands of the postal unions, who were not in agreement among themselves. In the second half of 1969, a bill to increase postal wages by 5.4 percent was making its way through

²⁷¹ 39 U.S.C. § 6005 (pre-PRA 1970 ed., S. Comm. Print, 1973). See H.R. Rep. No. 2318, 85th Cong., 2d Sess., at A82, A247 (Jul. 30, 1958) (report on the 1960 postal code). The original statute was Act of Jul. 28, 1916, ch. 261, § 1, 39 Stat. 412, 423.

²⁷² Senators McGee and Fong did not introduce their own bill for postal reform, S. 3613, until March 19, 1970. Under § 302 of the original version of S. 3613, the Postmaster General was appointed by the President with the advice and consent of the Senate for a seven-year term.

Congress.²⁷³ Generally, the postal unions opposed the Administration's postal reform bill and the concept of a "postal corporation" but supported wage increases and the right to negotiate wages in collective bargaining with government rather than having wages set by legislation. The Administration refused to negotiate on wages unless the unions supported postal reform. The unions demanded immediate action on the pay bills. On March 17, 1970, wildcat strikes by letter carriers began in New York City and a national postal strike appeared likely on March 23, 1970. At the last minute, a national strike was averted when the Administration agreed to negotiate directly with unions without preconditions. Nonetheless, federal troops were sent to New York City to handle the mail because of continuing local problems. The outcome of negotiations between the Administration and the unions was an agreement to jointly support two bills (1) a bill providing an immediate wage increase of 6 percent and (2) a bill providing mutually agreed postal reform measures and a further wage increase of 8 percent.

While the Administration and postal unions were sparring, both the House and Senate committees acted on postal reform bills. On March 12, 1970, the House committee voted, over the objections of Chairman Dulski, to substitute a version of the Administration bill for the original text of H.R. 4. The committee's report was filed on April 8 with several minority views.²⁷⁴ On March 19, Senators McGee and Fong introduced their own postal reform proposal, S. 3613. The McGee-Fong bill, like the original Dulski bill (the original H.R. 4), rejected the idea of a postal corporation and continued the Post Office under the direct authority of the President.²⁷⁵

On April 16, 1970, the Nixon Administration and the postal unions reached agreement on a revised postal reform proposal. On that day, President Nixon sent a message to Congress enclosing the agreed draft bill and a memorandum agreement

²⁷³ H.R. 1300, 91st Cong., 1st Sess.

²⁷⁴ H.R. Rep. No. 988, 91st Cong., 2d Sess. (Apr. 8, 1970). See individual comments of Chairman Dulski at id. 83.

²⁷⁵ S. 3613, 91st Cong., 2d Sess. (introduced, Mar. 19, 1970). Under § 302 of the original version of S. 3613, the Postmaster General was appointed by the President with the advice and consent of the Senate for a seven-year term.

signed by representatives of the Post Office and the postal unions.²⁷⁶ This revised Administration bill was an amalgam of the version of H.R. 4 as reported by the House committee (i.e., the first Administration bill) and S. 3613 pending before the Senate committee (through its thirteenth revision) that was further modified in negotiations with the postal unions.²⁷⁷ The revised Administration bill was immediately introduced in the House as H.R. 17070 by Chairman Dulski.

H.R. 17070 provided that the Post Office Department would be replaced by a new organization, the United States Postal Service. The Postal Service would be governed by a Commission on Postal Costs and Revenues consisting of eleven members: nine members appointed by the President for nine-year terms with advice and consent of the Senate, a Postmaster General appointed by the nine presidential appointees, and a Deputy Postmaster General appointed by the other ten members of the Commission.²⁷⁸ Changes in postal rates proposed by the Postal Service would be reviewed by a “Postal Rate Board” within the Postal Service. The Board would consist of three experts (in economics, accounting, law, or employee relations) appointed by the President. After review, the Postal Rate Board would submit a recommendation on changes in rates to the Commission on Postal Costs and Revenues. The Commission would then make a final decision on rate changes and submit a schedule of new rates to Congress. New rates would become effective unless disapproved within 60 days by a two-thirds vote of either

²⁷⁶ H.R. Doc. 313, 91st Cong., 2d Sess. (Apr. 16, 1970).

²⁷⁷ On April 22, 1970, Postmaster General Blount testified to the House committee, “The committee will find that most of the language of the jointly sponsored proposal is familiar; much of it, indeed, comes directly from H.R. 4 as this committee voted to report it out on March 12.” *Postal Reform: Hearings on H.R. 17070 and Similar Bills Before the House Committee on Post Office and Civil Service*, 91st Cong., 2d Sess., 4 (1970). On April 23, 1970, he testified to the Senate committee, “We have drawn heavily on the legislation that has been before Congress. There are many provisions of this bill that have language almost precisely like S. 3613, the bill that is before this committee, and there is also language in it that was drawn from the bill that the House committee had previously acted on, H.R. 4, as amended, and reported out by the House committee.” *Postal Modernization: Hearings Before the Senate Comm. on Post Office and Civil Service [Part II]*, 91st Cong., 2d Sess., 1264 (1970); id. 1265 (reference to thirteen version of S. 3613).

²⁷⁸ H.R. 17070, 91st Cong., 2d Sess. (introduced, Apr. 16, 1970) § 108.

the House or the Senate, thus giving Congress more scope for veto than afforded by the concurrent resolution required by the original Administration bill.²⁷⁹

The revised Administrative bill explicitly reversed much of the Postal Policy Act of 1958. Henceforth, postal rates should be set so that total revenues would cover total costs without a subsidy equal to a percentage of total costs. The subsidy for public service costs, guaranteed in the 1962 amendment to the Postal Policy Act of 1958, would be phased out over eight years. After that, the only public funds paid to the Postal Service would be an appropriation to cover “revenue foregone” by the Postal Service in cases where Congress directed that rates for specific services must be at reduced rates or free. If Congress failed to appropriate money to cover revenue foregone, the Postal Service would be permitted to recoup by raising rates. Moreover, the revised bill required that the rate for each class of service must cover attributable costs.²⁸⁰

In weaving together H.R. 4 and S. 3613, the revised Administration bill kept the policy provisions from both bills. The first section of the Administration bill set out a declaration of postal policy taken from the Senate bill. The declaration of policy in the Senate bill had been derived, in turn, from section 103 of the Postal Policy Act of 1958. At the same time, the revised Administration bill, like the original Administration bill, prescribed the general duties of the Postal Service in § 401. As noted above, this section was also derived in part from the Postal Policy Act of 1958. In the revised Administration bill, these two policy prescriptions did not conflict because the declaration of policy was set out as a separate section of the bill, i.e., not in Title 39 and thus not specifically integral to the administration of Title 39.

On June 18, 1970, the House of Representatives approved the Administration bill, H.R. 17070, without significant change to the policy provisions. The House committee had amended the bill in several other respects, relating mainly to employee relations, and reported the bill to full House on May 19.²⁸¹ The full House debated H.R. 17070 for three

²⁷⁹ H.R. 17070, 91st Cong., 2d Sess. (introduced, Apr. 16, 1970) § 1251-54.

²⁸⁰ H.R. 17070, 91st Cong., 2d Sess. (introduced, Apr. 16, 1970) § 1201-02.

²⁸¹ H.R. Rep. No. 1104, 91st Cong., 2d Sess. (May 19, 1970).

days and added several more amendments.²⁸² Most of the changes in the House dealt with employee relations and transportation of mail, but there were exceptions. After a relatively brief discussion, the House made the Postal Rate Board an independent agency outside of the ambit of the Postal Service (Board members would continue to be appointed by the President but not subject to Senate confirmation).²⁸³ The House rejected an amendment to maintain a public service subsidy equal to 10 percent of postal costs.²⁸⁴

4.4 Senate committee bill: S. 3842

The Senate postal committee was less inclined to defer to reform proposals agreed by the Administration and the postal unions. A week after the revised Administration bill was introduced in the House, Chairman McGee opened a Senate committee hearing by declaring to Postmaster General Blount, “I am not prepared to forfeit the responsibilities of the Congress in legislating postal reform to the questionable usurpation of these prerogatives by a labor-management negotiating team.”²⁸⁵ Chairman McGee was especially skeptical of the desirability of creating an independent board to insulate the Postmaster General from direct control by the President. After many revisions of S. 3613 (at least fourteen), the McGee-Fong bill was re-introduced as a “clean” bill, S. 3842, on May 14. This bill was reported, with further revisions, on June 3, 1970.

In overall concept, the Senate committee bill, S. 3842, differed significantly from the original Administration bill (essentially, the reported version of H.R.4) and the House-passed version of the revised Administration bill, H.R. 17070. While Senate committee bill replaced the Post Office Department with an independent Postal Service, the Senate bill created a fifteen-member “Board of Governors” to manage the Postal Service. The Board of Governors would consist of nine members, called “Governors,”

²⁸² 116 Cong. Rec. 19837-59 (Jun. 16, 1970); 20200-41 (Jun. 17); 20432-501 (Jun. 18).

²⁸³ 116 Cong. Rec. 20452-54 (Jun. 18, 1970).

²⁸⁴ 116 Cong. Rec. 20447-50 (Jun. 18, 1970). The House also rejected an amendment by Congressman Philip Crane of Illinois (a Republican) to repeal the postal monopoly; opponents noted that such a radical study required more study and that the bill already required the Postal Service to undertake a two-year study of the postal monopoly and report to Congress. 116 Cong. Rec. 20473-79 (Jun. 18, 1970).

²⁸⁵ *Postal Modernization: Hearings Before the Senate Comm. on Post Office and Civil Service [Part II]*, 91st Cong., 2d Sess., at 96 2 (1970).

appointed by the President for nine-year terms with the advice and consent of the Senate, a Postmaster General appointed by the Governors, a Deputy Postmaster General appointed by the Governors and the Postmaster General, and four representatives from Congress, two each from the House and Senate. Changes in postal rates proposed by the Postal Service would be reviewed by an independent body within the Postal Service, the “Postal Rate Commission,” composed of five Commissioners appointed by the President for six-year terms. From time to time, but not less than once every two years, the Postal Service would request the Commission to provide a recommended decision on changes in rates. After review, the Postal Rate Commission would submit a recommended decision to the Board of Governors which could approve, modify, or reject the recommended decision of the Commission in accordance with certain procedures (similar to those in Title 39 prior to enactment of the Postal Accountability and Enhancement Act of 2006). There was no provision for Congressional veto of rate changes.

The Senate postal committee was unconvinced that the “business-like” approach embodied in the House bill—essentially, the revised Administration bill—would maintain important public services. The Senate bill provided a permanent subsidy for public service costs equal to 10 percent of the money appropriated to the Post Office in 1971.²⁸⁶ New section 102 of Title 39 declared that the purpose of this appropriation was to pay for, *inter alia*, “effective and regular postal services to rural areas, communities, and small towns”:

To provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining, and to prevent either reductions in services or unreasonable increases in postal rates, there shall be appropriated to the Postal Service each year an amount of money which shall represent the public service cost of operating the Postal Service.

The committee report explained the purpose of this subsidy as follows:

²⁸⁶ See S. 3842, 91st Cong, 2d Sess. (reported, Jun. 3, 1970), § 2, enacting 39 U.S.C. § 3703 (“The Board shall then reduce its estimate of total costs determined under clause (1) of this subsection by an amount equal to the lesser of 10 percent of such total costs or 10 percent of the sum appropriated to the Post Office Department by Act of Congress for its use in fiscal year 1971 (other than the sum so appropriated for capital improvements), which amount shall be considered the public service cost of operating the Postal Service.”)

This subsidy would be based on the requirement that the Postal Service maintain high quality service in rural areas, small towns, and other places where the post office and other governmental services provided by the Postal Service are not self-sustaining.²⁸⁷

In addition to appropriating public funds for public services and incorporating a “general duties” provision (adopted from the House bill), the Senate committee bill sought to protect public services by including three policy new provisions:

1) *Declaration of policy within Title 39.* The Senate bill moved the declaration of postal policy into Title 39 as the first section, i.e., § 101. The effect was to make the declaration of policy integral to the administration of the Title 39. The committee report emphasized the importance of the declaration of policy to its favorable report on the bill:

In proposing to relinquish as much control as this bill would vest in the new Board of Governors of the U.S. Postal Service, the committee believes the intention of Congress should be clearly expressed: that the postal managers should follow, quite literally, the policy section of the bill which begins, “The United States Postal Service shall be operated as a basic and fundamental service provided the people by the Government of the United States, authorized by the Constitution, created by Act of Congress, and supported by the people.”²⁸⁸

While the Senate report does not specify the antecedents of § 101, several of the principles are obviously drawn from the Postal Policy Act of 1958. Others have no apparent statutory antecedent, including those supporting compensation for postal employees comparable to the private sector, a “fair and equitable” allocation of costs, and facilities that provide “desirable working conditions” for employees.

2) *Policy principles for Commission review of rates and classifications.* Second, the Senate bill introduced specific policy principles to guide review of rates and classifications. These principles were necessary because the Senate committee bill did not accept the House provisions under which Congress retained authority to establish preferential rates for books, library mail, and non-profit mail.²⁸⁹ Under the Senate bill, there would “no preferred classes of mail.” Even rates and classifications with public

²⁸⁷ S. Rep. No. 912, 91st Cong., 2d Sess., 4 (Jun. 3, 1970) (emphasis added).

²⁸⁸ S. Rep. No. 912, 91st Cong., 2d Sess. 3 (May 14, 1970) (emphasis added).

²⁸⁹ S. Rep. No. 912, 91st Cong., 2d Sess. 10-13 (May 14, 1970).

service elements would established by the Postal Service subject to review by the Postal Rate Commission. The Senate committee did not want to bar the Commission from considering public interest factors entirely. Therefore, the Senate bill included rate and classification principles to guide the Commission in its review of rates and classifications for various classes of mail. As the Senate committee report explained:

The theoretical basis for the committee recommendation on mail classification is that except for military mail, voting rights mail, and a very limited amount of free mail, there should be no preferential rates set by Congress. All ordinary mailers should begin on the same footing. The Postal Rate Commission . . . has the full authority without limitation and subject to only the general guidelines and policy of the act to establish classes of mail subject to the approval of the Governors of the Postal Service.²⁹⁰

In short, after a five- to ten-year transition period (depending on the type of mail), the Senate committee made the Commission responsible for deciding whether and to what extent preferential rates should be continued and included rate and classification principles to guide the Commission in its decisions. Most of the ratemaking principles in the Senate committee bill echoed the declaration of policy in § 101. Indeed, the Senate committee bill begins by requiring that any recommended decision be “in accordance with the postal policy contained in section 101(a) and (c) of this title,” referring to the policies that define the Postal Service as basic and fundamental service and favor fair and equitable apportionment of costs. Other principles, such as the concern for the effect on competitors of the Postal Service or support for simple rate schedules appear to be new. The Senate committee expected that these ratemaking principles would be sufficient to ensure that the Postal Rate Commission would recognize the public service element in certain traditional rates.²⁹¹

3) *Uniform rate rule for letters sealed against inspection.* A third USO element introduced by the Senate committee was the uniform rate requirement for letters. The bill

²⁹⁰ S. Rep. No. 912, 91st Cong., 2d Sess. 12 (May 14, 1970) (emphasis added)

²⁹¹ S. Rep. No. 912, 91st Cong., 2d Sess. 12 (May 14, 1970) (“Notwithstanding its rejection of a proposal to impose its views on the new Postal Service by law, the committee agreed that this report should specifically express committee concern over the rates to be established for certain classes of mail. Accordingly, the committee alerts the Rate Commission established by this bill to the public service which certain preferred rates have historically performed.”)

declares that rates each service for “letters sealed against inspection” must “be uniform throughout the United States, its territories, and possessions.” This provision has no evident statutory antecedent. As noted above a non-uniform rate for first class letters were seriously considered by Congress as recently as the mid 1950s (and supported by the House, the Senate, and the Administration, but at different times). The uniform rate requirement was not included in S. 3613 until the fourteenth committee revision. The provision was then omitted from the reported version of S. 3842, apparently by mistake, and inserted it back into the bill at the start of the Senate debate as a technical, non-substantive amendment.²⁹² The uniform rate requirement for letters was not discussed in either the committee report or the Senate debate.

Notwithstanding its constitutional ring, the requirement to provide at least one class of mail for “letters sealed against inspection” likewise has no apparent statutory antecedent.²⁹³ The 1960 postal code stated that first class mail included matter “closed against postal inspection,” but that phrase was apparently added in the 1960 Code as a questionable rephrasing of prior law and in any case does convey the same idea of forbidding all inspection.²⁹⁴ The first limited statutory prohibition against the opening of first class letters appears to have been adopted in section 1717(c) of the criminal code of

²⁹² 116 Cong. Rec. 21708 (Jun. 26, 1970).

²⁹³ In *Ex parte Jackson*, 96 U.S. 727, 733 (1878), the Supreme Court declared, “*Letters and sealed packages of this kind in the mail are as fully guarded from examination and inspection, except as to their outward form and weight, as if they were retained by the parties forwarding them in their own domiciles. The constitutional guaranty of the right of the people to be secure in their papers against unreasonable searches and seizures extends to their papers, thus closed against inspection, wherever they may be. Whilst in the mail, they can only be opened and examined under like warrant, issued upon similar oath or affirmation, particularly describing the thing to be seized, as is required when papers are subjected to search in one’s own household. No law of Congress can place in the hands of officials connected with the postal service any authority to invade the secrecy of letters and such sealed packages in the mail; and all regulations adopted as to mail matter of this kind must be in subordination to the great principle embodied in the Fourth Amendment of the Constitution [emphasis added].*”

²⁹⁴ Section 4251 of the 1960 postal code provided that “(a) First class mail consists of mailable (1) postal cards, (2) post cards, (3) matter wholly or partially in writing or typewriting, except as provided in [other sections], and (4) *matter closed against postal inspection* [emphasis added].” Act of Sep. 2, 1960, Pub. L. No. 86-682, § 4251, 74 Stat. 578, 663-34. The House committee report stated, “The phrase ‘any matter closed against postal inspection’ is added in view of section 250 of title 39 (see sec. 4058 of this title) which requires first class postage *on matter which cannot be easily examined* [emphasis added].” See H. Rep. No. 36, 86th Cong., 1st Sess., at A57 (1959).

1948.²⁹⁵ The scope of this prohibition is unclear, but context and prior statutes appear to limit this rule to letters which appear to be non-mailable. Nonetheless, the 1960 Code repealed section 1717(c) and reenacted it in the new postal code as a rule applicable to postal employees in the dead letter office: “Only an employee opening dead mail by authority of the Postmaster General, or a person holding a search warrant authorized by law may open any letter or parcel of the first class which is in the custody of the Department.”²⁹⁶ The language in the 1970 act goes well beyond these precedents to require establishment of a mail class for transmission of letters sealed against inspection by anyone or at least by anyone in the government not armed with a search warrant.

On June 30, 1970, after three days of debate, the Senate approved an amended version of S. 3613 and substituted its bill for the text of H.R. 17070.²⁹⁷ The only USO element added during the Senate debate was a requirement for the Postal Service to maintain uniform rates for (1) books, films, sound recordings, manuscripts, educational charts, and binders of medical information (usually called “media mail”) and (2) books and other scholarly materials sent between schools, libraries, and museums (usually called “library mail”). Specifically, the amendment declared that rates must be “uniform for such mail of the same weight, and shall not vary with the distance transported.” The amendment was proposed by Senator Mike Mansfield of Montana (a Democrat) and broadly supported. Senator Mansfield stated that the purpose of the amendment was to continue “the long-standing congressional policy that rates on books, educational and library materials be on a uniform national basis rather than zoned by distance.”²⁹⁸

4.5 Enactment of Postal Reorganization Act

Differences between the House and Senate versions of the postal reform bill were resolved in a conference committee that met in July 1970. Prior to the conference, the House took the extraordinary step of instructing its conferees to insist upon the “open

²⁹⁵ Act of June 25, 1948, ch. 645, § 1717(c), 62 Stat. 683, 782.

²⁹⁶ Act of Sep. 2, 1960, Pub. L. No. 86-682, § 4057, 74 Stat. 578, 657.

²⁹⁷ Debated: 116 Cong. Rec. 21707-18 (Jun. 26, 1970), 22049-74 (Jun. 29), and 22279-346 (Jun. 30); H.R. 17070 amended with text of S. 3842, Id. 22345; passed Senate, Id. 22346.

²⁹⁸ 116 Cong. Rec. 22300 (Jun. 30, 1970).

shop” provisions in the House bill (i.e., providing that postal employees could not be required to join a postal union).²⁹⁹ On this issue, the House prevailed. On the other hand, the conference accepted Senate provisions which ensured a stronger, more independent Postal Rate Commission, including elimination of a Congressional veto of postal rates and a requirement that a recommended decision by the Commission could be overruled only by a unanimous vote of the Governors. The compromise recommended by the conference committee was approved by both houses of Congress in early August, and the Postal Reorganization Act of 1970 was signed into law by President Nixon on August 12, 1970.

Apparently, only two elements of the new universal service obligation provoked significant discussion in the conference. The first was the disagreement between the House and Senate bills with respect to continuation of a permanent public service subsidy.³⁰⁰ The House bill phased out the public service subsidy over seven years. The Senate bill provided for permanent subsidy equal to 10 percent of appropriations in 1971. The conference bill provided a subsidy of 10 percent of appropriations in 1971 through 1979 (a subsidy of about \$ 920 million) and a staged reduction to half this amount over the next five years. After 1984, the Postal Service was authorized to modify or eliminate the subsidy “if the Postal Service finds that the amounts [appropriated] are not longer required to operate the Postal Service in accordance with the policies of this title.”³⁰¹

The second USO element that was negotiated by the conference committee involved price constraints, specifically, the requirement that rates must cover attributable costs. Mr. Udall explained the resolution of this issue as follows:

²⁹⁹ 116 Cong. Rec. 23528 (Jul. 9, 1970) (House instructs conferees). All of the major proponents of the postal reform bill listed employee provisions as a key issue of the conference. *See* 116 Cong. Rec. 26962 (Aug. 3, 1970) (remarks of Senator McGee), 116 Cong. Rec. 27595 (Aug. 6, 1970) (remarks of Mr. Dulski), *id.* 27603 (remarks of Mr. Udall).

³⁰⁰ The main sources for information on the conference committee are the report of the committee, H.R. Rep. No. 1363, 91st Cong., 2d Sess. (Aug. 3, 1970) and a long statement by Mr. Udall, a conferee and leader in the development of the House bill, 116 Cong. Rec. 27603-07. The conference committee report is very spare and not very informative. Mr. Udall's statement offers a more detailed and seemingly credible explanation of many points, but it is a statement of only one member of the conference.

³⁰¹ Postal Reorganization Act, Pub. L. No. 91-375, § 2 (39 U.S.C. § 2401(b)(2)), 84 Stat. 719, 743 (1970).

In order to guarantee that these charges would be based on fair and equitable standards for each class of mail, be it for the ordinary citizen or for the big commercial mailer, we [conferees for the House] insisted that each would pay at least the “demonstrably related costs.”

This phrase, while finally deleted in the final bill, was used throughout the conference to express the feeling that each class of mail pay those direct or indirect costs attributable to it.

We agreed that the principle of the House bill be included in the final version of the legislation. This would establish a “floor” for each class of mail equal to costs called “demonstrably related costs” in the House version and “attributable costs” in the final version. Such costs consist of those costs, both direct and indirect, which vary over the short term in response to changes in volume of a particular class of which, even though fixed rather than variable, are the consequence of providing the specific class or service involved.³⁰²

The compromise version of this provision became new section 3622(b)(3) of Title 39.

Other USO elements were seemingly less controversial in the conference committee. The the “general duties” provision first introduced in the Administration bill (H.R. 4 as reported) was included in conference report without change. The Senate's proposal to provide a statement of postal policy in section 101 was adopted. The specific rate and classification principles set out in the Senate bill were also incorporated in the final bill together with a phase-out of statutorily determined preferential rates, although certain preferential rates (generally, in-county newspapers, qualified nonprofit mail, and library mail) were capped at attributable costs (§ 3626). In addition, the final act continued free postal services for mail for the blind and handicapped (§§ 3403, 3404) and for correspondence of diplomats from member countries of the Postal Union of the Americas and Spain (§ 3217), provided Congress appropriated the necessary funds.

The conference committee also adopted, apparently without discussion, the two uniform rate provisions in the Senate bill: one rule for letters and another rule for books, films, and library materials, on the other. In his post-conference committee statement to the House, Mr. Udall explained the difference in these two rules as follows:

The legislation provides, in section 3623(d), that the rate for classes of letter mail sealed against inspection should be “uniform throughout the

³⁰² 116 Cong. Rec. 27606 (Aug. 6, 1970) (remarks of Mr. Udall) (emphasis added).

United States, its territories, and possessions.” The principal purpose here is to insure the nondiscriminatory injunction of section 403(c), so that no city or place in the United States or its territories or possessions, should be required to pay more for the delivery of its mail to other citizens in the United States just because of its remoteness or distance from the continental United States or its centers of population.

The language is not intended to prohibit imposition of a variable surcharge for special handling. Neither is it intended to prohibit rates based upon distances where transportation is a significant factor, as in parcel post—which is not under present law sealed against inspection—or in air parcel post or heavy first-class pieces entitled to air parcel post rates as provided in former section 4253(b) of title 39, even though such mail is presently sealed against inspection. A distinction is drawn between the requirement for uniformity in section 3623(d) and the provision in section 3683, where it is specifically provided that the rates for books and similar material shall not vary with the distance transported.³⁰³

This is the only discussion of the uniform rate rule for letters in the legislative history of the Postal Reorganization Act.

4.6 Summary of the USO elements of the PRA

In sum, the Postal Reorganization Act transformed the Postal Policy Act of 1958 into the basic, if skeletal, universal service obligation found in current postal law. The 1958 act was a statement of principles intended to guide future Congresses in the setting of postage rates and subsidies; these principles were originally intended to be persuasive and non-binding since one Congress cannot limit the discretion of future Congresses. In 1970, when Congress and the Administration decided to give the Post Office more independence—primarily independence from Congressional control of rates and wages—it was deemed necessary to include directions about what postal services were to be provided. In using the text of the 1958 act for this purpose, the language from the earlier act was given a significantly different, more normative, meaning than originally intended in 1958. While Congress in 1958 could not bind future Congresses with a statement of principles, Congress in 1970 could and did bind the Postal Service with the same language.

³⁰³ 116 Cong. Rec. 27606 (Aug. 6, 1970) (remarks of Mr. Udall).

The legislative evolution of the 1970 act explains the overlapping sets of policy pronouncements found in the final law. In the beginning of the legislative process, the Administration was thinking in terms of replacing the Post Office Department with an independent corporation. The bill included a specification of “general duties” drawn from the policy principles of the 1958 act and the 1916 act requiring rural mail service “serve as nearly as practicable the entire population of the United States.” As the legislation evolved, the Senate insisted that the Post Office Department must be succeeded by two institutions, an independent regulatory commission as well as a more operational Postal Service. The Senate bill therefore added a statement of ratemaking principles for the Commission and a set of overall policy principles for both institutions. These, too, were also derived from the 1958 act. In this manner, the provisions of the Postal Policy Act of 1958 were used three times in the Postal Reorganization Act.

Despite substantial reliance on the principles of the 1958 act, the Postal Reorganization Act also added several new USO principles for which there are no clear antecedents in U.S. postal statutes, including the following

- requirement to provide an efficient system of collection, sorting, and delivery of the mail nationwide;
- prohibition against undue or unreasonable discrimination among users of the mails;
- specific obligation to receive, transmit, and deliver throughout the United States, its territories and possessions;
- prohibition against closure of small post office closed solely for operating at a deficit;
- requirement to provide a uniform rate for all letter classes;
- requirement to maintain a class of mail for letters sealed against inspection; and
- requirement that the rate for each class or type of mail cover attributable costs.

While the Postal Reorganization Act transformed the ratemaking principles of 1958 into universal service obligations and added new obligations on top of these, the 1970 act does not provide an evident means of compensating the Postal Service for meeting these obligations over the long term. Congress rejected the permanent public subsidy which, in 1958, was deemed necessary to pay for the public services implied by the Postal Policy Act of 1958. No alternative means of financing was provided. Nor did Congress clearly embrace the logical conclusion that, as the public service financing is withdrawn, the Postal Service should reduce the scope of postal services correspondingly. Unlike in 1958, in adopting the 1970 act, Congress and Administration did not estimate the cost of public services required of the postal service.

5 Evolution of the Statutory USO, 1971-2006

The United States Postal Service was established on July 1, 1971, pursuant to the Postal Reorganization Act of 1970. Between 1971 and 2006, when the Postal Accountability and Enhancement Act was enacted, the statutory provisions adumbrating a “universal service obligation” evolved only incrementally. Although the performance of the Postal Service in the 1970s raised concerns, Congress did not act on proposals either to convert the Postal Service back into a department of government or to push ahead into a still more business-like approach. Amendments represented adjustments rather than reversals. In the 1980s and 1990s, Congress gradually ended the public service and revenue forgone financing envisioned in the Postal Reorganization Act while becoming, primarily through the appropriations process, more specific about the universal services required of the Postal Service. Together, these trends implied a greater reliance on internal cross-subsidy to cover the costs of universal service obligation—and hence, a less “business-like” Postal Service. In 1999, the U.S. government agreed to a revision of the Universal Postal Convention that included a pledge of uncertain legal import to provide universal service “at all points in a member country's territory, for all customers, at affordable prices.”

5.1 *Postal Reorganization Act Amendments of 1976*

In the five years following the debut of the Postal Service, the results were disappointing, if not alarming, to many in Congress. The stamp rate rose from 8¢ (introduced on May 16, 1971) to 13¢ (Dec. 31, 1975), a 63 percent increase compared an increase of 35 percent in the Consumer Price Index. Average postal wages and benefits rose 64 percent from July 1971 to March 1976. The postal deficit, far from being fixed, was projected to be \$ 1.4 billion in 1976 on revenues of \$13.5 billion, an amount that included \$1.6 billion in public appropriations. Net equity of the Postal Service fell from \$ 1.7 billion in 1971 to an estimated \$ -1.3 billion in 1976.³⁰⁴ The Senate postal committee concluded, “If it were truly a business, the United States Postal Service would be

³⁰⁴ S. Rep. No. 966, 94th Cong., 2d Sess., at 2-7 (Jun. 21, 1976).

bankrupt.”³⁰⁵ In 1975, mail volume declined for the first time since the 1930s, prompting the committee to question whether further rate increases would permanently impair mail volume: “Fiscal year 1974 may stand as the all-time high in volume of mail.”³⁰⁶ In the view of some, these problems were compounded by shortcomings in the management of both the Postal Service and the Postal Rate Commission.³⁰⁷

Universal postal service suffered in the wake of these transitional problems. In mid-1975, service quality was below 1969 levels. The General Accounting Office reported that average delivery time for a first class letter was 1.5 days in 1969, 2 days in 1971, and 1.65 days in 1975. Delivery and collection services declined as well.³⁰⁸ The Senate postal committee described the situation as follows:

Hard-pressed as it has become, the Postal Service has, not surprisingly, made cuts. Many air taxi routes have been abandoned. Same-day delivery in downtown areas has been abandoned. Local mail has been mixed with area mail, slowing it down. Collections from corner mail deposit boxes have been restricted. The frequency of delivery in downtown business areas of our larger cities has been cut. Door-to-door service in newly built-up areas is a thing of the past. And the criteria by which the fate of small rural post offices is decided has been changed to facilities a significant reduction in the number of such offices.³⁰⁹

5.1.1 Postal Service: “The Necessity for Change” (1975)

In July 1975, a Postal Service staff study, “The Necessity for Change,” analyzed the reasons for the difficulties encountered by the Postal Service. This study was reprinted by the House Post Office and Civil Service Committee at the end of 1976 and widely circulated.³¹⁰ Although “The Necessity for Change” did not use the terms

³⁰⁵ Id. at 2.

³⁰⁶ Id. at 4-5.

³⁰⁷ H.R. Rep. No. 391, 94th Cong., 1st Sess., at 3 (Jul. 24, 1975) (“The Committee concludes that the major reasons for this crisis emanates from an intolerable turn over within the top management in the Postal Service, as well as inefficiencies, failure of the Postal Rate Commission to act expeditiously on rate cases, a severe inflationary impact which appears to effected the Postal Service more disastrously than most other segments of our economy, and the public service nature of the Postal Service which obviously prevents it from reacting as a normal business would during times of financial crisis.”).

³⁰⁸ S. Rep. No. 966, 94th Cong., 2d Sess., at 6 (Jun. 21, 1976).

³⁰⁹ Id. at 4.

³¹⁰ Staff of the Postal Service, “The Necessity for Change,” House Comm. on Post Office and

universal service or *universal service obligation*, but much of its discussion is directly related to what is now referred to as the universal service obligation. The study offered an usually lucid evaluation of long term policy options for the Postal Service in the face of what was then expected to be little or no growth in letter mail volume. As it turned out, mail volumes grew substantially after this study was prepared, and diversion of written communications to new technologies occurred much more slowly than foreseen. Nonetheless, since the basic economics of postal services have changed little, much of this discussion of policy options appears applicable—even prescient—at a time when the future of letter mail (again) appears to be threatened by changing technology.

The study begins by defining “the postal problem” in 1975 as follows:

The U.S. Postal Service is expected to perform in a rational economic manner while operating under economically irrational constraints. It has failed to balance costs and revenues because it is required to provide a collection of traditional postal services with a pricing philosophy that was developed to meet political needs, not economic demand. Some of these constraints are legislated, others are grounded in two centuries of political practice. Continuation of the present system will insure financial failure, but every attempt to modify traditional services and pricing produces severe political reactions which are equally threatening to the survival of the Postal Service.³¹¹

The Postal Reorganization Act was based on a fallacy, argued the study, that postal costs would go down with reform.

This belief was predicated upon the assumption that postal activities were conducted in a wasteful and inefficient manner. Businesslike management and new technology were expected to achieve quantum jumps in postal productivity.³¹²

While postal reform did produce some improvements in productivity, improvements on the scale anticipated in 1970 had not been and could not be achieved.

Civil Service, 94th Cong., 2d Sess. (Comm. Print 94-26, Dec. 10, 1976).

³¹¹ Id. at 2.

³¹² Id. at 7.

The study recognized the long running debate about whether the Postal Service was a “business” or a “public service” but argued that this debate is often obscured by a failure to recognize the essentially economic nature of postal services.

First, it is essential to recognize that the Postal Service is an economic institution (as was its predecessor, the Post Office Department). USPS collects, sorts, transports and delivers mail and performs a number of other services. It incurs costs by acquiring the buildings, people, vehicles and other resources needed to provide these services. These costs must be funded. They can be funded by charging the users of the services or they can be funded by tax dollars, but they must be paid if the services are to be provided.

There has been great debate over the years as to whether the Postal Service should be a “business” or a “public service.” This is a legitimate and important issue, but it is beclouded and confused by some participants who feel that a “public” service is a “free” service. In reality, a public service is one funded through tax dollars rather than through user fees or prices.³¹³

The study recognized that it was a commonly held view that the Postal Service was “binding the nation together, linking millions of individuals. . . . principally to allow Aunt Minnie to stay in touch with her family.” In reality, however, Aunt Minnie “probably dials long distance instead.” Meanwhile, “the principal use of the mail is in the interest of commerce, business, and big business at that.”³¹⁴ But, continues the study, the role of commerce in the postal business was poorly understood.

Many of the customers and clients of the businesses who use the mail are households (they receive 64 percent of all mail), including the traditional Aunt Minnie. It is important to note, however, that these recipients are not the purchasers of mail service; they do not decide what will be entered and what will not. Time, Inc., decides in what way Aunt Minnie can receive its products; Time does not come by mail in some cities; it is delivered, albeit experimentally, by news boys. People can only be purchased at newsstands. Harry and David, not the Fruit-of-the-Month Club members, decides how October's fruit gets delivered.

The decisions which determine what is in the mail are business decisions, made in the best interest of the mailer, not of the mail receiver.

Mail is not a medium for urgent communications. At one time, before

³¹³ Id. at 12.

³¹⁴ Id. at 18.

the telegraph and the telephone, the post rider was the definition of “urgent” (post haste), but no more. Today, price and predictability of delivery are the most important criteria in choosing to use postal services. Other modes and media are available to the customer desiring speed.³¹⁵

The study suggested the continuation under the Postal Reorganization Act of 1970 was infeasible over the long run. The study foresaw that postage rates would rise dramatically (from 13¢ in 1976 to 22¢ in 1981), mail volume would decline slightly over the next five years, and the public would become increasingly unhappy with closure of post offices and reductions in delivery quality.³¹⁶ Over the longer term, the problems appeared still more fundamental due to the threat of diversion to electronic alternatives:

The single most important fact to be recognized about the present “postal business” is the long-term diversion of its major sources of revenue.

