

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Michael Kubayanda, Chairman;
Ashley E. Poling, Vice Chairwoman;
Mark Acton;
Ann C. Fisher; and
Robert G. Taub

Application for Waiver
First-Class Mail Letters 5-Digit Automation

Docket No. RM2021-5

ORDER DENYING POSTAL SERVICE
APPLICATION FOR WAIVER UNDER 39 C.F.R. § 3030.286

(Issued April 21, 2021)

I. INTRODUCTION

On March 26, 2021, the Postal Service filed an application for waiver pursuant to 39 C.F.R. § 3030.286 requesting that the Commission waive the applicability of 39 C.F.R. § 3030.284 for the First-Class Mail Letters 5-Digit Automation workshare discount in the upcoming market dominant rate adjustment.¹ For the reasons discussed below, the Commission denies the Postal Service's waiver request.

¹ United States Postal Service Application for Waiver Under 39 CFR 3030.286, March 26, 2021 (Application for Waiver). The Postal Service's Application for Waiver is accompanied by a Statement in Support of Waiver Application (Supporting Statement).

II. BACKGROUND

As part of Docket No. RM2017-3, the Commission adopted rules that established limitations on excessive and low workshare discounts set by the Postal Service.² As the Commission emphasized throughout Docket No. RM2017-3, both excessive and low workshare discounts lead to inefficient pricing.³ Pricing efficiency is achieved when workshare discounts adhere to Efficient Component Pricing (ECP) and have resulting passthroughs of 100 percent.⁴ Thus, the Commission's rules related to workshare discounts are intended to result in discounts that adhere as closely as practicable to ECP principles.⁵ The Commission sought to balance the limitations on workshare discounts with the statutory scheme already in place, which permits certain exceptions. See 39 U.S.C. § 3622(e)(2)(A)-(D) and (e)(3). As such, the Commission created a waiver application process in order to allow the Postal Service to set workshare discounts that do not adhere to 39 C.F.R. §§ 3030.283 and 3030.284 under certain, limited circumstances. The Commission intended for the waiver application process to be used only in "exceptional circumstances" and stated that it would "ensure the Postal Service's strict adherence to the waiver regulation [of 39 C.F.R. 3030.286]." Order No. 5763 at 213-214.

As it relates to a workshare discount that would be below the cost avoided by the Postal Service for not providing the applicable service, the Commission's rules permit

² See 39 C.F.R. §§ 3030.283 and 3030.284. See also Docket No. RM2017-3, Order Adopting Final Rules for the System of Regulating Rates and Classes for Market Dominant Products, November 30, 2020 (Order No. 5763); Postal Accountability and Enhancement Act (PAEA), Pub. L. 109-435, 120 Stat. 3198 (2006).

³ Order No. 5763 at 198; Docket No. RM2017-3, Notice of Proposed Rulemaking for the System for Regulating Rates and Classes for Market Dominant Products, December 1, 2017, at 93 (Order No. 4258).

⁴ Order No. 4258 at 87-89; Order No. 5763 at 198. The relationship between workshare discounts and avoided costs is usually expressed as a percentage called a passthrough, which is calculated by dividing the discount by the avoided cost. Workshare discounts with passthroughs below 100 percent are considered below avoided cost workshare discounts.

⁵ Order No. 4258 at 87; Order No. 5763 at 198.

such a workshare discount if the discount is new, if it is a minimum of 20 percent more than the existing workshare discount, or if the workshare discount produces a passthrough of at least 85 percent. 39 C.F.R. § 3030.284. If a low workshare discount does not meet any of those requirements, the Postal Service must request a waiver pursuant to 39 C.F.R. § 3030.286, at least 60 days prior to its next rate adjustment filing. 39 C.F.R. § 3030.284(d), § 3030.286(a).

The Postal Service's waiver application must be supported by a preponderance of the evidence and demonstrate that a waiver from the limitations imposed by 39 C.F.R. § 3030.284 should be granted. 39 C.F.R. § 3030.286(b). The Postal Service must include the grounds for a waiver, including all relevant supporting analysis; the length of time the waiver will be necessary; for each subsequent rate adjustment filing planned to occur during the length of time for which a waiver is sought, a representation of the proposed minimum amount of the change to the workshare discount; and any other relevant information. See 39 C.F.R. § 3030.286(c)(1) through (3) and (8). Grounds for waiver for a low workshare discount and the required accompanying information are set forth in 39 C.F.R. § 3030.286(c)(5) and (7).⁶

III. APPLICATION FOR WAIVER

On March 26, 2021, the Postal Service requested the waiver of 39 C.F.R. § 3030.284 for First-Class Mail Letters that are sorted to the 5-Digit level for any rate adjustment proceeding filed in Fiscal Year (FY) 2021. Supporting Statement at 1. Citing to 39 C.F.R. § 3030.286, the Postal Service states that "increasing the workshare discount for 5-Digit presort First-Class Mail by 0.5 cents in a single year could decrease the efficiency of its processing operations." *Id.*; see 39 C.F.R. § 3030.286(c)(5). It notes that the current discount of 3.0 cents results in a passthrough of 73 percent, which is below the 85 percent threshold. *Id.* To be in compliance with 39 C.F.R.

