

**BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON, DC 20268-0001**

**Complaint on Stamped Stationery**

**Docket No. C2004-3**

**DOUGLAS F. CARLSON  
REPLY BRIEF**

**June 22, 2006**

**I. INTRODUCTION**

The Commission recently defined a “postal service” for the precise purpose of determining whether Postal Service products are subject to Commission jurisdiction. As I explained in my initial brief,<sup>1</sup> under the Commission’s definition, stamped letter sheets are a postal service. The Postal Service apparently recognizes the futility in arguing that stamped letter sheets are not a postal service. Consequently, in its brief, the Postal Service shifts tactics, arguing now that the Commission should not simply refer to statute, regulation, precedent, or practice in determining whether stamped letter sheets are a postal service.<sup>2</sup>

The Postal Service effectively is requesting that the Commission drive a huge hole in its new definition of a postal service. Whether the Commission can or should consider factors other than its definition is questionable, particularly since policy considerations informed the Commission’s original definition. If the Commission rules that a service that so clearly meets the definition of a postal service under the Commission’s definition is, nonetheless, not a postal service,

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<sup>1</sup> Douglas F. Carlson Initial Brief, filed June 8, 2006.

<sup>2</sup> Brief of the United States Postal Service (“Postal Service Brief”), filed June 8, 2006.

the precedent will cloud future assessments of whether new services are postal services.

**II. THE POSTAL SERVICE FAILED TO DEMONSTRATE THAT STAMPED LETTER SHEETS ARE NOT SUBJECT TO COMMISSION JURISDICTION.**

By imagining inconsistencies in the current landscape of regulated services, the Postal Service argues for a “more discerning approach” in applying the definition of a postal service. Postal Service Brief at 3–5. The Postal Service suggests that packaging supplies and photocopier machines in post offices could meet the definition of a postal service. Indeed they could. However, the purpose of this proceeding is not to determine whether packaging supplies and photocopier machines are postal services. Nonetheless, in determining whether a service is a postal service, the Commission should draw a line to ensure that regulation becomes neither too broad nor too narrow. An appropriate place to draw a line is to conclude that services over which the Postal Service is the sole provider are a postal service. Customers can purchase packing tape at the corner drug store. They can make photocopies at copy stores and office-supply stores. Nobody else, however, sells stamped stationery products. The Postal Service is the sole provider of stamped cards, stamped envelopes, and stamped letter sheets, each of which offers a unique combination of services. Regulation is appropriate to protect the public from excessive prices set by a monopoly provider of a monopoly product.

The Postal Service turns next to money orders to suggest inconsistency in prior definitions of a postal service. *Id.* at 4. The focus of this complaint is not to defend the conclusion that money orders are a postal service. My argument that stamped letter sheets are a postal service in no way depends on the conclusion that money orders are a postal service. The Commission’s decision in Docket No. R76-1 was not rendered under the current definition of postal service. Whether the Commission would reach the same decision today is irrelevant to the determination of whether stamped letter sheets are a postal service.

The Postal Service incorrectly asserts that, unlike stamped envelopes, the pre-affixed postage on stamped letter sheets is “almost incidental” because the stationery itself supposedly is the principal source of demand. Postal Service Brief at 5. To many customers, the pre-affixed postage is the essence of the product and the reason to buy it. The Postal Service’s distinction between stamped envelopes and stamped letter sheets is incorrect.

The Postal Service argues that it is not overcharging customers for stamped letter sheets because the price of stamped letter sheets does not exceed the “high end” of the price that some private companies charge for stationery. *Id.* at 6. In reality, the appropriate fee for stamped letter sheets depends on the outcome of a public rate-setting process that considers the pricing criteria specified in 39 U.S.C. § 3622. Much as the proper rate for Express Mail cannot be determined simply by examining the price that FedEx charges for its overnight services, the Commission cannot conclude that stamped letter sheets are not overpriced simply because the price the Postal Service is charging does not exceed the “high end” of the price for which private, for-profit companies sell stationery.

The Postal Service suggests that the public is not unhappy about the price of its stamped letter sheets because the Postal Service is unaware of “any other complaint.” Postal Service Brief at 5. One would not, however, expect additional complaints to be filed with the Commission because only one complaint is necessary to initiate Commission review, and the Commission appointed the Office of the Consumer Advocate to represent the interests of the general public. In reality, thousands of people are monitoring the progress of this complaint in *Linn’s Stamp News* articles; the absence of additional complaints about the price of the stamped letter sheets proves nothing about public opinion.

