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FORMALIZING THE USPS UNIVERSAL SERVICE OBLIGATION

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EXECUTIVE SUMMARY

The United States Postal Service has roots in American government going back to the Constitution. Today, it remains a deeply popular institution, reaching every address with letter and package services. But as Americans send fewer letters, the agency has fallen on hard times, and the subsidies that allow it to continue to provide universal, low-cost postal services to even the most rural, unprofitable-to-serve places—without annual payments from taxpayers—are drying up.

Exacerbating these fiscal woes, the postal service operates under a cloud of ambiguity as to how it must operate. This is because Congress has never defined what “universal mail service” means, which has left the Postal Board of Governors, the Postmaster General, the Postal Regulatory Commission and the committees of jurisdiction in Congress without guidance on how the agency is to adapt to its changing economics. Thankfully, the nation has precedent in deciding how to provide universal utilities services, both from electricity and telecommunications. Accordingly, by providing a statutory method to reach a formal definition of the universal service obligation, the USPS and its stakeholders would benefit from a clear, predictable picture of how it will look in the coming years.

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INTRODUCTION

Affordable, quick, universal mail has come to be seen as one of the core services provided by American government. Americans send and receive more mail than any other nation. The United States Postal Service (USPS) regularly receives high marks in polls that ask how government agencies are doing. In 2019, for example, a Gallup poll found that 74 percent of Americans believe the agency is doing an excellent or good job.¹ Polls going back to 2007 have found Americans deem the agency the most trusted part of the government.² In fact, it is viewed more favorably than other government bodies, including the National Parks Service, and the Centers for Disease Control and Prevention.³

But polls that show a perennially popular postal service tell us nothing about whether an agency is operating as Congress intends, or whether the path it is on is sustainable in the long term. And, for the USPS in particular, a fall from grace seems to be looming. This is because, for the last decade or so, its finances have been getting weaker as letter mail declines from its 2001 peak.⁴ The swift rise of e-commerce in this period has propped up its balance sheet for now,⁵ but competition threatens to erode the temporary bounty. All the while,

1. Lydia Saad, “Postal Service Still Americans’ Favorite Federal Agency,” Gallup, May 13, 2019. <https://news.gallup.com/poll/257510/postal-service-americans-favorite-federal-agency.aspx>.

2. “USPS rated ‘Most Trusted’ agency,” United States Postal Service, 2007. <https://about.usps.com/postal-bulletin/2007/html/pb22201/news.2.3.html>.

3. “Ratings of federal agencies, Congress and the Supreme Court,” Pew Research Center, Nov. 23, 2015. <https://www.people-press.org/2015/11/23/4-ratings-of-federal-agencies-congress-and-the-supreme-court/>.

4. United States Postal Service, “First-Class Mail Volume Since 1926,” accessed July 15, 2019. <https://about.usps.com/who-we-are/postal-history/first-class-mail-since-1926.htm>.

5. See, e.g., United States Postal Regulatory Commission, “Form 10-K,” 2018. <https://about.usps.com/who-we-are/financials/10k-reports/fy2018.pdf>.

the agency struggles to lower its costs, with billions of dollars in pensions and healthcare promised to postal workers, and the number of addresses it must deliver to continues to grow each year.⁶

Despite the structural problems of the mail industry, Congress has limited how the postal service is allowed to adapt to its changing reality. For example, it is barred by law from reducing the number of delivery days, and has limited power to change prices in response to changing demand for its services. Yet, such a willingness to prescribe how the USPS must operate has not extended to all the problems it faces. Most notably, Congress has never formally defined what “universal mail service” means in America, and this has left the agency, its regulators and postal consumers in flux, without formal guidance on how they should be adapting as the decline of letter mail continues each year.

THE HISTORY OF MAIL SERVICE UNIVERSALIZATION

Universal, federally operated mail service has never been a given in American history. While the Constitution imbued Congress with the right to establish “Post Offices and post Roads,” the document is silent on whether this mandate required any degree of universality or equality in the distribution of postal infrastructure. From the beginning, the concentration of post offices varied dramatically between states and this inequality persisted for most of the 19th century.⁷

Despite substantial inequality in infrastructure access, the notion that national mail systems should reach every address became pervasive as the Post Office Department grew over time. National expansion, war and economic growth meant a greater need for universal, low-cost communication networks. Stamps, as we now know them, were first introduced in New York in 1842, based on a model pioneered in the United Kingdom.⁸ They were rolled out nationwide in 1847. In 1845, Congress passed the first laws that standardized postal rates nationwide.⁹

