

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

**Consideration of Workshare Discount
Methodologies**

Docket No. RM2009-3

**JOINT COMMENTS OF
THE BANK OF AMERICA CORPORATION, DISCOVER FINANCIAL SERVICES,
J.P. MORGAN CHASE & CO., AND U.S. BANK N.A.
(SEPTEMBER 11, 2009)**

By Order No. 243, dated July 10, 2009, the Postal Regulatory Commission (Commission) invited further comment on several broad, high-level policy issues. The Bank of America Corporation, Discover Financial Services, J.P. Morgan Chase & Co., and U.S. Bank N.A. (the Joint Commenters) respectfully submit these comments in response to Order No. 243. The Joint Commenters filed initial comments pursuant to Order No. 192.¹

I. SUMMARY OF POSITION

The Postal Accountability and Enhancement Act (PAEA)² does not confer any “special protection” on the users of Single-Piece First-Class Mail. But the lack of any statutory “special protection” does not mean that users of Single-Piece First-Class Mail are without protection or that the Commission must impose pre-PAEA cost linkages between separate First-Class Mail products as a means of protection. The PAEA provides the Commission with the ability to protect these mailers, and all others, through its command that the Commission establish and maintain a “just and reasonable” modern rate system.

¹ See Initial Comments of Bank of America Corporation, Discover Financial Services, J.P. Morgan Chase & Co, and the American Bankers Association (May 27, 2009)(Joint Comments).

² See Pub. L. No. 109-435, 120 Stat. 3198 (Dec. 20, 2006). The PAEA amends various sections of title 39 of the United States Code. Unless otherwise noted, section references in these comments are to sections of title 39.

Application of the “just and reasonable” schedule of rates confirms that incremental changes in Standard Mail letters and flats rates are necessary to ensure compliance with PAEA.

In response to the specific inquiries in Order No. 243 and the questions in the August 27, 2009 Notice of Inquiry (NOI),³ the Joint Commenters support pricing differentials that fully reflect all workshare and nonworkshare-related cost savings to the Postal Service.

II. DISCUSSION

A. First-Class Mail Rate Design

1. The PAEA Does Not Confer Any “Special Protection” on the Users of Single-Piece First-Class Mail

In Order No. 243, the Commission asks “whether the users of single-piece First-Class Mail are entitled to special protection under the PAEA.”⁴ To the extent that “special protection” implies that the PAEA provides Single-Piece First-Class Mail users favorable treatment (i.e., a lesser price burden) in comparison to other mail users (e.g., Presort First-Class Mail users) the answer is “no.” Nothing in the PAEA entitles the users of Single-Piece First-Class Mail to “special protection.”⁵ Numerous provisions of the PAEA protect the interests of users of Single-Piece First-Class Mail, but these provisions do not elevate the interests of Single-Piece First-Class Mail users above the interests of other First-Class Mail users.

The PAEA left unchanged section 101(a), which provides, in pertinent part:

The United States Postal Service shall be operated as a basic and fundamental service provided to the people by the Government of the United States, authorized by the Constitution, created by Act of Congress, and supported by the people. *The Postal Service shall have as its basic function the obligation to provide postal services to bind the Nation together through the personal, educational, literary, and business correspondence of the people.* It shall provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all

³ See Dkt. No. RM2009-3, NOI-1 (August 27, 2009).

⁴ Order No. 243 at 4.

⁵ It is noteworthy that Single-Piece mailers do not even assert that the PAEA affords any “special protection.” See Comments of the Greeting Card Association (August 31, 2009).

communities. The costs of establishing and maintaining the Postal Service shall not be apportioned to impair the overall value of such service to the people.⁶

The postal policy of the United States expressly and unambiguously promotes and protects the needs of both personal *and business correspondence* alike.

The objectives, factors, and requirements of the modern rate system likewise do not provide for any “special protection” for Single-Piece First-Class Mail users.⁷ To be sure, several objectives and factors may appropriately be read to protect the interests of citizen mailers; but other objectives and factors seek to protect the interests of business mailers.⁸

Even section 3622(c)(3), the *only* statutory objective or factor to expressly address the needs of citizen mailers, urges the Commission to take into account “the effect of rate increases upon the general public, business mail users, and enterprises in the private sector of the economy engaged in the delivery of mail matter other than letters.”⁹

Notwithstanding the absence of any “special protection” for the users of Single-Piece First-Class Mail, the statutory objective of a “just and reasonable” schedule of rates serves as an

⁶ 39 U.S.C. § 101(a).