Available evidence about public opinion in fact suggests significant concern. Exhibit 2 of my complaint included a strongly worded editorial in *Linn’s Stamp News* condemning the price of the Postal Service’s stamped letter sheets.

Two additional letters to the editor appeared in *Linn's Stamp News* supporting my complaint, one on August 9, 2004, and the other on May 8, 2006. These letters appear in Appendix 1. Public interest in this issue has persisted for nearly two years. While public opinion on issues rarely is unanimous, if the Postal Service believes that I am the only person who is concerned about the price of stamped letter sheets, the Postal Service is seriously mistaken.

The Postal Service's authority pursuant to 39 U.S.C. § 404(a)(5) to offer philatelic services is irrelevant. Philatelic services include special cancellations, hand-back postmark services, and first-day covers. Stationery with postage pre-affixed is not a philatelic service. Under the Postal Service's logic, stamped envelopes and stamped cards of sufficient philatelic quality or interest — however the Postal Service would try to draw that line — suddenly would be whisked away from the Commission's jurisdiction and subjected to monopoly pricing practices without public scrutiny or input. The mere existence of philatelic appeal in a product does not convert a postal service into a philatelic service.

Moreover, the Postal Service's interpretation of 39 U.S.C. § 404(a)(5) is flawed because it is too broad, and it ignores the larger statutory scheme in the Postal Reorganization Act. Section 404(a)(5) grants the Postal Service the "specific power" to provide philatelic services. This statute does not provide the Postal Service exclusive authority or, as the Postal Service argues in its brief, "unilateral authority" to provide philatelic services. Postal Service Brief at 6. Therefore, a private company can provide philatelic services, too. Moreover, section 404(a)(5) does not prohibit the Commission from regulating the fee for a postal service. This section merely grants the Postal Service the authority to provide philatelic services, just as section 404(a)(1) grants the Postal Service the authority to deliver mail and section 404(a)(4) grants the Postal Service the authority to provide and sell stamped paper, cards, and envelopes.<sup>3</sup> Neither section has ever been read to preclude Commission regulation of rates and fees

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<sup>3</sup> Indeed, if any subsection of section 404 is relevant to the current dispute, section 404(a)(4) applies, not section 404(a)(5).

for those postal services. The scope of the Commission's regulation appears in 39 U.S.C. § 3622: The Commission regulates postal services. Once again, the only issue is whether stamped letter sheets are a postal service. Even if stamped letter sheets are philatelic services, the statutory scheme subjects every *postal service* to Commission regulation.

In sum, stamped stationery products are postal services, and the fees are subject to regulation.

### **III. REGULATION OF STAMPED LETTER SHEETS IS IN THE PUBLIC INTEREST.**

Postal Service assertions about the inconvenience of regulation of the fee for stamped stationery are unpersuasive. See Postal Service Brief at 7–8. Regulation has never been known for its convenience. However, regulation is well known for protecting the public. Congress recognized that the rate and classification process could be laborious and lengthy when it allowed the Commission 10 months to conduct a hearing and issue a recommended decision. Congress balanced the benefits of regulation against the costs and delays and indisputably chose regulation. The Postal Service should direct to Congress, not the Commission, its dissatisfaction with the perceived inconvenience of this process for regulating the fee for stamped letter sheets. Current law ensures that the Postal Service cannot unilaterally set the fee for monopoly services, nor can the Postal Service unilaterally set the fee for products incidental to monopoly services for which the Postal Service also is the exclusive provider — such as stamped letter sheets.

The Postal Service suggests that, in a regulated environment, it might choose not to produce stamped letter sheets at all. *Id.* at 9. The Postal Service suggests that this decision would result in a loss of customer convenience. This result would not be the fault of the Commission or the regulatory scheme. Rather, the result would be a consequence of the Postal Service's choice not to

seek regulatory approval for its fee for stamped stationery. The Commission should ignore this threat.

The Postal Service's additional complaints about possible difficulty in securing licensing agreements are pure speculation and nothing more. *Id.* at 8–9. Indeed, the absence of specificity, such as sworn statements from individuals supporting the Postal Service's position, further undermines the speculation. The Postal Service also ignores the fact that it can produce stamped letter sheets without licensing issues, as it did when it used its own designs for the Garden Bouquet stamped letter sheets.

