

[ORAL ARGUMENT SCHEDULED FOR MAY 10, 2019]**No. 18-1328**

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

DOUGLAS F. CARLSON,

Petitioner,

v.

POSTAL REGULATORY COMMISSION,

Respondent,

**PITNEY BOWES INC. AND UNITED STATES POSTAL
SERVICE,**

Intervenors.

On Petition for Review from an Order of the Postal Regulatory Commission

BRIEF FOR RESPONDENT

*Of Counsel:***JOSEPH H. HUNT**
*Assistant Attorney General***DAVID A. TRISSELL**
*General Counsel***MICHAEL S. RAAB**
JOSHUA M. SALZMAN
*Attorneys, Appellate Staff***ANNE J. SIARNACKI**
*Deputy General Counsel**Civil Division, Room 7258*
*U.S. Department of Justice***LAURA E. ZUBER**
*Attorney**950 Pennsylvania Avenue NW*
Washington, DC 20530
*(202) 532-4747**Postal Regulatory Commission*

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), the undersigned counsel certifies as follows:

A. Parties and Amici

The petitioner is Douglas F. Carlson and the respondent is the Postal Regulatory Commission. The United States Postal Service and Pitney Bowes Inc. have both intervened on behalf of the respondent.

B. Rulings Under Review

Petitioner seeks review of Commission Order No. 4875 (Nov. 13, 2018), PRC Dkt. No. R2019-1.

C. Related Cases

Respondent is unaware of any related cases.

s/ Joshua M. Salzman

Joshua M. Salzman

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	iii
GLOSSARY	vii
INTRODUCTION	1
STATEMENT OF JURISDICTION	2
STATEMENT OF THE ISSUES.....	2
PERTINENT STATUTES AND REGULATIONS	3
STATEMENT OF THE CASE.....	3
A. Statutory Background.....	3
B. The Proceeding Below	14
SUMMARY OF ARGUMENT.....	16
STANDARD OF REVIEW	18
ARGUMENT	18
I. THE COMMISSION’S FOCUS ON QUANTITATIVE REQUIREMENTS DURING PRE-IMPLEMENTATION REVIEW OF PROPOSED RATE CHANGES IS CONSISTENT WITH THE PAEA.....	20
II. THE COMMISSION’S ORDER IN THIS CASE IS NOT ARBITRARY OR CAPRICIOUS.....	27
CONCLUSION	35
CERTIFICATE OF COMPLIANCE	
CERTIFICATE OF SERVICE	

TABLE OF AUTHORITIES

Cases:	<u>Page(s)</u>
<i>Chevron USA Inc. v. Natural Res. Def. Council, Inc.</i> , 467 U.S. 837 (1984)	18
<i>National Ass’n of Greeting Card Publishers v. U.S. Postal Serv.</i> , 462 U.S. 810 (1983)	4
<i>U.S. Postal Serv. v. Council of Greenburgh Civic Ass’ns</i> , 453 U.S. 114 (1981)	3
<i>U.S. Postal Serv. v. Postal Regulatory Comm’n</i> , 599 F.3d 705 (D.C. Cir. 2010)	18
<i>U.S. Postal Serv. v. Postal Regulatory Comm’n</i> , 640 F.3d 1263 (D.C. Cir. 2011)	18
<i>U.S. Postal Serv. v. Postal Regulatory Comm’n</i> , 785 F.3d 740 (D.C. Cir. 2015)	29, 31
Statutes:	
Postal Accountability and Enhancement Act of 2006, Pub. L. No. 109-435, 120 Stat. 3198	1
Postal Reorganization Act, Pub. L. No. 91-375, 84 Stat. 719 (1970)	3, 4
5 U.S.C. § 706(2)(A)	18
5 U.S.C. § 706(2)(C)	18
18 U.S.C. §§ 1693-1699	3
39 U.S.C. § 101(d).....	21
39 U.S.C. § 401(c).....	21

39 U.S.C. § 601.....	3
39 U.S.C. § 3622	19, 24, 30, 32, 34
39 U.S.C. § 3622(a).....	6, 24
39 U.S.C. § 3622(a)-(c).....	20, 21
39 U.S.C. § 3622(b) (2000).....	22
39 U.S.C. § 3622(b)	6, 12, 13, 14, 16, 17, 19, 21, 24, 27, 28, 29, 32, 33
39 U.S.C. § 3622(b)(1).....	15
39 U.S.C. § 3622(b)(2)-(9) (2000).....	6
39 U.S.C. § 3622(b)(2).....	14
39 U.S.C. § 3622(b)(4).....	30
39 U.S.C. § 3622(b)(4)-(5)	15, 32
39 U.S.C. § 3622(b)(6).....	14
39 U.S.C. § 3622(b)(8).....	6, 15, 31
39 U.S.C. § 3622(b)-(c)	2, 8
39 U.S.C. § 3622(c).....	6, 12, 13, 14, 16, 17, 19, 21, 22, 24, 28, 29, 32, 33
39 U.S.C. § 3622(c)(1)-(6).....	6, 22
39 U.S.C. § 3622(c)(6).....	34
39 U.S.C. § 3622(c)(7)	30, 35
39 U.S.C. § 3622(c)(11).....	6, 22
39 U.S.C. § 3622(c)(14).....	6, 22
39 U.S.C. § 3622(d)(1)(A).....	5, 6

39 U.S.C. § 3622(d)(1)(C)-(D)	7, 20
39 U.S.C. § 3622(d)(2)(A).....	31
39 U.S.C. § 3622(d)(3).....	8, 21
39 U.S.C. § 3622(e).....	11
39 U.S.C. § 3626	11
39 U.S.C. § 3653(b)	8, 25
39 U.S.C. § 3662(a).....	8, 21, 25
39 U.S.C. § 3662(b)-(c)	8
39 U.S.C. § 3663	2, 18

Regulations:

39 C.F.R. §§ 3010.3-3010.6	11
39 C.F.R. § 3010.10	11
39 C.F.R. § 3010.11(a)(5).....	12
39 C.F.R. § 3010.11(b)-(c)	12
39 C.F.R. § 3010.11(d)	12, 20, 26, 28, 34
39 C.F.R. § 3010.11(e).....	12
39 C.F.R. § 3010.11(k)	12, 25, 26
39 C.F.R. § 3010.12.....	12
39 C.F.R. § 3010.12(b)(7)	12, 14, 33, 34, 35

Legislative Materials:

H.R. Rep. No. 109-66 (2005).....	7
S. Rep. No. 108-318 (2004).....	5, 7, 22, 23, 30

Other Authorities:

Letter from Sens. Susan M. Collins and Thomas R. Carper, Committee on Homeland Sec. and Governmental Affairs, to Hon. Dan C. Blair, Chairman, Postal Regulatory Comm'n (Apr. 6, 2007), https://www.prc.gov/docs/56/56253/PRC_Comments_from_Collins___Carper.pdf	9, 24, 30
---	-----------

