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E-COMMERCE ACTIVITIES OF THE U.S. POSTAL SERVICE

HEARING

BEFORE THE

INTERNATIONAL SECURITY, PROLIFERATION, AND FEDERAL SERVICES SUBCOMMITTEE

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

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SEPTEMBER 7, 2000

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E-COMMERCE ACTIVITIES OF THE U.S. POSTAL SERVICE

THURSDAY, SEPTEMBER 7, 2000

U.S. SENATE,
SUBCOMMITTEE ON INTERNATIONAL SECURITY,
PROLIFERATION, AND FEDERAL SERVICES,
OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:38 a.m. in room SD–342, Senate Dirksen Building, Hon. Thad Cochran, Chairman of the Subcommittee, presiding.

Present: Senators Cochran and Edwards.

OPENING STATEMENT OF SENATOR COCHRAN

Senator COCHRAN. The Subcommittee will please come to order.

I want to welcome everybody to our hearing that we have convened today. Our Subcommittee is here to review a report that has been compiled by the General Accounting Office on the electronic commerce activities of the U.S. Postal Service.

The Postal Service has been aware that the growing use of the Internet and electronic technologies is a new problem for it as it tries to deal with challenges that are presented with these new alternatives to traditional services that have been performed and provided by the Postal Service. At a hearing we had earlier this year, the Postmaster General said that information showed that these factors will cause a drop in mail volume and revenue for the Postal Service.

For some time now we have been working to help ensure that the Postal Service conducted its business so that it wouldn't have to rely upon the infusion of Federal tax dollars to subsidize its operation. The Postal Service has done a very good job in recent years in achieving that result—operating without the benefit of direct subsidies from the Federal treasury. And so this new development is one that presents both problems and challenges for the Postal Service, according to information that has come to the attention of our Subcommittee in previous hearings.

So the Postal Service, in searching for ways to continue to react to the demands of the American public and businesses, is trying to decide how it can reduce costs, increase revenues, and develop a range of e-commerce products and services that supplement its traditional mail services to the public. One question that has arisen from competitors who are also embarking upon new business ventures in these areas is whether or not this is appropriate competi-

tion for the Postal Service to embark upon, and whether or not it is consistent with existing laws and regulations on the subject.

To try to answer these questions, our Subcommittee asked the General Accounting Office to look into these issues and give us a report so that we could better understand the legal issues that arise from these activities. So that's why we are here today. We have an opportunity today to examine the results of the GAO's review and its report, which I hope will serve as a foundation for continuing oversight of the Postal Service and its activities.

On our first panel today is a witness who is representing the General Accounting Office. He is Bernard Ungar, Director of Government Business Operations Issues, who will present the GAO's report. Then we will hear from a panel of witnesses that includes John Nolan, Deputy Postmaster General of the U.S. Postal Service; Ed Gleiman, Chairman of the Postal Rate Commission; and Robert Rider, Vice Chairman of the Board of Governors of the U.S. Postal Service.

We welcome all of our witnesses and we appreciate very much your providing us with prepared statements which we will include in the record in full. And we encourage you to proceed.

Before proceeding, let me point out our distinguished Ranking Member of the Subcommittee is not able to join us today. Senator Akaka, from Hawaii, has just recently undergone replacement hip surgery. He is doing well but the physicians suggested that he not yet embark upon a long flight from Honolulu to Washington. So he is not here. We do have a written statement from him which will be placed in the record at this point.

[The opening statement of Senator Akaka follows:]

PREPARED STATEMENT OF SENATOR AKAKA

Thank you, Senator Cochran for your leadership and direction in holding today's hearing on a topic of great importance to the American public: The Postal Service's E-commerce Activities. As the Ranking Member of this Subcommittee, I am a strong advocate of the U.S. Postal Service and understand why Headquarters is pursuing electronic commerce initiatives. We are witnessing dramatic changes in government and business because of the profound technological transformation of our society and world. The ability of the Postal Service to meet these fast paced challenges in a highly complex and competitive environment, while sustaining its commitment to providing universal service, highlights the dedication and professionalism of the more than 800,000 Postal Service employees. I hold them in the highest regard and commend their exemplary service to our Nation.

Today's hearing focuses upon the legality, propriety, and advisability of the Postal Service's development, implementation, and expansion of e-commerce initiatives. There is no question that the Postal Service is a leader in utilizing the latest technology and the best logistical and marketing strategies to sustain and improve the core services. The innovative range of e-commerce initiatives implemented and planned by the Postal Service is impressive. There is great debate, however, about whether these enterprises are consistent with the laws and regulations under which the Postal Service operates and whether the Postal Service's entry into the e-commerce arena best serves the public interest.

As the Postal Service becomes more involved in e-commerce activities, I want to know how the Postal Service plans to safeguard its customers' personal and financial information. This is a growing concern of the American public. In recent polls, nine of ten Americans expressed concern about threats to their personal privacy and eight of ten believe they have lost control over how companies use their personal information. There are a number of privacy related bills pending in Congress to address this rising concern. It is my hope that the Postal Service is employing the strongest safeguards available. Our citizens believe in the Postal Service and entrust the Postal Service with a wide range of personal information for safe and secure transmittal through the mails. I know the Postal Service wants this trust to

extend into its e-commerce activities, and I look forward to working with postal officials to guarantee the highest level of electronic privacy standards.

I am also interested to find out what steps the Postal Service is taking to remedy the inconsistencies turned up by the Government Accounting Office's audit of the processes for review and approval of postal e-commerce initiatives. There appears to be unreconciled accounting of how an e-commerce activity is approved, as well as concerns that some e-commerce initiatives fall outside the realm of approved postal services.

The exponential growth of the Internet, e-commerce, and electronic communications will impact the Postal Service's ability to maintain universal service at reasonable rates. It is interesting to note that the two highest volume areas—bill presentment and payments and advertising mail, are also the most vulnerable to electronic alternatives. Without adapting to change, and quickly adopting strategic solutions, the Postal Service risks the possibility of loss of market share and erosion of its core business. I believe the key question we need to answer is how the Postal Service should implement change in the 21st century. I look forward to working with the Postal Service and GAO in this endeavor.

Thank you, Mr. Chairman.

Senator COCHRAN. Now, Mr. Ungar, we welcome you specifically and encourage you to proceed to present the report.

TESTIMONY OF BERNARD L. UNGAR,[1] DIRECTOR, GOVERNMENT BUSINESS OPERATIONS ISSUES, U.S. GENERAL ACCOUNTING OFFICE

Mr. UNGAR. Thank you, Mr. Chairman. We are pleased to be here today to help the Subcommittee in its oversight efforts with respect to the Postal Service's e-commerce initiatives.

With me are the staff who worked on our assignment. They assure me they are right behind me—I think they are way behind me—Teresa Anderson, Ken John, Casey Brown, Angela Davis, and Hazel Bailey, who I would like to thank very much.

Our report,[2] which was done at your request and at the request of the House Subcommittee on the Postal Service, was issued today, as you know. What I would like to do is summarize briefly four issues that we discuss in this report. Before I do that though, I would like to provide some context for those issues to be discussed within.

The Postal Service, like many other organizations today, both government and in the private sector, is in the early stages of actually formulating and developing its e-commerce program. A number of initiatives have been undertaken by the Postal Service over a several year period, in fact, going back even into the 1980's, on an individual case-by-case basis. But it has just been in the last several months that the Postal Service has been trying to put together a program of initiatives.

It has been in the process, again in the early stages, of sorting through that, trying to identify and define these initiatives, trying to organize and get a strategy laid out. And it has made progress in a number of respects. It has defined in the last several months some very broad goals for this program. It has identified some strategies that it wants to pursue. It has identified certain expected results it would like to see from some of these initiatives. It has set up an organizational structure to specifically review and ap-

[1] The prepared statement of Mr. Ungar appears in the Appendix on page 35.

[2] The GAO report entitled "U.S. Postal Service: Postal Activities and Laws Related to Electronic Commerce," dated September 2000 appears in the Appendix on page 90.

prove e-commerce initiatives, and it has set up a separate review process for them.

At the same time, it is still in the process of making lots of decisions and trying to see which initiatives it wants to pursue and not pursue. And it has still not yet developed an overall strategic plan for this area, but it is in the process of doing that.

With that backdrop, the first issue that I would like to discuss has to do with a number of e-commerce initiatives that the Postal Service has underway currently.

According to the Postal Service, the number is seven, and we have outlined those both in our statement and in our report. However, the Postal Service identifies these seven within a framework of a broader category that it has labelled "eBusiness" which constitutes a whole variety of different initiatives or efforts, some of which the Postal Service has talked about as infrastructure, meaning enablers, to provide the Postal Service with the technological capability, for example, to do some of these, and some of these are service enhancements.

The Postal Service has come up with a definition of e-commerce which is basically the use of the Internet to generate revenue, in a simplistic fashion. Unfortunately, what we found during the course of our work was that the Postal Service had not consistently applied this definition to the seven initiatives. For example, it has identified Stamps Online as e-commerce, but an eBay auction of stamps was not e-commerce. So we had a great deal of difficulty trying to determine exactly what the number of e-commerce initiatives is, and we were not able to do that. I would point out again that it is evolving and, hopefully, soon it will be a little clearer as to which initiatives are e-commerce and which are not. And that is important because it has a lot of implications in terms of tracking revenues and expenses and the ratepayers.

The second issue that I would like to talk about is the approval process that the Postal Service has set up. It actually has two processes: One, a new products approval process that has been in place for some time; and a separate process it set up for electronic commerce, which was recently implemented in May. Of the five initiatives, these are the five initiatives of the seven that were either fully or partially implemented during the course of our review or as of our review, the Postal Service could not provide documented evidence that these five initiatives went through all the required steps in its process. For example, the electronic postmark, according to the Postal Service, was implemented in April 2000, yet the documentation provided showed it had not been approved by the special panel it had set up for approving these types of initiatives until July after the initiative had been implemented.

The third issue, and what I think is one of the most important issues for a number of reasons, is the financial issue. This has to do with the revenue/expense data that the Postal Service has pulled together for its e-commerce initiatives. During the course of our review, it has been a real challenge for both us and the Postal Service to get a handle on this. The Postal Service did provide us a number of sets of data during the course of the review, and, as I indicated, of course their initiatives are evolving. But nonetheless, for each set of data that we had been given we found a number of

inconsistencies associated with the data, some incomplete information, and a lot of problems, to the point where we really did not feel comfortable that we could rely on that data.

Problems existed both in the revenue data and the expense data. For example, almost all the revenue that the Postal Service identified associated with its e-commerce initiatives to date had been generated from its Stamps Online and its MoversNet initiatives, which basically get back to the traditional hard copy documents as opposed to the more e-commerce type or electronic initiatives. On the expense side, similarly, we also found a number of problems. For example, the data that the Postal Service provided to us was somewhat different from the data that was provided to the Postal Rate Commission for the Mailing Online initiative. It also excluded some of the expenses that had been incurred associated with some of the discontinued initiatives.

The Postal Service has been quite receptive and quite open to the recommendations that we have made to it with respect to these issues I just mentioned. During the course of our review we did have a few disagreements with the Postal Service, I guess largely in the contextual or perspective area. But I think the Postal Service recognized that it has got some growing pains associated with the e-commerce initiatives and, as I indicated, has been very willing to listen to our suggestions, and, in fact, has already begun to implement them, actually before we completed our review.

The last item that I would like to talk about deals with legal issues associated with the e-commerce initiatives. And as I am sure everybody is aware, the information in the paper today about the Federal Express proposed alliance I am sure falls into this area of interesting legal issues. With respect to e-commerce, however, the Postal Service believes that it has broad authority to introduce new e-commerce products and services. We have not specifically assessed that due to the shortness of time available to us. But a couple of years ago we did look at its authority overall to introduce new products and found that it did have fairly broad authority both in the postal and non-postal area, although there are some constraints, of course. One of the key ones is how closely do these new initiatives relate to its basic mission as it is set out in statute.

The Postal Service believes that some laws generally do not apply, such as consumer protection laws or antitrust laws, and some laws do apply to the Postal Service. And it gets to be a very complex issue. There is certainly a lot of controversy over this and certainly a lot of questions that are being raised over whether or to what extent the Postal Service has authority to get into some of these areas, and, if so, on what sort of specific framework it can undertake some of these initiatives. We have not evaluated that. But it is certainly an issue that is going to be debated for some time.

One of the key issues I would just like to mention briefly has to do with privacy. A lot of people are concerned about the privacy issue associated with e-commerce. The Postal Service has told us and told others that it believes that its mandate basically under the Privacy Act and under the Postal Reorganization Act, as well as some other legislation, enables it to provide more protection, and will enable it to provide more protection in the privacy area to its

customers than some of its private sector competitors have. And this was certainly a controversial area.

But one issue that I would like to raise is that we have had a long-standing disagreement with the Postal Service with respect to the privacy of information that customers provide for changing addresses. And it is a little difficult for us to reconcile this issue with the Postal Service's broad policy statement on protecting the privacy of the information. In a nutshell, the disagreement centers around whether or not the information that postal customers give the Postal Service for address changes can be used by its licensees or their customers to create new movers lists, which is a marketing area that involves sending solicitations and advertisements to people who just moved.

We feel very strongly, and have felt very strongly, that this is not a purpose that would be authorized without the individual's permission. The Postal Service seems to have a disagreement with that. And the question that we raise is what implications does this have for other initiatives that the Postal Service is going to venture into with that kind of a position. It is something that the Subcommittee may want to pursue as it looks into a number of the issues that surround electronic commerce.

With that, I would like to end my summary and be available for any questions.

Senator COCHRAN. Thank you very much, Mr. Ungar. You mentioned at the outset of your statement that there were four issues discussed in your report. I was trying to keep up with each one. You mentioned e-commerce initiatives that have been started by the Postal Service, and then I have the legal issues that are involved, the definition of the legal authority of the Postal Service to engage in these, and then the privacy issue. Have I missed one? What was the other one?

Mr. UNGAR. I sort of categorized them a little differently. I had the first issue as how many e-commerce initiatives are there—identification. The second was the review and approval process that the Postal Service has set up. The third is the reliability of the financial information associated with that. And the fourth one was the whole umbrella of legal issues, I just happened to choose one.

Senator COCHRAN. All right. In the case of the seven new initiatives that have been undertaken by the Postal Service, you said five have been fully or partially implemented. What are the other two that are still under consideration?

Mr. UNGAR. There are two. They are in the report. They are NetPost.Certified and MoversNet.Com enhancements.

Senator COCHRAN. OK. Well, in connection with the process that has been established by the Postal Service for approving these initiatives, we will hear later from representatives of the Postal Service who are knowledgeable about that process, but as far as your review that was undertaken, you said you discovered that some of these initiatives have not really been approved by the process that has been established. To what extent is this, in your view, a problem? If the Postal Service is trying to identify a procedure to review to see that these are consistent with the legal authority and that it is something that is appropriate for the Postal Service to do,

what is the risk to the public or what is the reason for highlighting that as a matter of concern?

Mr. UNGAR. Mr. Chairman, I think it is important for a number of reasons. One is that the Postal Service argues, and probably rightfully so, that while it is not subject in its view to a number of statutes that would apply to the operations of some of its private sector competitors, there are a number of protections built in to the Postal Reorganization Act and one of those is review and approval by the Board of Governors of the general activities of the Postal Service. So to the extent that there has not been an appropriate review of some of the initiatives, it certainly would suggest that if there are public interest concerns—possible competition or fairness of competition issues, or pricing issues, to the extent that some of these are real initiatives as opposed to enhancements to existing services—the Board should weigh in.

I might add that there is some question—the Postal Service believes that it had approved the initiatives, although, again, it could not provide us the documentation for that. Since our review has started, though, the Postal Service now has a new procedure in place we understand, which we think is good, whereby the Board of Governors is going to review on a quarterly basis the e-commerce initiatives that are being proposed and undertaken, and if things apparently come up in between those quarters, I think they are going to ask to have information on them. So I think they have recognized that this was something that they needed to address and have taken action.

Senator COCHRAN. We know that there are legal parameters for the Postal Service's operations set out in the statute creating the Independent Postal Service, Board of Governors, Rate Commission, and the rest. What remedies are available, if any, under the Postal Reorganization Act to those who feel aggrieved or harmed by extending activities beyond the legal authorities that the Postal Service has?

Mr. UNGAR. Sir, I believe one remedy would be to file a complaint with the Postal Rate Commission if a party believes that there is some unreasonable initiative or unfair price. I think one of the big issues that seems to exist here has to do with recovery of cost and are some of the items or services going to be underpriced. In other words, the services will not cover their direct/indirect cost and make a contribution to overhead. Another question is whether the Postal Service is using its position as a monopoly provider to its advantage or in an unreasonable way.

I presume that parties who feel that this might be a problem could go to the Rate Commission. I presume they could go directly to the Board of Governors if they feel there is a problem. They could certainly come to Congress, as I am sure they often do, and raise a concern.

Senator COCHRAN. One of the questions that occurred to me was whether or not there have been any instances where there has been litigation or an effort to actually test some of these authorities in court. Do you know of any, or did your review involve looking at whether or not there were cases that had been brought?

Mr. UNGAR. I don't recall looking at any cases. I do not think we did. There is a complaint pending with the Rate Commission on the

PosteCS initiative. But we did not do a search to see if there were any cases. My recollection is that this is pretty uncharted territory when it comes to testing in court. There may have been some cases.

Senator COCHRAN. One of the observations you made about the data review that you undertook to try to determine what kind of revenue was being generated by these new eBusiness activities and what some of the expenses were that were being incurred in developing these initiatives, you said that these were difficult to isolate and verify. Has that been cured in any way, or do you think there have been changes in the accounting processes to permit you to have a better degree of certainty about the expenses and the revenues that have been generated by these activities?

Mr. UNGAR. Mr. Chairman, not as of the time we completed our work, in August. I think even the most recent set of data that we got we found some problems with. I know the Postal Service is certainly concerned about this as well. And one of the problems it has is that these initiatives are being done in different parts of the organization and different parts are not necessarily seeing things in the same way. Based on the last set of data that we got, we still think there is a lot of work to be done by the Postal Service to really get a good handle on these revenues and costs and make sure that it is allocating these costs and assigning them in an appropriate manner.

Senator COCHRAN. Well one of the issues involved in connection with that is that under the Postal Reorganization Act, the charges that are made for services by the Postal Service cannot be subsidized by any other activity.

Mr. UNGAR. Right.

Senator COCHRAN. Is that the relevant issue that is involved—that they have to be able to allocate these costs to a particular kind of service that is being provided?

Mr. UNGAR. Yes, sir. That is one of the major issues. Certainly, this gets back to why it is important to define e-commerce initiatives consistently. Because if it is a true new product or service, then it needs to be able to stand on its own and be able to recover its costs. I know there are a lot of issues surrounding that. But it certainly needs to be able to stand on its own over some period in time. I think we would recognize that any new business is not necessarily going to make a profit when it first introduces a product; so, there is going to be some period of time where it probably will not. But on the other hand, the Postal Service certainly needs to have good accounting of both the revenues and expenses so one can determine whether direct and indirect costs are really being attributed, are they being recovered, and is some contribution being made to overhead. So that is a very important issue.

The other relevance of that is that, to the extent that they are not being properly accounted for, then there are a couple of issues that arise. One is, is there cross-subsidization inappropriately taking place, and second, are these initiatives successful or not. No one could ever tell. Right now, we would have to say we cannot tell where the Postal Service is because of the problems with the accounting that exists.

Senator COCHRAN. Were there any guidelines that the GAO suggested to determine when an activity had to be considered profit-

able or not being successful enough to stand on its own two feet and would have to be abandoned by the Postal Service? Were any guidelines like this discussed?

Mr. UNGAR. No, Mr. Chairman. We did not get into a specific timeframe. We have not really researched in terms of, for example, the private sector, what is the common practice. I know that the Postal Service has discontinued a number of the initiatives that it had begun because they were not bearing fruit. So it is certainly not a case where the Postal Service has just initiated these and let them go on. But in terms of a precise timeframe, we are not in the position to say at this point.

Senator COCHRAN. Were you able to draw any conclusions about the overall question, sort of the big question, are these or are these not compatible with the Postal Service's authorities under existing law?

Mr. UNGAR. That is the $64,000 question, or maybe million dollar question in these times. But, no, Mr. Chairman, we really did not look at any particular initiative in the context of is it appropriate or not. We identified in the report a lot of the factors that would be considered. But it is really going to boil down to, I think, a public policy question that perhaps in the end the Congress or maybe the court is going to have to decide.

The Postal Service, as I mentioned, believes that it does have quite broad authority, and in a lot of cases it does. Now where that gets tricky is how close are some of these products and services to the mission of the Postal Service. I think as an enhancement of an existing service, for example, being able to track and trace priority mail, I do not think a lot of people would argue that it is not connected with the mail or the Postal Service. But some of the other things, eBillPay, for example, may be a little further away, and some of the other initiatives could be, too. So I guess it is a question of how closely do these relate to the basic mission of the Postal Service, and how comfortable from a public policy standpoint is the Congress with the Postal Service venturing into areas that the private sector also is already into.

Senator COCHRAN. I think this is very helpful and a good starting point for our discussion with the representatives of the Postal Service about their practices and about their views of what they are doing and what safeguards have been put in place to make sure that the things that are being undertaken are consistent with their authorities, and that they have procedures in place to review these and be sure that they are being conducted in a way that is consistent with the law.

So we appreciate this. We will look at the report in more detail now that we have it. And we appreciate very much your being here and starting off our hearing today, Mr. Ungar.

Mr. UNGAR. Thank you, Mr. Chairman, appreciate it.

Senator COCHRAN. Thank you.

We will now hear from our next panel. John Nolan, Ed Gleiman, and Robert Rider, all of whom are here in their capacity as officials, one way or the other, of the Postal Service or the Rate Commission or the Board of Governors. We have each of these entities represented by high ranking officials, and we appreciate their presence and cooperation. We have statements from these witnesses

which we will put in the record, and would encourage them to make any summary comments or read excerpts from their statements as they choose.

Mr. Nolan, let's start with you. Please proceed.

TESTIMONY OF JOHN NOLAN,[1] DEPUTY POSTMASTER GENERAL, U.S. POSTAL SERVICE

Mr. NOLAN. Thank you, Mr. Chairman. I had to chuckle a little bit when Bernie said this was the $64,000 question and then corrected himself. If this was the $64,000 question, we would not be here. Hopefully, it is a lot bigger than a $64,000 question.

The world is changing. That is no news flash. It has gone global, and it has gone Internet. Change is not new, but the rate of change continues to be new. And the acceleration of that change is a challenge for everybody.

Some things have not changed, though—the need for the Postal Service and the importance of postal services to the American public. Also, the need for the Postal Service, and businesses in general, to adapt to changing customer needs and technology opportunities.

The Internet is both a supportive and a disruptive technology. It is supportive in the sense that it is going to enable us to offer our products and services that we have historically offered in a more seamless, easier, fuller, and richer manner. It is disruptive in the sense that it is going to tear away significant portions of our current volume at some point in the future and we have to deal with that. So our facts that we understand are that volume has been impacted somewhat by the Internet and will be impacted a lot more. The question really is not will it impact, it is to what extent and when.

Affordability is at risk. That is a fact. We know we have to shrink our organization as mail volume goes away, regardless of whether or not we get into the Internet. As volumes go away, we cannot have a featherbedding environment where we continue to keep people, guaranteeing full employment for all employees. We have to shrink our organization as volume declines. But the problem is that if you have a letter carrier going up to the front door of a house and yesterday it was with ten pieces of mail and today it is with five, I still need that letter carrier and each piece of mail is going to have to carry a higher cost burden. Likewise, we have post offices throughout the country in every nook and cranny and the cost of maintaining that has to be borne by a smaller number of pieces of mail. And that is the question, can we remain affordable?

We have been delivering money, messages, and merchandise for this country for over two centuries. We have accepted the challenge of change over the years and have always been effective users of technology. And that use has always been questioned. It is funny, if we were sitting here in 1910 or 1911, the big debate at that point was whether or not the Postal Service should be allowed to use air transportation for the carriage of mail. And there are some interesting quotes from that time, because for three straight years the use of air travel was disapproved, with statements such as: "A use-

[1] The prepared statement of Mr. Nolan appears in the Appendix on page 49.

less expenditure of money." "The Postal Service and Post Office have been up in the air much too long and it is time to get back on terra firma." "There is no need or demand for this experiment." And one of my favorites, "Along with the spineless cactus, the motherless chicken, and the seedless raisin, do we really want trackless travel now?"

So we have always been controversial. We are very big, we understand that. But we have always used technology. We have been a technology user and the country has benefited from that use.

Our Internet strategy is both simple and comprehensive. We want to use the Internet for internal efficiencies, like any company would. We need to add value to our core products and services through the richer, more effective channels through which you can reach us. And finally, we want to introduce e-commerce initiatives.

E-commerce initiatives, as Mr. Ungar indicated, are those products that require the Internet to do business and that generate revenue to the Postal Service through either user charges or licensing fees. That is the definition that we have set and that is the way we are approaching this. And while to many businesses the exact definition would be an arbitrary and unnecessary thing to discuss, we know it is important in this space because we know that there are issues of cross-subsidization and other things that have to be dealt with. So we are not trying to hide from that. We are trying to very carefully define it. The audit that GAO did helped us to understand better how to package those things so that we will have an ongoing ability for them to review what we are doing and to keep an eye on us, so to speak, because we know that is important.

We are in e-commerce for several reasons. Customer demand, a number of our customers have come to us and said we need you in this space. And part of the reason for that is because people trust us. When our partners in this space have gone out to the public to ask them who do you trust, like that old TV show, the Postal Service comes up at or near the top. And finally, because we are everywhere. We have the ability to offer services in a more effective manner for several offerings, and an opportunity to bridge the digital divide to make sure that no one is left out of the opportunities of the Internet because all of the competitors are not going everywhere. We think we can offer something that will make sure no one is left out.

If you ask me for just a couple of words about how our services would be categorized in e-commerce, its security, privacy, and customer choice. Nothing that we are doing here is going to force anyone to use us to the detriment of any competitors. We believe in competition. Our competitors should believe in competition too.

Also in this space what you can expect to see is a lot of partnering on our part. While we are heavy technology users, we have also proven over the years that we are effective partners with technology experts. We are not technology experts in this space. But we are partnering with a lot of companies that are the best and the brightest. They enable us to move quickly, they enable us to use the best technology, and they are putting up a lot of their own money to make sure that we do not have to put up a lot of money to help begin to fund some of these things. We believe all of these

initiatives in e-commerce will generate a positive contribution to the bottom line or we would not be able to offer them.

We strongly support GAO's recommendations. We have no problem not only supporting them but embracing them. This was not an easy audit for them or anyone else. This is a whole new area. Not many audits I am sure have been done in this country on e-commerce initiatives within companies. So they were charting new ground and we were struggling along with them to try and figure out how to categorize various things and allocate costs. So the fact is it is a new and developing area.

We have control over project approval and project costs at this point. The time of the audit was at the early stages of our growth and showed some of our growth pains, as Mr. Ungar indicated. In the first 30 days after I arrived, we instituted this e-Business Opportunity Board to set up a more rigorous structure. In my last 11 years of business I've had experience with profit and loss statements for individual entities and I believe in controlling costs, understanding costs, and being able to demonstrate those costs and revenues. Our Board of Governors is being briefed on all initiatives. One slight modification to what Mr. Ungar had said. When an initiative comes up that requires Board review, that does not have to wait for a quarterly report. We will go right to the Board to notify them of that. What the Board has requested, and we certainly support, is on a quarterly basis, for each initiative, however, we will be providing status on where exactly each of these stands so that there is a clear understanding of that.

Part of the confusion with the numbers and status dealt with how to categorize the projects, in my opinion, and how to separate out those costs. But we are very confident that we have set in process a new accounting system so that each initiative will have its own finance number, own accounting so that we will be able to tightly control it.

We will fully meet the GAO recommendations. And the use of the Internet will enable us to be a better and more relevant Postal Service in the future, we believe. We also believe we will not only be better able to serve our customers through our involvement, but also to ensure that the trust in and utilization of the Internet will also be a beneficiary of this endeavor on our part. Thank you, Mr. Chairman.

Senator COCHRAN. Thank you, Mr. Nolan. Let's now turn to the Postal Rate Commission and its representative here today, Ed Gleiman.

TESTIMONY OF EDWARD J. GLEIMAN,[1] CHAIRMAN, POSTAL RATE COMMISSION

Mr. GLEIMAN. Thank you, Mr. Chairman, for the opportunity to provide testimony today. I want to make clear at the outset that the views I am expressing today are my own rather than those of the Commission as an institution. While the majority of my colleagues on the Commission would probably agree with many of my comments, they have not participated in developing this testimony.

[1] The prepared statement of Mr. Gleiman appears in the Appendix on page 56.

As the GAO report demonstrates, there is a lot of uncertainty about the direction, financing, oversight, and even the extent of these initiatives. The report paints a seemingly accurate, albeit somewhat surreal, picture of the state of current Postal Service activities in the current e-commerce area.

Mr. Chairman, your letter inviting me to appear as a witness asked me to address "the application of major Federal laws and regulations to the e-commerce initiatives of the Postal Service" in my testimony. I will do so, but with some trepidation, because of two concerns. First, I understand that the applicability of current laws to such services is largely uncharted territory, and there are few, if any, settled legal doctrines to be found in Federal court decisions or other authoritative sources. Second, as the General Accounting Office report notes, there is a pending complaint proceeding before the Commission that concerns the legal status of PosteCS service. Because of the extent of the Commission's jurisdiction over this initiative is a major issue to be resolved in this case, I must refrain from offering comments that could be misconstrued as prejudging the issue. Nevertheless, I will try to address the question generally.

The Postal Service's position is that several provisions in the Postal Reorganization Act grant general authority broad enough to encompass e-commerce activities, in addition to its specific power to provide "special nonpostal or similar services." However, the Postal Reorganization Act's statement of general duties of the Postal Service found in section 403(a) must also be kept in mind. This provision obliges the Postal Service to offer efficient, reasonably priced postal services for the conveyance of "written and printed matter, parcels, and like materials" and "such other services incidental thereto." Likewise, section 101 declares that the Postal Service's basic function is the fulfillment of an obligation to provide postal services "to bind the Nation together through the personal, educational, literary, and business correspondence of the people."

It is really hard to see a telecommunications or Internet horizon in this legal guidance. Now I agree that Title 39 does not contain language specifically prohibiting the Postal Service from offering nonpostal services, but I am not convinced that Congress intended the absence of a prohibition to be interpreted as broad authority to compete with private businesses.

The regulation of the Postal Service e-commerce initiatives is also a question to which there is no clear answer. Chapter 36 of Title 39 requires the Postal Service to file a request with the Postal Rate Commission prior to establishing any new mail classification for postal services. The Postal Service currently argues that as long as the new service manipulates electrons and does not produce hard copy, that service is not postal and therefore is none of the business of the Postal Rate Commission. The Commission has not yet explicitly accepted or rejected that argument. I will note, however, that if the Postal Service position is correct, there may be a gap in regulatory oversight.

The Postal Service offers several rationales for its entry into e-commerce, and I will attempt to address each of these. Before doing so, I would like to pose two basic questions: First, is there some compelling need for the Postal Service to do that? If some current

or potential customer of the Postal Service has been clamoring for new non-postal e-commerce services, I am not aware of it. The evidence I am aware of suggests that demand for electronic initiatives is limited to those that would make improvements in or provide additional support for core Postal Service business.

Second, is there some compelling justification for any government monopoly to compete with private enterprise in this arena? Put another way, if the Postal Service had not taken the initiative to develop e-commerce products, would Congress pass legislation directing the establishment of a government-owned start-up, funded by users of the Postal Service, to compete with private Internet business firms?

Returning to the rationale set forth in the GAO report, the Postal Service cites four bases for viewing e-commerce products as appropriate for serving its institutional purposes. One rationale is that such services, in combination with its other functions and activities, should help to "bind the Nation together," in keeping with the basic function prescribed in Section 101 of Title 39.

This is a plausible rationale, but only if you overlook the fact that the United States is already "bound together" electronically by the private sector—initially by telegraph and telephone but now by an ever-expanding variety of telecommunications media, including the Internet.

A second but related rational is the Postal Service's suggestion that, since "binding the Nation together" is part of its basic function, initiatives such as e-commerce serve an appropriate objective in their own right by fostering national communications. This justification provokes another question: At some point, would pursing the objective of binding the Nation together through new media change the Postal Service from a delivery company to a communications company? There is evidence that this may be what the Postal Service has in mind.

Looking at the Postal Service's website the other day, I came across the Frequently Asked Questions section devoted to PosteCS service. Here is a question and answer that I found particularly interesting. Question: "How does PosteCS fulfill Postal Service's primary mission?" The first sentence of the answer: "PosteCS fulfills the Postal Service's mission to 'bind the Nation together through its communications'." I do not know what or whom this answer intended to quote, but it certainly is not Section 101 of Title 39. In any event, the diversification of the Postal Service from what has been a nationwide delivery service into a communications company would represent a major change in national policy.

A third rationale offered by the Postal Service identifies technological improvements such as the Internet as sources of "opportunities for improved interaction between the postal system and its customers." The Postal Service says the particular electronic services it has chosen to introduce "serve as logical, supporting, ancillary, incidental enhancements of the postal system for the benefit of our customers."

Evolution of the postal services through the adoption of new technologies is well-established in historical precedent. As long ago as 1877, the Supreme Court recognized the power of the national postal service included employing "new agencies" or "instrumental-

ities of commerce" to "keep pace with the progress of the country, and adapt themselves to the developments of time and circumstance." However, one question posed for the Postal Service's future is the following: If entry into e-commerce and other electronic initiatives is an appropriate evolutionary development for the national postal system, should current forms of oversight, governance, and regulation evolve as well?

The fourth rationale offered by the Postal Service notes that the current services are "deeply rooted in the traditions of this country and embedded in the current economic and social fabric," and it invokes the authority to take advantage of such technologies as e-commerce to meet challenges to "improve and build upon the services, capabilities, role, and customer relations that it already maintains."

I agree that some electronic initiatives can fairly be viewed as extensions and enhancements of Postal Service core business. For example, mentioned earlier, Delivery Confirmation that makes use of the Internet to enhance priority mail and parcel post delivery. But other current initiatives do not build on any pre-existing traditional service offered by the Postal Service. Illustratively, eBillPay does not improve nor build on any service currently offered. Instead, it offers a potentially all-electronic substitute for the current bill paying transactions.

My point here is not that the Postal Service should be precluded from offering services that are categorically different from anything they have done before, although historically the Congress did preclude the pre-Reorganization Act Post Office Department from extending the scope of its core businesses by competing in the new media such as telegraph and telephone services. The point to be made here is that the Postal Service forays into services with no clear connection to its core business raise important policy issues that ought to be considered in a forum beyond Postal Service headquarters and beyond meetings of the Board of Governors.

And while I am on the subject of traditional postal services, let me say a few words about the privacy traditionally and legally accorded to mailers and mail recipients. The GAO report noted my comments earlier this year about the breadth of disclosure of customer information allowed by the Postal Service's Privacy Act statement for the eBillPay service. The Postal Service has since revised that Privacy Act statement. As a general matter, the Postal Service is quoted as saying that it can protect the privacy of the Postal Service e-commerce customers better than private sector providers because of the Federal privacy laws.

Nevertheless, I remain concerned that personal information about the users of e-commerce services might be disclosed pursuant to permissible so-called "routine uses" under the Privacy Act of 1974. As evidenced by the Postal Service's initial eBill Privacy Act statement, Federal agencies have broad administrative discretion when it comes to sharing personal information, more perhaps than many of the proposals currently under consideration which would impose restrictions on the private sector.

One practical reason that has been advanced for the Postal Service's entry into e-commerce is reaction to the new competitive challenges that may lead to a substantial decline in first class mail vol-

ume and result in an erosion of the Postal Service's ability to fulfill its universal service obligation. Under this rationale, the Postal Service must invest in developing e-commerce activities as a means of cultivating new revenue streams.

The rationale of income replacement raises serious questions. First, who would finance the Postal Service's e-commerce initiatives? The Postal Service has no sources of risk capital except its revenue from monopoly ratepayers. And if it fails to earn the expected return, there are few adverse consequences.

Because the Postal Service can easily obtain risk capital from monopoly ratepayers, it may be tempted to make imprudent guarantees to other vendors when it enters the e-commerce market. Frequently, partners and contractors require guaranteed revenues. This happened in the market test for Mailing Online service. In exchange for low printing rates, the Postal Service guaranteed its printing contractor a minimum revenue of $325,000. At the end of the test, only about $23,000 had been spent on printing services. The Postal Service reportedly has had to pay more than $250,000 to the contractor with no additional services being rendered, and as of February of this year there was an outstanding remaining payable balance. The potential size of guarantees in the e-commerce arena may be much, much larger and should be given some attention.

And this raises a question. Who is going to manage and audit the service, the cost and revenues of these initiatives? This is a significant consideration because of the potential financial impact on monopoly ratepayers and other users of conventional postal services.

GAO's sense of confusion about the Postal Service's division of its e-commerce activities, which I share, highlights the importance that the Postal Service not bury significant development costs of e-commerce products in product lines that fall outside of e-commerce. Moreover, while the Postal Service states it intends to recover direct and indirect costs of its e-commerce products, I believe that products should satisfy the more appropriate standard of covering incremental costs.

Then there is the pragmatic, bottom-line issue of whether e-commerce products can reasonably be expected to produce significant amounts of revenue to support the Postal Service. All things considered, I would have to say that the signs are not encouraging. As someone close to the issue, and sitting close to me, said recently, "While the Postal Service may wish for a golden spike out there in the realm of e-commerce to produce huge revenues, the immediate prospects are much more modest."

To summarize, from my perspective, the issue of the Postal Service's participation in e-commerce is a difficult one involving many uncertainties. The sources and extent of the Postal Service's authority to mount such initiatives unilaterally is not clear in the Postal Reorganization Act. Further, the applicability of existing regulations and requirements is likewise uncertain.

On the merits of embarking on e-commerce initiatives, some of the rationales the Postal Service offers appear to rest on questionable legal or practical assumptions. There is no apparent legal mandate, or compelling need, for broadening the mission of this government enterprise to include telecommunications services gen-

erally. In addition to the effects on private competition, postal ratepayers would have to fund such initiatives, and the net financial returns to the Postal Service may not justify the outlays.

Of course it makes sense for the Postal Service, like any good business in the current era, to adopt available new technologies into its operations to enhance productivity and to add value to its core services. But pursuit of e-commerce for its own sake may only serve to distract postal management and divert resources from the critical demands of performing its public mission in a challenging new century.

Mr. Chairman, I have a copy of a study that I would like to provide to the Subcommittee, by Professor Richard B. Kielbowicz, that was prepared for the Commission, entitled: "Postal Enterprise: Post Office Innovations with Congressional Constraints, 1789–1970."[1] This study will also soon be posted on our web page.

I want to thank you for the opportunity to share my thoughts with you on this important matter. And if there are questions, I would be pleased to answer them.

Senator COCHRAN. Thank you very much. We appreciate your statement and the study that you have provided the Subcommittee, which we will carefully consider.

We will now turn to Mr. Rider, who represents the Board of Governors. We appreciate your presence. You may proceed.

TESTIMONY OF ROBERT F. RIDER,[2] VICE CHAIRMAN, BOARD OF GOVERNORS, U.S. POSTAL SERVICE

Mr. RIDER. Thank you, Mr. Chairman. I welcome this opportunity to discuss with you the electronic commerce activities of the Postal Service. I appreciate your interest in the Postal Service and your insights as we grapple with the unprecedented complexities of the 21st century communications marketplace. I would also like to recognize the hard work of the General Accounting Office and thank them for their recommendations, which incidentally dovetail with our own thinking.

The Governors of the Postal Service have broad oversight over the expenditures, practices, and policies of the Postal Service. It is our responsibility to ensure that the strategic direction of the organization is sound and to judge the overall implementation and performance of programs put in place to carry out that strategy. As a practical matter, the Governors are not involved in day-to-day operations or the thousands of daily decisions that are required to manage such an extensive operation. That responsibility rests with a highly dedicated team of professional managers, represented here today by Deputy Postmaster John Nolan. Therefore, I will address the broader questions of our e-commerce strategy and my view of management's implementation and overall performance.

Our overall Internet and e-commerce strategy is based on the fundamental principle that our actions must be consistent with our historic traditions of public trust and fairness, and with our mandate to operate according to the highest standards of business and of public service. Consequently, our e-commerce initiatives should

[1] The copy of a study by Professor Kielbowicz appears in the Appendix on page 168.
[2] The prepared statement of Mr. Rider appears in the Appendix on page 72.

be supportive of our universal service mission and the need to bring electronic commerce to those who cannot afford it. They should foster economic growth by enabling greater public confidence and trust in Internet communications and commerce. The new e-commerce services should respond to customer needs and be managed with appropriate business discipline so as to become self-supporting within a reasonable period of time.

The Governors are supportive of management's efforts to embrace the Internet. For the most part, these efforts represent an ongoing evolution to improve the management of the mail system through the use of modern information technology. To the average household customer, the Postal Service is represented by the individual clerk who sells them stamps or the neighborhood letter carrier that stops by their mailbox each day.

In reality, the Postal Service is a complex, interdependent network that each day coordinates the movement of nearly 700 million pieces of mail, on more than 15,000 commercial air segments, between 38,000 post offices and 800,000 employees, who serve more than 134 million delivery points. Our success in managing this network is directly related to infrastructure improvements that allow us to rapidly transmit critical information to employees, to customers, and to suppliers in many platforms.

Today, the postal retail customers enjoy the convenience of credit and debit card purchases. Major retailers schedule their shipments and make payments electronically. Letter carriers track packages and important documents with computerized hand scanners that uplink into a national data network. And sophisticated logistical systems keep the mail flowing economically by ground, rail, and air between our plants and our post offices.

Over the past few years, as citizens and business have embraced the Internet, the Postal Service has migrated some of these information systems onto the Internet. We expect this trend to continue. Today, millions of household customers visit our web sites every day. Large mailers use the Internet to coordinate their operations with ours. And the postal intranet has become a primary tool to manage operations and share ideas among functional units dispersed all across the country. The result has been a more efficient and productive organization that provides better service and value to our customers. Postal management has done a commendable job in managing these extensive information programs, which have involved substantial expenditures and resulted in better productivity, service, and value for our customers.

So, in many ways, the Internet has been a blessing. It has enabled the Postal Service to perform its historic mission with modern precision and efficiency. However, the Internet has also demonstrated an ability to alter entire industries and offer new business models. We have seen examples of this in the retail and software sectors. We are aware that similar potential exists for the mailing industry. E-mail, Internet banking and bill payment, and electronic catalogs and merchandising are directly competitive with the mail. The GAO has warned that the Postal Service may be nearing the end of an era due to these and other competitive pressures. The truth is we do not know how fast or how much the Internet will change the Postal Service's business model. What is

clear is that the stakes are high and we cannot wait to be certain before we act.

This year marks a turning point for the Postal Service's e-commerce program. In the latter half of the 1990's the Postal Service began to explore the potential of e-commerce. The last couple of years, however, were also occupied with updating our computer system for the year 2000, Y2K. This year, we are bringing new focus to our development efforts and formalizing our processes based on what we have learned. We have also launched several new products and are testing them in the marketplace.

The Board of Governors has encouraged and enthusiastically supported these developments. The Governors have discussed or reviewed some aspect of e-commerce at virtually every board meeting this year. On June 5, the Board established a quarterly review procedure by which management will provide regular reports on the current status of existing e-commerce initiatives. The board also has established the means by which significant new types of e-commerce initiatives will be presented to the Board before being launched. These measures reinforce the framework created by management for developing and managing e-commerce initiatives, which are Mr. Nolan's responsibility and which he has discussed in some detail with you.

It is difficult to assess the effectiveness of the Postal Service's e-commerce initiatives thus far. As the GAO has noted, the program is in its very early stages. It is also hard to establish meaningful benchmarks in an industry that is in its infancy. Nevertheless, management has proven its ability in other challenging modernization efforts, and the Board expects no less in this difficult area.

Thank you, Mr. Chairman, that concludes my remarks.

Senator COCHRAN. Thank you, Mr. Rider. Thank you all for your interesting statements and your cooperation with our Subcommittee's effort to review this issue.

In connection with the GAO's findings, there were several points made in the testimony and in the submitted statement by GAO about the process that is in place for reviewing and approving initiatives in this area by the Postal Service.

Mr. Nolan, is it your view that this procedure and process that has been established now is one that will provide a clear impression of what e-businesses are being undertaken by the Postal Service and a certainty that these activities have been approved by the Board of Governors?

Mr. NOLAN. Yes, sir, I do. I think the early initiatives and structure that the Postal Service used in fact was to try and set up competing groups within the Postal Service to see who could develop some of these areas, and also to make use of existing talent. For example, our treasurer was a natural to take a look at e-payments. The time has come though, and in my discussions with Bill Henderson as I was coming on board, to try and put those into a more logical structure and a more streamlined structure.

That is exactly what we have done. The creation of an e-Business Opportunity Board gives the Postal Service the opportunity to bring people together from different organizational functional areas, everything from our consumer advocate, to finance, to operations, to take a look at new initiatives at their very inception to

determine whether or not it is worth pursuing those things and then to regularly review them. Because on the Internet there are a lot of good ideas or things that seem good on day-1 that by day-31 do not seem quite as good. And yet, in a lot of organizations those things would continue on because they got started and inertia is going to keep it moving. Well, we cannot afford to let that happen.

So the review process that we have is a very rigorous one. And at critical points it involves our communications with the Governors, reviewed by the Governors, so that we are sure we are on solid ground. But as we move ahead, and this is where the GAO study comes in, we can improve something, move forward on it, we have got to have goals, we have got to articulate those goals, we have got to track performance against those goals, and, as they say, fish or cut bait down the line someplace if we are not achieving those goals, to either fix it and achieve the goals or to stop it. And I am confident that the process we have set in place will do that.

Senator COCHRAN. There was also a question raised about the transparency of the revenue and expense data for those who were reviewing these activities. Are you confident at this point that you have a system in place that permits a review by an investigative body like GAO or the Congress that will be able to determine what the revenue and expense data really are for these new e-business activities?

Mr. NOLAN. I think we are, Mr. Chairman. I am hesitating because we have just recently instituted some of these things. As I mentioned before, we have a certain accounting process that we have set up, very early on, to track each individual cost. To be able to go back in time through some earlier initiatives that changed directions several years ago is obviously difficult. But I am confident that costs that we have going forward are going to be tightly controlled.

To me, it is not just a matter of getting it right, getting the numbers accurate so that they are auditable, but the ease of the audit is also what I am concerned about. I do not want it to be a torture going forward, because we know we are going to have reviews like this. Part of the way we should be measured is not only are the data accurate, but how easy it was to get to. Because if we are not reviewing that data regularly, then we are missing what we should be doing. And so, if we are reviewing it regularly, it ought to be very easy for a GAO audit or any other audit to find that. That is the standard that we are trying to hold ourselves up to.

Mr. RIDER. Mr. Chairman, I just wanted to add that the Governors endorse having a profit center for each one of these initiatives, and we will have. Each one will stand on its own.

Senator COCHRAN. I see. There have been several references to specific activities that are now being initiated or have been initiated by the Postal Service in this area. One was buying stamps over the Internet.

Mr. NOLAN. Stamps Online, yes.

Senator COCHRAN. Stamps Online, you call it. Another one talked about is being challenged now before the Postal Rate Commission. I think that was referred to as the PosteCS case.

Mr. NOLAN. Electronic courier service, yes, sir.

Senator COCHRAN. Now what is that?

Mr. NOLAN. It is a service which enables people to send highly confidential documents in a very secure manner over the Internet, again, electronic to electronic, no hard copy involved. I should add it is not only designed for domestic use, but also to enable us to transmit those documents across borders. The interesting thing of course is that if we did not get into this business, you could have the Costa Rican Post coming in and offering the same thing within this country, because it is a service that is very important we believe.

Senator COCHRAN. By across borders, you are talking about national borders?

Mr. NOLAN. Yes, to Europe, to the Far East.

Senator COCHRAN. International.

Mr. NOLAN. Yes.

Senator COCHRAN. What are some of the other business activities that you are now undertaking that you think are going to be long-term and are classified by you as e-business?

Mr. NOLAN. E-commerce I think is——

Senator COCHRAN. E-commerce, yes.

Mr. NOLAN. E-commerce is a part of e-business. E-business includes things that we would do within our organization to streamline it as well as to add value to our existing core products and services, like a return merchandise service on the Internet that enables you to bring packages back. That would be building on our core products and services.

E-commerce would include, in addition to the Stamps Online and the PosteCS that you have mentioned, our Mailing Online initiative, which is really a hybrid service. It starts off as an Internet service and that people will send us files, and we will transmit those files to a destination print site where it gets printed and inserted and mailed. So it is both hard copy and Internet. The reason why we have included it as an Internet is because we get user fees for the Internet portion of that, and that is why we have included it. The other area that we have got that is moving from hard copy to the Internet is our Movers Guide and the MoversNet.com where people will be able to update their changes of address not only in hard copy but via the Internet. Our Electronic Postmark enables people to indicate when they have mailed something and then we can certify when they have transmitted it via the Internet, and we can also ensure that there was no tampering of that document going forward to destination.

Senator COCHRAN. Is this like a return receipt requested that you used to use?

Mr. NOLAN. In a sense it is in that it will indicate who shipped it, when it was shipped, and when it was received. In addition, it will indicate whether or not it was tampered with in process, both to the shipper and the receiver.

Finally, the other area, that we have not made a formal announcement about, but that we are working very closely on with HCFA and Social Security, is our NetPost.Certified. This is an interesting area where, for example with HCFA, you have got a lot of doctors that have to communicate tons of paperwork to HCFA

in order to get reimbursements. That agency, along with Social Security and others, is trying desperately to streamline their operations to reduce the cost of doing business, make more efficient what they are doing. And they have asked us, and we have readily agreed, to get into the space, whereby we could authenticate the shipper of that information and provide secure transmission of that, to, again, take the cost out of that transaction and to speed it along so that everyone benefits in the space. Again, the fact that we are located everywhere certainly helps that authentication and makes sure that everyone can avail themselves of that.

Those seven are—I don't know if we should call them the Magnificent Seven right now—but there are seven initiatives that at the present time are the ones that we are pursing aggressively and we believe represent areas of opportunity to serve the public better.

Senator COCHRAN. There was a reference made earlier today about a new initiative—it was in the paper and I have a copy, I guess it is the *Washington Post* edition this morning—that the Postal Service and Federal Express Corporation are negotiating a strategic alliance and could complete a deal by next month under which the Postal Service would deliver many FedEx packages to homes across the Nation while using FedEx's air transportation network to move priority and express mail around the world. Is this another example of e-commerce or e-business?

Mr. NOLAN. No, sir. This does not involve Internet. Obviously, in the exchange of information on package status, etc., we, like Federal Express, like UPS, certainly use the Internet to be able to track packages and provide information. But we are doing that separately. This represents an effort on our part to—we are one of the largest users of contract transportation in the world and Federal Express is one of the most efficient airlines in the world. Certainly, the opportunity to make use of their airline capacity to augment what has been increasingly non-available private carrier capacity that we have been using should enable us to enhance service and keep our costs down.

In the process of doing that examination for our air transportation, we obviously began to look at other areas where we could use our ubiquity, our resources that are out there to the best possible use. And so, we are looking at contact points and where we have some synergy where we can enhance the functions of both companies to better provide services to the American public.

Senator COCHRAN. There is some question about the fact that if you do not get into some areas such as you have described here you are going to have to raise rates for the delivery of mail and the other services that you have traditionally provided. To what extent has that provided an incentive for the Postal Service to look for new revenue sources, and are these going to provide the revenue sources you need in order to keep from having to raise rates in the future?

Mr. NOLAN. Yes, and I hope so. Certainly, this disruptive technology that is having an impact on our volume—our volume is not declining yet, Mr. Chairman. But in a period of significant economic boom, to only have the kind of growth rates that we are having is unprecedented for us. Normally, you would see far greater increases in volume during a period of economic strength that this

country is seeing. So we know that the Internet is going to have dramatic impact, as has other technology had an impact, on our revenues.

There has been a lot of discussion about the ratepayers here. If we are not careful, we may significantly impact the ratepayers with higher rates and the inability to provide universal service if we do not find alternate sources of revenue to enable us to keep this infrastructure which has served the public so well for so many years. Our concern is that in a declining revenue period, while we certainly have to cut costs, we are going to be faced with an infrastructure that the country and our ratepayers cannot afford. And just as when Mary Smith or John Doe place a phone call, if you ask them the question, would you like the phone company to be investing in new technologies? They might say, no, let's keep our rates low. But the fact is that without that investment, the opportunity to take advantage of new technologies, to offer new products and services to enhance the lifestyles, the businesses in this country would be very limited.

Senator COCHRAN. Mr. Gleiman, during your comments I was interested in your assessment of these e-commerce activities as possibly outside the realm of authorized activity by the Postal Service. What will a prohibition against e-commerce, if Congress decides to legislate a prohibition against e-commerce activity by the Postal Service, what impact will that have, in your opinion, on postal rates?

Mr. GLEIMAN. Senator, postal rates are likely to go up whether Congress enacts legislation prohibiting the Postal Service from being involved in e-commerce or not. And postal rates are likely to go up whether the Postal Service is involved in e-commerce or not.

You have heard a bunch of interesting words today. Augmentation is one that I especially like—we want to augment our revenue. If you do not realize net profit from a new activity, then the augmentation is not worth very much. If I could give you a simple mathematical example. It involves the Postal Service's eBillPay, at least as far as I understand it.

A first-class stamp that you and I put on a bill when we pay it is 33 cents. Roughly 18 cents of that 33 cents goes toward covering the cost of actually handling that piece of mail, and the other 15 cents goes towards contributing to institutional overhead of the Postal Service. Now, if I do not send that envelope with a 33 cent stamp on it and decide to use eBillPay instead—and I can be corrected, and would be delighted if I am wrong here to be corrected—the Postal Service is going to get 10 cents from its eBillPay partner CheckFree for each electronic bill payment. Now remember the numbers I gave you. We started with a 33 cent stamp, there were 18 cents in costs, and 15 cents in institutional contribution. The 10 cents that the Postal Service is going to get from CheckFree is not going to cover the institutional cost. They are still short 5 cents on the institutional cost. And unless the Postal Service can figure out how to shed the 18 cents of cost that it currently incurs for handling the piece of hard copy mail, they have got to cover that, too.

So when you talk about eBillPay or e-commerce being a savior for the Postal Service, you really have to look hard at the numbers. The bottom line is going to be the bottom line. And I am really

pleased to hear Mr. Nolan say that his attitude is you have got to fish or cut bait. My concern is when you cut bait, who pays for the bait you just lost? It is going to be the monopoly ratepayer and the other captive users of the service. So I am not sure that it is going to make all that much difference in the final analysis if the Postal Service gets involved or not.

Mr. Nolan mentioned downsizing, cutting costs, and there has been a lot of talk about the universal service obligation of the Postal Service. I am going to commit an act of heresy here that is likely to get me in a little bit of hot water, but it will not be the first time. Perhaps in addition to considering cost-cutting and downsizing, the Postal Service and the Congress ought to be looking at the current universal service obligation. Maybe, if a lot of the hard copy mail is going to find its way into electronic media, there will not be the need to deliver to every place 6 days a week. If the mail is not there, maybe we ought to have a different type of service than we now have. And there are other aspects of universal service that ought to be examined that also would come into play or should come into play.