⁷ Other statutory objectives and factors expressly address the importance of promoting the pricing flexibility and preserving the financial stability of the Postal Service and increasing the efficiency of the postal system. *See* 39 U.S.C. §§ 3622(b)(1), (4)-(5) and 3622(c)(7), (12). For the reasons discussed below and in previous comments, these explicit objectives and factors will be undermined if the Commission seeks to impose the pre-PAEA cost linkage across distinct products.

⁸ *See* 39 U.S.C. §§ 3622(b)(2)-(3), (6), (8) and 3622(c)(1), (3), (6), (8), (9); *compare* 39 U.S.C. §§ 3622(b)(1)-(3), (6)-(8) and 3622(c)(1), (3)-(9).

⁹ 39 U.S.C. § 3622(c)(3)(emphasis added). It bears noting that Single-Piece First-Class Mail encompasses many different kinds of mail. There is undoubtedly a segment of Single-Piece First-Class Mail that continues to serve an important social function (e.g., personal correspondence, greeting cards, thank you notes, and the like). However, the Household Diary Study, Mail Use and Attitudes in FY 2008 shows that household to household correspondence is in decline and currently represents only a quarter of all household-originated mail. *See* The Household Diary Study, 2008 at 21 (Table 3.1). The significant majority of household Single-Piece First-Class Mail is transactional and business mail. *See id.*, at 27 (Table 3.12) and at 31 (derived from applying the number of households to 1.8 piece weekly average (Table 4.3)). Furthermore, almost half of all Single-Piece Mail originates outside of households in businesses, governmental organizations, NGOs, and the like. *See id.*, at 7 (Table 1.2) (total First-Class Single-Piece Mail of 33.545 billion pieces) and Table 1.5 (20.8 billion sent by households). For example, the Joint Commenters mail a significant amount of Single-Piece First-Class Mail. Typically this mail volume is composed of one-off business transactional and operational mail (white mail) that could not be included for business or technical mailing eligibility reasons in a bulk mailing.

important protection for Single-Piece First-Class mail users.¹⁰ This is true even if the “just and reasonable” objective of section 3622(b)(8) does not uniquely benefit users of Single-Piece First-Class Mail. And it does not.

Although section 3622(b)(8) does not provide any “special protection” for Single-Piece First-Class Mail users, the Commission has discretion to establish and maintain a just and reasonable schedule of rates to ensure that the Postal Service does not abuse its pricing flexibility by unreasonably shifting the price burden to any particular product, including Single-Piece First-Class Mail.

2. A Cost-Based Linkage Between Single-Piece and Presort First-Class Mail is Inappropriate and Unnecessary. The Commission Can Protect Single-Piece First-Class Mail Users, And All Others, By Giving Effect to the Full Range of Statutory Objectives and Factors of the PAEA, Including the Just and Reasonable Standard

The Commission can protect the interests of all First-Class Mail users without recourse to the mechanical and inefficient pre-PAEA cost linkage between different products. As discussed in the previous comments of the Postal Service, the Joint Commenters and numerous other parties, a cost-based linkage between Single-Piece and Presort First-Class Mail is inappropriate and inefficient.¹¹ The two products are separate and distinct products under section 102(6), with distinct cost differences and distinct market characteristics.¹² As the Commission has previously observed, Single-Piece and Presort First-Class Mail are appropriately classified as separate products.¹³ Moreover, as previously discussed in the initial comments, imposing a cost-based linkage between these two distinct products will unnecessarily limit the Postal Service’s pricing

¹⁰ See 39 U.S.C. § 3622(b)(8).

¹¹ See Initial Comments of the United States Postal Service (May 26, 2009), at 2-21; Joint Comments, at 2-7; Initial Comments of Pitney Bowes Inc. (May 26, 2009), at 2; Comments of National Postal Policy Council (May 26, 2009), at 12-13; Initial Comments of Major Mailers Association (May 26, 2009), at 6-10.

¹² See USPS Comments at 2-21; Joint Comments at 2-7; Pitney Bowes Comments at 2; NPPC Comments at 12-13; MMA Comments at 6-10.

