
ORAL ARGUMENT HAS NOT BEEN SCHEDULED

No. 15-1297

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

UNITED STATES POSTAL SERVICE,
Petitioner,

v.

POSTAL REGULATORY COMMISSION,
Respondent.

ALLIANCE OF NONPROFIT MAILERS, *et al.*,
Intervenors Supporting Respondent.

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

**BRIEF FOR MAILER INTERVENORS
IN SUPPORT OF THE
POSTAL REGULATORY COMMISSION**

(Names of sponsoring parties and counsel appear inside front cover)

March 2, 2016

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**CERTIFICATE AS TO PARTIES,
RULINGS AND RELATED CASES**

The Mailer Intervenors adopt the Certificate As To Parties, Rulings, and Related Cases in the Postal Service's initial brief as petitioner, except to note that the Postal Service's statement that the participants in the remanded proceedings in Docket No. R2013-11R "did not seek to intervene in the proceedings" (USPS Br. at i) is potentially misleading. 39 C.F.R. Part 3010, the rules of procedure for Commission rate cases of this kind, has no intervention requirement. Rate cases under part 3010 are informal rulemakings. One becomes a party simply by filing comments. *Cf. USPS v. PRC*, No. 10-1343 (D.C. Cir.), USPS Consolidated Opposition to Motions to Intervene (filed Nov. 18, 2010) (opposing mailers' motions to intervene because the mailers had filed comments but not "intervened" at the Commission); *id.*, Order issued Dec. 21, 2010 (granting mailers' motions to intervene over the Postal Service's opposition). The mailer intervenors filed multiple rounds of comments. JA295-310, 532-48 (Valpak); JA229-40, 342-358, 443-66 (Association for Postal Commerce, *et al.*).

RULE 26.1 DISCLOSURE STATEMENTS

Alliance of Nonprofit Mailers

The Alliance of Nonprofit Mailers (“ANM”) is a membership organization of charities and other nonprofit organizations that rely on the mail to raise funds and disseminate information. ANM seeks to promote the interests of its members, *inter alia*, by participating in administrative and appellate litigation concerning the rates of postage paid by nonprofit organizations.

ANM is organized as a nonprofit corporation under the laws of the District of Columbia, and has its principal place of business in the District of Columbia. ANM is not publicly traded and has no corporate parent. No publicly traded entity has an ownership interest in ANM. ANM is a trade association within the meaning of Circuit Rule 26.1(b).

Association for Postal Commerce

The Association for Postal Commerce (“PostCom”) is a membership organization comprised of direct marketing firms, printers, letter shops, suppliers, and others who use or support the use of mail for business communication and commerce. Members of PostCom are customers, competitors, or licensees of the Postal Service for both postal and nonpostal services and products that are the subject of the Commission order under review.

PostCom is organized under the laws of the District of Columbia, and has its principal place of business in Arlington, Virginia. PostCom is not publicly traded and has no corporate parent. No publicly traded entity has an ownership interest in PostCom. PostCom is a trade association within the meaning of Circuit Rule 26.1(b).

MPA—The Association of Magazine Media

MPA—The Association of Magazine Media (“MPA”) is a membership organization of magazine publishers. MPA seeks to promote the interests of its members, *inter alia*, by participating in administrative and appellate litigation concerning the rates of postage paid by magazine publishers.

MPA is organized as a nonprofit corporation under the laws of the state of New York, and has its principal place of business in the State of New York. MPA is not publicly traded, and has no corporate parent. No publicly traded entity has an ownership interest in MPA. MPA is a trade association within the meaning of Circuit Rule 26.1(b).

Valpak Direct Marketing Systems, Inc.

Valpak Direct Marketing Systems, Inc. (“VPDMS”) is organized as a corporation under the laws of the state of Delaware and has its principal place of business in St. Petersburg, Florida. VPDMS is a wholly owned subsidiary of Cox

Target Media, Inc., which is a wholly owned subsidiary of Cox Media Group, Inc., which is a wholly owned subsidiary of Cox Enterprises, Inc., a privately held corporation. No publicly held corporation has a 10 percent or greater ownership interest in VPDMS.

