

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

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**Consideration of Technical Methods to  
Be Applied in Workshare Discount Design**

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**Docket No. RM2010-13**

**INITIAL COMMENTS OF  
AMERICAN POSTAL WORKERS UNION, AFL-CIO  
(February 18, 2011)**

On September 14, 2010, the Postal Regulatory Commission (PRC) issued Order No. 536 Adopting Analytical Principles Regarding Workshare Discount Methodology. Order No. 536 resolved many legal and policy issues pertaining to workshare discounts. It recognized that the Commission's prior decisions on worksharing were incorporated by reference into the statute. This Order also reaffirmed the long established principle that there is a worksharing relationship between presort First Class Mail and single-piece First Class mail that is metered. Simultaneously with the release of Order No. 536, the Commission issued Notice of Proposed Rulemaking Concerning the Technical Methods to Be Applied in Designing Workshare Discounts establishing the current docket to determine the appropriate base group (benchmark) for measuring First-Class workshare discounts.

APWU submits these comments in support of retaining Bulk Metered Mail (BMM) letters as the appropriate benchmark to use in determining discounts for First Class workshared mail. As explained more fully below, the BMM benchmark is the only benchmark that ensures compliance with the policies and requirements of the PAEA. It alone complies with the Commission's longstanding and unchanged rationale permitting discounted rates while requiring that they not exceed the costs avoided as a result of worksharing. Furthermore, retention of the BMM benchmark protects the Postal Service and single-piece users from the destructive consequences of cost ratcheting and the debilitating effects of leakage.

**I. The BMM Letter Benchmark Ensures Compliance with the Enduring Postal Policy of Universal Service at Uniform Rates**

Section 101 of the Act expresses the fundamental policy that

...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 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.

39 U.S.C. § 101(a); and

The Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining...

39 U.S.C. § 101(b). In the Postal Reorganization Act of 1970 ("PRA"), Congress confirmed our national commitment to provide our citizens with universal postal service at uniform rates. This fundamental policy has now been reconfirmed by the Postal Accountability and Enhancement Act ("PAEA" or the "Act").

As the Commission observed in its MC95-1, Decision at ¶ 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.

When Congress deliberated the passage of the Postal Reorganization Act it was concerned with the prospect that rural areas would have to pay higher rates for mail

service. It is clear that this concern was about more than just geography. Congress was fearful that low volume mailers, single piece mailers like the proverbial “Aunt Minnie,” would be charged higher rates because of the inevitable higher cost of some of this letter mail. To guard against this, Congress made the uniform rate requirement a fundamental part of the Act. This section of the PRA requiring uniform rates for letters sealed against inspection has been restated verbatim as a new subsection (c) to Section 404 of Title 39. Thus, Congress has reiterated and reconfirmed the requirement of uniform First Class rates. It is well-settled that:

Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change. [Citation omitted]. So too, where, as here, Congress adopts a new law incorporating sections of a prior law, Congress normally can be presumed to have had knowledge of the interpretation given to the incorporated law, at least insofar as it affects the new statute.

*Lorillard v. Pons*, 434 U.S. 575, 580-581 (1978).

Thus, if the Commission were to replace the BMM letter benchmark with a another benchmark that permitted discounts to be based on the intrinsic differences in cost or efficiency in the handling of heterogeneous First Class letter mail, it would no longer provide uniform rates for First Class letter mail. Discounted rates can only be justified by costs avoided by the Postal Service when the mailer performs a function that replaces work that would otherwise be performed by the Postal Service. As the Commission explained in R77-1

... [T]he OCC maintains that the Postal Service has followed legally sound ratemaking concepts. These consist of calculating “clearly capturable cost avoidance” per piece...due to presorting and, then, **offering a per piece discount from the regular first-class rate equal to that cost avoidance so that the per piece and overall contribution to residual costs for first class mail would remain unchanged.**

Opinion and Recommended Decision for R77-1, at 240-242. [Emphasis added.]

The use of the BMM letter benchmark helps to ensure that discounts do not exceed costs avoided, and that similar pieces of First Class mail are required to make

the same contribution to institutional costs regardless of whether or not they are presorted. This preserves the enduring statutory requirement of rate uniformity.