⁶ Grounds for waiver for a below avoided cost workshare discount relate to the impediment of efficient postal operations and non-compensatory products. See 39 C.F.R. § 3030.286(c)(5) and (7).

§ 3030.284, the Postal Service states that it would be required to increase the discount by 0.5 cents to 3.5 cents absent a waiver. *Id.* at 1-2. It maintains that “[s]uch an increase (which would be nearly 17 [percent] higher than the same discount in FY 2020) represents a dramatic change following years of relative pricing stability.” *Id.* at 2. The Postal Service states that the required change “would represent a significant increase compared to prior years” and “could lead to unpredictable changes among the relative proportions of mail volumes sorted to 5-Digit, Auto AADC, and Mixed AADC.” *Id.* Thus, the Postal Service seeks to maintain the First-Class Mail Letters 5-Digit Automation workshare discount at 3.0 cents for the next rate adjustment filing. *Id.*

On March 30, 2021, the Commission provided notice of the Postal Service’s Application for Waiver, allowing interested persons to comment.⁷

⁷ Notice and Order Concerning Postal Service Application for Waiver Under 39 CFR 3030.286, March 30, 2021 (Order No. 5854).

IV. COMMENTS

The Commission received several comments in opposition to the Postal Service's Application for Waiver. Thirty-two commenters filed similar letters requesting that the Commission deny the Postal Service's Application for Waiver.⁸ The commenters note that the waiver process was intended to be used in exceptional circumstances and that the Commission included requirements the Postal Service must comply with if requesting a waiver.⁹ The commenters maintain that the Postal Service "has not met the requirements laid out by the Commission nor has it adhered to the waiver rules." *See id.* They further note that, as this is the first waiver request under the Commission's new workshare discount rules, it is essential that the process be followed as intended, as it will set the precedent for future waiver requests. *See id.*

⁸ *See* Comment of Mail Movers Regarding U.S. Postal Service Waiver Request, April 2, 2021; Comment of Action Mail Presort, Inc. Regarding U.S. Postal Service Waiver Request, April 2, 2021; RAF Technology Waiver Opposition, April 2, 2021; Comment of Access Mail, April 5, 2021; Comment of Action Mail Presort, Inc., April 5, 2021; Comments of Qualified Presort Service, LLC, April 5, 2021; Comment of Postal Center International, April 5, 2021; Comment of United Mail, April 5, 2021; Comment of Ozark Mailing Service, LLC, April 5, 2021; Comment of Presort Plus, April 5, 2021; Comment of L&M Mail & Courier Service, April 5, 2021; Comment of UMS Print Solutions, April 5, 2021 (UMS Print Solutions Comment); Comment of Mail Services LLC, April 5, 2021; Comment of United Mailing Services, Inc., April 5, 2021; Comment of Express Business Systems, Inc., April 5, 2021; Comment of Yaron Pacht, QuestMark Information Management, Inc, April 6, 2021; Comment of Beth Ledeker, QuestMark Information Management, Inc, April 6, 2021; Comment of ABS Direct Inc, April 6, 2021; Comment of Midwest Direct, April 6, 2021; Comment of Online Data, April 6, 2021; Comment of JLS Mailing Services, April 6, 2021; Comment of TGI Direct Inc, April 6, 2021; Comment of National Presort, LP, April 6, 2021; Comment of Casey Hendrick, United Mail, April 6, 2021; Comment of AWRC, April 6, 2021; Comment of Inland Presort & Mail Services, April 6, 2021; Comment of Cardinal Presort Service Ltd, April 6, 2021; Comment of ALG Worldwide Logistics, April 7, 2021 (ALG Worldwide Logistics Comment); Comment of TC Delivers, April 7, 2021; Comment of Lineage Mailing Services, April 8, 2021; Comment Received from KC Presort, April 12, 2021; Comment Received from Twin Port Mailing, April 12, 2021.

⁹ *See, e.g.,* ALG Worldwide Logistics Comment at 1; UMS Print Solutions Comment at 1-2.