VPDMS is a leading printer and mailer of coupons in an envelope. VPDMS serves 175 independently owned franchises across North America, assisting more than 50,000 small business advertisers in promoting their products and services. VPDMS' mail volume is approximately 466 million Standard Mail pieces per year.

Valpak Dealers' Association, Inc.

Valpak Dealers' Association, Inc. ("VPDA") is an incorporated association of the franchisees of VPMDS, having no parent company, but affiliated with VPDMS. No publicly held corporation has a 10 percent or greater ownership interest in VPDA.

VPDA is an association of approximately 175 independently owned franchises across North America. VPDA seeks to promote the interests of its members, *inter alia*, by participating in administrative and civil litigation concerning the rates of postage paid by VPDA members.

VPDA is a trade association within the meaning of Circuit Rule 26.1(b).

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* Authorities on which we chiefly rely are marked with an asterisk.

GLOSSARY OF TERMS

JA	Joint record appendix filed by the petitioners
Market dominant product	A postal product over which the USPS exercises enough market power to satisfy 39 U.S.C. § 3642(b). 39 U.S.C. §§ 102(6), 102(8), and 3621. Rates on market-dominant mail products are regulated under 39 U.S.C. § 3622.
Order No. 1926	Postal Regulatory Commission Order No. 1926 (“Order Granting Exigent Price Increase”) in PRC Docket No. R2013-11, <i>Rate Adjustment Due to Extraordinary or Exceptional Circumstances</i> (Dec. 24, 2013) (reproduced at JA1-JA219)
Order No. 2623	Postal Regulatory Commission Order No. 2623 (“Order Resolving Issues On Remand”) in PRC Docket No. R2013-11R, <i>Rate Adjustment Due to Extraordinary or Exceptional Circumstances</i> (July 29, 2015) (reproduced at JA555-JA624)
PRC or Commission	Postal Regulatory Commission (before 2007, Postal Rate Commission)
USPS or Postal Service	United States Postal Service

STATEMENT OF ISSUES

In 2013, the United States Postal Service sought permission from the Postal Regulatory Commission to impose a 4.3 percent rate surcharge on all rates charged for market dominant mail products. Although the stated purpose of the surcharge was to recover losses caused by the 2007-2009 recession, which the Commission had found to be an extraordinary or exceptional circumstance, the Postal Service proposed to keep the surcharge in effect indefinitely. In December 2013, the Commission approved the surcharge but ordered the Postal Service to end it as soon as it generated \$3.2 billion in extra revenue (equivalent to \$2.766 billion in extra contribution to the Postal Service's institutional costs). Order No. 1926 (JA1-JA197).

In *Alliance of Nonprofit Mailers v. PRC*, 790 F.3d 186 (D.C. Cir. 2015), this Court remanded Order No. 1926 for reconsideration of one of the standards used by the Commission to limit the amount of the surcharge: the “count once” rule, which allowed the Postal Service to recover the contribution from volume losses in each class of mail only for the first year in which they occurred. The Court upheld all of the other aspects of Order No. 1926 challenged by the Postal Service and other parties. In particular, the Court specifically upheld the Commission's “new normal” test, which cut off recovery of recession-related losses “when the exigent

character of” the extraordinary or exceptional “circumstance dissipates—when its effects lose their exceptional character—even though the effects in some literal, but-for causal sense linger.” 790 F.3d at 191-96.

On remand, the Commission eliminated the “count once” constraint, thereby increasing the maximum allowed contribution from the 4.3 percent surcharge to \$3.957 billion. Order No. 2623 at 28-46, 53-54, 62-63 (JA584-602, 609-10, 618-619). The Commission declined, however, to reconsider any other aspects of its earlier order, including the “new normal” test. *Id.* at 15-28 (JA571-584).