I want to make clear though there is a distinction: Activities that are above and beyond what the Postal Service now does that are more in the communications area, as they make them out to be, as opposed to those that enhance their core products. And I think they ought to charge out into the sunset and take care of enhancing those core products. They are doing a good job in that area and they ought to continue it.

Senator COCHRAN. I am going to ask you one other question, and then I am going to yield to my friend from North Carolina who has joined us at the hearing. You mentioned this PosteCS case, the fact that it is pending before the Postal Rate Commission, and that you would not be able to comment on it. Nor should you, on the merits at all. But tell us what is the issue that has been raised by that case exactly.

Mr. GLEIMAN. Well, the Postal Service's position is that since what is involved here is a point-to-point electronic transmission, it is not postal in nature, it is nonpostal in nature. Another aspect of the Postal Service's initial defense against the complaint was that this was an international service. I was interested to find out just a moment ago that in fact it was designed for domestic use as well. But the key issue here is whether the Postal Rate Commission has jurisdiction over something that is a point-to-point electronic transmission.

Senator COCHRAN. OK. Who brought the complaint?

Mr. GLEIMAN. The United Parcel Service filed the complaint.

Senator COCHRAN. OK. I am going to yield to my friend from North Carolina.

Mr. GLEIMAN. If I could just add, because I think it is relevant to a comment that was made by Mr. Nolan in response to a question a moment ago.

Senator COCHRAN. Yes. Go ahead.

Mr. GLEIMAN. If the Postal Service did not offer PosteCS or eBillPay or Electronic Postmark, does anyone really believe that there is no one else out there that would offer these services, or perhaps people are not already offering these services? I see news

clips and read trades and it seems to me that every day there is a new entity out there that is offering something akin to what the Postal Service says if they do not put it out there it is just not going to be available.

Senator COCHRAN. The Senator from North Carolina, Senator Edwards.

OPENING STATEMENT OF SENATOR EDWARDS

Senator EDWARDS. Thank you very much, Mr. Chairman. Good morning.

Mr. Nolan, I want to ask you a few questions about a subject that is of interest and concern to me, which is privacy, specifically, the approach the Postal Service takes with respect to its privacy policy with respect to the eBillPay program. Let me ask you first just generally, would you agree that the Postal Service's approach to privacy is to try to incorporate the fair information practices of notice, choice, access, and security, is that something that you all try to meet and comply with?

Mr. NOLAN. Yes, sir.

Senator EDWARDS. OK. We've got a copy, and I think you have a copy in front of you and there is a copy up on the easel over here, of the Privacy Act statement of the Postal Service. First, with respect to the notice consideration and giving people notice of what your privacy policy is and what you do to protect people's privacy, let me just ask you a couple of questions about this Privacy Act statement, if I can. It uses language, and I am referring now under the Privacy Act statement to the second sentence, that says "The information may be disclosed," and then there are a number of enumerated categories. Let me ask you, do you disclose information that are not in one of those categories?

Mr. NOLAN. I am sorry, I am not sure I——

Senator EDWARDS. If you look under the Privacy Act statement, second sentence. It says "The information may be disclosed" and then you have got a list of several categories. I guess what I am asking you is, are those the exclusive categories, circumstances under which information can be disclosed, or are those just examples of categories where it can be disclosed?

Mr. NOLAN. It was designed to be all-encompassing.

Senator EDWARDS. OK. So what you intend to tell folks there is that the only way in which their information will be disclosed is if it falls within one of these categories. Is that correct?

Mr. NOLAN. Yes.

Senator EDWARDS. OK. Well, I am not sure that is clear when you say "may be disclosed." It might be a good idea to tell people that these are the only ways it can be disclosed.

Mr. NOLAN. I think that is a very good comment. I think the statement was designed to show that one or more of these may apply in a given situation. But we should say that they are the only situations under which circumstances may require us to issue information.

Senator EDWARDS. OK. I think that is a good policy and I think it is important for people to know that is what it means.

Mr. NOLAN. I agree.

Senator EDWARDS. Let me ask you a couple of follow-up questions about the specific categories that you have here. You say, under subsection (a), "to an appropriate government law enforcement agency pursuant to a Federal warrant." Do you have any policy or provision that allows the people whose information is being provided to contest the warrant if it is something they think should not be complied with?

Mr. NOLAN. To tell you the truth, I do not know the answer. I will be glad to look it up and get back to you on that. I am not sure. I think from the law enforcement standpoint, that notifying someone that their information is being examined and having them contest it may wind up being a problem. But I do not know the answer and I will get back to you on that.

[The information to be provided follows:]

INFORMATION PROVIDED

This is the manner in which the Postal Service intends to treat customer information acquired in its eBillPay service offering.

Privacy Act Statement: The information you provide will be used to provide you with electronic billing and payment services. The information may be disclosed (a) to an appropriate government law enforcement agency pursuant to a Federal warrant; (b) in a legal proceeding to which the Postal Service is a party or has an interest when such information is relevant to the subject matter of the proceeding; (c) to a congressional office at your request; (d) to an independent certified public accountant during an official audit of Postal Service finances; (e) to the service provider under contract with the Postal Service to provide eBillPay service; (f) to a payee or financial institution for purposes of resolving payment-posting questions or discrepancies regarding status of electronic bill payment; (g) to a credit bureau for the purposes of verifying identity and determining risk limits; and (h) pursuant to a Federal court order. The provision of information for eBillPay service is voluntary. However, if the information is not provided, we will be unable to provide you with our eBillPay service. The collection of information required for this service is authorized by 39 U.S.C. §§ 401 and 404.

Senator EDWARDS. Is that something that you think folks ought to have a right to do? If you get a warrant from a law enforcement agency saying they want this information, I assume you notify the people who are involved that you are about to provide this information. Is that right?

Mr. NOLAN. That is what I am not sure about. I need to find out that information. I am not sure of the implications, again from a law enforcement standpoint, at what point people should be notified, be given the opportunity. So I would need to provide that information to you. I am just not aware of that.

Senator EDWARDS. OK. Would you find that out for me and let me know that, please.

Mr. NOLAN. Absolutely.

[The information supplied follows:]

INFORMATION SUPPLIED FOR THE RECORD

1. Can the eBillPay's Privacy Act statement be amended to clearly state that information will be disclosed exclusively for the specifically listed purposes?

So long as our Privacy Act statement is consistent with the current system of records for eBP, the statement may be amended at any time. It would be consistent with the soon to be published revised eBillPay system of records to state that "[a]s a routine use, the information may *only* be disclosed *outside the Postal Service* (a) . . . ."

In publishing the Privacy Act statement, the Postal Service is meeting its obligation under the Privacy Act. Disclosures of the information within the agency for the purpose of providing and monitoring the service should reasonably be within the expectations of a customer of this service. Furthermore, the sentence preceding the introduction of the routine uses states that "information you provide will be used to provide you with electronic billing and payment services." As the Postal Service seeks to set a standard for electronic commerce notification and protection, we will consider whether this sentence might also be amended to clarify internal releases as well.

2. Is there a mechanism that would allow an affected person to challenge the issuance of a warrant before the Postal Service discloses information in response to receiving a warrant?

No. The Privacy Act provides that the general prohibition against disclosure of Privacy Act records does not apply to disclosures:

> to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or *criminal law enforcement activity if the activity is authorized by law,* and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

5 U.S.C. § 552a(b)(7). A Federal search warrant would certainly fall within the definition of a criminal law enforcement activity authorized by law.

The Privacy Act does provide that an agency maintaining such records shall "make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory process when such process becomes a matter of public record." 5 U.S.C. § 522a(e)(8). This provision does not require advance notice, but rather only reasonable efforts to notify once a disclosure is made.

There has been little litigation concerning this "reasonable notice" provision. Taking the language at face value, it would not be "reasonable" to tip the subject of a criminal investigation that he or she is such a target. The purpose of search warrants, and the reason they are subject to specific judicial scrutiny prior to execution, is that they are used to seize records and evidence of criminal activity before the subject of the investigation has the opportunity to "cleanse" those records. Where the element of surprise is not important, Section 522a(e)(8) makes provision for notification after release of the records.

Title 18, U.S.C. § 41 establishes the procedures for the issuance and execution of a search and seizure warrant. Rule 41 requires that notice of the execution of a warrant be left with the custodian of the items seized. Postal Service regulations interpreting this requirement provide that, when live mail is seized, the Postmaster receives a copy of the warrant, not the addressee or sender of the piece seized, unless the sender has requested a return receipt, in which case notice and a copy is sent to the sender after execution of the warrant. Administrative Support Manual (ASM) 274.62 and 274.63.

In the context of the seizure of personal information stored in electronic communications (it appears that eBillPay customer transactions would fall within this definition) there are specific requirements, and exemptions, for prior notification in the Electronic Communications Privacy Act, 18 U.S.C. §§ 2701–2711. The ECPA requires that law enforcement entities obtain a warrant for certain stored electronic communications, and specifies notification requirements to the subject of the request. However, 18 U.S.C. 2705 makes clear that a court *shall* grant a request for the delay of notification to the subject of the warrant. Similarly, when records that are subject to the Right to Financial Privacy Act, 12 U.S.C. § 3401, *et seq.* are seized pursuant to warrant, the RFPA specifies notice requirements within 90 days of execution of the warrant. Again, however, the RFPA provides that, upon request, the notice requirement may be postponed where such notice could interfere with an ongoing investigation. 13 U.S.C. § 3406.

There does not appear to be any mechanism that allows the subject of a search and seizure warrant to challenge the release of information prior to the execution of that warrant. Certainly, however, any attempt to use the evidence seized as a result of a warrant is subject to potential challenge on a host of procedural and constitutional grounds.

Senator EDWARDS. And if you look under subcategory (d), it says "to an independent certified public accountant during an official audit of Postal Service finances." Do you have any provision or contractual obligation with the CPAs that may conduct an audit that provides that they cannot provide the information to somebody else? In other words, at that point does the customer who is involved, do they lose control over their private information?

Mr. NOLAN. Well, I should add two things. One is, there is a lot of information that is collected about transactions, these kinds of things that would have nothing to do with a person's personal information. The need for an auditor to look at personal information—your Social Security number, or your address or what have you—would be extremely remote, and I cannot even think of an instance at this point. It was designed more to indicate that looking at reams of data that would be available about transactions, volumes, revenues might be required. But it probably would not touch on an individual's personal information. However, should for some reason that come in contact with that auditor, they would absolutely be controlled by us from providing that information to anyone else.

I should add one thing. Again, given our concern about privacy, and yet being in an area where privacy has been a concern, not because of the Postal Service but everyone in this space, what we are doing is convening a panel of privacy experts, people interested in the whole privacy field later this month to begin the process to have them understand what it is that we are trying to accomplish, how we are trying to accomplish it, to offer us the best possible information on ways to ensure that we are the best organization in the world in protecting people's privacy. That is an important part of our brand. It is not something we are playing games with. And we want to make sure we get the best information from experts in the field, not one time but on a continuing basis, to make sure that we are enhancing that space.

Senator EDWARDS. And when is this panel convening?

Mr. NOLAN. It is later this month. I am not sure of the exact date, September 21 strikes me. I will let you know about that.

Senator EDWARDS. Good. I am glad to hear that. And I am glad to hear your description of your attitude toward protecting people's privacy.

One of the concerns I had is, not that brevity is necessarily a bad thing, but your privacy statement is relatively short and simple. And when I compare it to privacy policies of organizations like Bank of America, which I have in my hand here, which goes on for several pages and are very specific about the things that they are protecting, there obviously is a difference between the two. So I think it is a good idea for you all to be examining——

Mr. NOLAN. There are other web pages as well that describe in a lot more detail some aspects of our privacy and uses, etc. So there is a lot more than just this. We are trying to make it understandable. And we probably need to do that better and will continue the process to do that.

Mr. GLEIMAN. Senator, if I may.

Senator EDWARDS. Sure.

Mr. GLEIMAN. Since I cut my teeth working on the Federal privacy law way back in the 1970's when I was an aide to Congressman Richardson Pryor——

Senator EDWARDS. From Greensboro, North Carolina.

Mr. GLEIMAN. Yes, sir. I thought I might add some insights. First, an earlier statement that the Postal Service published was far more onerous, and I think they are to be complemented for narrowing the routine uses that they will make of this data.

Senator EDWARDS. You mean it was broader in terms of who they could disclose to?

Mr. GLEIMAN. Yes, sir. And I think they have done a nice job in narrowing down and addressing this concern.

Second, with respect to your question about pre-notification. In the Federal Privacy Act, in order to avoid the onerous requirement that people be notified, and in some cases the counter-productive notification, pre-notification before the release of information, as might be the case when there was a criminal investigation, the law has a provision that permits agencies to establish "routine uses," which are what you were seeing up there. The law does not require that individuals be notified before disclosure pursuant to published routine uses, only that an accounting of the disclosures be kept.

I might add that while this statement is an improvement, there is nothing that precludes the Postal Service, or any other Federal agency, from coming up with additional routine uses that would broaden out the availability of data. But I take Mr. Nolan and others at the Postal Service at their word in that they are concerned and that this is an issue that they use as a selling point.

Senator EDWARDS. Also, I am not sure we want to be bound by existing law, since it is to a large extent not existent. One of the things I think Mr. Nolan was saying is you want to go far beyond the existing law in protecting people's privacy, is that right, Mr. Nolan?

Mr. NOLAN. Yes, sir.

Senator EDWARDS. Let me ask you just a couple of follow-up questions. You use a company called CheckFree to handle your electronic bill payments. They have a privacy statement, CheckFree, that says "We do not share your personal information with other companies, the government, or any third party. Your personal information is kept strictly confidential." In other words, they have no subset categories of circumstances under which they disclose the information. Which privacy policy controls, CheckFree's privacy policy or the Postal Service's privacy policy, to the extent there is a conflict between them? Because theirs seems very absolute, "We do not share your personal information with other companies, the government, or any third party."

Mr. NOLAN. Well, I have not seen theirs. But, obviously, if a warrant was issued for information there, they would be required by law to give it up. So I am not sure that—there is no absolute there. But one of the reasons why we chose CheckFree, frankly, was their attitude about data and the sanctity of the data very much was in line with ours. And this is a company that has been in business for a long time and knows that if they are going to stay in business they have got to respect privacy. So I would say that we are looking to make our privacy policies and actions as rigid as we possibly

can for the benefit of the consumer. Because that benefits our brand, our activity in the space, and, frankly, benefits the Internet in general. So we think it is just a sound business practice. So to the extent that we can, we want to make it as rigid as possible, recognizing that we, as private companies, have obligations under law to release information if we are given a warrant or whatever.

Senator EDWARDS. One thing, when you convene your panel later, you may want to look at making sure that your privacy policy is consistent with organizations, like CheckFree, that you do business with. I think that would be important.

I am very pleased to hear your description and your attitude about privacy and the fact that you are convening this panel. I think those all say very good things. And I agree with you that the Postal Service in fact should be the model of the kind of privacy protection that people in this country should expect.

Mr. NOLAN. The way that people have come to us, a lot of customers have come to us is saying to us that people trust you. As Mr. Gleiman indicated, there are other people who can offer these services. This is not a monopoly. Why do people want to come to us? Why do they want us in this space? Because they trust us. Frankly, our hard copy business is our bread and butter, will continue to be our bread and butter. To do anything that would damage that bread and butter in an area that is a new initiative would be ridiculous for us to do. So we take that very seriously.

Senator EDWARDS. Good. Thank you very much, Mr. Nolan.

Mr. Chairman, thank you.

Senator COCHRAN. Thank you, Senator.

Mr. Rider, there was some conversation with our GAO representative, Mr. Ungar, about the documents that were needed by GAO to verify that the Board of Governors had actually approved some of these e-commerce initiatives. According to the GAO report, the Board of Governors did not have documentation showing that it had approved but one of the seven e-commerce initiatives before they were launched.

What is your response to that? Is that a problem? Has that been corrected? Do you intend to ensure that there will be documentation of the actions of the Board in the future on these issues?

Mr. RIDER. Senator, there were seven endeavors there. The first one we will discuss is ePayments. This was approved in the April Board of Governors meeting.

NetPost Mailing Online was approved in our August meeting. The Board of Governors approved the PRC decision authorizing the pilot of this. That was done in August.

With respect to Internet change of address and move-related products and Movers Guide, a proposal was presented to the members of eBob, which is our Business Opportunity Board, on April 13, 2000. The Governors were sent a letter on May 31 informing them of all the proposed enhancements to this program.

The next one is NetPost.Certified. The eBob approved it in August and the Board of Governors were briefed on this at our September board meeting.

PosteCS—The Board of Governors were briefed on the launch of PosteCS in April, and in August the eBob approved the business plan.

Stamps Online—The Board of Governors' approval was not necessary because of the minimal development expenditures and because it is an enhancement of our stamp selling process.

Electronic Postmark—The Board of Governors was notified of that program in April 2000, and eBob approved the business plan in August 2000.

Senator COCHRAN. Do you think it would be helpful in the future for the Board of Governors to have some documentation about the basis for its decisions on e-commerce initiatives on the record so that people who are interested, stakeholders particularly, can understand why they are deemed appropriate and in the public interest?

Mr. RIDER. Yes, sir, I certainly do. And the eBob committee was just formed, I think, in April and they will be reporting to the Board every quarter on their progress, and in every board meeting we expect to review any new initiatives.

As far as the public notification, Senator, the Board of Governors' public notification complies with the provisions of the Sunshine Act and all of the presentations to the Board of Governors are documented. The minutes of our meetings are open to the public for their review. What I have told you on each one of these initiatives and the dates I have told you are gleaned from our records.

Senator COCHRAN. Mr. Gleiman, there was a case recently entitled Mailing Online. Could you tell us how the Postal Rate Commission handled that and the issue, particularly of fair competition.

Mr. GLEIMAN. Yes, sir. First off, it is important for you to know that the Commission is covered by the Administrative Procedures Act when it has a case before it, and, in keeping with that Act, we have hearings on the record where parties, both the Postal Service and others, can come in and make their case before the Commission and rebut one another's cases before the Commission. So we had an evidentiary record that we looked at.

In examining the information that the Postal Service provided, we concluded that some of their costs were not calculated correctly. We made adjustments in the costs and also in the mark-up over cost of that product. The result was, for example, that a two-page black and white document, as proposed by the Postal Service would have cost 38 cents, and under the recommendation of the Rate Commission, which was accepted by the Governors, it would cost 41 cents. But that was one aspect of trying to protect competition, by not allowing a rate that was unreasonably low that would put the Postal Service at an unfair competitive advantage.

Another aspect of that case involved an agreement that was reached, ostensibly through negotiations between the Postal Service and the parties who had intervened in the case, to ensure that all parties who offered similar services, and there is some language in the decision to describe the nature of similar services, would have available to them the reduced rate for the hard copy portion of mailing online that the Postal Service had requested from us and that we had approved. So that also kept the field level and did not give the Postal Service an advantage in the hard copy end.

Senator COCHRAN. Mr. Nolan, the Postal Service has said it has identified an electronic mailbox, which is a concept in the development stage that could link electronic and physical addresses. Can

you explain how an electronic mailbox would work. Would every American, for example, get one?

Mr. NOLAN. Again, Senator, as you indicated, we are in the conceptual development phase of the electronic mailbox. But every American could get one if they wanted, if we wind up offering the service. It is not something that we have secretly got a number for everybody and it is there and you have to use it.

One of the things that becomes very obvious in the Internet is the value of information that has existed forever but was not able to be captured. So, for example, if you ordered something from a catalog or an e-tailer and were to receive delivery, would it be of value to you to know when that package was going to be delivered by the Postal Service so that you could be sure to be home, or ask the Postal Service not to deliver it that day, or to deliver it at a certain time? If we had the ability to take that physical address as we are scanning it through our normal process and be able to know what your E-mail address is to trigger an information notice to you that a package was coming, where would you like it, when would you like it, we think that would have value.

We think there are other products and services in similar fashion that could also have value for consumers and they may very well appreciate receiving the information that way. We may find that people involved in our bill payment service would like to receive their bills in a special place, as opposed to their normal mailbox, that is less open to the public, more restricted in who they provide that information to. They might find a value in that particular space. So we are examining all those possibilities. We have not made any decisions yet. But it seems to us to be an area of opportunity that we are in fact investigating.

Senator COCHRAN. One concern that has been brought to my attention is that this could possibly be used to send out unsolicited advertising. Is that expected or foreseen by you?

Mr. NOLAN. Absolutely not. To the contrary, it is because of concerns about spamming that this kind of thing would actually be of benefit. In this model, the sender pays. And so, as is true in the spamming environment when people are spamming individuals, they do not pay an intermediate body like the Postal Service for delivery of that spam message. In this particular kind of situation, if we offered the opportunity for customers to receive mail in their mailbox, the payment through us to that mailbox would be by the sender. That would tend to dissuade people from spamming.

In our current mailbox we act as an agent, in the hard copy mailbox, the box at the curb or your front door, we act as an agent of the sender and the receiver. If you want to send mail, we are duty-bound to deliver it to that box. So what goes into that box is not your choice as the owner of the box, it is the choice of the sender. In the space on the Internet, we view the electronic mailbox as something that is controlled by the receiver. So only that which the customer wants to get in that box gets there.

That is the model that we are using conceptually as we are developing that. It is designed specifically to ensure that the Postal Service is not a party to any kind of spamming situation or loss of privacy for the individual. So we are really turning that whole

thing on its head in our conceptual phase as we are developing it right now.

Senator COCHRAN. Some have suggested that the Postal Service, since it has law enforcement responsibilities for e-commerce products and services, is positioned to compete unfairly just as a matter of fact with other competitors. How do you respond to that concern?

Mr. NOLAN. We pay for our Inspection Service. It is borne by our ratepayers. If individuals play games on the Internet, break the law on the Internet, the FBI, the Justice Department, there are a lot of law enforcement agencies which in fact can be brought to bear to find and convict those people committing those crimes. We have received a Memorandum of Understanding that enables our Inspection Service to delegate that authority to get involved in those kinds of activities where there is a postal nexus. But the fact is that we are interested, as is the Inspection Service, in enhancing the security on the Internet and so we work very closely with other law enforcement agencies. But we pay for that postal service.

I appreciate the fact that people view it as a premier law enforcement agency. We are proud of that fact. It did not come as a result of statute; it came as a result of the way we do business. And to the extent that the way we do business gives people confidence in our abilities to maintain privacy and security, we are pleased with that. But our ads, everything we do does not tout the Inspection Service as much as it touts the fact that you are doing business with the Postal Service and the benefits from doing that.

Senator COCHRAN. Another concern that has been brought to my attention is that because of the legal and regulatory framework that is used to create the Postal Service, that you are positioned to compete unfairly with others in these e-commerce areas. What is your response to that? Is it unfair?

Mr. NOLAN. I would love to have the playing field that our competitors have. I think that the restrictions placed on the Postal Service far outweigh any benefits that exist for us to be able to compete. I think that what we are faced with here is an organization that is meeting a need within this country, and we think we have done it fairly well, hoping to do it better all the time. But to the extent that by doing the job we do everyday it enables us to offer products and services that satisfy the needs of customers, I think that is good news. But I think that in terms of restrictions that we have, again, if I were a competitor choosing whether to take my restrictions or their restrictions, I do not think anybody in their right mind would choose mine.

Senator COCHRAN. I appreciate very much this panel's participation in the hearing. We have votes occurring on the floor and I have to go back over there and cast my vote. But I think we have had an excellent overview of the situation here with the e-commerce strategy and initiatives of the Postal Service being reviewed by the General Accounting Office and its report being presented to the Subcommittee today.

We are going to undertake a careful review of all the information that has been provided to us today and are hopeful that the work of our Subcommittee will contribute to the overall understanding of the legal situation. And if there are indications that changes should

be considered, we will be glad to hear from other Senators and those who are interested in this issue as well.

The hearing is adjourned.

[Whereupon, at 12:30 p.m., the Subcommittee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

United States General Accounting Office

GAO

Testimony

Before the Subcommittee on International Security, Proliferation, and Federal Services
Senate Committee on Governmental Affairs

For Release on Delivery
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U.S. POSTAL SERVICE

Electronic Commerce Activities and Legal Matters

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Summary

U.S. Postal Service: Electronic Commerce Activities and Legal Matters

USPS is in the early stages of implementing its electronic commerce (e-commerce) program. USPS has taken steps this year to develop and implement its e-commerce activities, including developing a definition of its e-commerce initiatives, identifying e-commerce and related initiatives, and establishing a process for approving these initiatives. USPS identified seven e-commerce initiatives involving products and services meant to facilitate the movement of messages, merchandise, and money in ways that require the use of the Internet and generate revenues for USPS. USPS also outlined overall e-commerce goals and strategies and developed some performance targets for its e-commerce initiatives. However, GAO identified three problem areas relating to USPS management of its e-commerce area:

- inconsistencies in identifying e-commerce and related initiatives and in reporting the status of these activities, which made it difficult to obtain a complete and accurate picture of USPS' e-commerce activities;
- inconsistencies in following the required process for reviewing and approving its e-commerce initiatives, which raised questions as to whether the initiatives were appropriately planned and reviewed; and
- deficiencies in the financial information USPS provided for its e-commerce activities, which raised concerns about the accuracy and completeness of the financial reporting for e-commerce activities.

To help ensure more effective management and oversight of USPS' e-commerce activities, GAO recommended that the Postmaster General (1) take appropriate actions to help ensure that e-commerce and related initiatives are appropriately identified and maintain accurate and complete information related to the status of these initiatives; (2) follow processes and controls that have been established for developing and approving e-commerce initiatives; and (3) provide complete and accurate information on costs and revenues for the financial data on e-commerce initiatives.

In the legal area, USPS provided its views on how various laws and regulations apply to its e-commerce activities. USPS said its unique status as an independent establishment of the executive branch gives it broad legal authority and discretion to offer e-commerce products and services in ways that USPS finds appropriate to its assigned functions and in the public interest. USPS, some competitors, and others have conflicting views on the extent of USPS' legal authority to offer e-commerce products and services and under what circumstances it should offer such services.

Statement

U.S. Postal Service: Electronic Commerce Activities and Legal Matters

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to participate in the Subcommittee's hearing on the electronic commerce (e-commerce) initiatives of the U.S. Postal Service (USPS). In my testimony, I will summarize the main findings and recommendations of our report on USPS e-commerce initiatives and related legal matters, which is based on the review we conducted from January through August 2000.[1]

Members of Congress and postal stakeholders have raised issues related to the merits of USPS' development of nonpostal products and services, including those that are e-commerce related. As USPS has recently developed and implemented a number of e-commerce initiatives, you requested us to provide information on the status of USPS' e-commerce activities and related legal and regulatory matters.

In my testimony today, I will describe USPS' (1) e-commerce initiatives that have been implemented or are being developed, (2) goals and strategies for the e-commerce area, (3) processes for approving these initiatives, and (4) expected performance and results to date related to e-commerce initiatives. I will also discuss areas we identified during the course of our review where USPS can improve its management of its e-commerce activities. In addition, I will describe USPS' views on how major federal laws and regulations apply to its e-commerce initiatives and identify some legal issues that have been raised concerning its e-commerce activities. Our report on USPS' e-commerce initiatives provides more detail on each of these areas.[2]

USPS Activities in the E-Commerce Area

USPS is in the early stages of developing its current e-commerce program. We previously reported on USPS' new products and services, including several e-commerce activities piloted or implemented during fiscal years 1993 through 1997.[3] Since then, USPS has discontinued its earlier e-commerce activities, some of which have helped USPS develop new e-commerce-related products and services.

Since the beginning of 2000, USPS has taken a number of steps to develop and implement its e-commerce activities. Some key actions included

[1] U.S. Postal Service: Postal Activities and Laws Related to Electronic Commerce (GAO/GGD-00-188, Sept. 7, 2000).

[2] GAO/GGD-00-188.

[3] U.S. Postal Service: Development and Inventory of New Products (GAO/GGD-99-15, Nov. 24, 1998).

developing a definition of its e-commerce initiatives, identifying its e-commerce and related initiatives, outlining its overall goals and strategies, establishing expected performance, and providing some information on results to date.

How USPS defines its e-commerce activities is fundamental when determining what USPS is doing in the e-commerce area and what process is to be followed in reviewing and approving e-commerce initiatives. The development of goals and strategies is key to understanding what USPS expects to achieve in this area. The review and approval processes are to establish accountability for management and oversight of the e-commerce initiatives. Information on performance targets and results is to provide a basis for determining if the actual performance of the e-commerce initiatives is meeting intended targets.

USPS Definition of its E-Commerce Initiatives

USPS' definition of its e-commerce initiatives has two components—those products or services that (1) require the Internet to do business and (2) generate revenue to USPS through user charges or licensing fees. USPS defined its e-commerce initiatives as a subset of its broader "eBusiness" environment, which included other categories of related initiatives that may involve use of new technology, such as "eService" initiatives that are to be value-added services or enhancements to existing services. Other related initiatives referred to as "gray area" initiatives did not meet the requirements of the e-commerce definition. Another category called "infrastructure" initiatives included information technology systems and other technology initiatives that are required to support e-commerce initiatives. USPS' distinctions among these categories illustrate that USPS activities involving the Internet include more than just its designated e-commerce initiatives.

USPS Identified Seven Current E-Commerce Initiatives

USPS identified seven e-commerce initiatives that were either planned or implemented as of September 2000. These seven initiatives are generally intended to facilitate the movement of messages, merchandise, and money. To facilitate the movement of messages, USPS introduced the PosteCS initiative, an Internet-based global document delivery system implemented in May 2000. To facilitate the movement of merchandise, USPS introduced the Stamps Online initiative in December 1998 that enables customers to use the Internet to purchase stamps, philatelic products, and other USPS products. USPS also plans to expand this initiative to include a Virtual Store that would offer USPS merchandise and other stamp products for sale via the Internet. To facilitate the movement of money, in April 2000 USPS introduced its eBillPay initiative, an electronic bill presentment and payment service.

USPS also identified three initiatives that it refers to as gray area initiatives. Gray area initiatives are related to e-commerce initiatives but either would not generate revenue for USPS or would not require use of the Internet.

Table 1 provides a list and descriptions of USPS' e-commerce initiatives and gray area initiatives.

Table 1: USPS E-Commerce and Gray Area Initiatives as of September 2000

Initiative	Description of initiative	Intended customers	Status
E-Commerce initiatives			
Electronic Postmark (EPM)	Creates a secure electronic time and date stamp for electronic communications and provides evidence of any tampering. USPS is seeking business partners to integrate EPM into their products, services, and systems. Revenue to date has been generated from businesses that incorporated EPM with their services. EPM also has been used with the PosteCS initiative.	Financial, legal, medical, governmental, and educational organizations	Implemented 4/00.
ePayments	Provides integrated ePayment solutions: (1) eBillPay—consumers paying bills, (2) businesses sending bills, (3) consumers paying each other, and (4) consumers receiving financial statements. eBillPay services are currently offered through a partnership with a private company. The eBillPay service is to be offered to new customers at no charge for the first 6 months. Revenue is to be generated by user fees.	Consumers and businesses	eBillPay was implemented 4/00. The rest of the services are in the planning stage.
Internet Change of Address and Move-Related Products and Services (MoversNet)	MoversNet includes three products and services: the hard copy publications—Movers Guide and Welcome Kit—and the Internet application called MoversNet.com. Currently MoversNet.com allows downloading a form for customers to submit changes of physical addresses and is accessible via the USPS Web site and via direct link. It is offered through a strategic alliance with a private company. Future MoversNet enhancements, which are to involve integration into a proposed MoversGuide Web site, are to allow additional services, such as electronic changes to physical addresses, e-mail addresses, and electronic accounts; ordering various services (e.g., power, electric, water, cable, newspaper, and long-distance telephone service); and new security features, such as credit card verification. Revenue to date has been generated by commissions from USPS' partner.	All postal customers	MoversNet was implemented summer 1996. Enhancements to MoversNet were scheduled for implementation in 9/00.
NetPost.Certified	is to provide confidential, ensured delivery of electronic documents to the government. A completed electronic delivery is to be certified back to the sender via an electronic receipt containing a USPS electronic postmark that provides legal proof of filing. Revenue is to be generated from transaction fees from government agencies.	Organizations that file information with the government	Not implemented.

Initiative	Description of initiative	Intended customers	Status
NetPost Mailing Online	Is to allow mailers to electronically transmit their documents, correspondence, newsletters, and other First-Class Mail and Standard A mail (primarily advertising mail), along with mailing lists, to USPS. Electronic files would then be securely distributed to printing contractors who print documents, insert them into addressed envelopes, sort the mailpieces, and transport the mailing to post offices for processing and delivery. Revenue is to be generated by printing and mailing fees paid by users.	Small Office and Home Office (SOHO) customers	To be implemented 9/00.
PosteCS	Provides a secure, private, Internet-based document delivery system. Users establish secure links using Secure Socket Layer (SSL) protocol. They then upload a file(s) to the PosteCS server using desktop software. To receive PosteCS messages, the recipients need only to have access to e-mail and an Internet browser. USPS has joined with Canada Post and LaPoste of France to provide this service globally. Also, the EPM initiative was used as part of PosteCS. Revenue is to be generated by user fees.	Large to medium-size businesses and SOHOs	Implemented 5/00.
Stamps Online/Virtual Store	Stamps Online allows the purchase of stamps and other existing USPS products. After the Virtual Store is implemented, postal customers are to be able to purchase stamps, philatelic products, phone cards, and other USPS merchandise via the Internet, including new products not currently available. Revenue to date has been generated from the face value of postage stamps and from other existing USPS products ordered via the Internet.	All postal customers	Stamps Online implemented 12/98; Virtual Store implementation planned in 2000.
Gray area initiatives			
Returns@ease	Enables customers to return Internet-purchased merchandise. Using a Merchandise Return Application Program Interface, businesses can authorize customers to download a postage-paid label directly from their Internet sites. The program is designed to make returning items bought via the Internet, through catalogs, and by phone easier for both buyers and sellers. Revenue is generated from user fees and postage.	Online merchants	Implemented 11/99.
Dinero Seguro™	Allows electronic fund transfers from the U.S. to Mexico. Dinero Seguro™, which means "Sure Money," is a money-by-wire service that can be used to transfer money from designated U.S. postal locations to more than 1,300 Bancomer Bank branches in Mexico. This initiative uses telephone lines instead of the Internet and is to become part of a planned Sure Money® service.[a] Revenue is generated by Dinero Seguro™ through money-wire transfer fees.	Americans of Mexican origin, most recently immigrants	Implemented 6/96.
PC Postage	Allows customers of private companies to purchase and print stamps onto labels and envelopes using their computers and the Internet. Private companies sell PC Postage products after USPS certifies that these products meet USPS standards. USPS receives revenue from the face value of postage stamps.	SOHO market	Implemented 8/99.

[a]USPS has identified additional target countries, which it plans to include in an expansion effort to this initiative, referred to as Sure Money®.

Source: USPS documents.

USPS does not consider products and services to be e-commerce initiatives if they involve use of the Internet but either do not generate revenues, or the revenues generated are related to existing core products and services. USPS considers these products and services to be value-added services or enhancements to existing services. For example, customers can use the Internet to access information about USPS products and services, look up ZIP codes and post office locations, download labels for mailing packages, and check the status of certain items mailed without paying any fees. Customers can also use the Internet as an alternative channel to access existing core products and services, such as Priority and Express Mail; to confirm delivery; or to arrange for package return. The revenues from these enhancements are to be reported with the existing core products and services.

USPS is also developing other initiatives, which it refers to as infrastructure initiatives, to support its e-commerce initiatives. For example, USPS has identified an electronic mailbox, which is a concept in the early development stage that could link electronic and physical addresses, as an infrastructure initiative.

USPS Goals and Strategies for the E-Commerce Area

USPS outlined the purpose and direction for its eBusiness and e-commerce areas and stated that its overall goal is to use the best technology, including the Internet, to provide customers with expanded universal access and choices on how they do business with USPS. USPS also explained that the criteria for these initiatives are that they be universally available, designed to fulfill customer and marketplace needs, offer customers voluntary choices, be secure and private, provide financial benefits to customers and USPS, and be consistent with USPS' mission. USPS identified eight strategies for accomplishing its eBusiness goal and its related e-commerce goal. Examples of these strategies were using the Internet as a cost-effective channel, providing security and privacy for customers, minimizing USPS investments and risks, and pursuing partnerships and alliances with industry.

To carry out these goals and strategies, USPS has established an eBusiness Integration team that is responsible for eBusiness implementation planning and for developing an eBusiness strategic plan. In addition, USPS established the eBusiness Opportunity Board (e-BOB) to provide operational oversight in the eBusiness area and to review the performance of e-commerce initiatives.

USPS Processes for Approving E-Commerce Initiatives

In May 2000, USPS established a management process for reviewing and approving e-commerce initiatives that is different from the review and approval process for other new products. The e-commerce review process was designed as an expedited 120-day process to result in quicker approval of initiatives than USPS' review and approval process for new products. The e-commerce review process requires a business proposal and plan, a public affairs/communication plan, periodic monitoring, and approval by top management or USPS' Board of Governors (BOG). Some e-commerce initiatives were launched before the new process was introduced and were therefore subject to USPS' former approval process. In instances in which a project contains significant capital investments, the initiative is also to be subject to the headquarters review and approval process for capital projects.

The Deputy Postmaster General explained to us how resource allocation for e-commerce initiatives was unlike that for all other areas in the USPS budget. He said that all of the funding for USPS e-commerce activities was budgeted and kept in one overall fund. He said these funds were not allocated to specific managers until program managers justified the use of funds for specific projects.

Performance Expectations and Results

USPS provided information on its performance targets and results achieved for e-commerce initiatives implemented to date. USPS also told us in July 2000 that the aggregate fiscal year 2001 planned revenue for e-commerce initiatives that was being submitted for BOG approval totaled $104.0 million, and projected expenses specific to e-commerce initiatives totaled $67.2 million. These totals do not include infrastructure and other costs associated with e-commerce, which also are to be calculated.

Evaluation of the results of USPS' e-commerce initiatives, according to USPS, is generally based on the service performance provided to consumers and businesses and on the revenue, cost, and contribution to financial performance. A BOG resolution adopted in June 2000 specifies that "significant new types of e-commerce initiatives, which have not been previously presented to the Board [of Governors] for review, shall be presented to the Board before being launched." Initiative reviews by e-BOB are to be conducted on at least a quarterly basis, and quarterly status reports are to be sent to BOG.

USPS Opportunities for Improving Implementation of E-Commerce Initiatives

During our review, we identified a number of inconsistencies and other problems in the information provided by USPS that indicated areas in which it can improve implementation of its e-commerce initiatives. These management deficiencies indicate that more effective management and oversight is needed in this area. We made recommendations to USPS that address these issues.

Inconsistencies in Identifying E-Commerce and Related Initiatives

During the course of our review, USPS inconsistently applied its definition of e-commerce in identifying its initiatives and provided inconsistent information on the status of its initiatives. These inconsistencies made it difficult to ensure we had a complete and accurate picture of USPS' e-commerce activities. USPS was able to reconcile some of the inconsistencies, but consistency across the organization will be necessary for USPS to provide accurate and complete information on the status of its e-commerce initiatives. As previously mentioned, BOG is to receive quarterly status reports on USPS' e-commerce initiatives.

USPS has struggled to properly classify its e-commerce and other initiatives that relate to its broader eBusiness environment. The initial list of e-commerce and related initiatives that USPS provided to us in April 2000 included 28 initiatives. As of July 2000, the list had been reduced to seven e-commerce initiatives. USPS dropped some of the initiatives on the initial list because they were identified as infrastructure or enhancements to core products and services, and called others gray area initiatives because they did not fit the definition of e-commerce initiatives. In addition, some initiatives are in various stages of development, and their classification may change as their product features evolve. As we discussed the rationale for the classification of specific initiatives with USPS officials, we noted several apparent inconsistencies where initiatives that seemed to have similar characteristics were not treated similarly.

In some cases, it was difficult to understand the rationale for the identification of the initiatives without more clarification from USPS on how it intended to treat the revenue from these initiatives. Also, some initiatives were provided in conjunction with other products and services, and it was not clear how the revenues would relate to e-commerce versus other core products or services. Finally, some initiatives were not currently generating revenues, such as eBillPay, but USPS planned to generate revenues from these initiatives in the future. USPS' consistent application of its e-commerce definitions is important so that it can maintain complete and accurate information about its e-commerce and related activities.

USPS also provided conflicting information related to the status of certain e-commerce activities that made it difficult for us to determine when some of the e-commerce initiatives had been implemented. We recognize that activities in this area continue to evolve. However, USPS has had difficulty providing complete and accurate information on initiatives that have been ongoing for some time.

USPS Has Not Consistently Followed its Processes for Approving E-Commerce Initiatives

USPS did not consistently adhere to its process requirements for the review and approval of its e-commerce initiatives. According to information provided by USPS, none of the five e-commerce initiatives fully or partially implemented to date have had all of the required documents, such as business plans, or formal approvals from appropriate officials. Consequently, it is not clear whether USPS management properly reviewed and approved e-commerce initiatives to ensure that they would support USPS' overall mission and goals.

Problems and Inconsistencies in USPS' Reported Financial Results for the E-Commerce Area

We identified deficiencies in the financial information provided for the e-commerce activities that raised concerns about the accuracy and completeness of USPS' financial reporting for its e-commerce activities. We do not believe the financial data that USPS provided were sufficiently complete and reliable to be used to assess USPS' progress toward meeting its overall financial performance expectation that revenues generated by e-commerce products and services in the aggregate are to cover USPS' direct and indirect costs as well as make a contribution to overhead. Without accurate and complete information on the revenues and expenses associated with USPS' e-commerce initiatives, USPS and other stakeholders will not be able to assess progress toward meeting USPS' financial goal in the e-commerce area.

USPS' Views on Legal Matters Relating to its E-Commerce Activities

In the legal area, USPS has provided legal information and analysis that should be a valuable reference to Congress and other stakeholders interested in how laws and regulations apply to USPS' e-commerce activities. We did not evaluate USPS' legal analysis or attempt to obtain others' views for our report, although we summarized some of the concerns that have been raised regarding USPS' e-commerce activities. We also summarized some of our reports that may relate to the application of laws and regulations to USPS e-commerce activities, although, due to time constraints, we did not update this past work for the purposes of our review of specific USPS e-commerce activities.

USPS' Views of Its Authority in the E-Commerce Area

USPS believes that it has broad statutory authority to offer e-commerce products and services in ways that it finds appropriate to its assigned functions and in the public interest. USPS told us this authority is grounded in several provisions of the Postal Reorganization Act of 1970,[4] not just the provision relating to its specific power to offer nonpostal services. USPS said that the law provides discretion to its Board of Governors to determine whether particular new services are appropriate and in the public interest.

Our Reports That Discussed USPS Legal Authority

We have issued reports that may relate to the application of laws and regulations to USPS e-commerce activities:

- We reported in 1998 that statutory and regulatory authorities governing USPS provide it broad latitude to develop and market a wide variety of new products, including both postal and nonpostal products.[5]
- We reported in 1996 and 1999 that we and USPS had differing interpretations of federal privacy protections that relate to change-of-address information reported by USPS customers.[6]

USPS' Views on the Application of Laws, Regulations, and Policies to its E-Commerce Activities

According to USPS, numerous federal laws and regulations apply to its e-commerce products and services, but it has a different legal status from its private sector competitors in some respects. For example, USPS reported that federal privacy laws afford USPS e-commerce customers greater protection than is provided for customers of private sector providers. Further, USPS told us that the public interest, universal service, antidiscrimination, and other policy provisions of the Postal Reorganization Act of 1970 provide consumer protections in connection

[4] P.L. 91-375.

[5] Our analysis showed that USPS is subject to at least three constraints in developing and marketing new products: (1) explaining how any new product will further USPS' mission to provide postal services to bind the nation together; (2) requesting a recommended decision from the Postal Rate Commission (PRC) in the case of domestic postal products; and (3) addressing constraints or influences that may arise from congressional oversight, restrictions imposed during the appropriations process, or other legislative actions. See U.S. Postal Service: Development and Inventory of New Products (GAO/GGD-99-15, Nov. 24, 1998).

[6] We reported that in our view, use of information linked to the National Change of Address (NCOA) program to create or maintain new-movers lists by USPS licensees, who are viewed under the Privacy Act as if they were USPS employees, would be inconsistent with the Privacy Act. USPS disagreed, stating that the NCOA program does not violate the Privacy Act because NCOA information provided to licensees, and by licensees to their customers, is limited to the new addresses of persons whose names and addresses are already on the licensee's or the customer's list. See U.S. Postal Service: Improved Oversight Needed to Protect Privacy of Address Changes (GAO/GGD-96-119, Aug. 13, 1996); and U.S. Postal Service: Status of Efforts to Protect Privacy of Address Changes (GAO/GGD-99-102, July 30, 1999).

with its e-commerce products and services, but many other federal consumer protection laws are inapplicable to USPS. However, USPS stated that some federal consumer protection laws may apply to USPS in certain circumstances, and others may apply to USPS contractors or financial institutions that help USPS offer e-commerce products and services.

Concerning law enforcement and e-commerce, USPS reported that the Postal Inspection Service, a part of USPS that is responsible for enforcing postal laws, has authority and responsibility to investigate violations of law that involve USPS e-commerce products and services. The authority of the Inspection Service was enhanced in 1998 by a delegation of authority from the U.S. Attorney General. This delegation gave the Inspection Service limited jurisdiction to investigate violations of certain crimes that may relate to USPS' e-commerce products, such as the Electronic Postmark. However, USPS told us that the Inspection Service has no authority to investigate electronic communications that do not "have a postal nexus."

In the competition area, USPS told us that the antitrust laws and general competition-related statutes do not apply to USPS, with the exception of the advertising and competition provisions of the Lanham Act.[7] However, USPS stated that federal law prescribes competition-related factors that must be considered with regard to USPS e-commerce activities.

USPS also said that in some cases, major federal regulations apply to its e-commerce products, including regulations adopted by USPS and other federal agencies, such as Department of the Treasury and Federal Reserve regulations related to USPS' eBillPay initiative. However, it also noted that the ability to make generalizations about how the regulations apply to USPS is somewhat limited. USPS reported that it has authority to issue regulations pertaining to its own e-commerce products and services, but USPS also said it has "no authority to act as a regulator over economic activity in general or over the Internet in particular."

Finally, USPS reported that its activities in the e-commerce area are generally not subject to administration policies that apply to other executive branch agencies. According to USPS, executive orders and Office of Management and Budget (OMB) instructions, unless grounded in separate statutory authorization covering USPS or by national security laws, do not apply as a matter of law, although USPS may voluntarily be guided by certain of them.

[7] 15 U.S.C. § 1125(a).

Concerns Have Been Raised About USPS E-Commerce Activities

USPS, some competitors, and other stakeholders have conflicting views on the extent of USPS' legal authority to offer e-commerce products and services and under what circumstances it should offer such services. Some USPS competitors and others have recently raised concerns that USPS has an unfair competitive advantage in the e-commerce area because it is subject to legal and regulatory requirements that are different from those its competitors are subject to. On the other hand, the Postmaster General and some other stakeholders have said that current laws put USPS at a competitive disadvantage and have called for changes to give USPS increased flexibility to compete. The appropriate role of USPS has been debated for many years and continues to be debated in the context of proposals for comprehensive legislation to reform the nation's postal laws. In addition, some specific concerns have been raised about USPS e-commerce activities that also relate to emerging e-commerce issues, such as the privacy of consumer information and what new e-commerce products are subject to PRC review.

Recommendations

Our report recommended that the Postmaster General take the following actions to help ensure more effective management and oversight of USPS' e-commerce activities:

- take appropriate actions to help ensure that e-commerce and related initiatives are appropriately identified and maintain accurate and complete information related to the status of these initiatives,
- follow processes and controls that have been established for developing and approving e-commerce initiatives, and
- provide complete and accurate information on costs and revenues for the financial data on e-commerce initiatives.

In commenting on our draft report, USPS generally agreed with the facts in our report and endorsed the report's recommendations. However, USPS noted differences in perspectives related to some of the concerns we discussed. Specifically, USPS stated that its senior management had reviewed and approved all of its e-commerce initiatives before implementation. If so, such approvals were not fully documented. USPS also stated that it is already taking the necessary actions to implement the recommendations in our report within a management structure that will provide long-term as well as day-to-day oversight of its e-commerce program. PRC generally agreed with the report's analysis of the issues and further commented on USPS' pricing policy for its e-commerce initiatives.

Mr. Chairman, this concludes my statement. I would be pleased to respond to any questions you or the Members of the Subcommittee may have.

Contact and Acknowledgments

For further information regarding this testimony, please contact Bernard L. Ungar at (202) 512-8387. Individuals making key contributions to this testimony included Teresa L. Anderson, Kenneth E. John, Angela S. Davis, Casey L. Brown, Hazel J. Bailey, Alan N. Belkin, and Victor B. Goddard.

STATEMENT OF JOHN NOLAN
DEPUTY POSTMASTER GENERAL
UNITED STATES POSTAL SERVICE
BEFORE THE SUBCOMMITTEE ON INTERNATIONAL
SECURITY, PROLIFERATION, AND FEDERAL SERVICES
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

September 7, 2000

Good morning, Mr. Chairman and Subcommittee members.

I appreciate this opportunity to discuss the Postal Service's electronic commerce initiatives with you.

The Internet and the emerging "new economy" are becoming an integral part of the everyday world we live in. All organizations, public and private, face the necessity to communicate with the public and to serve their customers within a context that is being dynamically altered by this new technology.

Having returned to the Postal Service earlier this year from the private sector, I see common challenges with those faced by management across a broad spectrum of organizations and industries. What does the e-world have in store for present ways of doing business? What directions will emerge as markets assimilate new ideas and possibilities? What threats are impending, and what are the opportunities? How can we leverage this technology to improve our services and efficiency? What management processes are required to develop new ideas, make sound choices, and deliver services in a timely way as the e-world changes so rapidly? And most importantly, what do our customers want and how must we change to meet their needs? Inescapably, all companies and organizations must grapple with these difficult issues.

The Postal Service is no exception. As the General Accounting Office reported last October, the postal system faces an especially formidable transition as electronic alternatives achieve wider penetration and acceptance over the next few years. Bills and payments – now responsible for about half of the First-Class Mail stream – are at risk to electronic diversion. Ad Mail – our second largest market segment – also confronts increasing competition from Internet alternatives.

The prospect of an unprecedented shift from traditional forms of hard copy to electronic alternatives is challenging for many of our customers as well as the Postal Service. We have traditionally said that the Postal Service "binds the Nation together," and that remains true today. Significant portions of the U.S. economy have developed and flourished around ties of mutuality forged with the postal system over many decades. These customers, like the Postal Service and everyone else, face the necessity to adapt their own practices and services in order to survive and flourish in the new economy. Where they need to, they will make the difficult changes necessary to sever or reduce their dependence on the mails, in order to improve efficiency or serve their own customers better. But they also ask and expect the Postal Service to do everything possible to aggressively modernize our own operations and services, just as they are doing, as we work together with them to continue to offer solutions for their customers.

What the Postal Service has in mind for its eCommerce services is to respond to the needs and demands of its customer base. We intend to provide services using modern technology to improve and build on our existing services

and relationships with customers, to continue filling the needs that the Postal Service has traditionally served. We intend to maintain technologically modern infrastructures that allow us to perform our internal work efficiently. Where those infrastructures make it possible to offer appropriate services for our customers, we will do so. We look for private sector service providers with whom we can join to offer services bringing together their skills and expertise with ours for the benefit of the public.

Applying these kinds of principles, we are initiating this month a nationwide experimental offering called Mailing Online. This service makes bulk mailings quick and easy for customers who want to send their messages electronically over the Internet to a participating printer, for entry into the mailstream near the point of delivery. Mailing online joins together the efficiency and convenience of the Internet with the reach of mail delivery.

Earlier this year, we started several other eCommerce services, including eBillPay, which enables customers to submit and pay bills electronically. Functionally, this service continues to meet the needs of customers we already serve. By combining both electronic payment and postal delivery options, the Postal Service can provide creditors the opportunity to accomplish all of their billing through one "stop."

We also launched PosteCS in cooperation with Canada Post and LaPoste of France. This global service gives customers who have depended on the mail for their international business correspondence the option to continue to meet

the same needs through electronic transmission, while maintaining their relationship with the Postal Service.

Our new Electronic Postmark provides a technologically updated version of a time and date service similar in function to the conventional postmark. Participating customers will be able to use this service in a number of applications to offer their own customers the assurance of authenticated business correspondence.

These services illustrate the directions we believe the Postal Service should pursue in this area. We want to provide services responsive to identified needs that our customers have come to rely on the Postal Service to fill.

In pursuing initiatives such as these, we also expect to help fulfill the Postal Service's role as a provider of universal service. Throughout its history, the Postal Service has extended access for all Americans to modern, comprehensive, efficient, rapid, and secure systems for their personal and business correspondence. Our customers have looked to the Postal Service to provide the reach that binds all segments and communities together. We think we can find opportunities to add similar value in extending access in eCommerce. The Postal Service will continue to serve as a unifying force and building block for the new integrated economy much as it did for the growth of the "old" economy.

We expect eCommerce services to perform against much the same management expectations that we would apply to other new services. ECommerce services should be developed and managed to establish a

presence in the marketplace. With an appropriate introduction period, usage should demonstrate that they are providing a needed service and should be able to pay their own way. In the fast-changing electronic world, not every service will prove successful. Those that show they are filling the needs of the marketplace will be emphasized, and any that do not will be modified or dropped.

The unprecedented dynamism of the electronic communications technology and markets puts pressure on management structures and processes. Developing the optimum systems for managing eCommerce initiatives is an ongoing challenge, for the Postal Service and for every organization.

Over the past year the Postal Service has made a number of management changes based on our experience with these programs. We restructured the management of e-business programs under the Senior Vice President and Chief Technology Officer and a new position of Senior Vice President, Corporate and Business Development. We are also putting in place a revenue and cost attribution process for eCommerce so that progress can be measured and subsidies can be avoided.

This past February, we created an e-Business Opportunity Board, including appropriate senior officers and chaired by me, to provide oversight and direction for e-business proposals and initiatives. One of the first tasks of this Board was to establish a clear statement of our e-business goal, strategy guidelines, and criteria for adoption of new initiatives. Under this Board, we now have a more rigorous process for the development and review of proposals over

their life cycle. The process is designed to facilitate the prompt action required by the eCommerce marketplace, while providing the careful evaluation and documented business planning necessary to evaluate proposals, control resources, identify measures of success, and evaluate performance. E-business initiatives are reviewed at successive stages and must be approved by the Opportunity Board. In addition, new eCommerce service initiatives must be presented to the Board of Governors for review.

We are determined that the Postal Service's eCommerce customers can count on privacy and security second to none for their personal information and transactions. The Postal Service has always stood for privacy and security in hard-copy communications. We are well positioned to bring value to the eCommerce marketplace by providing solutions for customers that will address their privacy and other personal and business requirements.

The Postal Service is accountable to act in the public interest. Under the Postal Reorganization Act, consumers of eCommerce services and other stakeholders have the protection that the Postal Service is expected to act fairly and reasonably, without discrimination, for the benefit of the entire country, under public control. We understand that these protections include the right of interested parties to question or challenge, in the public arena, anything they may not understand or agree with. We believe in what we are doing in eCommerce, and are prepared to articulate our views and respond to concerns.

