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[Not Yet Scheduled for Oral Argument]

No. 25-1161

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

UNITED STATES POSTAL SERVICE,
Petitioner,

v.

POSTAL REGULATORY COMMISSION,
Respondent,

ASSOCIATION FOR POSTAL COMMERCE; SCHOLASTIC, INC.; BOOK OF THE MONTH LLC; and PACKAGE SHIPPERS ASSOCIATION,
Intervenors.

On Petition for Review of an Order of the Postal Regulatory Commission,
Docket Nos. MC2025-948, MC2025-958

INITIAL OPENING BRIEF FOR THE UNITED STATES POSTAL SERVICE

KEITH E. WEIDNER
Executive Vice President &
General Counsel

DAVID C. BELT
Managing Counsel

MICHAEL D. WEAVER
MORGAN E. REHRIG
Office of the General Counsel
United States Postal Service
475 L'Enfant Plaza, SW
Washington, DC 20260
(202) 268-2998

July 27, 2026 *Attorneys for the United States Postal Service*

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

A. Parties, Intervenors, And Amici

Petitioner is the United States Postal Service (the "Postal Service"). Respondent is the Postal Regulatory Commission (the "Commission"). Intervenors are the Association for Postal Commerce; Scholastic, Inc.; Book of the Month LLC; and the Package Shippers Association. No persons or entities have moved to participate as *amicus curiae*.

B. Rulings Under Review

The Postal Service seeks review of an order of the Commission in Docket Numbers MC2025-948 and MC2025-958: Commission Order Number 8937, Order Denying Request to Remove Bound Printed Matter from the Market Dominant Product List and Approving Changes in Weight Limits for USPS Marketing Mail, dated June 25, 2025, which is located at pages __ - __ of the Joint Appendix ("JA").

C. Related Cases

Commission Order Number 8937 has not previously been before this Court or any other court. Petitioner's counsel are unaware of any related cases pending in this Court or any other court.

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2006 Act	Postal Accountability and Enhancement Act of 2006, Pub. L. No. 109-435, 120 Stat. 3198 (2006)
Bound Printed Matter	Bound Printed Matter Flats and Bound Printed Matter Parcels
Commission	Postal Regulatory Commission
JA	Joint Appendix
Manual	Domestic Mail Manual, a regulation of the Postal Service
Postal Service	United States Postal Service
SA	Sealed Appendix

INTRODUCTION

The basic function of the United States Postal Service ("Postal Service") is to serve America's mailing needs. 39 U.S.C. § 101(a). For many people, interaction with the Postal Service is limited to what arrives in their mailbox or to an occasional trip to the local post office. Behind these everyday experiences, however, is a massive, nationwide operation. For example, in fiscal year 2025, the Postal Service sorted, transported, and delivered approximately 109 billion pieces of mail, an average of more than 361 million pieces per day, six days per week. *See* U.S. Postal Service FY 2025 Annual Compliance Report, "Revised Revenue, Pieces and Weight by Classes of Mail and Special Services for Fiscal Year 2025," No. ACR2025, at 6 (P.R.C. Dec. 29, 2025) (https://prc.arkcase.com/portal/filings/138860). Currently, the Postal Service delivers to more than 170 million different addresses. *See* Statement of Postmaster General David Steiner before the House Committee on Oversight and Government Reform Subcommittee on Government Operations, "Oversight of the Postal Service: The Financial Future under Postmaster General Steiner," at 3 (Mar. 17, 2026) (https://oversight.house.gov/wp-content/uploads/2026/03/Steiner-Written-Testimony.pdf).

We are statutorily self-funded. This means that rather than receiving funding through annual congressional appropriations, we rely on the sale of postage, products, and services to fund our operations. As such, we constantly adjust and attempt to optimize our prices, products, and operations. This case concerns one attempted optimization and the Postal Regulatory Commission's ("Commission") arbitrary decision to deny us this opportunity.

Specifically, we sought to stop offering two products, "Bound Printed Matter Flats" and "Bound Printed Matter Parcels" (collectively "Bound Printed Matter"), because they are duplicative and generally underpriced; contain pricing anomalies where we charge less for heavier pieces than for substantially similar lighter pieces; and impose practical inefficiencies for our operations. Our removal request would have eliminated those issues while ensuring that customers who use those products have alternatives—either through products that retained the protection of rates capped by the Commission or through competitively priced products on the open market—even if the prices for those alternatives were higher than the prices for the discontinued products.

However, the Commission denied our request in a freewheeling opinion unmoored from Congress's statutory framework, the Commission's own regulations and prior decisions, this Court's case law, and common sense. As a result, despite our good reasons for discontinuing these products and creating reasonable alternatives for users thereof, we must continue to offer Bound Printed Matter, and we have no coherent guidance for when the Commission will allow us to stop offering other products in the future.

JURISDICTIONAL STATEMENT

This petition challenges Commission Order No. 8937, JA__-__, which concluded that the Postal Service's proposed removal of Bound Printed Matter Flats and Bound Printed Matter Parcels from the market-dominant product list was an attempt to camouflage a monopolistic price increase and was against the weight of the 39 U.S.C. § 3642(b)(3) considerations.

This Court has jurisdiction pursuant to 39 U.S.C. § 3663, under which any "person, including the Postal Service, adversely affected or aggrieved by a final order or decision" of the Commission may institute review proceedings in this Court within thirty days. The Commission issued Order No. 8937 on June 25, 2025. The Postal Service timely filed this petition on July 25, 2025. JA__(Petition_for_Review).

STATEMENT OF THE ISSUES

Did the Postal Regulatory Commission act arbitrarily, capriciously, or abuse its discretion by basing its denial of the Postal Service's request to remove Bound Printed Matter Flats and Bound Printed Matter Parcels from the market-dominant product list on legal errors and factual misunderstandings?

STATEMENT CONCERNING PERTINENT STATUTORY AND REGULATORY PROVISIONS

The statutory and regulatory provisions pertinent to this petition for review are set forth in an Addendum appearing at the end of this brief.

STATEMENT OF THE CASE

I. Statutory and Regulatory Background

Mail is classified, priced, and regulated under a system set up by the Postal Accountability and Enhancement Act of 2006, Pub. L. 109-435, 120 Stat. 3198 ("the 2006 Act"). The Postal Service offers different "products," defined as "postal service[s] with ... distinct cost or market characteristic[s] for which a rate or rates are, or may reasonably be, applied[.]" 39 U.S.C. § 102(6). Like products are grouped together into classes, such as First-Class Mail, which contains five products. Mail Classification Schedule § 1100.2 (https://prc.gov/mail-classification-schedule at "MCS Through 07122026.docx").[1]

Central to the system of regulation under the 2006 Act is its division of products into two categories, "market dominant" and "competitive," with different rules applying to each. 39 U.S.C. §§ 102(8), (9), 3621-29 (governing market-dominant products), 3631-34 (governing competitive products). All products must belong to one category or the other, *id.* § 3642(e), and the Commission maintains lists of approved market-dominant and competitive products. 39 C.F.R. § 3040.102.

[1] The Mail Classification Schedule is maintained by the Commission and lists the Postal Service's products, "as well as current price and classification information applicable to [those] products[.]" 39 C.F.R. § 3040.101(a), (b).

Market-dominant products are those products over which the Postal Service has an effective monopoly:

> The market-dominant category of products shall consist of each product in the sale of which the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

39 U.S.C. § 3642(b)(1). All other products are competitive products, *id.*, and they are, as the label implies, subject to competition by offerings from carriers such as UPS and FedEx.

The 2006 Act also established an initial list of market-dominant products, 39 U.S.C. § 3621(a), and a mechanism for adding new products to the market-dominant and competitive product lists, transferring products between the lists, and, at issue in this case, eliminating products by removing them from the lists. *See* 39 U.S.C. § 3642; 39 C.F.R. §§ 3040.130–176.

In reviewing product additions, transfers, or deletions, the Commission must determine whether the product in question is properly categorized as market dominant or competitive, based on the above-quoted definition and giving due regard to three other considerations:

(A) the availability and nature of enterprises in the private sector engaged in the delivery of the product involved;

(B) the views of those who use the product involved on the appropriateness of the proposed action; and

(C) the likely impact of the proposed action on small business concerns (within the meaning of section 3641(h)).

39 U.S.C. § 3642(b)(1), (3).

Additionally, the 2006 Act subjected price increases for market-dominant products to a price cap, given the Postal Service's market power over these products as defined by the statute. Price increases are measured by the weighted-average increase per class, 39 C.F.R. § 3030.128(c), (e), and such class-wide increases generally may not exceed the price-cap formula established by the Commission.[2]

Calculating the percentage increase in prices and comparing it to the price-cap formula is, generally, straightforward. For each individual price, use the volume of mailpieces sent at that price in the last twelve months (the "billing determinants") and multiply the volume by the price. Then multiply the same volume by the proposed new price and take the percentage difference between the two figures. *See*

[2] By statute, the formula for the first ten years after the 2006 Act's passage was simply the Consumer Price Index for All Urban Consumers. 39 U.S.C. § 3622(d)(1)(A). In 2020, the Commission, after a proceeding mandated by 39 U.S.C. § 3622(d)(3), concluded that the original price cap did not maintain the Postal Service's financial stability, and chose to retain the price cap but to augment it with additional pricing authority not relevant to this case. This Court upheld the revised price cap. *Nat'l Postal Policy Council v. Postal Regul. Comm'n*, 17 F.4th 1184 (D.C. Cir. 2021).

39 C.F.R. § 3030.128(b), (c). Thereafter, take the weighted average of the percentage changes for all prices in the class, *id.* § 3030.128(e), and determine whether the class-wide increase is within the authority computed by the Commission. *Id.* § 3030.127(a). If it is, then the proposed change satisfies the price cap.

In practice, however, the calculation may be more complicated if, for example, a price is removed sometime in the previous twelve months, such as when the Postal Service removed dedicated prices for sending product samples. *See* Order No. 7155, Order on Price Adjustments, etc., No. R2024-2, at 81 (P.R.C. May 30, 2024) (https://prc.arkcase.com/portal/filings/129088). In those cases, we make "reasonable adjustments to the billing determinants to account for the effects of" the changes. 39 C.F.R. § 3030.128(b)(1). "Whenever possible," those adjustments must "be based on known mail characteristics or historical volume data," not "forecasts of mailer behavior." 39 C.F.R. § 3030.128(b)(2). If a price is removed and no comparable price exists, the billing determinants for that price are set to zero. 39 C.F.R. § 3030.128(b)(3).

Prices for competitive products, by contrast, are not capped. Instead, consumers are protected by the available competition from other providers. Accordingly, the principal restriction on competitive products is a price floor: individual products must cover their attributable costs and products collectively must cover an "appropriate share" of the Postal Service's institutional costs. 39 U.S.C. § 3633(a).

