

The Mailbox Monopoly: A New Look at the Last Mile

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Key Question

What are the most convincing arguments both for and against maintaining the mailbox monopoly? What new insights have yet to be considered in the emerging debate?

Key Findings

1. **The mailbox does not stand alone.** Repeal of the mailbox-delivery exclusion rule does not represent an incremental reform. Rather, it is a major transformative step that would, in turn, necessitate large-scale reevaluation of the Postal Service's charter, operations, and fiscal viability.

- **Context is critical.** Mail inside the box stays high and dry, lending a tremendous quality-of-service advantage to the USPS. However, the net effects of all statutory requirements imposed on the Postal Service are actually to its competitive *disadvantage*, the FTC recently concluded. The private sector already enjoys an upper hand; USPS should not be expected to surrender one of its greatest logistical assets.
- **New entrants will engage in cream-skimming** of the most profitable regions and non-protected mail classes, if allowed to deliver to residential boxes. This will leave the USPS with reduced revenue-per-stop, lowered efficiency, and declining volume. Consumers would likely face a USPS postage hike, while wading through a deluge of commercially delivered ad-mail.

2. **Open access is not a panacea.** The Mailers Council, whose members produce 70 percent of all mail in the country, strongly opposes "opening" the mailbox. These large mailers are pleased with the most recent postal reform bill, and would like to see the Postal Service succeed in its mission to provide exemplary service under the mandated price caps.

3. Critics of the mailbox monopoly contend that because consumers buy their own mailboxes, they should dictate the terms of its access. This **property rights** argument has a certain *prima facie* appeal. Yet the Supreme Court has already ruled against the claim, making it a matter of settled law in 1981.

4. Current mailbox regulations **help protect personal privacy, and provide added security**. Americans routinely rate the Postal Service as the “most trusted” federal agency, and freely commit their personal, financial, and confidential correspondence to letter carriers six days a week. This unique culture of trust is self-enforcing.

- Criminal statutes would have to be rewritten to allow open access; removing these high-penalty, felony-grade deterrents would make the mailbox a far more attractive target for identity thieves.
- Asking the Postal Inspection Service to police USPS competitors in an open mailbox scenario may prove impossible—and a blatant conflict of interest.
- The Postal Service does not capitalize on privileged insights about the kind of mail and periodicals people receive. Competitive delivery services may prove more curious: compiling and selling information to companies interested in cross-selling opportunities.

5. Proponents of ending the mailbox monopoly often cite other **deregulated, network-based utilities, like energy and telecommunications**, as proof of their economic policy: increased competition leads to greater efficiency, lower prices, and overall social benefit. **Such comparisons, however, are deeply flawed.**

- Telecom, electric and natural gas industries rely on capital-intensive networks with low traffic-sensitive costs. Postal delivery, on the other hand, is highly labor intensive, with significant volume-variable costs. Opening the mailbox may actually *increase* the total costs of hard document delivery.
- As an outcome of the AT&T divestiture, telephone customers now pay fees for universal service and access to national infrastructure. Requiring U.S. residents to pay a commensurate monthly surcharge for their inbound postal service is an idea that is unlikely to gain traction among consumers or Congress.

6. Ending the mailbox monopoly is a concept with clear support from conservative policy groups—but relatively low-level grassroots appeal, prompting critics to deride it as being merely “**a think tank issue.**”

1. The Mailbox Does Not Stand Alone

The premise appears deceptively simple. Why not allow other delivery services—beginning with established firms like UPS, DHL and FedEx—to leave parcels and priority letters in the mailbox, when residents are not home to receive them in person?

Advocates of such a change argue that the policy could be brought about as a standalone bill before Congress. Further study of the logistics and foreseeable impact of this scenario, however, suggests that repeal of the “mailbox rule” would send shockwaves through the postal community, and may ultimately challenge the long-term survival of the Postal Service.

Ending the mailbox monopoly is not an incremental reform. Rather, it is a major step toward systemic change that would ultimately require a serious reappraisal of the universal service obligation, postal operations, funding mechanisms and fiscal viability.

Who Wants Access?

UPS and FedEx both claim that the mailbox monopoly increases their delivery costs. Their statements to the Federal Trade Commission on this issue were included in the December 2007 report “Accounting for Laws that Apply Differently to the United States Postal Service and its Private Competitors.” The FTC report states:

Modifying the mailbox monopoly to allow consumers to choose to permit private express companies to leave deliveries in their mailboxes would eliminate an important legal constraint on the USPS’s competitors (Page 86).

In their August 6, 2007 letter to the FTC, FedEx executives Nancy S. Sparks, managing director of regulatory affairs, and M. Rush O’Keefe Jr., senior VP and general counsel, write: “There is no economic evidence that a mailbox access restriction is necessary to maintain universal postal service.”

These FedEx executives also contend that the mailbox monopoly—in tandem with the letter monopoly, and restrictions on P.O. Box delivery—has “severely restricted the growth of innovative document delivery services in the United States.”

