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Postal Reform and Level Playing Fields

by Murray Comarow

The Postal Rate Commission (PRC) is a regulatory government agency which decides how much we should pay for stamps. It can be overruled by the nine presidentially-appointed governors of the U.S. Postal Service, but only if they are unanimous, a rare occurrence.

At a recent Cato conference, I argued that it is absurd to have five presidential appointees look over the shoulders of nine other presidential appointees to decide postal prices. If the nine governors--and the Postmaster General they select--can't run the Postal Service, they should be replaced.

After the Cato conference, a Fedex lobbyist approached me, demanding an explanation. The Postal Service has a monopoly, he said, and you would let them set their own prices? A monopoly must be regulated! Whatever happened to due process?

Fedex is, of course, a head-to-head competitor of the Postal Service. Together with the United Parcel Service and other interests, it has a stake in keeping the Postal Service locked into the smallest possible market areas, and under the most stringent regulation. But the lobbyist's economic motivation aside, he raises a fair question, which deserves an answer.

Governors could not, of course, set whatever prices they wished. Criteria such as those in the Postal Reorganization Act of 1971 would guide them, just as they guide the PRC's decisions. The law requires, for example, that each mail class bear its attributable costs, plus certain other costs. It requires that rates take into account mail preparation by the mailer. There are nine such legal guidelines, and something like them would continue to be necessary.

The last guideline in the present law should not, in my view, be carried forward. It permits the PRC to consider "such other factors as the Commission deems appropriate." Think about that. Strange that libertarians and conservatives who are (a) opposed to government regulation, and (b) apoplectic about vesting any government body with unlimited power, do not object to this provision. Lord Acton, who spoke about the corrupting effects of absolute power, where art thou?

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To return to the due process issue, these are the steps I recommend:

1. The Postal Service proposes changes in postal prices; the proposals go to the postal community and are printed in the Federal Register.
2. Comments are reviewed by the Postal Service and a revised proposal is published.
3. A panel of three Administrative Law Judges (ALJs), experts in rate matters, is convened. They are detailed from other rate-setting agencies and supported with a few law clerks and technical personnel.
4. The panel holds full due process hearings. Trained judges could well move things along more efficiently than lay commissioners.
5. The ALJs' initial decision would go to the governors; by two-thirds vote they could accept, modify, or remand the ALJs' decision, again honoring the statute's criteria.
6. The final decision would be subject to appeal to the U.S. Court of Appeals for the Federal Circuit on the usual grounds (e.g., violation of due process or failure to obey statutory mandates).

One may challenge this proposal on any number of counts, but it surely does not constitute a denial of due process. Yet there remains the central objection: It would still be a monopoly, right? And aren't corporate monopolies regulated by federal and state agencies? This argument is superficially appealing, but there are two things wrong with it.

- First, not all monopolies are regulated. With 83 percent of the parcel business, I suggest that UPS is an unregulated monopoly.
- Secondly, the "all monopolies should be regulated" argument ignores the difference between government and the private sector. A corporation, monopoly or not, exists to make money for its owners--its shareholders. That's where profits go. In the case of the postal monopoly, any excess revenues are ploughed back into operations. The word "profits" is sometimes used by postal officials, but they are wrong to do so. The law requires that they break even over time--there are no "profits" as the word is commonly understood.

The United Parcel Service is apparently not convinced by this reasoning. Its CEO has mounted an aggressive public relations and lobbying campaign, accusing the Postal Service of blatant anti-competitive practices and of using monopoly "profits" to expand into new markets. "The inevitable result," he said, "is less competition and fewer alternatives for businesses." The UPS battle-cry is, "Level the playing field!"

One way they would do this is to increase the power of the Postal Rate Commission. The bill under consideration, H.R. 22, would re-name it the Postal Regulatory Commission, a change designed to underline its broader authority. When Postal Service competitors lobby to increase PRC's power, they find willing allies in the Commission. Regulators famously evolve sound reasons, always in the public interest, why their authority should be increased.

H.R. 22 would give the PRC subpoena authority. It would permit the Commission to define universal service. The bill seems to increase pricing flexibility so that the Postal Service can compete more effectively, but it would really be an early Christmas present for the Postal Service's competitors, who drafted some of its key provisions. It would impose price caps on non-competitive products, but is silent on what would happen if external economic forces prevent revenues from covering expenses. If prices could not be raised, would Congress appropriate the difference so that bills and wages could be paid? If so, that could spell the end of a self-supporting Postal Service.

The Postal Service, unlike UPS and Fedex, can't negotiate contracts with major customers. H.R. 22 would permit this only in such limited circumstances as to render it virtually useless. Even so, PRC Chairman Gleiman's February 11 testimony noted that as written, the bill would permit such contracts to be negotiated without public notice and without PRC prior approval.

