

No. 19-1155

**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,
Intervenor for Respondent.

**On Petition for Review from the
Postal Regulatory Commission,
Docket No. ACR2018**

**BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED
STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF
THE POSTAL REGULATORY COMMISSION**

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March 11, 2020

**CERTIFICATE OF PARTIES, RULINGS, AND RELATED CASES
PURSUANT TO CIRCUIT RULE 28(a)(1)**

A. Parties, Intervenors, and Amici. The United States Postal Service is petitioner, the Postal Regulatory Commission is respondent, and the Association for Postal Commerce is intervenor for respondent in this Court. The United States Chamber of Commerce is the only amicus curiae to have filed a notice of intent to file an amicus brief.

B. Ruling Under Review. An accurate reference to the ruling at issue appears in Petitioner's brief.

C. Related Cases. The Chamber is aware of no related case pending before this Court or any other court.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 26.1, amicus curiae the Chamber of Commerce of the United States of America hereby submits the following corporate disclosure statement:

The Chamber of Commerce of the United States of America (“Chamber”) is a non-profit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the Chamber.

**STATEMENT REGARDING CONSENT TO FILE
AND SEPARATE BRIEFING**

All parties have consented to the filing of this brief.* The Chamber filed its notice of its intent to participate in this case as *amicus curiae* on March 11, 2020.

Pursuant to Circuit Rule 29(d), the Chamber certifies that a separate brief is necessary to provide the perspective of the businesses that the Chamber represents—including U.S. merchants and manufacturers, as well as mail carrier companies that compete with the United States Postal Service—regarding the importance of the Postal Service’s financial transparency and the disclosure of the information required by the Postal Commission’s order on review.

* No counsel for a party authored this brief in whole or in part, and no person other than the *amicus curiae*, its members, or its counsel contributed money that was intended to fund the preparation or submission of this brief. *See* Fed. R. App. P. 39(a)(4)(E).

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STATUTES AND REGULATIONS

Relevant materials are contained in petitioner's addendum.

INTEREST OF THE *AMICUS CURIAE*

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents 300,000 direct members and indirectly represents the interests of approximately 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases that raise issues of concern to the nation's business community.

The Chamber's members include numerous American manufacturers and vendors—and other businesses—subject to the fees imposed by the United States Postal Service. The Chamber is concerned that U.S. merchants and manufacturers are placed at an economic disadvantage to foreign merchants and manufacturers due to artificially low rates paid by foreign shippers for delivery of their merchandise within the United States at rates not available to domestic shippers. The Chamber's members also include mail service companies that

compete with the Postal Service and have faced distorted competition as a result of the below-cost prices set by the Postal Service.

INTRODUCTION AND SUMMARY OF ARGUMENT

Despite having possessed market-dominant power to set prices, the Postal Service has consistently set below-cost prices for domestic delivery of certain foreign letters and packages (known as “Inbound Letter Post”), incurring hundreds of millions of dollars in losses. JA624–25. The artificially low prices have distorted competition by making it difficult for other mail carriers to compete. JA625. Moreover, because the prices are much lower than what the Postal Service charges for domestic delivery of the same type of letters and packages from domestic shippers, they have had the perverse effect of discriminating against United States merchants and manufacturers by effectively subsidizing mail services provided to foreign merchants and manufacturers. In light of the serious concerns raised by the Postal Service’s rate-setting approach, the Postal Regulatory Commission has urged the Postal Service to correct the situation, but the Postal Service has not done so. JA624–25.

In this case, the Postal Service has tried to shield its anti-competitive, discriminatory practices from public scrutiny. In particular, the Postal Service seeks to designate as confidential certain 2014–2018 volume, revenue, cost, and contribution data related to its Inbound Letter Post product. In the proceedings below, the Commission rightfully concluded, consistent with the statutory requirements, that the product information should not be accorded confidential treatment because the strong public interest in the Postal Service’s financial transparency outweighs any likely competitive injury. The lack of transparency surrounding the Postal Service’s Inbound Letter Post product does not serve any legitimate public purpose.