How many UPS, FedEx and DHL packages would actually end up in a non-monopoly letter box? The FTC acknowledges it does not have the answer. Yet it cites “confidential data” indicating between 20 and 33 percent of current competitive mail products delivered to consumers could “fit into a mailbox.” (It is not specified if this mailbox is generously rural-sized, or a smaller urban model.)

Moreover, the FTC lacked data to determine what percentage of these products require signature-confirmation, and would therefore be inappropriate for mailbox

delivery. Tracking and delivery-assurance are key elements of the FedEx and UPS business models; most of their freight could be expected to fall into this category.

Given these parameters, the greatest long-term beneficiaries of an “open mailbox” system may not be FedEx, UPS and DHL. Rather, industry experts suggest that the policy shift would give rise to large, alternate delivery firms specializing in non-express, non-protected classes like periodicals and catalogs.

Competitive Advantage of the “Crown Jewel”

Mail inside the box stays high and dry and protected, lending a tremendous quality-of-service advantage to the USPS for document delivery. The residential mailbox has been described as the “crown jewel” of the postal network. Alternative delivery firms would certainly benefit from open access, particularly for items that do not require signature-confirmation.

The experience of now-defunct Publishers Express serves an instructive example for this kind of alternative delivery model. Publishers Express was a unit of Time Inc. that distributed periodicals, catalogs and direct advertising to households in select geographic markets from 1989 to 1996.

“If you don’t have mailbox access, the quality of delivery service suffers,” says Jim O’Brien, former CEO of Publishers Express. “Mailbox access is an incredible competitive advantage. An unbelievable competitive advantage.”

Beginning with two zip codes in the Atlanta suburbs, Publishers Express installed its own plastic delivery tubes, for which it paid \$5 per household. The company attracted business from catalogers and magazine publishers by offering lower rates than the USPS.

After paying their carriers, and covering warehouse costs, Publishers Express made a penny profit per piece. So if a weekly magazine brought in 52 cents profit per year, it would take nearly a decade to recoup the cost of the \$5 delivery tube—*ten years to break even*.

Publishers Express also experimented with other approaches to household delivery. They wrapped magazines in plastic bags and dropped them at the end of subscribers’ driveways, like a newspaper. The bags tended to tear as they hit the asphalt, due to the weight of the magazines, prompting frequent consumer complaints.

“We tried hanging bags on doorknobs,” O’Brien adds, “but that’s a signal that nobody’s home, so people didn’t like that. We went to the Postal Service, and said, ‘Could you license us to put our magazines in the mailbox, we’ll give you a penny apiece.’ But they weren’t about to give up that competitive advantage.”

Publishers Express eventually branched out to 32 cities, totaling 1000 zip codes, by licensing the business to newspaper publishers. Newspaper publishers used private, part-time contractors to provide total market coverage (TMC) of advertising supplements to all households in their local area, even those that did not subscribe to the newspaper. Under the arrangement with Publishers Express, these contractors were paid 10 cents per household to deliver magazines. O'Brien said the part-time, independent workforce ultimately proved unreliable. Many dumped the heavy magazines in the trash instead of delivering them.

O'Brien told ILO that Publishers Express only turned a profit "one month" in its six years of operation. "But we learned a lot of things about the business," he said.

"Mailbox access is what killed Publishers Express," concludes O'Brien. He told ILO that open mailbox access would have been a huge boon for the business. "Even at a penny profit per piece, if you scale that big enough, you can make money at it," he said.

Context of "Competitive Advantage" is Critical

Despite the obvious benefits conferred by the mailbox monopoly, the FTC concluded that the Postal Service suffers an overall competitive *disadvantage* in relation to the private sector, as detailed at length in its December 2007 report "Accounting for Laws that Apply Differently to the United States Postal Service and its Private Competitors."

Today, Jim O'Brien, now VP of distribution and postal affairs for Time Inc., does not support the repeal of the mailbox monopoly. He believes the USPS might not survive such a move, and the consequences could be disastrous for large mailers. He says:

We don't think the USPS will ever give it up. They need to fight it to the death. They have to fight it to the death.

Bob McLean, executive director of the Mailers Council, echoes this assessment. "Given the competition that the Postal Service has these days, with both traditional products and competition from electronic payment options—the Postal Service is going to be struggling in the future to remain viable," he told ILO.

"The Postal Service still needs to maintain some unique advantages if it's going to remain affordable," McLean said.

The FTC report raises some possibilities for relaxing the mailbox monopoly. Yet if the private sector already enjoys the upper hand, the USPS should not be expected to surrender one of its greatest logistical assets.

New Entrants will Engage in Cream-Skimming

If allowed to deliver non-monopolized mail classes like periodicals and catalogs to residential boxes, alternative delivery services will target the most remunerative regions. They will cherry-pick affluent, convenient, densely populated, and easily accessible areas.

