

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

Consideration of Workshare Discount)
Methodologies)

Docket No. RM2009-3

**VALPAK DIRECT MARKETING SYSTEMS, INC. AND
VALPAK DEALERS' ASSOCIATION, INC.
INITIAL PRESENTATION ON WORKSHARE DISCOUNT ISSUES
(May 26, 2009)**

INTRODUCTION

On March 16, 2009, the Commission issued Order No. 192, Notice of Proposed Rulemaking on Application of Workshare Discount Rate Design Principles, commencing Docket No. RM2009-3, and inviting the submission of “initial presentations” with respect to certain workshare discount issues in First-Class Mail and Standard Mail. Specifically, the Commission provided interested persons “an opportunity to address the legal, factual, and economic underpinnings of the methodologies used by the Postal Service to develop its proposed First-Class Mail and Standard Mail discount rates in Docket No. R2009-2.” Order No. 192, p. 3. The Commission then stated that

After an opportunity to review those presentations, the Commission will issue a procedural schedule to provide interested persons an opportunity to submit **responsive presentations**. Depending on the breadth and complexity of issues presented, the Commission may provide an opportunity for **hearings** and may find it appropriate to bifurcate the proceeding. [*Id.* (emphasis added).]

Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc.
(hereafter “Valpak”) submit this joint initial presentation in response to Order No. 192.

SCOPE

Valpak focuses its initial presentation on what it considers to be the threshold issue — precisely which rate differences constitute “workshare discounts” under 39 U.S.C. section 3622(e)(1), and therefore are subject to statutory limitations in the balance of that section. Indeed, this threshold issue appears to fall within the issues on which the Commission sought comment — “the legal, factual, and economic underpinnings of the methodologies used....” Order No. 192, p. 3.

A statutory analysis of the limitations on workshare discounts in the Postal Accountability and Enhancement Act (“PAEA”), Pub. L. 109-435, is presented *infra*. A supporting economic analysis is provided in the separately-filed statement of John Haldi, Statement of John Haldi, Ph.D., Concerning Workshare Discounts (hereinafter “Haldi Statement”).

Although this initial presentation addresses neither issues relating to specific workshare cost avoidance methodologies nor issues relating to First-Class Mail, Valpak may file additional comments in this docket as opportunities present themselves.¹

¹ On several prior occasions, Valpak has commented on aspects of the PAEA workshare discount limitation. *See, e.g.*, Docket No. R2006-1, Valpak Comments on Notice of Inquiry Nos. 2 and 3 (Aug. 17, 2006); Docket No. ACR2008, Valpak Suggested Questions for Discussion at the Technical Conference of January 26, 2009, or in the alternative, Motion for a Commission Information Request (Jan. 21, 2009), p. 4; Docket No. R2009-2, Valpak Response to Supplemental Comments of the Newspaper Association of America, Inc. (Mar. 13, 2009).

DOCKET NO. R2009-2

This docket arises out of Docket No. R2009-2, Notice of Market-Dominant Price Adjustment.² Issues arising from that docket relating to First-Class Mail are not addressed here.³ With respect to Standard Mail, during litigation of the pricing docket, the Commission requested the Postal Service to provide the “discounts, avoided costs, and percentage passthroughs **by shape** ... between (1) Basic and High Density, and (2) High Density and Saturation” and to “discuss how the proposed **presort discounts** ... comply with the worksharing requirements in section 3622(e) of title 39.” *See* Docket No. R2009-2, Chairman’s Information Request No. 4, question 7 (emphasis added). In response, the Postal Service stated:

While providing the calculations requested, **the Postal Service does not accept the premise that either shape or density can be defined as worksharing.** In its broadest sense, **worksharing occurs when customers undertake activity that the Postal Service would otherwise do.** Clearly customers can

² Order No. 191, concluding Docket No. R2009-2, and Order No. 192, commencing docket No. RM2009-3, were both issued on the same day — March 16, 2009.

