

Going Postal: What Can Reform do for You?

Lauren T. Andrews

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GOING POSTAL: WHAT CAN REFORM DO FOR YOU?

ABSTRACT

The sending and receiving of post and parcel is a vital aspect of daily living in the United States. Despite this vitality, the setup for post and parcel delivery in the United States has been heavily criticized. This Note, in response to these criticisms, explores whether postal reform is warranted in the United States today. To do so, this Note examines the origins of the public/private dichotomy inherent in the delivery of post and parcel, governmental regulation of the United States Postal Service and its private competitors, and the monopolies possessed by the United States Postal Service. It then analyzes the advantages and disadvantages of the current regime from the perspective of the United States Postal Service's private-sector competitors and consumers. Ultimately, this Note concludes that postal reform is necessary and proposes avenues for such reform.

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INTRODUCTION

Freedom—the word, the premise, the ideal—is a driving, fundamental force in the United States of America. Individual choice was, is, and will remain a vital component of the freedom American citizens hold so dear. The freedom of choice enjoyed by citizens of the United States spans the gamut; we have the freedom to choose who runs our government, what types of clothes to wear and where to buy them, where we live, what we say, what kind of computer we want, whether to own a gun, what religion to practice, and so much more. Yet, in the face of this immense freedom of choice, Americans remain constrained in one significant aspect of daily life: how to mail a letter or other post in a standard-letter envelope.¹ Citizens of the United States have one, and only one, choice: the United States Postal Service (USPS).²

All United States citizens are thus constrained in choosing who delivers their mail. Every citizen must therefore place at least a forty-four-cent stamp on a standard-letter envelope,³ take it to the local Post Office or Post Office Box, and expect it to arrive to its destination in approximately one to three days.⁴ There exist few reasons or opportunities for citizens to divert this monopolized service. A citizen can only do so if urgent delivery is required⁵ or if the citizen ships a package as opposed to post.⁶ Why is

¹ See U.S. CONST. art. I, § 8, cl. 7; FEDERAL TRADE COMMISSION, ACCOUNTING FOR LAWS THAT APPLY DIFFERENTLY TO THE UNITED STATES POSTAL SERVICE AND ITS COMPETITORS 6 (2007), available at <http://www.ftc.gov/os/2008/01/080116postal.pdf> [hereinafter FTC REPORT]; PETER J. FERRARA, FREE THE MAIL: ENDING THE POSTAL MONOPOLY 1 (Peter J. Ferrara, ed., 1990). When used in this Note, a standard-letter envelope is defined in accordance with the standards of the United States Postal Service. The minimum size of a standard-letter envelope is “3-1/2 inches high by 5 inches long by 0.007 inch thick.” USPS, *First-Class Mail Prices*, <http://www.usps.com/prices/first-class-mail-prices.htm> (last visited Feb. 7, 2011) [hereinafter *First-Class Mail Prices*]. The maximum size of a standard-letter envelope is 6 inches long by 4-1/4 inches high. *Id.*

² See U.S. CONST. art. I, § 8, cl. 7; FTC REPORT, *supra* note 1, at 6; FERRARA, *supra* note 1, at 1.

³ *First-Class Mail Prices*, *supra* note 1 (stating that First-Class Mail starts at 44 cents, as long as the weight of the envelope is one ounce or less).

⁴ USPS, *Prices* http://www.usps.com/prices/welcome.htm?from=home_Wouldyouliketo&page=seepricing (last visited Feb. 7, 2011) [hereinafter *USPS Prices*].

⁵ See USPS, UNIVERSAL SERVICE AND THE POSTAL MONOPOLY: A BRIEF HISTORY 16 (2008), available at http://www.usps.com/postallaw/_pdf/UniversalServiceandPostalMonopolyHistory.pdf [hereinafter USPS, UNIVERSAL SERVICE] (defining urgent delivery as delivery “within 12 hours or by noon of the next day”). Thus, if urgent delivery is required, a citizen could opt to use a private carrier such as UPS or FedEx. *Id.*

the postal system in the United States, a country known as a haven for freedom, configured in a manner that inhibits individual choice? What are the origins of this odd public/private dichotomy? Is it a workable system? This Note seeks to address these and other issues.

Without a doubt, the sending and receiving of post and parcel is a vital aspect of daily living in the United States for people from all walks of life, as well as businesses of every color, from mom-and-pop stores to large corporations.⁷ It is also a fundamental aspect of daily life for employees of post and parcel carriers such as the USPS, UPS, FedEx, and other less-than-truckload companies, such as Old Dominion Freight Line, Roadway Express, and Yellow Transportation.⁸ Despite the vitality of the post and parcel industry, the setup for delivery of post and parcel in the United States has its share of problems and has been heavily criticized.⁹ In spite of this criticism, however, some maintain that the public/private dichotomy inherent in the delivery of post and parcel is largely successful, and that it could and should be extended to other vital service sectors.¹⁰

⁶ See USPS, UNIVERSAL SERVICE, *supra* note 5, at 12 (explaining that the Postal Service's monopoly extends to the carriage of *letters*) (emphasis added); UPS, UPS RATE AND SERVICE GUIDE: 2011 DAILY RATES 1 (2011), available at http://www.ups.com/media/en/daily_rates.pdf [hereinafter UPS RATE GUIDE] (referring to shipping packages); FEDEX, FEDEX SERVICE GUIDE: FEDEX EXPRESS AND FEDEX GROUND RATES 3 (2010), available at http://www.fedex.com/us/services/pdf/Service_Guide_2010.pdf [hereinafter FEDEX RATE GUIDE] (discussing the shipment of packages in the United States).

⁷ See USPS, UNIVERSAL SERVICE, *supra* note 5, at 2 ("The United States Postal Service is the one government agency that touches every American on a daily basis.").

⁸ See Pacific Atlantic Freight, *Our Partner Freight Carriers*, <http://www.freightshippingcenter.com/freightcarriers.php> (last visited Feb. 7, 2011) (listing a variety of less-than-truckload carriers). "Less-than-truckload" is a standard industry term for freight carriers that "specialize in shipments under 10,000 pounds." *Trucking Freight Glossary*, LOADEDTRUCK.COM, http://loadedtruck.com/moreinfo/trucking_glossary.html (last visited Feb. 26, 2011).

⁹ See, e.g., FERRARA, *supra* note 1, at 1 (stating that the USPS's monopoly is problematic for a variety of reasons); Rick Geddes, *Postal Reform: Do Vital Economists Reach a Policy Conclusion on Postal Reform?*, 1 ECON. J. WATCH 61, 64, 67, 69, 70 (2004) (summarizing various articles that criticize the current postal regime); David Lazarus, *Postal Service a Vital Option*, L.A. TIMES, Dec. 20, 2009, at B1, B4 (citing various complaints about the USPS). In fact, the federal government itself has begun to recognize the problems inherent in the current postal system. See USPS, *Envisioning America's Future Postal Service*, <http://www.usps.com/strategicplanning/futurepostalservice.htm> (last visited Feb. 7, 2011) (stating that the USPS is at a tipping point for a variety of reasons).

¹⁰ See, e.g., Jason Linkins, *The U.S. Postal Service: A Winning Model for Health Care?*, THE HUFFINGTON POST, Aug. 27, 2009, http://www.huffingtonpost.com/2009/08/27/the-us-postal-service-a-w_n_270366.html (last visited Feb. 7, 2011) (noting that the USPS's infrastructure enables it to transfer mail inexpensively); Steve Losey, *Postal*

This Note addresses the public/private dichotomy inherent in the delivery of post and parcel. Part I focuses on the origins of the public/private setup by looking at the history of the USPS, UPS, and FedEx. Part II provides an overview of governmental regulation of the USPS and private companies, such as UPS and FedEx, that choose to compete with the USPS. It also addresses the USPS's universal service obligation, the monopolies granted to the USPS by the United States Constitution, the exceptions to those monopolies, and the realm of competitive products.

Parts III and IV of this Note explore the advantages and disadvantages of the current setup. First, Part III looks at the advantages and disadvantages from the perspective of a private company currently in, or wishing to enter into, the post and parcel delivery business. Second, this Note explores the advantages and disadvantages of the current regime from the perspective of a consumer, differentiating between the average consumer and a business consumer.

Finally, Part V of this Note analyzes the aforementioned advantages and disadvantages of the current post and parcel regime, concluding that the time has come for complete postal reform. This Note contends that the delivery monopoly the USPS now possesses by Constitutional right should be maintained; however, the USPS should be reintegrated into the federal government as a full-governmental agency,¹¹ and it should be limited to only delivering post under a certain weight, such as 12 ounces. This would prevent the USPS from competing with private carriers for delivery of post over the statutorily defined weight limit.

I. HISTORY OF THE USPS, UPS, AND FEDEX

The history and origins of the USPS aid in fully analyzing and understanding the public/private system that is in place in the United States today. Additionally, the general history and background of UPS and FedEx provide a sound basis for determining how a private company enters the realm of post and parcel delivery. Such history also provides an in-depth look at the elements these private companies brought with them into the realm of post and parcel delivery. These elements include new

Service: Whipping Boy of the Health Care Debate, FEDLINE: THE BELTWAY AND BEYOND (Aug. 11, 2009), <http://blogs.federaltimes.com/federal-times-blog/2009/08/11/postal-service-whipping-boy-of-the-health-care-debate/> [hereinafter Losey Posting].

¹¹ Despite the fact that, presently, the USPS is a governmental agency, much of its operations could be classified as quasi-governmental as in many ways it is independent of the federal government. *See infra* Part I.A.

technologies, modes of post and parcel transportation, and other revolutionary delivery services.

A. The United States Postal Service

The USPS is the “oldest and largest public enterprise” in the United States.¹² Although many individuals claim the USPS is merely a “quasi-governmental”¹³ agency, USPS refers to itself as a governmental agency.¹⁴ The USPS began operations in 1775 as the “Post Office Department,”¹⁵ however, the USPS, in its current form, began operations in 1971.¹⁶ “In 1970, Congress transformed the Post Office Department into the [USPS]” to allow the USPS to become “a self-supporting establishment of the government with more authority over its own operations.”¹⁷

From the beginning, the USPS has been viewed as a vital component of the wellbeing of the United States.¹⁸ “[Benjamin] Franklin and his fellow patriots saw a robust mail system as critical to the nation’s welfare. A healthy postal network facilitated communications among army commanders and the first elected representatives, and representatives and their constituents; newspapers sent through the mail enabled Americans to participate in political life.”¹⁹ Throughout its history, by congressional decree, the USPS strove to balance two ideals: provision of universal service and covering its own expenses through its own revenue.²⁰ Significantly, the USPS, adhering to half of its dual mission, accepted its last public subsidy in 1982.²¹ The USPS also proudly abides by the second part of its mission, the provision of universal service: “Through rain, sleet,

¹² Geddes, *supra* note 9, at 61.

¹³ MAILERS COUNCIL, *POSTAL SERVICE PRODUCTIVITY: WHY THE CURRENT BUSINESS MODEL INCREASES COSTS AND REDUCES INCENTIVES FOR IMPROVEMENTS 2* (2003) (arguing that “[t]he quasi-governmental business model both increases costs and reduces incentives for productivity improvement”).

¹⁴ USPS, *UNIVERSAL SERVICE*, *supra* note 5, at 2 (“The United States Postal Service is the one government agency that touches every American on a daily basis.”).

¹⁵ *Id.*

¹⁶ USPS, *Significant Dates*, http://www.usps.com/postalhistory/significantdates.htm?from=Postal_History&page=Center_SignificantDates (last visited Feb. 7, 2011) [hereinafter *USPS Significant Dates*].

¹⁷ USPS, *UNIVERSAL SERVICE*, *supra* note 5, at 2-3.

¹⁸ *See id.* at 2.

¹⁹ *Id.*

²⁰ *See id.* at 17 (“[T]he Post Office should serve all Americans, and ... the revenues of the Post Office should pay for its expenses.”).

²¹ *USPS Significant Dates*, *supra* note 16.

and snow, Postal Service employees deliver more mail every delivery day, per capita, than most countries deliver in a month.”²²

Originally, the USPS only delivered to and from its own facilities²³ and limited itself to delivery of First-Class Mail and smaller packages.²⁴ On July 1, 1863, however, the USPS commenced a revolution in customer convenience when it began providing free city delivery with payment of postage.²⁵ By 1893, the USPS extended the same convenience to its rural customers.²⁶ This virtually eliminated the need for the USPS’s customers to wait in long lines in order to pick up their mail, oftentimes to no avail,²⁷ at their local Post Office. Continuing its trend of enhancing customer convenience, the USPS expanded from solely delivering First-Class Mail and smaller packages in 1913, when it began sending parcel post.²⁸

Once the USPS expanded its operations beyond First-Class Mail and smaller packages, it faced increasing direct and indirect competition.²⁹ This competition centers on the USPS’s core function: delivering the mail.³⁰ The USPS, from the moment it expanded its services outside of its constitutionally provided delivery monopoly, faced direct competition

²² USPS, UNIVERSAL SERVICE, *supra* note 5, at 2.