Postal Regulatory Commission, U.S. Postal Service:

Order No. 26 (Aug. 15, 2007), https://www.prc.gov/docs/57/57348/RM2007-1FINAL.pdf	9, 10, 24, 31
Order No. 43 (Oct. 29, 2007), https://www.prc.gov/docs/58/58026/FinalRuleswithTOC.pdf	11, 13, 23, 25, 33
Order No. 191 (March 16, 2009) https://www.prc.gov/docs/62/62705/Order_No_191.pdf	23, 27, 31, 32
Order No. 536 (Sept. 14, 2010), https://www.prc.gov/Docs/70/70204/Order_No_536.pdf	11, 14, 24, 25, 26
Order No. 675 (Feb. 16, 2011) https://www.prc.gov/docs/71/71974/Order_No_675.pdf	26
Order No. 4257 (Dec. 1, 2017) https://www.prc.gov/docs/102/102709/Order%20No.%204257.pdf	4, 5

GLOSSARY

1970 Act

Postal Reorganization Act

PAEA

Postal Accountability and Enhancement Act

INTRODUCTION

Under the Postal Accountability and Enhancement Act of 2006 (PAEA), Pub. L. No. 109-435, 120 Stat. 3198, the Postal Regulatory Commission (Commission) is charged with determining within a forty-five day review period whether changes that the United States Postal Service wishes to make to postal rates should be allowed to take effect. In light of the compressed time window that the PAEA allows for the Commission's pre-implementation review, the Commission has consistently understood its responsibility during the review period to be to insure that proposed rate changes comply with a price cap that the PAEA imposes on increases to postal rates, along with certain other quantitative, and easily administrable, limitations on the Postal Service's pricing authority. While the PAEA directs the Commission to design a system for postal rate regulation that furthers an array of qualitative factors beyond compliance with the price cap, the Commission generally defers consideration of these factors until after the pre-implementation review window.

Petitioner challenges a recent order of the Commission that allowed an increase to the price for Stamped Letters to take effect. Petitioner concedes that the price increase complies with the price cap and the other quantitative limitations on the Postal Service's authority to increase prices. But petitioner contends that the rate change is inequitable and offends certain of the qualitative factors that the Commission has been directed to further. This argument misapprehends the limited scope of the pre-implementation review process, which under the Commission's

regulations is directed to the quantitative requirements that can be properly evaluated within the forty-five day review window.

Petitioner attacks both the Commission's regulations and the specific order approving the price increase for Stamped Letters. Both sets of contentions lack merit. The Commission's regulations represent a reasonable construction of the statute and are in keeping with the PAEA's purpose of providing the Postal Service with pricing flexibility and the latitude to make pricing changes on just forty-five days' notice. And the specific order at issue here faithfully applies the Commission's regulations. Accordingly, the Commission's order should be affirmed.

STATEMENT OF JURISDICTION

The Commission issued its final order, Order No. 4875 (JA186-JA354), on November 13, 2018. Petitioner filed a timely petition for review in this Court on December 11, 2018. *See* 39 U.S.C. § 3663 (30-day time limit). This Court has jurisdiction pursuant to 39 U.S.C. § 3663.

STATEMENT OF THE ISSUES

1. Whether the Commission's regulations establishing a process for pre-implementation review of changes to postal rates are invalid because they do not require the Commission to consider in individual rate cases the nine statutory objectives and fourteen statutory factors that the Commission is required to balance and consider in designing the "system" for postal rate regulation. *See* 39 U.S.C. § 3622(b)-(c).

2. Whether the Commission's order approving a rate change for Stamped Letters is arbitrary and capricious.

PERTINENT STATUTES AND REGULATIONS

Pertinent statutes and regulations are reproduced in the brief of petitioner.

STATEMENT OF THE CASE

A. Statutory Background

From the Nation's founding until the late twentieth century, the federal government provided for the delivery of mail through the Post Office Department, a cabinet-level department in the Executive branch. In the past fifty years, Congress has substantially revised that system twice: first through the Postal Reorganization Act, Pub. L. No. 91-375, 84 Stat. 719 (1970) (the 1970 Act), and more recently through the Postal Accountability and Enhancement Act.

1. Enacted in 1970, the Postal Reorganization Act "transformed the Post Office Department into a Government-owned corporation called the United States Postal Service." *U.S. Postal Serv. v. Council of Greenburgh Civic Ass'ns*, 453 U.S. 114, 122 (1981). But though the Postal Service has been transformed into a corporation, it has continued to differ from a typical business, including in that it has been given a statutory monopoly over the delivery of several categories of mail. *See* 39 U.S.C. § 601; 18 U.S.C. §§ 1693-1699.

Congress has controlled the Postal Service's exercise of this monopoly power by regulating its pricing. The 1970 Act directed that the Postal Service should be run

on a “break-even” basis such that the Postal Service’s total revenue would equal its costs. *See* 1970 Act § 3621, 84 Stat. at 760; *National Ass’n of Greeting Card Publishers v. U.S. Postal Serv.*, 462 U.S. 810, 813 (1983). In the 1970 Act, Congress also created an independent regulatory body, then-called the Postal Rate Commission (Rate Commission), charged with overseeing the Postal Service’s pricing. *See* 1970 Act § 3601, 84 Stat. at 759; *National Ass’n of Greeting Card Publishers*, 462 U.S. at 813.

Under the 1970 Act, ratemaking responsibility was divided between the Postal Service and the Rate Commission, but ratemaking authority was “vested primarily” in the Rate Commission. *National Ass’n of Greeting Card Publishers*, 462 U.S. at 821. In particular, upon receiving a request for changes in rates or fees in a class of mail, the Rate Commission was charged with making a recommended decision regarding the appropriate rates. 1970 Act § 3622(b), 84 Stat. at 760-61. In making this recommended decision, the Rate Commission was directed to undertake a complex analysis that required consideration of an array of statutorily specified factors. *Id.*

Rate adjustment proceedings before the Rate Commission under the 1970 Act were “complex, expensive, and time-consuming.” Postal Regulatory Commission, Order No. 4257, at 25-26 (Dec. 1, 2017).¹ A typical omnibus rate case might involve 75-100 parties, 100-150 witnesses, and tens of thousands of pages of testimony, as

¹ <https://www.prc.gov/docs/102/102709/Order%20No.%204257.pdf>.

well as days of public hearings. *Id.* These proceedings generally took 10-18 months to complete. *Id.*

2. In the decades following the 1970 Act, concerns arose that led to a movement for further reform. The Postal Service ran deficits for several consecutive years as it experienced falling mail volumes, revenues below projections, and expenditures for security enhancements in response to the anthrax attacks through the mail in the fall of 2001. *See* S. Rep. No. 108-318, at 2 (2004). Concerns arose that the time-consuming system set out in the Act for changing mail prices “often forces the Postal Service to wait up to 18 months to change rates, giving management little flexibility to adjust its revenues to changing market conditions.” *Id.* at 3-4.

