



# **WHAT DOES POSTAL REFORM DO?**

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**An Article Prepared by  
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The views expressed in this document are those of the author alone. They do not necessarily reflect the views of the Academy as an institution.

## ABOUT THE AUTHOR

Murray B. Comarow was elected as a Fellow of the National Academy of Public Administration in 1974 and served on the organization's board of directors. An attorney, he was of counsel to two law firms and is a consultant to a major mailer. He was executive director of President Johnson's Commission on Postal Organization in 1967-68, and executive director of President Nixon's Advisory Council on Executive Organization in 1970-71. Additionally, he served as senior assistant postmaster general, distinguished adjunct professor in residence at American University, Acting Dean of its College of Public and International Affairs, partner at Booz, Allen, and Hamilton, executive director of the Federal Power Commission, and acting deputy general counsel in the Office of the Secretary of the Air Force.

This article should be of interest to the Congress, the Executive Office of the President, senior management of the Postal Service, the Academy, and the private sector. It is a sequel to Comarow's February 2007 essay, "The Strange Case of Postal Reform," his November 2006 essay, "The U.S. Postal Service is a Government Corporation: So What?," his September 2006 essay, "The Postal Conundrum," and to his March 2006 essay, "How Not to Reform Government." The views expressed in this document are those of the author alone. They do not necessarily reflect the views of any client or of the Academy as an institution.

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## WHAT DOES POSTAL REFORM DO?

The Postal Accountability and Enhancement Act (PAEA) of December 20, 2006 has been hailed as rescuing the Postal Service from a slide into oblivion, with disastrous economic and social consequences. Now that the dust has settled, it may be useful to figure out what it does and doesn't do for all who depend upon the mails.

Mailers supported the Act for two main reasons: They expected financial relief from escrow and military payments, and a rate cap for its market dominant products, which comprise ninety percent of its volume. The Act does not give financial relief until 2017, and perhaps not then. In fact, it increases costs by requiring billions to go to a new Retiree Health Benefits Fund. The result is a shortfall of \$600 million this year. The rate cap may work if there are no extraordinary costs, and if labor arbitrators respect the cap. The Act does not require them to do so; if an arbitrator makes a wage award that breaks the cap, there is no appeal.

Some mailers supported this legislation, not for a specific reason, such as the hoped for rate cap, but because they say they distrust the Postal Service. They relish the idea of tough regulation by a PRC entrusted with new and unprecedented powers. These mailers justified their position anecdotally and in private.

In dealing with any large and complex organization, it is statistically certain that some encounters will be unsatisfactory or worse. To seek relief from such encounters by granting overbearing management authority to a regulatory body is the wrong solution. Business executives correctly rail against bureaucratic layering, oppressive reporting requirements, and second-guessing. These divert managers and create an environment where executives work in a defensive crouch, looking over their shoulders. It continues to puzzle me that private sector executives seem to believe that these dynamics don't apply to the Postal Service which is, after all, a self-supporting government corporation, supposed to act like a business.

The labor unions, most but not all nonprofits, and competitors are pleased, with good reason. Board Chairman Jim Miller and Postmaster General Jack Potter are putting a good face on the situation, but they are truly dismayed, also for good reason: The basic business model, which has been at the root of concerns for the Postal Service's viability, has not been altered by the Act. It has been made worse by the transfer of powers to the Postal Regulatory Commission.

The Act is not devoid of merit. Its provisions on volume discounts, executive compensation, and standards for appointments as Governors or Commissioners are all to the good. PRC's glacial and expensive rate-setting process is almost certain to improve. PRC Chairman Dan Blair might consider using a panel of judges to hear complex cases. Their recommendations to the Commission would likely be highly professional, untainted by perceptions of political influence or bias, and would still be subject to the Commission's review.