²³ *See id.* at 5 (explaining that postage initially paid only for the delivery from Post Office to Post Office, requiring citizens to pick up their mail at the Post Office).

²⁴ *See id.* at 8. When used in this Note, First-Class Mail is defined in accordance with the USPS’s own standards. The USPS defines First-Class Mail as “[t]he least expensive, most immediate option for mailing postcards, letters, and large envelopes 13 ounces or less.” *First-Class Mail Prices*, *supra* note 1; *see supra* note 1 and accompanying text (discussing minimum and maximum sizes of First-Class Mail). The USPS also shipped larger items, but had a four-pound weight limit. *See* USPS, UNIVERSAL SERVICE, *supra* note 5, at 8. Any item that exceeded this four-pound weight limit was shipped via private express companies or the railroads. *See id.*

²⁵ *See* USPS, UNIVERSAL SERVICE, *supra* note 5, at 6.

²⁶ *Id.* at 7.

²⁷ *See id.* (“Rural people needed the important information provided by newspapers yet did not always have time to walk or ride to the Post Office, a trip that could take several hours and might have been in vain.”).

²⁸ *Id.* at 9 n.29 (explaining that in 1913 the USPS began accepting packages weighing up to eleven pounds, increased the weight limit later that year to twenty pounds, and ultimately reached a seventy pound weight limit by 1931).

²⁹ When the USPS expanded its services beyond First-Class Mail and smaller packages, it placed itself in a position that was more directly adverse to private companies, which were already limited to delivering parcels, as the carriage of letter-mail was, and is, solely in the province of the USPS by governmental decree. *See id.* at 12.

³⁰ *Id.* at 19.

from private express companies.³¹ Further, as will be discussed later, following the USPS's surrender of part of its letter-mail monopoly in 1979 for "extremely urgent" letters,³² the USPS further exposed itself to competition, namely in the delivery of First-Class Mail.³³ In addition to direct competition, the USPS also faced increased indirect competition over time. "Media such as telephones, television, faxes, the Internet, and email increasingly provide alternatives to hard-copy mail."³⁴ Overall, since its inception, the USPS has been a dedicated universal provider of letter-mail whose services have slowly expanded to other areas of delivery, such as large packages. This expansion has increased the competition the USPS faces and has forced it to find new ways to maintain its success while adhering to its dual mission of providing universal service while covering its own costs with its revenue.

B. UPS

At its commencement in 1907,³⁵ UPS was a messenger company.³⁶ UPS began its operations under the direction of Jim Casey³⁷ in Seattle, Washington,³⁸ and was originally known as the "American Messenger Company."³⁹ UPS adopted the name "United Parcel Service" in 1919⁴⁰ and later changed its moniker to simply "UPS."⁴¹

³¹ See *id.* at 9, 19. Today, these companies include private express carriers, predominately UPS and FedEx, and other less-than-truckload carriers. FTC REPORT, *supra* note 1, at 8.

³² See *infra* Part II.E.1.

³³ USPS, UNIVERSAL SERVICE, *supra* note 5, at 19. It is of note that First-Class Mail is the USPS's "most profitable segment." *Id.*

³⁴ *Id.*

³⁵ UPS, *Company History*, <http://www.ups.com/content/us/en/about/history/index.html> (last visited Feb. 8, 2011) [hereinafter *UPS Company History*].

³⁶ *Id.* ("In response to telephone calls received at their [UPS's] basement headquarters, messengers ran errands, delivered packages, and carried notes, baggage, and trays of food from restaurants. They made most deliveries on foot and used bicycles for longer trips.")

³⁷ *Id.* James E. "Jim" Casey was nineteen years old at the time he established UPS, and he did so with a mere \$100 that he borrowed from a friend. *Id.* Jim had a partner as well, Claude Ryan, who helped him run the service. *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* ("The word 'United' served as a reminder that the company's operations in each city were part of the same organization, 'Parcel' identified the nature of the business, and 'Service' indicated what was offered.")

⁴¹ *UPS Company History*, *supra* note 35.

Just over a century after its founding, UPS is the world's largest package delivery company.⁴² The company began expanding out of Seattle and across the United States, eventually reaching the east coast in the 1930s.⁴³ By 1975, UPS became the first package delivery company to serve every address in the United States.⁴⁴ By 1985, UPS entered the overnight air delivery business,⁴⁵ and continues to expand today.⁴⁶ UPS is the leading global provider of specialized transportation and logistics services.⁴⁷ "Every day, we [UPS] manage the flow of goods, funds, and information in more than 200 countries and territories worldwide."⁴⁸ Not only has UPS revolutionized itself since its founding, but the company has also revolutionized the parcel delivery business as a whole.

UPS initiated many improvements and innovations in the field of parcel delivery.⁴⁹ In 1924, UPS debuted the first conveyor belt system for handling packages.⁵⁰ "In 1929 UPS became the first package delivery company to provide air service via privately operated airlines."⁵¹ In 1995, UPS became the first company to offer same-day service and guaranteed 8:00 a.m. overnight delivery.⁵²

Additionally, over the years, UPS demonstrated its willingness to use innovative, top-of-the-line technology in all aspects of its ever-expanding services.⁵³ The technology utilized by UPS spans a broad range, anywhere "from small handheld devices, to specially designed package delivery vehicles, to global computer and communications systems."⁵⁴ For

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.* (qualifying that this reach was limited to the 48 contiguous states in the United States).

⁴⁵ *Id.*

⁴⁶ *Id.* In the late 1990s, UPS moved into the service industry, providing "goods, information, and capital." *Id.* Similarly, around the same time, UPS formed UPS Logistics Group "to provide global supply chain management solutions and consulting services based on customers' individual needs." *Id.* In 1999, "UPS offered shares of its stock to the public for the first time." *Id.* In 2001, UPS entered the retail business with its opening of The UPS Store, which offers lower UPS-direct shipping rates while remaining locally owned and operated. *Id.*

⁴⁷ *UPS Company History, supra* note 35.

⁴⁸ *Id.* In addition, UPS today reaches over four billion people; this is twice the number of people who can be reached by any telephone network. *Id.*

⁴⁹ *See id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *See id.*

⁵³ *See UPS Company History, supra* note 35.

⁵⁴ *Id.*

example, in 1992, UPS began tracking all of its ground packages,⁵⁵ and in 1994, UPS “went live” when the company established its website, UPS.com.⁵⁶

Despite the restrictions placed upon UPS by federal regulations and the various monopoly powers held by the USPS,⁵⁷ UPS still competes directly with the USPS and other private messenger companies, such as FedEx.⁵⁸ Amidst all the regulation, UPS has managed to compete successfully, stay afloat, and proactively pioneering in the parcel delivery business that it entered so long ago. “It is a company that has never shied away from reinventing itself”⁵⁹

C. FedEx

Incorporated in 1971,⁶⁰ FedEx began operations in 1973.⁶¹ Frederick W. Smith founded the company in an attempt to resolve what he deemed an “inefficient distribution system.”⁶² The FedEx that the average customer has come to know and recognize, FedEx Ground, began operations in 1985.⁶³ In 1998, FedEx Corporation was formed,⁶⁴ seeking to build on the strength of FedEx’s “famous express delivery service”⁶⁵ and to eventually create a more diversified company.⁶⁶ Ultimately, by the new millennium, FedEx unveiled its global brand.⁶⁷

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *See infra* Part II.

⁵⁸ *See UPS Company History*, *supra* note 35 (stating that UPS expanded its focus from a private messenger company to that of a “common carrier” from between 1930-1952, focusing on delivering packages between all customers, both private and commercial).

⁵⁹ *Id.*

⁶⁰ FedEx, *FedEx History*, http://about.fedex.designcdt.com/our_company/company_information/fedex_history (last visited Feb. 9, 2011) [hereinafter *FedEx Company History*].

⁶¹ *Id.* (explaining that FedEx began operations with the launch of fourteen small aircraft from Memphis International Airport).

⁶² *Id.*

⁶³ *Id.* Initially, FedEx Ground operated as RPS (Roadway Package System). *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *FedEx History*, *supra* note 60. (stating that the company sought to create greater diversity in the company by including “a portfolio of different but related businesses”).

⁶⁷ *Id.*

Today, FedEx touts itself as the “premier provider of shipping and information services worldwide.”⁶⁸ It currently owns the world’s largest all-cargo air fleet,⁶⁹ delivers to customers in more than 220 countries,⁷⁰ and, like its primary private-sector competitor UPS, expanded its service offerings over time.⁷¹

Also, like UPS, the world of private express carriers owes many innovations of great import to FedEx.⁷² FedEx played a prominent and “leading role in lobbying for air cargo deregulation” throughout the 1970s,⁷³ lobbying that ultimately succeeded by 1977.⁷⁴ In 1995, FedEx became the only all-cargo carrier based in the United States with aviation rights to China.⁷⁵ Furthermore, FedEx Ground was the first company within the small-package ground shipping market to utilize bar coding and automatic sorting.⁷⁶ Therefore, like its counterpart UPS, even though FedEx is a younger company, it has brought vital innovation to the package delivery industry since its inception.⁷⁷

II. GOVERNMENTAL REGULATION OF THE USPS AND PRIVATE COMMON CARRIER COMPANIES THAT COMPETE WITH THE USPS

At base level, the USPS is a governmental body largely run and governed by Congress.⁷⁸ In fact, it is the United States Constitution that provides Congress with such power.⁷⁹ In accordance with this power, Congress created the USPS as an independent establishment of the executive branch of the United States government.⁸⁰ Congress stated the

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *See id.* For example, many companies operate under the FedEx name across the globe, such as FedEx Express, FedEx Ground, FedEx Kinko’s, FedEx Office, and FedEx Custom Critical. *Id.*

⁷² *See FedEx History, supra* note 60.

⁷³ *Id.*

⁷⁴ *See id.* The changes that FedEx lobbied for allowed air cargo carriers to utilize larger aircraft, thus allowing the company to grow. *Id.*

⁷⁵ *See id.* (“Federal Express obtained authority to serve China through a 1995 acquisition from Evergreen International Airlines.”).

⁷⁶ *Id.*

⁷⁷ *See id.*

⁷⁸ *See* U.S. CONST. art. I, § 8, cl. 7.

⁷⁹ *Id.* (“The Congress shall have Power ... [t]o establish Post Offices and post Roads.”).

⁸⁰ FTC REPORT, *supra* note 1, at 6.

basic obligation of the USPS: “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.”⁸¹

A. Governance of the USPS

Although Congress possesses ultimate power over the USPS, it has delegated certain aspects of USPS governance.⁸² For example, “[t]he exercise of the power of the Postal Service shall be directed by a Board of Governors composed of 11 members”⁸³ In 1970, there was a growing concern, however, that the USPS did not have the necessary freedom required to function efficiently and effectively.⁸⁴ Therefore, Congress passed the Postal Reorganization Act of 1970 to give the USPS the necessary freedom to make many more, but not all, of its own business decisions.⁸⁵ The Postal Reorganization Act created the Postal Regulatory Commission,⁸⁶ an independent agency that exercises regulatory oversight over the USPS.⁸⁷ Despite this attempt at reform, however, the USPS was still constrained in its operations.

The Postal Accountability and Enhancement Act (PAEA), enacted in 2006, “promised to make the [USPS even] more competitive by giving postal management greater freedom” than before.⁸⁸ The PAEA strengthened the authority of the Postal Regulatory Commission “to serve as a counterbalance to new flexibility granted to the Postal Service in setting postal rates.”⁸⁹ The PAEA also assigned new and continuing

⁸¹ 39 U.S.C. § 101(a) (2006).

⁸² *See id.* § 202.

⁸³ *Id.* § 202(a)(1).

⁸⁴ *See* USPS, UNIVERSAL SERVICE *supra* note 5, at 18-19 (explaining that one of the purposes of the Postal Reorganization Act of 1970 was to provide the USPS with more flexibility in making its own business decisions).

⁸⁵ *Id.* at 18. The Postal Reorganization Act of 1970 was revised in 2006 by the Postal Accountability and Enhancement Act. *Id.* at 19.

⁸⁶ *Id.* at 18-19.

⁸⁷ Postal Regulatory Commission, *About PRC*, <http://www.prc.gov/prc-pages/about/default.aspx> (last visited Feb.9, 2011) [hereinafter *About PRC*]. Initially this oversight “consisted primarily of conducting public, on-the-record hearings concerning proposed rate, mail classification or major service changes, and recommending decisions for action by the postal Governors.” *Id.*

⁸⁸ USPS, UNIVERSAL SERVICE, *supra* note 5, at 19. For example, PAEA gave the USPS and “postal management greater freedom in setting rates.” *Id.*

⁸⁹ *About PRC*, *supra* note 87.

oversight to the Postal Regulatory Commission, granting the Commission the ability to determine the USPS's compliance with applicable laws, develop accounting practices for the USPS, review the universal service obligation, and ensure transparency.⁹⁰ Most significantly, despite the continuing oversight that various agencies have over the USPS, the PAEA gave the USPS the authority to set its own prices for competitive products.⁹¹ As such, it seems the PAEA sought to balance the independence of the USPS against the undeniable fact that, in the end, the USPS is a governmental agency that must be regulated as such.