³ The Commission describes the worksharing issue relating to First-Class as follows:

the Postal Service opted to delink single-piece First-Class Mail from presort First-Class Mail, effectively abandoning established methodology and the bulk metered mail benchmark. The predominant effect of this change is to no longer consider Automation Mixed AADC letters a workshare discount relative to the bulk metered mail benchmark.

In the Postal Service’s justification for this change, it notes that single-piece and presort have been defined as separate products. It contends that the workshare provisions of 39 U.S.C. § 3622(e) do not apply between products. Thus, it argues, the workshare link that previously existed between single-piece First-Class Mail and presort First-Class Mail legally no longer exists under the PAEA. [Docket No. R2009-2, Order No. 191, p. 19-20.]

make decisions that affect **shape** or **density**; however, this is not an activity that the Postal Service could undertake once mail is presented. A flat cannot be transformed into a letter; a parcel cannot be transformed into a flat Similarly, the Postal Service cannot change the density of mailing from high-density (125 pieces per carrier route) to saturation (75 percent of all addresses on the route). More fundamentally, the statute defines worksharing very explicitly as **presorting, prebarcoding, handling and transportation** of the mail. None of these is changing shape or changing density. [Postal Service Response to Chairman's Information Request No. 4, question 7 (Mar. 4, 2009), p. 12 (emphasis added).]

In Docket No. R2008-2, subsequent to the deadline for submitting comments to the Commission, Newspaper Association of America ("NAA") submitted Supplemental Comments (Mar. 6, 2009) with respect to the issue of whether density of a mailing constitutes worksharing. NAA argued that historically the Commission has treated **density** as a matter of worksharing subject to the limitations of subsection 3622(e). *See* NAA Supplemental Comments, pp. 2-3. Valpak submitted a response to NAA's Supplemental Comments, demonstrating the flaws in the NAA argument and pointing out that the issue of density as a matter of worksharing never actually had been litigated or resolved. *See* Docket No. R2008-2, Valpak Response to NAA Supplemental Comments (Mar. 13, 2009).

In its Order approving the price adjustments, the Commission stated:

The Postal Service did submit requests in advance for some of the **new costing methods** supporting its current rate proposals; however, it also relies on new, legal definitional arguments to justify its use of **workshare discount design methods** that vary from past accepted practice. A number of commenters are sharply critical of the Postal Service for proposing rates that result from unilateral adoption of these new practices.

It has been suggested that the Commission should reject rates not justified by application of **traditional workshare discount design practice**. *See* Supplemental Comments of the Newspaper Association of America on Notice of Market-Dominant Price Adjustment, March 6, 2009 (NAA Supplemental Comments). The Postal Service contends its discount proposals are consistent with the law, and fully within the ambit of the pricing flexibility contemplated by the PAEA. *See* Response of the United States Postal Service to Chairman's Information Request No. 1, February 20, 2009 (Response to CHIR No. 1). The majority of commenters addressing this issue suggest that, in light of the severe financial circumstances currently facing the Postal Service and the turmoil that could result from a blanket rejection, the Commission should allow rates to take effect as proposed, but **immediately institute a rulemaking docket to properly evaluate these new rate design practices**.

After thoughtful consideration, the Commission approves the proposed workshare discount rates and **concurrently establishes a rulemaking to consider workshare rate design methodologies**. More thorough reasoned evaluations of these issues will result when the Postal Service and interested parties have the opportunity to present their views in a complete and cohesive fashion, and the Commission has the opportunity to consider them apart from the pressures of a pending rate adjustment or compliance determination. If, at the conclusion of this rulemaking it appears that some rates are not in compliance with the law, the Commission will take appropriate action. [Order No. 191, pp. 5-6.]

