

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

**Consideration of Workshare Discount
Methodologies**

Docket No. RM2009-3

**COMMENTS OF
AMERICAN POSTAL WORKERS UNION, AFL-CIO
(September 11, 2009)**

The American Postal Workers Union, AFL-CIO (APWU) hereby submits these comments in response to the Commission's July 10, 2009, Order on Further Procedural Steps, Order No. 243. The rulemaking came about as a result of Docket No. R2009-2, wherein the Postal Service proposed workshare discounts that were "not based on established workshare cost avoidance methodologies."¹ The Postal Service unsuccessfully sought to abandon these principles in the past.² For the reasons explained more fully below, the Commission should reject proposals by the Postal Service and other participants that would undermine the statutory requirement that workshare discounts not exceed costs avoided by the Postal Service.

The PAEA Requires that the Rates for First-Class Single Piece and Presorted Mail Remain Linked by a Benchmark.

Section 3622(e) of the Postal Accountability and Enhancement Act (PAEA) defines workshare discounts as "rate discounts provided to mailers for the presorting, prebarcoding, handling, or transportation of mail, as further defined by the Postal Regulatory Commission."³ The Act further mandates: "[t]he Postal Regulatory Commission shall ensure that such discounts do not exceed the cost that the Postal Service avoids as a result of the workshare activity."⁴

¹ PRC Order No. 192, March 16, 2009.

² See Docket No. R2006-1 and Docket No. R2008-1.

³ 39 U.S.C. § 3622(e)(1).

⁴ Id. at §3622(e)(2).

The Senate Report by the Committee on Governmental Affairs that accompanied the workshare provision clearly endorses this concept of workshare discounts:

The Committee agrees with the principle, supported by the Postal Service, the Postal Rate Commission, and postal employees, that workshare discounts should generally not exceed the costs that the Postal Service avoids as a result of the worksharing activity. When discounts are kept below the costs saved by the Postal Service, mailers have a financial incentive to do work more efficiently than the Postal Service can do it, yielding savings to the participating mailers, to the Postal Service, and to other postal customers whose rates are kept down by the Postal Service's savings under the program.⁵

The Report also shows that Congress adopted the Commission's previously delineated exceptions to this general rule:

There are four circumstances under which workshare discounts in excess of avoided costs have historically been allowed by the Postal Rate Commission and are warranted, and the Committee has codified these exceptions in the legislation:

The first exception applies when a discount is associated with a new or changed postal product... .

The second exception provides that a workshare discount may exceed costs avoided if a reduction in the discount would – (i) lead to a loss in volume of the affected category of mail and thereby reduce the aggregate contribution to institutional costs, (ii) result in a further increase in rates paid by mailers not able to take advantage of the discount, or (iii) impede the efficient operation of the Postal Service.

The third exception allows a workshare discount to exceed costs avoided if that excess portion of the discount is necessary to mitigate rate shock and will be phased out over time... .

The fourth exception applies to discounts that are provided in connection with subclasses of mail consisting exclusively of material having educational, cultural, or scientific value.⁶

The only way to ensure that discounts do not exceed costs avoided is to compare the workshare piece to a benchmark that differs from the workshared mail only because of a lack of workshare activities. To de-link workshared first class mail from single piece first class mail, to refuse an across-product comparison would completely ignore this requirement of 3622(e) and the protections offered by it to single-piece users.

⁵ Sec. Rpt. 108-318, at 12 (Jul. 22, 2004). While this Report is from the 108th Congress, this was the genesis of the workshare language adopted.

⁶ Id.

As the Commission observed in MC95-1, ¶ 2048, "...the first and most enduring objective of postal policy has been to bind the nation together." The Postal Accountability and Enhancement Act amended many areas of the Postal Reorganization Act, yet this principle remains a constant, central objective of postal policy. Section 404(c) of the Postal Reorganization Act provides, in part:

The Postal Service shall maintain one or more classes of mail for the transmission of letters sealed against inspection. The rate for each such class shall be uniform throughout the United States, its territories, and possessions.