In addition, the Public Representative, Pitney Bowes Inc. (Pitney Bowes), the American Bankers Association (ABA), the National Postal Policy Council (NPPC) *et al.*, and the Association for Postal Commerce (PostCom) filed more detailed comments recommending the Commission deny the Application for Waiver.¹⁰

The commenters' main contention is that the Postal Service's Application for Waiver is unsupported and does not comply with the requirements set forth in 39 C.F.R. § 3030.286.¹¹ First, the commenters contend that the Postal Service's filing "comes nowhere near the preponderance of evidence standard required to obtain a favorable ruling by the Commission" pursuant to 39 C.F.R. § 3030.286(b).¹² Both ABA and Pitney Bowes describe the Postal Service's claims as "speculative" and maintain that the Application for Waiver does not satisfy the preponderance of the evidence standard.¹³

Second, commenters maintain that the Postal Service did not identify an operational strategy, provide any quantitative or qualitative data in support of its Application for Waiver, or provide any explanation addressing how improving the workshare discount at issue would impede the efficient operation of the Postal Service pursuant to 39 C.F.R. § 3030.286(c)(5).¹⁴ Pitney Bowes notes that the Commission's rules "require[] a detailed description of the operational strategy at issue and real analysis supporting a claim that improving a below cost workshare discount will impede

¹⁰ See Public Representative Comments, April 6, 2021 (PR Comments); Response of Pitney Bowes Inc. in Opposition to the Application for Waiver, April 6, 2021 (Pitney Bowes Comments); American Bankers Association Opposition to the Application for Waiver, April 6, 2021 (ABA Comments); Joint Opposition of the National Postal Policy Council, the Major Mailers Association, the National Association of Presort Mailers, and the Association for Mail Electronic Enhancement, April 6, 2021 (NPPC *et al.* Comments); Comments of the Association for Postal Commerce, April 6, 2021 (PostCom Comments).

¹¹ PR Comments at 2; Pitney Bowes Comments at 4-7; ABA Comments at 2; NPPC *et al.* Comments at 2-3; PostCom Comments at 1.

¹² PR Comments at 2; *see also* ABA Comments at 3; NPPC *et al.* Comments at 3-4; PostCom Comments at 3; Pitney Bowes Comments at 2, 5, 7, 8.

¹³ ABA Comments at 3; Pitney Bowes Comments at 5.

¹⁴ Pitney Bowes Comments at 1; ABA Comments at 2-3; NPPC *et al.* Comments at 3; PostCom Comments at 1-3; PR Comments at 2-3.

the efficient operation of the Postal Service.” Pitney Bowes Comments at 5. Pitney Bowes maintains that the Postal Service has not met these requirements. *Id.* PostCom and Pitney Bowes also take issue with the Postal Service’s claim that a 17 percent increase in the discount is “dramatic,” asserting that such an outcome is clearly contemplated by the Commission’s rules.¹⁵

As it relates to the Postal Service’s assertion that the workshare discount increase “could lead to unpredictable changes among the relative proportions of mail volumes...,” the Public Representative maintains that the Postal Service “provided no evidence to substantiate this claim.” PR Comments at 3; see Supporting Statement at 2. She further notes that the Postal Service failed to explain why it would be unable to respond to the unpredictable changes it describes, or how that inability would result in operational inefficiencies. PR Comments at 3. The Public Representative states that she “cannot properly evaluate the Postal Service’s assertions without quantitative evidence demonstrating the likely harm” to the Postal Service. *Id.* NPPC *et al.* and PostCom similarly assert that the Postal Service lacks support for this assertion. NPPC *et al.* Comments at 4; PostCom Comments at 2.

Commenters also present additional concerns related to the Postal Service’s Application for Waiver. Some commenters note the precedential nature of the Postal Service’s first waiver request. ABA states that approval of the Postal Service’s Application for Waiver would undermine the Commission’s rules and recommends the Commission “use this case to reaffirm that the waiver requests should be limited to exceptional circumstances” that will be “narrowly construed and subject to strict adherence to the requirements” of 39 C.F.R. § 3030.286. ABA Comments at 4. Similarly, the Public Representative contends that the “Commission’s revised workshare rules can only address the need to set discounts more efficiently and consistent with ECP if [those rules] are reasonably enforced.” PR Comments at 3. PostCom notes the

¹⁵ PostCom Comments at 2; Pitney Bowes Comments at 3, 5. See Supporting Statement at 2.

Commission's new rules make progress in addressing the historically disparate focus on excessive workshare discounts compared to low workshare discounts. PostCom Comments at 2-3. It states that "[t]he Commission should take this opportunity to demonstrate that it is committed to a new path" of ensuring efficient pricing related to low workshare discounts. *Id.* at 3.