Approximately 47 percent of postal revenues stem from transmission of financial transactions such as bills, payments, and orders. Another 20 percent stems from transmission of correspondence. It is highly improbable that 80 percent, or 90 percent of this material will be in the mails 20 years from now. The lion's share of transaction mail will be diverted by Electronic Funds Transfer Systems and related innovations. The correspondence segment will be absorbed by continued growth of voice telecommunications, plus new communications devices. . . .

The remaining third of present postal revenues is derived from distribution of parcels and advertising (about 12 percent each), delivery of publications (about 3 percent), and a multitude of other minor services. Most of this business is subject to competition, and the future competitive position of the Postal Service will be undermined by continuing losses of business in the transaction and correspondence sectors. . . .

Any debate on the future role and organizational status of the Postal Service should reflect an understanding of this long-range outlook. The most desirable resolution of the problem will be one that provides the mechanisms to meet a rapidly changing postal environment.³¹⁷

Under these circumstances, the study concluded there are only two truly viable long term options for the Postal Service:

³¹⁵ Id. at 18.

³¹⁶ Id. at 18-19.

³¹⁷ Id. at 30-31 (emphasis added). The authors of the study refer to competition for third class mail apparently because they understood that the postal monopoly applied only to first class mail. Id. at 29 (“postal monopoly on first class letters”).

(1) Congress can move back toward the Post Office Department concept. Postal services can be considered public services like other government activities and subsidized for the satisfaction of public needs. This option is based upon a conviction that postal services and prices are inherently political.

(2) Congress can move further along in the direction of chartering the Postal Service to behave like a business. USPS would be expected to tailor postal services to meet market demand and develop pricing by market principles. This might include the eventual abolition of the postal monopoly.³¹⁸

In the “public service” option, the study imagined that Congress would oblige the Postal Service to provide specified level of universal services and “Any expenses incurred in performing those services are public service costs and should be funded as such if operating revenues are deficient.”³¹⁹ The study speculated on what such an obligation must include;

The operational consequences of this public service concept are vague. Attempts to define what the Postal Service would do differently as a “public service” produce a variety of answers, such as:

- (1) Give everyone door delivery service.
- (2) Put back the residential street collection boxes and sweep them more frequently.
- (3) Do not close post offices, stations or branches.
- (4) Keep prices down (no change in first class rate for five years).³²⁰

Under this option, the public subsidy would grow from \$ 1.5 billion in 1976 to \$ 8.1 billion in 1981.³²¹

In the “business” option, the study imagined that the Postal Service would “tailor its service and prices to meet market demand.” Delivery to businesses would be maintained at five days per week but deliveries to residences would be reduced to three days per week because “Market research suggests that this would meet the demand for

³¹⁸ Id. at 12.

³¹⁹ Id. at 21.

³²⁰ Id. at 22.

³²¹ Id. at 23.

over 90 percent of the present market.”³²² The system of 42,000 post offices would be reduced to about 9,000 with contract post offices as needed. Cluster box delivery would be introduced as much as possible. Classes and rates would be totally redesigned. The average first class mailer would save approximately 20 percent but the price of an individual stamp would increase by approximately 10 percent. Services to Alaska, Hawaii, and some rural areas could be surcharged. Until this scenario, the public subsidy could be eliminated entirely.

The study ended with a call for Congress to clarify the objectives of the Postal Service. If Congress decides that traditional postal services are essential to national needs, the Postal Service can maintain, extend and even improve upon those services. But provision of these services will be ever more costly, and neither more mechanization nor different management can make the cost go away. Someone must pay the bill. . . .

Congress can decide to subsidize traditional postal services, but the long-term cost of such a policy should be recognized and pondered. Maintenance of the present system will require tens of billions of dollars over the next decade. Whether these funds are better spent on postal services or on other needs is fundamentally a public policy issue.

If the Postal Service were operating as a business, it could eliminate postal deficits. It could keep rates down to a reasonable level for those mailers who generate most mail, while providing services responsive to their needs. It would do so, however, by curtailing traditional services now provided to non-paying constituencies or by instituting new or higher rates for a variety of services. The economic price of such a policy would be very low, but the political price might be intolerably high; after all, there is little precedent for telling average taxpayers that they are getting too much for their money.

Whether the Postal Service operates as a public service or as a business, Congress and postal management must recognize the changing demand for postal services. As new technologies for communications and transactions supplant postal usage, the system must be scaled down. It cannot be closed down or dismantled overnight. People, plant and equipment require long-term investments. Will subsidized maintenance of traditional services be compatible with the long-term demand for services, or will it produce greater problems a decade hence?³²³

³²² Id. at 24. The study also suggested the possibility of providing five-day residential service as an option for an annual fee of \$ 150.

³²³ Id. at 33-34.

5.1.2 House consideration

In response, the House Committee on Post Office and Civil Service proposed to amend the Postal Reorganization Act by adding specific requirements for postal delivery and to increase the public service subsidy to correspondingly. The statutory obligations for delivery proposed in the House committee bill were as follows:

(B) Except as provided in subparagraph (C), the Postal Service shall provide door delivery or curblane delivery to all permanent residential addresses (other than apartment building addresses). The Postal Service shall provide door delivery in any case in which the unit of general local government having jurisdiction over the address involved has adopted zoning ordinances in the interest of protecting the public safety which prohibit the construction or maintenance of any structure on the property adjacent to the curblane.

(C) The Postal Service may provide cluster box delivery service for any permanent residential address in any case in which a unit of general local government having jurisdiction over such address specifically approves the provision of such cluster box delivery service.³²⁴

The proposal to impose standards for delivery was explained as follows:

The Postal Service has recently established a policy that almost no new residential developments are eligible to receive door-to-door delivery. The new regulations for postal delivery services encompass the following:

(1) The Regional Postmaster has the sole discretion to extend door-to-door delivery to new residential areas.

(2) No local option is provided for door-to-door delivery in new areas.

(3) In new residential housing areas, the delivery options open to the local postmaster are limited to: curblane or clusterbox, within 300 feet of the residence.

(4) In new mobile home parks the options are curblane, clusterbox or delivery to the management for further distribution by other than postal employees.

(5) The only circumstances under which door-to-door delivery will continue are for residences built to fill-in an area already receiving door delivery and extreme hardship cases approved by the Regional Postmaster General.

(6) Where municipal or county ordinances prohibit curblane delivery,

³²⁴ H.R. Rep. No. 391, 94th Cong., 1st Sess., at 34 (Jul. 24, 1975).

the only no cost options are clusterbox delivery, general delivery or no service at all.

In many new areas, curblin boxes are prohibited by local ordinance, thus under the regulations they will be served only by clusterboxes.

The Committee concludes that the alternatives provided by these regulations are not acceptable.

Therefore, H.R. 8603 establishes certain standards of delivery, provided the Congress appropriates the full amount authorized for public service appropriations, and involves local jurisdictions in some of the decisions regarding adequate mail delivery.

The bill requires the Postal Service to provide door-to-door delivery or curblin delivery to all permanent residential addresses entitled to city delivery. The Postal Service's option to provide curblin delivery in these cases would be denied in any case in which the appropriate unit of local government has adopted a zoning ordinance in the interest of the public safety prohibiting such structures on the property adjacent to the curblin.

Clusterbox delivery could be provided by the Postal Service only if the appropriate local governing body approves it. The thrust of the language is to guarantee a high level of delivery service to the public and to give local governments a voice in Postal Service decisions which affect the quality of local service.³²⁵

At the same time, the House committee proposed to change the public service subsidy to a formula, \$35 per delivery address, that would grow with the increase in the delivery system. The formula would increase the subsidy for 1976 from \$ 0.92 billion to \$ 2.6 billion.³²⁶ The bill also required the Postal Service to prepare a "comprehensive statement of its compliance with the public service cost policy section 101(b)," i.e., obligation to serve rural areas.

The House bill also proposed to make a number of changes in rates and classifications. Reduced rates for nonprofit mail would be extended to one magazine published by a state conservation agency and to the mail of political parties. College catalogs and bulletins and looseleaf publications would be eligible for second class rates (reversing a decision by the Postal Service). Books sent by publishers to libraries and schools would be eligible for the preferential library rate. For the future, the Commission

³²⁵ Id. at 5 (emphasis added).

³²⁶ Id. at 3-4.

would be directed to consider a new factor in setting rates: “the educational, cultural, scientific, and informational value to the recipient of mail matter.”³²⁷

The House committee also proposed several changes in how the Commission was organized and conducted rate cases. The President’s appointments to the Commission were made subject to Senate confirmations. Rate cases were limited to 10 months. The Commission was given subpoena authority.

Finally, the House committee proposed to establish a special commission of prominent citizens to consider more fundamental changes in postal policy.

The Postal Service supported reform of the Commission’s rate proceedings but opposed most of the USO-related provisions in the House committee bill. The Postal Service particularly objected to the proposal for specific delivery obligations as unwise, unworkable, and possibly unconstitutional. In a letter to the committee, the General Counsel of the Postal Service declared—

The Postal Service strongly opposes the amendment . . . to require existing modes of delivery service to be retained and new addresses to be given delivery to the door, except as provided by local governments. In the first place, we believe that such an abdication of Federal responsibility for administering Federal services would be subject to serious question under the Constitution. . . . Even if the amendment could be legally upheld, it would be bad Federal policy and precedent, in our view. The proposal would not retain for the Federal Government any means of insuring that recipients of Federal postal services are treated fairly by the local officials to whom control over the mode of postal delivery services is delegated. . . . This could eventually turn delivery routes into a patchwork quilt of mixed modes of delivery that would be inefficient and expensive and could make delivery services appear completely irrational to neighbors treated inconsistently.

The irresponsibility of such a delegation to local communities is illustrated further by the vagueness and indisputable overbreadth of the provision, which would be a nightmare to administer. . . .

Finally, there would be no exemption for rural delivery areas or houses with large set-backs.³²⁸

³²⁷ Id. at 10-12, 18.

³²⁸ Id. at 30-31 (emphasis added).

The Postal Service also strongly opposed proposals make certain mail for reduced rates or second class rates as “narrow, special-interest exemptions from the general rules of eligibility for reduced rates.”³²⁹ The Postal Service opposed increases in the public service subsidy, preferring instead changes in the rate-setting procedures of the Commission.

In the full House, members agreed to amendments that would reverse key provisions of the Postal Reorganization Act. The House agreed, by vote of 267 to 123, to require the Postal Service to justify its entire budget to Congress (i.e., to repeal the permanent authorization of postage revenues to the Postal Service)³³⁰ and to re-vest authority to appoint the Postmaster General and Deputy Postmaster General in the President.³³¹ The House also broadened the requirement for Commission review of changes in the nature of Postal Service under section 3661.³³²

5.1.3 Senate consideration

The Senate Post Office and Civil Service Committee did not agree with the many USO-related proposals of the House committee, although it did not wholly disagree either. Senate McGee, chairman of the Senate committee, continued to believe, as he had in 1970, that the Postal Service required a permanent public subsidy in order to provide needed, but non-commercial public services. President Gerald Ford, however, declared that he would veto any bill including a permanent increase in subsidy.³³³ After lengthy negotiations with the Ford Administration, the Postal Service, and House leadership, the Senate committee decided to limit the bill to measures required to fix the finances of the Postal Service, to establish of a study commission, and to establish a moratorium on

³²⁹ Id. at 31.

³³⁰ 121 Cong. Rec. 30772 (Sep. 29, 1975). This amendment, offered by Representative Bill Alexander of Arkansas (Dem.), was highly controversial.

³³¹ 121 Cong. Rec. 34446 (Oct. 30, 1975).

³³² 121 Cong. Rec. 34429 (Oct. 30, 1975). The amendment would add a new subsection 3661(d), “For purposes of this section, the term ‘change in the nature of postal services’ means any change or alteration in the type, quality, terms, or conditions of providing for the receipt, transmission, or delivery of mail matter of any type.”

³³³ 122 Cong. Rec. 27091 (Aug. 22, 1976).

changes in rates or services until the report of the commission. To address the finances of the Postal Service, the Senate committee bill tightened the administration of the Commission, made members subject to Senate confirmation, imposed a ten-month deadline on rate cases, and granted a one-time \$ 1 billion payment to the Postal Service to cover accumulated debts. Similar to the House bill, the Senate committee bill required the Postal Service to provide annually a comprehensive statement on its compliance with the universal service objectives of the act.³³⁴

In the Senate committee bill, the moratorium on reductions in services addressed “levels and types of service” and post office access³³⁵ as well as for delivery. Until the Commission on Postal Service made its report, the Postal Service was required not to—

(e) (1) . . . [raise rates]

(2) provide levels and types of postal services which are less than the levels and types of services provided on July 1, 1976;

(3) close any post office where 35 or more families regularly receive their mail and which was providing service on July 1, 1976; or

(4) close any post office where fewer than 35 families receive their mail and which was providing service on July 1, 1976, unless the Postal Service receives the written consent of at least 60 percent of the regular patrons of such office who are at least 18 years of age.

(f) . . . the Postal Service shall provide door delivery or curblane delivery to all permanent residential addresses (other than apartment building addresses) to which service is begun on or after the date of enactment of the Postal Reorganization Act Amendments of 1976.³³⁶

Delivery requirements were obviously taken from the House bill, but the possibility provided in the House bill for new cluster box service was dropped, apparently due to Postal Service objections against being subject to decisions of local government about a

³³⁴ S. Rep. No. 966, 94th Cong., 2d Sess., at 9-12 (Jun. 18, 1976).

³³⁵ In June 1975, the General Accounting Office issued a study that concluded 12,000 small post offices could be closed in rural areas without affecting the quality of service. General Accounting Office, “\$100 Million Could Be Saved Annually in Postal Operations in Rural America Without Affecting the Quality of Service” (Jun. 4, 1975).

³³⁶ Id. at 34.

community needs for postal delivery. The requirement to maintain “levels and types of service” was explained in the committee’s report as follows:

The bill also provides that, during the moratorium period, levels, and types of postal services may not be instituted that are less than the levels and types of services provided on July 1, 1976. It is not the committee’s intention to preclude the Postal Service from making such minor adjustments as would occur, for instance, in the restructuring of a letter carrier route. Rather, the committee intends by this provision to prohibit a more substantial adjustment, including a reduction in the frequency of delivery services.³³⁷

This provision is arguably the ultimate antecedent for the prohibit on reduction in six-day delivery that would appear in appropriations acts in the 1980s.

As in the House, the Senate committee’s proposals to limit service reductions were adopted over the opposition of the Postal Service. The Postal Service advised the committee, “We oppose these restrictions. If the Postal Service is to make an effort at sensible economies given the long-term financial realities that must be faced, the judicious use of curbside and cluster box delivery modes is an essential and a modest step in that direction.”³³⁸

During consideration by the full Senate, Senator Jennings Randolph of West Virginia proposed another USO-related measure. His amendment would oblige the Postal Service, before closing or consolidating a post office, to consider the effects on the community, the effects on postal employees, and consistency of the action with its obligation under section 101(b) to provide “a maximum degree of effective and regular postal services to rural areas, communities, and small towns.” Under the proposed amendment, the Postal Service would be required to solicit the views of interested parties. And any interested party could appeal to the court of appeals if the Postal Service failed to comply with the statutory procedures, but the court was not authorized to review

³³⁷ Id. at 10.

³³⁸ Id. at 29.

the Postal Service's determination on the merits. The Randolph amendment was adopted by a vote of 60-13.³³⁹

5.1.4 The 1976 amendment

The Postal Reorganization Act Amendments of 1976 was enacted in September 1976.³⁴⁰ The final act followed the Senate approach in most respects. The centerpiece of the act was the creation of a committee of prominent citizens, the Commission on Postal Service, to study the problems of the Postal Service and recommend solutions in a report to Congress and the President to be submitted by March 15, 1977. In addition, the final act included:

- the moratorium on service reductions proposed by the Senate;
- made members of the Postal Rate Commission subject to Senate confirmation and added a ten-month deadline to rate cases;
- granted an extraordinary public service appropriation of \$ 1 billion to cover accumulated indebtedness of the Postal Service;
- included the reduced rate and classifications provisions from the House bill;
- added a new item to factors to be considered by the Commission in setting rates: "the educational, cultural, scientific, and informational value to the recipient of mail matter";
- adopted statutory procedures for closing and consolidating post offices, providing for appeal to the Commission (rather than the court of appeals as proposed by Senator Randolph);
- required the Postal Service to provide a "comprehensive statement" relating to, inter alia, plans and policies "designed to comply with all of the provisions of section 101 of this title" and the "speed and reliability of service provided for the various classes of mail."

³³⁹ 122 Cong. Rec. 27109 (Aug. 23, 1976).

³⁴⁰ Postal Reorganization Act Amendments of 1976, Pub. L. 94-421, 90 Stat. 1303.

5.1.5 Commission on Postal Service, 1977

The Commission on Postal Service was the third major study committee of prominent citizens to be charged with studying the future of the national post office since 1950. It was composed of seven persons appointed by the President and Congressional leaders.³⁴¹ The Commission was chaired by Gaylord Freeman, a banker. It included two senior officials of postal unions (James H. Rademacher, former president of the National Association of Letter Carriers and David W. Johnson, vice president of the American Postal Workers Union), a Washington lawyer (Hobart Taylor Jr.), a former congressman and union official (Paul J. Krebs), a businesswoman (Rose Blakely), and the chairman of Reader's Digest (Kent Rhodes).

Under the terms of the 1976 act, the Commission was directed to study and report on, but not be limited to, several topics related to the universal service obligation:

- the public service aspects of the Postal Service to determine whether those aspects could be identified and their costs estimated;
- the extent and method of supporting public service aspects through appropriations;
- the ratemaking criteria of current law to ensure that they will be responsive to the needs of both the Postal Service and the public; and
- current and future levels of service and the extent to which they should be supported by appropriations.

In addition, the Commission was required to consider the long range impact of electronic funds transfer and electronic communications techniques on the Postal Service and the feasibility of the Postal Service operating an electronic communications system.

The Commission accomplished an extraordinary amount of research in a few months. It held 26 days of public hearings in 21 cities, receiving testimony from 525

³⁴¹ Three commissioners were appointed by the President, two by the President pro tempore of the Senate, and two by the Speaker of the House. Two of the seven commissioners were required to be postal union members. The Postmaster General and the Chairman of the Postal Rate Commission were included as non-voting members.

witnesses, and collected written comments from an additional 425 individuals and groups. The Commission also contracted for studies by five independent research groups. National Economic Research Associates (NERA) was retained to identify public service aspects of the Postal Service and study productivity measurements. Arthur D. Little and the George Washington University Program of Policy Studies in Science and Technology studied the impact of electronic communications on the Postal Service. A. C. Nielsen Company conducted two studies: one based on a public opinion survey of existing postal rates and services and the other based on a special survey of postal customers in rural areas. Lewin and Associates was provided an analysis of the implications of possible alternatives of structural changes in the Postal Service.

In March 1977, the Commission on Postal Service issued a 109-page report supplemented by more than 850 pages of studies prepared by contractors. The Commission rejected calls to abolish the independent Postal Service and reestablish the national post office as a governmental department, although it proposed to reduce the number of Governors from nine to seven.³⁴² The Commission also recommended reducing membership in the Postal Rate Commission to three persons and further depoliticizing the Commission by limiting members to persons with “professional competence in postal affairs, law, economics, or utility regulation.” The Commission further recommended that the Postal Rate Commission be granted final authority over postal rates and classifications (eliminating review and possible rejection of recommended decisions by the Governors of the Postal Service).³⁴³

With respect to what this study has defined as the universal service obligation—the report did not use the terms *universal service* or “universal service obligation”—the Commission proposed significant changes:

- reduction in mail delivery from six days to five days a week (while retaining six-day postal counter service);³⁴⁴

³⁴² Postal Service Commission, *Report* 75-76.

³⁴³ *Id.* 77-78.

³⁴⁴ *Id.* 49-50.

- making dependable, timely delivery—rather than rapid transit time—the primary service objective;³⁴⁵
- moving away from cost-based rates by modifying the criteria for postal rates to give greater weight to factors other than cost causation;³⁴⁶
- freezing the four major classes of mail by statute to prevent introduction of shaped-based or other cost-based classification systems;³⁴⁷
- elimination of reduced rates for preferred mailers over ten years;³⁴⁸ and
- stricter rules to limit closures of post offices.³⁴⁹

The report was silent on mode of delivery (door, curbside, cluster box) despite the prominence of this issue in developing the 1976 act.

The Commission's report made several points in support of its controversial proposal to reduce in the frequency of mail delivery. The Commission noted that its survey of public opinion showed that 80 percent of citizens considered five-day service "acceptable," and 43 percent preferred a reduction in delivery frequency to an increase in the public appropriation for the Postal Service. The Commission also concluded that likely increases in the use of electronic communications implied a need to reduce delivery frequency.

We favor five-day delivery for another reason. Electronic communications have resulted in a diversion of messages from the mail. Arthur D. Little, Inc. estimates that first class mail volume will not increase between 1976 and 1985. During this period, costs will increase substantially. The public service appropriation would have to be increased significantly to compensate the Postal Service for the impact of no mail volume increase and yet continued increased costs. The reduction to five-day delivery would recognize the beginning of the impact of electronic

³⁴⁵ Id. 49.

³⁴⁶ Id. 62-64. The Commission was reacting to a judicial approach that was later overturned.

³⁴⁷ Id. 67.

³⁴⁸ Id. 68.

³⁴⁹ Id. 51-52.

communications on the Postal Service.³⁵⁰

In fact, A.D. Little predicted that by 1985 first class mail volume would fall to 56 billion items, the same volume as in 1972, a prediction that proved far off the mark.³⁵¹

The Commission studied the possibility of linking postage rates to changes in the Consumer Price Index but rejected this idea. The Commission concluded that linking postage rates to the Consumer Price Index would give too little weight to public policy considerations (such as social and cultural factors) and tie postage rates to a standard that bears little or no relation to the costs of providing postal service.³⁵²

Recommendations of the Commission on Postal Service were never translated into legislation. In Congressional hearings on the Commission's report, postal committees of the House and Senate envisioned very different solutions for "the postal crisis," as the Department of Commerce termed the situation.³⁵³ The House committee favored abolition of the Board of Governors, presidential appointment of the Postmaster General, and Congressional veto authority over increases in postage rate. The House of Representatives was also wholly opposed to reducing delivery frequency.³⁵⁴ In contrast, the Senate committee supported retention of the independent Postal Service and Postal Rate Commission established by the Postal Reorganization Act but proposed less cost-oriented ratemaking principles to protect postal volumes and further public interest objectives.³⁵⁵ Neither committee was able to convince the other. By relieving Congress of

³⁵⁰ Postal Service Commission, *Report* 50. The Commission also recommended that the Postal Service pursue an appropriate role in electronic communications. The Commission supported continuation of the postal monopoly but urged Congress to exempt time-sensitive letters.

³⁵¹ Postal Service Commission, *Report*, Vol. 2 at 573. The estimate was prepared by Arthur D. Little. In fact, the mail volume in 1985 was 140 billion items or 150 percent higher than estimated. In 1975, two years before the report of the Postal Service Commission, the General Accounting Office estimated that the mail volume for 1984 would be between 101 and 110 billion items. GAO, "Forecast of Postal Service Self-Sufficiency Potential" at 8 (Feb. 20, 1975). As it turned out, mail volume for 1984 was 132 items.

³⁵² *Id.* 64-66.

³⁵³ U.S. Department of Commerce, "The Postal Crisis: The Postal Function as a Communications Service" (Jan. 1977).

³⁵⁴ In September 1977, the House approved a concurrent resolution urging the Postal Service not to reduce delivery frequency below current levels by a vote of 377 to 9. 123 Cong. Rec. 30942 (Sep. 26, 1977) (H. Con. Res. 277).

³⁵⁵ See H.R. Rep. No. 23, 95th Cong., 1st Sess. (Nov. 3, 1977); S. Rep. No. 1191, 95th Cong., 2d

the need to legislate changes in postal rates and wages, the Postal Reorganization Act eliminated the main issues impelling regular postal legislation.³⁵⁶ The universal service obligation as prescribed by the Postal Reorganization Act and its 1976 amendments remained unchanged.

5.1.6 Postal policy debates of the 1970s in retrospect

Problems in implementing the Postal Reorganization Act precipitated what was, in some respects, the most searching Congressional analysis of national postal policy and the universal service obligation since the 1950s. Although the immediate problem was continuing postal deficits, for many the long term future of the Postal Service was also at stake because it was widely believed that postal volumes (413 items per capita in 1976) would stagnate and decline due to changing technology. In 1975, the staff of the Postal Service produced a lucid analysis of what it saw as the only long-term options—a public service Postal Service or a truly commercial Postal Service—and made the case for clarification of the mission of the Postal Service. In response, the House proposed specific statutory criteria for the delivery of mail, and Congress ultimately enacted temporary criteria for both the delivery of mail and the establishment of post offices. In both case, however, the Postal Service strongly objected to Congressional definition of statutory standards for universal service.

The temporary requirements for universal service embodied in the 1976 act represented a high-water mark in Congressional efforts to define a universal service obligation. An evaluation of long term policy options was delegated to a special Commission on the Postal Service, but its recommendations failed to generate sufficient consensus to sustain new legislation. As it turned out, the need to determine the future of universal services for the long term was postponed by rapid growth in the volume of mail and slower than expected diversion to electronic alternatives.

Sess. (Sep. 13, 1978). The Senate committee never reported the House resolution on delivery frequency.

³⁵⁶ Decline in the need for substantive postal legislation has been reflected in changes in the organization of Congressional committees. In February 1977, the Senate Committee on Post Office and Civil Service was eliminated and its functions transferred to the new Committee on Governmental Affairs. At the start of the 104th Congress in 1995, the House Committee on Post Office and Civil Service was largely absorbed by the Committee on Government Reform.

5.2 *Public service subsidy: the appropriations process*

5.2.1 Omnibus Reconciliation Act of 1980 and the 20¢ stamp

Only a few years later, the scope of universal postal service was reconsidered again, this time in the course a government-wide debate about how to respond to rapid price inflation. On May 29, 1978, the Postal Service increased the price of a postage stamp from 13¢ to 15¢. In fiscal 1979, the first full year of the new rates, the Postal Service made a profit of \$ 470 million, its first profit since 1945. Nonetheless, escalating price inflation threatened not only the Postal Service but the entire federal budget. The Consumer Price Index rose 9.0 percent in 1978, 13.3 percent in 1979; and 12.5 percent in 1980.³⁵⁷ On March 14, 1980, in an effort to curb inflation, President Jimmy Carter proposed a budget for fiscal 1981 that reduced governmental expenditures by \$ 13 to \$ 14 billion. The Administration let it be known that it would seek a reduction of \$250 million in appropriations for the Postal Service in 1981, and further reductions of \$ 644 million and \$ 522 million in the 1982 and 1983, respectively.³⁵⁸ On April 1, 1980, Postmaster General William Bolger told the Board of Governors that the Administration plan would probably mean the end of Saturday mail delivery,³⁵⁹ a claim Administration officials disputed.³⁶⁰ Undaunted, the House and Senate Budget Committees proposed still deeper cuts in the federal budget, including a \$ 600 million reduction in Postal Service appropriations.³⁶¹

³⁵⁷ U.S. Department of Labor, Bureau of Labor Statistics.
<ftp://ftp.bls.gov/pub/special.requests/cpi/cpiiai.txt> (Aug. 24, 2008).

³⁵⁸ "Transcript of President Carter's Statement on Nation's Economy; The Budget Credit Wage and Price Standards Energy Structural Changes," *New York Times*, Mar. 15, 1980; "End of Saturday Mail Delivery Seen," *Washington Post*, Apr. 2, 1980.

³⁵⁹ "5-Day Mail Delivery Called Likely," Ernest Holsendolph, *New York Times*, Apr 2, 1980; "End of Saturday Mail Delivery Seen," Jane Seaberry, *Washington Post*, Apr. 2, 1980. Postal Service studies reportedly indicated a savings of \$ 500 or \$ 600 million annually (compared to total expenses in 1980 of \$19.4 billion).

³⁶⁰ "Senate Panel Tentatively Votes Aid Cut That Could End Saturday Mail Deliveries," *Wall Street Journal*, Apr. 3, 1980.

³⁶¹ "House Unit Votes To Slash Budget By \$16.4 Billion: House Unit Slashes Spending Beyond President's Request," Art Pine and Peter Behr, *Washington Post*, Mar. 21, 1980.

Despite the peril for government finances, the prospect of eliminating Saturday mail delivery—it was assumed that Saturday would be the day to be eliminated—was fiercely opposed by many in Congress. The Postal Service and postal unions were likewise opposed. On April 21, Postmaster General Bolger asked the Postal Rate Commission to approve an increase in the price of a first class stamp from 15¢ to 20¢, an increase that the Postal Service said would permit continuation of Saturday mail delivery.³⁶² On May 12, by a vote of 69 to 27, the Senate amended the budget resolution by limiting the reduction in Postal Service appropriations to \$ 250 million, the maximum amount that, according to the Postmaster General, could be absorbed while maintaining Saturday mail delivery (and assuming no reductions in later years). The Senate amendment was overturned, however, by a House-Senate conference committee which decided to require reductions in Postal Service appropriations of \$ 500 million.³⁶³ In the first week in June, a Postal Service task force countered by making the case for retaining Saturday mail delivery.³⁶⁴ Nonetheless, on June 12, 1980, both houses of Congress approved the conference report of the budget committees. The next day, the House Appropriations Committee defied the budget process and reported a bill that restored the entire \$ 500 million to the Postal Service.³⁶⁵ Budget, appropriations, and postal committees were in open warfare.

The shape of an eventual compromise was foreshadowed in a July 21 report by the House Budget Committee. The committee reported a budget reconciliation bill that

³⁶² "House Unit Votes Not to Reduce Postal Subsidies: Appropriations Panel Acts To Maintain Funding for Deliveries on Saturday," *Wall Street Journal*, Jun. 16, 1980.

³⁶³ "Study Backs 6-Day Deliveries of Mail: Panel Sees Risks to Future Postal Revenue if Saturday Service Is Cut," Bryce Nelson, *Los Angeles Times*, Jun 6, 1980.

³⁶⁴ The report declared, "the task force is reluctant to endorse five-day delivery as being in the best interest of the Postal Service and its customers." According to one news account, the report continued, "one disadvantage in eliminating Saturday delivery pointed out by the task is the increased number of private delivery firms that would spring up to serve the needs of publishers or merchandisers who think that they six-day delivery. And th growth of such firms would reduce postal revenues, thus negating some of the cost savings achieved by cutting service. Study Backs 6-Day Deliveries of Mail:Panel Sees Risks to Future Postal Revenue if Saturday Service Is Cut. Bryce Nelson. *Los Angeles Times*, Jun. 6, 1980.

³⁶⁵ H.R. Rep. No. 1090, 96th Cong., 2d Sess., at 21-22 (Jun. 13, 1980). "House Unit Votes Not to Reduce Postal Subsidies: Appropriations Panel Acts To Maintain Funding for Deliveries on Saturday," *Wall Street Journal* Jun. 16, 1980; "Budget Resolution, a Day Old, Hits Buzzsaw in House Panel," by Richard L. Lyons, *The Washington Post*, Jun. 14, 1980.

would reduce the *public service* appropriations of the Postal Service to \$ 486 million. This was only \$ 250 million less than the amount provided in the phase-out schedule of the Postal Reorganization Act for fiscal 1981, i.e., “an amount equal to 8 percent of such sum for fiscal year 1971” or \$ 736 million. However, the House Budget Committee also proposed to mandate \$ 236 million in additional cuts in the Postal Service’s *revenue forgone* appropriations, cuts which could be made up by the Postal Service through higher postage rates. At the same time, the House Budget Committee added a provision prohibiting the Postal Service from eliminating six-day mail delivery in fiscal 1981.³⁶⁶ On September 12, 1980 the Senate Appropriations Committee reported an appropriations measure generally consistent with this approach and expressed its belief that the result should permit continuation of Saturday mail delivery.³⁶⁷

Final budget and appropriations acts was not adopted until after the dramatic November 1980 elections—elections which ended Democratic control of both the Senate and the presidency, won by Ronald Reagan, and substantially reduced the Democratic majority in the House. In December, President Carter signed the Omnibus Reconciliation Act of 1980.³⁶⁸ This act, *inter alia*, amended the Postal Reorganization Act to reduce the public service appropriation in 1981 to \$486 million, the same \$250 million reduction proposed by the House Budget Committee and the Senate Appropriations Committee. Revenue foregone appropriations were also reduced below what was previously authorized.³⁶⁹ Six-day mail service was assured—at least where it was already provided—by section 412, which provided:

³⁶⁶ H.R. Rep. No. 1167, 96th Cong., 2d Sess. at 216-20 (Jul. 21, 1980).

³⁶⁷ S. Rep. No. 955, 96th Cong., 2d Sess., at 36 (Sep. 17, 1980).

³⁶⁸ A Senate document explains the reconciliation act process as follows: “A process by which Congress includes in a budget resolution ‘reconciliation instructions’ to specific committees, directing them to report legislation which changes existing laws, usually for the purpose of decreasing spending or increasing revenues by a specified amount by a certain date. The legislation may also contain an increase in the debt limit. The reported legislation is then considered as a single ‘reconciliation bill’ under expedited procedures.” Senate Comm. on the Budget, “The Congressional Budget Process: An Explanation,” Committee Print 105-67, 105th Cong., 2d Sess. (1998).

³⁶⁹ Omnibus Reconciliation Act of 1980, Pub. L. No. 96-499, §§ 411-15, 94 Stat. 2599, 2607-08. See H.R. Rep. No. 1479, 96th Cong., 2d Sess., at 119-20 (Nov. 25, 1980) (conference report). Appropriations were provided by a continuing resolution. Act of Dec. 16, 1980, Pub. L. No. 96-536, 94 Stat. 3166.

Sec. 412. During the period from the date of enactment of this Act until October 1, 1981, the Postal Service shall take no action to reduce or to plan to reduce during that period of time the number of days each week for regular mail delivery.

This was the first occasion in which Congress explicitly required the Postal Service to maintain a specified frequency of delivery.

In a postscript to the Congressional debate over the Postal Service appropriations for 1981, the Postal Rate Commission addressed the Postal Service's April 21 request to raise the price of a first class stamp from 15¢ to 20¢. On February 19, 1981, the Commission decided that an 18¢ stamp would be more consistent with the principles of Title 39.³⁷⁰ The Governors of the Postal Service cited the possibility of declining public service appropriations and requested reconsideration. On June 4, 1981, the Commission affirmed its recommendation of an 18¢ first class stamp.³⁷¹ The Postal Service demanded further reconsideration, but on September 17, 1981, the Postal Rate Commission affirmed its recommendation for a second time.³⁷² On September 29, 1981, the Governors, by the necessary unanimous vote, overruled the Postal Rate Commission and put the 20¢ rate and associated rate increases into effect on November 1, 1981. As a result of the relatively favorable resolution of the budget battle and the large increase in postage rates, the Postal Service made a profit of \$ 802 million in 1982 compared to a loss of \$ 588 million in 1981.

5.2.2 Postal Service appropriations act 1982: origin of the USO rider

President Ronald Reagan took office on January 20, 1981. On February 18, President Reagan proposed a dramatic reduction in the federal budget of \$ 41 billion as well as significant tax cuts.³⁷³ The Administration's plan included further reductions in

³⁷⁰ PRC Op. R80-1 (Feb. 19, 1981).

³⁷¹ PRC Op. Upon Reconsideration R80-1 (Jun. 4, 1981).

³⁷² Opinion and Recommended Decision Upon Further Reconsideration, Docket R80-1 (Sep. 17, 1981).

³⁷³ "Reagan Promises His Tax, Spending Cuts Will Reduce Inflation and Increase Growth: Plan Reflects Determination To Lessen Federal Role, Spur Private Investment Reagan Pledges to Reduce Inflation and Spur Growth Tax Plan Marks Major Departure From Past Policy President Plans Limits on Medicaid, Tough Controls On Welfare and Cutbacks in Social Security Outlays," by Kenneth H. Bacon and Timothy D. Schellhardt, *Wall Street Journal*, Feb. 19, 1981.