This Commission language in Docket No. R2009-2 might lead one to assume that this new rulemaking would discuss only workshare costing methodology issues. However, the Commission made other comments which indicate (in discussing First-Class issues) that this docket would address the scope of the limitation on workshare discounts:

The Postal Service bases its decision to introduce a new workshare methodology on its definition of the word "product" and its statutory interpretation of the workshare requirements. Other than in the limited timeframe of this rate adjustment,

interested participants have not had an opportunity to thoroughly analyze or comment on the Postal Service’s unilateral decision. Likewise, the Commission has not had an opportunity to appropriately consider the views of interested parties or review the Postal Service’s arguments in light of the PAEA. [Order No. 191, p. 23.]

And, as stated above, Order No. 192 solicits comments “address[ing] the legal, factual, and economic bases underlying” worksharing. Order No. 192, p. 3.

DISCUSSION

PAEA contains certain limitations pertaining only to “workshare discounts” offered by the Postal Service:

(e) WORKSHARE DISCOUNTS.—

(1) DEFINITION.—In this subsection, the term ‘**workshare discount**’ refers to **rate discounts** provided to mailers for the **presorting, prebarcoding, handling, or transportation of mail**, as further defined by the Postal Regulatory Commission under subsection (a).

(2) SCOPE.—The Postal Regulatory Commission shall ensure that such discounts do **not exceed the cost** that the Postal Service **avoids** as a result of workshare activity, **unless**—

(A) the discount is—

(i) associated with a **new postal service**, a change to an existing postal service, or with a new work share initiative related to an existing postal service; and

(ii) **necessary** to induce mailer behavior that furthers the economically efficient operation of the Postal Service and the portion of the discount in excess of the cost that the Postal Service avoids as a result of the workshare activity will be phased out over a limited period of time;

(B) the amount of the discount above costs avoided—

(i) is necessary to mitigate **rate shock**; and

(ii) will be **phased out** over time;

(C) the discount is provided in connection with subclasses of mail consisting exclusively of mail matter of **educational, cultural, scientific, or informational value**; or

(D) reduction or elimination of the discount would impede the **efficient operation** of the Postal Service.

(3) LIMITATION.—Nothing in this subsection shall require that a work share discount be reduced or eliminated if the reduction or elimination of the discount would—

(A) 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; or

(B) result in a further **increase in the rates** paid by mailers **not** able to take advantage of the discount.

(4) REPORT.—Whenever the Postal Service establishes a workshare discount rate, the Postal Service shall, at the time it publishes the workshare discount rate, submit to the Postal Regulatory Commission a detailed report that—

(A) explains the Postal Service’s reasons for establishing the rate;

(B) sets forth the data, economic analyses, and other information relied on by the Postal Service to justify the rate; and

(C) certifies that the discount will not adversely affect rates or services provided to users of postal services who do not take advantage of the discount rate. [39 U.S.C. § 3622(e) (emphasis added).]

Despite efforts by some to read these workshare limitations broadly,⁴ careful analysis of the statute demonstrates that they apply only to a relatively narrow category of pricing differentials.⁵ Although the Commission has authority to “further define[]” workshare

⁴ See, e.g. Docket No. R2009-2, NAA Supplemental Comments (Mar. 6, 2009).

⁵ Not all price differentials are even properly classified as “discounts,” much less “workshare discounts.” See Haldi Statement, pp. 1-2, and Appendix I, pp. I-1 to I-5.

discounts, that elaboration cannot encompass types of discounts outside the scope of the statute. The analysis *infra* demonstrates that the limitation on workshare discount applies only where all of the following four conditions specified in the statute are met:

(i) the **workshare activity** must fall within one or more of **four activity categories**:

- presorting,
- prebarcoding,
- handling, or
- transporting mail;

(ii) the discount must be offered **in exchange for** performing workshare activities, and not offered for other reasons (such as demand factors reflecting high elasticity);

(iii) the discount must be based on a price differential existing **within a product** — that is, the workshare activity must be **optional** for the mailer, rather than being **required** to be eligible to use the product; and

(iv) if the workshare activity were **not performed** by the mailer, it would **need to be performed** by the Postal Service.

Each of these four elements of the definition is addressed separately in the following four sections.

