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# Historical Development of a Universal Service Obligation in the United States

James I. Campbell Jr.

## 1. INTRODUCTION

In postal parlance, a “universal service obligation” or “USO” is an obligation to provide a specific level of postal service throughout a national territory. Over the last two decades, as governments have given their post offices more commercial freedom and abolished the postal monopoly and other legal privileges, they have also found it necessary to define a USO. The USO is, in effect, a social contract between government and its citizens, defining what level of service government ensures will be maintained. In most postal reform countries, government reserves the right to contract out these obligatory services to any delivery service it chooses. As a practical matter, however, it is invariably the national postal operator — now corporatized and perhaps privatized — that is responsible for almost all of the USO. The USO thus serves as well as a contract between government and the national postal operator. Like any contract, if well drafted, the USO protects both sides of the bargain. Government’s promises to the citizenry are upheld, and the national postal operator has a clear understanding of what is required and appropriately compensated for services rendered.

In the United States, there is long tradition of efficient and affordable postal service throughout the nation. The United States Postal Services (“USPS”) is obliged to maintain this service in the sense that if it were so foolish as to suspend any significant

portion of the service Congress would force restoration very quickly. These self-evident facts of postal existence have lead many observers to speak confidently of the “USO”. In 2003, the report of the President’s Commission on the United States Postal Service used the term “universal service” or its equivalent more than 80 times. In reports on the bills that would become the Postal Accountability and Enhancement Act of 2006, congressional committees referred to “universal service” more than 40 times.

What is the USO and where did it come from? In fact, despite near universal concern about the fate and future of the “USO,” the scope and content of this seemingly legal concept is far from clear. The postal laws of the United States—unlike those of almost all other industrialized countries—include no statutory or regulatory definition of “universal service”.

This paper summarizes the historical development of the laws which people have in mind (apparently) when they speak of a USO. The paper seeks to clarify precisely which services USPS, and its predecessor the Post Office Department, have been obliged to provide and which services could be adjusted in response to shifts in public demand or financial resources. Section 2 describes the early development of the national post office as a system of post roads and post offices. Sections 3 and 4 recount the origins of postal delivery services, first in cities and then in rural areas. Section 5 summarizes the evolution of different types of postal services. Section 6 explains the development of the Postal Policy Act of 1958, the first official statement of national postal policy and the origin of many phrases considered by some to announce a national USO. Sections 7 and 8

describe the last two major postal reform acts, the Postal Reorganization Act of 1970 and the Postal Accountability and Enhancement Act of 2006, and their effects on the modern concept of a USO. Section 9 offers conclusions. Overall, the paper argues that the legal obligations of USPS are, for the most part, the ill-defined remnants of historical happenstance. To ensure an acceptable and appropriate level of universal postal service for the future, at reasonable cost, it may be time for lawmakers and the general public need to express more clearly what they really need.

## 2. POST ROADS AND POST OFFICES

The concept of a postal service that collects from and delivers “to everyone everywhere everyday” (a USPS slogan) is a relatively new idea in American postal law. When the United States was established in the late eighteenth century, the idea of a postal service was far different. A “postal service” was a service for transporting a government “mail,” or pouch, containing letters between cities. The mail was transmitted by means of a series of “posts,” or relay stations, located along “post roads.” The mail was conveyed by walking messengers (a “foot post”) or mounted riders (a “horse post”) or, as the eighteenth century progressed, by a “stage coach”. There was no collection or delivery. Letters were posted or collected at a “post office,” commonly a tavern or general store.

Since a postal service was the only means of regular long distance communications, it was of crucial importance to government. The Post Office was originally established by the Continental Congress on July 26, 1775, three months after the battles of Lexington and Concord and almost a year before the Declaration of

Independence. In 1789, the first Congress elected under the Constitution continued the Continental Post Office while it debated how the new Post Office should be organized.

