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**BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001**

**POSTAL RATE AND FEE CHANGES**

**Docket No. R2001-1**

**Reply Brief Of  
Major Mailers Association  
In Support Of Stipulation And Agreement**

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Dated: Round Hill, Virginia  
March 8, 2002

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Major Mailers Association (“MMA”) hereby submits its reply brief in support of the First-Class workshare rates contained in the January 17, 2002 Revised Stipulation and Agreement<sup>1</sup> (“S&A”).

MMA has received initial briefs filed on behalf of many parties. All but one of these parties support the S&A and urge that it be recommended to the Governors. Indeed, the American Postal Workers Union, AFL-CIO (“APWU”) is the only party that opposes the S&A. Accordingly, with one exception,<sup>2</sup> this brief will be limited to addressing APWU’s arguments against approval of the workshare discounts contained in the S&A.

MMA anticipated and responded to most of APWU’s arguments and unsubstantiated claims in its initial brief. Accordingly, in the interests of judicial economy, we will refer the Commission to the appropriate portions of MMA’s Initial Brief (“IB”).

**I. There Is No Merit In APWU’s Denial Of Due Process Arguments**

APWU (IB at 22-37) spends a significant portion of its brief rehashing arguments made in its January 24, 2002 untimely response to POR 30<sup>3</sup> and its February 25, 2002 motions to strike the surrebuttal testimony of MMA witnesses John D. Crider and Richard E. Bentley and others. The Presiding Officer and Commission have already

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<sup>1</sup> See Motion of the United States Postal Service Submitting Second Revised Stipulation and Agreement, dated January 17, 2002.

<sup>2</sup> The Postal Service supports the S&A but makes certain arguments that are either inconsistent with the terms of the S&A itself or the record in this proceeding. Those arguments are addressed in Section IV below.

<sup>3</sup> Presiding Officers Ruling Adjusting The Hearing Schedule And Other Procedural Dates, issued January 8, 2002.

ruled against APWU.<sup>4</sup> Nevertheless, a brief response to some of APWU's new denial of due process arguments is in order.

APWU argues (IB at 28-29) that it had only six days to review and absorb complex surrebuttal testimony and that it was afforded only one day in which to test the surrebuttal through oral cross-examination, allegedly an inferior "tool." Such arguments are not persuasive. If APWU had difficulty preparing and filing its own case and in understanding the testimony rebutting it, it was the fault of APWU, not the Commission, not MMA, and not any other proponent of the S&A.

APWU is challenging not just the very minor increases in the 3-digit and 5-digit discounts contained in the S&A. APWU is also challenging the increases in workshare discounts that the Postal Service proposed in its September 24, 2001 filing in this case.

See APWU IB at 14. Moreover, based on the level of the workshare rates that APWU has proposed, APWU is challenging the currently effective discounts and, by extension, those set by the Commission in prior cases as well. MMA IB at 6, Table 1.

In view of the fact that APWU apparently was planning such a broad attack on the proposed, current, and perhaps even prior workshare discounts, it was incumbent upon APWU to **begin** preparation of its case before the middle of January 2002.<sup>5</sup> Yet the record shows that APWU did not even **approach** APWU witness Riley until January 14, 2002 (MMA IB at 7) and that, prior to cross-examining USPS witnesses Miller and Robinson on January 9, 2002, APWU did virtually **nothing**. For example, a search of the Commission's web site shows that APWU did not submit one single

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<sup>4</sup> See POR 43, issued January 31, 2002; Order No. 1337, issued February 27, 2002.