PAEA also gives the Postal Service more flexibility with respect to competitive products such as priority mail and bulk parcel post, which represent 10 percent of postal volume. This flexibility, however, must be exercised in accordance with PRC requirements, and may be more apparent than real, given PRC's raw power to review any postal action on the basis of any complaint. But let me return to the core disease that afflicts this institution. The Act ignores a slow-growing, potentially lethal condition: the Postal Service's outdated business model. Calcified by statutory constraints, this has been well known to Congress and all components of the postal community for years, but Congress will not acknowledge it, much less fix it.

On May 20, 1996, I co-authored a Washington Post Op-Ed article that pointed out the obvious: "The Postal Service is in trouble." We recommended that a new presidential commission review the situation. In 2003, such a Commission said that the Postal Service's basic business model must be changed if affordable universal service is to survive. Comptroller General David Walker, however, had beaten the Commission to the punch. He had placed the Postal Service on a High Risk List in 2001, citing its outdated business model as his central concern.

On February 7, 2006, seven of the nine presidential commission members informed the Senate and House leadership that the legislation being considered "transfers oversight and operational authority from the Board of Governors and management to the regulator. This is a governance model that simply won't work." The postal Governors unanimously told the Committees that they would prefer no reform at all to the legislation being pushed. There was no response to the former, and an angry, accusatory backlash to the latter.

On April 17, 2007, Board Chairman Jim Miller testified before a House Committee that the "social compact" that has characterized the Postal Service is breaking down. The new postal law, he said, "adds significantly to our cost base." Postal employees, he said, "enjoy a significant wage premium," and "the ways we have of addressing labor costs . . . are limited." Acknowledging that labor was a "sacred cow," he devoted only one brief paragraph to this issue.

At the same hearing, Postmaster General Jack Potter laid it out: The Act "does not resolve the underlying issue of a business model that . . . is irrelevant to the reality of today's market." Pointing out declining volume, the seriously weakened monopoly, and other constraints, Potter said, in effect, that he would do his best to work with a statute that failed to deal with the Postal Service's core issue. Both he and Miller used the same phrase, "The business model is broken."

Which takes us to the Government Accountability Office in the person of Katherine Siggerud, speaking for David Walker, whose High Risk List was a powerful factor in seeking reform. The GAO report states: "GAO testified several times since 2001 that comprehensive postal reform legislation was needed to address the Service's unsustainable business model, which assumed that increasing mail volume would cover rising costs and mitigate rate increases."

Siggerud tried to explain why GAO removed the Postal Service from its High Risk List. She reviewed the Postal Service's financial condition in 2007, talked about "opportunities and challenges", and listed issues for future Congressional oversight. Omitted from her thirty-page statement is any finding on whether the Act created the kind of business model Walker had in mind. If it did, his representative would undoubtedly have said so, rightfully claiming part of the credit for a worthwhile change.

As late as November 17, 2006, Walker's letter to Congress stated: "The Postal Service's business model is increasingly outmoded." He went on to recommend "transition to a modernized business model" and it is fair to infer that he did not think the legislation achieved that end. The Committees carefully did not ask him, nor was that question directed at Siggerud.

That being the case, why did GAO take the Postal Service off the High Risk List? Walker had little choice. He works for Congress, and retaining the Postal Service on the High Risk List would have proclaimed that Congress failed to deal with the "unsustainable" business model that he had addressed for six years. Even a tough and assertive Comptroller General has his limits.

A healthy private business has a fair degree of control over prices, products, facilities, and costs, and the flexibility to experiment, even to make mistakes. The same is true of government corporations. Congress has created eighteen such entities, of which the Postal Service is the biggest. Such agencies run on customer revenues, not tax dollars. All but the Postal Service set wages, prices, and fees under legal guidelines. This Act goes far beyond the prior statute in tying the hands of postal governors and managers.

My February 2007 essay, "The Strange Case of Postal Reform", listed some thirty of the Act's constraints that are inconsistent with a sound business model. The PAEA also assigns new postal responsibilities to the Treasury, the Office of Personnel Management, the Federal Trade Commission, and the State Department. The U.S. Customs and Border Patrol is in the game as well. They will all consume management's time and energies.