The first act of Congress specifying the format and duties of the Post Office was adopted in 1792. Although derived from English precedents, early American postal laws soon assumed a more democratic flavor. Most importantly, Congress admitted newspapers to the post for the first time. From the earliest days of the Republic, political leaders stressed the need to spread news about current events throughout the new Nation to generate a sense of community. At this time, a newspaper was a single sheet of paper printed on both sides by hand press. The maximum postage rate for a newspaper was 1½ ¢ per sheet (rates varied by distance). By comparison, letters were discouraged by exceedingly high postage rates, varying from about 6¢ to 25¢ per sheet of paper. In the American democratic experiment, the Post Office was the first national broadcast network.

Congress decided that it, not the President or Postmaster General, would decide on the location of new post roads and, hence, the scope of postal service. The total length of post roads in use increased 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*. In 1874, the list of post roads required a separate volume of 343 pages. Congress continued to designate individual post roads by statute until almost the end of the nineteenth century. After the early days, however, the Postmaster General decided which postal roads would actually be placed in service. In 1884, Congress finally declared “all public roads and highways

while kept up and maintained as such are hereby declared to be post routes.”

### 3. CITY DELIVERY SERVICES

At first, almost all intercity letters were collected at the post office by the addressee, who paid the postage. Although it was possible to prepay postage, it was not the custom. Some letters were delivered to recipients in the environs of a post office by messengers informally appointed by the local postmaster. Local “letter carriers” were not salaried employees of the Post Office but paid 2¢ per letter by the addressee. A person could also drop a letter at the post office for later collection by someone residing in same city. For each “drop letter,” the postmaster received 1¢. Custody of drop letters and delivery by letter carriers were not “postal” services, and letters so handled were not “in the mail.”

Local collection and delivery services were pioneered not by the Post Office, but by private companies called “penny posts” operating in New York City and other major cities beginning in the 1840s. The Post Office’s first foray into local delivery was taken in the wake of the postage reduction act of 1851. That act halved the drop letter rate to 1¢ and gave the Postmaster General authority to establish “convenient places of deposit” and to designate “post routes” within cities. By 1859, the Post Office had established delivery systems in fourteen cities. In that year the Post Office delivered over 11 million letters, newspapers, and pamphlets, but almost all were intercity items.

Not until 1863 did Congress initiate true local postal service by authorizing “free city delivery” in major cities. “Free” referred to delivery without a separate charge added

to the prepaid charge for “postal” services, then 3¢ per half ounce. The geographic scope of the city delivery system was left to the discretion of the Postmaster General. It could be established wherever the city carrier system was “perfected.” The 1863 act also required prepayment of local letters—“letters not transmitted through the mails”—at a standard rate of 2¢ per half ounce. Local delivery and intercity transportation of the mail were not viewed as a unified service. In effect, the Post Office operated two complementary businesses: the postal service and local delivery services.

City delivery was extended in stages over the next two decades. In 1865, Congress made free city delivery mandatory in every city with more than 50,000 residents. In 1879, Congress authorized, but did not require, the Postmaster General to extend the city delivery system to cities with 20,000 or more residents. In 1887, the Post Office was authorized to extend service to cities and towns with not less than 10,000 residents and from post offices with gross revenues of not less than \$10,000. With such authority, the Postmaster General expanded the scope of the city delivery as demand increased and funds became available. City delivery grew linearly up to World War II. In 1887, there were 189 city delivery offices; in 1900, 1,440 offices; in 1920, 2,086, and in 1945, 3,884 offices.

#### 4. RURAL AND VILLAGE DELIVERY NETWORKS

In 1890, about 19 million of the Nation's 76 million inhabitants enjoyed city delivery service. Members of Congress from rural districts argued that it was inequitable

to provide daily delivery to city households while requiring country residents to travel, often many miles, to retrieve their mail. The Post Office, however, resisted calls for a rural delivery service on the grounds that costs would greatly exceed revenues. Finally, in 1896, Postmaster General William Wilson agreed to experiment with “rural free delivery” or RFD service after Congress provided enough money for a thorough test.