¹³ See Dkt. No. RM2007-1, Order No. 43 at 103-104.

flexibility and, given the current pricing differentials between the two products, needlessly harm the Postal Service’s financial viability by prohibiting the Postal Service from using its pricing authority to stem declines and encourage growth in more profitable Presort letter mail volumes.¹⁴

For all of these reasons, imposing a cost-based linkage between Single-Piece and Presort First-Class Mail is inappropriate. It is also unnecessary. The PAEA, through its command that the Commission establish and maintain a just and reasonable schedule of rates, gives the Commission the ability to protect Single-Piece First-Class Mail users without “linking.” Section 3622(b)(8) of the PAEA directs the Commission to establish a modern rate system that seeks, among other objectives:

To establish a just and reasonable schedule of rates and classifications, however the objective under this paragraph shall not be construed to prohibit the Postal Service from making changes of unequal magnitude within, between, or among classes of mail.¹⁵

The reply comments of the Greeting Card Association (GCA) highlight two salient features of the “just and reasonable” objective.¹⁶ First, GCA observes that the “just and reasonable” objective calls for a just and reasonable *schedule* – implying a focus on the “relationship among rates, and not just individual rates in isolation[.]”¹⁷ The Joint Commenters agree. The “just and reasonable” standard is a relative standard. Price differences and relative price burdens must be assessed comparatively.

¹⁴ See USPS Comments at 21-28; Joint Comments at 2-7; Pitney Bowes Comments at 4-8; NPPC Comments at 5-6; MMA Comments at 10-16. In the case of First-Class Mail, the effect of a “linked” rate design is especially harmful because (1) the cost heterogeneity of Single-Piece First-Class Mail does not allow for the selection of an accurate benchmark from which to measure, either directly or indirectly, costs avoided by Presort First-Class Mail, and (2) the operation of the integer constraint on Single-Piece First-Class Mail and the price cap mechanics create a systematic bias in favor of Single-Piece letters. For these reasons, the Joint Commenters support the Greeting Card Association’s request that the Postal Service and the Commission consider replacing the whole-cent letter stamp convention as a means of promoting more efficient, equitable First-Class Mail rates under the price cap. While this suggestion is valuable independent of the Commission’s determination on linking, it is imperative if the Commission imposes the pre-PAEA cost linkage between Single-Piece and Presort First-Class Mail.

¹⁵ 39 U.S.C. § 3622(b)(8).

¹⁶ See GCA Comments (August 31, 2009), at 11.

¹⁷ *Id.*

Second, GCA observes that the command that a just and reasonable schedule be “maintained” implies a continuing obligation on behalf of the Commission. More precisely, the PAEA directs the Commission to “establish and maintain” a just and reasonable schedule of rates. As to the first element, the statutory language implies that Congress intended the just and reasonable schedule to be *established* under the new, modern rate system – a fundamental attribute of which is expanded pricing flexibility for the Postal Service. The language is inconsistent with the notion that the Commission ought to constrain the Postal Service’s pricing flexibility by means of imposing the pre-PAEA cost-based linkage between Single-Piece and Presort First-Class Mail.

The command that the Commission *maintain* the just and reasonable rate schedule also implies an assessment over time, rather than a snapshot determination.¹⁸ A longer-term assessment of compliance with the “just and reasonable” standard is further suggested by the express statutory reference to unequal increases within, between, and among product and classes within any given year. Moreover, a longer-term assessment is necessitated by year-to-year variances caused by the operation of the integer constraint under the price cap. As noted in our initial comments, in the two pricing adjustments implemented under the modern rate system of the PAEA, above-the-cap increases have alternated between Single-Piece and Presort First-Class Mail letters.¹⁹ Thus, there is no basis to suggest that the Postal Service’s exercise of its pricing flexibility has disadvantaged Single-Piece First-Class Mail users. In fact, the opposite is true.

¹⁸ The Joint Commenters agree that the just and reasonable objective imposes a continuing obligation to assess the relationship among rates over time. But GCA’s discussion of workshare as a mature service offering in this context is misplaced. The fact that workshare is a mature service offering is relevant to the question of whether mail at the margin of converting to or from Single-Piece to Presort First-Class Mail can properly be measured using the Bulk Metered Mail (BMM) benchmark. As the Postal Service correctly observed in its initial filing, it cannot be. *See* USPS Comments at 17-20. Because workshare is a mature service offering, mail at the margin has long since converted. *See id.* Therefore, BMM is not a suitable benchmark.