<sup>5</sup> MMA has and the Commission might well ask why APWU did not float its quixotic challenge to First-Class workshare rates in earlier Commission proceedings. For example, in the last case, Docket No. R2000-1, the Postal Service pursued essentially the identical strategy that witnesses Miller and Robinson adopted in this case: low ball the estimated cost savings and then propose workshare discounts that are higher than the savings. As the Commission observed,

Current estimates of avoided costs are based on the Commission's conclusion that labor costs in most mail processing operations are 100 percent variable with volume. Because the variabilities estimated by the Postal Service are dramatically lower, using them to estimate the costs avoided by worksharing would dramatically shrink the estimated costs avoided. This would require an equally dramatic reduction of the discounts offered for worksharing if they were to accurately reflect the underlying cost savings. The alternative would be to award discounts that deviate dramatically from the underlying costs saved. ***The Postal Service addresses this problem by proposing the latter approach.***

See *Postal Rate And Fee Changes*, Docket No. R2000-1, Opinion And Recommended Decision, issued November 13, 2000 ("Op. R2000-1"), Volume II, Appendix F, p. 37 (emphasis added).

interrogatory to USPS witnesses or to the institution. APWU's inaction may be contrasted with the diligent manner in which other participants pursued their discovery rights. Before becoming a signatory to the S&A, MMA filed over **160 interrogatories, most of them multipart questions**. MMA also cross-examined USPS witnesses Tolley and Schenk (at length) and filed designations of written cross-examination for several witnesses and the institution.<sup>6</sup> These facts are significant because, among other things, MMA's questions and the USPS responses give a pretty good indication of the issues MMA felt were important. Moreover, judging from APWU's untimely intervention in this case, it appears that the Union had secured the services of Joel Popkin & Co., a consulting firm.<sup>7</sup> Accordingly, there is no legitimate reason why APWU was not prepared to understand and cross-examine witnesses for the proponents of the S&A. Having sat on its hands until the middle of January, APWU cannot claim that procedural unfairness is responsible for its failure to understand the surrebuttal presentations of MMA and other proponents of the S&A.

There is no greater merit in APWU's related claim that it was only afforded one day to cross-examine the surrebuttal witnesses. Counsel for APWU was afforded an adequate opportunity to ask questions and receive answers.<sup>8</sup> The Commission and parties who litigate proceedings before it are accustomed to working as late as necessary to complete their work.

Had APWU been doing its homework since the case began, understanding the testimony of surrebuttal witnesses would have been far easier. When asked, Mr. Bentley told Ms. Catler that he had been studying the Postal Service's costing methodology since the case began in late September. Tr 13/5235. Of course, Mr.

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<sup>6</sup> See e.g. Major Mailers Association's Designations Of Written Cross-Examination For USPS Witness George S. Tolley, dated December 10, 2001; Major Mailers Association's Designations Of Written Cross-Examination For USPS Witness Karen Meehan And Request To File One Day Late, dated December 13, 2001; Major Mailers Association's Designations Of Written Cross-Examination For USPS Witness Leslie M. Schenk, dated December 13, 2001

<sup>7</sup> See Notice Of Intervention Of American Postal Workers Union, AFL-CIO, dated October 26, 2001.

<sup>8</sup> Presiding Officer Omas repeatedly assured counsel for APWU that she could take the time necessary to complete cross-examination. Tr 13/5023, 5382. Similarly, counsel for KeySpan Corporation stated, "[w]e're certainly willing to wait around until Ms. Catler studies it a little more here and formulates the questions . . . because, you know, we want her to have an adequate opportunity to ask questions and receive answers." Tr 13/5382. In fact, as Chairman Omas correctly observed, APWU counsel did a "yeoman's job." Tr 13/5390.

Bentley's understanding of what Mr. Miller did was aided by the fact that Mr. Miller presented a similar methodology in Docket No. R2000-1. *Id.*

The real question is where was APWU during all the months when Mr. Bentley was diligently trying to understand and replicate Mr. Miller's derivation of workshare cost savings? APWU's cannot shift the blame for its own failure to do the necessary homework to other participants.

## II. APWU's Studious Disregard Of Other Workshare Cost Savings

Like its witness, Mr. Riley, APWU takes a head-in-the-sand approach to cost savings estimates other than USPS witness Miller's cost savings. MMA (IB at 6-10) discussed at length the problems associated with Mr. Riley's failure to even acknowledge the existence of other cost savings estimates, including the savings resulting from the **exact** same method the Commission used in the last case. In that designated written cross-examination, the USPS confirms that "the cost avoidance calculations shown in Column 1 of the Table exceed the discounts in the proposed Settlement, as shown in Column 2 of the Table."