The Postal Service’s current petition for review again challenges the lawfulness of the “new normal” test. This raises three issues:

- (1) Is the Commission’s refusal to reconsider the “new normal” test an unreviewable exercise of discretion? (Yes.)
- (2) Is the Postal Service’s challenge to the Commission’s refusal to reconsider the “new normal” test barred by the law-of-the-case and the law-of-the-circuit doctrines? (Yes.)
- (3) Assuming *arguendo* that the merits of the Postal Service’s renewed challenge to the “new normal” test are properly before the Court, should the test be upheld as a reasonable exercise of the Commission’s discretion? (Yes.)

PERTINENT STATUTORY AND REGULATORY PROVISIONS

Except for 39 U.S.C. § 3622, which is reproduced in the addendum to the Postal Service's initial brief, all pertinent statutes and regulations are reproduced in the addendum to this brief.

SUMMARY OF ARGUMENT

The Postal Service's challenge to the lawfulness of the "new normal" test in this review proceeding is barred by the law-of-the-case and law-of-the-circuit doctrines.

ARGUMENT

The Commission has shown in its brief that the Postal Service's renewed challenge to the "new normal" standard fails on two grounds. First, a direct challenge to the Commission's 2013 decision adopting the standard is time-barred by 39 U.S.C. § 3663, and the Commission's decision not to reconsider the standard in 2015 is unreviewable. Commission Br. at 18-24. Second, even assuming *arguendo* that the merits of the "new normal" test are properly before the Court, the Commission's refusal to reconsider the test should be upheld as a reasonable exercise of the Commission's discretion. Commission Br. at 24-33.

The Commission's brief amply supports both points, and we do not repeat them here. Instead, we discuss a third ground for denying the Postal Service's petition for review: the Postal Service's renewed challenge to the "new normal" standard is barred by the law-of-the-case and law-of-the-circuit doctrines.

I. THE POSTAL SERVICE'S RENEWED CHALLENGE TO THE "NEW NORMAL" STANDARD IS BARRED BY THE LAW-OF-THE-CASE AND THE LAW-OF-THE-CIRCUIT DOCTRINES.

The Postal Service's petition for review in this docket is merely a collateral attack on the Commission's 2013 decision in Order No. 1926 to adopt the "new normal" standard. Because the Court upheld the standard in *Alliance of Nonprofit Mailers*, 790 F.3d at 191-92, 193-96, the law-of-the-case and law-of-the-circuit doctrines bar a renewed challenge to the same standard before this Court.

The law-of-the-case doctrine "posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case." *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 816 (1988). Hence, "[w]hen there are multiple appeals taken in the course of a single piece of litigation, law-of-the-case doctrine holds that decisions rendered on the first appeal should not be revisited on later trips to the appellate court." *United States v. Philip Morris USA Inc.*, 801 F.3d 250, 257 (D.C. Cir. 2015) (citations omitted).

A related principle, the law-of-the-circuit doctrine, applies when two successive review proceedings are heard by different panels of the same circuit of the Court of Appeals. “Because [one] panel has no authority to overrule another, ‘an even stronger than usual version of the law-of-the-case doctrine,’ law of the *circuit*, governs.” *Id.* (quoting *LaShawn A. v. Barry*, 87 F.3d 1389, 1395 (D.C. Cir. 1986)). “While law-of-the-case doctrine is a prudential creation of the courts, the law-of-the-circuit doctrine is derived from legislation and from the structure of the federal courts of appeals.” *Id.* at 1395 (discussing 28 U.S.C. § 46(c) and citing precedent). Hence, “[W]hen both doctrines are at work, the law-of-the-circuit doctrine should increase a panel’s reluctance to reconsider a decision made in an earlier appeal in the same case.” *Philip Morris USA*, 801 F.3d at 257 (citing *LaShawn A.*, 87 F.3d at 1395).

