

**BEFORE THE POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268**

Docket No. R2020-1: Market-Dominant Price Change

Evan D. Kalish, October 29, 2019

In light of the rebuke by a unanimous panel of District of Columbia Circuit judges (Carlson v. Postal Reg. Comm'n, No. 18-1328) regarding the Postal Regulatory Commission's failure to apply reasoned decision-making in its order upholding the Postal Service's price adjustments for First-Class Mail for 2019, I write to express my concern with the Postal Service's proposed rate schedule for First-Class Mail for 2020.

There continues to be no valid justification for the five-cent jump in the rate of a First-Class Letter that occurred in January 2019; that it should be carried forward into 2020 is a continued disservice to First-Class Letter senders everywhere.

I send scores of First-Class Letters every year and I can definitively state that I would fail to be inconvenienced by paying a lower price of 51 or 52 cents for the stamps that I most commonly purchase in multiples of 10 [or 20]—using a credit card, no less.

As for the Postal Service's argument that 55 is "simpler" than 52, as a former captain of my math team for all four years in high school I can tell you that there is no such concept as a "simpler" number. $55 = 11 \times 5$. $52 = 13 \times 4$. So what? 41 is prime; was that postage rate too difficult for people to figure out? Should I be thankful to pay \$4.00 for a product as opposed to \$3.99? Is there an epidemic of penny allergies that's gone unreported in the news?

The entire original justification for the increase is a joke. It's almost as though someone at the Postal Service's said, "I don't like pennies. Let's make a five-cent increase and call it customer convenience." If that weren't bad enough, the Postal Regulatory Commission has been bending over backwards to help rationalize this on a post hoc basis. The D.C. Circuit recognized the PRC's abdication of its oversight duty in its decision: the Commission's facile acceptance of the Postal Service's contrived justification was the epitome of arbitrary and capricious.

The Commission has attempted retroactive bureaucratic acrobatics with Order No. 5285; unfortunately rotting drywall cannot be cured with a few coats of fresh paint.

As with the vacated portion of Order No. 4875, this new order fails to comply with the "reasoned explanation requirement" of the Administrative Procedure Act. The PRC continues to purvey logically null statements as evidence, such as on page 27: "The Postal

Service explains that the 5-cent increase for Stamped Letters should provide retail customers with a “straightforward, understandable pricing structure[.]”

Again, the Commission appears to have started with its conclusion and adopted its logic backward, as on page 66-7: “Even if a few of the individual factors or objectives were thought to weigh against the First-Class Mail price adjustments (notwithstanding the Commission’s conclusion that the price changes are consistent with all of them), the Commission would reach the same result. ... [E]ven if some of the objectives and factors were thought to be in tension with the First-Class Mail price changes, the Commission concludes that, at a minimum, the weight of the balance favors approving the First-Class Mail price adjustments.” How, exactly, could this amorphous logic not be applied to approve a subsequent rate increase of 10, or 25 cents for First-Class Letters?

The above is not a hypothetical exercise in *reductio ad absurdum*; consider that Canada Post increased the price of its Permanent stamps—analogue to USPS’s Forever Stamps—from 63 cents to \$1.00 (or 85 cents, if purchased in “bulk”) in 2014. Conceivably this 34.9–58.7% increase would pass muster with the PRC, given the arbitrary weighted balance referenced above.

In *Department of Commerce v. New York*, No. 18–966, Chief Justice John Roberts wrote in his majority opinion: “The reasoned explanation requirement of administrative law, after all, is meant to ensure that agencies offer genuine justifications for important decisions, reasons that can be scrutinized by courts and the interested public. Accepting contrived reasons would defeat the purpose of the enterprise. If judicial review is to be more than an empty ritual, it must demand something better than the explanation offered for the action taken in this case.”

Here, an interested public (as embodied by Mr. Carlson) successfully challenged the PRC’s contrived decision-making, as scrutinized by the courts (the D.C. Court of Appeals). It is disappointing that the PRC’s response to date has been to effectively ignore all of this. Order No. 5285 attempts to pass off the same deficient house of cards as more “reasoned” because it shuffled the deck. Hopefully the PRC will not adopt the “empty ritual” stance toward judicial review, or its own responsibilities to the public, in reviewing R2020-1.

In light of the above, I am concerned that the Postal Service and the Postal Regulatory Commission continue to debase the Administrative Procedure Act, while violating the spirit of letter of *Department of Commerce v. New York*, No. 18–966 and *Carlson v. Postal Reg. Comm’n*, No. 18-1328. The PRC must deny the rate schedule proposed in this Docket, as its underlying basis in Docket No. R2019-1 is invalid. The First-Class Letter rate should revert to a justifiable figure, such as 52 cents.