I. Section 3622(e) applies only to “workshare” activity within four activity categories — “presorting, prebarcoding, handling, or transportation of mail.”

A. “Presorting, prebarcoding, handling, or transportation of mail” explained.

Section 3622(e)(1) states:

the term ‘**workshare discount**’ refers to **rate discounts** provided to mailers for the **presorting, prebarcoding, handling, or transportation of mail**, as further defined by the Postal Regulatory Commission under subsection (a). [Section 3622(e)(1) (emphasis added).]

Therefore, the only type of rate difference limited by this language is a difference provided for mailer activity that falls into one or more categories:

- presorting,
- prebarcoding,
- handling, or
- transporting mail.

Certain activities clearly would fall within these four categories.

Presorting indicates sorting performed by mailers, before entry into the Postal Service after which the Postal Service does its sorting, thereby saving the Postal Service time and money. For instance, this would include preparing Standard Regular 5-digit trays instead of 3-digit trays. (When mailers do this work, it normally is done by computer. When presort bureaus do this work, the mail is physically presorted.) Generally, presorting is not optional within the three Standard ECR products, but is within First-Class Mail and, to a degree, within Standard Regular.

Prebarcoding indicates barcoding performed by mailers before entry into a postal facility, thereby saving the Postal Service from having to barcode the mail. At the time that PAEA was enacted (Dec. 20, 2006), the code used was the Postnet code. The Postal Service's Intelligent Mail Barcode ("IMB") (anticipated by 39 U.S.C. section 3622(c)(13)) is somewhat different, in that the Postal Service cannot apply a complete IMB, which contains information in the possession of the mailer.

Handling would entail such activities as entering dropshipped mail so as to eliminate the need for the Postal Service to cross-dock mail when upstream facilities are by-passed by dropshipped mail.

Transporting would include shipping mail to a destinating Bulk Mail Center (“BMC”), destinating Sectional Center Facility (“SCF”), or Destinating Delivery Unit (“DDU”), thereby relieving the Postal Service of that task.

Note that none of the four itemized types of activities are “dropshipping” or “destination entry,” but that this type of mail implicates both **handling** and **transportation** elements. (Since the Postal Service started offering destination entry discounts, the library reference that calculates costs avoided consists of two parts: (i) transportation costs, and (ii) handling costs of cross-docking mail when upstream facilities are by-passed.)

Neither shape nor density is a matter of either “presorting, prebarcoding, handling, or transportation.”⁶ In Docket No. ACR2008, the Postal Service explained why presort density pricing differences within the former ECR subclass are not worksharing. In addressing Standard Mail, the Postal Service stated:

The Postal Service did not include the (former) ECR cost and price differences and passthroughs in either the FY 2007 ACR or the FY 2008 ACR because it believes that the **PAEA quite clearly excluded address density from the list of items that constitute worksharing.**

The Postal Service observed that the Commission included cost and price differences for the former ECR pricing categories (now separated into **three different products** that do not correspond exactly to the former density tiers of ECR that the Commission used in its Annual Compliance Determination (ACD) Table VII-D-4) in its ACD report. But the Postal Service continues to object to the labeling of these cost differences as “presort cost differentials” in the ACD (FY 2008 ACD at 96). **The address density differences between the Basic, High Density and Saturation categories of the former ECR subclasses are clearly not presort differences, for no amount**

⁶ See generally Haldi Statement, pp. 5-10, and Appendix pp. I-2 to I-3.

of mailer presorting or other advance mailer preparation can convert a mailing that qualifies only for Carrier Route (formerly Basic ECR) pricing into one that qualifies for High Density or Saturation pricing. Similarly, no amount of mailer presorting or other advance preparation can convert a mailing that qualifies for High Density, but not Saturation, pricing into one that qualifies for Saturation pricing. Simply put, these are three different groups of mail that typically follow different mail processing paths and that are typically used for different purposes by different types of mailers. The Postal Service believes that these three categories of mail **serve three different market segments**—though in some cases these markets are related, and in some cases, perhaps, these markets may overlap slightly.