This initial law prescribed a three-tier postage pricing system. Local letters dropped at the post office for delivery only were charged 2 cents. The rate was 5 cents for letters traveling under 300 miles and 10 cents for those traveling more

than 300.¹⁰ Differential rates were later abolished in 1863, with all letter mail defaulting to the lowest-price category.¹¹

The USPS started home delivery of mail on July 1, 1863 for places where local mail revenues were sufficient to pay for the cost of delivery.¹² By 1864, this meant home service was available in 65 cities. As time passed, mail volumes continued to grow, pushing more and smaller cities beyond the breakeven point for local home delivery.¹³

It was only in 1896 that free delivery to rural addresses began, after Congress legalized the practice in 1893.¹⁴ The coming decades saw the service expand continuously, eventually developing into a mandate to deliver mail to every address in the nation. Not surprisingly, universal, rural home-mail service involved challenges that universal urban home-mail delivery service did not. Before the advent of and investment in modern transportation technologies and infrastructure, the promise of prompt and universal mail service meant the Post Office Department had to innovate. Most notably, it was forced to reckon with the nation’s disparate geography from the technological forefront, rather than piggybacking on the construction efforts of private and state infrastructure owners as it had previously.¹⁵

The process of universalization of parcel service began in earnest in 1913, again after Congress acted to allow the USPS to begin carrying larger and heavier mail.¹⁶ While it began carrying non-letter parcels as early as 1869, the service was not formalized into a separate, universal product offering for almost 50 years.¹⁷ This led the agency to carry merchandise, adding a universal freight service to what had previously been only a universalized letter-based communications business.¹⁸ This universal parcel service eventually evolved into the system we have today.

6. Ibid.

7. See, e.g., Jeffrey Jensen and Adam Ramey, “Going Postal: State Capacity and Violent Dispute Resolution,” SSRN, March 13, 2019, p. 8. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3344347.

8. “History of Stamps,” American Philatelic Society, accessed July 15, 2019. <https://classic.stamps.org/Stamp-History>.

9. “A Century of Lawmaking for a New Nation: U.S. Congressional Documents and Debates, 1774-1875,” *Statutes at Large*, 28th Congress, 2nd Sess., p. 773. <http://memory.loc.gov/cgi-bin/ampage?collid=llsl&file=005/llsl005.db&recNum=770>.

10. Ibid.

11. “Report On Universal Postal Service and The Postal Monopoly,” U.S. Postal Service, October 2008, p. 5. <https://about.usps.com/universal-postal-service/usps-uso-report.pdf>.

12. Ibid.

13. Ibid.

14. Ibid.

15. See, e.g., Richard DeLuca, *Post Roads and Iron Horses* (Wesleyan University Press, 2011).

16. Ibid.

17. See, e.g., U.S. Postal Service, “The United States Postal Service: An American History 1775-2006,” Pub. 100, November 2012, p. 16. https://about.usps.com/publications/pub542/pub542_ch1_002.htm. <https://about.usps.com/publications/pub100.pdf>.

18. Ibid., p. 28.

THE USPS AS A UTILITY

One way to understand the role of a universally-available postal service is as a public utility—which is to say a regulated, often-monopoly industry subject to special government regulation. The Post Office Department, and now the USPS, have held a monopoly on delivery of letter mail for hundreds of years. Monopolization of the mail began when, pursuant to its mandate to establish post offices, Congress passed the Private Express Statutes in 1792.¹⁹ These have since been codified and amended, but the fundamentals of the letter monopoly have remained intact.²⁰ Beyond this, the USPS holds a monopoly on access to privately provided and maintained post-box infrastructure.

Regulation of utilities poses unique challenges for public officials. Monopolies face incentives to maximize factors relevant to their own interests, capturing market surplus that would otherwise accrue to utility consumers or society at large. For the USPS, surplus from the postal monopoly is the funding mechanism meant to subsidize universal service. For the first two centuries of its existence, this worked reasonably well, as growth of mail volumes covered increased costs from expanding universal service demands.

However, reliance on monopoly cross-subsidies is risky. While they have grown for many years, surpluses from the mail monopoly and costs of universal mail service are not automatically linked—which is to say that there has never been a guarantee that the benefits to the USPS from expanded service at the margin will exceed its expanding costs.