Both doctrines are at work here. The issue raised by the Postal Service’s current petition for review—whether the Commission’s adoption of the “new normal” standard was arbitrary and capricious—was also raised by the Postal Service in Docket No. 14-1010 and resolved by the Court in *Alliance of Nonprofit Mailers*. The Commission’s formulation of the standard in both 2013 and 2015 was the same:

[T]he “new normal” point in time is when all or most of the following occur: (1) the disruption to a sufficient number of relevant macroeconomic indicators demonstrate a return to near historic positive trends; (2) application of the macroeconomic variables

accurately project change, and the rate of change on Postal Service mail volumes is positive; (3) the Postal Service regains its ability to predict or project mail volumes following an extraordinary or exceptional event; and (4) the Postal Service demonstrates an ability to adjust operations to the lower volumes.

Order No. 2623 at 16 (JA572) (quoting Order No. 1926 at 86 (JA90)). And the formulation of the standard by the panel of the Court that upheld the standard in *Alliance of Nonprofit Mailers* was identical. See 790 F.3d 191-92 (quoting standard).

A corollary of the law-of-the-case doctrine—waiver—would bar relitigation of the lawfulness of the “new normal” standard even if the Postal Service’s current arguments against the standard differed significantly from those offered in Docket No. 14-1010. The Postal Service did not seek further appellate review of the Court’s decision in *Alliance of Nonprofit Mailers*. A “legal decision made at one stage of litigation, unchallenged in a subsequent appeal when the opportunity to do so existed, governs future stages of the same litigation, and the parties are deemed to have waived the right to challenge that decision at a later time.” *Philip Morris USA*, 801 F.3d at 257-58.

Nevertheless, the commonality of the specific arguments advanced by the Postal Service against the “new normal” standard in Docket No. 14-1010 and again in the current review proceeding is striking. For example, the USPS has argued to the Court in both dockets that:

- (1) The “new normal” test violates the “due to” standard because the USPS cannot adjust quickly to volume losses even after the volume stabilizes. *Cf.* USPS Br. 35-41 with USPS Br. in 14-1010 (July 18, 2014) at 28-30; USPS Reply Br. in 14-1010 (filed July 18, 2014) at 8-9, 13; *Alliance of Nonprofit Mailers*, 790 F.3d at 193-94.
- (2) The Commission’s definition of “new normal” ignores the fixed character of a large share of Postal Service costs. *Cf.* USPS Br. 38-39; USPS Br. in 14-1010 at 32-34; USPS Reply Br. in 14-1010 at 8-9; *Alliance of Nonprofit Mailers*, 790 F.3d at 193-94.
- (3) The Commission’s definition of “new normal” contradicts the Commission’s findings in Section V of Order No. 1926 that the USPS adjusted to the decline in demand as fast as the constraints on USPS operations allowed. *Cf.* USPS Br. 42 with USPS Br. in 14-1010 at 32-34; USPS Reply Br. in 14-1010 at 10, 12-14; and *Alliance of Nonprofit Mailers*, 790 F.3d at 193-94.
- (4) Defining the “new normal” as the point when the USPS “began to take steps to respond to” the extraordinary event makes the exigency safety valve most useless when it is most needed. USPS Br. 42-45; *cf.* USPS Reply Br. in 14-1010 at 8-9; *Alliance of Nonprofit Mailers*, 790 F.3d at 193-94.

- (5) The Commission erred in applying the “new normal” test at the class average level. *Cf.* USPS Br. 36 (class-specific start dates too disaggregated; PRC should have adopted the same start date for every class); USPS Br. in 14-1010 at 37-39 (class-specific start dates *not disaggregated enough*; should have had separate start dates for individual subclasses or categories); USPS Reply Br. in 14-1010 at 15-17 (same); *Alliance of Nonprofit Mailers*, 790 F.3d at 195 (the Commission’s adoption of class-specific start dates for the “new normal” was a reasonable level of disaggregation; USPS witness Thress “himself suggested that the new normal arrived at different times for different classes of mail.”).

The Postal Service tries to avoid the preclusive effect of *Alliance of Nonprofit Mailers* on the theory that two supposedly new developments since 2015 entitle the Postal Service to relitigate the “new normal” standard. Neither distinction withstands scrutiny.

