

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Market-Dominant Price Change

Docket No. R2020-1

DOUGLAS F. CARLSON
COMMENTS IN OPPOSITION TO A 55-CENT PRICE
AND FIVE-CENT ROUNDING POLICY
FOR ONE-OUNCE, MACHINABLE, STAMPED, FIRST-CLASS LETTERS

October 24, 2019

During oral argument¹ in *Carlson v. Postal Regulatory Commission*,² whenever the subject arose of the Postal Service's decision to price single-piece, one-ounce, stamped, machinable, First-Class letters in an amount divisible by five, the skepticism of the three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit was palpable. The court's subsequent decision vacating the portion of Order No. 4875 that approved First-Class Mail rates in Docket No. R2019-1 was not surprising because the Commission designed and operated a system to regulate market-dominant rates that violated the explicit requirement in 39 U.S.C. § 3622(b) and (c) for this system to consider the pricing objectives and factors specified in the statute. Very surprising, however, was the Postal Service's decision in its October 9, 2019, Notice of Market-Dominant Price Change to stand by this ridiculed and discredited five-cent rounding policy for pricing the basic postage rate in 2020.³ When reviewing rates in Docket No. R2020-1, the Commission should reject this pricing policy and the proposed 55-cent rate that derives from this policy. In fact, since the Postal Service has not justified a percentage increase beyond the annual CPI, the Commission should

¹ <https://www.cadc.uscourts.gov/recordings/recordings.nsf>; browse to May 10, 2019.

² *Carlson v. Postal Regulatory Commission*, 938 F.3d 337 (D.C. Cir. 2019).

³ United States Postal Service Notice of Market-Dominant Price Change ("Notice 2019") at 11–16, filed October 9, 2019.

lower the basic postage rate to 52 or 53 cents, the rate that would apply in 2020 if the original 50-cent rate were increased by the CPI percentage for 2019 and 2020.

Five-Cent Rounding Policy

Announcing its continued support for five-cent rounding, the Postal Service argues:

Whatever other ways in which stamp-related transactions might be simple regardless of price, it cannot be denied that, for the individual and small-business mail users who use Stamped Letters, rates denominated in five-cent increments are easier to remember and compute than those denominated otherwise. Simplicity, in this sense, is also promoted by the Postal Service's stated intent to maintain this structure into future years, meaning that customers would not have to keep track of changes in Stamped Letter prices in every year.⁴

The Postal Service asserts that pricing factor 6⁵ supports five-cent rounding.⁶ Under this factor, the Commission's system must consider "simplicity of structure for the entire schedule and simple, identifiable relationships between the rates or fees charged the various classes of mail for postal services[.]"⁷

To begin, I incorporate by reference my comments in Docket No. R2019-1 explaining the meaning and proper application of this statutory factor and the reasons why the Postal Service's reliance on this factor to support five-cent rounding is misplaced.⁸ My discussion from Docket No. R2019-1 applies in Docket No. R2020-1. In fact, my previous discussion persuaded the Court of Appeals to include this disapproving comment in a holding paragraph of the opinion: "The Commission did not address whether the Postal Service's claims about the convenience, straightforwardness, and understandability of prices

⁴ Notice 2019 at 12.

⁵ 39 U.S.C. § 3622(c)(6)

⁶ Notice 2019 at 11–12.

⁷ 39 U.S.C. § 3622(c)(6).

⁸ Douglas F. Carlson Comments in Opposition to a 55-Cent Price for One-Ounce, Machinable, Stamped, First-Class Letters [Erratum #2] ("Carlson Comments") at 3–8, filed October 31, 2018.

divisible by five *had anything to do with the PAEA's requirement for 'simplicity of structure'*" [emphasis added].⁹

The Postal Service's second try to support five-cent rounding, in Docket No. R2020-1, is as unpersuasive as the justification offered in Docket No. R2019-1. Beginning with the ominous assertion that "it cannot be denied," the Postal Service wills the Commission to believe that "rates denominated in five-cent increments are easier to remember and compute than those denominated otherwise."¹⁰ The Postal Service provides no studies or data to support the dubious proposition that the public could more easily remember 55 cents than 52 cents. In fact, for most of history, the basic postage rate for one-ounce stamped letters has not been divisible by five cents. Thus, for centuries, the public has readily comprehended rates that were not divisible by five, a fact that renders the Postal Service's present assertion implausible, and "deniable," on its face.

As if the assertion that the public could more easily remember 55 cents than 52 cents were not insulting enough to the intelligence of the American public — the Postal Service's customers — the Postal Service compounds the offense by suggesting that the public could more easily "compute" rates that are denominated in five-cent increments. Once again, the Postal Service provides no studies or data to support the suggestion that the public can more easily compute $55 + 15$ than $52 + 16$. And even if some members of the public cannot perform this simple math, most Americans carry a mobile computing device that includes calculator functions, so they have the technological support to "compute" postage rates if doubts arise.