In response, Congress enacted the PAEA in 2006, which overhauled the system for postal price regulation. This new statutory scheme dispenses with the break-even requirement and allows the Postal Service to make profits and use them to fund capital improvements and network expansions. To constrain price increases in products in which the Postal Service is “market dominant,” Congress instead mandated the creation of a price cap in the form of “an annual limitation on the percentage changes in rates” equal to the percentage change in the rate of inflation. 39 U.S.C. § 3622(d)(1)(A). This price cap applies to classes of mail, and does not restrict the ability of the Postal Service to increase the price of individual products at a higher rate, provided that, on average, overall prices within a class of products stay

within the price cap. *See id.*; *see also id.* § 3622(b)(8) (preserving the right of the Postal Service to “mak[e] changes of unequal magnitude within . . . classes of mail”).

The PAEA also abolished the old Rate Commission and replaced it with the Postal Regulatory Commission (the Commission), which is the respondent in this litigation. The Act charged the Commission with responsibility for establishing “a modern system for regulating rates and classes” for products in which the Postal Service is market dominant. 39 U.S.C. § 3622(a).

The PAEA specified that the “system” the Commission was to develop should achieve nine objectives (the 3622(b) objectives), such as “allow[ing] the Postal Service pricing flexibility,” “reduc[ing] the administrative burden and increas[ing] the transparency of the ratemaking process,” and “establish[ing] and maintain[ing] a just and reasonable schedule for rates and classifications.” 39 U.S.C. § 3622(b). Congress further directed the Commission in “establishing or revising such system,” to take into account fourteen additional factors (the 3622(c) factors), including “simplicity of structure” and “the importance of pricing flexibility to encourage increased mail volume and operational efficiency.” *Id.* § 3622(c). Many of these fourteen factors were factors that the Rate Commission had been directed under the 1970 Act to consider in individual rate adjustment proceedings. *Compare* 39 U.S.C. § 3622(b)(2)-(9) (2000), *with* 39 U.S.C. § 3622(c)(1)-(6), (11), (14).

While Congress gave the Commission general guideposts in the form of the objectives and factors in sections 3622 (b) and (c), Congress largely delegated to the

Commission responsibility for determining how best to balance these objectives and factors in developing the new system. *See* H.R. Rep. No. 109-66, at 48 (2005) (“The details of such a system have been left to the Commission so that this regulatory body will be able to respond to changes in mail volume, technologies, and other factors.”); S. Rep. No. 108-318, at 8 (noting “the Committee carefully considered whether Congress itself should legislatively establish the details of the regulatory system,” but “determined that relying on the Postal Regulatory Commission’s expertise to develop the price cap will result in a more flexible system that can be adapted to changing market conditions”).

In the PAEA, Congress also streamlined the process for approving price increases, directing the Commission to establish procedures to permit the Postal Service to adjust prices on only forty-five days’ notice, provided that the changes comply with the price cap. 39 U.S.C. § 3622(d)(1)(C)-(D). Congress “clearly recognize[d]” that a forty-five day review period would be “short,” but “determined that a short review period is consistent with the goals of increasing Postal Service pricing flexibility.” S. Rep. No., 108-318, at 11. The Senate Report further expressed Congress’s presumption that “extremely clear and well-defined standards will be established by regulation allowing the Postal Service and the Postal Regulatory Commission to make a rapid determination of whether a rate adjustment meets the applicable criteria.” *Id.* This forty-five day review period was to be used only for

applying these “well-defined standards,” and was “not intended to be used to evaluate the regulatory structure.” *Id.*

The PAEA provides the Commission with opportunities other than the forty-five day pre-implementation review period to consider whether the ratemaking system is operating in accordance with the statutorily specified objectives and factors. The Commission is required to make annual reviews of Postal Service rates and fees for compliance with statutory and regulatory requirements. *See* 39 U.S.C. § 3653(b). And the PAEA establishes a procedure through which “[a]ny interested person” who “believes the Postal Service is not operating in conformance” with specific statutory requirements may “lodge a complaint” with the Commission. *Id.* § 3662(a). The Commission is required to take action on the complaint and, if the complaint is found to be justified, the Commission may order unlawful rates to be adjusted to lawful levels. *Id.* § 3662(b)-(c). The PAEA also directed that ten years after the effective date of the PAEA, the Commission should review the ratemaking system it had created “to determine if the system is achieving the objectives [in Section 3622(b)], taking into account the factors in [Section 3622(c)].” *Id.* § 3622(d)(3).

3. After enactment of the PAEA, the Commission promptly set about developing regulations to implement a modern system for postal rate regulation, and solicited public comment on proposed rules. Among the early commenters were Senators Collins and Carper, who wrote in their capacity as co-authors in the Senate of the PAEA. *See* Letter from Sens. Susan M. Collins and Thomas R. Carper to Hon.

Dan C. Blair, Chairman, Postal Regulatory Comm'n (Apr. 6, 2007) (Apr. 11, 2007) (Collins-Carper Comments).² The Senators noted that it had been their intention that the Postal Service should have “significant flexibility to price their products in the manner they deemed most appropriate,” so long as the pricing complied with the price cap. *Id.* at 2. The Senators also noted their understanding that the “45-day period that the Act gives the Commission to review rate filing is largely intended to be used to determine whether or not a rate filing is within the rate cap.” *Id.*

In a 2007 order proposing regulations to establish the new ratemaking system, the Commission noted that it had received public comments offering a range of perspectives on the appropriate scope of Commission review during the forty-five day pre-implementation review period. Postal Regulatory Commission, Order No. 26, at 17 (Aug. 15, 2007).³ Some commenters suggested that the Commission should review a proposed change “only” for compliance with the price cap, while other commenters urged that the Commission should review a proposed change for a host of other purposes, including “consistency with statutory factors and objectives” and scrutinizing whether different products within a class of mail were being treated differently. *Id.* In response to these comments, the Commission explained that the PAEA “ushers in a fundamentally different approach to rate regulation for market

² https://www.prc.gov/docs/56/56253/PRC_Comments_from_Collins_Carper.pdf.

³ <https://www.prc.gov/docs/57/57348/RM2007-1FINAL.pdf>.

dominant products” and “represent[s] a marked shift away from [the 1970 Act] style in-depth examination,” and that the Commission intended to adopt regulations that “honor the spirit and letter of the new law.” *Id.* at 18.