None of the Postal Service’s objections have merit. Its position on what the statute requires is inconsistent with the statute’s plain text and its context and history. Exercising its expert judgment, the Commission appropriately considered the Postal Service’s general allegations of risk of harm and correctly concluded that the Postal Service had not met its burden to establish that any likely harm outweighed the public interest. The Commission addressed the points raised by the two dissenting commissioners. And the Commission

appropriately applied the meaningful, fact-specific balancing test that Congress required.

This Court should deny the petition for review.

ARGUMENT

I. Disclosure Is Important to Protect the Public Interest in the Financial Transparency of the Postal Service.

Congress has long recognized that there is a strong public interest in the Postal Service's financial transparency. The Postal Accountability and Enhancement Act authorizes the Commission to require the public disclosure of relevant information in connection with its obligation to oversee the Postal Service's activities. *See* Pub. L. No. 109-435, § 204, 120 Stat. 3198, 3211–13 (2006). In deciding what information should be disclosed, Congress directed the Commission to apply a balancing test that weighs any “likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets.” 39 U.S.C. § 504(g)(3)(A). In this case, the Commission properly applied that test and determined that the public interest in accountability, competition, and non-discrimination favored disclosure. JA647–48, 659–60, 662–63.

A. Financial Transparency Ensures Governmental Accountability and Safeguards Against Unlawful Behavior.

The public interest in the Postal Service's financial transparency promotes government accountability by ensuring that the Postal Service follows the statutory policies imposed by Congress. In the international context, those policies are focused on furthering competition and preventing market discrimination. They include the "efficient operation of international postal services and other international delivery services," as well as the promotion of "unrestricted and undistorted competition in the provision of international postal services and other international delivery services." 39 U.S.C. § 407(a). In addition, Congress has adopted a general policy of preventing "any undue or unreasonable discrimination among users of the mails." 39 U.S.C. § 403(c). Requiring the public disclosure of the Postal Service's Inbound Letter Post information is consistent with these policies.

First, the public has a strong interest in holding the Postal Service accountable for its money-losing operations. As explained by President Obama in the context of the Freedom of Information Act, "[a] democracy requires accountability, and accountability requires transparency."

Freedom of Information Act: Memorandum, 74 Fed. Reg. 4,683, 4,683 (Jan. 26, 2009). For many years, the Postal Service has operated at a deficit. See, e.g., *U.S. Postal Serv. Reports FY 2019 Results*, USPS (Nov. 14, 2019); *U.S. Postal Serv. Reports FY 2017 Results*, USPS (Nov. 14, 2017). As a result, the Postal Service has borrowed billions of dollars from the U.S. Treasury at below-market rates through the Federal Financing Bank. See U.S. Dep't of Treas., *United States Postal Service: A Sustainable Path Forward* 25 (Dec. 4, 2018).

The Inbound Letter Post product has contributed to this deficit with its “long documented history of poor financial performance resulting in” lost money. JA647. “Negative contribution increased from \$97.9 million in FY 2015 to \$134.5 million in FY 2016, in large part due to a 23 percent increase in volume.” Postal Regulatory Comm'n, *Annual Compliance Determination Report FY 2016* 65–66 (Mar. 28, 2017). In fiscal year 2018, the Postal Service lost \$81 million on the Inbound Letter Post product. JA667 n.105. Notably, for all this time, the Inbound Letter Post product was considered market dominant. JA630–31; see also JA631 (“On January 9, 2019, the Commission conditionally approved the Postal Service’s request to transfer Inbound Letter Post

small packets and bulky letters from the market dominant to the competitive product list.”). In other words, the Postal Service could have set the price above costs without losing a significant level of business to other firms; yet it chose to lose money subsidizing foreign shippers instead. JA629.

Financial transparency is therefore needed to hold the Postal Service accountable for its operations and price-setting choices. It is also needed because products like the Inbound Letter Post “threaten the financial integrity of the Postal Service.” JA649. Since the nation’s beginning, the Postal Service has played a central role in serving and connecting the American people. *See An Act to Establish the Post-Office and Post Roads within the United States*, 1 Stat. 232, 234 (1792). That the Postal Service is setting prices to serve non-U.S. merchants and manufacturers in a way that undermines its viability only calls for more transparency and accountability.