Under the 2006 Act, the power to set prices belongs exclusively to the Governors of the Postal Service. *See* 39 U.S.C. § 404(b); Order No. 5937, Order on Price Adjustments for First-Class Mail, etc., No. R2021-2, at 85 (P.R.C. July 19, 2021) ("The authority to establish prices is vested primarily in the Governors of the Postal Service.") (https://prc.arkcase.com/portal/filings/45694). However, before the Postal Service can change any price, the Postal Service must file a petition with the Commission demonstrating compliance with the price cap and other applicable pricing restrictions. 39 C.F.R. §§ 3030.121-123, 3035.102-105. New prices are effective only following the Commission's finding that the proposed changes are consistent with the law. 39 C.F.R §§ 3030.126(b), (c), 3035.106-107.

II. Factual Background

A. Bound Printed Matter

This case concerns the Postal Service's attempt to remove two products from the market-dominant product list: Bound Printed Matter Flats and Bound Printed Matter Parcels. JA__(USPS_Request_to_Remove_Bound_Printed_Matter_from_the_Market-Dominant_Product_List,_at_1,_Dec._20,_2024) ("Request").

These products are two of four products that comprise the Package Services class of market-dominant products. Mail Classification Schedule § 1400.2.

Bound Printed Matter Flats and Parcels may weigh up to fifteen pounds and may contain printed matter consisting of advertising, promotional, directory, or editorial material (or any combination thereof), including books. Domestic Mail Manual ("Manual") § 263.2.1.b, c (July 12, 2026) (https://pe.usps.com/cpim/ftp/manuals/dmm300/full/mailingstandards.pdf). The larger parcel product typically carries books, often in fulfillment of consumer purchases; other non-advertising publications; and larger catalogs. The smaller flats product typically carries smaller catalogs and advertising or promotional material.

Bound Printed Matter Flats and Parcels are only available to commercial customers. Manual § 260. Transportation is by ground, and at the time of the underlying Commission proceedings, the service standard was two to eight days, *see* JA__(Request_at_6); 39 C.F.R. part 121, Appendix A—Tables Depicting Service Standard Day Ranges (June 2025),[3] though the Postal Service does not guarantee delivery within that time, Manual § 263.3.1, and pieces are not sealed against inspection. Manual § 263.3.2.

[3] Currently, the service standard is four to seven days within the continental United States. 39 C.F.R. part 121, Appendix A.

B. Alternative Products

As described below, the material that may be mailed as Bound Printed Matter may also be mailed using other market-dominant products (Media/Library Mail, and Marketing Mail) and also can be mailed using competitive products (USPS Ground Advantage, and Negotiated Service Agreements).

1. Media/Library Mail

Media/Library Mail ("Media Mail") is another product in the market-dominant Package Services class. Mail Classification Schedule § 1400.2. Any printed book and some printed catalogs that can be sent as Bound Printed Matter may also be sent at Media Mail rates. *Id.* at § 1425.1.

Media Mail pieces are priced by weight, regardless of distance traveled, 39 U.S.C. § 3683(a), and may not contain advertising (other than incidental announcements of books). Manual §§ 173.4.1.a, 273.3.1.a. Transportation is by ground, with the same service standard as Bound Printed Matter. 39 C.F.R. part 121, Appendix A. Delivery is not guaranteed within the service standard, Manual §§ 173.2.1, 273.5.1, and pieces are not sealed against inspection. Manual §§ 173.2.2, 273.5.3.

2. Marketing Mail

Any advertising, promotional, and directory material that may be sent as Bound Printed Matter and not as Media Mail may also be sent as Marketing Mail.

Marketing Mail may not be used for fulfillment of purchases. Manual § 243.3.2.2. Marketing Mail is a market-dominant class of mail consisting of seven products for sending letters, flats, and parcels containing mailable matter that is not sent under the First-Class Mail or Periodicals classes. Mail Classification Schedule § 1200.2. Letters may weigh up to one pound, flats up to one and a half pounds, and parcels up to fifteen pounds. *Id.* at § 1200.1.a. The Postal Service does not guarantee delivery of Marketing Mail within a specified time, and pieces are not sealed against inspection. Manual §§ 243.3.1.1, 243.3.2.5.

3. USPS Ground Advantage

USPS Ground Advantage is a basic ground shipping product, comparable to UPS Ground and FedEx Ground. Any mailable matter, including advertisements, books, and other printed matter, may be sent by Ground Advantage. Mail Classification Schedule § 2125.1.a; Manual § 283.2.0. Prices are set by weight or volume and distance travelled, the service standard is 2 to 5 days, and $100 of insurance is included in the price. Mail Classification Schedule §§ 2125.1.f, 2125.4, 2125.6; "USPS Ground Advantage" (https://faq.usps.com/s/article/USPS-Ground-Advantage, May 7, 2026).

4. Negotiated Service Agreements

Anything sent as Bound Printed Matter may also be sent under a Negotiated Service Agreement, which is a "written contract" for discounted rates. 39 C.F.R. §§

3010.101(f), 3041.110(g). Although these Agreements can apply to both market-dominant and competitive products, Mail Classification Schedule §§ 1600, 2000, all extant domestic Negotiated Service Agreements are for competitive products. *Id.*[4] Therefore, their prices are not restricted by a price cap, and they typically involve negotiated prices for USPS Ground Advantage, Priority Mail, Priority Mail Express packages, or some combination of them. Mail Classification Schedule § 2000. The Commission treats each Negotiated Service Agreement as a separate product that must comply with applicable price regulations.[5]

III. Procedural History

A. The Postal Service's Request to Transfer Bound Printed Matter Parcels and the Commission's Denial

This is not the first time the Postal Service has sought an adjustment to Bound Printed Matter. In 2021, we sought to transfer Bound Printed Matter Parcels from the market-dominant list to the competitive list. *See* United States Postal Service Request to Transfer Bound Printed Matter Parcels to the Competitive Product List,

[4] The Mail Classification Schedule lists a market-dominant Negotiated Service Agreement with Publisher's Clearing House. § 1601.6. That Agreement, though approved, was never implemented. USPS Notice Regarding Implementation of Publisher's Clearing House NSA etc., Nos. MC2023-222, R2023-4 (P.R.C. Jan. 17, 2024) (https://prc.arkcase.com/portal/filings/127796).

[5] The Postal Service is challenging this approach in a petition for review that is currently pending before this Court. *See U.S. Postal Serv. v. Postal Regul. Comm'n*, No. 25-1120 (D.C. Cir. petition docketed May 5, 2025).

No. MC2021-78 (P.R.C. Mar. 26, 2021) (seeking the Commission's approval under 39 U.S.C. § 3642 and 39 C.F.R. § 3040.130 et seq.) (https://prc.arkcase.com/portal/filings/37664). That would have been the fifth transfer, since 2010, of a market-dominant parcel product to the competitive list. *Id.* at 1.

The Postal Service explained that Bound Printed Matter Parcels competed with the "Ground" delivery products offered by both UPS and FedEx. *Id.* at 6-7. Both UPS and FedEx products lacked content restrictions, meaning they could be used for "[a]ny package a customer could send using [Bound Printed Matter] Parcels," and UPS and FedEx guaranteed delivery "within five days." *Id.* at 7.

The Commission denied the request. *See* Order No. 6105, Order Denying Request to Transfer Bound Printed Matter Parcels to the Competitive Product List, No. MC2021-78, at 2 (P.R.C. Feb. 10, 2022) (https://prc.arkcase.com/portal/filings/50341). It decided that the Bound Printed Matter Parcels product operates in a "distinct submarket" defined by Bound Printed Matter Parcels' own content and preparation requirements. *Id.* at 44.

Having defined the relevant market that narrowly, the Commission concluded that "[Bound Printed Matter] Parcels operates without effective competition …." *Id.* at 48. The UPS and FedEx Ground products were not suitable substitutes, the Commission reasoned, because those (market-priced) alternatives were more expensive, especially for unboxed packages. *Id.* at 39-48. The Commission determined that, lacking reasonably substitutable products and competitors, Bound Printed Matter Parcels was market dominant and could not be transferred to the competitive product list. *Id.* at 2, 52.

B. The Postal Service's Request to Remove Bound Printed Matter

In 2024, the Postal Service instead requested the Commission's approval to eliminate Bound Printed Matter Flats and Bound Printed Matter Parcels by removing them from the market-dominant product list. JA__(Request). In addition, the Postal Service filed a notice to increase the maximum weight of flats in the Marketing Mail class from one pound to one-and-a-half pounds and the weight of parcels from one pound to fifteen pounds.[6] JA__-__(USPS_Notice_of_Updates_to_the_Maximum_Weight_Limit_for_Marketing_Mail,_Dec. 20,_2024). Increasing the maximum weight was intended to maximize the amount of volume that could transfer to Marketing Mail if Bound Printed Matter Flats and Parcels were eliminated, because the maximum weight for Bound Printed Matter Flats and Parcels was fifteen pounds.

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[6] Our request to increase the Marketing Mail weight limits is not at issue in this case. The Commission approved the increases. JA__-__(Order_No._8937_at_54-55).

Mail Classification Schedule §§ 1415.1.a (Bound Printed Matter Flats), 1420.1.a (Bound Printed Matter Parcels).

1. Anomalous Pricing

The Postal Service explained that eliminating Bound Printed Matter was justified, in part, because it would remove anomalous and irrational prices. JA__(Request_at_9-11). Specifically, one-pound Bound Printed Matter Flats sorted in the order of the mail carrier's line of travel ("carrier route") and brought by the mailer directly to the local delivery unit that delivers customers' mail, is much less expensive than lighter, quarter-pound to one-pound pieces would be if they were similarly sorted and transported as Marketing Mail. JA__(Request_at_10). Anomalously lower prices also appear when comparing prices for one-pound Bound Printed Matter Flats with prices for lighter weight flats sent as Marketing Mail and sorted in various ways. JA__(Request_at_11).

2. Simplified Product Offerings

The Postal Service also explained that removing Bound Printed Matter would simplify our product offerings and pricing structure. JA__-__(Request_at_6-8). Specifically, in fiscal year 2024, the Postal Service delivered approximately 224 million Bound Printed Matter Parcels and 119 million Bound Printed Matter Flats. JA__(Request_at_6). The total of approximately 343 million pieces represented less than one-third of one percent (0.32 percent) of all market-dominant pieces the Postal

Service delivered that year. JA__,__(Request_at_14;_USPS_Responses_to_ Chairman's_Information_Request_No._1,_at_17,_Feb._3,_2025); *see* U.S. Postal Service FY 2025 Annual Compliance Report, "Revised Revenue, Pieces and Weight by Classes of Mail and Special Services for Fiscal Year 2025, etc.," No. ACR2025, at 1, 2 (P.R.C. Dec. 29, 2025) (https://prc.arkcase.com/portal/filings/138860).