The Commission also noted that it had received comments expressing concern that the Postal Service would comply with the overall price cap (which, again, applies to classes of mail rather than to individual products) by disproportionately raising prices on some products and offsetting the overall increase by maintaining lower prices for products within the same class of mail. Order No. 26, at 20. In response, the Commission noted that it “is to be expected that rate adjustments within a class will be both above and below average.” *Id.* at 21. The Commission, accordingly, rejected a proposal that the Postal Service be required to provide written justification when price increases were disproportionately reserved for a subset of products, concluding that “[r]equiring written justification for individual rates is contrary to the goals of a simpler, more flexible, process.” *Id.* The Commission concluded that “the Postal Service should be given an opportunity to exercise its pricing flexibility by making changes of unequal magnitude without having to file separate justification for what some might consider ‘excessive’ above-cap increases within a class.” *Id.* The Commission explained that if the Postal Service should “abuse this discretion, and regularly fail to develop rate adjustments consistent with the statutory objective of maintenance of just and reasonable rate schedules,” the Commission would respond with “additional regulations in this area.” *Id.*

After taking further comments, the Commission promulgated its final regulations. *See generally* Postal Regulatory Commission, Order No. 43 (Oct. 29, 2007).⁴ As the Commission has since explained, under the system that the Commission established, the Postal Service enjoys “a general prerogative to set market dominant rates,” subject to three “objective, quantitative pricing standards,” including the statutory cap on price increases within a given class of mail. Postal Regulatory Commission, Order No. 536, at 16 (Sept. 14, 2010).⁵ When the Postal Service wishes to make a price adjustment that it believes complies with the price cap limitations, it is to provide notice to the Commission and the public no later than forty-five days prior to the intended implementation date. 39 C.F.R. § 3010.10.⁶ The Postal Service must file a notice with the Commission containing information addressing an array of issues, the vast majority of which pertain to whether the

⁴ <https://www.prc.gov/docs/58/58026/FinalRuleswithTOC.pdf>.

⁵ https://www.prc.gov/Docs/70/70204/Order_No_536.pdf. The other two quantitative requirements are the limitations on “workshare discounts” that can be provided pursuant to 39 U.S.C. § 3622(e), and the revenue ceiling for certain categories of preferred mail, *see id.* § 3626. Neither of these requirements is relevant to this litigation.

⁶ The regulations refer to price changes that comply with the annual limitation on price increases as “Type 1” adjustments. *See* 39 C.F.R. §§ 3010.3-3010.6. There are three subtypes of Type-1 adjustments, Type 1-A, Type 1-B, and Type 1-C. *See id.* Petitioner describes the price adjustment at issue as having been a Type 1-A adjustment. Pet. Br. 8. In fact, this was a Type 1-B (because the Postal Service relied on rate adjustment authority that was unused from prior years). JA4. But the same regulations govern Type 1-A and Type 1-B adjustments, and nothing turns on this distinction.

proposed change complies with the price cap and the other quantitative limits on the Postal Service's authority to adjust rates. *Id.* § 3010.12. In addition, the Postal Service must also provide a discussion that demonstrates how the planned rate adjustments are designed to help achieve the objectives in Section 3622(b) and take account of the qualitative factors in Section 3622(c). *See id.* § 3010.12(b)(7).

During the forty-five day review period, there is an opportunity for public comment. *See* 39 C.F.R. § 3010.11(a)(5). The regulations specify that public comments should “focus primarily” on whether the planned rate adjustments comply with the statute’s “mandatory” quantitative requirements, though public comments may also address other relevant statutory provisions and applicable Commission orders. *Id.* § 3010.11(b)-(c).

Within fourteen days of the conclusion of the public comment period, the Commission will determine “at a minimum” whether the proposed adjustment complies with the price cap and the other quantitative limits on rate adjustments. 39 C.F.R. § 3010.11(d). If the Commission determines that the proposed rate adjustment complies with applicable law, the change will take effect. *Id.* § 3010.11(e). A finding by the Commission that a rate adjustment complies with quantitative requirements is deemed by the Commission to be the final decision on the merits of that issue, but any finding by the Commission that a rate adjustment “does not contravene other policies” under the PAEA is “provisional and subject to subsequent review.” *Id.* § 3010.11(k).

In the order finalizing adoption of these regulations, the Commission explained that this system was designed to reflect the fact “Congress intended to give the Postal Service wide latitude in designing specific rates and rate relationships,” and “expect[ed] that the Commission would alter those decisions only where disregard of particular statutory standards is clear.” Order No. 43, at 11. The regulations also reflect the fact that Congress viewed forty-five days as an adequate review period, which implied that “the pre-implementation issues with which Congress expected the Commission to deal would be few enough, or the level of scrutiny would be light enough, to allow the Commission to evaluate them adequately within 45 days.” *Id.* at 12. Within the forty-five day window, the Commission would likely only “be able to scrutinize and reach definitive conclusions on compliance issues that are factually clear and straightforward—such as rate cap compliance, or compliance with formulas for calculating preferred rates,” and would not be able to reach definitive conclusions concerning “complex or subjective policy factors.” *Id.* at 13 n.8.

The Commission also explained that these regulations do not foreclose Commission review of nuanced questions of policy, like consideration of the objectives and factors contained in Sections 3622(b) and (c). The inference to be drawn from the forty-five day review window is that “Congress contemplated that complicated or subjective compliance issues” would not be addressed during the pre-implementation review process, but rather, “during the annual compliance review, or through the complaint procedures of section 3662.” Order No. 43, at 12. The

Commission has since reiterated that its “regulations reflect its conclusion that application of the qualitative standards must largely be deferred to post-implementation compliance review . . . except in circumstances that exhibit blatant disregard for a given standard.” Order No. 536, at 34.

B. The Proceeding Below

1. In October 2018, the Postal Service filed a notice with the Commission of planned rate adjustments for market dominant products, pursuant to the regulations authorizing the Postal Service to make changes to rates within forty-five days. JA1-JA36. The Postal Service sought within-price-cap changes to a significant array of market dominant products. Among these proposed changes was an increase in the rate for the first ounce of a First Class Stamped Letter (Stamped Letter) from \$.50 to \$.55, an increase of 10%. JA8. Because the price cap required the Postal Service to limit its overall increase in the price of First Class Mail to approximately 2.5%, the Postal Service offset this increase by seeking to make far smaller increases (and in some instances, decreases) to the prices of other First Class Mail products. JA7-JA8.

Consistent with the requirements of 39 C.F.R. § 3010.12(b)(7), the Postal Service’s notice included a discussion of how the proposed price changes were designed to help achieve the Section 3622(b) and (c) objectives and factors. JA31. The Postal Service explained that it was providing notice of the changes in a manner designed to make “predictable” changes through a “transparent proceeding,” which furthers two statutory objectives. JA31; *see* 39 U.S.C. § 3622(b)(2), (6). The Postal

Service further explained that it was designing prices to increase revenue and “maximize incentives to reduce costs and increase efficiency,” thereby furthering three more statutory objectives. JA31; *see* 39 U.S.C. § 3622(b)(1), (4)-(5). And the Postal Service expressed its belief that the resulting price schedule was “just and reasonable,” consistent with still another statutory objective. JA31; *see* 39 U.S.C. § 3622(b)(8). The Postal Service affirmed its “consideration and balancing of multiple factors.” JA31.