The Commission observes that "[a] class such as First Class is necessary to comply with the statutory command [of Section 404(c)] that ...[t]he rate for [First Class] shall be uniform throughout the United States, its territories, and possessions." *Id.*, at ¶ 3005.⁷ Consistent with this requirement, the Commission consistently adhered to the principle that workshare discounts may not exceed costs avoided. Mr. Taufique, the Postal Service's First Class rate design witness in R2006-1, describes this concept in his testimony.

Since classification reform in Docket No. MC95-1, the structure of and approach to the relationship between the Single-Piece and Workshare rate categories in First-Class Mail have remained relatively constant. Workshare rates are determined by applying discounts to Single-Piece rates. These rate differentials (discounts) are based on estimates of costs avoided through each type of worksharing activity (e.g. prebarcoding and/or various levels of presortation). The cost differentials are developed by estimating avoidance of postal mail processing and related operations costs in comparison to a representative benchmark for workshare mail generally.⁸

Those that are participating in worksharing are compensated only for the costs avoided by the Postal Service and the non-worksharing mailers are no worse off. Thus, the application of the cost avoided standard for workshare discounts is necessary for compliance with the statutory requirement of a uniform First Class rate. If discounts exceed the costs avoided by the Postal Service, costs will shift to non-workshare mailers and rates will not be uniform.

In Docket No. R2006-1 the Commission reasoned that "[d]elinking the rate design [between First Class single piece and presort mail] does not fairly and equitably balance

⁷ The requirement was then in 39 U.S.C. 3623(d).

⁸ R2006-1, USPS T-32, p. 12.

the interests of all First-Class mailers.” PRC Op. R2006-1 at ¶ 5090. The Commission noted that abandoning the benchmark and de-linking single piece and presort mail “allows many costs that are not worksharing related to be avoided” by presort mailers. The enactment of the PAEA did not change this fact. The legislative underpinnings for requiring a uniform rate for First Class mail have not been amended by the PAEA. The central postal policy has been and remains to “bind the Nation together.”⁹ Section 404(c) is unaltered; thus, the requirement for a uniform rate for First Class remains unchanged. To now treat single-piece mail and presort mail as separate, un-linked products would contravene the decision of Congress to continue these enduring postal policies by codifying the principle that workshare discounts not exceed costs avoided.

During the Public Forum, held on August 11, 2009, it was suggested that single piece users may find protection in other areas of the PAEA, namely the objective that rates be “just and reasonable.”¹⁰ While it is true that this provision affords some protection to single piece users, there are practical problems to enforcing this provision. The streamlined rate setting procedure makes it difficult to enforce as it would only be evaluated if 1) a complaint were filed or 2) during the Commission’s Annual Compliance review, usually close to a year after the rates have taken effect.

The new complaint system is mostly untried,¹¹ and it is not clear who would bring a complaint on behalf of single-piece mailers. It is possible that a Public Advocate could represent the interests of single-piece mailers, but Public Representatives are appointed by the Commission **after** a proceeding has been initiated and the Commission has placed it on the docket. There is no incumbent Public Representative to initiate a proceeding whenever it feels as though a rate schedule is not “just and reasonable.” Even if such a complaint were contemplated by a Public Representative or an individual citizen, the just and reasonable standard is too amorphous to be an adequate proxy for legal restrictions on excessive discounts. Furthermore, establishing a violation of an undefined “just and reasonable” standard would likely prove extremely costly, more than likely prohibitively so for the majority of single piece mailers most affected by unjust rates.

⁹ 39 U.S.C. § 101(a).

¹⁰ See 39 U.S.C. § 3622(b)(8).

¹¹ To date, only one Complaint docket has been established under the new complaint rules, C2009-1.

The Annual Compliance Review also does not provide an adequate means of enforcing the “just and reasonable” requirement to protect single piece mailers. From the Annual Compliance Determinations issued thus far, it does not appear that the Commission considers and evaluates all of the factors and objectives of the Act. Also, the annual compliance occurs at the end of the calendar year, usually long after rates have been in effect. The Commission must issue its Report within 90 days of receiving the Postal Service’s annual report. There is little opportunity for public participation or comment during this time. This is especially problematic since the Commission has decided

A written determination finding no instance of noncompliance creates a rebuttable presumption of compliance with the matters regarding rates and fees and service standards in effect during such year in any complaint proceedings filed pursuant to § 3662 of the PAEA. 39 U.S.C. § 3653(e).¹²

The workshare discount language provides a valuable protection for single piece users against impermissible cost shifting. No other protection can sufficiently replace that afforded by the workshare language.