“Publishers Express didn’t go to Podunk, Iowa,” notes Jim O’Brien. “We went to Marietta, Georgia. **We skimmed the cream.**” He predicts that any alternate delivery service would do the same.

Siphoning magazines and advertising materials from the mailstream would significantly reduce USPS revenue-per-stop. Loss of revenue and efficiency in prime markets would make it more difficult for the USPS to sustain universal service without raising prices, particularly as First Class mail volume continues to decline.

Given this scenario, Bob McLean predicts that Postal Service delivery of non-protected mail would gradually be winnowed down to less-profitable zones that its competitors had deemed “financially impractical,” including disparate rural areas, and dangerous urban neighborhoods.

“In a number of cities across the country, there are neighborhoods where the Postal Service delivers mail under police protection,” McLean told ILO. “If it’s a dangerous area, or the bottom of the Grand Canyon, or the boonies of Alaska, or a desert in Arizona... I don’t think [alternative delivery services] will go there. The Postal Service remains the only delivery option for a number of addresses.”

McLean notes that FedEx and UPS now use the USPS to achieve delivery of their own packages in certain hard-to-reach locations in the country. “The Postal Service does things that no private sector competitor would ever do,” he said. “Delivering mail six days a week, to every address in the country, including a lot of urban and rural addresses that most private sector companies would say, ‘I’m sorry, we’re just not going to deliver mail there.’”

Gene Del Polito is president of the Association for Postal Commerce, and a proponent of ending the mailbox monopoly. In his view, periodicals and advertising mail do not need to be delivered six days a week. A private delivery service could effectively compete with the Postal Service by delivering such materials—to the mailbox—one day a week. He continued:

*Surely that will suck revenue out of the Postal Service. **But the Postal Service’s response would have to be, either match the quality and timeliness and frequency of the alternative provider, or move quickly to make commensurate reductions in workforce and network to ensure that that costs do not escalate beyond their ability to control them.***

By that reasoning, the ultimate outcome of opening the mailbox would be: a) diminished service; or b) layoffs. And this is an optimistic assessment!

“The Postal Service has a charter of delivering mail to everybody, no matter what it costs—and they charge the same,” counters Bob McLean. “The FTC study showed that the USPS is at a disadvantage, compared to most of its competitors. They realize the Postal Service has enormous expectations placed on them. The fact that they do as good a job as they do is a modern marvel.”

If a private competitor did prove successful in delivering catalogs, periodicals, and advertising mail to residential mailboxes, they would be in an excellent position to then challenge the USPS monopoly on letter mail delivery. Again, the competitors would only pursue prime markets. If the USPS lost its delivery monopoly on protected classes, but continued under its chartered obligation of universal service, it would be forced to maintain its national workforce and infrastructure. Costs would increase; efficiency would drop; operations would be stretched thin. USPS would become the carrier of last resort.

1. Open Access is Not a Panacea

Those individuals advocating the repeal of the mailbox rule are fond of pointing out that the United States is the only known country that has a mailbox monopoly. Meanwhile, posts in Europe, United Kingdom, Japan and Australia are rapidly liberalizing.

Given the rapid pace of global postal reform, the government-owned monopoly of the USPS will “start to stand out... as one that is behind the times,” says Rick Geddes, an associate professor at Cornell, who has written on postal reform for the American Enterprise Institute.

Jim O’Brien says Time Inc. has studied the emerging models in Europe, and visited many of the foreign posts to study their transformation process. He notes that the United Kingdom is often held up as a forerunner and a lead innovator. “They kind of hold themselves up as, ‘We’re the ones who’ve opened their markets completely.’”

However, O’Brien notes that the postal regulator in the U.K. has “been very much involved” since the liberalization regime began. “It hasn’t worked so well,” he said.

The British “open access” system allows competitive services to pick-up mail from customers, and transport it downstream to the local Postal Office, which then carries the mail the last mile to the recipient’s letter box.

“**Open access is not the panacea, because we’re already there,**” says O’Brien. In his view, open access is not substantially different from the USPS program of work-sharing, in which commercial firms receive postal discounts for preparing, presorting and transporting their own mail to a USPS facility that is closer to the final destination. Work-sharing represents a successful and functional equivalent to the highly touted British program, he says.

Rick Geddes of Cornell University, a long-time advocate for postal reform, does not necessarily agree that worksharing discounts are tantamount to liberalizing the postal system. However, in a conversation with ILO, he agreed that the efficiency measures instituted through worksharing and have been beneficial—and a big step in the right direction.

Large Postal Consumers Want the Latest Reforms to Succeed

Bob McLean is executive director of The Mailers Council, an umbrella group of corporations and mailers organizations, whose members produce 70 percent of all mail in the country. McLean says his members strongly oppose opening the mailbox.

“Our members would oppose such a repeal,” McLean told ILO. “We’ve been on record with that position for some time. Primarily because the Postal Service is an essential

business tool for us, and it's important to preserve the mail monopoly if the mail is going to remain affordable.”