First, the Postal Service claims that Order No. 2623 changed the legal basis for the “ability to adjust” element of the “new normal” standard from the “due to” prong of the statute to the “necessary” prong. USPS Br. 31-34. The supposed change is an invention of the Postal Service. As the Commission explains on pages 29-33 of its brief, the Commission reaffirmed in Order No. 2623 what it

previously held in Order No. 1926: that the “ability to adjust” element implements the “due to” requirement, which is prior to the “necessary” analysis. *Compare* Order No. 1926 at 94 (JA98) (“Once impact of [extraordinary or exceptional circumstances] is normal, and the Postal Service has begun to adjust to it, additional impact cannot be said to be due to a past extraordinary or exceptional circumstance.”), *aff’d*, *Alliance of Nonprofit Mailers*, 790 F.3d at 194-95, with Order No. 2623 at 24-26 (JA580-82).

Second, the Postal Service contends that reconsideration of the “new normal” test is warranted by the issuance of the Commission’s Financial Analysis Report for FY2013, a report which was not published until three months after Order No. 1926, and which assertedly offered a more pessimistic assessment of the Postal Service’s ability to adjust to the effects of the recession. USPS Br. 8, 23, 26, 31, 38-40, 45 (citing PRC Docket No. ACR2013, PRC Analysis of USPS Financial Results and 10-K Statement for Fiscal year 2013 (Mar. 18, 2014) (“Financial Analysis Report”). This argument founders on three grounds.

First, the Postal Service identifies nothing in the Financial Analysis Report that differed materially from the information before the Commission when it issued its 2013 decision. To the contrary, the Report supported the Commission’s findings in Order No. 1926 that the Postal Service was adapting to a world of lower volume: “Since FY 2010, the Postal Service has reduced operating expenses

and increased efficiency in order to better align operating expenses with current volumes.” Financial Analysis Report at 1.

Second, the USPS had an opportunity to—and did—cite the Financial Analysis Report to the Court in 2014. USPS Reply Br. in Docket No. 14-1010 at 13, 14.

Third, and in any event, the focus of the Financial Analysis Report was on the Postal Service’s *overall* financial condition. Report at i (stating that the purpose of the Report was to “provide[] an in-depth analysis of the Postal Service’s financial health primarily using information reported in FY 2013 Form 10-K measured against FY 2012 and its FY 2013 Integrated Financial Plan.”). The report nowhere considered the question that 39 U.S.C. § 3622(d)(1)(E) and Commission Order No. 864 in Docket No. R2010-4R required the Commission to answer in the present docket: the extent to which the Postal Service’s overall financial condition is “due to” the *subset* of overall losses in mail volume that were caused by the 2007-2009 recession when it was still an “extraordinary” or “exceptional” circumstance. *See Alliance of Nonprofit Mailers*, 790 F.3d at 190 (summarizing Commission Order No. 864); *id.*, 790 F.3d at 193-95. Rather, the Report focused mainly on long-term trends in volume, revenue, and costs, and more recent trends that began or accelerated after the recession ended. Report at ii-42.

CONCLUSION

More than five years have passed since the Postal Service first sought to obtain above-inflation price increases in the aftermath of the 2007-2009 recession. The Commission adopted the “new normal” constraint on recession-related loss recovery more than two years ago, and the Court specifically upheld the lawfulness of the constraint over the Postal Service’s challenge in *Alliance of Nonprofit Mailers*. On remand, the Commission reaffirmed the constraint in Order No. 2326. The exigent rate surcharge will expire on April 10, 2016. *See* Docket No. R2013-11, Notice of the USPS of Removal of the Exigent Surcharge (filed Feb. 25, 2016) (www.prc.gov/docs/95/95102/2016-02-25%20Exigent%20Removal%20Notice.pdf).

A central objective of postal ratemaking is to “create predictability and stability in rates.” 39 U.S.C. § 3622(b)(2). The central objectives of the law-of-the-case and law-of-the-circuit doctrines are to avoid “[i]nconsistency,” the “antithesis of the rule of law,” and bring litigation to an end. *LaShawn A.*, 87 F.3d at 1393. Allowing the Postal Service to continue to litigate the “new normal” constraint would frustrate all of these goals. The current petition for review should be denied.

