

UNITED STATES OF AMERICA
BEFORE THE POSTAL REGULATORY COMMISSION
Washington, DC 20268

In the Matter of:

Docket No. R2020-1

Market Dominant Price Change

COMMENTS OF
STEPHEN A. RAHER

Pursuant to the Commission's Notice and Order on Price Adjustments and Classification Changes for Market Dominant Products (Order No. 5273, Oct. 10, 2019) and 39 C.F.R. § 3010.11, please accept the following comments in opposition to the Postal Service's continued policy of five-cent rounding for stamped single-piece, one-ounce, first-class letters.

Approximately six weeks ago, the Court of Appeals for the District of Columbia Circuit issued its decision in *Carlson v. Postal Regulatory Commission*, 938 F.3d 337 (D.C. Cir. 2019). The court's opinion makes crystal clear that the Commission's powers under 39 U.S.C. § 3622 are subject to the reasoned decisionmaking requirements of the Administrative Procedure Act (5 U.S.C. § 551, *et seq.*). Notwithstanding this unambiguous reinforcement of bedrock administrative-law principles, the Postal Service apparently invites the Commission to perpetuate its past error by filing a Notice of Market-Dominant Price Change (the "Notice") containing the same five-cent rounding policy that was rejected in *Carlson*.

I join in the comments of Douglas F. Carlson docketed in the above-captioned proceeding on October 24, 2019. In addition, I would emphasize two matters that the Commission should consider when evaluating the prices contained in the Notice.

1. The Postal Service Has Not Provided A Reasonable Basis to Support A Five-Cent Rounding Policy

As noted by Mr. Carlson, the Postal Service's purported justifications for adhering to a five-cent rounding policy are implausible and difficult to take seriously. The Postal Service's allegation that "it cannot be denied that for [certain customers], rates denominated in five-cent increments are easier to remember and compute than those denominated otherwise" (Notice at 12) is merely a smokescreen to obscure the fact that the record contains no evidence to support this statement. If the Postal Service wishes to argue against the grain of basic logic, then it bears the heavy burden of producing evidence that supports its extraordinary factual allegations.

Regarding customers' ability to "remember" the price of a first-class stamp, a number is a number is a number. The Postal Service provides no evidence beyond naked conjecture to suggest why a typical customer would be more likely to remember 55¢ than 52¢, and for this reason alone the proposed pricing cannot be approved. See *St. James Hosp. v. Heckler*, 760 F.2d 1460, 1467, n.5 (7th Cir. 1985) (in a rulemaking, "it is an agency's duty to establish the statistical validity of the evidence before it prior to reaching conclusions based on that evidence, not the public's duty to inform the agency of statistical invalidities in its evidence"). For the record, I will affirmatively state that I am a regular sender of single-piece stamped letters, and I have no difficulty remembering whole numbers that are not divisible by five.

Even in the unlikely event that some customers do have difficulty remembering first-class rates, this by itself would not justify the Postal Service's policy of intentionally pricing first-class, first-ounce stamps in excess of the direct and indirect costs properly allocated to such type of mail. In addition to making a factual finding, the Commission must conclude that there is a rational nexus between the facts in evidence and the Postal Service's chosen course of action. See *Burlington Truck Lines v. U.S.*, 371 U.S. 156, 167 (1962) (reversing decision of the ICC because the commission did not

“articulate any rational connection between the facts found and the choice made”). Here, any purported difficulty in remembering first-class postage rates has already been effectively addressed by the Commission’s previous approval of non-denominated “Forever Stamps.” The “evergreen” nature of Forever Stamps is such that mailers of single-piece first-class letters weighing one ounce or less do not have to remember the first-ounce rate: when the customer purchases Forever Stamps, she pays whatever the prevailing rate is and the postage is then valid forever, notwithstanding subsequent rate changes. Indeed, when the Postal Service successfully advocated for approval of Forever Stamps, it relied on market research (the type of detailed factual evidence *not* present here) finding that customers would support Forever Stamps, but *would not* be willing to pay a premium for the convenience. *In re Postal Rate and Fee Changes*, PRC Dkt. No. R2006-1, USPS LR-L-152, at 7. The Postal Service is now effectively proposing to charge a premium to mailers of single-piece stamped letters for the privilege of being able to divide the price by 5¢. The same research from the 2006 proceeding found that “[c]ustomers were not inconvenienced at the last rate change.” *Id.* at 1. That 2006 rate change increased single-piece first-class rates from 37¢ to 39¢, neither of which number is divisible by 5¢. The Postal Service relied on this information when seeking the Commission’s approval for a new product, but now wishes to ignore it when advocating for an unjust pricing policy.

Regarding the contention that it is difficult to “compute” prices that are not divisible by 5¢, the Postal Service betrays its desperation to find a justification for the five-cent rounding policy. Without evidence, the Postal Service alleges that “stamp usage has been declining among individuals.” Notice, at 15. To the extent that this is a generally accepted fact that the Commission can rely upon in this proceeding, so too can it note that cellphone adoption is nearly universal in the United States.¹ Since even

¹ See, e.g., Pew Research Center, “Mobile Fact Sheet,” <https://www.pewinternet.org/fact-sheet/mobile/> (June 12, 2019) (finding that 96% of Americans own a cellphone).

early-model cellphones come equipped with pre-installed calculators, the difficulty of computing postage is simply not a meaningful challenge for customers—nearly everyone has a calculator within reach at all times.

2. The Commission’s Attempted Procedural Bifurcation Is Confusing and Potentially Unreasonable

The Commission’s Order No. 5273 states that “any issues specifically related to Docket No. R2019-1 First-Class Mail rates and the *Carlson* decision will be addressed in a separate order in Docket No. R2019-1 and will not be adjudicated as part of the instant proceeding.” Order at 3-4. To the extent that the Commission seeks to separate prospective compliance with the *Carlson* ruling from the current proceeding, such action is unreasonable. As Mr. Carlson himself notes, if the prior rate adjustment had complied with 39 U.S.C. § 3622, then the first-ounce single-piece rate in this proceeding would be 52¢ or 53¢. Carlson at 2. The *Carlson* ruling is therefore directly relevant to the Commission’s consideration of the Notice and there is no reasonable way to confine those issues within the framework of Docket No. R2019-1.

3. Conclusion

The Postal Service’s adherence to the five-cent rounding policy that was thoroughly discredited in *Carlson* is the very definition of arbitrary and capricious decisionmaking. The Commission should not approve any single-piece, one-ounce, first-class letter rate over 52-52¢.²

Dated: October 25, 2019

Respectfully submitted,

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² See Carlson at 2 (52-53¢ is “the rate that would apply in 2020 if the original 50-cent rate were increased by the CPI percentage for 2019 and 2020.”).