According to Jim O'Brien, distribution executives at companies like Time Inc. are pleased with the major reform bill, “Postal Accountability and Enhancement Act,” passed in December 2006. These large mailers would like to see the Postal Service succeed in its mission to provide exemplary service under the mandated price caps.

O'Brien points out that the cost increases faced by consumers today—with price caps at 2.9 percent for market dominant products—are far different than those faced by catalogers and periodical publishers during the days that gave rise to Publishers Express. In the 1980s and 1990s, postage costs for certain mail classes escalated by 20 percent to 40 percent some years.

He acknowledges that “we're still in the honeymoon period” with the latest postal reform. Though the Postal Service has managed to successfully comply with the new law through its first year, he predicts that there may be some tough operational years ahead. This is particularly true as labor costs continue to rise.

If the Postal Service can maintain rates below the mandated CPI cap, O'Brien says, then consumers will remain highly satisfied, and the Postal Service will continue to enjoy top ratings. He added: “Everybody will agree that Jack Potter is doing a great job, the system works, the law is great.”

Rick Geddes, an outspoken advocate for postal reform, confers similar praise on the current round of legislation. “On this issue, let me say that the current Postmaster General, Jack Potter, is true public sector hero,” he told ILO. “He's done a tremendous job.”

Consumer advocate Linda Sherry agrees that the latest reforms have alleviated a number of concerns. She says her group, Consumer Action, became interested in postal reform when it perceived that the USPS was using First Class postage revenue to subsidize its competitive offerings. These cross-subsidies, she believed, would be harmful to lower-income, inner-city residents who rely on affordable First Class postage. With the passage of the 2006 postal reform bill, she is now satisfied that this issue has been addressed.

Sherry believes the mailbox monopoly should not be repealed. “Price of stamps was the big issue, but it's been made moot,” she said. “With the new legislation, it's not such an issue anymore.”

However, if the Postal Service fails to conform to the price caps, the rallying call for further reforms may come quickly and loudly. O'Brien said, “**The canary in the coal mine will be exigent rate cases.**”

“The major question,” says Rick Geddes, “is how long can it last?” If the USPS is unable to control costs, and advertisers decide it’s no longer cost-beneficial to do direct mail advertising, the system will face a major crisis, prompting another round of reforms.

Gene Del Polito agrees that it will probably take another major crisis to prompt a new round of postal reforms, at which time the mailbox monopoly may finally be repealed.

In his estimation, it may eventually prove more “painful” for Washington decision-makers to justify subsidizing a less-needed postal system with tax dollars, then it would be to further open the field to commercial delivery services and “simply say to the Postal Service: live or die by the basis of your own wits and competitiveness.”

Del Polito told ILO it will take “five to seven years” before the system hits that pain point, but suggests a crisis could come at anytime. For major changes to occur in Washington, he said, “They’ve got to find the circumstance where they can legitimately say, ‘The devil made me do it’.”

O’Brien predicts that the latest reform bill is probably going to hold for 10 to 15 years, though the Postal Service may need to take on debt during that period, if unable to control costs. A key milestone will come in 2016, when the Postal Service has fully pre-funded its retiree health benefits, and will no longer be required to contribute \$5 billion annually to the fund, restoring that revenue to its bottom line.

O’Brien concludes that repealing the mailbox monopoly would lead to a decrease in USPS revenue, and may force a postage price hike, which would prove counterproductive to the current round of reforms.

“Our viewpoint,” he told ILO, “let’s let this new law live for a while. We have mail. We need this process to succeed.”

3. Property Rights... and Pandora's Box

Rick Geddes of Cornell University positions the mailbox monopoly as a property rights issue. The actual owner of the mailbox, he suggests, should have the authority to dictate the terms of its access.

“Who really owns the mailbox?” Geddes asks. “Does it belong to the homeowner? Or does it belong to the Postal Service?” He characterizes this as a fundamental, ethical question, and he believes the logical conclusion is to grant control of the mailbox to the consumer.

Don Soifer of the Consumer Postal Council expressed the same idea in a July 2007 letter to the FTC: **“Because consumers generally purchase their mailboxes at their own expense, it logically follows that they ought to have the right to dictate the terms under which that property is utilized.”**

From a consumer advocacy point of view, the issue of whether private ownership should correlate to private control seems like a fair question, says Linda Sherry of Consumer Action.

However, the property rights issue is already matter of settled federal law. In *United States Postal Service v. Council of Greenburgh Civic Association*, 453 U.S. 114 (1981), the Supreme Court ruled:

When a letterbox is designated an “authorized depository” of the mail by the Postal Service, it becomes an essential part of the nationwide system for the delivery and receipt of mail. In effect, the postal customer, although he pays for the physical components of the “authorized depository,” agrees to abide by the Postal Service’s regulations in exchange for the Postal Service agreeing to deliver and pick up his mail.