The Postal Service also included a discussion specific to the change in the Stamped Letter rate. It explained that it was choosing to set the Stamped Letter rate “at round numbers divisible by five” to further “simplicity of structure” and to provide retail customers with “straightforward, understandable pricing.” JA8-JA9. The Postal Service noted that the impact of the price increase should be mitigated by other changes the Postal Service was making, and that because the Postal Service intended to maintain this simplicity of structure in future years, Stamped Letters may not see an increase in future years. JA9. The Postal Service further explained that it was “purposely increasing the differential between the Stamped and Metered Letters prices from three cents to five cents, both to better retain those non-Presort customers who most use the mail, and to enhance operational efficiency.” JA9. The pricing differentials between various types of letters was developed with an eye towards “slowing the migration of mail volume to electronic channels” and favoring “efficient” products that “provide[] high[] unit contribution” and are “most at risk for

electronic diversion.” JA9-JA10. Ultimately, the pricing structure reflects “complicated tradeoffs . . . balancing competing statutory objectives and taking into account powerful marketplace forces such as electronic diversion,” and are properly understood as part of “a longer-term, multiple year business strategy.” JA11.

2. Consistent with its regulations, the Commission took public comments on the proposed rate changes. Among the commenters was petitioner Douglas Carlson, who offered comments arguing that the proposed rate increase for Stamped Letters does not comply with the Section 3622(b) and (c) objectives and factors. JA95-JA105.

The Commission ultimately approved the rate changes requested by the Postal Service, including the increase in price for Stamped Letters. JA190. The Commission noted that several commenters, including petitioner, opposed the Stamped Letter price increase and that a couple of commenters did not object. JA204-JA206, JA208. After summarizing the comments, including those of petitioner, the Commission concluded that “subject to certain limitations, most prominently the price cap, the PAEA gives the Postal Service pricing flexibility within First-Class Mail. The Postal Service has complied with the applicable statutory and regulatory requirements.” JA208-JA209.

SUMMARY OF ARGUMENT

Petitioner argues that the Commission regulations governing the pre-implementation review of postal rate changes conflict with the PAEA because they do not require the Commission to consider the numerous qualitative objectives and

factors enumerated in 39 U.S.C. § 3622(b) and (c). But the Commission has reasonably construed the PAEA as requiring the Commission to consider the Section 3622(b) and (c) objectives and factors in the design of the “system” for postal rate regulation, rather than to require balancing of the objectives and consideration of the factors during individual pre-implementation rate review proceedings, which proceed on a compressed timeline.

Petitioner also attacks the Commission’s order in this case. But it is undisputed that the price change at issue complied with the price cap and other quantitative limitations on the Postal Service’s pricing authority. Under the Commission’s regulations, that undisputed fact is sufficient to establish that it was appropriate for the Commission to approve the rate adjustment. Petitioner contends that this case is special because it involves an extreme price change. But the Commission did not abuse its discretion in concluding that the change to Stamped Letter prices, which petitioner concedes is only a few cents larger than normal, did not facially violate the PAEA. Nor did the Commission violate the PAEA or its own regulations in accepting a submission by the Postal Service that the rate adjustments to First Class Mail products comply with the purposes and objectives of the PAEA. The Commission’s order faithfully applied the governing regulations, and readily withstands scrutiny under the applicable deferential standard of review.

STANDARD OF REVIEW

This Court's review is predicated on 39 U.S.C. § 3663, which incorporates the standards of Section 706 of the Administrative Procedure Act. Accordingly, as relevant here, the Commission's order should be sustained unless it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or in "excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A), (C).

In this action, petitioner challenges not only the Commission's specific order approving the increase to the rate for Stamped Letters, but also the underlying regulations that the Commission has adopted to implement the rate-review process mandated by the PAEA. "Because the Congress expressly delegated to the Commission responsibility to implement" the PAEA, this Court reviews the Commission's interpretation under the standards enunciated in *Chevron USA Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). See *U.S. Postal Service v. Postal Regulatory Comm'n*, 640 F.3d 1263, 1266 (D.C. Cir. 2011). Thus, where the PAEA "has some ambiguity, [this Court] must defer to the Commission's interpretation regarding [its] coverage . . . and affirm it, if reasonable." *U.S. Postal Serv. v. Postal Regulatory Comm'n*, 599 F.3d 705, 710 (D.C. Cir. 2010).

ARGUMENT

In enacting the PAEA in 2006, Congress sought to end a postal regulatory regime under which each proposed change to postal rates required the Commission's

predecessor (the Rate Commission) to engage in a complex balancing of an array of qualitative factors, which led to protracted litigation over each rate change. In its place, Congress established a system that affords the Postal Service far greater pricing flexibility and allows changes to be implemented within just forty-five days, so long as the price change complies with a statutorily mandated cap on price increases. As Congress understood, a necessary consequence of this transition to streamlined procedures for pricing changes is that detailed consideration of how best to balance qualitative factors is generally no longer possible during pre-implementation review. The Commission has accordingly adopted a system under which the pre-implementation review process is focused on quantitative limitations on the Postal Service's pricing authority that can be applied objectively and expeditiously.

Petitioner believes that the Postal Service's recent increase in the rate for Stamped Letters is too large and disproportionate, and therefore fails to conform to a few of the nine objectives and fourteen factors that the Commission must balance and consider under Section 3622(b) and (c) of the PAEA. Petitioner reads the PAEA as requiring the Commission to have considered these qualitative factors in reviewing the change to the Stamped Letter rate, and thus argues that the Commission erred in approving a price-cap compliant rate change that petitioner believes is not fair and equitable. Pet. Br. 17-18. But petitioner misapprehends the role of the Section 3622 objectives and factors under the PAEA. That statute directs the Commission to account for the qualitative factors that previously dominated the rate-review process

in the course of designing the overall “system” for regulating postal rates, 39 U.S.C. § 3622(a)-(c), rather than during each individual rate-review case. Congress also provided mechanisms for post-implementation review that would allow for deliberate consideration of whether rates reflect a reasonable balance of the many qualitative objectives and factors that the Commission has been directed to consider. Petitioner is thus wrong in attacking the Commission’s quantitatively focused system for pre-implementation review of postal rates. And because the Commission reasonably applied that system to the specific price change at issue here, petitioner’s attack on the Commission order approving the increase to the price of Stamped Letters likewise lacks merit.

I. THE COMMISSION’S FOCUS ON QUANTITATIVE REQUIREMENTS DURING PRE-IMPLEMENTATION REVIEW OF PROPOSED RATE CHANGES IS CONSISTENT WITH THE PAEA

The PAEA directed the Commission to develop a system for postal rate regulation that would allow the Postal Service to make rate changes on just forty-five days’ notice. *See* 39 U.S.C. § 3622(d)(1)(C)-(D). Pursuant to that mandate, the Commission has promulgated regulations that make the focus of that limited review period the Postal Service’s compliance with a statutorily-imposed price cap, along with other quantitative limitations on the Postal Service’s otherwise broad flexibility to set prices. *See* 39 C.F.R. § 3010.11(d). Petitioner contends that the system the Commission has established for pre-implementation review violates the PAEA insofar as it does not expressly require the Commission to consider a host of qualitative

factors before approving a rate change. But nothing in the PAEA mandates the complex balancing that petitioner hypothesizes is required during individual pre-implementation review cases. On the contrary, by focusing on quantitative limitations during pre-implementation review, the Commission honored Congress's intent in enacting the PAEA.