Second, the public has an interest in ensuring undistorted competition. As the Postal Service’s brief acknowledges, Congress “believe[d] that [] open and fair competition with private sector firms [would] encourage the cost-effective provision of Postal Service

competitive products.” Pet. Br. 21 (quoting S. Rep. No. 108-318, at 15 (2004)). To that end, both the House and Senate “reports emphasized that transparency is necessary to ensure fair treatment of Postal Service customers and its competitors.” JA648 (citing S. Rep. No. 108-318, at 5; H.R. Rep. No. 109-66, at 46 (2005)). The Postal Service has avoided a fair playing field, charging below-cost prices for Inbound Letter Post, which places domestic competitors at a disadvantage. *See* Comments of the U.S. Chamber of Commerce Regarding Notice of a Preliminary Determination to Unseal the Postal Services’s Response to Chairman’s Information Request No. 15, Docket No. ACR2017, at 2, (P.R.C. Feb. 23, 2018). And the Postal Service has engaged in this problematic practice for decades. *See* JA650 (noting that since “FY1998, the revenues for inbound mail have been problematic”). Giving lawmakers and the public the information necessary to understand the inner workings of failing products is necessary to root out this anticompetitive practice and to develop viable solutions.

Third, the public has an interest in ensuring that the Postal Service does not unreasonably discriminate against U.S. merchants and manufacturers. The Inbound Letter Post product has a direct and

discriminatory “impact on domestic mailers and manufacturers.” JA650. As the Commission previously explained, “domestic mailers are subsidizing the entry of Inbound Letter Post by foreign mailers who use the same postal infrastructure but bear none of the burden of contributing to its institutional costs.” *Annual Compliance Determination Report* at 66. “Because UPU terminal dues rates are not equivalent to domestic postage rates in the destination country, the Commission considers them discriminatory.” *Id.* Foreign e-commerce merchants compete with both online and brick-and-mortar American retailers to supply customers with these goods. U.S. merchants and manufacturers are at an economic disadvantage compared to foreign merchants and manufacturers because foreign shippers pay artificially low rates for delivery of their merchandise within the U.S. at rates not available to domestic merchants and manufacturers.

The need for transparency for this product is well understood. The President in a 2018 memorandum specifically identified problems in the rates charged for the delivery of foreign-origin mail. JA654 (citing *Presidential Memorandum for the Secretary of State, Secretary of the Treasury, Secretary of Homeland Security, Postmaster General, and*

Chairman of the Postal Regulatory Commission, White House (Aug. 23, 2018)). And numerous stakeholders addressed the importance of transparency for this product: it is relevant to the “long-term financial viability of the nation’s Postal System”; it is needed to understand the “distortion [of] competition with the private sector and [the] place[ment] [of] domestic competitors at a disadvantage to foreign competition”; and it is important to alert “regulators, lawmakers, and the general public” of the “inner workings of under-water products” to “root[] out below-cost pricing and identify[] where and how to control costs.” JA652–53 (internal quotation marks omitted). There is a strong public interest in the Postal Service’s financial transparency with respect to the Inbound Letter Product.

B. The Postal Service’s Narrow Reading of the Term “Public Interest” Is Contrary to the Statute and Unsupported by Legislative History.

The Postal Service concedes that the Commission relied on and applied the key statutory language—“the public interest in maintaining the financial transparency of a government establishment competing in commercial markets.” *See* Pet. Br. 18 (citing JA 643, 645–47, 660, 682, 687, 689). The Postal Service nonetheless faults the Commission for its

interpretation of what the statute requires. According to the Postal Service, this statutory language should be understood to refer only to a public interest in transparency when the Postal Service abuses its statutory monopoly or otherwise takes advantage of its governmental status. Pet. Br. 19–20. But neither the text nor the legislative history supports the Postal Service’s interpretation.

