

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

POSTAL RATE AND FEE CHANGES, )  
2006 )

Docket No. R2006-1

**REPLY BRIEF OF  
NATIONAL ASSOCIATION OF PRESORT MAILERS  
AND NATIONAL POSTAL POLICY COUNCIL  
ON RATES FOR PRESORT FIRST-CLASS MAIL**

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January 4, 2007

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The National Association of Presort Mailers (“NAPM”) and the National Postal Policy Council (“NPPC”) respectfully submit this brief on rates for Presort First-Class Mail. This brief responds to the arguments offered by American Postal Workers Union, AFL-CIO (“APWU”), the Greeting Card Association (“GCA”) and the Office of Consumer Advocate (“OCA”) against the delinking of presort and single-piece First-Class rates.

**I. THE COMMISSION SHOULD RECOMMEND THE PRESORT RATE DIFFERENTIALS PROPOSED BY THE POSTAL SERVICE FOR FIRST-CLASS MAIL.**

**A. The Efficient Component Pricing Rule (“ECPR”) Is The Proper Standard For Setting Presort Rate Differentials.**

In their initial brief, NAPM and NPPC showed that the appropriate economic benchmark for setting presort rate differentials is the Efficient Component Pricing Rule (“ECPR”). NAPM/NPCC Br. 4-7. APWU and GCA, while disputing the precise meaning of ECPR, do not dispute that it is the

governing economic standard. See GCA Br. 15-18. The OCA, however, suggests in its brief that compliance with ECP in setting presort discounts should be subordinated to the maintenance of subsidies to fund universal service. OCA Br. 104-105. OCA cites no authority for this novel proposition, and it is unsupported by Commission precedent and economically nonsensical.

The Commission has repeatedly held that ECPR-compliant prices maximize both efficiency and fairness. PRC Op. & Rec. Decis. MC95-1 (Jan. 26, 1996), ¶ 3074; PRC Op. & Rec. Decis. R2000-1, ¶ 5060; *accord*, Docket No. R2006-1, Notice of Inquiry No. 3 (“NOI #3”) (issued July 26, 2006) at 2. The ECPR benchmark is also supported by the consensus of the economic testimony before the Commission in this docket—including the testimony of OCA witness Thompson. See Thompson Direct (OCA-T-4) at 18 (acknowledging that worksharing discounts are, “to the extent practical, set equal to the costs avoided by worksharing”); *accord*, 20 Tr. 7378 (Thompson) (“Discounts should be based on the costs avoided by the activities of mailers that justified the creation of the discount.”). See *also* Panzar Dir. (PB-T-1) at 16-26; 35 Tr. 11724, 11739-41 (Crowder); Sidak Direct (NNA-T-1) at 6-11.

Moreover, none of this has any bearing on the funding of universal service. The Postal Service accomplishes the latter by charging rates for First-Class Mail and other mail classes that cover the attributable costs of each class and collectively cover the Postal Service’s total institutional costs. Changes to presort rate differentials *within* the First-Class rate structure have no effect on universal service funding so long as the Postal Service’s aggregate revenue requirement is satisfied. OCA has offered no reason to believe that the rates proposed by the Postal Service would fall short of this goal.

Equally unfounded is OCA's suggestion that the USPS rate proposal would "shift the entire burden of universal service to single-piece mailers." OCA Br. 107. The USPS proposal would require the average presort First-Class letter to pay approximately the same per-piece contribution to institutional costs as the average single-piece letter—and, because the attributable costs of the former are lower, would require it to pay to pay a *higher* percentage contribution. Presort First-Class mailers most definitely will not be "avoid[ing] their share of responsibility to support universal service." *Cf.* OCA Br. 107.