**Table 1**  
**Comparison of Workshare Cost Savings**  
**Using the Docket No. R00-1 Methodology**  
**With USPS Proposed Workshare Discounts**

Rate Category	Workshare Cost Savings Docket No. R00-1 Methodology	USPS Proposed Discounts
Mixed AADC	7.994	6.1
AADC	9.076	6.9
3-Digit	9.439	7.8
5-Digit	10.711	9.2

Tr 10A/2862.<sup>9</sup> This evidence was introduced well before Mr. Riley testified and much earlier than February 20 when MMA's surrebuttal testimony was filed. Accordingly,

<sup>9</sup> Counsel for the National Association of Presort Mailers ("NAPM") addressed essentially the same issue, **in the presence of counsel for APWU**, on January 9, 2002 during cross-examination of USPS

there is no legitimate reason for APWU to pretend that it doesn't exist, although Mr. Bentley did identify a practical reason why APWU might do so:

[T]he discounts proposed in the S&A meet or exceed the 80% - 100% standard [APWU witness Riley] advocates if the Commission measures the discounts proposed in the S&A against . . . its own methodology. . . . In other words, based on the derived cost savings that I present in my testimony, APWU witness Riley's complaints regarding the relationship between the proposed discounts and cost savings no longer apply and his testimony is essentially moot.<sup>10</sup>

APWU's failure to even recognize, much less respect the substantive validity of, the Commission's method of measuring workshare cost savings is all the more strange in light of the obvious importance APWU attaches (IB at 2-3, 7-8, 15-16) to the Commission's explication of its policy regarding setting workshare discounts in Mail Classification Schedule, 1995, Classification Reform I, Docket No. MC95-1, Opinion And Recommended Decision, issued January 26, 1996 ("Op. MC95-1").<sup>11</sup>

MMA does not disagree with the general proposition that, in the long run, there should be a limit on the size of discounts relative to cost savings. However, as the Commission recognized in Docket No. R2000-1 when rejecting Mr. Miller's unduly narrow measure of cost savings:

Passing through [the USPS'] dramatically reduced cost savings is likely to decimate the Postal Service's current worksharing programs. If the low variabilities that the Postal Service estimates for mail processing labor are valid, passing through more than the cost savings would be counterproductive, since it would encourage a mailer to provide the unbundled service even when it was the less efficient provider. Since economic efficiency is the fundamental purpose of offering worksharing discounts, the Commission is not inclined to recommend, over the long-

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witness Robinson. Tr 7/1621-26. The workshare cost savings he used were almost identical to those in Table 1. See MMA IB at 6-7.

<sup>10</sup> Tr 13/5164.

<sup>11</sup> APWU has misapplied the Commission's general statements to imply explicit approval for Mr. Riley's 80%-100% range. See APWU IB at 9 citing Op MC95-1 at Paragraph 3079. The Commission never said any such thing. In a classic example of econo babble, APWU boldly asserts (IB at 8, footnote 18) that passing through less than 100% of cost savings in workshare discounts will benefit "**all mailers**" by reducing the institutional cost pool that has to be recovered. Such a claim is absurd on its face. Nor is APWU's argument helped by the related claim that "the **lower** workshare rate attracts new, additional mail . . ." *Id* (emphasis added). Having just posited a lower discount and therefore a **higher** workshare rate, APWU's reference in the next breath to the **lower** workshare rate makes no sense whatsoever.

term, passthroughs that are substantially higher than the cost savings that they are supposed to reflect.<sup>12</sup>

In other words, APWU has addressed only one-half of the equation. The other half, which it studiously avoids, is that a passthrough has to be determined in relation to accurately measured cost savings.