Approximately ninety-one percent of Bound Printed Matter Parcels and approximately seventy-two percent of Bound Printed Matter Flats were sent by ten large commercial mailers. JA__(Request_at_14). Many of these mailers are themselves parcel service businesses, and their volume represents approximately 2,500 mailers of parcels and 2,400 mailers of flats that would be affected by any resulting price change arising from Bound Printed Matter's elimination. JA__(USPS_Responses_to_Chairman's_Information_ Request_No._1,_at_10).

Of the [redacted] million Bound Printed Matter Parcels, the Postal Service estimated that approximately [redacted] million pieces (or [redacted] percent) contained books in fulfillment of orders, and [redacted] million (or [redacted] percent) contained advertising and promotional materials. *See* Sealed Appendix ("SA") __(USPS_Responses_to_ Chairman's_Information_Request_No._3,_Notice_of_Filing_Under_Seal,_etc.,_ Attachment_PROTECTED_USPS-LR-MC2025-948-NP1_Rev2.25.25_Excel_ file,_"Volume_Migration"_tab,_Feb._25,_2025).

Of the [redacted] million Bound Printed Matter Flats, approximately [redacted] million (or [redacted] percent) were fulfillment and [redacted] million (or [redacted] percent) contained advertising or promotional material. *Id.*

As such, all these pieces could be sent using other postal products. After elimination, approximately [redacted] million (or [redacted] percent of) Bound Printed Matter Parcels would travel as other market-dominant products, mostly Media Mail, while [redacted] million (or [redacted] percent) would move to competitive products. *Id.* That number represents [redacted] percent of Bound Printed Matter Flats and Parcels combined.

For Bound Printed Matter Flats, all pieces would travel as Marketing Mail or Media Mail. *Id.* Only [redacted] of [redacted] million pieces ([redacted] percent) would move to competitive products. *Id.*

Although eliminating Bound Printed Matter would increase prices, JA__-__(Request_at_14-15), any price increases for the pieces that migrated to market-dominant products would remain below the applicable price cap. *See* SA__(PROTECTED_USPS-LR-MC2025-948-NP1_Rev2.25.25_Excel_file,_ Cap._Effect_Est_tab).

The Postal Service outlined the steps used in our price cap calculations, including the "reasonable adjustments" to billing determinants required by 39 C.F.R. § 3030.128(b)(1), which included in the cap calculations volume where Media Mail represented the least expensive price, but excluded volume where negotiated rates under a Negotiated Service Agreement were lower or where negotiations with a large-volume fulfillment shipper made it unclear where its volume would migrate. JA__-__(USPS_Responses_to_Chairman's_Information_Request_No._1_at_11-13). Applying these adjustments, and following the requirements of 39 C.F.R. § 3030.128(b), 87 percent of fulfillment volume would be excluded from the price cap calculation as "reasonable adjustments." JA__-__(USPS_Responses_to_Chairman's_Information_Request_No._2_at_11,_Feb._20,_2025).

C. The Commission's Decision Denying the Postal Service's Request to Remove Bound Printed Matter

In deciding whether to approve the request to remove Bound Printed Matter, the Commission applied a two-part test. First, looking to its precedents, the Commission asked whether "the Postal Service's rationale for the removal outweighed the three additional considerations to which the Commission must give due regard pursuant to 39 U.S.C. § 3642(b)(3)." JA__-__(Order_No._8937_at_35-36). Second, the Commission stated that it was applying this Court's decision in *U.S. Postal Serv. v. Postal Regul. Comm'n*, 886 F.3d 1261 (D.C. Cir. 2018) ("*Return Receipt for Merchandise*"), by separately asking whether examining the request for removal "is a pretext for an abuse of market power." JA__(Order_No._8937_at_36).

Regarding the Postal Service's rationale of simplifying the product lists and pricing structure, the Commission stated that its previous removal cases concerned products that were effectively no longer in use when removed. JA__-__(*Id.*_at_36-37). The Commission reasoned that by contrast, the two Bound Printed Matter products still had "substantial volumes and revenue." JA__(*Id.*_at_37). The Commission also found that "removal of [Bound Printed Matter] would not result in the discontinuation of any service and any attendant cost savings—the Postal Service [would] continue to accept the same mailpieces it currently accepts as [Bound Printed Matter], with the associated costs simply accruing to other products." JA__(*Id.*). The Commission did not address whether any increase in revenue that the Postal Service might realize from Bound Printed Matter pieces transferring to other postal products should be given any weight.

The Commission also found that Media Mail and Marketing Mail products were not duplicative of Bound Printed Matter. Specifically, the Commission noted that 1) unlike Bound Printed Matter, Marketing Mail products cannot be used for fulfillment of orders; 2) Media Mail does not offer drop-shipping discounts—i.e., discounts for mailers who transport the mail part of the way to its destination—as Marketing Mail does; and 3) 87 percent of Bound Printed Matter Parcels fulfillment volume would migrate to competitive products. JA__-__(*Id.*_at_38-39).

As to our justification that removing Bound Printed Matter will eliminate irrational pricing, the Commission found that the irrational pricing could be ameliorated by pricing the Bound Printed Matter products differently, without eliminating the Bound Printed Matter products, but did not find that this would fully *eliminate* the anomalies, as removing Bound Printed Matter would. JA__-__(*Id.*_at_39-42).

Ultimately, the Commission concluded "that the benefits to the Postal Service of removing [Bound Printed Matter] Flats and [Bound Printed Matter] Parcels from the Market Dominant product list are at best minimal." JA__(*Id.*_at_42).

By contrast, the Commission found that these "minimal" benefits were outweighed by Section 3642(b)(3)'s three considerations. First, the Commission found no private sector competitors for the Bound Printed Matter products. 39 U.S.C. § 3642(b)(3)(A); JA__(Order_No._8937_at_43).

Next, under 39 U.S.C. § 3642(b)(3)(B), the Commission noted that commenters were unanimously opposed to removal, and it dismissed the argument that mailers would still have the protection of the price cap as "misleading at best." JA__(Order_No._8937_at_44). The Commission reasoned that that protection would only apply to market-dominant products, so mailers that did not use them would have to use competitive products, where the rate cap not only provides no protection, but rates are subject to a price floor. JA__(*Id.*). The Commission also noted that, "the Postal Service's own analysis anticipates that 87 percent of fulfillment [Bound Printed Matter] Parcels volume will migrate to Competitive products, where it will receive no rate cap protection." JA__(*Id.*).

Further, the Commission found that the "sizable proportion of Bound Printed Matter volume migrating to" Marketing Mail "would represent such a small proportion of USPS Marketing Mail volume that the rate cap—which is applied at the class level as a volume-weighted average—would provide little protection against future rate increases." JA__(*Id.* at 45).

Finally, under 39 U.S.C. § 3642(b)(3)(C), the Commission found that removing Bound Printed Matter Flats and Bound Printed Matter Parcels would have a disproportionate impact on small business concerns, noting that approximately 2,500 mailers of parcels and 2,400 mailers of flats would see considerably higher prices. JA__(*Id.*_at_46). The Commission did not discuss whether these mailers satisfied the criteria for a "small business concern" set forth in 39 C.F.R. § 3010.101(u). *See also* 39 U.S.C. § 3641(h) (noting the Commission's definition of a small business concern must conform with section 3 of the Small Business Act).

Finding that the consequences of removing Bound Printed Matter outweighed any benefits removal might provide to the Postal Service, the Commission then noted that under *Return Receipt for Merchandise*, it is also required to undertake a market power analysis under 39 U.S.C. § 3642; examine whether the Postal Service is abusing its market power; and stop any monopolistic rate increase. JA__(Order_No._8937_at_49).

The Commission found that in contrast to cases in which it approved the removal of moribund products, the consequences of removing the two Bound Printed Matter products would be higher prices for mailers who would not have the benefit of competing substitutable products. JA__(*Id.*_at_50). Further, because it found that the Postal Service overstated our arguments in favor of removal and understated the factors weighing against it, the Commission concluded that the Postal Service's behavior easily met any standard for "camouflaging" monopolistic behavior. JA__(*Id.*_at_51). Specifically, the Commission determined that the Postal Service:

- overstated the degree to which Media/Library Mail and Marketing Mail are duplicate offerings for [Bound Printed Matter] Flats and [Bound Printed Matter] Parcels;

- overstated the degree to which [Bound Printed Matter] Flats mailers and, especially, [Bound Printed Matter] Parcels mailers, will continue to enjoy the protection of the rate cap;

- overstated the benefit of resolving pricing and classification anomalies by failing to discuss the degree to which the pricing and classification anomalies cited as justification for the product removals are controllable by the Postal Service with actions short of outright product removal;

- understated the opposition of the users of the products to the proposed product removals; and

- understated the impact on small business concerns.

JA__(*Id.*).

SUMMARY OF THE ARGUMENT

Bound Printed Matter Flats and Bound Printed Matter Parcels are problematic—they duplicate other offerings, create pricing anomalies, cause inefficiencies, and deprive the Postal Service of needed revenue. Yet rather than allow us the opportunity to remedy those problems by removing Bound Printed Matter while still providing users with alternatives, the Commission made three successive errors and arbitrarily denied our request.

First, the Commission arbitrarily rejected the Postal Service's proffered reasoning and instead appeared to suggest that only "moribund or beleaguered" products could be removed. But there is no statutory or regulatory basis for that position. Assuming products that are still in use *can* be removed, the Commission provided no coherent guidance for when we can do so.

To make matters worse, the Commission substituted its own judgments for the Postal Service's about the best way to efficiently manage our product offerings—precisely the sort of micromanagement that is inconsistent with the 2006 Act and that Congress sought to avoid.

And the Commission deemed the possibility of increased revenue to the Postal Service a per se negative, without considering the benefits of revenue under Congress's scheme, particularly when that revenue increase comes from correcting Bound Printed Matter's underpricing.

Second, the Commission misunderstood this Court's precedent and concluded that removing Bound Printed Matter would amount to an abusive "monopolistic rate increase" because existing Bound Printed Matter customers likely would pay higher prices for alternative services. But there is no possible monopolistic or market power abuse here. Under the Postal Service's proposal, Bound Printed Matter volume will either migrate to other market-dominant products or to the open market. Either way, customers remain protected from monopolistic price increases.

Compounding the problem, the Commission misread the record and erroneously assumed that the Postal Service's request would force 87 percent of Bound Printed Matter Parcels fulfillment volume into the Postal Service's own competitive products—a factual error that itself violates the Administrative Procedure Act. And it drew the wrong conclusion from that erroneous finding; the fact that a sizeable percentage of volume would likely migrate to the competitive marketplace argues *against* any inference that the Postal Service's proposal could be an abuse of market power.

Third, the Commission misinterpreted and failed to give "due regard" to the considerations listed in 39 U.S.C. § 3642(b)(3): "the availability and nature" of private-sector alternatives; "the likely impact" on statutorily defined "small business concerns"; and "the views of those who use the product."