Section 3652(b) Creates No Impediment to Keeping First-Class Single Piece and Presorted Mail Linked.

Section 3652(b) requires that workshare discount information be reported “with respect to each market-dominant product for which a workshare discount was in effect.” This requirement is entirely consistent with Section 3622(e). A product can serve as the smallest unit of a rate category. Requiring workshare information to that level ensures that all of the discounts within the class are based on costs avoided. Thus, the reporting mandates help ensure compliance with 3622(e). The contrary interpretation offered by the Postal Service and supported by some others, is not suggested, much less required by the statutory language. Moreover, it would nullify the protections of the workshare language so recently adopted by Congress.

In statutory construction, “[i]t is well established that [Courts] will not assume Congress intended an odd or absurd result. *Rucker v. Davis* 237 F.3d 1113, 1124 (C.A.9 (Cal.),2001) *citing X-Citement Video*, 513 U.S. at 69-70, 115 S.Ct. 464; *Public Citizen*,491

¹² PRC Annual Compliance Determination Report 2007 at p. 5, March 27, 2009.

U.S. at 453-55, 109 S.Ct. 2558. As the Greeting Card Association has observed, the Postal Service's interpretation could lead to the absurd situation where "the rate difference between [a workshared version of an otherwise identical non-presorted product] would not be a workshare discount even though, apart from the worksharing involved, there would be no reason for it to exist."¹³ To endorse the Postal Service interpretation would read out the workshare language almost entirely from the statute; a result that must not be permitted.

Bulk Metered Mail is Still the Proper Benchmark and Must Be Used to Determine Costs Avoided

There are two purposes for using a consistent benchmark piece in discount calculations. The Commission, in its R2000-1 Opinion confirming the use of BMM letters as the appropriate benchmark [at 5089], stated the primary reason for using the benchmark:

This may mean that the institutional cost burden of First-Class workshare mail is increasing. However, when discounts pass through 100 percent of avoided costs to the workshare mailer, the contribution made by that mailer to institutional costs is the same as the mailer would have made without worksharing. Thus, workshare mailers and non-workshare mailers provide the same contribution, which is fair and equitable.¹⁴

The comparison is not between the workshared mailer and all the single-piece mailers. The comparison has always been to what the presort mailer would pay if that mailer was not worksharing. That comparison is what isolates the worksharing contribution to cost savings. This echoes the comments in the original MC95-1 case where the Commission stated

the most important reason for using a discount approach to recognize cost distinctions brought about by worksharing is that the Commission has determined that this is most fair and equitable to all mailers. Worksharing mailers receive a price reduction based on avoided costs while residual mailers are no worse off.¹⁵

¹³ GCA Reply Comments, at p.7, August 31, 2009.

¹⁴ *Opinion and Recommended Decision R2000-1*, at 5060, page 234 and 5089 at p. 241.

¹⁵ *Opinion and Recommended Decision MC95-1*, at 3079, page III-31.

In discussing its decision to use a benchmark, in R97-1, the PRC quoted Postal Service witness Fronk's testimony:

[n]onpresorted mail includes everything from 'clean' mail (uniform pieces featuring typewritten or pre-printed addresses and often mailed in bulk) to 'dirty' mail (pieces featuring handwritten and incorrect or incomplete addresses) and all the mail in between. Using all nonpresort letters as a benchmark results in a larger discount than using a benchmark which tends to have all the attributes of presort/automated mail, except for the actual presortation or application of the barcode.¹⁶

In its R2006-1 Decision, the Commission identified other major reason for using such a benchmark when it stated a "comparison of pieces that are similar, except for worksharing, is the approach most likely to accurately isolate the savings due to worksharing, and therefore allow for the development of discounts that encourage efficient mailer behavior and minimize costs to society."¹⁷

In order to encourage the most efficient mailer behavior it is necessary that the benchmark used remain constant. Utilizing the same benchmark enables the Postal Service, and mailers to more readily determine the costs avoided and the resulting discounts. This is useful for mailers who intend to make large capital investments in support of workshare activities it intends to perform. If the benchmark were not constant, it would be hard for mailers to accurately predict what the return on any such investment would be year to year. A consistent benchmark easily provides mailers and the Postal Service with critical information that affects the amount of workshare activity performed. If the work can be done more cheaply by the mailer than by the Postal Service, then make the investment and do the work; if not, it is better for society as a whole for the work to be done by the Postal Service.