The statutory text is broad. Congress directed the Commission to consider “the public interest in maintaining the financial transparency of a government establishment competing in commercial markets.” 39 U.S.C. § 504(g)(3)(A). There can be no dispute that the Postal Service is a government establishment competing in commercial markets. Indeed, the Postal Service’s alleged harm here is that disclosure might “harm its competitive interest.” Pet. Br. 9. Accordingly, the Commission must consider the public interest in maintaining the Postal Service’s financial transparency. Nothing in the text cabins or limits the relevant interest in transparency. *Contrast with, e.g.,* 5 U.S.C. § 552(4)(A)(iii) (FOIA statute providing that “[d]ocuments shall be furnished . . . if disclosure of the information is in the public interest *because it is likely to contribute significantly to public understanding of the operations or*

activities of the government and is not primarily in the commercial interest of the requester” (emphasis added)). As this Court has explained, financial transparency “ensure[s] fair treatment of customers of the Postal Service’s and those companies competing with the Postal Service’s competitive products.” *USPS v. Postal Regulatory Comm’n*, 886 F.3d 1261, 1263 (D.C. Cir. 2018) (quoting S. Rep. No. 108-318, at 1).

The Commission thus properly refused to read into the text additional limitations that Congress did not impose. The Postal Service may prefer more limited transparency, but its position is inconsistent with the text that Congress drafted.

The legislative history of the statute confirms its breadth. The Postal Service points out that a draft of the bill described the interest as “financial transparency of a government establishment” with a goal of “fair treatment” for customers and competitors. Pet. Br. 20 (quoting H.R. Rep. No. 109-66, pt. 1, at 25, 88). But the final bill rejected that approach. If anything, the decision to reject the proposed language reveals a broadening of the public interest to encompass *all* the benefits of financial transparency—such as government accountability—not just those related to fair treatment for customers and competitors.

In any event, even if the Court were to adopt the Postal Service’s narrowing construction—that the statute contemplates financial transparency only when government establishments abuse their government status to compete in commercial markets—the Commission’s order still reaches the correct decision. The record evidence showing the need for government accountability, *see* JA648, 652–53, the problem of government-subsidized distorted competition, *see* JA652, 662, and the concern with government-subsidized discrimination against U.S. merchants and manufacturers, JA651, are all relevant to the Postal Service’s governmental status. The Commission’s order properly considered the public interest in the Postal Service’s financial transparency. Its decision should be upheld.

II. The Postal Service’s Procedural Objections to the Commission’s Order Are Meritless.

The Postal Service raises three objections to the Commission’s order on procedural grounds. The Postal Service claims that the Commission did not “properly take into account” the risk of harm to the Postal Service. Pet. Br. 23. It also asserts that the order failed to respond to the dissent. *Id.* And, finally, the Postal Service argues that

the Commission did not provide a “meaningful standard.” *Id.* None of these arguments has merit.

A. The Commission Appropriately Considered and Addressed the Postal Service’s Allegations of Harm.

The Commission properly concluded that the Postal Service had not met its burden of persuasion to establish that disclosure of the information was *likely* to cause commercial harm so serious that it would outweigh the strong public interest in transparency. The Postal Service asserts that the Commission’s analysis failed to consider “the substantial risks of commercial harm to the Postal Service.” Pet. Br. 23. But the Commission may evaluate only the “nature and extent of [] *likely commercial injury* to the Postal Service,” 39 U.S.C. § 504(g)(3)(A) (emphasis added), not general risk of harm. Moreover, the party seeking nonpublic treatment of information—here, the Postal Service—bears the burden of persuasion that the materials designated as nonpublic should be withheld from the public. *See* Application for Non-Public Treatment, 39 C.F.R. § 3007.201(a) (2020). The Postal Service did not meet that “burden of persuasion to show that [its] alleged commercial injury [was] likely to result.” JA658.

The Commission has substantial experience evaluating harms to the Postal Service. The Commission and its predecessor agency also have decades of experience with regard to international mail products. JA679. The Secretary of State consults with the Commission concerning U.S. foreign policy relating to international mail. *Id.* The Commission reviews rates for international mail pre- and post-implementation. *Id.* Congress chose to vest in the Commission the authority to determine the non-public status of any information that the Postal Service files under seal, including international mail products. *Id.*

Exercising its expertise, the Commission appropriately considered the Postal Service's alleged harm and reasonably determined that the Postal Service had not carried its statutory burden. The information the Commission ordered to be publicly disclosed consists of information related to the Postal Service's data on the Inbound Letter Post for four country groups. JA624. Each group consists of no less than 34 countries. *Id.* The information includes the Postal Service's revenue, volume, cost, and contribution data for its Inbound Letter Post from fiscal years 2014–2018 at the country group level of aggregation. JA635. The Commission found that the country groups are too broad and diverse to

allow participants to infer operator-specific data from data specific to the four country groups. JA667. “A high degree [of deference] is appropriate” when an agency uses its expertise in applying an imprecise statutory provision that requires agency discretion. *Ctr. for Auto Safety v. Ruckelshaus*, 747 F.2d 1, 5 (D.C. Cir. 1984). Deference is especially appropriate here where the Postal Service exercised its statutory discretion and expertise to protect the public interest and reign in a fellow government agency.