## **II. The BMM Letter Benchmark Alone Ensures Discounts Do Not Exceed the Costs Avoided by the Worksharing Activity**

### **A. Workshare Discounts Must Not Exceed the Costs Avoided by the Worksharing Activity.**

From the inception of First Class workshare discounts, there has been an understanding by both the Postal Service and the Commission that discounts must be justified by costs avoided so that similar letters being provided First Class service bear the same amount of the institutional costs of the Postal network. MC73-1 Opinion and Recommended Decision at p. 16. The process is to set a single uniform rate for First Class letters and validate discounts provided to Presort letters by the determining cost savings due to worksharing activities that allow the Postal Service to skip certain steps in processing that mail.

As the Commission explained in MC95-1:

[3066] In the first classification case, Docket No. MC73-1, the Postal Service proposed that First-class rates also be varied to reward mailer worksharing. This was based on the premise that if mailers could prepare their mail so that it required less work by the Postal Service, they should be rewarded with a discount which reflected the costs the Service would avoid as a result of the worksharing. The first discount was accorded to bulk presorted First Class. It was set to pass through to mailer some, but not all, of the costs the Postal Service would avoid by not having to sort that mail. The result was a classic “win/win” situation: mailers that could presort their mail for less than the discount would do so, and benefit from lower total costs; the Service would benefit because its costs would be reduced by more than the discount, which meant more revenue available to offset institutional costs. For example, giving mailers a 1.0-cent discount for worksharing which allows the Service to avoid costs of 1.2 cents, makes the Postal Service better off by 0.2 cents per piece. In this example, everyone benefits, including mailers that are unable to take advantage of the discount.

[3067] This last point is important. Initially there was some resistance to worksharing from those who thought it might be unfair to offer lower, discounted, rates to large mailers. However, it was recognized that because the discount was less than the costs avoided by the Service, even the small mailer would benefit. In the example above, the Postal Service is better off by 0.2 cents, which means

that the institutional burden which must be recovered from all mailers, large and small, is reduced by 0.2 cents.

The Commission went on to conclude in paragraph 3068: . . . “the basic premise that everyone benefits as long as discounts do not exceed the Service’s cost savings remains valid.” 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. As noted above, 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 the PAEA, Congress has recognized and adopted this important principle. Section 3622(e) of the Act codified the Commission’s prior decisions on workshare discounts by requiring the Commission “ensure that such discounts do not exceed the cost that the Postal Service avoids as a result of workshare activity, unless – “ one of four exceptions historically recognized by the Commission applied. Thus, the PAEA adopted the Commission’s longstanding requirement that discounts be “no larger than the clearly capturable avoided costs, so that residual mailers would not experience a rate increase because some other mailers were encouraged to workshare.” *Id.* at ¶ 3076.

**B. BMM Letter Benchmark Best Isolates the Cost Savings from Worksharing Activities.**

The Commission has long relied upon the concept of Efficient Component Pricing (ECP) and the BMM letter benchmark to set discounts not in excess of costs avoided.

[3074]... From the inception of worksharing discounts, the Commission has been concerned with both equity and economic efficiency. It set the first such discount at clearly capturable avoided costs. This provided a rate incentive to mailers which would allow cost based decisions on whether to engage in the worksharing activity. In effect, the Commission was setting discounts in conformity with what later became known as efficient component pricing. The discount approach led to the lowest cost producer providing the service. This, in turn, minimized the cost of the workshare activity to society as a whole.

*Id.* The use of ECP in setting workshare discounts is generally believed to be the best way to achieve the highest possible efficiency in the overall postal system. However, it is critical to the framework of ECP that workshare discounts be measured against an appropriate benchmark. The only way to ensure that discounts do not exceed cost avoided is to compare the workshare piece to a benchmark that differs from the workshared mail only because of a lack of workshare activities. Otherwise, mailers who do not or cannot workshare will experience higher institutional costs burdens. As recognized by the Commission, “there is no reason to shift institutional burdens from mailers who already benefit from a financially advantageous discount rate to other mailers, many of whom may not be able to take advantage of the discount .” *Id.* at ¶ 3072. Furthermore, use of the wrong benchmark may require the Postal Service to reward discounts to mailers for doing work the Service can do more efficiently, in contravention of ECP. The importance of adhering to ECP can be seen in the fact that the Postal Service currently has excess capacity, due in part to excessive workshare discounts.

In its Opinion and Recommended Decision in R2006-1, upholding the use of the BMM letter benchmark, the Commission reasoned “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 mailer behavior and minimize costs to society.” R2006-1 Op. and Rec. Decision at ¶ 5089. The BMM letter remains the mail piece most like workshared mail and should be retained.