**B. The Relevant Presort Benchmark Under ECPR Is Single-Piece Mail With The Cost Characteristics Of Collection Mail, Not BMM.**

**1. The relevant presort benchmark under ECPR is single-piece mail at the margin of conversion.**

The initial briefs of APWU, GCA and OCA also offer no serious challenge to the evidence demonstrating that the relevant rate benchmark under ECPR is single-piece mail at the margin of conversion. NAPM/NPPC Br. 9-12. APWU baldly asserts that the relevant benchmark remains the mail that "is most like the average workshare piece," APWU Br. 19, but offers no evidence, or even a theory, to contradict Dr. Panzar's explanation of why the rate benchmark that complies most closely with ECPR, given the widely varying costs and significant rate averaging within single-piece First-Class Mail, is the *marginal* piece of single-piece mail. NAPM/NPPC Br. 9-12 (discussing record).

GCA asserts that ECPR-compliant rate differentials properly exclude the costs avoided by presort-related cost attributes such as better address quality because the improvement of address quality is a "mailer activity pure and simple" that does not substitute private sector costs for Postal Service costs. GCA Br.

15-18 (“the Postal Service does not formulate addresses or apply them to mail.”). But the record evidence, including the undisputed testimony of NAPM witness Bell, an experienced presort bureau operator, makes clear that (1) presort bureaus and their customers do substantial work to improve address quality in order to qualify for presort discounts; (2) this work has costs; and (3) this work, by providing the Postal Service with cleaner addresses, enables it to avoid costs. NAPM/NPPC Br. 13-15 (citing record). APWU witness Kobe did not seriously disagree. On cross-examination, she conceded that the submission of cleaner addresses by mailers “could impact cost, I suppose.” 20 Tr. 7196.

**2. The marginal piece of single-piece mail has the cost characteristics of collection mail, not BMM.**

The initial briefs of APWU, GCA and OCA also offer no serious challenge to the record evidence showing that single-piece mail at the margin of converting to presort is much costlier to process than BMM-like mail. None of these participants discuss the extensive evidence, including the eyewitness testimony of NAPM witness Bell and USPS witness Taufique, showing that the typical single-piece mail at the margin of converting to presort is much more heterogeneous and costly to process than BMM-like mail. *Compare* OCA Br. 101-102 (asserting, without any evidentiary support, that “office” mail and other high-cost single-piece mail is unlikely to convert to presort) with NAPM/NPPC Br. 12-21 (discussing record evidence to the contrary).

APWU recites the rebuttal testimony of USPS rebuttal witness Abdirahman that he believed he had seen “hundreds of trays of BMM” during a visit to the “Southern Maryland processing plant” in September 2006, APWU Br. 17. The record makes clear, however, that what Mr. Abdirahman saw on these occasions almost certainly was mail processed by presort bureaus, but

entered at undiscounted single-piece rates because the mail already carried full rated postage<sup>1</sup> or could not be entered at discounted rates for other reasons (e.g., its address could not be given a proper 11-digit delivery point POSTNET barcode). DMM 233.5.1. The Postal Service requires that presort bureaus perform extensive processing on all mail they enter—even mail that does not qualify for presort discounts. 38 Tr. 12949-50 (Bell). The uncompensated work that the Postal Service compels presort bureaus to perform on this “full-paid mail” includes facing, traying and separation of stamped envelopes from business reply envelopes (“BREs”), stamped mail and BRE from metered mail, Express and Priority Mail from First-Class Mail, flats from letters, and packages from other shapes. Bell Reb. (NAPM-RT-1) at 6-7 (38 Tr. 12949-50).<sup>2</sup> Although the result may look like BMM to the uninitiated, it is not. As Ms. Bell testified:

Q: In your professional opinion, have you seen mail inside the Postal Service that looks like bulk metered mail?

A. I’ve seen processed mail like [that] coming from presorts. I’ve never seen large volumes of anything other than going on the facer cancelers from the collection boxes.

Q. In your professional opinion, what is the most likely source of mail that looks like bulk metered mail inside the Postal Service?

A. I would say presort service bureaus.

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<sup>1</sup> Mail bearing indicia of payment at the full single-piece rate is ineligible for value-added refunds to the presort bureau entering it. DMM 902.9.4.12(c); *accord*, 38 Tr. 12994, lines 15-21 (Bell).

<sup>2</sup> Ms. Bell’s company alone enters about 8,000 pieces of such full-paid mail every day—an amount equivalent to 40 trays of mail, or a little more than five percent of the total mail volume entered by her company. Bell Reb. (NAPM-RT-1) at 6-7 (38 Tr. 12949-50).