The Postal Service’s risk-of-harm allegations were general in nature, and in many instances not supported by any explanation. JA676. Indeed, the Postal Service did “not cite or reference any specific [data] when discussing [] alleged commercial harms.” JA658; *see also* JA661 (“[T]he Postal Service’s arguments that the highly aggregated historical data . . . would result in commercial harm are wholly conclusory and lack support.”). In addition, the Postal Service did not identify any other entity having a proprietary interest in the data. JA675. Even on appeal, it remains unclear what “commercial injury” the Postal Service believes is “likely” to occur and why it is likely. 39 U.S.C. § 504(g)(3)(A). The Postal Service points only to a “weakened

bargaining position” that could “undercut efforts to negotiate higher rates.” Pet Br. 27–28.

The Commission appropriately evaluated this concern and reasonably rejected it. The Commission concluded that the disclosed information was insufficient to provide competitors with the sort of upper hand that the Postal Service fears. JA673. And even if it did, the Commission found that the Postal Service could rely on pronouncements, like the Presidential Memorandum, to resist negotiations to lower prices to cover only costs. *Id.* In addition, the Postal Service generally negotiates products beyond just the Inbound Letter Post, which provides it with additional leverage in negotiations. JA674–75. It is also unclear why the disclosure of data related to a below-cost product would weaken the Postal Service’s negotiating power or cause it to lower rates further. The Commission appropriately reviewed the Postal Service’s claim of harm and found that “any type of commercial harm is speculative at best.” JA664.

B. The Commission Appropriately Considered and Addressed the Dissent’s Analysis.

The Commission’s order also properly addressed the arguments raised by the dissenting Commissioners. It is true that “reasoned

decisionmaking requires considering [] alternatives.” *Am. Gas Ass’n v. FERC*, 593 F.3d 14, 19 (D.C. Cir 2010). But contrary to the Postal Service’s suggestion, Pet. Br. 24, there is no rule that an agency must explicitly cite a dissenting opinion or expressly acknowledge that fellow commissioners dissented. The Commission must consider only the “alternative or objection raised” by the dissent, so long as it is “neither frivolous nor out of bounds.” *Nat’l Lifeline Ass’n v. FCC*, 921 F.3d 1102, 1114 (D.C. Cir. 2019), *as amended* (Apr. 10, 2019) (quoting *Chamber of Commerce of U.S.A. v. SEC*, 412 F.3d 133, 145 (D.C. Cir. 2005)).

Here, two Commissioners concurred with the majority’s decision to unseal the Commission’s analysis of revenue and volume data aggregated by country group and shape. JA691. But the two Commissioners dissented from the portion of the order unsealing cost and cost contribution data. *Id.* The dissenting Commissioners based this on the belief that the “data could be combined with known or readily ascertainable information about the structure of the international mail and parcel markets to model the Postal Service’s costs in serving particular large markets.” JA692. According to the dissenting Commissioners, the ability to disaggregate this data could then

undermine the Postal Service's ability to conduct negotiations and weaken its competitive position relative to foreign posts and other entities. *Id.*

The majority opinion considered and addressed this concern. The Commission first noted that “the annual compliance review proceeding looks backwards to determine” past compliance. JA662. Unsealing the information relevant to past compliance is thus “unlikely to result in harm because the data is too stale to use as a basis for commercial decision-making, now and in the future.” JA663.

The Commission further explained that the historical cost data aggregated by country group “does not provide actionable commercial information to actors in the present or future environment, which is undergoing rapid change.” JA664. The Commission likewise concluded that the information “does not provide competitors with data useful to target specific customers or markets because there are too many unknown variables related to the origination, international transportation, and destination of the mailpieces.” JA669 (describing what the information does not disclose). The Commission also noted that the data encompasses rates from two different calendar years and

depends, at least in part, on weight data, which is not publicly available. JA669–70.