The Postal Service believes that the statute is clear and that **Congress did not intend address-density differences, such as those between former Basic, High Density and Saturation ECR, to be treated as worksharing.** [Docket No. ACR2008, Responses of the United States Postal Service to Commission Order No. 169, item 6 (Jan. 21, 2009), pp. 17-18 (emphasis added).]

B. “As further defined by the Postal Regulatory Commission” explained.

The definition of “workshare discounts” concludes with the language: “as further defined by the Postal Regulatory Commission under subsection (a).” The reference to subsection (a) refers to the provision under which the Commission is authorized “by regulation [to] establish [and revise] a modern system for regulating rates and classes for market-dominant products.” *See* 39 U.S.C. section 3622(a).

Although the terms “**presorting, prebarcoding, handling, or transportation of mail**” are understandable, Congress wisely understood that some nuances could arise in the application of these terms, and allowed the Commission to refine the definition of each term as may be necessary. For example, as discussed above, destination entry discounts are generally understood to be “workshare discounts,” as the activities undertaken by mailers that dropship

are itemized in this list — handling and transportation.⁷ However, not all mail that qualifies for destination entry discounts has been the object of worksharing — the best illustration of this being mail entered at a DDU near the location of the mailer’s facility. Since the mail is being entered at a location close to where it is printed, the mailer did no significant transportation or handling of this mail to qualify for the lower rates. However, since destination-entered mail is overwhelmingly handled and transported to be able to take advantage of destination entry rates, it would seem reasonable for the Commission to evaluate **all** destination entry rates (including that for locally printed and locally entered) against the limitation on worksharing discounts — even if the limitation on worksharing discounts has no application to mail that originates and is entered locally.

In Docket No. RM2007-1, on October 29, 2007, the Commission issued initial ratemaking regulations under PAEA. Order No. 43 (“Order Establishing Ratemaking Regulations For Market Dominant and Competitive Products”). However, no regulations amplifying the statutory language “further defining” the type of presorting, prebarcoding, handling, or transportation activities that are worksharing were issued at that time.⁸ *See generally*, 39 C.F.R. section 3010.14 (“Contents of Notice of Rate Adjustment”). Generally “the Commission acknowledges that the PAEA defines worksharing as activities related to four broad areas” — “presorting, prebarcoding, handling, and transportation.” Order No. 43, pp.

⁷ See Haldi Statement, Appendix, pp. I-5 to I-6.

⁸ Since then, the Commission conducted various rulemakings and issued additional rules addressing various matters related to ratemaking, but none of these other rulemakings have further defined these workshare discount terms. *See, e.g.*, Order No. 195 (“Order Establishing Rules for Complaints and Rate or Service Inquiries”) (Mar. 24, 2009).

42, 41. Although the issue was not litigated, the Commission stated in passing that “workshare discounts, as defined in the PAEA, do **not** include **shape-based** differences.” Order No. 43, p. 42 (emphasis added).⁹ Both of these Commission comments seem consistent with the position of Valpak in this docket.

However, it should be noted that in one Annual Compliance Determination, the Commission at least once reported rate differentials by presort tier (ECR Basic, High Density, and Saturation) in a table designated “Standard Mail Enhanced Carrier Route and Nonprofit Enhanced Carrier Route, Workshare Discounts and Benchmarks” which could reasonably be read to imply that the Commission may have considered rate discounts for different density tiers workshare discounts. *See, e.g.*, Docket No. ACR2007, FY 2007 Annual Compliance Determination, Table VII-D-4, p. 96. However, there was no narrative associated with this table to indicate that the Commission was considering and resolving this issue, and, indeed, no text other than the table caption, which may have been either inadvertent or erroneous.¹⁰ It is submitted that the Commission has not previously ruled on the issue of whether presort/density

⁹ *See also*, Docket No. ACR2007, FY 2007 Annual Compliance Determination, pp. 97-98.