¹⁹ *See* Initial Comments of Bank of America Corporation, Discover Financial Services, J.P. Morgan Chase & Co, and the American Bankers Association (May 27, 2009), at 4-5.

Over the past decade, the average contribution per piece and the average cost coverage ratios for Single-Piece and Presort First-Class Mail evidence a consistent bias in favor of Single-Piece First-Class Mail. In FY 2001, Single-Piece contributed 15 cents per piece and Presort contributed 17 cents per piece (note that these figures include letters, flats, and parcels because they were all aggregated together in the CRA until FY 2008). By FY 2007, the last year to include flats and parcels, Single-Piece contributed 20 cents per piece and Presort contributed 22.6 cents per piece, 2.6 cents per piece more than Single-Piece. The contribution difference peaked in 2005 at 5.8 cents. For FY 2008, the first year in which the CRA isolates letter costs for Single-Piece and Presort First-Class Mail, Presort Letters contributed 4.8 cents more per piece (22.674 cents per piece) than Single-Piece Letters (17.874 cents per piece).

Moreover, the cost coverage of Presort letters (301.5 percent) is nearly double the cost coverage of Single-Piece letters (170.9 percent).²⁰ This disparity cannot be justified based on available elasticity data. The elasticity data suggests that Presort First-Class Mail letters are more price sensitive than Single-Piece First-Class Mail letters, not less.²¹ Yet the product bearing a disproportionate price burden is Presort First-Class Mail, not Single-Piece First-Class Mail. In sum, the price difference between the two products is *not large enough*, rather than too large.

The imposition of a pre-PAEA cost-based linkage between Single-Piece and Presort First-Class Mail will perpetuate (and likely exacerbate) the disproportionate price burden currently borne by Presort First-Class Mail. This is inconsistent with the statutory objective that the Commission establish and maintain a just and reasonable rate schedule. While protecting the

²⁰ See FY2008 ACD, at 48, Table VI-1.

²¹ See United States Postal Service FY 2008 Demand Analysis Materials Market Dominant – USPS Econometric Demand Equation Tables for Market Dominant Products as of November 2008 (filed Jan. 16, 2009).

interests of all mailers, the Commission should seek over time to more equitably balance the rate relationships among First-Class Mail products.

B. Standard Mail Rate Design

The concerns raised in Order No. 243 regarding pricing relationships and the relative price burdens among products apply with equal force to Standard Mail.

In the FY 2008 ACD the Commission observed that below-average increases for Standard Mail flats and above-average increases for Standard Mail letters have had the effect of placing a disproportionate price burden on Standard Mail letter mailers.²² The Commission likewise observed that in FY 2008, Standard Mail (non-Carrier Route) flats' attributable costs exceeded their associated revenues, yielding a unit "contribution" of negative 2.2 cents (Standard Mail Letters yielded a unit contribution of 9.0 cents).²³ Thus, the prices for Standard Mail flats fail to satisfy section 3622(c)(2) of the PAEA, which requires that each class of mail or type of mail service cover attributable costs and make a reasonable contribution to institutional costs.²⁴

The Commission also suggested that the lack of a sufficiently high-cost coverage may be inconsistent with sections 101(d) and 3622(b)(5) of the PAEA which direct the Postal Service to apportion costs equitably and to establish rates that ensure adequate revenues to maintain financial stability.²⁵ The Commission has also raised legitimate concerns regarding unreasonable discrimination under section 403(c), absent any evidence that Standard Mail letters and flats have different market characteristics or other non-cost factors sufficient to justify the current rate preference for Standard Mail flats.²⁶

²² See FY2008 ACD, at 62.

²³ See *id.*, at 60.

²⁴ See FY2008 ACD, at 61; 39 U.S.C. § 3622(c)(2).

²⁵ See *id.*; 39 U.S.C. §§ 101(d) and 3622(b)(5).

²⁶ See *id.*, at 62; 39 U.S.C. § 403(c).

For all of these reasons, the current pricing relationship between Standard Mail letters and Standard Mail flats fails to satisfy the statutory objective for a just and reasonable schedule of rates. Accordingly, the Joint Commenters urge the Commission to require the Postal Service to either (1) rectify over time the current disparity between letters and flats in future pricing adjustments or (2) provide the Commission with empirical evidence that the market characteristics of Standard Mail letters and Standard Mail flats or other non-cost factors justify the disparate difference in per piece contributions and percentage markups between Standard Mail letters and flats.