B. The USPS and the Universal Service Obligation

Despite the trend towards increasing the freedom of the USPS, the USPS still has certain government-mandated obligations and directives. One of the prime government-mandated missions of the USPS is the provision of universal service;⁹² unsurprisingly, there are provisions in place to ensure that this mission remains a top priority of the USPS and is ultimately fulfilled.⁹³ By congressional mandate, as indicated in Title 39 of the United States Code, the USPS has a universal service obligation.⁹⁴ “[The Postal Service] shall provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all

The Act requires the Commission to develop and maintain regulations for a modern system of rate regulation, consult with the Postal Service on delivery service standards and performance measures, consult with the Department of State on international postal policies, prevent cross-subsidization or other anticompetitive postal practices, promote transparency and accountability, and adjudicate complaints.

Id.

⁹⁰ *Id.*

⁹¹ 39 U.S.C. § 3632(a)-(b) (2006). “Competitive products” are listed as “priority mail; expedited mail; bulk parcel post; bulk international mail; and mailgrams.” *Id.* § 3631(a)(1)-(5). Essentially, competitive products are those products over which the USPS does not have a monopoly—where a consumer has other, private options for delivery. *See id.* The USPS's competitive products are in contrast with its “market-dominant” products, which

are defined as “first-class mail letters and sealed parcels; first-class mail cards; periodicals; standard mail; single-piece parcel post; media mail; bound printed matter; library mail; special services; and single-piece international mail.” *Id.* § 3621(a)(1)-(10). Pricing requirements for competitive products are discussed later in this Note. *See infra* notes 160-162 and accompanying text.

⁹² *See infra* notes 94-96.

⁹³ *See* 39 U.S.C. § 101(a) (USPS “shall provide ... service to patrons in all areas”); USPS, UNIVERSAL SERVICE, *supra* note 5, at 2, 20.

⁹⁴ *See* 39 U.S.C. § 101(a).

communities.”⁹⁵ It has been generally understood that the universal service obligation entails three elements.⁹⁶ These three elements are “universal coverage of the postal network, uniform prices for one class of letter mail, and uniform service.”⁹⁷ Therefore, no matter the location, day of the week (excluding Sundays), or other conceivable factor, the USPS must deliver post and parcel to any given address. Despite this government-mandated burden, however, the USPS does possess privileges as a result of its status as an agency of the executive branch of the federal government.⁹⁸

C. Privileges of the USPS

Owing to its status as a governmental agency, the USPS enjoys certain privileges, in addition to its monopolies,⁹⁹ that other private parcel companies, such as UPS and FedEx, do not enjoy; yet, as a result of the recent 2006 PAEA legislation, the privileges enjoyed by the USPS are not necessarily what they once were.

Perhaps the USPS’s greatest privilege lies in its possession of sovereign immunity as a governmental agency.¹⁰⁰ The PAEA, however, severely limited this once-broad privilege. As a part of the PAEA, the 2006 revisions to the United States Code subjected the USPS to new forms of potential legal liability for any product that is not covered by the postal monopoly.¹⁰¹ The new provisions waive any claim of sovereign immunity on the part of the USPS for suits brought against it in federal court for any violation of federal law, provided that the suit involves a product not covered by the postal monopoly.¹⁰² The USPS not only possesses sovereign immunity, at least in a limited sense, but it also enjoys exemption from certain state and local legal requirements by virtue of its

⁹⁵ *Id.* Title 39 also provides that “[t]he 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.” *Id.* § 101(b).

⁹⁶ *See* FTC REPORT, *supra* note 1, at 12.

⁹⁷ *Id.* *See generally* 39 U.S.C. § 101 (discussing the universal service obligation).

⁹⁸ *See infra* Part II.C.

⁹⁹ *See infra* Part II.E.

¹⁰⁰ 39 U.S.C. § 410(a) (“[N]o Federal law dealing with public or Federal contracts, property, works, officers, employees, budgets, or funds ... shall apply to the exercise of the powers of the Postal Service.”).

¹⁰¹ *See id.* § 409(e)(1)(A)-(B).

¹⁰² *See id.*

status as an entity of the federal government.¹⁰³ Examples include tax and licensing laws.¹⁰⁴

The USPS also possesses certain privileges unrelated to sovereign immunity, namely in the form of certain financial benefits, owing to its status as an agency of the federal government. These benefits are numerous. Examples include: the ability to transfer to or from the President or other departments, with or without reimbursement, any property of that department, agency or independent establishment, when the public interest would be served by such transfer;¹⁰⁵ the power to require the Secretary of the Treasury to purchase its obligations;¹⁰⁶ the ability to call obligations of the USPS obligations of the United States government;¹⁰⁷ and the existence of a Postal Service Fund¹⁰⁸ and Postal Service Competitive Products Fund¹⁰⁹ within the treasury. Despite these undoubtedly beneficial financial privileges, however, the USPS's status as a governmental agency does have its drawbacks.

D. Limitations of the USPS

The fact that the USPS has its hands tied by the United States government requires it to stay within certain boundaries, confines by which its private competitors are not restricted. As previously mentioned, for example, the USPS is heavily regulated, leaving it with limited ability to conduct its own affairs, set its own rates, make its own decisions, and generally self-govern.¹¹⁰ Further, unlike its private competitors, the USPS must comply with a plethora of federal requirements, "such as restrictions on its ability to manage its labor costs and to configure its network."¹¹¹ Additionally, despite its status as a governmental agency, which often leaves its hands tied in terms of governance, the USPS does not receive the full financial benefit available to other agencies of the federal

¹⁰³ FTC REPORT, *supra* note 1, at 6.

¹⁰⁴ *Id.*

¹⁰⁵ 39 U.S.C. § 2002(d) (2006).

¹⁰⁶ *See id.* § 2006(b) (noting that the exception to this privilege is if doing so would cause the holding of the Secretary of the Treasury to exceed a certain, set amount).

¹⁰⁷ *See id.* § 2003(c).

¹⁰⁸ *See id.* § 2003(a).

¹⁰⁹ *See id.* § 2011(a)(2).

¹¹⁰ *See supra* Part II.A.

¹¹¹ FTC REPORT, *supra* note 1, at 6.

government.¹¹² In fact, the USPS is one of the few federal agencies required to be self-funded.¹¹³

Additionally, despite the fact that the USPS is a governmental agency, it must comply with certain applicable laws, as would any typical private company. Just like private companies, for example, the USPS must comply with national building codes,¹¹⁴ conform with state and local zoning laws,¹¹⁵ land use laws,¹¹⁶ and environmental laws,¹¹⁷ to name a few. Nevertheless, the United States Code appears to grant the USPS some discretion with respect to compliance with these various state and local statutes and regulations,¹¹⁸ which is quite unlike anything a private company of comparable magnitude would enjoy. Thus, overall, the USPS is both privileged and hindered as a result of its status as an agency of the federal government; perhaps its greatest privileges, however, lie with the existence of the monopolies granted to it by the federal government.¹¹⁹

E. The USPS's Monopolies

To fund its obligation to provide universal service, Congress conferred two monopolies upon the USPS.¹²⁰ The first monopoly is one over the delivery of “letters.”¹²¹ The second monopoly provides the USPS with the exclusive right to access citizens’ mailboxes.¹²²

1. The Delivery Monopoly

The USPS is a monopoly by government decree. The United States Constitution prohibits other firms, individuals, or private companies from

¹¹² See USPS, ASSESSMENT OF U.S. POSTAL SERVICE FUTURE BUSINESS MODEL 2 (2009), available at http://www.usps.com/postallaw/_pdf/USPS_FutureBusiness Model PaperForGAO_Final.pdf [hereinafter USPS, ASSESSMENT].

¹¹³ *Id.* (stating that the USPS’s revenues from mailing and shipping services must cover its costs).

¹¹⁴ 39 U.S.C. § 409(f)(1) (2006).

¹¹⁵ *Id.* § 409(f)(2).

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.* § 409(f) (stating, for example, that “[e]ach building constructed or altered by the Postal Service shall be constructed or altered, to the maximum extent feasible as determined by the Postal Service, in compliance with 1 of the nationally recognized model building codes”) (emphasis added).

¹¹⁹ See *infra* Part II.E.

¹²⁰ FTC REPORT, *supra* note 1, at 6.

¹²¹ *Id.*

¹²² *Id.*

competing with the USPS in the form of delivering letters or other First-Class Mail.¹²³ Thus, the first, and arguably most fundamental, monopoly enjoyed by the USPS is its congressionally granted monopoly over the delivery of “letters.”¹²⁴

The delivery monopoly extends its reach only to the delivery of “letters.”¹²⁵ This simple word leaves much to be desired in the form of breadth and definition. The Code of Federal Regulations defines a letter as a “message directed to a specific person or address and recorded in or on a tangible object.”¹²⁶ According to the Federal Trade Commission, the term “letters” includes personal correspondence, bills, postcards, and advertising¹²⁷ that are addressed to a specific person.¹²⁸

Both Congress and the USPS have put forth numerous justifications for the existence of the delivery monopoly. The USPS argues that the delivery monopoly enables the USPS to serve all Americans, no matter how remote or otherwise difficult to access, yet still fund its operations largely from its own revenue.¹²⁹ This ideal of universal service, at least initially, was largely political as it was seen “as a way to support the growth of the democratic state.”¹³⁰

Aside from the desire to preserve universal service, the USPS’s delivery monopoly also seems largely embedded in simple tradition. The monopoly predates the formation of the United States; it was derived from the British prior to the American Revolution.¹³¹ As a country wedded to equality and tradition, the USPS’s delivery monopoly seems logical. Furthermore, Congress saw the delivery monopoly as a form of protection

¹²³ FERRARA, *supra* note 1, at 1.

¹²⁴ FTC REPORT, *supra* note 1, at 6. Congress granted the USPS the monopoly over the carriage of letter mail by a compilation of federal laws known as the Private Express Statutes. USPS, UNIVERSAL SERVICE, *supra* note 5, at 2.

¹²⁵ FTC REPORT, *supra* note 1, at 6.

¹²⁶ 39 C.F.R. § 310.1(a) (2009). The USPS, in turn, defines a message as “any information or intelligence that can be recorded . . .” *Id.* § 310.1(a)(2). “Methods by which messages are recorded on tangible objects include, but are not limited to, the use of written or printed characters, drawing, holes, or orientations of magnetic particles in a manner having a predetermined significance.” *Id.* § 310.1(a)(4).

¹²⁷ FTC REPORT, *supra* note 1, at 6.

¹²⁸ *Id.* at 14.

¹²⁹ USPS, UNIVERSAL SERVICE, *supra* note 5, at 2.

¹³⁰ Sharon M. Oster, *The Failure of Postal Reform*, 3 DEREGULATION AND PRIVATIZATION IN THE UNITED STATES: HUME PAPERS ON PUBLIC POLICY 109, 110 (1995) (citing George L. Priest, *The History of the Postal Monopoly in the United States*, 18 J.L. & Econ. 33 (1975)).

¹³¹ USPS, UNIVERSAL SERVICE, *supra* note 5, at 12.

for the government-run USPS.¹³² Without such protection, Congress reasoned that private companies, in an effort to make profit and cut costs, “would siphon off high-profit delivery routes.”¹³³ Without a delivery monopoly, private companies would leave only the money-losing routes to the USPS, who would then be compelled to depend on taxpayers in order to remain a viable entity.¹³⁴

Despite the apparent breadth of the USPS’s delivery monopoly, however, it is certainly not unlimited or without exception. Indeed, the scope of the delivery monopoly is limited depending upon the delivery time,¹³⁵ the type of material being sent,¹³⁶ the letter’s destination,¹³⁷ the price paid by the customer,¹³⁸ and the weight of the letter material.¹³⁹ Further, the USPS itself has the discretion to narrow the breadth of this monopoly.¹⁴⁰

The first and most important exception to the USPS’s delivery monopoly is the exception pertaining to extremely urgent letters. The USPS’s delivery monopoly does not prohibit the private delivery of letters if urgent delivery is required.¹⁴¹ Urgent delivery is defined as delivery within twelve hours of mailing or by noon of the next business day.¹⁴² Thus, a private express carrier, such as UPS or FedEx, qualifies for participation

¹³² *Id.* at 2.