Don Soifer also believes that individuals should be allowed to place non-commercial notices, such as invitations to a birthday party, into a neighbor’s mailbox without fear of prosecution. This is an oft-expressed notion from critics of the mailbox monopoly, to which *USPS v. Council of Greenburgh Civic Association* provides the following response:

A letterbox, once designated an “authorized depository,” does not at the same time transform itself into a “public forum” of some limited nature to which the First Amendment guarantees access to all comers. Just because it may be somewhat more efficient for appellees to place their messages in letterboxes does not mean that there is a First Amendment right to do so. The First Amendment does not guarantee access to property simply because it is owned or controlled by the Government.

Repealing the mailbox rule would effectively overturn the established precedent of *USPS v. Council of Greenburgh Civic Association*, by moving the mailbox from the government sphere back into the private forum.

Accordingly, the change would require much more than repeal of the “mailbox rule,” says attorney William Baker, a partner at D.C. law firm Wiley Rein. He contends the following legal issues would require serious consideration and resolution:

- (1) whether to modify the Private Express Statutes in whole or in part;
- (2) whether to impose nondiscrimination and reasonable rate requirements on the new entrants;
- (3) what to do about universal service;
- (4) whether mailbox owners would have a right to bar some delivery firms from accessing their mailbox;
- (5) could mailbox owners charge a fee for the right to access their mailboxes?

Allowing consumers to dictate the terms of mailbox access may have some far-reaching and hitherto unexpected consequences. This is particularly true if consumers choose to deny (or charge a fee for) mailbox access to alternative delivery services. This right-of-refusal does not apply today in the U.S.

Postal reform advocate Gene Del Polito cites the model of “unaddressed mail” in Europe, which recipients can refuse by simply putting a sticker on the outside of their mail receptacle. “Something comparable may be required to be developed for direct mail [in the U.S.] and if that’s the case, it could cut down on the appeal of using private delivery instead of the Postal Service,” he adds. “That’s not to say it shouldn’t happen.”

DO NOT MAIL

Shifting control of the mailbox from the Postal Service to consumers could end up hurting, rather than helping, direct mailers and advertisers. Upon “opening” the mailbox, there may be a number of surprises inside—including a national Do Not Mail list.

With the successful enactment of the Do Not Call list and the CAN-SPAM Act, some consumer, environmental and privacy advocates have been urging adoption of a similar Do Not Mail law. Such initiatives have been launched in at least 15 states.

In his January 2007 column in *Privacy in Focus*, a newsletter of privacy and information security law, attorney William Baker observes:

These proposals are of obvious concern to direct mailers and advertisers that rely upon the postal system for hardcopy delivery of promotional materials, flyers, and other offers. Congress only last year passed comprehensive postal reform legislation that did not contain a Do Not Mail provision.

Baker adds: “Do not expect the new Congress to take this up on its agenda, but keep an eye out for further activity at the state level.”

Thus far, the mailing industry has been able to defeat every state-level Do Not Mail initiative, engaging in what one postal insider likened to a “game of whack-a-mole at the circus.” He told ILO: “If one pops up and we miss it, game over!”

The momentum behind the Do Not Mail movement could fundamentally shift with the repeal of the mailbox monopoly. As Baker informed ILO:

Whether opening the mailboxes would affect demand for ‘do not mail’ or ‘do not deliver’ laws is an interesting question. I suppose if opening the mailboxes led to reduced delivery costs, one result might be more unsolicited mail than we receive today... which could lead to more demand for such laws.

[Baker adds that, on the other hand, advertising mail is often driven by business decisions beyond delivery costs; such factors may actually be a greater determiner of how much unsolicited mail enters the mailstream.]

Gene Del Polito, who generally supports repeal of the mailbox rule, acknowledges that the change could bring about some unintended—and perhaps unfortunate—consequences to the mailing industry, including speedier passage of a Do Not Mail registry.

“For every action there is an equal and opposite reaction,” he told ILO. “So, there are consequences that may not necessarily be favorable to all sectors of the industry, from having made such a decision.”

4. Safeguarding Personal Privacy and Security

Current mailbox regulations help protect personal privacy, and provide added security and peace of mind. Americans routinely rate the Postal Service as the “most trusted” federal agency, and freely commit their personal, financial, and confidential correspondence to letter carriers six days a week.

“The Postal Service continues to enjoy great favor in the general public, overall,” says Bob McLean. “The trust factor very high.”

“Ask anybody in America,” says Jim O’Brien, “and they’ll tell you, ‘I love my mailman. I hate waiting in line at the Post Office, but I love my mailman. My UPS driver? I don’t even know who he is.’”

O’Brien warns: “You’re going to scare the American public if you open up the mailbox.”

Security Issues

The penalties for mail tampering, mail theft and similar offenses are high. “If you take mail out of a mailbox these days, you’re going to prison for a long time,” observes Bob McLean. “We’d like to keep it that way.”

The FTC report “Accounting for Laws that Apply Differently to the United States Postal Service and its Private Competitors” cites a 1997 GAO survey in which “58 percent of consumers favored allowing express mail companies to place deliveries in their mailboxes.”