The Commission considered, addressed, and rejected the dissenting opinion’s arguments. There is no need for the Commission to name or adopt the five-page dissent. *See Chamber of Commerce*, 412 F.3d at 144–45 (Commission has an obligation to consider *alternatives* raised by dissent). It is, after all, a dissent. *Chamber of Commerce of U.S.A. v. NLRB*, 118 F. Supp. 3d 171, 216 (D.D.C. 2015) (that individual members were outvoted “does not mean that the Board overlooked ‘evidence’ in the record”).

C. The Commission Appropriately Resolved the Fact-Specific Issue Before It.

The Postal Service complains that the Commission failed to provide a meaningful standard for confidential filings. But the Postal Service’s real complaint is with the standard set forth by Congress, which requires the Commission to weigh two fact-specific inquiries: the public interest and any likely harm to the Postal Service. The Commission “may not rewrite clear statutory terms to suit its own sense”—or the Postal Service’s sense—“of how the statute should operate.” *Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302, 328 (2014).

That Congress requires the Commission to engage in a fact-specific balancing test does not render the Commission's decision arbitrary and capricious. To the contrary, courts and agencies are routinely called upon to conduct balancing tests. *See, e.g., Comput. Prof'ls for Soc. Responsibility v. U.S. Secret Serv.*, 72 F.3d 897, 904 (D.C. Cir. 1996), *as amended* (Feb. 20, 1996) (describing required balancing test for disclosure under FOIA); *United States v. Moore*, 793 F. App'x 1, 4 (2d Cir. 2019) (application of a balancing test in an evidentiary context "was [] neither arbitrary nor irrational"); *F.W. Woolworth Co. v. NLRB*, 655 F.2d 151, 154 (8th Cir. 1981) (National Labor Relations Board's application of the balancing test of "the employee's right to engage in concerted activity against the employer's right to maintain order and respect" should not be disturbed "unless illogical or arbitrary"); *Am. Tel. & Tel. Co. v. NLRB*, 521 F.2d 1159, 1161 (2d Cir. 1975) ("The responsibility for applying this balancing test, depending as it does so heavily on the facts in a particular case, rests with the Board, whose decision, if supported by evidence, will not be disturbed unless it is arbitrary or illogical.").

The Commission did not apply a “know-it-when-we-see-it” standard. It evaluated the general allegations of harm set forth by the Postal Service; it evaluated the public interest in the Postal Service’s financial transparency; and it applied its substantial expertise to determine under the statutory balancing test that it was inappropriate to accord confidentiality to this specific subset of information. Congress placed that ultimate decision in the Commission’s hands, and the Commission reached the correct decision. The balancing test imposed an appropriate burden on the Postal Service that the Postal Service, as a factual matter, failed to meet.

* * * *

For years, the Postal Service has suppressed prices in a manner that stifles competition and has the consequence of discriminating against domestic merchants and manufacturers. The financial transparency that Congress ordered is important to ensuring that the public has the ability to hold the Postal Service accountable. Exercising its expert judgment, the Commission properly applied the statutory requirements and appropriately concluded that the public interest in transparency outweighs the Postal Service’s vague and undefined

concerns. The Postal Service has not demonstrated any error and its makeweight procedural objections are all lacking in merit. The Commission's decision should be affirmed.

CONCLUSION

The Court should deny the petition for review.

Respectfully submitted,

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March 11, 2020

**CERTIFICATE OF COMPLIANCE
WITH TYPE-VOLUME LIMITATION**

Pursuant to Fed. R. App. P. 32(g), I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B) because it contains 4,120 words, excluding the parts exempted by Fed. R. App. P. 32(f) and Cir. R. 32(e)(1). I further certify that 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 the brief was prepared in 14-point Century Schoolbook font using Microsoft Word.

Dated: March 11, 2020

/s/Ashley C. Parrish
Ashley C. Parrish

CERTIFICATE OF SERVICE

I hereby certify that on March 11, 2020, I electronically filed the foregoing amicus brief with the Clerk of Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system, thereby serving all persons required to be served.

/s/Ashley Parrish
Ashley C. Parrish