Postal Service appropriations. In fiscal 1982, the Administration proposed to reduce the \$ 644 million public service appropriation provided in the Postal Reorganization Act by \$300 million and to eliminate the subsidy entirely in later years. Revenue forgone appropriations for reduced rate mail would also be cut by \$343 million.³⁷⁴

The Reagan Administration proposal raised again the prospect of reductions in national postal service. In early February, a widely circulated analysis prepared by the Office of Management and Budget suggested that cuts in the Postal Service budget might lead to a reduction in delivery frequency.³⁷⁵ Nonetheless, soon after announcement of the budget, Postmaster General Bolger declared that the Postal Service could absorb such funding cuts without service reductions. Even so, the possibility of service reductions was a major topic in hearings before the House and Senate Appropriations Committees in March and April 1981. Postmaster General Bolger assured both committees that the budget cuts could be offset by productivity gains rather than elimination of Saturday mail delivery or post office closures. Indeed, the Postmaster General told the House committee, elimination of Saturday mail delivery would be “counterproductive. We are still in a growing volume situation, and we will continue to grow. We have enough problem of delivering our mail within five days, and I think—I mean six days—and we would have a real problem if we tried it in five days.”³⁷⁶

The appropriations committees were not completely reassured by the Postmaster General's statements. In its report, the House Appropriations Committee noted, “The Committee directs the Postal Service to maintain six day mail delivery and not have any wholesale closing of small post offices.”³⁷⁷ The Senate committee wanted firmer statutory guarantees. The chairman of the Senate subcommittee, James Abdnor of South Dakota, and the ranking Democratic member, Dennis DeConcini of Arizona, questioned

³⁷⁴ *Treasury, Postal Service, and General Appropriations for Fiscal Year 1982: Hearings Before a Subcomm. of the House Comm. on Appropriations, Part 2: United States Postal Service*, 97th Cong., 1st Sess., at 1 (1981).

³⁷⁵ “Mail, Train, City Funds Face Reagan Ax,” *Chicago Tribune*, Feb. 7, 1981.

³⁷⁶ *Treasury, Postal Service, and General Appropriations for Fiscal Year 1982: Hearings Before the a Subcomm. of the House Comm. on Appropriations, Part 2: United States Postal Service*, 97th Cong., 1st Sess., at 24 (1981).

³⁷⁷ H.R. Rep. No. 171, 97th Cong., 1st Sess., at 26 (Jul. 9, 1981).

the Postmaster General about the acceptability of a statutory service requirement as follows:

SENATOR DECONCINI. You stated publicly you intend to maintain the current services in fiscal 1981 and 1982 through increased productivity and other operational efficiencies. Your confidence that service can be maintained in the face of budget cuts and a less-than-expected rate increase is indeed welcome news and I compliment you for that.

Nevertheless. I would like to ask you what your reaction would be if this subcommittee were to put language in the Treasury, Postal Service, and General Government appropriations bill for 1982 which would direct you not to reduce current delivery services or close rural post offices in fiscal year 1982? In view of your assertions that this would not be done. Would you have any objections to language such as that?

MR. BOLGER. If we are covering fiscal year 1982. no. But I cannot foresee the future. That is my position now and I think the position on a long-term basis for the Postal Service.

Rural post offices are needed. I try to find ways to make them more productive. We will close some from time to time. I think at the present time, with the growth in volume in the foreseeable future, 6-day delivery is still needed. I have no problem with restrictions put in there, but I think it defeats the purpose of postal reorganization. I think from time to time we have to look at events as they exist and where they are going to go in the future. I think we need to leave the doors open.

I think we need to be able to leave the choice to the American public whether they want a particular postal service. It isn't my purpose to tell the American public what they want for postal service. but instead to Find out what they want and provide it. If they want to pay the bill for it, fine; if they don't, that is their choice,

SENATOR DECONCINI. I agree, and I have no objections to the fine job you are doing, and I compliment you, as I said. I wanted to see how firm you felt that you could operate because it is helpful for us at least for this Senator

SENATOR ABDNOR. If we did write it in the bill, it would be for that particular fiscal year. We in a sense would be reviewing it every year anyway. It is not that we are writing it into an authorization bill. This covers only that particular year's appropriation.

It would give us all a chance to review it and to satisfy the people back home knowing they are going to have 6-day mail, at least for the year we are operating in. And I, too, want to commend Mr. Bolger for that. I meant to. I was pleased to hear that in your statement.

You told me that several weeks ago. I know you are doing everything possible to maintain 6-day mail in rural areas. This is more important,

probably, than in cities. We commend you for it.

I did bring this up only to point out. it would give us a chance to review it, too.

SENATOR DECONCINI. I agree with the chairman. I think obviously this is an annual subsidy or investment. I like to refer to it as, but I think it does give some credibility to your operations and your testimony and the Service's efficiency if, in fact, we can consider putting that in the law or the bill that we pass.³⁷⁸

In sum, Postmaster General Bolger did not object to a statutory command “not to reduce current delivery services or close rural post offices in fiscal year 1982” because the Postal Service could “maintain the current services in fiscal 1981 and 1982 through increased productivity and other operational efficiencies.”

Based on this testimony, on September 22, 1981, the Senate Appropriations Committee reported a bill that included \$250 million in public service subsidy, as required by the Omnibus Budget Reconciliation Act of 1981 (next section). The bill also included three statutory provisos after the appropriating language. These provisos prohibited (1) use of funds “to consolidate or close small rural or other small post offices”; (2) use of funds to curtail “six-day delivery or any other existing postal service”; and (3) implementation of the new nine-digit ZIP code.

Provided, That none of the funds provided in this Act shall be used to consolidate or close small rural and other small post offices in the fiscal year ending on September 30, 1982: Provided further, That none of the funds provided in this Act shall be used to curtail six-day delivery or any other existing postal service in the fiscal year ending on September 30, 1982: Provided further, That none of the funds provided in this Act shall be used to mandate the implementation of nine-digit ZIP code in the fiscal year ending on September 30, 1982.³⁷⁹

The committee report explained these provisos as follows:

The Committee has included language in the bill that would prohibit the Postal Service from closing or consolidating small rural or other small

³⁷⁸ *Treasury, Postal Service, and General Appropriations, Fiscal Year 1982: Hearings Before the a Subcomm. of the Senate Comm. on Appropriations*, 97th Cong., 1st Sess., at 97-98 (1981) (emphasis added).

³⁷⁹ S. 4121, 97th Cong., 1st Sess., at 11 (reported in the Senate, Sep. 22, 1981). The prohibition against use of the 9-digit ZIP code system was added to the House bill during floor debate. 127 Cong. Rec. 18758-59 (Jul. 28, 1981).

post offices or curtailing 6-day delivery or other current postal services in fiscal year 1982. During his appearance before the Committee on April 2, the Postmaster General testified that he would have no objection to such bill language covering fiscal year 1982. He also testified that rural post offices are needed and that he was trying to find ways to make them more productive. He also told the Committee that 6-day delivery was still needed. Nevertheless, the Committee believes that despite these assurances from the Postmaster General, the bill language recommended would guarantee that small communities and the general public would be able to plan on continuation of current postal services at existing postal service facilities in the coming fiscal year.³⁸⁰

A few weeks later, on November 17, 1981, the Senate Appropriations modified its earlier report with a revised bill that lowered the proposed appropriation from \$946 million to \$829 million but kept the same qualifying language.

It seems that the version of the 1982 Postal Service appropriations act set out in the Senate report was enacted into law, although the outcome of the appropriations process that year was less than self-evident. On December 15, 1981, Congress adopted a “continuing resolution” in place of four appropriations bills, including the Treasury, Postal Service and General Government Appropriations Act, 1982. The apparent effect of the continuing resolution was to enact the Postal Service appropriations bills as reported by the Senate committee.³⁸¹ Section 101(a)(2) of the continuing resolution provided that “appropriations made by this subsection shall be available to the extent and in the same manner which would be provided by the pertinent appropriation Act.”

In this convoluted manner, the Senate Appropriations Committee report of September 1981 became the original source for the annual appropriations “rider” (a substantive provision that is added to an appropriations bill) that continues to qualify

³⁸⁰ S. Rep. No. 192, 97th Cong., 1st Sess., at 36 (Sep. 22, 1981).

³⁸¹ Act of Dec. 15, 1981, Pub. L. No. 97-92, §§ 101(a)(1) 101(a)(3), 95 Stat. 1183, 1185 (enacting S. Rep. No. 192, 92d Cong., 1st Sess. (Sep. 22, 1981) as modified on Nov. 17, 1981). The final clause of section 101(a)(3) indicates that the bill reported by the Senate committee as modified on November 17, 1981, is the version of the appropriations bill referred to. The level of appropriations provided in the Senate report was further modified by sections 108 and 142 of Public Law 97-92. This continuing resolution was extended to the end of fiscal 1982 by the Joint Resolution of Mar. 31, 1982, Pub. L. No. 97-161, 96 Stat. 22.

Postal Service appropriations to the present day. This was the first use of the appropriations act to impose USO-related conditions on the Postal Service.³⁸²

Table 5. Summary of reductions in public service subsidy, 1981 to 1985

| Fiscal year | USPS expenses | USPS profit | PRA public service subsidy | Revised statutory subsidy | Change in statutory subsidy | Same as % of expenses | Actual subsidy approps | Change in actual subsidy | Same as % of expenses |
|-------------|---------------|-------------|----------------------------|---------------------------|-----------------------------|-----------------------|------------------------|--------------------------|-----------------------|
| 1981 | 21,369 | -588 | 736 | 486 | -250 | -1.17% | 486 | -250 | -1.17% |
| 1982 | 22,826 | 802 | 644 | 250 | -394 | -1.73% | 12 | -632 | -2.77% |
| 1983 | 24,083 | 616 | 552 | 100 | -452 | -1.88% | 0 | -552 | -2.29% |
| 1984 | 26,357 | 117 | 460 | 0 | -460 | -1.75% | 0 | -460 | -1.75% |
| 1985 | 29,207 | -251 | 460 | 460 | 0 | 0.00% | 0 | -460 | -1.57% |

Source: 1985 *Postmaster General Ann. Rept.*; 39 U.S.C. § 2401(b) (Feb. 28, 1971 ed., S. Comm. Print 92-1, 1971).

5.2.3 Omnibus Budget Reconciliation Act of 1981 and the public service appropriation

The Omnibus Budget Reconciliation Act of 1981, adopted in August 1981, also included a USO-related condition. That act prohibited any reduction in frequency of mail delivery for three years, until the end of fiscal 1984.³⁸³ Section 1722 provided,

SEC. 1722. During the fiscal years 1982 through 1984, the Postal

³⁸² See Postal Service Appropriation Act 1972, Pub. L. No. 92-49, tit. 2, 85 Stat. 108, 110 (1971); Postal Service Appropriation Act 1973, Pub. L. No. 92-351, tit. 2, 86 Stat. 471, 474 (1972); Postal Service Appropriation Act 1974, Pub. L. No. 93-143, tit. 2, 87 Stat. 510, 513 (1973); Postal Service Appropriation Act 1975, Pub. L. No. 93-381, tit. 2, 88 Stat. 613, 616 (1974); Postal Service Appropriation Act 1976, Pub. L. No. 94-91, tit. 2, 89 Stat. 441, 444 (1975); Postal Service Appropriation Act 1977, Pub. L. No. 94-363, tit. 2, 90 Stat. 963, 965-66 (1976); Postal Service Appropriation Act 1978, Pub. L. No. 95-81, tit. 2, 91 Stat. 341, 343-44 (1977); Postal Service Appropriation Act 1979, Pub. L. No. 95-429, tit. 2, 92 Stat. 1001, 1004 (1978). The 1980 Postal Service appropriations act was the first to include any sort of qualification: "Provided, That no funds appropriated herein shall be available for implementing special bulk third-class rates for 'qualified political committees' authorized by Public Law 95-593, other than the National, State, or congressional committee of a major or minor party as defined in Public Law 92-178, as amended." Postal Service Appropriations Act, 1980, Pub. L. No. 96-74, tit. 2, 93 Stat. 559, 562 (1979). This qualification was seemingly repeated for fiscal 1981 by the continuing resolution. See Act of Oct. 1., 1980, Pub. L. No. 96-369, § 101(2), 94 Stat. 1351, 1352.

³⁸³ Omnibus Budget Reconciliation Act of 1981, §§ 1721-27, Pub. L. No. 97-35, 95 Stat. 357, 759-61.

Service shall take no action to reduce or to plan to reduce during that period of time the number of days each week for regular mail delivery. A subsequent reconciliation act extended this requirement through fiscal 1987.³⁸⁴

The Omnibus Budget Reconciliation Act of 1981 also reduced the public service appropriation, eliminating it entirely in 1984, but keeping the program in place after that. Specifically, the public service appropriation was reduced to \$ 250 million in 1982 (originally \$ 644 million in the Postal Reorganization Act); to \$ 100 million in 1983 (originally, \$ 552 million); and to zero in 1984 (originally, \$ 460 million).³⁸⁵

Finally, the Omnibus Budget Reconciliation Act of 1981 placed caps on the revenue foregone appropriations for these years and directed the Postal Service to raise postage rates if the appropriations failed to cover the rate reductions set out in Title 39. These caps were,

however, modified by subsequent Congressional acts to allow the Postal Service to recover larger sums for revenue forgone and thus to maintain reduced rates for preferred classes of mail.

5.2.4 Appropriations riders, 1983 to 1985: the standard USO rider

The Postal Service did not apply for or receive the public service subsidies permitted by the appropriations act for 1982 or the Omnibus Budget Reconciliation Act of 1981. As noted above, the Postal Service made a profit of \$ 802 million in 1982 and \$ 616 million in 1983. In fiscal 1982, the Postal Service received only \$12 million in public service funds.³⁸⁶

For fiscal 1983, the Postal Service proposed a zero subsidy. Complete termination of the public service subsidy in fiscal 1983 was viewed as an important milestone, especially in the Senate, which had been the chief supporter of the public service subsidy since the Postal Reorganization Act. In its report on the annual appropriations bill, the House Appropriations Committee noted without comment its agreement to the

³⁸⁴ Deficit Reduction Act of 1984, Pub. L. No. 98-369, § 2209, 98 Stat. 494, 1061.

³⁸⁵ Omnibus Budget Reconciliation Act of 1981, § 1721, Pub. L. No. 97-35, 95 Stat. 357, 759.

³⁸⁶ 1982 *Postmaster General Ann. Rept.* 4.

Administration's request for a zero public service appropriations.³⁸⁷ The Senate Appropriations Committee, however, emphasized its support for a continuation of a high level of public services paid for, if necessary, by a public service subsidy.

The Committee notes that the payment to the Postal Service fund for public service costs provides direct Government support for programs specified in the Postal Reorganization Act of 1970. Appropriations for public service were initially authorized by Congress in the act of 1970 to provide for "a maximum degree of effective and regular postal services nationwide, in communities where post offices may not be deemed self-sustaining, as elsewhere." Although the Committee has not recommended an appropriation in fiscal 1983 to cover public service costs, it does not indicate a retreat by the Committee from its historic position that the public service subsidy is an essential ingredient in helping to maintain postal services such as 6-day delivery, door-to-door delivery, corner box collection, and small post office operations in small and rural communities where mail delivery is particularly important to their citizens. Nor should the Committee's [sic] actions in any way reflect on its consideration of public service subsidy requirements in future years. The Committee has consistently supported an appropriate public service subsidy and will view any future proposal not to fund or to eliminate the public service subsidy with great reservation and concern. The Committee recognizes the rigid fiscal restraints that have been imposed on the Postal Service and other Federal entities for fiscal 1983 by the administration. Nevertheless, during a more stable economic environment, the Committee would be sympathetic to considering to continue funding the public service subsidy at levels that will assure the maintenance of essential services, including 6-day delivery and keep small post offices operational. . . .

The Committee has included language in the bill that would prohibit the Postal Service from closing or consolidating small rural or other small post offices or curtailing 6-day delivery or other current postal services in fiscal year 1983. During his appearance before the Committee, the Postmaster General testified that he would have no objection to such bill language covering fiscal year 1983. He also testified that rural post offices are needed and that he was trying to find ways to make them more productive. He also told the Committee that 6-day delivery was still needed. Nevertheless, the Committee believes that despite these assurances from the Postmaster General, the bill language recommended would guarantee that small communities and the general public would be able to plan on continuation of current postal services at existing postal

³⁸⁷ H.R. Rep. No. 854, 97th Cong., 2d Sess. at 28 (Sep. 22, 1982). The reported House bill, H.R. 7158, did not include provisions on six-day service or closing small post offices.

service facilities in the coming fiscal year.³⁸⁸

The Senate committee proposed to add the following provisos, among others, to the Postal Service appropriations bill:

Provided, That none of the funds provided in this act shall be used to consolidate or close small rural and other small post offices in the fiscal year ending on September 30, 1983: Provided further, That none of the funds provided in this Act shall be used to curtail six-day mail delivery or any other existing postal service in the fiscal year ending on September 30, 1983.³⁸⁹

As it turned out, the Congress adopted a continuing resolution for fiscal 1983 in place of several regular appropriations bills, including the Treasury-Postal appropriations bill. Reflecting the views of the Senate Appropriations Committee, the continuing resolution included a specific requirement to maintain “six-day delivery of mail and rural delivery of mail” at 1982 service levels. In the fiscal 1983 act, this provision was expressed as a direct command rather than as a limitation on use of funds, as it had been in the fiscal 1982 act.

SEC. 111B. Notwithstanding any other provision of this joint resolution the Postal Service shall continue six-day delivery of mail and rural delivery of mail shall continue at the 1982 level.

SEC. 112. Notwithstanding any other provision of this joint resolution, except section 102(c), there are appropriated to the Postal Service Fund sufficient amounts so that postal rates for all preferred-rate mailers covered by section 3626 of title 39, United States Code, shall be maintained at Step 14.³⁹⁰

For fiscal 1984, as noted above, the public service subsidy was set to zero by the Omnibus Budget Reconciliation Act of 1981. Nonetheless, in developing the Postal Service appropriations bill for fiscal 1984, the Senate Appropriations Committee again emphasized its position that public services must be maintained.

The Committee notes that the Postal Service requested no funds for public service costs specified in the Postal Reorganization Act of 1970. Appropriations for public service were initially authorized by Congress in

³⁸⁸ S. Rep. No. 547, 97th Cong., 2d Sess., at 46-47 (Sep. 16, 1982) (emphasis added).

³⁸⁹ S. 2916, 97th Cong., 2d Sess., at 12 (reported, Sep. 16, 1982).

³⁹⁰ Act of Dec. 21, 1982, Pub. L. No. 97-377, §§ 111B, 112, 96 Stat. 1830, 1912 (emphasis added).

the act of 1970 to provide for “a maximum degree of effective and regular postal services nationwide, in communities where post offices may not be deemed self-sustaining, as elsewhere.” The Committee is most pleased that the Postal Service has reached such a plateau since the reorganization, however, it does not mean the Committee will retreat from its historic position that the public service subsidy is an essential ingredient in helping to maintain postal services such as 6-day delivery, door-to-door delivery, corner box collection, and small post office operations in small and rural communities where mail delivery is particularly important to their citizens. The Committee directs continuation of 6-day service and operation of small post offices.³⁹¹

The provision recommended by the Senate committee was as follows:

Notwithstanding any other provision of this Act, the Postal Service shall continue six day delivery of mail; rural delivery of mail shall continue at the 1983 level: Provided, That none of the funds provided in this Act shall be used to consolidate or close small rural and other small post offices in the fiscal year ending on September 30, 1984.³⁹²

Again in fiscal 1984, a continuing resolution was substituted for the regular Postal Service appropriations bill. The 1984 continuing resolution again reflected the proposals of the Senate Appropriations Committee, including the use of 1983 as the benchmark year for six-day and rural delivery of mail. The 1984 act also added a requirement that mail for overseas voting and the blind should be free.

SEC. 106. Notwithstanding any other provision of this joint resolution except section 102, there are appropriated to the Postal Service Fund sufficient amounts so that postal rates for all preferred-rate mailers covered by section 3626 of title 39, United States Code, shall be continued at the rates in effect on September 1, 1983 (step 14): Provided, That mail for overseas voting and mail for the blind shall continue to be free: Provided further, That six-day delivery and rural delivery of mail shall continue at the 1983 level.³⁹³

The sequence of bills and acts leading up to the fiscal 1984 continuing resolution illuminates the meaning of the final version of the proviso: “six-day delivery and rural delivery of mail shall continue at the 1983 level.” The Senate committee report for the fiscal 1984 bill used a semicolon to separate references to six-day and rural service: “ the

³⁹¹ S. Rep. No. 186, 98th Cong., 1st Sess., at 39 (Jul. 20, 1983) (emphasis added).

³⁹² S. 1646, 98th Cong., 1st Sess., at 14-15 (reported, Jul. 20, 1983) (emphasis added)

³⁹³ Act of Nov. 14, 1983, Pub. L. No. 98-151, § 106, 97 Stat. 964, 975.

Postal Service shall continue six day delivery of mail; rural delivery of mail shall continue at the 1983 level.” The fiscal 1983 act used two main clauses to refer to these two services: “shall continue six-day delivery of mail and rural delivery of mail shall continue at the 1982 level.” Seemingly, the fiscal 1984 act was intended to express the same thoughts. In all cases, then, it appears that Congress intended to refer to two distinct delivery services, the six-day delivery service and the rural delivery service. There was no apparent intention to require six-day delivery by rural services where such six-day service was not already provided.

In fiscal 1985, the situation changed in key respects. In early 1984, instead of a profit as in the past few years, the Postal Service was projecting a loss in fiscal 1985. Moreover, under the Postal Reorganization Act, beginning in fiscal 1985, there remained a permanent public service appropriation of \$ 460 million unless the Postal Service found the subsidy “no longer required to operate the Postal Service in accordance with the policies of this title.”³⁹⁴ Nonetheless, the Postal Service again declined to request any public service appropriation for fiscal 1985. Instead of requesting the public service appropriation, in November 1983 the Postal Service had filed with the Postal Rate Commission a proposal for a substantial rate increase that would, inter alia, raise the first class stamp from 20¢ to 23¢. (The case was not decided by the Postal Rate Commission until September 1984.³⁹⁵)

In July 1984, the Senate Appropriations Committee reported the Postal Service appropriations bill. The proposed fiscal 1985 act added to the provisos of the previous year a prohibition against consolidation or closure of rural or other small postal services. Since this proviso repeats the awkward phrase “small rural and other small post offices,” it appears obvious that the intent of the Senate committee was to include again the proviso that was an element to the 1982 appropriations bill. The Senate provisos were accepted by a conference committee. A continuing resolution for 1985 enacted the

³⁹⁴ 39 U.S.C. § 2401(b)(2) (2006). This public service appropriations was not affected by the Omnibus Budget Reconciliation Act of 1981. It remains in current law.

³⁹⁵ PRC Op. R84-1 (1984), at 1. The Commission ultimately approved an increase in the first class stamp to 22¢, not the 23¢ requested.

conference report for Treasury, Postal Service, and General Government Appropriations bill as if it had been enacted into law. The provisos to the 1985 postal appropriations act read:

Provided, That mail for overseas voting and mail for the blind shall continue to be free: Provided further. That six day delivery and rural delivery of mail shall continue at the 1983 level: Provided further, That none of the funds provided in this Act shall be used to consolidate or close small rural and other small post offices in the fiscal year ending on September 30, 1985.³⁹⁶

The report of the Senate committee repeated the rationale underlying these provisos, echoing the words of the previous year's report

The Committee notes that the Postal Service requested no funds for public service costs specified in the Postal Reorganization Act of 1970. Appropriations for public service were initially authorized by Congress in the act of 1970 to provide for "a maximum degree of effective and regular postal services nationwide, in communities where post offices may not be deemed self-sustaining, as elsewhere." The Committee is most pleased that the Postal Service has reached such a plateau since the reorganization, however, it does not mean the Committee will retreat from its historic position that the public service subsidy is an essential ingredient in helping to maintain postal services such as 6-day delivery and small post office operations in small and rural communities where mail delivery is particularly important to their citizens. The Committee has directed continuation of 6-day service and operation of small post offices in the bill.³⁹⁷

The tone of the Senate committee report raises the possibility that the continuation of the appropriations rider in the fiscal 1985 appropriations act resulted from the Postal Service's continuing refusal to accept the permanent \$ 460 million public service appropriations and its decision to raise postage rates instead.

³⁹⁶ Act of Oct. 10, 1984, Pub. L. No. 98-473, § 101(j), 98 Stat. 1699, 1837 (enacting H.R. Rep. No. 993, 98th Cong., 2d Sess. (Sep. 6, 1984) (conference report)) (emphasis added). The conference report is printed at 130 Cong. Rec. 24466 (Sep. 6, 1984). The bill as reported by the Senate committee is printed at id. at 20501. The proviso relating to consolidation or closure of small post offices was added by Senate committee. The conferees note an intention to keep the preferred mail rates at step 14 of the phasing schedule. H.R. Rep. No. 993, 98th Cong., 2d Sess., at 9 (Sep. 6, 1984).

³⁹⁷ S. Rep. No. 562, 98th Cong., 2d Sess., at 42 (Jul. 17, 1984) (emphasis added).

5.2.5 Appropriations acts, 1986 to 2008: additional provisions and directions

The tripartite 1985 appropriations rider is what may be termed the “standard USO rider” that has been attached to each Postal Service appropriations bill since 1985.³⁹⁸ The only substantive change was introduced in the appropriations act for 2000. In that year, the statutory command that six day delivery and rural delivery of mail “shall continue at the 1983 level” was changed to “shall continue *at not less than* the 1983 level.” This change originated in the House but was unremarked in the report of the House Appropriations Committee. Indeed, the House report states that, “The Committee has continued language which prohibits funds made available to the Postal Service from being used to close or consolidate certain post offices, from charging employees of local and child support agencies, provides funds for free mail for the blind, and for six day mail delivery and rural delivery of mail *at existing levels*.” This sentence seems to suggest that bills requires the Postal Service to maintain six day mail delivery and rural delivery of mail at “existing levels,” which it did not.³⁹⁹

The Postal Service appropriations act for fiscal 1986 added another permanent element to the standard appropriations rider. As in the previous year, for fiscal 1986,

³⁹⁸ See Act of Dec. 19, 1985, Pub. L. No. 99-190, §§ 101(h), 99 Stat. 1185, 1291 (enacting conference report, H.R. Rep. No. 349, 99th Cong., 1st Sess. (Oct. 31, 1985)); Postal Service Appropriations Act 1987, Pub. L. No. 99-591, tit. 2, 100 Stat. 3341, 3341-314; Postal Service Appropriations Act 1988, Pub. L. No. 100-202, tit. 2, 101 Stat. 1329, 1329-397; Postal Service Appropriations Act 1989, Pub. L. No. 100-440, tit. 2, 102 Stat. 1721, 1728 (1988); Postal Service Appropriations Act 1990, Pub. L. No. 101-136, tit. 2, 103 Stat. 783, 790 (1989); Postal Service Appropriations Act 1991, Pub. L. No. 101-509, tit. 2, 104 Stat. 1389, 1397 (1990); Postal Service Appropriations Act 1992, Pub. L. No. 102-141, tit. 2, 105 Stat. 834, 843 (1991); Postal Service Appropriations Act 1993, Pub. L. No. 102-393, tit. 2, 106 Stat. 1729, 1737 (1992); Postal Service Appropriations Act 1994, Pub. L. No. 103-123, tit. 2, 107 Stat. 1226, 1235 (1993); Postal Service Appropriations Act 1995, Pub. L. No. 103-329, tit. 2, 108 Stat. 2382, 2392 (1994); Postal Service Appropriations Act 1996, Pub. L. No. 104-52, tit. 2, 109 Stat. 468, 476 (1995); Act of Sep. 30, 1996, Pub. L. No. 104-208, tit. 2, 110 Stat. 3009, 3009-326; Postal Service Appropriations Act 1998, Pub. L. No. 105-61, tit. 2, 111 Stat. 1272, 1290 (1997); Postal Service Appropriations Act 1999, Pub. L. No. 105-277, 112 Stat. 2681, 2681-492 (1998); Postal Service Appropriations Act 2000, Pub. L. No. 106-58, tit. 2, 113 Stat. 430, 444 (1999); Postal Service Appropriations Act 2001, Pub. L. No. 106-554, tit. 2, 114 Stat. 2763, 2763A-135 (2000); Postal Service Appropriations Act 2002, Pub. L. No. 107-67, tit. 2, 115 Stat. 514, 525 (2001); Postal Service Appropriations Act 2003, Pub. L. No. 108-7, tit. 2, 117 Stat. 11, 117 (2003); Consolidated Appropriations Act 2004, Pub. L. No. 108-199, 118 Stat. 3, 340 (2004); Consolidated Appropriations Act 2005, Pub. L. No. 108-447, 118 Stat. 2809, 3264 (2004); Act of Nov. 30, 2005, Pub. L. No. 109-115, 119 Stat. 2396, 2490; Act of Sep. 29, 2006, Pub. L. No. 109-229, Div. B §§ 101(a)(10), 101(d), 120 Stat. 1257, 1311-12 (enacting H.R. 5576, 109th Cong., as passed H.R., Jun. 14, 2006) ; Consolidated Appropriations Act 2008, Pub. L. No. 110-161, 121 Stat. 1844, 2012-13 (2007).

³⁹⁹ H.R. Rep. No. 231, 106th Cong., 1st Sess., at 83-84 (Jul. 13, 1999). See *id.* at 31-34.

Postal Service appropriations were provided in a continuing resolution that enacted a conference report.⁴⁰⁰ The conference report included a proviso that prohibited the Postal Service from charging fees for furnishing addresses in connection with enforcement of state and local child support programs.⁴⁰¹ This “child support law proviso” has been included in each Postal Service appropriation bill since fiscal 1986, although it does not seem related to the provision of universal postal service.

The Postal Service appropriations act for 1986 also included several additional provisos, as follows:

. . . : Provided further, That none of the funds provided in this Act shall be used to consolidate or close small rural and other small post offices in the fiscal year ending on September 30, 1986: Provided further, That none of the funds made available to the Postal Service by this Act may be used to support in-county second-class rates of postage for any issue of a publication unless more than 50 percent plus one copy of the total paid circulation is distributed within the county of publication, or the total paid circulation of the publication is under 10,000: Provided further, That none of the funds made available to the Postal Service by this Act shall be used to support the mailing of nonsubscriber copies of such publications at the in-county second class rates of postage at any time during the calendar year in excess of 10 percent of the total weight of copies mailed to subscribers at the in-county rate during the calendar year.

None of these provisos were repeated in later appropriations acts.

Since fiscal 1986, provisos attached to Postal Service appropriations acts have generally been limited to the tripartite standard USO rider and the child support law proviso. In two appropriations acts, for fiscal 1987 and fiscal 1992, the proviso sections were used to make changes in the substantive postal law.⁴⁰² And on at least three other

⁴⁰⁰ Act of Dec. 19, 1985, Pub. L. No. 99-190, §§ 101(h), 99 Stat. 1185, 1291 (enacting conference report, H.R. Rep. No. 349, 99th Cong., 1st Sess. (Oct. 31, 1985)). The text of the postal provisions in the conference-approved bill seems to be given by H.R. 3036, 99th Cong., 1st Sess. (in House, as passed by the Senate, Nov. 26, 1985).

⁴⁰¹ The proviso originated in the House bill and states, “*Provided further*, That none of the funds made available to the Postal Service by this Act shall be used to implement any rule, regulation, or policy of charging any officer or employee of any State or local child support enforcement agency, or any individual participating in a State or local program of child support enforcement, a fee for information requested or provided concerning an address of a postal customer.”

⁴⁰² See Postal Service Appropriation Act 1987, Pub. L. No. 99-591, tit. 2, 100 Stat. 3341, 3341-314 (amending 39 U.S.C. § 2254); Postal Service Appropriations Act 1992, Pub. L. No. 102-141, tit. 2, 105

occasions since fiscal 1985, provisions in appropriations acts outside the proviso section have included substantive changes.⁴⁰³

In the late 1980s, Congressional appropriations committees began to include directions to the Postal Service in committee reports in addition to statutory instructions. In its report on the Postal Service appropriations bill for 1987, the House Appropriations Committee “directed” to the Postal Service to maintain downtown post offices in two cities in California. For example:

The Committee directs the United States Postal Service to give every consideration to maintaining a downtown location for the post office in Sanger, California and to give serious consideration to the site proposed by the Sanger City Council. The current downtown location of the postal facility has proved efficient and convenient for the many residents and businesses that utilize post office services. It is important that the location of the facility remain in the downtown area in effort to meet the postal service needs of the Sanger community and in effort to keep downtown Sanger thriving.⁴⁰⁴

In the report for fiscal 1991 appropriations, the House Appropriations Committee offered comments or directions with respect to the Postal Service's use of rental trailers, the assignment of rural routes to post offices, the collection of penalties, and the state of postal service in certain postal districts.⁴⁰⁵ In its report for fiscal 2000 appropriations, the House Appropriations Committee offered recommendations with respect to the ten post offices.⁴⁰⁶ Similarly, the Senate Appropriations Committee has often included specific comments or directions concerning the location or operation of individual post offices or

Stat. 834, 843 (1991) (amending 39 U.S.C. §§ 2401(c), 3626).

⁴⁰³ See Postal Service Appropriations Act 1999, Pub. L. No. 105-277, 112 Stat. 2681, 2681-492 (1998)

(§ 633, 112 Stat. 2681-523, amending 39 U.S.C. § 407; § 647, 112 Stat. 2681-527, amending 5 U.S.C. §§ 5303 and 5304; § 648, 112 Stat. 2681-527, adding 39 U.S.C. § 3663); Postal Service Appropriations Act 2002, Pub. L. No. 107-67, tit. 2, 115 Stat. 514, 525 (2001) (§ 651, 115 Stat. 557, amending 39 U.S.C. § 5402(d)); Consolidated Appropriations Act 2005, Pub. L. No. 108-447, 118 Stat. 2809, 3264 (2004) (§ 301, 118 Stat. 3350, amending to 39 U.S.C. § 5402).

⁴⁰⁴ H.R. Rep. No. 211, 100th Cong., 1st Sess., at 35 (Jul. 9, 1987) (emphasis added).

⁴⁰⁵ H.R. Rep. No. 589, 101st Cong., 2d Sess., at 30 (Jul. 11, 1990).

⁴⁰⁶ H.R. Rep. No. 231, 106th Cong., 1st Sess., 32-34 (Jul. 19, 1999).

postal facilities in, for example, Maryland and West Virginia;⁴⁰⁷ Tucson, Arizona;⁴⁰⁸ South Dakota and Arkansas;⁴⁰⁹ Lenexa, Kansas;⁴¹⁰ the Bronx, New York, and Pasadena, California.⁴¹¹

5.2.6 Practical Effects of the Appropriations Provisions

In sum, there appear to be three significant continuing threads in the appropriations process that are especially significant for an evaluation of the universal service obligation: (i) the requirement that six-day delivery and rural delivery of mail shall continue at the 1983 level; (ii) the requirement that none of the funds provided in the annual appropriations act be used to consolidate or close small rural and other small post offices in the current fiscal year; and (iii) that requirement that the Postal Service either use of a permanent annual public service of \$ 460 to fund public service costs or determine that such funds not required. In each case, the practical effect of the appropriations provision is unclear.

The effect of the requirement to maintain six-day delivery and rural delivery at no less than 1983 levels is unknown. There is no public information on what the 1983 levels of service were. It does not seem possible to evaluate whether the Postal Service is exceeding 1983 service levels voluntarily or being required to provide 1983 service levels in areas where it would otherwise opt to provide less than 1983 service levels.

The effect of the requirement that no annually appropriated funds be used to consolidate or close small rural and other small post offices is unclear. The proviso only limits use of funds appropriated in the annual appropriations act whereas almost all of the funds of the Postal Service are permanently appropriated under section 2401(a).⁴¹² As

⁴⁰⁷ S. Rep. No. 105, 101st Cong., 1st Sess., at 46 (Aug. 3, 1989).

⁴⁰⁸ S. Rep. No. 411, 101st Cong., 2d Sess., at 56 (Jul. 10, 1990).

⁴⁰⁹ S. Rep. No. 353, 102d Cong., 2d Sess., at 46-48 (Jul. 23, 1992).

⁴¹⁰ S. Rep. No. 106, 103d Cong., 1st Sess., at 45 (Jul. 22, 1993).

⁴¹¹ S. Rep. No. 207, 110th Cong., 1st Sess., at 85 (Jun. 22, 2007).

⁴¹² 39 U.S.C. § 2401(a) (2006).

discussed below, the Postal Service has in fact closed several hundred post offices since the adoption of the appropriations proviso.

The effect of the public service appropriations provision is also unclear. The permanent appropriations of \$ 460 million in public service appropriations could be read to limit the public service activities of the Postal Service. As recounted above, in 1916 when Congress charged the Post Office "to serve, as nearly as practicable, the entire rural population of the United States," it apparently envisioned the appropriations process as defining the limit to what was "practicable." From annual reports of the Postmaster General, it appears that the Postal Service has not received any public service appropriations from fiscal 1985 through fiscal 2007. Pursuant to the act, therefore, it may be presumed that the Postal Service has each year determined that public service appropriations "are no longer required to operate the Postal Service in accordance with the policies of this title."⁴¹³ The implication might be that the postal market of the United States has developed to such a point that no services need to be provided as a "public service" (except, perhaps, for reduced rates which were not funded through public service appropriations). Alternatively, the implication might be that the appropriations process does not limit the scope of public services because under the "policies of this title" the Postal Service is free to set the limits of public service for itself and obtain the necessary funds by adding charges to mailers captured by the postal monopoly and mailbox monopoly.