To what degree has the public opinion on the issue evolved since 1997? The FTC report does not say. From a security perspective, much has changed in the intervening decade. Calls for increased civilian vigilance followed the attacks of 9/11. Americans have been victimized by mail-delivered anthrax attacks. More recent news cycles have significantly raised the concern about mailbox-targeted identity theft.

“The public’s concern about [the mailbox] has really been ratcheted up in the last couple years because of identity theft,” Bob McLean told ILO. “I think most people are quite passionate about this—they don’t want anybody messing with their mailbox.”

USPS carriers are often granted the key to the front door of apartment buildings. Would residents be willing to lend such keys to USPS competitors, too? And who would keep track of them all? Consumer advocate Linda Sherry voices what appears to be a common sentiment, saying: “It just doesn’t seem like a good idea to let outside parties have keys.”

The FTC report does address numerous security- and privacy-related concerns of the USPS and USPIS, which prompts it to conclude that non-USPS carriers should not be granted key-access to cluster boxes. Regarding access and enforcement at other boxes, the FTC authors urge further study.

McLean believes that relaxing the enforcement of the exclusion rule would lead to a gradual deterioration of both the “trust factor” and the “intimidation factor” at the mailbox, which could lead to significant problems. He told ILO:

Theft of mail is a big deal, and you go to jail for a long time. The penalties for identity theft that does not involve the Postal Service or a federal agency are far less severe. Identity theft that does not involve mail-theft is an entirely different matter: the penalties are much shorter.

Attorney William Baker of Wiley Rein notes: “While security, in theory, could be a problem today with any mailbox that is outside and unlocked, it doesn’t seem to be a major problem, perhaps because our culture just doesn’t open other peoples’ mailboxes.” Moreover, it is typically easy to spot interlopers at the mailbox, based on whether or not they are wearing the familiar USPS uniform.

McLean further observes that the prevalence of working couples in which both partners are employed full-time means that there are no adults at home during the day. Left unattended, the mailbox is considerably more vulnerable than it was, say, 50 years ago. He adds:

This is not just my house, or your house. This is every house on the block. So you don’t have people looking out for one another the way they could have in years gone by. Mail theft is actually quite easy in a lot of neighborhoods.

Though consumer advocate Eric Bourassa of MASSPIRG said his organization has not taken a position on the mailbox monopoly, or given the matter much thought, he was quick to recommend heightened mailbox security, in general, as a defense against identity theft. The risks run high when bank statements, “pre-approved” credit offers, medical and insurance records, and other sensitive correspondence fall into the wrong hands.

Anecdotal evidence suggests that the connection between mail theft and identity theft has struck a chord in the collective consciousness. Methamphetamine addicts who steal mail have been covered in *USA Today*, ABC News, PBS’s *Frontline* and a number of other media outlets. In March 2004, MSNBC declared, “It is a twin-headed monster ravaging communities across the nation: methamphetamine addiction and identity theft.” Whether motivated by fear or fact, the public appears to have become increasingly aware of the mailbox.

Privacy Concerns

The USPS is legally prohibited from opening First Class Mail without a search warrant, a privacy protection that does not extend to periodicals or advertising mail, notes attorney William Baker. “Suppose we allow private firms to pick up mail from a resident’s box,” he observes. “Should this prohibition be extended to other carriers? Should the prohibition be extended to other types of mail?”

Baker notes that telephone companies are subject to fairly strict consumer privacy rules, including the Customer Proprietary Network Information rules and more recent anti-pretexting requirements. “These rules,” he explains, “restrict the ability of telephone companies to use customer calling patterns in marketing services.”

In a competitive market with an open mailbox, Baker posited that a delivery service could potentially use its knowledge of what it—or others—are delivering to the mailbox to hone its marketing strategy.

Information on consumer habits and personal tastes can be easily gleaned from magazine subscriptions, mail order deliveries, and so forth. This kind of composite data—particularly in affluent markets—would presumably have significant value to direct-mail marketing firms. If allowed access to the mailbox, would commercial delivery services be tempted to snoop? Would mail recipients face a major erosion of consumer privacy?

The Postal Service, on the other hand, is not known to capitalize on privileged insights about the kind of mail and periodicals people receive. Apart from criminal investigations or national security inquiries, the mail remains fundamentally free from prying eyes. This is one of the many reasons why consumers place their trust in the Postal Service.

Policing the Competition

“To address privacy concerns and concerns related to enforcing prohibitions on mail theft and the proliferation of hazardous or obscene material, mailbox access should be limited to only private express carriers that satisfy certain criteria,” conclude the authors of the recent FTC report (“Accounting for the Laws...”) Conditions pertaining to carrier screening, licensing, regulation and auditing are generally accepted—to some degree—by people who support ending the mailbox monopoly.

Don Soifer told ILO that he thought the regulation process could be handled by local Postmasters, on a case by case basis. Gene Del Polito envisions a narrower, national slate of competitive alternatives, companies that submit to screening and periodic auditing by the Postal Inspection Service.