Regarding the first consideration, the Commission ignored the non-price components of the "availability and nature" of private-sector alternatives and instead found that the factor weighed against the Postal Service's request because only higher-priced alternatives to Bound Printed Matter existed. Furthermore, the Commission failed to adequately explain its differential treatment of similar cases and consider the Postal Service's products—Marketing Mail and Media Mail—in its analysis.

As to the impact on small businesses, the Commission assumed they would be injured without providing any analysis or even mentioning the statutory definition of a small business. The Commission simply declared that smaller mailers that mail with large shippers (and not directly with the Postal Service) were "small business concerns" within the meaning of the statute.

And in place of circumspect consideration of self-interested comments from users, the Commission elevated reluctance by users to pay higher prices to a functional veto, despite the Postal Service's need to eliminate underpricing, a need heightened by our current insolvency.

Each of these errors independently renders the Commission's order arbitrary and capricious and contrary to law. This Court should set aside the Commission's order and remand with instructions to approve the Postal Service's request.

STANDING

The Postal Service has standing under 39 U.S.C. § 3663 to challenge the Commission's order because it is "adversely affected or aggrieved" by the order. By denying the Postal Service's request to remove Bound Printed Matter Parcels and Bound Printed Matter Flats from the market-dominant list, the Commission prevented the Postal Service from simplifying our product offerings, curing pricing anomalies, and eliminating duplicative offerings from our portfolio. That, in turn, increases costs for the Postal Service and limits our ability to generate revenue. *See, e.g.,* JA__-__(Request_at_4-13). This Court can redress these injuries by granting the petition for review and setting aside the Commission's conclusions as contrary to law, arbitrary, or capricious.

ARGUMENT

I. Standard of Review

This Court reviews Commission orders under Section 706 of the Administrative Procedure Act. *See* 5 U.S.C. § 706; *see also* 39 U.S.C. § 3663. Section 706 requires that an agency order must be held unlawful and set aside if, among other things, it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," 5 U.S.C. § 706(2)(A), or is "unsupported by substantial evidence," *id.* § 706(2)(E).

The Court will set aside a Commission order if (1) it is "devoid of needed factual support," *Ass'n of Data Processing Serv. Orgs. v. Bd. of Governors of the Fed. Reserve Sys.*, 745 F.2d 677, 683 (D.C. Cir. 1984); (2) it lacks a "rational explanation for its decision ... based on consideration of the relevant factors," *Am. Fed'n of Gov't Emps. v. Fed. Lab. Rels. Auth.*, 470 F.3d 375, 380 (D.C. Cir. 2006) (citation omitted); (3) there is no "reasoned path" from the facts and considerations before the agency to the decision it reached, or the decision is "illogical on its own terms," *id.* (citations omitted); (4) it fails to adequately explain the differential treatment of seemingly like cases, *LePage's 2000, Inc. v. Postal Regul. Comm'n*, 642 F.3d 225, 233 (D.C. Cir. 2011); or (5) it is "rife with anomalies," *id.* at 231. "Put simply, the [Administrative Procedure Act] requires that an agency's exercise of its statutory authority be reasonable and reasonably explained." *Mfrs. Ry. Co. v. Surface Transp. Bd.*, 676 F.3d 1094, 1096 (D.C. Cir. 2012).

II. The Commission's Review of the Postal Service's Reasons to Remove Bound Printed Matter Was Arbitrary and Capricious.

The Commission began by "review[ing] the Postal Service's rationale for the proposed product removals." JA__(Order_No._8937_at_36). That review was laden with both legal and factual errors. The Commission either ignored the Postal Service's reasons for its proposed change or rejected them without the reasoned analysis required by the Administrative Procedure Act.

A. The Postal Service's Reasons for Removal Were Genuine and Comport with the Statutory Text and Congress's Intent.

The Postal Service presented multiple reasons supporting its request to remove Bound Printed Matter from the market-dominant list: to "simplify and streamline the overall structure of prices and products," to fix pricing anomalies, and to foster more efficient and cost-effective sorting. JA__, __(Request_at_8,_13). What is more, all agree that the change would result in "higher revenue for the Postal Service." JA__(Order_No._8937_at_50). Each of these objectives comports with Congress's goal of "balanc[ing] the Postal Service's need for increased pricing and product flexibility with the need for effective oversight and accountability." S. Rep. No. 108-318, at 6-7 (2nd Sess. Aug. 25, 2004).

As the Postal Service explained, pieces mailed as Bound Printed Matter can also be mailed using the market dominant Media Mail and Marketing Mail products, and our request would end pricing anomalies that undermined the consistency and rationality of some market-dominant prices. *See* JA__-__(Request_at_6-9). For example, removing Bound Printed Matter Flats would eliminate the anomaly of the Postal Service charging less to deliver some heavier flats than it charges to deliver some lighter flats with the same underlying characteristics. *See* JA__(Request_at_9).

Removing Bound Printed Matter Flats would also allow for more efficient and cost-effective sorting. *See* JA__-__(Request_at_11-12); *Return Receipt for*

Merchandise, 886 F.3d at 1263 (explaining that Congress sought to "encourag[e] the Postal Service to reduce costs, [and] increase efficiency"). Because Bound Printed Matter Flats have a weight limit of fifteen pounds, many flats utilizing that product cannot be sorted on dedicated flats-sorting equipment, which has a one-and-a-half-pound limit. JA__-__(Request_at_11-12). Thus, removing Bound Printed Matter Flats from the market-dominant list and setting the weight limit for Marketing Mail Flats to one-and-a-half-pounds to accommodate the Bound Printed Matter pieces would "allow all remaining flats products to be sorted on flats sorting equipment." JA__(Order_No._8937_at_7).

Lastly, the Postal Service explained that eliminating Bound Printed Matter would allow all catalogs and advertising and promotional material to be mailed as Marketing Mail, which currently cannot be handled together with Bound Printed Matter, due to differing weight requirements and preparation rules, which prevent Bound Printed Matter from being mixed with Marketing Mail that is otherwise similar. *See* JA__-__, __(Notice_at_4-5;_USPS_Responses_to_Chairman's_Information_Request_ No._3,_at_4,_Feb._25,_2025). The effective consolidation, therefore, would "improve the efficiency of handling, transportation, and floor space utilization of mail entered by mail service providers." *See* JA__(USPS_Responses_to_Chairman's_Information_Request_No._3,_at_4).

These are exactly the sorts of experience-laden policy and operational judgments that Congress entrusted the Postal Service to make. *See Return Receipt for Merchandise*, 886 F.3d at 1263 (observing that Congress intended the Postal Service to have "flexibility to experiment with ways to improve its appeal to customers"); *see also* 39 U.S.C. § 403(b) (Congress requiring the Postal Service to "maintain an efficient system of collection, sorting, and delivery of the mail nationwide," and "provide types of mail service to meet the needs of different categories of mail and mail users"). Those reasons were entitled to appropriate weight and deference in the Commission's analysis. *See Return Receipt for Merchandise*, 886 F.3d at 1264.

B. The Commission Erred by Rejecting the Postal Service's Reasons.

The Commission's treatment (or nontreatment) of the Postal Service's reasons was arbitrary and capricious. *First*, the Commission largely brushed off the Postal Service's reasons on the ground that Bound Printed Matter Flats and Parcels are not "moribund or beleaguered" products like those previously removed, without explaining what, if any, reasons would be sufficient to remove a non-moribund product. *Second*, the Commission exceeded its statutory role and sought to micromanage how the Postal Service improves its product offerings. *Third*, the Commission considered only the downside of increased revenue from the proposed change without considering its benefits. Each of those errors is discussed in turn.

1. Rather than directly address the Postal Service's reasons here, the Commission largely focused on the fact that such reasons differed from "the arguments that the Commission found persuasive in the previously approved product removals," JA__(Order_No._8937_at_36), which involved products that the Commission determined were "moribund or beleaguered"—that is, products that are no longer widely purchased. JA__(*Id.*_at_50). Because Bound Printed Matter Flats and Parcels are not "moribund or beleaguered," the Commission appeared to suggest, the proffered reasons are somehow inherently inadequate to justify the removal of a product. JA__-__(*Id.*_at_36-37); *see also* JA__(*Id.*_at_38) (describing the Postal Service's showing as "questionable" compared to prior removals). In this way, the Commission effectively determined that only rationales supporting the removal of a moribund product could be persuasive. That reasoning was erroneous.

To the extent that the Commission is saying that, at least as a practical matter, only "moribund" products may be removed, such a proposition conflicts with the best reading of the text. *See United States v. Neely*, 124 F.4th 937, 943 (D.C. Cir. 2024) ("The Court does not read into statutes words that aren't there.") (internal citations and quotation marks omitted). For example, in "all" cases involving changes to the product lists, whether adding, removing, or transferring a product, the Commission must consider the views of users and the likely impact on small businesses. 39 U.S.C. § 3642(b)(3)(B), (C). Both provisions imply that products still being purchased and used can be removed from the market-dominant list, and nothing about either provision suggests anything to the contrary. The Commission's functional requirement of moribundity was therefore incorrect as a matter of law. *Me. Lobstermen's Ass'n v. Nat'l Marine Fisheries Serv.*, 70 F.4th 582, 597 (D.C. Cir. 2023) ("For 80 years it has been a clear precept of administrative law that an agency action 'may not stand if the agency has misconceived the law.'") (quoting *Sec. & Exch. Comm'n v. Chenery Corp.*, 318 U.S. 80, 94 (1943)).

To the extent that the Commission is saying that the universe of reasons that would justify the elimination of a product is limited to those offered and accepted in previous product-removal cases (involving "moribund" products), there is also nothing in the text that allows (let alone requires) the Commission to use its prior precedents in this way. *Teva Pharms. USA, Inc. v. Food & Drug Admin.*, 441 F.3d 1, 5 (D.C. Cir. 2006) (an agency order is arbitrary and capricious if based on misconception of law, such as a belief it is bound to precedent when it is not). Put simply, the Commission conflated what was *sufficient* to remove moribund products in prior proceedings with what is *necessary* to remove Bound Printed Matter here. That was arbitrary and capricious. And it left the Postal Service with no guidance as to the proper standard and relevant criteria for determining, once the Commission's legal error is corrected, when and under what circumstances a non-moribund product can be removed. *See U.S. Postal Serv. v. Postal Regul. Comm'n*, 785 F.3d 740, 753 (D.C. Cir. 2015) (faulting the Commission for neglecting to explain "the circumstances in which a change to mail preparation requirements such as the one in this case will be considered a 'change in rates'").

2. The Commission also exceeded its statutory role by micromanaging the Postal Service's decisions about pricing and product offerings and rejecting the Postal Service's reasons because it would have preferred different changes. For example, the Commission did not (and could not) deny that eliminating Bound Printed Matter would eliminate the pricing anomalies the Postal Service identified. Yet the Commission found the significance of that rationale "overstated" because it constructed a way to ameliorate some, but not all, of the anomalies through price changes, without eliminating Bound Printed Matter. JA__-__,__(Order_No._8937_at_39-42,_51).