The current report from the General Accounting Office provides a useful compilation of the Postal Service's views on the legal and policy foundations of

our eCommerce initiatives. The report also identifies management areas for improvement, and offers three recommendations. GAO recommended –

- appropriate measures for identification of eCommerce initiatives and tracking their status;
- processes and controls for developing and approving these initiatives; and
- complete and accurate information on costs and revenues.

We fully subscribe to these recommendations. These are among the program elements that we have already been working to improve before and during the course of the audit, with the steps I have described for you today. The still emerging e-business marketplace puts us all through a learning process, as we seek to understand and anticipate revolutionary changes, and to take the steps needed to serve our customers. The Postal Service benefits from having outside perspectives. We especially value the advice and assistance of all of those who share with us a concern for the present and future of the postal system, including the GAO and the members of this Subcommittee.

Thank you very much, Mr. Chairman. I would be pleased to answer any questions.

Testimony of

The Honorable Edward J. Gleiman, Chairman

on behalf of the

Postal Rate Commission

Before the

United States Senate
Committee on Governmental Affairs
Subcommittee on International Security,
Proliferation and Federal Services

September 7, 2000

Chairman Cochran, members of the Subcommittee on International Security, Proliferation and Federal Services, thank you for the opportunity to provide testimony on the e-commerce activities of the United States Postal Service. In testifying today, I am expressing my own views, rather than those of the Postal Rate Commission institutionally. While the majority of my colleagues on the Commission would probably agree with many of the views I am about to present, they have not participated in developing this testimony.

We are here today because there is a growing interest and concern about the Postal Service's current involvement in e-commerce and other electronically based initiatives beyond its performance of conventional, or core if you will, postal services. As the GAO report presented by Mr. Ungar today demonstrates, there is a lot of uncertainty about the direction, financing, oversight, and even the extent of these initiatives. I commend the Subcommittee for addressing these difficult issues, and hope my remarks today can shed a little light on this murky territory.

I think GAO has done a good job of documenting developments since its last review covering the 1993 to 1997 period. The report paints a seemingly accurate, albeit surreal, picture of the state of current Postal Service activities: a wide variety of electronically based programs in various stages of approval and implementation. After reading the draft GAO report, I asked the Commission staff to review readily available information from the Postal Service and its contractors about electronically based

initiatives and compile a briefing book for my use. I have that briefing book with me today, and I would be happy to provide it for the Subcommittee's information.

Mr. Chairman, your letter inviting me to appear as a witness asked me to address "the application of major federal laws and regulations to the e-commerce initiatives of the Postal Service" in my testimony. I will do so, but with some trepidation, because of two concerns. First, I understand that the applicability of current laws to such services is largely uncharted territory, and there are few if any settled legal doctrines to be found in federal court decisions or other authoritative sources to provide guidance. Second, as the GAO report notes, there is a pending complaint proceeding before the Commission that concerns the legal status of Post$_e$CS service. Because the extent of the Commission's jurisdiction over this e-commerce initiative is a major issue to be resolved in the case, I must refrain from offering comments that could be misinterpreted as prejudging this issue. But I will try to address the question generally.

Looking at the primary body of law that applies to the Postal Service—the Postal Reorganization Act of 1970, enacted when the Internet was little more than a gleam in anyone's eye—it is difficult to find anything that would authorize the Service to introduce e-commerce initiatives as new products. The GAO reports the Postal Service's position that several provisions in the Act grant general authority to the Service broad enough to encompass e-commerce activities, in addition to the specific power to provide "special nonpostal or similar services." However, the Reorganization Act's statement of the

general duties of the Postal Service in section 403(a) must also be kept in view. This provision obliges the Service to offer efficient, reasonably priced postal services for conveyance of "written and printed matter, parcels, and like materials" and "such other services incidental thereto...." Likewise, section 101 declares as a matter of postal policy that the Service's basic function is fulfillment of an obligation to provide postal services "to bind the Nation together through the personal, educational, literary, and business correspondence of the people."

It is really hard to see a telecommunications horizon in this legal guidance. Now I agree that Title 39 does not contain language specifically prohibiting the Postal Service from offering non-postal services, but I am not convinced that Congress intended the absence of a prohibition to be interpreted as broad authority to compete with private businesses that offer Internet-related businesses, or other nonpostal businesses. I will have more to say about the implications of section 101 a little later.

The regulation of Postal Service e-commerce initiatives is also a question to which there is no clear answer. Chapter 36 of Title 39 requires the Service to file a request with the Commission prior to establishing any new mail classification for "postal" services. The Postal Service currently argues that, as long as a new service manipulates electrons and does not produce hardcopy mail, that service is not "postal," and therefore is none of the Postal Rate Commission's business. The Commission has not yet explicitly accepted or rejected that argument, and I should not offer an opinion

for reasons already mentioned. I will note that, if the Postal Service position is correct, there may be a gap in regulatory oversight. But even so, I have to wonder why the Service did not consult with the Commission before introducing eBillPay service, which I understand results in the mailing of physical checks in envelopes at least some of the time. This would seem to make eBillPay a hybrid service akin to Mailing Online, which the Service requested and the Commission has recommended in two separate decisions.

The Postal Service offers several rationales for its entry into e-commerce, which the GAO report cites, and I will address each of these shortly. Before doing that, I would like to pose two basic questions: First, is there some compelling need for the Service to do this? If some current or potential customer of the Postal Service has been clamoring for new non-postal e-commerce services, I am not aware of it. The evidence I am aware of suggests that demand for electronic initiatives is limited to those that would make improvements or provide additional support for core Postal Service business. If there is some compelling need for non-postal e-commerce services, I believe it must originate somewhere outside the day-to-day business demands of operating the contemporary Postal Service.

Second, is there some compelling justification for any government monopoly to compete with private enterprise in this arena? Put another way, if the Postal Service had not taken the initiative to develop e-commerce products, would Congress pass

legislation directing the establishment of a government-owned "start-up," funded by users of the Postal Service, to compete with private Internet business firms?

According to the GAO report, the Postal Service cites four bases for viewing e-commerce products as appropriate for serving its institutional purposes. One rationale is that such services, in combination with its other functions and activities, should help to "bind the Nation together," in keeping with the basic function prescribed in section 101 of Title 39.

This is a plausible rationale, but only if you overlook the fact that the United States is already "bound together" electronically by the private sector—initially by the telegraph and telephone but now by an ever-expanding variety of telecommunications media, including the Internet. Is the Postal Service suggesting that there is an unmet national need for publicly provided electronic services? If so, this would represent a major national policy finding, and accordingly should not acted upon before investigation and very careful deliberation by Congress.

A second but related rationale is the Postal Service's suggestion that, since "binding the Nation together" is part of its basic function, initiatives such as e-commerce serve an appropriate objective in their own right by fostering national communications. The GAO report refers to this objective as "expanded universal access."

This justification provokes another question: at some point, would pursuing the objective of binding the Nation together through new media change the Postal Service

from a delivery company to a communications company? This may be what the Postal Service has in mind. If so, this would be contrary to the trend elsewhere in the world, where national telecommunications authorities are being separated from countries' postal administrations and privatized.

Looking at the Service's website the other day, I came across the Frequently Asked Questions section devoted to the Post$_e$CS service. Here is the Q. and A. I found particularly interesting. Question: "How does Post$_e$CS fulfill U.S. Postal Service's primary mission?" The first sentence of the answer: "Post$_e$CS fulfills the Postal Service's mission to 'bind the nation together through its communications'." I do not know what or whom this answer intended to quote, but it was not section 101. In any event, the diversification of the Postal Service from what has been a nationwide delivery service into a communications company would represent a major change in national policy, and as such should be decided publicly. If such a change is deemed appropriate, it might best be implemented through new legislation.

A third rationale offered by the Postal Service identifies technological improvements such as the Internet as sources of "opportunities for improved interaction between the postal system and its customers." While it does not claim that all-electronic products and services are becoming the "basic function" of the Postal Service, it says the particular electronic services it has chosen to introduce "serve as logical, supporting,

ancillary, incidental enhancements of the postal system for the benefit of our customers."[1]

Evolution of postal services through the adoption of new technologies is well-established in historical precedent. As long ago as 1877, the Supreme Court recognized that the powers of the national postal service included employing "new agencies" or "instrumentalities of commerce" to "keep pace with the progress of the country, and adapt themselves to new developments of time and circumstances."[2] This decision, and many other historical developments concerning postal innovation in the United States, are discussed in a study prepared for the Commission by Professor Richard Kielbowicz, entitled "Postal Enterprise: Post Office Innovations with Congressional Constraints, 1789-1970." The Commission would be happy to provide copies of this study for the Subcommittee, and it will soon be available on the PRC website.[3]

However, one question posed for the Postal Service's future is the following. If entry into e-commerce and other electronic initiatives is an appropriate evolutionary development for the national postal system, should current forms of oversight, governance and regulation evolve as well? The legislative history of the Reorganization

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[1] Draft GAO Report at 57.

[2] *Pensacola Telegraph Co. v. Western Union Telegraph Co.*, 96 U.S. 1, 16 (1877).

[3] The Commission's website, which hosts its electronic reading room and provides access to a variety of related information, is located at: www.prc.gov.

Act makes clear that the PRC was created to protect monopoly ratepayers from being exploited and to protect the private sector from unfair competition. Congress did not leave the Service's Board of Governors to do this job alone. It therefore seems odd that the Postal Service now argues that its Board of Governors alone should protect monopoly ratepayers and private sector competitors in the e-commerce area.

The fourth rationale offered by the Postal Service notes that its current services are "deeply rooted in the traditions of this country and embedded in the current economic and social fabric[,]" and invokes its authority to take advantage of technologies such as e-commerce to meet a challenge "to improve and build upon the services, capability, role, and customer relationships that it already maintains...."[4]

I agree that some electronic initiatives to date can fairly be viewed as extensions and enhancements of core Postal Service business. Delivery Confirmation makes use of the Internet to enhance Priority Mail and Parcel Post. Another example is Mailing Online, which harnesses the Internet to enable customers to produce and mail hardcopy messages from their electronic word processing files.

But other current initiatives do not build on any pre-existing service traditionally offered by the Postal Service. Illustratively, eBillPay does not improve or build upon any service currently offered. Instead, it offers a potentially all-electronic substitute for current bill paying transactions.

My point here is not that the Postal Service should be precluded from offering services that are categorically different from anything they have done before, although historically this has happened. As Dr. Kielbowicz's study documents, Congress precluded the pre-Reorganization Act Post Office Department from extending the scope of its cores businesses by competing in new media such as the telegraph[5] and telephone[6] services. The point to be made here is that Postal Service forays into services with no clear connection to its core businesses raise important policy issues that ought to be considered in a forum beyond Postal Service headquarters and meetings of the Board of Governors.

And while I am on the subject of traditional postal services, let me say a few words about the privacy traditionally, and legally, accorded to mailers and mail recipients. The GAO report notes my comments earlier this year about the breadth of disclosure of customer information allowed under the Postal Service's Privacy Act statement for the eBillPay service. According to the report, the Service has since

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[4] Draft GAO Report at 58.

[5] After funding a telegraph line between Washington and Baltimore for demonstration purposes in 1843, which was supervised initially by the Treasury Department and thereafter by the Post Office Department, Congress declined to approve further appropriations in 1845 and 1846, and the line was sold to a private company in 1847.

[6] Despite initiatives begun in 1913 to acquire the Nation's telegraph and telephone lines and turn them over to the Post Office Department, and the Department's management of all wire communications as an emergency measure following the outbreak of World War I, Congress returned permanent control over wire communications to the private sector after one year of Post Office supervision.

revised its Privacy Act statement, and says it does not intend to provide such information. As a general matter, the Service is quoted as saying that it will protect the privacy of USPS e-commerce customers better than private sector providers would because of the federal privacy laws.

Nevertheless, I remain concerned that personal information about users of e-commerce services might be disclosed, possibly to one of the Postal Service's "partners" in providing the services, under permissible "routine uses" under the Privacy Act. As evidenced by the Postal Service's initial eBillPay privacy statement, federal agencies have broad administrative discretion when it comes to sharing personal information; more, perhaps, than many of the proposals currently under consideration which would impose restrictions on the private sector. I believe this is an issue that should be carefully monitored in exercising oversight over the Postal Service's e-commerce activities.

One practical reason that has been advanced for the Postal Service's entry into e-commerce is reaction to new competitive challenges that may lead to substantial declines in First-Class Mail volume and a resulting erosion of the Service's ability to fulfill its universal service obligation. Under this rationale, the Service invests in developing e-commerce activities as a means of cultivating new revenue streams to replace income lost to private delivery companies and electronic communications alternatives.

One variant of this rationale should be dismissed right away. Several years ago, certain postal officials promoted e-commerce and other initiatives as a means of "preserving market share" for the Postal Service. I cannot regard this goal as an appropriate objective for the Postal Service to pursue in the e-commerce arena. Starting from a base of hardcopy message and transaction mail, is it even meaningful to talk about the Service's "share" of electronic transactions? I do not think it would be realistic to regard even a small fraction of e-mail messages sent today as letters that have been diverted from the Postal Service.

But even the more respectable rationale of income replacement raises serious questions. First, who should finance the Postal Service's e-commerce initiatives? Again returning to the 1970 Reorganization Act, there is no basis in the legislative history for concluding that Congress contemplated the Postal Service's entry into nonpostal competitive businesses of this type. Perhaps this was for a good reason. The Postal Service has no sources of risk capital except its revenue from monopoly ratepayers. It has no willing investors who want to take risks for a potential return on their investment. An ordinary firm entering a competitive market is constrained by its access to risk capital and its owners' tolerance for risk. After all, private firms have to use retained earnings or risk capital from investors—money that is not easily replaced.

The Postal Service is in a different position. Its capital is essentially free, and if it fails to earn the expected return, there are no adverse consequences. It has a source

of monopoly revenues from which to replace the lost funds. Therefore, at best the Postal Service would be an anomaly in the nonpostal competitive marketplace. At worst, it would be a danger to other venturers because it does not have to play by the same set of rules that govern capital formation and risk.

Because the Postal Service can easily obtain risk capital from monopoly ratepayers, it may be tempted to make imprudent guarantees to other vendors when it enters the e-commerce market. Frequently, partners and contractors require guaranteed revenues. This happened in the market test of Mailing Online service. In exchange for low printing rates, the Postal Service guaranteed its printing contractor a minimum revenue of $325,000. At the end of the test only about $23,000 had been spent. The Service reportedly has paid more than $250,000 to the contractor with no additional services rendered, and as of February 12 of this year there was a remaining balance payable. The potential size of these kinds of guarantees in the e-commerce arena may be much larger.

A related question is, who will manage and audit the costs and revenues of these initiatives? This is a significant consideration, because of the potential financial impact on monopoly ratepayers and other users of conventional postal services.

I share GAO's sense of confusion about the Postal Service's division of its activities into "e-commerce," value-added "eService" enhancements of existing services, "gray area," and "infrastructure" initiatives. It is important that the Postal Service not

bury significant development costs of e-commerce products in baskets that fall outside e-commerce. The PRC must regularly deal with the issue of whether costs that the Service claims are common costs are, in fact, caused by a specific product. It will only be able to do so if the costs of e-commerce initiatives are properly accounted for and reported.

The Postal Service states that it intends to recover the "direct and indirect" costs of its e-commerce products. I believe that such products should satisfy the more appropriate standard of incremental cost, as the Commission advised GAO in its comments.

I also think it is important that the Service use fairly rigid definitions of e-commerce to prevent using revenues from profitable products only marginally related to e-commerce to show that the e-commerce basket is profitable overall.

Then there is the pragmatic, bottom-line issue of whether e-commerce products can reasonably be expected to produce a significant amount of revenue support to the postal system. All things considered, I would have to say the signs are not encouraging.

In general, the Postal Service faces the same challenge of achieving profitability on which many private startups have foundered. As the GAO report observes, "[t]he competitive landscape is very fluid in the e-commerce area, where new competitors

may rapidly appear and disappear."[7] Although USPS enters this arena with a distinct advantage in financial resources, and what may be an unmatchable degree of bricks-and-mortar commercial presence, it is unclear whether the Service can effectively leverage these advantages to produce a significant net contribution to the support of its core operations.

Consequently, as someone close to this issue recently said, while the Postal Service may wish for a "golden spike" out there in the realm of e-commerce to produce huge revenues, the immediate prospects are much more modest.

From my perspective, the issue of the Postal Service's participation in e-commerce is a difficult one involving many uncertainties, as the GAO report accurately portrays. The sources and extent of the Service's authority to mount such initiatives unilaterally is not clear in the Postal Reorganization Act. Further, the applicability of existing regulatory requirements for the introduction and pricing of new conventional postal services is likewise uncertain.

On the merits of embarking on e-commerce initiatives, some of the rationales USPS offers appear to rest on questionable legal or practical assumptions. There is no apparent legal mandate, or compelling need, for broadening the mission of this government enterprise to include telecommunications services generally. In addition to

[7] Draft GAO Report at 15.

the effects on private competition, postal ratepayers would have to fund such initiatives, and the net financial returns to the Postal Service may not justify the outlays.

Of course it makes sense for the Postal Service, like any good business in the current era, to adopt available new technologies into its operations to enhance productivity and add value to its core services. But pursuit of e-commerce for its own sake may only serve to distract postal management, and divert resources, from the critical demands of performing its public mission in a challenging new century.

Statement of
Robert F. Rider
Vice Chairman, Board of Governors
United States Postal Service
Before the
Subcommittee on International Security, Proliferation, and Federal Services
Governmental Affairs Committee, U.S. Senate
September 7, 2000

Mr. Chairman and members of the Subcommittee, I welcome this opportunity to discuss with you the electronic commerce activities of the United States Postal Service. I appreciate your interest in the Postal Service and your insights as we grapple with the unprecedented complexities of the 21st century communications marketplace. I would also like to recognize the hard work of the General Accounting Office and thank them for their recommendations, which dovetail with our own thinking.

The Governors of the Postal Service have broad oversight over the expenditures, practices, and policies of the United States Postal Service. It is our responsibility to ensure that the strategic direction of the organization is sound and to judge the overall implementation and performance of programs put in place to carry out that strategy. As a practical matter, the Governors are not involved in day-to-day operations or the thousands of daily decisions that are required to manage such an extensive operation. That responsibility rests with a highly dedicated team of professional managers, represented here today by Deputy Postmaster General John Nolan. Therefore, I will address the broader questions of our eCommerce strategy, and my view of management's implementation and overall performance.

Our overall Internet and eCommerce strategy is based on the fundamental principle that our actions must be consistent with our historic traditions of public trust and fairness, and with our mandate to operate according to the highest standards of business and public service. Consequently, our eCommerce initiatives should be supportive of our universal service mission and the need to narrow the digital divide. They should foster economic growth by enabling greater public confidence and trust in Internet communications and commerce. And new eCommerce services should

respond to customer needs and be managed with appropriate business discipline so as to become self-supporting within a reasonable period of time.

The Governors are supportive of management's efforts to adapt to the Internet. For the most part, these efforts represent an ongoing evolution to improve the management of the mail system through the use of modern information technology. To the average household customer, the Postal Service is represented by the individual clerk who sells them stamps or the neighborhood letter carrier that stops by their mailbox each day. In reality, the Postal Service is a complex, interdependent network that each day coordinates the movement of nearly 700 million pieces of mail, on more than 15,000 commercial air segments, between 38,000 post offices and 800,000 employees, who serve more than 134 million delivery points. Our success in managing this network is directly related to infrastructure improvements that allow us to rapidly transmit critical information to employees, customers, and suppliers across many platforms.

Today, postal retail customers enjoy the convenience of credit and debit card purchases. Major mailers schedule their shipments and make payments electronically. Letter carriers track packages and important documents with computerized hand scanners that uplink into a national data network. Post offices receive and transmit information through a national communications backbone. And sophisticated logistical systems keep the mail flowing economically by ground, rail, and air between our plants and post offices.

Over the past few years, as citizens and business have embraced the Internet, the Postal Service has migrated some of these information systems onto the Internet. We expect this trend to continue. Today, millions of household customers visit our web site every week. Large mailers use the Internet to coordinate their operations with ours. And the postal Intranet has become a primary tool to manage operations and share ideas among functional units dispersed all across the country. The result has been a more efficient and productive organization that provides better service and value for our customers. Postal management has done a commendable job in managing these extensive

information programs, which have involved billions of dollars in expenditures and resulted in better productivity, service, and value for postal customers.

So, in many ways, the Internet has been a blessing. It has enabled the Postal Service to perform its historic mission with modern precision and efficiency. However, the Internet also has demonstrated an ability to alter entire industries and upset fundamental business models. We have seen examples of this in the retail and software sectors. We are aware that similar potential exists for the mailing industry. E-mail, Internet banking and bill payment, and electronic catalogs and merchandising are directly competitive with the mail. The GAO has warned that the Postal Service may be nearing the end of an era due to these and other competitive pressures. The truth is that we do not know how fast or how much the Internet will change the Postal Service's business model. What is clear is that the stakes are high and we cannot wait to be certain before we act.

This year marks a turning point for the Postal Service's eCommerce program. In the latter half of the 1990's, the Postal Service began to explore the potential of eCommerce. The last couple of years, we were also occupied with updating our computer systems for the year 2000. This year, we are bringing new focus to our development efforts and formalizing our processes based on what we have learned. We also have launched several new products and are testing them in the marketplace

The Board of Governors has been vigorously involved in these developments. The Governors have discussed or reviewed some aspect of eCommerce at virtually every board meeting this year. On June 5, the Board established a quarterly review procedure by which management will provide regular reports on the current status of existing eCommerce initiatives. The Board also has established the means by which significant new types of eCommerce initiatives will be presented to the Board before being launched. These measures reinforce the framework created by management for developing and managing eCommerce initiatives, which are Mr. Nolan's responsibility and which he will discuss in some detail with you.

It is difficult to assess the effectiveness of the Postal Service's eCommerce initiatives thus far. As the GAO has noted, the program is in its very early stages. It is also hard to establish meaningful benchmarks in an industry that is in its infancy. Nevertheless, management has proven its ability in other challenging modernization efforts, and the Board expects no less in this difficult arena.

Thank you, Mr. Chairman, that concludes my statement.

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Statement of
Karla W. Corcoran, Inspector General
United States Postal Service
"E-Commerce Initiatives of the Postal Service"
Before the
Subcommittee on International Security, Proliferation, and Federal Services
Senate Committee on Governmental Affairs
September 7, 2000

Chairman Cochran and Members of the Subcommittee, the Office of Inspector General (OIG), United States Postal Service, is pleased to submit this written statement involving electronic commerce activities in the Postal Service and the challenges that lie ahead.

Electronic commerce is one of the most significant challenges facing the Postal Service, a $62 billion business, in its more than 200-year history. The Postal Service projects that electronic commerce will lead to a $32.9 billion dollar decrease in First-Class Mail revenue over the next nine years--the first-ever projected decrease. However, electronic commerce also represents opportunities for the Postal Service to enhance customer service, increase operational efficiencies, streamline business processes, and provide avenues for new revenue. The Postal Service is leveraging its traditional strengths--universality, affordability, innovation, and trust--with the power of today's technology to add new revenue sources and provide systems and services to meet supplier and customer needs.

In order to serve the American public in the electronic era, the Postal Service is moving ahead with various initiatives and, over the last several years, has positioned itself to be a major player in the emerging electronic commerce marketplace. As the Postal Service moves rapidly into this new arena, we will assist the Postal Service in identifying electronic commerce challenges in order to help it minimize related risks. The energy, dedication, and enthusiasm with which the Postal Service takes on each new challenge has been key to its accomplishments in such major endeavors as the successfully concluded Year 2000 Initiative. As the Postal Service moves forward into the electronic commerce arena, we believe it will be equally successful by drawing from past experiences and quickly adapting to this new technology.

In this testimony, we will discuss lessons learned from more traditional business areas that may be applicable to the electronic commerce area, our observations to date in the electronic commerce area as well as ongoing and future work, and other critical issues and challenges in electronic commerce.

I. LESSONS LEARNED

Our experience in reviewing a range of traditional Postal Service programs and operations provides insight into challenges that officials may face in the months and years ahead. By sharing lessons learned in the more traditional business areas, we hope to help the Postal Service identify and avoid the same risks associated with new electronic commerce products and services. Mr. Chairman, these risks were identified in OIG reviews of traditional Postal Service operations and, we believe, may have a direct impact on some of the new initiatives in electronic commerce. These reviews cover the breadth of operations and include such complex topics as organizational structure, planning, budget practices, systems development, contracting, and computer security. In our view, postal management needs to adequately address these risks in order to ensure the success of future Postal Service electronic commerce ventures.

I would like to briefly explain the issues in each of these areas:

Organizational Structure: In numerous reviews of postal programs, we have identified organizational issues such as fragmentation, decentralization, and a need for better focus. For example, during the Year 2000 Initiative, Postal Service senior management did not get involved early enough in the process to allow the most effective approach to problem solving. Vice presidents outside the Information Technology group were not initially engaged in solving the problem and not held accountable for results. This situation was corrected when the highest levels of senior management became actively involved on a day-to-day basis.

In our comprehensive computer security review, we questioned the subordinate organizational placement of the group responsible for developing computer security policy. We also found it difficult to identify a single source or focal point within the Postal Service that was responsible for enforcement of computer security.

Planning: In numerous reviews that we have conducted, we noted that planning had not always been comprehensive, integrated, strategically focused, or linked to the budget process, and did not always consider proper assumptions. For example, the Postal Service did not have a comprehensive, integrated Postal-wide plan to address the Year 2000 conversion issue. Without a corporate-wide, integrated plan to follow, the Postal Service may not have used resources as efficiently as possible; did not focus on the most critical processes until late in the game; and may not have reached its Year 2000 goals had it not infused additional resources - money and staff - in an eleventh hour drive to successfully complete the job.

In our review of the process used by the Postal Service in approving new marketing initiatives,[1] we noted that senior management did not consider staffing and funding levels in determining how many projects or business lines should be run simultaneously. In addition, all projects received equal treatment rather than being prioritized with a vision or plan for managing these projects. A cross-functional team had not periodically revalidated all projects to ensure they met management's vision and philosophy for revenue generation.

Budget Practices: During our budget and performance reviews, we found that postal officials did not always effectively plan, control, and allocate organizational resources to invest in and support the Postal Service's goals. In a comprehensive review of the headquarters budget process, we noted at least 50 percent of the program budgets reviewed were not based on current or complete studies and analyses to ensure that program funding requirements were sufficient. This occurred because program budget officials focused on reducing costs instead of performing comprehensive analyses to support budget estimates.

In addition, during many of our reviews, program vice presidents and managers have expressed concerns regarding the absence of complete financial information needed to effectively develop, justify, and defend program budgets. This occurred, in part, because of the large number of programs and the absence of a mechanism to efficiently consolidate information or provide accurate accounting on related programs.

Systems Development: We noted several systemic issues related to development and deployment of new systems and technologies, including return on investment projections, data reliability, performance data, and project functionality and deployment. First and foremost, the return on investment for

[1] This process has since been discontinued. However, a separate process now exists for electronic commerce initiatives.

new development projects was frequently based on overly optimistic savings and cost assumptions. This resulted in an overstated return on investment that was compounded by the inability to capture all actual program costs. In many mission-critical areas, the OIG has consistently determined that the lack of reliable data hampered effective decision-making. Also, because performance data is not always captured or available, system needs or requirements may not be recognized.

We also found that, in the systems and technology area, Postal Service program management reduced functionality and performance criteria during the development process in order to keep an unrealistic deployment schedule. For example, some hardware and software systems were deployed without meeting all program requirements, resulting in systems containing numerous defects and immature technology. Also, in some instances, systems were deployed prior to receipt of all contract deliverables, the absence of which could adversely impact their operation.

Further, across the Postal Service, individual management officials have the prerogative of selectively accepting or deploying new systems as they are developed, depending on budgetary positions or perceived operational needs. This independence erodes the benefits of centralized program management.

Contracting: In a number of OIG reviews and investigative efforts, we have identified that the Postal Service did not always provide proper control and oversight of contract activities. The Postal Service needs to ensure that appropriate internal controls exist, and that systems and data are available to validate contractor charges for services rendered or work performed. It is also our view that better methodology and documentation is needed to support prequalification strategies and decisions. Without this, problems with the integrity of the procurement prequalification process could result. Our work further identified instances where documentation could be improved to support

contracting decisions, including documentation available to support payments to contractors. Finally, we determined that quality assurance procedures needed to be strengthened to properly monitor work performed by contractors.

Computer Security: Our review of computer security in the Postal Service indicated a need to develop a more comprehensive, integrated computer security program and make computer security a higher priority. We also found that Postal Service managers need to recognize their responsibilities for computer security, and place more emphasis on planning and budgeting for computer security. Further, Postal Service policies and procedures for computer security need to be developed, implemented, and kept current. In addition, the office responsible for computer security policy-making needs to be elevated within the Postal Service, properly staffed and funded, and given authority over computer security compliance. Finally, we identified technology-related staffing issues involving the lack of background clearances and experience levels, and the difficulty in attracting and retaining qualified security personnel because of salary constraints.

These examples address issues that have existed in the traditional operating environment within the Postal Service. Electronic commerce is susceptible to the same issues. In our limited review of electronic commerce initiatives to date, we found similar issues with some of the Postal Service's electronic commerce-related initiatives, as discussed below.

II. ELECTRONIC COMMERCE AUDITS AND INVESTIGATIONS

The following section discusses the work completed by the OIG in the electronic commerce area, ongoing activities, and some key future reviews.

Completed To Date:

Until January 2000, we concentrated much of our technical resources on Year 2000 issues and only recently started reviewing electronic commerce. The following are some of the issues that have surfaced as a result of our work.

- Our initial observations of the Postal Service's interim electronic commerce organization disclosed that electronic commerce responsibilities were fragmented among several senior managers, and that senior managers' mainstream functions were commingled with electronic commerce functions. We believe that a single focal point may help ensure a comprehensive, integrated electronic commerce implementation plan and a more efficient use of resources. The Postal Service has subsequently created a new corporate-level group to identify, develop, implement, and invest in new business opportunities and has established the eBusiness Opportunity Board for consideration and review of new eBusiness ideas.

- We found that the Postal Service was able to meet the mailing requirements of one of its largest Internet mailers but was unable to meet the special financial terms requested without approval of the Postal Rate Commission. In addition, once this Internet mailer opted for better financial terms with a postal competitor, we made recommendations to Postal Service management that would save approximately $5 million by eliminating excess operating capacity and unnecessary transportation costs.

- We reviewed five PC Postage and eBillPay private sector agreements with the Postal Service and found these agreements did not provide adequate access to information maintained by commercial partners. As a consequence, contractors may resist Postal Service program managers' attempts to review contract issues, including billing practices and computer security. For example, one postal agreement specifically prohibits the Postal

Service--and purportedly the OIG--from discussing alleged crimes committed under the contract with the Department of Justice, without prior approval of the contractor. This area is of particular concern to the OIG because of our need to perform audits or investigations and fulfill the requirements of the Inspector General Act. Senior postal management recognizes that the OIG has access rights in these agreements. Therefore, we are working with postal management to ensure that specific contract language spelling out OIG access rights will be used in contractual agreements.

- USPS eBillPay, the Postal Service online bill presentment and payment service, was launched to offset the loss of mail volume from bills, financial statements, and payments being diverted from hard-copy mail to the Internet. This program has the potential to be a significant revenue generator for the Postal Service. We reviewed USPS eBillPay to determine if it met privacy and security requirements before bringing the system online. Our review disclosed that the Postal Service needs to adjust its policies and procedures to meet the needs of electronic commerce partnerships and alliances, and better address computer and network security issues.

Ongoing and Future Activities:

Our ongoing and future audit and investigative plans include an increased presence in the electronic commerce arena. We have included a list of projects planned for FY 2001 (see Attachment). Some of the areas in which we have initiated or planned work are as follows:

Computer Intrusion Activities: As the Postal Service provides greater access to its automated systems, these systems become more susceptible to cyberattacks. In order to help the Postal Service address the electronic commerce challenge, we assisted Postal Service officials in identifying and installing a computer intrusion detection system. We have responded to cyberattacks on Postal Service web sites and computer networks and helped the

Postal Service develop an action plan for vulnerability scans and penetration tests of systems.

Comprehensive Postal-wide Telecommunications Review: We are currently performing a comprehensive, nationwide review of the Postal Service telecommunications environment, including controls over the electronic commerce architecture.

Information Platform: We are conducting a series of reviews of the Postal Service Information Platform, a project to develop an integrated framework for linking core business applications to provide relevant information to external customers and internal users. We are looking at planning, budgeting, and eventually, the individual systems that comprise the platform.

Protection of Internet User Privacy Data: We will also be assessing the adequacy of the Postal Service web privacy policy, and the collection, use, and security of web-based user information, including an examination of "cookies." We will also look at the extent to which web privacy policies and practices have been implemented by the Postal Service and its commercial partners.

Revenue Generation and Cost-Benefit: We will review the Postal Service alliance agreement with a commercial partner involved with USPS eBillPay. During this audit, we will concentrate on contract execution, revenue generation, and return on investment.

USPS.com Review: We also plan to initiate a review of USPS.com, the Postal Service's web page. The Postal Service is investing significant resources in redesigning its web site to facilitate the expansion of electronic products and services through the Internet. The objective of this review will be to assess web site implementation, planning, system architecture, and security.

III. CRITICAL ISSUES AND CHALLENGES IN ELECTRONIC COMMERCE

To be successful in the electronic marketplace, the Postal Service must be aware of, and prepare for, the challenges associated with this new environment. Some of the barriers and challenges that the Postal Service faces as it ventures into this new environment may involve:

- Protecting customer privacy in Postal Service web-based systems by improving information collection policies and practices. Such protection is critical to establishing and maintaining consumer confidence and remaining a viable presence in the electronic commerce marketplace.

- Creating business partnerships and alliances with companies involved in electronic commerce. The new economies of the Internet dramatically alter the ways in which organizations interact with customers, suppliers, competitors, and markets.

- Developing strategies and plans to achieve a major market presence when deploying electronic commerce products and services. Electronic commerce strategies need to be dynamic, intuitive, and inclusive.

- Ensuring the integrity and security of electronic commerce systems and transactions. This includes the development of electronic commerce security measures such as electronic signatures, virtual private networks, intrusion detection, and smart cards.

- Continuing to enhance the Postal Service information and electronic commerce systems infrastructure. As the Internet becomes more critical to the core business, safeguards against business interruptions and internal and external network attacks take on greater importance.

In addition to these unique challenges presented by electronic commerce, we believe the Postal Service needs to address the issues identified in Section I above.

CONCLUSION

Federal agencies must adapt their business processes to participate in the emerging area of electronic commerce while protecting the integrity and privacy of electronic data. The fact that web-based applications can store and collect data on their client population during online sessions and profile their purchasing habits, viewing preferences, and "surfing" choices may be unsettling to many. It is also a bit more unsettling that the limitless possibilities offered by the Internet and electronic commerce carry with them the unwelcome burden of "viral infections," "hack attacks," and cybercrime that challenge the most dedicated security-conscious agency officials. The fact that the Postal Service intends to compete in that same electronic marketplace only emphasizes the importance of a structured approach such as outlined above, with a deep-seated commitment by senior management to ensure the success of the Postal Service's electronic commerce initiatives.

Mr. Chairman, we believe we are helping the Postal Service address the electronic commerce challenge. We have established a continual, open dialogue with senior technology managers and have shared ideas and strategies about Postal Service technology challenges. By independently and objectively reporting our observations on its programs and activities, we will continue to assist Postal Service management, the Governors, and Congress in this new challenge. This concludes my written statement.

ATTACHMENT

Area	Project Title	Project Description
Infrastructure	Information Platform	Identify strategic business improvements, cost avoidance, and additional management controls in Postal Service efforts to link systems together for the electronic exchange of real time information.
	Electronic Signature	Evaluate the development and deployment of electronic signature.
	Public Key Infrastructure	Assess Postal Service efforts to develop and operate a Public Key Infrastructure.
	Postal Service Business Partners	Investigate computer security issues regarding Postal Service business partners.
	Postal Service Computer Networks	Map the topology of Postal Service computer networks.
	Disaster Recovery Center Operations	Review capability of Raleigh disaster recovery center to sustain high priority systems in the event of a disaster.
Security	Internet Security Architecture	Determine whether the Postal Service has proper controls over communications within the electronic commerce architecture.
	Electronic Commerce Privacy Review	Assess how the Postal Service collects, secures, and discloses sensitive data, including using "cookies" over the Internet.
	System Certification and Accreditation	Review controls in place to develop, test, and approve critical/sensitive systems.

ATTACHMENT

Area	Project Title	Project Description
Security (cont'd)	Penetration Testing	Conduct penetration testing of Postal Service computer systems and networks.
	Internet Firewalls	Evaluate implementation and effectiveness of Postal Service firewalls.
	Postal Service Computer Security Policy	Evaluate the adequacy of Postal Service computer security policy.
	Criminal Investigations of Postal Service Security Incidents	Conduct reactive and proactive criminal investigations of computer security incidents.
	Liaison with Postal Service Computer Incident Response Team Organization	Work with Postal Service officials in developing and operating a Computer Incident Response Team organization.
	Computer Fraud Awareness Briefings	Present computer fraud awareness briefings to Postal Service management.
	Computer Security Advisories	Issue computer security advisories as necessary.
Program	USPS.com	Evaluate the implementation, maintenance, and security of USPS.com and its ability to support major Postal Service electronic commerce initiatives.
	Review of PC Postage	Evaluate the development, implementation, security, and return on investment of PC Postage.
	Review of Stamps Online	Evaluate the development, implementation, security, and return on investment of Stamps Online.

ATTACHMENT

Area	Project Title	Project Description
Program (cont'd)	Postal One	Determine if the design and development of this system, which provides the electronic exchange of mailing information, and electronic documentation, verification and postage payment capabilities, will achieve desired results.
	Long-Range Information Technology Planning	Determine if the Postal Service's long-range Information Technology planning and budgetary processes are effective and efficient and reflect the agency's strategic goals.
	Implementation of Money Order Imaging System Controls	Review the implementation and controls over the Money Order Imaging System.

United States General Accounting Office

GAO

Report to Congressional Requesters

September 2000

U.S. POSTAL SERVICE

Postal Activities and Laws Related to Electronic Commerce

GAO/GGD-00-188

United States General Accounting Office
Washington, D.C. 20548

General Government Division

B-285058

September 7, 2000

The Honorable Thad Cochran
Chairman, Subcommittee on International Security, Proliferation, and Federal Services
Committee on Governmental Affairs
United States Senate

The Honorable John M. McHugh
Chairman, Subcommittee on the Postal Service
Committee on Government Reform
House of Representatives

This letter responds to your requests to review electronic commerce (e-commerce) initiatives of the U.S. Postal Service (USPS). Members of Congress and postal stakeholders have raised issues related to the merits of USPS' development of nonpostal products and services, including those that are e-commerce related. As USPS has recently developed and implemented a number of e-commerce initiatives, you requested us to provide information on the status of USPS' e-commerce activities and related legal and regulatory matters. Specifically, our objectives were to describe USPS' (1) e-commerce initiatives that have been implemented or are being developed, (2) goals and strategies for the e-commerce area, (3) processes for approving these initiatives, and (4) expected performance and results to date related to e-commerce initiatives. During the course of our review, we identified areas where USPS can improve its management of its e-commerce activities, and this report discusses these areas as well. An additional objective was to describe USPS' views on how major federal laws and regulations apply to its e-commerce initiatives and to identify legal issues that have been raised concerning its e-commerce activities.

USPS is in the early stages of developing its current e-commerce program. We previously reported on USPS' new products and services, including several e-commerce activities piloted or implemented during fiscal years 1993 through 1997.[1] Since then, USPS has discontinued its earlier e-commerce activities, some of which have helped USPS develop new e-commerce-related products and services.

[1] U.S. Postal Service: Development and Inventory of New Products (GAO/GGD-99-15, Nov. 24, 1998).

To address the objectives of this review, we reviewed USPS documents and the information available on USPS' Internet site. We also held discussions with USPS officials responsible for e-commerce activities. We reviewed the material obtained for internal consistency and completeness, but we did not verify the information provided by USPS. We also obtained legal information and analysis from USPS on laws and regulations that may apply to USPS' e-commerce activities. We did not verify or evaluate the legal information, although we checked the citations to laws and regulations that were used in this report. A more detailed description of our scope and methodology for this review is included in appendix I.

We conducted our review at USPS headquarters in Washington, D.C., between January 2000 and August 2000 in accordance with generally accepted government auditing standards. We requested comments on a draft of this report from the Postmaster General and from the Chairman of the Postal Rate Commission (PRC). USPS' and PRC's written comments are discussed near the end of this letter.

Results In Brief

Since the beginning of 2000, USPS has taken a number of steps to develop and implement its e-commerce activities. Some key actions included developing a definition of its e-commerce initiatives, identifying its e-commerce and related initiatives, outlining its overall goals and strategies, establishing expected performance, and providing some information on results to date.

How USPS defines its e-commerce activities is fundamental when determining what USPS is doing in the e-commerce area. USPS defined its e-commerce initiatives to include products and services that (1) require the use of the Internet and (2) generate revenues for USPS from user charges or license fees. USPS defines its e-commerce initiatives as a subset of its broader eBusiness activities that involve the use of new technology. USPS identified seven e-commerce initiatives that were either planned or implemented as of September 2000. These seven initiatives are generally intended to facilitate the movement of messages, merchandise, and money. For example, to facilitate the movement of messages, USPS introduced the PosteCS initiative, an Internet-based global document delivery system implemented in May 2000. To facilitate the movement of merchandise, USPS introduced the Stamps Online initiative in December 1998 that enables customers to purchase stamps, philatelic products, and other USPS products. USPS also plans to expand this initiative to include a Virtual Store that would offer USPS merchandise and other stamp products for sale via the Internet. To facilitate the movement of money,

USPS introduced its eBillPay initiative, an electronic bill presentment and payment service, in April 2000.

USPS also identified three initiatives that it refers to as gray area initiatives. Gray area initiatives are related to e-commerce initiatives but either would not generate revenues for USPS from user charges or license fees or would not require use of the Internet. USPS is also developing other initiatives, which it refers to as infrastructure initiatives, to support its e-commerce and related initiatives. For example, USPS has identified an electronic mailbox, which is a concept in the early development stage that could link electronic and physical addresses, as an infrastructure initiative.

USPS outlined the purpose and direction for its eBusiness and e-commerce areas and stated that its overall goal is to use the best technology, including the Internet, to provide customers with expanded universal access and choices on how they do business with USPS. USPS also explained that the criteria for these initiatives are that they be universally available, designed to fulfill customer and marketplace needs, offer customers voluntary choices, be secure and private, provide financial benefits to customers and USPS, and be consistent with the USPS' mission. USPS identified eight strategies for accomplishing its eBusiness goal and its related e-commerce goal. Examples of these strategies were using the Internet as a cost-effective channel, providing security and privacy for customers, minimizing USPS investments and risks, and pursuing partnerships and alliances with industry.

In May 2000, USPS established a management process for reviewing and approving e-commerce initiatives that is different from the review and approval process for other new products. The e-commerce review process was designed to result in quicker approval of initiatives than USPS' review and approval process for new products. The new process requires a business proposal and plan, a public affairs/communication plan, periodic monitoring, and approval by top management or USPS' Board of Governors (BOG). Some e-commerce initiatives were launched before the new process was introduced and were therefore subject to USPS' former approval process. USPS also provided information on its performance expectations and results achieved for e-commerce initiatives implemented to date.

During our review, we identified a number of problems and inconsistencies in the information provided by USPS. We are making recommendations to USPS that address these issues. First, during the

course of our review, USPS inconsistently applied its definition of e-commerce in identifying its initiatives and provided inconsistent information on the status of its initiatives. These inconsistencies made it difficult to ensure we had a complete and accurate picture of USPS' e-commerce activities. Second, USPS did not consistently adhere to its process requirements and did not always document the review and approval of its e-commerce initiatives. Consequently, it is not clear whether USPS management properly reviewed and approved e-commerce initiatives to ensure that they support USPS' overall mission and goals. Finally, we identified deficiencies in the financial information USPS provided for its e-commerce activities that raised concerns about the accuracy and completeness of USPS' financial reporting for its e-commerce activities. Further, we do not believe the e-commerce financial data that USPS provided was sufficiently complete and reliable to be used to assess USPS' progress toward meeting its overall financial performance expectation that revenues generated by e-commerce products and services in the aggregate are to cover USPS' direct and indirect costs as well as make a contribution to overhead.

USPS believes that it has broad statutory authority to offer e-commerce products and services in ways that it finds appropriate to its assigned functions and in the public interest. USPS also believes that the law provides discretion to its BOG to determine whether particular new services are appropriate and in the public interest. According to USPS, numerous federal laws and regulations apply to its e-commerce products and services, but it has a different legal status from its private sector competitors in some respects. For example USPS has reported that federal privacy laws afford USPS e-commerce customers greater protection than is provided for customers of private sector providers. Further, USPS told us that public interest, universal service, antidiscrimination, and other policy provisions of the Postal Reorganization Act of 1970[2] provide consumer protections in connection with its e-commerce products and services, but many other federal consumer protection laws are inapplicable. However, some federal consumer protection laws may apply to USPS in certain circumstances, and others may apply to USPS contractors or financial institutions that help USPS offer e-commerce products and services. Further, USPS reported that the Postal Inspection Service, a part of USPS that is responsible for enforcing postal laws, has authority and responsibility to investigate violations of law that involve USPS e-commerce products and services. In addition, USPS told us that the antitrust laws and general competition-related statutes do not apply to

[2] P.L. 91-375.

USPS, with the exception of the advertising and competition provisions of the Lanham Act.[3] However, USPS stated that the Postal Reorganization Act of 1970 prescribes competition-related factors that must be considered with regard to USPS e-commerce activities.

USPS also said that in some cases, major federal regulations apply to its e-commerce products, including regulations adopted by USPS and other federal agencies, such as Department of the Treasury and Federal Reserve regulations related to USPS' eBillPay initiative. However, it also noted that the ability to make generalizations about how regulations apply to USPS is somewhat limited. Finally, USPS reported that its activities in the e-commerce area are generally not subject to administration policies that apply to other executive branch agencies.

We did not evaluate USPS' legal analysis or attempt to obtain others' views within the scope of this review. However, we note that USPS, some competitors, and other stakeholders have conflicting views on the extent of USPS' legal authority to offer e-commerce products and services and under what circumstances it should offer such services. The appropriate role of USPS has been debated for many years and continues to be debated in the context of proposals for comprehensive legislation to reform the nation's postal laws. In addition, some specific concerns have been raised about USPS e-commerce activities that also relate to emerging e-commerce issues, such as the privacy of consumer information and what new e-commerce products are subject to PRC review.

In commenting on our draft report, USPS generally agreed with the facts and endorsed the report's recommendations. However, USPS noted differences in perspectives related to some of the concerns we discussed. Specifically, USPS stated that its senior management had reviewed and approved all of its e-commerce initiatives before implementation. If so, such approvals were not fully documented. PRC generally agreed with the report's analysis of the issues and further commented on USPS' pricing policy for its e-commerce initiatives.

Background

We have reported that USPS may be nearing the end of an era as it faces growing challenges from competition, notably from private delivery companies and electronic communications alternatives such as the Internet.[4] USPS and other stakeholders agree that growth in USPS' core

[3] 15 U.S.C. § 1125(a).

[4] U.S. Postal Service: Challenges to Sustaining Performance Improvements Remain Formidable on the Brink of the 21st Century (GAO/T-GGD-00-2, Oct. 21, 1999).

business of delivering First-Class Mail has already been affected by the rapid growth of the Internet, electronic communications, and electronic commerce. USPS expects that competition will lead to substantial declines in its First-Class Mail volume in the next decade and a consequent loss of revenues. Should this occur, USPS will likely face unprecedented challenges as it seeks to fulfill its primary mission of providing universal postal service at reasonable rates while remaining self-supporting from postal revenues.

Thus, USPS may be at a crossroads in its ability to meet its mission of providing affordable, readily accessible, universal postal services over the long term. Although USPS has achieved its best ever financial and service performance over the past 5 years, it has fallen short of its revenue targets for the first three quarters of fiscal year 2000. USPS recognizes that it faces challenges from a dynamic and versatile marketplace, changing customer demands, and more alternative delivery options that provide greater choices for customers.

As an example of trends that have affected USPS' mail volumes, at the federal level, government agencies are mandated to move as quickly as possible to reduce paperwork and to adopt electronic billing and payment. Of the 880 million Social Security checks, tax refunds, and other payments sent by the Department of the Treasury in fiscal year 1999, 68 percent were sent electronically, not mailed. According to USPS, this cost $180 million in lost First-Class Mail revenue. Further, according to a postal operations survey conducted by the American Bankers Association, the banking industry reduced its mail volume in 1999 by almost 18 percent compared to its 1996 level.

Although it is difficult to predict the timing and magnitude of further mail volume diversion and potential financial consequence, USPS has begun to plan how it would address such a scenario. The Postmaster General recently explained that USPS' strategy to deal with its competitive challenge is a combination of aggressive cost-cutting and new revenue generation.[5] According to USPS, in addition to minimizing costs, the Internet offers unparalleled opportunities to grow long-term revenue through enhanced and new services.

[5] The Annual Report of the Postmaster General, Hearing before the Subcommittee on International Security, Proliferation, and Federal Services of the Senate Committee on Governmental Affairs, July 13, 2000.

The history of USPS' involvement in e-commerce related products and services began with a brief foray in 1982 when it introduced its Electronic Computer-Originated Mail (E-COM) service.[5] However, E-COM generated much controversy and scrutiny from PRC, the Federal Communications Commission (FCC), and Congress. In a report by the House Committee on Government Operations, the oversight committee concluded that the rates charged did not cover the cost for this initiative.[7] USPS discontinued E-COM service in September 1985. More recently, during fiscal years 1993 through 1997, as noted in our 1998 report, USPS engaged in research and development efforts related to e-commerce activities.[8] Since our previous report was issued, the exploratory e-commerce efforts have been discontinued or evolved into more recent initiatives, which are discussed later in this report along with other new e-commerce initiatives.[9]

The nature of the competition that USPS faces in the e-commerce area is broader than its competition in other service delivery areas, such as for domestic letter mail and parcels. Not only does competition in the e-commerce area include USPS' traditional competitors, such as the major private express delivery companies—FedEx, and United Parcel Service (UPS)—it also includes such competitors as technology companies, financial institutions, and foreign postal administrations. Further, within the e-commerce area, competitors may differ for different types of services, such as electronic messaging, or e-mail, electronic bill presentment and payment services, and electronic retail sales involving the purchase and return of goods. For example, in the electronic bill presentment and payment area, competitors are numerous and often include partnerships among financial institutions, billers, consolidators, and technology companies.

In the retail area, on-line sales are expected to grow substantially over the next few years, which would entail a dramatic rise in parcel shipments and returns. Thus, although USPS expects more opportunities to expand in this

[5] This service preceded current hybrid mail services, such as Mailing Online, and allowed mailers to transmit the text of letters over telephone lines to computers located in 25 specially equipped post offices. The letters were printed, stuffed into envelopes, and mailed as First-Class mail so they could be delivered within 2 days.

[7] Postal Service Electronic Mail: The Price Isn't Right, Forty-First Report by the Committee on Government Operations, House Report No. 97-919, 97th Congress, 2d Session, Oct. 1, 1982.

[8] Our previous report (GAO/GGD-99-15) discussed USPS e-commerce-related initiatives under which the Electronic Postmark and Certificate Authority systems were developed.

[9] Discontinued e-commerce related initiatives that were described in our 1998 report included the following: Deliver America, Electronic Commerce Services, Global ePost, Post Office Online, and , WEB Interactive Network of Government Services (WINGS).

area, it also faces competition from its traditional competitors—FedEx and UPS—and newly emerging alternative delivery options. For example, private start-up dot.com companies are also competing for this retail delivery business by providing same-day delivery, particularly on a regional basis, for Internet purchases of goods, such as groceries, CDs, videos, and books. The competitive landscape is very fluid in the e-commerce area, where new competitors may rapidly appear and disappear.

Another challenge for USPS in the e-commerce area is keeping up with changing customer demands. USPS' customers are generally categorized into two major groups: households and businesses. Although businesses generate most mail, households are the recipients of most of the mail generated by businesses.[10] USPS recognizes that its customers are becoming more demanding and selective and are interested in expanding their access to choice, convenience, service, and value. For example, some mailers have noted that mail-based billings and payments are more costly to process than electronic versions.

As the dynamic development of electronic commerce continues to unfold, consumers, businesses, and governments are working hard to understand and adapt to the many benefits and challenges associated with the Internet and related new technology. For USPS, the challenges include providing more convenient access to its products and services and thus rethinking how to change the organization to adapt old processes and practices to new technology, as well as addressing new customer expectations and greater competition in providing customer services. Congress is closely monitoring how government organizations adapt in this new environment and has held numerous oversight hearings to discuss emerging issues, such as privacy, consumer protection, open access, and competition.

USPS Activities in the E-Commerce Area

USPS has taken a number of steps since the beginning of 2000 to develop and implement its e-commerce activities. Some key actions taken include developing a definition of its e-commerce initiatives, identifying its e-commerce and related initiatives, outlining overall goals and strategies, establishing processes for approving and implementing e-commerce initiatives, and providing some information on expected performance and results to date. How USPS defines its e-commerce activities is fundamental when determining what USPS is doing in the e-commerce area and what

[10] In 1998, in the United States about 53 percent of mail traffic was from businesses to households, 5 percent from households to businesses, 3 percent between households, and 38 percent between businesses, according to USPS.

process is to be followed in reviewing and approving e-commerce initiatives. The development of goals and strategies is key to understanding what USPS expects to achieve in this area. The review and approval processes are to establish accountability for management and oversight of the e-commerce initiatives. Information on performance targets and results is to provide a basis for determining if the actual performance of the e-commerce initiatives is meeting intended targets.

USPS Definition of E-Commerce Initiatives

USPS' definition of its e-commerce initiatives has two components—those products or services that (1) require the Internet to do business and (2) generate revenue to USPS through user charges or licensing fees. USPS defined its e-commerce initiatives as a subset of its broader "eBusiness" environment, which included other categories of related initiatives that may involve use of new technology. For example, related initiatives include "eService" initiatives that are to be value-added services or enhancements to existing services, and for which revenues are to be reported with existing products and services. Other related initiatives referred to as "gray area" initiatives did not meet the requirements of the e-commerce definition. Another category called "infrastructure" initiatives included information technology systems and other technology initiatives that are required to support eBusiness initiatives. USPS' distinctions among these categories illustrate that USPS activities involving the Internet include more than just its designated e-commerce initiatives.

In May 2000, USPS provided us the following information on how its e-commerce initiatives relate to its broader eBusiness activities and strategy:

> "Our eBusiness strategy is voluntary and is intended to improve capabilities not only for our customers, but also for our 800,000 employees, business partners, and suppliers, too. Our eBusiness initiatives will have an ePeople, eService, and eCommerce component. ePeople efforts will keep employees better informed, provide a full range of 'self-services,' reduce administrative tasks, and increase access to development opportunities. eService initiatives will enhance features, access, and information about core products and services. eCommerce initiatives are new, Internet-based products and services for consumers, businesses, and government entities. All will be supported using an infrastructure that will link our core production processes, equipment and complete the development of a common information platform."

