

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

COMPLAINT ON STAMPED STATIONERY

Docket No. C2004-3

REPLY BRIEF OF THE UNITED STATES POSTAL SERVICE
(July 10, 2006)

Analysis of many of the arguments made by the participants in their initial briefs¹ demonstrates the appropriateness of the Postal Service's position in this case: Without a clear legal basis for the Commission to assert jurisdiction over stamped stationery or a practical need supporting such a "stretch" in this gray area, the better course is to maintain the status quo and leave the matter to the marketplace, rather than impose unneeded regulation.

In its initial brief, the OCA asserts that the Commission's definition of "postal services" establishes "simple and clear" criteria, including, "is the product or service incidental to correspondence or a mailable package?"² Mr. Carlson argues that the Postal Service's intention that the stationery be used for mailing demonstrates that they are a postal service.³ As the Postal Service set forth in its initial brief, however, it is not that simple.⁴ For example, a ReadyPost mailing carton sold by the Postal Service meets these tests, but the Commission has determined that the sale of packaging material is not a postal service.

¹ Douglas F. Carlson Initial Brief; Office of the Consumer Advocate Initial Brief; Initial Brief of David B. Popkin (all filed on June 8, 2006).

² OCA Initial Brief at 4-5.

³ DFC Initial Brief at 4-5.

⁴ Postal Service Initial Brief at 4-6.

The OCA apparently agrees that the sale of the same stationery with a packet of stamps included, instead of postage imprinted, would not be a “postal service.”⁵ The OCA asserts that “it is the imprinting of postage on the letter sheets that imbues the Disney Stamped Stationery with its ‘postal service’ character....”⁶ This view elevates abstract logic over practical realities. As the Postal Service demonstrated in its initial brief,⁷ the Commission has not followed the path of ignoring practicalities in this area in past determinations. Rather, it has attempted to discern what regulation is rationally in the public interest. And it seems obvious that no public interest is served by subjecting the price-setting of stationery to a regulatory process to which otherwise identical stationery sold by the Postal Service would not be subject, if stamps were included in a packet as opposed to imprinted.

Contrary to the OCA’s assertion, the Postal Service is not “confused” about the difference between the issues of jurisdiction over the service and the appropriate markup of a postal service.⁸ The Postal Service’s argument is that the very lack of a criterion to allow appropriate pricing of stamped stationery supports its argument that it should not be deemed a “postal service” under chapter 36.⁹ The main value in the

⁵ Again, despite the fact that even this product would meet the “tests” constructed by the OCA and Mr. Carlson.

⁶ *Id.* at 6.

⁷ Postal Service Initial Brief at 4-6.

⁸ *Id.* at 4.

⁹ The Postal Service recognizes that criterion 9 allows the Commission to consider other appropriate factors and might argue, if it were to become necessary in the future, that both criterion 2 and criterion 9 support a high markup for stamped stationery on the basis of its convenience and artistic and philatelic value. This begs the question, however, of whether it is appropriate for the Commission to attempt to determine such value. That question is squarely before the Commission in this case, because if it asserts jurisdiction, it will be faced with becoming the arbiter of such aesthetic matters. The alternative, of ignoring the artistic value, could doom the product.

stationery is something that the terms of the ratemaking criteria do not contemplate: its artistic and philatelic value. The OCA's brief implicitly confirms this when it states that the price for stamped stationery should be set at attributable costs plus a reasonable contribution to institutional costs, "which is unlikely to be as much as" the current price level.¹⁰ Mr. Carlson's brief stresses the convenience value of pre-stamped products but entirely fails to address its artistic and philatelic value.¹¹

Setting a fee for stamped stationery in this manner would ignore the entire *raison d'être* of the product. A price resulting from an application of the ratemaking criteria modeled on stamped envelopes would potentially not be an appropriate one for the product. To price it without regard to artistic value is to severely undervalue it and would likely result in the product's demise, a situation in which everyone loses, as discussed in the Postal Service's initial brief.¹² Mr. Carlson's discussion of historical letter sheets,¹³ while interesting, does little to advance his position, since these sheets were apparently sold at postage value and were utilitarian items like stamped envelopes and stamped cards. They are not comparable to the stationery at issue here, except for the fact that both are folded for mailing, a weak reed on which to rest an expansion of regulation not clearly supported by law or practical need.

As the briefs filed by the OCA and Mr. Carlson again demonstrate, the apparent underpinning of this complaint and the arguments made in support of it, continues to be a belief that the price set by the Postal Service is too high and that consumers are

¹⁰ OCA Initial Brief at 7-8. The OCA provides no analysis to support its speculation regarding the price level.

¹¹ See DFC Initial Brief at 6-7.

¹² Postal Service Initial Brief at 7-9.

¹³ DFC Initial Brief at 4-5.

harmed. But these are factual issues for which there is no record support, because neither Mr. Carlson nor the OCA submitted testimony or evidence supporting such allegations.¹⁴ Moreover, in the absence of any such showing on the record, it is not at all obvious that consumers are harmed by the availability of a discretionary product that might otherwise be unavailable, regardless of its price.

For these reasons, the Commission should not subject this product to regulation.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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¹⁴ Indeed, Mr. Carlson's brief mischaracterizes the issue by referring to "a staggering markup of 87.6 cents per sheet." This figure is the difference between the price of each sheet ($\$14.95 \div 12$) and the imprinted postage ($\$0.37$). But that is not a "markup" over anything. It is the implicit price of the sheet of stationery that covers its costs, reflects its value in the market, and is in line with the price of similar quality stationery sold elsewhere.