Rural delivery proved a success. More delivery points generated more mail. In 1902, Postmaster General Henry Payne declared that RFD should be adopted as a permanent service. He concluded, however, that RFD could feasibly serve only about one-third of the national territory (excluding Alaska) and that it was already serving one-third of that area.

Congress left the geographic scope of RFD service to the discretion of the Postmaster General. The Post Office, in turn, depended upon citizens to initiate RFD by filing a petition when three-quarters of residents were willing to receive mail by delivery and mailboxes were ready. By 1906, the number of petitions had peaked, and RFD was substantially in place. Daily service was provided on almost all routes, but the Post Office reserved the right to reduce service to three days per week if patronage lagged. As RFD expanded, the Post Office closed small “fourth class” post offices, usually agencies in stores.

Establishment of the RFD system was heavily influenced by politics. Republicans controlled the presidency and both houses of Congress until the election of 1910. 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 in operation even after

they had been approved by the Post Office. Election of Democrat Woodrow Wilson as President in 1912 failed to alleviate the situation. Wilson's Postmaster General, Albert Burleson, was determined to make the Post Office more self-sufficient, and his determination set the stage for the first major confrontation over what might be called the "USO."

To make rural routes more efficient, Burleson decided to make greater use of automobiles. This innovation was strongly opposed by farmers and rural postmen. Consolidating and motorizing routes meant that rural carriers were displaced. Mailboxes had to be moved to different, sometimes more distant, roads. Farmers resisted motorized routes that started from a distant post office because the farmer's postal address was no longer associated with his local village. Congress was deluged with complaints.

In 1916, Congress stepped in to control the rural free delivery program and slow introduction of motorized vehicles. The House added a provision to the postal appropriations bill for 1917 that prohibited use of motor vehicles to serve rural routes unless approved by a majority of households served. The Senate added an amendment by Democratic Senator Thomas Hardwick of Georgia that required that horse-drawn routes must be between 24 and 36 miles in length and motorized routes between 50 and 75 miles. The Postmaster General was directed to reorganize the RFD system accordingly. The irrational result was that it was impossible to establish a route between 36 and 50 miles in length, a limitation that would handicap postal operations until 1925.

The Hardwick amendment included the seminal declaration, "*That rural mail*

*delivery shall be extended so as to serve, as nearly as practicable, the entire rural population of the United States.*” This the first and only time Congress specified the geographic coverage of RFD. It is the closest that Congress came to declaring a USO until 1970. A review of congressional debates suggests that Senator Hardwick’s intent was 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. Hardwick stressed that this provision was a “a mere statement of policy; it is nothing else except that,” but he also noted that committee members 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.”<sup>1</sup>

In its annual report for 1916, a year after the Hardwick amendment, the Post Office summed up its efforts to provide the level of service required. Postal officials estimated that mail was delivered to about 61 percent of the *rural* population, 26 percent of the national population. Other rural residents were either served only by fourth class post offices or not served at all.

About this time, postal delivery came to villages as well. “Village delivery” referred to delivery of mail in towns too small to qualify for city delivery, i.e., towns having less than 10,000 residents. Not until 1912 did Congress authorize the Post Office to experiment with postal deliveries in villages; village delivery made permanent in 1916. Again, Congress left the scope and parameters of service up to the discretion of the Postmaster General. There was never any thought of delivering the mail to every

household in a village, and to this day village residents living near a post office must collect their mail from the post office.

## 5. POSTAL RATES AND SERVICES

The range of rates for specific types of postal services also grew by accretion. Rates were controlled by Congress more directly than the geographic scope of service.

At first, the Post Office had only two rate classifications: a basic rate for letters and a steeply discount rate for newspapers. Magazines and pamphlets were admitted to the mails in 1794, but only if they could be transported conveniently.