Similarly, the Commission did not (and could not) deny that "eliminating … [Bound Printed Matter] Flats" would "simplify the processing of market-dominant flats" by allowing flats-sorting machines to sort all flats. JA__(Request_at_13). Yet it still discounted that rationale because the Commission believed that the same result "could potentially be realized by classification changes short of wholesale product deletion." JA__(Order_No._8937_at_42).

Even assuming some such unidentified change could accomplish the same goal, and ignoring that the Commission previously prevented the Postal Service from transferring the product to the competitive list, there is no requirement that the Postal Service adopt what the Commission considers to be the least disruptive method for accomplishing valid business goals. Although "Congress gave [the Commission] authority to review and approve [Postal Service] proposals, *see* 39 U.S.C. § 3642(a), … Congress did not intend for that authority to result in Postal Regulatory Commission management of the Postal Service's product offerings." *Return Receipt for Merchandise*, 886 F.3d at 1268 (citation modified); *cf.* Order No. 5550, Order Approving Removal of Customized Postage from Mail Classification Schedule, No. MC2020-126, at 7 (P.R.C. June 16, 2020) ("However, the Commission does not substitute its judgment for that of the Postal Service's when balancing the risks and rewards of the value to its own brand.") (https://prc.arkcase.com/portal/filings/67970). That the Postal Service's requested change would have served our efficiency goals merited serious consideration that we did not receive.

3. Finally, the Commission misunderstood the significance of increased revenue for the Postal Service. The Commission relied on the fact that the Postal Service's request would "mean[] higher revenue for the Postal Service" solely as a reason to *deny* the request. JA__(Order_No._8937_at_50). But increased revenue for the Postal Service is not a reason to reflexively dismiss a proposed product's removal or transfer.

To the contrary, the fact that the request may raise revenue *supports* removal if (as here) Bound Printed Matter's continued existence and pricing do not "comport with the Act's overall objectives of enhancing the efficiency and competitiveness of the Postal Service." *Return Receipt for Merchandise*, 886 F.3d at 1264, 1269; S. Rep. No. 108-318, at 6-7 (2nd Sess. Aug. 25, 2004). Here, the increased revenue is beneficial rather than harmful. Thus, the Commission "entirely failed to consider an important aspect of the problem": the positive role of revenue in the statutory scheme. *Motor Vehicle Mfrs. Ass'n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). And that failure was arbitrary and capricious.

III. The Commission Erroneously Determined that Removing Bound Printed Matter Amounts to Market-Power Abuse.

The Commission also erroneously concluded that removing Bound Printed Matter from the market-dominant list would allow the Postal Service to abuse our market power by "inflicting a monopolistic price increase on mailers." JA__-__(Order_No._8937_at_49-51). There is no possible abuse of market power here: Bound Printed Matter customers who migrate to other market-dominant products would continue to have the protection of regulated rates subject to price caps. And Bound Printed Matter customers who instead choose to use products in the competitive marketplace—whether from the Postal Service or private firms—would be protected by the market itself.

In ruling otherwise, the Commission ignored both statutory language and elementary economic principles. Its conclusory "analysis" boiled down to little more than a finding that mailers will pay more. But that is not equivalent to an abuse of market power. On top of that, the Commission misread the factual record and misapplied this Court's precedent.

A. Removing Bound Printed Matter Is Not an Abuse of Market Power.

The Postal Service would not abuse any market power by removing Bound Printed Matter from the market-dominant list. Statutorily, a product is market dominant when the Postal Service has the power to set prices "substantially above costs," or "raise prices significantly," without "risk of losing a significant level of business to other firms offering similar products." 39 U.S.C. § 3642(b)(1). Users of market-dominant products are protected from abusive price increases directly through a price cap. *See, e.g.*, *Return Receipt for Merchandise*, 886 F.3d at 1270 (the rate cap prevents the Postal Service from improperly leveraging its monopoly powers over market-dominant products); *U.S. Postal Serv. v. Postal Regul. Comm'n*, 816 F.3d 883, 885 n.2 (D.C. Cir. 2016) (same).

While the question of whether price changes for market-dominant products comply with the price cap under 39 U.S.C. § 3622 is wholly distinct from the question of whether a market-dominant product may be discontinued under 39 U.S.C. § 3642—and the Commission may not allow a product to be discontinued only to then also treat it as a rate change subject it to the price cap, *Return Receipt for Merchandise*, 886 F.3d at 1268-73—the Commission has the authority to deny a product-discontinuance request in order to prevent the Postal Service from abusing market power by, for example, "camouflaging a monopolistic rate increase as a product ... deletion." *Id.* at 1269.

Here, however, there is no evidence of any such abuse. In fact, the Postal Service voluntarily demonstrated that, even if the elimination of Bound Printed Matter *were* analyzed as a price increase, the effect of such an "increase" would remain within the price cap. While such a demonstration of price-cap compliance is not *necessary* under this Court's *Return Receipt for Merchandise* decision to prove that the removal does not constitute an abuse of market power, it is *sufficient* to demonstrate the absence of abuse, even if some customers will pay more. By voluntarily ensuring that the removal of Bound Printed Matter from the product list would not exceed the price cap (if it were instead treated as a rate increase), the Postal Service prevented any abuse of market power on the market-dominant side of the scale.

And the Commission made no findings that would support a conclusion that the elimination of Bound Printed Matter would constitute an abuse of market power under 39 U.S.C. § 3642(b)(1). Nowhere in its Order, for example, does the Commission quantify how much more customers would pay for items shipped as

Bound Printed Matter when shipped using other market-dominant or competitive products (or Negotiated Service Agreements) to determine whether such increases are "significant," nor does it anywhere find that the new prices would be substantially above the Postal Service's costs.[7]

The Postal Service's current Bound Printed Matter customers will continue to have rate-capped alternatives for mailpieces that they currently ship using Bound Printed Matter Parcels and Flats. Specifically, market-dominant Media Mail and Marketing Mail products would remain available for customers who prefer utilizing services under the Commission's rate regulations. JA__(Request_at_2). Bound Printed Matter mailpieces that contain catalogues, promotional material, and other advertising materials can be shipped as Marketing Mail. And Postal Service customers shipping books—including to fulfill purchase orders—may use Media Mail. JA__(*Id.*). With a few minor caveats discussed below, Marketing Mail and Media Mail are adequate substitutes in that they offer comparable transportation, service standards, and delivery characteristics to Bound Printed Matter products.

[7] The only place where the Commission even gestures at an attempt to quantify the price increase was its statement that, for the "87 percent" of Bound Printed Matter fulfillment volume it assumed would migrate to competitively priced products, "rates will increase approximately 189 percent." JA__(Order_No._8937_at_50_n.63). But that touches only a fraction of Bound Printed Matter, ignoring the substantial chunk of *non*-fulfillment Bound Printed Matter volume. And as discussed below, the Commission's repeated references to that "87 percent" statistic stems from a fundamental misunderstanding of the record. *See infra* pp. 43-47.

JA__-__(*Id.*_at_6-8). The only real difference—the one focused upon by the Commission—is their higher (yet still rate-protected) prices.

There can be no conceivable abuse of market power in removing a market-dominant product, however, when customers who use that product can continue to ship the same mailpieces using other market-dominant products, particularly when shifts to those other products have been explicitly shown to fall within the market cap (had they been treated as a price increase, which they are not). The Commission reviews prices all market-dominant products and subjects them to a strict price cap, and the point of the price cap is to prevent "the Postal Service from 'improperly leverag[ing] its monopoly powers over'" those products. *Return Receipt for Merchandise*, 886 F.3d at 1270; *see also* 39 U.S.C. §§ 404(b), 3622; 39 C.F.R. part 3030. In approving rates for Marketing Mail and Media Mail, the Commission has necessarily determined that customers do not suffer monopolistic "abuse" by paying those rates, even if those rates are higher than the rates customers pay now for Bound Printed Matter. The Postal Service *cannot* abuse our market power in this context because we lack the authority to unilaterally raise rates on those alternative market-dominant options.

Basic antitrust principles prove the point. The presence of rate regulation largely (and in this case, entirely) negates the dangers of market dominance. *See Verizon Comms. Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398, 411

(2004). When the regulated actor "does not have the direct power to control prices," it hardly follows that its purportedly anticompetitive conduct amounts to an abuse of market power. *Almeda Mall v. Hous. Lighting & Power Co.*, 615 F.2d 343, 354 (5th Cir. 1980). The Postal Service cannot charge customers even "one nickel more" for Marketing Mail and Media Mail than what the Commission has authorized. *See S. Pac. Comms. Co. v. AT&T Co.*, 556 F. Supp. 825, 885 (D.D.C. 1982) (finding no monopolistic abuse). Therefore, current Bound Printed Matter customers—who will retain the option to use those alternative market-dominant products—continue to enjoy the protection of a price cap for their mailing needs.

To be sure, some of those current Bound Printed Matter customers may choose not to use the Postal Service's rate-regulated Media Mail or Marketing Mail products and instead opt for competitively priced products on the open market. But that is not a sign that discontinuing Bound Printed Matter amounts to a monopolistic abuse. It actually proves the opposite, and even calls into question the Commission's antecedent determination that the Postal Service wields market dominance over Bound Printed Matter. Market power, after all, means that the Postal Service can act "without risk of losing a significant level of business" to other companies' offerings. 39 U.S.C. § 3642(b)(1). If removing Bound Printed Matter causes customers to turn down the Postal Service's higher-priced (but still rate-capped) market-dominant alternatives and instead bring their business to the competitive market, then the Postal Service has *lost* whatever market dominance it supposedly had.

It is of no consequence that some Bound Printed Matter customers switching to the competitive marketplace might choose our own competitive products (like Ground Advantage) over similar products sold by private competitors. The whole premise of the Postal Service's competitive product list is that we lack market power over those products and therefore cannot abuse it. 39 U.S.C. § 3642(b)(1).

In categorizing any product as "competitive," the Commission necessarily determines that other firms offer "similar products" that customers may choose between, and that the *market*—not the Postal Service—sets what customers pay. *Id.* Any finding by the Commission that customers will venture to competitive products is incompatible with a finding that the Postal Service has wielded abusive or monopolistic power. *Cf. Husky Mktg. & Supply Co. v. Fed. Energy Regul. Comm'n*, 105 F.4th 418, 425 (D.C. Cir. 2024) ("a firm has market power when it can profitably and sustainably raise its prices above those of its competitors").

As the Supreme Court explained in *Weyerhaeuser*, merely showing that prices were raised is not sufficient to demonstrate an abuse of market power. *Weyerhaeuser Co. v. Ross–Simmons Hardwood Lumber Co.*, 549 U.S. 312, 318 (2007). Instead, the plaintiff must show that the original price was set "below an appropriate measure of its rival's costs" to drive out its competitors before raising its prices sufficiently to regain those funds with interest "during the supracompetitive-pricing stage of the scheme." *Id.* (internal quotations omitted). Here the Commission has not established that any new "supracompetitive" price would be charged. In fact, its primary allegation is simply that some percentage of customers would choose to substitute competitive products, rather than pay rate-capped market-dominant prices, the opposite of an abuse of market power.