These scenarios raise a perplexing question: How can the USPS or the Postal Inspection Service be expected to neutrally police its competitors? Even if the evidence of an offense were incontrovertible, prosecuting FedEx, UPS or DHL employees for allegations of mailbox-related wrongdoing (whatever the new criteria might be) would present a serious conflict of interest for the USPS.

Allowing a limited number of “approved” competitors to access the mailbox would not create a free market. Would-be entrants who were barred from accessing the mailbox may complain—perhaps appropriately—of collusion and anticompetitive activity. With the repeal of the mailbox monopoly, new legal precedents would need to be established, creating a likely opening for costly litigation against the USPS and postal regulators.

5. A Perspective on Deregulated Network-Based Utilities

Proponents of ending the mailbox monopoly commonly cite non-postal, network-based utilities as proof of the historic merits of deregulation: increased competition leads to greater efficiency, lower prices, and overall social benefit. Rick Geddes made this point in his July 2004 paper, “Timid Steps Toward Postal Reform,” which criticized the mailbox monopoly as “an absurd law.” He writes:

Over the past several decades, economists have come to appreciate that market competition is socially beneficial, even in industries characterized by a “network” structure, that is, those using systems of lines, pipes, or routes with strong physical interconnections among component parts.

It is important to note, however, that utilities like electricity, water and natural gas have capital-intensive networks with relatively low traffic-sensitive costs. Postal delivery, on the other hand, is highly labor intensive, with significant volume-variable costs.

Opening the mailbox may actually *increase* the total costs of hard document delivery, particularly if multiple carriers are duplicating efforts on redundant routes.

In conversation with ILO, Geddes acknowledged there are fundamental differences between labor-intensive postal delivery, and capital-intensive networks like natural gas, water and electricity, which require significant physical infrastructure. “Postal service has a route, but doesn’t have lines or pipes,” he clarified.

“We already have a bunch of carriers,” Geddes continued. “At my house, we have somebody who delivers the paper in the morning. FedEx or UPS come pretty regularly. Then we have the Postal Service. We already have carriers that are doing multiple routes. Any social cost of making more stops on their current route to deliver [additional material to the mailbox] would be outweighed by social benefits of increased competition.”

Geddes added that the increased competition would presumably make USPS and all other firms in the market, including FedEx and UPS, considerably more efficient. “As for how many businesses would actually get into [alternative mailbox-delivery services],” Geddes said, “we just don’t know until we observe it.”

“Normally, when you talk about deregulation there’s a focus on the consumer, and whether they would benefit from lower prices,” Geddes told ILO.

Yet industry deregulation does not automatically lead to lower consumer prices, as anybody who lived through the California electricity crisis of 2000 and 2001 would readily agree.

What Ma Bell Tells Us About the Mailbox

The prospect of postal reform brings to mind previous legislative efforts that improved performance in the telecommunication industry, writes economist James Montayne in “Going Postal: Regulatory Reform for the Digital Age” (*The Independent Review*, Fall 2007).

William Baker, a partner at D.C. law firm Wiley Rein, points out that there are a number of differences between telephone networks and the postal system—including labor dependence, volume-variable costs, physical infrastructure, and the funding mechanisms for access to the universal network.

Today, telephone customers pay certain universal service and access fees that are built into their monthly rates. These fees are a legacy of the 1970s antitrust breakup of AT&T.

Baker explains that access fees first emerged as an issue when MCI began to offer service, a few years before the divestiture of the “Bell System” owned and operated by AT&T. (The current access charge regime was put into place around the time that AT&T’s long distance business was divested from the regional telephone companies.)

In the Bell System, long distance rates were set high to subsidize (and thereby lower) local rates. MCI was able to offer lower long distance rates to consumers, because it did not have to support the local service or the Bell System infrastructure.

“Matters came to a head when, with equal access spawned by AT&T’s divestiture, MCI was no longer relegated to inferior connection arrangements,” Baker notes. “The subscriber line charge was invented to shift the fixed costs to subscribers.”

The cost of universal postal service is factored into postage rates. The USPS revenue stream is primarily protected by the Private Express Statutes, and probably reinforced to some degree by the mailbox rule, according to Baker.

“I have yet to see an economist propose to replace this [postal] pricing system with a fixed annual assessment to residents for mail delivery to recover fixed costs of operating the delivery network (analogous to the subscriber line charges telephone customers pay),” observes Baker. “And I certainly wouldn’t expect any politician to advocate such a policy.”

The most striking similarity between the telecommunication and postal industries may be the near-impossibility of achieving regulatory reform that satisfies all interested parties. As telecommunications scholars Jonathan Nuechterlein and Philip Weiser write in their 2005 book *Digital Crossroads: American Telecommunications Policy in the Internet Age*, telecom reform “triggered some of the fiercest public policy wars ever waged.”