Consider the marketplace dynamics if prior approval were required. The Humongous Corporation plans to ship a billion items, and seeks bids from UPS, Fedex, the Postal Service, and others. The private carriers respond; the Postal Service says, "We're competing, but wait till we clear the PRC, O.K.?" Humongous Corporation says, "Are you serious?"

The current bill would allow the Governors to set up a "private law corporation" which could do anything, even non-postal-related activities. I'm not making this up. I cannot think of any precedent in our 212-year history when a government agency was authorized by law to establish a private corporation to do whatever it feels like doing.

H.R. 22 would create a firewall between the revenues, costs, and financing of competitive services and non-competitive services. This would vastly complicate and diffuse management's ability to run the Postal Service, already a daunting challenge. Fifty-four percent of rural carriers, for example, work out of post offices with just one or two rural routes. They carry competitive and non-competitive types of mail, in varying proportions. Accounting for each would be time-consuming and expensive. Guessing or estimating would be arbitrary and subject to manipulation. Would a postal truck carrying both types of mail be subject to local parking regulations? Should the mail be segregated to avoid this?

Two things about this are remarkable. First, that the supporters of a bill which is not rooted in practical American experience have utter faith that it will work. I do not doubt the sincerity of their convictions, but I am reminded of Nietzsche's remark that "Convictions are sometimes worse enemies of the truth than lies." An old story illustrates that faith can be carried too far.

In a town drowned by a flood, the preacher would not leave the church. Rescuers came along in a boat when he was on the first floor and they said, "Preacher, come with us, this church is going to be submerged." He said, "I have served the Lord all my life and I am going to stay right here. He will take care of me."

The waters rose. He was on the second floor. They came again with the boat and said, "You've got to come with us." He said, "Not a chance."

The waters rose. He was sitting on top of the steeple. They sent a helicopter. He said, "I won't go." The helicopter left and the preacher drowned.

He found himself before Saint Peter and he was hopping mad. "I have had faith in the Lord all my life," he said, "Why didn't He take care of me?" Saint Peter said, "Give us a break. We sent you two boats and a helicopter."

The Postal Service should be up front about how much harder it would be to manage the operation under the bifurcated and untested requirements of H.R. 22. Service is at an all-time high. Three out of four postal customers are happy or satisfied. Politicians should be so lucky. The latest polls show them at about sixteen percent.

The root problems of the Postal Service are not effectively addressed by H.R. 22. One is the lack of flexibility to set prices and offer products to meet customers' needs. Absent that flexibility, declining volumes will inevitably threaten its existence. The other is wages, which are usually set by an arbitrator who is obviously not responsible for costs or service. Sometimes the parties do reach agreement, as in the recent case of the American Postal Workers Union, but collective bargaining with an arbitrator waiting off stage may result in serious neck injuries as the parties keep looking over their shoulders. It alters the dynamics from the opening gun.

If binding arbitration makes sense for the USPS, why not for other government agencies? Why only the Postal Service? It is in the law not because it's sound public policy, but because it was a political deal to obtain union support for postal reform--that and a fourteen percent wage increase. The administration, which enjoys union support, won't touch it, and neither will the Congress, at least in the near term.

Let's examine the "level playing field" challenge. It's true that the Postal Service has a limited monopoly on hard copy letter mail, rapidly becoming an endangered species. On the other hand, UPS has a de facto monopoly on parcel delivery--83 percent sounds pretty monopolistic to me. (The Postal Service delivers six percent.) Similarly, the top 100 newspapers, according to Editor and Publisher, serve 90 metropolitan areas. In 80 of those 90 areas, there is only one large newspaper, another kind of monopoly. Eight cities have two papers, Los Angeles has four (counting a business and a Spanish-language daily), and New York has five. With few exceptions, the newspaper business is extremely profitable.

To be fair, some of the 80 cities with only one major paper do have small competitors, as in Washington, where the highly subsidized Washington Times struggles against The Washington Post.

To level the playing field, I therefore propose legislation which will impose upon UPS, Fedex, newspapers, and other competitors the same conditions under which the Postal Service operates.

- UPS sets prices with no outside scrutiny. That must be changed, of course.
- It builds or abandons facilities to suit its convenience. Change that.
- It bargains with unions unhampered by binding arbitration. Change that.
- It lobbies at national and local levels. We know how effective they and Fedex have been in Washington, but take one outside the Beltway case. The Wall Street Journal reported that UPS:

--Lobbied the state of Kentucky for \$120 million in tax breaks.

--Lobbied for a \$700 million expansion of Louisville Airport, a central UPS hub.

--Lobbied to create "UPS University" where thousands of college students that UPS urgently needs for night work would sleep during the day and take evening classes.

--Lobbied for reduced city taxes on jet fuel and for a \$100 million cash grant.