In a July 14, 2000, letter to us, the Deputy Postmaster General explained the category referred to as gray area initiatives as initiatives that "have a current revenue model or financial arrangement that does not accurately meet today's definition for eCommerce." He stated that "These initiatives that fall into the 'gray area' today may, in response to the changing needs

of our customers and the marketplace, become clearer as to direct financial contribution in the future."

USPS does not consider products and services to be e-commerce initiatives if they involve use of the Internet but either do not generate revenues or the revenues generated are related to existing core products and services. USPS considers these products and services to be value-added services or enhancements to existing services. For example, customers can use the Internet to access information about USPS products and services, look up ZIP codes and post office locations, download labels for mailing packages, and check the status of certain items mailed without paying any fees. Customers can also use the Internet as an alternative channel to access existing core products and services, such as Priority and Express Mail, to confirm delivery or arrange for package return. The revenues from these enhancements are to be reported with those from existing core products and services.

USPS also identified another category of initiatives related to Internet activities—infrastructure initiatives—which includes information technology systems or services that are required to support eBusiness initiatives. One example of a proposed infrastructure initiative would be an electronic mailbox that could link electronic and physical addresses. This initiative is currently in the early development stage and is identified by USPS as an infrastructure, not an e-commerce, initiative. USPS explained that its proposed electronic mailbox would not generate revenues as a free-standing service, but it may be offered in conjunction with other e-commerce services in the future.

USPS Identified Seven Current E-Commerce Initiatives

USPS identified seven e-commerce initiatives as well as three gray area initiatives planned or implemented as of September 2000 to facilitate the movement of messages, merchandise, and money in ways that require the use of the Internet and generate revenues for USPS. Table 1 provides a list and descriptions of USPS' e-commerce initiatives as well as gray area initiatives. As discussed later, however, it appears that USPS may not have consistently applied its e-commerce definition in identifying those initiatives.

Table 1: USPS E-Commerce and Gray Area Initiatives as of September 2000

Initiative	Description of initiative	Intended customers	Status
E-Commerce initiatives			
Electronic Postmark (EPM)	Creates a secure electronic time and date stamp for electronic communications and provides evidence of any tampering. USPS is seeking business partners to integrate EPM into their products, services, and systems. Revenue to date has been generated from businesses that incorporated EPM with their services. EPM also has been used with the PosteCS initiative.	Financial, legal, medical, governmental, and educational organizations	Implemented 4/00.
ePayments	Provides integrated ePayment solutions: (1) eBillPay—consumers paying bills, (2) businesses sending bills, (3) consumers paying each other, and (4) consumers receiving financial statements. eBillPay services are currently offered through a partnership with a private company. The eBillPay service is to be offered to new customers at no charge for the first 6 months. Revenue is to be generated by user fees.	Consumers and businesses	eBillPay was implemented 4/00. The rest of the services are in the planning stage.
Internet Change of Address and Move-Related Products and Services (MoversNet)	MoversNet includes three products and services: the hard copy publications—Movers Guide and Welcome Kit—and the Internet application called MoversNet.com. Currently MoversNet.com allows downloading a form for customers to submit changes of physical addresses and is accessible via the USPS Web site and via direct link. It is offered through a strategic alliance with a private company. Future MoversNet enhancements, which are to involve integration into a proposed MoversGuide Web site, are to allow additional services, such as electronic changes to physical addresses, e-mail addresses, and electronic accounts; ordering various services (e.g., power, electric, water, cable, newspaper, and long-distance telephone service); and new security features, such as credit card verification. Revenue to date has been generated by commissions from USPS' partner.	All postal customers	MoversNet was implemented summer 1996. Enhancements to MoversNet were scheduled for implementation in 9/00.
NetPost.Certified	Is to provide confidential, ensured delivery of electronic documents to the government. A completed electronic delivery is to be certified back to the sender via an electronic receipt containing a USPS electronic postmark that provides legal proof of filing. Revenue is to be generated from transaction fees from government agencies.	Organizations that file information with the government	Not implemented.
NetPost Mailing Online	Is to allow mailers to electronically transmit their documents, correspondence, newsletters, and other First-Class Mail and Standard A mail (primarily advertising mail), along with mailing lists, to USPS. Electronic files would then be securely distributed to printing contractors who print documents, insert them into addressed envelopes, sort the mailpieces, and transport the mailing to post offices for processing and delivery. Revenue is to be generated by printing and mailing fees paid by users.	Small Office and Home Office (SOHO) customers	To be implemented 9/00.

Initiative	Description of initiative	Intended customers	Status
PosteCS	Provides a secure, private, Internet-based document delivery system. Users establish secure links using Secure Socket Layer (SSL) protocol. They then upload a file(s) to the PosteCS server using desktop software. To receive PosteCS messages, the recipients need only to have access to e-mail and an Internet browser. USPS has joined with Canada Post and LaPoste of France to provide this service globally. Also, the EPM initiative was used as part of PosteCS. Revenue is to be generated by user fees.	Large to medium-size businesses and SOHOs	Implemented 5/00.
Stamps Online/Virtual Store	Stamps Online allows the purchase of stamps and other existing USPS products. After the Virtual Store is implemented, postal customers are to be able to purchase stamps, philatelic products, phone cards, and other USPS merchandise via the Internet, including new products not currently available. Revenue to date has been generated from the face value of postage stamps and from other existing USPS products ordered via the Internet.	All postal customers	Stamps Online implemented 12/98; Virtual Store implementation planned in 2000.
Gray area initiatives			
Returns@ease	Enables customers to return Internet-purchased merchandise. Using a Merchandise Return Application Program Interface, businesses can authorize customers to download a postage-paid label directly from their Internet sites. The program is designed to make returning items bought via the Internet, through catalogs, and by phone easier for both buyers and sellers. Revenue is generated from user fees and postage.	Online merchants	Implemented 11/99.
Dinero Seguro™	Allows electronic fund transfers from the U.S. to Mexico. Dinero Seguro™, which means "Sure Money," is a money-by-wire service that can be used to transfer money from designated U.S. postal locations to more than 1,300 Bancomer Bank branches in Mexico. This initiative uses telephone lines instead of the Internet and is to become part of a planned Sure Money® service.[a] Revenue is generated by Dinero Seguro™ through money-wire transfer fees.	Americans of Mexican origin, most recently immigrants	Implemented 6/96.
PC Postage	Allows customers of private companies to purchase and print stamps onto labels and envelopes using their computers and the Internet. Private companies sell PC Postage products after USPS certifies that these products meet USPS standards. USPS receives revenue from the face value of postage stamps.	SOHO market	Implemented 8/99.

[a]USPS has identified additional target countries, which it plans to include in an expansion effort to this initiative, referred to as Sure Money®.

Source: USPS documents.

USPS Goals and Strategies for E-Commerce Area

USPS provided several reasons for its involvement in e-commerce activities. Some of these reasons are echoed in the overall goals and strategies that USPS has developed for its eBusiness and e-commerce areas. To carry out these goals and strategies, USPS has established an eBusiness Integration team that is responsible for eBusiness implementation planning and for developing an eBusiness strategic plan. In addition, the eBusiness Opportunity Board (e-BOB) was established to provide operational oversight in the eBusiness area and to review the performance of e-commerce initiatives.

Many postal stakeholders are interested in how USPS sees its e-commerce activities relating to overall USPS mission and goals. To better understand USPS' purpose and expectations for the e-commerce area, we asked postal officials why USPS is involved in the e-commerce area. USPS officials and documents cited the following reasons for its participation in the e-commerce area:

"USPS involvement in eCommerce is responsive to its obligations as a public service. Like other government agencies, it must use information technologies to provide traditional services to the citizens of the United States more effectively and efficiently."

"USPS involvement follows from the mission of the United States Postal Service, as established by the Postal Reorganization Act of 1970 . . . The use of modern communications technology such as the Internet to provide traditional postal services such as delivery of bills or messages is little different from adopting the new technologies of the railroad or the airplane to provide prompt, reliable and efficient delivery services."

"In addition to gaining new efficiencies, our eCommerce initiatives seek to grow the revenue of the USPS to replace some of the revenues from traditional mail volume lost to the competition from technological substitutes. This revenue is essential to maintaining the ability of the USPS to support the infrastructure developed to provide universal service."

"USPS participation in this market is seen by many as critical to addressing the issue of the 'digital divide', or the significant portion of the American population that will not have complete access to the Internet. This is the core of the USPS mission of binding the nation together and providing services to all communities."

"The Postal Service is a national institution, known and trusted by Americans; it is a neutral party with a universally understood public service mandate; it protects the privacy of customer's information; it is a long-lived, stable institution that can be relied on for the long term as an EBP [electronic bill payment] provider; and it is known for providing value."

"The Postal Service is uniquely positioned to preserve the security and privacy of confidential information. The Postal Service has in-house law enforcement personnel who can investigate criminal or civil offenses that occur in connection with transactions sponsored by the Postal Service."

To better understand USPS' direction for its e-commerce activities, we asked USPS officials about their goals and strategies for the e-commerce area. In response, USPS provided us with some general guidance that e-BOB had recently approved for the eBusiness and e-commerce areas. In a June 21, 2000, internal memorandum, the Deputy Postmaster General outlined the overall criteria, goals, and strategies for USPS' eBusiness area as follows:

- USPS eBusiness Criteria: "New USPS initiatives will be universally available, designed to fulfill customer/marketplace needs, offer customers voluntary choices, be secure and private, provide financial benefits to our customers and the USPS, and be consistent with the mission of the Postal Service."

- USPS eBusiness Goal: "To increase the value, availability, and affordability of our products and services for all customers (both senders and receivers) by continuing to use the best available and emerging technologies, including the Internet. Provide customers with expanded universal access and choices on how they elect to interface and do business with the U.S. Postal Service."

- USPS eCommerce Goal: "Use the internet channel to offer new and enhanced products and services that provide the U.S. Postal Service with revenue such as license fees and user charges."

- USPS eBusiness Strategies:
  1. Develop and implement a customer interface/channel to the USPS, which provides seamless physical and electronic mailbox coverage.
  2. Use the Internet as a cost effective communications channel for customers, suppliers, business "partners," and employees.
  3. Capitalize on USPS' tradition of providing security and privacy for customers.
  4. Leverage USPS' brick and "motor" assets, i.e., 38,000 postal facilities and 200,000 vehicles, as well as USPS' daily delivery infrastructure.
  5. Pursue eCommerce and eService opportunities that meet USPS criteria and have the potential for business growth.
  6. Minimize (especially in the short term) USPS investments and financial/business risks.

7. Pursue partnerships/alliances with industry leaders having "unique" technology, management, marketing, and sales skills and resources necessary to be successful in this marketplace, including "Quick to Market" capabilities.

8. Establish structures to assure that costs and revenues associated with electronic services and products are tracked and allocated.

To better understand how USPS is implementing and managing its e-commerce activities, we asked how responsibilities were assigned. The Postmaster General explained organizational responsibilities in a memorandum dated February 24, 2000, in which he announced that e-BOB would be responsible for the following:

- reviewing eBusiness opportunities and approving those that meet a set of established criteria;
- allocating resources against approved eBusiness pursuits;
- ensuring that complete, cross-functional implementation plans are in place;
- providing oversight by measuring performance against established goals; and
- seeing that the organization reacts rapidly to changes in the marketplace.

The Postmaster General also announced that the Deputy Postmaster General would chair e-BOB, and the Chief Technology Officer would serve as vice chairperson. Several other postal officers with direct e-commerce responsibilities included the E-Commerce Vice President, the Corporate/Business Development Senior Vice President, and the Chief Financial Officer/Finance Executive Vice President. According to USPS, other USPS officers with responsibilities for core products and services may also be involved in certain cross-functional activities related to the e-commerce area.

USPS Processes for Approving E-Commerce Initiatives

In May 2000, USPS established an approval and implementation process for its eBusiness initiatives called the eBusiness Development Review and Approval process (e-BOB process). This process covers e-commerce initiatives and is different from the New Products and Service Review and Approval (New Products) process that is to be used for other new USPS products and services. The new e-BOB process was established in recognition of the fast-paced changes in eBusiness and in the e-commerce marketplace.

The e-BOB review and approval process was set up as an expedited 120-day, four-step process under which a sponsoring officer guides the proposed initiative through the process. The sponsoring officer, in conjunction with a cross-functional team, is required to develop a business proposal and business plan for each initiative. The business proposal is to be reviewed and approved by the sponsoring officer and e-BOB. The business plan is to be approved by e-BOB and the Management Committee[11] and, when considered necessary, the Board of Governors (BOG). Final approval of the initiative is determined by e-BOB and the Management Committee and, when considered necessary, by BOG. In instances in which a project contains significant capital investments, the initiative is also to be subject to the headquarters review and approval process for capital projects, which involves approval, if appropriate, by area officials, the headquarters Capital Investment Committee, and final approval by BOG.[12]

The New Products process was to be used to review and approve new products, including initiatives to develop new e-commerce products and services, prior to the establishment of the e-BOB approval process. According to USPS officials, the principles of USPS' *CustomerPerfect!* Annual Management Cycle guided the development of new e-commerce initiatives.[13] The New Products process required initiatives to have a business proposition statement—reviewed and approved by the Chief Marketing Officer (CMO)—and a business plan—reviewed and approved by the BOG Strategic Planning Committee and the full BOG. Under this process, initiatives were to undergo a market test. The results of the market test were to be reviewed by the CMO, the Management Committee, the BOG Strategic Planning Committee, and the full BOG before the initiative was implemented.

[11] The Management Committee includes the Postmaster General, Chief Executive Officer; Deputy Postmaster General; Vice President, General Counsel; Senior Vice President, Human Resources; Chief Financial Officer and Executive Vice President,; Senior Vice President, Government Relations and Public Policy; Senior Vice President, Chief Technology Officer; Senior Vice President, Chief Marketing Officer; Chief Operating Officer and Executive Vice President; Senior Vice President, Operations; and the Inspector General.

[12] Applies to all capital projects exceeding $10 million in total project costs.

[13] The *CustomerPerfect!* Annual Management Cycle is USPS' Malcolm Baldrige Award criteria-based management system. The *CustomerPerfect!* management cycle of planning, implementation, and review consists of activities intended to give direction to the organization and to build and sustain improved performance against set goals. The *CustomerPerfect!* process is intended to ensure effective management control through a formalized system of checks and balances that require top management buy-in at four critical stages: (1) concept stage, (2) business plan stage, (3) test stage, and (4) implementation stage.

Table 2 compares the e-BOB process with the New Products process. Both approval processes are similar in that they require preliminary proposals for e-commerce initiatives to be presented for approval by USPS officers before further action can be taken on the initiatives. Differences between the two processes are primarily in the business plan and market testing stages. For example, as shown in table 2, under the New Products process, the preliminary business plan is to be approved by the Management Committee, the CMO, and finally sequentially by the BOG's Strategic Planning Committee and the full BOG. However, under the e-BOB process the preliminary eBusiness plan is to be reviewed first by a cross-functional team, the sponsoring officer, and e-BOB, which is to determine whether Management Committee or BOG action is necessary. In addition, the New Products process has a formal market testing stage—involving approvals by the CMO, Management Committee, and BOG—which is not included in the e-BOB approval process.[14]

[14] USPS may conduct research and pilot tests and incorporate the results into the business plan, but these steps are not required under the e-BOB process.

Table 2: USPS' Processes for Review and Approval of E-Commerce Initiatives

eBusiness Development Review and Approval process (5/00) (e-BOB process)			New Products and Service Review and Approval process (New products process)		
Stage	**Requirements**	**Approval**	**Stage**	**Requirements**	**Approval**
eBusiness proposal	•Present proposal and supporting documentation (e.g., financial statements/preliminary break-even analysis) for review and approval.	Sponsoring officer	**Business proposition statement**	•Present proposition for new initiative to Chief Marketing Officer (CMO) for review and approval.	CMO
	•Present proposal and any recommendations for approval.	e-BOB[a]			
eBusiness plan	•Cross-functional team reviews preliminary business plan, includes independent analysis/external consultant review, if appropriate.	Sponsoring officer	**Business plan**	•Present preliminary business plan (with Management Committee feedback) for review and approval to Management Committee.	Management Committee
	•Plan and supporting documentation are then revised and submitted for approval by (1) the sponsoring officer and (2) e-BOB.	Sponsoring officer and e-BOB[b]		•Conduct proof of operations test to validate initiative/present results to CMO for review and approval.	CMO
	•As necessary, the Management Committee reviews business plan, supporting documentation, and e-BOB minutes and determines whether BOG consideration is warranted.	Management Committee/ BOG[c]		•Present preliminary plan, including test results, for sequential review and approval by BOG's Strategic Planning Committee (SPC) and the full BOG.	SPC/BOG
	Not Applicable		**Market testing**	•Present results of limited market test to CMO for approval to proceed with major market test.	CMO
				•Present proposal to proceed with major market test for sequential review and approval.	Management Committee/ SPC/BOG
				•Submit major market test results for CMO review and approval to move to initiative implementation.	CMO
Public affairs/ communications event plan	•Follow event planning guide if announcement or event is to announce new initiative. (Minimum of 6 weeks is required for effective and properly handled announcement.)	Public Affairs/ e-BOB	**Implementation roll out**	•Finalize plan using market test results and Management Committee feedback.	Management Committee
				•Present plan, including test results, for sequential review and approval to implement/ roll out.	Management Committee/ SPC/BOG

eBusiness Development Review and Approval process (5/00) (e-BOB process)			New Products and Service Review and Approval process (New products process)		
Stage	Requirements	Approval	Stage	Requirements	Approval
Initiative monitoring	•Track quarterly (or more frequently if directed by e-BOB); resulting suggestions and recommendations will affect initiative's future direction.		Initiative monitoring	•Track continuously against the business plan, perform annual reviews, and improve initiative as indicated.	

[a]Approval by e-BOB at proposal stage authorizes seed funding for testing, if applicable, and business plan development.

[b]e-BOB is to (1) approve the plan (2) defer for additional information, or (3) disapprove the plan.

[c]Generally, eBusiness initiatives, including e-commerce initiatives, are within management's approval authority. Therefore, unless specified in the bylaws, these initiatives require only BOG notification or consideration from an advisory standpoint prior to their contractual commitment or implementation.

Source: USPS documents.

The Deputy Postmaster General explained to us how resource allocation for e-commerce initiatives was unlike that for all other areas in the USPS budget. He said that all of the funding for USPS e-commerce activities was budgeted and kept in one overall fund. He said these funds were not allocated to specific managers until program managers justified the use of funds for specific projects.

Performance Expectations and Results

USPS provided some information on the performance targets and results of its e-commerce initiatives to date. USPS also gave us the following explanation in July 2000 of why performance targets for fiscal year 2001 were not provided:

> "It is important to recognize that performance targets provided in business plans, DARs [decision analysis reports], and business proposals are projections. They are dependent on Board of Governors' approval of the FY 2001 budget in October 2000, as well as on approval of the business plans, where annotated. Until approval occurs, we think that it is premature to publicly report quantitative plans or targets for the specific initiatives. However, the aggregate FY 2001 planned revenue for eCommerce initiatives that is being submitted for approval and to PRC totals $104.0 million. Projected expenses specific to eCommerce initiatives total $67.2 million. This does not include infrastructure and other costs associated with eCommerce, which will be calculated as part of our ongoing obligation to appropriately report those incurred costs. Similarly, it will differ from the total estimate of $146 million, provided to the Postal Rate Commission, which encompasses our other eBusiness initiatives."

Evaluation of the results of USPS' e-commerce initiatives, according to USPS, is generally based on the service performance provided to consumers and businesses and on the basis of revenue, cost, and contribution to financial performance. Postal officials explained that the e-BOB, Management Committee, and depending on the level of investment or potential liability, the Headquarters Investment Committee and BOG, are responsible for evaluating the USPS e-commerce program as a whole as well as the individual initiatives. A BOG resolution adopted in June 2000 specifies that "significant new types of e-commerce initiatives, which have not been previously presented to the Board [of Governors] for review, shall be presented to the Board before being launched." Initiative reviews by e-BOB are to be conducted on at least a quarterly basis, and quarterly status reports are to be sent to BOG.

Table 3 includes information on the performance targets and results, when applicable, for USPS e-commerce initiatives.

Table 3: Targets and Performance of E-Commerce Initiatives, Fiscal Years 1996 Through 2000

		Targets and Performance by Fiscal Year				
Initiative	**Status of initiative**	**1996**	**1997**	**1998**	**1999**	**2000[a]**
Electronic Postmark (EPM)	Implemented 4/00					
Target		Not applicable	Not applicable	Not applicable	Not applicable	$60,000[b]
Performance		Not applicable	Not applicable	Not applicable	Not applicable	$30,000[b]
ePayments	Not implemented (except eBillPay)					
Target		Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
Performance		Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
(eBillPay)	Implemented 4/00					
Target		Not applicable	Not applicable	Not applicable	Not applicable	Number of users
Performance		Not applicable	Not applicable	Not applicable	Not applicable	Proprietary
MoversNet[c]	Implemented 1996					
Target		Not provided	Net contribution	Net contribution	Net contribution	Net contribution
Performance		Not provided[d]	$6,107,000[e]	$2,720,000[e]	$5,458,000[e]	$11,104,000[e]
Enhancements to MoversNet	To be implemented 9/00					
Target		Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
Performance		Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
NetPost Mailing Online	To be implemented 9/00					
Target		Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
Performance		Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
NetPost.Certified	Not implemented					
Target		Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
Performance		Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
PosteCS	Implemented 5/00					
Target		Not applicable	Not applicable	Not applicable	Not applicable	$493,000[b]
Performance		Not applicable	Not applicable	Not applicable	Not applicable	Not provided
Stamps Online	Implemented 12/98					
Target		Not applicable	Not applicable	Not applicable	$4,000,000[f]	$10,158,000[f]
Performance		Not applicable	Not applicable	Not applicable	$5,710,000[f]	$10,561,000[f]
Virtual Postal Store	Not implemented					
Target		Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
Performance		Not applicable	Not applicable	Not applicable	Not applicable	Not applicable

Note: "Not applicable" means that the initiative was not implemented.

[a]Through February 2000.

[b]Revenue.

[c]Internet Change of Address and Move-Related Products/Services (MoversNet) included the Movers Guide, Welcome Kit, and Moversnet.com.

[d]Contribution for fiscal year 1996 was included in data for fiscal year 1997.

[e]Revenues toward net contribution were generated from two hard copy publications: the Movers Guide and the Welcome Kit.

[1]Revenues generated from postage stamps and other existing USPS products ordered via the Internet.

Source: USPS documents.

Opportunities for Improving Implementation of E-Commerce Initiatives

During our review, we identified a number of inconsistencies and other problems in the information provided by USPS that indicated areas in which it can improve implementation of its e-commerce initiatives. These deficiencies indicate that more effective management and oversight is needed in this area. First, during the course of our review, USPS inconsistently applied its definition of e-commerce in identifying its initiatives and provided inconsistent information on the status of its initiatives. These inconsistencies made it difficult to ensure we had a complete and accurate picture of USPS' e-commerce activities. Second, USPS had not consistently adhered to its process requirements and did not always document the review and approval of its initiatives. Consequently, it is not clear that USPS management properly reviewed and approved e-commerce initiatives to ensure that they would support USPS' overall mission and goals. Finally, we identified deficiencies in the financial information provided for the e-commerce activities that raised concerns about the accuracy and completeness of USPS' financial reporting for its e-commerce activities.

Inconsistencies in Identifying E-Commerce and Related Initiatives

As a result of inconsistencies in the information provided by USPS, we are not sure that USPS provided complete and accurate information on the identification and status of its e-commerce initiatives. Throughout this review, USPS provided numerous documents related to its e-commerce initiatives that included conflicting information about the identification and status of its e-commerce initiatives. USPS was able to reconcile some of the inconsistencies, but consistency across the organization will be necessary for USPS to provide accurate and complete information on the status of its e-commerce initiatives. As previously mentioned, BOG is to receive quarterly status reports on USPS' e-commerce initiatives.

USPS has struggled to properly classify its e-commerce and other initiatives that relate to its broader eBusiness environment. The initial list of e-commerce and associated infrastructure initiatives that USPS provided to us in April 2000 included 28 initiatives. As of July 2000, the list had been reduced to seven e-commerce initiatives. Some of the initiatives on the initial list were dropped because they were identified as infrastructure or enhancements to core products and services, and others are now called gray area initiatives because they did not fit the definition of e-commerce initiatives. In addition, some initiatives are in various stages of development, and their classification may change as their

product features evolve. As we discussed the rationale for the classification of specific initiatives with USPS officials, we noted several apparent inconsistencies where initiatives that seemed to have similar characteristics were not treated similarly. Some examples of apparent inconsistencies in the application of USPS' e-commerce definition—for products and services that (1) require the Internet to do business and (2) generate revenue to USPS through user charges or licensing fees—that we brought to the attention of USPS officials were as follows:

- GAO: Advertising revenue generated by MoversNet does not appear to be a user charge or a licensing fee—the two kinds of revenue specifically listed in USPS' definition of e-commerce.

- USPS Response: MoversNet is a part of the strategic alliance between USPS and its partner. The net contribution generated by the strategic alliance, which is split between USPS and its partner, is treated as revenue to USPS. USPS currently views and treats this form of revenue as commissions received from USPS' partner for this service, which could be classified as a licensing fee for the use of USPS' infrastructure, name, and good will. It has seemed to make sense to manage this initiative as a part of the e-commerce management process.

- GAO: According to the explanation provided, MoversNet includes the Movers Guide and the Welcome Kit—traditional hard copy postal products that do not require use of the Internet. Thus, these components would not appear to fit the e-commerce definition.

- USPS Response: MoversNet also includes the MoversNet.com application. The components of all three aspects of MoversNet are related and are being managed in conjunction with the electronic application. USPS has found it useful to manage together various aspects of some of these e-commerce initiatives, which are being developed as part of the same effort, even though some of the subparts might not independently fit the definition of e-commerce initiatives if considered independently. It makes internal business sense to proceed in this way. USPS recognizes that where charges need to be set and revenues and costs reported and evaluated, care is needed to attribute costs and revenues to the proper activity.

- GAO: The Stamps Online component of the Stamps Online/Virtual Store initiative appears to fit the definition of an enhancement—that is, providing front-end or back-end Internet access to core or existing USPS

products and services. Revenues from enhancements are to be reported with core or existing products.

- USPS Response: StampsOnline revenue was previously reported as revenue diverted from other channels. However, USPS plans to expand both product lines and product markets through launch of the Virtual Store. Therefore, USPS continues to include StampsOnline/Virtual Store with listed e-commerce initiatives.

- GAO: USPS sold philatelic collectibles on the Internet via eBay from July 7 to July 16, 2000. This initiative appears to fit the definition of a USPS e-commerce initiative in that it required use of the Internet and generated revenue to USPS.

- USPS Response: These are regarded as asset sales rather than user charges. This program has more in common with other philatelic initiatives than with electronic commerce initiatives. Accordingly, it is managed in tandem with other philatelic programs, rather than passing through the e-BOB and related processes for the management of e-commerce initiatives.

Our questions and comments and USPS' responses to them illustrate the potential for differences in interpretation that may occur. In some cases, it was difficult to understand the rationale for the identification of the initiatives without more clarification from USPS on how it intended to treat the revenue from these initiatives. Also, some initiatives were provided in conjunction with other products and services, and it was not clear how the revenues would relate to e-commerce versus other core products or services. Finally, some initiatives were not currently generating revenues, such as eBillPay, but USPS planned to generate revenues from these initiatives in the future. USPS' consistent application of its e-commerce definitions is important so that it can maintain complete and accurate information about its e-commerce and related activities.

USPS also provided conflicting information related to the status of certain e-commerce activities that made it difficult for us to determine when some of the e-commerce initiatives had been implemented. For example, USPS documents provided in April 2000 reported that the Electronic Postmark (EPM) and MoversNet initiatives had been implemented, that is, were made publicly available. USPS documents provided in July 2000 showed that EPM had not been implemented, but USPS has since reported that it was implemented in April 2000. Likewise, the July 2000 USPS documents showed that MoversNet was scheduled to be implemented in July 2000.

USPS documents provided on August 4, 2000, stated that MoversNet had been implemented in the summer of 1996. USPS officials explained that the MoversNet implemented in the summer of 1996 consisted of access via the MoversNet Internet site to a form that could be used to order the hard copy Movers Guide and Welcome Kit and that enhancements to MoversNet were scheduled to be implemented in September 2000. The July 2000 documents showed that of the seven e-commerce initiatives, only two—eBillPay and PosteCS—had been implemented. The August 4, 2000, USPS documents stated that five of its seven initiatives—eBillPay, EPM, MoversNet, PosteCS, and Stamps Online/Virtual Store—had been fully or partially implemented. Subsequently, BOG approved implementation for NetPost Mailing Online to take effect in September 2000. We recognize that activities in this area continue to evolve. However, USPS has had difficulty providing complete and accurate information on initiatives that have been ongoing for some time.

USPS Has Not Consistently Followed its Processes for Approving E-Commerce Initiatives

USPS has not consistently followed its current or former processes for approving and reviewing e-commerce initiatives. Based on information provided by USPS, none of the five e-commerce initiatives fully or partially implemented to date have had all of the required documents or formal approvals from appropriate officials. Without business plans and documented approvals, USPS cannot ensure that its e-commerce initiatives are being appropriately planned and reviewed so that they will support USPS' overall mission and goals.

Based on the documentation provided by USPS, USPS did not follow all of the requirements of either the applicable e-BOB or New Products review and approval processes. USPS initiatives introduced before the new e-BOB review and approval process was finalized in May 2000 were subject to the New Products process. Thereafter, the initiatives were subject to the e-BOB review and approval process. For example, USPS reported that its PosteCS initiative was launched on May 9, 2000. The required documents to approve this initiative prior to implementation, and thus prior to the e-BOB review and approval process, should have included a business proposition statement, preliminary business plan, market test results, and a finalized business plan. However, the documentation USPS provided to us for this initiative was a business proposition statement to the CMO in May 1998, a preliminary business plan in March 1999, and a business proposal presented to e-BOB for approval in July 2000—after the initiative was publicly launched in May 2000. Likewise, USPS launched its Electronic Postmark initiative in April 2000 and provided a business proposal that was presented to e-BOB in July 2000. Table 4 shows the

documentation and approvals USPS provided to us for each of its e-commerce initiatives. However, we did not assess the substance of these documents.

Table 4: USPS Documentation of Its Review and Approval of E-Commerce Initiatives

Initiative (Date implemented)	Business proposition statement[a]	Business plan	Market test	Implementation approval
Electronic Postmark (Implemented 4/00)	Yes – business proposal - 7/00	Not provided	Not provided[b]	Not provided
ePayments • (eBillPay) (Implemented 4/00)	Not provided	Yes – draft business plan – 3/00	Not provided	Yes – BOG – 4/00
Internet Change of Address and Move-Related Products and Services • (MoversNet) (Implemented 1996);	Not provided	Not provided	Not provided	Not provided
• Enhancements to MoversNet (To be implemented 9/00)	Yes — business proposal presentation to e-BOB – 4/00	Not provided	Not applicable[c]	Not implemented
NetPost.Certified (Not implemented)	Yes – 3/00	Not provided	Not applicable[c]	Not implemented
NetPost Mailing Online (To be implemented 9/00)	Not provided	Yes – preliminary business plan – 12/96	Not applicable[c]	Yes – BOG – 8/00
PosteCS (Implemented 5/00)	Yes – business proposition statement to CMO – 5/98; business proposal to e-BOB – 7/00	Yes – preliminary business plan – 3/99; plan approved by e-BOB – 8/00	Not provided[b]	Not provided
Stamps Online (Implemented 12/98)	Not provided	Not provided	Yes –12/97, 7/98, 9/98	Not provided
Virtual Store (Not implemented)	Not provided	Not provided	Not applicable[c]	Not implemented

[a]Business proposition statement required under the New Products process; business proposal required under the new e-BOB process.

[b]No individual market testing was done on EPM, other than USPS offering it in conjunction with PosteCS. USPS provided an Electronic Commerce Services Product Market Study dated June 1997 prepared by an outside consultant that focused primarily on examining the market potential for an electronic postmark as well as other electronic commerce services under consideration. According to USPS' 1998 Comprehensive Statement on Postal Operations, p. 70, EPM was integrated into one messaging service and both fully functional services were then to be used in limited market tests.

[c]The e-BOB process was applicable in May 2000; thus, market testing was not required for this initiative.

Source: USPS documents.

Problems and Inconsistencies in USPS Reported Financial Results for E-Commerce Area

We requested available data on financial results for fiscal years 1995 through 2000 for USPS e-commerce initiatives as part of our work to report on results from these initiatives. In response to our request, USPS provided information on revenues and expenses generated by its e-commerce initiatives, although some did not have reported revenues because they had not been implemented by USPS' cut-off date of February 2000.[15] In April 2000, USPS provided data on its revenues and expenses to date for its current e-commerce initiatives, based on USPS' list of e-commerce initiatives that was provided at that time. We did not independently verify or audit the overall integrity of USPS' data. However, we examined the data to see whether they appeared to be consistent with USPS' e-commerce definition and criteria, clear as to what was included, and complete. We notified USPS of several concerns we had with the April 2000 data; USPS acknowledged our concerns and provided revised data for some of its current e-commerce initiatives as well as its discontinued e-commerce initiatives on June 15 and June 27, 2000. We advised USPS of similar problems with the June data, and USPS provided another set of substantially revised data in July. However, our review of the July data continued to raise concerns about their consistency, clarity, and completeness.

Due to the data deficiencies, we do not have confidence that the revenue and expense data USPS provided for its individual e-commerce initiatives are accurate and complete. Consequently, we do not believe the financial data that USPS provided could be used to reliably assess USPS' progress toward meeting its overall financial performance expectation that revenues generated by e-commerce products and services in the aggregate are to cover their direct and indirect costs as well as make a contribution to overhead.

We recognize that USPS has recently implemented many of its current e-commerce initiatives; thus, it may be premature to assess its progress against its financial goal. As we noted in our 1998 report on new postal products, it may not be reasonable to expect all new products to become profitable in their early years, because new products generally take several years to become established and recover their start-up costs.[16] In this regard, several e-commerce initiatives, such as the Electronic Postmark,

[15] USPS provided data for current and discontinued initiatives from inception, which predated fiscal year 1995, through fiscal year 1999 and partial results for fiscal year 2000. The cut-off date in fiscal year 2000 appeared to vary for some initiatives for the data that USPS provided to us in April 2000. In July 2000, USPS provided revised data with a February 2000 cut-off date for revenues and expenses generated by each e-commerce initiative.

[16] GAO/GGD-99-15.

eBillPay, and PosteCS, were launched earlier this year. USPS' Virtual Store and its NetPost.Certified initiatives were not implemented as of August 2000. Nonetheless, without accurate and complete information on the revenues and expenses associated with USPS' e-commerce initiatives, USPS and other stakeholders will not be able to assess progress toward meeting USPS' financial goal in the e-commerce area.

We noted apparent inconsistencies in the e-commerce expense data that USPS provided. For example, problems included apparent inconsistencies between the data USPS provided to us and to PRC for its Mailing Online initiative. In July 2000:

- USPS reported to us about $2.2 million in Mailing Online expenses through fiscal year 1998, up from about $112,000 that was reported to us in April and June 2000. USPS also reported that there was no available breakdown of Mailing Online expenses from inception through fiscal year 1998, although such breakdowns were made for other e-commerce initiatives (i.e., expenses through fiscal year 1997 and for fiscal year 1998).

- USPS clarified that data for Mailing Online expenses (and revenues) did not include associated expenses under USPS' discontinued PostOffice Online initiative to develop and conduct the first test of Mailing Online. In this regard, USPS provided data to us on PostOffice Online expenses that differed from the expense data USPS reported to PRC. For example, on June 15 and June 27, 2000, and on July 2000, USPS reported to us expenses for PostOffice Online of $0.8 million for fiscal year 1997, $4.5 million in fiscal year 1998, and $0 in fiscal year 1999. In comparison, USPS reported to PRC in April 2000 expenses of $0 for fiscal year 1997, $9.6 million for fiscal year 1998, and $18.2 million for fiscal year 1999.

- USPS reported to us that capital commitment data were not available for Mailing Online before fiscal year 2000. Yet, on June 15 and June 27, 2000, USPS reported to us that its capital commitment for Mailing Online in fiscal year 1999 was $3.5 million.

Also, in April and June 2000, USPS reported to us that there were no expenses in some years for certain e-commerce initiatives, even though it reported that USPS staff had been working on those initiatives in the same time periods. Conversely, USPS reported no USPS staff had worked on certain e-commerce initiatives in some years, even though it reported operating expenses in the same years.

With respect to revenues, as the examples that follow indicate, we also have continuing concerns with the completeness and accuracy of these data, partly because of the substantial revisions that were made from one report to another. For example:

- USPS substantially lowered reported revenues for its MoversNet initiative from $41.0 million in its April 2000, June 15, 2000, and June 27, 2000, reports to $25.4 million in July 2000. USPS provided no explanation for this revision.

- USPS reported Electronic Postmark (EPM) revenues for fiscal year 2000 of $90,000 in April 2000, $0 on June 15, 2000, $60,000 on June 27, 2000, and $0 in July 2000. In July 2000, USPS also reported that EPM generated revenues of $30,000 after the February 2000 cut-off date for fiscal year 2000 data.

- USPS revised reported revenues from its ePayments initiative from $3.8 million in its April and June 2000 reports to $0 in July, apparently because the revenues that were initially provided for fiscal year 2000 were based on expected revenues instead of actual revenues.

Without reliable revenue and expense data, USPS and others will not be able to assess USPS' progress toward its goal that USPS e-commerce products and services are to cover their direct and indirect costs. In addition, in order for such an assessment to be made, additional data would be needed. For example, data would be needed on expenses associated with its e-commerce initiatives, such as (1) expenses related to information systems required to support e-commerce initiatives and (2) some expenses for other infrastructure initiatives that supported e-commerce initiatives. As USPS recognized in its July 20, 2000, letter to us, it plans to calculate "infrastructure and other costs associated with eCommerce . . . as part of our ongoing obligation to appropriately report those incurred costs."

USPS provided us in July 2000 with a "Summary of e-Commerce Initiatives" that included "Total Revenue" of $41.8 million from USPS' current e-commerce initiatives, "Total Expenses" of $21.1 million from these initiatives, and "Capital Commitment" of $5.2 million from these initiatives. However, such data would not be sufficient to tally all revenues and the direct and indirect expenses needed to calculate the net contribution to date from USPS e-commerce initiatives. First, these data do not include $37.4 million in expenses and $1.2 million in capital commitment reported in July 2000 for discontinued e-commerce

initiatives.[17] Second, 99.8 percent of USPS' revenues for e-commerce initiatives reported to us in July 2000—specifically, revenues from Stamps Online and Movers Net—appeared to be based on revenue that fit the definition of revenues generated by core and existing postal products and services or Internet enhancements to provide front-end or back-end access to these products and services. As USPS had told us on June 15, 2000, such revenues are to be included with revenues from the core and existing products. Specifically:

- Stamps Online: USPS reported in April 2000 that this initiative had generated $16.3 million in "existing revenue diverted from other USPS channels," such as revenue from the on-line sale of hard copy stamps. However, as we noted to postal officials in July, such revenue appeared to fit the USPS definition of "our web presence through 'front-end' or 'back-end' internet access to our core or existing USPS service or products that . . . do not fall within the Postal Service's definition of 'electronic commerce initiatives.' The resources for these functions are reported with other core or existing US Postal Services." In July, USPS revised its data for Stamps Online to report $16.1 million in "re-channeled" revenue that was included from hard copy stamps ordered via the Internet in the $41.8 million in total revenues generated from current e-commerce initiatives. According to USPS officials, the other $163,000 in Stamps Online revenue was generated through the sale of existing USPS products ordered via the Internet.

- MoversNet: USPS reported in April and June 2000 that this initiative generated $41.0 million in revenues from advertising fees paid by commercial enterprises to have products and services included in MoversNet. When we questioned the inclusion of the hard copy—Movers Guide and Welcome Kit—publications, USPS told us that the three components of this initiative are related and are being managed in conjunction with the electronic application. However, USPS also said that these components "might not fit the definition of eCommerce initiatives if they were considered independently." In July, USPS reduced revenues from this initiative to $25.4 million. In August, USPS clarified that these revenues were generated exclusively by the hard copy publications, which could either be picked up at postal locations or ordered via the Internet. In our opinion, revenues generated by hard copy publications that do not require use of the Internet would be inconsistent with USPS' definition of e-commerce. If these publications were ordered via the Internet, they

[17] These discontinued e-commerce initiatives included Electronic Commerce Services R&D, PostOffice Online, WEB Interactive Network of Government Services (WINGS), Deliver America, and Global e-Post. See GAO/GGD-99-15 for a description of these initiatives. USPS reported expenses through fiscal year 1998 for these initiatives in June and July 2000. USPS reported no revenues from these initiatives.

would fit USPS' definition of front-end or back-end access to an existing product.

USPS Views of its Authority in the E-Commerce Area

USPS has a unique status as an independent establishment of the executive branch, and, as such, some laws and regulations may apply differently to USPS from how they apply to other federal agencies or private sector companies involved in similar e-commerce activities. To provide Congress with information on USPS' legal authority in this complex and emerging area, we asked USPS a series of questions about how it views the application of certain laws and regulations to its e-commerce activities. USPS' General Counsel provided written responses to our questions. Other postal stakeholders or competitors may have interpretations different from those of USPS. We did not evaluate USPS' legal analysis or attempt to obtain others' views within the scope of this review.

USPS believes it has broad statutory authority to offer e-commerce products and services in ways that USPS finds appropriate to its assigned functions and in the public interest. USPS believes this authority is grounded in several provisions of the Postal Reorganization Act of 1970, not just the provision relating to its specific power to offer nonpostal services. According to USPS, numerous federal laws and regulations apply to its e-commerce products and services, but it has a legal status that differs in some respects from the status of its competitors in the private sector. Appendix II summarizes USPS-provided information on laws, regulations, and policies, including information in such areas as (1) USPS statutory authority to offer e-commerce products and services, (2) privacy, (3) consumer protection, (4) criminal statutes, (5) the application of regulations, and (6) the possible application of administration policy.

USPS competitors and others have raised questions on the extent of USPS' legal authority to offer e-commerce products and services and under what circumstances it should offer such services. To put these concerns into context, the appropriate role of USPS has been debated for many years and continues to be debated in the context of proposals for comprehensive legislation to reform the nation's postal laws. In addition, some specific concerns have been raised about USPS e-commerce activities that also relate to emerging e-commerce issues, such as the privacy of consumer information.

Prior GAO Reports That Discussed USPS Legal Authority

We have issued reports in three areas that may relate to the application of laws and regulations to USPS e-commerce activities: (1) USPS' authority to develop and market new products; (2) applicable federal privacy laws that relate to change-of-address information reported by USPS customers; and (3) proposed postal reform legislation that would change USPS' current statutory authority to develop, test, approve, and market new products in a number of ways. As noted in appendix I, due to time constraints, we did not update this past work for the purposes of this review, which pertains to specific USPS e-commerce activities.

We reported in 1998 that "The statutory and regulatory authorities governing the Postal Service provide the Service provide broad latitude to develop and market a wide variety of new products, including both postal and nonpostal products. Under these broad authorities, USPS has developed an array of new products . . . ."[18] However, we also reported that "Our analysis shows that the Service is subject to at least three constraints in developing and marketing new products." These constraints were:

- First, because it is the underlying statutory mission of USPS to provide postal services to bind the nation together, USPS needs to be able to explain how any new product it develops will further that mission. Citing 39 U.S.C. § 101, we reported that USPS' basic mission is to provide postal services to bind the nation together and provide those services in a prompt, reliable, and efficient manner, at reasonable rates, to all communities and patrons.

- Second, under its statutory authority, before marketing (including test marketing) a new domestic postal product, which necessarily involves classification[19] of mail, USPS must request a recommended decision from PRC regarding the propriety of USPS' proposed classification, rates, or fees for the new product. Prior to issuing its recommended decision, PRC is required to hold hearings on USPS' proposal. The Postal Board of Governors, however, may reject or modify PRC's recommended decision. USPS is not required to request a recommended decision from PRC in the case of nonpostal products, such as telephone cards and retail merchandise.

[18] GAO/GGD-99-15.

[19] Classification refers to a grouping of mail matter for assigning it a specific rate or method of handling.

- Third, USPS' ability to market new products can be constrained or influenced by congressional oversight, restrictions imposed during the appropriations process, or other legislative actions.

  We also reported in 1996 and 1999 that we and USPS have differing interpretations of federal privacy protections that relate to change-of-address information reported by USPS customers.[29]

- In 1996 and 1999, we reported that through its National Change of Address (NCOA) program, USPS collects and widely disseminates change-of-address information reported by postal customers to a number of private firms licensed by USPS to provide address correction services. We reported that postal customers' change-of-address data are protected from inappropriate release or use under applicable federal privacy laws. However, in our view, USPS collects change-of-address information from postal customers for the limited purposes of address list correction and mail forwarding, not for the purpose of creating and maintaining new-movers lists. Thus, in our view, use of NCOA-linked data to create or maintain new-movers lists by USPS licensees, who are viewed under the Privacy Act as if they were USPS employees, would not be consistent with the limitations imposed by the Privacy Act.

  USPS disagreed with our assessment. USPS officials told us:

- USPS does not provide names to be included on any licensee or customer lists. NCOA information provided to licensees, and by licensees to their customers, is limited to the new addresses of persons whose names and addresses are already on the licensee's or the customer's list. Thus, the NCOA program does not violate the prohibition in the Privacy Act against unauthorized disclosure of an individual's name and address.

- Neither the Privacy Act nor the Postal Reorganization Act of 1970 limit in any way licensees' and customers' use of address data that have been properly updated or corrected through the NCOA service. Releasing the NCOA file to licensees to provide address-correction services and licensees' subsequent release of new addresses of postal customers—whose names and old addresses are already on a licensee's or its customer's lists—is lawful when done in accordance with the provisions and conditions of the licensing agreement. After a licensee performs

[29] See U.S. Postal Service: Improved Oversight Needed to Protect Privacy of Address Changes (GAO/GGD-96-119, Aug. 13, 1996); and U.S. Postal Service: Status of Efforts to Protect Privacy of Address Changes (GAO/GGD-99-102, July 30, 1999).

address correction services as a USPS agent, it is then free under the Privacy Act to use NCOA-linked data to create or maintain new-movers lists. With regard to the licensees' customers, USPS has no responsibility to attempt to restrict the use of NCOA-linked data by a private business with which it has no legal relationship.

Our 1999 report disagreed with this assessment. It raised as a matter for congressional consideration that Congress may wish to amend the Postal Reorganization Act of 1970 to (1) expressly prohibit the use of change-of-address data by licensees and their customers in the creation or maintenance of new-movers lists; or (2) specifically require USPS to have its licensees and their customers acknowledge in writing that they have been informed and understand that change-of-address data may not be used for any purpose not authorized by law, including the creation and maintenance of new-movers lists. As of August 2000, Congress had not acted on this matter.

Finally, our 1998 report on new postal products discussed how proposed comprehensive legislation known as postal reform legislation would have amended USPS' current statutory authority to develop, test, approve, and market new products in a number of ways.[21] The legislation, H.R. 22, introduced by the Chairman of the Subcommittee on the Postal Service, House Committee on Government Reform, was based on the premise that USPS participation in competitive markets should be, to the maximum extent possible, on the same terms and conditions as those faced by its private sector competitors. As of July 2000, H.R. 22 was pending in the House Committee on Government Reform.

USPS Reported It Has Broad Statutory Authority to Offer E-Commerce Products and Services

USPS told us that it has broad statutory authority to offer e-commerce products and services in ways that USPS finds appropriate to its assigned functions and in the public interest. According to USPS, several provisions of federal law individually and collectively provide the necessary legal authority for it to offer e-commerce products and services. In exercising its authority in the e-commerce area, USPS told us that the law provides discretion to BOG to determine whether particular new services are appropriate and in the public interest. USPS told us that several provisions of title 39 of the U.S. Code, which establishes the basic legal framework for USPS, give it the authority to offer e-commerce products and services. Specifically:

- Under Section 401, which provides USPS with "general powers" that USPS described as "broad businesslike powers," USPS may enter into

[21] GAO/GGD-99-15.

agreements, make expenditures, obtain property rights, or perform other transactions useful to accomplish its functions, such as the authority to contract, expend resources, acquire property, or perform other transactions useful to accomplish its functions, whether or not involving the Internet in some respect.

- Section 404 states that without limiting its more general powers, USPS may exercise certain specific powers, such as handing mail, prescribing how postage is paid, selling postage, and providing special nonpostal or similar services. According to USPS, "These provisions are stated in the language of broad inclusion, rather than of narrow constraint. Where the Internet would be useful to the Postal Service and its customers in the performance of its functions, this section does not limit access to that medium along with other methods for getting the job done."

- Section 403, relating to "general duties," outlines mandatory USPS functions to which USPS may apply its general and specific powers. USPS stated that most of the Internet-related services that it has considered to date fall inarguably within the scope of its mandatory general duties. For the most part, these services involve channels or avenues intended to make postal services more accessible or convenient for customers who use the Internet.

  USPS specifically stated that three subsections of title 39 are each broad enough to empower USPS to provide any service, conduct, or activity (not prohibited elsewhere) that appropriately serves its purposes as reflected in title 39:

- subsection 401(3), which gives USPS the authority to determine the character of, and necessity for, its expenditures;

- subsection 401(10), which gives USPS "all other powers incidental, necessary, or appropriate to the carrying on of its functions or the exercise of its specific powers;" and

- subsection 404(a)(6), which authorizes USPS "to provide, establish, change, or abolish special nonpostal or similar services."

  In this context, USPS discussed how it sees e-commerce products and services as appropriately serving its purposes:

- USPS' understanding is that section 101(a) of title 39, in describing the "basic function" of USPS as an "obligation to provide postal services to

bind the Nation together," by "postal services" means the postal system as a whole, not a select group of discrete service offerings in isolation. USPS uses many means to perform the collection of statutory functions described in title 39. It has both the "basic function" generally summarized in section 101(a), and a myriad of supportive functions necessary or appropriate to its work. All of its functions and activities in concert should help to "bind the Nation together."

- Since "binding the Nation together" is part of the basic function of the postal system as a whole, this is also an appropriate objective to be served by supporting functions in their own right, where feasible, even though section 101(a) itself only specifically enunciates this goal in terms of a "basic function."

- Technological improvements associated with the Internet offer many opportunities for improved interaction between the postal system and its customers. USPS makes no claim that all-electronic products and services, or any kind of eCommerce products and services, are becoming the "basic function" of USPS. USPS does consider that the particular electronic services being introduced have been carefully configured to serve as logical, supporting, ancillary, incidental enhancements of the postal system for the benefit of USPS customers, in ways that comport well with USPS' basic function. These services help USPS to meet the needs of USPS customers within the context of the kinds of personal and business correspondence that USPS has traditionally facilitated for them. USPS considers that these services are necessary and appropriate incidents to the performance of postal functions, and are thus within the authority of USPS.

- The remainder of section 101 and scattered other portions of title 39, such as Section 2010,[22] further define the mission and methods of USPS in terms emphasizing service, accessibility, efficiency, modernization, and essential relevance to the needs of customers. Nothing in the law gives any indication that USPS is intended to neglect any developing new medium, methods, or technology, or to allow itself to become outmoded, antiquated, difficult to use, too expensive, or irrelevant to its customers. To the contrary, any of these outcomes would seem to be inconsistent with the broad imperatives of service to the public written into the law.

- The Nation's current postal services are both deeply rooted in the traditions of this country and embedded in the current economic and

[22] 39 U.S.C. § 2010 states that USPS shall promote modern and efficient operations, among other things.

social fabric. USPS' challenge is to improve and build upon the services, capability, role, and customer relationships that it already maintains, in sensible, businesslike, appropriate, evolutionary steps. Its authority is to take advantage of electronic commerce, like other methods and technology, in ways it finds appropriate to the performance of its functions and in the public interest.

According to USPS, it has been delegated considerable discretion to apply its experience and judgment in evaluating what seems appropriate for its job and in the public interest. USPS reported that there is no bright-line test of the furthest extent of its authority, but federal law offers a number of useful indicators or points of reference in this regard. According to USPS, a product or service is more likely to be appropriate or in the public interest if the product or service:

- relates to personal, educational, literary, or business correspondence and communication;
- improves or updates an existing or previous USPS service through use of more modern evolving methods or technology;
- improves the efficiency, economy, simplicity, speed, consistency, security, equity, or any other characteristic of its mail or philatelic services so as to add value for customers;
- enables customers to use mail or philatelic services more efficiently, economically, or in greater volume, or to any other advantage to them, to other customers, or to the postal system as a whole;
- is similar, supplementary, integrated or in some way connected to or an extension of a service USPS already provides or has provided;
- is derived in a logical way from an existing service, property interest, stamp design, or other attribute belonging to or identified with USPS;
- as a matter of economic reality or good business practice, is well performed in a multipurpose way in combination with some existing USPS service or operation;
- makes fuller or more efficient use of property or resources, such as using excess or unused capacity so that the addition of some lesser, secondary application would enable the property or resources to be used more productively;

- adds a particular new service to USPS' menu of offerings, where good business practice demonstrably counsels such an addition;
- reflects demonstrated demand from the postal customer base;
- is supported by private or international experience in combining or integrating particular services;
- assists another federal agency to perform its functions; or
- advances the policies of the United States.

USPS stated that none of the above factors would necessarily be the sole basis for determining whether an e-commerce product or service would be appropriate or in the public interest. However, USPS noted that the fact that a service is different from previous services, or is nonpostal, is not in itself a bar to USPS offering the service, "although we do not think that means unrelated or inappropriate services are permitted."

Privacy Laws Reportedly Protect the Privacy of USPS E-Commerce Customers More Than They Protect Customers of Private Sector Competitors

USPS has reported that federal privacy laws afford USPS e-commerce customers greater protection than is provided for customers of private sector providers. First, USPS reported that the Privacy Act,[23] which applies to USPS and restricts disclosures of private information maintained about individuals to third parties without their consent, does not apply to private providers of e-commerce services. Second, under the Electronic Communications Privacy Act,[24] a "remote computing service"[25]—a description that USPS reported applies to itself and its contractors—may not disclose stored electronic communications to a governmental entity without either a search warrant or, under limited circumstances, certain subpoenas. USPS told us that "The combined effect of the Privacy Act and the Electronic Communications Privacy Act is to afford customers greater protection from invasions of privacy than they could expect with a private sector provider."

USPS noted that the Privacy Act prohibits it from identifying USPS customer information to other private companies, such as for marketing or market research. In addition, USPS told us that its contractors, such as its

[23] 5 U.S.C. § 552a.

[24] 18 U.S.C. § 2701 *et seq.*

[25] A remote computing service entails providing computer storage or processing services to the public by means of an electronic communications system. 18 U.S.C. § 2711(2).

business partner in offering eBillPay, are bound by contract to the same nondisclosure requirements that apply to USPS.

USPS also reported that the Trade Secrets Act[26] generally precludes USPS from releasing certain confidential, business-sensitive information about a customer from its computer files without the customer's express permission. USPS reported that although it is subject to the Freedom of Information Act (FOIA),[27] and private providers of e-commerce products are not, several specific exemptions to mandatory FOIA disclosures protect USPS e-commerce information from disclosure.