In postal acts enacted in 1845 and 1851, postage rates for letters were reduced drastically. Weight-based rates (replacing rates per sheet) and less expensive paper led to introduction of envelopes (early letters were folded and sealed with wax). Prepayment of letters was encouraged by discount and then, after 1855, required. “Cheap postage,” as the movement was called, shifted the center of gravity of the postal service and precipitated a revolution in personal communications. Suddenly, ordinary Americans could correspond with one other across the country practically and inexpensively. As historian David Henkin has put it, “The dates 1845 and 1851 thus stand at the center of a revolutionary era in nineteenth-century U.S. history, when a critical mass of Americans began reorganizing their perceptions of time, space, and community around the existence of the post.”<sup>2</sup>

The preferential rates for newspapers adopted by the founding fathers gave rise to

a perpetual political debate over what other types of publications deserved similar preferential treatment and which did not. A discounted rate for advertising mail originated in the inability of Postmasters General and Attorneys General to decide whether a “price current,” a list of current market prices, qualified for “newspaper” postage or not. In 1845 Congress added a less-than-newspaper discount for “all printed or lithographed circulars and handbills or advertisements, printed or lithographed on quarto post or single cap paper.” This was the beginning of what became third class mail, called “standard mail” after 1996.

The 1845 act also ended the condition that magazines and pamphlets could be transmitted by post only when there was space available and instead added a provision giving letter mail priority over other types of mail. The 1845 act further provided free postal transportation for newspapers transmitted less than thirty miles, 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 forerunner of “second class” mail, called “periodicals” after 1996.

Postal rates were not collected into “classes” until 1863, in the same act that introduced free city delivery. In this act, the first class included letters, and the second class periodic publications. The third class included not only non-periodic printed matter but also other mailable matter including seeds and bulbs. Third class thus replaced the letter rate category as the catch-all category. In 1879, Congress replaced the 1863 scheme with four classes of mail. First class mail was defined as “written matter;” second class, “periodical publications”; third class, “miscellaneous printed matter”; and fourth class,

“merchandise.” The 1879 mail classification system lasted until 1996.

The first nationwide geographically uniform rate for letters was adopted in 1885. In that year, Congress reduced the rate for intercity letters to 2¢ per ounce and set the “drop letter” rate at 2¢ per ounce for cities and towns where free city delivery was available. 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 for almost five decades (except for a temporary increase to 3¢ during World War I). Nonetheless, a uniform rate for letters was not seen as an inviolable principle. In 1932, in response to the budget deficits of the Great Depression, Congress added a one-cent surcharge to the first class letter rate, resulting in a 3¢ stamp. The next year, when utilities and department stores turned to private delivery services, Congress returned to the 2¢ stamp for local letters while retaining the 3¢ national letter rate. The local/national rate structure remained until June 1947, when Congress applied the 3¢ rate to all letters.

Although there were several steps to the Post Office’s entry in the parcel business, the key date was 1912. By the mid-1800s, the Post Office had become a conduit for transmission of seeds, bulbs, books, and other things weighing up to three or four pounds. In 1912, Congress expanded fourth class to include parcels exceeding four pounds. Expansion of parcel post was due to several factors. 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, 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.” By 1918 the weight limit had been increased to seventy pounds for local parcels and fifty pounds nationwide.

Discounts for the mail of non-profit institutions originated in World War I. In a bill raising taxes to pay for war-related activities, Congress introduced higher rates for the advertising content of second class publications to narrow the difference between 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 societies by exempting such publications from the new rates for advertising content.

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

## 6. POSTAL POLICY ACT OF 1958

After the end of World War II, Congress proved unable to continue management of the Post Office Department. The essential problem was that Congress repeatedly raised

wages for postal employees but was unable to agree on rate increases to pay for increased wages.

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. The deficit was about \$590 million. According to the accounts of the Post Office, all categories of mail were losing money except for first class letters.

President Harry Truman's Postmaster General, Jesse Donaldson, who took office in December 1947, believed that there should be a "proper business relationship between income and expenditures." 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 ignited a political firestorm by ending 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.

While all sides 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. 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.

In 1953, the Senate established an Advisory Council of prominent citizens to advise on postal policy. This was the first of several citizens' committees that have periodically helped to reshape national policy over the last four decades. The leader of the Advisory Council was 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.