Petitioner's argument is built on the premise that "Section 3622(b) and (c) require the Commission to apply *all* the objectives and factors" in individual rate cases. Br. 23; *see also* Br. 21 (arguing that in addition to the qualitative factors under Section 3622, the Commission must also consider whether a rate change is "fair and equitable," 39 U.S.C. § 101(d), and whether the Postal Service has engaged in "unreasonable discrimination among users of the mails," *id.* § 403(c)).⁷ But the text of the statute does not impose the mandate that petitioner assumes. By its terms, the PAEA directs the Commission to further the nine Section 3622(b) objectives, and to consider the fourteen additional Section 3622(c) factors, in the course of developing and revising the overall "system" governing postal rates. 39 U.S.C. § 3622(a)-(c). The objectives and factors are also central to the Commission's ten-year review of the "system." *Id.* § 3622(d)(3). But nothing in the statute unambiguously requires

⁷ Petitioner did not reference Sections 101(d) and 403(c) in his comments to the Commission. JA95-JA105. But in any case, petitioner's arguments under these provisions lack merit. By statute, the appropriate mechanism through which a private party can allege that the Postal Service is not operating in conformance with these provisions is by lodging a complaint with the Commission. *See* 39 U.S.C. § 3662(a).

consideration of these objectives and factors in individual pre-implementation rate cases, as opposed to in the design of the “system” as a whole.

The statute’s use of the word “system” takes on particular significance when the PAEA is contrasted against the statute it replaced, the Postal Reorganization Act of 1970. Under the 1970 Act, the Commission’s predecessor, the Postal Rate Commission, was required to consider many of the same factors now found in Section 3622(c). *Compare* 39 U.S.C. § 3622(b)(2)-(9) (2000), *with* 39 U.S.C. § 3622(c)(1)-(6), (11), (14). But notably, under the 1970 Act, the Rate Commission was required to consider these factors each time it made “a recommended decision on the request for changes in rates,” 39 U.S.C. § 3622(b) (2000), *i.e.*, in each individual rate determination case. Congress’s decision in the PAEA to instead require consideration of these qualitative factors only in the Commission’s design, revision, or ten-year review of the postal rate “system” thus suggests a conscious decision by Congress to depart from a regime in which qualitative factors were necessarily balanced in each rate review proceeding.

The PAEA’s legislative history underscores congressional intent to focus the Commission’s pre-implementation review on whether the Postal Service’s planned rate changes would conform to clear quantitative criteria. In the section devoted to describing the “Need For Legislation,” the Senate Report explains that a problem with the 1970 Act was that it forced the Postal Service to wait up to 18 months to change prices, depriving it of necessary pricing flexibility. S. Rep. No. 108-318, at 2-4.

Congress addressed the problem by limiting pre-implementation review to forty-five days, a period that Congress recognized to be “short.” *Id.* at 11. The Senate Report explained that this review period is to be used for application of “extremely clear and well-defined standards” that will allow the “Commission to make a rapid determination of whether a rate adjustment meets the applicable criteria.” The review is “*not* intended to be used to evaluate the regulatory structure.” *Id.* (emphasis added).

Accordingly, from the time of the PAEA’s enactment, and consistently thereafter, the Commission has repeatedly and reasonably concluded that, in light of the short time available for pre-implementation review, the Section 3622 objectives and factors are to play a limited role in the pre-implementation review process. *See, e.g.*, Order No. 43, at 13 n.8 (concluding that in the forty-five day window, the Commission would “be able to scrutinize and reach definitive conclusions on compliance issues that are factually clear and straightforward—such as rate cap compliance, or compliance with formulas for calculating preferred rates,” and would not be able to reach definitive conclusions concerning “complex or subjective policy factors”); Postal Regulatory Commission, Order No. 191, at 4 (Mar. 16, 2009)⁸ (concluding that “a reasonable hearing of contentions that rates within a class are ‘unreasonably burdensome’ or ‘unduly discriminatory’ as between types of mail or mail users . . . will require more than two weeks of examination and analysis” and

⁸ https://www.prc.gov/docs/62/62705/Order_No_191.pdf.

thus, litigation of such questions should generally be deferred); Order No. 536, at 34 (explaining that the Commission’s “regulations reflect its conclusion that application of the qualitative standards must largely be deferred to post-implementation compliance review”). This represents a reasonable construction of the Act, and is not foreclosed by the text of the PAEA. And it is entitled to substantial deference because Congress expressly delegated to the Commission responsibility for devising the system for postal rate regulation. *See* 39 U.S.C. § 3622(a); *see also supra* pp. 6-7.

The reasonableness of the Commission’s interpretation is confirmed by the comments the Commission received at the time that it first developed the regulations implementing its system for postal rate regulation. Some commenters read the statute not only as failing to mandate consideration of the Section 3622 objectives and factors during the pre-implementation review window, but as *precluding* the Commission from using that window for any purpose other than assessing whether a proposed price change complies with the price cap. *See* Order No. 26, at 17-18 (summarizing comments). Among the commenters who offered the view that the “45-day period that the Act gives the Commission to review rate filing is largely intended to be used to determine whether or not a rate filing is within the rate cap” were the two lead authors of the PAEA in the Senate. *See* Collins-Carper Comments, *supra*, at 2.

Notably, the Commission’s decision to largely forgo consideration of the Section 3622(b) and (c) objectives and factors *during the pre-implementation review process*, does not mean that the Commission’s *system* disregards those considerations. On the

contrary, under the PAEA and the Commission's implementing regulations, there are opportunities after rate changes have been implemented for the Commission to perform the complex balancing necessary to determine whether rates comply with qualitative requirements under the PAEA. This analysis can take place during the required annual review of Postal Service rates and fees for compliance with statutory and regulatory requirements. *See* 39 U.S.C. § 3653(b). Likewise, petitioner could place the issue before the Commission by filing a complaint alleging that the new rate for Stamped Letters violates specific statutory requirements. *See id.* § 3662(a).

Thus, as the Commission has repeatedly explained, in generally declining to analyze qualitative factors during pre-implementation rate reviews, the Commission is not disregarding the qualitative requirements, but merely “defer[ing]” consideration of whether the rates meet those requirements until a time when the question can be evaluated outside the compressed window for pre-implementation review. *See, e.g.*, Order No. 536, at 17; *see also* Order No. 43, at 12 (“Congress contemplated that complicated or subjective compliance issues would be addressed during the annual compliance review, or through the complaint procedures of section 3662.”). Indeed, the Commission's regulations explicitly provide that a Commission ruling in a pre-implementation rate review case is not a final decision on the merits of any issue other than compliance with the price cap and other quantitative requirements, and any decision that a “rate adjustment does not contravene other policies” of the PAEA is “provisional and subject to subsequent review.” 39 C.F.R. § 3010.11(k). Given that

the Commission's system allows for consideration of the qualitative factors outside the pre-implementation review window, petitioner is quite wrong to suggest that the Commission's system "nullifies" those protections. Pet. Br. 29.