5.3 Revenue forgone: free and reduced rates for preferred classes of mail

5.3.1 Reduced rates under section 3626

In the Postal Reorganization Act, section 3626 of Title 39 recognized that for certain types of mail, the pre-1970 rates were below levels implied by the ratemaking principles of the act. Section 3626 divided these rates into two categories (using

⁴¹³ 39 U.S.C. § 2401(b)(2) (2006).

references to the "former sections" or sections of the 1960 postal code) and provided special treatment for each category, as follows:

If the rates of postage for any class of mail or kind of mailer under former sections 4358, 4359, 4421, 4422, 4452, or 4554 of this title, as such rates existed on the effective date of this subchapter, are, on the effective date of the first late decision under this subchapter affecting that class or kind, less than the rates established by such decision, a separate rate schedule shall be adopted for that class or kind effective each time rates are established or changed under this subchapter, with annual increases as nearly equal as practicable, so that—

(1) the revenues received from rates for mail under former sections 4358, 4452(b) and (c), and 4554(b) and (c) shall not, on and after the first day of the tenth year following the effective date of the first rate decision applicable to that class or kind, exceed the direct and indirect postal costs attributable to mail of such class or kind (excluding all other costs of the Postal Service) ; and

(2) the rates for mail under sections 4359, 4421, 4422, 4452(a), and 4554(a) shall be equal, on and after the first day of the fifth year following the effective date of the first rate decision applicable to that class or kind, to the rates that would have been in effect for such mail if this subsection had not been enacted.⁴¹⁴

The first category of mail included in-county newspapers (§ 4358), qualified nonprofit⁴¹⁵ mail (§§ 4452(b), 4452(c)), and library mail⁴¹⁶ (§§ 4454(b), 4454(c)). The second category of mail included regular second class mail and third class mail, i.e., newspapers and magazines (§ 4359), controlled circulation publications (§§ 4421, 4422), general printed matter such as advertisements (§ 4452(a)) and general books, films, recordings, etc. (§ 4554(a)).

Postage rates for such "preferred mail" were to raised to new levels during a transition period lasting five to ten years. Rates for the first category mail—in-county

⁴¹⁴ 39 U.S.C. § 3626 (Feb. 28, 1971 ed., S. Comm. Print 92-1, 1971).

⁴¹⁵ According to 39 U.S.C. § 4552(d) (pre-PRA 1970 ed., S. Comm. Print, 1973), "The term 'qualified nonprofit organization' as used in this section means religious, educational, scientific, philanthropic, agricultural, labor, veterans, or fraternal organizations or associations not organized for profit and none of the net income of which inures to the benefit of any private stockholder or individual."

⁴¹⁶ Generally, books, printed matter, theses, sound recording, etc., sent between schools and universities or between public libraries, museums, etc. See 39 U.S.C. § 4554(b) (pre-PRA 1970 ed., S. Comm. Print, 1973).

newspapers, qualified nonprofit mail, and library mail—would be set equal to attributable costs after a ten-year phase-in period. Even after the ten-year transition, the act did not allow the rates of such mail to exceed attributable cost. Hence, the category of mail would receive preferential rates compared to the other mail permanently. Rates for regular second class mail and third class mail were to be set according to the normal ratemaking principles of the act (i.e., equal to attributable costs plus an appropriate share of institutional costs) after a five-year phase-in period.

After enactment of the Postal Reorganization Act, Congress expanded the scope and privileges of preferred mail in a series of steps.⁴¹⁷ In 1974, Congress extended the phase-in period for in-county newspapers, qualified nonprofit mail, and library mail from ten years to sixteen years and the phase-in period for regular second class mail and third class (except for books, films, and recordings) from five years to eight years.⁴¹⁸ As noted above, in the Postal Reorganization Act Amendments of 1976, Congress extended the first category of preferred rates to certain publications of colleges and universities, agricultural and marine associations, and state wildlife agencies and directed the Postal Rate Commission to take into account “the educational, cultural, scientific, and informational value to the recipient of mail matter” when setting rates generally.⁴¹⁹ In 1978, Congress extended reduced rates to qualified political committees.⁴²⁰

5.3.2 Free mail privileges

The Postal Reorganization Act continued two categories of free mailing privileges. Mail for the use of blind and handicapped persons, other than advertisements, is carried without charge to the mailer.⁴²¹ The act also provided that correspondence of members of the diplomatic corps of the countries of the Postal Union of the Americas and

⁴¹⁷ See generally, Kielbowicz, “A Policy History of Selected Preferred Mail Categories,” 126-37 (1986).

⁴¹⁸ Act of June 30, 1974, Pub. L. No. 93-328, § 2, 88 Stat. 287.

⁴¹⁹ Postal Reorganization Act Amendments of 1976, Pub. L. No. 94-421, §§ 10-11, 90 Stat. 1303, 1311.

⁴²⁰ Act of Nov. 4, 1978, Pub. L. No. 95-593, § 11(c), 92 Stat. 2535, 2538-39 (amendments to Overseas Citizen Voting Rights Act of 1975).

⁴²¹ 39 U.S.C. § 3403 (2006).

Spain should be carried without charge to the mailer.⁴²² In 1986, Congress added that materials relating to absentee balloting by military personnel and other citizens living abroad shall be transported by the Postal Service without charge.⁴²³

In all cases, Title 39 provides that the Postal Service may charge postage for such mail rates if Congress fails to appropriate funds to cover the cost of postage. Each year, the annual Postal Service Appropriations Act appears to provide funds for free mail for the blind and handicapped and for overseas voting mail, but not for diplomatic correspondence. Each appropriations act also includes a specific prohibition against discontinuing free mail services for the blind and handicapped and for overseas voting mail.⁴²⁴

5.3.3 Revenue Forgone Reform Act of 1993

Under the Postal Reorganization Act, Congress was supposed to compensate the Postal Service for “revenue forgone” due to reduced rates prescribed in section 3626 and other sections of the act. The amount of the revenue forgone was the difference between the revenues received by the Postal Service and the estimated revenues that the Postal Service would have received for such mail if section 3626 had not been enacted.⁴²⁵ If Congress failed to appropriate sufficient money to pay for the revenue forgone, the Postal Reorganization Act authorized the Postal Service to raise rates on preferred rate mail to cover the shortfall.⁴²⁶

In the mid-1980s, Congress became concerned about the growing cost of the revenue forgone requests from the Postal Service. In April 1986, Congress ended the

⁴²² 39 U.S.C. § 3217 (2006).

⁴²³ Uniformed and Overseas Citizens Absentee Voting Act, Pub. L. No. 99-410, § 201, 100 Stat. 924, 928 (1986), *codified* 39 U.S.C. § 3406 (2006).

⁴²⁴ 39 U.S.C. §§ 2401(c), 3627 (2006) and the annual Postal Service Appropriations acts.

⁴²⁵ 39 U.S.C. § 2401(c) (Feb. 28, 1971 ed., S. Comm. Print, 1971). The vast bulk of “revenue forgone” was the section 3626 mail, but the concept included all revenue not received by the Postal Service due to sections 3217 [free postal service for correspondence of diplomats], 3403-3405 [free postal service for mail of blind or other handicapped persons], and 3626 of this title and the Federal Voting Assistance Act of 1955.

⁴²⁶ 39 U.S.C. § 3627 (Feb. 28, 1971 ed., S. Comm. Print, 1971).

phase-in period for newspapers, qualified nonprofit mail, and library mail; tightened the eligibility for preferred rates; and asked the Postal Rate Commission to develop a plan to reduce the revenue forgone costs.⁴²⁷

In June 1986, the Commission reported to Congress. The Congress concluded that the Postal Service had overstated the amount of revenue forgone in its appropriations requests by as much as 50 percent.

The method that the postal Service currently employs to calculate the amount of revenue forgone subsidy does not accurately reflect the revenues that would be generated by preferred rate mail if these subsidies did not exist. This is because the primary measure currently used to set, compare, and adjust rate levels is the percentage markup over attributable cost. The current revenue forgone method would produce the desired result if preferred rate mail, and regular rate mail, had identical cost and content characteristics. Because they do not, the current method gives skewed results. . . .

The attributable costs of preferred rate mail generally are lower than those of their corresponding regular-rate class. Therefore, if the “equal markup” method were used, those lower costs would be marked up by the same percentage as the corresponding regular-rate class. This would result in a lower rate, and a lower estimate of revenue forgone than the method currently used. For FY 1987, using the “equal markup” method would have reduced the estimated revenue forgone from \$743.5 million to \$478.0 million, a reduction of more than one third.⁴²⁸

Therefore, the Commission proposed to change the method for calculating the revenue forgone so that the allowance for institutional costs would be based on the cost coverage for similar regular rate mail and not on the average revenue per piece for such mail. The Commission’s suggestion was immediately enacted into legislation.⁴²⁹

More fundamentally, the Commission recommended that Congress eliminate almost all revenue forgone appropriations and allow the Commission to set rates for

⁴²⁷ Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. No. 99-272, Title XV, §§ 15102(b)(1), (c), 15104, 15105, 100 Stat. 82, 330-31 (1986).

⁴²⁸ Postal Rate Commission, “Report to the Congress: Preferred Rate Study,” Docket SS98-1, at 1-2, 12 (1986) (emphasis added).

⁴²⁹ Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, Title VI, § 6003(a), 100 Stat. 1874, 1933 (1986).

preferred classes of mail in such a way as to shift the cost of foregone revenue on to other mailers:

[W]e recommend that the revenue forgone appropriation should be eliminated (except for the relatively small amount supporting free mail for the blind, and some free categories connected with voting). The effect of this proposal on rates charged to preferred-rate users would be greatly mitigated by Congress' amending the ratemaking statute, which we likewise recommend, so that when recommending rates the Commission would take into account the public benefit of organizations eligible to use these subclasses. Virtually all costs of the Postal Service could then be recovered from mail users rather than taxpayers, and revenue forgone could be substantially eliminated as a Federal government expenditure. . . .

In summary, we recommend that Congress consider favorably the option of creating subclasses for mail currently paying preferred rates, giving guidelines for limitation of these subclasses' institutional cost contribution, and thereby allowing complete discontinuance of the revenue forgone appropriation.⁴³⁰

In 1993, Congress enacted a more refined version of the Commission's proposal as the Revenue Forgone Reform Act.⁴³¹ In brief, the act eliminated all revenue forgone appropriations except for a small appropriation that compensated the Postal Service for providing a free postal services for mail for the blind and overseas voting rights mail. The Revenue Forgone Reform Act nonetheless required the Postal Service to create reduced-rate mail classes for certain in-county newspapers, qualified nonprofit mail, and library mail (eligibility rules were tightened again). Over a six-year period, rates for such mail could be increased to cover attributable costs plus one-half of the institutional costs contributed by similar regular rate mail. The act also authorized annual payments of \$ 92 million to the Postal Service from fiscal 1994 until fiscal 2035 to compensate the Postal Service for the costs of phasing in new rates over the transition period years and for the shortfall of revenue forgone appropriations in fiscal years 1991-1993. The conference committee summarized the effects of the act as follows:

Revenue Forgone Reform represents a compromise worked out by the Committee on Post Office and Civil Service among commercial and

⁴³⁰ Id. at 2 and 23; see id. at 18-23 (emphasis added).

⁴³¹ Treasury, Postal Service, and General Government Appropriations Act, 1994, Pub. L. No. 103-123, Title VII, 107 Stat. 1267, 1267-73.

nonprofit mailers to eliminate the authorization for revenue forgone appropriations for nonprofit second-class, classroom second-class, in-county second-class, nonprofit third-class and library rate mail. The title creates a mechanism to continue preferred, lower postage rates for nonprofit mailers without the need for taxpayer subsidy. . . .

Commercial use of nonprofit third-class mail has been prohibited. Advertising for nonprofit second-class mail has been limited as has the use of library rate mail by commercial publishers. Publishers may use library rate mail only for matter which has been ordered by libraries or schools. The managers intend that the Postal Service shall administer these new eligibility reforms in a manner that does not unduly jeopardize continued access to the postal system by reduced rate mailers who are seeking to comply with the new standards. The Postal Service may well establish a phased-in enforcement policy, including use of its authority to settle any deficiency claim against a reduced rate mailer.⁴³²

5.4 *Universal Postal Convention*

Since enacting the Postal Reorganization Act in 1970, the United States has participated in a series of intergovernmental agreements which regulate provision of international postal services and, after 1999, domestic postal services. The basic agreement is the Universal Postal Convention and its implementing regulations, the Letter Post Regulations and Parcel Post Regulations. These agreements and related conventions are negotiated and administered by an intergovernmental organization, the Universal Postal Union (UPU). The UPU, the second oldest intergovernmental organization, was founded in 1874. Each version of the Universal Postal Convention is effective for a period of four or five years, at the end of which it is renegotiated and agreed again. Between the Postal Reorganization Act of 1970 and the Postal Accountability and Enhancement Act of 2006, the Universal Postal Convention was revised and readopted seven times: in 1974, 1979, 1984, 1989, 1994, 1999, and 2004. The 2004 Convention is the current convention. It went into effect on January 1, 2006, and remains in effect until December 31, 2009.⁴³³

⁴³² H.R. Rep. No. 256, 103d Cong., 1st Sess. (Sep. 24, 1993) .

⁴³³ On January 1, 2010, the 2004 Universal Postal Convention will be superseded by the 2008 Convention negotiated in Geneva in July and August 2008.

The Universal Postal Convention, and the other “acts” of the UPU, impose legal obligations on all UPU member countries, including the United States. Although details have changed, the nature of the obligations created by the Convention have remained broadly similar except for the addition of a domestic universal service obligation in 1999. The following discussion refers to the provisions of the 2004 Universal Postal Convention and implementing regulations unless otherwise indicated.

5.4.1 Obligations relating to universal postal service

The provisions of the Universal Postal Convention that most directly related to universal service were added in 1999 and are found in Articles 1 to 3 and Article 12 of the 2004 Convention. Article 1 defines “universal postal service” as “*the permanent provision of quality basic postal services at all points in a member country’s territory, for all customers, at affordable prices.*” Article 3 obliges the United States to provide universal postal service to its citizens:

Article 3. Universal postal service

(1) In order to support the concept of the single postal territory of the Union, member countries shall ensure that all users/customers enjoy the right to a universal postal service involving the permanent provision of quality basic postal services at all points in their territory, at affordable prices.

(2) With this aim in view, member countries shall set forth, within the framework of their national postal legislation or by other customary means, the scope of the postal services offered and the requirement for quality and affordable prices, taking into account both the needs of the population and their national conditions.

(3) Member countries shall ensure that the offers of postal services and quality standards will be achieved by the operators responsible for providing the universal postal service.

(4) Member countries shall ensure that the universal postal service is provided on a viable basis, thus guaranteeing its sustainability.⁴³⁴

Article 2 obliges the United States (and other member countries) to report to the UPU’s secretariat, the International Bureau, the identity of “the operator or operators officially designated to operate postal services and to fulfil the obligations arising from

⁴³⁴ Universal Postal Convention (2004), art. 3.

the Acts of the Union.” This obligation appears to imply a duty to nominate one or more operators to provide “basic postal services.”

Article 2. Designation of the entity or entities responsible for fulfilling the obligations arising from adherence to the Convention

(1) Member countries shall notify the International Bureau, within six months of the end of Congress, of the name and address of the governmental body responsible for overseeing postal affairs. Within six months of the end of Congress, member countries shall also provide the International Bureau with the name and address of the operator or operators officially designated to operate postal services and to fulfil the obligations arising from the Acts of the Union on their territory. Between Congresses, changes in the governmental bodies and the officially designated operators shall be notified to the International Bureau as soon as possible.⁴³⁵

The Convention does not include a formal definition of the crucial term *basic postal services*. Article 12, however, appears to define “basic services” as follows:

Article 12. Basic services

(1) Member countries shall ensure the acceptance, handling, conveyance and delivery of letter-post items.

(2) Letter-post items are:

(2.1) priority items and non-priority items, up to 2 kilogrammes;

(2.2) letters, postcards, printed papers and small packets, up to 2 kilogrammes;

(2.3) literature for the blind, up to 7 kilogrammes;

(2.4) special bags containing newspapers, periodicals, books and similar printed documentation for the same addressee at the same address called “M bags”, up to 30 kilogrammes. . . .

(5) Member countries shall also ensure the acceptance, handling, conveyance and delivery of postal parcels up to 20 kilogrammes, either as laid down in the Convention, or, in the case of outward parcels and after bilateral agreement, by any other means which is more advantageous to their customers.⁴³⁶

⁴³⁵ Universal Postal Convention (2004), art. 2.

⁴³⁶ Universal Postal Convention (2004), art. 12.

To summarize, the Universal Postal Convention obliges the United States to designate an operator or operators to maintain a universal postal service, that is, “the permanent provision of quality basic postal services at all points in a member country's territory, for all customers, at affordable prices.” Basic postal services appears to include the acceptance, handling, conveyance and delivery of letter post items (letters, postcards, printed papers and small packets, up to 2 kg. or 4.4 lb. and literature for the blind up to 7 kg. or 15.4 lb.) and parcel post items (packages weighing up to 20 kg. or 44 lb.). The government is obliged to adopt an explicit legal definition of universal service, to ensure services and quality are attained, and to ensure that universal service is provided on viable basis (apparently referring to financial sustainability).

5.4.2 Relationship between the UPU Convention and U.S. postal law

It could be argued that U.S. postal law (pre- or post-PAEA) is not fully consistent with the universal service obligation defined in the Universal Postal Convention. U.S. law does not explicitly “set forth . . . the scope of the postal services offered and the requirement for quality and affordable prices.” Indeed, in the United States, the scope of universal services was unclear. Nor does U.S. law clearly “ensure that all users/customers enjoy the right to a universal postal service involving the permanent provision of quality basic postal services at all points in their territory, at affordable prices,” especially if “universal postal service” includes all services which the Universal Postal Convention lists as “basic services.” Under U.S. law, it is legally difficult for individual users or customers to hold the Postal Service to a specific standard of quality basic postal service. Moreover, U.S. law requires extension of postal service only to “as nearly as practicable the entire population of the United States” not to “all users/customers.”

The legal implications of such inconsistencies are not self-evident. Would it be possible, for example, for someone living in the Alaskan bush country or an inaccessible island to insist in court that the Universal Postal Convention, perhaps in conjunction with U.S. postal law, provides a legal right to parcel post service even if U.S. postal law, standing alone, does not?

Under U.S. law, the Universal Postal Convention is a “Congressional-Executive agreement,” which has been negotiated by the Department of State under authority of a

section 407 of Title 39 and ratified by the President. The *Third Restatement of the Foreign Relations Law* (1987) declares somewhat cryptically,

A Congressional-Executive agreement (§ 303(2)) draws its authority from the joint powers of the President and Congress and supersedes any prior inconsistent federal legislation. However, Congressional authorization to make an executive agreement that would supersede federal law is not to be inferred lightly.⁴³⁷

Thus, it appears that the Universal Postal Convention might be considered to override an earlier provision in the postal law but only to the extent that Congress authorized the government to negotiate such a provision. Insofar as the scope of the universal service obligation is considered, it is at least questionable whether Congress intended in the pre-PAEA version of section 407 to give the government authority to modify the universal service obligation with respect to *domestic* postal services. On the other hand, it appears that a subsequent federal statute, like PAEA, trumps an earlier Universal Postal Convention, although here, too, the Restatement expresses caveats:

An act of Congress supersedes an earlier rule of international law or a provision of an international agreement as law of the United States if the purpose of the act to supersede the earlier rule or provision is clear or if the act and the earlier rule or provision cannot be fairly reconciled.⁴³⁸

Moreover, it appears that the pronouncements of the *Restatement* are not settled law. In the last decade, there has been an intense debate among scholars about the proper relationship between domestic law and international agreements. Purely as a matter of law, there appears to be no simple answer as to whether the UPU Convention trumps an inconsistent provision of a prior U.S. statute.

Moreover, as a practical matter, it may be reasonably questioned whether the UPU's universal service provisions should be considered obligatory. It appears that many UPU member countries fall short of the literal requirements of Convention. UPU studies reported that in 2002, universal service in some member countries extended only to 20-

⁴³⁷ Restatement (Third) of the Foreign Relations Law of the United States § 115 comment (c) (1987) (emphasis added). Section 303(c)(2), referenced in the quotation, says, "(2) the President, with the authorization or approval of Congress, may make an international agreement dealing with any matter that falls within the powers of Congress and of the President under the Constitution."

⁴³⁸ Restatement (Third) of the Foreign Relations Law of the United States § 115(1)(a) (1987).

gram letters and only a bare majority of member countries included parcel delivery with the universal service. In a significant number of developing countries, there is no postal delivery to a large percentage of the population.⁴³⁹ Nonetheless, it could be argued, that the lapses of other UPU members do not excuse for the United States from meeting its obligations.

The proposition that the Universal Postal Convention may override U.S. postal statutes is not merely a subject for speculation by legal theorists. This argument has been raised in recent legal fora. In an arbitration proceedings initiated by United Parcel Service under the North American Free Trade Agreement, Canada argued, *inter alia*, that its actions were justified by the universal service obligation imposed on Canada by the Universal Postal Convention. This argument may have carried some weight with the majority of the arbitration panel, which sided with Canada.⁴⁴⁰ Similarly, in a recent proceeding before the Postal Rate Commission, the Postal Service raised the possibility that provisions of the Universal Postal Convention (albeit the customs provision, not the universal service provisions) might trump contrary U.S. statutes.⁴⁴¹ And, as discussed below, the primacy or not of the Universal Postal Convention to federal law appears to affect the obligations of the Postal Service with respect to the pricing of international postal services which fall within the ambit of the universal service obligation.

⁴³⁹ See UPU, International Bureau, "Memorandum on Universal Postal Service Obligations and Standards," at 16-17 (update 1, 2002); UPU, Beijing Congress (1999) Doc 22 ("Implementation of the Beijing Postal Strategy") at 6.

⁴⁴⁰ The arbitration certificate observed, "Canada is not the only state to recognise the importance of universal and accessible postal service. It was the recognition by governments around the world of the primary importance of universal postal service that led to the creation in 1874 of the UPU. By coordinating the application of the concept of universal postal service internationally, and by *enshrining the universal service obligation as a treaty obligation*, the member nations of the UPU created and have maintained a seamless international postal regime." *United Parcel Service of America v. Government of Canada*, par. 141 (ICSID, Jun. 11, 2007) (emphasis added).

⁴⁴¹ The Postal Service observed, "to determine whether private sector customs requirements should be applied to postal shipments [it must be resolved] whether any requirements for parity would be consistent with the international obligations of the United States under the Universal Postal Convention." Initial Comments of the United States Postal Service in Response to Order No. 26," at 24 n. 40 (Sep. 24, 2007).

5.4.3 Obligations with respect to international mail

Aside from the universal service obligation added in 1999, the remainder of the Universal Postal Convention deals with member countries' obligations with respect to the exchange of international postal services and related financial services. There are three main components of international postal services: letter post (letters, advertisements, other documents, and small packets weighing up to two kilograms), parcel post (parcels weighing up to 20 kg. or 44 lb.), and international express mail. International express mail is generally placed outside the obligations of the Convention and embodied in bilateral agreements between the Postal Service and foreign postal administrations. The primary function of the Universal Postal Convention is to regulate the exchange of documents and parcels among the public post offices of member countries.

International mail comprises only a very small portion of the business of the Postal Service. In 2007, outbound international documents and parcels amounted to about 833 million items or 0.39 percent of all mail collected by the Postal Service. It may be estimated that the volume of inbound international mail was approximately 552 million items or approximately 0.26 percent of all mail delivered by the Postal Service.⁴⁴² In addition, to outbound and inbound mail, the Postal Service handles international transit mail, i.e., mail that sent to the Postal Service by a foreign postal administration for forwarding to another foreign postal administration. The volume of transit mail is not publicly disclosed. Revenue from outbound, inbound, and transit mail services accounted for about 2.5 percent⁴⁴³ of all mail revenue received by the Postal Service.

In the 2004 Universal Postal Convention, the only specific legal obligation with respect to international mail is to provide transit services: "the obligation for each postal administration to forward always by the quickest routes and the most secure means which it uses for its own items, closed mails and à découvert letter-post items which are passed

⁴⁴² In 1998, inbound mail volume was 66 percent of outbound mail volume. Postal Rate Commission, "Report to the Congress: 1998 International Mail Volumes, Costs and Revenues," at 9 (Jun. 30, 1999). This was the last report on international mail publicly disclosed by the Commission. The estimate in the text assumes the same ratio of inbound to outbound volumes existed in 2007.

⁴⁴³ This figure is somewhat overstated. It excludes revenues outbound international express mail but includes revenues from inbound express mail and other services outside the scope of the UPU Convention such as Global Priority Mail Guaranteed.

to it by another administration.”⁴⁴⁴ Failure to provide transit services is the only transgression for which sanctions are prescribed.⁴⁴⁵ As a practical matter, this obligation appears to be of limited significance; it is a holdover from pre-aviation days when international transportation was earth-bound.

An obligation to deliver inbound international mail is implied rather than stated explicitly, so its contours are not clear. For letter post mail, the 2004 Convention establishes a system of delivery rates called “terminal dues.” While the finer points of terminal dues are complex, the basic approach is to establish two schedules of charges. One schedule applies to letter post items exchanged between industrialized countries. A second, lower schedule of charges applies to letter post items sent to or received from developing countries. In general, for all letter post items, UPU terminal dues charges are less than U.S. postage rates for similar items.⁴⁴⁶ Under the 2004 Convention, UPU terminal dues apply only by default; the Postal Service and any foreign post office may agree to alternative arrangements. Alternative arrangements are hardly infeasible. In 1999, the Postal Service had alternative bilateral terminal dues agreements with post offices from fifteen countries accounting for about 59 percent of all inbound letter post by volume and 63 percent by weight.

Even for letter post mail exchanged with countries with whom UPU terminal dues are applicable, Postal Service’s obligation to deliver inbound mail at UPU terminal dues rates is not absolute. Terminal dues rates did not apply to inbound international letter post:

- received from private delivery services or mailers;

⁴⁴⁴ Universal Postal Convention 1994, art. 1(1).

⁴⁴⁵ As a semi-official history of the UPU explained in 1964, “The basic documents of the UPU contain no provisions which would permit the UPU to bring formal sanctions to bear on governments which fail to carry out their treaty obligations. . . . There is one exception to the non-enforcement rule. Article 35 of the Ottawa Postal Convention [Universal Postal Convention 2004, art. 4(5)]—a similar article has been included in the postal conventions since 1920—provides: ‘When a country fails to observe the provisions of Article 34 concerning the freedom of transit the administrations of the other member countries are at liberty to discontinue their postal service with that country.’” George A. Coddington Jr., *The Universal Postal Union* at 112 (New York: New York University Press, 1964).

⁴⁴⁶ Universal Postal Convention 2004, arts. 28-30.

- received from an office of a foreign post office located outside of its national territory;⁴⁴⁷
- posted by or on behalf of a person or firm that is a resident of the United States where the foreign postage rate applied to such items is lower than the comparable U.S. domestic postage rate.⁴⁴⁸

In short, UPU letter post terminal dues apply only to mail which a foreign post office sends from its national territory and even then may not apply if the international mail has been sent by someone whom the Postal Service considers to be a “resident” in the United States.

Because of these restrictions, it is apparent that UPU terminal dues creates a series of reciprocal arrangements between post offices. The Postal Service charges Post Office X for the delivery of inbound international letter post and refuses to give the same rates to private companies or foreign post offices who may be competing with Post Office X in its home territory in the international mail business. By the same token, Post Office X charges the Postal Service terminal dues for the delivery of U.S. outbound letter post and denies similar delivery rates to the Postal Service’s competitors. The Postal Service may be charging less than domestic rates for delivering inbound letter post, but it is also receiving in return the right to have its outbound letter post delivered at rates that are likely to be even more below domestic postage in most other industrialized countries.

In any given bilateral exchange, the overall effect of letter post terminal dues depends upon two main factors: the relationship between U.S. domestic postage rates and

⁴⁴⁷ Universal Postal Convention, Resolution C44/2004 (“operated by or in connection with a postal operator outside its national territory, on the territory of another country, and that these offices are established by postal operators for commercial purposes to draw business in markets outside their own national territory.”) In UPU terminology, postal offices or facilities located outside the national territory of a postal administration are called “extraterritorial offices of exchange” or ETOEs.

⁴⁴⁸ Universal Postal Convention 2004, art. 27, *implemented by* Postal Service, International Mail Manual Part 780 (Issue 33, Mar. 2006). According the Postal Service’s regulation, residents of the United States include any firm that had a place of business in the United States or was incorporated or otherwise organized in the United States, its territories, or its possessions. A “place of business in the United States” is any location in the United States, its territories, or its possessions where a firm’s employees or agents regularly have personal contact with other individuals for conducting the firm’s business or the aggregate amount of time spent in the United States is 180 days or more within 12 consecutive months.

domestic postage rates in the foreign country⁴⁴⁹ and the ratio of imported mail to exported mail. The terminal dues arrangements of the 2004 Universal Postal Convention are a “good deal” for the Postal Service in any bilateral exchange in which foreign postage rates are higher than U.S. postage rates and the U.S. exports as much or more letter post mail than it imports. Terminal dues arrangements are a “bad deal” for the Postal Service in every bilateral exchange in which foreign postage rates are lower than U.S. postage rates and the U.S. imports as much or more letter post mail than it exports. In other bilateral exchanges, the terminal dues and alternative domestic postage charges need to be calculated separately for inbound and outbound mail in order to determine whether the Postal Service receives a net benefit or not. Since the Postal Service has relatively low postage rates and is a substantial net exporter of letter post mail, it appears likely that the letter post terminal dues arrangements represent a net benefit for the Postal Service. Nonetheless, it is impossible to come to a definite conclusion since insufficient data about international mail is publicly disclosed.

For delivery of inbound international parcels, the 2004 Universal Postal Convention established a schedule of “inward land rates.” Prior to the 2004 Convention, inward land rates were set by each destination post office according to its costs.⁴⁵⁰ The 2004 Universal Postal Convention, however, delegated the authority to set inward land rates to the UPU’s Postal Operations Council, a committee of representatives of forty post offices. The Postal Operations Council set the inward land rate for the years 2006 to 2009 at 71.4 percent of the 2004 rate but not less than SDR 2.85 (about \$ 4.66) per parcel and SDR 0.28 (about \$ 0.46) per kg.⁴⁵¹ Assuming the 2004 inward land rates were roughly cost-based, this reduction appears to benefit exporters of parcels. Since the Postal Service is a net exporter of parcels, it is probably a beneficiary of the inward land rate

⁴⁴⁹ It may be assumed that domestic postage rates reflect the economic value of postal services in industrialized countries. In some developing countries, postage rates are heavily subsidized and therefore the domestic postage in the foreign country should be increased by an amount that reflects the per unit public subsidy.

⁴⁵⁰ See Universal Postal Convention 1999, art. 56(2).

⁴⁵¹ Parcel Post Regulations, art. RC 188 (2005). The regulation also permit surcharges if the post office provides certain supplementary services. SDR values converted to dollars using the exchange provided by the International Monetary Fund as of July 1, 2008. http://www.imf.org/external/np/fin/data/param_rms_mth.aspx.

system of the 2004 Convention, but it is impossible to calculate the net effect without public disclosure of current international parcel data. The 2004 Convention does not seem to permit post offices to agree bilaterally on compensation arrangements that differ the inward land rate system.

5.5 Summary of evolution of the statutory USO, 1971-2006

The major statutory modifications in the universal service obligation between 1971 and 2006 were:

- addition of a procedural requirement that the Postal Service consider public interest factors and the views of local customers before closing any post office and a provision for Commission review of Postal Service to ensure compliance;
- addition of a requirement that Commission consider “the educational, cultural, scientific, and informational value to the recipient of mail matter” in setting postage rates;
- marginal expansion of eligibility for reduced rates for preferred classes of mail;
- marginal reduction in the degree of rate reduction for preferred classes of mail;
- elimination of appropriations for revenue forgone due to reduced rates for preferred classes of mail;
- marginal expansion of free mailing privileges;
- addition of a requirement that the six-day delivery and rural delivery of mail shall continue at not less than the 1983 level;
- prohibition against use of annually appropriated funds to consolidate or close small rural and other small post offices;
- addition of a commitment in the 1999 Universal Postal Convention to permanently provide quality basic postal services at all points in the United States for all customers at affordable prices.

In brief, although the statutory universal service obligations set out in Title 39 have changed little since enactment of the Postal Reorganization Act, there have been some significant legal developments. In the mid-1970s, Congress considered enacting specific criteria for universal postal service for delivery and the establishment of post offices. The Postal Service objected strongly, however, and Congress did not so. In the early 1980s, however, Congress again became alarmed at the possibility of service reductions due to government budgetary restrictions. Since the 1980s, Congress has included provisions in the annual appropriations acts that were intended to prevent reductions in delivery frequency and closure of small town post offices, although the practical effects of these proviso are unclear. Another legal development outside of Title 39 and of uncertain import is the progression of the Universal Postal Convention into an agreement that places more legislative authority in the hands of postal officials and addresses domestic as well as international postal services.

The Postal Reorganization Act established two main funding programs to cover the costs of non-business-like universal services. The first was the public service appropriations program. It was scheduled to decline from \$ 920 million in fiscal 1971 to \$ 460 million in fiscal 1985 and thereafter continue at that level. In the late 1970s and early 1980s, Congress reduced or eliminated the scheduled public service appropriations due to fiscal problems of the federal government. Since fiscal 1985, the Postal Service not received any public service subsidy, apparently because it has determined that such funds "are no longer required to operate the Postal Service in accordance with the policies of this title."⁴⁵² The second funding program was the revenue forgone subsidy. It continued with adjustments, until questions arose in the mid-1980s about the correctness of the methods of calculation used by the Postal Service. In 1993, Congress ended the revenue forgone subsidy, except for an annual payment of \$ 92 million that will last until 2035. Congress has not, however, eliminated the requirement to maintain reduced rates for certain types of mail.

⁴⁵² 39 U.S.C. § 2401(b)(2) (2006).

6 Interpretation and Administration of the USO, 1971-2006

The practical consequences, or lack of consequences, of the statutory provisions creating a universal service obligation have been developed in a series of decisions by the Commission and the courts. This chapter summarizes the administration of the universal service obligation by these bodies.

6.1 Geographic scope of universal service

6.1.1 Geographic scope of express mail

In the general rate case R77-1, Purolator Courier Company, a private express, argued that the Postal Service's proposed rates for Express Mail were inconsistent with the requirement in former section 3623(d), now section 404(c): "The rate for each such class [for the transmission of letters sealed against inspection] shall be uniform throughout the United States, its territories, and possessions." Purolator's argument raised two questions: whether all letter services must be offered nationwide and whether letter services must be priced so they do not vary with distance.

Purolator's argument with respect to nationwide services came down to a contention that a "uniform rate" must necessarily be offered nationwide. At the time, express mail was offered in only 47 cities. In response, the Commission held that the plain meaning of section 3623(d) did not require nationwide availability of all letter services.

That section requires that the rate for each class of sealed letter mail be uniform. Read literally, this means that so long as the rate charged for the same service in every place where the service is offered is the same, § 3623(d) is not violated. It does not go so far as to require that every service available for sealed letters be available in every post office in the United States and its overseas dependencies. If this plain reading of § 3623(d) is correct, Purolator's argument must fail.

Recognizing, however, that the emphasis given to geographical extent (by the phrase "throughout the United States, its territories, and possessions") might be thought to imply some concern for universal availability of all letter services, as well as equality in rates, we have examined the legislative history of the Act. [The legislative history] while not conclusive on, the point, strongly suggests that rate equality was the

object of § 3623(d) and that it is neutral on the subject of nationwide availability of particular services. It thus reinforces our conviction that the problem raised by Purolator is not governed by § 3623(d).⁴⁵³

The Commission went on to offer an interesting discussion of the Postal Service's legal obligations with respect to the geographic scope of its services:

We do not suggest that there is nothing in the statute requiring a reasonable degree of universality in the offering of particular postal services. In our view, however, the guarantee that services such as Express Mail will be made as widely available as reasonably possible is not to be sought in § 3623(d), but in the provisions forbidding undue discrimination and preference. Section 403 requires an inquiry into the reasonableness of the limitations on availability when a question is properly raised regarding unjustified restriction of service to certain areas or communities. It is not, in our view, an absolute prohibition on such limitations. Section 403(c) proscribes "undue or unreasonable discrimination . . . [or] preferences. . . . " Section 403 (b)(3), on the other hand, requires the Service

. . . to establish and maintain postal facilities of such character and in such locations that postal patrons throughout the Nation will, consistent with reasonable economies of postal operations, have ready access to essential postal services. [Emphasis added.]