The Postal Service expresses disagreement with my previously stated position that the Commission should not consider the philatelic value in setting the fee for stamped letter sheets. *Id.* at 8. The Postal Service insists that “business reality” might prevent the Postal Service from producing stamped letter sheets if the Postal Service were not permitted to recover the licensing fee, and no corporation would consent to use of its intellectual property without adequate compensation. *Id.* at 8–9. This argument ignores the fact that stamped letter sheets featuring licensed designs are not the only type of stamped letter sheets that the Postal Service may issue. In fact, the Garden Bouquet stamped letter sheets — one of two designs of stamped letter sheets that the Postal Service is selling — do not use licensed artwork.

In any event, the pricing criteria are irrelevant to the jurisdictional question and should not be further considered or discussed here.

The Postal Service then allows for the possibility that the Commission might expand the pricing criteria beyond the criteria that I have previously suggested. However, the Postal Service finds this prospect unworkable because “the owner of significant intellectual property is very unlikely to allow the Postal Service to present in a public proceeding information about the value of the property, given the highly sensitive commercial value of this information.” *Id.* at

9. The absence of any evidentiary support for this speculation once again is striking. Perhaps even more remarkable is how quickly the Postal Service forgets about its ability to move for protective conditions, a solution that allows interested members of the public access to the information solely for the purpose of resolving the issues in the case. Under the Postal Service's simplistic approach, its transportation contract with FedEx never would have been signed because FedEx would not have agreed to public disclosure of the contract.

#### **IV. CONCLUSION**

This case represents an early application of the Commission's new definition of a postal service. Stamped letter sheets clearly meet the definition. If the Commission followed the Postal Service's recommendation and ignored the definition, the value of the Commission's rule as a precedent would evaporate, and the Commission's rule would no longer provide useful guidance to the public or the Postal Service.

Contrary to the Postal Service's arguments, regulation of the fee for stamped letter sheets is in the public interest and will protect the public from the current overpricing of a monopoly product by a monopoly provider. The public will welcome a Commission ruling that stamped letter sheets are a postal service.

Respectfully submitted,

Dated: June 22, 2006

DOUGLAS F. CARLSON

# **APPENDIX 1**



# Readers' Opinions



## Don't soak 37¢ Olympics

Warning to all stamp collectors: do not soak on-paper examples of the new United States 37¢ Summer Olympic Games stamp.

It is a little tougher to soak off than other recent U.S. self-stick stamps, and the ink peels off and cracks after the stamp has dried.

Rud W. Svendsen  
New York, N.Y.

*J.A. Watercutter addressed the problematic 37¢ Summer Olympic Games stamp in his Aug. 2 Stamp Soaker column.*

## King of stamps

Like most grandfathers, I think my grandchildren are the cutest creatures God ever made. I love all 20 of them very dearly, but one in particular — Phillie, age 10 — captured my philatelic attention.

I thought one of my daughter Julie's children might become interested in stamp collecting, so one Christmas I gave a package as a Christmas present to "the one who wants it." The package contained a stamp album and a few stamps.

I was rather hesitant about doing this, because everybody in my family knows that Grandpa is slightly daffy on the subject of stamps. I didn't want to inflict my ideas of fun on my grandkids.

Phillie was the one who wanted the album, and at the time it wasn't a big deal.

Since then, I've sent him stamps and an old Scott catalog I don't need any more. I would like to say he is now the king of stamps. He isn't, but he's getting hooked. He takes his stamps out sometimes and looks at them — in between more important things, such as playing outside.

My point: I think we stamp collectors are reluctant to try to recruit friends and family into our fascinating hobby. But in my case anyway, I learned my lesson.

me that the Minkus albums were very affordable for young collectors and provided much impetus to the hobby, which was thriving in the 1950s and 1960s.

I have fond memories of my 10th birthday in July 1955, when my mother accompanied me to the Emporium Department Store in downtown San Francisco. We purchased the Minkus New Worldwide album, which was quite an upgrade from the beginner's album I was accustomed to.

Later, in 1959, I purchased a Minkus Japan album with money earned delivering newspapers up and down the hills of the city.

Those albums started a lifelong love of the hobby. They were priced right and had beautiful color dust jackets that included either a country's flag or coat of arms. I will never forget those beautiful albums.

George Dean  
Foster City, Calif.

## Down with slogans

Until I saw John Burnett's Collecting Canada column in the May 24 *Linn's*, I didn't know anyone had any use for slogan cancels.

At any rate, I consider them an abomination. As a collector of used United States stamps, I think slogan cancels are a ruin to canceled stamps.

I suggest *Linn's* publish the address of the U.S. Postal Service official responsible for slogan cancels, so we collectors can write to express a desire to see the end of this awful practice.

Long live killer cancels.

Robert Naczi  
Wilmington, Del.