B. The Commission's Contrary Finding Was Arbitrary and Capricious.

The Commission nonetheless concluded that, by removing Bound Printed Matter from the market-dominant list, the Postal Service somehow would "inflict a monopolistic rate increase on mailers." JA__(Order_No._8937_at_50). But the Commission's reasoning rests on nothing more than its general finding that removing Bound Printed Matter would result in current Bound Printed Matter customers paying more for alternative services, which is not the same thing as a monopolistic abuse of market power. In reaching its flawed conclusion, the Commission misread the record, contradicted itself, and misapplied this Court's precedent.

1. The Commission Wrongly Assumed that 87 Percent of Bound Printed Matter Fulfillment Customers Would Migrate to Competitive Products and Lose the Benefit of Regulated Rates, and Drew an Arbitrary Conclusion from that Assumption.

The Commission relied heavily on the incorrect finding that "the Postal Service's own analysis anticipates that 87 percent of fulfillment [Bound Printed Matter] Parcels volume will migrate to Competitive products, where it will receive no rate cap protection." JA__(*Id.*_at_44); *see also* JA__(*Id.*_at_39) (noting that "the Postal Service estimates 87 percent of fulfillment [Bound Printed Matter] Parcels volume will migrate not to the ostensibly duplicate Market Dominant products, but to Competitive products") (internal quotation marks omitted). Indeed, the Commission found that "fact" so critical to its analysis that it repeated the point no fewer than *five times* throughout its decision. JA__,__,__,__(*Id.*_at_31,_39,_44,_50_n.63).

But this finding was based on a complete misreading of what the Postal Service said. The "87 percent" figure comes from the Postal Service's written response to one of the Commission's information requests. JA__(Chairman's_Information_Request_No._2,_Feb._13,_2025). The Commission asked the Postal Service to estimate what "percentage of fulfillment [Bound Printed Matter] volumes" would "be excluded from the price cap calculations" for Marketing Mail and Media Mail. JA__(*Id.*_at_3). In response, the Postal Service estimated "87%." JA__(USPS_Response_to_Chairman's_Information_Request_No._2_ at_11).

Yet despite framing its information request as seeking rate-cap exclusions and receiving a responsive answer, the Commission jumped to the conclusion that 87 percent of Bound Printed Matter Parcel fulfillment volume would migrate to products on the Postal Service's competitive list. That conclusion does not follow from the Postal Service's answer, mischaracterizes the data, and is factually incorrect.

As the Commission well knows, under the Commission's own rules, reasonable adjustments to billing determinants must be based on known mail characteristics or historical volume data, not forecasts of mailer behavior. 39 C.F.R. § 3030.128(b)(2). As such, to demonstrate that our proposal would not exceed the price cap if it were treated like a price increase under the Commission's rules, our rate cap calculations included 13 percent of Bound Printed Matter Parcel fulfillment volume. We did not include all volume that will potentially, or even likely, move to other market-dominant products in these calculations, because where this volume would move could not be determined based on "known mail characteristics or historical volume data" and would require guesses about mailer behavior that are not permitted by the Commission's rules.

In fact, what the record does show is that, outside of the narrow evidentiary rules around the price cap, our evidence demonstrated that [redacted] percent of Bound Printed Matter Parcels volume would likely migrate to competitive products, [redacted] percent would remain in Market-Dominant products, and [redacted] percent of Bound Printed Matter Flats would likely remain in market-dominant products. *See* SA__(PROTECTED_USPS-LR-MC2025-948-NP1_Rev2.25.25_Excel_file,_ Volume_Migration_tab).

Altogether, *most* Bound Printed Matter volume—around [redacted] percent of Bound Printed Matter, Parcels and Flats together—will likely migrate to rate-capped market-dominant products; only around [redacted] percent would migrate (voluntarily) to the competitive marketplace, which includes the Postal Service's own competitive line, Negotiated Service Agreements, and private competitors. *See* SA__(*Id.*). It is simply wrong to say, as the Commission does, that the "87 percent" figure somehow "seriously undermin[es] the Postal Service's claim that [Bound Printed Matter] Flats and [Bound Printed Matter] Parcels are redundant" to existing market-dominant products. JA__(Order_No._8937_at_39).

This "basic mistake of fact," *Code v. McCarthy*, 959 F.3d 406, 409 (D.C. Cir. 2020), which permeates the Commission's entire order, warrants relief because it "runs counter to the evidence before the agency." *Motor Vehicle Mfrs. Ass'n.,* 463 U.S. at 43. *See also* 5 U.S.C. § 706(2)(E) (agency action is unlawful if it is "unsupported by substantial evidence"). The Commission does "*not* have free rein to use inaccurate data." *Dist. Hosp. Partners, L.P. v. Burwell*, 786 F.3d 46, 56 (D.C. Cir. 2015) (emphasis in original). It was "required to examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Id.* (citation modified). Because the Commission's figures were "erroneous," "it has failed to comply with the APA." *Id.*

Moreover, the Commission drew an arbitrary conclusion from the fact that a subset (though not 87 percent) of Bound Printed Matter volume will likely migrate to competitive products. Contrary to the Commission's suggestion, this fact cannot support a finding of "material harm to mailers through a monopolistic price increase." JA__(Order_No._8937_at_50_&_n.63). Mailers could not possibly face "material harm" from a "monopolistic price increase" if a significant percentage of their volume (whether the Commission's erroneous 87 percent or the correct [redacted] percent of Bound Printed Matter Parcels and [redacted] percent of Bound Printed Matter as a whole) would receive protection from the competitive marketplace, with the remaining volume continuing to receive protection from rate regulation for market-dominant products.

Relatedly, the Commission's claim that Bound Printed Matter has "no effective competition from enterprises in the private sector," JA__(*Id.*_at_50), makes no sense in this context and is fundamentally at odds with the Commission's own finding that a large percentage of Bound Printed Matter volume will migrate to competitive products. By definition, the Postal Service's competitive products all have similar private alternatives. 39 U.S.C. § 3642(b)(1). If a Bound Printed Matter customer can ship its mail volume using one of the Postal Service's various competitive offerings—say, Ground Advantage or Parcel Select—then that customer necessarily has competitive private options, too.

2. The Commission Exaggerated Theoretical Differences Between Bound Printed Matter and Other Available Price-Capped Products.

In finding that discontinuing Bound Printed Matter amounts to an abuse in market power, the Commission also seemingly quibbled with the Postal Service's position that Bound Printed Matter volume overlaps with market-dominant alternatives. JA__(Order_No._8937_at_51). But none of the technical differences between Bound Printed Matter and other market-dominant options changes the analysis.

First, the Commission notes that drop-shipping services are available for Bound Printed Matter but not for Media Mail. Accordingly, Bound Printed Matter fulfillment shippers switching to Media Mail will no longer qualify for the discounts associated with drop shipping. JA__(*Id.*_at_39). Those customers could either use end-to-end Media Mail or, if they preferred, opt for a product on the competitive market (whether through the Postal Service or a private carrier). *See* JA__(*Id.*). To the extent the Commission relied on such a narrow distinction in rejecting the Postal Service's request, however, the Commission's reasoning clashes with its own precedent and broader antitrust principles.

Specifically, in the order approving the removal of the Return Receipt for Merchandise product from the market-dominant list, the Commission agreed that Certified Mail (with Return Receipt) was a "reasonable substitute" for Return Receipt for Merchandise—even though it was not a one-to-one fit—because Certified Mail shared Return Receipt for Merchandise's "basic characteristics." Order No. 2322, Order Conditionally Approving Removal of Return Receipt for Merchandise Service from Mail Classification Schedule, No. MC2015-8, at 9 (P.R.C. Jan. 15, 2015) (https://prc.arkcase.com/portal/filings/53616).

Indeed, the Commission deemed Certified Mail with Return Receipt a suitable alternative for Return Receipt for Merchandise even though the product required customers to pay "an additional fee" for an extra service, and thus could be viewed as requiring a type of rate increase. *Id.* at 3, 9-10. Here, the Commission does not explain how losing a discount for drop-shipping is meaningfully different or otherwise justifies its decision to demand a one-to-one match.

Second, the Commission suggested in passing that some (unspecified) subset of Bound Printed Matter fulfillment volume might not qualify as Media Mail because of a discrepancy between the two products' respective definitions: Bound Printed Matter extends to both advertising and non-advertising materials, but Media Mail excludes books containing non-incidental advertising. JA__-__(Order_No._8937_at_38-39); *see* Mail Classification Schedule §§ 1415.1, 1420.1

(defining Bound Printed Matter Flats and Parcels); Manual § 273.3-4 (defining Media Mail). Tellingly, however, the Commission does not claim that this distinction carries any practical significance. *See generally* JA__(Order_No._8937_at_39). After all, the record indicates that customers may ship advertising materials as non-fulfillment mailings by Marketing Mail, which was the purpose of raising Marketing Mail weight limits in conjunction with seeking removal of Bound Printed Matter from the product lists. *See e.g.*, JA__-__(Request_at_6-8).

3. The Commission Effectively Found that Any Price Increase Is an Abuse of Market Power, Turning this Court's *Return Receipt for Merchandise* Decision on Its Head.

Finally, the Commission misapplied this Court's decision in *Return Receipt for Merchandise*, 886 F.3d 1261. That decision explained that the Commission should reject product-discontinuance proposals that would "materially harm[] mailers or small businesses by … abusing the Postal Service's market power through camouflaging a monopolistic rate increase as a product addition or deletion." *Id.* at 1269. The Commission appears to have read that language as requiring rejection of any discontinuance request as a "camouflage[d] monopolistic rate increase" if it would cause mailers to pay more. *See* JA__-__(Order_No._8937_at_49-51) (accusing the Postal Service of "openly using a product removal to inflict a monopolistic rate increase on mailers").

But this Court did not say anything of the sort, and certainly did not suggest that there has been a *monopolistic* price increase or abuse of market power any time a mailer may pay more. *See also supra* pp. 46-47 (noting that customers choosing to bring their business to the competitive market, contradicts any notion of monopolistic abuse). Indeed, *Return Receipt for Merchandise* itself approved a Postal Service product removal even though some customers would need to migrate to a higher-cost alternative if they wanted to use a product that shared a particular feature—a paper postcard receipt—as the discontinued product. 886 F.3d at 1261. That mailers seeking a paper postcard receipt might pay more was not a camouflaged monopolistic rate increase. *Id*. at 1269-70. So too here. And in *Return Receipt for Merchandise*, the Court concluded that there was no requirement that the volume migrating to the higher-priced alternative fit within the market-dominant price cap, something the Postal Service demonstrated here *voluntarily.*

Moreover, the Court in *Return Receipt for Merchandise* made it *easier* for the Postal Service to remove products, by determining that we did not have to show compliance with the price cap when removing products, so long as the removal was not a camouflaged monopolistic rate increase. *Id.*; *see also supra* pp. 36-37. Here, however, the Commission violated *Return Receipt for Merchandise* by finding that, even where the Postal Service has voluntarily demonstrated compliance with the price cap, it must go further and meet an undefined standard that appears to prohibit *any* mailers from experiencing price increases, JA__-__(Order_No._8937_ at_49-51), something *Return Receipt for Merchandise* expressly disclaimed.