When evaluating limitations on the availability of services such as Express Mail, we must therefore consider whether the limitation is reasonable. We must ask, for example, whether it is motivated by genuine requirements of postal economies, or is an attempt—as Purolator suggests elsewhere in its brief—to serve profitable routes while neglecting those with less desirable traffic levels. These are questions of fact to be answered on the basis of an evidentiary record.⁴⁵⁴

The Commission thus appears to conclude that, at least for "services such as Express Mail," the obligatory geographic scope of services is established by section 403(b)(3). According to the Commission, this provision permits a reasonable limitation on the availability of a particular postal service if the limitation is grounded in "genuine requirements of postal economies." It should be noted that in this discussion, the Commission does not distinguish between "universal services" and other services offered by the Postal Service.

⁴⁵³ PRC Op. R77-1 (1978), at 411-12 (emphasis added).

⁴⁵⁴ PRC Op. R77-1 (1978), at 412-13 (emphasis added).

6.1.2 Geographic scope of parcel post: Alaska bypass mail

In the general rate case R90-1, the Commission considered whether the cost of air transportation for third and fourth class postal services (primarily, parcel post) in Alaska should be attributed to those classes or considered an institutional cost. Normally, third and fourth class mail is entitled only to relatively slow and inexpensive surface transportation, but to some destinations in Alaska, normal parcel post service is provided using air transportation because of a lack of roads. Nonetheless, the Postal Service proposed to charge ordinary parcel post rates for Alaskan parcels transported by air, in effect, charging parcel postal rates for a service tantamount to first class service.

In addition, since 1970, the Postal Service had administered a so-called “bypass” program whereby in parts of Alaska unserved by roads, the Postal Service purchased air transportation from private carriers and resold it to persons shipping goods in bulk quantities weighing as much as 1000 pounds. Such shipments “bypassed” the Postal Service’s normal processing facilities entirely. The shipper tendered “bypass mail” to the air carrier directly, and it was collected from the airport by the consignee at the destination airport. For bypass transportation, the Postal Service charged the shipper rates that were substantially less than the Postal Service paid the air carrier. In effect, the bypass program was a subsidy to certain Alaskan shippers and air carriers. Indeed, Alaskan bypass service was similar to Post Office Department programs used to subsidize development of stagecoach lines in the first half of the nineteenth century and commercial airlines in the second quarter of the twentieth century.

The Commission concluded that the extra cost associated with air transportation of bypass mail would be considered an institutional cost, and thus not paid by parcel post mailers alone, because it was a “universal service obligation premium”:

The record supports a finding that nonpriority Alaska air costs are attributable only to the extent that they substitute for the surface costs that would be incurred if that transportation service were available. The remaining costs, which we refer to as the “universal service obligation premium,” are institutional. Those costs are caused by the Postal Service's statutory obligation to serve the entire nation.⁴⁵⁵

⁴⁵⁵ PRC Op. R90-1 (1991), at ¶ 3720 (emphasis added).

In its analysis, the Commission concluded that this extra cost is “is caused by the statutory obligation to provide universal service”:

Regardless of how these costs might actually vary with volume, we find that the premium is caused by the statutory obligation to provide universal service rather than the mail volumes. It is true that if none of this mail existed, the costs would not be incurred. It is difficult to believe, however, that this nonpreferential mail would be incurring these very high air costs in the absence of a statutory mandate to serve the entire nation. The Postal Service interprets its duty as one to offer its basic services to every part of the country, and not to deny the lower priced parcel post service to people who live in remote areas which have only expensive transportation available. See Tr. 5/1703. The Postal Service notes that extraordinary circumstances in Alaska have resulted in the Postal Service establishing unconventional operations to ensure that its national mission is not denied to the residents. Postal Service Brief at IV-25, fn. 11. The Postal Service has a long tradition of serving remote areas even if the transportation required is difficult and perhaps costly. . . .

After quoting subsections 101(a) and (b) of Title 39, the Commission reasoned,

Let us consider the effect on the Alaska air costs if the Postal Service were not required to serve the entire nation. . . . If the Postal Service continued to serve the remote areas at all, prudent pricing policy would dictate that it provide that service at rates that reflect the very high costs of the necessary transportation. . . .

If the statutory mandate were not present, we are confident that the Postal service would not be providing any parcel post service to these communities. Rather, it would follow the lead of UPS, which delivers the overwhelming majority of the nation's parcels, and deny these communities the use of all service offerings whose rates are based on ground transportation costs. . . .

Congress has made a determination to have universal mail service. Part of that mandate is to offer the same rates to each person in the country. Costs which are found to have been incurred solely to meet that mandate, however, are caused by the statute and not by any particular class of mail. Those costs, moreover, should not be permitted to distort the rates and services supplied to all the country. Costs which are not caused by parcel post should not be allocated to that subclass. Furthermore, it is neither rational nor reasonable that rates paid by Priority Mail -- which is constrained by the Private Express statutes for part of its volume -- should be affected by the necessity to fly parcel post to remote areas of Alaska.⁴⁵⁶

⁴⁵⁶ PRC Op. R90-1 (1991), at ¶¶ 3760, 3766, 3767, 3669 (emphasis added, footnotes omitted).

The Postal Service objected strongly the Commission's interpretation of the section 101. In seeking reconsideration of the Commission's decision, the Postal Service declared,

The Commission is simply wrong in its premise that the transportation by air of parcels within Alaska (or anywhere else) is mandated by the Postal Reorganization Act. The Commission has cited no such explicit mandate; indeed, it could not because there is no such mandate. The general policies that the Commission cites are insufficient to support the conclusion that the Postal Service is constrained by statute to fly parcel post within Alaska or anywhere else in the country. . . .

The Postal Service has not concluded, and believes it would be erroneous for it to conclude, as the Commission apparently has, that the statute gives the Postal Service no leeway to make administrative and operational changes to rectify the now-apparent distortions which have resulted. To the contrary, the Postal Service has the authority, and indeed the duty, to take steps to restore the balance between providing a public service and operating in a more cost-oriented fashion.

Indeed, the Postal Service has the authority, if it were to conclude that it was the proper course to take, to decide to carry parcel post only between points linked by surface transportation. Needless to say, this policy would have to be applied without undue discrimination, but no statutory mandate would be violated with such a decision.⁴⁵⁷

The Postal Service pointed to provisions regulating its contracts for air transportation, section 5402 of Title 39, as the only plausible legal source for the air transportation costs incurred in Alaska.⁴⁵⁸ The Postal Service also argued that Express Mail served as another example of a service which the Postal Service is not obliged to offer to all points in the United States regardless of economic considerations:

The fatal flaw in the Commission's reasoning is demonstrated further by Express Mail Next Day service, which has not been made universally available because of operational considerations where transportation or other factors make effectuation of its service goal impossible. Similarly, a decision could be made to offer parcel post service, which by its nature is a low-cost service moved by surface transportation, only between locations linked by surface transportation. Nothing in the statute would prevent such a determination any more than it has prevented limitations on

⁴⁵⁷ Postal Service, "United States Postal Service in Support of Reconsideration" (Feb. 5, 1991), PRC Docket R90-1, at 41-42.

⁴⁵⁸ Id. at 41 n. 24.

the availability of Express Mail.⁴⁵⁹

When the Commission reiterated its conclusion that Alaska air transportation costs were “universal service costs” in Order No. 883 and asked for comments, the Postal Service renewed its objections as follows:

The commission's determination that most Alaska air transportation costs are institutional rather than attributable to parcel post is based on its view that “the ultimate cause” of these costs is not parcel post volumes but what it calls a “universal service obligation.” The conclusion that there is such an obligation operating with respect to Alaska air costs is based on an error of law. . . . The Postal Service has made clear that although its policy has been to transport parcel post by air in Alaska, it is not required by the statute to do so, and it is free to change its policy.⁴⁶⁰

In response to the Postal Service’s legal arguments, the Commission, in its order on reconsideration, confirmed its decision to treat Alaska air transportation costs as institutional costs but backed away from its assertion that such costs were mandated by the universal service provisions of section 101. It dismissed the distinction between a legal obligation and operational policy as a “matter of semantics”:

Postal Service now states its actions result only from “its policy” and that it is free to change this policy. Response at 7. This is no more than semantics. Its “policy” directly reflects the Postal Reorganization Act's universal service policies. The Postal Service has followed this policy for its entire history, and has never indicated (and does not indicate now) that it might seriously consider changing it. Whether the Service subjectively believes that it has a legal obligation, or that its obligations flow only from management policies designed to satisfy statutory postal policies, is not dispositive; and does not vitiate its consistent, long-term undertaking, which will continue in the test year, to purchase air transportation as necessary to enable it to deliver all categories of mail sent to remote areas of Alaska. Under these circumstances the Commission's attributions of the costs of this transportation comport best with the evidence of record.⁴⁶¹

⁴⁵⁹ Id. at 42-43 n. 25 (emphasis added).

⁴⁶⁰ Postal Service, “Response of United States Postal Service to Commission Order No. 883” (May 20, 1991), PRC Docket R90-1, at 6-7 (emphasis added).

⁴⁶¹ PRC Op. and Further Recommended Decision R90-1 (1991), at 7. *See also* PRC Op. R97-1 (1998), at ¶ 3397 (“Beginning in Docket No. R90-1, a portion of the costs of intra-Alaskan air transportation costs (segment 14) have been considered institutional, although they are recognized as being volume variable in nature. The costs of serving areas without road access, the so-called Bush Country of Alaska, are considerably higher than the costs of providing service to other areas in the United States. Since the Postal Service's universal service obligation extends to citizens of all regions of the United States, it

It may be immaterial for purposes of cost allocation whether or not the Postal Service's decision to offer parcel post and bypass mail services in Alaska at rates below cost is a matter of corporate policy or legal obligation, but this question is highly relevant to interpreting the scope of the universal service *obligation*. In the exchange of legal points, the Postal Service appeared to make a strong case, and the Commission appeared to conclude that there is, after all, no clearly defined legal obligation that requires the provision of such services. Rather, the Commission concluded that it may classify the extra costs of such services as institutional costs based on other legal criteria. Without questioning the soundness of the Commission's ultimate decision regarding the proper allocation of cost, it seems that the totality of this analysis supports the conclusion that there exists no universal service obligation imposed on the Postal Service to provide parcel post and bypass mail services in Alaska.

6.2 *Range of universal service products*

Between 1971 and 2006, the Postal Service added and eliminated several products. The focus of this study, however, is limited to issues related to the addition or elimination of universal service products.

6.2.1 Special delivery service

"Special delivery" provided delivery of a postal item from the destination post office to the addressee as soon as the mail bag arrived at the post office so that the postal item would not held until the next regular carrier delivery. Special delivery service was begun 1885,⁴⁶² but use of special delivery declined substantially after 1970. In 1996, the Postal Service proposed to eliminate special delivery service. The American Postal Workers Union raised several legal arguments against this proposal but did not argue that the Postal Service was legally obliged to offer special delivery. The Commission agreed

would not be appropriate to recover all these costs from the nonpreferential classes carried by intra-Alaska Air.")

⁴⁶² Roper, *The United States Post Office* 75.

to elimination of special delivery service without considering whether special delivery was required by a universal service obligation.⁴⁶³

6.2.2 Single-piece advertisements

In 1997, the Postal Service eliminated “single-piece Standard A” service, that is, a nonpriority service for distribution of single-piece advertisements. This service was first offered by the Post Office as a result of the postal act of 1845. The Postal Service argued, however, that demand for this single-piece advertisements was too low to justify continuation. Moreover, the Postal Service pointed out that a cost-based price would be higher than first class mail, a higher priority service that was open to single-piece advertisements and a better quality substitute service. Neither the Commission nor any party suggested that the Postal Service was obliged by continue single-piece Standard A service. The Commission agreed to elimination of the service.

6.3 Access to universal services

Under the Postal Reorganization Act, section 403(b)(3) obliges the Postal Service to provide mailers with “ready access to essential postal facilities.”⁴⁶⁴ Access to postal facilities is generally provided through post office counters, public collection boxes, and the collection of outgoing mail from private mailboxes (if used for incoming mail). The extent of the legal obligation imposed on the Postal Service has been addressed in several cases presented to the courts and the Commission.

6.3.1 Post office establishment

In the 1983 case *Tedesco v. U.S. Postal Service*,⁴⁶⁵ persons from Cranberry, Pennsylvania, sought to have post office established in their township. When the Postal Service refused, they asked a federal district court to order Postal Service to establish a

⁴⁶³ PRC Op. MC96-3 (1997), at 145-57.

⁴⁶⁴ 39 U.S.C. § 403(b)(3) (2000 & Supp. V) (“to establish and maintain postal facilities of such character and in such locations, that postal patrons throughout the Nation will, consistent with reasonable economies of postal operations, have ready access to essential postal services.”)

⁴⁶⁵ *Tedesco v. U.S. Postal Service*, 553 F. Supp. 1387 (W.D. Pa. 1983).

post office based on an alleged breach of the Postal Service's statutory duty to "to establish and maintain postal facilities of such character and in such locations, that postal patrons throughout the Nation will, consistent with reasonable economies of postal operations, have ready access to essential postal services"⁴⁶⁶ and the statutory policy declaring that the Postal Service shall provide "prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities."⁴⁶⁷ The court dismissed the complaint, holding that "the Postal Reorganization Act does not create a private right of action for alleged service inadequacies."⁴⁶⁸ Citizens of Cranberry then filed a complaint with the Commission under section 3662, asking the Commission to issue report supporting establishment of a local post office. The Commission dismissed the complaint based on a discretionary policy of forbearance in such matters:

[T]he Commission being primarily an expert body on rates and classification matters rather than on the details of service through its rules and prior actions has exercised its discretion with regard to service complaints to refrain from holding hearings on service complaints which concern matters calling for an evaluation of competing interests by postal management. We have followed this policy unless on the face of the complaint it appears that managements actions (1) may have involved undue discrimination or otherwise were arbitrary, capricious or unreasonable as for example if the Postal Service did not afford complainants an opportunity to present their grievances to responsible management or (2) involved matters of public policy on a nationwide rather than a localized basis.⁴⁶⁹

The Commission went on to explain "Insofar as ascertaining whether the Postal Service is fulfilling its obligation to provide 'prompt, efficient and reliable' service to individuals representing the public we do not view it as our function to routinely interfere insubstantially what amounts to operating decisions of the Postal Service."⁴⁷⁰

⁴⁶⁶ 39 U.S.C. § 403(b)(3) (2000 & Supp. V).

⁴⁶⁷ 39 U.S.C. § 101(a) (2000 & Supp. V).

⁴⁶⁸ 553 F. Supp. at 1391.

⁴⁶⁹ PRC Order 512, Docket C83-1, at 2 (1983).

⁴⁷⁰ See also PRC Order 524, Docket C83-2 (1983) (dismissing complaint about location of new post office).

6.3.2 Post office closings

The closing of post offices is subject of several statutory obligations. Section 101(b) of Title 39 requires the Postal Service to “provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining.” This provision further commands that “no small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities.” In 1976, the Postal Reorganization Act was amended to provide that, prior to making a determination whether or not to close or consolidate a post office the Postal Service should consider the “effect of such closing or consolidation on the community” as well as the effect on postal service. The act further provided that any affected party could ask the Postal Rate Commission to review a Postal Service decision to close or consolidate a post office.⁴⁷¹ Since 1985, annual Postal Service Appropriations acts have included a provision that “That none of the funds provided in this Act shall be used to consolidate or close small rural and other small post offices in the fiscal year [current year].”

In 1986, the Postal Service amended its rules on post office closing procedures. The revised rule made clear that the Postal Service considered the statutory procedures on post office closing to be limited to closures of post offices managed by a “postmaster” and thus not to apply to decisions to close or consolidate stations, branch offices, or contract post offices.⁴⁷² The Postal Service adopted these rules despite a strong objection from the Commission that the Postal Service’s interpretation was contrary to the law. In the view of the Commission, Congress intended the statutory procedures to apply whenever the Postal Service sought to close the only retail facility serving a particular community.⁴⁷³ The Postal Service’s announcement also omitted any mention of the

⁴⁷¹ 39 U.S.C. § 404(b) (Dec. 31, 1976 ed., S. Comm. Print, 1977); 39 U.S.C. § 404(d) (2006).

⁴⁷² 51 Fed. Reg. 41300 (Nov. 14, 1986).

⁴⁷³ Letter from C.L. Clapp, Secretary, Postal Rate Commission, to M. Principe, U.S. Postal Service, dated Jul. 1, 1986).

appropriations provisions intended to prohibit the closure or consolidation of small post offices.

Between 1978 and 2006, the Commission reviewed many appeals of post office closings under the procedure adopted in 1976. The Commission remanded few, if any, to the Postal Service for further proceedings and affirmed the remainder. In this period, it seems that the appropriations rider was raised with Commission in only one case. In 1984, in reviewing the closure of the Post Office in Mitchell, Louisiana, Commissioner Simeon Bright dissented from the Commission's affirmation of the Postal Service's closure order. He cited the conference committee report on the Postal Service Appropriations Act of 1985 and commented, "I would also note that Congress is on the verge of declaring a one-year moratorium on the closing of small post offices and fairness would suggest that the Service should reconsider pending § 404(b) determinations."⁴⁷⁴

In April 2002, the Postal Service submitted to Congress a *Transformation Plan* describing the Postal Service's plan for adapting to changing times. Among other things, the Postal Service asked Congress to discontinue the appropriations rider prohibiting closure of small post offices and the repeal the 1976 procedures relating to closure of post offices.

The Postal Service's internal effort to rationalize the facilities network will not be wholly successful, however, as long as existing statutory restraints remain in place. The Postal Service will therefore urge Congress to repeal administrative notice and appeal procedures mandated for closing post offices or replace them with more flexible procedures. In addition, the Postal Service will ask Congress to refrain from adding amendments to annual Postal Service appropriations bills that discourage post office closings and freeze service levels at the 1983 level. Without greater flexibility to adapt and change, the traditional network will grow increasingly obsolete and needlessly expensive, draining postal resources that could be used to improve the Postal Service's overall ability to serve the American public.⁴⁷⁵

Despite statutory discouragement, the Postal Service has been able to close or consolidate a number of post offices after 1976. At the end of fiscal 1977, the Postal

⁴⁷⁴ PRC Op. A84-9, Commissioner S. Bright, dissenting, at 2 (Sep. 14, 1984).

⁴⁷⁵ Postal Service, *Transformation Plan* at 52 (Apr. 2002).

Service had 30,521 post offices and 9,801 branches, stations, contract post offices, and community post offices.⁴⁷⁶ At the end of fiscal 1984, the last year before the appropriations rider prohibiting closure or consolidation of small post offices, the Postal Service had 29,750 post offices and 9,770 branches, etc. At the end of fiscal 2006, the Postal Service had 27,318 post offices and 9,508 branches, etc.

6.3.3 Public collection boxes

In October 2000, an attorney, Douglas Carlson, complained that the Postal Service had changed, or was in the process of changing, the availability of Sundays, holidays, and holiday eve collection service without seeking input from the public, or advice from the Commission, as required. He claimed that the changes resulted in postal services that were neither adequate nor efficient. In November 2002, the Commission found that the Postal Service had eliminated Sunday collection and outgoing mail processing in 1988 and that the Postal Service was obliged under section 3661 to seek an advisory opinion from the Commission but had failed to do so.⁴⁷⁷ More generally, Carlson complained that the Postal Service had steadily reduced collection and outgoing processing on holidays while failing to inform the public. In response the Postal Service argued that, *inter alia*, that “no policy basis exists to require any particular level of outgoing holiday service.”⁴⁷⁸ The Commission found that the mailers were effectively being denied holiday collection and/or processing service as a result of the Postal Service’s policy of not indicating holiday collection times accurately and that the Postal Service did not have studies to evaluate what collection services were needed by the public.⁴⁷⁹ Finally, the Commission found that the Postal Service had hampered the investigation by refusing to making public data on the locations and collections times for

⁴⁷⁶ 1977 *Postmaster General Ann. Rept.* 33.

⁴⁷⁷ PRC Report C2001-1 (2002) (Complaint on Sunday and Holiday Collections), at 7.

⁴⁷⁸ *Id.* at 21.

⁴⁷⁹ *Id.* at 43, 45.

public collection boxes from the Collection Box Management Systems database.⁴⁸⁰ The Commission's findings were set out in a public report.

In November 2002, Carlson filed a more detailed followup complaint that suggested the Postal Service was failing to provide adequate and efficient collection services in some communities and nationwide by failing to abide by its own published service standards, by removing collection boxes needed by mailers, by providing inconveniently early collection times, and by failing to make scheduled collections.⁴⁸¹ As part of the proceedings, the Commission requested the Postal Service to disclose publicly data on customer satisfaction with collection box services from the Postal Service's Customer Satisfaction Measurement survey.⁴⁸² In April 2004, the Postal Service refused to disclose the data which it characterized as commercially sensitive, and the case was effectively been suspended.⁴⁸³

6.4 *Delivery of universal services*

Title 39 requires the Postal Service to deliver the mail but does not specify the manner of delivery. Section 101(a) declares that the Postal Service "It shall provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities." Section 403(a) states, "The Postal Service shall receive, transmit, and *deliver* throughout the United States, its territories and possessions, . . . written and printed matter, parcels, and like materials. . . . The Postal Service shall serve as nearly as practicable the entire population of the United States." Since 1971, several aspects of the delivery element of the universal service obligation have been presented to the courts and the Commission.

⁴⁸⁰ Id. at 2.

⁴⁸¹ Douglas F. Carlson, "Complaint on Removal of Collection Boxes" (Nov. 19, 2002), PRC Docket C2003-1.

⁴⁸² PRC Order 1390 (Feb. 4, 2004) and Presiding Officer's Ruling No. C2003-1/4 (Mar. 17, 2004), PRC Docket C2003-1.

⁴⁸³ Postal Service, "Response of the United States Postal Service to Presiding Officer's Ruling No. C2003-1/4" (Apr. 5, 2004), PRC Docket C2003-1. In October 2006, Carlson summarized earlier proceedings and the state of his information about the level of collection box services in Douglas F. Carlson, "Direct Testimony of Douglas F. Carlson (DFC-T-1)" (Oct. 27, 2006), PRC Docket R2006-1, at 36-50.

6.4.1 Cluster box delivery program

Between 1967 and 1975, the Post Office and Postal Service experimented with provision of centralized delivery units or “cluster boxes” for the delivery of mail in residential neighborhoods. In this program, the Postal Service approached builders of new neighborhoods and offered to build cluster box units at no charge to the builder. Once the neighborhood was completed, the Postal Service would provide mail delivery only to the cluster boxes. This new mode of delivery aroused substantial public opposition. As noted above, Congress suspended implementation temporarily in the Postal Reorganization Act Amendments of 1976.⁴⁸⁴ In 1981, the Postal Service reinstated the program on a permanent basis.⁴⁸⁵

In 1997, a GAO study indicated that approximately one in ten deliveries (other than delivery to a post office box or general delivery) was made to a cluster box.⁴⁸⁶ The Postal Service concluded that the cluster box program is not a change in the nature of postal services on a substantially nationwide basis and therefore has not requested an advisory opinion from the Commission under section 3661.⁴⁸⁷

6.4.2 Judicial decisions

In the 1974 case *Parsons v. United States Postal Service*,⁴⁸⁸ a federal district court reviewed a Postal Service decision not to provide door delivery to detached houses in the Winslow Crossing development even though it provided door delivery to townhouses in the same development. The Postal Service argued that was following an internal

⁴⁸⁴ See General Accounting Office, Letter from Victor L. Lowe, Director, to Senator Alan Cranston (Jun. 9, 1975) (GGD-75-92); General Accounting Office, “Statement of James G. Mitchell, Associate Director General Government Division, Before the Subcommittee on Government Information, Justice and Agriculture Committee on Government Operations House of Representatives on the United States Postal Service’s Neighborhood Delivery and Collection Box Program” (Mar. 28, 1984).

⁴⁸⁵ 46 Fed. Reg. 15263 (Mar. 5, 1981).

⁴⁸⁶ General Accounting Office, “U.S. Postal Service: Information About Restrictions on Mailbox Access,” at 10 (May 1997).

⁴⁸⁷ Congressional Research Service, Memorandum from American Law Division to House Government, Information, Justice and Agricultural Subcommittee (Aug. 2, 1983). CRS expressed doubts over the correctness of the Postal Service’s reading of section 3661 in this instance.

⁴⁸⁸ *Parsons v. United States Postal Service*, 380 F. Supp. 815 (D. N.J. 1974).

regulation which distinguished between residences based on “frontage,” the street distance between delivery points. The plaintiffs argued the regulation was arbitrary and capricious. The court upheld the Postal Service’s regulation:

Congress, in turn, has prescribed ‘general powers’ of the Postal Service, including the power ‘to adopt, amend, and repeal such rules and regulations as it deems necessary to accomplish the objectives (of Title 39).’ 39 U.S.C. § 401(2). Further, the Postal Service is charged with the responsibility ‘to maintain an efficient system of collection, sorting, and delivery of the mail nationwide.’ 39 U.S.C. § 403(b)(1). An examination of the regulations herein under attack, both on their face and as applied, leads this Court to conclude that the decision concerning door-to-door delivery at Winslow Crossing was a valid and reasonable exercise of administrative discretion. See also *Rockville Reminder, Inc. v. United States Postal Service*, 480 F.2d 4 (2d Cir. 1973). The determination to deliver on a door-to-door or ‘cluster box’ basis is clearly aimed at achieving the most efficient use of postal employees.⁴⁸⁹

In the 1975 case *Grover City v. U.S. Postal Service*,⁴⁹⁰ a federal district court reviewed a Postal Service decision not to provide either curbside delivery or door delivery to residents of a city who, pursuant to city ordinance, moved their curbside mailboxes to locations behind the sidewalk, about six feet from the curb. The residents were afforded only general delivery requiring them to collect their mail at the local post office. The court rejected the resident’s suit:

Even though the above-cited regulations might allow plaintiffs to be considered for ‘door delivery’, they are not entitled to such door delivery. In addition, postal customers who locate or relocate their mail receptacles in a place not suitable for the authorized form of delivery, are no longer entitled to such delivery. Thus, residents of Grover City who relocated their ‘curbside’ boxes so that they were no longer at the curb, were not entitled to continue to receive that form of delivery.⁴⁹¹

Citing *Parsons*, the court concluded that the Postal Service’s internal regulations relating to delivery were lawful

Although Postal Service regulations authorize different methods of providing delivery service to different mail users, the choice of method is

⁴⁸⁹ 380 F. Supp. at 818 (emphasis added).

⁴⁹⁰ *Grover City v. U.S. Postal Service*, 391 F. Supp. 982 (C.D. Cal. 1975)

⁴⁹¹ 391 F. Supp. at 986 (emphasis added).

made administratively strictly on the basis of relevant objective criteria set forth in the regulations described above, and applied nationwide. These regulations are neither arbitrary nor capricious. *Parsons v. United States Postal Service*, 380 F.Supp. 815 (D.N.J. 1974). The Postal Service's delivery regulations are not unreasonably discriminatory because the distinctions made by the regulations are reasonably related to the effectuation of the pertinent objectives of the Postal Reorganization Act, which are provision of efficient mail delivery services at reasonable costs.

In the 1977 case *Egger v. U.S. Postal Service*,⁴⁹² a federal district court reviewed a Postal Service decision not to provide delivery to unmarried students living in a university-owned apartment complex in an area called Lambeth Field. For such students, the Postal Service provided only bulk delivery of mail to the university's administrative offices, and the university provided delivery to the Lambeth Field apartment complex for a fee. The court accepted that the plaintiffs had raised plausible questions about whether the Postal Service was following its own regulations but concluded that "the Postal Service's interpretation of this regulation is controlling since it is not plainly erroneous or inconsistent with the regulation."⁴⁹³ The students argued that the Postal Service's regulations were unreasonably discriminatory in violation of section 403(c) because the regulations provided for delivery to (1) *married* students living in structurally similar, university-owned apartment buildings in the same part of town and to (2) unmarried students living in structurally similar, university-owned apartment buildings *in another part of town*. The Postal Service argued that the distinction in delivery policy based on marriage status was reasonable because unmarried students change apartments with greater frequency than married students and hence incur additional costs associated with changes of address. The court concluded that even if there is no difference in the frequency of moving, the distinction in delivery policy would still be reasonable because delivery to unmarried students is more costly since more individuals live at the same address. And the court held that the distinction in delivery policy applied in different parts of town was reasonable because the unmarried students were easier to identify in some parts of town than others.

⁴⁹² *Egger v. U.S. Postal Service*, 436 F.Supp. 138 (W.D. Va. 1977),

⁴⁹³ 436 F. Supp. at 143.

The court concludes that the difference in delivery methods to school-owned apartment complexes occupied entirely by unmarried students and those occupied entirely by married students accompanied by their families is rationally related to the achievement of the Postal Service's statutory goal of providing economical and efficient mail delivery. The court agrees with defendants that in postal delivery policy, distinctions and policy differences must often be based on the general differences between identifiable groups of mail recipients. While unmarried students residing at the Lambeth Field complex are easily identified as a group, since the complex is occupied exclusively by unmarried university students, other unmarried students living throughout the Charlottesville area are not as identifiable and are certainly not amenable to delivery in a group because they do not all live in a specifically defined location such as Lambeth Field. The court concludes that the discrimination in delivery methods between unmarried students occupying school-owned housing as a group and similar students occupying disparate housing units in the area is rationally related to the achievement of the Postal Service's goal of economical and efficient mail delivery.⁴⁹⁴

In the 2004 case *Currier v. Potter*,⁴⁹⁵ the Ninth Circuit Court of Appeals reviewed a Postal Service decision not to provide homeless persons living in Seattle, Washington, either a free post office box service at the main city post office or general delivery service at a post office near where the plaintiffs lived. The court held first that the postal laws do not give a person a private right of action to enforce Postal Service regulations. Hence, the plaintiffs could not claim a right to a post office box or general delivery under Postal Service regulations. The court further held that the general delivery system is a “nonpublic forum” for purposes of the First Amendment and thus may be subject to reasonable restrictions that do not suppress expression merely because of public officials oppose the views of the speakers. The court agreed that, as a general proposition, the Postal Service’s refusal to provide general delivery service at a post office near where the homeless lived was reasonable in light of the concerns about added costs and “general delivery’s purpose as a temporary means of delivery.”

Here, the Postal Service's decision to offer general delivery service at only one location is content- and viewpoint-neutral, applying to all customers

⁴⁹⁴ 436 F. Supp. at 142.

⁴⁹⁵ *Currier v. Potter*, 379 F.3d 716 (9th Cir. 2004), *cert. denied sub nom.* Seattle Housing and Resource Effort v. Potter, 545 U.S. 1127 (2005). The district court case under appeal was *Currier v. Henderson*, 109 F. Supp. 2d 1221 (W. D. Wash. 2002). The judgment of the district court was affirmed.

equally. The Service contends that general delivery mail must be hand-sorted and requires a transaction with a person at the counter; thus, offering general delivery service at branch offices would overburden those offices' personnel. The Postal Service further asserts that the system would be cumbersome and inefficient given the number of branch offices and zip codes at issue. . . . In light of these concerns and general delivery's purpose as a temporary means of delivery, we conclude that the Service's confinement of general delivery to a single Seattle location is reasonable.⁴⁹⁶

The court reached a similar conclusion with respect to the Postal Service's policy of providing free post office box "only to those customers who have physical addresses but are ineligible for carrier service" and not to customers are ineligible for carrier service because they have no physical address.

The Postal Service's restrictions on the provision of no-fee boxes are content- and viewpoint-neutral. It points out, moreover, that no-fee boxes are intended to serve persons in areas with low population density and are thus unavailable in large cities such as Seattle, where the Postal Service delivers mail to all physical addresses in the area. It further contends that the cost of providing no-fee boxes to all homeless persons would be substantial. Given these cost concerns and the Service's statutory mandate to provide efficient, economical service, its decision to provide no-fee boxes only to those customers who have physical addresses but are ineligible for carrier service is reasonable. . . . The Service is not constitutionally obligated to provide no-fee boxes to homeless persons.

Finally the court rejected arguments made under the Equal Protection Clause because it found that the Postal Service's policies constituted "a rational response to the inefficiencies and increased costs that would result from expanding general delivery to branch offices. . . . [and] the Service's

⁴⁹⁶ 379 F.3d at 731. As to the purpose of general delivery, however, the court noted earlier in its opinion that "General delivery service is intended primarily to serve as a temporary means of delivery, although homeless persons may use the service indefinitely." 379 F.3d at 722. The court also noted that its decision was based in part of the decision of the plaintiff's to make a "facial" rather than an "as applied" complaint: "We note that Currier essentially brings a facial challenge to the general delivery regulation, asserting that the Service's refusal to offer general delivery at branch offices violates homeless persons' First Amendment right to receive mail. *See Foti v. City of Menlo Park*, 146 F.3d 629, 635 (9th Cir. 1998) (discussing differences between facial and as-applied challenges). In rejecting this broad claim, we express no opinion regarding whether relief might be appropriate upon an individual plaintiff's affirmative demonstration that the regulation as applied to his individual circumstances effectively bars him from receiving mail at the sole general delivery location." 379 F.3d at 731 n. 9.

cost-driven decision to offer no-fee boxes only to customers with physical addresses who are denied carrier service is a reasonable attempt to eliminate some disparities between customers who receive carrier delivery and those who do not.”⁴⁹⁷

6.4.3 Commission complaint cases relating to delivery

Several complaints filed with the Commission have also be based on allegations of inadequate delivery service. In some cases, the filing of a complaint prompted the Postal Service to offer a delivery service acceptable to the complainant. The Commission dismissed other cases under a rule of procedure that precluded Commission review to issues relating to “to particular mail users or individual or localized or temporary services not on a substantially nationwide basis.” Cases dismissed by the Commission included the following:

- USPS refused to provide curbside delivery to residents of a trailer park who installed curbside boxes and requested curbside delivery to replace cluster box delivery. Docket C84-2.
- Addressee business objected when USPS changed time of delivery to business from early morning to mid-afternoon. Docket C84-3.
- Bank objected to USPS change in time of delivery of mail to local post office from 8:30 to 10 a.m. Docket C90-1.
- Village objected to USPS decision to assign it a unique zip code, alleging unconstitutional, fraud, discrimination, etc. Docket C99-3.
- USPS declined request of a town for its zip code to improve mail service due to insufficient operational benefits even though it grants a separate zip code to a single business in town. Docket C99-5.

6.4.4 Post office boxes for persons not receiving carrier service

In 1997, in a mail classification case involving rates for special services, the Postal Rate Commission considered a Postal Service proposal to charge mail recipients a

⁴⁹⁷ 379 F.3d at 733.

fee for post office boxes even though the Postal Service did not provide carrier delivery services to these mail recipients, for the most part recipients living within a quarter mile of a non-city post office. In the end, the Commission opined that such fees were inequitable and urged the Postal Service to reconsider:

The Commission believes it is equitable to offer one post office box at no charge to any customer ineligible for carrier delivery. The Postal Service still has not committed to providing carrier delivery or a free box to customers within a quarter-mile of noncity delivery offices, but it will extend this service to everyone else. It estimates that 942,307 boxes will be offered free of charge as a result of this policy. . . . The Postal Service is urged to re-evaluate the quarter-mile rule in an expedient manner and rectify any inequities caused by this rule. This record is devoid of any reason or justification for why customers should be charged for box service when that service is their only means of receiving mail. The Commission endorses the Postal Service's stated goal of offering one free method of delivery to all customers.⁴⁹⁸

In the course of a rate case also filed in 1997, the Postal Service decided to comply with the Commission's suggestion and provide a free post office box service for customers ineligible for carrier service.⁴⁹⁹

The Commission's decision leaves unclear whether it considered the Postal Service legally obliged to provide free post office box service to mail addresses who did not have a right to free carrier service. The Commission merely encouraged the Postal Service to reconsider its position. Indeed, it is evident that the Commission approved post office box fees for addressees who did not have free carrier service in prior decisions. In light of such considerations, it does not appear that the Commission's decision is tantamount to a ruling that Postal Reorganization Act obliges the Postal Service to provide free post office box service to persons who are not provided carrier service.

⁴⁹⁸ PRC Op. MC96-3 (1997), at 62 (emphasis added).

⁴⁹⁹ PRC Op. R97-1 (1998), at ¶ 5900 (1998).

