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

Rate Adjustment Due to Extraordinary Or Exceptional Circumstances, 2010 — **Docket No. R2010-4**

INITIAL COMMENTS OF AMERICAN POSTAL WORKERS UNION, AFL-CIO ON THE UNITED STATES POSTAL SERVICE EXIGENT REQUEST

(August 17, 2010)

Pursuant to Order No. 485, Notice and Order Concerning Rate Adjustment for Extraordinary or Exceptional Circumstances, issued July 8, 2010, the American Postal Workers Union hereby submits these initial comments on the Postal Service proposal for an exigent rate increase pursuant to Section 3622(d)(1)(E) of Title 39. The Commission should determine that the rate increase requested in this case meets the requirements of Section 3622(d)(1)(E) of the PAEA, but that it does not meet the workshare discount requirements of Section 3622(e).

We first observe that there can be no serious question that the Postal Service's circumstances are "extraordinary or exceptional" and that the requested adjustment is "necessary." In 2006 when the PAEA was enacted, it was heralded by its sponsors and supporters as a measure that would bring financial stability to the Postal Service and help ensure its future. Given those predictions, it is very hard to understand how those who made them now consider the present situation to be predictable and not sufficiently out of the ordinary to be extraordinary or exceptional. Thus, we believe a rate increase above the CPI cap is warranted by present circumstances and supported by the Postal Service's evidence in this case.

Nonetheless, the PAEA does not provide additional exceptions for workshare rates that exceed costs avoided in the event of extraordinary or exceptional circumstances warranting an above CPI rate increase pursuant to Section 3622(d)(1)(E). Even in an exigent increase, workshare discounts must comply with Section 3622(e) and not exceed costs avoided or if excessive, the discounts must meet one of the narrowly delineated exceptions of this provision. In this case, the proposed rates for First Class workshare mail exceed costs avoided and the Postal Service has failed to provide adequate evidence that a Section 3622(e) exception applies.

In ACR 2009, the Postal Service departed from established methodologies for determining workshare discounts for the fourth year in a row without the approval of the Commission. This began in R2006-1 where the Postal Service sought to de-link workshared mail from single piece First Class mail by using separate cost categories. In rejecting that effort, the Commission reasoned "[d]elinking the rate design [between First Class single piece and presort mail] does not fairly and equitably balance 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.
Thus, by 2006, the methodological requirements for setting workshare discounts that had been established by a long line of well-considered Commission decisions had been codified by Congress in Section 3622(e) of the PAEA.

But in 2009, the Postal Service continued to submit rates determined without meeting those requirements. The Commission responded by observing that its rules, as well as the law, “instruct the Postal Service to employ accepted analytical principles in its periodic reports to the Commission.” 2009 ACD at 68. Applying those principles in ACR 2009, the Commission found 13 workshare discounts “that are not justified and must be realigned in the next general market dominant price adjustment filing,” leaving open the possibility that the Postal Service “may present arguments” to justify a continuing excessive discount by establishing one of the exceptions in 3622(e) ACD at 6, 69, 73.

In this case, the Postal Service has acknowledged its obligation to comply with requirements of 3622(e) but it has at best paid lip service to those requirements. Excessive workshare discounts violate the requirements of 3622(e). They may be allowed only if the Postal Service demonstrates that this is “necessary to mitigate rate shock” and that they will be “phased out over time.” However, the Postal Service seeks to defend continuing and even increasing excessive passthroughs for First Class letter mail by arguing that it “is seriously concerned that price increases exceeding the overall average proposed in this request would cause many presort mailers to decide to abandon hard copy mail permanently and damage the core business supporting the Postal Service.” Kiefer Statement at 17. It asserts that the proposed rate increases for workshared mail should not be higher because higher increases would “raise unacceptable risks of damage to the automation letters mail category.” Id., at 24. It also asserts that, if excessive discounts for First Class letter mail were eliminated in this case, the resulting rate increases of 8.4 to 9.5 percent "would truly qualify as rate shock." Id., at 25.