In January 1953, the Advisory Council issued a 364-page report. The lead recommendation 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?

The Advisory Council answered its own question by proposing a statement of national postal policy that began, "*the Post Office Department is fundamentally a public service to the people of the United States and should be so considered.*"<sup>3</sup>

The Advisory Council resolved the problem of how to apportion needed rate increases by urging recognition of the—historically questionable—principle that “the

Post Office Department was established and is designed primarily for the handling of first-class mail.” Hence, the Advisory Council urged, first class rates should cover all fixed costs. Rates for other classes of mail should reflect incremental costs, except rates for certain mail categories should be discounted to stimulate their contribution to the general welfare, e.g., low rates for periodicals, newspapers, books, and mail for the blind. Public funds should be used to compensate the Post Office for several types of costs such as preferential rates, subsidies for airlines, international mail services, and “any expenditures which can be justified only on a national welfare basis” such as the costs of small post offices, rural delivery services, and “star route” services to rural areas. The Advisory Council recommended all postage rates should be set by Congress, divesting the Interstate Commerce Commission of authority over parcel post rates.

Meanwhile, President Dwight Eisenhower, who took office in January 1953, echoed President Truman’s call for postage rates that covered costs. For five years, Congress was unable to agree on rate increases despite passing several wage bills. In general, the Senate favored the approach of its Advisory Council while the House supported an approach that distributed higher rates over several classes of mail. The result was a compromise, the postal act of 1958. In broad terms, the House got a moderate increase in the first class stamp, raised to 4¢, and the Senate got the first ever statement of national postal policy.

The postal policy title, separately named the “Postal Policy Act of 1958,” is the ultimate source for much of what is considered by many to express a USO. Stated in

current terminology, the basic decisions of the 1958 act were as follows. First, postal costs deemed to be public service costs were to be paid from public funds. Second, 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 to pay a more-than-proportional share of institutional costs but not all of them. Fourth, relationships between rates for different classes of mail should reflect eight statutory factors. The 1958 act left unresolved whether rates for each category of mail should cover attributable costs, a principle strongly opposed by magazine publishers.

The Postal Policy Act of 1958 did not address all facets of postal service, only rates. It did not, for example, specify criteria for the geographic scope of postal services, access to postal services, mode or frequency of delivery, or quality of service. Nor did the act impose obligations on the Post Office. Since Congress set postage rates, the Postal Policy Act of 1958 was addressed to future Congresses, not the Post Office. That Congress would relinquish authority over postage rates in only a dozen years was wholly unforeseen. Postal policy debates of the 1950s did, however, explore in detail the scope and financing of “public services” provided by the Post Office. The major public service was thought to be rural postal service, although the net cost of such services was unclear given the state of postal accounting. There was widespread agreement that once properly calculated, public service costs should be charged to taxpayers, not mailers. There was virtually no mention of the postal monopoly as a means of financing public service costs.

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 salaries

consumed almost all of this. Moreover, some public service subsidies authorized by the 1958 act were unclaimed by the Post Office due to inadequate accounting.

In 1962, Congress not only raised postage rates but also modified the Postal Policy Act of 1958. The first class stamp price was increased to 5¢ and other rates raised, although increased revenues were again largely offset by increased wages. More significantly for postal policy, Congress revised the terms of the 1958 act to make clear that the Post Office was to calculate losses on public services by subtracting revenues earned from the fully allocated costs, not from the (far lower) revenues that would have been earned from similar postal services. Congress also explicitly added rural service to the list of public services. The bottom line was that 10 percent of the cost of the star route system and third class post offices and 20 percent of the cost of fourth-class post offices and rural routes were now considered public service costs. Public service payments jumped from \$63 million 1962 to \$413 million 1963. Even so, the 1962 amendments failed to stop the red ink at the Post Office. Between 1962 and 1967, the Post Office ran up deficits in the range of \$200 to \$500 million despite public financing equal to about 11 percent of revenue.