## Full-pane requirement

I recently went to the post office to purchase the four United States 37¢ The Art of Disney

28). I've been wondering just what it is that I'm collecting.

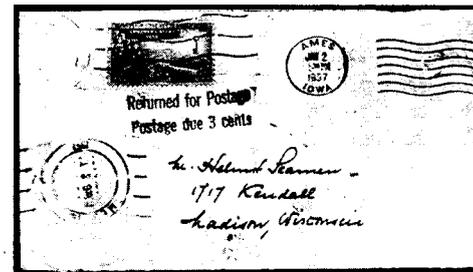
I'm sure that a select committee will be formed for this task, so the definition should be interesting to say the least. But I won't expect to see it any time soon.

Gordon Trotter  
Columbia, Md.

## Albino envelope

I know that *Linn's* U.S. Notes columnist John Hotchner frequently writes about unusual uses. Here is one that I bet he has never seen.

The writer used a United States 3¢ dark violet George Washington stamped envelope



This 3¢ George Washington stamped envelope bears an uninked, or albino, impression of the stamp imprint in the top-right corner. A clerk did not allow the imprint as postage.

(Scott U534) that was an albino, meaning that the envelope die made an uninked impression on the envelope paper. This impression is visible in the top-right corner of the cover.

A postal clerk marked the envelope "Returned for Postage Postage due 3 cents," and the mailer added a 3¢ Children's Friendship stamp (Scott 1085).

Therefore, the sender paid 6¢ postage to send his letter from Ames, Iowa, to Madison, Wis. The cover was postmarked Jan 2, 1957, in Ames.

Richard Novick  
Marlboro, N.J.

posed revenue sale. All recipients of a request for proposal should refuse to associate with any project involving the destruction of stamps.

2. Should the sale attempt still progress, buyers should boycott, leaving the museum with millions of unsold revenue stamps.

Kudos to Arthur Morowitz (*Linn's*, July 12, page 10) for having the guts to resign from the museum's council of philatelists in protest over the ineptitude with which this whole sordid affair has been handled. I hope the others on the council quickly follow suit.

Kane is clearly unwilling to listen to reason or to the stamp-collecting community at large. He should resign or be fired.

Mike Clement  
Adrian, Mich.

*For another perspective, see Donald Sundman's commentary on page 3.*

## Disney letter sheets

I read in *Linn's* (June 21) that only 40,000 pads of 12 of the four different United States 37¢ The Art of Disney Friendship letter sheets were printed.

This miniscule initial printing amounts by U.S. Postal Service standards to a de facto admission that the Postal Service doesn't expect these postal stationery items to sell well if at all — testimony to the failure of the Postal Service's pricing policies.

I wish Doug Carlson well with his petition (*Linn's*, July 26) filed with the Postal Rate Commission regarding the high cost — \$14.95 per pad of 12 — of the Disney letter sheets.

Craig Selig  
Fort Wayne, Ind.

## Madagascar

In his interesting Kitchen Table Philately column of July 19, E. Rawolik VI represents a

# Opinions

## Mimics photo

cover for the 1980 U.S. Write Soon stamp accompanying photograph of a pair of an attractive cachet



on this first-day cover, like the photograph, border took in 1944 while in the U.S. Army Air Corps.

shows a mechanic sitting against the wheel of an airplane, Mom is sending him love," is printed on the cover.

which I took in 1944 while in the U.S. Army Air Corps, showing a resemblance to the photograph. It shows a man against the nosewheel of a plane in Yuma, Ariz.

## Stamp formats?

There are no stamp collectors who collect United States Postal stamps. The subject of a given stamp should prefer five differ-

ent stamps instead of five varieties of the same stamp.

I do care a great deal about the selling formats of stamps, because I purchase stamps for five different collections — I am trying to get my grandchildren interested in stamp collecting.

I have to purchase these stamps a year before album supplements are available. To know what formats to save should be obvious. Often this is not obvious, and the stamps I purchase are in a different format from what is shown in the supplements when they finally arrive.

As an example, look at a U.S. 37¢ Spring Flowers double-sided pane of 20. The stamps on a given pane are nicely arranged in blocks of four, so I can easily get three blocks from each pane.

A 37¢ Sporty Cars of the 1950s double-sided pane of 20 presents a problem for me. Why was it important to show five different cars on the stamps, which can not be divided into three blocks of four? I can only get one strip of five from each pane.

An issue of five different stamps should be produced in se-tenant panes of 20 stamps, rather than in double-sided panes, which should be reserved for issues comprising four different stamps.