USPS reported it has adopted specific postal regulations that limit and govern possible disclosure of its e-commerce customer information under the Privacy Act. According to USPS, information protected by the Privacy Act may not be disclosed except in accordance with this act and postal regulations, which allow disclosure pursuant to "routine uses" for the system of records as published in the Federal Register.[28] USPS said it discloses such routine uses to its e-commerce customers through Privacy Act statements placed on its Internet site so they can read the statements before transmitting information to USPS. For example, USPS eBillPay customer information could be provided to a payee, a financial institution, or a credit bureau when necessary to, and as an integral part of, the eBillPay service being provided, according to USPS.

However, USPS told us that although it is subject to FOIA requests for information, USPS would not release information collected from e-commerce customers. USPS said that FOIA does not compel disclosure that is otherwise prohibited by law. Also, FOIA does not compel disclosure of names and addresses of USPS customers prohibited by law.[29] USPS said that FOIA does not require the disclosure of information of a commercial nature, whether or not obtained from a person outside USPS, that under good business practice would not be disclosed.[30] In this regard, USPS told us that "in our opinion, it would not be good business practice to disclose private information obtained in the provision of electronic services."

[26] 18 U.S.C. §1905.

[27] 5 U.S.C. § 552.

[28] According to USPS, "Routine uses are those situations in which information may be disclosed to third parties without the written consent of the subject of the records, but only for a purpose compatible with the purpose for which the information was collected."

[29] 39 U.S.C. § 410(c)(1).

[30] 39 U.S.C. § 410(c)(2).

Further, USPS stated that title 39 prohibits USPS and its employees from making any mailing or other list of names or addresses of postal patrons or other persons available to the public.[31] On the matter of possible use of USPS customer change-of-address information, which we have reported on and is discussed earlier in this report, USPS provided us with this response:

"USPS will not use address information obtained from its electronic commerce products and services to compile new movers lists, nor will its contractors or consultants be authorized to do so. However, change of address information may be submitted electronically for mail forwarding and address correction purposes in the near future; this information will be added to the National Change of Address File in the same way as changes of address that are submitted in the conventional manner. USPS adds change of address information to the NCOA file for forwarding and address correction purposes only when the customer submits a change of address order for that purpose."[32]

USPS Reported That Many Consumer Protection Laws Do Not Apply to its E-Commerce Initiatives

USPS told us that the public interest, universal service, antidiscrimination, and other policy provisions of the Postal Reorganization Act of 1970 provide consumer protections in connection with its e-commerce products and services,[33] while many other federal consumer protection laws are inapplicable. However, some federal consumer protection laws may apply to USPS in certain circumstances, and others may apply to USPS contractors or financial institutions that help USPS offer e-commerce products and services. Further, USPS said it administers certain consumer protection laws relating to U.S. mail, and these laws may be applicable in some circumstances to USPS e-commerce products and services.

[31] 39 U.S.C. § 412.

[32] In July 2000, the USPS Internet site for MoversNet contained a form for customers to submit changes to physical addresses and also referenced the following: "Privacy Act Note: Filing this form is voluntary. However, your mail cannot be forwarded without an order. If filed, your new permanent address will be provided to individuals and companies who request it, but this will occur only when the requester is already in possession of your name and old mailing address. Use Form 3576 to tell correspondents and publishers of address changes. Authorized 39 U.S.C. 404."

[33] USPS stated that the Postal Reorganization Act of 1970 is the principal federal consumer protection law relating to its e-commerce products and services. USPS noted that 39 U.S.C. § 202(a) specifies that the USPS Governors are appointed by the President to represent the public interest generally; and 39 U.S.C. § 403(a) states, among other provisions, that USPS "shall serve as nearly as practicable the entire population of the United States." USPS views of how its public interest, universal service obligations, and other postal policy provisions of the Postal Reorganization Act of 1970 relate to its e-commerce activities are discussed further in the section of this report on USPS's statutory authority in the e-commerce area. USPS views on the applicability of antidiscrimination provisions are discussed in the section of this report on competition-related laws.

Like other federal activities under the control of presidential appointees,[34] many consumer protection laws that address the activities of organizations outside the controls of federal management do not apply to USPS e-commerce products and services, according to USPS. For example, USPS noted that some consumer protection laws dealing with debt and credit do not apply because USPS does not extend credit. However, USPS said that some federal consumer protection laws might apply to USPS contractors or financial institutions that work with USPS to help provide USPS e-commerce products and services.

USPS told us that it is charged with enforcing consumer protection laws known as the "nonmailability laws,"[35] which include false representation and lottery laws, and which incorporate the criminal nonmailability statutes.[36] USPS told us it would be responsible for enforcing the nonmailability laws to the extent that any USPS e-commerce product or service could be used to violate them. USPS provided the following three examples:

- If a USPS e-commerce product or service is the means to promote a "solicitation of money or property through the mail by means of false representations" or a lottery (e.g., if remittances were solicited electronically and received through the U.S. mail), then the nonmailability laws would apply.

- If a physical product is ordered and paid for electronically, and then delivered by USPS, the nonmailability provisions relating to hazardous materials, as well as other restrictions, would apply.

- If a postal e-commerce product is used to both promote and deliver a product or service that would violate the written, printed, or graphic matter restrictions, it does not seem that the USPS civil consumer protection statutes would apply. However, an entirely electronic scheme

[34] The Board of Governors is the governing body of USPS. It consists of 11 members, including 9 Governors appointed by the president, with the advice and consent of the Senate; the Postmaster General (PMG), who is appointed by the Governors; and the Deputy Postmaster General, who is appointed by the Governors and the PMG. By law, Governors are chosen to represent the public interest and can not be representatives of special interests. See U.S. Postal Service: Issues Related to Governance of the Postal Service (GAO/GGD-97-141, Aug. 14, 1997).

[35] 39 U.S.C. §§ 3001-3017.

[36] USPS said that, in general, these laws limit using the U.S. mail to solicit money or property through the mails by means of false representation; the conduct of illegal lotteries, sweepstakes, or skill contests involving written, printed, or graphic matter; or the promotion or distribution of various physical items, such as hazardous or dangerous items, that are unfit by law to be sent through the mail.

or device with the fraudulent attributes of a false representations or lottery scheme would fall under the criminal statutes prohibiting wire fraud.[37]

USPS Said It Investigates Violations Relating to Its E-Commerce Offerings

USPS reported that the Postal Inspection Service, a part of USPS that is responsible for enforcing postal laws, has the authority and responsibility to investigate violations of law that involve USPS e-commerce products and services. USPS discussed two interrelated matters: (1) which federal laws define and apply to unlawful activity involving USPS e-commerce products and services, and (2) how the authority of the Inspection Service and other federal law enforcement agencies is defined with respect to enforcing those laws. In addition, USPS reported that the Inspection Service also has an interest in other crimes that make use of the Internet.

First, USPS reported that a large number of federal statutes, regulations, and policies are in place to ensure that USPS provides secure and reliable services that are free of fraud, waste, and abuse. These federal laws reportedly apply not only to U.S. mail, but also to USPS operations, equipment, and employees.

Concerning specific USPS e-commerce offerings, USPS told us:

- The USPS Electronic Postmark (EPM) is protected by postal laws and regulations. Thus, interfering with or misusing the EPM or electronic documents handled by a private company that incorporates the EPM would violate the law. However, the EPM does not have the same legal status as the physical postmark on U.S. mail, which is a byproduct of USPS processing and indicates USPS possession of an item for handling and delivery. As evidence that an item is "mail," the physical postmark may trigger a number of criminal statutes in the case of obstruction or theft. To the extent a physical postmark has additional legal significance, such as indicating the date when an item is deemed to have been delivered, that effect is the result of nonpostal federal and state laws and regulations, as well as contracts between private parties.

- PosteCS communications do not have the same legal status as U.S. mail, because they are not physical mail. Thus, although a number of laws apply to and protect such messages, other laws applicable only to physical U.S. mail do not.

- The electronic portion of hybrid mail—which includes the electronic portion of Mailing Online communications—does not have the same legal

[37] 18 U.S.C. § 1343.

status as physical U.S. mail because it is not yet physical mail. Once it is converted to physical mail, it would have the same status as physical mail. While a number of laws apply to and protect such electronic messages, other laws applicable to physical mail do not.

- If USPS offered a universal "electronic mailbox," which postal officials have said might be done in conjunction with some of its e-commerce initiatives, the electronic mailbox would not have the same legal status as a physical mailbox because is not a physical mailbox. Thus, although a number of laws apply to, and protect, an electronic mailbox, others applicable to physical mailboxes would not apply.[38]

- If eBillPay bills are presented only electronically, laws protect them in a different manner from the protections afforded to physical mail. Legal protections relating to electronic communications would apply. Laws and regulations that apply specifically to physical U.S. mail, and only to such mail, would not apply.

USPS told us that the Inspection Service has broad authority to investigate any criminal or civil offenses that affect the use or delivery of mail, occur on USPS property, or otherwise impair the efficient operation of USPS. The authority of the Inspection Service was further enhanced in 1998 by a delegation of authority from the U.S. Attorney General and MOUs with the Federal Bureau of Investigation (FBI) and the U.S. Secret Service that gave the Inspection Service limited jurisdiction to investigate certain crimes such as wire fraud.[39] USPS told us that the Inspection Service's role in investigations concerning postal e-commerce products and services promotes efficient law enforcement and eliminates duplication of efforts, which was one of the primary purposes of the delegation and the MOUs. USPS also said that the basis for the delegation and the MOUs was uncertainty concerning whether the mail fraud statute would apply to USPS e-commerce products and services, which had not been addressed in court, but that the wire fraud statute could be assumed to apply on the

[38] USPS reported that the specific statutes relating to the theft, tampering, or misuse of physical mailboxes, generally 18 U.S.C. §§ 1705, 1707, and 1708, would presumably not apply. In their place, the criminal statutes prohibiting electronic tampering, 18 U.S.C. §§ 1029 (access device fraud); 1030 (computer fraud and abuse); 1343 (wire fraud); and 2701(unlawful access to stored communications) would appear to apply.

[39] The delegation of authority gave the Inspection Service a limited delegation of jurisdiction to investigate violations of 18 U.S.C. §§ 1029, 1030, 1343, and 2701. The delegation of authority recognized the concurrent jurisdiction of the FBI and the U.S. Secret Service as the principal law enforcement agencies responsible for the enforcement of 18 U.S.C. §§ 1029 and 1030, and the FBI as the principal enforcement agency responsible for the enforcement of 18 U.S.C. §§ 1343 and 2701.

basis of existing case law. The delegation and the MOUs covered the following:

- criminal conduct in which USPS is an actual or intended victim;
- conduct that directly affects electronic messages conveyed by USPS and the counterfeiting or misuse of any Electronic Postmarks used by USPS; and
- criminal conduct directed against any computer, computer system, communication system, delivery system, payment system, or other similar property owned or leased by or provided to USPS.

For example, USPS told us that under its recent delegation of authority from the Attorney General, the Inspection Service would investigate illegal interception or tampering involving the USPS electronic postmark (EPM), including cases where the USPS EPM is used by a private company that recently purchased the EPM for inclusion with some of its electronic communications. Any such efforts would be based on the provision in this delegation that specifically defines "criminal conduct that has a detrimental effect upon the operations of the Postal Service" to mean "conduct that directly affects the counterfeiting or misuse of any electronic postmarks used by the Postal Service." In this regard, USPS told us that the Inspection Service has no authority to investigate electronic communications that do not "have a postal nexus." Finally, USPS said that violations of federal law relating to electronic communications without the EPM would be investigated by other federal law enforcement agencies.

In addition to these activities, USPS told us that it has enforcement interests in other crimes making use of the Internet. For example, USPS noted its longstanding relationship with the Federal Trade Commission (FTC) to protect consumers, in which the Inspection Service has jurisdictional responsibility regarding traditional mail fraud schemes that originate with an Internet solicitation and result in the mailing of a payment or merchandise. USPS estimated that currently, roughly 45 percent of Inspection Service consumer fraud cases in which the underlying offense is mail fraud originate on the Internet.

USPS Reported That Antitrust and Competition Laws Generally Do Not Apply to USPS

USPS told us that the antitrust laws and general competition-related statutes do not apply to USPS, with the exception of the advertising and competition provisions of the Lanham Act.[40] However, USPS told us that the Postal Reorganization Act of 1970 prescribes other competition-related factors that must be considered. Specifically, USPS told us:

- In ratemaking for postal services, the effect of rate increases on competition is among the statutory factors for consideration, and competitors have a formal opportunity to question and contest USPS rate and classification proposals—a right not ordinarily available to USPS with respect to the prices and services of its competitors.

- Some provisions of the Postal Reorganization Act of 1970 prescribe certain requirements for USPS that relate to competition, which would apply to some USPS e-commerce products and services. Specifically, USPS stated that with respect to "postal" services such as Mailing Online, USPS is specifically prohibited under 39 U.S.C. § 403(c) from making undue or unreasonable discrimination among mail users or from granting undue or unreasonable preferences.

- USPS does not think it could be seriously contended that the public interest would support the provision of nonpostal services having unreasonable objectives or applying irrational methods. Accordingly, while section § 403(c) of title 39 in terms seems inapplicable to nonpostal services, USPS assumes that general principles akin to those underlying that section are implicit in the policies of title 39 and thus should be applied to nonpostal services.

- Competition concerns are taken into account by USPS and its Board of Governors, who are appointed by the president and who are required by law to represent the public interest. This control mechanism, which is not present in private firms, brings to bear in USPS a standard of fairness both broader and stricter than any fair competition legislation applicable to private firms. USPS does not conceive of a situation in which the Governors would let stand a USPS offering of a service on terms legitimately shown to be contrary to unfair competition requirements applied in the private sector. In practice, opponents of USPS introduction of particular new services rarely attempt to establish a violation of particular fair competition requirements applicable to themselves. Instead, broad policy arguments are advanced concerning the degree to which

[40] The Lanham Act, among other things, protects businesses from such anticompetitive acts as false advertising and false representation about a product or service. 15 U.S.C. § 1125(a).

USPS, uniquely, should refrain from direct competition with private firms. It is this kind of basic policy issue that the Board of Governors finds it necessary to evaluate in considering whether to approve a particular initiative or how it should be structured. In some cases the Board has found it appropriate and in the public interest, for policy or prudential reasons, to hold USPS' activities well short of any considerations that private firms would observe.

Further, PRC decisions on proposed rates for USPS e-commerce products that are domestic postal products, such as Mailing Online, are subject to the requirement that each class of mail or type of mail service bear the direct and indirect postal costs attributable to it plus that portion of all other costs reasonably assignable to such class or type.[41] Concerning nonpostal and e-commerce products and services, USPS told us:

- For nonpostal services, failure to cover costs could unfairly shift costs to users of other services. Further, while section 101(d) of title 39 deals specifically with mail services, the cost apportionment policy reflected in that provision[42] seems appropriately applied to nonpostal services as well. USPS believes that it must seek to price its nonpostal services in a fair and reasonable way, including coverage of attributable costs plus a reasonable contribution to overhead.

- In providing eCommerce products and services, USPS will ensure that in the aggregate, the revenues generated by such products and services will cover their direct and indirect costs as well as make a contribution to overhead. Further, eCommerce products and services in the aggregate are to cover their incremental costs and thus not be cross-subsidized. Also, it is intended that each eCommerce product and service should cover its costs.

Major Federal Regulations Apply to USPS E-Commerce Offerings in Some Cases, But Not in Others

USPS told us that, in some cases, major federal regulations apply to its e-commerce products, including regulations adopted by USPS and other federal agencies. However, USPS said that the ability to make generalizations about how the regulations apply to USPS is somewhat limited. According to USPS, as a general matter, legal relations between USPS and other agencies are governed by provisions of the Postal Reorganization Act of 1970. These provisions specify, among other things, the application of laws to USPS, cooperation between USPS and other

[41] 39 U.S.C. § 3622(b)(3).

[42] 39 U.S.C. § 101(d) states that "Postal rates shall be established to apportion the costs of all postal operations to all users of the mail on a fair and equitable basis."

government agencies, and the relationship between USPS and the Department of the Treasury.[43] Further, USPS reported that it has authority to issue regulations pertaining to its own e-commerce products and services.

USPS provided the following examples of how the regulatory authority of other federal agencies applies or does not apply to its e-commerce products and services:

- USPS eBillPay is generally subject to the jurisdiction of the Department of the Treasury and the Federal Reserve, because the jurisdiction in question applies to USPS, its private contractor, or both. The regulations are extensive and complex.

- Laws and regulations governing Automated Clearinghouse (ACH) transactions do not apply to USPS, except when USPS chooses to make financial transactions using the National Automated Clearinghouse Association (NACHA). In those cases, the NACHA rules apply to the transactions.

- USPS' participation in NetPost Mailing Online apparently does not invoke the jurisdiction of the Federal Communications Commission (FCC). Postal electronic services do not involve USPS directly in common carriage of basic electronic information, which is regulated by FCC. Instead, these services can be classified as "enhanced" services, which currently are not regulated by the FCC.

- There are no written regulations or guidelines that require USPS to comply with FTC guidelines. USPS' established practice is for advertising initiatives to be reviewed by attorneys within its law department for legal and public policy advice. USPS may refer to various FTC regulations, for instance, the use of the word "free" (16 C.F.R. § 251.1) and on pricing comparisons (16 C.F.R. § 233.1 – 233.5). Also, USPS may go beyond what is required by FTC guidelines where it seems appropriate to assure fairness or avoid controversy.

USPS made the following points concerning its regulatory authority:

- Title 39 gives USPS the general power "to adopt, amend, and repeal such rules and regulations as it deems necessary to accomplish the objectives of

[43] 39 U.S.C. §§ 410(a), 411, and 2006.

this title."[44] This general power applies to the exercise of all USPS functions, including any use made of e-commerce.

- USPS has the authority to issue regulations that define the terms of its e-commerce offerings in the Domestic Mail Manual as appropriate, such as for Mailing Online, or in other directives.
- USPS' authority to adopt regulations defining the terms and conditions of its own nonpostal e-commerce services is functionally similar in most respects to the authority that any private company would exercise to prescribe the terms on which it is prepared to deal with its customers and suppliers.
- USPS has "no authority to act as a regulator over economic activity in general or over the Internet in particular."

USPS Reported That its E-Commerce Activities Are Generally Not Subject to Administration Policies

USPS reported that its activities in the e-commerce area are generally not subject to administration policies that apply to other executive branch agencies. USPS observed that:

- According to President Nixon, one of the objectives of the Postal Reorganization Act of 1970 was that USPS be insulated from the direct control of the president and the Bureau of the Budget, the predecessor agency to OMB. USPS is, nevertheless, sensitive to broad administration policies in this area. President Clinton's 1999-2001 budget submissions have included general policy discussions encouraging USPS' cooperative efforts with the private sector in promoting the emergence of secure and reliable electronic messaging networks, and in leveraging its capabilities to help promote universal access. USPS' new service offerings are consistent with those statements.
- The objective of insulating USPS from political control was reportedly implemented by organizing USPS as an independent establishment of the executive branch, headed by nine presidentially appointed Governors whose terms extend 9 years, beyond the term of any single administration. Since 1970, USPS has consistently maintained the view that executive orders and OMB instructions, unless grounded in separate statutory authorization covering USPS or by national security powers, do not apply as a matter of law, although the Governors, as representatives of the public interest, may find it appropriate to be guided by certain of them.

[44] 39 U.S.C. § 401(2).

- By and large, other federal authorities have respected USPS' independence, and USPS has also respected the responsibilities of those authorities and worked closely with them.

- None of the provisions of OMB Circular A-76 regarding "contracting out" of government services have been adopted. USPS has broad authority to enter into contracts, and follows the government policies in the Postal Reorganization Act of 1970 and other authorities incorporated therein.

- With regard to e-commerce, the President has included in his last three budget submissions a statement of general encouragement for USPS' cooperation with the private sector in promoting the emergence of secure and reliable electronic messaging networks and in leveraging its capabilities to help promote universal access. These presidential statements do not mention particular services or more specific policies for which USPS has responsibility.[45]

Concerns Have Been Raised About USPS E-Commerce Activities

USPS competitors and others have raised concerns regarding USPS e-commerce activities. Some of these concerns relate to the broad statutory authority that USPS asserts it has to offer e-commerce products and services in ways that USPS finds appropriate to its assigned functions and in the public interest. Also, some USPS competitors and others have recently raised concerns that USPS has an unfair competitive advantage because it is subject to different legal and regulatory requirements than are its competitors in the e-commerce area. The appropriate role and mission of USPS continues to be debated, including the extent of USPS legal authority to offer e-commerce products and services, and under what circumstances it should offer such services.

Related concerns have been raised in the past. CRS has reported that "... since early in its post-1970 history, the USPS has been charged with overstepping its mandate by offering retail and service products that are not directly related to its primary mission—delivering the mail to all parts of the country at uniform rates."[46] We previously reported that some Members of Congress and some private sector companies have said that USPS is unfairly expanding its product line to compete in nonpostal-related markets, and they have manifested their concerns in various

[45] Budget of the United States Government, Fiscal Year 2001, Appendix, 1195-96 (2000); Fiscal Year 2000, Appendix, 1191 (1999); Fiscal Year 1999, Appendix, 1126 (1998).

[46] Postal Service Diversification into Non-Mail Activities, Congressional Research Service, May 1, 2000 (RS20567).

forms.[47] Concerns have continued to be raised with respect to USPS e-commerce products and services. For example:

- Participants in the recent PRC case on USPS' proposal for a Mailing Online experiment largely focused their attention on whether USPS' status as a statutory nationwide monopoly gave it an unfair advantage as it enters the mixed electronic/hard copy communications market, and on whether USPS accurately identified Mailing Online costs.[48] During the case, several participants reached a settlement agreement with USPS, under which USPS will allow functionally equivalent, competing electronic/hard copy services to mail their products at the same postage rates USPS intends to charge for Mailing Online. According to PRC, this settlement alleviated much of the concern about unfair competition. However, PRC found that competition considerations and antitrust laws were relevant to its decision. On this matter, PRC found that Mailing Online, as recommended by the terms of PRC decision, would not constitute unfair competition or result in an unfair competitive advantage for USPS.

- In October 1998, United Parcel Service (UPS) filed a complaint with PRC that PosteCS has constituted unfair competition and is a class of mail or type of mail service and thus a domestic postal service that USPS could legally establish only by requesting a PRC decision on its classification and rates. USPS disagreed with both charges. USPS stated that PosteCS is a totally electronic service for documents; does not use USPS' physical retail, mail processing, and delivery networks; conducts all transactions through electronic communications; and is an international service. USPS also said that PRC had no authority to review USPS' categorization of PosteCS as a nonpostal service. However, PRC ruled that it has the authority to consider the claim that PosteCS is a postal service[49] and directed the complaint case to initially focus on the issue of whether PosteCS is a postal service. In August 2000, this case remained under consideration. USPS also told us that PRC does not have authority to review USPS decisions of what services are postal and nonpostal. In USPS' view, hybrid service offerings that combine electronic communications and hard copy mail, such as Mailing Online, are "postal services" that

[47] GAO/GGD-99-15.

[48] Opinion and Recommended Decision, Mailing Online Experiment, Docket No. MC2000-2, Postal Rate Commission, June 21, 2000.

[49] PRC stated that it had the discretionary authority to consider a wide range of rate and service complaints and thus was obliged to interpret the Postal Reorganization Act of 1970 and its applicability as part of the complaint process. Order Denying Motion of United States Postal Service to Dismiss Complaint and Notice of Formal Proceedings, PRC Order No. 1233, Docket No. C-99-1, May 3, 1999.

involve aspects of the acceptance, processing, or delivery of mail. Conversely, USPS stated that electronic service offerings that do not involve an aspect of the acceptance, processing, or delivery of mail are not "postal services" for purposes of PRC review.

- Concerns have been raised that USPS' dual role as a competitor and an entity with law enforcement responsibilities for its e-commerce products and services is inconsistent with fair competition. The Chairman of the House Subcommittee on the Postal Service has raised concerns that the Department of Justice (DOJ) delegation of authority to the Inspection Service in the e-commerce area gave USPS an unfair competitive advantage over private sector providers of electronic products and services who lack similar authority. DOJ defended its delegation of authority as not inconsistent with current law and stated the consideration of the issues did not negate the Attorney General's responsibility to ensure that the Inspection Service has the enforcement tools it needs to carry out its federal law enforcement mandate. However, DOJ also said that it "understands the potential for abuse that exists as a result of the law enforcement powers and protections assigned to the Postal Service, and we concede that support for the enforcement activities of the Postal Inspection Service may be viewed as somewhat incongruous with this concern." DOJ said that the drafters of the Postal Reorganization Act of 1970 did not provide safeguards against the possibility of conflicts between USPS' goals in managing the Inspection Service and the law enforcement goals of the federal government.

- In a May 8, 2000, letter to Representative Christopher Cox that was also circulated to other Members, the Executive Director of the U.S. Internet Industry Association (USIIA)[60] expressed a number of concerns, including the view that given the entry of USPS into e-commerce, its historic role as a regulator and its current exemption from antitrust considerations, it remains to be resolved whether USPS should be permitted to dominate services it may also seek to regulate. On May 17, 2000, USPS responded in a letter to Representative John McHugh, Chairman of the House Subcommittee on the Postal Service, and other House Members rebutting the USIIA concerns, stating that USPS is not in a position of regulating any portion of electronic services offered by USPS competitors, nor does it seek to do so.

[60] USIIA is a nonprofit trade association that reported its mission is to foster the growth and development of Internet commerce, content, and connectivity.

- The President and CEO of the Computer & Communications Industry Association (CCIA)[51] has recently objected to USPS offering competitive e-commerce products and services on the grounds that with an infrastructure established through taxpayer subsidies and its government-sponsored postal monopoly, USPS' entrance into these markets would be unfair and detrimental to competition and innovation. Similarly, the Chairman and CEO of UPS has also reportedly said that USPS wants to dominate the communications end of the e-commerce revolution, doing things like bill presentment and payment, but that a government monopoly should not be allowed to use the benefits of its government standing to attack the private sector.

In addition to these competition-related concerns, some specific concerns have been raised concerning USPS e-commerce products and services that relate to emerging e-commerce issues, such as consumer privacy. For example, USPS' Privacy Act statement for eBillPay was criticized this spring by the PRC's Chairman for permitting overly broad disclosure of customer information. USPS subsequently revised its eBillPay Privacy Act Statement to further restrict disclosure of customer information. In explaining the revisions, USPS noted that it had not provided, and did not intend to provide, information under its former Privacy Act statement.

During oversight hearings and in the debate over whether the nation's postal laws should be reformed, some in Congress have continued to raise questions about USPS' e-commerce activities and related legal authority, due in part to the conflicting views of USPS and some of its competitors and other stakeholders. Many of the competition-related concerns stem from the current USPS legal framework, which among other things, grants USPS a legal monopoly over the delivery of letter mail and requires USPS to provide service to all patrons in all communities and operate on a breakeven basis.

In addition, USPS stated that this framework allows USPS to develop new products and enter into markets currently being served by the private sector but exempts it from some of the laws and regulations that apply to private sector businesses. Consequently, some private sector businesses claim they are placed at a competitive disadvantage. On the basis of these concerns, some competitors and others contend that USPS should refrain from entering markets currently being served by the private sector and should limit its activities to providing hard copy delivery services. In

[51] CCIA reported that it is an international, nonprofit association of computer and communications firms as represented by their most senior executives.

addition, some stakeholders assert that if USPS is to compete in these markets, the laws should be changed so that USPS must participate on the same terms and conditions as those faced by its private sector competitors.

On the other hand, the Postmaster General and some other stakeholders have said that current laws put USPS at a competitive disadvantage and have called for changes to give USPS increased flexibility to compete. He and other stakeholders have called for granting USPS greater pricing flexibility and more authority to introduce new products. The issue of USPS' authority to offer nonpostal products and services and its specific authority to offer e-commerce products and services continues to be raised in Congress.

Conclusions

USPS is in the early stages of implementing its current e-commerce program. Since the beginning of 2000, USPS has taken a number of steps to develop and implement its e-commerce activities, including developing a definition of its e-commerce initiatives, identifying its e-commerce and related initiatives, and establishing an organizational process for approving its e-commerce initiatives. USPS has identified seven e-commerce initiatives involving products and services that facilitate the movement of messages, merchandise, and money in ways that require the use of the Internet and generate revenues for USPS. USPS has also recently outlined overall goals and strategies for the e-commerce area and developed some performance targets for its e-commerce initiatives.

Despite these steps, we have identified three problem areas in which USPS needs to improve its management of its e-commerce area. These are:

- inconsistencies in identifying e-commerce and related initiatives and in reporting the status of these activities that made it difficult for us to ensure we had a complete and accurate picture of USPS' e-commerce activities;
- inconsistencies in following the required process for reviewing and approving its e-commerce initiatives; and
- deficiencies in the financial information USPS provided for its e-commerce activities that raised concerns about the accuracy and completeness of the financial reporting for e-commerce activities.

Without reliable information, it is difficult to obtain a complete and accurate picture of USPS' e-commerce activities. According to documents provided to us by USPS, some e-commerce initiatives were implemented

without required business plans and documented approvals, which raises questions as to whether the initiatives were appropriately planned and reviewed. Finally, we do not believe the financial data that USPS provided could be used to assess USPS' progress toward meeting its overall financial performance expectation that revenues generated by e-commerce products and services in the aggregate are to cover their direct and indirect costs as well as make a contribution to overhead. We are making several recommendations to USPS that address these key management deficiencies.

In the legal area, USPS has provided legal information and analysis that should be a valuable reference to Congress and other stakeholders interested in the application of laws and regulations to USPS' e-commerce activities. USPS reports that its unique status as an independent establishment of the executive branch gives it broad legal authority and discretion to offer e-commerce products and services in ways that USPS finds appropriate to its assigned functions and in the public interest. USPS, some competitors, and other stakeholders have conflicting views on the extent of USPS' legal authority to offer e-commerce products and services, and under what circumstances it should offer these services. The appropriate role of USPS has been debated for many years and continues to be debated in the context of proposals for comprehensive legislation to reform the nation's postal laws.

Recommendations

We recommend that the Postmaster General take the following actions to help ensure more effective management and oversight of USPS' e-commerce activities:

- take appropriate actions to help ensure that e-commerce and related initiatives are appropriately identified and maintain accurate and complete information related to the status of these initiatives;
- follow processes and controls that have been established for developing and approving e-commerce initiatives; and
- provide complete and accurate information on costs and revenues for the financial data on e-commerce initiatives.

Agency Comments and Our Evaluation

USPS provided comments on a draft of this report in a letter from the Deputy Postmaster General dated August 29, 2000. These comments are summarized below and included as appendix III. We also incorporated technical comments provided by USPS officials into the report where appropriate. The Postal Rate Commission (PRC) provided comments on a

draft of this report in a letter from the Chairman dated August 25, 2000; these comments are also summarized below and included as appendix IV.

USPS said that the draft report generally described its e-commerce program at the time of our review accurately and captured the normal growing pains that most organizations go through in developing and beginning to implement something not done before. Further, USPS stated that it accepted and endorsed the report's recommendations. However, USPS noted some differences in perspective, which we discuss below.

USPS said it appreciated our draft report's candid evaluation and identification of opportunities to improve how it manages its e-commerce activities. USPS said that it is already taking the necessary actions to implement our recommendations within a management structure that will provide long-term as well as day-to-day oversight of the e-commerce program. Specifically, USPS said it would more precisely identify its new e-commerce initiatives and more completely document their review and approval. USPS also said it will require that complete and accurate cost, revenue, and performance data be tracked and periodically reported to senior management so USPS can assess whether its e-commerce program is meeting its goal in this area.

With respect to USPS' characterization of differences in perspectives on the administrative history of USPS' e-commerce initiatives, this apparently refers to our concerns about USPS' inconsistencies in applying its e-commerce definition. We recognize that this is an evolving area and some differences in interpretation of USPS' definition of e-commerce initiatives can exist. However, in some cases, it was difficult to understand the rationale for the identification of e-commerce initiatives without more clarification from USPS on how it intended to treat the revenues from these initiatives. Also, some initiatives were provided in conjunction with other products and services, and it was not clear how the revenues would relate to e-commerce versus other core products or services. USPS' consistent application of its e-commerce definitions is important so that it can maintain complete and accurate information about its e-commerce and related activities and has implications for how USPS accounts for its revenues and expenses from various e-commerce initiatives.

Concerning USPS' statement that all of its e-commerce initiatives were thoroughly reviewed and approved by senior management before implementation; if so, such approvals were not fully documented. Without documented approvals, USPS management cannot ensure that its e-

commerce initiatives are being appropriately reviewed so that they will support USPS' overall mission and goals.

USPS commented that it has been challenged by a new and extremely dynamic marketplace and that its e-commerce efforts are still in the early stages. USPS noted that its e-commerce program's most substantial progress so far has occurred while our review was being conducted this year. In that regard, USPS commented that even with its more accelerated approval process for its e-commerce intiatives, it is still carefully evaluating projects, controlling their use of resources, defining how it will measure success, and continually measuring performance against those standards. We believe that these are important steps that need to be fully and effectively implemented. In this regard, we believe that effective implementation of our recommendations should aid USPS in improving its management and oversight in the e-commerce area.

USPS also noted, and agreed with our report, that it needed better mechanisms to track and report the revenues and expenses of its e-commerce initiatives. Accordingly, USPS said it is already instituting a standard financial reporting procedure that will allow it to better assess the progress of each e-commerce initiative toward meeting its expected performance goals. We believe that the financial data deficiencies we reported are significant. The steps USPS has reported taking in this area are important and need to be effectively implemented.

In the comments provided by PRC, the Chairman stated that overall, the draft report's analysis of the issues was thorough, well-documented, and objective in its presentation of USPS views and those of other interested parties. In addition, PRC commented on one specific feature of our draft report dealing with USPS' pricing policy.

As we reported, USPS told us that it must seek to price its nonpostal services in a fair and reasonable way, including coverage of attributable costs plus a reasonable contribution to overhead. Also, USPS said that in providing e-commerce products and services, it will ensure that in the aggregate the revenues generated by such products and services will cover their direct and indirect costs as well as make a contribution to overhead. However, PRC commented that setting fees for e-commerce or other nonpostal services to achieve a revenue criterion of recovery of direct and indirect costs, plus some non-zero contribution to overhead, provides no assurance that the fees would satisfy the incremental cost test, either

individually or collectively, and thus generate revenues sufficient to be free of cross-subsidy.[52]

PRC also stated that even undertaking to satisfy the incremental cost test in the aggregate rather than individually could allow some e-commerce products to be cross-subsidized. Further, PRC said that it is not clear that it is good policy for a federal agency to offer any competitive product that is cross-subsidized. In this regard, USPS officials provided clarification during its review of our draft report that "eCommerce products and services in the aggregate are to cover their incremental costs and thus not be cross-subsidized. Also, it is intended that each eCommerce product and service should cover its costs."

Although we did not address this issue within this review, these comments further illustrate the need for accurate financial information. In addition, some postal stakeholders have raised concerns about the potential for cross-subsidization of postal e-commerce products from the revenues of other USPS products and thus are likely to focus attention on USPS' financial performance in the e-commerce area.

We are sending copies of this report to Senator Daniel Akaka, Ranking Minority Member, Subcommittee on International Security, Proliferation, and Federal Services, Senate Committee on Governmental Affairs; Representative Chaka Fattah, Ranking Minority Member, Subcommittee on the Postal Service, House Committee on Government Reform; Mr. William J. Henderson, Postmaster General and Chief Executive Officer, U.S. Postal Service; Mr. Edward Gleiman, Chairman, Postal Rate Commission; and other interested parties. We will also make copies available to others on request.

[52] PRC defined the following criteria for the incremental cost test: "The revenues collected from any service (or group of services) must be at least as large as the additional (or incremental) cost of adding that service (or group of services) to the enterprise's other offerings."

Staff acknowledgments are listed in appendix V. If you have any questions about this report, please contact me on (202) 512-8387.

Bernard L. Ungar

Bernard L. Ungar
Director, Government Business
Operations Issues

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Abbreviations

DOJ	Department of Justice
ACH	Automated Clearinghouse
BOG	Board of Governors
CCIA	Computer & Communications Industry Association
CMO	Chief Marketing Officer
CRS	Congressional Research Service
eBillPay	Electronic Bill Payment Service
eBOB	eBusiness Opportunity Board
E-COM	Electronic Computer-Originated Mail
EPM	Electronic Postmark
FBI	Federal Bureau of Investigation
FOIA	Freedom of Information Act
FTC	Federal Trade Commission
FTCA	Federal Tort Claims Act
MOU	memorandum of understanding
NACHA	National Automated Clearing House Association
NCOA	National Change of Address (program)
OMB	Office of Management and Budget
PosteCS	Postal Electronic Courier Service
PRC	Postal Rate Commission
SOHO	Small Office and Home Office
SPC	Strategic Planning Committee
SSL	Secure Sockets Layer
UPS	United Parcel Service
USIIA	US Internet Industry Association
USPS	U.S. Postal Service

Appendix I

Objectives, Scope, and Methodology

For this report, our objectives were to describe the U.S. Postal Service's (USPS) (1) e-commerce initiatives that have been implemented or are being developed; (2) goals and strategies for the e-commerce area, (3) processes for approving these initiatives, and (4) expected performance and results to date related to e-commerce initiatives. During the course of our review, we identified areas where USPS can improve its management of its e-commerce activities, and this report discusses these areas as well. An additional objective was to describe USPS' views on how major federal laws and regulations apply to its e-commerce initiatives and to identify legal issues that have been raised concerning its e-commerce activities.

To describe USPS e-commerce initiatives, we obtained a definition from USPS of what it considered to be an electronic commerce initiative; USPS' listing of e-commerce initiatives that was to correspond to this definition; and a description of each initiative, along with available supporting documentation. USPS reported e-commerce initiatives that were planned, piloted, or implemented as of September 2000. We obtained additional information on USPS e-commerce initiatives from Postal Rate Commission (PRC) proceedings and other public sources, such as the USPS Internet site. Further, we attended USPS press conferences on its e-commerce initiatives and attended a conference that included presentations by USPS officials that discussed USPS e-commerce initiatives.

We also obtained documentation from USPS on its goals and strategies, expected performance, and results to date relating to its e-commerce initiatives. The documentation included, for example, preliminary performance plans for fiscal year 2001; available performance measures, targets, and results; documentation of the processes applicable to USPS e-commerce initiatives and the approval of specific initiatives under these processes; minutes of the USPS eBusiness Opportunity Board and relevant meetings of the USPS Board of Governors; and available staffing and financial data. We interviewed USPS officials responsible for USPS e-commerce initiatives including the Deputy Postmaster General, the Chief Technology Officer, and e-commerce program officials. The USPS General Counsel and other USPS legal officials also participated in these interviews. In all cases, we obtained, when possible, documentation to corroborate oral statements.

In the area of financial results, in response to our request, USPS provided information on revenues and expenses generated by its e-commerce initiatives, although some did not have reported revenues because they

had not been implemented by USPS' cut-off date of February 2000.[1] In April 2000, USPS provided data on its revenues and expenses to date for its current e-commerce initiatives, based on USPS' list of e-commerce initiatives that was provided at that time. We did not independently verify or audit the overall integrity of USPS' data. However, we examined the data to see whether they appeared to be consistent with USPS' e-commerce definition and criteria, clear as to what was included, and complete. We notified USPS of several concerns we had with the April 2000 data; USPS acknowledged our concerns and provided revised data for some of its current e-commerce initiatives as well as its discontinued e-commerce initiatives on June 15 and June 27, 2000. We advised USPS of similar problems with the June data, and USPS provided another set of substantially revised data in July. As with the data previously provided, we did not independently verify USPS' data, but examined its consistency, clarity, and completeness.

Concerning how major federal laws and regulations apply to USPS e-commerce initiatives and relate to emerging e-commerce issues, we did preliminary research on applicable sections of the U.S. Code, USPS regulations, federal regulations, PRC decisions and proceedings, relevant court decisions, Office of Management and Budget (OMB) Circulars, and administration policies relating to electronic commerce. We also reviewed information on USPS e-commerce initiatives and other relevant literature, such as our related reports, stakeholder correspondence and press releases, and other articles in the trade press. We then obtained written responses from USPS regarding the applicability of federal laws, regulations, and policies to USPS e-commerce products and services. We also summarized our past findings on how relevant federal laws apply to USPS from our 1998 report on USPS new products and services[2] and our 1996 and 1999 reports that discussed federal privacy protections that relate to change-of-address information reported by USPS customers.[3] Due to time constraints, we did not update this past work for the purposes of this review. We also reviewed our 1995 report on government corporations[4] as

[1] USPS provided data for current and discontinued initiatives from inception, which predated fiscal year 1995, through fiscal year 1999 and partial results for fiscal year 2000. The cut-off date in fiscal year 2000 appeared to vary for some initiatives for the data that USPS provided to us in April 2000. In July 2000, USPS provided revised data with a February 2000 cut-off date for revenues and expenses generated by each e-commerce initiative.

[2] GAO/GGD-99-15.

[3] GAO/GGD-96-119, GAO/GGD-99-102.

[4] Government Corporations: Profiles of Existing Government Corporations (GAO/GGD-96-14, Dec. 13, 1995).

it related to the descriptions cited in appendix II of selected laws, regulations, and policies that may apply to USPS e-commerce activities. Further, we determined the views of some stakeholders on legal issues relating to USPS e-commerce initiatives based on public materials such as relevant PRC decisions.

We conducted our review at USPS headquarters in Washington, D.C., between January 2000 and August 2000 in accordance with generally accepted government auditing standards.

Selected Federal Laws, Regulations, and Policies That May Relate to USPS E-Commerce Initiatives According to USPS

Table II.1: Selected Federal Statutes, Regulations, and Policies That May Relate to USPS E-Commerce Initiatives According to USPS

Citation(s)	Description	USPS Comments
Selected statutes relating to USPS authority to offer e-commerce products and services		
Postal Reorganization Act 39 U.S.C. § 101(a)	Directs that USPS be operated as a basic and fundamental service provided to the people.	Provides generalized guidance about what USPS is intended to accomplish and is not intended as a comprehensive statement of powers and limitations.
	States that the basic function of USPS is the provision of postal services to bind the nation together through the personal, educational, literary, and business correspondence of the people.	The postal system as a whole is to bind the nation together. This includes the basic function of the carriage of goods, as well as supporting, ancillary, and nonpostal services.
	Directs USPS to provide prompt, reliable, and efficient services to patrons in all areas and render postal services to all communities.	This subsection applies to the postal system as a whole. USPS services should collectively provide services to all areas and communities.
Postal Reorganization Act 39 U.S.C. § 401(3)	Grants USPS powers to enter into and perform contracts, execute instruments, and determine the character and necessity of expenditures.	In conjunction with §§ 401(10), 403(a), and 404(a)(6), this subsection provides sufficient authority for USPS to offer e-commerce products and services. This subsection and §§ 401(10) and 404(a)(6) are each broad enough to empower USPS to provide whatever service or conduct whatever activity (not prohibited elsewhere) that appropriately serves the purposes set forth in law for USPS.
Postal Reorganization Act 39 U.S.C. § 401(10)	Grants USPS all other powers incidental, necessary, or appropriate to the carrying on of its functions or the exercise of its specific powers.	In conjunction with §§ 401(3), 403(a), and 404(a)(6), this subsection provides sufficient authority for USPS to offer e-commerce products and services. This subsection and §§ 401(3) and 404(a)(6) are each broad enough to empower USPS to provide whatever service or conduct whatever activity (not prohibited elsewhere) that appropriately serves the purposes set forth in law for USPS.
Postal Reorganization Act 39 U.S.C. § 403(a)	Directs USPS to provide other services, as it finds appropriate to its functions and in the public interest, incidental to the receipt, transmittal and delivery of mail.	In conjunction with §§ 401(3), 401(10), and 404(a)(6), this subsection provides sufficient authority for USPS to offer e-commerce products and services. However, this subsection is a summary of USPS duties rather than its authority.

Citation(s)	Description	USPS Comments
Postal Reorganization Act 39 U.S.C. § 403(b)	Directs USPS to maintain an efficient system of collection, sorting, and delivery of the mail.	A service ordinarily will be appropriate to the functions of USPS if it will aid USPS to improve, among other things, the efficiency or any other characteristic of one or more of its mail or philatelic services so as to add value for customers.
Postal Reorganization Act 39 U.S.C. § 404(a)(6)	Grants USPS the power to provide, establish, change, or abolish special nonpostal or similar services.	In conjunction with §§ 401(3), 401(10), and 403(a), this subsection provides sufficient authority for USPS to offer e-commerce products and services. This subsection and §§ 401(3) and 401(10) are each broad enough to empower USPS to provide whatever service or conduct whatever activity (not prohibited elsewhere) that appropriately serves the purposes set forth in law for USPS.
Postal Reorganization Act 39 U.S.C. § 404(a)(5)	Grants USPS the authority to provide philatelic services.	The USPS provision of services other than the carriage of "letters" does not signify that such other services are necessarily outside the scope of the postal laws. As an example, philatelic services are not mail but have the protection of some postal laws.
Postal Reorganization Act 39 U.S.C. § 2010	Directs USPS to promote modern and efficient operations, and refrain from engaging in any practice that restricts the use of new equipment or devices that may reduce the cost or improve the quality of postal services.	Efficiency is one factor for consideration when determining if a service is appropriate to USPS functions.
Selected Privacy Related Statutes and Regulations		
Privacy Act of 1974 5 U.S.C. § 552a	Limits the collection, maintenance, use, and dissemination of personal information by agencies and grants individuals access to information about themselves.	Applies to USPS, including USPS e-commerce products and services.
Freedom of Information Act (FOIA) 5 U.S.C. § 552	Provides persons with the right of access to a broad range of records and materials related to the performance of agency activities, other than those specifically excluded by the act.	Applies to USPS, with some exceptions, such as those stated in 39 U.S.C. § 410(c)(1) and (2).
Right to Financial Privacy Act 12 U.S.C. § 3401 *et seq.*	Prohibits federal agencies from accessing financial institution customer records unless authorized by the individual or authorized under the law for specific judicial and law enforcement purposes.	USPS does not act as a financial institution within the meaning of this statute.
Children's Online Privacy Protection Act of 1998 15 U.S.C. § 6501 *et seq.*	Prohibits unfair and deceptive acts and practices in connection with the collection and use of personal information from and about children on the Internet.	USPS considers that it should follow the standards adopted by the Federal Trade Commission for child-oriented Web pages.

Citation(s)	Description	USPS Comments
Trade Secrets Act 18 U.S.C. §1905	Prohibits disclosure of information by federal employees made with knowledge that information is confidential and its disclosure is forbidden by official agency policy, regulation, or law.	Applies to USPS, including USPS e-commerce products and services. Generally precludes USPS from releasing certain confidential, business-sensitive information about a customer from its computer files without the customer's express permission.
Electronic Communications Privacy Act 18 U.S.C. § 2701 *et seq.*	Prohibits the disclosure by certain computer storage or processing service providers of private electronic communications to a governmental entity without a search warrant or certain subpoenas.	Applies to USPS, including USPS e-commerce products and services. Applies to USPS-maintained e-commerce information prohibiting its disclosure to other federal agencies, including the Bureau of the Census and the National Archives and Records Administration.
Postal Reorganization Act 39 U.S.C. § 410(c)(1)	Exempts from FOIA disclosure the name or address, past or present, of any postal patron.	Applies to USPS, including USPS e-commerce products and services.
Postal Reorganization Act 39 U.S.C. § 410(c)(2)	Exempts from FOIA disclosure information of a commercial nature that would not be disclosed under good business practice.	Applies to USPS, including USPS e-commerce products and services.
Postal Reorganization Act 39 U.S.C. § 412	Prohibits the disclosure of lists of postal patrons or other persons by USPS employees or officers.	Applies to USPS, including USPS e-commerce products and services.
Selected Consumer Protection Related Statutes		
Fair Credit Reporting Act 15 U.S.C. § 1681 *et seq.*	Protects individuals from inaccurate or arbitrary information in credit reports that is used to determine eligibility for credit, insurance, or employment.	This statute does not apply on its own terms since USPS is not a consumer reporting agency within the definition of the act.
Equal Credit Opportunity Act 15 U.S.C. § 1691 *et seq.*	Prohibits the denial of credit based on race, color, religion, national origin, sex or marital status, age, or because the applicant receives public assistance.	Since USPS does not extent credit, this act does not apply to USPS e-commerce products and services. However, USPS considers itself bound not to discriminate in its programs.
Fair Debt Collection Practices Act 15 U.S.C. § 1692 *et seq.*	Prohibits abusive debt collection practices by debt collectors.	This act is meant for debt collection agencies and excludes debt collection by government employees. Since USPS does not extend credit, this act does not apply.
Electronic Fund Transfer Act 15 U.S.C. § 1693 *et seq.*	Establishes a framework of rights, liabilities, and responsibilities for consumers and other participants in electronic fund transfers.	Given the current form of USPS e-commerce programs, most of the act does not apply to USPS because fund transfers for USPS e-commerce services are currently not done by USPS or its agent.
Magnuson-Moss Act 15 U.S.C. § 2301 *et seq.*	Sets federal minimum standards and rules for the content and disclosure of warranties.	This act probably does not apply to USPS and USPS e-commerce products and services, which under this act do not seem to be consumer products. Under the act, "consumer product" means any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes.

Citation(s)	Description	USPS Comments
Gramm – Leach – Bliley Act (also referred to as Financial Services Modernization Act) Pub. L. No. 106-102, Nov. 12, 1999, to be codified at 15 U.S.C. § 6801 *et seq.*	Obligates financial institutions to protect and preserve the confidentiality of customers' nonpublic personal information.	Any financial institutions contracting to assist USPS in the provision of any of its services would be covered by this legislation.
Title III of the Omnibus Crime Control and Safe Streets Act of 1968 18 U.S.C. § 2510 *et seq.*	Prohibits electronic surveillance by the federal government except under carefully defined circumstances and only after securing judicial authority.	Applies to USPS, including USPS e-commerce products and services.
Bank Secrecy Act 31 U.S.C. § 5311 *et seq.*	Requires financial institutions to report the import and export of monetary instruments for purposes of acquiring information for criminal investigations.	Applies to USPS, including USPS e-commerce products and services. However, none of USPS e-commerce products and services currently trigger the reporting requirements in the act, except for Dinero Seguro, involving money sent to Mexico. (See table 1 for more information on this initiative.)
Postal Reorganization Act 39 U.S.C. § 101(d), 202(a), 403(a)	Establishes postal policies, such as apportioning postal costs to all mail users on a fair and equitable basis; provides that USPS shall be directed by Board of Governors chosen to represent the public interest; and mandates USPS to provide postal services to all communities and serve as nearly as practicable the entire population of the United States.	Incorporates elements of consumer protection through issues of postal policy, the appointment of a Board of Governors that represents the public interest, and the mandate to provide universal service.
Postal Reorganization Act 39 U.S.C. §§ 3001-3017	In general, limits "solicitation of money or property through the mails by means of false representations"; the conduct of illegal lotteries, sweepstakes or skill contests; or the promotion or distribution of various items that are "nonmailable" by statute.	Specifically applicable to USPS e-commerce initiatives (1) if the offered service is used to solicit money or property through the U.S. mail by false pretenses or (2) if a physical product is ordered and paid for electronically and then delivered by USPS.
Selected Contract and Procurement Related Statutes		
The Rehabilitation Act of 1973 29 U.S.C. § 701, *et seq.*	Prohibits discrimination against disabled individuals in programs receiving federal financial assistance.	Applies to USPS, including USPS e-commerce products and services.
The Vietnam Era Veterans Readjustment Assistance Act of 1972 38 U.S.C. § 4212	Requires federal contractors and subcontractors to take affirmative action to employ certain veterans.	Applies to USPS, including USPS e-commerce products and services.
Postal Reorganization Act 39 U.S.C. §410(b)(2), (4), and (5)	Cites contracting and labor laws that apply to USPS.	Applies to USPS.
National Labor Relations Act 29 U.S.C. § 151 *et seq.*	Governs labor management relations.	To the extent that it is not inconsistent with 39 U.S.C. §§1201-1209, this act applies to USPS.
The Javits – Wagner – O'Day Act 41 U.S.C. §§46-48	Establishes policies for government procurement from qualified agencies for the blind.	Applies to USPS, including USPS e-commerce products and services.

Citation(s)	Description	USPS Comments
The Contract Disputes Act of 1978 41 U.S.C. § 601 *et seq.*	Establishes rules for initiating and adjudicating contract claims against the U.S. government.	Applies to USPS, including USPS e-commerce products and services.
Title III of The Federal Property and Administrative Services Act 41 U.S.C. § 251 *et seq.*	Provides that federal agencies are to make purchases and contracts for property and services through full and open competition.	Does not apply to USPS.
The National Environmental Policy Act 42 U.S.C. § 4321 *et seq.*	Requires federal agencies to consider possible environmental consequences when performing their functions.	Applies to USPS, including USPS e-commerce products and services.
Selected Criminal Statutes		
18 U.S.C. § 201	Prohibits bribery of public officials and witnesses.	Applies to USPS, including USPS e-commerce products and services. Employees who accepted bribes or gratuities in exchange for information about postal customers would be subject to prosecution under this statue.
18 U.S.C. § 641	Prohibits the theft or embezzlement of public money, property, or records.	Applies to USPS, including USPS e-commerce products and services. The taking, conversion, or destruction of USPS tangible property would be a violation of this statute.
18 U.S.C. § 1029	Prohibits fraud and related activity in connection with access devices.	USPS investigative authority relating to this section is derived from 18 U.S.C. § 3061(b)(2) and a delegation of authority from DOJ.
18 U.S.C. § 1030	Prohibits fraud and related activity in connection with computers.	USPS investigative authority relating to this section is derived from 18 U.S.C. § 3061(b)(2) and a delegation of authority from DOJ.
18 U.S.C. § 1341	Prohibits frauds and swindles involving the use of the mails.	No court has yet addressed the issue of whether this statute would be applicable to USPS e-commerce products and services.
18 U.S.C. § 1343	Prohibits fraud by wire, radio, or television.	USPS investigative authority relating to this section is derived from 18 U.S.C. § 3061(b)(2) and a delegation of authority from DOJ. Based on existing case law, it can be assumed that this law would apply to certain USPS e-commerce products and services.
18 U.S.C. §§ 1691-1738	Prohibits theft, delay, and obstruction of mails, among other things	Applies to USPS, but does not apply to e-commerce products and services that do not involve hard copy mail. USPS believes that enforcement of these criminal statutes is limited to hard-copy mail, although no cases have addressed the issue.