As it relates to the First-Class Mail Letters 5-Digit Automation workshare discount historically, Pitney Bowes notes that the required increase to the workshare discount is of the Postal Service's "own doing," and "reflect[s] a failure to address the chronic inefficiency of the [First-Class Mail Letters] 5-Digit [Automation] [workshare] discount." Pitney Bowes Comments at 3. It further notes that such a failure led to the Commission's previous findings that, under the PAEA, the Postal Service had the necessary pricing authority to improve pricing efficiency and did not do so.¹⁶ Similarly, NPPC *et al.* note that an increase related to the First-Class Mail Letters 5-Digit Automation workshare discount is only necessary because "the Postal Service has consistently failed to price that discount efficiently in recent years." NPPC *et al.* Comments at 4.

Additionally, Pitney Bowes and NPPC *et al.* mention a separate docket currently pending before the Commission. Pitney Bowes suggests that, in light of the Postal Service filing in Docket No. RM2021-4, "it is reasonable to conclude that there is no operational strategy at issue, but rather that the Postal Service is trying to keep the [First-Class Mail Letters] 5-Digit [Automation] [workshare] discount at 3 cents until, the Postal Service hopes, the Commission approves its parallel petition to change the First-Class Mail cost avoidance model."¹⁷ Pitney Bowes notes that the Postal Service's Application for Waiver "is silent with respect to the parallel petition for good reason."

¹⁶ *Id.*; see Docket No. RM2017-3, Order on the Findings and Determination of the 39 U.S.C. § 3622 Review, December 1, 2017, at 139, 216-219 (Order No. 4257).

¹⁷ Pitney Bowes Comments at 7-8; see Docket No. RM2021-4, Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Two), March 24, 2021.

Pitney Bowes Comments at 7. Pitney Bowes explains that as part of Order No. 5763, the Commission rejected the Postal Service's suggestion that the pendency of cost avoidance methodology dockets should be grounds for a waiver.¹⁸ NPPC *et al.* conclude that "the Postal Service's waiver request in effect asks for *precisely* the relief that the Commission rejected in Order No. 5763." NPPC *et al.* Comments at 5 (emphasis in original).

Finally, as it relates to a potential future filing, PostCom states that, should the Postal Service choose to resubmit its Application for Waiver, the Commission should calculate the 60-day period specified in 39 C.F.R. § 3030.286(a) from the date of resubmission. PostCom Comments at 3.

V. COMMISSION ANALYSIS

Commission rules require that a Postal Service application for waiver must be supported by a preponderance of the evidence and demonstrate that a waiver from the limitations imposed by § 3030.284 should be granted. 39 C.F.R. § 3030.286(b). "Preponderance of the evidence means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not." *Id.* With an application for waiver, the Postal Service must include "a specific and detailed statement" that contains, among other things, "[t]he reason(s) why a waiver is alleged to be necessary (with justification thereof), including all relevant supporting analysis and all assumptions relied upon." 39 C.F.R. § 3030.286(c)(1). In order for the Postal Service to claim that setting a low workshare discount closer to or equal to avoided costs would impede efficient operation of the Postal Service, it must provide the following: (1) a description of the operational strategy at issue; (2) quantitative analysis (or if not available, qualitative analysis) indicating how the workshare discount at issue relates to that operational strategy; and (3) an explanation of how setting the workshare

¹⁸ *Id.*; see Order No. 5763 at 209-210, 222-223.

discount in compliance with 39 C.F.R. § 3030.284 would impede that operational strategy. 39 C.F.R. § 3030.286(c)(5). The Postal Service has failed to satisfy these requirements of 39 C.F.R. § 3030.286.

As described above, the Postal Service provided high-level generalizations that do not rise to the level of “specific and detailed” as to “why [it is alleging] a waiver is . . . necessary.” 39 C.F.R. § 3030.286(c)(1). In addition, the Postal Service did not include any “relevant supporting analysis” or “assumptions relied upon” in its filing. *Id.* Without a specific and detailed explanation with supporting analysis and discussion of assumptions, the Application for Waiver is deficient under 39 C.F.R. § 3030.286(c)(1).

The Postal Service also failed to clearly describe the operational strategy at issue. 39 C.F.R. § 3030.286(c)(5)(i). The Postal Service references generally “processing operations” in stating that an increase to the First-Class Mail Letters 5-Digit Automation workshare discount “could” decrease that operation’s efficiency. See Supporting Statement at 1. However, the Postal Service’s description lacks specificity beyond that, making it impossible to fully understand the particular operational strategy that the Postal Service has identified at issue.