The question of accurately measure cost savings is one that the APWU would rather ignore. APWU's claim (IB at 18) that "[b]ecause the Postal Service is experiencing a decline in the cost of the sorting and barcoding, the worksharing discounts *should be* declining." (emphasis added) is not supported by substantial record evidence. In fact, just the opposite it true. Workshare cost savings are not declining or even staying the same. ***In just the last year workshare cost savings have increased significantly.*** Table 2 compares the test year 2001 and 2003 derived workshare cost savings using the Commission's methodology based on fiscal years 1999 and 2000, respectively.<sup>13</sup> In the two years following FY 2001, the cost savings are expected to increase from 29% to 41%.

**Table 2**  
**Comparison of First-Class Derived Workshare Unit Cost Savings Using the Commission's Current Methodology in Docket Nos. R2000-1 and R2001-1 (Cents)**

First-Class Workshare Rate Category	Docket No. R2000-1 (BY 1999, TY 2001)	Docket No. R2001-1 (BY 2000, TY 2003)	% Increase
Basic/Mixed AADC, AADC	6.2	8.6	38%
3-Digit	7.3	9.4	29%
5-Digit	7.6	10.7	41%
Carrier Route	9.1	12.7	40%

Note: 8.6 cents is the weighted average for Mixed AADC and AADC

ABA&NAPM witness Clifton also studied past data since 1992 and came to a similar

<sup>12</sup> *Op. R2000-1*, Volume II, Appendix F, p. 37

<sup>13</sup> PRC *Op.*, R2000-2 at 243, Tr 10A/2862; MMR-LR-J-3, p. 1



conclusion. As he stated:

For the longer term, the trend line exercises in Figure 1, Figure 2, and Figure 3, make clear that, in witness Riley's own terms, "CRA actual costs" indicate **increasing** cost avoidance for the discounted mail. These trends are consistent with the increase in discounts proposed by the Commission in recent cases, recommended by the Postal Service in this case, and negotiated between the parties in the settlement of R2001-1.<sup>14</sup>

APWU cannot make unsupported assertions simply because they bolster its case. The evidence is quite clear. The Postal Service's notorious Docket No. R90-1 warning -- "that the value of mailer presortation to the Postal Service is anticipated to decline"<sup>15</sup>-- has never materialized. Workshare cost savings have increased over the past decade and will continue to increase, most likely because workshare volumes continue to grow at a much faster pace than the Postal Service's capacity to process single piece volumes.<sup>16</sup>

### **III. APWU's Scare Tactics Fail**

APWU (IB at 9-13) tries to bolster Mr. Riley's general statements about the "dire financial straits" facing the Postal Service by reference to the Service's Annual Report 2001 and claims that implementation of the S&A rates will starve the Service's capital investment program. Such arguments are not persuasive.

At the outset, MMA wonders why Mr. Riley the former Chief Financial Officer of the Postal Service did not make the arguments directly. The Annual Report was released in January 2002, before Mr. Riley submitted his testimony and well before February 14 when he took the stand.

While the subject matter is certainly important, the Commission should resist APWU's offer to substitute the Union counsel's or the Commission's judgment for that of the Postal Service. The Commission can and should assume that the Postal Service took all of these considerations into account when it agreed to the S&A that will assure

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<sup>14</sup> Emphasis added. Tr 13/5279.

<sup>15</sup> *Postal Rate And Fee Changes, 1990*, Opinion and Recommended Decision, issued January 4, 1991, at V-27.

<sup>16</sup> The Postal Service's capacity to process First-Class single piece volumes has remained about the same for 30 years. Tr 13/5168.

it will receive an additional **\$1.2 billion** in revenues. Moreover, setting capital budgets, deciding upon priorities for capital projects, dealing with debt levels and limits, and determining the size and timing of future rate increase proposals are all operational considerations that lie within the purview of Postal Service Management and the Board of Governors.

For these reasons, APWU's arguments that seek to manufacture additional fears about the financial health of the Service should be rejected.

#### **IV. Erroneous Arguments Can Not Mask The USPS' Support For The S&A**

Section V of the USPS brief is devoted to a defense of the First-Class workshare discounts contained in the S&A. However, certain portions of the USPS arguments are either counter to the terms of the S&A or not in accord with the record evidence.<sup>17</sup> Such issues should not detract from the USPS' support for the S&A.