The 2006 Postal Accountability Enhancement Act, or PAEA, divided USPS products into two categories.²¹ Monopoly products consist primarily of the agency's letter service, as well as related paper mail services. Competitive products consist of all other services where the agency competes with private companies. These include parcel delivery, express mail, return services and retail services such as packaging supplies. If the USPS were to enter the banking business, as has been suggested, these services would also likely fall into the latter category.²²

The 2006 law also mandated that every individual postal product must cover its associated costs, and that competitive products as a whole must cover the costs associated with

providing them.²³ This provision was designed to regulate the postal monopoly such that its efforts to self-finance with monopoly profits do not create collateral damage to consumers or non-mail shippers. It also works to prevent the USPS from using profits from its monopoly letter business to subsidize non-monopoly revenue streams.

Determining the scope of the postal monopoly in America has traditionally been a decision charged to Congress, although it has delegated some of this authority to the independent regulator—the Postal Regulatory Commission (PRC)—which is set up in the PAEA. Congress has also decided that universal mail service should be offered six days per week, regardless of volume or costs to the USPS. Likewise, it has allowed the scope of USPS products to include packages as mail, subject to the same delivery frequency mandates, and allowed it to carry “extremely urgent” mail as a competitive product.

But while Congress has allowed the USPS to grow in scope, it has not been without limit. Not all freight qualifies for mail service, for example. Packages are also regulated by size (normally 108 inches or 130 inches for light oversize parcels) and weight (70 pounds or 20 pounds for oversize parcels).²⁴

Beyond this, the PAEA's prohibition on cross-subsidization of competitive products acts as an internal check on the growth of USPS product offerings. Beyond the costs competitive products generate, they must also cover an appropriate share of USPS overhead. The appropriate share attributed to any given product has been debated since the law was passed, and for these products, the Postal Regulatory Commission designed a formula that increases the amount of overhead each parcel must cover when USPS market share in the parcel business increases.²⁵

However, with the creation of a regulator for the USPS with authority similar to regulators of other utility industries, the legislature changed the way the scope of the agency was governed, and since its creation in the PAEA, the PRC's role as regulator of the scope of the postal service has grown. For example, in one of its early rulings, the PRC noted that the meaning of the term “postal service” is not frozen in time and accordingly, in coordination with the postal service, it may change the meaning of postal product categories within the bounds of postal law, as defined by Congress.²⁶ And, as

19. See, e.g., U.S. Postal Service, “Understanding the Private Express Statutes,” Pub. 542, June 2014. https://about.usps.com/publications/pub542/pub542_ch1_002.htm.

20. *Ibid.*, pp. 1-4. https://about.usps.com/publications/pub542/pub542_ch1_004.htm.

21. Postal Accountability Enhancement Act (2006). <https://www.congress.gov/bill/109th-congress/house-bill/6407>.

22. See, e.g., Sarah Holder, “Why Cleveland Wants to Bring Back Postal Banking,” *Citylab*, June 4, 2019. <https://www.citylab.com/equity/2019/06/cleveland-post-office-banking-cash-check-predatory-lending/590557>.

23. Postal Accountability Enhancement Act (2006). <https://www.congress.gov/bill/109th-congress/house-bill/6407>.

24. “Physical Standards for Commercial Parcels,” U.S. Postal Service, accessed July 15, 2019. <https://pe.usps.com/text/qsg300/Q201e.htm#1009536>.

25. Postal Regulatory Commission, “Order adopting final rules relating to the institutional cost contribution requirement for competitive products,” Order No. 4963, Jan. 3, 2019. <https://www.prc.gov/docs/107/107901/Order4963.pdf>.

26. Postal Regulatory Commission, “Order and final rule defining the term postal service,” Order No. 1449, Jan. 4, 2006, p. 15. <https://www.prc.gov/docs/107/107901/Order4963.pdf>.

a result, the PRC has been at the center of the debate about what universal mail service means in America. However, now with this independent regulator akin to those that govern other utility businesses in place, a look toward how Congress has worked with other regulators to define universal utilities services could shed light on how it could go about doing the same to reform the universal service obligation.

Precedent from electricity and telecommunications

America has wrestled with the decision of what universal utilities services should look like at various points in its history. As the nation's economy grew and more and more consumers came of means to afford more services, advances in technology and governance brought waves of political demand to universalize access to utilities that were previously only available in limited areas. Among these services were electricity and telecommunications.