¹³³ *Id.* Over time, Congress has held onto this belief. A great example lies with the statements of many United States Senators at a hearing regarding the future of the USPS. Senator Donald W. Riegle, Jr. remarked:

Efforts to repeal or modify the private express statutes will inevitably produce inequities in the system The most evident threat to the system will be the ‘cream skimming’ that will occur upon repeal of the statutes. It is almost certain that once private companies have the right to deliver mail, the lucrative, high density, high volume areas will become the province of commercial entities, while the difficult, remote, and primarily rural areas will remain the responsibility of the Postal Service.

Id. at 2, n.4 (quoting *The Future of Mail Delivery in the United States, Hearing Before the Subcomm. on Economic Goals and Intergovernmental Policy of the J. Economic Comm.*, 97th Cong. (1982)).

¹³⁴ USPS, UNIVERSAL SERVICE, *supra* note 5, at 2.

¹³⁵ See 39 C.F.R. § 320.6 (2009).

¹³⁶ See *id.* § 320.7.

¹³⁷ See *id.* § 320.8.

¹³⁸ See 39 U.S.C. § 601(b)(1) (Supp. I 2009).

¹³⁹ See *id.* § 601(b)(2) (Supp. I 2009).

¹⁴⁰ See 39 C.F.R. § 310.2(c)-(d)(4). For example, the USPS can suspend the operation of the delivery monopoly where the public interest so requires. *Id.* § 310.2(c).

¹⁴¹ *Id.* § 320.6(a).

¹⁴² USPS, UNIVERSAL SERVICE, *supra* note 5, at 16.

in this exception based upon the timeliness of delivery.¹⁴³ An additional limitation exists upon this exception; according to the Code of Federal Regulations, the suspension of the delivery monopoly “is available only if the value or usefulness of the letter would be lost or greatly diminished if it is not delivered within these time limits.”¹⁴⁴ Timeliness and necessity are therefore both required in order for the application of the extremely urgent letter exception to the delivery monopoly.

In addition to the exception for extremely urgent letters, there exist other notable exceptions to the delivery monopoly. For one, private companies may carry advertisements enclosed with merchandise in parcels or accompanying periodicals within certain parameters.¹⁴⁵ Private companies may also freely carry letters that weigh more than 12.5 ounces.¹⁴⁶ Letters may also be carried outside of the delivery monopoly when “the amount paid for the private carriage of the letter is at least 6 times the rate currently charged for the 1st ounce of a single-piece first class letter.”¹⁴⁷ In addition to these exceptions pertaining to letter-type, another, albeit unrelated, exception to the delivery monopoly is that of international re-mailing.¹⁴⁸ Finally, the last exception of note rests with the fact that the USPS itself may suspend the delivery monopoly to some extent.¹⁴⁹ For example, the USPS may permit partial transportation by private carriers along USPS networks subsequent to mailing, but prior to delivery—that is, a private carrier will often transport mail from one Post Office to another, rather than the USPS making these inter-delivery drops.¹⁵⁰

All in all, the delivery monopoly possessed by the USPS covers a broad range of the mail delivery that many Americans experience on a daily basis. Nonetheless, the delivery monopoly is not all-encompassing. It contains exceptions in an attempt to allow for a more workable system as a whole.

¹⁴³ FTC REPORT, *supra* note 1, at 8.

¹⁴⁴ 39 C.F.R. § 320.6(b)(1).

¹⁴⁵ *See id.* § 320.7. This exception is limited by the fact that “[t]he advertisements must not be marked with the names or addresses of the recipients,” and “[t]he advertisements [themselves] must be incidental to the shipment...” *Id.*

¹⁴⁶ 39 U.S.C. § 601(b)(2) (Supp. 1 2009).

¹⁴⁷ *Id.* § 601(b)(1).

¹⁴⁸ *See* 39 C.F.R. § 320.8(b) (2010) (noting that “[t]his suspension shall not permit the shipment or carriage of a letter or letters out of the mails to any foreign country for subsequent delivery to an address within the United States”).

¹⁴⁹ *See id.* § 310.2(c).

¹⁵⁰ *Id.* This practice is typically known as “worksharing.” *See* FTC REPORT, *supra* note 1, at 50.

2. *The Mailbox Monopoly*

Though the delivery monopoly shines as the USPS's most fundamental and basic monopoly, the USPS also enjoys the benefit of a second monopoly, the mailbox monopoly. In addition to attempting to fund the USPS's universal service obligation via the delivery monopoly, Congress granted the USPS the sole right to access citizens' mailboxes to achieve the same end.¹⁵¹

The mailbox monopoly is much less complex, and thus much less developed, than its counterpart. In essence, the directive of the mailbox monopoly is as follows: "[E]very letterbox or other receptacle intended or used for the receipt or delivery of mail on any city delivery route, rural delivery route, highway contract route, or other mail route is designated an authorized depository for mail . . .,"¹⁵² and thus "may be used only for matter bearing postage."¹⁵³ Additionally, the USPS prohibits any private delivery to mailboxes.¹⁵⁴ The USPS does not classify door slots, non-lockable bins or troughs used with apartment house mailboxes, or support posts as subject to the restrictions of the mailbox monopoly.¹⁵⁵ The United States is currently the only country with such restrictions on mailbox access.¹⁵⁶

F. *The USPS and Competitive Products*

In contrast to the USPS's "market-dominant"¹⁵⁷ products, which fall under the province of its dual monopolies, the USPS also offers what it terms "competitive products."¹⁵⁸ Competitive products are simply defined

¹⁵¹ See FTC REPORT, *supra* note 1, at 6.

¹⁵² USPS, DOMESTIC MAIL MANUAL § 508.3.1.1 (2011) [hereinafter DOMESTIC MAIL MANUAL].

¹⁵³ FTC REPORT, *supra* note 1, at 17 (citing DOMESTIC MAIL MANUAL, *supra* note 152, at § 508.3.1.1).

¹⁵⁴ See DOMESTIC MAIL MANUAL, *supra* note 152, § 508.4.4.2.

¹⁵⁵ *Id.* § 508.3.1.2.

¹⁵⁶ See R. Richard Geddes, *Policy Watch: Reform of the U.S. Postal Service*, 19 J. ECON. PERSPS. 217, 219 (2005).

¹⁵⁷ Market dominant products are those over which the USPS "exercises sufficient market power that it can effectively set the price of such product 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." 39 U.S.C. § 3642(b)(1) (2006).

¹⁵⁸ *Id.* § 3642(a).

as “all other products.”¹⁵⁹ This category of products seems to be those products that are not subject to the delivery monopoly, that is, those products and services that private competitors can provide in an attempt to fairly compete with the USPS.

The USPS’s competitive products are subject to a somewhat different regulatory scheme. Beginning in 2006, the federal government granted the USPS the authority to make its own decisions when it comes to setting rates and prices for its competitive products.¹⁶⁰ The USPS is prohibited from cross-subsidizing its competitive products from the funds of its market-dominant products.¹⁶¹ The law requires that the USPS’s competitive products satisfy three conditions: the competitive products must cover their costs, each competitive product must recover the costs attributable to that product, and competitive products collectively must cover at least 5.5 percent of the USPS’s institutional costs.¹⁶²

Two separate funds exist to fulfill these goals: the Postal Service Fund and the Competitive Products Fund.¹⁶³ The Competitive Products Fund is more diverse than the Postal Service Fund as, among other things, it is not exempt as to principal and interest and not guaranteed by the United States Government.¹⁶⁴ Despite this, however, the Competitive Products Fund can be guaranteed by the United States if the USPS so requests and the Secretary of the Treasury determines it would be in the public interest to so guarantee.¹⁶⁵ Thus, though the Competitive Products Fund is technically separate from the Postal Service Fund and ideally covers its own costs, it can nonetheless be backed by the United States government like its counterpart Postal Service Fund.

III. ADVANTAGES AND DISADVANTAGES OF THE CURRENT REGIME FROM THE PERSPECTIVE OF A PRIVATE COMPANY

The current public/private dichotomy that exists in the United States as a result of the USPS’s monopolies, its ability to procure competitive products, and the regulations imposed on private companies as a result,

¹⁵⁹ *Id.* § 3642(b)(1).

¹⁶⁰ *See* Postal Accountability and Enhancement Act, Pub. L. No. 109-435, 120 Stat. 3206 (2006) (codified as amended at 39 U.S.C. § 3632(b)(2) (2006)).

¹⁶¹ *See* 39 U.S.C. § 3622(c)(2) (2006).

¹⁶² 39 C.F.R. § 3015.7(a)-(c) (2009).

¹⁶³ *See* FTC REPORT, *supra* note 1, at 29.

¹⁶⁴ *Id.* at 30 (citing 39 U.S.C. § 2005(d)(4) (2006) as compared to § 2011(e)(4)(d) (2006)).

¹⁶⁵ 39 U.S.C. § 2006(c).

undoubtedly has its advantages and disadvantages. From the perspective of a private company, such as UPS or FedEx, the disadvantages are many and the advantages are few.

A. Advantages

Despite the continued call for postal reform that exists in the United States,¹⁶⁶ from the perspective of a private carrier, such as UPS or FedEx, the current setup does have benefits. Namely, the existing regime better allows private companies to specialize,¹⁶⁷ puts the USPS at a competitive disadvantage,¹⁶⁸ frees private companies from added regulation, and allows those private companies to achieve their ultimate goal: profit.

UPS and FedEx are long-standing, successful companies and business models; yet, without the ability to specialize under the current regime, their continued success is uncertain. If the delivery and mailbox monopolies were lifted, allowing the USPS to fully compete and diversify itself, some argue the USPS could innovate and increase its ability to generate new revenue.¹⁶⁹ Currently, the USPS is constrained from taking any such action because of monopolies and heavy regulation.¹⁷⁰ As a result, private companies can specialize in products and other areas where the USPS's hands are largely tied. This provides private companies with the ability to generate revenue in areas in which they are allowed to specialize and avoid provision of products that are less profitable, such as Standard and First-Class Mail.¹⁷¹ Thus, private companies benefit from the current regime.¹⁷²

¹⁶⁶ It is of note that the USPS itself joined this call for reform. See USPS, *Envisioning America's Future Postal Service*, <http://www.usps.com/strategicplanning/futurepostalser-vice.htm> (last visited Feb. 10, 2011). The USPS reached out to experts for assistance in developing "a range of cost-reducing and revenue-generating initiatives" and called for greater flexibility. See *id.*

¹⁶⁷ See USPS, ASSESSMENT, *supra* note 112, at 2-3.

¹⁶⁸ See FTC REPORT, *supra* note 1, at 8.

¹⁶⁹ See USPS, ASSESSMENT, *supra* note 112, at 2-3.

¹⁷⁰ See *id.* (noting that, presently, the USPS is limited to offer only "postal" products and has difficulty leveraging prices for existing postal products as a result of legislative and regulatory constraints, which includes a price cap on approximately 90 percent of its revenue).

¹⁷¹ See *id.* at 2-4 (stating that mail volume is in decline, and that remaining mail volume is volatile and subject to economic conditions).

¹⁷² See *id.* at 2 ("[T]he Postal Service has a net comparative disadvantage versus private carriers.") (citation omitted).

Similarly, because of the current setup, the USPS is, in many ways, at a competitive disadvantage when compared to its private competitors;¹⁷³ in some ways, the present regime hinders rather than benefits the USPS. Despite the USPS's ability to indirectly cross-subsidize from its market dominant to its competitive products,¹⁷⁴ it remains well behind the UPS and FedEx in revenue in this area.¹⁷⁵ UPS and FedEx, in fact, earned \$30.5 billion and \$11.4 billion in revenue in 2006, respectively.¹⁷⁶ Thus, it seems private companies are not exactly "harmed" by the existence of the postal monopolies, the ability of the USPS to provide competitive products, and its ability to indirectly cross-subsidize its products. Further, the USPS is at a competitive disadvantage in comparison to UPS and FedEx by virtue of its status as a federal government entity. Because of this status, the USPS has legal and political constraints on its operations, reducing its efficiency.¹⁷⁷ Along the same lines, because of its status as a federal government entity, the USPS, unlike its private competitors, cannot negotiate for tax reductions, incentives, or inducements that local governments often provide private parties to locate in certain areas of the country.¹⁷⁸ All of these facts demonstrate that, perhaps contrary to popular belief, the USPS is in many ways at a competitive disadvantage.

As previously mentioned, the USPS is burdened in many ways by regulation because of its status as a federal government entity and because of the centrality of what it delivers to the American public: mail; yet, precisely because of the USPS's delivery and mailbox monopolies, private companies are free from mounds of regulation to which they might otherwise be subjected.¹⁷⁹ By not engaging in, or having the ability to engage

¹⁷³ See FTC REPORT, *supra* note 1, at 8.

¹⁷⁴ See *infra* Part III.B.

¹⁷⁵ See FTC REPORT, *supra* note 1, at 8.

¹⁷⁶ *Id.* (citation omitted).

