

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

Notice of Price Adjustment

Docket No. R2009-2

**SUPPLEMENTAL COMMENTS OF THE  
NEWSPAPER ASSOCIATION OF AMERICA  
ON NOTICE OF MARKET-DOMINANT PRICE ADJUSTMENT**  
(March 6, 2009)

In its comments in this proceeding filed on March 2, the Newspaper Association of America (“NAA”) pointed out that the Postal Service had violated Section 3622(e) by increasing the High Density flats per-piece rate by 0.9 cents, while increasing the Saturation flats per-piece rate by only 0.2 cents, thereby expanding the difference between those two worksharing rate categories from the current 1.9 cents to 2.6 cents – an amount in excess of the last known costs avoided.

In its response to Chairman’s Inquiry No. 4, Question 7, the Postal Service on March 4 filed data conforming to the established methodology for measuring worksharing discounts. The data confirm that the new discount for Saturation flats exceeds the costs avoided. The Postal Service argues that Section 3622(e) does not apply to the difference between Saturation and High Density flats, notwithstanding their being in the same product, asserting that the difference between those rate tiers is not “worksharing” but density. Arguing in the alternative, it asserts that it would justify the difference using subsections 3622(e)(3)(A) and 3622(e)(2)(D). These contentions are meritless.

**I. THE NEW SATURATION FLATS WORKSHARING DISCOUNT VIOLATES SECTION 3622(e)**

**A. The Saturation Flats Discount Is A Worksharing Discount Subject To Section 3622(e)**

NAA has previously addressed the Postal Service's legal argument in its reply comments in Docket No. ACR2008.<sup>1</sup> The Postal Service merely relies on its argument in that proceeding made in response to Order No. 169, Item 6. Notably, it makes no attempt to rebut the legal argument made previously by NAA.

The Commission for nearly 20 years repeatedly and consistently has treated the difference between High Density and Saturation flats as a presort worksharing discount, including in the Annual Compliance Review for 2007 and in its review of market-dominant rate adjustments only last year.<sup>2</sup> Valassis and the Saturation Mailers Coalition downplay the Commission's longstanding treatment of the saturation discount as worksharing, but it is they that are mistaken.<sup>3</sup> The history by which the discount was established and the consistent pattern of Commission actions spans nearly two decades. This leaves no room for the Postal Service to act as if it does not exist. Congress codified those decisions in enacting the PAEA.

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<sup>1</sup> Those reply comments are incorporated herein by reference.

<sup>2</sup> *Annual Compliance Determination: U.S. Postal Service Performance Fiscal Year 2007* at Table VII-D-4 and associated text (Mar. 27, 2008); see *Order No. 66*, Docket No. R2008-1 at 35 (referring to mailings that "lack the density to qualify for deeper presort discounts").

<sup>3</sup> *Comments of Valassis Direct Mail, Inc. and The Saturation Mailers Coalition*, Docket No. R2009-2 at 6 (March 2, 2009) (citing to two Commission opinions). Both of their citations refer to descriptions by the Commission of the actions of the Postal Service's pricing witnesses. The Commission's holdings applied the established worksharing methodology.

Finally, Valassis/SMC's assertions that High Density and Saturation are "distinct postal products" is contradicted not only by the clear competition between newspaper Total Market Coverage programs and saturation mailers, but also by the Postal Service's admission that "the boundary between these two categories of mail is porous and mail moves both ways between them." *United States Postal Service Response to Chairman's Information Request No. 4, Question 7* at 15.

**B. Neither Exception Cited By The Postal Service Applies**

Arguing in the alternative, the Postal Service says that an excessive discount is justified in order to prevent "significant volumes" of Saturation flats from switching to "products which deliver geographically targeted flats mainly using private carriers, with the residual typically being mailed using the Postal Service's High Density flats category" resulting, it fears, in a loss of contribution from Saturation flats. *Id.* On this basis, the Postal Service tries to justify the excessive Saturation flat worksharing discount using sections 3622(e)(3)(A) and 3622(e)(2)(D). The Postal Service's reliance is misplaced, as those provisions are inapplicable on their face.

**1. Section 3622(d)(3)(A) is inapplicable because the Postal Service is increasing, not decreasing a discount**

Section 3622(e) was enacted to address concerns that the Postal Service was giving, and would continue to give, discounts to large volume mailers that exceed the costs avoided. Congress was concerned that that phenomenon

would inevitably raise postal rates for other mailers. This case demonstrates the wisdom of Congress's concern.

Section 3622(e)(3)(A) provides, as an exception to the general prohibition, that an excessive discount should not be required to be "reduced" if the *reduction* would "lead to a loss of volume in the affected category or subclass of mail and reduce the aggregate contribution to the institutional costs of the Postal Service from the category or subclass subject to the discount below what it otherwise would have been if the discount had not been reduced or eliminated." That provision on its face simply does not apply to the Saturation worksharing discount.