Perhaps more fundamentally, the Postal Service is wrong when it implicitly suggests that computing postage rates is a frequent activity for single-piece and small-business customers. Most First-Class letters — 96.8 percent¹¹ — do not pay the additional-ounce rate or the nonmachinable surcharge. Therefore, no

⁹ *Carlson*, 938 F.3d at 347.

¹⁰ Notice 2019 at 12.

¹¹ USPS-LR-R2019-1, 3Q19 FCM BD, Worksheet "A-1 Single-Piece Letters."

rate exists to compute. If the rate is 52 cents, the rate is 52 cents. No addition or multiplication is necessary. Also, when customers buy stamps in quantity, such as 20 or 100, or even two, the Postal Service computes the total for the customer, so customers do not need to compute the total price to buy multiple stamps. Finally, the widespread use of forever postage stamps for one-ounce letters, additional ounces, and the nonmachinable surcharge means that customers are not routinely computing postage costs when they do mail heavy or nonmachinable items. Instead, they are applying forever stamp types that correspond to the physical characteristics of their mail piece, such as one basic forever stamp and one additional-ounce stamp for a two-ounce machinable letter — an action that requires the customer to determine which stamps to use but does not require the customer to compute the number of cents. The computation of the price of the stamps occurs at the time of purchase of the stamps, and the Postal Service performs this computation for the customer.

The Postal Service argues that five-cent rounding promotes simplicity of structure because of the Postal Service’s “stated intent to maintain this structure into future years, meaning that customers would not have to keep track of changes in Stamped Letter prices in every year.”¹² This assertion confuses simplicity of structure with frequency of rate increases and stability of rates. Simplicity of structure has the meaning that I described in my comments in Docket No. R2019-1.¹³ However, if rate stability and infrequent rate increases somehow do implicate simplicity of structure, the Postal Service could just as easily promote this simplicity by setting the rate at 52 cents and not raising it for several years.

Turning to other statutory criteria, the Postal argues that the “stamp-price freeze this year [] promotes predictability and stability in rates (Objective 2).”¹⁴ Based on the notice provided in Docket No. R2019-1, the Postal Service adds, “Stamped Letter customers could reasonably — and, ultimately, accurately —

¹² Notice 2019 at 12.

¹³ Carlson Comments at 3–8.

¹⁴ Notice 2019 at 12.

predict the level of rates past 2019 into 2020.”¹⁵ While predictability and stability in rates are important under 39 U.S.C. § 3622(b)(2), the Postal Service has not published any guidelines or explanations that would allow the general public or small businesses to predict when the rate will jump another five cents to 60 cents. I also am not aware that the Postal Service has disseminated this policy in a way that would reach many members of the general public. Also, in its notice in Docket No. R2019-1, the Postal Service reserved the right to deviate from the five-cent rounding policy.¹⁶ I probably know more about postal rate-making than most members of the public, and yet I have no idea when the rate will jump to 60 or 65 cents. Also, a rate of 52 cents that was held at that level for several years would promote just as much stability as a rate of 55 cents, so a policy of five-cent rounding does not, in and of itself, promote predictability or stability.

In addition, five-cent increases are so large that they hardly reflect stability in rates. Considered along with the absence of information to allow anyone to anticipate when these five-cent increases will occur, the five-cent rounding policy actually *undermines* the statutory objective for predictability and stability in rates. Moreover, the unpredictable five-cent jumps create similar uncertainty for mailers who use other First-Class rates, as PostCom noted in Docket No. R2019-1.¹⁷ Large mailers’ rates may spike in years when the basic postage rate does not increase and then increase only mildly in years when it does. The five-cent rounding policy ultimately creates unpredictability and instability for all First-Class Mail users. In contrast, the previous practice of increasing the basic postage rate approximately by the percentage increase in the CPI promoted predictability and stability because the public anticipated an increase every January of one or two cents.

¹⁵ *Id.* 12–13.

¹⁶ United States Postal Service Notice of Market-Dominant Price Change at 7, filed October 10, 2018.

¹⁷ Comments of the Association for Postal Commerce at 7–8, filed October 30, 2018.

