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Before the
POSTAL REGULATORY COMMISSION
Washington, DC 20268-0001

Notice of Market Dominant	:	
Price Adjustment	:	Docket No. R2020-1

COMMENTS OF THE GREETING CARD ASSOCIATION

The Greeting Card Association (GCA) files these Comments pursuant to Order No. 5273. GCA, comprising about 200 greeting card publishers and other enterprises, is the postal trade association which speaks for the individual household mailer.

I. BACKGROUND AND SCOPE OF COMMENTS

The Postal Service's Notice[1] in this Docket leaves the Single-Piece First-Class Letter rates of principal interest to GCA's constituency at FY 2019 levels. Accordingly, we raise no issues directly concerning the rates. Similarly, we are not raising issues of cap compliance. That said, there are several disquieting features of the Postal Service Notice which we will discuss.

The Postal Service states that it uses the R2019-1 rates as the basis for the present filing because the Commission's rules require it to.[2] Rule 3010.23(a)(1), (b), and (c) do call for a filing based on the rates "in effect" at the time the filing is made. Because the mandate in *Carlson* v. *Postal Regulatory Commission,* D.C. Cir. No. 18-1328 (September 13, 2019), has not yet issued, the R2019-1 First-Class rates the Court vacated are – for that reason – still in effect. Hence the Postal Service's assertion can be accepted as a matter of mechanical rate-filing construction. The R2019-1 rates are in effect simply because the Court's decision vacating them has not become operative, but

[1] *United States Postal Service Notice of Market-Dominant Price Change* ("Notice") (October 9, 2019).

[2] Notice, p.6.

since the present filing must have *some* basis to which price-capped adjustments can be applied and because it complies literally with the Commission's rule, the Postal Service's course appears legally defensible.

This does not mean, however, that any of the assertions or arguments the Postal Service made in support of the R2019-1 rates are correct or (whether correct or not) have become incontestable. The same is true of the Commission's discussion surrounding its acceptance of the rates. Particularly in view of *Carlson,* these matters should be considered open to debate in this Docket, not least because the Postal Service has treated at least one of them extensively in its Notice.

II. THE POSTAL SERVICE'S ARGUMENT THAT ONLY THE GOVERNORS MAY DETERMINE INDIVIDUAL RATES IS MISTAKEN

The Notice, at pp. 9-11, advances the novel contention that only the Governors, and not the Commission, may determine "individual" rates; on this view, the Postal Service need not, under rule 3010.12(b), justify individual rates but only the "overall" rate design. This argument is unsound.

The meaning of rule 3010.12(b)(7). The Postal Service argues that –

> . . . Commission Rule 3010.12(b)(7) requires only that the Postal Service discuss how the overall "rate adjustments are designed to" further the Section 3622 objectives and factors. The rule cannot, therefore, be read to require justification of specific rate adjustments at the class, product, price-category, or price-cell level; rather, it only requires justification of the overall rate design.[3]

This argument radically misreads rule 3010.12(b)(7) and indeed at one point misrepresents it.

The rule speaks of both "adjustment" and "adjustments" – singular and plural. It speaks of "adjustment" (singular) most often in referring to the rate adjustment filing or in a generalized phrase like "rate adjustment authority." But it also requires the Postal Service to show how the rate adjustments (plural) conform to the statute. Use of the

[3] Id., p. 11. The Postal Service does not explain what it means by "overall rate design."

plural here indicates that the filing indeed must justify adjustments "at the class, product, price-category, or price-cell level." The word "overall," which the Postal Service places immediately before its truncated quotation from rule 3010.12(b)(7), does not appear anywhere in that provision – nor, in fact, anywhere in rule 3010.12(b). Inserting it substantially changes the apparent meaning of subsection (b)(7). It is also worth mentioning that rule 3010.12(b)(12) directs the Postal Service to supply any other information which would help the Commission determine "whether the planned rate *adjustments* are consistent with applicable statutory policies" (italics added).

The singular/plural distinction makes structural sense in rule 3010.12(b)(7) and, once recognized, makes it clear that the rule does contemplate Commission consideration of individual rates. The Postal Service's reliance on the rule is therefore mistaken.

Even if rule 3010.12(b)(7) were ambiguous, it is clear from other rules that individual rates are subject to Commission scrutiny. Section 3010.12(b)(8) requires the Postal Service to show that the planned rate adjustments conform to 39 U.S.C. secs. 3626, 3627, and 3629. Doing so obviously requires attention to individual rates. Take a single example: 39 U.S.C. sec. 3626(a)(5) directs that –

> The rates for any advertising under former section 4358(f) of this title shall be equal to 75 percent of the rates for advertising contained in the most closely corresponding regular-rate category of mail.

To comply with this rule, the Postal Service would need to show that the nonprofit advertising rate was indeed 75 percent of the commercial rate – an exercise obviously entailing scrutiny of individual rates.

Section 404(b) of title 39. The Postal Service also relies on the PAEA provision granting the Governors certain powers. It argues that because this section does not specifically instruct them to consider the sec. 3622 objectives and factors, they need not, and the Commission thereafter may not.[4]

The short answer to this is that sec. 404(b) directs the Governors to establish rates "in accordance with the provisions of chapter 36." We could reasonably take this

[4] Notice, pp. 9 et seq.

to mean that the Governors *are* to apply the objectives and factors – undeniably "provisions of chapter 36" – in constructing a set of proposed rates. In view of this, it is insignificant that sec. 404(b) does not specifically mention secs. 3622(b) and 3622(c).