Respectfully submitted,

/s/

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**CERTIFICATE OF COMPLIANCE
WITH FED. R. APP. P. RULE 32(a)**

This brief complies with the type-volume limitations set forth in Fed. R. App. P. 32(a)(7)(B) and Circuit Rule 32(e)(2) because the brief contains 2,607 words as counted by Microsoft Word, excluding the parts of the brief that are exempted by Fed. R. App. P. Rule 32(a)(7)(B)(iii) and Circuit Rule 32(e)(1).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Word 2010 in 14 point Times New Roman.

/s/

David M. Levy

March 2, 2016

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of this brief were served today by filing electronically with the Court through the appellate CM/ECF system.

/s/

David M. Levy

March 2, 2016

ADDENDUM

28 U.S.C. § 46(c)

(c) Cases and controversies shall be heard and determined by a court or panel of not more than three judges (except that the United States Court of Appeals for the Federal Circuit may sit in panels of more than three judges if its rules so provide), unless a hearing or rehearing before the court in banc is ordered by a majority of the circuit judges of the circuit who are in regular active service. A court in banc shall consist of all circuit judges in regular active service, or such number of judges as may be prescribed in accordance with section 6 of Public Law 95–486 (92 Stat. 1633), except that any senior circuit judge of the circuit shall be eligible (1) to participate, at his election and upon designation and assignment pursuant to section 294(c) of this title and the rules of the circuit, as a member of an in banc court reviewing a decision of a panel of which such judge was a member, or (2) to continue to participate in the decision of a case or controversy that was heard or reheard by the court in banc at a time when such judge was in regular active service.

39 U.S.C. § 102. Definitions

As used in this title—

(1) “Postal Service” means the United States Postal Service established by section 201 of this title;

(2) “Board of Governors”, and “Board”, unless the context otherwise requires, mean the Board of Governors established under section 202 of this title;

(3) “Governors” means the 9 members of the Board of Governors appointed by the President, by and with the advice and consent of the Senate, under section 202(a) of this title;

(4) “Inspector General” means the Inspector General appointed under section 202(e) of this title;

(5) “postal service” refers to the delivery of letters, printed matter, or mailable packages, including acceptance, collection, sorting, transportation, or other functions ancillary thereto;

(6) “product” means a postal service with a distinct cost or market characteristic for which a rate or rates are, or may reasonably be, applied;

(7) “rates”, as used with respect to products, includes fees for postal services;

(8) “market-dominant product” or “product in the market-dominant category of mail” means a product subject to subchapter I of chapter 36;

(9) “competitive product” or “product in the competitive category of mail” means a product subject to subchapter II of chapter 36; and

(10) “year”, as used in chapter 36 (other than subchapters I and VI thereof), means a fiscal year.

39 U.S.C. § 3621. Applicability; definitions

(a) APPLICABILITY.—This subchapter shall apply with respect to—

- (1) first-class mail letters and sealed parcels;
- (2) first-class mail cards;
- (3) periodicals;
- (4) standard mail;
- (5) single-piece parcel post;
- (6) media mail;
- (7) bound printed matter;
- (8) library mail;
- (9) special services; and
- (10) single-piece international mail,

subject to any changes the Postal Regulatory Commission may make under section 3642.

(b) RULE OF CONSTRUCTION.—Mail matter referred to in subsection (a) shall, for purposes of this subchapter, be considered to have the meaning given to such mail matter under the mail classification schedule.

39 U.S.C. § 3642(a) and (b). 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)).

* * *

39 U.S.C. § 3663. Appellate review

A person, including the Postal Service, adversely affected or aggrieved by a final order or decision of the Postal Regulatory Commission may, within 30 days after such order or decision becomes final, institute proceedings for review thereof by filing a petition in the United States Court of Appeals for the District of Columbia. The court shall review the order or decision in accordance with section 706 of title 5, and chapter 158 and section 2112 of title 28, on the basis of the record before the Commission.