On May 1, 2007, for example, the Federal Trade Commission took its first major step to comply with its role under the Act. Its Federal Register notice solicited public comments to help FTC prepare a report to the President, the Congress, and the PRC concerning competitive mail products, and their private sector counterparts. The public is invited to respond to complex legal, economic, financial, and comparative cost-benefit and taxation questions. These will be addressed by mailers, postmasters, unions, suppliers, state and local governments, by the Postal Service itself, and more. To protect its own interests, each major entity will review the comments of other entities. The Postal Service will certainly need to do that, none of which gets mail delivered.

The FTC should not be misled by those who will argue that the Postal Service enjoys great advantages over its competitors. Watch for the phrase that they merely seek "a level playing field." They will point out, for example, that the Postal Service pays no

taxes, and is immune from zoning laws, parking restrictions, and the like. (By law, it was a break-even agency, so there was no profit to tax, but never mind.) Competitors have cut back on some of this. Under PAEA, the Postal Service's profits from competitive products are subject to anti-trust laws; they must pay taxes on those profits, and more.

Private sector competitors do not discuss their long-standing advantages:

- Private companies lobby and contribute funds to politicians at all levels of government. The Postal Service can't.
- Competitors have a strong voice in PRC proceedings; they testify on any matter that affects their interests. It does not work the other way.
- Private companies negotiate tax and zoning exemptions, free land, and other benefits estimated by James Surowiecki at almost \$50 billion a year in handouts (New Yorker, 12-03-04).
- Private companies set employees' wages. In the Postal Service alone, wages are set by arbitrators, or negotiated under threat of arbitration. (As of this writing, the city and rural carrier unions have rejected the Postal Service's last offers and are headed for arbitration.)
- Postal executives' pay and benefits may not exceed ceilings set by law. No private business is so limited.
- Employee fringe benefits are also set by law. (Siggerud testified that the Act "will result in short-term cost increases for the Service. She cautiously notes: ". . . beginning in fiscal year 2017, the Service might enjoy a significant reduction in its retiree health costs if its obligations are fully funded." Might.)
- Private businesses charge nonprofit customers the same prices as other customers. The Postal Service must charge them less, creating a subsidy from other mailers.
- Businesses adjust prices as they wish; not the Postal Service. (The airlines raised fares recently because of the jump in gas prices.)
- Competitors are not required to provide universal service to every business and household. The Postal Service must.
- Postal Service competitors offer, modify, or eliminate services as they see fit. For market-dominant products, 90 percent of its volume, the Postal Service must get PRC's okay.

Add the new restrictions to the old ones, and the February 7, 2006 verdict of the seven members of the President's Commission seems unassailable: "This is a governance model that simply won't work." I know of no private business or government corporation as micromanaged as the Postal Service.

Having created a stronger and expanded PRC, one might expect Congress to let PRC do its job. Instead, members of Senate and House committees bitterly criticized the Commission for parts of its recommended decision in the current rate case. Blair knew in advance that they were displeased, and tried to head off discussion, stating, "Because the Commission's deliberations on these topics are ongoing, I hope you will understand that it is inappropriate to address them specifically at this time." Didn't even slow them down. They lambasted the decisions and virtually demanded that PRC change its position. I am not dealing here with the merits of the issues. Legally, PRC is not permitted to consider anything outside the record, so everyone believes that the Commissioners will not be influenced by these remarks, right?

Also questionable is the April 6, 2007 letter from Senators Collins and Carper to Blair purporting to interpret certain sections of the Act. Two matters are covered. The first deals with the arcane and somewhat inconsistent relationship between the "nine major objectives" and the "fourteen factors" in the Act. (Don't ask.) The second interprets the phrase "extraordinary or exceptional circumstances" which would permit the Postal Service to break the rate cap.