More directly relevant, however, is the fact that among the provisions of chapter 36 are those providing for Commission review of the rate package the Governors decide to put forward.

Here again, focusing on a specific "provision[ ] of chapter 36" will clarify the issue. Sec. 3622(e) enacts a set of limitations on workshare discounts, and several exceptions to those limitations. That each workshare discount must conform to the limitations (absent a relevant exception) entails review of individual worksharing rates by the Commission. The Postal Service has consistently recognized this requirement. It regularly includes workshare tables as part of its price-cap case filings.[5]

The 1970 Postal Reorganization Act also empowered the Postal Service to "establish" rates – but under that statute, it was beyond question that the Commission could and did review individual proposed rates: *no* rate could be put into effect without a recommended decision by the Commission, adopted or in some cases modified by the Governors. The Postal Service has not shown that the somewhat different wording of PAEA has changed this situation.

Finally, the Postal Service's argument is flatly inconsistent with *Carlson.* If the Postal Service hopes that the Commission will challenge the *Carlson* panel's decision, it should present (or should have asked to present) its views in the separate process the Commission re-established under the R2019-1 rubric to consider R2019-1 and *Carlson* issues.[6]

In short: the Commission should squarely reject the "Governors' authority" argument and reaffirm that it will continue to review and if need be correct individual rates down to the price-cell level.

III. THE NICKEL-INCREMENT ARGUMENT

[5] See, e.g., the Postal Service's Attachment B in the present case and in Docket R2019-1.

[6] Order No. 5273, pp. 3-4. In view of the issuance of Order No. 5285, is this proceeding still active?

Although it does not propose a change in the first-ounce stamp price, the Postal Service reiterates its arguments in favor of increasing it (in some years) by five cents. That this argument was discredited by the *Carlson* panel appears to have made little impression. The Postal Service's assertion that "it cannot be denied that . . . rates denominated in five-cent increments are easier to remember and compute than those denominated otherwise"[7] raises questions to which it offers no answer. First, if prices divisible by five are superior, why was this "fact" not recognized until 2018? We reproduce here a table from our R2019-1 Comments, showing that, at that time, for most of the history of the reorganized Postal Service the stamp price had not been a multiple of five. The time spans when it was are highlighted in yellow.

Table A. First-Ounce Letter Stamps Since Reorganization

Rate ($)	Effective date	Days in effect
0.08	5/16/71	1,021
0.10	3/2/74	669
0.13	12/31/75	880
0.15	5/29/78	995
0.18	3/22/81	214
0.20	11/1/81	1,204
0.22	2/17/85	1,141
0.25	4/3/88	1,036
0.29	2/3/91	1,428
0.32	1/1/95	1,833
0.33	1/10/99	728
0.34	1/7/01	512
0.37	6/3/02	1,313
0.39	1/6/06	493
0.41	5/14/07	364
0.42	5/12/08	364
0.44	5/11/09	986
0.45	1/22/12	371
0.46	1/27/13	364
0.49	1/26/14	811
0.47	4/16/16	281
0.49	1/22/17	364
0.50	1/21/18	371

[7] Notice, p. 12.

Second, on what empirical findings does the Postal Service's proposition rest? It cited none in Docket R2019-1, and it cites none in this case. Third, why does the Postal Service believe that this alleged ease of recollection/computation is an acceptable bargain for stamp users if it entails periodic increases substantially above the rate of inflation?[8] It does not, as the Service argues, promote predictability and stability of rates (objective (b)(2)). If the five-cent pattern with spaced-out increases were embodied in a statute or regulation, predictability would be increased (stability, however, would not). Here, however, there is not even a binding commitment to that pattern – only a "stated intent."[9] If we are to take seriously the Postal Service's description of the complexities the Governors must cope with when choosing a set of proposed rates[10], it is not easy to see how they could make such a commitment, or why a "stated intent" should be taken as equivalent to one.

In considering this part of the Postal Service's presentation, the Commission should not confuse – as the Postal Service does – the *general* notion (perhaps true, or true for some individuals) that dividing by five in one's head is easier than dividing by, e.g., seven or thirteen, with the *relevant* concept of dealing with postage. If a customer buys a single stamp, there is no computation involved. If (s)he buys a sheet or booklet, the Postal Service has already computed the price. If, as is theoretically possible, the purchaser of a sheet or booklet wants to ascertain the price of each stamp, the relevant divisor is not the stamp price but the number of stamps in the sheet or booklet. The Postal Service decides whether a sheet will contain 12, 16, 18, 20, or 24 stamps. This is not a rate-case issue, and if its choice creates computational difficulties for a consumer, they are not to be remedied by distorting the unit price.

[8] As in Docket R2019-1, where the CPI-U price cap was 2.497 percent and the stamp was increased ten percent – four times the Commission's computed rate of inflation.

[9] Notice, p.12.

[10] Id, pp.9 et seq.

In short, the Commission should make unmistakably clear that – as strongly suggested in Order No. 5285, p. 56 – it does not accept the Postal Service's arguments in favor of the five-cent-increment pattern of pricing Single-Piece letters.

IV. CONCLUSION

While GCA is not contesting either zero-level increases in the Single-Piece First-Class letter rates or their compliance with the price cap, we do urge the Commission to reject unequivocally the Postal Service arguments we have analyzed in parts II and III of these Comments.

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Respectfully submitted,

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