#### 7. POSTAL REORGANIZATION ACT, 1970

On April 5, 1967, the President Lyndon Johnson asked Congress for higher postage rates. At the same time, he established the President's Commission on Postal Organization, a committee of ten prominent citizens. The new commission was heavily

laden with representatives from big business and led by Frederick Kappel, former chairman of AT&T. Its mission was to examine the need to transform the Post Office Department into “a Government corporation, or such other form of organization as the Commission may consider desirable.” In short, the job of the Commission was to find a way to end Congressional management of the Post Office.

In June 1968, the “Kappel Commission,” as it became known, recommended transformation of the Post Office into an independent, “business-like” Postal Service, essentially a government-owned corporation. President Richard Nixon, who took office in January 1969, strongly supported the idea. Postal committee members in Congress, however, were highly skeptical. Postal workers were adamantly opposed. They threatened a national strike if the Nixon proposal was enacted. In the end, the postal unions were placated only by substantial pay increases and role in revising the legislation.

After an intense political free-for-all, the Postal Reorganization Act was signed by President Nixon on August 12, 1970. The Post Office Department was not transformed into a corporation as proposed by the Kappel Commission but replaced with an independent federal agency, the United States Postal Service, which was supposed to operate in a more business-like manner. A second independent federal agency, the Postal Rate Commission, was established to regulate certain features of the national postal service, primarily the allocation of costs and relationships between rates.

As part of the compromises embodied in the 1970 act, the new business-like USPS was subject to several distinctly non-business-like policy objectives and obligations. Many were taken directly from the Postal Policy Act of 1958. These became

the postal policy set out in section 101 of the act and the guidelines for establishing rates and classifications found in sections 3622 and 3623. In addition, the 1970 act added policy prescriptions for which there were no clear antecedents in U.S. postal statutes. These included statutory instructions to: (i) avoid undue or unreasonable discrimination among users; (ii) receive, transmit, and deliver mail throughout the nation; (iii) refrain from closure of small post offices solely for operating at a deficit; (iv) provide a uniform rate for letters; (v) maintain a class for letters sealed against inspection; and (vi) ensure that the rate for each class or type of mail covers its attributable costs. Echoing the 1916 postal appropriations act, the 1970 act enjoined USPS to “serve as nearly as practicable the entire population of the United States,” although the change from “entire *rural* population” to “entire population” eliminated the original reference to the RFD program.

While the Postal Reorganization Act transformed the ratemaking principles of the 1958 act into general service obligations, it failed to emulate the earlier act in providing a mechanism for compensating USPS for provision of non-commercial services. Congress rejected a permanent subsidy to pay for public services (except for a continuing annual subsidy of \$460 million). Nor did Congress embrace the logical conclusion that, as public service financing was withdrawn, USPS should reduce services correspondingly. Congress simply avoided striking a balance between public services and public financing.

In the years following the debut of the USPS, results were disappointing, if not alarming. Rates and wages rose faster than inflation. The postal deficit, far from being fixed, expanded. The Senate postal committee concluded gloomily, “If it were truly a

business, the United States Postal Service would be bankrupt.” These difficulties prompted an extended Congressional review of postal policy. A new commission of prominent citizens was formed, the Commission on Postal Service, but its 1977 report failed to win broad support. In the end, Congress could not agree on whether the solution was to go backwards (by subjecting USPS to more political control) or forwards (by repealing the postal monopoly and making USPS more of a business). Policy debates in the mid-1970s highlighted the ambiguities in USPS’s legislative mandate, but net changes were minor.

The 1970 act divided public funding of USPS into two parts, a “public service” subsidy and a “revenue forgone” subsidy. In principle, the public service subsidy represented compensation for public services other than reduced rates for preferred classes of mail. The 1970 act reduced the public service subsidy in stages to a continuing annual payment of \$460 million after 1984. The revenue forgone subsidy was open-ended. It compensated USPS for the difference between reduced rates required by Congress for certain mail classes and the rates USPS would have charged otherwise.

