

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

MARKET-DOMINANT PRICE CHANGE

Docket No. R2020-1

**COMMENTS ON PROCEDURE OF THE  
NATIONAL POSTAL POLICY COUNCIL,  
THE GREETING CARD ASSOCIATION,  
AND THE MAJOR MAILERS ASSOCIATION  
(October 10, 2019)**

The National Postal Policy Council,<sup>1</sup> the Greeting Card Association,<sup>2</sup> and the Major Mailers Association<sup>3</sup> hereby respectfully urge the Commission to adopt a procedural schedule in this docket that takes into account and is consistent with the Court of Appeals decision in *Carlson v. Postal Regulatory Commission*, No. 18-1328 (D.C. Cir. WL 4383260, Slip Op. Sept. 13, 2019), instead of one based on rule of practice 3010.11.

In *Carlson*, the Court of Appeals vacated the First-Class Mail portions of this Commission's Order No. 4875 (Nov. 13, 2018) in Docket No. R2019-1 on the ground that the Commission did not "provide an adequate explanation" for its

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<sup>1</sup> The National Postal Policy Council is an association of large business users of letter mail, primarily First-Class Mail using the Automation rate category, with member companies from the telecommunications, banking and financial services, insurance, and mail services industries.

<sup>2</sup> GCA comprises about 200 greeting card publishers and other enterprises and is also the mailing industry trade association which speaks for the individual household mailer.

<sup>3</sup> MMA is a working association made up of quality First-Class Mailers. We provide a forum to represent the common interests of major First-Class mailers with the Postal Service. Our interests include Postal Service strategy, rates, and/or operational issues, such as delivery standards and mailing system impacts.

approval of certain rates and failed to respond to substantive objections based on the statutory objectives and factors, and therefore did not engage in reasoned decisionmaking under the Administrative Procedures Act. Slip Op. at 9.

Relevant to this proceeding, the Court of Appeals concluded that the Postal Accountability and Enhancement Act “does not authorize the Commission to defer evaluation” of the statutory objectives and factors “until after it approves a rate change.” Slip Op. at 9. The Court rejected the Commission’s position that it need not address the non-price cap qualitative statutory objectives and factors during the initial review of price cap adjustments except where a proposed adjustment exhibited “blatant disregard” for a standard. Slip Op. at 17 n.7.

Perhaps more importantly, *Carlson* casts doubt on the fast-track with which the Commission has reviewed every index rate case since enactment of the PAEA. See Slip Op. at 18-23. The Court held that the PAEA did not modify “the reasoned decisionmaking requirements of the APA” (Slip Op. at 18). The Court observed that the 45-day period established in 39 U.S.C. §3622(d)(1)(C) is a minimum, not a maximum, and that nothing in the PAEA specifies “the amount of time the Commission may take *during* its review.” Slip Op. at 21 (emphasis in original).

As of this date, the Court has not issued its mandate in *Carlson* and thus the decision has yet to take effect. And were a petition filed for rehearing of the panel decision, the mandate would be delayed until that petition were resolved. However, the Commission undoubtedly knows that the *Carlson* decision could take effect as early as late October. And, unless overturned, the reasoning in the

*Carlson* decision would cast doubt on the lawfulness of any Order approving market-dominant rate adjustments that emerges from the same procedures as were used in Docket No. R2019-1.

Postal rates should not be subject to challenge as the outcome of an unlawful *process*. Although NPPC, GCA, and MMA do not yet know what issues comments on the rates proposed in this proceeding may raise, if the Commission reviews the Postal Service's proposed rate adjustments in this Docket using the same procedural timetable based on rule of practice 3010.11(d) as was used in Docket No. R2019-1, the rates approved in this Docket could be vacated for the same reasons as those from that proceeding.

Such a result would disserve the Postal Service and harm mailers. One of the objectives of the Section 3622 ratesetting system is to create "predictability and stability in rates." 39 U.S.C. §3622(b)(2). It is through reliance on such predictability that mailers are able to plan. But if the system produces rates that subsequently are held unlawful, predictability and stability are disrupted. And mailers are further harmed because the statute makes the unlawful overcharges nonrefundable. 39 U.S.C. §3681.

The Commission undoubtedly is aware of these possible consequences of the *Carlson* decision and may already have decided to set the schedule in this proceeding accordingly. Nonetheless, the National Postal Policy Council, the Greeting Card Association, and the Major Mailers Association respectfully recommend that the Commission establish a procedural schedule in this docket

that will allow adequate time to engage in the reasoned review required by the PAEA and APA of both the qualitative and the quantitative factors.

Respectfully submitted,

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