¹⁷⁷ See *id.* at 45 ("The Postal Service, like other parts of the federal government, also must comply with a number of federal statutes not applicable to private sector firms that raise the costs associated with purchasing products and services"). In their report, the FTC states:

[F]ederal laws also: tightly bind the operations of that [Competitive Products] Fund within its historical market; require it for social policy reasons to follow high-cost, model employer policies not applicable to the competition; constrain its management of the size and location of its networks; impose multiple layers of transparency and oversight controls on top of those applicable to corporate disclosure; and generally require it to behave like the federal institution that it is.

Id. at 70 (citation omitted).

¹⁷⁸ See *id.* at 25-26 (citation omitted).

¹⁷⁹ See *supra* Part II.

in, the delivery of non-urgent “letters,” private companies are free from burdensome regulation.¹⁸⁰ This lack of regulation undoubtedly gives the USPS’s private competitors greater freedom and mobility in the non-monopolized areas in which they compete than they might otherwise have were the delivery and mailbox monopolies lifted.

Private carrier companies also benefit from the current setup as it provides an almost ideal setting, at least in the abstract, for profit.¹⁸¹ For example, the USPS is charged by governmental decree with providing universal service to all parts of the country, even in areas that may not be profitable.¹⁸² Private companies, on the other hand, can essentially ignore and avoid areas that may not be profitable, areas where they may otherwise be forced to serve if the postal monopolies were lifted and regulations put in place. Furthermore, companies such as UPS and FedEx would likely have no interest in the delivery of “letters,” primarily because it is not as profitable as larger parcel and package delivery.¹⁸³ In fact, a UPS Spokesman, Norman Black, stated, “We believe that the government plays a role in terms of ensuring that every mailbox is reached every day That is not a responsibility that UPS would want.”¹⁸⁴

Overall, then, the current regime, in spite of its drawbacks, does provide at least marginal benefits to private competitors. Nonetheless, the disadvantages the present setup poses to private carriers far outweigh the above advantages.

B. Disadvantages

Over time, the disadvantages of the current regime, even following the Postal Accountability and Enhancement Act of 2006, unveiled themselves to the USPS, its private competitors,¹⁸⁵ and consumers.¹⁸⁶ The existing private/public dichotomy impairs private carriers in countless ways. In short, the current setup disadvantages private companies because of the

¹⁸⁰ See USPS, ASSESSMENT, *supra* note 112, at 1-2.

¹⁸¹ See FTC REPORT, *supra* note 1, at 41-42 (citations omitted) (discussing the universal service obligation, its increasing costs, and the restrictions on closing postal facilities).

¹⁸² *Id.* at 41 (citing the statistics of the USPS’s general counsel that, “of 27,166 post offices, only 4,525 had positive revenues, resulting in annual losses of \$1.27 billion”) (citations omitted).

¹⁸³ See *id.*

¹⁸⁴ Lazarus, *supra* note 9, at B4.

¹⁸⁵ See *infra* Part III.

¹⁸⁶ See *infra* Part IV.

USPS's status under the United States Constitution,¹⁸⁷ the ability of the USPS to indirectly and implicitly cross-subsidize,¹⁸⁸ the limitations inherent in the postal monopolies,¹⁸⁹ the existence of less quantifiable advantages possessed by the USPS,¹⁹⁰ the fact that private companies must comply with state and local statutes and regulations not applicable to the USPS,¹⁹¹ the difficulty private companies have in securing financing as compared to the USPS,¹⁹² the priority of the USPS with respect to payment of debts,¹⁹³ the general financial advantages enjoyed by the USPS as a result of its status as a governmental entity,¹⁹⁴ and the fact that the USPS possesses law enforcement authority,¹⁹⁵ to name a few.

Perhaps the most profound disadvantage that results from the current regime lies in the fact that the USPS has the ability to indirectly and implicitly cross-subsidize their competitive products with their market-dominant products.¹⁹⁶ By law, the USPS cannot cross-subsidize from its market-dominant products' Postal Service Fund to its competitive products' Competitive Products Fund.¹⁹⁷ Despite the prohibition on direct subsidization, however, indirect and implicit cross-subsidizing occurs.¹⁹⁸ For example, despite the fact that it cannot directly cross-subsidize, the USPS has the privilege of utilizing the same facilities, mailboxes, trucks, and employees to handle both its monopolized and non-monopolized services.¹⁹⁹ Because it is not required to completely separate its monopolized services from its non-monopolized services, the USPS reaps the benefits of its monopolized services in the provision of its non-monopolized services, thereby implicitly cross-subsidizing. The end result of this phenomenon is what many have termed a "scope economy," which

¹⁸⁷ See U.S. CONST. art I, § 8, cl. 7.

¹⁸⁸ See Geddes, *supra* note 9, at 62; FTC REPORT, *supra* note 1, at 51.

¹⁸⁹ See FERRARA, *supra* note 1, at 1.

¹⁹⁰ See FTC REPORT, *supra* note 1, at 8.

¹⁹¹ See *id.* at 6.

¹⁹² See *id.* at 31 (citations omitted).

¹⁹³ See 39 U.S.C. § 401(9) (2006).

¹⁹⁴ See FTC REPORT, *supra* note 1, at 47-49, 51-52.

¹⁹⁵ See *Dolan v. United States*, 546 U.S. 481, 484 (2006).

¹⁹⁶ See FTC REPORT, *supra* note 1, at 51.

¹⁹⁷ 39 U.S.C. § 2011(h)(1)(A) (stating that the accounting practices and principles should be followed by the USPS with the objectives of preventing the subsidization of competitive products by market-dominant products).

¹⁹⁸ The USPS can "compensate for revenue shortfalls by unfairly competing in its non-monopolized services with private firms that do not enjoy the Postal Service's wide variety of privileges and immunities." Geddes, *supra* note 9, at 62.

¹⁹⁹ FTC REPORT, *supra* note 1, at 10.

private competitors cannot replicate because they are not permitted to deliver mail to consumers.²⁰⁰

Further, despite its inability to directly cross-subsidize, the USPS's status as an entity of the federal government provides its competitive products with an implicit subsidy of an estimated \$39-\$117 million a year.²⁰¹ "By virtue of its status as a federal governmental entity, the USPS is able to avoid costs associated with various federal, state, and local legal requirements that its private competitors incur. The USPS also avoids costs through preferential interest rates on debt."²⁰² Further adding to the volume of this implicit subsidy is the fact that state and local taxes²⁰³ cannot be assessed against the USPS.²⁰⁴

The existence of these subsidies provides benefits to the USPS in the provision of its competitive products at the expense of private carriers. These subsidies, for example, artificially and synthetically reduce the USPS's costs of supplying competitive products.²⁰⁵ As a result, "the USPS may charge prices for competitive products that are lower than they would be if it were to account for its implicit subsidies."²⁰⁶ The existence of these implicit subsidies thus sends false signals to consumers of post and parcel products. It leaves consumers with the belief that private carriers overcharge to an excessive degree. Yet, this belief is likely skewed by their point of reference, the USPS, which is in effect able to undercharge for provision of the same services.²⁰⁷ "The interference with normal market forces caused by these subsidies ... results in price signals that convey the

²⁰⁰ *Id.* ("The USPS has developed transportation, processing, delivery, and retail networks to provide products reserved to it under the postal monopoly. The USPS also uses these networks to provide its competitive products, which likely allows it to generate economies of scope.")

²⁰¹ *Id.* at 8 (qualifying that the estimate depends upon how the funds are actually allocated to the USPS's competitive products operations).

²⁰² *Id.*

²⁰³ Examples include income taxes, real property taxes, sales and use taxes, personal property taxes, and franchise taxes and fees.

²⁰⁴ *Mayo v. United States*, 319 U.S. 441, 446 (1943) ("It lies within Congressional power to authorize regulation, including taxation, by the state of federal instrumentalities. No such permission is granted here. Congress may protect its agencies from the burdens of local taxation.") (internal citations omitted).

²⁰⁵ FTC REPORT, *supra* note 1, at 9.

²⁰⁶ *Id.* at 9-10. A great example of this fact lies in the USPS's provision of Priority Mail Flat Rates. See USPS, *Priority Mail*, <http://www.usps.com/shipping/prioritymail.htm> (last visited Feb. 10, 2011) ("Whatever fits in the box or envelope ships for one low rate—anywhere in the United States."). This service artificially reduces the actual cost of shipping post or parcel.

²⁰⁷ See FTC REPORT, *supra* note 1, at 9

wrong information about relative scarcities in the market for competitive mail products, which leads to inefficient marketplace decisions and reduced consumer welfare.”²⁰⁸ Overall, then, in spite of the prohibition on cross-subsidizing its competitive products via its market-dominant products, the USPS enjoys indirect and implicit subsidies that put its private competitors at a great disadvantage.

Private competitors of the USPS are further disadvantaged by the present setup in less quantifiable ways. First and foremost, the current regime deprives private entrepreneurs and future competitors of the USPS and their employees of the freedom to fully pursue economic opportunities.²⁰⁹ A private company who may wish to enter the realm of post and parcel delivery will be unable to do so. As evinced by the relatively limited number of well-known options outside of the USPS, namely UPS and FedEx, private companies, even in the competitive products market, have difficulty both entering the private carrier industry and surviving once they gain entry.²¹⁰ This is especially evident in the less-than-truckload industry, which is essentially a less well-known version of UPS and FedEx.²¹¹ Entry into the less-than-truckload industry has proven very difficult over time.²¹² In fact, only a dozen or so firms from the fifty largest less-than-truckload carriers in 1979, managed to survive through the end of 1992.²¹³ Profitability and survival itself continue to be major problems for these less-than-truckload companies.²¹⁴ Perhaps this is the end result of the difficulty that lies with competing against the USPS, an

²⁰⁸ *Id.* at 10.

²⁰⁹ See FERRARA, *supra* note 1, at 1.

²¹⁰ DHL provides a great example. Despite its well-known, burst-on-the-scene ad campaign, it announced in 2008 that it was leaving the U.S. express-mail market. See Clay Dillow, *UPS, FedEx Jump to Fill DHL's Holes*, newser (Nov. 11, 2008, 11:13 AM CST), <http://www.newser.com/story/42292/ups-fedex-jump-to-fill-dhls-holes.html>.

²¹¹ Essentially, less-than-truckload carriers carry partially loaded trucks to a single destination; alternatively, they carry fully loaded trucks to multiple destinations. Examples include Con-Way, DHL, and Yellow Freight System. See Transportation Marketing & Communications Association, *Facts About the LTL Industry*, http://www.tmcoday.org/InsideTheIndustry/IndustryStats/Facts_About_LTL.asp (last visited Feb. 10, 2011).

²¹² See James P. Rakowski, *The Continuing Structural Transformation of the U.S. Less-Than-Truckload Motor Carrier Industry*, 34 *TRANSP. J.* 5, 5-7 (1994), available at http://www.entrepreneur.com/tradejournals/article/16529030_3.html (last visited Feb. 10, 2011).

²¹³ *Id.* at 5 (noting that only the “big three” carriers of 1979—Roadway Express, Consolidated Freightways, and Yellow Freight System were still the market leaders in 1992).

²¹⁴ See *id.* at 5-7.

entity that is able to artificially deflate its prices due to the implicit subsidies it receives as a result of its governmental status. These statistics may dissuade entrepreneurs from even attempting to engage in the business of private post and parcel delivery. Thus, from the perspective of a private company or potential private company, the present public/private dichotomy proves disadvantageous.

In addition to the discouragement of entrepreneurship and innovation, other, less-quantifiable disadvantages exist from the perspective of a private company. For one, the USPS is limited in the extent to which it can be sued.²¹⁵ For example, the USPS is immune from liability for certain types of conduct under the Federal Tort Claims Act.²¹⁶ Namely, the USPS is immune from claims involving failure to deliver mail as promised.²¹⁷ Private companies, conversely, do not possess this immunity. They can be sued, and often are, because a shipment was delayed, delivered to the wrong address, or damaged or destroyed.²¹⁸ An additional unquantifiable advantage enjoyed by the USPS rests with its power of eminent domain.²¹⁹ However, it is unclear whether the USPS has ever actually utilized the eminent domain authority it possesses.²²⁰ Nonetheless, private companies such as UPS and FedEx contend that the power of eminent domain is ““a powerful negotiating tool”” for the USPS.²²¹ The USPS also possesses other less pronounced, but nonetheless important, advantages over its private competitors. As previously mentioned, the USPS must conform to state and local zoning laws, land use laws, and environmental laws like its private competitors,²²² yet, the statutes that require this conformity give the USPS some discretion with respect to compliance.²²³

Companies such as UPS and FedEx are also at a marked disadvantage in attempting to compete with the USPS in their competitive products sector, owing to the fact that private companies must comply with state and local statutes and regulations that govern the operation of motor vehicles;²²⁴ the USPS, on the other hand, is excused from compliance with

²¹⁵ FTC REPORT, *supra* note 1, at 9.

²¹⁶ See 28 U.S.C. §§ 1346(b)(1)-(2), 2674 (2006).