The Postal Service claims that the 55-cent rate is not “unjust or unreasonable.”¹⁸ Objective 8 requires the Commission to maintain a “just and reasonable schedule for rates and classifications[.]”¹⁹ The best that the Postal Service can say about the high, 55-cent postage rate that nearly every American and small business will pay multiple times per year is that it is *not unjust or unreasonable* — a low standard, indeed, that fails to meet the requirement of the statute. The Postal Service explains how the Commission has interpreted this objective.²⁰ Regardless of prior interpretations, when beginning an analysis of five-cent rounding or the 55-cent rate under objective 8, the Postal Service and the Commission must, as a minimum threshold requirement, identify a plausible rationale for singling out the general public and small businesses for a large rate increase. Unfortunately, the Postal Service’s second try to advance a reason for the unprecedented five-cent rate increase implemented in January 2019 is no more convincing than the first. Although the Postal Service argues that the financial hit to a household — all 127.6 million of them,²¹ of course — from the 55-cent rate would be “relatively modest,”²² the increase cannot be just or reasonable if the Postal Service has not advanced a plausible reason for the increase in the first place. In approving rates for 2020, the Commission must meet a higher statutory standard of “just and reasonable,” not merely “not unjust or unreasonable.” By offering only justifications, for two consecutive years, that crumble under scrutiny, the Postal Service has not explained why the five-cent rounding policy and the 55-cent postage rate that results therefrom are just and reasonable.

The Commission should consider the “just and reasonable” provision in objective 8 alongside 39 U.S.C. § 101(d), which provides, “Postal rates shall be established to apportion the costs of all postal operations to all users of the mail

¹⁸ Notice 2019 at 14.

¹⁹ 39 U.S.C. § 3622(c)(8).

²⁰ Notice 2019 at 14.

²¹ U.S. Census Bureau, Households Table H1 (2018).

²² Notice 2019 at 14–15.

on a fair and equitable basis.”²³ This section is relevant because factor 14 requires the Commission to consider “the policies of this title[.]”²⁴ The large, 10-percent increase for 127.6 million households, plus small businesses, in Docket No. R2019-1 was not fair and equitable because the Postal Service provided no plausible explanation for burdening the general public and small businesses with such a large share of the cost of postal operations. Each cent increase in the basic postage rate produces over \$100 million in revenue. The Postal Service similarly has not addressed the requirement for fair and equitable apportionment of costs in Docket No. R2020-1 or explained why the five-cent rounding policy and the 55-cent rate are fair and equitable.

Indeed, for two years in a row, the Postal Service has failed to name the pricing factor that the 55-cent rate perhaps most obviously implicates: factor 3, which requires the Commission to take into account “the effect of rate increases upon the general public [and] business mail users[.]”²⁵ Last year, the Postal Service argued that the reduction in the rate for additional ounces and the non-machinable surcharge would mitigate the effect on the general public, even though only 3.3 percent of the mail would have benefited from this rate reduction, while 96.7 percent would have paid a higher rate.²⁶ This year, the Postal Service dropped that argument and instead observes that the average household would spend “only” \$2.85 more in a year to mail letters.²⁷ For rate increases denominated in cents, the increase for the general public can always be dismissed as a small dollar amount, although this small dollar amount may not feel small to families in which people work multiple jobs and live paycheck to paycheck. A few

²³ 39 U.S.C. § 101(d).

²⁴ *Id.* § 3622(c)(14).

²⁵ 39 U.S.C. § 3622(c)(3).

²⁶ See Carlson Comments at 8–10.

²⁷ Notice 2019 at 14–15. The Postal Service also cited the public representative’s calculation in Docket No. R2019-1 that the five-cent increase would cost a person mailing 20 letters “only \$1.” *Id.* 14. The comments of the public representative in Docket No. R2019-1 represented a failure to think critically, consider the complaints flowing in to the Commission from the public, and otherwise advocate for the interests of the general public. The public clearly had an interest in not suffering the burden of the largest increase in the basic postage rate in history. The public representative’s acquiescence to the 55-cent rate in Docket No. R2019-1 was shameful.

more dollars here and a few more dollars there, and soon the family misses a meal. The Commission needs to evaluate this factor at the macro level and consider that the 55-cent rate imposed an unjustified increase of hundreds of millions of dollars on the general public and small businesses.

The Postal Service observes that the 55-cent rate “is still far below the rates that apply to comparable standard domestic letters in other countries.”²⁸ Postage rates in other countries, while interesting, are not pricing objectives or factors under U.S. law, as postal systems in other countries face different cost structures, regulatory requirements, and service standards than in the U.S.

The only potentially plausible justification for the 55-cent rate that the Postal Service advances is the observation that price elasticity of demand is lower for single-piece letters than presort letters, and therefore the Postal Service seeks to increase revenue and contribution from the Stamped Letters category.²⁹ However, even this justification is flimsy because the Postal Service’s elasticity data refer to single-piece letters overall, not stamped letters specifically.