First, at V-14, the USPS urges the Commission to put issues regarding use of the Bulk Metered Mail ("BMM") benchmark to rest. That certainly is not what workshare mailers agreed to and not what the S&A requires or permits.

The benchmark issue has been extremely controversial in recent proceedings. MMA and other workshare mailers have not raised the benchmark issue in this case because doing so is not necessary or appropriate to **defend** the workshare discounts in the S&A. But that does not mean that they have agreed not to raise this important issue in the next case. As Mr. Bentley observed:

One of the most important issues regarding the derivation of workshare cost savings is the benchmark from which the savings are measured. In the last case I argued that the Commission's use of bulk metered mail (BMM) as the benchmark was inappropriate and unfair. The isolated examples USPS witness Miller provided in this case to demonstrate that BMM does, in fact, exist, do not change my opinion. Mr. Miller's testimony proves just how anomalous BMM really is, and how little is known about it.

I am even more convinced that BMM is an inappropriate benchmark to

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<sup>17</sup> USPS (IB at V-13-14) claims that the Commission's ruling in Docket No. R2000-1, that window service cost savings cannot be counted as workshare cost savings, provides additional support for witness Miller's elimination of two cost pools the Commission included in the last case. USPS is wrong. The Commission never said the **other** costs that are partially allocated on the basis of window service costs cannot be included in the workshare cost savings analysis. Therefore, there is no basis for the USPS position. Nor does that position make any sense. What the USPS argues, in effect, is that the Commission was right in one part of Op. R2000-1 and wrong in another part. The USPS cannot have it both ways.

establish rates for 50 billion pieces. ***If MMA were presenting its case-in-chief, this is one of the issues I would address. However, because of the extraordinary circumstances of this case, it is not necessary to address this and other issues in surrebuttal testimony.***

Tr 13/5160, footnote 4 (emphasis added). Moreover, the S&A does not purport to foreclose workshare mailers from raising the benchmark issue in future cases. Indeed, Section II, Paragraph 3 of the S&A provides, in pertinent part, “[f]or purposes of ***this proceeding only***, the undersigned parties agree that, ***taken in their entirety***, the Request, testimony, and materials filed on behalf of the Postal Service in this docket provide substantial evidence for establishing rates and fees, as agreed to herein and set forth in Attachment B to the Postal Service’s Request. . . . Emphasis added. See *also* Section II, Paragraphs 9 and 10. Accordingly, the parties are free to take issue with use of the BMM benchmark in subsequent cases.

The Postal Service also somehow concludes (IB at V-15) that “If a presort bureau stopped participating in the worksharing program, the customers that had submitted their mailings to that bureau as BMM letters would likely submit their mailings to the Postal Service as BMM letters.” Yet, Mr. Gillotte testified that his company drops off trays, explains to his customers how their mail is to be prepared, and then picks up the trays full of letters. Tr 13/5047, 5060 He stated his expert opinion quite aptly:

This begs the question, " Why would BMM be presented to the Postal Service by mailers (as opposed to by other Postal Service locations) in trays? Mailers paying the full single piece first class rates are not required to enter mail in trays. Full paid FCLM can be entered in any form. However, this unproven assumption presents another unrecognized saving realized by the USPS as a result of workshared mail. If BMM mail were entered in trays, how would BMM mailers have gotten the trays? The answer is simple, the USPS would have to give them the trays. But how would it do that? To make a fair comparison between workshared FCLM and BMM, the Postal Service would have to include the cost of providing trays as well as other MTE such as APCs to BMM mailers.<sup>18</sup>

Accordingly, there is absolutely no factual basis for the Postal Service to assume that such letters would be neatly faced, packed into trays and brought to the post office by mailers; USPS counsel’s conclusion that such mail will become BMM is pure

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<sup>18</sup> Tr 13/5033.

speculation.. Under these circumstances, it would be inappropriate for the Commission to put this issue “to rest.”