Finally, none of this is to say that qualitative factors can never play a role in the Commission's pre-implementation review of rates. *See* Postal Regulatory Commission, Order No. 675, at 4 (Feb. 16, 2011) (noting that "[p]rice adjustment proceedings, with their compressed timetable for decision, are not well-suited to explore complex pricing or costing issues," but rejecting the proposition that "they can never be considered in such proceedings").⁹ The Commission's regulations require the Commission to determine "at a minimum" whether a planned rate adjustment satisfies the quantitative requirements, and expressly leave open the possibility that the Commission may consider whether an adjustment comports with "other policies" as well. 39 C.F.R. § 3010.11(d), (k).

The Commission has indicated that it may reject a proposed rate change that complies with the quantitative requirements if the proposed change exhibits "blatant disregard" for non-quantitative standards. Order No. 536, at 34. Thus, in an instance where the Postal Service sought to increase a particular rate by 963% in an "unduly discriminatory" manner, and there was a "serious problem" with the Postal Service's justification for the rate change, the Commission concluded that it was an

⁹ https://www.prc.gov/docs/71/71974/Order_No_675.pdf.

“exceptional case” in which it would be inappropriate to defer consideration of whether the proposed rate change satisfied qualitative factors. *See* Order No. 191, at 69-72. Such blatant cases are rare, however, because each of the Section 3622(b) objectives needs to be “applied in conjunction with the others,” 39 U.S.C. § 3622(b), so even an overall price adjustment that is sharply at odds with one, or even a handful, of the objectives will not necessarily constitute a blatant violation of the qualitative objectives overall.

For all these reasons, the Commission’s system is fully consistent with the governing statute. In recognition of the constraints imposed by the forty-five day review window, the Commission has properly made quantitative requirements the dominant focus of the pre-implementation review process, while leaving itself latitude to disapprove rates that are price-cap compliant, but are nonetheless facially at odds with other statutory requirements. The Commission’s regulations reflect a reasonable effort to devise a system that will allow for the expeditious review mandated by Congress.

II. THE COMMISSION’S ORDER IN THIS CASE IS NOT ARBITRARY OR CAPRICIOUS

Petitioner argues that even if the Commission’s system for reviewing postal rates is not defective, the Commission’s order approving the rate change here is nonetheless arbitrary and capricious. But the Commission faithfully applied its own regulations in reviewing the Postal Service’s Notice of Market Dominant Price

Change (Notice) (JA1-JA36). Indeed, it undisputed that the Commission fulfilled the principal requirement imposed by its regulations, which is to determine “at a minimum, whether the planned rate adjustments are consistent” with the price cap and the other quantitative limitations. 39 C.F.R. § 3010.11(d). Petitioner does not and cannot deny that the Commission analyzed the quantitative requirements at length. Nor does petitioner contend that the Commission erred in concluding that the rate changes that the Postal Service sought to implement for First Class Mail products comply with the quantitative limitations. JA250.

Instead, all of petitioner’s attacks on the Commission’s order stem from the proposition that the change to the Stamped Letters rate contravenes the Section 3622(b) and (c) objectives and factors, and thus, that it was arbitrary and capricious for the Commission to approve the rate change. Petitioner frames this central claim in a variety of ways, but at bottom, he offers three sets of arguments. All lack merit.

1. Petitioner argues that the Commission’s order is arbitrary and capricious because the Commission failed to consider whether the price changes comply with the Section 3622(b) and (c) objectives and factors (Pet. Br. 30), the evidence before the Commission would not support the conclusion that these qualitative factors were satisfied (Pet. Br. 24-26), and the Commission failed to explain why the pricing change was consistent with the qualitative factors (Pet. Br. 32-33). This constellation of arguments ultimately collapses into petitioner’s attack on the Commission’s system for conducting pre-implementation review of rates. As explained above, *see supra* Part I,

the Commission is not required to consider qualitative factors during pre-implementation review. Petitioner concedes as much. Pet. Br. 30 (acknowledging that “the Commission’s system does not require the Commission routinely to consider section 3622(b) and (c) in a rate proceeding”). Because the Commission was not required to address qualitative factors, it cannot have abused its discretion in failing to consider those factors, in misweighing the record evidence related to those factors, or in inadequately explaining its reasoning on that point.

Notably, there is no dispute that the record evidence supported the Commission’s conclusion that the price change complied with the price cap and the other quantitative requirements. *E.g.*, JA208. Nor is there any allegation that the Commission failed adequately to explain its conclusions that that quantitative requirements were satisfied. Under the Commission’s regulatory scheme, that is sufficient to establish that the Commission’s order was “reasonable and reasonably explained.” *U.S. Postal Serv. v. Postal Regulatory Comm’n*, 785 F.3d 740, 750 (D.C. Cir. 2015).

Moreover, even if the Commission were required to address factors beyond the quantitative limitations, it did so. The Commission acknowledged that several commenters, including petitioner, had “take[n] issue” with the proposed pricing adjustments for Stamped Letters and the increased price differential between Stamped Letters and Metered Letters. JA208. In response, the Commission explained that “subject to certain limitations, most prominently the price cap, the PAEA gives the

Postal Service pricing flexibility within First-Class Mail” and concluded that the Postal Service “has complied with the applicable statutory and regulatory requirements.”

JA208-JA209. Assuring that the Postal Service has adequate pricing flexibility was a central objective of the PAEA, as petitioner concedes. Pet. Br. 4, 22-23; *see also, e.g.*, S. Rep. No. 108-318, at 11 (referencing the “goal[] of increasing Postal Service pricing flexibility”); Collins-Carper Comments, *supra*, at 2 (“So long as a rate change put forward by the Postal Service is within the [price cap], it was our intention that the Postal Service should have significant flexibility to price their products in the manner they deem most appropriate”). The importance of price flexibility is reflected directly in the Section 3622 objectives and factors, which include both “allow[ing] the Postal Service pricing flexibility,” 39 U.S.C. § 3622(b)(4), and “the importance of pricing flexibility,” *id.* § 3622(c)(7). Against that backdrop, the Commission’s acknowledgment of the importance of pricing flexibility for the Postal Service is sufficient to discharge any obligation the Commission has to discuss the Section 3622 objectives and factors in the context of a pre-implementation rate review.