Citation(s)	Description	USPS Comments
18 U.S.C. § 2701	Prohibits unlawful access to stored communications.	USPS investigative authority relating to this section is derived from 18 U.S.C. § 3061(b)(2) and a delegation of authority from DOJ.
Selected Statutes Relating to Ratesetting and the Postal Rate Commission (PRC)		
Postal Reorganization Act 39 U.S.C. § 101(d)	Postal rates shall be established to apportion the costs of all postal operations to all users of the mail on a fair and equitable basis.	USPS believes that while this subsection deals specifically with mail services, the cost apportionment policy reflected in this provision seems appropriately applied to nonpostal services as well.
Postal Reorganization Act 39 U.S.C. § 401(2)	Grants USPS the power to adopt, amend, and repeal rules and regulations.	This subsection applies to the exercise of all USPS functions, including any use made of electronic commerce.
Postal Reorganization Act 39 U.S.C. § 403(c)	Prohibits USPS from making any undue or unreasonable discrimination among users of the mails, and also from granting any undue or unreasonable preferences to any such user.	While USPS believes this subsection on its terms seems inapplicable to nonpostal services, USPS assumes that general principles akin to those underlying that subsection are implicit in the policies of title 39 and thus should be applied.
Postal Reorganization Act 39 U.S.C. §§ 3621 and 407(b)(2)	Grants BOG authority to establish reasonable and equitable classes of domestic mail and reasonable and equitable rates and fees for domestic postal services except as otherwise provided by this statute.	Courts have regarded postal services in this context as those services involving aspects of the acceptance, processing, or delivery of mail. In USPS' view, the term "mail" involves hard copy and not electronic transmissions.
Postal Reorganization Act 39 U.S.C. §§ 3622 and 407(b)(2)	Establishes a system for USPS to request and the PRC to provide recommendations for changes in rates of postage and fees for domestic postal services.	Courts have regarded postal services in this context as those services involving aspects of the acceptance, processing or delivery of mail. In USPS' view, the term "mail" involves hard copy and not electronic transmissions.
Postal Reorganization Act 39 U.S.C. §§ 3623 and 407(b)(2)	Establishes a system for USPS to request and the PRC to provide recommendations for changes in domestic mail classification.	Courts have regarded postal services in this context as those services involving aspects of the acceptance, processing or delivery of mail. In USPS' view, the term "mail" involves hard copy and not electronic transmissions.
Postal Reorganization Act 39 U.S.C. § 3625	Establishes actions BOG may take upon receiving a recommended decision from PRC.	BOG actions would apply to PRC decisions on USPS e-commerce products and services that are subject to PRC decisions.
Postal Reorganization Act 39 U.S.C. § 3662	Enables parties to file complaints to PRC charging that USPS rates and fees do not comply with the policies and guidelines contained in the Postal Reorganization Act.	USPS does not know of any provision for direct review or modification by PRC of any determination by USPS about whether it regards particular services as "postal." In the course of PRC's own proceedings under chapter 36, however, which may depend upon a service being "postal" for purposes of that chapter, PRC asserts the authority to form its own position on that subject for that purpose. The final determination in a particular case or controversy may rest with the courts.

Citation(s)	Description	USPS Comments
Selected Patent and Trademark Related Statutes		
Lanham Act or Trademark Act of 1946 15 U.S.C. § 1051 *et seq.*	Allows owners of trademarks to register them with the Patent and Trademark Office and prohibits others from using that trademark.	Applies to USPS, including USPS e-commerce products and services. Thus, as with other products and services, USPS can acquire trademark rights in the names used with e-commerce products and services and can register those names in the U.S. Patent and Trademark Office.
28 U.S.C. §1498	Allows patent and copyright holders to enforce patent rights against the federal government.	Applies to USPS, including USPS e-commerce products and services.
Patent Act of 1952 35 U.S.C. § 1 *et seq.*	Provides for the application for and enforcement of patent rights.	Applies to USPS, including USPS e-commerce products and services.
Other Selected Statutes		
Federal Tort Claims Act 28 U.S.C. § 2671 *et seq.*	Subjects the federal government to liability for injury or loss to the extent an individual would be liable under the law of the state in which the injury occurs.	Like the rest of the federal government, USPS is, for the most part, subject to tort liability only to the extent that immunity has been waived by this act. In 28 U.S.C. § 2680(b), the Federal Tort Claims Act (FTCA) excepts the loss, miscarriage, or negligent transmission of letters or postal matter. While application of this provision to electronic commerce services of various descriptions has not been litigated, to the extent that such services may involve "mail matter," the FTCA would bar tort liability in that arena. USPS has, with respect to specific guaranteed products, essentially waived that exception to a limited extent. Such specialized waivers would also be possible in the electronic commerce context.
The Paperwork Reduction Act of 1995 44 U.S.C. § 3501 *et seq.*	Sets policies and rules for minimizing the paperwork burden resulting from the collection of information by or for the federal government.	Does not apply to USPS.
The Government Paperwork Elimination Act of 1998 44 U.S.C. § 3504 note	Sets requirements for federal agencies to develop capabilities to permit, where practicable, electronic maintenance, submission, or disclosure of information, including the use of electronic signatures.	Does not apply to USPS.
The Chief Financial Officers Act of 1990 31 U.S.C. §§ 901-903	Establishes a Chief Financial Officer in each executive agency. Sets expectations for design, development, and deployment of modern financial systems, better performance and cost measures, and results-oriented reports on the government's operating performance.	Does not apply to USPS.

Citation(s)	Description	USPS Comments
Selected Executive Orders, Regulations, and Directives		
Executive Order No. 11,246	Prohibits discrimination and establishes equal employment opportunity requirements for federal employers and contractors.	Applies to USPS, including USPS e-commerce products and services. However, USPS maintains that executive orders and Office of Management and Budget (OMB) instructions generally do not apply to USPS, although it may choose to be guided by certain of them.
39 C.F.R. § 211.3	States that certain executive orders, and other executive pronouncements and certain circulars, bulletins, and other issuances of the OMB or particular provisions thereof, or requirements therein, apply to USPS and certain others do not apply.	USPS maintains that executive orders and OMB instructions generally do not apply to USPS, although it may choose to be guided by certain of them.
16 C.F.R. §§ 233.1, 233.5, and 251.1	Federal Trade Commission (FTC) regulations concerning marketing and advertising.	Does not apply to USPS. There are no written guidelines or regulations that require USPS to comply with FTC guidelines.
39 C.F.R. 266	Establishes USPS Privacy Act regulations governing information collected about individuals through USPS operations.	Applies to USPS, including USPS e-commerce products and services. The terms in this regulation allow disclosure pursuant to a "routine use" for the system of records published in the Federal Register.
OMB Circular A-76	Establishes federal policy regarding the performance of commercial activities and implements the statutory requirements; the supplement to the circular states the procedures for determining whether commercial activities should be performed under contract with commercial services or in-house using government facilities and personnel.	Does not apply to USPS. USPS maintains that executive orders and OMB instructions generally do not apply to USPS, although it may choose to be guided by certain of them.
OMB Circular No. A-130	Establishes uniform government-wide information resource management policies.	Does not apply to USPS. The Postal Reorganization Act requires USPS to manage its information resources in an appropriate manner.
OMB Memorandum M99-18	Directs executive branch departments and agencies to post clear privacy policies on federal web sites and provides guidance for doing so.	USPS has published on its Internet home page a generic privacy policy that it believes is in accordance with OMB guidance.

Source: USPS.

Comments From USPS

JOHN M. NOLAN
DEPUTY POSTMASTER GENERAL

UNITED STATES
POSTAL SERVICE

August 29, 2000

Mr. Bernard L. Ungar
Director, Government Business
Operations Issues
United States General Accounting Office
Washington, DC 20548-0001

Dear Mr. Ungar:

Thank you for providing the Postal Service with the opportunity to review and comment on the draft report entitled, U.S. Postal Service: Postal Activities and Laws Related to Electronic Commerce. We recognize that this study was a challenge for both groups. Our staff's challenge was to identify and assemble a large volume of information concerning our e-commerce initiatives and underlying laws while in the midst of structuring and organizing our internal processes and the management of these efforts. For your staff the challenge was to digest that financial, legal, and operational data for a dynamic, new technology area and then to quickly draft a report. Despite the vast amount of information we provided and the study's short time frame, your staff has done a professional job of presenting for the Congress the salient facts about our e-commerce program.

Discussed on p. 55.

We appreciate the report's candid evaluation and identification of opportunities to improve how we manage our e-commerce activities. The report examined the program carefully, and consequently, the report's observations and recommendations are relevant. Even though, as we have discussed with you, we have a somewhat different perspective regarding the administrative history of the e-commerce initiatives treated in the report, we acknowledge that the report generally describes the program at the time of the study accurately and captures the normal "growing pains" that most organizations go through in developing and beginning to implement something not done before. Virtually all organizations that have attempted to develop a corporate e-commerce structure have had similar challenges in their initial ventures into this emerging and rapidly changing business environment. At this point in the evolution of the business, there are few organizational standards or best practices against which any company can benchmark its efforts.

Discussed on p. 56.

We would emphasize, as does the report, that our e-commerce efforts are still in the early stages. We have already taken a number of key actions in the few months the current offerings have been in place. In fact, we think that the program's most substantial progress so far has occurred while the study was being conducted. For example, early this year we established and/or filled several senior management positions to focus specifically on setting the direction for and overseeing our emerging e-commerce initiatives. These officers, myself included, are tasked with ensuring that our involvement in the e-commerce arena is conducted in a manner that reflects our world-class reputation. Further, we had realized, and the study confirmed, that we need better mechanisms to track and report the revenues and expenses of our initiatives. We are already instituting a standard financial reporting procedure that will allow us to better assess the progress of each initiative toward meeting its expected performance goals. We will be able to clearly measure each initiative's success or failure and then make a fact-based decision to continue, modify, or terminate it.

Discussed on p. 56.

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Even before the study started, we had recognized that our existing process for senior management's review and approval of new products and services was not well-suited to e-commerce initiatives. In February, we set up an e-Business Opportunity Board (e-BOB), which I chair. It is comprised of our Chief Financial Officer, Chief Technology Officer, General Counsel, and other senior officers. Its role is to provide the essential senior-level oversight and decision-making for proposed e-commerce initiatives. In this way we are bringing new offerings "quick to market"—with discipline. We consider that our e-BOB approval process, while different, is fully as rigorous as that for our more traditional new product initiatives. It just allows us to introduce, as quickly as our competitors, new products and services into this highly competitive and dynamic marketplace. Even with this more accelerated approval process, we are still carefully evaluating projects, controlling their use of resources, defining how we will measure success, and continually monitoring their performance against those standards. All of our e-commerce initiatives have been thoroughly reviewed and approved by senior management before implementation.

Discussed on p. 56.

In the larger context of the e-commerce world, the Postal Service, like other businesses, has been challenged by a new and extremely dynamic marketplace. For all participants, this represents new opportunities, giving rise to new initiatives that require speed, flexibility, and innovation, both in their technical aspects and in how they are managed. We think that we have developed and are implementing an e-commerce model that balances the demands of a radically different business environment with a sound and responsive management approach.

Discussed on p. 56.

Concerning the report's three recommendations (page 85), we not only accept but endorse them. As noted above, we are already taking the necessary actions to implement them within a management structure that will provide long-term as well as day-to-day oversight of the program. We will more precisely identify our new e-commerce initiatives and more completely document their review and approval. And for every initiative, we will require that complete and accurate cost, revenue and performance data be tracked and periodically reported to senior management. With this essential information, we can assess whether the program is continuing to meet its goal of increasing the value, availability, and affordability of our products and services for all our customers.

Discussed on p. 55.

Now on p. 54.

We consider that your report provides valuable documentation of our position that the Postal Service has a valid and appropriate role to play in the e-commerce arena. Our long history as a trusted provider of universal communication services for the American people and the unquestioned value of our presence in and service to every community make it logical and, we think, imperative that we continue to develop the e-commerce products and services that our customers will need and demand both now and in the future for their business and personal lives.

If you or your staff would like to discuss any of these comments further, I am available at your convenience.

Sincerely,

John M. Nolan

Comments From PRC

POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

EDWARD J. GLEIMAN
CHAIRMAN

August 25, 2000

Bernard L. Ungar
Director, Government Business Operations Issues
General Government Division
United States General Accounting Office
Washington, D.C. 20548

Bernie,
Dear ~~Mr. Ungar~~:

I am responding to your letter of August 21, which invited comments on your draft report entitled *U.S. Postal Service: Postal Activities and Laws Related to Electronic Commerce* (GGD-00-188). The report addresses salient and timely issues raised by the Postal Service's development of e-commerce and related initiatives. Overall, I think the draft's analysis of those issues is thorough, well-documented, and objective in its presentation of the views of the Postal Service and the other interested parties cited.

Discussed on p. 56.

Certain portions of the draft report involve evidence presented in the omnibus rate case currently being litigated before the Commission, and legal positions taken in a pending complaint proceeding regarding the Commission's jurisdiction over an e-commerce initiative. It would, of course, be inappropriate to offer comments on any matters at issue in those cases.

Discussed on pp. 56-57.

As a matter of postal ratemaking theory, one feature of the draft report requires comment. The Postal Service reportedly told your staff that it acknowledges an obligation to price its e-commerce and other nonpostal products and services "in a fair and reasonable way, including coverage of attributable costs plus a reasonable contribution to overhead." Draft Report at 73. To satisfy this perceived obligation, the Postal Service reportedly also undertook to "assure that in the aggregate the revenues generated by such products and services will cover their direct and indirect costs as well as make a contribution to overhead." Ibid.

Now on p. 46.

This undertaking will not necessarily produce rates that satisfy the criteria applied to domestic postal services. The rates for each domestic subclass, to be considered fair and reasonable under the criteria of the Postal Reorganization Act, must generate sufficient revenues to be free of cross-subsidy. According to a ratemaking approach the Postal Service has espoused in the last two omnibus rate proceedings for pricing postal

Bernard L. Ungar
Page 2 of 2

services generally, the proper economic measure of fairness and reasonability is the "incremental cost test," defined by the following criterion:

> The revenues collected from any service (or group of services) must be at least as large as the additional (or *incremental*) cost of adding that service (or group of services) to the enterprise's other offerings.

Direct Testimony of John C. Panzar on Behalf of United States Postal Service in Docket No. R97-1, USPS-T11 at 8.

Discussed on pp. 56-57.

Setting fees for e-commerce or other nonpostal services to achieve a revenue criterion of recovery of direct and indirect costs, plus some non-zero contribution to overhead, provides no assurance that the fees would satisfy the incremental cost test, either individually or collectively. Even undertaking to satisfy the incremental cost test in the aggregate rather individually could allow some e-commerce products to be cross-subsidized. It is not clear that it is good policy for an agency of the Federal Government to offer any competitive product that is cross-subsidized.

Thank you for the opportunity to offer comments on the draft report.

Sincerely,

Edward J. Gleiman
Chairman

Appendix V

GAO Contacts and Staff Acknowledgements

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Acknowledgments

Teresa L. Anderson, Kenneth E. John, Angela S. Davis, Casey L. Brown, Hazel J. Bailey, Alan N. Belkin, and Victor B. Goddard made key contributions to this report.

Postal Enterprise:
Post Office Innovations with Congressional Constraints, 1789-1970

by

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Prepared for the Postal Rate Commission

May 30, 2000

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1. Introduction

The spare language of the Constitution's postal clause--"The Congress shall have Power . . . To establish Post Offices and post Roads"--left undefined two important relationships: the relation of government posts to the private sector and the relationship between Congress and postal administrators.[1] The first fueled long-running debates about the limits of postal enterprise. How far could the government post be developed before it unreasonably or unconstitutionally intruded on services that should be left in private hands? The second presented recurring problems for those favoring postal enterprise. Did administrators have the authority to launch innovations on their own, or did they need specific permission from Congress?

The Boundaries of Postal Enterprise

A reasonable reading of the postal clause empowered the central government to set up an institution that moved information and at least some types of goods. Through most of the nineteenth century, the post office offered services that transmitted information and facilitated commerce. At the same time, however, the post office established itself as the principal federal presence in people's everyday lives, warned the private sector not to intrude on its mail monopoly, and began exercising considerable administrative latitude--all of which strengthened its later claim to offer expanded communication and transportation services.

When the post office considered adopting new technologies or services, the innovations elicited--even tested--different theories or understandings about the proper relationship between government and the private sector. Most agreed that

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[1]U.S. Const. art. I, sec. 8.

the post office should act in a business-like fashion while attending to acknowledged public service functions. This meant operating with some entrepreneurial instincts such as maximizing use of the department's nationwide infrastructure. Few disagreed that the postal service should facilitate communication and commerce; but at what point did facilitation become competition? Even when the post office refrained from competing directly with private sector firms, its decisions about services tended to favor some mailers over others. Postal innovations often altered competitive balances *within* the private sector and became a major source of controversy.

The boundaries of postal enterprise were tested more vigorously by the Populists and Progressives from 1880 to 1920 than at any other time in American history. Their notions of political economy offered the best-developed rationale for an aggressively innovative post office. The Populists, a coalition of rural interests that emerged in the 1880s, worked to redress some of the excesses of large-scale industrialization and commercial development that were transforming the United States. Early in the twentieth century, Progressives--a force in both major parties--carried much of the Populist agenda forward but with a more urban, cosmopolitan flavor.

For the most part, Populists sought an "active, neutral state," according to Norman Pollack. Government regulation of or participation in key sectors of the economy--transportation, communication, and banking--would preserve competitive opportunities for private enterprises regardless of size. Without state action in these basic services, Populists feared, capitalism degenerated into monopoly when firms parlayed transportation, communication, or banking advantages into anti-competitive positions. Formal American economic thought at the time, heavily influenced by German theorists, had much in common with the Populists' pragmatic notions of the activist state. Progressives accepted many Populist precepts, especially as they applied to public utilities, including some aspects of communication. Progressives also strengthened claims for government-run enterprises by championing "scientific management," shorthand for reducing the influence of partisanship while incorporating business-like principles in the administration of public affairs.[2]

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[2]Norman Pollack, *The Humane Economy: Populism, Capitalism and Democracy* (New Brunswick: Rutgers Univ. Press, 1990), 136, 163; Morton Keller, *Affairs of State: Public Life in Late Nineteenth Century America* (Cambridge: Belknap Press of Harvard Univ. Press, 1977), 375, 429-430, 571.

When Populists and Progressives sought constitutional authority to support public enterprise, the commerce clause furnished some hope but proved more helpful in regulating private-sector activities than in initiating public-sector ones. Instead, enthusiasts for government enterprise embraced the postal clause. Citing that authority, Populists and Progressives spoke of postal savings, a postal express (i.e., parcel post), and a postal telegraph and telephone all in the same breath--and attained the first two objectives by 1912.[3] This marked the heyday of efforts to expand the domain of postal enterprise. Later innovations occurred *within* the boundaries of postal enterprise drawn by the early twentieth century.

Congressional Control versus Administrative Discretion

Until the Postal Reorganization Act, Congress controlled--or could control, if it cared to--virtually all facets of postal activity. As a practical matter, the postmaster general enjoyed some administrative discretion. But the latitude accorded the post office often depended on the politics of the moment--the press of other matters occupying Congress's time, the partisan configurations within Congress and between the legislature and the White House, and the activities of postal patrons and competitors.

From the start, Congress closely supervised the modes of transportation used to move the mails because they affected the quality of postal service and shaped the transportation industry. But the post office usually saw the utility for postal purposes of innovations in transportation technology before Congress recognized their value. Thus, the post office often took the initiative to experiment with new technologies before their wide-scale adoption. Congress likely knew of most such efforts even if it had not expressly authorized them. But Congress had to legislatively acknowledge new transports before they could play a major role in moving the mails. Of course, the post office could partly engineer congressional approval for some innovations. After all, the post office controlled much of the pertinent information, commanded the relevant expertise, and--considering its centrality to the patronage system--exercised considerable political influence.

Although the post office evolved into a huge, complex institution between 1790 and 1970, mechanisms for formal congressional control grew apace. "The potential ability of Congress to influence and direct postal operations has little

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[3]Wayne E. Fuller, "The Populists and the Post Office," *Agricultural History* 65 (Winter 1991): 1-16.

limit," a report for the Kappel Commission concluded on the eve of reorganization. The specific lines of congressional influence over the postal establishment took several pages to enumerate. Furthermore, postal innovations could be constrained by other players in the postal environment, most notably labor unions and regulatory bodies such as the Interstate Commerce Commission and the Civil Aeronautics Board.[4]

Scope of the Study

This study sketches the actual and perceived boundaries of postal enterprise from 1790 to 1970. It emphasizes major innovations in postal transportation and services. Other innovations, such as those in personnel management, ratemaking proceedings, mail handling, and so forth, fall outside the purview of this inquiry. In examining each innovation, this study focuses on such questions as: What was the original impetus for change: did it emanate from the post office, Congress, or elsewhere? What kind of controversy, if any, did proposed innovations kindle? To what extent were innovations structured to minimize competition with private firms furnishing similar services? If implemented, was the innovation subject to continuing scrutiny by Congress or other bodies? To what extent were innovations designed to protect the post office's monopoly over letters?[5]

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[4]Arthur D. Little, Inc., "Report of the General Contractor," in *Towards Postal Excellence: Report of the President's Commission on Postal Organization* (Washington, D.C.: Government Printing Office, 1968), Annex 1, pp. 108-21, quote at 112.

[5]The Postal Rate Commission's statement of work for this study reads as follows:

> Accordingly, the Contractor will research legislative, executive branch, judicial, scholarly and other available resources to develop an analysis of the manner and extent to which potential and actual innovations in the array of services provided by the United States Post Office Department, from its foundation up to passage of the Postal Reorganization Act of 1970, were subjected to scrutiny and control by Congress, the Executive Branch and the U.S. Courts. Among other germane topics, the analysis shall address with particularity: (1) the adoption of new technology by the Post Office Department, and its provision of new services, for the purpose of performing essential postal, as well as other functions; (2) the relationship of the Post Office Department's monopoly over the carriage of letter mail to the scrutiny and control applied to its innovations; and (3) the extent to which particular actual or proposed innovations effectively would have put, or did put, the Post Office Department into competition with private businesses, and the significance of such competition to the scrutiny and control applied to its innovation.

The report is divided into seven parts. The next section examines major transportation innovations. Part 3 reviews innovations in mail services; it devotes considerable attention to parcel post because that represented the most controversial innovation actually implemented. Part 4 is confined to one topic: postal savings banks; this innovation moved beyond traditional postal functions to compete, however modestly, with private banks. Part 5 sketches the eighty-year campaign for a postal telegraph and telephone; though never realized, this proposed innovation engages all the questions guiding this study. Part 6 deals briefly with innovations in the years leading up to postal reorganization. Part 7 summarizes the report and draws conclusions.

2. Transportation Innovations

The post office's most noticeable technical innovations, at least until the advent of sophisticated sorting equipment in the mid-twentieth century, came in the realm of transportation technology. The department adopted a succession of new transports--stagecoaches, fast schooners, steamboats, railroads, pneumatic tubes, airplanes, and more--to carry the mail. Each technology presented two questions that affected the post office's relationship with private firms and Congress: Should the post office operate transports itself or contract with private firms for the service? Did the department need congressional assent to innovate--to adopt the newest technologies?

From the start, most mail service was a joint public-private venture: the post office received mail, processed it, and delivered it to the recipient, but transportation from one town to another was purchased--with a few exceptions--from private firms. Although Congress retained ultimate control over the department's use of these transports, the post office often experimented with new modes of moving the mails before receiving legislative authorization.

Transportation Innovations before the Railroads

Initially, post riders employed by the post office carried mail from town to town. The first noteworthy improvement in mail transport, the use of stagecoaches, was authorized by the Continental Congress in 1785.[1] After the adoption of the Constitution, the new Congress in 1794 renewed the postmaster general's authority to contract with private stagecoach firms, though post riders and sulkies continued to provide much of the transportation.[2] Congress set the

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[1]29 *Journals of the Continental Congress* 684.

[2]Post Office Act of May 8, 1794, 1 Stat. 357.

basic terms under which the postmaster general purchased stagecoach transportation. The 1794 law required that expenses for stagecoach service should not exceed revenues.[3]

Purchasing transportation from stagecoach lines marked the beginning of a long-lasting policy that used mail contracts to encourage--even subsidize--the growth of private carriers. With the inducement provided by mail contracts, stagecoach companies presumably expanded their operations into new areas, building a transportation network for the young nation. Through mail contracts, Congress provided similar support for the expansion of railroads, ocean-going steamships and airlines. Rather than competing with private transports, except on rare occasions, the Post Office became one of their biggest customers and boosters.

One of the rare occasions in which the post office directly entered the transportation business came at the close of the 1700s. When private stagecoach transportation failed to provide satisfactory service on key lines, the post office experimented with operating its own transports--both schooners along the coast and stagecoaches on key segments of the main North-South post road. Apparently in both cases, Postmaster General Joseph Habersham inaugurated service on his own initiative.

Habersham first authorized the purchase of schooners to start a coastwise mail service in 1798. Fierce congressional debates in late 1798 and early 1799 had overburdened post riders with letters, public documents, and newspapers to such an extent that the mails were moving slower than usual, especially on the primitive post roads south of Petersburg, Virginia. Southern senators and congressmen complained to Habersham about the unsatisfactory service. The postmaster general decided to avoid the problem of the land route by carrying mails to the South using government-owned and operated schooners. He purchased three ships and arranged for crews and provisions.[4]

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[3]Congress modified this condition slightly in 1802 by allowing the postmaster general to pay a premium of one-third above the amount for horseback service on the expensive-to-serve main post road between Petersburg, Virginia, and Georgia. Act of May 3, 1802, 2 Stat. 191.

[4]The best account of this experiment is Arthur Hecht, "Government-Owned and Operated Coastwise Mail Service of the Eighteenth Century," *American Neptune* 22 (January 1962): 55-64.

Habersham believed the new service would provide for the "safe conveyance of Newspapers and the regular and expeditious carriage of the mails" in ten days rather than the usual two weeks or more.[5] Schooners sailed from New York City and Philadelphia to Charleston, where the mails were transported inland. One shipment of newspapers to Charleston, representing mails that had accumulated over two weeks, weighed 500 pounds. Despite advantages in shipping bulky mail by sea, the government-owned service died after sixteen months. The service was expensive, and taking on freight and passengers to defray costs made it difficult to adhere to a regular mail schedule. Also, once mails reached southern ports, they were still carried inland slowly, not appreciably improving delivery.[6]

In May 1799, Habersham began operating government-owned stages on the line between Philadelphia and Baltimore, "a bold experiment which few questioned at the time," in the words of one postal historian.[7] The government service was probably inaugurated because private stages arranged their schedules more for passengers' convenience than to make mail connections on time. The Post Office Department's stage service survived the change from Federalist to Republican (i.e., Jeffersonian or Anti-Federalist) administrations. Habersham's successor, Gideon Granger, extolled the success of the government stages in a report to Congress. "For the last year and a half, the fare of the travelers [carried on the government stages] has defrayed the expenses of the establishment, and the actual profit has been for that time equal to the whole expense of transporting the mail." The government stages carried the mail "with unexampled regularity and despatch . . . and secured from robbery and inclement weather."[8]

The Senate had asked for Granger's report to assess the feasibility of expanding the government stagecoach line to the whole Maine-to-Georgia post road. Granger analyzed the economics of the proposed government system,

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[5]Habersham to John Prior, Feb.8, 1799, Letterbook of the Postmaster General, microfilm edition, roll 8, pp. 280-81.

[6]Hecht, "Coastwise Mail Service."

[7]Wayne E. Fuller, *The American Mail: Enlarger of the Common Life* (Chicago: Univ. of Chicago Press, 1972), 152-54, quote at 152; Wesley E. Rich, *The History of the United States Post Office to the Year 1829* (Cambridge: Harvard Univ. Press, 1924), 96-97.

[8]Gideon Granger to James Jackson, chairman of the Senate post office committee, March 23, 1802, *American State Papers: Post Office*, class 7, pp. 21-22 quote at 22. This experiment is also discussed in Oliver W. Holmes and Peter T. Rohrbach, *Stagecoach East: Stagecoach Days in the East from the Colonial Period to the Civil War* (Washington, D.C.: Smithsonian Institution Press, 1983), 118-19.

including the revenue that would be derived from carrying passengers along with the mail. He concluded that the northern portion of the line--from Maine to Virginia--might be operated profitably, but that the southern portion would not produce enough revenues to cover expenses.[9] Congress declined to act on the ambitious proposal, but that did not deter Postmaster General Granger from adding another segment, the New York-to-Philadelphia line, to the government service in 1810. Private stages had "given unbelievably bad service" on this key route.[10] When Return J. Meigs, Jr., became postmaster general a few years later, he tried to shift service on the New York-Philadelphia line back to private stages. But contractors tendered no reasonable bids. Meigs decided to continue the government stages to serve "as a check upon contractors, both in repressing, and stimulating contractors to a faithful discharge of their duty."[11] Meigs ultimately sold the government stage lines to a private contractor in 1818. By then, the extended lines were no longer profitable, the postmaster general was devoting too much time to managing the service, and private contractors were complaining about government competition.[12]

Steamboats represented the major innovation in transportation technology before the railroads. And yet steamboats had a relatively modest impact on domestic mail transportation (ocean-going steamship lines, however, proved significant in international mail exchanges).[13] Apparently the post office did not use the new transports until Congress in 1813 authorized the postmaster general to consider awarding contracts to steamboat lines where they would provide service comparable, in regularity and cost, to land transports.[14] In 1823, Congress declared waterways on which steamboats travelled to be post roads, curtailing the growing practice of steamboat crews and passengers carrying letters outside the mails.[15]

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[9]Granger to Jackson, *American State Papers*, 21-27.

[10]Fuller, *American Mail*, 153.

[11]Return J. Meigs, Jr., quoted in Ibid.

[12]Holmes and Rohrbach, *Stagecoach East*, 120.

[13]Ross A. McReynolds, "History of the United States Post Office, 1607-1931" (Ph.D. dissertation, Univ. of Chicago, 1935), 77-81.

[14]Act of Feb. 27, 1813, 2 Stat. 805.

[15]Act of March 3, 1823, 3 Stat. 764.

Postal Expresses

Until telegraph lines spanned the continent in 1861, most information moved through the nation at the speed of the mails. Newspapers and businesses dependent on the speedy transmission of information grew impatient with regular postal services. When they launched private expresses to bring information in advance of the regular mails, the Post Office Department responded with its own services. The postmaster generals believed--and Congress concurred--that postal expresses equalized people's access to timely news, especially market information. Fresh, *publicly available* market intelligence would reduce the advantages of brokers and speculators who had private channels of communication. Postal officials typically started expresses by modifying the terms under which regular mail contractors operated.

The post office launched its first express in 1825, though earlier relays had speeded military dispatches during the War of 1812. An upswing in cotton prices in 1824-25 convinced Postmaster General John McLean of the need for an express between New York and New Orleans. When news of Liverpool's rising cotton prices reached New York, speculators dispatched coastal packet ships to southern cotton markets. The first messengers to arrive made substantial profits for their employers by purchasing cotton at normal prices. This was hardly an isolated occurrence. Speculators in eastern ports, especially New York, sought advance information about fluctuations in distant markets. Ships from Europe sometimes dawdled along the coast while a courier carried market information ashore. Messengers then hurried southward. Some even alleged that mail contractors took bribes to delay the mails while private messengers dashed ahead to convert their exclusive market information into profits.[16]

Not surprisingly, commodity producers and brokers acting without the most current market information complained; they had to await the arrival of the much slower mails with their newspapers, price currents, and letters. In May 1825, McLean solicited bids from contractors willing to establish an express to connect northeastern commercial centers with the cotton-producing regions. The post office express would convey information about "any sudden and important change in the price of the principal staples of our Country." Postmasters along the route

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[16]Robert G. Albion, *The Rise of New York Port* (New York: Charles Scribner's Sons, 1939), 53, 114-15; Richard R. John, *Spreading the News: The American Postal System from Franklin to Morse* (Cambridge: Harvard Univ. Press, 1995), 83-87.

would arrange for publication of the intelligence in local papers.[17]

A North Carolina newspaper near the proposed route applauded the plan:

> on occasions of great importance to the commercial community, to send express mails on their [the mail contractors'] lines, at the rate of 11 miles an hour, and thus, by affording to all the news of important changes in the markets, to put a stop to the system of speculation which has lately been so extensively practised by individuals of one commercial town on those of another who were not possessed of the same means of information.[18]

But another editor complained, "Is this minute interference with the private relations of men compatible with the general duties of government?"[19]

The next postmaster general, William T. Barry, also initiated a postal express in the early 1830s when a New York newspaper began running its own horse relays. The New York *Journal of Commerce* launched an express to obtain Washington, D.C., news before the mails arrived. Readers prized timely political intelligence from the nation's capital as it often influenced financial and commercial markets. The post office responded with an express starting on January 31, 1833, so that all New York City newspapers, and their readers, would have equally timely access to market-moving political news. The department instructed the mail contractor to transport newspaper exchanges and some letters by a relay of horses in advance of the stagecoach mails.[20] The New York and Philadelphia postmasters were directed to "always have your office open at night for the receiving of the express. . . ." Editors could pick up their exchange papers and letters "at night, whatever may be the hour of its arrival."[21]

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[17]Circular from John McLean, May 10 and 12, 1825, Letterbook of the Postmaster General, D: 441, Record Group 28, National Archives.

[18]*Fayetteville Observer*, May 19, 1825, reprinted in "The Mails," *Niles' Weekly Register* 28 (May 28, 1825), 194.

[19]Thomas Ritchie, editor of the Richmond *Enquirer*, June 3, 1825, quoted in John, *Spreading the News*, 84-85.

[20]A number of letters and other documentary material relating to this express are in Sen. Doc. 86, 23d Cong., 2d sess. 59-69, 277-302 (1835). See also Richard B. Kielbowicz, *News in the Mail: The Press, Post Office and Public Information, 1700-1860s* (New York: Greenwood Press, 1989), 165-67.

[21]O. B. Brown, superintendent of contracts, to postmasters at Philadelphia and New York, Jan. 28, 1833, in Sen. Doc. 86, 23d Cong., 2d sess. 293 (1835).

For the next few months during the 1832-33 congressional session, the *Journal of Commerce* and the post office each jockeyed to give its express advantages over the other. The post office revived its express during Congress's 1833-34 session.[22] Doubts about the propriety of a government express prompted a Senate investigation. A committee reported in January 1835 that "the object of the Department was laudable and praiseworthy." Private "mode[s] of communication" allow individuals to receive intelligence and act upon it "before the community at large can have the benefit of it through the medium of the Government mails." When that happens, "the Government should not hesitate to adopt means, *although of an expensive character*, to place the community generally in possession of the same intelligence at as early a period as practicable."[23]

The revival of the *Journal of Commerce's* express in December 1835, plus complaints from the West and South about commercial agents using their exclusive market intelligence to exploit farmers, prompted Congress to put post office expresses on a firmer footing.[24] A 1836 law empowered the postmaster general "to establish an express mail, in addition to the ordinary mail, on any of the post roads in the United States. . . ."[25] During the next three years, the post office ran expresses between the major commercial cities that cut delivery time by half. Horseback riders carried the express mails over most of the routes except where railroads or steamboats offered faster service. The Post Office Department discontinued its expedited service in 1839 as the speed of the regular mails--using more railroads and steamboats--approached that of the expresses.[26]

The most celebrated express in American history ran between St. Joseph, Missouri, and San Francisco for eighteen months. It stemmed mainly from private rather than government initiative, but it did blur the distinction between the two.

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[22]William H. Hallock, *Life of Gerard Hallock, Editor of the New York Journal of Commerce* (New York: Oakley, Mason, 1869), 300-302.

[23]Sen. Ex. Doc. 86, 23d. Cong., 2d sess. 113-14 (1835) quoted in Edward G. Daniel, "United States Postal Service and Postal Policy, 1789-1860" (Ph.D. dissertation, Harvard Univ., 1941), 222-23.

[24]James L. Crouthamel, *James Watson Webb: A Biography* (Middleton, Conn.: Wesleyan Univ. Press, 1969), 68; Minority Rep. of Sen. Comm. on Post Offices and Post Roads, in *Register of Debates in Congress*, 23d Cong., 1st sess., appendix, 241 (1834).

[25]Act of July 2, 1836, 5 Stat. 88.

[26]Delf Nororna, "The Express Mail of 1836 to 1839," *American Philatelist* 56 (September 1943): 774-85; 1839 *Annual Report* 613.

The Pony Express was launched on April 3, 1860, by the stagecoach firm of Russell, Majors & Waddell. During 1860, Congress debated the merits of various arrangements to transport the mails overland to California. Russell, Majors & Waddell started running relays of horseback riders to attract favorable notice in Congress for its route. Not until March 1861 did Congress pass a law formally recognizing the Pony Express as part of the post office. Ironically, the company operating the Pony Express did not receive the mail contract; it went instead to the Butterfield Overland Mail Co. Butterfield, however, subcontracted some of the relays to Russell, Majors & Waddell.[27]

The law incorporating the Pony Express into the federal postal system stipulated that the contractor could cease providing this special service on completion of the telegraph lines from the Missouri River to the Pacific. This occurred on October 24, 1861, ending the Pony Express eighteen months after it had started, and a mere seven months after it came under control of the Post Office Department.[28]

Railroads

Railroads provided the bulk of inter-city mail transportation from the mid-1800s to the mid-1900s. To enhance railroads' value to the postal system, the department experimented with a number of innovations. For the most part, postal officials undertook the experiments before securing congressional authorization.

The attributes of railroad transport--speed, regularity, bulk, and weight--perfectly suited the Post Office Department's needs. Touting these advantages, railroad promoters sought aid from Congress in 1819, 1824, and 1825 to help launch the first rail lines. Congress declined to act. In the early 1830s, mail contractors, then relying principally on stagecoaches, began arranging with early railroad lines to carry the mail.[29] The department apparently consented to these arrangements. In his 1834 annual report to Congress, Postmaster General William

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[27]Le Roy Hafen, *The Overland Mail, 1849-1869* (1926; reprint ed. New York: AMS Press, 1969), 165-91; Arthur Chapman, *The Pony Express* (1932; reprint ed. New York: Cooper Square Publishers, 1971).

[28]Act of March 2, 1861, 12 Stat. 206.

[29]McReynolds, "History of the U.S. Post Office," 81; Daniel, "U.S. Postal Service," 140-42.

T. Barry noted that two railroads already "afforded great and important facilities to the transition of the great eastern mail." Barry advised Congress, however, that railroad "corporations may become exorbitant in their demands, and prove eventually to be dangerous monopolies."[30]

Barry continued using railroads without express congressional authorization; by 1837, the mails were carried on 65 percent of the nation's 1,497 miles of rail lines.[31] Some railroad mail cars were even constructed under the direction of the department.[32] In 1838, Congress declared every railroad a post route and empowered the postmaster general to "cause the mail to be transported thereon, provided he can have it done upon reasonable terms," paying no more than 25 percent above "what similar transportation would cost in post coaches."[33] The postmaster general found the terms set by Congress too restrictive in negotiating contracts and he creatively interpreted them. Within seven months, Congress modified the conditions for purchasing railroad transportation. But this was just the beginning: for many decades, the railroads, post office, and Congress struggled over deciding the appropriate compensation for transporting the mail by rail.[34]

Two post office innovations in railroad mail transportation--railway post offices (RPOs) and fast mail trains--substantially improved the speed of delivery. RPOs cut delivery times by having clerks sort mail while trains ran between stations. Small-scale experiments with RPOs apparently began in 1862 when a post office route agent arranged with a railroad company to fit a railway car with sorting cases.[35] Two years later, Postmaster General Montgomery Blair directed the postmaster in charge of the Chicago Distributing Post Office to "test [RPOs] by actual experience." He was empowered "to arrange with railroad companies to

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[30]1834 *Annual Report* 44-45, in Sen. Ex. Doc. 1, 23d Cong., 2d sess. (1835).

[31]Daniel, "U.S. Postal Service," 143.

[32]*Niles' Weekly Register*, May 18, 1838, in Bryant A. Long and William J. Dennis, *Mail by Rail: The Story of the Postal Transportation Service* (New York: Simmons-Boardman Publishing, 1951), 98.

[33]Act of July 7, 1838, 5 Stat. 283.

[34]See Lewis H. Haney, *A Congressional History of Railways in the United States* (1908 and 1910; reprint ed. New York: Augustus M. Kelley Publishers, 1968), 1: 318-26, 2: 200-13; Daniel, "U.S. Postal Service," 144-72.

[35]Carl H. Scheele, *A Short History of the Mail Service* (Washington, D.C.: Smithsonian Institution Press, 1970), 94.

furnish suitable cars for traveling post offices," designate "head offices," and select clerks.[36] The first post office-sanctioned RPO left Chicago on August 28, 1864. According to one account, RPO service started "in spite of the indifference of Congress . . . and the ridicule of businessmen."[37] Within several months, however, Congress passed legislation approving the employment of railway mail clerks and the service expanded rapidly.[38]

Sorting mail en route helped speed the mails, but further improvements in the railway mail service could not be effected as long as trains were scheduled to mainly accommodate passengers and baggage. In 1875, the post office secured the cooperation of some railroads to experiment with special trains scheduled to suit the dynamics of the postal system. Dubbed "fast mail trains," they started service in September. The inaugural run of the New York-to-Chicago train carried 47 bags of letters, 663 sacks of newspapers, plus another 50,000 newspapers--a total of 33 tons. A carload of public officials, publishers and editors accompanied the mail to celebrate the new service.[39]

Despite the unquestioned success of the experimental fast mail trains, the post office had to suspend service several months later. Congress, in one of its recurring struggles with railroads over compensation for carrying the mail, in 1876 reduced payments to railroads by 10 percent.[40] Within ten days, the railroads stopped cooperating with the department in providing the fast mail trains. Responding to complaints from railroads, the public, and postal officials, Congress in 1877 established a "special facilities fund" from which the postmaster general could draw funds to pay for rapid mail service. The fast mail trains resumed service.[41]

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[36]Montgomery Blair to George B. Armstrong, 1864, reprinted in Long and Dennis, *Mail by Rail*, 111-112.

[37]Long and Dennis, *Mail by Rail*, 111. Congress, of course, was preoccupied by the Civil War.

[38]Act of March 3, 1865, 13 Stat. 506.

[39]"The New-York and Chicago Fast Train," *New York Times*, 26 Aug. 1875, p. 5; *History of the Railway Mail Service* (Washington, D.C.: Government Printing Office, 1885), 101-104, 182-83.

[40]Act of July 12, 1876, 19 Stat. 79.

[41]Act of March 3, 1877, 19 Stat. 384; Haney, *Congressional History of Railways*, 210-11; Scheele, *A Short History of the Mail Service*, 104-105.

Pneumatic Tubes

Another transportation innovation to speed mail delivery in large cities was the pneumatic tube and, again, the Post Office Department pushed Congress to appropriate funds to develop the new technology. In his 1891 annual report, Postmaster General John Wanamaker wrote that he "thoroughly believe[d]" that the pneumatic tube, "though expensive in its introduction, is effectual and will certainly be self-sustaining if not profitable."[42] He based this belief on the successful development of pneumatic tubes in Berlin, London, Paris and Vienna.[43] The next year Congress authorized $10,000 to study a "more rapid dispatch of mail matter between large cities and post-office stations and transportation terminals . . . by means of pneumatic tubes or other systems."[44] The study was favorable, and the Post Office Department contracted for the first pneumatic tube in Philadelphia out of appropriation funds for its mail messenger service. Congress allotted $35,000 to expand the system in 1896 and $150,000 the next year.[45]

Concerns over excessive costs and construction delays caused Congress to direct the Post Office Department in 1908 to investigate the possibility of the government purchasing, installing or operating the equipment for pneumatic-tube service in the cities where the service was in operation. The department concluded that it was not "feasible and desirable at the present time" for the government to take over the system.[46] Problems continued with the contractors. In 1912 Congress appointed a joint House/Senate commission to investigate again the desirability of taking over the pneumatic-tube service.[47] The commission recommended that the postmaster general be given the authority to negotiate purchasing the equipment from the pneumatic-tube companies. By this time, the companies' contracts needed to be renewed and Postmaster General A.S. Burleson appointed another committee to recommend action. That committee recommended

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[42]1891 *Annual Report* 6.

[43]Ibid., Appendix C, 150-161.

[44]1892 *Annual Report* 18, 90-91.

[45]1896 *Annual Report* 212; 1897 *Annual Report* 15. For further information about pneumatic tubes, see Clyde Kelly, *United States Postal Policy* (New York: D. Appleton and Company, 1932), 135; and Scheele, *A Short History of the Mail Service*, 1970), 131-135.

[46]1909 *Annual Report* 149.

[47]1913 *Annual Report* 163-164.

curbing the service substantially because of recurring problems with the contractors and the advent of a new technology--motorized vehicles. Burleson approved the recommendations, fully anticipating the industry to campaign bitterly against the action.[48] The service was discontinued in 1918 because it was "beyond question extremely costly and at the same time very inferior to the more modern methods of transporting mail."[49] The Post Office Department, however, resumed limited service in 1922 because of public demand, particularly in Philadelphia.[50] Use of all pneumatic tubes was formally suspended on Dec. 31, 1953.[51]

Airmail

In its quest to increase the speed of mail delivery, the Post Office Department played an important role in the development of another transportation innovation--the airplane. In 1911 Postmaster General Frank H. Hitchcock approved the first experimental aerial mail service; by June 1913, the department had experimented with airmail 54 times in various parts of the country at no departmental cost.[52] That year the department asked Congress to appropriate $50,000 toward an experimental airmail program and to give the postmaster general full discretion to contract for services.[53] It wasn't until 1916 that Congress earmarked the requested funds to finance an experimental airmail program. The next year Congress doubled the appropriation and in 1918, it authorized the postmaster general to set a special postage rate of not more than 24 cents per ounce for mail carried by airplane.[54]

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[48]1915 *Annual Report* 141; 1916 *Annual Report* 20-22.

[49]1918 *Annual Report* 45.

[50]Scheele, *A Short History of the Mail Service*, 131-135.

[51]Ibid.

[52]1913 *Annual Report* 26; see also Scheele, *A Short History of the Mail Service*, 151.

[53]1913 *Annual Report* 26, 50. The department repeated its request in 1914 and 1915. 1914 *Annual Report* 25, 71, 182; 1915 *Annual Report* 50-51, 145.

[54]1915 *Annual Report* 46; 1917 *Annual Report* 40; see also Paul T. David, *The Economics of Air Mail Transportation* (Washington, D.C.: The Brookings Institution, 1934), 6-8; McReynolds, "History of the United States Post Office, 1607-1931," 247; Act of May 10, 1918, 40 Stat. 548.

President Woodrow Wilson witnessed the first regular airmail flight between Washington and New York on May 15, 1918. The War Department furnished the planes and pilots until Aug. 12, 1918 when the Post Office Department took over the full operation.[55] The initial service was so successful that the postmaster general reduced the postage rate for airmail to 2 cents per ounce in 1919, the same rate charged any first-class mail matter, and Congress increased the appropriation to $850,500 to extend airmail to Cleveland and Chicago.[56]

Recognizing the enormous potential of airmail and realizing that the Post Office Department did not have the funds to maximize that potential, Postmaster General Burleson repeatedly asked Congress for additional appropriations to develop air service and for the authority "to make contracts with commercial enterprises for carrying the mail in connection with passenger and other traffic."[57] According to Burleson, "Congress [has] responded to this in an insufficient manner by the adoption of a provision in the law which requires that contracts for mail by airplane shall not result in a greater cost for transportation of the mail than by train."[58] Some of Congress's reluctance to increase funding and authority may be explained by lawmakers' frustration over the Post Office Department's unauthorized use of funds to promote airmail on unauthorized routes.[59] This friction continued until 1925 when Congress enacted the Air Mail Act, which gave the post office the authority to contract with commercial firms to carry airmail.[60] To encourage the use of airmail, Congress also reduced the postage rate for airmail to not more than 5 cents per ounce in 1928.[61]

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[55]1918 *Annual Report* 16-17; Arthur Summerfield and Charles Hund, *U.S. Mail: The Story of the United States Postal Service* (New York: Holt, Rinehart and Winston, 1960), 98; David, *Economics of Air Mail Transportation*, 12-15.

[56]1919 *Annual Report* 13, 16.

[57]1920 *Annual Report* 64.

[58]Ibid.

[59]David, *Economics of Air Mail Transportation*, 30-31.

[60]Air Mail Act of Feb. 2, 1925, 43 Stat. 805; see also Stanley H. Brewer, *The Impact of Mail Programs and Policies on United States Air Carriers* (Seattle: University of Washington, 1967), 2-4; David, *Economics of Air Mail Transportation*, 44-53; and Gerald Cullinan, *The Post Office Department* (New York: Frederick A. Praeger, 1968), 136-137.

[61]Act of May 17, 1928, 45 Stat. 594.

According to one historian, the lower postage rates and favorable air contracts "had an enormous effect on the growth of the airplane and airline industries in this country."[62] By 1932, Congress had appropriated $47,267,000 for airmail development. "From a public welfare standpoint no better expenditure of Government funds was ever made," another postal historian wrote, "and the nation was fortunate in having the postal service as an agency through which the speediest of all methods of transportation could be developed and maintained."[63]

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[62]Cullinan, *The Post Office Department*, 137.

[63]Kelly, *United States Postal Policy*, 140.

3. Innovations in Mail Services

Not all postal innovations stemmed from new technologies. Some simply extended established services into unserved areas, such as Rural Free Delivery (RFD). Other innovations involved accepting new types of material as mailable matter; parcel post is the best example. And still other innovations involved adjusting postal rules to accommodate some mailers, as happened with patron mail. Of these three, parcel post provides the most insights: after considerable agitation, Congress authorized the Post Office Department to compete with well-established private firms. RFD was put on a permanent footing only after a considerable period of experimentation. And patron mail, a post office initiative, died in the face of opposition from newspapers and, probably, lawmakers.

From City Carriers to Rural Free Delivery

Throughout the nineteenth century, the vast majority of postal patrons called at the city or village post office to pick up their mail. Delivery to home or business addresses had started in the late 1700s; so-called penny posts carried mail from the city post office to a customer's home for a fee in addition to the postage. Such services operated sporadically in larger cities through the early and mid-1800s. Some were sanctioned by the post office and recognized in postal laws;[1] at the same time, private operations competed with the official service in some cities.[2] In 1863, Congress authorized free city delivery service in forty-nine large

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[1]See, e.g., "Sec. 36. *And be it further enacted*, That letter-carriers shall be employed at such post-offices as the Postmaster General shall direct. . . ." Act of March 3, 1825, 4 Stat. 112.

[2]Richard R. John, *Spreading the News: The American Postal System from Franklin to Morse* (Cambridge: Harvard Univ. Press, 1995), 150-54; Richard R. John, "Private Mail Delivery in the United States during the Nineteenth Century: A Sketch," *Business and Economic History* 15 (1986): 135-47.

cities. Lawmakers incrementally extended the service to smaller cities; by 1887, the postmaster general was empowered to provide carriers in cities as small as 10,000 residents.[3]

Despite these improvements, by 1890 only one-fourth of the nation's 76-million inhabitants enjoyed free mail delivery. Most disadvantaged were residents who lived along country lanes outside towns. Farm families typically went to town--and the post office--about once a week.[4] Members of Congress representing rural constituencies increasingly pointed to the inequities in a system that provided daily free delivery to city households while requiring country residents--half of all Americans--to travel, often many miles, to retrieve their mail.[5]

Postmaster General John Wanamaker, appointed in 1889, envisioned a postal establishment that carried parcels, operated the nation's telegraph and telephone systems, and provided basic banking services. First, though, he labored to launch rural free delivery. Securing a small appropriation from Congress, Wanamaker began an experimental free delivery service in 46 communities. Although Wanamaker proclaimed the rural free delivery experiment a success in his 1891 annual report to Congress, the initiative actually tested the feasibility of delivery in small towns and villages rather than on roads running into the countryside.[6]

In fact, Wanamaker's successor, William Bissell, disparaged the experiment and recommended against the extension of free delivery to small towns. And even though Congress appropriated $10,000 for a test of a true rural free delivery service, Bissell declined to experiment further. RFD, he estimated, would cost at least $20 million. "[T]he Department would not be warranted in burdening the people with such a great expense," he reported to Congress.[7] Bissell refused to spend a $20,000 appropriation in 1895 for the same purpose.[8]

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[3]Act of March 3, 1863, 12 Stat. 703; Wayne E. Fuller, *The American Mail: Enlarger of the Common Life* (Chicago: Univ. of Chicago Press, 1972), 71-74.

[4]Albert Britt, *An America That Was: What Life Was Like on an Illinois Farm Seventy Years Ago* (Barre, Mass: Barre, 1964), 92-95.

[5]Fuller, *American Mail*, 75.

[6]1891 *Annual Report* 6, 82-89, 117-29; 1892 *Annual Report* 11-14.

[7]1893 *Annual Report* ix.

[8]1895 *Annual Report* 8; the 1895 report was filed by Bissell's successor, William L. Wilson, but the decision not to undertake the experiment funded by Congress was Bissell's.

The next Postmaster General, William L. Wilson, also doubted the fiscal wisdom of trying to deliver mail to thousands of farmers' lanes, but when Congress in 1896 appropriated $40,000 for a RFD experiment, he complied.[9] RFD service commenced in October 1896. Because this initial service was considered experimental, the post office planned the first routes for a variety of states and conditions to test the likelihood of success if the service were expanded everywhere. "The general results obtained have been so satisfactory as to suggest the feasibility of making rural delivery a permanent feature of postal administration in the United States . . . in some gradual and gradated form. . . ."[10]

Each of the next few years, Congress increased the appropriations for the still-experimental RFD. Of course, the addition of routes enlarged RFD's constituency among those who enjoyed the service and did not want the experiment to end, and those who heard about it and wanted RFD for themselves. Congress received countless petitions and in 1902 ended the experimental phase by putting RFD on a permanent footing. The postmaster general advised Congress that rapid extension would increase the department's deficits in the short term but that, once widely established, RFD would generate new revenue.[11]

As RFD routes multiplied, families living along country lanes gradually found themselves tied into the national communication and marketing network. Daily receipt of correspondence reduced rural isolation. Newspapers and popular magazines immediately discovered the new market and began sending advertising-filled editions to rural reader-consumers. The big catalogue houses followed suit. Market news reaching farmers allowed them to make informed judgments about selling their livestock and crops. The Post Office Department observed that RFD even enhanced the real estate value of the now less-isolated farms.[12]

Apart from its own merits, RFD also increased demand for parcel post and proved to many rural residents and postal officials that the government could offer--and successfully administer--new services.

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[9] 1896 *Annual Report* 25, 129.

[10] 1897 *Annual Report* 105.

[11] 1902 *Annual Report* 14-15.

[12] Ibid., 14-16, 124-36. On the history and impact of rural free delivery, see generally Wayne E. Fuller, *RFD: The Changing Face of Rural America* (Bloomington: Indiana Univ. Press, 1964).

Parcel Post

Parcel post marked a dramatic departure in public-sector initiatives: it put the federal government in direct competition with well-established package-delivery firms. The federal government, of course, had long influenced business operations through contracts, grants, subsidies, and tariffs. Congress, however, had repeatedly resisted calls, particularly insistent during the Populists' heyday, for government ownership of key industries. Parcel post legislation stopped short of appropriating private firms, but proponents and opponents both acknowledged that it redefined the accepted domain of postal activity.[13]

From the 1880s, when parcel post was first seriously contemplated, to its enactment in 1912, supporters repeatedly advanced several reasons for establishing a government package-delivery service. First, it promised to complete the suite of postal services available to reader-consumers. Second, the Post Office Department sought to maximize the use of its nationwide infrastructure. Third, an American parcel post would allow the United States to participate more fully in providing international postal services. Fourth, private delivery firms--railroads and express companies--failed to serve millions of rural Americans. Fifth, government competition with private firms would, many believed, force down rates.