38 Tr. 13001 (Bell). Needless to say, mail that has already received extensive processing from a presort bureau is not a valid benchmark of the cleanliness of single-piece mail before conversion to presort.<sup>3</sup>

APWU tries to discredit Ms. Bell's competence on the theory that her career as a Postal Service letter carrier ended many years ago. APWU Br. 18. Ms. Bell's personal knowledge of the mix of First-Class mail currently processed inside Postal Service mail processing facilities stems from her ongoing personal involvement in running a presort bureau. Ms. Bell's first-hand exposure to the processing of First-Class Mail inside Postal Service facilities continues to this day. 38 Tr. 12946, 13001 (Bell).

**3. The BMM benchmark does not achieve a uniform per-piece contribution to institutional costs.**

APWU argues at length in its initial brief that delinking is inappropriate because it would allow presort First-Class letters to pay a lower per-piece contribution than equally "clean" single-piece letters. APWU Br. 7-10, 12-15. As

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<sup>3</sup> It is also possible that some mail observed in Postal Service facilities as having the appearance of BMM may in fact be collection mail that was trayed and faced by Postal Service employees at an associated facility before transport to the observation point. See, e.g., R2000-1 Tr. 45/19699 (Miller) (some of the mail volume characterized as BMM "is trayed by the Postal Service itself rather than mailers"). Needless to say, mail that has already received processing by the Postal Service is also not a legitimate benchmark of the cost characteristics of single-piece mail before conversion to presort.

It is also possible that the trays of mail that Mr. Abdirahman assumed to be BMM mail in fact contained local automation mail entered by presort bureaus. USPS processing and distribution plant managers have the authority to waive the tray sleeving and strapping requirement for such mail, and often do so. See DMM 235.3.4 and 235.3.5. The absence of sleeves and straps on such trays may have confused Mr. Abdirahman into think that the mail in the trays was really single-piece mail.

explained in our initial brief, however, the alternative rate designs proposed by APWU and OCA do result in similar nonuniformity of contribution. No First-Class rate design will achieve uniformity of contributions across the class as long as the First-Class rate structure fails to recognize many significant drivers of cost. See NAPM/NPPC Br. 21-24 (discussing record). APWU witness Kobe herself acknowledged this. 20 Tr. 7076, 7079.

GCA's contention that the nonuniformity of contribution between presort First-Class Mail and "clean" single piece First-Class Mail is unfair and inequitable within the meaning of 39 U.S.C. § 3622(b)(1), GCA Br. 18-20, fails for the same reasons. No rate design for First-Class Mail—or any other mail class—can achieve uniformity of contribution within the class. If GCA's reading of Section 3622(b)(1) were correct, no rate design established by the Commission for any class of mail since the enactment of the Postal Reorganization Act in 1970 would pass legal muster.

Averaging is "an integral part of postal ratemaking." MC95-1 Op. & Rec. Decis. ¶ 3063. The "essence of a classification" is a "*grouping* of mail for which a certain rate is charged." *National Easter Seal Society v. USPS*, 656 F.2d 754, 762-63 (D.C. Cir. 1981) (emphasis added). A "separate rate for every group of mailers with special cost savings, no matter how small the group, would produce a hopelessly complicated rate schedule." *Id.* (quoted in *United Parcel Service, Inc. v. USPS*, 184 F.3d 827, 845 (D.C. Cir. 1999); accord, *Mail Order Ass'n of America v. USPS*, 2 F.3d 408, 426 (D.C. Cir. 1993).

Equally without merit is APWU's claim that delinking would produce unlawful non-uniformity of *rates* within the meaning of 39 U.S.C. § 3623(d). APWU Br. 8, 12-15. APWU misreads Section 3623(d). The uniformity required

by that provision is *geographic* uniformity: “rates for letters sealed against inspection” must “be available on the same terms *nationwide*.” PRC MC76-1 Op. (July 15, 1977) at 6 (emphasis added). Nothing in the Act forbids nonuniformity among First-Class rates with respect to *any other* physical or cost characteristic of the mail. As the Commission noted in MC76-1:

No one can seriously contend that Congress intended the uniformity clause of section 3623(d) to end all rate distinctions applicable for first-class mail or to prohibit new distinctions from being used when appropriate under section 3622. Our construction gives effect to the plain meaning of the language of section 3623(d) by maintaining the requirement that rates be uniform throughout the nation.