²¹⁷ See *id.* § 2680(b) (“The provisions of this chapter and section 1346(b) of this title shall not apply to... [a]ny claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter.”).

²¹⁸ FTC REPORT, *supra* note 1, at 33.

²¹⁹ See *id.* at 8-9.

²²⁰ See *id.* at 35.

²²¹ *Id.* (citation omitted).

²²² See *supra* Part II.D.

²²³ See *supra* Part II.D.

²²⁴ FTC REPORT, *supra* note 1, at 28.

these regulations.²²⁵ This privilege arises from the Supremacy Clause of the United States Constitution. “[T]he Supremacy Clause prevents enforcement of state and local regulations—other than taxation requirements—if such enforcement actually interferes with the execution of a Postal Service function.”²²⁶ UPS and FedEx also contend that they are disadvantaged by the Supremacy Clause as they must pay parking tickets, while the Supremacy Clause exempts the USPS from such a requirement.²²⁷ Although it is unclear whether this contention is meritorious, it has been argued that officers do not ticket USPS vehicles because they believe they are barred from doing so.²²⁸

In addition to the above stated disadvantages, private companies also argue that they possess a disadvantage when compared to the USPS in terms of securing financing for operations.²²⁹ The Federal Trade Commission admitted that, though this is unclear, as the Secretary of the Treasury is not required to guarantee the debt of the USPS,

[p]rospective purchasers of Postal Service obligations may nevertheless be willing to receive a lower interest rate from such obligations than from private obligations because they assume—whether or not correctly—that the federal government will stand behind Postal Service debt instruments, just as many private investors now apparently believe that the federal government will take steps to prevent default on obligations issued by the Federal National Mortgage Association or Freddie Mac.²³⁰

One commentator who responded to the request for public comments following the passing of the Postal Accountability and Enhancement Act provided an estimate of the value in saved interest rates that the USPS enjoys as a result of the possibility that the government will guarantee USPS loans. The commentator determined that “the Postal Service receives an implicit interest rate subsidy of 1.45 percentage points from the Treasury on every loan, and it saves \$14.5 million annually on each \$1

²²⁵ *Id.*

²²⁶ *Id.* at 29.

²²⁷ *Id.* at 28.

²²⁸ *Id.* at 29 (stating that, while it is unclear that the Constitution precludes local jurisdictions from ticketing USPS vehicles, the USPS has “agreed to pay parking fines in some jurisdictions” while other jurisdictions “simply refrain from ticketing [USPS] vehicles”).

²²⁹ *Id.* at 31 (citation omitted).

²³⁰ FTC REPORT, *supra* note 1, at 28 (citation omitted).

billion it borrows.”²³¹ Even if debatable, there exists at least some data that point to the conclusion that private companies fare worse in their attempts to secure financing when compared to the USPS, placing them at a competitive disadvantage in their attempts to provide similar products to consumers.²³²

In addition to the financial benefits possessed by the USPS, private carriers are also at a disadvantage when it comes to law enforcement tools. Unlike private companies, the USPS possesses the authority to carry out searches and seizures in the enforcement of laws protecting the mail.²³³ A number of criminal statutes protect the mail,²³⁴ and the USPS itself has the authority to enforce these provisions.²³⁵ This provides the USPS with a competitive advantage in comparison to its private counterparts. In effect, the USPS has the advantage of being able to promise its consumers protection and security of their mail.²³⁶ Private companies do not have this liberty as no similar criminal statute protects the items shipped or delivered by entities other than the USPS.²³⁷ Further, private companies cannot quell the fears of their customers with their ability to enforce the safety and security of the mail via searches and seizures as private companies do not have this luxury.

A final, noteworthy way in which the USPS has an edge over its private competitors comes as a result of the mailbox monopoly possessed by the USPS. The inability of private carriers to utilize mailboxes artificially increases the costs of private carriers to deliver competitive products.²³⁸ It does so because, without the mailbox monopoly, private companies could save time, and therefore money, by simply delivering to consumers’ mailboxes. UPS contends:

²³¹ Michael Schuyler, *Government-Imposed Advantages and Burdens on the Postal Service’s Competitive Products: Two Wrongs Do Not Make a Right*, 91 IRET BULLETIN 1, 33 (2007), available at <http://iret.org/pub/BLTN-91.PDF> (explaining that “[t]he Treasury interest rate is significantly lower than even the most credit worthy private-sector business can obtain because lenders think Treasuries are free of default risk. The government borrowing window enables the Postal Service to borrow at substantially less cost than if it were a private-sector company possessing the Service’s revenues, costs, and future prospects.”).

²³² *See id.*

²³³ *See United States v. Dolan*, 546 U.S. 481, 484 (2006).

²³⁴ *See* 18 U.S.C. §§ 1341-42, 1705, 1708 (2006).

²³⁵ *See Dolan*, 546 U.S. at 483-84.

²³⁶ *See* FTC REPORT, *supra* note 1, at 36.

²³⁷ *See id.*

²³⁸ *Id.* at 10.

[T]he Postal Service mailbox monopoly has the direct effect of raising the labor costs private sector competitors incur for delivery to many customers. The effect is most pronounced where the Postal Service, unlike private competitors, can deliver to a mailbox or bank of boxes that are a significant distance from a customer's door, such as in apartment buildings, rural areas, and some cluster housing The added labor costs for private companies to deliver, or in many cases re-deliver, to a residential door are quite large.²³⁹

Further, FedEx contends that various studies have shown that delivery to a customer's door is as much as twice as expensive as curbside or mailbox delivery.²⁴⁰ With no mailbox use permitted, a private company, for various reasons, may not always be able to leave a customer's package or urgent letter at the door.²⁴¹ This often forces private companies to return to re-deliver at a later time. Not only does this impose additional costs on consumers and private companies, but it also presents an inconvenience to the consumer. A private company must charge more at the outset to deal with the potential for increased costs associated with re-delivery, must incur any additional costs from that re-delivery, and consumers, as a result, deal with increased prices in addition to post and parcel delays. Because of the cost and inconvenience, a consumer who may otherwise prefer to utilize a private carrier may opt instead to utilize the services of USPS for convenience, if nothing else.²⁴²

Overall, though the existence of the public/private dichotomy between the USPS and private companies provides numerous advantages to private carrier companies, it seems the disadvantages far outnumber the advantages—both quantitatively and qualitatively. Therefore, at least from the perspective of a private company, it would seem that the current regime needs reform in some shape, form, or fashion. Such reform may not come to fruition, however, unless the current regime poses disadvantages to consumers.

²³⁹ *Id.* at 52 (citation omitted).

²⁴⁰ *Id.* at 53.

²⁴¹ *See id.* at 52.

²⁴² FTC REPORT, *supra* note 1, at 36. Many consumers who may work during the day, or have other obligations, may not be home during delivery hours, and if a private company cannot deliver a package without someone home, problems inevitably arise. This causes private companies to lose business they would otherwise maintain if they were allowed to deliver curbside or to consumers' mailboxes.

IV. ADVANTAGES AND DISADVANTAGES OF THE CURRENT
REGIME FROM A CONSUMER'S PERSPECTIVE

The advantages and disadvantages of current post and parcel delivery vary between private companies and consumers. And, within the pool of consumers, there exists a divide between the interests, at least in some respects, between a rural consumer, an urban consumer, and a business consumer. Nevertheless, for the most part, the interests of all types of consumers coincide with respect to the primary advantages and disadvantages of the current post and parcel regime.²⁴³

A. Advantages

Overall, for the average consumer, the USPS provides a multitude of advantages. For consumers, the USPS's provision of universal service²⁴⁴ proves of great advantage. Further, the USPS is a safe method of mail and parcel delivery,²⁴⁵ it provides a service that is largely unprofitable,²⁴⁶ it supplies an affordable option,²⁴⁷ and, in reality, the USPS provides the United States and its consumers with much more than the mere delivery of mail.²⁴⁸

Perhaps one of the greatest advantages of the current regime from a consumer's perspective lies with the fact that the USPS, by congressional mandate, must provide universal service.²⁴⁹ This means not only that every consumer across the United States can get mail, but also consumers can receive that mail six days a week.²⁵⁰ Though the provision of universal service clearly provides all consumers with the ability to receive mail, it also has added benefits. For example, some individuals have analogized the delivery of mail to a schoolhouse²⁵¹ as it provides individuals who may

²⁴³ When the interests of these three types of consumers do diverge, however, it will be acknowledged in this Note. For all other purposes, however, this Note, when discussing "consumers," refers to all types of consumers.

²⁴⁴ See Geddes, *supra* note 9, at 66.

²⁴⁵ See 39 U.S.C. § 404(a)(6) (2006) (noting the USPS's ability to "investigate postal offenses").

²⁴⁶ See USPS, ASSESSMENT, *supra* note 112, at iv-v, 18-19 tbl.B-10.

²⁴⁷ See *id.* at iv.

²⁴⁸ See *id.* at 25-27.

²⁴⁹ See 39 U.S.C. § 101(a).

²⁵⁰ See Geddes, *supra* note 9, at 66.

²⁵¹ USPS, UNIVERSAL SERVICE, *supra* note 5, at 8 (citations omitted) ("It [rural delivery of the mail] is the schoolhouse of the American farmer, and is without a doubt one of the most potent educational factors of the time.").

otherwise not have access to television or other forms of media with an opportunity to learn and connect with the rest of the world.²⁵² Perhaps Christopher W. Shaw stated this ideal most aptly:

The Postal Service is an institution that reaches every American on a regular basis, and it does not discriminate. All Americans are entitled to receive the same service. It is irrelevant whether they are rich or poor, rural or urban, black or white, young or old: all Americans are equal in the eyes of the Postal Service.²⁵³

In addition to the provision of universal service and its many benefits, the USPS also provides consumers with a safe method of transporting their mail. This is because, unlike its private competitors, the USPS possesses the right to investigate postal offenses and civil matters relating to the USPS.²⁵⁴ With a federal arm to protect the mail, the United States Postal Protection Service,²⁵⁵ the USPS provides consumers with the assurance of safe exchange of funds, mail, securities, payments, and other confidences, through the mail. A consumer may further enhance this safety and security via the USPS seal, which provides safety in transmitting correspondence and messages by allowing them to be sealed against inspection.²⁵⁶ Undoubtedly, these protections provided by the USPS give consumers comfort in the transmission of their mail; this is undeniably beneficial to all types of consumers.

The USPS also provides consumers a cheap service that is not profitable, something private companies might deprive consumers of without the existence of the government-run USPS. Without a doubt, delivery of the mail is not a profitable service.²⁵⁷ Over the last three decades, mail volume has plummeted,²⁵⁸ deterring even the most ambitious private

²⁵² *See id.*

²⁵³ CHRISTOPHER W. SHAW, PRESERVING THE PEOPLE'S POST OFFICE 46 (2006).

²⁵⁴ 39 U.S.C. § 404(a)(6).

²⁵⁵ USPS, ASSESSMENT, *supra* note 112, at 26.

²⁵⁶ *See id.* at 5-6, 26. This is known as the "sanctity of the seal." *Id.* at 26.

²⁵⁷ *Id.* at 18-19 tbl.B-10. Perhaps this is best exemplified by recent Postal News, which announced that the USPS ended the 2010 fiscal year with a record \$8.5 billion loss. *See* USPS, *Postal Service Ends 2010 with \$8.5 Billion Loss*, POSTAL NEWS (Nov. 12, 2010) http://www.usps.com/communications/newsroom/2010/pr10_107.htm (stating that operating revenue totaled \$67.1 billion while operating expenses totaled \$70 billion).

²⁵⁸ USPS, ASSESSMENT, *supra* note 112, at 3-4 ("The Postal Service closed 2009 with volume down sharply, to 177 billion pieces, a decline of 17 percent between 2006 and 2009. Additional volume decline of 10 billion pieces is expected in 2010 Negative volume drivers, like electronic diversion and the green movement, are expected to continue.").

company from aspirations of providing post delivery service. Further, even if private companies were to venture into the realm of standard mail delivery, they would likely only cater to business consumers, rather than the average consumer, as commercial customers currently generate roughly 80 percent of postal revenue.²⁵⁹ Aside from provision of an unprofitable service, the USPS also provides mail delivery at a cheap, affordable rate,²⁶⁰ something that consumers likely appreciate.²⁶¹ This inexpensive rate is not guaranteed without the existence of the government-controlled USPS, as privatization in other countries demonstrates.²⁶² Apart from merely being inexpensive, however, the USPS's ability to provide both market-dominant and competitive products allows consumers to save even more money. This is because the USPS benefits from economies of scope, which reduce costs by allowing a shared network to deliver both mail (market-dominant) and competitive products,²⁶³ something UPS and FedEx cannot provide.²⁶⁴ Further, the USPS creates a price floor for its competitors,²⁶⁵ which naturally keeps prices of companies such as UPS and FedEx at a lower rate than might otherwise exist. Therefore, apart from its provision of universal service, the USPS's ability to provide an

²⁵⁹ *Id.* at 4. It is noteworthy, however, that business consumers may prefer this alternative, which would allow them to contract with private companies such as UPS and FedEx, as many of them already do, for both mail and parcel delivery. The average consumer, on the other hand, would be left out to dry if this route were taken, as private companies are, in the end, profit-seeking entities.