Package delivery before parcel post. Before the inauguration of parcel post on January 1, 1913, the post office accepted no package weighing more than four pounds and only then at the steep rate of 1 cent an ounce. This amounted to $320 a ton compared to $1.90 at railroad freight rates or about $28 as railway express. Ironically, even though no parcel could weigh more than 4 pounds, some publishers mailed tons of their daily, weekly, monthly, or quarterly editions for 1 cent a pound.[14]

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[13]The best overview of parcel post's origins and impact is Fuller, *RFD*, 199-233. For an examination of parcel post's implications for government-business relations, see Richard B. Kielbowicz, "Government Goes Into Business: Parcel Post in the Nation's Political Economy, 1880-1915," *Studies in American Political Development* 8 (Spring 1994): 150-72. See also Wayne E. Fuller, *The American Mail: Enlarger of the Common Life* (Chicago: Univ. of Chicago Press, 1972), 181-88; Daniel J. Boorstin, *The Americans: The Democratic Experience* (New York: Random House, 1973), 109-45.

[14]Sen. Doc. No. 485, 62d Cong., 2d sess. 3 (1912).

Parcel post formed the capstone in a postal communication and transportation system that already promoted marketing on a national scale. When Congress halved second-class postage to one cent a pound in 1885, advertising-filled popular magazines poured out of major cities. Mailings of periodicals, most filled with ads, rose twenty times faster than population between 1880 and 1920. Fast mail trains rushed big-city dailies to readers in the hinterlands; in 1894, Chicago papers dispatched more than twenty tons each day. The inauguration of RFD in the late 1890s brought city newspapers and national magazines directly to farmers' lanes. Mail-order retailers could now reach most of the nation with ads, and modest letter postage allowed reader-consumers to respond with orders. Yet at the outset of the twentieth century, Congress still prohibited the postal delivery of the commercial fruits of all this communication--parcels.[15]

Catalogue houses and mail-order retailers thus built their operations without the assistance of a government delivery service available in nearly every other industrialized nation. When mail-order merchandisers such as Montgomery Ward (1872) and Sears, Roebuck and Company (1887) began offering their wares to the nation, they relied on express companies to expedite packages or the slower but cheaper freight services to deliver loads above 100 pounds. Customers paid shipping charges, and the catalogue houses turned this to their marketing advantage: "RAILROAD COMPANIES USUALLY CHARGE NO MORE FOR CARRYING 100 POUNDS THAN THEY DO FOR 20 POUNDS," Sears reminded its customers, "so that in case you only have a small order and want it to come by freight, you could have some friend buy goods at the same time, send his order with yours, and have both orders shipped in your name. . . ." Mail-order firms thus converted customers into sales agents. Montgomery Ward and Co. estimated in 1911 that it shipped about 82 percent of its orders by freight, 10 percent by express, and only 8 percent by mail.[16]

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[15]See Richard B. Kielbowicz, "Postal Subsidies for the Press and the Business of Mass Culture, 1880-1920," *Business History Review* 64 (Autumn 1990): 451-88; Richard B. Kielbowicz and Linda Lawson, "Protecting the Small-Town Press: Community, Social Policy and Postal Privileges, 1845-1970," *Canadian Review of American Studies* 19 (Spring 1988): 26-34.

[16]Sears catalogue quoted in 46 *Cong. Rec.* 2006 (1911); *Parcel Post: Hearings Before the Subcom. on Parcel Post of the Sen. Com. on Post Offices and Post Roads under S. Res. 56*, 62d Cong., 2d sess. 882 (1911-12), (testimony of Montgomery Ward's general manager) [hereafter cited as 1912 *Senate Hearings*].

Although organized as separate entities, the big express firms used "the plant, equipment, and operating organization of the railroads." Express matter typically traveled on passenger trains, about twice as fast as freight, and received special attention at the terminals.[17] Despite their incorporation as separate entities, express companies and railroads were one and the same in the public's mind. Popular magazines trumpeted a Senate report that found $66.8 million in intercorporate ownership: railroads held $20.7 million in express company stock; express companies owned railroad securities worth $34.5 million; and express companies invested $11.6 million in each other.[18] "If in a hurry or the need is urgent, you ship by express at many times the freight rate, but it is all the same to the railroad; it gets the money, and there is and can be no competition between the general freight service and express transportation," a long-time critic of the expresses complained in 1910.[19]

Parcel post divides rural America. The parcel post debate revealed fissures in the facade of beneficent small-town commerce. The antagonists were buyers, who favored parcel post, and small-town retailers, who feared it would divert customers to faraway mail-order merchandisers.

Small-town residents often had only one or two modestly stocked general stores at which they could conveniently shop; farm families living along country lanes had trouble reaching even these. Without a parcel post, mail-order customers typically paid to have their packages shipped by railroad freight or express. Americans began to question why the government post office failed to carry parcels at a competitive rate. At a minimum, parcel post could deliver to the twenty million Americans who lived outside express companies' service areas. And lower postage rates would further open the countryside to urban merchandisers or, viewed from customer's vantage point, allow rural residents to choose from the offerings of a modern consumer society.[20]

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[17]Isaiah L. Sharfman, *The Interstate Commerce Commission: A Study in Administrative Law and Procedure* (New York: Commonwealth Fund, 1931), 2: 58.

[18]Allan L. Benson, "Why We Have No Parcels Post," *Pearson's Magazine* 25 (March 1911): 388-97, esp. 390.

[19]Nathan B. Williams, *The American Post-Office: A Discussion of Its History, Development, and Present-Day Relation to Express Companies*, Sen. Doc. No. 542, 61st Cong., 2d sess. 28 (1910).

[20]1912 *Annual Report* 7. On the supposed advantages and disadvantages of parcel post for rural America, see Richard B. Kielbowicz, "Rural Ambivalence Toward Mass Society: Evidence from the U.S. Parcel Post Debates," *Rural History* 5 (Spring 1994): 81-102.

On the other side, parcel post's opponents evoked the romantic image of small-town retailing that still grips the imagination. Neighborly storekeepers offered advice about purchases, freely extended credit, performed other banking services, special ordered goods not in stock, provided a congenial gathering place for townspeople around a pot-bellied stove, and permitted customers to use the phone, often the first one in town. If parcel post opened the countryside further to mail-order merchandisers, small-town retailers would be circumvented entirely, they feared.[21]

Advocates of a parcel post testified that reputable mail-order firms offered a wider choice of goods at cheaper prices than any small-town store. "[T]he assertion of the local merchant that the parcel post will destroy or injure his business is an admission that he can not sell as cheaply as the mail-order house," a representative of farm groups told Congress. "This, in effect, is a demand that the farmer pay him a premium or bounty in order that he may continue to conduct business by antiquated methods and be protected from the progressive spirit of modern merchandizing and twentieth-century methods."[22]

When small-town retailers realized they could not defeat parcel post by disputing the economies of mail-order shopping, they instead argued that it would foster a new, unhealthy commercial ethos. They also foresaw a general decline of small towns, a centralization of production and distribution, a disruption of the "natural" relations among labor, retailers, and consumers, and the aggrandizement of urban culture.[23]

Parcel post advanced the broader agendas of the Grange and the National Farmers' Union, the two agrarian groups that worked most assiduously for its passage. These groups viewed express companies as corporate extensions of the

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[21]Thomas D. Clark, *Pills, Petticoats and Plows: The Southern Country Store* (Indianapolis: Bobbs-Merrill, 1944); Lewis Atherton, *Main Street on the Middle Border* (Bloomington: Indiana Univ. Press), 43-55, 222-33; Kielbowicz, "Rural Ambivalence."

[22]1912 *Senate Hearings* 851-875, quote at 860 (testimony of George P. Hampton representing the Farmers' National Committee on Postal Reform); see also *Parcels Post: Hearings Before the House Com. on the Post-Office and Post-Roads*, 61st Cong., 2d sess. 58-59 (1910) (testimony of T. C. Atkinson representing the National Grange) [hereafter cited as 1910 *House Hearings*].

[23]Oskaloosa, Iowa, Commercial Club to J. P. Dolliver, Feb. 1, 1904, S58A-J62, Senate Records, Record Group 46, National Archives; 1912 *Senate Hearings*, 572.

railroads farmers so hated. And they believed that parcel post would bring producers and consumers into closer contact.[24]

The Post Office Department champions parcel post. Much of the campaign for parcel post turned on beliefs about the capacity of the Post Office Department to handle new tasks. Could the department assume a private-sector function and operate it along businesslike lines? The size, complexity, and reach of the post office had earned the department accolades as "the greatest business concern in the world." In this view, the department possessed the requisite expertise to successfully manage a parcel delivery business.[25]

Many postal officials believed that adding parcel post made good business sense because it capitalized on the department's unrivaled nationwide infrastructure.[26] They repeatedly observed that all other industrial nations had a parcel post. "[P]arcels post is a success wherever it is in operation" around the world, Postmaster General John Wanamaker proclaimed, blaming the "four great express companies" for blocking it in the United States. Moreover, foreign governments and international postal congresses asked the United States to provide parcel post on the same terms as other industrial nations to facilitate cross-border package exchanges.[27]

The Post Office Department's critics, usually big mailers complaining about their high postage bills, impugned the department's business acumen and managerial skills. A 1908 essay in the *Journal of Political Economy* identified features of the post office that distinguished it from for-profit businesses and

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[24]The Populists and their predecessors, the Farmers' Alliance, placed strong parcel post planks in their 1889-1892 party platforms. By 1912, the Grange was aggressively rebuilding in the Midwest, and the Farmers' Union was extending its southern base into the region as well, tripling its membership there by 1914. John D. Hicks, *The Populist Revolt: A History of the Farmers' Alliance and the People's Party* (1931; reprint Lincoln: Univ. of Nebraska Press, 1961), 427-44.

[25]Postmaster General Charles E. Smith, *Greatest Business Organization in the World: The United States Postal Service* (N.p.: n.p., 1899), 3; "A National Opportunity--A Business Postal Department," *World's Work* 19 (March 1910): 12643-44; 1912 *Senate Hearings* 202 (testimony of Postmaster General Hitchcock).

[26]On the development of administrative capacities in the federal government generally, see Stephen Skowronek, *Building a New American State: The Expansion of National Administrative Capacities, 1877-1920* (New York: Cambridge Univ. Press, 1982), and in the Post Office Department specifically, see Leonard D. White, *The Republican Era, 1869-1901: A Study in Administrative History* (New York: Macmillan, 1958), chap. 12.

[27]1891 *Annual Report* 7, 113, quote at 114; 1890 *Annual Report* 7-8.

concluded "that the Postal Department as now organized and operated would be utterly unable to compete with express companies upon purely a business basis."[28]

Another argument for parcel post presumed that business imperatives should drive the post office; therefore, enterprising postal managers had an obligation to add services that capitalized on the system's infrastructure. Proponents had long argued that parcel post would take advantage of rural carriers' underutilized capacity, their partly loaded wagons. In fact, RFD carriers unofficially used extra space in their mail wagons to deliver parcels for patrons along their routes until postal officials and Congress curtailed the practice. Nonetheless, this unauthorized test heartened parcel post advocates and strengthened claims that the postal system could efficiently accommodate additional services. Proponents saw parcel post as the capstone in a postal communication and transportation system that already promoted marketing on a national scale.[29]

Furthermore, some pointed out that the post office already had the unprofitable business--delivering parcels under four pounds to sparsely settled parts of the country--leaving the more lucrative shipments to the express firms. A full-fledged parcel post would develop profitable routes that compensated for the unprofitable ones found in any system promising universal service. Parcel post, in sum, would improve the department's finances. Opponents, of course, argued forcefully that any extension of service would just increase the postal deficit.[30]

The failure of ICC regulation. After the turn of the century, the Progressives' penchant for investigations, data, and publicity kept railroads and express companies under a public microscope. The results of these inquiries suggested to many that merely regulating private delivery companies did not go far enough; they lent support to a more radical solution--government competition.

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[28]Don C. Seitz, "The Post-Office: An Obstructive Monopoly," *World's Work* 21 (February 1911): 13978-13986 (Seitz was a newspaper editor); Albert N. Merritt, "Shall the Scope of Governmental Functions be Enlarged So as to Include the Express Business?" *Journal of Political Economy* 16 (July 1908): 417-435.

[29]Fuller, *RFD*, 113-18.

[30]Fremont Rider, "The Parcels Post and the Retailer," *World's Work* 21 (April 1911): 14248-51; Henry A. Castle, "Defects and Abuses in Our Postal System--I," *North American Review* 174 (June 1902): 807-19.

The peculiar organization of express companies, "a distinctive American institution," did much to keep the parcel post campaign alive.[31] Although largely offshoots of railroads, the express companies maintained separate corporate structures that allowed them to sidestep regulation until 1906.[32] From its founding in 1887, the Interstate Commerce Commission narrowly construed its jurisdiction over express companies. The ICC noted that Congress had failed to list express companies among the enumerated carriers; moreover, some expresses were directly controlled by railroads while others were independent, at least nominally. "Either the entire express business should be left wholly on one side or it should all be included," the ICC explained in declining to regulate these carriers. The 1906 Hepburn Act resolved the jurisdictional question: Congress added expresses and other carriers to the Commerce Act.[33]

With a broadened mandate, the ICC conducted a comprehensive study of express companies, the first ever, and acted boldly in 1912. The ICC's report basically corroborated what the pro-parcel post muckrakers had been telling magazine readers for several years: express companies double charged and over charged, refused to tell customers about free delivery areas beyond rail depots, sent shipments by circuitous routes to inflate costs, discriminated among customers, and more. The commission blamed most problems on the complexity of the system and rate schedules. "There are some thirty-five thousand express stations in the United States. To separately state the rates from each one of these stations to each of the others requires the statement of over 600,000,000 rates." The commission's own rate experts, let alone ordinary express agents, could hardly find the correct rates. Journalists and Progressive lawmakers, however, pointed to collusion among express companies, and between railroads and express firms, as the root of the problem.[34]

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[31]Sharfman, *The Interstate Commerce Commission: A Study in Administrative Law and Procedure*, 2:58-82, quote at 59.

[32]Benson, "Why We Have No Parcels Post," 388-97, esp. 390; Williams, *The American Post-Office: A Discussion of Its History, Development, and Present-Day Relation to Express Companies.*

[33]*In re* the Express Cos., 1 I.C.C. 349-69, quote at 369 (1887). See also Sharfman, *Interstate Commerce Commission*, 2:58-82.

[34]*In re* Express Rates, Practices, Accounts, and Revenues, 24 I.C.C. 380-541, quote at 413 (1912). For one example of the journalistic attack on railroad-express ties, see Frederick F. Ingram, "The Parcels Post," *Twentieth Century Magazine* 3 (March 1911): 514-22.

The ICC called its regulatory prescriptions "a revolution and renovation in the methods and rates of express companies."[35] It lowered rates and standardized them, developed a simple scheme for classifying express shipments and "enter[ed] into the minutiae of the billing, routing, and other details."[36] The ICC boasted, "This is probably the most important single piece of work ever done by the Commission."[37] The leading student of the ICC agrees. "The Commission's action was more sweeping and more boldly forward-looking than any it has ever taken in the railway field, and yet it met with the ready acceptance of the carriers and encountered no obstacles through judicial interference."[38]

Parcel post in Congress. Stricter ICC regulation did not derail the parcel post movement in Congress. Years of devastating publicity about the express services had left the public and Progressive lawmakers amenable to a more radical solution.

Congress had declined to hold hearings on parcel post until 1910. Critics blamed the tardy congressional response on the private carriers' influence over such lawmakers as House Speaker Joseph Cannon and key senators.[39] The 1910 elections reconstituted Congress along lines more amenable to parcel post. "Angry consumers slaughtered the conservative Republicans," according to one historian, and voters replaced them with progressive Republicans and Democrats. Many voters believed that railroads and pro-railroad legislation had contributed to the rising cost of living; parcel post, touted as consumer legislation, was considered a partial remedy.[40]

A month after Cannon was ousted from the speakership in March 1910, the House convened its first hearings on the subject and held another round in June 1911. The Senate provided the most extensive public forum, running from

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[35]1912 *I.C.C. Annual Report* 3.

[36]24 I.C.C. 389.

[37]1912 *I.C.C. Annual Report* 3.

[38]Sharfman, *Interstate Commerce Commission*, 2: 70.

[39]John B. Walker, "The People versus the Express Companies," *Pearson's Magazine* 24 (July 1910): 56-60, advertising section pp. 28-30.

[40]David P. Thelen, "Patterns of Consumer Consciousness in the Progressive Movement: Robert M. La Follette, the Antitrust Persuasion, and Labor Legislation," in *The Quest for Social Justice*, ed. Ralph M. Aderman (Madison: Univ. of Wisconsin Press, 1983), 33; *Record of the Postal Progress League for the Year Ending February 1st, 1912* (New York: The League, 1912).

November 1911 to April 1912, producing a hearing record that filled 1,290 printed pages. These two years of hearings fueled a wide-ranging discussion in newspapers, popular magazines, agricultural journals, trade publications, and pamphlets.[41]

By 1912, the Republican, Democratic, and Progressive Parties, and their presidential candidates, had all endorsed parcel post; Socialists subsumed it among more radical proposals. Accordingly, at least twenty parcel post bills were introduced in the House during the second session of the Sixty-Second Congress and referred to the post office committee. John A. Moon, a Tennessee Democrat who typified Southern progressives, chaired the House committee. His Senate counterpart was Jonathan Bourne, Jr., an insurgent Republican from Oregon who had worked for parcel post since 1906. In conference committee, they worked out key elements of the final parcel post plan. Parcel post was only one provision in an omnibus postal appropriations bill, and because the session was drawing to a close, members of Congress had little time to explore the plan's implications during the floor debate. Most of the debate dealt with parliamentary maneuvers, the merits of appropriating express companies versus competing with them, and the fine points of parcel post zones and rates.[42]

Legislative choices and their relation to the private sector. As the parcel post debate crested, Congress considered four options: (1) leave the parcel delivery business entirely to private-sector competition; (2) subject private carriers to stricter regulation by the Interstate Commerce Commission; (3) launch a public

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[41] 1910 *House Hearings*; *Parcels Post: Hearings Before Subcom. No. 4 of the House Com. on the Post Office and Post Roads*, 62d Cong., 1st Sess. (1911) [hereafter cited as 1911 *House Hearings*]; 1912 *Senate Hearings*. A bibliography suggesting the scope of the debate is Hermann Henry Bernard Meyer, comp., *Select List of References on Parcels Post* (Washington, D.C.: Government Printing Office, 1911).

[42] For parties' platform statements, see Arthur M. Schlesinger, Jr., ed., *History of U.S. Political Parties* (New York: Chelsea House Publishers, 1973), 3:1845, 2488, and 2594. Key players and their philosophies are discussed in Anna M. Moon and Joe Phillips, *John A. Moon: Father of the Parcel Post* (N.p., 1941), chap. 11; Anne Firor Scott, "A Progressive Wind from the South, 1906-1913," *Journal of Southern History* 29 (Feb. 1963): 53-70; Albert H. Pike, "Jonathan Bourne, Jr., Progressive" (Ph.D. dissertation, Univ. of Oregon, 1957), 1-3, 190-96, 248-49. House discussion of parcel post can be found at 48 *Cong. Rec.* 5641-52, 11749-61, and appendix 107-109, 137-57, 156-57, 194-95, 254-55, 583-86, 669, 742-45, 918-20 (1912). Senate deliberations are at 48 *Cong. Rec.* 9448-65, 11673-77, and appendix 128-30, 254-55, 669-75 (1912).

service to compete with the private sector; and (4) invoke the Constitution's postal clause to establish an outright public monopoly.

Years of investigations and exposes had destroyed the credibility of railroads and express companies in fighting parcel post. Fearing a public backlash, the express companies remained largely in the background throughout the congressional debates. Therefore, fighting for the first option--leaving parcel delivery entirely in private hands--fell mainly to small-town businesses and allied interests. They feared that parcel post would divert patronage to mail-order merchandisers, further undermining the economic and social foundation of their communities. Small-town merchants and their suppliers lobbied directly and through their trade associations, which in turn pooled resources in the 300-member American League of Associations (ALA). One line of attack was to cast doubts on the financial viability of parcel post.[43]

The ALA and allied groups, however, quickly moved beyond the practicality of parcel post to matters of political economy. Letters, petitions, pamphlets, articles, and testimony warned against government intrusions into the realm of private enterprise, either as a monopolist or as a competitor. At a minimum, parcel post overstepped the traditional bounds of government activity, transforming an information utility, the Post Office Department, into a transportation common carrier. At its worst, parcel post represented federal paternalism and even socialism. The ALA invoked John Stuart Mill on the dangers of extending government power and Adam Smith and David Ricardo on the correct principles of political economy. The widespread adoption of parcel post in other countries suggested how alien it was to American political economy, they argued.[44]

The arguments in favor of parcel post applied "to the telegraph and telephone and would inevitably precipitate the Government into the control of other large public utilities," a wholesaler told Congress.[45] Invoking the slippery slope argument, so common in policy debates, was not mere hyperbole here. After all, many parcel post advocates had vowed to use parcel post as the first step toward

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[43]For details on the ALA, see 1912 *Senate Hearings* 541-88 (testimony of E. B. Moon of the ALA); on small-town merchants' opposition, see Kielbowicz, "Rural Ambivalence."

[44]42 *Cong. Rec.* 2846 (March 3, 1908) (remarks of Rep. Smith of Calif.); 1912 *Senate Hearings* 541-88, esp. 543, 563, 572 (testimony of E. B. Moon of the ALA).

[45]1912 *Senate Hearings* 461-75, quote at 467 (testimony of Harry B. French, president of Smith, Kline & French Co.).

placing functionally related communication and transportation facilities under postal control, just as had been done in many other countries. Recognizing the strong sentiment for parcel post, opponents instead urged stronger regulation. "Would it not be better for the Government to undertake to regulate and guide commercial enterprises rather than to try to own them?" asked a representative of the National Retail Hardware Association.[46]

At the other extreme were proponents of the fourth option--a government monopoly over parcel delivery. Some believed that the postal clause provided sufficient basis to acquire the express companies and operate them under the Post Office Department.[47] Many viewed government acquisition of the express industry as a realistic goal considering the relatively small capital investment involved (express firms relied heavily on railroads' organization and equipment).[48] Postmaster General Frank H. Hitchcock gave Congress a pragmatic reason for a government parcel-delivery monopoly: without one, the expresses would skim off the lucrative business, leaving revenue-losing routes to the department.[49]

The successful option--a government delivery service that competed with private firms--was crafted mainly by Senate post office committee chairman Jonathan Bourne. He had embraced parcel post as part of his 1906 campaign platform and, once on the post office committee, vigorously sought information from all quarters. He gathered details about the workings of foreign parcel posts and sought data from the ICC on the U.S. express industry. Behind the scenes, he coordinated his parcel post campaign with lobbyists and journalists; publicly, Bourne contributed articles to popular magazines and muckraking journals.[50]

Bourne believed that public-private competition in the package delivery business would maximize service and minimize rates. The most likely outcome, he predicted, was "decreased cost to the public whenever the Government can operate

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[46]1911 *House Hearings* 290-97, quote at 293 (testimony of W. P. Bogardus).

[47]For one such proposal, see 1911 *House Hearings* 246-65 (testimony of James L. Cowles for the Postal Progress League).

[48]John Brisben Walker, "The Aid Which the Post-Office Department Might Render to Commerce," *Cosmopolitan* 36 (February 1904): third unnumbered page following p. 378; "The Enormous Profits of the Express Companies," *Mail Order Journal* 13 (December 1909): 30.

[49]1912 *Senate Hearings* 191-241.

[50]Memorandum from J.W. Slack, assistant to the Senate Post Office committee, to Bourne, Aug. 15, 1911, box 33, folder 10; drafts of speeches on parcel post, box 33, folder 7, Jonathan Bourne Papers, Univ. of Oregon Library; *Parcel Post in Foreign Countries* (1912) (committee print prepared under Bourne's direction).

as cheaply and efficiently as a private individual." Outright government ownership "tends toward paternalism and bureaucracy," Bourne argued, though he held it out as "a dernier resort, where regulation has been demonstrated to be a failure."[51] Others who supported postal competition with private expresses invariably applauded its value in making "express companies come to a just price in sending articles."[52] President William H. Taft endorsed parcel post even though Bourne headed the National Progressive Republican League, a group working to find another presidential candidate for the 1912 elections.[53]

As passage of parcel post in some form appeared inevitable by late 1911, even the express companies grudgingly accepted the idea of public-private competition to head off government absorption of their business. The express companies calmly reassured stockholders that government competition would not unduly affect earnings. The most violent reaction came from small-town retailers and the industries that served them. Lashing out, small retailers threatened to disregard partisan loyalties and support anyone who stood against parcel post.[54]

The decision: limited competition with the private sector. Several features of the parcel post law constrained the post office's ability to fully compete with the private sector. As passed, the law raised the fourth-class weight limit to 11 pounds, the International Postal Union's standard, and charged postage graduated according to distance. Furthermore, the law suggested that rates needed to be adjusted when necessary to cover costs. These three provisions--a strict weight limit, zoned postage, and rates tied to costs--constrained the POD's ability to compete with private carriers. Nonetheless, parcel post initially reached twenty million people outside the service areas of private express companies and early tests comparing the two showed that the government service generally was faster.[55]

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[51]Jonathan Bourne, Jr., *Parcels Post: Report Submitted to the Subcom. on Parcel Post of the Sen. Com. on Post Offices and Post Roads* (Washington, D.C.: Government Printing Office, 1912), 12. See also 1912 *Senate Hearings* 235 (remarks of Sen. Bourne).

[52]R. W. Lynn, Agency, Iowa, to Sen. William B. Allison, Dec. 30, 1908, Senate Records, file S60A-J110.

[53]John M. Stahl, Farmers National Congress, to Bourne, June 10, 1912, Box 28, file 1, Bourne Papers. Stahl's letter quotes President Taft: "You can count on my giving the bill every assistance in my power."

[54]Bureau of Railway Economics, *A Study of the Proposed Parcel Post as Affecting the Railways* (Washington, D.C.: The Bureau, 1912); "A Parcel Post An Assured Fact," *Mail Order Journal* 15 (April 1912): 25; "The Fight Against the Parcels Post," *ibid.* 15 (December 1911): 22.

[55]Fuller, *RFD*, 230; 1912 *Annual Report* 7-8.

Charging postage according to distance was the most notable element of the new mail service designed to keep the Post Office Department from gaining undue advantages over private carriers. By 1912, virtually all postal rates were flat--they did not increase with distance--in sharp contrast to the scaled rates common through the mid-nineteenth century.[56] Thus, creating nine rate zones (local plus eight out-of-town) represented a marked departure from the prevailing postal philosophy that favored flat rates to provide uniform service across the nation. In fact, farm interests strongly favored a flat parcel rate structure partly because it would punish private carriers with formidable government competition. Senator Bourne, however, stood fast for zoned postage as a means to put the government service on terms similar to those of private carriers.[57]

The low weight limit--11 pounds--and relatively high rates for the near zones displeased farm interests that envisioned parcel post fostering farm-to-consumer trade. But the law provided a unique remedy: it empowered the postmaster general to modify weight limits, rates, and zones. The law authorized the postmaster general to make such changes "in order to promote the service to the public or to insure the receipt of revenue from such service adequate to pay the cost thereof."[58] In contrast, Congress had always set postage and the basic terms for every other mail class. Agrarian groups had insisted upon giving the postmaster general these powers.[59] But the postmaster general's discretion was not unchecked; the law further provided that the postmaster general seek the ICC's consent for adjustments in basic terms of the parcel service. Thus, the government's parcel delivery service was subject to scrutiny by the same body that regulated similar private services.

Implementation. Before leaving office, President Taft's postmaster general recommended that his successor cut rates and raise weights. He did. Woodrow Wilson appointed as postmaster general Albert S. Burleson, a member of Congress from Texas who, though conservative on social issues, subscribed to most of the

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[56]In 1912, the only rate distinction based on distance was found in the second class: in-county rates were lower than those for delivery out of county. See the tables in U.S. Post Office Department, *United States Domestic Postage Rates, 1789-1956* (Washington, D.C.: Government Printing Office, 1956), 21-36.

[57]Fuller, *RFD*, 222-27.

[58]Act of Aug. 24, 1912, 37 Stat. 558.

[59]"Statement of Provisions Essential to a System of Parcel Post Adequate to Meet the Service Requirements of Producers and Consumers by the Farmers National Committee on Postal Reform, June 1, 1912," Senate Records, file S62A-F20.

old Populist agenda on government enterprise. Within a year, Burleson had cut rates for all zones, most sharply for the first two, and dramatically increased the weight limit. He also admitted books over four pounds to the mail as parcels, a goal long sought by the nation's librarians that Congress had just as long ignored. To stimulate use of parcel post, Burleson, acting under power given him by Congress, also authorized two accessory services. Collect-on-Delivery (COD) provided a measure of certainty in transactions between parcel mailers and recipients who usually did not know each other. Insurance on parcel shipments was also provided for a fee.[60]

Parcel post, plus stepped-up ICC regulation, did affect the express companies. The securities of the four largest carriers--highly overvalued in the minds of many--dropped $32 million one month after government entered the field. Within a year, the express companies stopped competing with parcel post in many small towns. When the government took over operation of the railroads during World War I, the express companies consolidated their operations in a unified service, the American Railway Express Co. The railroads reverted to private management in 1920, but the Railway Express Co. continued, becoming the Railway Express Agency in 1929.[61]

The highly touted farm-to-table food service never came close to realizing the potential envisioned by parcel post's backers. Shortly after parcel post started in 1913, the agriculture and post office departments began promoting food sales by mail. A modest farm-to-city food service, involving mainly eggs, butter, cheese, and fruits, did grow out of parcel post but withered after World War I, except in

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[60]Adrian N. Anderson, "Albert Sidney Burleson: A Southern Politician in the Progressive Era" (Ph.D. dissertation, Texas Tech, 1967), 166-77; Jane Kennedy, "United States Postal Rates, 1845-1951" (Ph.D. dissertation, Columbia Univ., 1955), 75-77; Post Office Department, *Domestic Postage Rates*, 16; Daniel C. Roper, "Fundamental Principles of Parcel-Post Administration," *Journal of Political Economy* 22 (June 1914): 526-35.

[61]See editorial from the *Syracuse Post-Standard*, Feb. 8, 1913, attached to letter from Bourne to the paper's editor, Feb. 10, 1913, Box 28, file 1, Bourne Papers; Alden Hatch, *American Express: A Century of Service* (Garden City, N.Y.: Doubleday & Co., 1950), 130; Anderson, "Albert Sidney Burleson," 175; T. W. van Metre, *Transportation in the United States* (Chicago: Foundation Press, 1939), 166-67.

the citrus industry.[62] Within a few years the catalogue houses were the dominant parcel post mailers.[63]

Continued competition and congressional scrutiny. The postmasters general exercised their discretion to raise rates and modify zones several times between 1913 and 1930; in each case, the ICC consented in unreported decisions.[64] Some members of Congress apparently believed that the ICC consented too causally. Language in the 1912 law, "subject to the consent of the Interstate Commerce Commission after investigation," was replaced in 1916 with "the proposed change shall be approved by the Interstate Commerce Commission after thorough and independent consideration in such manner as it may determine." Postmaster General Burleson complained that additional ICC supervision "will greatly retard the improvement in the service, as well as interfere with its businesslike administration." Congress restored the original language in 1925.[65]

Many of the postmaster generals' adjustments in weight, rates, and zones were designed to make the parcel post more competitive with private parcel delivery. At least one change in the fourth class--admitting larger catalogues--aimed at improving overall department business, especially first class mail. In 1939 the postmaster general created a subclass for larger catalogues. Effective July 1, individually addressed catalogues consisting of 24 or more pages and weighing less than 10 pounds passed at about half the regular zone rates.[66] In seeking the Interstate Commerce Commission's consent, the postmaster general stated that increasing numbers of catalogues were being diverted from the mail to private channels. The department predicted that the new subclass would recapture this business, "lower the unit cost of handling, and increase the demand for other post office services."[67] More catalogues in circulation, the post office believed,

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[62]See, e.g., Lewis B. Flohr, "Shipping Eggs by Parcel Post," *U.S. Department of Agriculture Farmers' Bulletin No. 594* (Washington, D.C.: Government Printing Office, 1914); Grover C. Tarman and Lawrence Leer, *The Producer's Marketing Guide: The Connecting Link Between Producer and Consumer* (New Paris, Ind.: By Auther, 1915); Hamilton H. West, *Parcel Post Profit from Farm Produce* (Rockford, Ill.: Producer's Marketing Guide, 1915); St. Louis Post Office, *United States Parcel Post Produce List: The Farm to Table Plan* (St. Louis, 1917).

[63]Sen. Doc. No. 944, 63 Cong., 3d sess. 5-7 (1915).

[64]4 Interstate Commerce Acts Annotated 3194 (1930).

[65]Ibid. 3193; 1916 *Annual Report* 17.

[66]Postmaster General Order No. 13098, June 29, 1939.

[67]"New Postal Rates for Catalogs," *Publishers' Weekly* 136 (July 8, 1939): 106.

would generate demand for first-class mail, money orders, and parcel post shipments.[68]

Congress did not retire entirely from the business of setting rates on parcel post. It sporadically adjusted postage on parcel post in some omnibus postal bills. In fact, the postmaster general and Congress seemingly alternated in adjusting parcel post rates--Congress in 1928, the postmaster general in 1932, Congress in 1948, and the postmaster general in 1951 and 1953.[69] Indeed, Congress forced the postmaster general's hand in the steep 1951 rate increase. Congress had underscored its displeasure with below-cost parcel post rates in 1950 by requiring the postmaster general to "certify in writing" that he had sought consent from the ICC to raise parcel rates enough to pay for the service. Until the postmaster general provided such certification, the department was barred from drawing Treasury funds appropriated for the fiscal year.[70]

In the early 1950s, Congress reduced parcel size and weight limits partly at the request of private carriers, especially the Railway Express Agency. The sponsor of a successful 1951 bill asserted that parcel post was damaging Railway Express. Mail-order houses, in contrast, generally preferred to keep or increase the weight limits. Nonetheless, Congress cut the 70-pound weight limit to 40 pounds in the first and second zones and to 20 pounds in the third to eighth zones when parcels were delivered at first-class post offices. In a concession to rural patrons, the 70-pound weight limit was retained for smaller offices and mailings to and from rural and star routes.[71] (See Chapter 6 for a discussion about parcel post in the 1960s.)

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[68]1939 *Annual Report* 54.

[69]Act of May 29, 1928; Postmaster General Order No. 2388, April 7, 1932; Act of July 3, 1948; Postmaster General Order No. 46380, June 1, 1951; Postmaster General Order No. 55214, June 19, 1953 in Post Office Department, *Domestic Postage Rates*, 79, 83, 98, 102, 105.

[70]Act of Sept. 27, 1950, 64 Stat. 1050.

[71]*Readjustment of Size and Weight Limitations on Fourth Class (Parcel Post Mail): Hearings Before the House Com. on Post Office and Post Roads*, 82d Cong., 1st sess. (1951); Act of Oct. 24, 1951, 65 Stat. 610.

Patron Mail Experiment

With a seemingly innocuous change in rules, the post office in 1953 launched the patron mail experiment and ignited a controversy about the merits of so-called junk mail. "It was instituted with the avowed purpose of reducing the huge loss in handling third-class mail and of providing additional service," Postmaster General Arthur E. Summerfield explained when he terminated the experiment.[72] The department believed that patron mail, which allowed locally delivered third-class mail to omit names and addresses, would stimulate mailings and reduce sorting costs. Carriers simply would leave one of the identical pieces at each address.[73] Under the experiment launched August 21, 1953, advertisers delivered to their local post office enough mail bundled for each carrier's route covering the targeted areas selected by local retailers to reach prospective customers. Small businesses welcomed patron mail because it eliminated the costly task of maintaining and updating mailing lists and provided concentrated coverage not possible with most newspapers.[74]

Simplified address systems had seen limited and noncontroversial use since 1924. Before 1953, third-class mail could be addressed simply "Rural or Star-route box holder," "Post Office box holder," or "Postal patron" in towns without carrier service. The local post office noted how many pieces were needed to cover a rural route or boxes and the mailers supplied the correct number. No names or addresses were needed for this saturation mail, making it attractive to advertisers striving to reach every potential customer in a community. Until 1953, this simplified address system applied only to post offices without village or carrier service, about 32 percent of the population. The advent of patron mail in 1953 allowed advertisers to reach almost all of the remainder using only a simplified address.[75]

Newspapers recognized patron mail as a threat to their position as the principal purveyors of local retail advertising. Locally produced direct mail was a nearly perfect substitute for newspaper ads. After World War II, newspapers

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[72]"Junk Mail to End," *Editor and Publisher* 88 (Jan. 1, 1955): 7-8.

[73]*The Postal Bulletin* 74 (Aug. 25, 1953): 1-2; "Ground Rules for New, Simplified Addressing," *Reporter of Direct Mail Advertising* 16 (September 1953): 70-72.

[74]Ibid.

[75]1924 *Postal Laws & Regulations* 189, 225; 1948 *Postal Laws & Regulations* 262-63; Virgil E. Harder, "History of Direct Mail Advertising" (Ph.D. dissertation, Univ. of Illinois, 1958), 156.

watched with alarm as direct mail (national and local) attained a rough parity with other forms of advertising. In 1947, $579 million was spent on direct mail, growing to $1.42 billion ten years later. The American Newspaper Publishers Association warned its members that some retailers were switching from newspapers to patron mail. To make matters worse, patron mail was inaugurated at a time when newspapers saw their advertising revenues threatened from another quarter--television. Newspapers could do little to curb the burgeoning television industry. But direct mail was another matter.[76]

Newspapers retaliated by attacking "junk mail," a term that they wielded regularly for the first time. The anti-junk mail campaign asserted that patron mail unduly burdened postal carriers, delayed letter deliveries, paid postage that was too low in relation to letter rates, and bothered households with unsolicited material. The direct mail advertisers offered concrete responses to the first two charges: federal law limited carriers' bags to a maximum of 35 pounds and postal regulations gave letters priority in processing. But disputes about the cost of patron mail, especially in comparison to the postage paid by newspapers and magazines, continued endlessly. Perhaps most elusive was the value--to senders, recipients, and the economy--of third-class advertising mail. Was junk mail indeed junk?[77]

When Postmaster General Summerfield discontinued the patron mail experiment on March 31, 1955, the direct-mail industry blamed newspapers and magazines for pressuring the post office to kill it. As the newspaper campaign against direct mail crested, the postmaster general was developing a bill to raise postage rates. Killing the patron mail experiment may have been a gambit to curry favor with publishers and with Congress. Patron mail's opponents pronounced the experiment a failure, though direct mail advertisers insisted that no evaluation had established its impact on postal finances.[78]

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[76]Harder, "History of Direct Mail," 137; "Mur-Durr!!," *Reporter of Direct Mail Advertising* 17 (October 1954): 41-45.

[77]"Deluge of 'Junk Mail' Angers Taxpayers'," *Pittsburgh Press*, Oct. 21, 1954, p. 21; "The War Is On," *Reporter of Direct Mail Advertising* 17 (December 1954): 17-20; "H.R. 2988," ibid., 23-28; "MUR-DURR," 41-45; Harder, "Direct Mail Advertising," 160-65.

[78]Post Office Department press release no. 3242, Dec. 30, 1954 (U.S. Postal Service Library, Washington, D.C.); *New York Times*, Dec. 27, 1954, p. 28; ibid., Dec. 31, 1954, p. 1; "The December 30th Story," *Reporter of Direct Mail Advertising* 17 (January 1955): 14-16; "H.R. 2988," 23-28. For remarks of one congressman who decried patron mail, see 100 *Cong. Rec.* 2147 (1954) (statement of Rep. Jones).

4. Postal Savings Banks

Although Progressive reformers were not successful in establishing a permanent postal telegraph, they were able to persuade Congress to enact legislation in 1910 creating a savings bank within the Post Office Department. The congressional action expanded the department's responsibilities into the business of financial savings, leading one postal official thirty years later to declare that the Postal Savings Division of the U.S. Post Office had become America's largest bank.[1] This section discusses the reasons for establishing the postal savings system, describes the congressionally imposed limitations intended to prevent the department from competing directly with private financial institutions, and explains why Congress discontinued the system in 1966.

Origins

As early as 1861, a patron of the Pittsburgh, Penn., post office urged the local postmaster to establish a bank where citizens could safely deposit money without fear of losing their savings.[2] It wasn't until the Panic of 1873, which brought the collapse of three leading securities firms and a 10-day closure of the New York stock exchange, did Postmaster General John Creswell recommend such a savings system as a way to reassure Americans. "The events of the past few weeks have awakened a lively interest in a plan . . . for securing the savings of the

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[1]Daniel C. Roper, *Fifty Years of Public Life* (Durham: Duke Univ. Press, 1941), 130. First Assistant Postmaster General Roper wrote: "I was startled at the outset to learn that by whatever comparison, number of employees, scope and complexity of operations, or volume of business handled, the United States Postal Service was the 'biggest business' in the world. The Postal Savings Division was America's largest bank."

[2]Clyde Kelly, *United States Postal Policy* (New York: D. Appleton and Company, 1932), 177.

great body of the people by a pledge of the credit and faith of the United States," Creswell asserted in his 1873 annual report.[3] Creswell, however, resigned the next year and his replacement, Connecticut businessman Marshall Jewell, immediately abandoned Creswell's proposal to establish a postal savings system. In his 1874 annual report, Jewell stated "that the time has come when a resolute effort should be made to determine how far the Post Office Department can properly go in its efforts to accommodate the public, without trespassing unwarrantably upon the sphere of private enterprise."[4]

Nevertheless, the idea of savings banks, housed in the Post Office Department, continued to gain popular support and by 1882 the new postmaster general urged Congress to authorize the department to establish such an operation.[5] Many Populists saw a savings system as a logical extension of the Post Office Department's civic responsibilities. Postal banks, they asserted, would encourage thrift among immigrants, the working class and rural inhabitants and would promote economic stability by bringing unused money into the economy to stimulate business and by helping to stop the flow of U.S. dollars to other countries. The banks would also protect vulnerable people against "swindlers, unsafe deposits and unwise investments, and at the same time increase the investors' loyalty to the government by giving them a stake in a stable economy."[6] And, proponents opined, postal savings banks would require "no new organ of government."[7] In fact, one advocate argued:

> The post-office, of all institutions, seems to be the best adapted to carry the influence of the savings banks to every fireside. The most pervasive, the best understood, and the most familiar institution of any civilized country is the post-office. And

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[3]1873 *Annual Report of the Postmaster General* xxxii-xliii as cited in Carl H. Scheele, *A Short History of the Mail Service* (Washington, D.C.: Smithsonian Institution Press, 1970), 99.

[4]1874 *Annual Report* 28 as cited in Scheele, *A Short History of the Mail Service*, 99.

[5]Postmaster General Howe saw the postal savings bank "as a place near at hand, where a dollar may be deposited and may be secure against the temptations of the burglar, the thief and the saloonkeeper." Cited in Kelly, *United States Postal Policy*, 178.

[6]Wayne E. Fuller, *The American Mind: Enlarger of the Common Life* (Chicago: The University of Chicago Press, 1972), 178-180, quote at 179.

[7]James Henry Hamilton, *Savings and Savings Institutions* (New York: The Macmillan Company, 1902), 306. Hamilton was a professor of sociology at Syracuse University. See also Hamilton's "The Relation of Postal Savings Banks to Commercial Banks," *Annals of American Academy of Political and Social Science* 11 (January 1898): 44-53.

> likewise in every rural community the most widely known individual is the postmaster, and in every urban community the most familiar individual is the letter carrier. . . . Thus, he is peculiarly qualified to serve the savings bank, which requires not only facilities but missionaries.[8]

Furthermore, proponents asserted that postal savings banks would not compete against regular banks because people interested in depositing money in postal banks would not be the same people investing in private institutions. One postal study, for example, reported that many Americans, especially in the South and the West, lived hundreds of miles from private savings banks.[9]

Opponents, on the other hand, argued that a postal savings system would indeed intrude upon private enterprise and would most likely be "mismanaged, inefficient and costly, and [would] serve the public less well than privately managed businesses."[10] Bankers, in particular, aggressively--and successfully for many years--lobbied against federal legislation to enact such a system.[11] They worried that their customers would close their banking accounts and redeposit the money in government-protected postal accounts.[12]

The late 1800s and early 1900s brought renewed political interest in the Populist and Progressive agendas, including the establishment of postal savings banks.[13] During this time period, many foreign countries, including the United

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[8]Hamilton, *Savings and Savings Institutions*, 300-301.

[9]Edwin W. Kemmerer, *Postal Savings: An Historical and Critical Study of the Postal Savings Bank System of the United States* (Princeton: Princeton Univ. Press, 1917), 10-13. See also Arthur Summerfield and Charles Hund, *U.S. Mail: The Story of the United States Postal Service* (New York: Holt, Rinehart and Winston, 1960), 90.

[10]Fuller, *The American Mind*, 179. See also Edwin W. Kemmerer, "The United States Postal Savings Bank," *Political Science Quarterly* 26:3 (1911): 465.

[11]Between 1873 and 1910, congressional members, mostly from the South and from states west of the Mississippi, introduced eighty bills to establish postal savings banks and most of the legislation died without debate. Kemmerer, *Postal Savings*, 1; Kemmerer, "The United States Postal Savings Bank," 462; Gerald Cullinan, *The Post Office Department* (New York: Frederick A. Praeger, 1968), 197.

[12]Kemmerer, *Postal Savings*, 12.

[13]Fuller, *The American Mind*, 183; see also Library of Congress, *List of Books with References to Periodicals relating to Postal Savings Banks*, compiled under the direction of Appleton Prentiss Clark Griffin (Washington, D.C.: Government Printing Office, 1908).

Kingdom and Canada, established successful postal savings systems.[14] At the request of Congress, the National Monetary Commission instructed U.S. consuls serving around the world to investigate postal savings banks in their respective countries.[15] The Postmaster General also sent a postal expert to Canada to determine why the Canadian system worked so well.[16]

It took, however, the 1907 banking panic with the accompanying collapse of numerous banks to provide the impetus for the enactment of the 1910 postal savings law. President Theodore Roosevelt and Postmaster General George von L. Meyer urged Congress to authorize a postal savings system to help restore Americans' faith in the virtue and security of systematic savings. The major political parties endorsed the idea in their party platforms[17] and, when President William H. Taft assumed the presidency in 1909, he made postal savings banks one of his top legislative priorities. Postmaster General Frank H. Hitchcock summarized the reasons for enacting such a service:

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[14]Germany was the only other industrial country without a postal savings system, and it had established municipal savings banks. Patricia Hagan Kuwayama, "Postal Banking in the United States and Japan: A Comparative Analysis." In *IMES Discussion Paper Series* (Tokyo: Institute for Monetary and Economic Studies, Bank of Japan, June 1999), 5. For the language of the United Kingdom's 1881 establishing act, see the *Annual Report of the Secretary of the Treasury of the State of the Finances for the Year 1897* (Washington, D.C.: Government Printing Office, 1897), 362-363. See also Edward T. Heyn, "Postal Savings Banks," *Annals of American Academy of Political and Social Science* 8 (November 1896): 464; and Kelly, *United States Postal Policy*, 177.

[15]National Monetary Commission, *Notes on the Postal Savings-Bank Systems of the Leading Countries*, Sen. Document No. 658, 61st Cong. 3d sess. (Washington, D.C.: Government Printing Office, 1910), 59-128.

[16]"Postal Service Extension: What Postal Savings Banks and a Cheap and Efficient Parcel Post Would Mean to the Farmer and Wage-Earner: By the Editor," *Craftsman* 14 (September 1908): 587-94.

[17]The Republican 1908 platform supported "the establishment of a postal savings bank system for the convenience of the people and the encouragement of thrift." The Democratic platform favored guaranty of bank deposits and "a postal savings bank if the guaranteed bank cannot be secured, and that it be constituted so as to keep the deposited money in the communities where it is established." The Prohibition Party platform advocated "the establishment of postal savings banks and the guaranty of deposits in banks"; the Populist platform demanded "that postal savings banks be instituted for the savings of the people"; and the Independence League platform stated "government postal savings banks should be established where the people's deposits will be secure, the money to be loaned to the people in the locality of the several banks at a rate of interest to be fixed by the Government." Kemmerer, *Postal Savings*, 4-5; Kemmerer, "The United States Postal Bank," 464.

> The establishment of postal savings banks is earnestly recommended. It is believed that they would prove here, as they have elsewhere, an inestimable benefit not only to those who directly use them, but also to the general business community, including the banking interests. . . .
>
> Our private savings banks neither are nor can be sufficiently numerous and accessible to meet this growing need . . . [In 1909 there was one bank for every 270 square miles in the United States compared with one post office for every 50 square miles.[18]] The occasional failure of a bank is sufficient to transform . . . natural caution into a kind of distrust that restrains . . . people from depositing at any time in a bank . . . . On the other hand, all classes have unshakable confidence in the Government and its guaranty. A system of postal savings banks representing the national credit would constitute a conservative and reassuring influence in the financial and business affairs of the country. . . .[19]

Despite Hitchcock's reassuring words, banking interests continued aggressively to oppose any legislation that would establish, from their perspective, a competing financial institution within the government.[20] According to Senator Albert Cummins (R-Iowa), "The banks of the United States are opposed unanimously to the institution of a postal savings system. . . . I venture the assertion that during the nearly two years that I have been a member of this body . . . I have received the protest of nearly every bank in my State against any such scheme, and those protests have usually been accompanied by a very large number of petitions, secured, I have no doubt, through the industry and energy of the bank officers."[21] During House Post Office Committee's hearings, the American Banking Association representative summarized the industry's concerns: "We hold that the postal savings bank could add an unnecessary burden on the Federal

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[18]Kelly, *United States Postal Policy*, 179.

[19]1909 *Annual Report* 17-19.

[20]The American Bankers Association approved the following resolution in 1908: "Resolved, that it is the sense of this association that we should condemn in unqualified terms the proposition for the establishment of postal savings banks or any other system by which the government enters directly into banking relations with the people." Cited in Kemmerer, *Postal Savings*, 15.

[21]*Cong. Rec.*, 61st Cong., 2d sess. 8535 (June 20, 1910).

Government, that there is not the need or demand for it that many people think, and that its establishment would derange the present developing banking system of the country and inconvenience the multitudes as compared to a few who might be served."[22] Advocates for postal savings countered that the banks had nothing to fear because they already had the advantages of an established clientele, and the ability to set higher interest rates and higher limits for deposits.[23]

Acknowledging the banking industry's concerns, policymakers constructed the legislation in such a way as not to compete directly with private banks. Specifically, they set the interest rate payable to depositors at 2 percent, half of what private banks could offer under the Bowery Savings Bank Act.[24] This was the lowest interest rate of any postal savings system in the world, even though the American private banks at the time were paying the highest interest rates on deposits.[25] They also set the maximum account balance at $500,[26] and specified that the money the local postal bank collected from depositors should be redeposited in solvent local banks, if available.[27] Although the American Bankers Association committed one million dollars to halt the legislation, it finally conceded that the creation of voluntary postal savings banks was inevitable and

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[22]U.S. Congress, Hearings Before House Subcommittee No. 2 on Committee on Post Office and Post Roads (Feb. 25, 1909), 113 as cited in Jean Reith Schroedel and Bruce Snyder, "People's Banking: The Promise Betrayed?," *Studies in American Political Development* 8 (Spring 1994): 187-188.

[23]Kemmerer, *Postal Savings*, 15. "Petitions Supporting Postal Savings," Records of the U.S. Senate, Record Group 46, file Sen. 56A-J31.3, National Archives.

[24]Act of June 25, 1910, 36 Stat. 816; 39 U.S.C. 757. In 1916, the postmaster general wanted to recommend a "slight increase in the rate of interest paid to depositors" but waited until 1920 to do so. Congress declined to act on his recommendation. 1920 *Annual Report* 111.

[25]On average, the private banks were paying 3 1/2 percent in interest. Washington Bankers Association, *The Postal Savings System of the United States*, No. 4 rev., Fourth of a Series of Studies made under Direction of the Research Committee of the Washington Bankers Association (1937), 4. See also Kemmerer, "United States Postal Savings Bank," 485.

[26]Upon the postmaster general's recommendation, Congress increased the maximum balance to $2,000 in 1916 with only the first $1,000 getting 2 percent interest and again in 1918 to $2,500 with all the funds earning interest. 1915 *Annual Report* 30-31; 1916 *Annual Report* 28; 1918 *Annual Report* 38-39. See also Washington Bankers Association, *The Postal Savings System of the United States*, 3-4.

[27]Act of June 25, 1910, 36 Stat. 814-819, 39 U.S.C. 751.

certainly preferable than legislative action to guarantee bank deposits, another proposed remedy stemming from the Panic of 1907.[28]

Administration

Effective Jan. 1, 1911, the postal savings system "was established as an experiment in a new field of public benefits."[29] To administer the program, Congress appointed a three-member board of trustees, consisting of the postmaster general, the secretary of the Department of Treasury and the attorney general, and appropriated $100,000 for the first year's operating funds. Given the limited funding, the board decided to select one post office in each state and territory to receive deposits on a trial basis in 1911.[30]

Although Congress designed the board to represent administrative, financial and legal interests and gave it wide discretionary powers, it soon determined that the board's administrative structure was flawed. It was simply too difficult for the three members to meet on a regular basis to set policy and procedures. Consequently, Congress amended the law in 1911, giving the postmaster general the sole authority to designate postal savings depositories and to make rules for deposits and withdrawals. Investments and the control of deposits, however, continued to be entrusted to the board.[31] In 1913, the postmaster general issued an administrative order, creating the Division of Postal Savings and placing it under the Bureau of the Third Assistant Postmaster General.[32]

In keeping with congressional intent, the Post Office Department at first actively targeted the immigrant community to encourage participation in the postal savings program. The department issued circulars in 23 languages and provided special assistance for non-English speaking users. By 1915, 58.7 percent of the

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[28]Schroedel and Synder, "People's Banking," 187; Kemmerer, *Postal Savings*, 3-4.

[29]Kelly, *United States Postal Policy*, 182.

[30]1910 *Annual Report* 9-10.

[31]Edwin W. Kemmerer, "Six Years of Postal Savings in the United States," *American Economic Review* 7 (March 1917): 46-90.

[32]1913 *Annual Report* 26-28; see also Kelly, *United States Postal Policy*, 180; Kemmerer, "Six Years of Postal Savings in the United States," 47.

depositors were born outside of the United States and 71.8 percent of the total deposits were from immigrants.[33]

The postal savings system flourished in the 1930s and 1940s, reaching its peak in 1947 with 4,196,517 depositors and a balance of $3,392,773,461.[34] As the Depression brought interest rates plummeting in the private sphere, the postal savings banks' interest rate of 2 percent became more competitive. An American Bankers Association survey, conducted in the mid-1930s, concluded "that the Postal Savings System is now a significant competitor to the Banking System in the savings deposit field."[35] Postal savings banks were no longer serving primarily citizens without convenient access to local banks; indeed, 78.6 percent of them were operating in communities with local financial institutions, the association contended.[36] They also were not redepositing investors' money in the local banks as Congress originally intended. And they were no longer necessary as a safe haven for conservative, bank-wary investors because most private banks were now members of the Federal Deposit Insurance Corporation, which insured most deposits.[37] For all of these reasons, the American Banking Association urged Congress to amend the program "to bring the administration of the System again within the purpose governing its establishment, namely, to furnish supplementary and non-competitive savings facilities."[38]

The board of trustees overseeing the postal savings system recognized that the 2 percent interest rate offered by postal savings banks was indeed higher than what banks in some states were offering their customers. Consequently, the board

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[33]1915 *Annual Report* 30. The department, however, stopped advertising in later years because of concerns over competing with private banks. Kuwayama, "Postal Banking in the United States and Japan: A Comparative Analysis," 10.