I think that the U.S. Postal Service could also reduce its production costs if it produced stamps in a limited number of standard-size formats.

The harder the Postal Service makes it to collect stamps, the harder and more costly it can be to get children interested in collecting them.

Leonard Zimmer  
Walker, Minn.

## Registered-mail delays

I read with interest Peter Palmer's April 24 Readers' Opinions letter about the delay he experienced sending a registered letter from Florida to Toronto.

For several months, I have experienced the same problem in the opposite direction.

Registered mail sent by dealer friends in Toronto or Montreal routinely takes three weeks to reach me in North Carolina.

Maurice M. Bursey  
Chapel Hill, N.C.

## ½¢ Nathan Hale stamp

In the many years that I have been reading *Linn's Stamp News*, I have never come across a more outrageous cartoon caption than the disgusting and disrespectful commentary concerning the United States ½¢ Nathan Hale stamp illustrated in the April 17 U.S. Notes column.

To all who lampooned one of our nation's earliest and greatest heroes of the American Revolution in John Hotchner's column, I ask you: "Have you no decency?"

All of those cartoon-caption commentaries, though said in jest, were definitely not funny to this veteran.

Duane E. Frederic  
Chagrin Falls, Ohio

## 24¢ Common Buckeye stamp

I was particularly pleased when the new United States 24¢ Common Buckeye stamp (in various formats) was issued March 8.

I am a biologist, so I think that a stamp picturing a butterfly is a fine idea.

Rene Pellet  
San Martin, Calif.

## 'Leaving the American zone'

Janet Klug, in her March 13 Refresher Course, pictures and describes a United States Army airletter as being "sent from Adelsdorf, Bavaria, in the U.S. zone in 1950."

I believe the more correct and far more commonly used term was "American zone," as in, "You are now leaving the American zone."

There seems to be nothing about the illustrated airletter itself that is military. It was used by a person in the U.S. Army, but it is a civilian form.

Also, the airletter did not go by way of the U.S. military. It bears no Army Post Office cancel, and U.S. postage stamps were not used to mail it.

The German post office handled the item, but I am not sure if there was any German civilian airmail.

The American (and possibly British Forces) airletters were the only airletter forms in Germany.

The Germans had a slight problem with getting good quality paper and being able to print on it, even up to 1950.

Puff Malkin  
Vancouver, British Columbia

## Love those sprayed-on cancels

I began collecting United States sprayed-on postmarks in December 2005, soon after the first Snowman sprayed-on slogan cancel appeared.

I requested covers bearing sprayed-on cancels via a classified advertisement in *Linn's*, and I received several replies.

The Machine Cancel Society sent a list of all cities that are scheduled to begin using sprayed-on postmarks in 2006. I use this list to contact postmasters and request a sprayed-on cancel from their city. I enclose with each request an addressed reply envelope franked with correct postage.

I have been collecting since I was 10. Over the years, my interests have

changed many times.

I am 89 and having more fun than ever before.

Norman N. Kerber  
Silver Spring, Md.

*The Machine Cancel Society publishes Machine Cancel Forum four times a year. A membership application is available from Gary Carlson, 3097 Frobisher Ave., Dublin, OH 43017.*

## 37¢ Arctic Tundra stamps

After 65 years of collecting United States stamps, I find that all the stamps the U.S. Postal Service issues to be a bit much.

The Postal Service prints some beautiful pictures, but they don't look like U.S. postage stamps.

This album page shows the 10 37¢ Arctic Tundra stamps individually mounted, after removal from the pane.



Album page (shown cropped) from a *Linn's* reader displaying the 10 37¢ Arctic Tundra stamps in individual mounts.

In my opinion, these stamps, when displayed in this manner, look a lot more like U.S. postage stamps than they do in an intact pane.

Tom Baltosser  
Chassell, Mich.

## 37¢ Art of Disney letter sheets

I read Bill McAllister's report (May 1, page 8) that the Postal Rate Commission initially ruled against the United States Postal Service in the matter of Douglas F. Carlson's complaint about the selling price of the 37¢ Art of Disney letter sheets.

I bought several packages of these letter sheets and mailed them to unusual destinations around the world. I thought that they would make unusual additions to my collections and to those of my international stamp-collecting friends.

If the Postal Rate Commission rules against the Postal Service in its final judgment, how will this affect me and other collectors who bought the letter sheets at the going price?

Perhaps the final ruling will keep the Postal Service from selling postal stationery for significantly more than face value in the future.

Rasa Miller  
Troy, Ohio

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