This presentation by the Postal Service does not meet the statutory requirement that the Commission ensure that discounts not exceed costs avoided unless "the amount of the discount above costs avoided is necessary to avoid rate shock; and [the excessive amount] will be phased out over time." 39 U.S.C. § 3622(e)(2)(B)(emphasis added here). The Postal Service has not shown that maintaining the "the amount of the discount above costs avoided" is necessary to avoid rate shock; it asserts that totally eliminating the excess would "truly" cause rate shock. It also fails to make a commitment to phase the excessive amount out over time.[1]

Instead of beginning a trend to eliminate the excessive discounts, the Postal Service has proposed certain workshare rates with passthroughs that are even greater than those found to be unjustified in ACD 2009. Specifically, in the 2009 ACD, the passthrough for automation AADC presort letters was determined by the Commission to be 110 percent. In this case, instead of closing the gap between the excessive discount and what is permitted by the PAEA, the Postal Service proposed a rate that has a passthrough of 120 percent. The Postal Service provides no support for increasing the already excessive discount beyond claiming that it is necessary to mitigate "rate shock." However, as noted above, the PAEA requires that excessive discounts be necessary to mitigate "rate shock" and be "phased out over time." Logically, in order to phase the discount over time, the amount exceeding the costs avoided should get smaller, not

[1] In his oral testimony, Mr. Kiefer responded to a request by Chairman Goldway by making a commitment that the Postal Service would "file with the Commission" the Postal Service's "planned timeline for phasing out the excess amount."

larger. Further, if the smaller passthrough was not justified, an even larger passthrough with no additional, compelling support, must likewise be unjustified.

We respectfully submit that the Postal Service must be required to do more than pay lip service to the statutory requirements for worksharing. In this case, the proposed rates will not be effectuated until January 2011, 19 months after the last rate case. On an annualized basis, the overall rate increase will be less than three percent. See Kiefer oral testimony at 389. Even with a sluggish economy and low inflation rates, it requires more than the Postal Service's concerns to demonstrate that preserving discounts that violate the statute is necessary to avoid rate shock.

We submit that the Postal Service must be required to submit a firm timetable for the elimination of the excess amounts of workshare discounts, subject only to exceptions due to significantly changed circumstances. Given that the Commission has been instructing the Postal Service on this issue for four years, and given that Congress very specifically legislated on the subject in 2006, actual movement is now required. We respectfully suggest that the Commission instruct the Postal Service to phase out the excessive discounts over a three-year period.

Making the required changes to phase out completely the excessive discounts over a three year period should have only minimal impact on First Class workshare volume. Specifically, if the change was implemented by a 1/3 adjustment each of the next three years, the rate for 5-digit presort, the largest volume category, could remain as the Postal Service proposes in case. The rate for the lowest three workshare levels would increase by approximately one percent. Given that over half of the presort volume is 5-digit presort, and that this rate would not change, presumably its volume will remain, and the volume for the other presort levels will not be greatly diminished, certainly not to the degree to be considered "rate shock."

We also observe that the Postal Service gave no consideration to holding the increase in a single piece First Class stamp to one cent instead of two cents. Its analysis "started out with the two-cent" because "it fell within the range" of the overall increase the Postal Service was seeking. Kiefer oral testimony at 402. Yet a decision to increase single piece First Class letters by one cent while increasing workshared First Class mail as proposed in this case would reduce new revenue by less than $300 million while significantly improving the alignment between single piece rates and workshared rates for First Class mail.[2] A closer alignment between workshare discounts and costs avoided could be accomplished without increasing the proposed rates for workshare mail, thus retaining the expected volume and revenue for this mail, while only minimally reducing single-piece revenue.

Conclusion

The Postal Service has demonstrated that a rate increase above the CPI is merited due to extraordinary and exceptional circumstances pursuant to Section 3622(d)(1)(E) of the PAEA. However, the rates proposed for First Class workshare mail continues to violate Section 3622(d) in that they exceed costs avoided. After four years of continued noncompliance, we respectfully request that the Commission determine that the Postal Service must begin to align the workshare discounts with costs avoided. As demonstrated above, the Postal Service can begin to bring the rates into compliance

[2] We recognize that the Postal Service has an exigent need for more revenue. It also is required to comply with the law in the way it sets rates. The exigency provision of the law (3622(d)(1)(E)) provides no additional exception to the four workshare discount exceptions codified in 3622(e).

by reducing the proposed increase for First Class single piece mail to one cent instead of two. Alternately, the Postal Service could make adjustments to shrink the workshare discounts implemented over time. If the Postal Service makes a 1/3 adjustment every year over the next three years, the likely loss of volume will be minimal and will not rise to the level of “rate shock.” Finally, the Commission should require the Postal Service to submit a detailed plan to phase out the excessive discounts as required by Section 3622(e)(2)(B).

Respectfully submitted,

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