The USPS (IB at V-38-40) urges the Commission not to rely upon the surrebuttal presentations of MMA and other workshare mailers. More specifically, citing Section II, Paragraph 3, quoted above, the USPS (IB at 40-41) urges the Commission to disregard the cost savings estimates derived by MMA witness Bentley and NAPM witness Clifton because they “conflicted with those of Postal Service witness Miller.”

MMA recognizes that, as a general matter, the USPS has full confidence that the Commission can approve the S&A workshare rates based on the cost savings estimates produced by USPS witness Miller alone and a preference that the Commission do so. MMA is not so confident and cannot afford to trust the USPS’s judgment on this crucial matter. We believe that it is far more logical for all parties to recognize, as MMA does, that the Commission has its own policies regarding the relationship between demonstrated cost savings and discounts and its own method of determining cost savings.

Well before surrebuttal testimony was filed, the USPS had already acknowledged the accuracy of MMA’s calculation of workshare cost savings using the Commission’s method and confirmed that those savings exceeded, by a significant margin, the discounts proposed by the USPS. Tr 10A/2862. Accordingly, it is difficult to understand why the USPS would try to exclude surrebuttal evidence to the same effect.

Certainly nothing in the S&A supports the Postal Service’s position that this surrebuttal testimony should be disregarded. In Section II, paragraph 3, the signatory parties did agree that the Postal Service’s original presentation supported, among other things, the S&A workshare discounts and rates. They did **not** agree, however, that the USPS presentation was the **only** evidence supporting the S&A rates, and they certainly did **not** agree to rely exclusively on the Postal Service evidence.<sup>19</sup>

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<sup>19</sup> Had the parties agreed to rely exclusively on the USPS evidence, it would have been necessary to withdraw existing record evidence that already suggested, *inter alia*, other methods for calculating workshare cost savings and called into question, for example, USPS witness Scheck’s flawed delivery cost estimates. In other words, a different, additional stipulation would have been necessary.

In the last analysis, the Postal Service's real complaint is that the workshare cost savings derived by MMA witness Bentley and NAPM witness Clifton do a better job of supporting the S&A workshare rates than that of its own witness, Mr. Miller. As the party standing to gain **\$1.2 billion** if the S&A is approved, the USPS should welcome, not disparage, evidence that provides more support for approving the S&A.<sup>20</sup>

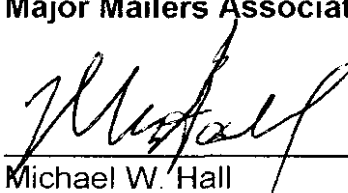
### **Conclusion**

For the foregoing reasons and those set forth in MMA's initial brief, the Commission should reject APWU's proposals to change the workshare rates incorporated in the S&A and approve the S&A as filed before March 25, 2002..

Respectfully submitted,

**Major Mailers Association**

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March 8, 2002

<sup>20</sup> Part of the USPS' problem with the surrebuttal testimony of MMA and others is attributable to the USPS's misunderstanding of the nature and intent of certain surrebuttal evidence. For example, the USPS (IB at 38-39) takes issue with MMA witness Crider because he supposedly is seeking to "expand the scope of mail preparation activity included in the scope of cost avoidance estimates." To be sure, MMA does believe that the definition of workshare cost savings is too narrow and that workshare mailers are forced and/or "persuaded" to do many things for which they deserve but do not receive tangible recognition in discounts. However, that is fodder for the next case. In this case, Mr. Crider's purely defensive testimony serves only as a counterweight to APWU witness Riley's spurious claim that Mr. Miller's cost avoidance estimate was too high. In that regard, the USPS should have observed that neither Mr. Crider nor Mr. Bentley tried to assign any specific unit cost savings to the activities discussed or include such efforts in the derivation of workshare cost savings in this case.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon all parties to this proceeding, in compliance with Rule 12 of the Commission's Rules of Practice.

Dated this 8th day of March 2002

A handwritten signature in black ink, appearing to read "Mr. Hall", written over a horizontal line.

Michael W. Hall