²⁶⁰ *Id.* at 6 (stating that the USPS is constrained by a price cap, which limits the Postal Service's ability to raise the average price of each market dominant class).

²⁶¹ It is important to note, however, that rural consumers benefit more from the USPS's affordable rates. This is because the USPS "creates a cross-subsidy from urban to rural consumers created by a uniform rate." *See Geddes, supra* note 9, at 64 (citation omitted). Therefore, urban consumers pay more than they otherwise need to in order to compensate for the more expensive delivery to their rural counterparts. The ability to do this, however, would not exist without the existence of the monopolies possessed by the USPS.

²⁶² USPS, ASSESSMENT, *supra* note 112, at 36 ("A look at postal privatization in other countries shows prices far greater than in the U.S. The new private post would lose the economies of scale inherent with processing and delivering the entire nation's mail. The most likely outcome is that postal providers will quickly fill in to serve the higher volume, profitable areas of the country, leaving higher cost rural and inner city urban locations without affordable service.").

²⁶³ *See* FTC REPORT, *supra* note 1, at 47.

²⁶⁴ UPS and FedEx cannot provide this scope economy, however, because of the existence of the delivery and mailbox monopolies. Thus, this is not to say that private companies could never provide economies of scale and reduce costs in a similar manner.

²⁶⁵ FTC REPORT, *supra* note 1, at 47.

inexpensive method of delivery for an unprofitable entity benefits consumers of all types.

The USPS also benefits consumers by providing a host of other services aside from standard mail delivery. For example, the USPS provides consumers with the ability to purchase money orders,²⁶⁶ passport application acceptance,²⁶⁷ national security,²⁶⁸ and support during national disasters.²⁶⁹ Further, the USPS provides consumers with a government presence on a daily basis, a government that many consumers would not otherwise have the ability or wherewithal to contact. The USPS itself notes:

The Postal Service provides a government presence in all neighborhoods, delivering to more than 150 million addresses. Having carriers on the streets every day is an invaluable way to keep watch on America's neighborhoods. Although, not required by the law, the Carrier Alert Program recognizes that carriers help monitor the well-being of elderly and disabled customers, and carriers throughout the country have saved hundreds of lives by keeping an eye out for citizens.²⁷⁰

Additionally, the USPS is a humanitarian organization, evinced by the fact that it provides free mail for the blind and reduces its rates for non-profit mail.²⁷¹ The USPS also provides many middle-class Americans with employment across the United States.²⁷² Though some might not consider these factors advantageous, job opportunities are especially important in the current economic climate.²⁷³

²⁶⁶ USPS, ASSESSMENT, *supra* note 112, at 23.

²⁶⁷ *Id.* at 26.

²⁶⁸ *Id.* (stating that USPS carriers “have agreed to participate in the Cities Readiness Initiative, a federally funded effort to prepare major U.S. cities and metropolitan areas to effectively respond to a large scale terrorist event”).

²⁶⁹ *Id.* (noting that carriers “provide support during national disasters such as floods, tornadoes, earthquakes, hurricanes, and other emergencies”).

²⁷⁰ *Id.* at 25. For example, in 2007 five USPS carriers played a role in rescuing elderly individuals from a burning six-story building in California. See USPS, *Unsung Heroes of 2007: Countless Acts of Heroism Performed by California's Postal Employees*, POSTAL NEWS (Dec. 28, 2007) http://www.usps.com/communications/newsroom/local_news/ca/ca_2007_1228b.htm.

²⁷¹ USPS, ASSESSMENT, *supra* note 112, at 25 (noting that this is required by law).

²⁷² *See id.* at 27.

²⁷³ Michael Powell & Sewell Chan, *Slow Job Growth Dims Expectation of Early Revival*, N.Y. TIMES, Jan. 8, 2011, at A1 (“The year 2010 ended on a disappointing note, as the economy added just 103,000 jobs in December, suggesting that economic deliverance will not arrive with a great pop in employment.”).

Overall, the USPS, especially in the delivery of its market-dominant products, provides a variety of consumers a multitude of advantages. Consumers undoubtedly want mail to reach them on an almost-daily basis, want that mail to be cheap, and want the delivery of that mail to be safe and free from harm and tampering. The USPS provides these and other aforementioned benefits to all types of consumers nationwide.

B. Disadvantages

Though the USPS and the current public/private dichotomy provide consumers with many advantages, the current setup is not without its downfalls. The disadvantages of the current regime are many: the costs of the postal monopoly often exceeds its benefits;²⁷⁴ demand for the services the USPS provides is declining;²⁷⁵ the current setup goes against the political commitment of the United States to freedom;²⁷⁶ consumer choice is limited;²⁷⁷ politics often get in the way;²⁷⁸ and, for business consumers, the current regime proves more expensive than necessary.²⁷⁹

The most profound disadvantage consumers face as a result of the current regime lies with the fact that the costs of the current setup may offset its benefits.²⁸⁰ For one, the USPS is slowly drowning. Although it continues to try to find new ways to cut costs, the USPS's revenue base is eroding.²⁸¹ Indeed, the USPS lost well over \$12 billion over the course of

²⁷⁴ See Geddes, *supra* note 9, at 66-67.

²⁷⁵ See *id.* at 62.

²⁷⁶ See generally George L. Priest, *Socialism, Eastern Europe, and the Question of the Postal Monopoly*, in GOVERNING THE POSTAL SERVICE 46, 46-59 (J. Gregory Sidak, ed., 1994).

²⁷⁷ See FTC REPORT, *supra* note 1, at 54.

²⁷⁸ See USPS, ASSESSMENT, *supra* note 112, at iv.

²⁷⁹ See *id.* at 4. Though this idea will not be fleshed out in this Note as this section focuses on the "average" consumer, businesses could cut costs by having a private company, such as UPS or FedEx, who they have likely already contracted with for parcel delivery, bring their mail concurrently with the businesses' packages. This would reduce costs and increase efficiency. This would cut costs even though the USPS touts itself as "cheaper," because, for large accounts, UPS and FedEx offer rates comparable to the USPS's. FTC REPORT, *supra* note 1, at 22.

²⁸⁰ For urban consumers, this rings even more true, owing to the fact that they must cross-subsidize rural consumers because of the USPS's universal service obligation. See Geddes, *supra* note 9, at 64.

²⁸¹ *Id.* at 62 (citing the USPS's net loss in 2002 as \$700 million, following a \$1.7 billion loss in 2001).

the last three years and lost roughly \$8.5 billion in 2010 alone.²⁸² Conversely, other countries that have de-monopolized their postal system have shown cost reductions as a result of such liberalization.²⁸³ Further, in the face of rapidly declining volume and revenue, the USPS's premise of self-funding does not work as revenues can no longer cover costs.²⁸⁴

In addition to rising costs in terms of declining revenue, the USPS and the current regime pose other, less quantifiable costs. For example, because of the present setup, there are no incentives for postal management to address issues such as operating systems, the framework of operation, labor relations, and the like.²⁸⁵ This leads to inefficiencies and increased costs.²⁸⁶ Additionally, because the current regime has always existed without being subject to a market test, there are no built-in guarantees that the present setup is cost-efficient.²⁸⁷ "Removal of statutory entry barriers would subject it [the Postal Service] to a market test"²⁸⁸ to genuinely see if the USPS is truly cost efficient. Further, owing to the fact that the government constrains the USPS's ability to price and manage its postal products, the USPS cannot capture the ups and downs of the market and alter their products and services to adequately address that change.²⁸⁹

²⁸² USPS, ASSESSMENT, *supra* note 112, at v; USPS, *Postal Service Ends 2010 with \$8.5 Billion Loss: Record Efficiency Levels and work Hour Reductions Cannot Offset Falling Volumes—Fundamental Changes Needed*, POSTAL NEWS (Nov. 12, 2010) http://www.usps.com/communications/newsroom/2010/pr10_107.htm. Further, absent fundamental change in the current regime, cumulative losses could total more than \$238 billion by the year 2020. USPS, ENSURING A VIABLE POSTAL SERVICE FOR AMERICA: AN ACTION PLAN FOR THE FUTURE 1 (2010), *available at* http://www.usps.com/strategicplanning/pdf/Action_PlanfortheFuture_March2010.pdf [hereinafter USPS, ENSURING A VIABLE POSTAL SERVICE].

²⁸³ See USPS, ASSESSMENT, *supra* note 112, at 13-14 tbl.6 (citation omitted); see also Geddes, *supra* note 9, at 66.

²⁸⁴ *Id.* at 2. The USPS has acknowledged this reality time and time again, most recently in early 2010, when it began efforts to develop a range of cost-reducing, revenue-generating initiatives. See USPS, *Envisioning America's Future Postal Service*, <http://www.usps.com/strategicplanning/futurepostalservice.htm> (last visited Feb. 11, 2011).

²⁸⁵ See Geddes, *supra* note 9, at 68 (citation omitted).

²⁸⁶ See *id.* at 66 (citation omitted).

²⁸⁷ John C. Panzar, *The Economics of Mail Delivery*, in GOVERNING THE POSTAL SERVICE 1, 6 (J. Gregory Sidak, ed., 1994).

²⁸⁸ *Id.*

²⁸⁹ USPS, ASSESSMENT, *supra* note 112, at 5. This reality was acknowledged in the most recent change to the USPS's prices. See USPS, *New Postal Service Pricing Announced*, POSTAL NEWS (Jan. 13, 2011), http://www.usps.com/communications/newsroom/2011/pr11_004.htm ("The Postal Service filed new mailing service prices with the Postal Regulatory Commission (PRC). Price increases are limited to the

This leads to numerous unnecessary costs and inefficiencies, which are far from beneficial to the consumer public.²⁹⁰

On top of the inefficiencies and costs of the USPS that may outweigh the benefits of the current regime, the current setup proves disadvantageous to consumers because, in modern times, there exists less need for the mail delivery services provided by the USPS.²⁹¹ Over time, and especially recently, there has been a major decline in the demand for First-Class Mail²⁹² as technology has lessened the need for the sending of mail.²⁹³ Telephones, cell phones, computers, fax machines, e-mail, smart phones, and the like, have all had their hand in displacing the once profound need for the USPS.²⁹⁴ The fact that approximately 150 Post Offices close every year evinces this declining demand.²⁹⁵

Not only is the need for the USPS in steady decline, but the very existence of the USPS bucks against the political commitment of the United States to freedom and democracy.²⁹⁶ This commitment is exemplified, among other ways, by the fact that all other network industries in

Consumer Price Index (CPI) cap of 1.7 percent, consistent with the Postal Law of 2006. Actual percentage price increases for various products and services will vary. It has been nearly two years since the last increase The overall increase is capped at 1.741 percent—at or below the rate of inflation as measured by the Consumer Price Index.”).

²⁹⁰ As mentioned in a Federal Trade Commission report:

From a market-wide perspective, the federally-imposed restrictions that impose economic burdens on the USPS and the implicit subsidies that provide the USPS an economic advantage should be viewed as two distortions that compound each other and negatively affect the provision of competitive mail products. The USPS's burdens cause it to utilize more resources than necessary to produce competitive products. Its implicit subsidies partially mask these inefficiencies from consumers, creating incentives for consumers to purchase more competitive mail products from the USPS than they otherwise would if the products were priced based on their full costs. The net economic effect of these two factors is to divert some portion of sales from lower-cost suppliers of competitive mail products or other communications media to the USPS, which produces competitive products at a higher cost due to its economic burdens. These distortions reduce overall economic efficiency because more resources are used to produce the current volume of competitive products than is necessary.

FTC REPORT, *supra* note 1, at 9.

²⁹¹ *See id.* at 6-7.

²⁹² *See* USPS, UNIVERSAL SERVICE, *supra* note 5, at 20 (stating that, between 2001 and 2007, the volume of First-Class Mail experienced at least a 7 percent decline).

²⁹³ *See* Geddes, *supra* note 9, at 62.

²⁹⁴ *See id.*

²⁹⁵ USPS, UNIVERSAL SERVICE, *supra* note 5, at 19.

²⁹⁶ *See* Priest, *supra* note 276, at 56.

the United States, aside from the USPS, such as electricity, gas, and telecommunications, are privately owned and operated.²⁹⁷ Some, such as George L. Priest, argue that “the citizenry and thus democracy in America can be made better off by freeing the forces of innovation and experimentation to empower the discovery of new methods of delivery that advance communication.”²⁹⁸ Priest further condemned the current regime, writing:

Supporters of the monopoly and of the socialized features of Postal Service operation must be portrayed ... as the enemies of true democracy who seek, through advocacy of the principle of universality, to tax the communication of all of us, stifling innovation and experimentation and burdening the communication of the citizenry to subsidize particular mail classes or high-cost routes.²⁹⁹

Thus, by not opening the delivery of standard mail to competition, the United States inhibits innovation and capitalism, going against its commitment to freedom. Undoubtedly, for some, this proves disadvantageous.