The advent and expansion of electricity infrastructure facilitated improvements in both the quality of domestic life and the quantity of potential locations for industrial activity. Early electricity service was centered on dense cities where infrastructure costs could be shared by many people. These profitable-to-serve areas saw early utilities erect poles and string wires in the technology's infancy. But there are only so many places with the density to make such fixed investments certain to pay off.

At the same time, electricity helped power advances in transportation systems. Streetcars proliferated, with more than 22,000 miles of electric rail lines completed by 1902.²⁷ Americans were spreading out geographically. Industry was no longer confined to ports and railheads, and workers were able to quickly commute a few miles from early suburbs.²⁸ The suburbanization of America had a lot of benefits, but it also posed new, but not insurmountable, challenges for utilities.

Perhaps unsurprisingly, electricity companies followed their customers, building power lines to the urban fringes and constructing enough generation capacity to handle the extra load that came with more extensive networks. Progress continued until profits were no longer enough to cover the costs of added infrastructure. Expanding further out into sparsely populated rural areas simply did not make sense for most private electricity firms, although the 1920s saw the development of self-generation of electricity by rural households and the organization of early rural electricity cooperatives.²⁹

27. Brian Cudahy, *Cash, Tokens, and Transfers: A History of Urban Mass Transit in North America* (Fordham University Press, 1990), p. 7.

28. William Fischel, *Zoning Rules! The Economics of Land Use Regulation* (Lincoln Institute of Land Policy, 2015), p. 172.

29. Richard Hirsh, "Shedding New Light on Rural Electrification: The Neglected Story of Successful Efforts to Power Up Farms in the 1920s and 1930s," *Agricultural History* 92:3 (2018), pp. 296–327. www.jstor.org/stable/10.3098/ah.2018.092.3.296.

Despite these private efforts, by 1930, only three percent of farm homes were electrified.³⁰

Franklin Roosevelt's administration saw this lack of universal electricity service as a political opportunity, both to create jobs and expand service. The Rural Electrification Act of 1936 therefore channeled federal funds to rural electricity cooperatives in an effort to universalize access to power infrastructure.³¹ To do so, the act created the Rural Utilities Service (RUS) as part of the agriculture department. These subsidies succeeded in bringing service to more than ninety percent of farm homes within 25 years.³² In the years since, electricity service has been almost entirely universalized with minimal need for new subsidies, although the RUS continues to subsidize loans for rural infrastructure. Faced with a declining need for its services, the RUS has since moved on to providing subsidies for consumer energy efficiency improvements.³³

The proliferation of telephone service followed a similar path from the city centers to the suburbs and into the countryside. Like electricity, the economics of investment in telecommunications infrastructure are better when people are clustered together such that the cost of installing poles and wires is spread over more people. And, the incentive for extending the infrastructure to small towns and rural homesteads breaks down the more spread out people are. Also like electricity, Congress intervened during the New Deal era in an effort to universalize service, although telephone service followed a slightly different model.

For telecommunications, Congress granted AT&T a monopoly on local telephone service in exchange for the promise that the firm would extend service to every town in the nation.³⁴ This included extremely rural places, where it was unprofitable to serve. The paradigm persisted until the break-up of AT&T's monopoly in the 1980s, but was revived in a different form under section 101(a) of the Telecommunications Act of 1996. Today, universal telephone service is governed by Section 254 of the U.S. Code.³⁵

The law tasks the Federal Communications Commission (FCC) with overseeing universal telecommunications service such that rural users have access similar to that of urban

30. Paul E. Anderson, "Sam Rayburn and Rural Electrification," *East Texas History*, accessed July 15, 2019. <https://easttexashistory.org/items/show/73>.

31. "Rural Electrification Act of 1936." <https://legcounsel.house.gov/Comps/Rural%20Electrification%20Act%20of%201936.pdf>.

32. Anderson. <https://easttexashistory.org/items/show/73>.

33. "Electric Programs," U.S. Dept. of Agriculture, accessed June 25, 2019. <https://www.rd.usda.gov/programs-services/all-programs/electric-programs>.

34. See: "Communications Act of 1934," Federal Communications Commission. <https://transition.fcc.gov/Reports/1934new.pdf>

35. "Universal Service," 47 U.S. Code § 254. <https://www.law.cornell.edu/uscode/text/47/254>.

ones. It includes four related programs as part of the FCC's Universal Service Fund that subsidize different groups of people. The most relevant of them is the Connect America Fund, which subsidizes broadband internet service connection for rural users. Notably, Congress did not define "universal service" as related to broadband. Rather, the FCC has defined service standards via the rulemaking process, and periodically updated them as technology improves. Subsidies are distributed via negotiation between the FCC, state public utilities commissions and the independent, nonprofit Universal Service Administrative Company, which oversees program operations.³⁶ This design introduces a degree of federalism into universal telecommunications subsidies that differs from electricity in the past and postal service today.