¹⁰ Relying on this table heading and some unidentified “associated text,” in Docket No. R2009-2, NAA expansively concluded “The Commission for nearly 20 years ... 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.” (NAA’s footnote reference was to Docket No. R2008-1, Order No. 66, p. 35 — which NAA described as “(referring to mailings that ‘lack the density to qualify for deeper presort discounts’.)” However, this reference has no apparent relationship to any Commission determination as to what constitutes worksharing. *See generally* Docket No. R2009-2, Comments of Valassis Direct Mail, Inc. and The Saturation Mailers Coalition (Mar. 2, 2009) p. 6, n.1 as to prior Commission terminology.

constitutes a workshare discount, and this docket gives the Commission the opportunity to receive testimony and hear arguments on this important issue before making any ruling on the issue.

C. Section 3622(e)(1) Construed and Applied.

A narrow view of the “workshare discount” limitation is supported by the statutory language. As noted above, section 3622(e) contains a roster of special statutory prescripts governing “workshare discounts,” ranging from the definition of the term itself (subsection 1), to cost ceiling rules (subsections 2 and 3), and to requiring a “detailed” report on each “workshare discount rate” established by the Postal Service. In light of the overall structure of section 3622, there is no question that these additional constraints apply only to “workshare discounts,” not to other “discounts” or other pricing decisions made by the Postal Service. Thus, even in the absence of the exercise of the rulemaking power conferred in section 3622(e)(1), it would be a mistake to contend that the grant of authority to the Commission, acting “under [section 3622](a)” to “further define” the term, “workshare discount,” somehow empowers the Commission to expand the class of such discounts beyond its statutory meaning and, consequently, to impose section 3622(e)(2) - (4) limits on discounts other than those that would qualify under the statutory definition. Not only would such a construction do violence to the overall statutory context governing postal rates and classes,¹¹ it would also be inconsistent with the explicit text of section 3622(e)(1).

¹¹ See Addison v. Holly Hill Fruit Products, Inc., 322 U.S. 607, 611-14 (1944).

Section 3622(e)(1) defines “workshare discount” by four specific activities of mailers for which a discount is provided to mailers, namely, “presorting, prebarcoding, handling, or transportation of mail.” Immediately following these four definitive workshare discounts, Congress tacked on its grant of authority to the Commission to define workshare discount “further” and to do so only by the exercise of its power under section 3622(a) to act by regulation. By its express terms, then, the Commission’s authority to act is circumscribed by the text.

As the Supreme Court pronounced in Addison v. Holly Hill Fruit Products, Inc., 322 U.S. 607 (1944), “[t]he determination of the extent of authority given to a delegated agency by Congress is not left for the decision of him in whom authority is vested.” *Id.*, 322 U.S. at 616. Rather, the scope and extent of the authority granted is determined by the statutory language, itself. As the Addison Court observed:

The wider a delegation is made by Congress to an administrative agency the more incomplete is a statute and the ampler the scope for filling in ... its details. But when Congress wants to give wide discretion it uses broad language. [*Id.*, 322 U.S. at 616.]

Typically, broad authority is expressed by language, such as, “to take such action ‘as will effectuate the policies of this Act.’” *Id.* See also Harrison v. PPG Industries, Inc., 446 U.S. 578, 581 (1980); EPA v. National Crushed Stone Ass’n., 449 U.S. 64, 73-78 (1980).

The section 3622(e)(1) grant of power is just the opposite, coming within a very specific subsection concerned with the definition of a particular category of “discount rates” which, if included, would trigger a host of limitations upon the Commission’s discretionary powers. Indeed, the language authorizing the Commission by regulation to “further define”

the four workshare terms in section 3622(e)(1) is delimited, and should be contrasted with the more expansive language of section 3622(a) authorizing the Commission to establish by regulation “a modern system for regulating rates and classes for market-dominant products.” To be sure, the Commission’s power “under subsection (a)” is referred to in section 3622(e)(1), but that reference must be understood as language of limitation, namely, that the Commission’s authority to “define [workshare discount] further” must be exercised by the exercise of its rulemaking power, not by ad hoc adjudication. *See Bowen v. Georgetown University Hospital*, 488 U.S. 204, 222 (1988) (Scalia, J., concurring) (“Arguably ... the Administrator was *obliged* to act by regulation rather than by adjudication, since the statutory exemption in question referred to ‘area of production (as defined by the Administrator).’” (Italics original.)