Along the same lines, the current setup inhibits a consumer’s freedom of choice, as the present regime deprives consumers of the ability to choose who delivers their mail.³⁰⁰ Even in terms of non-mail products, such as parcel, consumers’ choices are limited. Because of the high turnover rate of less-than-truckload companies,³⁰¹ and the difficulty private companies have competing with the competitive services industry of the USPS, most consumers really have only three options for parcel delivery: USPS, UPS, or FedEx.³⁰² Though consumers may have the choice of a regional carrier within their geographic region, such as DHL or another less-than-truckload carrier, USPS, UPS, and FedEx are the most prominent choices for parcel delivery in the United States.³⁰³ On the other hand, if the delivery monopoly were lifted, it would spawn competition, which could provide consumers with lower prices, better quality, and a greater variety.³⁰⁴

A last noteworthy disadvantage of the current setup is that the USPS is a government-run entity, leaving it subject to political control and the

²⁹⁷ Geddes, *supra* note 9, at 67 (citation omitted).

²⁹⁸ Priest, *supra* note 276, at 58.

²⁹⁹ *Id.*

³⁰⁰ FERRARA, *supra* note 1, at 1.

³⁰¹ *See supra* Part III.B.

³⁰² *See* FTC REPORT, *supra* note 1, at 8.

³⁰³ *Id.*

³⁰⁴ *See id.* at 10.

dreaded bureaucracy. “Even in those areas where the Postal Service theoretically has the ability to control its costs, it often faces political resistance when it attempts to close or consolidate facilities. This means that costs cannot decrease as rapidly as volume and revenue decline.”³⁰⁵ Thus, consumers are forced to absorb the costs of political, bureaucratic decisions to maintain postal facilities.³⁰⁶

Overall then, there are key disadvantages to the current system from the perspective of an average consumer. Whether these downfalls of the present regime render the public/private dichotomy disfavored by consumers on average is unknown. But, it is undeniable that these disadvantages exist, will continue to exist, and may even become more pronounced in the future as the political front becomes more divided, costs increase, the need for standard mail declines, and private companies continue to face difficulty competing with the USPS.

V. SHOULD THERE BE POSTAL REFORM? AN ANALYSIS OF THE CURRENT REGIME

Based on the advantages and disadvantages inherent in the present public/private dichotomy that exists between the USPS and private companies, the time has come for complete postal reform.³⁰⁷ On the basis of the aforementioned arguments for and against the current regime, it appears that one available alternative to the present setup, apart from that

³⁰⁵ USPS, ASSESSMENT, *supra* note 112, at iv.

³⁰⁶ *Id.* at 17. For example, though the USPS renewed its drive to drop Saturday delivery in March 2010, it met political resistance in the form of the Postal Regulatory Commission and Congress. See Brian Montopoli, *Postal Service Dropping Saturday Delivery? Not so Fast*, CBS NEWS (Mar. 2, 2010, 3:35 PM), http://www.cbsnews.com/8301-503544_162-6259683-503544.html. To date, Saturday delivery continues to exist.

³⁰⁷ It is of note that the USPS itself recognizes the need for this reform and has developed proposals of its own. See USPS, ENSURING A VIABLE POSTAL SERVICE, *supra* note 282, at 1. Its proposals include restricting retiree health benefits, adjustment of delivery days, modernizing customer access, establishing a more flexible workforce, adjusting pricing, expanding products and services, and implementing more effective oversight. See *id.* To date, the USPS has only marginally implemented one of these proposals. See USPS, *New Postal Service Pricing Announced*, POSTAL NEWS (Jan. 13, 2011), http://www.usps.com/communications/newsroom/2011/pr11_004.htm (last visited Feb. 20, 2011). Though the USPS strives to ensure that prices of market dominant products can be based on demand, the most recent pricing change remains tied to the Consumer Price Index and was capped at 1.7 percent, consistent with the Postal Law of 2006. See *id.*

recently proposed by the USPS,³⁰⁸ is thus: maintain the USPS's delivery monopoly,³⁰⁹ allowing the USPS to carry post under a set weight;³¹⁰ reintegrate the USPS as a federal agency into the United States Government;³¹¹ dispense with the USPS's competitive products division and its ability to provide competitive products in the marketplace; eliminate the mailbox monopoly;³¹² and statutorily provide more leeway for the USPS and private companies to engage in work share programs, especially when it comes to providing post to large businesses.³¹³ Further, over time, it may be advisable for the USPS to cut back from six to five-day delivery; and, if possible, the federal government should attempt to reduce costs wherever feasible³¹⁴ without compromising the universal service mandate. All in all, this reform proposal would result in benefits for both private companies and consumers alike.

Private companies would benefit in a number of ways from such reform. This proposal would allow private companies to continue to specialize in profitable areas of parcel delivery while not engaging in the

³⁰⁸ See USPS, ENSURING A VIABLE POSTAL SERVICE, *supra* note 282, at 1.

³⁰⁹ Maintaining the USPS delivery monopoly as is, for purposes of this proposal includes maintenance of the "urgent delivery" exception.

³¹⁰ The weight could be set at a weight comparable to current weights for First-Class Mail, such as thirteen ounces. *First-Class Mail Prices*, *supra* note 1.

³¹¹ Reintegrating the USPS into the government would entail making it less of a quasi-governmental entity and more of a government funded, as opposed to self-funded, executive agency, as it was prior to the 1980s. See notes 17 & 21 *supra* and accompanying text.

³¹² This proposal would obviously entail some sort of revision of the United States Code sections that pertain to mailbox security, which presently remains the province of the USPS. See *supra* Part II.E.2. One idea is to continue to allow the USPS to remain the enforcement arm of mailbox security. An alternative would be to allow all carriers to engage in mailbox protection and security.

³¹³ The idea behind this piece of the proposed change is that many large businesses have contracts with private carriers, such as UPS and FedEx, which pertain to provision of parcel. FTC REPORT, *supra* note 1, at 22. By increasing the flexibility of work share programs amongst the USPS and private carriers, economies of scale could be created in the private sphere. See FTC REPORT, *supra* note 1, at 47. This would result in greater efficiency, lower costs, and environmental benefits as only one carrier (whether the USPS, UPS, or FedEx) would have to drive to the business on any given day, as opposed to the usual two or three.

³¹⁴ For example, former Postmaster General John Potter stated that costs could be cut by shedding jobs through attrition, reducing work hours wherever possible, and consolidating mail-sorting facilities. Op-Ed, *No Saturday Delivery? Post Office Needs More Cuts*, USA TODAY, Mar. 8, 2010, at 8A. Additionally, the USPS could save money by closing extra Post Offices or Post Offices that are in decline or losing money. See *id.* All of these changes are ways to cut costs without sacrificing a significant consumer concern: the provision of universal service.

delivery of post, an area which is largely unprofitable and thus unappealing for private companies. Private companies could thus compete in the area of parcel delivery, where they are most interested, in a more focused manner. Private companies would no longer have the burden of competing with an artificially cheaper USPS parcel alternative, which would allow them to better innovate and open the door for new entrepreneurship without the added risk inherent in the enterprise of post and parcel delivery today. Further, the elimination of the mailbox monopoly would offset the removal of the economies of scale that exist for the USPS today. Though the USPS would no longer be able to create economies of scale in their post and parcel delivery, private companies would be better able to operate efficiently with permission to utilize the USPS's mailboxes.³¹⁵ With the removal of the mailbox monopoly, any urgent letters and small parcels that otherwise may not be able to be delivered if a customer is not home could simply be left in the customer's mailbox, rather than requiring redelivery. This would decrease costs for private companies, offsetting the increased costs that may inhere from eliminating the USPS's economies of scale. The same logic applies to broadening the work share opportunities for large business customers. If the USPS and private companies could contract, allowing for private companies to take post to large businesses with which they have contracts, it would increase efficiency and decrease the need for two trucks to go to the same place every single day. This alternative would be both efficient and environmentally friendly.

Additionally, consumers of all types would benefit from the proposed postal reform. The proposal would allow the continuation of universal service, while at the same time allowing for innovation and efficiency in parcel delivery, perhaps decreasing costs and increasing customer satisfaction. Additionally, citizens would still have the luxury of daily interaction with a governmental entity.³¹⁶ Further, for consumers, this pro-

³¹⁵ Even if the USPS is unwilling to fully relinquish its mailbox monopoly, it may be possible for the USPS to create the effect of so relinquishing by allowing private companies mailbox access for a set or agreed-upon fee. This could also provide an additional source of revenue for the USPS.

³¹⁶ Though the proposal may decrease the USPS's interaction with large businesses, it still requires universal service; thus interaction with individual consumers on an almost-daily basis would continue, depending upon the consumer's usage of standard mail.

posal may allow the USPS to decrease its costs while increasing consumer choice in the area of parcel delivery.³¹⁷

Because this proposal would force the USPS to shoulder the unprofitable delivery of post while leaving it without the ability to cross-subsidize through provision of more profitable products, this proposal may only increase USPS's burden and its mounting debt. However, at the present time, this seems like the most workable solution for a variety of reasons. First, as previously mentioned, no comparable private company would bear the burden of delivering unprofitable post.³¹⁸ Second, this change may allow the USPS to more effectively focus its efforts on the delivery of post, which may result in the USPS discovering and implementing cost-saving techniques and other innovations in the industry. Finally, though it may cause strain on the traditionalist's heart, this proposed reform may begin the movement towards an even greater decline in the use of and need for standard mail, at least from an individual perspective.

Elimination of the mailbox monopoly would also provide a new source of convenience to consumers who work during the day and are not home to receive their urgent letters or small packages. Apart from the advantages to the average consumer, however, the proposal would also benefit business consumers. If the work share programs increase flexibility in the realm of delivery of post, businesses will be able to create economies of scale, allowing UPS or FedEx, with whom many businesses have contracts, to bring in and take out the mail when they stop to deliver and pick up parcels.

Overall, this proposal seems viable from the standpoint of both the average consumer and the business consumer. It is not too radical a departure from the current regime. Further, and perhaps most importantly, the proposal would provide benefits to all parties involved. It would eliminate many of the difficulties faced today, provide simple solutions, and allow many of the advantages of the present setup to persist.

CONCLUSION

The sending and receiving of post and packages is a vital aspect of daily living in the United States for people from all walks of life. The current public/private dichotomy that has long existed, and presently

³¹⁷ The proposal would potentially increase consumer choice by making it less risky for new entrepreneurs to enter the realm of parcel delivery, and making their success more achievable.

³¹⁸ See *supra* Part III.A.

exists, between the USPS and private competitors such as UPS has its advantages and disadvantages for consumers and private companies alike. Because, however, over time the disadvantages have swallowed what advantages there once were to the current setup, there exists a growing need for postal reform in the United States.

This Note has proposed reform that differs from the USPS's proposed initiatives. This proposal is not without its own problems, but does address some of the issues the postal regime currently faces while providing benefits for consumers and private companies alike.

Without a doubt, this country is in need of postal reform. Even the USPS acknowledges that the current regime has become unbelievably inefficient and costly.³¹⁹ Though there exists much debate on how best to accomplish this reform in order to please all affected parties, there are basic facts upon which everyone can agree: the USPS is a sinking ship; mail volume is in steady decline; the USPS, on its current course, will lose well beyond \$200 billion over the next decade,³²⁰ and something must be done about all of the aforementioned. Awareness of the failing plan of the USPS is not limited to studies, headlines, criticism, and balance sheets; it is a reality citizens encounter in their everyday lives. The following scenario is an oft-occurring experience:

I would direct this straight to the USPS.com site if I could, but they have no mechanism for doing so. Idiots. The post office [sic] here ... has slots for 5 people to assist with mailing, stamps, retrieving packages, et.al. On Saturday ... they had 2 people working and 30 people in line. Today they have 20 people in line and ONE person working! ... I waited for 30 minutes and moved 2 steps up on Saturday before leaving to go live my life. ... Does the Post Office make their customer service extra crappy in advance of postal rate increases? Is that their plan?³²¹

It is time to adopt a better plan for the USPS.

*Lauren T. Andrews**

³¹⁹ See USPS, ENSURING A VIABLE POSTAL SERVICE, *supra* note 282, at 1.

³²⁰ See *id.*

³²¹ *US Post Office Complaints – Ultra-Poor Counter Service*, COMPLAINTS BOARD (Feb. 23, 2009), <http://www.complaintsboard.com/complaints/us-post-officec167811.html>.

* J.D. Candidate, Class of 2011, William & Mary School of Law.