

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

Annual Compliance Report, FY 2010

Docket No. ACR2010

**INITIAL COMMENTS OF
AMERICAN POSTAL WORKERS UNION, AFL-CIO
(February 3, 2011)**

On December 29, 2010, the United States Postal Service (USPS) filed its Annual Compliance Report (ACR) for Fiscal Year 2010 pursuant to Section 3652 of the Postal Accountability and Enhancement Act (PAEA). The Postal Regulatory Commission subsequently issued a Notice of Postal Service's Filing of Annual Compliance Report and Request for Public Comment (January 4, 2011) and established Docket No. ACR20010 in accordance with 39 U.S.C. § 3653.

In response to the Commission's Notice and Request for Public Comment, the American Postal Workers Union, AFL-CIO (APWU) respectfully submits the following comments. We submit these comments because once again the workshare discounts for First-Class Mail Presort Letters/Cards reported by the Postal Service do not comply with the workshare discount restrictions of 39 U.S.C. § 3622(e).

Section 3622(e) of Title 39 requires the Commission to ensure that workshare discounts provided to large mailers not exceed the costs avoided by the Postal Service as a result of the workshare activity unless one of four very narrow exceptions are met. See Section 3622(e)(2). Yet in every annual compliance report since the enactment of

the PAEA, has shown that the Postal Service has not calculated its workshare discounts in accordance with the methodology used by the Commission and that it has not taken steps on its own to correct discounts that are not fully justified by costs avoided.

In the current ACR, First Class letter presort discounts continue to exceed the costs avoided:

Table 1: First Class Letter Discounts from Single Piece Rate—Current and Proposed Compared with the Most Recent ACR calculations				
First Class Letters	Proposed Discounts Effective May 2009	2009 ACR calculations of avoided costs	2010 ACR calculations of avoided costs	Proposed Discounts Effective April 2011
Single Piece	NA	NA	NA	NA
Presort Nonauto	2.6	5.0	4.3	2.6
Auto-Mixed AADC	5.8	4.6	4.5	5.0
Auto AADC	8.0	6.6	6.7	7.2
Auto 3-Digit	8.3	6.9	6.9	7.5
Auto 5-Digit	10.5	9.5	9.5	10.0

The Postal Service makes no effort to justify this excess under the law. Instead, it contends that because of the Commission decision in RM2009-3 pertaining to workshare methodologies, (Order No. 356, September 24, 2010), it need not calculate discounts from the Bulk Metered Mail benchmark and it is not required to make any adjustments. While the Commission is considering a new benchmark in RM2010-13, that docket should not impact the Commission's ability to determine compliance with the PAEA for FY 2010. In its Annual Compliance Determination for FY2009 issued March 29, 2010, the Commission explicitly stated:

the accepted methodology (which uses BMM as the benchmark for mixed AADC presort letters and non-automation presort letters) is to be retained unless and until “a different analytical principle subsequently [is] accepted by the Commission in a final rule.”

ACD at 71 citing CFR 3050.1(a); see *also* 2008 ACD at 50. The FY 2009 ACD, issued six months before Order No. 356, is controlling. There has been no final rule issued on the appropriate benchmark. The Postal Service should at the very least have acted in accordance with the ACD for FY2009 up until the issuance of Order No. 356 at the end of September 2010. Furthermore, even if the BMM is not used as the benchmark in this proceeding, there is no reason to believe that the use of any other valid benchmark would affect costs avoided in such a way as to make the current discount rates compliant with the law. Therefore, the Postal Service should be required to justify discounts that exceed costs avoided and provide a comprehensive plan for phasing out excess discounts overtime.

Comments by John Waller Director of Office of Accountability and Compliance on Behalf of the Postal Regulatory Commission Before the U.S. House of Representatives Committee on Oversight and Government Reform Subcommittee on Federal Workforce, Postal Service and the District of Columbia on May 12, 2010 illustrate the importance of these requirements:

When discounts exceed avoided costs, the mailer has price incentives to perform postal functions that the Postal Service can perform at a lower cost. In that instance, the discount can introduce inefficiencies in the mail process. The PAEA explicitly requires the Commission to ensure that this does not occur.

Because the cost of some operations decreased during fiscal year 2009, some existing discounts ended the year exceeding avoided costs. A reduction in postal costs is desirable in these difficult financial times. Identifying these contractions in cost avoidances on an annual basis, and making suitable realignments as

soon as practicable, is one of primary purposes of the Annual Compliance Determination.

Waller Comments at 3-4.

Meanwhile, underutilized capacity is growing causing inefficiencies in the postal network. As noted by the Office of the Inspector General in the recent report of workshare discounts “Excess capacity can result in increased total unit costs and workshare discounts that exceed the true cost the Postal Service is able to avoid.” Audit Report – Workshare Discounts Exceeding Avoided Costs (Report Number MS-AR-11-001), at 7, December 23, 2010. This in turn may adversely impact mailers who do not utilize the discounts in direct violation of Section 3622(e)(4)(C) of Title 39 which requires the Postal Service to certify that any new discount rate “will not adversely affect rates or services provided to users of postal services who do not take advantage of the discount rate.” Thus, in order to satisfy Section 3622(e)(4)(C) the Postal Service must come into compliance with the requirements of Section 3622(e)(2) immediately.

The Postal Service also maintains that Section 3622(e) requirements, including the requirement that workshare discounts not exceed the costs of avoided by the Postal Service, must be applied over the long term and do not require immediate cost adjustments. This argument contradicts the clear and mandatory requirements of the law. The PRC “shall ensure” that workshare discounts are not excessive unless one of the four exceptions of Section 3622(e) is met. Accordingly, the Postal Service errs when it asserts that avoided cost that is lower than its related discount “does not itself trigger a requirement for an immediate price change” ACR2010, at 52. The Postal Service posits that when a discount violates the requirements of Section 3622(e) because it exceeds costs avoided, “it is an indication that a specific discount/cost

avoidance relationship needs to be fully re-evaluated in the context of all of the statutory criteria.” In this fifth successive case in which the Postal Service has reported unjustified workshare discounts in excess of avoided costs despite clear direction from the Commission to correct them, the Postal Service asserts that “[t]his re-evaluation will be undertaken by the Postal Service when it prepares its next price adjustment, and will then be reviewed by the Commission.” ACR2010, at 52 (emphasis added here).

This offer by the Postal Service, we submit, is not sufficient to avoid a finding by the Commission that the discounts are out of compliance with the law. In the Annual Compliance Review process, the Commission is required to make a determination of non-compliance when, as here, rates in effect during the year reviewed “have not been in compliance with applicable provisions of” Chapter 36 of the Act. 39 U.S.C. § 3653(b)(1). Furthermore, the Commission has ruled on this issue in ACD 2009 and flatly rejected the Postal Service’s “long term” compliance approach stating: “the only language in section 3622(e) that suggests application over the long term is limited to the phasing out of excess discounts that qualify for the new discount and rate shock exceptions in subparts (2)(A) and (2)(B)” both of which are inapplicable here. ACD FY 2009 at 71.

For above stated reasons, the Commission must make a written determination that the Postal Service’s workshare discount rates for First Class letter mail are not in compliance with Section 3622(e) of the Act and require the Postal Service to adjust these discounts accordingly and/or produce a comprehensive report detailing how each excess discount will be phased out over time.

Respectfully submitted,

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