Opponents of the BMM benchmark err in contending that BMM does not exist. In R2006-1 when asked if the BMM benchmark should continue to be used if the Commission rejected the proposal to de-link First Class single-piece and presort mail Postal Service Witness Abdirahman stated:

Yes, that's why I explained my testimony; that the BMM is still there; and I, myself, observed their existence. And if the Commission decides not to accept the de-

¹⁶ *Opinion and Recommended Decision R97-1*, p.292 at 5092.

¹⁷ *Opinion and Recommended Decision, R2006-1*, February 26, 2007 at 5089.

linking proposal, the only alternative that I see is the BMM, and that's as a costing witness.¹⁸

The BMM benchmark has never been precisely measured with a separate CRA cost analysis. A proxy for BMM costs has always been estimated from the CRA for metered mail letters. Consequently, the cost basis from which the BMM benchmark has always been measured is available and will continue to be available.

The benchmark piece is still important in keeping costs from being shifted from workshare mailers to those that do not participate in worksharing. Any change in the benchmark piece towards an alternative that would provide a larger avoided cost calculation, causes leakage in the system, compensating presort mailers for something they were already doing without benefit of a discount. The resulting loss of network contribution from presort mailers would shift that contribution burden to other mailers not in a position to use workshare discounts. This means that even within the price cap system imposed by the PAEA costs can be shifted to others in the same class or even to mail in different classes. The price cap limits how much a class can be increased overall and therefore how much cost shifting could be done at one time. But, a price cap does not control price increases relative to other classes or to other products within the same class.

The more productive the Postal Service becomes, the more likely it is that discounts based on avoided costs will stay constant or grow very slowly. That is exactly how the efficient component pricing system is designed to work. It only gives mailers the incentive to do the work if they can be more efficient about doing it. It clearly is not efficient to have multiple delivery networks. If the mail is to be combined into a single delivery network, all of it must eventually pass through the Postal Service's processing system to be prepared for that delivery. If the definition of the benchmark piece is changed, or worse is changed on a regular basis, then there will 1) be leakage from the system that covers the joint overhead costs of running the network and 2) a change to both the incentives the mailers are using to make their decisions and also a change in the basis for the Postal Service's return on its investments. Ultimately, the mail must come back together into one processing stream before it can be delivered by the single delivery

¹⁸ R2006-1 Tr. 35/11968-9; see also 12050-51.

system, consequently there must be enough mail left in the system to provide a reasonable return on the investments it has made.

If, as many have observed, worksharing is now a mature industry with little single-piece mail still a candidate for conversion to presort mail, then there is limited rationale for providing mailers with incentives for trying to convert an increasing volume of mail. The universal Postal network that allows everyone to reach out to every other user in the United States is a valuable public service and also a valuable marketing tool. It is valuable to single piece users and it is valuable to business mailers who use it to contact virtually every household and business in the United States at some time during the year. There is no reason why mailers should not make as large a contribution to the support of the network as they would if they were mailing at single piece rates.

Creating A Separate Class Of First Class Single Piece Mail Will Not Provide Adequate Protection For Single Piece Mailers.

It has been proposed by the Public Representative that a new class of mail, “comprised of single-piece First Class Mail letters (and cards) be established as an “alternative to the Postal Service’s efforts to abandon the BMM benchmark.”¹⁹ (PComments page 23). This proposal is clearly impermissible under the PAEA and should be rejected by the Commission.

The PAEA established an “annual limitation the percentage changes in rates...equal to the change in the Consumer Price Index for All Urban Consumers...”²⁰ The Act goes on to state “...the annual limitations under paragraph (1)(A) shall apply to a class of mail, **as defined in the Domestic Mail Classification Schedule as in effect on the date of enactment of the Postal Accountability and Enhancement Act.**”²¹ The DMCS does not include a definition of “class of mail.” Instead, it includes a listing of the classes of mail. Therefore, this provision clearly requires the cap to be applied to a class of mail as it existed on December 18, 2006. In the case of First Class Mail, the annual limitation applies to single-piece AND workshared mail.