Furthermore, the Postal Service failed to provide any quantitative or qualitative analysis indicating how increasing the workshare discount affects the operational strategy at issue. 39 C.F.R. § 3030.286(c)(5)(ii). With only generalized descriptions of potential outcomes and without any additional data and analysis, the Commission cannot determine that the requirements of 39 C.F.R. § 3030.284 should be waived as it is unable to find that the Postal Service’s Application for Waiver has met its burden to show such relief is necessary by a preponderance of the evidence.

Finally, the Postal Service does not fully explain how increasing the First-Class Mail Letters 5-Digit Automation workshare discount in compliance with 39 C.F.R. § 3030.284 would impede the operational strategy it identifies. 39 C.F.R. § 3030.286(c)(5)(iii). Indeed, the Postal Service only describes the magnitude of the

increase, subjectively, as “dramatic” and “significant.”¹⁹ It appears that the only explanation for how such an increase would impede “processing operations” is that such an increase “could lead to unpredictable changes among the relative proportions of mail volumes sorted to 5-Digit, Auto AADC, and Mixed AADC.” Supporting Statement at 2. The Postal Service’s statement is speculative and without support. Without a more thorough and supported explanation, the Commission cannot determine that the requirements of 39 C.F.R. § 3030.284 should be waived as it is unable to find that the Postal Service’s Application for Waiver has met its burden to show such relief is necessary by a preponderance of the evidence.

Furthermore, as noted by the commenters, the Commission intended for the waiver application process to be used only in “exceptional circumstances.” See Order No. 5763 at 213. However, the “exceptional” circumstances described by the Postal Service are that the increase to the First-Class Mail Letters 5-Digit Automation workshare discount *could* decrease the efficiency of its processing operations or that it *could* lead to unpredictable changes among the relative proportions of mail volumes. See Supporting Statement at 1, 2 (emphasis added). The Commission finds that the potential outcome of either circumstance, without supporting evidence, does not rise to the level of an exceptional circumstance that the Commission contemplated when promulgating rules related to the waiver process.

¹⁹ Supporting Statement at 2. The Commission concurs with the commenters that an approximately 17 percent increase in the workshare discount is within the scope of increases envisioned by 39 C.F.R. § 3030.284. See PostCom Comments at 2; Pitney Bowes Comments at 3, 5; see *also* Docket No. RM2017-3, Revised Notice of Proposed Rulemaking, at 200 n.282 (Order No. 5337) (“The Commission considered permitting “rate shock” as a basis for a waiver application related to a low workshare discount but determined that allowing for passthroughs as low as 85 percent and limiting any required adjustment of a low workshare discount to a maximum of 20 percent provides adequate protection against rate shock”).

The Commission finds that many of the points made by commenters in this proceeding are persuasive.²⁰ Low workshare discounts like First-Class Mail Letters 5-Digit Automation represent a form of inefficient pricing and improvement of these discounts requires strict adherence to the requirements of 39 C.F.R. §§ 3030.284 and 3030.286. Furthermore, in Order No. 5763, the Commission was clear that the waiver application process was intended to apply in limited exceptional circumstances and required sufficient supporting information. See Order No. 5763 at 213-214. With the Postal Service's failure to comply with the informational requirements of 39 C.F.R. § 3030.286(c)(1) and 3030.286(c)(5), the Postal Service's Application for Waiver is plainly not supported by a preponderance of the evidence. Thus, the Postal Service has failed to demonstrate that a waiver from the limitations of 39 C.F.R. § 3030.284 should be granted as it relates to the First-Class Mail Letters 5-Digit Automation workshare discount in the upcoming market-dominant rate adjustment.

For these reasons, the Commission denies the Postal Service's Application for Waiver. Should the Postal Service seek to resubmit its Application for Waiver, it must do so at least 60-days prior to the rate adjustment filing in which it intends for the waiver to be applicable.

It is ordered:

The Postal Service's Application for Waiver Under 39 C.F.R. § 3030.286 filed March 26, 2021, is denied.

By the Commission.

Erica A. Barker
Secretary

²⁰ With regard to Docket No. RM2021-4, the Commission acknowledges that this docket proposes changes that would affect the First-Class Mail Letters 5-Digit Automation workshare discount. As Pitney Bowes and NPPC *et al.* discuss in their comments, the Commission previously found that the pendency of a cost avoidance methodology docket, that if approved would affect a workshare discount, is not an adequate ground for requesting waiver of 39 C.F.R. §§ 3030.283 and 3030.284. Order No. 5763 at 222-223. See Pitney Bowes Comments at 7-8; NPPC *et al.* Comments at 5.