

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

Annual Compliance Report, 2008

Docket No. ACR2008

**INITIAL COMMENTS OF
AMERICAN POSTAL WORKERS UNION, AFL-CIO
(January 30, 2009)**

On December 29, 2008, the United States Postal Service (USPS) filed its Annual Compliance Report (ACR) for Fiscal Year 2008 pursuant to Section 3652 of the Postal Accountability and Enhancement Act (PAEA). The Postal Regulatory Commission subsequently issued Order No. 161, Notice of Filing of Annual Compliance Report by the Postal Service and Solicitation of Public Comment (December 31, 2008). In accordance with Order No. 161, American Postal Workers Union, AFL-CIO (APWU) respectfully submits the following comments. These comments address our concern that workshare discounts for First-Class Mail Presort Letters/Cards and the elimination of the Bulk Metered Mail (BMM) benchmark do not comply with the requirements of the PAEA.

In its Compliance Determination for Fiscal Year 2007, the Commission observed that

A decision to change the framework used for measuring worksharing cost avoidance should await a more complete airing of the pros and cons of the alternatives.

FY 2007 ACD at pp.63-64 (March 27, 2008). The Commission also observed that

The logic of restricting worksharing analysis to intra-subclass rates does not necessarily translate directly into restricting analysis to intra-product rates. Whereas subclasses under the PRA were defined as having distinct cost *and* demand characteristics, products are defined in the PAEA as having distinct cost *or* demand characteristics. Whether or not a rate differential is a worksharing discount may depend, in part, on whether the categories in question have substantially similar demand characteristics.

Id. For these reasons, and for the additional reasons stated below, the APWU urges the Commission to uphold and enforce its previous decisions on the effort by the Postal Service to de-link workshared mail from its BMM benchmark. The effort by the Postal Service to de-link single piece mail and workshared mail was discussed and rejected by the Commission as recently as R2006-1. Its return to that rejected approach in the FY 2007 ACR and again in this filing makes it clear that the Postal Service intends to adhere to its new de-linked approach and to seek through the incremental advancement of this change to obtain the Commission's tacit or active acquiescence without being required to justify this change in legal or economic terms.

Despite the clarity of Commission's instructions in the FY 2007 ACD, and despite the fact that the Commission has explicitly stated that the separation between product categories does not dictate a de-linking of rates of different products, the Postal Service is seeking to treat the de-linking as a *fait accompli*. This approach is no more justified than it was in R2006-1 and the FY2007 ACR. Based on the record in this case, the fact that the workshare discounts provided exceed costs avoided is unjustified and in violation of the workshare discount restrictions of 39 U.S.C. § 3622(e).

We observe that the rate set for Mixed AADC auto letters, which the Postal Service uses as the linchpin of its workshare rate determinations, cannot be fully justified by reference to costs avoided from the costs of the Bulk Metered Mail benchmark. The plain fact is, however, that the rate for Mixed AADC auto letters is a rate that has historically been set by reference to the cost of processing BMM and the costs avoided by the worksharing required to obtain the Mixed AADC auto letters discount. Despite the Postal Service's assertion that the language of Section 3652(b) of the PAEA "suggests" that worksharing differences be measured on an intra-product rather than inter-product basis, the criteria for determining qualification for the Mixed AADC auto letter rate are workshare cost saving factors. If it were not for the presorting and prebarcoding done to these letters, they would be paying single piece rates. In fact, workshared mailings that fail acceptance scrutiny must be withdrawn by the mailer or pay single piece rates.

Much as it might wish to reject the Commission's teachings on the role of the BMM benchmark in R95-1 and in R2006-1, the Postal Service can find no justification for this rate other than in workshare cost savings within the meaning of Section 3622(e) of the PAEA. The Postal Service segregation of first class letters into various products cannot be used to circumvent the law and nullify previous Commission decisions.

We urge the Commission to draw the line at this point in the Postal Service's attempts to depart from the law incrementally. In the absence of any economic or legal justification for departing from the BMM benchmark, the Commission should reaffirm its adherence to that standard. In keeping with that standard and as

required by Section 3622(e), the Commission should ask the Postal Service either to state any justification it may have for its noncompliance with that section in terms of the limited exceptions provided by that section or to make a definite commitment to come into compliance with the law.

Respectfully submitted,

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