*Id.* at 7-8.<sup>4</sup>

The Commission has included discounts for worksharing and other cost drivers in the First-Class rate structure for more than two decades. In MC73-1, for example, these forms of rate deaveraging included “both a new first-class rate differential based on mailer preparation, and prospective surcharges for first-class mail with difficult to process shapes.” PRC Op. MC76-1, *supra*, at 7. These forms of rate deaveraging have proliferated since then, and have become an integral part of the First-Class rate structure. If APWU’s cramped reading of Section 3623(d) were correct, all of these forms of rate nonuniformity would have to be eliminated.

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<sup>4</sup> Even with respect to geographic uniformity, the Commission has held that the uniformity requirement of Section 3623(d) allows geographic rate deaveraging of First-Class Mail as long as the deaveraged rates (e.g., “local” rates) are “available on the same terms nationwide.” PRC MC76-1 Op., *supra*, at 7.

**4. Basing presort discounts on the marginal piece of mail does not give existing presort mail an inappropriate reward.**

APWU's claim that ECPR-based presort differentials would give an inappropriate reward or benefit to mail that mailers would presort at a lower discount, APWU Br. 11-12, is little more than a backdoor attack on the ECPR. Deepening discounts will induce a greater volume of presorted mail. That inframarginal presort mail will incidentally receive deeper discounts is a necessary and entirely appropriate consequence of ECPR-compliant prices in any market with an upward-sloping supply curve. NAPM/NPPC Br. 24.

**5. Delinking is not tantamount to the creation of a separate subclass.**

APWU and GCA's attempt to equate delinking with the creation of a separate subclass (APWU Br. 9-10; GCA Br. 20-23) is also baseless. The creation of separate subclasses would entail the prescription of separate coverage ratios or contributions to institutional cost for each grouping of mail, based on a separate analysis of the demand for each grouping. See R80-1 Op. & Rec. Decis. ¶ 692, *aff'd*, *Newsweek, Inc. v. USPS*, 663 F.2d 1186, 1210 (2<sup>nd</sup> Cir. 1981); R84-1 Op. & Rec. Decis. ¶¶ 5090-5106; R87-1 Op. & Rec. Decis. ¶ 5144; MC95-1 Op. & Rec. Decis. ¶¶ 2073, 3017-18, 3022-25, 5030-34. The Postal Service has not proposed this more far-reaching relief here. Absent these additional steps, the modified cost avoidance methodology embodied in the delinking proposal does not rise to the creation of a separate subclass. As the Commission held in R87-1:

*From the outset, we reject the Postal Service's implication that a choice of a cost methodology other than its cost avoidance methodology to design the First-Class Mail 5-digit presort discount is tantamount to a designation of the presort rate as a subclass or "de facto subclass." From our reading of the statutory criteria and*

history and of the presort discount, nothing suggests that a restrictive view such as that advanced by the Service is mandated or desirable. On the contrary, these sources and the record in this proceeding support the view that there should be flexibility in the design of any given discount rate and the development of the discount should not be bound by one exclusive cost methodology which must be used throughout the history of the discount.

R87-1 Op. & Rec. Decis. ¶ 5188 (emphasis added).

APWU and GCA's claim that the delinking rate proposal violates the Commission's pronouncements in MC95-1 (APWU Br. 9; GCA Br. 20-23) founders on the same ground. So long as the Commission recommends rates that generate approximately the same average contribution per piece from single-piece and presort mail, the concerns expressed by the Commission in MC95-1 do not arise.

## CONCLUSION

For the foregoing reasons, and those set forth in the initial brief of NAPM/NPPC on this issue, NAPM and NPPC respectfully request that the Commission recommend the Presort First-Class rate design proposed by the Postal Service.

Respectfully submitted,

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