First, the Saturation discount is *not being reduced* – the Postal Service is *increasing* it by 0.7 cents, or 36 percent, to an amount that, unlike the current discount, exceeds even the Postal Service's measure of costs avoided. Therefore, Section 3622(e)(3)(A) does not apply by its terms.

Second, of perhaps of even greater concern to this Commission's institutional prerogatives, the Postal Service's grossly misconstrues the statute by suggesting that the Commission lacks power to order the discount to be set at a lawful level. The "reduction" to which the statute refers is the change in an actual postal rate from year to year. It is not, as the Postal Service implies, a limitation on the Commission's legal authority, when reviewing rate changes under Section 3622(e), to order that a discount be made smaller. Put differently, Section 3622(e) operates as a limitation – enforced by this Commission -- on the

Postal Service's pricing flexibility; it is not a constraint on the Commission's ability to ensure that the Postal Service to charge lawful rates.

The Postal Service's interpretation would, literally, insulate any excessive worksharing discount from Commission review. It would do so by precluding the Commission from forcing the Postal Service to reduce an excessive discount to a lawful level, once the excessive discount is announced.

Third, the Postal Service argues that the excessive discount is necessary to preserve Saturation volumes and revenues, fearing that any higher rates would simply cause Saturation mail to leave the system and cause a "reduction in the aggregate contribution from Saturation mail below what it would have been if the gap had not been" and "ultimately drive up other Standard Mail prices." This is not the "detailed report" required by Section 3622(e)(4), and in any event such unsubstantiated speculation deserves no weight. There is no discussion of potentially relevant factors such as the actual likelihood that Saturation *mailers* – as distinct from *advertisers* – might choose a High Density mailing if rates were properly set, or any other showing.

It is baffling that the Postal Service did not similarly consider the effect of high prices on migration out of the mail when it set High Density flats rates that greatly exceed inflation. Raising High Density rates on newspaper Total Market Coverage programs will lead to the disappearance of very profitable mail -- accounting for *more than a third* of current revenues from the High Density/Saturation product. NAA believes that High Density mail is at greater risk of shifting to private delivery than is saturation mail.

In any event, Section 3622(e)(3)(A) does not justify *increases* in discounts to excessive levels; it applies only to weaning mailers off of such subsidies. Here, the current Saturation worksharing discount is not in excess of the costs avoided, so accordingly Section 3622(e)(e)(A) does not apply.

**2. The Postal Service would turn Section 3622(e)(2)(D) on its head**

Section 3622(e)(2)(D) provides that a worksharing discount may exceed the costs avoided if its reduction “would impede the efficient operation of the Postal Service.” The Postal Service does not explain how this provision would apply, other than by asserting that a “serious loss in contribution” would “certainly” undermine its efficiency. It confuses revenues with efficiency.

This Commission has recognized repeatedly that worksharing discounts that *exceed* avoided costs *decrease* postal efficiency. Section 3622(e)(2)(D) requires a showing that inefficient pricing signals promote efficient operations. No such showing is offered. Nor is the Postal Service’s volume/revenue argument germane. Section 3622(e)(2)(D) protects the Postal Service’s finances only insofar as it *prohibits* – not excuses -- excessive discounts except where the excessive discount promotes efficiency. That has not been shown here.

**C. The Postal Service Data Confirm That The So-Called “Saturation Volume Incentive” Also Violates Section 3622(e)**

NAA’s March 2 Comments demonstrated that the Postal Service’s new so-called “saturation mail volume incentive” of 4.0 cents per piece for “new” volume - a 28 percent rate discount for such pieces -- is an expanded discount for workshared saturation mail in disguise, and an undue preference. The March 4

data confirm that the discount for the “incentivized” saturation flats would be 6.6 cents, far in excess of the 2.48 cents cost avoided.

The Postal Service has not argued that any exception to Section 3622(e) applies. On the contrary, a discount that so grossly exceeds the costs avoided will inherently harm the Postal Service’s finances. Accordingly, the Commission must reject the incentive.

**II. THE POSTAL SERVICE DATA SHOW THAT THE HIGH DENSITY FLATS DISCOUNT IS TOO SMALL**

NAA notes that the USPS response to Question 7 shows that the new High Density flats discount is only 83 percent of avoided costs. Efficient pricing requires that the High Density flats discount *increase* by 0.0082 cents while the Saturation flats worksharing discount should be reduced by 0.012 cents.

**III. CONCLUSION**

For the foregoing reasons, the Commission should reject as unlawful the new worksharing discounts for Standard Saturation and High Density flats mail.

Respectfully submitted,

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