Interpretations by legislators after a bill becomes law muddy the waters. The rules of statutory interpretation are complex, but in general, if a statute is clear on its face, lawyers and judges should not search its legislative history to find another meaning. If the statute is not clear, committee reports, debates, and so forth, may be read to ascertain legislative intent. Expressions of intent by individual legislators after-the-fact may not express the intent of the whole body, and may generate statements from other members who differ. A court would likely reject the Collins/Carper communication out of hand.

Given the political climate, the mailing community should be concerned about an all-out effort by the National Association of Letter Carriers to block outsourcing of delivery functions. In House and Senate hearings on April 17 and 19 this year, committee members of both parties clearly sided with the NALC. NALC is also supported by the postmasters, supervisors, and the rural carriers' and mail handlers' unions; it is opposed by Bill Burrus, who heads the American Postal Workers Union. As usual in labor matters, mailers took no substantive position. They did, however, urge committees not to interfere with collective bargaining.

The Postal Service has contracted out only two percent of its deliveries, and only six percent of its new 2006 deliveries. Its right to do so has been embedded in collective bargaining agreements since 1973. Bills have been submitted to make this difficult (S. 1457, by Senator Harkin) or to stop it altogether (H. Res. 282, Representative Sires). Every dollar of higher costs will come from customers' pockets; if Congress enacts the

NALC sponsored legislation, quite possible in view of token mailer resistance, mailers will pay the price.

What can mailers do in the present situation, fraught as it is with possibilities of a serious decline? In the short run, damage control. The new rate-setting procedure should be cautiously crafted. The PRC should restrain those who want to exercise their new powers to the hilt. Informal give-and-take among Dan Blair, Jack Potter, and the mailing community is essential, but not sufficient. Much more is needed.

Heavily regulated organizations become dysfunctional. Legislative changes must be considered, and statements made at the April 19 Senate Committee hearing open the door a crack for such changes. Senator Carper said in his opening statement, and repeated at the close, that “there could be ways to improve this legislation,” and suggested possible discussions with Potter and Blair. Senator Coburn, ranking member, called the bill “a great intermediate step,” which seemed to support Carper’s remarks. As the new procedures are created, and the effects of the Act become clear, the Postal Service should rebuild relationships with Congress, as Miller stressed, and not only discuss possible amendments, but place drafts of such amendments in the hands of the committees.

There are also long-range initiatives to be considered, worth doing whether or not the Postal Service is under stress. Forty years ago, I was appointed executive director of a presidential commission on the Post Office Department (Kappel Commission). Most members headed great corporations, such as AT&T, General Electric, and Bank of America. I knew no more about the Post Office than the average citizen, and as I assembled a staff, we searched for academic, think-tank, or other books or papers that would educate us. We were astonished to find almost no quality work from objective, credible sources. Four decades later, I’m still astonished at the paucity of objective material. What does exist is largely superficial or ideological, arguing for privatization without neutral analysis of its impact on our society.

Privatization has different meanings to different people. It should be defined and studied. When I served the Kappel Commission, I structured the study so as to offer the Commissioners alternative organizational models, one of which was to privatize the institution. They rejected that alternative. When I testified before the December 2002 Commission, I urged them to answer the overarching question: “What kind of postal service, if any, would best serve our society?” The 2002 Commission also rejected privatization, although their report lacked detailed analysis on this (and other) issues.

The impact of PAEA on the Postal Service and its customers should be subject to careful analysis by scholars at the peak of their professions. A joint study by think tanks such as the American Enterprise Institute and The Brookings Institution would have credibility. A joint study by leading schools of business or public affairs might also be credible. Whether think tanks or academics, the goal should be to illuminate the importance of the Postal Service to the movers and shakers, and to the public. A study by the Cato Institute, or a Ralph Nader group, even if well done, would be less credible in view of their self-identification as Libertarians and consumerists, respectively. The same is true

of papers by privatization enthusiasts such as Michael Crew and Paul Kleindorfer, whose April 12, 2007 paper “Privatization and the Future of the U.S. Postal Service”, relies largely on faith in the private sector and the experience of foreign posts, whose relevance to the United States is very much open to question.

