

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

**ANNUAL COMPLIANCE REPORT, 2010**

**Docket No. ACR2010**

**COMMENTS OF THE ASSOCIATION FOR POSTAL COMMERCE  
IN RESPONSE TO ORDER NO. 636**

The Association for Postal Commerce ("PostCom") hereby submits these comments in response to Commission Order No. 636. These comments are directed exclusively to the Postal Service's discussion of workshare discounts in section II.F of the Annual Compliance Report for Fiscal Year 2010 ("ACR" or "ACR 2010") submitted by the Postal Service on December 29, 2010. While the discounts reported by the Postal Service raise a number of issues that warrant attention, PostCom urges the Commission to refrain from any substantive rulings on these issues in this Docket so as not to prejudice the outcome of the various rulemaking dockets in which workshare, costing, and reporting issues will be properly and thoroughly considered.

**I. The Postal Service's Reported Passthroughs**

As required by the Postal Accountability and Enhancement Act ("PAEA"), the Postal Service reports on the workshare discounts it offered in 2010, and the percentage of avoided costs these discounts pass through to mailers, in its ACR. Several of the

discounts reported by the Postal Service passed through more than 100% of avoided costs in FY 2010, including three within Standard Mail Letters, four in Standard Mail Flats, and five in Standard Mail Parcels and NFMs. *See* ACR at 55-58. Additionally, several of the reported discounts resulted in passthroughs of less than 100%, such as the drop-ship discounts for Standard Mail DNDC and DSCF Letters. *See* Library Reference USPS-FY10-3.

The passthrough values in both directions reported by the Postal Service necessarily raise policy questions. The PAEA charges the Commission with ensuring, as a general matter, “that [workshare] discounts do not exceed the cost that the Postal Service avoids as a result of workshare activity,” subject to a number of exceptions, including where “a reduction or elimination of the discount would impede the efficient operation of the Postal Service.” 39 U.S.C. § 3622(e)(2). Conversely, discounts that do not pass the full amount of avoided costs through to mailers may encourage inefficient behavior, leading the Postal Service to perform work that could be performed by other parties at lower cost.

These issues are no doubt significant. Nevertheless, PostCom submits that this docket is not the appropriate forum for the commission to rule on the propriety of the Postal Service’s workshare discount design. Rather, the Commission should defer any decision about the appropriateness of the workshare discounts currently in place, and the methodologies used by the Postal Service to calculate those discounts and the

passthroughs they represent, to its decisions in other dockets where these issues will be thoroughly and specifically addressed.

## **II. Commission's Authority and Discretion**

The Commission is charged with determining whether the reported workshare discounts comply with the PAEA. 39 U.S.C. § 3563(b). As discussed above, while workshare discounts should not, as a rule, exceed the costs avoided by the worksharing activity, there are a number of exceptions to this rule. Principally, a workshare discount is permitted to pass through more than 100% of the avoided costs where “a reduction or elimination of the discount would impede the efficient operation of the Postal Service.” 39 U.S.C. § 3622(e)(2)(D).

PostCom submits that on the current record, it is impossible to determine that reductions in the discounts reported by the Postal Service would not “impede the efficient operation of the Postal Service.” Because the costing methodologies employed by the Postal Service do not accurately track the costs actually incurred by the Postal Service in providing services, a workshare discount that appears to pass through more than 100% of the Postal Service's avoided costs may in fact pass through less than the full amount of avoided costs. As the Postal Service recognizes in the ACR, some of the calculated passthroughs simply defy logic. For instance, “the cost for ADC presorted flats was higher than the cost for Mixed ADC, essentially unpresorted, flats.” ACR at 56. As the Postal Service recognized, this cost difference is “anomalous” and cannot “be reasonably

used in pricing automation flats,” as doing so would price presorted flats higher than unsorted flats and encourage inefficient behavior.

Such anomalies indicate a need for reform of the Postal Service’s costing methodologies, and a close look at whether operational changes implemented by the Postal Service are producing real cost savings. These issues, however, are beyond the scope of this docket.

The Commission determination of the Postal Service’s compliance under 39 U.S.C. § 3653 is necessarily retrospective, as it focuses on the past fiscal year. It is therefore inappropriate to consider changes to the Postal Service’s workshare design and costing methodologies in this docket. Moreover, the Commission already has several dockets pending in which these issues will be extensively discussed. In particular, Docket No. RM2010-13 will consider technical issues relating to the design of workshare discounts, and Docket No. RM2011-13 will consider proposals for future data collection for periodic reporting that could provide the Postal Service and Commission with more accurate data regarding avoided costs. Additionally, as the Postal Service notes, there are a number of open dockets in which various costing methodology proposals are being evaluated. *See* ACR at 5-6. These rulemaking dockets are forward-looking, and as such, are better suited than this ACR proceeding for developing prescriptive mandates regarding workshare discounts. As a practical matter, therefore, the Commission’s energy would be best spent evaluating all issues related to workshare discount design in the dockets opened specifically for that purpose.

Moreover, a finding of noncompliance with respect to the Postal Service's workshare discount would be legally problematic, as it would risk prejudgment of the outcome of these pending proceedings. Ostensibly, any finding of noncompliance would require the Postal Service to rectify the illegal discount. To do so, the Postal Service would be required to either change the discount level or the methodology by which it is calculated. Either action would impinge on ongoing proceedings -- those examining workshare discount design.

Adherence to the commands of both the Administrative Procedure Act ("APA") and the PAEA requires the Commission to refrain from reaching substantive decisions in this docket with respect to matters that are under consideration in pending proceedings. To do otherwise would deprive interested parties of their right to meaningfully comment. Cf., Roadway v. USDA 514 F.2d 809 (DC Cir 1975).

## **II. Conclusion**

To avoid prejudging the outcome of pending proceedings, the Commission should refrain from a determination of noncompliance with respect to the workshare discounts reported by the Postal Service. Instead, the Commission should ensure that the Postal Service's costing methodologies and workshare discount designs are thoroughly and comprehensively reviewed in Docket Nos. RM2010-13 and RM2011-13, among others. The ACR docket is simply not the proper forum in which to make the type of

comprehensive revisions to workshare discount design and data collection necessary to allow the Postal Service to most efficiently meet the needs of its customers.

Respectfully submitted,

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