[34]House Rept. No. 1065, *Cong. Rec.*, 89th Cong., 2d sess. 5595 (March 14, 1966).

[35]American Bankers Association, *The Postal Savings System of the United States*, 8. See also Maureen O'Hara and David Easley, "The Postal Savings System in the Depression," *Journal of Economic History* 39:3 (September 1979): 745; and Cullinan, *The Post Office Department*, 198.

[36]American Bankers Association, *The Postal Savings System of the United States*, 5-8.

[37]Ibid., 7.

[38]Ibid., 3.

lowered the postal banks' interest rate in New Jersey and Mississippi to 1 percent in 1939 and in 1945 respectively.[39]

This action, however, did not curb criticism of the postal savings system. As early as 1949, the Commission on Organization of the Executive Branch of the Government (the Hoover Report) questioned whether the system's original aims were still applicable in the current financial environment. Three years later, a General Accounting Office audit raised similar concerns, and legislation was introduced to abolish postal savings banks.[40]

In the meantime, postal savings banks--limited by law to a 2-percent interest rate--were no longer attracting serious investors because private financial institutions had markedly raised their interest rates after World War II. Instead, the system was often used for trivial purposes, a 1953 investigation showed. At some East Coast beaches, for example, people who didn't want to rent a locker would deposit their cash in a postal savings bank, go swimming for a few hours and then withdraw their deposits. Likewise, race track gamblers would deposit enough money in a local post office to pay their fare home after a day of betting.[41]

Postal administrators agreed with the almost universal assessment that postal savings banks had served their original intent and were no longer needed. With the support of the Post Office Department, Congress voted to discontinue the banks in 1966.[42] Even at the point of dissolution, however, members of Congress reiterated, "The Postal Savings System was not designed to complete with private enterprise, and it has not done so."[43] Established as a "safe and convenient

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[39]In New Jersey, the rate was increased to 1 1/2 percent in 1946 and restored to 2 percent in 1947. In Mississippi, it was increased to 1 1/2 percent in 1954. *United States Domestic Postage Rates: 1789 to 1956* (Washington, D.C.: Post Office Department), 15; 1948 *Postal Laws and Regulations* 560.

[40]Ronald Moe, *Hoover Commissions Revisited* (Boulder, Colo.: Westview Press, 1982), 51; Kuwayama, "Postal Banking in the United States and Japan: A Comparative Analysis," 27.

[41]House Rept. No. 1065, *Cong. Rec.*, 89th Cong., 2d sess. 5595 (March 14, 1966); Cullinan, *The Post Office Department*, 198.

[42]Public Law 89-374, *Cong. Rec*, 89th Cong., 2d sess. 5595 (March 14, 1966). Unclaimed savings were turned over to the Department of Treasury. Cullinan, *The Post Office Department*, 199.

[43]House Rept. 1065 in ibid.

savings depository," the postal savings system had simply "outlived its usefulness," the Post Office Department concluded.[44]

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[44]1966 *Annual Report* ix.

5. Postal Telegraph and Telephone

Except for the United States, virtually every nation regarded the telegraph and telephone as natural extensions of the state's mail monopoly and operated them under a postal ministry.[1] The U.S. Constitution did not foreordain telecommunication's development as a private-sector function. To the contrary, the Constitution's postal clause left the principal information-transmitting institution in government hands.[2] Why, then, did the Post Office Department fail to secure its most far-reaching expansion of service--into telecommunication?

Part of the answer, of course, may stem from the reservations Americans supposedly harbor about government ownership of industries or commercial services. Students of comparative public policy customarily point to historical experiences and philosophical predilections to explain these reservations: the Revolution's legacy of opposition to state authority; the division of power between lawmaking and administrative institutions; the federal structure of U.S. government; an individualism nurtured by the frontier experience; the early inroads

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[1]Volker Schneider, "Telecommunications and the State: A Historical and Comparative Perspective," *Trends in Communication* (no. 3, 1997): 7-33. Of course, for two or more decades the trend has been toward privatizing formerly public telecommunication services. See Raymond M. Duch, *Privatizing the Economy: Telecommunications Policy in Comparative Perspective* (Ann Arbor: Univ. of Michigan Press, 1991).

[2]Ithiel de Sola Pool, *Technologies of Freedom* (Cambridge: Harvard University Press, 1983) has discussed the disjunction between the communication policies governing the postal system and those applied to telecommunication. The best, albeit dated, study of the postal clause is Lindsay Rogers, *The Postal Power of Congress: A Study in Constitutional Expansion* (Baltimore: Johns Hopkins Univ. Press, 1916).

of laissez-faire economics; and suspicion of an eastern-governing elite by the rest of an expansive nation.[3]

Indeed, opponents of postal--i.e., government--telecommunication constructed their brief from these and related principles. Tenets of American political economy, however, remained far from settled during the wide-ranging public debate over a postal telegraph and telephone that lasted from the 1830s to 1920. Thus this debate, which tested the boundaries of postal enterprise, figured centrally in the process of contesting, refining, and validating principles about the role of the state, especially federal bureaucracies. In short, this debate did not apply established rules of political economy to proposals for a postal telegraph and telephone--it helped create the rules.

The Post Office Launches--and Relinquishes--the Telegraph

Most people associated with the first American telegraph line, built with federal funds, viewed it as a natural extension of the state's postal power. The Secretary of the Treasury's 1837 call for proposals to establish a telegraph system assumed that it "might most properly be made appurtenant to the Post Office." When Samuel F. B. Morse submitted his plan, he similarly compared a telegraph network to the "mail system." Congress, however, declined to fund a line in 1837-38 and Morse turned to Europe for the government subvention he needed to demonstrate his invention. Travels abroad failed to yield the state funding he sought, but it did give Morse a sense of the different institutional settings in which telecommunication could evolve.[4]

Congress reconsidered plans to establish a telegraph network and in March 1843 awarded Morse $30,000 to build a demonstration line between Washington and Baltimore. With the 1844 message "What hath God wrought!," Morse signaled the birth of telecommunications in the United States. Sensing the power

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[3]See Byron E. Shafer, *Is America Different? A New Look at American Exceptionalism* (Oxford: Clarendon Press of Oxford Univ. Press, 1991), especially chapters by Seymour Martin Lipset, "American Exceptionalism Reaffirmed," and Richard Rose, "Is American Public Policy Exceptional?"

[4]House Doc. 15, 25th Cong., 2d sess. quote at 1 (1837). A good descriptive overview of the establishment and early operation of the telegraph can be found in Robert L. Thompson, *Wiring A Continent: The History of the Telegraph Industry in the United States, 1832-1866* (Princeton: Princeton Univ. Press, 1947): 1-34.

of the new technology, and perhaps influenced by his discussions with European officials, Morse favored telegraphy controlled by the government, possibly with some regulated private competition. The founder of American telecommunication had more reservations about abuses of his technology in the hands of the private sector than by government administrators.[5]

Morse initially operated his Washington-to-Baltimore telegraph under the supervision of the treasury department until Congress shifted control to the post office. Congress asked Postmaster General Cave Johnson to recommend whether the government should retain the line or turn it over to Morse. Johnson conceded that the line had not proved a financial success and yet telegraphy in private hands, he feared, could become a formidable competitor for the postal system; the department "must necessarily be superceded in much of its most important business in a few years, if the telegraph be permitted to remain under the control of individuals." The post office thus recognized at this early date that telecommunication could substitute for letters. Johnson recommended in 1845 and 1846 that Congress retain and extend the network of wired communication. Congress declined and the line was sold to a the Magnetic Telegraph Co. in 1847.[6]

The congressional decision did not turn on the constitutionality of a government telegraph. An 1845 report from the House Ways and Means Committee concluded that the postal clause furnished sufficient authority. The committee further noted that it would be a "manifest dereliction" to allow the post office to "lag behind the improvements of the age." The post office should adopt any "newly discovered agency or contrivance possessing decided advantage of celerity over previously used methods." To let the telegraph develop solely in private hands would mean that the "post office, in its transportation of all correspondence and news, would lag not hours, but days, behind the transmission of the same things through another medium. . . ." And with this medium in private hands, private interests could capitalize on their access to information before it became available through public channels.[7]

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[5]Richard R. John, Jr., "A Failure of Vision? The Jacksonians, the Post Office, and the Telegraph, 1844-1847" (unpublished paper presented at the 1986 meeting of the Society for Historians of Technology, Pittsburgh).

[6]Sen. Doc. 1, 29th Cong., 1st sess. quote at 861 (1845); Sen. Doc. 1, 29th Cong, 2d sess. 689 (1846); Thompson, *Wiring A Continent*, 56.

[7]House Rep. No. 187, 28th Cong., 2d sess. quotes at 3 and 5 (1845).

The decision to remove the post office from telegraphy stemmed mostly from circumstances of the moment rather than fundamental objections to the principle. Mounting post office deficits at the time made the addition of a new service financially risky. The poor financial showing--$400 in revenue for $4,000 in operating expenses between April and October 1845--was largely a result of the demonstration line's short reach. The Washington-to-Baltimore line needed connections to Philadelphia or preferably New York City to prove its financial viability. When the Senate considered continuation of the postal telegraph, most of the opposition stemmed from a failure to appreciate that a longer line would attract sufficient patronage from businesses and the public. Behind-the-scenes bickering by Morse and his partners, including a member of Congress, also undermined support for expansion of the first government telegraph.[8]

From Competition to Monopoly and Renewed Government Interest

With telegraphy in private hands, competition between the Morse interests and rival lines fueled wildcat growth. The small, poorly capitalized local and regional telegraph companies, however, frustrated the technology's potential to provide uninterrupted long-distance communication. Telegraphy's principal customers, businesses of all kinds, complained about wasteful competition in a service that would function best under unified control.[9]

The industry first tried to reduce the ravages of competition through cooperation. The 1857 "Treaty of the Six Nations" divided the United States into six sectors and protected the dominant telegraph company in each from competition by other signatories. In the long run, however, consolidation proved more powerful in rationalizing the industry. Western Union, a key regional firm before the Civil War, emerged from the conflict poised to acquire competitors that had been partly integrated into a nation-wide network by the Union government.[10]

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[8]John, "A Failure of Vision?," 11-13; M. Elliot Vittes, "Postal Service and the Public: A Case Study in Public Policy" (Ph.D. dissertation, Univ. of Massachusetts, 1983), 87-88; Richard R. John, *Spreading the News: The American Postal System from Franklin to Morse* (Cambridge: Harvard Univ. Press, 1995), 86-89.

[9]Thompson, *Wiring a Continent*; Richard B. Du Boff, "Business Demand and the Development of the Telegraph in the United States," *Business History Review* 54 (Winter 1980): 459-79.

[10]Thompson, *Wiring a Continent*, 259-446.

The telegraph industry's new industrial configuration revived calls for a postal telegraph. Although the issue of public ownership arose in connection with other institutions, especially railroads, no industry presented the matter as sharply and as urgently as the telegraph. No single railroad, for instance, came close to dominating its field the way Western Union occupied an entire economic sector--telecommunication--from coast to coast. Also, the telegraph--the first modern information utility and the first industry to use electricity--had by the 1860s become the nervous system for commerce, finance, transportation, journalism, and governance. "[T]he telegraph was a new and distinctively different force of production that demanded a new body of law, economic theory, political arrangements, management techniques, organizational structures, and scientific rationales," a communications historian has observed. These innovations were needed "to justify and make effective the development of a privately owned and controlled monopolistic corporation."[11]

In 1866, the year that Western Union absorbed its two major rivals, Congress passed a law with the potential to restructure the telegraph industry. On one hand, the law gave telegraph companies land-grant privileges similar to those enjoyed by railroads. Companies could construct their lines along post roads and across public lands, using resources in the public domain, in return for allowing the government to send messages at rates fixed annually by the postmaster general. On the other hand, the legislation provided that the government could purchase, after 1871, any company that accepted these privileges. The purchase price would be set by a five-person committee jointly selected by the government and industry.[12]

This law gave the government two options for postalizing (a nineteenth-century term) the telegraph. Exercising its option after 1871, the government could take over telegraph companies to operate as a monopoly. Or it could acquire one firm and operate it in competition with Western Union. Even Western Union accepted the terms of this law as it promised to respect shareholders' rights.[13]

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[11]James W. Carey, "Technology and Ideology: The Case of the Telegraph," *Prospects* 8 (1988), 303-25, quote at 306.

[12]Act of July 24, 1866, 14 Stat. 221.

[13]For a legislative history of the 1866 act, see Lester G. Lindley, "The Constitution Faces Technology: The Relationship of the National Government to the Telegraph, 1866-1884" (Ph.D. dissertation, Rice Univ., 1971), 41-83. See also Richard John, "The Politics of Innovation," *Daedalus* 127 (no. 4, 1998): 198.

Populists Lay a Foundation for a Postal Telegraph

Looming in the background, the 1866 law--congressional acceptance of the possibility of a government telegraph--heartened advocates of post office innovation. The nationalization of the British telegraph in 1869 reinvigorated the U.S. campaign for a postal telegraph. British experience was frequently invoked in the American debate, both because it provided a precedent for nationalizing an established industry and because of the relative congruence of the two nations' values. When the Royal Post Office assumed control of the British telegraphs in 1870, it left the United States and Canada as the only major industrial nations with telegraph systems largely in private hands.[14] Accordingly, at least one hundred bills to create a postal telegraph (later including the telephone) were introduced in Congress before 1900; "and at least twelve times between 1870 and 1896, congressional committees, after citing Western Union malpractices, reported in favor of government participation in the telegraph business." Similar legislation was continually debated between 1900 and 1920.[15]

Advocates of a postal telegraph developed quite a bill of particulars against Western Union. While giving huge discounts to commercial customers, Western Union's high rates for individuals confined social uses of the telegraph to less than 5 percent of the traffic; in contrast, the post office-operated telegraphs of Europe were widely used by the general public for correspondence. In addition, the company influenced lawmakers and opinion leaders by liberally conferring telegraph franking privileges. Exclusive contracts with railroads and other customers handicapped competitors. And cozy contractual agreements with the leading press association kept much of the media aligned with Western Union's interests. For instance, Western Union "inspired" stories in American newspapers, datelined London, that recounted problems with the British takeover of the telegraph.[16]

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[14]C. R. Perry, *The Victorian Post Office* (Woodbridge, UK: Boydell & Brewer, 1992), 85-144. See, e.g., Leon Trousdale, *The Postal Telegraph System . . . Examined in Its Relations to American Institutions* (Memphis: Dalton & Price, 1869) (suggesting that a government telegraph would subvert a free press).

[15]H. H. Goldin, "Governmental Policy and the Domestic Telegraph Industry," *Journal of Economic History* 8 (May 1947): 57.

[16]Ibid., 57-58; Lindley, "Constitution Faces Technology," 84-133.

With such ammunition, well-organized agrarian groups--the Grange, Farmers' Alliance and the Populists--joined the Post Office Department's efforts to secure a postal telegraph. Western Union's own operations and rhetoric suggested that competition in telegraphy wasted resources and yielded inferior service. And yet competition was the touchstone of private-sector enterprises. The agrarian groups thus popularized the view of telegraphy (and later the telephone) as a natural monopoly. Furthermore, telecommunications had become a strategic input for other sectors of the economy--finance, commerce, transportation, and more. But in private hands, a monopolistic telegraph company could use its power to restrict competition in industries dependent on the information it transmitted. And Western Union earned a reputation--partly derived from the machinations of key stockholders such as Jay Gould and Cornelius Vanderbilt--of using its control over the transmission of information to stifle competition in finance, transportation, and other sectors of the economy. Thus, agrarian groups could plausibly argue that a telegraph operated by the Post Office Department would preserve competition in industries dependent on the electrical transmission of information.[17]

The Populists' campaign for a postal telegraph derived considerable support from the administrative resources of the Post Office Department. Most postmaster generals after 1870 endorsed the idea, none more vigorously than John Wanamaker. He and other administrators were developing a view of their institution as the proper locus for government initiatives, a conclusion derived in part from their familiarity with postal ministries around the world. The Post Office Department drew on its international connections to amass data on the operation of postal telegraphs in other countries. The findings provided ammunition to postal officials and Populists who pressed their case in Congress.[18]

The campaign for postal involvement in telecommunications also received indirect support from the U.S. Supreme Court. An 1877 decision, *Pensacola Telegraph Co. v. Western Union Telegraph Co.*, construed the postal clause elastically. In this case, Florida law blocked Western Union from competing with a company chartered within the state. The Supreme Court upheld Western Union's challenge to such state regulation; it considered both the constitution's postal and

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[17]John D. Hicks, *The Populist Revolt: A History of the Farmers' Alliance and the People's Party* (1931; reprint Lincoln: Univ. of Nebraska Press, 1961), 427-44; Nathaniel P. Hill, *Speeches and Papers on the Silver, Postal Telegraph and Other Economic Questions* (Colorado Springs: Gazette Printing Co., 1890), 167-98.

[18]A convenient summary of statements on postal telecommunication by postmasters general can be found in Sen. Doc. 399, 63d Cong., 2d sess. 22-30 (1914).

commerce clauses in reaching its decision. "Post-offices and post-roads are established to facilitate the transmission of intelligence," the Court wrote.

> The powers thus granted are not confined to the instrumentalities of commerce, or the postal service known or in use when the Constitution was adopted, but they keep pace with the progress of the country, and adapt themselves to new developments of time and circumstances. They extend from the horse with its rider to the stage-coach, from the sailing-vessel to the steamboat, from the coach and the steamboat to the railroad, and from the railroad to the telegraph, as these new agencies are successively brought into use to meet the demands of increasing population and wealth.[19]

The court declined to decide in this case whether "Congress may assume the telegraph as part of the postal service, and exclude all others from its use."[20]

Enter the Telephone--and AT&T's Opposition to Postal Telecommunications

Unlike the telegraph, the telephone began strictly as a private-sector service, at least in the United States. For seventeen years after he patented his device in 1876, Alexander Bell and his partners guided the development of the American telephone industry. But when key patents expired in 1893 and 1894, independent--that is, non-Bell--companies mushroomed. A period of vigorous competition ensued. The Bell Co. faced small and medium-sized rivals throughout the nation, forcing it to cut rates in many markets. Because of this competition--half the nation's cities had two or more phone companies--and because telephony remained largely a local communication service, the drive to postalize it made little headway.[21]

The picture changed, however, in the first decade of the twentieth century, reigniting a broader campaign for postal telecommunications. In 1907, the J. P. Morgan banking interests brought in Theodore N. Vail to revive AT&T's fortunes.

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[19]96 U.S. 1, 16 (1877).

[20]Ibid., 18-19.

[21]Alan Stone, *Public Service Liberalism: Telecommunications and Transitions in Public Policy* (Princeton: Princeton Univ. Press), 54-140.

Instead of competing with the many independents, Vail offered to interconnect with strategically placed rival systems, a prelude to absorbing many of them. And, to strengthen its position in long-distance communication, AT&T acquired a controlling interest in Western Union (it was another several years before AT&T completed its own coast-to-coast telephone lines).[22]

To complement these business tactics, Vail launched "the first, the most persistent, and the most celebrated of the large-scale institutional advertising campaigns of the early twentieth century."[23] This campaign--whose slogan "One Policy, One System, Universal Service" appeared in AT&T ads and literature--intended to convince Americans that telephony functioned best under a unified system of control. Vail realized that a unified system could be structured in one of two ways: by a private sector firm, say a paternalistic AT&T, or a government agency, the Post Office Department.[24]

AT&T's resurgence prompted two legal responses. First, the 1910 Mann-Elkins Act gave the ICC jurisdiction over interstate rates charged by the telegraph, telephone, and cable industries. Second, AT&T's brazen takeover of Western Union prodded the Wilson administration to threaten the nationalization of telecommunications. AT&T retreated, signing an agreement with the Justice Department to relinquish control over Western Union and to seek the ICC's approval before acquiring independent telephone companies. But that hardly quieted the matter; the public hostility aroused by AT&T's maneuvers--the press now portrayed it as a grasping octopus--resurrected the drive to postalize the nation's telegraph and telephone systems.[25]

With passage of postal savings (1910) and parcel post (1912), it seemed to many--including AT&T--but a short step to a postal telegraph and telephone. Informed commentators proclaimed congressional enactment of a postal telecommunications system a near certainty. But AT&T responded with a broad and sophisticated campaign against any further expansion of postal enterprise. Going beyond the usual publications, speeches, and congressional testimony,

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[22]Robert B. Horwitz, *The Irony of Regulatory Reform: The Deregulaton of American Telecommunications* (New York: Oxford Univ. Press, 1989), 98-99.

[23]Roland Marchand, *Creating the Corporate Soul: The Rise of Public Relations and Corporate Imagery in American Business*, quoted in Richard R. John, "Theodore N. Vail and the Civic Origins of Universal Service," *Business and Economic History* 28 (Winter 1999), 71.

[24]Stone, *Public Service Liberalism*, 140-54.

[25]Horwitz, *Irony of Regulatory Reform*, 100-101.

AT&T organized a public information campaign designed to build a bulwark against further postal innovations. The most potent weapon in this campaign was a a looseleaf service, *Brief of Arguments Against Public Ownership*. Started around 1913, the looseleaf service supplied opinion leaders with hundreds of documents that challenged government enterprise generally and postal innovations in particular. Each item arrived complete with instructions on how to file it according to type of utility (railroads, postal, telecommunications, energy), country (more than a dozen), and the nature of the argument.[26]

The brief, or outline of arguments, started by conceding that some government regulation of private utilities was healthy. But then it provided "general arguments against public ownership," including the "inapplicability of foreign precedents." The heart of the brief asserted that government ownership harmed the public in a variety of ways. It interfered with the "primary function of government," "increased opportunities for political corruption and abuses," exerted "undue political influence" by expanding the civil service, and produced an "undemocratic tendency toward centralization, militarism and bureaucracy." Furthermore, public ownership destroyed "individual initiative." It hurt public finance by encouraging false accounting, fixing rates according to political pressure, and taxing members of the public who did not use the service. Consumers would suffer from "poor service," "arbitrary treatment" by government employees, "high rates," and from a stodgy bureaucracy's reluctance to adopt the latest innovations. Ordinary consumers would suffer discrimination in rates set to favor those with political influence.[27]

AT&T gathered evidence for each of these arguments, and others, to be used in its campaign against postal telecommunications. The evidence ranged from short news items published in the United States and abroad to lengthy excerpts from U.S. and foreign government reports. The smallest and silliest evidence against government-owned telecommunications was not overlooked. Item No. 107, Index No. D1 (arguments about government systems' poor service), filed under "COUNTRY: Germany" and "UTILITY: Telephones" came from the New York *Times* Marconi Transatlantic Wireless Telegraph datelined Berlin: A witness, testifying at hearings on the telephone, "asserted that . . . Government telephone girls had been permitted by the Inspectors to utilize one of the big

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[26]American Telephone and Telegraph Co., Commercial Engineer's Office, comp., *Brief of Arguments Against Public Ownership* (New York: n.d., ca. 1913-14).

[27]All quotes from "Index" in ibid. (capitalization altered slightly).

exchanges for the reception of their fiances." Another "amusement of the girls of this exchange was to look up all the subscribers having the same name, to connect all of them, ring them all up, and laugh loudly at the result."[28] The message: employees of postal telephone systems rendered poor service. Most of the items in the *Brief* were more substantial, but all were intended for wide circulation in the campaign against postal telecommunications.

The AT&T campaign rebutted proposals put forward by the Wilson administration's postmaster general, Albert S. Burleson, and members of Congress such as Representative David J. Lewis. In 1913, Burleson, Lewis, and members of post office committees in Congress began working on legislation to buy the nation's telegraph and telephone lines and turn them over to the Post Office Department. President Wilson reportedly agreed with the plans[29] but backed away when AT&T agreed to divest its Western Union interests. Burleson, Lewis and others, however, pushed ahead. Lewis worked tirelessly to counter AT&T's information campaign with publicity of his own. In December 1913, for instance, he filled seventy-two columns of the *Congressional Record* with data about postal telegraphy and telephony around the world, evidence that pointed toward the merit of government systems. Lewis' plan died when Democrats who had originally backed postalization decided that the newly authorized ICC supervision of the telegraph and telephone was sufficient reform for the time being.[30]

The Possibility of Government Ownership Foreclosed

Just when it appeared that the campaign for postalization of telecommunication had stumbled in the arenas of public opinion and policymaking, war presented a last chance. The outbreak of World War I gave the Post Office Department an opportunity to prove its administrative capability. In December 1917, Congress subjected railroads to government control as a wartime measure

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[28]Ibid., item no. 107.

[29]In an April 4, 1913, letter to Burleson, President Wilson wrote, "For a long time I have thought that the government ought to own the telegraph lines of the country and combine the telegraph with the post office. How have you been thinking in this matter?" Burleson Papers, Box 6, Library of Congress.

[30]Cong. Rec. 63d Cong., 2d sess., 1377-1412 (1913). See generally Thomas D. Masterson, "David J. Lewis of Maryland: Formative and Progressive Years, 1869-1917" (Ph.D. dissertation, Georgetown Univ., 1976), 403-28; David Lewis, *The Postalization of the Telephone and Telegraph* (Washington: Government Printing Office, 1914).

and several months later put the Post Office Department in charge of the nation's wire communications. Postmaster General Burleson's goal of converting the Post Office Department into a Department of Communication seemingly had been realized except for the name change.[31]

Because the authorizing legislation required government to pay equitable compensation to the telecommunication companies, Burleson was forced to raise phone rates and institute service charges. Wages rose rapidly with wartime labor shortages, and strikes by workers further undermined the post office's management. In such a situation, "the public could see no advantage in government operation." Congress returned wires to private control after one year, much faster than the railroads, because the experience had been so bad. Some congressional postmortem analyses tried to show that Burleson's management--not public control per se--was the problem. Regardless, the campaign for a postal telegraph and telephone was dead.[32]

In the 1920s, the Post Office Department played a small role in the development of radio communication as an adjunct to airmail transport. This made the post office a player, albeit a minor one, in the struggle to develop a permanent regulatory scheme for radio.[33] Congress in 1927 vested regulatory authority in the Federal Radio Commission and later in the Federal Communications Commission seven years later. The 1934 law transferred the postmaster general's remaining powers over telegraphy--basically to negotiate rates at which companies sent government telegrams--to the FCC.[34]

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[31]On Burleson's long-standing interest in the subject, see his report, "Government Ownership of Electrical Means of Communication," printed as Sen. Doc. 399, 63d Cong., 2d sess. (1914).

[32]Richard W. Howard, "The Work of Albert Sidney Burleson as Postmaster General" (unpublished M.A. thesis, Univ. of Texas-Austin, 1938), 85-95, quote at 91; Horwitz, *Irony of Regulatory Reform*, 101-102.

[33]Paul T. David, *The Economics of Air Mail Transportation* (Washington, D.C.: Brookings Institution, 1934), 34, 40-41; Philip T. Rosen, *The Modern Stentors: Radio Broadcasting and the Federal Government, 1920-1934* (Westport, Conn.: Greenwood Press, 1980), 25-29, 40-46.

[34]Communications Act of 1934, Public Law 416, sec. 601(b), reprinted in *A Legislative History of the Communications Act of 1934* (New York: Oxford Univ. Press, 1989), 962.

6. Postal Innovation and Postal Reorganization

Congress, through the Postal Reorganization Act (PRA), clearly intended to commit the U.S. Postal Service to a program of continual innovation. But the intended boundary between appropriate postal enterprise and unwarranted competition with the private sector is only implied by the official proceedings that culminated in reorganization.

Reviewing the postal crisis that precipitated reorganization, the Kappel Commission's report, and key elements in the development of the PRA suggest three conclusions about congressional understanding of postal innovation: First, lawmakers seemed preoccupied with innovations in management, facilities, mail processing, transportation, personnel matters, and ratemaking. Second, Congress paid little attention to how developments in electronic communication might affect the Postal Service. Third, lawmakers did recognize the importance of granting the new postal establishment considerable flexibility and latitude to innovate.

Postal Crises and Innovations in the 1960s

Several developments converged in the 1960s to highlight the need for an overhaul of the postal system. At the same time, the Post Office Department was exploring innovations to address looming problems.

By the 1960s, the postal system was suffering noticeably from the decline of railway mail transportation. Although more mail moved by airplanes and trucks, neither allowed for the sorting en route that had long made railway cars so attractive. Instead, poorly equipped big-city post offices became the processing centers. And when rising volumes of mail flowed into cramped urban post offices,

relatively small technical or managerial problems created massive logjams.[1] Such a crisis occurred in the Chicago post office--at 60 acres, the world's largest--in October, 1966. For two weeks, paralysis at the Chicago facility slowed mail delivery through much of the nation.[2]

During the 1960s, the post office looked to several innovations--each partly dependent on others--to handle a growing avalanche of mail. ZIP Code, instituted in 1963, promised to speed mail processing. It worked in conjunction with sectional processing centers. The ultimate goal was to use ZIP Codes as part of an automated mail-sorting system.[3] But when the post office announced that some second- and third-class bulk mail would have to be presorted, starting July 1, 1965, affected mailers complained to Congress and the department postponed implementation until 1967.[4]

In the one mail class that faced private-sector competition--parcel post--Congress continued its tug and pull with the post office during the 1960s. (See chapter 4 for an account of parcel post through the mid-1950s.) The Postal Policy Act of 1958 declared that some mail classes provided distinct public services for the nation. For these--notably publications and nonprofit mailings--revenues did not have to cover costs; the Treasury made up the difference. Parcel post, however, fit in another category; the 1958 law reiterated Congress's original intention with parcel post: revenues and expenditures had to balance so that the post office did not subsidize a service that competed with private businesses. Because parcel post showed chronic deficits, Congress gave the postmaster general a precise mandate in the 1958 law: change rates, with the ICC's consent, whenever costs and revenues varied by more than four percent.[5]

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[1]"Danger of Breakdown in Mail Service?" *U.S. News & World Report* 60 (March 14, 1966): 58-59, 62.

[2]"A Question the World Over: 'What's Wrong with the Mails?'" *U.S. News & World Report* 61 (Oct. 24, 1966): 95-96; "Breakdown Ahead in Mail Service," ibid., 61 (Nov. 7, 1966): 52-54; "Insider Explains Mail Breakdown," ibid., 61 (Dec. 5, 1966): 50-51.

[3]U.S. Postal Service, *History of the United States Postal Service* (Washington, D.C.: U.S.P.S., 1993), 15.

[4]John A. Gronouski, "The Best Form of Efficiency," *Reporter of Direct Mail Advertising* 27 (March 1965): 14-15; *Zip Code System in the United States Postal Service: Hearings on H.R. 5180 and Similar Bills Before the Subcom. on Postal Facilities and Modernization of the House Com. on Post Office and Civil Service*, 89th Cong., 1st sess. (1965).

[5]Act of May 27, 1958, 72 Stat. 143.

The postmaster general dutifully raised parcel rates in 1960 and, as before, the volume dropped, producing a 20 percent deficit in 1961. The postmaster general sought a further rate hike, which the ICC approved. But the ICC turned aside the postmaster general's request to relax the weight and size limitations that Congress had legislated in 1951 as a response to complaints from private carriers. The ICC claimed that only Congress could make such changes in its own laws. "The Postmaster General reported to Congress that he was unable to certify that a rate increase alone would achieve the break-even objective for parcel post because of the inevitability of further volume losses which would preclude a cost-revenue balance."[6] Frustrated, the postmaster general asked Congress to assume sole authority for setting parcel post rates. Congress declined. It did, however, authorize an inquiry that culminated in the Parcel Post Act of 1966, which gradually raised the size-weight maximum to make the government service more competitive with private carriers. The 1966 law slightly altered the ICC's role in ratemaking: POD proposals became effective automatically unless the ICC decided to investigate.[7]

The tension between Congress and the Post Office over parcel post illustrates, in microcosm, some of the problems that beset the post office on the eve of reorganization. Ironically, it also pointed toward a solution: give the post office considerable autonomy but subject its decisions to the scrutiny of another federal agency.

Kappel Commission

Headed by the former chairman of AT&T, Frederick R. Kappel, the President's Commission on Postal Organization provided the most comprehensive review of the postal establishment undertaken in the years preceding reorganization. Concern about postal innovation pervaded the study; it dwelled on obstacles to innovation created by the old postal structure and touted the freedom to innovate that could be realized under a new postal organization. When it came to tangible proposals, though, the Kappel Commission confined its discussion of

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[6]Foster Associates, "Rates and Rate-Making: A Report to the President's Commission on Postal Organization," *Towards Postal Excellence* (Washington, D.C.: Government Printing Office, 1968), Annex, 2: 2-50 [hereafter cited as *Kappel Commission*].

[7]Act of Sept. 20, 1966, 80 Stat. 815. See also "Project: Post Office," *Southern California Law Review* 41 (Spring 1968): 671-73.

innovations to those that addressed postal problems evident in 1968, not problems--such as those posed by an entirely new communication environment--that loomed at some point in the future.

The Kappel Commission's general view of postal innovation might be summarized as follows: Congressional control over postal affairs helped the system produce a number of positive externalities during the development of the United States. But by the mid-twentieth century, the indirect social benefits of the system could not substitute for reasonably priced, efficient services, especially when most mail was related to business affairs. If freed from political control, postal officials could apply business principles to the management of the enterprise. This involved long-range planning, research and development, and the flexibility to respond to patrons' needs--the basics of innovation. The Kappel Commission clearly had this in mind. The postal corporation it envisioned would be able to offer new postal services where the market supported them. And it should be free to develop or contract for appropriate technologies.[8]

But what were the boundaries of postal enterprise? Could the new postal service enter other sectors of communication where private firms had already established a strong presence? "Today the nation is linked together by many communications and transportation networks," the Kappel Commission observed. Indeed, the commission believed that the increasingly competitive nature of the communication environment was a major reason to overhaul the structure of the post office.[9] "Telephone communications surpassed mail communications by six billion in 1950 and by over fifteen billion in 1960," a consultant's report noted."[10] Furthermore, telephone calls could substitute for one-third of the general correspondence then being mailed.[11]

Ironically for a commission headed by the former chairman of AT&T, telecommunication's impact on mail received scant attention in the plans for the new postal establishment. "New telecommunication systems will not appreciably

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[8]See *Kappel Commission*, 1-6 (summary of report). "Only a Post Office quick to identify and meet market needs can successfully serve a changing economy. Obsolete and inefficient postal facilities should be replaced. Existing technology must be fully applied and new technology brought to bear through vigorous research and development." Ibid., 3.

[9]*Kappel Commission*, 46-47, quote at 47.

[10]Arthur D. Little, Inc., "A Description of the Postal Service Today," *Kappel Commission*, Annex 3, p. 1.20.

[11]*Kappel Commission*, 91

affect mail volume but will satisfy latent and presently unrealized demands," Arthur D. Little, Inc., predicted in its report to the commission. "The combined effect of new telecommunication systems, which in some sense will parallel the mail, will not change volume by more than 3%. Checkless banking within the foreseeable future will not change mail volume by more than 10%." This 13-percent total represented a loss in the projected growth of first-class mail.[12]

From the vantage of 1967-68, the Kappel Commission could not see how electronic communications would transform the environment in which the postal system operated. Its contractors noted two developments in telecommunications that might affect the mails, the "coming availability of broadband [digital] circuits which can be switched and interconnected" and acoustically coupled facsimile. The commission's consultants downplayed these technologies; people preferred receiving documents over raw information transmitted electronically and the high cost of long-distance telephone connections discouraged use.[13]

Only once did the Kappel Commission report--or, more precisely, a contractor's study--hint that the post office might offer telecommunication services. In discussing alternative structures for the new postal organization, Arthur D. Little, Inc., speculated that a regulated private postal corporation "would be allowed to compete with other forms of communication and distribution. It would flourish or wither as changes in economic requirements or technology might dictate, subject to the capacity of the Corporation to change to meet new challenges." In this scenario, the private corporation would be subject to the same regulatory supervision as other communication firms. None of the other alternative structures permitted this latitude to innovate, in the consultant's analysis.[14]

The Kappel Commission did not expressly indicate whether the postal establishment it envisioned could transmit information via telecommunication as a complement to or extension of traditional services. The commission did, however, suggest that a business-minded postal service should enjoy considerable flexibility in making arrangements to move information. "[P]ostal managers should have the authority to select whatever means of transportation is best suited to the needs of

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[12]Arthur D. Little, Inc., "A Description of the Postal Service Today," *Kappel Commission*, Annex 4, pp. 8.35-8.48, quote at 8.35.

[13]Ibid., Annex 4, pp. 8.35-8.36, quote at 8.35.

[14]Ibid., Annex 1, pp. 179-220, quote at 211.

the postal service," the commission recommended. It urged Congress to "relieve from special involvement in postal transportation matters those agencies whose intervention, however well administered, constitutes a reduction in postal management authority."[15] And the commission entertained the possibility of the postal service offering some services jointly with private firms.[16]

"The new technology of recent years and the explosion of communications requirements have brought into question the traditional role and practices of post offices in this country and elsewhere."[17] The implications of this provocative observation, buried deep in the contractor's report, did not prompt the commission to recommend in 1968 that the postal service enter the domain of electronic communication. But nine years later, when another commission examined the postal service, it regarded electronic communication as occupying a central place in the postal service's future.[18]

Postal Innovation in the Reorganization Act

As the drive for postal reform moved from the Kappel Commission to the White House and Congress, lawmakers dwelled mostly on addressing postal problems evident in the late 1960s. But in crafting the charter for a new postal establishment, Congress granted the U.S. Postal Service considerable freedom to innovate.

During the roughly fifteen years preceding reform, the post office enjoyed considerable freedom to experiment with innovations in moving the mail without first securing express congressional approval. One example was the post office's increasing use of airplanes for the inter-city transport of first-class mail. (Of course, the post office had long used aircraft for airmail, a congressionally

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[15]*Kappel Commission*, 171-72.

[16]The Kappal Commission approved of joint public-private services expressly for parcel post; it is not clear whether the commission envisioned this for other postal services. Ibid., 173.

[17]Arthur D. Little, Inc., "Postal Problems and Their Causes," *Kappel Commission*, Annex 3, pp. 1.11. This entire section of the contractor's report, labeled "The Post Office in the Age of Telecommunications," consists of the sentence quoted above plus one other: "The last few years have seen the beginning of the third and perhaps most important stage of development in the postal services."

[18]Commission on Postal Service, *Report* (Washington, D.C.: Government Printing Office), 6, 19-24.

sanctioned mail class.) After World War II, the decline in passenger trains cut sharply into the quality of inter-city mail transportation. To continue providing timely delivery of first-class mail, the Post Office Department studied "what might be done with available extra space on airlines. . . ." In 1953, the department started experimental airlifts of first-class mail and expanded service thereafter. Railroads challenged the post office's authority to experiment in such a fashion, but the court of appeals upheld the department.[19]

The post office twice experimented with telecommunication as a partial substitute for transportation. Looking for better means of transmitting mail, the post office developed an experimental facsimile service, Speed Mail, in 1959. The department's own research and development unit performed much of the early work in cooperation with federal agencies experienced with advanced electronic communication. In January 1960, the post office awarded a contract to IT&T to design a complete package of equipment. To protect privacy, Postmaster General Arthur E. Summerfield explained, the equipment would "receive sealed communications, unseal and transmit them [by microwave], and deliver a sealed [addressed] envelope at the receiving end." During the experiment, the service successfully transmitted government communications--letters, reports, maps, photographs and more--among post offices around the nation. The post office planned to offer the service to the public at 71 post offices for the equivalent of 7-cent airmail postage; or, for a 30-cent special delivery fee, a message could be sent across the nation and delivered to the recipient's door in an hour or two.[20]

Before Speed Mail became publicly available, however, the next postmaster general, appointed by newly elected President John F. Kennedy, "quietly de-emphasized" such projects. J. Edward Day believed that "facsimile mail was a blatant intrusion into wire communication which is a private enterprise." He also preferred to concentrate on improving the delivery of mail through ZIP Code and increasingly mechanized processing.[21] In fact, opposition emerged during

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[19]Arthur E. Summerfield, *U.S. Mail: The Story of the United States Postal Service* (New York: Holt, Rinehard and Winston, 1960), 105-108, quote at 106; *Atchison, Topeka and Santa Fe Railway Co. v. Summerfield*, 229 F2d 777 (D.C. Cir. 1955), cert. denied 351 U.S. 926 (1956). After the experiment started, Congress did acknowledge it by asking for reports. 229 F2d 782.

[20]Sumerfield, *U.S. Mail*, 202-209, quote at 207. Summerfield was postmaster general at the time. See also "The Mails Go Through--electronically," *Business Week* (Oct. 31, 1959): 31; "Mail to be Sent by Electronic Scanner," *Computers and Automation* 9 (December 1960): 2B.

[21]J. Edward Day, *My Appointed Round: 929 Days as Postmaster General* (New York: Hlt, Rinehart and Winston, 1965), 39.

Summerfield's experiment: Western Union, backed by its telegraphers, criticized Speed Mail for competing with its facsimile business and the press speculated that Congress might not approve full-scale operations.[22]

When the post office started experimenting with mailgrams in 1969, it did so with Western Union as a partner. Mailgrams exploited the two institutions' strengths--Western Union's electronic transmission network and the post office's carrier force. Customers transmitted their messages over Western Union's network to teleprinters in 110 post offices in twelve cities. They were printed, enclosed in an envelope, and delivered to addressees by letter carriers. Western Union paid the post office 25-cents for each mailgram. The mailgram provided service faster than mail but cheaper than a telegram.[23]

The new service attracted relatively little attention in 1970-71 during the genesis of the Postal Reorganization Act and the beginnings of the U.S. Postal Service. The president of Western Union saw the experiment as "breaking down . . . artificial institutional barriers" between the "Post Office and Western Union." Mailgrams exemplified "how they may support one another and . . . eliminate wasteful duplication for which the consumer pays in cost and efficiency."[24] The *New York Times* editorialized that mailgram service might succeed if the post office became a government corporation.[25] The post office touted mailgrams as exemplifying the kind of speedy service tailored to business needs intended by the PRA.[26] Mailgrams apparently did not attract much attention in Congress during the development of the PRA. For instance, when the chairman of the House post office committee commented on the new service, he did not question the legitimacy

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[22]"Instant Mail," *Newsweek* 56 (Nov. 14, 1960): 103; "Government to Test Facsimile Mail," *Public Utilities Fortnightly* 66 (Sept. 29, 1960): 464-65; "Facsimile Mail Test," ibid., 66 (Nov. 24, 1960): 827-28; "Western Union Protests Government Facsimile," ibid., 66 (Dec. 22, 1960): 967-68. But see *Cong. Rec.*, 86th Cong., 2d sess. 1254-57, esp. 1257 (Jan. 24, 1960) (remarks by Senator Carlson and article entered in the record seemingly favoring such projects).

[23]"Untangling the Mess in the Post Office," *Business Week* (March 28, 1970): 78-82, esp. 82; *New York Times*, July 1, 1969, p. 1.

[24]Russell W. McFall, *Making History by Responding to its Forces* (New York: Newcomen Society, 1971), 15-17, quote at 16; McFall was chairman of Western Union.

[25]*New York Times*, July 11, 1969, p. 34.

[26]See, e.g., "As New Mail Service Gets Set--Changes You Can Expect," *U.S. News & World Report* 69 (Oct. 19, 1970): 44-45.

of the innovation; instead, he expressed concerns about the privacy of mailgrams.[27]

The most vigorous opposition to mailgram service came from the United Telegraph Workers Union. In a complaint to the Federal Communications Commission, which it carried to federal court during final congressional deliberations on reorganization, the union objected that federal law governing the post office and telecommunication did not permit such joint public-private services. Its argument relied heavily on congressional rejection of the postal telegraph proposals in the late 1800s and early 1900s. The court of appeals did not consider this persuasive. Instead, it found that the post office "has clear authority under 39 U.S.C. sec. 504(a) (1964) for engaging in experiments as part of a research and development program to improve the economy and efficiency of its business." Furthermore, the 1955 *Atchison* decision upholding the transportation of first-class mail in airplanes "counsels that the Post Office's mandate to improve mail service through innovative techniques should not be frustrated by implied or niggardly restrictions upon its authority."[28]

When Congress began considering postal reorganization bills, and specifically the importance of innovation in a reformed establishment, it--like the Kappel Commission--conceived of modernization largely in familiar terms. The vast majority of the comments offered at hearings, the explanations given in House and Senate reports, and the remarks during the floor debate dealt with providing existing services more efficiently rather than launching new ones. Terms such as "innovation" and "modernization" usually appeared in discussions about devising new management structures, building modern facilities, adopting equipment for mail processing, and arranging more efficient transports for moving the mail. To the extent that Congress exhibited concern about the potential loss of first-class mail, it perceived the threat arising mainly from the post office itself; that is, a

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[27]*Post Office Reorganization, Pt. 2: Hearings Before the House. Comm. on Post Office and Civil Service*, 91st Cong., 1st sess. 724-25 (1969) (remarks of Thaddeus J. Dulski).

[28]United Telegraph Workers, AFL-CIO v. Federal Communications Commission, 436 F.2d 920, 926 (D.C. Cir. 1970). This case was argued on June 22, less than two months before the Aug. 12 passage of the PRA; the case was decided about four months after the PRA passed.

failure to modernize would force some mailers, especially businesses, to look elsewhere to satisfy their communication needs.[29]

In developing the PRA, Congress repeatedly stated that one of the principal mandates of the postal service was to transmit mail as fast as possible.[30] At least four parts of the act's general statement on postal policy emphasize that speed of transmission is a key consideration in adopting new means of moving the mails or adding new services.[31] One constraint--that the postal service shall fairly distribute "mail business to carriers providing similar modes of transportation services"[32]--reminded the postal service of its long-standing role in supporting a range of transportation technologies, many of which survived in a carefully regulated environment.[33] In an unusually specific direction for an otherwise general statement of policy, Congress gives as one primary goal the adoption of express mail.[34] Businesses had expressed considerable interest in this innovation.

The chapter of the Reorganization Act outlining the postal service's general authority accords the postal service considerable flexibility to adopt new innovations. A House report put it most expansively: "The Postal Service is empowered to engage in research and development programs directed toward the expansion of present postal service and the development of new services responsive

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[29]This summary is based mainly on the key House and Senate reports preceding passage of the PRA. See, e.g., House Rep. 988, 91st Cong., 2d sess. (1970) 2-4; House Rep. 1104, 91st Cong., 2d sess. 2-5 (1970); Sen. Rep. 912, 91st Cong., 2d sess. 1-3 (1970). Of course, large parts of these reports and other elements of the legislative proceedings dealt with ratemaking, labor relations, a rate commission, and other aspects of reorganization.

[30]See, e.g., House Rep. 988, 91st Cong., 2d sess. 4 (1970); Sen. Rep. 912, 91st Cong., 2d sess. 4 (1970).

[31]Congress directed the postal service to "provide prompt, reliable, and efficient services to patrons. . . ." 39 U.S.C. 101(a). "In determining all policies, . . . the Postal Service shall give the highest consideration to the requirement for the most expeditious collection, transportation, and delivery of important letter mail." 101 (e). Similarly, "In selecting modes of transportation, the Postal Service shall give highest consideration to the prompt and economical delivery of all mail. . . ." 101(f).

[32]39 U.S.C. sec. 101(f).

[33]Sen. Rep. 912, 91st Cong., 2d sess. 17 (1970); *Cong. Rec.*, 91st Cong., 2d sess. 21713 (June 26, 1970) (remarks of Sen. McGee).

[34]"Modern methods of transporting mail by containerization and programs designed to achieve overnight transportation to the destination of important letter mail to all parts of the Nation shall be a primary goal of postal operations." 39 U.S.C. sec. 101(f).

to the evolving needs of the United States."[35] Thus, Chapter 4 of the act grants the postal service specific powers plus "all other powers incidental, necessary, or appropriate to the carrying on of its functions. . . ."[36] Beyond carrying "written and printed matter, parcels, and like materials . . . [it can] provide such other services incidental thereto as it finds appropriate to its functions and in the public interest."[37] This chapter confers specific powers, one of which was "to provide, establish, change, or abolish special nonpostal or similar services. . . ."[38] Although this might seem like an open-ended mandate, the context suggests that "nonpostal or similar services" meant mostly philately, selling packing materials, and the like.

The Postal Reorganization Act's chapter on finance also contains a section that bears on innovation. "The Postal Service shall promote modern and efficient operations and should refrain from . . . engaging in any practice . . . which restricts the use of new equipment or devices which may reduce the cost or improve the quality of postal services. . . ."[39]

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[35]House Rep. 1104, 91st Cong., 2d sess. 9 (1970).

[36]39 U.S.C. sec. 401(10).

[37]39 U.S.C. sec. 403(a).

[38]39 U.S.C. sec. 404(a)(6).

[39]39 U.S.C. sec. 2010.

7. Summary and Conclusions

Adam Smith, no friend of government involvement in the economy, offered a surprisingly charitable view of postal enterprise. "The post office is properly a mercantile project," he wrote in *The Wealth of Nations*. "It is perhaps the only successful mercantile project which has been successfully managed by, I believe, every sort of government." Despite the apparent thrust of these remarks, few American proponents of postal enterprise would find them heartening. Their context--in his book and in history--indicates that Smith regarded the post office as a revenue-generating unit of government.[1] But the public service nature of American postal policy was one of the most powerful imperatives driving postal innovations. In fact, the post office's ventures into new enterprises varied with the shifting emphasis on revenue considerations and public service obligations.

Several conclusions emerge from this history of postal enterprise:

1. The Constitution empowered Congress to launch far-reaching postal innovations, though it sometimes declined to do so. Congress tested the boundaries of its power when it considered adding telecommunication to the suite of postal services. Once, at the birth of the telegraph, Congress nearly launched American telecommunication under the auspices of the post office. Short-term practical considerations dissuaded lawmakers from following this course in the 1840s. Later, when telegraphy had emerged as a near monopoly, Congress again considered the merits of a postal telegraph. In 1866 Congress created a mechanism, which it never activated, for acquiring private telegraph lines and placing them under the post office. In its 1877 *Pensacola* decision, the Supreme

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[1]Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776; reprint Chicago: Encyclopedia Britannica, 1952), 358. This passage appeared in a chapter on sources of government revenue; furthermore, England at that time operated the Royal Posts as a revenue-generating agency.

Court read the postal clause as permitting the post office to adopt, with congressional concurrence, the latest transportation and telecommunication technologies.

2. Congress allowed the post office considerable latitude in applying new technologies to existing tasks; when it came to creating new services, however, lawmakers guarded their prerogatives more jealously. Typically, when new technologies became available to transport the mail, the postmaster general would undertake experiments. In fairly short order, though, Congress would legislate terms for their regular use. In contrast, proposals to offer new services--e.g., Rural Free Delivery, postal savings banks, and parcel post--provoked long-running debates before Congress directed the post office to act.

3. The successful campaigns for postal savings banks and parcel post mobilized those who opposed further postal enterprise. Most notably, AT&T redoubled its efforts to derail a postal telegraph and telephone. It popularized arguments against federal enterprise generally and postal innovation in particular. For instance, AT&T literature frequently asserted that some new government services violated accepted principles of American political economy. Another common theme disparaged the administrative ability of the Post Office Department. Carefully disseminated throughout the nation, such arguments informed the campaigns of later opponents.

4. Apart from performing its existing missions more efficiently, the post office and its allies advanced two major reasons to justify significant innovations. First, some innovations assured more nearly universal service. For instance, postal expresses of the 1830s intended to equalize access to market data on which many people based business decisions. Two other examples: RFD extended to the countryside postal services long enjoyed in the city; postal savings banks served some communities without other banks. Another reason to launch new services was to compete with private firms and thereby force them to act more efficiently. This was frequently offered as one justification for parcel post.

5. Congress explicitly circumscribed new postal services that competed directly with private firms. The most obvious example was parcel post. Rates and size-weight limits were designed to keep the post office from undercutting private carriers. Furthermore, the Interstate Commerce Commission, which regulated the private carriers, also had to approve changes in the post office's service. And Congress mandated that parcel post break even: if it incurred a deficit, rates had to be raised. When the postmaster general failed to make the necessary changes,

Congress stepped in and legislated them. Some of these interventions, though, protected the interests of private carriers by undercutting parcel post.

Congress likewise tightly limited postal savings banks. By capping interest rates and the maximum deposit, Congress minimized competition with private institutions. In fact, postal savings banks collected money *for* private banks; under law, money collected at post offices was redeposited in private institutions. Not all banks, however, benefited in this fashion.

Congress had more subtle tools to guide the actions of the Post Office Department as it tried innovations. In the early days of RFD, for instance, Congress appropriated money each of several years, in increasing amounts, for a phased test of the service. But this incremental development spawned such a large constituency so quickly that Congress had to expand the service more rapidly than it had planned. Finally, simply expressing displeasure--as some in Congress probably did when the post office tested patron mail--could produce the desired effect.

6. Decisions about postal innovations altered the posture of private firms in competition with each other. The most tangible illustration was parcel post's impact on small-town retailers. The post office did not itself compete with these merchants, but by opening a new channel of commerce it substantially altered the existing relationships in the nation's marketing system. Large-scale, urban mail-order merchandisers presumably benefited. Similarly, newspapers decried patron mail because it helped a competitor, direct-mail advertisers.

As a major purchaser of transportation services, the post office exerted considerable influence over private carriers. When it turned to a new transport, old ones suffered. Hence Congress expected the Post Office Department to consider established relations among carriers--e.g., railways, airlines, trucking--in arranging mail transportation.

Similar dynamics affected the post office's two experimental telecommunication services in the decade preceding reorganization. With Speed Mail (1960), the department arranged its own electronic network to transmit facsimile mail; Western Union and telegraphers unions complained about unwarranted intrusion into their realm. Ten years later, the post office offered mailgrams in partnership with Western Union. Speed Mail created an enemy; mailgrams cultivated an ally.

7. The post office developed new services mindful of their likely effect on the first-class letter monopoly even though that was not the foremost concern. For instance, when Congress added steamboats and railroads to the repertoire of postal

transports, it also declared water routes and railways to be post roads subject to the post office's monopoly for letter carriage. The decision to adopt the latest and fastest technology was prompted mainly to satisfy mailers by providing expeditious service. The post office knew, however, that competitors would use the same technologies to the extent permitted by law.

The telegraph and telephone, of course, diverted communications that would otherwise travel by mail. When urging Congress to purchase Morse's telegraph, the postmaster general worried about the future of the post office in an era of electric communication. Strangely, though, postal officials from that time to the 1960s did not single out telecommunications as the principal threat to the continuation of basic postal services.

8. The circumstances that led to the Postal Reorganization Act suggest that the reformed establishment should enjoy the utmost freedom to innovate in fulfilling its mission. Its realm clearly encompassed the physical delivery of documents and probably the delivery of materials that had been transmitted partly through electronic channels. Although some involved in the development of the legislation knew about the declining share of mail in the total communication market, this did not translate into an unequivocal mandate for the postal service to develop full-fledged telecommunication services in competition with the private sector.