Nuechterlein and Weiser describe the telecommunications reform legislation of the 1990s as “a crazy-quilt of ambiguous provisions designed ... to leave many of the important questions unanswered so as to offend no powerful interest groups.”

“The lesson from telecommunications teaches that modern regulatory reform can be a perilous endeavor,” concludes James Montayne in *The Independent Review*. “The past is not necessarily prologue. Nevertheless, skepticism and vigilance are indicated lest postal services, like telecommunications, emerge from legislative reform as an unnecessarily lawyer-driven industry.”

6. “It’s a Think Tank Issue, Not a Grassroots Issue”

Rick Geddes of Cornell University suggests the mailbox rule is “small potatoes” compared to the letter delivery monopoly. Nevertheless, he says, the mailbox situation merits attention and correction. He portrays the mailbox rule as both an international anomaly, and a Depression-era anachronism.

“There’s no evidence of a big policy debate,” he told ILO, “where the cost and benefits were thoroughly vetted before Congress passed the law making it a monopoly [in 1934].”

Like Geddes, many who support ending the mailbox monopoly have been associated with think tanks, including conservative groups like the American Enterprise Institute, Cato Institute, and the Hoover Institution. Position papers published by these groups constitute a major portion of the available literature on the subject.

Don Soifer, lead signator of a July 2007 letter to the FTC calling for repeal of the mailbox monopoly, is executive director of the Consumer Postal Council. The Council is closely linked to the Lexington Institute, where Soifer serves as executive vice president. The Lexington Institute’s mission statement declares:

The Lexington Institute believes in limiting the role of the federal government to those functions explicitly stated or implicitly defined by the Constitution. The Institute therefore actively opposes the unnecessary intrusion of the federal government into the commerce and culture of the nation, and strives to find nongovernmental, market-based solutions to public-policy challenges.

The other co-signors of Soifer’s letter to the FTC include “policy experts” like Grover Norquist at Americans for Tax Reform, as well as John E. Berthoud, president of the National Taxpayers Union.

These voices typically offer a clear and unified message: **everybody will benefit in a competitive system, where multiple providers strive to provide the best quality service at the lowest possible cost.**

Such straightforward economic theories can be quite convincing. Indeed, free-market competition is generally considered a bedrock principle of American democracy. Yet the director of a major mailing organization took exception to applying these kinds of broad, academic arguments to the postal industry, considering it overly simplistic and removed from reality. He told ILO:

*I’ve been to a lot of American Enterprise programs on postal reform, and their ignorance of the Postal Service is astounding. I don’t have a lot respect for these think tank folks, because a lot of them are incredibly naïve when it comes to the American public. **If you said, there was a bill about to pass through Congress to allow anybody to put their hands in the mailbox, I think the hew and cry from the American public would be deafening.***

He added: “I have no doubt that any bill that got anywhere close to passage would be quickly shot down.”

Don Soifer’s issue group—the Consumer Postal Council—does not include any major mail producers among its members, and the consumer advocate who’d been involved with the group on postal matters flatly rejected the idea that the mailbox monopoly should be repealed. (She also refused to sign Soifer’s letter to the FTC.) Interestingly, Soifer emphatically denies any personal commercial interest in postal reform. He claims it’s a purely theoretical exercise.

Consumer advocate Linda Sherry of Washington, D.C.-based Consumer Action, worked with Don Soifer and the Consumer Postal Council to explore postal reform issues. Unlike Soifer, she decided that repeal of the mailbox monopoly was not in the public’s best interest.

“Despite working with Don Soifer,” Sherry said, “We [at Consumer Action] did not take position that mailboxes should be opened. Some of the things that concerned us were that the repeal may lead to even more junk mail, and increase the burden on First Class stamp buyers. Also, it seemed a strange idea to let all these outside parties have keys to the mailbox.”

Sherry describes the mailbox monopoly as a complex issue that the public largely ignores. “When you try discussing the intricacies,” she says, “people’s eyes glaze over. That’s always the worst type of thing to try to explain to anybody.”

Eric Bourassa, a consumer advocate with MASSPIRG, told ILO that his group has no position on the mailbox monopoly, and he doubts the national PIRGs will get involved in the issue anytime soon. “Not a priority,” he noted. “We tend to work on things that people feel really impacts their lives.”

“I can imagine that if you believe the free market is the answer to every problem in the world, than the USPS sticks out as something to be privatized,” Bourassa added dryly.

“It’s a think tank issue, not a grassroots issue,” said Jim O’Brien of Time Inc. From his perspective, conservative policy groups and potential postal competitors are the only true sources of support for ending the mailbox monopoly.

Like Soifer, Geddes makes it clear that his positions are not a matter of personal or financial self-interest. Rather, he considers postal reform to be an engaging policy issue. He has written numerous articles on the subject, and proves generous with his time in answering questions on the subject. Yet the castle he’s building appears to exist only in the air. “Who wants access to the mailbox? I don’t know. I’m not plugged into the political—that’s a political question,” he told ILO.