6.5 *Prices of universal services*

6.5.1 **Classes, subclasses, and rate categories**

In the Postal Reorganization Act of 1970, Congress delegated to the Commission and the Postal Service the authority to establish classes of mail and rates for each class. With some exceptions, the procedure envisioned was that changes in classifications or rates would be proposed by the Postal Service but finally determined by the Commission. In fifteen general rate cases conducted under the Postal Reorganization Act, the Governors of the Postal Service only once exercised their authority to overrule rates set by the Commission.⁵⁰⁰ As noted above, the act included policy principles to guide the Postal Service and Commission in setting classes and rates but permitted the Postal Service and Commission substantial discretion in applying them. The only firm requirement was that the rate for each “each class of mail or type of mail service bear the direct and indirect postal costs attributable to that class or type plus that portion of all other costs of the Postal Service reasonably assignable to such class or type.”⁵⁰¹

The Postal Reorganization Act did not define the term “class” nor require continuation of the mail classification scheme inherited from Congress. Nonetheless, the Postal Service and Commission initially continued the traditional division of domestic⁵⁰² postal services into four classes. Only one new class was added, what is now expedited mail, in 1977. The Postal Reorganization Act did, however, limit its otherwise flexible approach towards rates and classifications by including statutory provisions for specific categories of mail. These included provisions relating to letters (uniform rates, sealed against inspection), media mail (uniform rates), library mail (uniform and reduced rates),

⁵⁰⁰ In November 1981, when the Governors rejected the Commission’s recommendation in the R80-1 case for an 18¢ first class stamp and introduced a 20¢ stamp and associated rates.

⁵⁰¹ 39 U.S.C. § 3622(b)(3) (2000 & Supp. V).

⁵⁰² Although the Postal Reorganization Act did not state explicitly whether the Commission had jurisdiction over international mail rates, the Commission accepted the Postal Service’s assertion that it did not. The Postal Service’s interpretation of the act was ultimately upheld by the courts. *See Air Courier Conference of America/International Committee v. U.S. Postal Service*, 959 F. 2d 1213 (3d Cir., 1992). In the classification of international mail, the Postal Service developed a more flexible approach than the Commission permitted for domestic postal services.

in-county newspapers (reduced rates), and non-profit mail (reduced rates).⁵⁰³ As noted above, reduced rates for regular second class (periodicals) and third class (advertisements) were phased out over eight years. For other statutorily defined categories of mail, the Postal Service and the Commission had little choice but recognize them as distinct categories of mail for ratemaking purposes.

In implementing the act, the Commission gradually adopted the view that only two types of subdivisions should be permitted below the traditional “class” level: subclasses and rate categories. A subclass was a category of mail to whose rates would be set by reference to the statutory ratemaking principles. A rate category was a category of mail whose rates would be set by reference to the rates of another class or subclass. Whether or not a category of mail was a subclass or a rate category could have a substantial effect on the applicable postage rates.

Between 1971 and 2006, the only occasion that the Commission had to conduct a comprehensive review of mail classification principles was the MC95-1 case concluded in January 1996.⁵⁰⁴ In this case, the Postal Service proposed to revise the mail classification system to make it more oriented towards priority as the basis for defining classes. In the end, however, with the exception of expedited mail, the primary classes were renamed but little changed. They continued to be defined primarily by the content of the items conveyed. In MC95-1, the Commission rejected proposals by the Postal Service to create several new “subclasses.” The Commission held that a subclass may be created only after a showing of differences in both *cost* and *demand* characteristics between two groupings of mail.

A showing of cost and demand differences has been important for concluding that independent application of all of the § 3622(b) ratemaking criteria is warranted. . . . The cost characteristics test reflects the need to classify mail for purposes of attributing costs. The market-demand characteristics test reflects the need to classify mail for purposes of

⁵⁰³ Under the Postal Reorganization Act, as amended, the mailer was not charged postage for transmission of mail for the blind and handicapped and for mail related to overseas balloting, but these types of mail did not require special rate categories to administer the statutory scheme.

⁵⁰⁴ PRC Op. MC95-1 (1996), at ¶ 1001 (“the first comprehensive reclassification proposal the Postal Service has submitted under the Postal Reorganization Act”).

assigning institutional costs, particularly to take into account “the value of mail service actually provided each class or type of mail service to both the sender and the recipient . . .” 39 U.S.C. § 3622(b)(2).⁵⁰⁵

If a category of mail did not qualify as a subclass, it was deemed by the Commission to be a “rate category.” The Commission further required that rates within a rate category must be set by reference to the rates of the broader class or subclass of which the rate category was a subdivision. In essence, all products in a rate category are required to bear the same rate as the more comprehensive class or subclass except for differences reflecting clearly identifiable differences in direct costs. The idea of a rate category was originally introduced to describe “workshared mail,” that is, mail which is in some manner prepared by the mailer so that Postal Service did not incur the cost of work that it would otherwise perform. The Commission considered that the mailer should receive a discount for such mail and denominated the discounted rate a “rate category.”⁵⁰⁶ In subsequent cases, the Commission extended the idea of rate categories. The pricing rationale was generalized using the more formal economic concept of “efficient component pricing.” “The rate category concept was applied to all “workshared” mail, and the term “workshared” was applied more generally to include all mail entered “downstream” from the entry point of ordinary, single-piece retail mail. In 2007, in the last rate case under the Postal Reorganization Act, the Commission concluded that efficient component pricing should be the “starting point” for all rate differentials within

⁵⁰⁵ PRC Op. MC95-1, at ¶ 1007 (1996). *See also* id. at ¶ 1009; PRC Op. R2006-1 (2007), at ¶ 4033 (“It is essential that subclasses contain rational groupings of mail with similar cost and demand characteristics.”) In MC95-1, the Commission rejected a determined argument by the Postal Service and mailers that mail classification divisions should be permitted if based on a showing of cost differences alone. The Commission held that such an approach would reduce “economic efficiency” and could lead to “unwarranted discrimination.” PRC Op. MC95-1, ¶ 3031 (1996). When some mailers pointed out that regulators of other sectors recognized classification divisions based on the wholesale or retail status of customers, the Commission responded that postal classification presented unique legal issues because postal classification is controlled by the full range of factors set out in former section 3623. Quoting an earlier opinion with approval, the Commission emphasized that its approach to mail classification was longstanding and unique: “The wholesale/retail dichotomy was rejected by the Commission on both factual and legal grounds. The Commission found public utility standards ‘not . . . particularly instructive in defining classes of mail.’ PRC Op. R80-1, at ¶ 683. Unlike utilities, which provide an essentially homogeneous product for which differences in demand may be the major defining characteristic, separate classification of mail triggers all the ratemaking criteria of § 3622(b). This was said to be a legal consequence “unique to mail classification,” and one which requires the Commission to look mainly to the Act itself for its classification criteria. Id. at paras. 0683-84.” PRC Op. MC95-1, at ¶ 3039 (1996).

⁵⁰⁶ PRC Op. R77-1 (1978), at 247-49.

a subclass, including differences based on shape and weight which have no relation to the concept of worksharing.⁵⁰⁷

In sum, although the obligations in the Postal Reorganization Act with respect to pricing were opened, the Commission developed additional criteria in the course of administering its rulemaking authority. Under the Postal Reorganization Act, the scope for changing certain classes and rates was limited by statutory provisions requiring reduced rates or other special conditions. For other classes and rates, the regulatory concepts of “subclass” and “rate category” placed additional obligations on the Postal Service with respect to prices. These obligatory limits affected the pricing of all domestic postal services but not rates for international mail. Neither the Postal Reorganization Act nor the Commission overtly distinguished between universal postal services and other postal services.

6.5.2 Uniform rate rule for letters

As noted above, in 1977, Purolator Courier Company, a private express, argued that the Postal Service’s proposed rates for Express Mail were inconsistent with the requirement in former section 3623(d), now section 404(c): “The rate for each such class [for the transmission of letters sealed against inspection] shall be uniform throughout the United States, its territories, and possessions.” Purolator’s argument raised two questions: whether all letter services must be offered nationwide and whether letter services must be priced so they do not vary with distance.

In response to the second contention, the Commission provided its most extensive analysis of the uniform rate rule for letters. The Commission first quoted Congressman Udall to show that available legislative history suggests that Congress intended to distinguish between the uniform rate rule for letters found in former section 3623(d) and

⁵⁰⁷ PRC Op. R2006-1 (2007), at ¶¶ 4029, 4038. The Commission declares, “the Commission now believes, and with good evidence, that the neutral starting position should equal the per-piece contribution because this promotes productive efficiency. [¶ 4032] . . . Although the Act provides pricing factors and policies, it does not prescribe a rate setting methodology. That is left to the judgment of the Commission. . . . The Commission finds in this case that ECP is a sound starting point from which to make adjustments to satisfy the pricing factors and policies of the Act. [¶ 4036].”

the uniform rate rule for books and similar materials found in section 3683.⁵⁰⁸ From this history, the Commission concluded

It is clear from this explanation that § 3683(a) cannot be taken as showing that the uniformity requirement in § 3623(d) proscribes zoned rates, at least for parcels and other heavy pieces. Section 3683(a) does indeed prohibit the zoning of rates for books and other similar materials, but it does this in so many words—not by means of the general term “uniform.” . . . [A]ccordingly, we cannot agree with Purolator that the use of the same term in § 3623(d) imports a prohibition of zoning. . . .

[T]he historical continuity (since 1863) of unzoned letter rates is thus not dispositive on the meaning of “uniform.” We acknowledge its potential relevance to the question—not presented here—whether ordinary first-class letters should continue to pay a rate not variable with distance. . . . Here, however, we are dealing with a class which does not furnish the essential “backbone” of letter communication with which, in our view, Congress has long been concerned. Indeed, Express Mail is not restricted to letters. Anythingailable within the weight and size maxima, may be sent by Express Mail. Since, as Purolator points out, it is currently the class offering the most expeditious handling and transportation, it must be held open for letters; if it were not, we would be faced with a violation of § 3623(d). But the fact that letters may be sent by Express Mail does not persuade us that the traditional policy of maintaining an unzoned rate for regular first-class letters requires unzoned Express Mail rates as well.⁵⁰⁹

Thus, the Commission concluded that the word “uniform” in section 3623(d)—“The rate for each such class shall be *uniform* throughout the United States, its territories, and possessions”—does *not* mandate a postage rate for letters that is the same for all distances. The Commission’s conclusion applied to rates for carriage of letters via express mail. The Commission left open the possibility that it might interpret the word “uniform” differently if applied to first class letter services.

In three subsequent Commission proceedings in the 1990s, Niagara Telephone Company urged adoption of a new classification and reduced rate for local first class letters.⁵¹⁰ The justification for such a classification was straightforward: local letters were

⁵⁰⁸ PRC Op. R77-1 (1978), at 417-18. The Commission quoted Mr. Udall’s remarks after the House-Senate conference on Postal Reorganization Act of 1970.

⁵⁰⁹ PRC Op. R77-1 (1978), at 417-18.

⁵¹⁰ PRC Op. R90-1 (1991), at ¶¶ 5205-07; PRC Op. R94-1 (1994), at ¶¶ 5070-77; PRC Op. MC95-1 (1996), at ¶¶ 5085-91.

less costly to handle because they required less sorting and transportation than local distance letters. In its review of Niagara Telephone's third attempt to make the case for local first class mail, the Commission praised the proposal as "worthy of serious consideration" and commended Niagara Telephone for "broadening the range of potential improvements and innovations in First-Class Mail."⁵¹¹ The Commission considered briefly but seemingly dismissed the potential objection that the uniform rate rule for letters precluded a local first class letter rate:

First-Class Mail is the original "class[] . . . for the transmission of letters sealed against inspection," and as such it is subject to the requirement that, "[t]he rate for each such class shall be uniform throughout the United States, its territories, and possessions." 39 U.S.C. § 3623(d). This restriction does not obviously preclude adoption of a separate classification category with a reduced rate for "local only" mail, but it would appear to mandate that such a classification and rate be made available on identical terms throughout the nation's postal system.⁵¹²

Nonetheless, the Commission rejected the Niagara Telephone proposal because the record in the case did not provide sufficient information on the costs and volumes of local mail to allow the Commission to recommend appropriate rates.⁵¹³

6.6 *Quality of universal services*

Although several provisions in Title 39 require the Postal Service to maintain "adequate and efficient postal services" (§§ 403(a), 3661(a)), or words to similar effect, the only specific pre-PAEA obligation relating to quality of service was section 3661(b),

⁵¹¹ PRC Op. MC95-1 (1996), at ¶ 5087.

⁵¹² PRC Op. MC95-1 (1996), at ¶ 5088 (emphasis added). Neither Niagara Telephone nor the Postal Service, which opposed proposal, commented on the uniform letter rate rule in their briefs. In 1993, the D.C. Circuit Court of Appeals reviewed the Commission's decision in the R90-1 case and, inter alia, upheld the Commission's rejection of Niagara Telephone's first local mail proposal. In so doing, however, the court explicitly declined to consider the uniform rate rule for letters: "We note that 39 U.S.C. § 3623(d) requires that 'classes of mail for the transmission of letters sealed against inspection' have a rate that is 'uniform throughout the United States, its territories, and possessions.' *The Commission did not list this among its reasons for rejecting Niagara's proposal.* Thus, although the USPS alluded to the argument in its brief, *we do not address it here.*" *Mail Order Association of America v. United States Postal Service*, 2 F.3d 408, 438 (D.C. Cir. 1993) (emphasis added).

⁵¹³ PRC Op. MC95-1 (1996), at ¶¶ 5089-90.

which required the Postal Service to seek an advisory opinion from the Commission before making large scale changes in service:

(b) When the Postal Service determines that there should be a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis, it shall submit a proposal, within a reasonable time prior to the effective date of such proposal, to the Postal Regulatory Commission requesting an advisory opinion on the change.

In the 1975 case *Buchanan v. United States Postal Service*, the Fifth Circuit Court of Appeals reviewed a district's decision to grant preliminary injunctions against the Postal Service's introduction of certain service changes before the Commission could render an advisory opinion under section 3661. The service changes were: (1) a plan to consolidate and eliminate district offices throughout the United States; (2) a retail analysis program that was alleged to be a program that decided upon relocation of retail facilities; and (3) introduction of a national bulk mail system program. Since the case was presented as an appeal of a preliminary injunction, the court of appeals considered only whether the evidence before the district court implied a likelihood that a section 3661(b) review was required.

The appellate court vacated the district court's injunction with respect to the first service change (finding there was evidence that a consolidation of districts would affect service) but allowed the injunction with respect to the other service changes. In its opinion, the court emphasized the limited scope of the Postal Service's obligation to seek an advisory opinion as follows:

The language of 3661 indicates the limited scope of application. All changes within the Service will probably affect postal service to some extent. . . . The language of the statute, however, indicates that three factors must coexist before 3661 applies. First, there must be a 'change.' This implies that a quantitative determination is necessary. There must be some meaningful impact on service. Minor alterations which have a minimal effect on the general class of postal users do not fall within 3661. Second, the change must be 'in the nature of postal services.' This involves a qualitative examination of the manner in which postal services available to the user will be altered. Third, the change must affect service 'on a nationwide or substantially nationwide basis.' A broad geographical area must be involved. These three factors combine to demonstrate that Congress intended the safeguards of 3661 to apply only when changes of

significance were contemplated.⁵¹⁴ And the court noted, “Opinions of the Rate Commission are, as the statute states, advisory only. The Postal Service is not required to follow them.”⁵¹⁵ *Buchanan* is the only case in which the courts have required the Postal Service to seek an advisory opinion under section 3661.⁵¹⁶

After the hearings before the Commission following *Buchanan*, the Postal Service has applied to the Commission for an advisory opinion under 3661(b) on only three occasions, once voluntarily (in the view of the Postal Service).⁵¹⁷ In one case, involving the Postal Service’s reduction in the number of public collection boxes, the Commission held that Postal Service unlawfully failed to seek an advisory opinion.⁵¹⁸

6.7 Protection of the rights of users of universal services

Section 3662 of Title 39, introduced by the Postal Reorganization Act, provided for a procedure for individuals to seek administrative enforcement of universal service obligations. Interested persons may complain that the Postal Service is not “charging rates which do not conform to the policies set out in this title” or that “they are not receiving postal service in accordance with the policies of this title.”

On January 12, 1971, about two months after it was established, the Postal Rate Commission promulgated rules of practice which narrowed the scope for individual

⁵¹⁴ *Buchanan v. United States Postal Service*, 508 F. 2d 259, 262-63 (5th Cir. 1975) (emphasis added).

⁵¹⁵ 508 F.2d at 262.

⁵¹⁶ Requests for application of section 3661(b) have been denied in *Wilson v. U.S. Postal Service*, 441 F.Supp. 803 (C.D. Cal. 1977) (transfer of mail processing functions affecting only western region of Los Angeles County); *Martin v. Sloan*, 432 F. Supp. 616 (W.D. N.C. 1977) (consolidation of two rural postal routes); *National Ass'n for Advancement of Colored People (Atlanta Local) v. U.S. Postal Service*, 398 F. Supp. 562 (N.D. Ga. 1975) (decision to move postal operations to a new mail processing facility serving the same area).

⁵¹⁷ Docket N86-1 (change in the collect-on-delivery service); Docket N89-1 (changes in first class delivery standards); N2006-1 (plan to improve the mail processing and transportation networks). The Postal Service took the position that it was not obliged to seek an advisory opinion in N2006-1; the Commission did not rule on whether the consultation was obligatory or not.

⁵¹⁸ Docket C2001-1, “Commission Report: Complaint on Sunday and Holiday Collections” (2002).

complaints arising from universal service obligations.⁵¹⁹ Rule 82 announced that the Commission would decline to entertain complaints about individual, localized, or temporary service issues unless they were “on a substantially nationwide basis.”

Interested parties who believe the Postal Service is charging rates which do not conform to the policies set out in the Act, or who believe that they are not receiving postal service in accordance with the policies of such title, may file and serve a written complaint with the Commission in the form and manner required by §§ 3001.9 to 3001.12. The Commission shall entertain only those complaints which clearly raise an issue concerning whether or not rates or services contravene the policies of the Act; thus, complaints raising a question as to whether the Postal Service has properly applied its existing rates and fees or mail classification schedule to a particular mail user or with regard to an individual, localized, or temporary service issue not on a substantially nationwide basis shall generally not be considered as properly raising a matter of policy to be considered by the Commission. The Commission shall, in the exercise of its discretion, decline to entertain a complaint during the period the complainant is continuing to pursue the general subject matter of the complaint before an Administrative Law Judge or the judicial officer of the Postal Service.

In this manner, individual users were largely limited to complaints that the Postal Service had failed to follow the requirements of section 403(c), prohibiting unjust or unreasonable discrimination, or section 3661(b), requiring the Postal Service to seek advisory opinion from the Commission on changes in service on a “substantially nationwide basis.”

Whether or not an individual may sue the Postal Service in court for failure to provide a universal service is unclear. No statutory provision explicitly grants individuals a “private right of action.” At least one federal district court has concluded that that “the Postal Reorganization Act does not create a private right of action for alleged service inadequacies.”⁵²⁰ On the other hand, in a number of other cases, however, courts have entertained individual complaints about an alleged Postal Service failure to provide

⁵¹⁹ 36 Fed. Reg. 396 (Jan. 12, 1971).

⁵²⁰ *Tedesco v. U.S. Postal Service*, 553 F. Supp. 1387,1391 (W.D. Pa. 1983).

universal service.⁵²¹ In all of these cases, however, the courts deferred to the authority of the Postal Service to manage postal operations.

6.8 *Summary*

A review of the interpretation and administration of legal provisions relating to universal service since 1971 has suggests that the Postal Service has not been obliged by law, to any significant degree, to extend service or a product to an unserved area, to locate a post office or collection box in a particular place, to provide delivery in specific manner, to change the quality of a given service, or to redress a user for lapses in universal service. The only service element where USO requirements do have seem to have a practical effect is price. Statutory requirements for rates have been attained because they have been enforced by the Commission in each rate case.

⁵²¹ See *Currier v. Potter*, 379 F.3d 716 (9th Cir. 2004), cert. denied sub nom. *Seattle Housing and Resource Effort v. Potter*, 545 U.S. 1127 (2005); *Egger v. U.S. Postal Service*, 436 F. Supp. 138 (W.D. Va. 1977); *Grover City v. U.S. Postal Service*, 391 F. Supp. 982 (C.D. Cal. 1975); *Parsons v. United States Postal Service*, 380 F. Supp. 815 (D. N.J. 1974).

7 Postal Accountability and Enhancement Act, 2006

The Postal Accountability and Enhancement Act (PAEA) of 2006⁵²² was the first major revision of the nation's postal laws since the Postal Reorganization Act of 1970. It was also the first postal act to be developed in an environment in which the terms *universal service* and *universal service obligation* were accepted as part of the vocabulary of postal policy. Although the PAEA did not define the concept of a universal service obligation, its development sheds light on what legislators presumed the universal service obligation to be and how they intended to affect it.

7.1 Introduction of the term *universal service*

Since the term *universal service* has not traditionally been used in American postal laws, a brief review of its introduction into postal policy appears appropriate. The phrase *universal service* was apparently coined in early in the twentieth century by the American Telephone and Telegraph Company (AT&T) as part of a public relations campaign. In a 1995 study for the Commission, historian Richard Kielbowicz explained:

The phrase universal service originated in connection with telephony and in that context has prompted the greatest scrutiny by scholars and policymakers. Historians agree that AT&T President Theodore N. Vail popularized and perhaps coined the phrase in 1907. . . .

. . . AT&T invoked the term universal service in 1907 as part of its campaign—"the first, most persistent, and most celebrated of the large-scale institutional advertising campaigns of the early twentieth century"—to bring order to a fragmented and competitive telephone industry. The campaign's slogan, "One Policy, One System, Universal Service," anchored AT&T ads, speeches and reports intended to persuade Americans that telephony functioned best under unified control. In this context, universal service conveyed three messages for AT&T. In this context, universal service conveyed three messages for AT&T. First, it reminded policymakers and potential customers that its long-distance lines formed the backbone of a nationwide system. Second, acknowledging the thousands of independent (i.e., non-Bell) companies, it suggested that the public was best served when all systems were coordinated by one party—AT&T. Third, the phrase universal service conveyed a sense that the

⁵²² Postal Accountability and Enhancement Act (PAEA), Public Law 109-435, 120 Stat. 3198 (2006).

company worked in the public interest, not just for stockholders, an important consideration at the time when Congress regularly heard proposals to “postalize” the nation’s telephone system.⁵²³

Although Kielbowicz reports some question about what the phrase meant in 1907 and the degree of public spiritedness underlying the AT&T public relations campaign, there is no doubt the AT&T’s purpose was to persuade the government and the public of the desirability of allowing it to continue to dominate the U.S. telephone industry after its original patents expired.

In the late 1980s and early 1990s, *universal service* was incorporated into acts modernizing the regulations of telecommunications in both the United States and the European Union. In 1992, the European Commission published a plan for modernizing European postal laws. The “Postal Green Paper” introduced the concept of “universal service obligation” to European postal policy as well.

In the United States, postal reform began with series of investigative hearings by the House Subcommittee on the Postal Service in 1995. At about the same time, the Postal Service began to highlight the concept of universal service in its public statements. Prior to 1996, there were almost no references to “universal service” or a “universal service obligation” in the Postmaster General’s annual reports to Congress.⁵²⁴ Perhaps the most substantive reference to “universal service” prior to 1996 was the Board of Governors’s summary conclusion in 1973:

⁵²³ Kielbowicz, “Universal Postal Service,” at 6.

⁵²⁴ In the twenty-five annual reports prepared by the Postmaster General between 1971 and 1995, term “universal service” or its equivalent seems to have been used on only four occasions. Three of these references were in broadly stated transmittal letters from the Postmaster General to the Board of Governors and the Congress. The most recent, in 1994, was Postmaster General Marvin Runyon’s statement that “We are dedicated to ‘universal service at a uniform price’ —the words that chartered this great organization 220 years ago.” 1994 *Postmaster General Ann. Rept.* 1. This must be considered a rhetorical flourish since Congress plainly never imagined anything approaching “universal service at a uniform price” in the late eighteenth century. The Postmaster General’s transmittal letters also mentioned “universal service” in 1988 and 1984. See 1988 *Postmaster General Ann. Rept.* 2 (“this great public enterprise for consistent, reliable, affordable and universal mail services to meet a range of communication and distribution needs”) and 1984 *Postmaster General Ann. Rept.* 3 (“the primary purpose of the U.S. Postal Service: to provide the best possible universal mail”). In addition, in the 1990 annual report, the caption of photo showing the postal mule train serving the bottom of the Grand Canyon notes that the Postal Service provides “universal service at a uniform prices.” 1990 *Postmaster General Ann. Rept.* 18 (the photos show the mule train providing postal service in the Grand Canyon).

We have concluded that the basic protections of the Private Express Statutes must be retained if this country is to continue to have effective universal mail service reaching into every community and serving all parts of the nation.⁵²⁵

After 1996, the annual reports of the Postal Service has employed the term “universal service” liberally. The 1996 annual report alone refers to “universal service” eight times and includes a quotation from a speech by President Bill Clinton mentioning universal service. The 1996 annual report is also the first to refer to universal service as a legal obligation or “mandate”: “our mandate to provide universal mail service at uniform postage rates.”⁵²⁶ The report includes a definition of the “universal service” in its glossary:

Universal service: The Postal Service’s mandate and commitment to the nation to provide mail delivery service at uniform and reasonable rates to everyone, everywhere, six days a week.⁵²⁷

Since 1996, each annual report of Postmaster General has liberally referred to “universal service” and the Postal Service’s “mandate” or “legal mandate” to provide universal service in the same or similar terms (on average six to eight times per report) and included the definition of “universal service” introduced in the 1996 report. In its 2002 Transformation Plan, the Postal Service uses *universal service* more than 70 times.⁵²⁸

The Postal Service has thus effectively popularized the phrase *universal service* and the notion of a universal service “mandate” or “obligation” in order to summarize its vision of what is or should be national policy towards its activities. *Universal service* may be accepted as a convenient shorthand expression for the longstanding government policy of promoting widespread availability of postal services for the good of the nation. The broad applicability of such a shorthand expression should not, however, obscure the dynamic nature of the underlying policy, which has changed and matured in fundamental

⁵²⁵ Postal Service, Board of Governors, *Restrictions on the Private Carriage of Mail* 1. See also *id.* at 6 (“But abandonment of this policy [of postal self-sufficiency] would impose an unjustifiable burden of costs on the tax-paying public and might lead to the erosion of universal postal service.”)

⁵²⁶ 1996 *Postmaster General Ann. Rept.* 5.

⁵²⁷ 1996 *Postmaster General Ann. Rept.* 75.

⁵²⁸ This excludes references in appendices.

respects with the changing needs of society and availability of different communication technologies.

7.2 *Legislative history of the PAEA*

7.2.1 Development of postal reform in the House, 1995-2002

The origin of the Postal Accountability and Enhancement Act lies in the work of the 104th Congress. In early 1995, the House Subcommittee on the Postal Service, led by a new chairman, Congressman John McHugh, a Republican from New York, conducted a series of oversight hearings on the state of the Postal Service. On February 23, the first day of hearings, the opening witness was Postmaster General Marvin Runyon. The Postmaster General called for reform legislation to address three major issues:

There are three areas we need to focus on. First, we need to free our employees from burdensome rules and bureaucratic red tape and focus their efforts on serving our customers' mailing needs; second, we need to free the price setting process so we can respond to the market, and keep costs down; and, third, we need to free our products from bureaucratic restrictions and make them more modern and customer oriented.⁵²⁹

These hearings persuaded Chairman McHugh of the need to modernize the postal laws. He accepted the Postal Service's argument that it needed greater commercial flexibility to respond to the threat of private carriers and electronic alternatives. At the same time, McHugh believed that the Postal Service should compete on equal terms when facing private companies. He was also sensitive to concerns that the Postal Service might take advantage of its economic power in markets where its products faced little or no competition. And, as representative of a rural district, McHugh was also determined to ensure continuation of postal service throughout in the United States.

Based on such premises, Chairman McHugh introduced a first draft of a plan for postal reform, H.R. 3717, on June 25, 1996. For five years, from the middle of the 104th

⁵²⁹ *General Oversight of the U.S. Postal Service: Hearings before the Subcommittee on the Postal Service of the House Committee on Government Reform and Oversight*, 104th Cong, 1st Sess. (1997) at 6-7 (seven hearings held February to June 1995).

Congress to the end of the 106th Congress, the Subcommittee refined the postal reform bill, but it languished without Congressional action.⁵³⁰

Early in the 107th Congress, in May 2001, the General Accounting Office (GAO) placed the Postal Service on a list of “high risk” federal agencies because of concerns that the Postal Service was not responding to changing commercial conditions fast enough to ensure long term financial viability. Both the House and Senate held hearings on the financial outlook of the Postal Service.⁵³¹ The leadership of the Senate on Governmental Affairs requested the Postal Service prepare a plan for transforming itself into a more modern, financially viable organization. In April 2002, the Postal Service issued its *Transformation Plan*. In May 2002, the Senate Subcommittee, chaired by Senator Daniel Akaka of Hawaii, held further hearings on the GAO report and Postal Service plan.⁵³²

Although these hearings and the Postal Service’s *Transformation Plan* did not lead directly to legislation, they provided momentum. In the House of Representatives in early 2001, Democratic members of the Committee on Government Reform, led by ranking Democratic member Congressman Henry Waxman of Los Angeles, joined with Chairman McHugh to develop a bipartisan postal reform bill. The result was H.R. 4970. Among other things, H.R. 4970 introduced the concept that the Postal Rate Commission should develop a “modern system of rate regulation.” Nonetheless, for political reasons apparently unrelated to postal issues, in June 2002, the full committee rejected H.R. 4970

⁵³⁰ In the 105th Congress, beginning in January 1997, H.R. 3717 was reintroduced as H.R. 22. In September 1998, the House Subcommittee on the Postal Service approved a substantially revised version of H.R. 22, but the 105th Congress adjourned before taking up the bill. In January 1999, at the start of the 106th Congress, Mr. McHugh reintroduced the postal reform bill, again numbered H.R. 22, and convened a final round of hearings. The postal reform bill was broadly but not universally supported. Despite the traditionally bipartisan nature of postal legislation, however, Democratic members opposed action on the bill due to political considerations unrelated to the merits. The 106th Congress expired without action on postal reform.

⁵³¹ *The U.S. Postal Service's Uncertain Financial Outlook, Parts I and II: Hearings Before the House Comm. on Government Reform*, 107th Cong., 1st Sess., Ser. No. 107-10 (2001) (hearings held on April 4 and May 14, 2001); *The Financial Outlook of the U.S. Postal Service: Hearing Before the Senate Committee on Governmental Affairs*, 107th Cong., 1st Sess., Ser. No. 107-70 (hearing held on May 15, 2001).

⁵³² *The Postal Service in the 21st Century: the USPS Transformation Plan: Hearing Before the International Security, Proliferation and Federal Services Subcomm. of the Senate Comm. on Governmental Affairs*, 107th Cong., 2d Sess., Ser. No. 107-551 (2003) (hearing held May 13, 2002).

by a vote of 20 to 6 even though a majority of members likely favored the bill on the merits.

7.2.2 President's Commission on the U.S. Postal Service, 2003

To break the political deadlock, in December 2002, President George W. Bush appointed a special commission of nine leading citizens to recommend a course of action. The President's Commission, the fourth major panel of prominent citizens to study national postal policy since World War II, was led by co-chairs, James A. Johnson (a merchant banker and former chairman of Fannie Mae) and Harry J. Pearce (chairman of a leading electronics manufacturer). They were joined by four other members from finance and industry and leaders from academia, the labor movement, and politics.⁵³³ The commission's charter was very broad ("the role of the Postal Service in the 21st century and beyond"), but its allocated time was highly compressed, seven and a half months.

On July 31, 2003, the President's Commission endorsed a vision of the Postal Service characterized by the following key elements:

- The Postal Service should remain a public institution in the executive branch of the Federal government with a unique charter to operate as a self-sustaining commercial enterprise. "Privatization of a commercial entity the size of the Postal Service could seriously disrupt both mail service and the private postal marketplace."
- *Postal monopoly should be clarified and narrowed over time.* The Postal Regulatory Commission should "periodically review the scope of the monopoly with an eye toward narrowing it over time, so long as a greater reliance on a thriving private postal marketplace can occur without sacrificing universal, affordable access to essential postal services."

⁵³³ The seven members of the commission were: Dionel E. Aviles (president of an engineering company); Don V. Cogman (chairman of a private investment firm); Carolyn L. Gallagher (former executive from manufacturing industry); Joseph R. Wright (president of a satellite broadcast company); Richard C. Levin (economist, university president); Norman Seabrook (president of a union of law enforcement officers); and Robert S. Walker (public affairs consultant, former congressman).

- *The Postal Service should focus on its core value: universal mail service.* The report endorsed the basic features of current universal mail service for now but cautioned that a rapidly changing mail environment required flexibility over longer run. The report proposed “authorizing the independent Postal Regulatory Board to periodically review the universal service obligation as the nation’s reliance on its mail system continues to evolve.”
- *The Postal Service should be guided by best business leaders, practices.* “Both the Postal Service and its customers would benefit greatly from the creation of a strong, independent, and experienced Board of Directors of a stature that truly reflects the size and significance of the Postal Service’s work. This Board would apply the best practices of the business world and would attract members with the talent and skills necessary to transform the Postal Service into a world-class service business.”
- *The Postal Service requires broader, constructive oversight.* “Rather than a sole focus on rate-setting and mail classifications, the [proposed] Postal Regulatory Board would be tasked with broad public-policy oversight.” The President’s Commission endorsed price caps as preferable to lengthy a priori regulatory review.
- *The nation should overhaul its 1950s era postal network.* “Through the strategic deployment of new technologies, partnerships with the private sector and appropriate cost-reduction strategies, the Postal Service has significant opportunities to grow smaller and stronger.” The report encouraged the Postal Service to rely more on the private sector through contracting and worksharing. The report also encouraged Congress to the Postal Service greater flexibility to close “low-activity” post offices.
- *The Postal Service should encourage a culture of excellence in the postal workforce.* The report endorsed reductions in the size of workforce through attrition, steps to improve relations between management and employees, including benefits as well as wages in collective-bargaining, and a pay-for-performance program. In addition, the report proposed “authorizing the Postal

Regulatory Board to develop a fair and impartial mechanism for ensuring total compensation is comparable to the private sector, but does not exceed that generous standard.”

- *Information technology can deliver the future of mail today.* “By placing a unique barcode on every piece of mail and investing in technologies throughout the postal network that can put that information to use . . . , the Postal Service can begin building a truly digital network that links postal facilities, vehicles, partners and employees not only to each other, but also via the Internet to customers and to the mail itself.”
- *The Postal Service customer experience should advance significantly.* The report recommended “expanding and accelerating efforts already underway at the Postal Service to bring a wider array of services to customers in convenient locations throughout their community—from grocery stores, to pharmacies, to cash machines, and even into homes and businesses via a more robust and user friendly Postal Service website.”⁵³⁴

In this manner, the President’s Commission supported the concepts of universal service and a universal service obligation. Although the President’s Commission supported most of the reforms being developed by Congress, its overall perspective was more fundamental and longer term.

7.2.3 Senate Committee Report, 2004

In the 108th Congress, a new factor entered the political equation. In April 2003, Congress had enacted a small measure, the Postal Civil Service Retirement System Funding Reform Act of 2003, to correct a statutory provision that would have erroneously required the Postal Service to pay more than necessary into a pension system (“CSRS”) for postal employees.⁵³⁵ The CSRS reform act suspended excess pension

⁵³⁴ President’s Commission on the United States Postal Service, *Embracing the Future* at ix-xviii (2003). The summary in the text closely follows the executive summary of the report.

⁵³⁵ Postal Civil Service Retirement System Funding Reform Act of 2003, Pub. L. No. 108-18, 117 Stat. 624.

payments through 2005 but thereafter required the Postal Service to make these payments into an escrow fund until Congress decided what to do with the money. In addition, the act required the Postal Service to pay for pensions earned by postal employees who had served in the U.S. military. Military pension obligations amounted to about \$27 billion to be paid over the course of a decade or more. In short, the CSRS reform act required mailers to pay annually several billion dollars in increased postage rates beginning in 2006. Mailers, the Postal Service, and most members of Congress felt that the escrow fund requirement should be repealed and the cost of military pensions returned to the U.S. Treasury. The Bush Administration, facing a large budget deficits, was opposed.

