

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Market-Dominant Price Change

Docket No. R2020-1

DOUGLAS F. CARLSON  
COMMENTS ON THE POSTAL SERVICE'S RESPONSE  
TO ORDER NO. 5302

November 27, 2019

In my initial comments filed on October 24, 2019, I explained that the Postal Service had failed properly to address the statutory objectives and factors supporting a 55-cent rate for single-piece, one-ounce, stamped, machinable, First-Class letters in Docket No. R2020-1.<sup>1</sup> In addition, I argued that the Postal Service had failed to justify five-cent rounding as a pricing policy. Importantly, I also advised the Commission that its role is “not to make the Postal Service’s case for it and devise a legal justification to allow the Postal Service to impose five-cent rounding or a 55-cent rate.”<sup>2</sup>

Within minutes of submitting my electronic filing to the Commission, Order No. 5285 appeared in the Commission’s daily listing. In Order No. 5285, the Commission made the Postal Service’s case for the 55-cent rate in Docket No. R2019-1 by identifying statutory objectives and factors that supposedly supported this rate. Although the Postal Service’s premise for the 55-cent rate was the thoroughly debunked notion that five-cent rounding would contribute to “simplicity of structure,” the Commission dismissed this problem with the remarkable note that the Commission “accords little weight to Factor 6 in this

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<sup>1</sup> Douglas F. Carlson Comments in Opposition to a 55-Cent Price and Five-Cent Rounding Policy for One-Ounce, Machinable, Stamped, First-Class Letters, filed October 24, 2019.

<sup>2</sup> *Id.* 9–10.

proceeding” — even though the only factor or objective that the Postal Service cited specifically to justify a 55-cent rate was factor 6, “simplicity of structure.” The Postal Service’s proposal in October 2018 and the Commission’s response thereto in Order No. 4875 in November 2018 led the D.C. Circuit to hold that “Congress directed the Commission to serve as more than just a rubber stamp of the Postal Service’s proposed rate increases.”<sup>3</sup> Unfortunately, Order No. 5285 was a rubber stamp approval of the Postal Service’s 55-cent rate proposal.

In the current proceeding, the Commission, in rejecting the Postal Service’s notice of market-dominant price change, pointedly stated, “Consistent with the decision of the United States Court of Appeals for the District of Columbia Circuit, the Commission is not persuaded that the discussion of simple consumer prices is relevant to the evaluation of 39 U.S.C. § 3622(c)(6)” (citing *Carlson*, 938 F.3d at 346).<sup>4</sup> Accordingly, the Commission instructed the Postal Service to “meaningfully address the pricing decisions questioned in public comments including, but not limited to: the Stamped Letter price and the adjustments to presorted rate categories” [footnotes omitted].<sup>5</sup> The Postal Service declined to do so, instead relying on the findings in Order No. 5285.<sup>6</sup>

The Commission’s system for regulating market-dominant products requires the Postal Service’s notice of rate adjustment to include a “discussion that demonstrates how the planned rate adjustments are designed to help achieve the objectives listed in 39 U.S.C. 3622(b) and properly take into account the factors listed in 39 U.S.C. 3622(c).” 39 C.F.R. § 3010.12(b)(7). In two proceedings, the Postal Service, by focusing on a meritless argument about simplicity of structure, has failed to demonstrate that the 55-cent rate is consistent with the statutory objectives. Moreover, in two proceedings, the Postal Service has not demonstrated that the *pricing policy* of five-cent rounding that

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<sup>3</sup> *Carlson v. Postal Regulatory Commission*, 938 F.3d 337, 351 (D.C. Cir. 2019).

<sup>4</sup> Order No. 5302 at 25, filed November 13, 2019

<sup>5</sup> *Id.* 24–25.

<sup>6</sup> United States Postal Service Response to Order No. 5302 at 17, filed November 20, 2019.

underlies the 55-cent rate in any way helps to achieve the objectives in 39 U.S.C. 3622(b) or properly takes into account the factors in 39 U.S.C. 3622(c). Indeed, the Commission already announced in Order No. 5302 that the justification that the Postal Service has offered for five-cent rounding — convenience, straightforwardness, understandability, and ease of computation — does not support the one statutory objective or factor, simplicity of structure, that the Postal Service has cited in favor of this rate and this pricing policy.<sup>7</sup> Yet the rate is still 55 cents, and the Postal Service wants to keep it at 55 cents without further discussion.

The commenters, as well as the general public and small businesses whose sentiments the commenters reflect, await a response from the Commission that does not rubber-stamp the Postal Service's 55-cent rate and the Postal Service's pricing policy of five-cent rounding. 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: November 27, 2019

DOUGLAS F. CARLSON

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<sup>7</sup> See Order No. 5302 at 25.