¹⁹ RM2009-3 Public Representative Comments, at p. 23, May 26, 2009.

²⁰ Section 3622(d)(1)(A).

²¹ Id. [emphasis added].

The use of a separate class of mail for single piece users has been suggested as a potential protection for them. While being in its own class could provide some protection, it would not result in the same outcome as the current system that keeps the two rates tied together in the same class. The costs to support the shared network cannot be allocated directly to one class of mail and are shared by all the classes. Under a system in which single piece and presort mail are separated into two different classes, there could still be shifting of the costs to support that system from the presort mail to single piece. While both of the new classes could be protected in the sense that their rates could not be increased beyond the rate of inflation, the single piece “class” could well be faced with price increases that are always at the maximum end of the rate cap while the presort mailer is given further discounts or other rate cuts that reduce the contribution they make to sustain the Postal network. In this manner costs would be shifted from the presort mailer to the single piece mailer. The current system puts a fair and equitable cap on how much of a shift can take place since the workshare discounts can not exceed the costs avoided by the Postal Service. What has not been addressed in the rather vague discussions of separate classes is the wide variety of mail that would still remain in First Class single piece mail. It would still be non-homogeneous and run the gamut from hand-addressed birthday cards to type-written business letters and would include everything from consumer reply mail to netflix. Inevitably, the long term rate increases for single piece mail would outpace the rates for workshared mail.

The other danger to a separate class is that it would also leave open the option for there to be different service provided to those two classes. If the contribution to the network provided by presort mailers is decreased, as is certain to happen if the class is separated and/or the rates de-linked, single-piece users will either face an increase in rates or a decrease in service. Either result is clearly prohibited by the PAEA and the requirement there be a uniform rate and service for First Class mail. Therefore, separating the First Class offers little protection to first class single piece users and would lead to results that violate the law.

Postal Service Flexibility

We observe that the Postal Service argument for de-linking boils down to a complaint that the CPI limitation on rate increases and the requirement that workshare discounts must not exceed costs avoided have, in combination, left the Postal Service with too little rate-making flexibility. We have several responses to that complaint. One is that Congress made the policy decisions that underlie the CPI cap and the restriction on workshare discounts; and Congress spelled out the CPI and worksharing standards in the statute. There is no doubt that Congress was aware of the hybrid nature of the system -- that it employs both a rate cap and cost-based standards for rates. Both requirements are written in clear statutory terms. To the extent that there is any tension between the two statutory requirements, and we think the Postal Service overstates that tension, the Postal Service is nevertheless required to comply with both provisions of the law.

It is important to observe that Congress, in codifying the Commission's prior decisions on workshare discounts, included in that codification as temporary exceptions several circumstances the Commission had recognized in its decisions as justifications for flexibility in the application of the costs avoided standard.²²

Finally, we observe that the tension in First Class rates is created not so much by the combination of the CPI cap and workshare discount restrictions as by the tension between whole integer rate increases and the CPI cap. CPI cap banking is one way for any resulting rate-making inefficiency to be resolved over the long run. There also are several other rate-making tactics that have been suggested elsewhere that would address these circumstances without violating the law. Whether the Postal Service or the Commission will seek to adopt those strategies is a topic for a different proceeding.

²² See *supra* p. 2.

Conclusion

For the reasons explained above, the Commission should maintain the link between First Class single piece and presort mail. The Postal Service interpretation of the workshare requirement and its assertion that the workshare discount limitation should not be applied across products undermines the statutory requirement that workshare discounts not exceed the costs avoided and should be rejected. In order to effectuate all provisions of the Postal Accountability and Enhancement Act, and to ensure the continued protection of single-piece users against unjust cost shifting, the Commission must ensure the workshare discounts do not exceed costs avoided. The only way to keep workshare discounts from exceeding costs avoided is through the use of a consistent benchmark piece that isolates the costs avoided by the workshare activity. The proper benchmark remains the Bulk Metered Mail piece.

Respectfully submitted,

Darryl J. Anderson
Jennifer L. Wood
Counsel for American Postal Workers Union, AFL-CIO