Beginning in the 1980s, Congress retreated from both promised sources of funding. First, due to government-wide deficits arising from a recession, Congress reduced the public service subsidy more rapidly than provided in the 1970 act. The last public service subsidy was paid in 1982 (after 1984, USPS has declined the permanent annual public service appropriation of \$ 460 million). At the same time, Congress was concerned that reduced public funding might lead USPS to reduce the level or frequency of postal services. Although the Postmaster General assured congressional committees

that no such reductions were intended, Congress added provisions to postal funding acts that obliged USPS to refrain from closing small post offices and declaring that “six day delivery and rural delivery of mail shall continue at the 1983 level.” These provisions have been included in annual appropriations acts ever since, although the precise meaning of these requirements is very unclear (e.g., no one seems to know what levels of service were provided in 1983). Today (in 2009), as USPS is facing both the rise of the Internet and an even more serious economic recession, this ill-considered *ad hoc* provision from three decades earlier restricts the ability of USPS to adjust delivery schedules to reflect diminished postal revenues.<sup>4</sup>

Similarly, in 1986 Congress substantially reduced the revenue forgone funding by adopting a new basis for calculation. In 1993, Congress ended virtually all payments for revenue forgone. Nonetheless, Congress maintained statutory provisions requiring USPS to offer reduced rates for preferred classes of mail. In effect, Congress required USPS to collect the cost of these preferred rates from other mailers.

While Congress thus reasserted control over certain rates and practices of USPS, the 1970 act left individuals with almost no power to require USPS to meet statutory service standards. In judicial and regulatory proceedings since 1970, USPS has not been obliged by law, to any significant degree, to extend services to unserved areas, to locate a post office or collection box in a particular place, to provide delivery in a specific manner, to change the quality of a given service, or to redress a user for lapses in service. Since 1970, USPS has substantially reduced the quality of its delivery service by

requiring addresses to collect their mail from curbside mailboxes or neighborhood “cluster boxes.” Even the legal obligation to maintain rates for letters that are “uniform throughout the United States,” added in 1970, was interpreted by the Postal Rate Commission to permit geographically zoned rates.

#### 8. POSTAL ACCOUNTABILITY AND ENHANCEMENT ACT, 2006

The Postal Accountability and Enhancement Act of 2006 (PAEA) was the first major revision of the nation’s postal laws since 1970. It was eleven years in the making. The House of Representatives began work on a postal reform bill in early 1995.

During public debates over the course of this postal bill, the terms *universal service* and *universal service obligation* first became established in the vocabulary of postal policy. Although policymakers in other industrialized countries commonly referred to the USO, in the United States prior to 1995, there were almost no references to a USO or “universal service” in discussions of national postal policy. USPS introduced this terminology as Congress began to consider postal reform. In its 1996 annual report, USPS referred to “universal service” eight times. For the first USPS referred to universal service as a legal obligation or “mandate”: “*Universal service: USPS’s mandate and commitment to the nation to provide mail delivery service at uniform and reasonable rates to everyone, everywhere, six days a week.*” Since 1996, each annual report has liberally referred to “universal service” and USPS’s “mandate” to provide universal service.

Terms such as “universal service” and “USO” are now used by all participants in

postal policy discussions, including members of Congress, government agencies, postal employees, mailers, and scholars. The concept of a USO has become embedded in minds of policymakers even though it is entirely missing from historical practice or the statute books (“universal service” does not appear at all in Title 39 of the United States). The PAEA left unchanged key provisions relating to the scope of national postal service, including the policy objectives from the 1970 act and the specific requirements included in annual appropriations bills. The only provisions of the PAEA that mention universal service are calls for studies by the Postal Regulatory Commission and the General Accountability Office.

## 9. CONCLUSIONS

What, then, is to be made of the long history of postal laws and short history of the term “USO”?