For decades large mailers have sought to increase discounts based on features of their mail not related to worksharing activities, which are limited by law to “the presorting, prebarcoding, handling or transportation of the mail.” 39 U.S.C. § 3622(e)(1). Each time the Commission has rejected, for good and sufficient reasons, attempts to expand workshare discounts to include mail preparation activities that are not workshare related including, but not limited to, the use of Move Update, proper envelope shape and color and address format, and the use of a meter instead of stamps. For example, In Docket No. R2006-1 the Commission rejected the Postal Service’s call to de-link rates of First Class Single Piece mail from those of First Class

Presort Mail. PRC Opinion and Recommended Decision in Docket R2006-1 at ¶ 5079. In doing so, the Commission noted that the de-linking proposal would unfairly allow “many costs that are not worksharing related to be avoided by worksharing mailers.” *Id.* at ¶ 5086. The decision continued to limit the application of workshare discounts to those activities like presorting and prebarcoding mail pieces; activities that the Postal Service would otherwise have to do. *Id.* at ¶ 4037. The Commission noted not all cost-causative characteristics can, or should be, reflected in rates. Public policy factors such as the importance of a widely available, affordable postal network that provides a variety of services to bind the nation together may militate against de-averaging in certain instances. *Id.* at ¶ 4025. Thus, the comparison has always been to what the presort mailer would pay if that mailer was not worksharing. The PAEA did not alter the effect or reasoning of the Commission’s past decisions and the Commission should reject any calls now to depart from these longstanding principles.

The contention that BMM letter mail no longer exists and therefore cannot serve as a valid benchmark ignores two important points. First, the BMM letter 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. Second, as repeatedly recognized by the Commission, BMM “represents not only that mail most likely to convert to worksharing, but also, to what category current worksharing mail would be most likely to revert if the discounts no longer outweigh the cost of performing the worksharing activities.” PRC Op. R2006-1, at ¶ 5095, *citing* PRC Op. R2000-1, at ¶ 5089.

In calculating costs avoided, the BMM letter has been used as the benchmark piece since R97-1. This is the concept that was embedded in practice and understanding of the participants when the worksharing language for the PAEA was crafted and passed into law. Use of the BMM letter benchmark remains the appropriate way to ensure that identical pieces of mail pay identical rates for the same service as required by Title 39.

### **III. Changing the Benchmark Would Depart from the Requirement of Uniform Rates and Increase the Costs for the Mailing Public**

As detailed above, the BMM benchmark best isolates the costs avoided by worksharing thereby ensuring compliance with the fundamental requirement of universal service at uniform rates. Thus, the benchmark piece is important in keeping costs from being shifted from workshare mailers to those that do not participate in worksharing.

Retention of the BMM benchmark is also important to prevent leakage in the system. Any change in the benchmark piece towards an alternative that would provide a larger avoided cost calculation, causes leakage in the system by compensating presort mailers for something they were already doing without benefit of a discount. It adds an extra discount to every piece of mail that already qualifies for discounts based on the cost estimates related to a marginal piece. In FY 2010 43.3 billion workshared letters were mailed. Every additional 0.1 cent discount provided to these pieces is an additional 43 million dollars of revenues that the Postal Service will lose and there will be no change in the level of workshare provided. This would be disastrous for the Postal Service. The Postal Service is in dire financial straits and it needs to follow sound financial policies to remain a viable enterprise. Providing mailers additional compensation for work they already perform on the mail that they are already mailing under the worksharing program promotes inefficiency and negatively impacts the financial viability of the Postal Service.

Moreover, the resulting loss of network contribution from presort mailers as a result of excess discounts 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 BMM benchmark serves to protect the Postal Service and the non-discount mailer from paying for the discount.

The BMM benchmark also prevents ever increasing costs from continuously shifting to non-workshare mailers. A change in the benchmark piece may allow another few marginal pieces to move to worksharing but as that next round of slightly "cleaner" mail to process migrates to workshare mail, the single piece mail group that remains will become less clean and more expensive to process on average. By maintaining the benchmark at BMM letters, single piece mailers are protected from the ratcheting effect that would be produced as a shifting benchmark causes the average cost of single piece mail to grow relative to the average workshare mail, despite there being no corresponding increase in workshare activity.

#### **IV. Conclusions**

For the foregoing reasons, the Commission should retain the Bulk Metered Mail letter benchmark and reject calls for any other base group that would permit discounts for activity that is not worksharing in violation of Section 3622(e) and the fundamental requirement of universal service at uniform rates.

Respectfully submitted,

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