2. Petitioner next argues that even if a discussion of the Section 3622 objectives and factors is not always required, such a discussion was necessary here because the case involved an “extreme, non-routine” price increase. Pet. Br. 31. In particular, petitioner points to the size of the price increase on Stamped Letters and the fact that it is disproportionate to the increase for other types of letters. Pet. Br. 21. But the mere fact that the Postal Service raised prices more on one product that

on others is hardly remarkable. As this Court has recognized, “the Postal Service can raise the price of one product in a mail ‘class’ by more than the rate of inflation if that over-inflation increase is offset by lower rises or reductions in other products in the class.” *U.S. Postal Serv. v. Postal Regulatory Comm’n*, 785 F.3d 740, 745 (D.C. Cir. 2015); *see also* 39 U.S.C. § 3622(b)(8) (stating that the Postal Service is not prohibited “from making changes of unequal magnitude within, between, or among classes of mail”); 39 U.S.C. § 3622(d)(2)(A) (making the price cap applicable to “[c]lasses of mail” rather than individual products). From its inception, the Commission has recognized that it “is to be expected that rate adjustments within a class will be both above and below average.” Order No. 26, at 21. Such disproportionate price changes are a necessary consequence of Congress’s decision to allow the Postal Service pricing flexibility within the price cap regime.

Nor is the change here remarkable on its own terms. The Postal Service has increased the price of Stamped Letters by only five cents, or ten percent. While this is a somewhat larger increase than has been made in recent years, petitioner concedes that this is not even the largest percentage increase ever for Stamped Letters. Pet. Br. 4 (noting a 1991 price change that exceeded 10%). By contrast, when the Commission previously identified an “exceptional case” that justified rejection of a price-cap compliant rate change, the change was a 963% increase in the price of a particular subscription service, *see* Order No. 191, at 70—a change nearly 100 times larger than the change at issue here. Moreover, the price change at issue in that case

exceeded \$200,000. *Id.* Here, by contrast, the price increase is only a few pennies above the two-cent increase that petitioner concedes would have been “run-of-the-mill.” Pet. Br. 22. And even in the exceptional case where the Commission rejected a proposed price change, its ultimate decision was tied to the Postal Service’s failure to factually support the premise on which the price change was predicated, and was not based solely on the sheer magnitude of the price increase. Order No. 191, at 71-72.

Petitioner’s insistence that the increase to the price of Stamped Letters “obviously” raised concerns under Sections 3622(b) and (c) (Pet. Br. 18), also fails to grapple with the fact that the sheer volume of objectives and factors—many of which can pull in countervailing directions in a given case—undermines petitioner’s ability to show any obvious violation of the statute. Thus, for example, though petitioner highlights certain statutory objectives and factors that petitioner believes are incompatible with the price increase for Stamped Letters (Pet. Br. 19-22), other objectives—such as “allow[ing] the Postal Service pricing flexibility” and “assur[ing] adequate revenues” for the Postal Service point in the other direction. 39 U.S.C. § 3622(b)(4)-(5); *see also* JA31 (Notice) (arguing that these objectives support the price change here). Given that all of objectives must be “applied in conjunction with the others,” 39 U.S.C. § 3622(b), petitioner cannot show an “obvious[]” violation merely by noting that a price change is in tension with a subset of the Section 3622 objectives and factors. Petitioner fails to show that the Commission acted arbitrarily in declining to treat this case as exceptional.

3. Finally, petitioner argues that the Commission should have rejected the price change because the Postal Service failed to comply with the obligation to include in its notice of rate adjustment 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) (subsection (b)(7)); *see* Pet. Br. 33-34. Petitioner’s argument is based on a misunderstanding of both the significance of subsection (b)(7) and the content of the Postal Service’s Notice in this case.

Although, for the reasons discussed above, the Commission itself need not address the Section 3622(b) and (c) in the course of a pre-implementation rate review, the Commission has required the Postal Service to discuss those factors. The Commission has explained this decision, noting that although the “Commission can give close scrutiny to only a limited number of compliance issues in the time available before rate changes are implemented,” the Commission cannot “always predict in advance precisely which issues will be of highest priority,” and accordingly, “the Commission require[s] the Postal Service to address a broad range of relevant issues in any notice of rate adjustment.” Order No. 43, at 13. The Commission noted that it was “likely” that in most cases the Commission would only ultimately scrutinize “factually clear and straightforward” issues like compliance with the rate cap (*id.* at 13 n.8), but chose to require the Postal Service to address additional issues, so as to give the Commission leeway to consider those issues in an appropriate case.

Nothing in subsection (b)(7) suggests that the Commission intended to bind itself to deciding whether a particular rate change complies with the Section 3622 objectives and factors. As discussed above, the applicable regulations are clear that that Commission is required in pre-implementation rate proceedings to consider only the quantitative requirements. 39 C.F.R. § 3010.11(d). Petitioner cannot leverage subsection (b)(7)—which requires only that the Postal Service submit information and does not impose any requirements on the Commission—as a means of attacking the Commission for failing to analyze the Section 3622 objectives and factors.

In any event, the Postal Service adequately discharged its obligations under subsection (b)(7), explaining why its proposed changes to the rates for the various First Class Mail products further the Section 3622 objectives and factors. JA31; *see also supra* pp. 14-15. Petitioner ignores this portion of the Notice, and focuses only on a separate passage in which the Postal Service specifically discussed its reasons for changing the Stamped Letter rate in particular (JA8-JA9). Subsection (b)(7) does not require the Postal Service to perform a detailed analysis of how each individual proposed rate change furthers the Section 3622 objectives and factors, and petitioner is wrong to overlook the Postal Service's more general discussion. Moreover, even the discussion of the change to Stamped Letter prices shows that the Postal Service considered multiple factors, including the simplicity of price structure, 39 U.S.C. § 3622(c)(6), and the need to establish pricing structures that would minimize “electronic diversion” and favor “efficient” products (JA9-JA10), which is consistent

with the statutory factor of encouraging “increased mail volume and operational efficiency,” 39 U.S.C. § 3622(c)(7). Thus, even were it appropriate for this Court to review the adequacy of the Postal Service’s submission under subsection (b)(7), petitioner has failed to demonstrate that it was arbitrary and capricious for the Commission to accept the Postal Service’s submission.

CONCLUSION

For the foregoing reasons, the judgment of the Postal Regulation Commission should be affirmed.

Respectfully submitted,

Of Counsel:

DAVID A. TRISSELL
General Counsel

ANNE J. SIARNACKI
Deputy General Counsel

LAURA E. ZUBER
Attorney
Postal Regulatory Commission

JOSEPH H. HUNT
Assistant Attorney General

MICHAEL S. RAAB

s/ Joshua M. Salzman

JOSHUA M. SALZMAN
Attorneys, Appellate Staff
Civil Division, Room 7258
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530
(202) 532-4747
joshua.m.salzman@usdoj.gov

March 2019

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 8,479 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Microsoft Word 2016 in Garamond 14-point font, a proportionally spaced typeface.

s/ Joshua M. Salzman

Joshua M. Salzman

CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2019, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/ Joshua M. Salzman

Joshua M. Salzman