There is no doubt that USPS, and its predecessor, the Post Office Department were established by Congress to provide postal services to the Nation. In a general sense, USPS is “obliged” to provide a national postal service for that is its purpose. In a more specific sense, however, USPS, like the Post Office before it, has been afforded broad discretion in interpretation and implementation of general statutory objectives. For almost all of the last two and quarter centuries, while Congress has determined the major parameters of postal policy, it has been the Postmaster General who has determined the geographic scope and specific nature of the national postal service. There have been two

important exceptions to this pattern, one traditional and one extraordinary.

The traditional exception is postage rates. From the beginning of the Republic, Congress controlled every element of postage rates. In 1970, Congress delegated much of the ratemaking function to the Postal Rate Commission but retained control over rates for preferred types of mail including newspapers and magazines, the mail of non-profit institutions, and government documents. In the PAEA of 2006, Congress allowed USPS more freedom to make minor adjustments in specific rates while constraining the overall rate structure with a framework of statutory price caps. Since 1993, Congress has declined to compensate USPS for revenue lost in maintaining discounted postage rates for certain preferred mailers.

The second, less traditional exception to the general rule that the Postmaster General has been allowed to determine the specific scope and details of the national postal service is the appropriations provision that has, since the early 1980s, required USPS to maintain postal services at 1983 levels and refrain from closing small post offices. This appropriations rider does not reflect long standing postal policy in the United States or well-considered congressional consideration. It was an *ad hoc* political reaction to an economic downturn. The appropriations “rider” was, and remains, inconsistent with Congress’s customary restraint in defining the outer limits of the national postal system in a country as vast and varied as the United States. Nonetheless the rider remains on the books and significantly hinders the flexibility of USPS to adjust to a rapidly changing postal market.

In sum, the United States has adopted broadly stated policy objectives coupled

with a traditional obligation to provide discounted rates for preferred classes of mail and a less traditional requirement to maintain services at 1983 levels (together with several other lesser or less legally compelling requirements not detailed in this overview).<sup>5</sup> This does not add up to a “USO” in the sense that that term is used in modern postal reform laws. U.S. postal law does not include a social contract which defines what basic postal services all citizens may count on and clarifies the rights and obligations of those—today, the USPS—that must actually provide the services. Universal postal service is defined not by a formal obligation but by the political winds blowing through the halls of Congress on any given day.

There are, however, many examples of how to define a USO in manner that is fairer and more predictable to all concerned.<sup>6</sup> The most obvious is to copy the example of the Telecommunications Act of 1996 . This act authorized the Federal Communications Commission (FCC) to define, and revise periodically, a regulatory definition of universal service in light of statutory policy guidelines and changing public needs. The FCC also has the authority to ensure that the minimum level is provided, if necessary by ordering service providers to do so (and compensating them for their efforts). In the postal world, the German Post Law of 1997 adopts a similar approach. The United States has a long tradition of national postal service and a less extensive history of broadly stated postal policies. It may be time to follow the lead of other sectors and other countries and convert these ingredients into a formal “universal service obligation.”

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## NOTES

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<sup>1</sup>53 Cong. Rec. 9630-31 (1916).

<sup>2</sup>Henkin, *The Postal Age* 3

<sup>3</sup>Advisory Council, *Advisory Council Report* 7 (emphasis added).

<sup>4</sup> See, e.g., Dan Eggen, “Postal Service May Cut Deliveries; Mail Could Arrive Only 5 Days a Week,” *Washington Post*, p. A2 (Jan. 29, 2009).

<sup>5</sup> The most important of these relates to uniformity of rates. Some would argue that USPS is legally obliged to charges rates that either (i) do not vary with distance or (ii) do not vary with destination (same charge for delivery in Montana as in New York). With the exception of a provision requiring nationally uniform rates for books and films, 39 U.S.C. §3683 (2006), it is difficult to find firm statutory support for either position. More involved legal arguments are possible, but addressing them is beyond the scope of this short history.

<sup>6</sup> Options are summarized in the Postal Regulatory Commission, *Report*, pp. 178-81 and App. H, pp. 10-31.