The Postal Service is barred by law from engaging in such conduct. Since a level playing field is a primary UPS objective, I'm sure they would agree to call a halt to such activities.

The newspapers actually may not be happy about the UPS gambit. They will also cease and desist from lobbying. They will also be price-regulated by the newly-named Postal, Parcel and Newspaper Regulatory Commission. Hundreds of laws, national and state, give newspapers special advantages even though--may I remind you--most big ones are one-paper monopolies. Newspapers are exempt from such laws as anti-trust, false advertising, child labor, telemarketing, various taxes, and minimum wage, depending upon the state. A summary of these laws I saw recently runs to thirty-five pages.

These exemptions give newspapers a big advantage over other advertisers, such as direct mailers (one of whom is a client). The taxes they don't pay, the minimum wage laws they may ignore mean lower costs than their competitors.

How do they get away with it? Their shield and their sword is the First Amendment. Laws that apply to other businesses would abridge, they say, their freedom of expression. Actually, the First Amendment does not completely bar regulation of the press, but few politicians are willing to take them on, courage not being a prerequisite for political office. A

Florida telemarketing law, for example, exempts newspapers because they reportedly threatened to bury any politician who voted against the exemption.

Now before I am assaulted by the ACLU for undermining the Constitution, and by UPS and Fedex for destroying free enterprise: I'm kidding. Well, maybe not entirely. It's just that I've become tired of Postal Service competitors complaining about the great advantages it enjoys, never mentioning their own formidable flexibility and political clout.

Nor do they mention the heavy burden of universal service, a burden which is at the same time a high privilege. To carry the mail to every business and household, six days a week, is part of the glue which binds us together. To maintain 38,000 postal facilities so that most Americans are within easy reach and need not take their mail or parcels to a profit-making intermediary, is a blessing we take for granted--but shouldn't.

The staff director of the House Postal Service Subcommittee doesn't believe that universal service is much of a burden. In an article late last year, he conceded that "U.S. postage rates are low by international standards," but went on to say that:

"Universal service costs account for less than 1% of postage rates. The high postage rates which are made possible by the postal monopoly, pay for various types of inefficiency that mailers have consistently decried, but not universal service."

I seriously doubt that the costs of universal service are so low, but even if true, so what? Customers choose or don't choose the U.S. Mail on the basis of their economic and personal interests--also known as the marketplace--but the one percent figure does puzzle me. To take one universal service expense which would never be borne by a private postal service, there are 20,000 post offices that cost \$3.68 for every dollar they take in. The justification for their existence is obviously not economic--it is based upon a political judgment that universal service is vitally connected to our culture and traditions.

When the Postal Service, on February 11, proposed a number of amendments to H.R. 22, UPS issued a press release within hours: "The government agency still hasn't gotten the reform message and is trying to become even less accountable to the American people . . . the Postal Service pays no taxes, pays no vehicle licensing fees . . ." Same old same old.

I've been watching this arena since 1967, and the UPS/Fedex tactics are not new. They have upped the pressure recently, and Joe Cinadr's blunt and vigorous testimony before the McHugh subcommittee explained why: You're doing too good a job. When Bill Henderson challenged you to reach 90 percent in service levels, not many people thought it could be done. But you and your employees not only attained that goal, you exceeded it. The Postal Reorganization Act requires that you operate in an efficient, businesslike manner, but then you actually did! Are you nuts? Can't you see how that hurts the opposition?

There are other initiatives which may roil your competitors, such as your Network Operations Center in North Carolina's Research Triangle Park. Under a \$3.3 billion dollar MCI contract, it already ties 5,000 post offices together, a super aid to better service. When complete, 34,000 post offices will be part of the system. Users of Priority Mail will soon be able to track it and get delivery confirmation, more bad news for competitors.

I'm not here to paint an unrealistically rosy picture. Storm clouds are on the horizon. Changes in technology and in business practices will cause your most profitable category to hemorrhage; I'm talking about financial transactions. Other postal products are also losing market share. Foreign post offices, especially the Germans, British, and Dutch, have enormous commercial freedom and tons of money. They're on the hunt for overseas markets, and we're by far the biggest, with 40 percent of the world's mail. By way of contrast, Japan is in second place with six percent.

Bill Henderson's expensive consultants are busy telling him this, all of which he knew already. What he needs, aside from the ever-present job of cost control, is well put in the Postal Service's own 1998 Comprehensive Statement of Postal Operation. Page 115 says that the Postal Service:

needs the ability to price its offerings in response to rapidly changing market conditions, and to offer products and services with characteristics that compare favorably with changing alternatives.

H.R. 22 does not accomplish this. It should. Your competitors are determined to see that it does not. Who stands up for the Postal Service?

That's where you come in.