In June 2003, Senator Thomas Carper of Delaware introduced a modified version of the House postal reform in the Senate as S. 1285. Carper's bill introduced the idea of that the Commission should establish modern service standards for the Postal Service. He also proposed creation of a special commission on network modernization to recommend steps to close and consolidate postal processing facilities.⁵³⁶

In early 2004, energized by the report of the President's Commission and concerns about the unnecessary rate increases, Congress returned to postal reform.⁵³⁷ In May 2004, John McHugh, Tom Davis of Virginia (Republican, new chairman of the full committee), Henry Waxman, and several co-sponsors introduced H.R. 4341, a bill similar to H.R. 4970 in the previous congress but now named the "Postal Accountability and

⁵³⁶ S. 1285, 108th Cong., 1st Sess. (Jun. 18, 2003). Mr. Carper explained that his bill, "requires the Postal Regulatory Commission to set strong service standards for the Postal Service's Market Dominant products, a category made up mostly of those products, like First Class Mail, that are part of the postal monopoly. The Postal Service currently sets its own service standards, which allows them to pursue efforts like the elimination of Saturday delivery, a proposal floated two years ago. The new standards set by the Commission will aim to improve service and will be used by the Postal Service to establish performance goals and to rationalize their physical infrastructure. Once the standards are established, the Postal Service will recommend a list of facilities that can be closed or consolidated without hindering their ability to meet the standards." 149 Cong. Rec. S8136-53 (Jun. 18, 2003).

⁵³⁷ *Answering the Administration's Call for Postal Reform—Parts I, II, and III: Hearings Before the House Special Panel on Postal Reform and Oversight of the Comm. on Government Reform*, 108th Cong., 2d Sess. (2004) (hearings held January 28, 2004 and February 5 and 11, 2004). The Special Panel was chaired by Mr. McHugh.

Enhancement Act.” The House Committee on Government Reform immediately reported this bill to the full House.⁵³⁸

The Senate Committee on Government Affairs, led by Chairman Susan Collins of Maine and Senator Carper, also began to address postal reform.⁵³⁹ In late May 2004, the Senate Committee reported a postal reform bill, S. 2468. The Senate bill was substantially based on the House bill, H.R. 4341, and Mr. Carper’s bill, S. 1285. The committee’s report, Senate Report 108-381 is last Senate committee report on what became the PAEA. The committee endorsed Mr. Carper’s proposal for the Commission to adopt modern service standards. The committee reports discussed modern service standards and the universal service obligation as follows:

The bill also requires the Postal Regulatory Commission to establish by regulation a set of modern service standards for the Postal Service’s market-dominant products. These regulations, and the revised regulations the Regulatory Commission would be authorized to issue from time to time, would in effect serve as the Regulatory Commission’s interpretation of universal service as defined in sections 101(a), 101(b) and 403 of title 39 of the United States Code.

The Committee believes that sections 101(a), 101(b) and 403 of title 39 fully define the universal service obligation. Section 101(a) states that the Postal Service shall “bind the Nation together through the mail” and serve “all patrons” in “all communities.” Section 101(b) elaborates on these requirements, stating that “effective and regular postal services” shall be provided to “rural areas, communities, and small towns where post offices are not self-sustaining.” Section 403 further elaborates on the requirements of Section 101(a), stating generally that the Postal Service “shall serve as nearly as practicable the entire population of the United States” and “establish and maintain postal facilities of such character and

⁵³⁸ Several sections of H.R. 4970 was subsequently referred to the Committee on the Judiciary. The Judiciary Committee favorably reported H.R. 4970 to the full House after striking a section which would have allowed the Postal Service to claim bankruptcy protection for competitive products and making other minor amendments. *See generally Postal Accountability and Enhancement Act*, H. Rpt. No. 108-672, Part 1 (Sept. 8, 2004) (Committee on Government Reform) and Part 2 (Sep. 29, 2004) (Committee on the Judiciary).

⁵³⁹ Hearings on the report of the President’s Commission were held in March 2004. *Postal Reform: Sustaining the Nine Million Jobs in the \$900 Billion Mailing Industry: Hearings Before the Senate Comm. on Governmental Affairs*, 108th Cong., 2d Sess. (2004) (hearings on May 9 and 11, 2004). On March 23, 2004, the Senate committee joined the House committee in a rare joint session at which Secretary of Treasury John Snow testified in support of postal reform. *The Postal Service in Crisis: a Joint Senate House Hearing on Principles for Meaningful Reform*, 108th Cong., 2d Sess. (2004) (hearing on Mar. 23, 2004).

in such locations, that postal patrons throughout the Nation will, consistent with reasonable economies of postal operations, have ready access to essential postal services.’’ Section 403 states further that the Postal Service shall not ‘‘make any undue or unreasonable discrimination among users of the mails, nor shall it grant any undue or unreasonable preferences to any such user.

The Committee’s main intent in giving the Regulatory Commission the authority to interpret universal service through regulation is to ensure that the service the Postal Service provides its customers is consistent with the statutory definition of universal service. The service standards established by the Regulatory Commission, however, should be reasonable. They should not force the Postal Service to charge higher rates or make dramatic changes to its retail and mail processing networks in order to meet them. In establishing and revising such standards, the Regulatory Commission should take into account the level of service the Postal Service provides now and how successfully that service has met the needs of its customers. The Regulatory Commission should also take into account the fact that many Americans now use other forms of communication, such as e-mail, electronic bill pay, and fax machines, to conduct business and keep in touch with friends and family. Over the years, the service standards established by the Regulatory Commission should reflect the fact that more and more Americans are likely to turn to these, and other, electronic forms of communication. They should also reflect the cost to the Postal Service of providing universal service as the number of addresses they must serve grows at the same time that mail volume is declining.

The other major goal in giving the Regulatory Commission the authority to interpret universal service through regulation is to preserve, and where possible enhance, the value of the various market-dominant products offered by the Postal Service. The Committee believes this is especially important at a time when poor mail volume is having a major impact on postal finances and there may be some temptation to erode service quality in an effort to cut costs. On April 3, 2001 the Postal Service’s Board of Governors requested a study from postal management of the cost savings associated with eliminating the Saturday delivery of mail. While the Committee is strongly supportive of any effort on the part of the Postal Service to cut costs, we believe postal management should do all it possibly can to find efficiencies before using cuts in service to find savings. We were pleased, then, when the Board of Governors announced in July 2001 that they would maintain six-day delivery. Making the Regulatory Commission the body responsible for determining the appropriate minimum delivery speed and frequency for market-dominant products as mail volume and the Postal Service’s financial condition change will ensure that postal customers receive an appropriate level of service for the rates they pay. It also ensures that those parts of the country with post offices and delivery routes that are not profitable continue to

receive a level of service consistent with the definition of universal service contained in sections 101(a), 101(b) and 403 of title 39, even when mail volume and revenues are poor.

The service standards established by the Regulatory Commission should also serve as a benchmark for measuring the Postal Service's performance. The Postal Service should strive to exceed the standards set by the Regulatory Commission, but the Regulatory Commission should regularly measure the Postal Service's performance to ensure that these standards are met. The Regulatory Commission is required to inform Congress in the annual reports required of them under section 204 of the bill whenever the Postal Service has failed to meet any existing service standards. The Committee expects the Postal Service to provide the Regulatory Commission with the data the Regulatory Commission believes necessary to determine whether or not service standards are being met. We also expect the Regulatory Commission to make use of the new information gathering authority made available to them in the bill to collect this data should the Postal Service be unwilling to provide it.

There is some concern that the authority given the Regulatory Commission to establish service standards would allow that body to micromanage the Postal Service and involve itself in product design. This is not the Committee's intent. One of the overarching goals of S. 2468 is to give the Postal Service the flexibility necessary to act more like a private business. The bill, in section 203, gives the Postal Service streamlined authority to introduce new and experimental products. The Committee believes, then, that the Postal Service should be free to innovate and to do what it needs to do to make the products it offers valuable to its customers. We have no intention through the service standards authority given the Regulatory Commission to restrict the Postal Service's commercial freedom, only to ensure that it lives up to its universal service obligation and the obligation it has to its captive customers to give them the service they pay for.⁵⁴⁰

The committee report also includes an illuminating explanation of why it did not place single-piece parcel service in the competitive category. The committee assumes that retaining single-piece parcel post in the market dominant category will help keep Postal Service rates for such single-piece parcel post affordable or even uniform throughout the country:

The Committee considered classifying single-piece Parcel Post as a competitive product. In many parts of the country where a number of private sector delivery services compete with the Postal Service in the

⁵⁴⁰ S. Rep. No. 108-318, 108th Cong., 2d Sess., at 22-23 (Aug. 25, 2004) (emphasis added).

package delivery market, classifying single-piece Parcel Post in this way would not be likely to have much of an impact on postal customers. However, the Committee decided to make single-piece Parcel Post a market-dominant product because of the negative impact we feared a competitive classification would have on those postal customers who live in parts of the country with fewer package delivery options. The Postal Service has traditionally kept prices for single-piece Parcel Post low to facilitate universal access to affordable package delivery in all parts of the country. It charges the same rate for single-piece Parcel Post in rural communities as it does in urban or suburban communities with more competitive package delivery markets. If single-piece Parcel Post were made a competitive product subject to the language in new section 3633 of title 39 of the U.S. Code setting cost coverage requirements for all competitive products, it is possible that the Postal Service would be forced to increase the price it charges for the product. This could make single-piece Parcel Post unaffordable for some postal customers. That said, nothing in this bill prevents single-piece Parcel Post from one day being moved from the market-dominant to the competitive category under the new section 3642 of title 39. If the Postal Regulatory Commission considers making this change at any point in the future, the Committee urges them to pay particular attention during their deliberations to the impact their decision could have on the affordability and availability of package delivery services in those communities without a fully-developed competitive package delivery market.⁵⁴¹

At another point, the committee reports notes, “S. 2468 maintains the current prohibition on closing post offices solely because they operate at a deficit, ensuring that rural and inner-city communities where post offices do not earn a profit continue to have access to retail services. It also in no way makes it any easier for the Postal Service to close a post office for any reason. . . . That said, the Committee believes it is vitally important that the Postal Service begin expanding access to alternate retail options”⁵⁴²

The Senate committee considered but rejected the recommendation of the President’s Commission that the Postal Regulatory Commission should be authorized to adjust the scope of the universal service obligation and postal monopoly as the needs of society change over time:

The President's Commission believed that the Regulatory Commission would be the appropriate body to regularly review, and refine if necessary,

⁵⁴¹ S. Rep. No. 108-318, 108th Cong., 2d Sess., at 7 (Aug. 25, 2004) (emphasis added).

⁵⁴² S. Rep. No. 108-318, 108th Cong., 2d Sess., at 25-26 (Aug. 25, 2004).

the Postal Service's universal service obligation. (The "universal service obligation" refers, in general, to regular delivery at uniform rates across the country.) With steadily declining volumes of First Class mail, it is clear that the nation's correspondence needs are changing. The President's Commission recommended, therefore, that an independent entity—the Regulatory Commission—be charged with, "refining key aspects of universal service as circumstances require/permit." Similarly, the President's Commission recommended that the Regulatory Commission be granted the authority to refine the scope of the mail monopoly

From the perspective of the Committee, both the postal monopoly and universal service are issues of broad public policy—not regulatory issues. For that reason, the Committee decided that the power to refine either the monopoly or the universal service obligation should remain in the hands of Congress. However, the Committee thought it would be helpful to hear from the Regulatory Commission what potential changes to either the monopoly or the universal service obligation they believed made sense. Congress would then have the option to enact any of the Regulatory Commission's recommendations with which they agreed. Therefore, S. 2468 requires that the Regulatory Commission, at least every three years, submit a report to Congress detailing any recommended changes to universal service and the postal monopoly they consider appropriate, with estimated effects of the recommendations on the service, financial condition, rates, and security of mail provided by the Postal Service.⁵⁴³

In October 2004, the 108th Congress adjourned for the November election without addressing the postal reform bills.

7.2.4 Completion of the PAEA, 2005-2006

In January 2005, as 109th Congress was convening, it was apparent that without new legislation postage rates would be increased as a result of CSRS reform act of 2003.⁵⁴⁴ On the first day of Congress, Mr. McHugh reintroduced the postal reform bill, this time again numbered H.R. 22. On April 28, 2005, the House Committee on Government Reform reported H.R. 22 to the House. H.R. Report 109-66 is the last House committee report on postal reform. In this report, the House committee likewise emphasized its continuing support for universal service. The House committee bill,

⁵⁴³ S. Rep. No. 108-318, 108th Cong., 2d Sess., at 38-39 (Aug. 25, 2004) (emphasis added).

⁵⁴⁴ In April 2005, the Postal Service asked the Postal Rate Commission to recommend a 5.4 percent increase in rates to pay for the escrow payments required by the 2003 act beginning in 2006. In November, the Postal Rate Commission agreed. PRC Op. R2005-1 (Nov. 1, 2005).

however, focused on more on gathering further information about costs and options for the future than administering the current obligation to provide universal service.

Maintenance of a universal postal system must be the cornerstone of any postal reform measure, and the bill preserves this mandate by giving the Postal Service the ability to remain viable and effective. The statutory mission of the Postal Service is focused strictly on postal services. A study will be required to recommend concrete standards for universal service. In addition, the Postal Regulatory Commission will develop an annual estimate of the costs of universal service so that Congress can better understand how to provide the necessary protections in the future.⁵⁴⁵

Similarly, the House committee did not address the more far reaching proposals of the President's Commission, preferring to emphasize the importance of the policy studies required by the bill. On July 26, 2005, the House of Representatives considered H.R. 22, rejected three proposed amendments, and overwhelmingly approved the bill by a vote of 410-20.⁵⁴⁶

In the Senate, in March 2005, Ms. Collins and Mr. Carper introduced a modified postal reform bill, S. 662.⁵⁴⁷ Although closely modeled on S. 2468 from the previous Congress, the new Collins-Carper bill made two crucial changes with respect to the universal service obligation. First, the bill shifted authority to adopt modern service standards from the Commission to the Postal Service. As a result, the modern service standards became voluntary instead of obligatory. This change was apparently due to opposition from the Postal Service. Second, the bill fixed statutory price caps to statutorily defined mail classifications. Price caps became a statutory command instead of a regulatory tool. This change left both the Commission and the Postal Service with less flexibility in their respective spheres of responsibility.⁵⁴⁸

⁵⁴⁵ H.R. Rep. No. 66, 109th Cong., 1st Sess., at 44 (Apr. 28, 2005).

⁵⁴⁶ 152 Cong. Rec. H6511-6549 (daily ed., Jul. 26, 2005). *See also* 152 Cong. Rec. D831 (Daily Digest, Jul. 26, 2005).

⁵⁴⁷ *U.S. Postal Service: What Is Needed to Ensure its Future Viability?: Hearing Before the Senate Comm. on Homeland Security and Governmental Affairs*, 109th Cong., 1st Sess. (2006) (hearing on April 14, 2005).

⁵⁴⁸ *See* 151 Cong. Rec. S3013-31 (daily ed., Mar. 17, 2005).

Quick action on S. 662 was prevented by disagreement over provisions relating to the regulation of rates for market dominant products. Some senators, led by Senator Kit Bond (Rep., Missouri) were concerned about possible rate increases for single-piece letters, such as greeting cards. Resolution of this issue took several months during which time adjustments were also made to address issues raised by other parties. On February 7, 2006, Senators Collins and Bond joined in a colloquy to record agreement on certain ratemaking principles.⁵⁴⁹

On February 9, 2006, the Senate approved S. 662. Four amendments were added. The most important was an amendment reflecting the compromise between Senators Collins and Bond. It modified provisions relating to objectives, unused rate adjustment authority, transition rules, and rate and service complaints. In addition, the Senate approved four amendments by unanimous consent, without debate.⁵⁵⁰ An amendment by Senator Tom Harkin (Dem., Iowa) required the Postal Service to give affected parties ample opportunity for comment before rationalizing the postal facilities network or removing excess capacity from the network. An amendment by Senator Harry Reid (Dem., Nevada) changed the terms of Governors of the Postal Service from 5 years to 7 years and added, as qualifications for Governor, “experience in the fields of public service, law or accounting” to the bill’s text, “demonstrated ability in managing organizations or corporations of substantial size.” An amendment by Senator Ted Stevens (Rep., Alaska) modified contracts for the transportation of mail by air. The Senate then adopted S. 662 as a substitute amendment to H.R. 22, requested a conference with the House of Representatives to resolve the different versions of H.R. 22, and appointed conferees.⁵⁵¹

The Senate and House versions of H.R. 22 differed significantly. The House did not appoint conferees, and no conference was held. Instead, key members of Congress

⁵⁴⁹ 153 Cong. Rec. S767 (daily ed., Feb. 7, 2006). A “colloquy” is a scripted exchange of views between members of the Senate or House that is inserted in the *Congressional Record* to make a point or clarify the views of members, often for the purpose of making “legislative history.”

⁵⁵⁰ 153 Cong. Rec. S926 (daily ed., Feb. 9, 2006).

⁵⁵¹ See 153 Cong. Rec. S898-943 (debate and approval), S982 (amendments), S1033-34 (amendment) (daily ed., Feb. 9, 2006).

and the Administration worked out a compromise version informally. Resolving one of the major issues, the Administration accepted an end to the Postal Service's responsibility for paying military pensions. Nonetheless, remaining disagreements prevented action before the end of the regular session of the 109th Congress in October. After the November election, the 109th Congress convened a lame duck session. On December 7, 2006, key members of the House and Senate agreed to a final compromise on the postal reform bill. The compromise was introduced in the House as a new bill, H.R. 6407. At 11:15 pm on December 8, the last day of the 109th Congress, the House took up H.R. 6407 and approved it without amendment.⁵⁵² In the early morning hours of December 9, the Senate approved H.R. 6407, necessarily without amendment.⁵⁵³ On December 20, 2006, President George W. Bush signed H.R. 6407 and it became Public Law 109-435.

From this legislative history, it appears that the main thrust of the PAEA was to allow the Postal Service more flexibility to adapt to changing market conditions. The final catalyst for enactment was concern over the threat to postage rates posed by the CSRS reform act. While all parties expressed support for continuation of universal service, there were only two significant initiatives to provide greater clarity and substance to the concept of the universal service obligation. The first was the proposal of the President's Commission to delegate to the Commission the authority to adapt the universal service obligation to new circumstances. The second was the proposal by the Senate committee to authorize the Commission to set modern service standards to implement the universal service obligation. Neither proposal was included in the final act. Although there emerged no Congressional consensus on the specific provisions of the universal service obligation, the 2004 report of the Senate Governmental Affairs Committee provides an extended discussion of universal service. This appears to be the only sustained consideration of the concepts of universal service and the universal service obligation by a Congressional body in the last decade.

⁵⁵² 153 Cong. Rec. H9160-182 (Dec. 8, 2006). *See also* 153 Cong. Rec. D1162 (Daily Digest, Dec. 8, 2006).

⁵⁵³ 153 Cong. Rec. S11674-677 (debate); S11821-22 (approval). *See also* 153 Cong. Rec. D1153 (Daily Digest, Dec. 8, 2006).

7.3 *Modifications in the USO by PAEA*

7.3.1 Generally

The Postal Accountability and Enhancement Act did not explicitly address the concept of a universal service obligation. The PAEA did not modify the main statutory provisions associated with the “universal service obligation” under current law. The PAEA left unchanged key provisions of Title 39, including section 101 (postal policy), section 403 (general duties of the Postal Service), section 404(c) (uniform rate requirements for letters) and section 3683 (uniform rate for library and media mail). Nor did the PAEA affect the annual appropriations rider which prescribes six-day delivery and prohibits closure of small post offices.

Nonetheless, the PAEA modified several statutory provisions which affect service elements of universal postal services. These changes include the following:

- division of domestic and international postal products into two categories: market dominant and competitive (§§ 3621, 3631, 3642);
- requirement that rates for market dominant products comply with a new “modern system of regulation” to be devised by the Commission in accordance with statutory principles (§§ 3621-22, 3662);
- relaxation of price controls over competitive products while requiring that competitive products cover attributable costs and make a collective contribution to institutional costs; addition of obligation to pay an assumed federal income tax (§§ 3631-34, 3662);
- modification of the rate preference for in-county newspapers to give the Postal Service and Commission more flexibility in defining the preference (§ 3626);
- adoption of more flexible size and weight limits for postal products (§ 3682);
- requirement that the Postal Service establish quality of service standards which meet statutory criteria (§ 3682);

- adoption of a statement of national policy with respect to international postal services and other international delivery services and limitations on the scope of international postal agreements (§ 407); and
- requirement for the Postal Service to consult with interested parties before closing or consolidating any processing or logistics facility.⁵⁵⁴

Four of these new provisions appear to be especially relevant to the modern idea of a universal service obligation: the modern system of regulation for market dominant products, modern service standards, the modification of the complaint process, and the Commission's report on the costs of universal service. These are discussed below. Other amendments to the universal service obligation introduced by the PAEA are discussed as appropriate in the summary of the current status of the universal service obligation, below.

7.3.2 Modern system of regulation

The modern system of regulation may include regulatory measures that the Commission deems necessary to accomplish nine policy objectives set out in section 3622(b), including the establishment of a “just and reasonable schedule for rates and classifications.” In accomplishing these objectives, the Commission is directed to take into account fourteen factors set out in section 3622(c). These objectives and factors grant the Commission broad discretion to shape the universal service obligation with respect to pricing. The act also requires the Commission to include two specific elements in the modern system of regulation: price caps and limits on workshare discounts. So far, the Commission has adopted an approach to the “modern system of regulation” that focuses on the implementation of the statutory price cap rules.⁵⁵⁵

As implemented by the Commission, the price cap provision requires that, for five groups of market dominant products, the Postal Service may not to increase the average postage rate in each group by more than inflation as measured by the Consumer Price

⁵⁵⁴ Postal Accountability and Enhancement Act, Pub. L. No. 109-435, § 302, 120 Stat. 3198, 3219-21 (2006). Section 302 of the PAEA did not amend Title 39.

⁵⁵⁵ 72 Fed. Reg. 63662 (Nov. 9, 2007).

Index. The five product groups are first class mail, periodicals, standard mail, package services, and special services. As required by statute, the five product groups are defined by the organization of products in the Domestic Mail Classification Schedule in effect on December 21, 2006. The Commission has included market dominant outbound international mail products in the most nearly equivalent domestic mail group. In case of "extraordinary or exceptional circumstances," the Postal Service may request the Commission to approval rates in excess of the price caps.⁵⁵⁶

By imposing statutory price caps, the PAEA has curtailed the authority of the Postal Service and the Commission to adjust rates and classifications. Under the Postal Reorganization Act, the Postal Service and the Commission could raise rates to reflect increased costs and adjust the allocation of the burden of institutional costs among the classes of mail in accordance with rulemaking principles of the act. Under PAEA, the Postal Service has seemingly gained authority to adjust rates within each of the five groups of products,⁵⁵⁷ but the Postal Service and the Commission can no longer adjust the allocation of institutional costs among the rate groups.

More fundamentally, the PAEA appears to have limited the authority of the Postal Service to revise classifications of mail. Prior to the PAEA, the Postal Service and Commission could revise the definitions of classes and subclasses as needed. By introducing rate restrictions tied to the definitions of classes as they existed in December 2006, the PAEA has apparently made it more difficult to revise the definition of a class, except by moving a product from the market dominant to the competitive category. If, for example, the Postal Service decided to replace the traditional content-based classification

⁵⁵⁶ 72 Fed. Reg. 63662, 63696-97, adding 39 C.F.R. 3001.60-66, implementing 39 U.S.C. § 3622(d)(1)(E) (2006).

⁵⁵⁷ However, the PAEA also statutorily defined certain limits for the pricing of workshare discounts. 39 U.S.C. § 3622(e) (2006). The concept of a workshare discount was devised by the Commission and evolved substantially over time; it might have developed further if left to the discretion of the Commission. By incorporating rules for workshare discounts into Title 39, the PAEA may have limited the authority of the Postal Service and the Commission to adjust prices *within* a rate group in key respects although the burden on the Postal Service will depend upon how this provision is administered by the Commission. On the other hand, aside from the rules relating to worksharing, the Commission specifically rejected rules—sometimes called “rate bands” or “subclass caps”—limiting the discretion of the Postal Service to adjust the rates of different products within a rate group. *See* 72 Fed. Reg. 50744, 50748 (Docket RM2007-1, Orders 26 and 27, Sep. 4, 2007).

scheme with a priority/non-priority classification scheme (as several industrialized country post offices have done) or create new subclasses for bulk mail products (as the Postal Service proposed in MC95-1), the price cap limitations would, apparently, continue to attach to the postal items as defined by the classes as they existed in December 2006. Reclassification would no longer have the effect of redefining how institutional costs are allocated.

In this manner, the PAEA has likely increased the burden of the price elements of the universal service obligation. To cite a well-known example, losses on periodical mail (i.e., the difference between revenues and attributable costs) would not have been permitted under the pre-PAEA regulation, but may be implied under the modern system of regulation. If so, the PAEA will have increased the cost of the USO. Limiting the flexibility of the Commission and the Postal Service with respect to rates and classifications could increase costs significantly over time.

7.3.3 Modern service standards

Section 3691, added to Title 39 by the PAEA, requires the Postal Service to establish “modern service standards” for all market dominant products. If, as suggested below, the range of universal services can be plausibly equated with market dominant products, then section 3691 may be considered to impose an additional level of obligation with respect to the quality of universal services. Section 3691 provides that the Postal Service must adopt modern service standards that are designed to meet four objectives:

- To enhance the value of postal services to both senders and recipients.
- To preserve regular and effective access to postal services in all communities, including those in rural areas or where post offices are not self-sustaining.
- To reasonably assure Postal Service customers delivery reliability, speed and frequency consistent with reasonable rates and best business practices.

- To provide a system of objective external performance measurements for each market-dominant product as a basis for measurement of Postal Service performance.⁵⁵⁸

On December 19, 2007, the Postal Service adopted regulations providing modern service standards pursuant to section 3691.⁵⁵⁹ The service standards list “stated goals”⁵⁶⁰ for the transit times of types of postal services, where “transit time” refers to the number of days elapsing between the published deadline for tendering the mail (“critical entry time”) and the day of delivery to the addressee. Since the modern service standards are only stated goals and may in any case be modified by the Postal Service, they are not “obligations” imposed upon the Postal Service. The Postal Service’s only obligation is to adopt and maintain such standards. Moreover, the scope of the standards appears to be subject to the discretion of the Postal Service. Although the statute identifies “regular and effective access to postal services in all communities” as an objective of the modern service standards, the Postal Service rejected requests to include standards for access via public collection boxes or waiting time in post offices in the modern service standards, concluding that such matters were “beyond the scope of this rulemaking.”⁵⁶¹ The modern service standards are not enforced by penalties, such as, for example, rebates to mailers for substandard services.

⁵⁵⁸ 39 U.S.C. § 3691(b) (2006). Subsection (c) further requires the Postal Service to take into account eight factors in developing modern service standards: (1) the actual level of service that Postal Service customers receive under any service guidelines previously established by the Postal Service or service standards established under this section; (2) the degree of customer satisfaction with Postal Service performance in the acceptance, processing and delivery of mail; (3) the needs of Postal Service customers, including those with physical impairments; (4) mail volume and revenues projected for future years; (5) the projected growth in the number of addresses the Postal Service will be required to serve in future years; (6) the current and projected future cost of serving Postal Service customers; (7) the effect of changes in technology, demographics, and population distribution on the efficient and reliable operation of the postal delivery system; and (8) the policies of this title and such other factors as the Postal Service determines appropriate.

⁵⁵⁹ 72 Fed. Reg. 72216 (Dec. 16, 2007) (final rule).

⁵⁶⁰ 72 Fed. Reg. 58946 (Oct. 17, 2007) (notice of proposed rulemaking).

⁵⁶¹ 72 Fed. Reg. 72216, 72223 (Dec. 19, 2007).

7.3.4 Modification of the complaint process

The PAEA substantially revised the role of complaint proceedings before the Commission. Revised section 3662 narrows the complaint jurisdiction of the Commission by identifying specific provisions of Title 39 which may be addressed by complaint. At the same time, instead of limiting the Commission to a public report or a recommended decision, section 3662 now gives the Commission broad authority to take remedial action where violations of law are discovered. As revised, section 3662(a) provides as follows:

(a) In General.—Any interested person (including an officer of the Postal Regulatory Commission representing the interests of the general public) who believes the Postal Service is not operating in conformance with the requirements of the provisions of sections 101(d), 401(2), 403(c), 404a, or 601, or this chapter (or regulations promulgated under any of those provisions) may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.⁵⁶²

The revised complaint procedure excludes most of the provisions which define the universal service obligation. Essentially all of the general postal policy objectives in section 101 have been excluded; the only exception, paragraph 101(d), refers to ratemaking principles set out in greater detail in “this chapter,” i.e., chapter 36, the rate regulation chapter. The only portion of the general duties of the Postal Service, section 403, that may be subject to a complaint is the prohibition against unjust or unreasonable discrimination (§ 403(c)). What is left, so far as the universal service obligation is concerned, are the obligations relating to rates. The Commission, it appears, is no longer authorized to investigate and report on complaints by individuals alleging specific failures of the Postal Service to provide services required by the universal service obligation.⁵⁶³ This loss, however, is partially balanced by increased reporting requirements with respect to cost of the universal service obligation generally.

⁵⁶² 39 U.S.C. § 3662(a) (2006).

⁵⁶³ Of course, the Commission’s pre-PAEA Rule 82 precluded consideration of most such complaints in any case.

7.3.5 Commission's annual report on the universal service obligation

New section 3651, added by the PAEA, directs the Commission prepare an annual evaluation of the Postal Service's overall compliance with universal service obligations of Title 39. The precise wording of section 3651 is important to an appreciation of the implications of this report and how it relates to the present study. Section 3651 provides in full:

(a) In General.—The Postal Regulatory Commission shall submit an annual report to the President and the Congress concerning the operations of the Commission under this title, including the extent to which regulations are achieving the objectives under sections 3622 and 3633, respectively.

(b) Additional Information.—

(1) In general.—In addition to the information required under subsection (a), each report under this section shall also include, with respect to the period covered by such report, an estimate of the costs incurred by the Postal Service in providing—

(A) postal services to areas of the Nation where, in the judgment of the Postal Regulatory 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 required to provide prompt, reliable, and efficient services to patrons in all areas and all communities, including as required under the first sentence of section 101(b);

(B) free or reduced rates for postal services as required by this title; and

(C) other public services or activities which, in the judgment of the Postal Regulatory Commission, would not otherwise have been provided by the Postal Service but for the requirements of law.

(2) Basis for estimates.—The Commission shall detail the basis for its estimates and the statutory requirements giving rise to the costs identified in each report under this section.

(c) Information From Postal Service.—The Postal Service shall provide the Postal Regulatory Commission with such information as may, in the judgment of the Commission, be necessary in order for the

Commission to prepare its reports under this section.⁵⁶⁴

Paragraph (A) of section 3651(b)(1), in particular, appears to require the Commission to estimate the cost of universal service by defining two sets of postal services:

- 1) the set of postal services which the Postal Service is obliged to provide “in accordance with the requirements of this title” by virtue of the specific requirement that the Postal Service must provide “prompt, reliable, and efficient services to patrons in all areas and all communities, including as required under the first sentence of section 101(b)”;
- and
- 2) the set of postal services which the Postal Service would probably provide in the absence of the requirement to provide “prompt, reliable, and efficient services to patrons in all areas and all communities, including as required under the first sentence of section 101(b).”

The Commission’s duty, then, is to prepare “an estimate of costs incurred by the Postal Service” in providing all services which are in set (1) but not in set (2).

The conceptual framework of this report appears to be generally similar to the conceptual framework of this study, although some clarifications and distinctions should be made.

First, paragraph (A) of section 3651(b)(1) appears to distinguish between the entire spectrum of costs imposed by Title 39 and those costs which flow from the specific requirement to provide “prompt, reliable, and efficient services to patrons in all areas and all communities, etc.” Since the phrase “prompt, reliable, and efficient services to patrons in all areas and all communities, etc.” seems equivalent to the idea of “universal services,” it would simpler to say that paragraph (A) appears to distinguish between the entire spectrum of costs imposed by Title 39 and those costs which flow from the obligation to provide universal services. This is the same distinction adopted by this study in chapter 1. Set (1), then, is the set of postal services required by the “universal service obligation” provisions of Title 39.

Second, this study has interpreted the “universal service obligation” to include not only the elements of universal service required by Title 39 but also service elements

⁵⁶⁴ 39 U.S.C. § 3651 (2006).

required by other legal measures, such as annual appropriations acts, the Universal Postal Convention, and the regulations of the Commission. To this degree, the “universal service obligation,” as defined by this study, is broader than set (1), as defined in paragraph (A).

Third, paragraph (B) of section 3651(b)(1) requires the Commission to estimate the costs incurred by the Postal Service in providing free or reduced rates required by Title 39. Since reduced rates are required by Title 39, they must be accounted for in the figure calculated under paragraph (A) as well. Hence, paragraph (B) seems to require no more than that the calculation under paragraph (A) must have a separate line for free and reduced rates.

Fourth, paragraph (C) requires the Commission to estimate the costs incurred by the Postal Service in the provision of “other public services” required by Title 39. In the terminology of this study, “other public services” would not be costs of the universal service obligation estimated under paragraph (A). This is not to suggest that paragraph (C) costs are any less genuine costs of public service or that they are less worthy of being accounted for. Paragraph (C) costs are simply public service costs that are beyond the scope of universal service costs.

Paragraph 3651(b)(2) is also noteworthy. It specifically requires the Commission to “detail the basis for its estimates and the statutory requirements giving rise to the costs identified in each report under this section.” To develop specific cost estimates, it appears that the Commission must adopt specific definitions of the seven service elements of the universal service obligation identified in this study. For example, the Commission must define “adequate and efficient” service levels with respect to the geographic scope of service, the modes of delivery, the various means of access, etc.

In short, the Commission may find it necessary to develop a specific definition of the universal service obligation, much as European postal regulators are required to do under the Postal Directive, even though the function of the Commission’s USO definition may be only to develop a section 3651 report and not to impose a legal obligation on the Postal Service.

8 Current Status of the USO

This chapter draws together the foregoing analysis and summarizes the current status—in many cases, the uncertain status—of the legal obligations imposed on the Postal Service to provide universal postal services. One benefit of a careful survey of the law—as opposed “whatever everyone knows” to be the law—is to reveal areas that need to be filled in or updated. It should be emphasized that this chapter attempts only to describe what is, not what should be.

8.1 *Geographic scope of the obligation to provide universal service*

Title 39 obliges the Postal Service to serve the entire United States and military and diplomatic posts abroad. Section 403 requires the Postal Service to “receive, transmit, and deliver *throughout the United States, its territories and possessions, and, pursuant to arrangements entered into under sections 406 and 411 of this title, throughout the world*, written and printed matter, parcels, and like materials and provide such other services incidental thereto as it finds appropriate to its functions and in the public interest.” Sections 406 and 411 refer to postal services for the military and other government agencies, not international mail. The phrase “throughout the United States, its territories and possessions” was first introduced into the postal law in 1970 and is not illuminated by legislative history. Section 403 declares further that the Postal Service shall service “*as nearly as practicable the entire population of the United States.*” This phrase was taken from a 1916 postal appropriations act that described the objectives of the rural free delivery program. The geographic coverage of universal service is also mentioned in section 101(a), which declares that the Postal Service “shall have as its basic function the obligation to provide postal services to *bind the Nation together*” and “provide prompt, reliable, and efficient services to patrons *in all areas and shall render postal services to all communities.*” Section 101(b) stresses that the Postal Service “shall provide a maximum degree of effective and regular postal services to *rural areas, communities, and small towns* where post offices are not self-sustaining.”

These statutory directions regarding the geographic scope of the universal service are not unqualified. While section 403 requires the Postal Service to provide service

“throughout the United States, its territories and possessions,” it also requires the Postal Service to “provide adequate and efficient postal services at fair and reasonable rates and fees” and “maintain an efficient system of collection, sorting, and delivery of the mail nationwide.” The requirement of efficiency has been interpreted by the courts as qualifying provisions of section 403. For example, the Postal Service is not obliged to deliver to every possible address but only to provide an efficient delivery service, one which may entail dropping off the mail for many persons at a single delivery point such as a university mail room. It seems plausible that the courts would likewise conclude that service “throughout the United States, its territories and possessions” does not oblige the Postal Service to collect or deliver mail to places in the United States which cannot be served with reasonable economy.

What, then, is the obligation of the Postal Service with respect to geographic coverage? On the one hand, it seems clear that the Postal Service cannot deny service to any city or town or a significant portion of any state. On the other hand, it seems evident that the Postal Service is not obliged to deliver to every log cabin in the woods. Between these extremes, what is required?

Perhaps the most plausible interpretation of the geographic scope of the universal service obligation emerges from a consideration of its historical roots in the rural free delivery program. The essential objective of rural free delivery in the early twentieth century was to provide service along the major public roads throughout the United States so that rural households could access the national postal system by traveling to a point along a “line of travel” served by rural carriers. The Post Office was not required to deliver to every person’s dwelling no matter how far removed from the public road. Nor was it required to offer service along every public road, but only to do so where “practicable” in light of current technology, the conditions of roads, and the density of settlement. By the same token, the Post Office has never been required to deliver mail to households that live within walking distance of a village post office.