To be candid, merely evaluating, let alone accepting, the Postal Service’s rationale for the past two rate cycles that the public would prefer a 55-cent rate to a 52-cent rate has always required a suspension of a certain level of belief and common sense. This year, the Postal Service inadvertently admits the implausibility of its own claims about the preferences of the public. While arguing that the 55-cent rate is not unjust or unreasonable, the Postal Service opens a sentence with this clause: “*Although customers who use stamps might prefer to pay a lower rate (just as customers using any product would prefer to pay a lower rate for that product), in practical terms the five-cent increase is relatively modest*” [emphasis added].³⁰ Of course the general public and small businesses would prefer to pay a lower rate to mail letters! The Postal Service’s suggestion that the public would prefer a 55-cent rate over a 52-cent rate because 55 cents

²⁸ *Id.* 15.

²⁹ *Id.* 15–16.

³⁰ Notice 2019 at 14.

would be more straightforward or would be easier to remember, understand, or compute is nonsense. If any valid reasons exist for a 55-cent rate, the benefit to the public is not one of them.

Required Commission Action to Reduce 55-Cent Rate

In Docket No. R2019-1, the Postal Service failed to justify any increase in the 50-cent rate beyond an increase consistent with the overall price cap increase of 2.497 percent. For Docket No. R2020-1, the Postal Service offered a potentially valid reason for the 55-cent rate, revenue and contribution, while failing properly to address myriad other statutory objectives and factors. However, in Docket No. R2020-1, the Postal Service still has completely failed to justify five-cent rounding as a *pricing policy*. Regardless of the other reasons that the Postal Service has advanced to support the 55-cent rate, such as revenue and contribution, the Commission should recognize that *the underlying policy is five-cent rounding*. All justifications follow from, and are offered in support of, this flawed policy. The comments in this document and in Docket No. R2019-1 establish that the five-cent rounding policy is devoid of merit. Therefore, the Commission must not approve a rate level for 2020, 55 cents, that is based on a pricing policy that fails to comply with the statutory factors and objectives. Indeed, five-cent rounding is more than a policy: it is a *system* for pricing the Stamped Letters category — a system that may control the rate for this category for many years. The Commission's system for regulating market-dominant rates must consider the statutory objectives and factors.³¹ As a system for pricing or regulating rates for Stamped Letters, five-cent rounding does not advance the objectives and factors. Therefore, the Commission must not adopt a pricing system, five-cent rounding, that is inconsistent with the statutory objectives and factors.

The Commission's role in Docket No. R2020-1 is not to make the Postal Service's case for it and devise a legal justification to allow the Postal Service to

³¹ 39 U.S.C. § 3622(b) and (c); see also *Carlson*, 938 F.3d at 347.

impose five-cent rounding or a 55-cent rate. Rather, according to the *Carlson* court, “Congress directed the Commission to serve as more than just a rubber stamp of the Postal Service’s proposed rate increases.”³² Additionally, the Commission must “consider relevant statutory objectives and factors” and “respond to significant public comments[.]”³³ The Postal Service has had its chance — twice — to justify the 55-cent rate and five-cent rounding as a pricing policy. The Commission knows that the Postal Service is basing the 55-cent rate on a five-cent rounding policy. The Commission’s obligation to consider relevant statutory objectives and factors when approving new rates requires rejection of Postal Service pricing proposals when, as here, the Postal Service has not adequately supported a pricing proposal under the statutory pricing criteria despite two attempts to do so, and when, as here, significant public comments challenge the fundamental premise of the proposal.³⁴ Until the Postal Service, in a notice of rate change in a future year, advances a pricing policy or rate proposal that is consistent with the statutory criteria, the rate for single-piece, one-ounce, machinable, stamped First-Class letters should not exceed the price level that would result if the rate increased each year by the percentage allowed under the price cap. This rate affects too many customers, and implicates too much revenue, for the Commission to allow an unjustified increase to proceed. Therefore, the Commission should lower the basic postage rate from 55 cents to 52 or 53 cents, the rate that would apply in 2020 if the original 50-cent rate were increased by the CPI percentage for 2019 and 2020.

Respectfully submitted,

Dated: October 24, 2019

DOUGLAS F. CARLSON

³² *Carlson*, 938 F.3d at 351.

³³ *Id.*

³⁴ See *Id.* 343 (“We conclude that the Commission fell short of the APA’s requirement for reasoned decisionmaking because it did not adequately analyze the stamp price hike’s compliance with all of the PAEA’s relevant statutory objectives and factors, particularly those raised in the public comments”); see also *Id.* 344 (“[A]n agency must respond to comments ‘that can be thought to challenge a fundamental premise’ underlying the proposed agency decision” (citing *MCI WorldCom, Inc. v. FCC*, 209 F.3d 760, 765 (D.C. Cir. 2000))).