PATHS FORWARD

Like the changing economics of electricity and telecommunications, the decline in mail volumes and deterioration of the USPS's financial condition will force Americans and their elected leaders to consider what baseline service level is appropriate for a utility. While mail service differs in a number of ways from both of the others discussed, the methods past legislators have used to ensure universal access to utilities could provide guidance for how the USPS's universal service obligation may be formalized and reformed.

At its core, the postal service engages in two types of universal service that share similarities with telecommunications and electricity. First, it provides universal communications services, primarily through its monopoly on letter mail. Second, it provides universal logistics services, which include most of its competitive products, most importantly parcels.

The transformation in mission that the Rural Utilities Service has gone through in the last few decades could similarly help formalize the changing role of the postal service. Like electricity, postal infrastructure has reached the point of saturation and thus there is little need for subsidies to build new post offices or to extend mail service to new communities. Rather, the service has made clear that its mission has changed. With packages making up more of the mail mix each year, a similar transformation may be in order for the USPS. If Congress decides that subsidies for rural packages matter more to rural Americans than mail, it may be appropriate for legislators to formalize the mission change in statute, with targeted and potentially means-tested logistics subsidies for rural households that rely on deliveries. In doing so, Congress could separate subsidies for universal rural logistics from those for universal rural communications services. This would work in concert with USPS existing prohibition on cross-subsidization of competitive products,

and relieve some uncertainty among USPS officials about how invested the agency should be in the rise of e-commerce within the mail mix.

Moreover, precedent from the Telecommunications Act of 1996 demonstrates how Congress can go about reaching a formal definition of "universal mail service." Such a model has a few benefits that could make its adaptation to the new economics of mail easier. By officially empowering the Postal Regulatory Commission to define the meaning of universal mail service, Congress would remove itself from a politically contentious debate that generates rancor with every proposed change. It would also empower a national regulator with authority that complements PRC oversight of other postal standards.

Further, it would give state utility commissions a say in subsidies for rural letter and package service, which could allow service to better adapt to the disparate demands of rural postal consumers, shippers and retailers. In an issue unique to mail, utilities commissions could also be involved in deciding whether subsidies are appropriate for all postal products or just a subset, such as letters and packages, but not periodicals or advertising mail (or any combination thereof). These officials have extensive experience regulating similarly complex markets in electricity, telecommunications and transportation and thus they could give the PRC important insight into how the mail market differs across space in different jurisdictions. Further, it would allow for regular updates as service demands change. And it would give needed clarity to the USPS board, the Postmaster General and other leaders by bringing the definition of universal service into the normal federal rulemaking process.

By formalizing package subsidies or reforming the process of providing universal mail service, postal policymakers would be able to better plan for the future as the mail business changes. Both methods would allow universal pricing of mail to persist, but would break down the existing business model that relies on urban mail to subsidize rural mail. But changing the way universal service is defined is only part of the solution. Any reform that would allow the nation to set out a formal definition would benefit from repeal of statutory rules that prescribe particular business practices to the USPS—most importantly (but not limited to) the existing mandate for six-day-per-week mail delivery. As the gulf between subsidy supply and subsidy demand widens, this change grows more urgent by the year.

CONCLUSION

The decision as to what universal mail service should look like for the next few decades could be made in piecemeal fashion. The Postal Board of Governors could give the USPS guidance on how it should behave within existing constraints.

36. Universal Service Administrative Company, "About," accessed June 15, 2019. <https://www.usac.org/about/default.aspx>.

The Postal Regulatory Commission could use its existing rate-setting authority to more completely account for full costs of universal service, including overhead caused by each postal product class delivered to high-cost areas. And the USPS itself can work to adhere more strictly to existing rules and regulations, including the appropriate logging of time by rural mail carriers, and ensuring that all postal facilities and related contracts in high-cost areas are procured according to postal law. But ultimately, the formal meaning of universal service will be grounded in laws passed by Congress and signed by the president, as they have been for more than 200 years. What history has shown is that universal mail service has meant many different things over the centuries. And now, as the postal service faces the prospects of permanent decline, Congress may see value in giving postal stakeholders some formal guidance on how they should proceed.

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