In applying the phrase “as nearly as practicable the entire population” to the United States in the early twenty-first century, it seems reasonable to suggest that “universal service” should continue to be related to accessibility by public thoroughfares.

However, the idea of public thoroughfare would today other modes of travel, including air and sea routes. Thus, one might interpret the universal service obligation as requiring the Postal Service to provide, to the extent practicable, postal service along all major transportation routes used by the general public. This is, however, only a plausible interpretation. No decision by a court or the Commission has defined the geographic scope of the universal service obligation, and the statute itself is not so clearly expressed that it establishes an enforceable obligation with respect to geographic coverage.⁵⁶⁵

Finally, in evaluating the geographic scope of the universal service obligation under law, the implications of the Universal Postal Convention must be considered. The 2004 Universal Postal Convention provides that “member countries shall ensure that all users/customers enjoy the right to a universal postal service involving the permanent provision of quality basic postal services *at all points in their territory*. While the meaning of the Universal Postal Convention is not self-evident, “at all points” in the United States could be considered a broader definition of the USO than the foregoing public route-based interpretation of Title 39. If so, then it will be necessary to determine whether (1) the obligation imposed on the United States to ensure universal service “at all points” supersedes the general duties imposed on the Postal Service by Title 39 or (2) the general duties of section 403 should be interpreted more broadly in light of the Universal Postal Convention 2004. Either way, the effect of the Universal Postal Convention 2004 could be to enlarge the geographic scope of the USO.

In light of the above, Congress may wish to consider (1) specifying more clearly the geographic scope of the universal service obligation set out in Title 39 and (2) defining more clearly the relationship between the universal service obligation set out in Title 39 and the provisions relating to universal service in the Universal Postal Convention.

⁵⁶⁵ Compare, for example, the EU Postal Directive requires postal delivery to “to the home or premise of every natural or legal person or, by way of derogation, under conditions at the discretion of the national regulatory authority, one delivery to appropriate installations.” Directive 1997/67/EC, OJ L 15, 21 Feb. 1998, p. 14 art. 3(3).

8.2 *Obligation to provide a range of postal products universally*

Title 39 obliges the Postal Service to provide universal service for a wide range of documents and parcels. Section 403(a) requires the Postal Service to provide “adequate and efficient postal services at fair and reasonable rates and fees” and to “receive, transmit, and deliver throughout the United States, its territories and possessions, and [overseas military and diplomatic posts] throughout the world, *written and printed matter, parcels, and like materials* and provide such other services incidental thereto as it finds appropriate to its functions and in the public interest.” Section 403(b)(2) requires the Postal Service “to provide *types of mail service to meet the needs of different categories of mail and mail users*.” Section 101(a) declares that, “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.”

Title 39 emphasizes the Postal Service’s obligation to provide an expeditious and universal service for letters. Section 101(e) declares, “In determining all policies for postal services, the Postal Service shall give *the highest consideration to the requirement for the most expeditious collection, transportation, and delivery of important letter mail*.” Section 101(f) states that “Modern methods of transporting mail by containerization and programs designed to achieve overnight transportation to the destination of *important letter mail to all parts of the Nation* shall be a primary goal of postal operations.”⁵⁶⁶ Section 404(c) states,

The Postal Service shall maintain one or more classes of mail for the transmission of letters sealed against inspection. The rate for each such class shall be uniform throughout the United States, its territories, and possessions. One such class shall provide for the most expeditious handling and transportation afforded mail matter by the Postal Service.

Title 39 also mentions different types of non-letter items but does not describe the nature of the services required. Sections 3621 and 3631 list types of postal items

⁵⁶⁶ Since all of these provisions were included in the Postal Reorganization Act of 1970, they pre-date the advent of expedited mail in 1977. It seems clear, therefore, that they are referring to first class letter service.

transmitted by the Postal Service in 2006 for the purpose of assigning them to the market dominant or competitive categories. Sections 3626 and 3683 prescribe special rates for transmission of items defined in pre-1970 mail classifications: in-county newspapers, qualified nonprofit mail, library mail, and media mail. Other provisions refer to the postal transmission of specific types of items.⁵⁶⁷ On the other hand, several provisions prohibit the Postal Service from transmitting various types of “non-mailable” items considered contrary to public policy.⁵⁶⁸ The PAEA essentially removed weight limits for items that may be transmitted by the Postal Service.⁵⁶⁹

Which products, then, is the Postal Service obliged to provide on a universal basis? Nothing in Title 39 distinguishes between products which the Postal Service is obliged to offer as “universal services” and products which the Postal Service may offer on a less-than-universal basis. There appear to be at least three plausible answers to the question: (1) all services offered by the Postal Service must be offered on a universal basis, (2) a minimum of one service for the transmission of written and printed matter, parcels, and like materials must offered by the Postal Service; and (3) some services must be offered on a universal basis but others do not have to be.

The proposition that the Postal Service is obliged to offer *all postal services* on a universal basis could be supported by focusing on provisions in the statute which emphasize that the Postal Service is a public service intended to “bind the Nation together” and provide “a maximum degree of effective and regular postal services to rural

⁵⁶⁷ See, e.g., the following sections of 39 U.S.C. (2006): sound recordings, 3401(a), 3401(b)(1)(A), 3403(a)(3), 3404; video recordings, 3401(a), 3401(b)(1)(A); periodic publications, 3001(k)(4), 3008(c), 3010(d), 3401(b)(1)(C), 3685, and PAEA §708; newspapers, 3001(k)(4), 3008(c); magazines, 3001(k)(4); catalogs, 3010(d); advertisements, 3001(e)(2), 3002(a), 3005(d), 3008, 3010; books, 3010(d), 3207(a)(2); parcels, 604, 606, 2401(g), 3001(e)(2)(B), 3004, 3401(b), 3401(c).

⁵⁶⁸ Non-mailable items include solicitations appearing to be invoices or statements of account; motor vehicle master keys and locksmithing devices; mail bearing a fictitious name or address; false representations and lotteries; unordered merchandise; pandering and sexually oriented advertisements; certain plants, plant pests, and injurious animals; certain skill contests and sweepstakes matter; and hazardous material. See *generally* 39 U.S.C. §§ 3001-18 Aug. (2006).

⁵⁶⁹ 39 U.S.C. § 3682 (2006) provides, “The Postal Service may establish size and weight limitations for mail matter in the market-dominant category of mail consistent with regulations the Postal Regulatory Commission may prescribe under section 3622. The Postal Service may establish size and weight limitations for mail matter in the competitive category of mail consistent with its authority under section 3632.”

areas, communities, and small towns.” By its nature, then, the Postal Service is national service, and it should not provide services some people and not to others, except perhaps for temporary periods when new universal services are being developed. Such an interpretation of the act does not seem to have been explicitly endorsed, and it has been directly opposed in at least two proceedings before the Commission. In R77-1, the Commission concluded that the Postal Service was not obliged to provide express mail on a universal basis where a more limited service was “motivated by genuine requirements of postal economies.” In R90-1, the Postal Service made a strong argument that it was not required by statute to provide parcel post services to areas not accessible by surface transportation. Although the Commission insisted that the premium costs of Alaska bypass mail must be regarded as institutional costs, it did not reject the Postal Service’s interpretation of the scope of the universal service obligation. These limited legal precedents lend some weight to the view that the Postal Service is not obliged to provide all postal products on a universal basis.

Alternatively, it might be argued that section 403 is satisfied if the Postal Service provides *at least one* universal service for the transmission of “written and printed matter, parcels, and like materials” provided such service also satisfies the requirements for transmission of letters sealed against inspection and the other statutory requirements of universal service. According to such an interpretation, first class mail (including priority mail) might be regarded as the only product required to meet the Postal Service’s universal service obligation because it provides universal, nationwide transmission for all types of written and printed matter and parcels weighing up to 70 pounds. In this view, the Postal Service may, in its discretion, offer other products—including expedited mail, periodicals, standard mail, and package services—on a more limited geographic basis. Since all postal items which transmitted by these additional services can also be transmitted universally by means of first class mail, first class mail alone effectively ensures that the nation will be bound together. Indeed, first class *single-piece* mail services could be regarded as sufficient for this purpose. While such a limited interpretation of the range of universal service products might be justified by narrow reading of the statute, however, it may be considered by some to be inconsistent with the

historical U.S. policy of favoring the widest possible distribution of newspapers and magazines.

A third plausible interpretation of the postal law is that the Postal Service is obliged to provide *some postal services* on a universal basis but not others. Although the act does not distinguish between universal services and non-universal services, it does distinguish between market dominant products and competitive products. Market dominant products are defined as products over which “the Postal Service exercises sufficient market power that it can effectively set the price of such product[s] substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.” Since users are more dependent on the Postal Service for the supply of market dominant products, they are more strictly regulated by the Commission. By granting the Postal Service substantially more commercial freedom in the management of competitive products, one might argue that Congress *implicitly* limited the obligation of the Postal Service to “receive, transmit, and deliver throughout the United States . . . written and printed matter, parcels, and like materials” to market dominant products. This interpretation seems most consistent with the spirit of the PAEA and portions of the most recent Senate committee report, but it does not rest on any explicit provisions of the act.⁵⁷⁰

In sum, with respect to the range products covered by the universal service obligation, the law is unclear. The postal law obliges the Postal Service to provide universal service for a broad range of postal items: “written and printed matter, parcels,

⁵⁷⁰ There is, in addition, one minor category of competitive products that, it could be argued, must be included in the universal service obligation: inbound international competitive products covered by the 2004 Universal Postal Convention (i.e., the current convention). Under the Universal Postal Convention, the United States is obliged to deliver all inbound international letter post and parcel post items, competitive as well as market dominant. The government, in turn, has obliged the Postal Service to perform this function. The Commission has categorized two inbound products governed by the Universal Postal Convention as competitive products: air parcel post and M-bags. 72 Fed. Reg. 63662, 63699 (Docket RM-2007-1, Final Rule, Nov. 9, 2007). After the 2004 Convention lapses at the end of 2009, the PAEA prohibits the government from entering into another international agreement that will, with respect to competitive products, “grant an undue or unreasonable preference to the Postal Service, a private provider of international postal or delivery services, or any other person.” This provision might be construed to limit the authority of the government to summarily oblige a carrier, even the Postal Service, to provide international competitive products.

and like materials.” However, the postal law does not explicitly state whether the Postal Service’s obligation to provide universal service extends to all, some, or only one of the services it offers for transmitting such items. The logic of the PAEA may favor a view that the range of products which the Postal Service is, or should be, obliged to provide on a universal basis is limited to market dominant products. This interpretation, however, does not rest on any explicit provisions of the act.

8.3 Obligation to provide access to universal services

Mailers access universal postal services by one of three methods: (1) tendering mail at a post office or postal facility, (2) depositing mail in a public collection box, or (3) placing mail in a private mailbox for collection by a carrier. Current law obliges the Postal Service to provide “ready access to essential postal services” that is “consistent with reasonable economies.”⁵⁷¹ The specific parameters of this obligation are not clearly defined in the law.

Of the three methods of access, the law has been most concerned with the accessibility provided by local post offices. Section 404(a)(3) delegates to the Postal Service the power “to determine the need for post offices.” Section 101(b) states that, “The Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. No small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities.” There appears to be no legal means for a individual citizen or town to require the Postal Service to establish a new post office. Nor does the Commission oversee the need to provide establish new post offices. From 1971 to 2007, the number of post offices (all types) per million citizens has declined from about 204 to 122.

⁵⁷¹ 39 U.S.C. § 403(b)(3) (2006) requires the Postal Service “to establish and maintain postal facilities of such character and in such locations, that postal patrons throughout the Nation will, consistent with reasonable economies of postal operations, have ready access to essential postal services.”

The Postal Service's authority to "to determine the need for post offices" also authorizes it to close and consolidate post offices when they are no longer needed. Current law requires the Postal Service to consult with affected parties and consider a range of issues before closing or consolidating any post office.⁵⁷² Over the strong objections of the Commission, the Postal Service has interpreted this requirement narrowly, to apply only to the closure or consolidation of "post offices" (managed by a postmaster) and not to apply "branch offices," "contract offices," and other sorts of retail facilities even though they may be the last Postal Service retail counter serving a particular community. Where the Postal Service follows the statutory consultation procedures, an affected party may ask the Commission to review the process, but the Commission's oversight authority is limited to ensuring that the statutory procedures were followed. The Commission has no authority to overturn a decision to close a post office on the merits. Since 1977, the Commission has reviewed a substantial number of post office closings but remanded few, if any, to the Postal Service for further consideration.

Since fiscal 1985, Congress has included a provision in each annual Postal Service Appropriations Act that declares, "That none of the funds provided in this Act shall be used to consolidate or close small rural and other small post offices in the fiscal year [current year]." Although the original intent of Congress was apparently to prohibit the Postal Service from closing or consolidating small post offices, from fiscal 1984 to fiscal 2008, the Postal Service has reduced the number of post offices by 2,549 (6.5 percent) or 2,068 excluding branch offices and other retail facilities (7 percent). This reduction in the number of post offices seems to imply closure or consolidation of a number of small rural or other small post offices. Thus, the annual appropriations rider does not appear to establish an effective legal obligation on the Postal Service to maintain small rural and other small post offices.⁵⁷³

⁵⁷² 39 U.S.C. § 404(d) (2006).

⁵⁷³ In its 2002 Transformation Plan, the Postal Service called on Congress to repeal the statutory provisions requiring consultation before closure of small post offices and to discontinue the annual appropriations rider relating to closure or consolidation of small rural or other small post offices, measures which it characterized as "discouraging" the closure of post offices: "In addition, the Postal Service will ask

Access to universal service via public collection boxes is governed by the authority of the Postal Service “to provide for the collection . . . of mail.”⁵⁷⁴ There is no specific legal obligation with respect to public collection boxes. Complaint proceedings before the Commission have made clear that the Postal Service has substantially reduced the number of boxes, advanced the time of day for the last collection, and in some cases failed to abide by posted collection times in some cases. Such steps have made public collection boxes less convenient as means of access to the universal service. In 2002, the Commission found that the Postal Service’s policies towards collection boxes amounted to a change in nationwide service that, under section 3661 of the statute, could not be implemented without a public hearing before the Commission.⁵⁷⁵ Nonetheless, the Postal Service has never sought such a hearing nor has the Commission required one.

Finally, access to universal service is provided by letter carriers. City carriers collect and post prepaid mail left in private mailboxes. Rural letters carriers will provide a broader range of services, including selling stamps and weighing parcels. Both types of services are longstanding, but neither appears to be obliged by statute.

In sum, the legal obligations imposed on the Postal Service with respect to access to universal services appear to be minimal. There are no legal measures governing access by public collection boxes or personal mailboxes. While procedural requirements and appropriations provisions may “discourage” the closure of small post offices, there exists no legal obligation for the Postal Service to maintain a specific number or distribution of post offices or other access facilities.

Congress to refrain from adding amendments to annual Postal Service appropriations bills that discourage post office closings and freeze service levels at the 1983 level.” Postal Service, *Transformation Plan* 52 (2002).

⁵⁷⁴ 39 U.S.C. § 404(a)(1) (2006).

⁵⁷⁵ Docket C2001-1, “Commission Report: Complaint on Sunday and Holiday Collections,” at 1-3 (2002).

8.4 *Obligation to provide delivery of mail transmitted by universal services*

The postal law authorizes the Postal Service “to provide for the . . . delivery . . . of mail”⁵⁷⁶ and obliges the Postal Service to “deliver throughout the United States . . . written and printed matter, parcels, and like materials.”⁵⁷⁷ Beyond this, however, the postal law is silent on the mode or frequency of delivery which the Postal Service is obliged to provide.

Based on longstanding practice, it is evident that the Postal Service is not obliged to deliver the mail to the door of every household or even to every non-rural household. In rural areas, postal delivery has always been provided to a post office box placed along a main road, which may be some distance from the householder’s residence. The Postal Service may also decline to provide delivery, except to a post office box or general delivery, to persons who live close to a post office and to householders in thinly settled areas.⁵⁷⁸ Since 1960s, the Postal Service has encouraged builders to install cluster boxes in new neighborhoods, or has itself installed cluster boxes, and then required residents in new neighborhoods to accept cluster box delivery.

The courts have recognized that the Postal Service has considerable leeway in deciding how to provide delivery.⁵⁷⁹ The Postal Service may decline to provide door delivery and provide only curbside delivery. It may decline to provide either door or curbside delivery and offer only general delivery in a neighborhood that refuses to provide curbside boxes.⁵⁸⁰ The Postal Service may also decline to provide any delivery to a university-owned apartment building occupied by unmarried students and instead

⁵⁷⁶ 39 U.S.C. § 404(a)(1) (2006).

⁵⁷⁷ 39 U.S.C. § 403(a) (2006).

⁵⁷⁸ See PRC, Docket C81-1 (USPS, following its regulations, declined to extend city carrier delivery service to an address in new residential area where a majority of lots were vacant due to economic downturn).

⁵⁷⁹ *Parsons v. United States Postal Service*, 380 F. Supp. 815 (D.C.N.J. 1974).

⁵⁸⁰ *Grover City v. U.S. Postal Service*, 391 F. Supp. 982 (C.D. Cal. 1975)

deliver the occupants' mail to the university.⁵⁸¹ The Postal Service may provide free post office boxes to householders to whom it does not deliver the mail and yet decline to provide a free post office box to a homeless person who does not have a house to which the mail could be delivered.⁵⁸²

The Postal Service's broad discretion with respect to the delivery of universal services is, however, constrained by one statutory provision: a prohibition against service reductions included in every Postal Service Appropriations Act or budget reconciliation act since fiscal 1981. The current version of this proviso declares that, "That 6-day delivery and rural delivery of mail shall continue at not less than the 1983 level."⁵⁸³ From the legislative history of this provision, it appears that the Congress intended to refer to two distinct delivery services, the six-day delivery service and the rural delivery service. There was no apparent intention to require six-day delivery by rural services where such six-day service was not already provided. There appears to be no public record detailing the state of six-day delivery and rural delivery services in fiscal 1983. The Postal Service has stated to the Commission that it does not know what service levels were provided in 1983.

In sum, the Postal Service is legally obliged to deliver the mail, but law gives the Postal Service broad discretion with respect to the mode of delivery. The Postal Service appears to have discretion to provide delivery to addressees by one of several methods—including door delivery, curbside delivery, cluster box delivery, post office box delivery, or general delivery—based upon its judgment as to the most reasonable and efficient methods. The Postal Service is obliged to maintain six-day delivery and rural delivery at not less than 1983 levels, but since the Postal Service does not know what service levels were attained in 1983, it may be questioned whether this requirement acts as a significant constraint on the Postal Service's operations.

⁵⁸¹ Egger v. U.S. Postal Service, 436 F.Supp. 138 (W.D. Va. 1977).

⁵⁸² Currier v. Potter, 379 F.3d 716 (9th Cir. 2004), *cert. denied sub nom.* Seattle Housing and Resource Effort v. Potter, 545 U.S. 1127 (2005).

⁵⁸³ Consolidated Appropriations Act 2008, Pub. L. No. 110-161, 121 Stat. 1844, 2012-13 (2007).

8.5 Obligations with respect to pricing of universal services

In the pricing of universal services, the Postal Service is obliged to comply with several provisions of Title 39. Some of those provisions apply to all of the products of the Postal Service.

Section 404(d) authorizes the Governors to set rates for the Postal Service and declares that, “Postal rates and fees shall be reasonable and equitable and sufficient to enable the Postal Service, under best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States.” Section 403(a) obliges the Postal Service to establish rates that are “fair and reasonable.”

Section 403(c) requires the Postal Service refrain from unjust or unreasonable discrimination among “users” in the pricing of all products. Section 101(a) declares that “The costs of establishing and maintaining the Postal Service shall not be apportioned to impair the overall value of such service to the people.” Section 101(d) provides that “Postal rates shall be established to apportion the costs of all postal operations to all users of the mail on a fair and equitable basis.”

Other pricing constraints—the “modern system of regulation” established by the Commission in accordance with statutory principles set out in the PAEA— apply to the pricing of market dominant products, both domestic and international. The modern system of regulation specifically includes (i) statutory price caps applied to baskets defined by the classes of mail existing in late 2006 and (ii) restrictions on workshare discounts. If the scope of universal services may be considered as equal to or less than the scope of market dominant products, then the universal service obligation also includes the obligation to comply with the modern system of regulation. As described above, compared to the Postal Reorganization Act, the modern system of regulation significantly limits the flexibility of the Postal Service and the Commission to adjust rates and classifications for market dominant mail.

Special pricing constraints also apply to several individual market dominant products. These pricing rules fall into three categories: (i) rules requiring the Postal

Service to provide service at reduced rates or no charge to the mailer; (ii) rules requiring some type of rate uniformity; (iii) rules specifying charges for inbound international mail.

Reduced rate requirements apply to five types of mail. These may be described approximately as follows:⁵⁸⁴

- *In-county newspapers.* Rates for in-county newspapers shall be set “so that postage on each mailing of such mail reflects its preferred status as compared to the postage for the most closely corresponding regular-rate category mailing.”⁵⁸⁵
- *Classroom and nonprofit publications.* Rates for classroom publications and publications of nonprofit organizations⁵⁸⁶ shall be 5 percent less than for corresponding regular rate mail.⁵⁸⁷
- *Agricultural publications.* Rates for advertisements in agricultural publications shall be 25 percent less than for corresponding regular rate mail.⁵⁸⁸
- *Nonprofit standard mail.* Rates for bulk standard mail posted by nonprofit organizations and qualified political committees shall be 40 percent less than for corresponding regular rate mail.⁵⁸⁹
- *Library mail.* Rates for books, printed music, periodicals, sound recordings, or other library or museum materials sent to or from schools, libraries, museums,

⁵⁸⁴ The rules for eligibility for reduced rates are complex. The descriptions in the text are approximate only. For precise definitions of eligibility for the reduced rate categories, see the cited statutory provisions in 39 U.S.C. (2006), the corresponding provisions in the current Mail Classification Schedule adopted by the Commission, and the Domestic Mail Manual and the International Mail Manual adopted by the Postal Service.

⁵⁸⁵ 39 U.S.C. § 3626(a)(3) (2006).

⁵⁸⁶ A “qualified nonprofit organization” is defined in former § 4452(d) as follows: “religious, educational, scientific, philanthropic, agricultural, labor, veterans, or fraternal organizations or associations not organized for profit and none of the net income of which inures to the benefit of any private shareholder or individual.”

⁵⁸⁷ 39 U.S.C. § 3626(a)(4)(A) (2006).

⁵⁸⁸ 39 U.S.C. § 3626(a)(5) (2006).

⁵⁸⁹ 39 U.S.C. § 3626(a)(6) (2006).

and similar organizations shall be 5 percent less than for corresponding regular rate mail.⁵⁹⁰

In addition, current law requires the Postal Service to transmit a limited number of items—mail matter (except advertising) for blind and handicapped persons and overseas balloting materials—without charge to the mailer, although the government pays the full rate from public funds.⁵⁹¹

There are uniform rate requirements for two types of mail: (1) letters and (2) library and media mail. The uniform rate rule for letters is established by subsection 404(c): “The Postal Service shall maintain one or more classes of mail for the transmission of letters sealed against inspection. The rate for each such class shall be uniform throughout the United States, its territories, and possessions.” The sparse legislative history of this provision and its administration by the Commission point clearly, but less than definitively, to the conclusion that the term “uniform” was intended to require that rates for letters should be non-discriminatory but not distance invariant. It appears that this provision does *not* prohibit the Postal Service from charging rates based upon distance where transportation is a significant cost factor nor prohibit the Postal Service from imposing of a variable surcharge for special handling of letters. It appears that the Postal Service could, for example, introduce a discount for letters posted and delivered in the same postal district. The Postal Service might be able to introduce charges that reflect differences in the cost of delivery provided all mailers are presented with the same prices for delivery in the same places.

A uniform rate rule for library and media mail is established by section 3683. Postage rates for transmission of books, films, and other cultural, educational or scholarly materials sent to or from schools, libraries, museums, and similar organizations⁵⁹² must

⁵⁹⁰ 39 U.S.C. § 3626(a)(7) (2006).

⁵⁹¹ Correspondence of members of the diplomatic corps of the countries of the Postal Union of the Americas and Spain is also carried without charge to the mailer if Congress appropriate funds to cover the cost of postage, but Congress generally does not so. *See generally* 39 U.S.C. §§ 2401(c), 3217, 3403, 3406, 3627 (2006).

⁵⁹² The rules for eligibility for uniform rates under section 3683 are complex. Descriptions in the text are approximate only. For precise definitions of eligibility, 39 U.S.C. § 3683 (2006) and the corresponding provisions in the current Mail Classification Schedule adopted by the Commission the

be “uniform for such mail of the same weight, and shall not vary with the distance transported.” The uniform rate rule covers both “library mail,” which is entitled to reduced rates, and “media mail,” which is not. The uniform rate rule for library and media mail, unlike the corresponding rule for letters, requires that rates “not vary with the distance transported.”

A final category of rate constraints pertains to inbound international letter post and parcel post items. The 2004 Universal Postal Convention, currently in effect, obliges the United States government to deliver inbound international letter post and parcel post items. The government, in turn, has apparently appointed the Postal Service to provide this service. Under the terms of the Convention, the Postal Service may negotiate agreements with foreign post offices to establish terms of compensation for the delivery of letter post items. In the recent past, the Postal Service has been able to negotiate agreements with post offices in industrialized countries that account for the majority of inbound letter post and parcel post mail. The current situation, however, has not been disclosed publicly by the Commission or the Postal Service. For letter post and parcel post mail not covered by negotiated compensation agreements, the Postal Service is obliged to accept, with some exceptions (that cannot be quantified), compensation according to the terms of the Universal Postal Convention. Under the 2004 Convention, the Postal Service’s compensation for delivering inbound mail is two-fold: (1) payments which appear to be less than domestic postage for comparable mail⁵⁹³ and (2) an exclusive right to have outbound letter post and parcel post mail delivered by foreign post offices at UPU rates that are often less than domestic postage in the destination countries. Given the lack of transparency with respect to the international postal services, it is impossible to estimate economic value of the compensation received by the Postal Service. Thus, an unknown portion of inbound international letter post and parcel post

Domestic Mail Manual adopted by the Postal Service.

⁵⁹³ The PAEA requires reform of these arrangements. Section 407(c), as amended by the PAEA, requires that in future versions of the Universal Postal Convention, any rate of compensation rate for delivery of inbound international mail set by international agreement shall (1) for market dominant products, be certified by the Commission to be “consistent with the standards and criteria established by the Commission under section 3622,” i.e., domestic postage rates, and (2) for inbound competitive products, not create an “undue or unreasonable preference to the Postal Service, a private provider of international postal or delivery services, or any other person.” 39 U.S.C. §§ 407(b)(1), 407(c) (2006).

mail is subject to price constraints imposed by the Universal Postal Convention, and the net effect of these constraints cannot be evaluated.

The PAEA implies several modifications in the pricing obligations flowing from the Universal Postal Convention. The rates for inbound international mail products, like the rates for domestic products, must cover attributable costs.⁵⁹⁴ Since the PAEA is a Congressional statute subsequent to the 2004 Universal Postal Convention, its provisions apparently trump contrary provisions of the Convention. The 2008 Universal Postal Convention becomes effective on January 1, 2010. At this point, the PAEA requires that the compensation received by the Postal Service for the delivery of inbound market dominant products must, in addition to covering costs, be “consistent with the standards and criteria established by the Commission” for domestic market dominant products.”⁵⁹⁵ For inbound competitive products, the attributable cost will continue to be an obligatory requirement. This obligation is reinforced by another provision introduced by the PAEA that prohibits the government from participating in an agreement that will “grant an undue or unreasonable preference to the Postal Service, a private provider of international postal or delivery services, or any other person.”⁵⁹⁶ As noted above, this provision may imply that inbound competitive products should not be considered part of the universal service obligation after 2009.⁵⁹⁷

⁵⁹⁴ 39 U.S.C. § 3633(a)(2) (2006) requires the rates for each competitive product to cover its attributable cost. In addition, 39 U.S.C. § 3622(c)(2) (2006) also seems to require the rates for each market dominant to cover its attributable cost. *See* National Association of Greeting Card Publishers v. United States Postal Service, 462 U.S. 810, 820 (1983) (“Of the factors set forth in § 3622(b), only subsection (b)(3) is styled a ‘requirement.’ With the approval of both Courts of Appeals, the Rate Commission has concluded that notwithstanding its placement as the third of nine factors, this distinction dictates that ‘attribution’ and ‘assignment’ define the framework for ratesetting. In addition, the Rate Commission takes the view that ‘causation is both the statutory and the logical basis for attribution.’ PRC Op. R74-1, p. 110. The parties do not dispute these premises, and we see no reason to question them.”).

⁵⁹⁵ 39 U.S.C. § 407(c)(1) (2006). As modified by the PAEA, section 407(c) requires Postal Regulatory Commission to submit its views on whether rates and classifications established in the 2008 Convention are “consistent with the standards and criteria established by the Commission under section 3622” and requires the Secretary to “ensure that each treaty, convention, or amendment concluded under subsection (b) is consistent with the views submitted by the Commission” absent a finding of overriding foreign policy or national security considerations.

⁵⁹⁶ 39 U.S.C. § 407(b)(1) (2006).

⁵⁹⁷ Of course, if the Universal Postal Convention (2008) is inconsistent with specific provisions of the PAEA and considered to trump the PAEA, then the requirements of the PAEA may be disregarded with respect to inbound international mail.

In sum, current law imposes substantial and multiple obligations on the Postal Service with respect to the pricing of universal services. These include requirements relating to non-discrimination, transparency, cost-based pricing, preferential rates for specific products, uniform rates for specific products, statutory price caps set at the class level, discount (or workshare) pricing, and pricing inbound international mail and additional regulatory requirements with respect to the structure and effects of the prices of market dominant products.

8.6 Obligation to provide universal service of a specific quality

Section 403(a) of Title 39 requires the Postal Service to provide “adequate and efficient postal services.” Subsection 101(a) declares that the Postal Service “shall provide prompt, reliable, and efficient services.” Section 3661(a) requires the Postal Service to “develop and promote adequate and efficient postal services.” These general statements do not distinguish between universal services and other postal services. Given the need to defer to the Postal Service’s discretion to manage its operations, these general statements cannot be considered to impose obligations with respect to quality of service.

Other parts of Title 39 require a particularly high quality of service for letter mail, but it is open to question whether these provisions to impose obligations with respect to a universal service. Subsection 101(e) states that the Postal Service “shall give the highest consideration to the requirement for the most expeditious collection, transportation, and delivery of important letter mail.” Subsection 101(f) requires the Postal Service to adopt transportation methods “designed to achieve overnight transportation to the destination of important letter mail to all parts of the Nation shall be a primary goal of postal operations.” The particular need to maintain a high quality of service for letter mail is noted again in section 404(c), which directs the Postal Service maintain one or most classes of mail for letters sealed against inspection and that “one such class shall provide for the most expeditious handling and transportation afforded mail matter by the Postal Service.” All of these provisions were included in the Postal Reorganization Act of 1970, when they undoubtedly referred to first class mail. Today, however, the postal product offering “most expeditious collection, transportation, and delivery of important letter mail” is expedited mail. Expedited mail is a competitive product. While the range of

products within the scope of universal service is unclear, as discussed above, one plausible interpretation of the law would suggest that competitive products should not be considered universal services.

Two provisions in Title 39, however, imposed definite—but relatively light—obligations with respect to the quality of universal services. Section 3661 requires the Postal Service to seek an advisory opinion from the Commission before making any change “in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis.” Since 1971 this procedure has been used rarely by the Postal Service and was disregarded in at least one instance (reductions in access via public collection boxes) when, in the view of the Commission, it should have been invoked. Section 3691, added by the PAEA, requires the Postal Service to promulgate “modern service standards.” The Postal Service has interpreted this provision to require publication of its “stated goals” for transit times of different products. Thus, present quality of service standards are not enforced by penalties, do not address service elements such as access and delivery, and may be revised at the discretion of the Postal Service. The obligatory aspect of modern service standards is minimal.

8.7 Protection of a user’s right to universal service

Section 3662 of Title 39, introduced by the Postal Reorganization Act, provided for a procedure for individuals to seek administrative enforcement of universal service obligations. In 1971, however, the Commission adopted rules of procedure according to which the Commission declined to entertain complaints relating to an “individual, localized, or temporary service issue not on a substantially nationwide basis.” This has effectively limited the ability of an individual to apply to the Commission for enforcement of a USO in a specific situation.⁵⁹⁸ The courts, too, have been reluctant to respond to individual complaints about alleged lapses in the provision of universal services. In the PAEA, Congress revised the complaint procedure to exclude from the Commission’s jurisdiction most of the provisions which relate to universal service except for those limiting the Postal Service’s rate setting authority. In sum, current law does not

⁵⁹⁸ The Commission is currently reconsidering its complaint procedures in docket RM2008-3.

appear to offer an individual any ready or predictable means of enforcing universal service obligations as they may apply in specific situations.

8.8 *Summary: a "quasi-USO"*

The United States Postal Service was established “to provide postal services to bind the Nation together” through the supply of “prompt, reliable, and efficient services to patrons in all areas” with particular attention to ensuring “a maximum degree of effective and regular postal services to rural areas, communities, and small towns.” The Postal Service must transmit “written and printed matter, parcels, and like materials” and “provide types of mail service to meet the needs of different categories of mail and mail users” by establishing a postal system that serves “as nearly as practicable the entire population of the United States.” This is no question that the Postal Service is legally “obliged” to provide a “universal postal service” throughout the United States even though Title 39 does not once use the term “universal service.”

At the same time, Title 39 and other U.S. laws do not currently provide a complete or coherent description of the universal postal services which the Postal Service is obliged to supply to the nation or which the government is otherwise prepared to guarantee. Current postal laws were never intended to do so. The bulk of the statutes which are now interpreted as creating a universal service obligation were enacted in 1958 as an attempt by one Congress to influence the ratemaking decisions of future Congresses. These statutory phrases were reenacted in the Postal Reorganization Act of 1970 as a statement of general goals and objectives, not as a set of specific service requirements to be met by the Postal Service. Indeed, ever since enactment of the Postal Reorganization Act, there has been strong opposition to the adoption of specific service requirements for the Postal Service. This opposition has been grounded at least in part in the view that such operational requirements would hamstring the ability of the Postal Service to manage postal operations and indicate a retreat from the achievement of establishing a more “business-like” Postal Service. In the face of such opposition, Congress has not tried to define precisely what types and levels of postal services the Postal Service is obliged to provide and how such an obligation might be enforced. Nor

has Congress delegated to the Commission (or other government agency) authority to give specific definition to the generalized obligation found in current statutes.

Although Congress has not sought to provide a complete definition of the universal service obligation, it adopted some statutes that specific obligations to deal with specific circumstances. Principally, it appears that the Postal Service is obliged to provide “six day delivery and rural delivery of mail” at no less than the 1983 level, to provide postal services for certain types of types at reduced or geographically uniform rates, to follow certain procedures in closing post offices, and to price market dominant products in accordance with price caps defined by reference to services and prices existing in December 2006.

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Note on citations to United States Code

This study refers to several versions of the United States Code (U.S.C.).

The U.S.C. is prepared by the Office of the Law Revision Counsel of the U.S. House of Representatives. A complete edition is published every six years and updated with annual supplements. The 2006 edition of Title 39, U.S.C., includes amendments by the Postal Accountability and Enhancement Act of 2006. It was posted on the Internet on Nov. 20, 2008, and citations to it have been incorporated into this paper. The 2000 edition of Title 39, U.S.C., through Supplement V, sets out the pre-PAEA version of Title 39. Thus, for example, "39 U.S.C. § 601(b) (2000 & Supp. V)" refers to the pre-PAEA version of section 601(b); "39 U.S.C. § 601(b) (2006)" refers to the post-PAEA version.

In addition, between 1971 and 1977, the Senate Committee on Post Office and Civil Service annually published updated versions of Title 39 as committee prints. In 1973, the Senate committee published a version of Title 39 as it existed prior to the Postal Reorganization Act of 1970. The Senate Committee on Post Office and Civil Service was abolished in January 1977, and the House Committee on Post Office and Civil Service took up the practice of publishing updated versions of Title 39 as committee prints at irregular intervals, apparently beginning in 1979. Most of these committee prints are available in electronic format from William S. Hein & Company whereas electronic versions of the corresponding editions of the U.S. Code are not available. It will therefore be convenient to refer to these committee prints for versions of the United States Code prior to the 1990, the earliest version of the code available from the House. The following codifications are especially useful for this study: (1) 1960 postal code as amended to 1970, "39 U.S.C. (pre-PRA 1970 ed., S. Comm. Print, 1973)"; and (2) Postal Reorganization Act of 1970 as enacted: "39 U.S.C. (Feb. 28, 1971 ed., S. Comm. Print 92-1, 1971)." See the following list of references to publication details.

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