It is fair to challenge the rationale for yet another study after twelve years of testimony from the postal community. I favor this because I believe we have gone seriously astray. The Act has no organizing principle. Instead, it violates the fundamental principle that managers must be able to manage without oppressive and distracting oversight. The Act can be read to mean that a rogue agency needed to be harnessed and controlled.

Barbara Tuchman, one of our greatest historians, once wrote: “A phenomenon noticeable throughout history regardless of place or period is the pursuit by governments of policies contrary to their own interests. Mankind, it seems, makes a poorer performance of government than of almost any other human activity. . . . Why do holders of high office so often act contrary to the way reason points and enlightened self-interest suggests?”

Here are some questions. While some have been “answered” by the Act, and others will be examined by the PRC, an outside study would be in the public interest.

1. What overall effect, positive or negative, has PAEA had on the Postal Service?
2. What effect has it had on costs, service, and productivity?
3. What effect has it had on wages? Are wages comparable to similar work in the private sector?
4. Should postal workers have the right to strike?
5. How should the Postal Service’s performance be measured and evaluated, and by whom?
6. Since the PRC now has substantial management authority, how should its performance be measured and evaluated, and by whom?
7. What should be the Postal Service’s mission? (Should it be free to engage in any postal-related activity? Who should define “postal-related”?)
8. Should the Postal Service be fully privatized, “commercialized” with some degree of public control, or remain part of government?
9. In view of its universal service mandate, should the Postal Service, now supported by customer revenues, be partly supported by taxes?

10. Should the Postal Regulatory Commission define universal service or should the Postal Service do so within statutory guidelines?
11. Should the monopoly on letter mail be abolished or modified?
12. Should the Postal Service be free to close some of the 16,000 post offices which lose money, or are these small post offices justified for noneconomic reasons or to maintain universal service?
13. Should business mailers continue to subsidize non-profit mailers? (Non-profits such as Yale, Harvard, the AARP, and the Beer Drinkers of America pay about 60 percent of what businesses pay to send similar mail.)
14. How should the Board of Governors be composed? Should all or some part-time governors be replaced by full-time governors?
15. Should executive salaries in this \$74 billion organization be held to levels that are a joke by private sector standards?

It would be equally important to engage the national press. The Postal Service can't compete for attention with Iraq or immigration reform, much less abortion or the return to the majors of forty-five year old Roger Clemens. But editors of top newspapers and magazines should be made aware of the predictably rocky path for all who use, work for, or are connected with the Postal Service.

Neither of these suggestions will gain momentum on the basis of this or any other individual effort. I propose that mailers, unions, and others in the postal community establish a working group (not to exceed ten members) to stimulate interest in this proposal, select the institutions to do the study, provide for funding, and orchestrate a series of meetings with editors and columnists to bring postal matters to the table.

The Postal Service is not moribund, but if mailers, unions, postmasters, contractors and the like focus on their own short-term interests, they invite its gradual dissolution. There is time to head this off, because the Postal Service can draw upon a huge reservoir of good will, earned over more than two centuries. International Communications Research recently reported that 86 percent of those surveyed prefer the mails for bills, payments, bank statements and financial reports; 10 percent opted for e-mail. About 70 percent prefer mail for product announcements and offers, even from companies whose products they have never bought; 18 percent prefer e-mail. Another survey reveals that the Postal Service is one of the ten most trusted private or public institutions in the nation.

That speaks volumes for the job postal people have done, but it's not a guarantee of future affordable, universal service. Some of my experienced friends dismiss my concerns, asserting that Congress would never permit the Postal Service to become so weak that prices soar while service slumps. They may be right, but the result would be a

return to a politically saturated, sporadically corrupt institution, supported by taxpayers.  
Who wants that?