* * *

At bottom, the Commission defied logic in finding a monopolistic abuse in market power. Bound Printed Matter mailers can continue to mail using capped prices if they migrate to other available market-dominant products. And Bound Printed Matter mailers who prefer the competitive marketplace can enjoy prices controlled by the market. The Postal Service would not, and *could* not, abuse any market power by removing Bound Printed Matter Parcels and Flats from the market-dominant list.

IV. The Statutory Considerations in 39 U.S.C. § 3642(b)(3) Do Not Outweigh the Postal Service's Rationales for Removing Bound Printed Matter.

Finally, the Commission also erred when it evaluated the "additional considerations" in 39 U.S.C. § 3642(b)(3): "the availability and nature of enterprises in the private sector engaged in the delivery of the product involved"; "the views of those who use the product involved on the appropriateness of the proposed action"; and "the likely impact of the proposed action on small business concerns." Those factors are capacious, and, as the Commission recognizes, require "careful consideration," time, and often additional information to evaluate. *See* Order No. 3670, Order on Price Adjustments for Special Services Products, etc., No. R2017-1, at 10-11 (P.R.C. Dec. 15, 2016) (https://prc.arkcase.com/portal/filings/61606). In addition, the statute's plain text makes clear that these considerations are not dispositive; instead, the Commission is to give them only "due regard." 39 U.S.C. § 3642(b)(3); *cf. Noye v. Johnson & Johnson Servs., Inc.*, 765 F. App'x 742, 746 n.5 (3d Cir. 2019) ("In doing so, we give due regard, but not conclusive effect to decisions of the state's lower courts." (citation modified)); *United States v. Allen*, 813 F.3d 76, 81 (2d Cir. 2016) ("While entitled to due regard, those cases of course do not bind us.").

As a threshold matter, the basic mistakes of fact established above are sufficient to show that the Commission's analysis of the § 3642(b)(3) considerations is flawed. The Commission cannot have reasonably weighed the statutory considerations while fundamentally misunderstanding the basic facts of what would happen to customers of Bound Printed Matter. *See supra* pp. 35-51.

Even if these factual errors did not fundamentally taint the Commission's § 3642(b)(3) analysis, the Commission's reasoning about the statutory considerations was also arbitrary and capricious. Although the Commission's Order purports to tick off each factor, a hard look at the order reveals that, when the Commission said "product availability," "consumer views," and "small business concerns," it once more over-relied on a single factor: "price." It analyzed only whether substitutes existed *at the same price*, addressed comments that focused almost exclusively on *the price customers would pay* for using alternative services, and determined that small businesses would *pay more*. The Commission then applied a heuristic the statute does not support: If a request would cause customers to pay more, then it fails all (b)(3) considerations. Thus, the Commission's analysis of the (b)(3) considerations mirrored its flawed approach to market power. *See supra* pp. 42-49. Here too, that price-exclusive approach betrays the text, structure, and purpose of the statute.

A. The Commission's Finding that There Are No Alternatives to Bound Printed Matter Is Contrary to Law and Fact.

The Commission's consideration of the "availability and nature of enterprises in the private sector engaged in the delivery of the product involved," was triply flawed. 39 U.S.C. § 3642(b)(3)(A).

The Commission's decision is arbitrary and capricious because it failed to consider all non-price components of "availability and nature." *See id.; Pub. Citizen v. Fed. Motor Carrier Safety Admin.*, 374 F.3d 1209, 1216 (D.C. Cir. 2004) (finding rule arbitrary where agency failed to consider statutorily mandated factor). The statutory language plainly embraces more than mere price. "Nature" means "[a] fundamental quality that distinguishes one thing from another[.]" *Nature*, Black's Law Dictionary (12th ed. 2024). Postal products are distinguished from each other based on a number of qualities—content restrictions, delivery time, availability of tracking, transportation options, delivery locations, weight limits, dimension limits, etc., as well as price—so all of those attributes comprise the "nature" of an alternative. And "availability" means the degree to which something is "ready for immediate use[.]" *Available*, Merriam-Webster Dictionary (https://www.merriam-webster.com/dictionary/available) (last visited July 27, 2026). For postal products, that might include, among other things, whether a product is available to both commercial and retail shippers.

Rather than considering the full breadth of attributes Congress required, the Commission considered only one aspect of "nature"—price. JA__(Order_No._8937_at_43) (relying on "no effective competition" at Bound Printed Matter's current *prices*) (citation modified). It did not consider, for example, delivery time or weight and dimension limits. And it did not consider "availability" at all. That is, the Commission gave *no* regard for whether other products existed that are similar to Bound Printed Matter—*e.g.*, whether products existed that would allow the same customers to ship the same goods to the same locations in the same time periods. JA__(*Id.*). Cabining its consideration to fewer aspects than the statute demands was arbitrary. *See Pub. Citizen*, 374 F.3d at 1216 (rule was arbitrary and capricious because agency failed to consider a factor required by statute).

The Commission also erred by failing to adequately explain its differential treatment of seemingly like cases. *See LePage's 2000, Inc.*, 642 F.3d at 233 (D.C. Cir. 2011) (remanding for explanation of why Commission inconsistently found a public need met and unmet by the same proposal); *U.S. Postal Serv. v. Postal Regul.*

Comm'n, 842 F.3d 1271 (D.C. Cir. 2016) (remanding because the Commission had denied the Postal Service's request to reclassify retail First-Class Mail Parcels as a competitive product without explaining why it was departing from its precedent granting similar reclassification requests). For example, in the Return Receipt for Merchandise removal proceeding, the Commission considered the availability of *similar* but not identical products—*e.g.*, email confirmation versus postcard confirmation. *See* Order No. 2322 at 12-13 (considering the Postal Service's reasoning that "other shipping service providers such as United Parcel Service and Federal Express, as well as the Postal Service itself, offer *similar* services" and determining that the Postal Service satisfied Section 3642's requirements) (emphasis added). And as noted above, the fact that an offering closely resembling Return Receipt for Merchandise was higher priced was not dispositive as it appears to have been here. *Return Receipt for Merchandise*, 886 F.3d at 1265 (noting an increase from $4.20 to $5.75 for a physical postcard recipient signature). Yet here the Commission rejected that same approach—one that does not require a twin or identical pricing—out of hand.

Finally, the Commission failed to consider Marketing Mail and Media Mail in its analysis. Although Section 3642(b)(3)(A) refers to "private sector" alternatives, the Commission has taken a broader approach in the past and also considered Postal Service products. *See, e.g.*, *Return Receipt for Merchandise*, 886

F.3d at 1266 (discussing other Postal Service products); Order No. 2322 at 12 (agreeing with the Postal Service's analysis that "the Postal Service itself offers similar services") (citation modified). The Commission's silence regarding this departure from its approach in the Return Receipt for Merchandise removal proceeding renders its decision arbitrary. *LePage's 2000, Inc.*, 642 F.3d at 233.

B. The Commission's Finding Regarding the Removal of Bound Printed Matter's Impact on Small Businesses Was Arbitrary and Capricious.

The Commission similarly acted arbitrarily and capriciously when it concluded that removing Bound Printed Matter would "likely have a disproportionate impact on small businesses." JA__(Order_No._8937_at_46). To make this determination, the Commission needed to first identify the "small businesses" that would purportedly be affected. The 2006 Act instructs the Commission to define small business concerns, 39 U.S.C. § 3641(h), and it did. Under the Commission's regulations, "small business concerns" means for-profit business entities that are "independently owned and operated," not "dominant in [their] field," located and primarily operating in the United States or significantly contributing to its economy, and "qualif[ying] as small … under the criteria and size standards established by the Small Business Administration." 39 C.F.R. § 3010.101(u).

Yet the Commission failed to even mention any of these criteria. Instead, it concluded that because the Postal Service's request would affect "2,403 [Bound Printed Matter] Flat mail owners and 2,504 [Bound Printed Matter] Parcel mail owners," "higher prices will … be passed along to a large number of smaller businesses." JA__(Order_No._8937_at_46). But the Commission cited no evidence that these mail owners are small businesses under the Commission's regulations. Had the Commission grappled with those criteria, it may have reached an entirely different conclusion. Indeed, the Public Representative in the earlier proposed transfer of [Bound Printed Matter] Parcels reviewed the evidence and "concur[ed]" with the Postal Service that "small businesses are likely to be unaffected" because "the top 20 shippers of [Bound Printed Matter] Parcels account for 93.6 percent of volume." Public Representative Comments, No. MC2021-78, at 18 (P.R.C. May 17, 2021) (https://prc.arkcase.com/portal/filings/40557). The fact that one "searche[s] the extensive administrative record in vain" for any discussion of the small-business criteria renders the Commission's conclusion arbitrary. *Getty v. Fed. Sav. & Loan Ins. Corp.*, 805 F.2d 1050, 1055 (D.C. Cir. 1986); *see also Brock v. Cathedral Bluffs Shale Oil Co.*, 796 F.2d 533, 536 (D.C. Cir. 1986) (Scalia, J.) ("It is axiomatic that an agency must adhere to its own regulations[.]") (citation omitted).

Nor can the Commission now attempt to backfill its analysis by pointing to the public comments it received. Even if comments could substitute for Commission reasoning, those comments about the potential impact of the removal similarly fail to make the antecedent showing that the businesses about which they speak are "small business concerns" under the Commission's rules.

Moreover, even assuming the Commission could conclude removing Bound Printed Matter would affect small businesses, it did not articulate why those impacts exceeded impacts in previous product deletions. The Commission must "enunciate an intelligible standard" for giving "differential treatment of seemingly like cases." *U.S. Postal Serv.*, 785 F.3d at 744, 753, 756 (quoting *LePage's 2000, Inc.*, 642 F.3d at 232).

In 2020, the Commission approved deletion of "Customized Postage," a "beloved" program "popular and intrinsically valued by small businesses" that comprised "approximately 90%" of its users. Order No. 5550 at 3, 6. The record here is quite different. Unrebutted evidence showed that 72 percent of Bound Printed Matter Flats and 91 percent of Bound Printed Matter Parcels were sent by just *ten* mailers. All of these mailers are large entities that would certainly not qualify as "small business concerns" under the Small Business Administration's definition, which the Commission is obligated to follow. The Order provides no guidance to the Postal Service as to why the Commission weighed the impact on small business concerns more highly here than in the Customized Postage case.