C. Workshare Definition

Order No. 243 invited interested parties to comment on the appropriate definition of worksharing.²⁷ Specifically, the Commission invited comment as to whether a worksharing discount should be defined as:

- A “pure” presorting, prebarcoding, handling, or transportation activity that is a direct substitute for an equivalent Postal Service activity; or
- A “pure” worksharing activity as described above, plus other cost-reducing mail characteristics that are facilitated by or naturally support the “pure” worksharing activity, e.g., walk sequencing and density.

Id.

On August 27, 2009, the Commission issued an NOI asking a series of questions regarding the value of various activities performed by presort mailers and how avoided costs associated with these activities should be reflected in pricing differentials.²⁸

The Joint Commenters support a “pure” worksharing definition for several reasons. First, the Postal Service should have flexibility to price distinct products on a variety of economic considerations, not only on cost differences. The pricing differentials between Basic and Full-

²⁷ Order No. 243 at 4.

²⁸ See Dkt. No. RM2009-3, NOI-1 (August 27, 2009).

Service Intelligent Mail Barcode mailings are an example of the Postal Service's appropriate exercise of its pricing flexibility. Second, the "pure" definition adheres to the statutory language of section 3622(e)(1).²⁹

Third, the "pure" definition has the advantage of avoiding foreseeable disputes regarding whether various characteristics are "facilitated by" or "naturally support" traditional workshare activities. Finally, the Postal Service has not exhausted potential applications of the "pure" worksharing definition. For example, a distance-related discount for First-Class Mail is an appropriate extension of the Postal Service's current workshare discounts that fits squarely within the "pure" definition. First-Class Mail is the only major category of mail that does not have a distance-based rate structure. The statutory definition of worksharing specifically identifies "transportation" as an activity that can be performed by mailers that is a direct substitute for an equivalent Postal Service activity. Accordingly, the Postal Service should provide First-Class Mail workshare discounts equal to the costs avoided by the Postal Service for mailers who transport and enter their mail deeper into the postal network.

The NOI questions highlight the need to ensure that pricing differentials fully reflect the costs avoided of all handling activities performed by presort mailers that improve the efficiency and reduce the costs of the Postal Service. Many of the activities referenced in the NOI are properly recognized as "handling" activities performed by presort mailers.³⁰ Importantly, the statutory definition of worksharing specifically recognizes "handling" as activity that can be performed by a mailer as a direct substitute for an equivalent Postal Service activity. Regardless of whether certain activities (e.g., density, mail piece design, electronic documentation) are

²⁹ See 39 U.S.C. § 3622(e)(1).

³⁰ See Docket No. R2006-1, Direct Testimony of Richard E. Bentley on Behalf of Major Mailers Association, DST Mailing Services, Inc. and the Association for Mail Electronic Enhancement, Inc. (MMA-T-1)(October 23, 2006), at 22-24 (discussion of how volume within a mailing impacts efficiency)..

defined as worksharing or nonworksharing, the value of these activities in terms of cost savings to the Postal Service ought to be fully reflected in the pricing differentials among products in the same market.

The policy issues regarding workshare definitions are closely intertwined with the questions regarding “how price signals influence mailers’ decisions to invest in hardware, software or quality control processes to avoid postage penalties that could result from failing Postal Service acceptance tests.”³¹ In response to the specific question, the Joint Commenters submit that price signals keyed to mailing eligibility criteria have a strong influence. More broadly, postal pricing signals have a direct and significant effect on the decisions we make to invest in new postal technologies and processes. Pricing signals also have a significant influence on whether and to what extent mail remains a preferred communications medium. Mailing eligibility rules associated with workshare discounts impose real costs on our businesses. In the absence of meaningful pricing incentives to offset these costs, mail cannot compete as a viable business communications channel.

III. CONCLUSION

For the reasons stated above and in the previous submissions in this docket, the Commission should not impose a cost-based linkage between Single-Piece and Presort First-Class Mail. A cost-based linkage between these separate products is inappropriate and unnecessary. The Commission can protect the interests of Single-Piece Mail users, and all others, by giving effect to the full range of statutory objectives and factors of the PAEA, including the statutory objective to establish and maintain a just and reasonable schedule of rates. With respect to the Standard Mail, the Joint Commenters respectfully request that the Commission direct the Postal Service to justify or remedy, over time, the current inequitable rate

³¹ Order No. 243 at 5.