Because rate differences predicated on either **presort density** or **shape** do not fall within the categories of rate discounts for “**presorting, prebarcoding, handling, or transportation of mail,**” the workshare discount limitations of section 3622(e) are wholly inapplicable.

II. The discount must be offered in exchange for performing workshare activities, and not offered for other reasons.

It is highly significant that only discounts provided to mailers “**for**” specific workshare functions are limited under section 3622(e). The statutory definition provides: “the term ‘workshare discount’ refers to rate discounts provided to mailers **for** the presorting, prebarcoding, handling, or transportation of mail....” Section 3622(e)(1) (emphasis added). Logically then, when a “discount” is offered **for some reason other than** the worksharing being done by the mailer, the limitation of section 3622(e)(1) does not apply.¹²

Indeed, not every pricing decision made by the Postal Service is cost-based. While Saturation mail is generally estimated to be less expensive for the Postal Service to handle than High Density mail,¹³ the reason that rates for Saturation mail are lower than High Density mailers is not limited to cost. Rather, lower prices are provided to Saturation mailers, in part, because Saturation mail is believed to have an extremely high price elasticity.¹⁴ Saturation mailers have other advertising alternatives which high density mailers do not, giving Saturation mail a higher elasticity of demand.

¹² Indeed, if a rate discount were **partially** provided to a mailer **for reasons other than worksharing**, that portion would not be subject to the limitation of section 3622(e). Currently, the Postal Service does not identify how much of such a discount is for what reasons, but there is no reason that this could not be done in the future.

¹³ *See generally*, Haldi Statement, pp. 16-17.

¹⁴ The Postal Service reported that the elasticity of Standard ECR commercial mail was -0.911. *See* cover letter from R. Andrew German of the Postal Service to Hon. Steven W. Williams of the Postal Regulatory Commission, regarding FY 2008 Demand Analysis Materials for Market Dominant Products, and attachments, filed January 16, 2009.

It would be foolish to believe that the high elasticity of saturation mail is irrelevant postal pricing. To believe that the Postal Service prices Saturation mail without regard to its access to alternatives would be to disregard willfully the realities of the marketplace. The importance of the little word “for” was explained by Valpak in its filing in Docket No. R2009-2.

NAA ignores the language of PAEA which requires the Commission to first determine that **the “rate discount” is being “provided ... for”** “presorting, prebarcoding, handling, or transportation of mail.” (Emphasis added.) It has been clear for years that the Postal Service offers lower rates for Saturation mail in part because of non-worksharing reasons — such as the fact that Saturation mailers have mailing alternatives that High Density mailers do not have, because of their density, and those demand factors are being reflected in rates. [See, e.g., Postal Service Response to Chairman’s Information Request No. 4, Question 7, at 15.] [Docket No. R2009-2, Valpak Response to Supplemental Comments of the Newspaper Association of America (March 13, 2009), p. 3.]

If Congress had intended a different meaning, it easily could have written the definition in section 3622(e)(1) to read: the term ‘workshare discount’ refers to “rate discounts provided to mailers who presort, prebarcode, handle, or transport their mail....” Written in this fashion, it would have been clear that the totality of the discount being provided to a mailer would be analyzed, not just the portion of the discount provided in exchange **“for”** a mailer’s “presorting, prebarcoding, handling, or transportation of mail.”

III. The discount must be based on a price differential existing within a product, not between products

Under PAEA, products have been redefined by the Postal Service. PAEA defines a “product” as “a postal service with a distinct cost or market characteristic for which a rate or rates are, or may reasonably be, applied...” 39 U.S.C. § 102(6).