C. The Views of Bound Printed Matter Users Are Not Dispositive.

The Commission similarly erred when it examined "the views of those who use the product." 39 U.S.C. § 3642(b)(3)(B). The Commission found "that the users of [Bound Printed Matter] Flats and [Bound Printed Matter] Parcels" oppose the removal of these products because of "[c]oncerns regarding effective price increases beyond what would ordinarily be possible through a rate increase." JA__(Order_No._8937_at_45). And it ultimately appeared to give those self-interested concerns unqualified weight, effectively giving users a veto over the Postal Service's attempts to simplify and optimize its product offerings. But that treatment of users' views was inconsistent with past removals and failed to explain when users' views are sufficient to defeat a product removal.

Past approved removals featured opposition from users (or possible users), and in those cases, the Commission gave some, but not dispositive, weight to that opposition. *See, e.g.*, Order No. 2322 (Return Receipt for Merchandise removal); Order No. 5550 (Customized Postage removal). Users in particular objected strongly to the deletion of the "beloved and valued" Customized Postage program. Order No. 5550 at 3-4, 6. The Commission gave little weight to these comments, instead encouraging the Postal Service to "take note" of these comments as "important information" when "balancing … customer preferences and the needs of the Postal Service when determining its product offerings" going forward while still approving the deletion. *Id.* at 6. Here, despite Bound Printed Matter likewise facing customer opposition due to the cost of alternatives, the Commission instead privileged the views of those who benefit from the Postal Service's current artificially low prices.

The Commission fails to "reasonably explain" its decision when it "offers no meaningful guidance to the Postal Service … on how to treat future changes." *U.S. Postal Serv.*, 785 F.3d at 753-54. Here, the Commission provides no guidance to the Postal Service as to when price concerns display only "preferences" to "take note of," and when they require scrapping attempts to manage product offerings. That was arbitrary and capricious.

The Commission also refused to consider the protection users would get from the price caps on Marketing Mail and Media Mail. It seemingly did so (1) because the protected rates are higher for those products, and (2) in reliance on its erroneous finding that 87 percent of Bound Printed Matter fulfillment volume would migrate to the Postal Service's competitive products. JA__-__(Order_No._8937_at_44-45). But the views of users who would be protected by a price cap and thus could not be abused should have been considered with that important context. *See supra* pp. 46. And again, the Commission's 87 percent finding was simply wrong. As discussed above, a price cap conclusively determines that a price is not abusive, even if the regulated price is higher than Bound Printed Matter. *See supra* pp. 36-42.

* * *

The Commission's decision was arbitrary, capricious, and contrary to law. The Commission ignored evidence and rationales—including the 2006 Act's efficiency and revenue-generating goals—that undermined its preferred outcome. The Commission erroneously concluded that the Postal Service could impose a monopolistic rate increase when charging a rate lawfully set and approved by the Commission. The Commission misread the record. And the Commission failed to evenhandedly apply lessons learned from its past decisions.

CONCLUSION

For the foregoing reasons, this Court should set aside the Commission's order with instructions to grant the Postal Service's request to remove Bound Printed Matter Flats and Bound Printed Matter Parcels from the market-dominant product list.

Dated: July 27, 2026

Respectfully submitted,

KEITH E. WEIDNER
Executive Vice President & General Counsel

DAVID C. BELT
Managing Counsel

/s/ Michael D. Weaver
MICHAEL D. WEAVER
MORGAN E. REHRIG
Office of the General Counsel
United States Postal Service
475 L'Enfant Plaza, SW
Washington, DC 20260
(202) 268-2998
michael.d.weaver@usps.gov

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Brief of the United States Postal Service complies with the type-volume limit of Fed. R. App. P. 32(a)(7)(B) because it contains 12,980 words as measured by Microsoft Word, a word processing system that includes footnotes and citations in word counts.

I further certify that this Brief complies with the type-face requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in Times New Roman 14-point font using Microsoft Word.

/s/ Michael D. Weaver
Attorney for the U.S. Postal Service
Dated: July 27, 2026

CERTIFICATE OF SERVICE

I hereby certify that, on July 27, 2026, the foregoing brief was electronically filed with the U.S. Court of Appeals for the District of Columbia Circuit by using the CM/ECF system. I further certify that counsel for the respondent and the intervenors are registered as ECF filers and that they will be served by the CM/ECF system.

/s/ Michael D. Weaver
MICHAEL D. WEAVER
Office of the General Counsel
United States Postal Service
475 L'Enfant Plaza, SW
Washington, DC 20260
(202) 268-2998
michael.d.weaver@usps.gov

ADDENDUM

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Postal Accountability and Enhancement Act of 2006

39 U.S.C. § 3641

Market tests of experimental products

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(h) Definition of a small business concern.--The criteria used in defining small business concerns or otherwise categorizing business concerns as small business concerns shall, for purposes of this section, be established by the Postal Regulatory Commission in conformance with the requirements of section 3 of the Small Business Act.

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39 U.S.C. § 3642

New products and transfers of products between the market-dominant and competitive categories of mail

(a) In general.--Upon request of the Postal Service or users of the mails, or upon its own initiative, the Postal Regulatory Commission may change the list of market-dominant products under section 3621 and the list of competitive products under section 3631 by adding new products to the lists, removing products from the lists, or transferring products between the lists.

(b) Criteria.--All determinations by the Postal Regulatory Commission under subsection (a) shall be made in accordance with the following criteria:

> **(1)** The market-dominant category of products shall consist of each product in the sale of which the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products. The competitive category of products shall consist of all other products.

(2) Exclusion of products covered by postal monopoly.--A product covered by the postal monopoly shall not be subject to transfer under this section from the market-dominant category of mail. For purposes of the preceding sentence, the term "product covered by the postal monopoly" means any product the conveyance or transmission of which is reserved to the United States under section 1696 of title 18, subject to the same exception as set forth in the last sentence of section 409(e)(1).

(3) Additional considerations.--In making any decision under this section, due regard shall be given to--

(A) the availability and nature of enterprises in the private sector engaged in the delivery of the product involved;

(B) the views of those who use the product involved on the appropriateness of the proposed action; and

(C) the likely impact of the proposed action on small business concerns (within the meaning of section 3641(h)).

(c) Transfers of subclasses and other subordinate units allowable.--Nothing in this title shall be considered to prevent transfers under this section from being made by reason of the fact that they would involve only some (but not all) of the subclasses or other subordinate units of the class of mail or type of postal service involved (without regard to satisfaction of minimum quantity requirements standing alone).

(d) Notification and publication requirements.--

(1) Notification requirement.--The Postal Service shall, whenever it requests to add a product or transfer a product to a different category, file with the Postal Regulatory Commission and publish in the Federal Register a notice setting out the basis for its determination that the product satisfies the criteria under subsection (b) and, in the case of a request to add a product or transfer a product to the competitive category of mail, that the product meets the regulations promulgated by the Postal Regulatory Commission under section 3633. The provisions of section 504(g) shall be available with respect to any information required to be filed.

(2) Publication requirement.--The Postal Regulatory Commission shall, whenever it changes the list of products in the market-dominant or competitive category of mail, prescribe new lists of products. The revised lists shall indicate how and when any previous lists (including the lists under sections 3621 and 3631) are superseded, and shall be published in the Federal Register.

(e) Prohibition.--Except as provided in section 3641, no product that involves the physical delivery of letters, printed matter, or packages may be offered by the Postal Service unless it has been assigned to the market-dominant or competitive category of mail (as appropriate) either--

(1) under this subchapter; or

(2) by or under any other provision of law.

Regulations

39 C.F.R. § 3010.101

Definitions.

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(u) Small business concern means a for-profit business entity that:

(1) Is independently owned and operated;

(2) Is not dominant in its field of operation;

(3) Has a place of business located in the United States;

(4) Operates primarily within the United States or makes a significant contribution to the United States economy by paying taxes or using American products, materials, or labor; and

(5) Together with its affiliates, qualifies as small in its primary industry under the criteria and size standards established by the Small Business Administration in 13 CFR 121.201 based on annual receipts or number of employees.

****

39 C.F.R. § 3040.130

General.

The Postal Service, by filing a request with the Commission, may propose a modification to the market dominant product list or the competitive product list. For purposes of this part, modification shall be defined as adding a product to a list, removing a product from a list, or moving a product from one list to the other list.

39 C.F.R. § 3040.131

Contents of a request.

A request to modify the market dominant product list or the competitive product list shall:

(a) Provide the name, and class if applicable, of each product that is the subject of the request;

(b) Provide a copy of the Governor's decision supporting the request, if any;

(c) Indicate whether the request proposes to add a product to the market dominant list or the competitive list, remove a product from the market dominant list or the competitive list, or transfer a product from the market dominant list to the competitive list or from the competitive list to the market dominant list;

(d) Indicate whether each product that is the subject of the request is:

> (1) A special classification within the meaning of 39 U.S.C. 3622(c)(10) for market dominant products;
>
> (2) A product not of general applicability within the meaning of 39 U.S.C. 3632(b)(3) for competitive products; or
>
> (3) A non-postal product.

(e) Provide all supporting justification upon which the Postal Service proposes to rely; and

(f) Include a copy of the applicable sections of the Mail Classification Schedule and the proposed changes therein in legislative format.

39 C.F.R. § 3040.132

Supporting justification.

Supporting justification shall be in the form of a statement from one or more knowledgeable Postal Service official(s) who sponsors the request and attests to the accuracy of the information contained within the statement. The justification shall:

(a) Explain the reason for initiating the docket and explain why the change is not inconsistent with the applicable requirements of this part and any applicable Commission directives and orders;

(b) Explain why, as to market dominant products, the change is not inconsistent with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code;

(c) Explain why, as to competitive products, the addition, deletion, or transfer will not result in the violation of any of the standards of 39 U.S.C. 3633;

(d) Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can, without risk of losing a significant level of business to other firms offering similar products:

(1) Set the price of such product substantially above costs;

(2) Raise prices significantly;

(3) Decrease quality; or

(4) Decrease output.

(e) Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 18 U.S.C. 1696 subject to the exceptions set forth in 39 U.S.C. 601;

(f) Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product;

(g) Provide any information available on the views of those who use the product on the appropriateness of the proposed modification;

(h) Provide a description of the likely impact of the proposed modification on small business concerns; and

(i) Include such information and data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.

39 C.F.R. § 3040.134

Review.

The Commission shall review the request and responsive comments. The Commission shall either:

(a) Approve the request to modify the market dominant and competitive product lists;

(b) Institute further proceedings to consider all or part of the request if it finds that there is substantial likelihood that the modification is inconsistent with statutory policies or Commission rules, and explain its reasons for not approving the request to modify the market dominant and competitive product lists;

(c) Provide an opportunity for the Postal Service to modify its request; or

(d) Direct other action as the Commission may consider appropriate.