Three reasons argue against the recognition of any worksharing discount limitation across products.

First, different products generally have distinct costs or distinct market characteristics (*e.g.*, different elasticities), and different contributions to institutional cost. (By way of analogy, under the PRA, different subclasses had different cost coverages.) It is by no means clear when rate differentials not based on explicit discounts are reflecting different market characteristics, and when they are reflecting cost differences associated with workshare activities. Any interpretation of PAEA under which workshare discounts could exist across products would require the Postal Service to clarify how much of each rate differential is associated with worksharing, and how much is associated with varying elasticities, a heroic feat at best.¹⁵

Second, virtually every bulk mail product has minimum required makeup requirements. For some products, work done beyond that minimum is optional, entitling the mailer to a discount, which could be a workshare discount. Considering workshare discounts to exist

¹⁵ See generally Docket No. ACR2008, Initial Comments of Valassis Direct Mail Inc. and The Saturation Mailers Coalition Concerning The Postal Service’s FY2008 Annual Compliance Report (Jan. 30, 2009), pp. 16-18.

across products would confuse, if not crush, the distinction between required minimum requirements, and optional workshare requirements.

Third, the text of PAEA indicates that workshare discounts are limited to products. In 39 U.S.C. section 3652, Congress set out the content of the Postal Service's annual reports to the Commission, and subsection (b) contains the totality of reporting required with respect to workshare discounts:

(b) Information Relating to **Workshare Discounts**. The Postal Service shall include, in each report under subsection (a), the following information with respect to **each market-dominant product for which a workshare discount was in effect** during the period covered by such report:

(1) The per-item cost avoided by the Postal Service by virtue of **such discount**.

(2) The percentage of such per-item cost avoided that the per-item **workshare discount** represents.

(3) The per-item contribution made to institutional costs. [39 U.S.C. § 3652(b) (emphasis added).]

From this language, it is apparent that workshare discounts were considered by Congress to exist within products. The only reporting required concerning workshare discounts was a part of the reporting for "each [such] market-dominant product." If a workshare discount could exist across products, surely Congress would have focused the reporting on the workshare discounts, not on individual products.

IV. If workshare activity were not performed by the mailer, it would need to be performed by the Postal Service.

The term “workshare” is defined in PAEA by express reference to four specific mail-related activities — presorting, prebarcoding, handling and transportation of mail. In each of these activities, the mailer is doing a job that the Postal Service would otherwise be required to do. Thus, the Postal Service has provided a useful explanation of one common-sense aspect of worksharing, containing the four itemized activities with the activities that would need to be performed by the Postal Service:

In its broadest sense, worksharing occurs when **customers undertake activity that the Postal Service would otherwise do**. Clearly customers can make decisions that affect **shape** or **density**; however, this is not an activity that the Postal Service could undertake once mail is presented. A **flat** cannot be transformed into a **letter**; a **parcel** cannot be transformed into a **flat**.... Similarly, the Postal Service cannot change the **density** of a mailing from high-density (125 pieces per carrier route) to saturation (75 pieces of all addresses on the route). [Docket No. R2009-2, Postal Service Response to Chairman’s Information Request No. 4, item 7, pp. 12-13.]

In the case of shape or density, not only **would** the Postal Service **not** change the mailing’s shape or density, it **could not** do so. The characteristics of **shape** and **density** are easily contrasted, for example, with **prebarcoding**, where the Postal Service must apply a barcode where this would facilitate sorting if the mailer does not, and transportation, where the Postal Service must **transport** the mailing from an origin point to a destinating point if the mailer does not enter it there. Where there is no work performed by the mailer which the Postal Service otherwise would be required to do, there is no worksharing subject to the limitation on workshare discounts.

CONCLUSION

For the reasons set out above, the Commission should determine that 39 U.S.C. section 3622(e) applies only when the four criteria set out *supra*, are present. And, applying those four criteria, neither density nor shape is to be considered worksharing subject to the limitation on workshare discounts.

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