

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

ANNUAL COMPLIANCE REPORT, 2011

Docket No. ACR2011

**REPLY COMMENTS OF THE
AMERICAN POSTAL WORKERS UNION, AFL-CIO
(February 23, 2012)**

On December 29, 2011, the Postal Service filed its "United States Postal Service FY2011 Annual Compliance Report" ("ACR"), pursuant to 39 U.S.C. § 3652(a). On January 3, 2012, the Postal Regulatory Commission ("Commission" or "PRC") issued Order No. 1095, "Notice of Postal Service's Filing of Annual Compliance Report and Request for Public Comments," seeking comments on the ACR. Several parties submitted Initial Comments pursuant to Order No. 1095. Many commenters submitted arguments that would increase the size of the workshare discounts provided for First Class presort mail. See Comments of Pitney Bowes (February 3, 2012); Comments of the Direct Marketing Association, Inc., the National Association of Presort Mailers and the Parcel Shippers Association (February 3, 2012); Joint Comments of the Direct Marketing Association, Inc., the Major Mailers Association, the National Association of Presort Mailers, the National Postal Policy Council, and the Parcel Shippers Association (February 3, 2012); and Comments of the National Postal Policy Council (February 3, 2012). The American Postal Workers Union, AFL-CIO ("APWU") respectfully submits its Reply Comments to address the arguments of parties regarding First Class Mail workshare discounts, particularly those of Pitney Bowes and its consultant, John C. Panzar.

THE PAEA DOES NOT PREVENT WORKSHARE DISCOUNTS THAT ARE LESS THAN AVOIDED COSTS

In his Initial Comments submitted on behalf of Pitney Bowes, Mr. Panzar asserts that the Commission should “design a modern system for regulating rates” which “requires that discounts be set at 100 percent of avoided cost”, thereby ensuring that “worksharing discounts are non-exclusionary.”¹ This assertion is not supported by the Postal Accountability and Enhancement Act (“PAEA” or “Act”), is inconsistent with Commission precedent and must be rejected.

Section 3622(e)(2) of the PAEA states that “[t]he Postal Regulatory Commission shall ensure that [workshare] discounts do not *exceed* the cost that the Postal Service avoids as a result of the workshare activity” (emphasis added) and provides exceptions to this general rule. Nowhere in Title 39 does it require that workshare discounts be *equal* to the costs avoided. Nor does Title 39 require that the system of ratemaking established by the Commission under Section 3622 be designed to avoid rates that, while meeting the objectives and factors established by Sections 3622(b) and (c) have an incidental exclusionary effect on some private sector mail processors who would be less efficient than active workshare mail processors. The ideal espoused by Mr. Panzar is, furthermore, inconsistent with the preservation of universal service provided by a limited monopoly established as a public service.

Additionally, should the Commission adopt Mr. Panzar’s approach and require that discounts be set at 100 percent of costs avoided, it can be expected that discounts will in reality exceed the costs saved. The Postal Service continues to become more efficient and as it does, there is every reason to believe that the costs avoided will be reduced. The reduction in costs may be frequent. The Postal Service should be able to benefit from increases in efficiencies and a reduction in costs. However, with a rigid 100 percent passthrough requirement, the Postal Service would instead pass this savings to large mailers. At a time when the Postal Service desperately needs money and capital to invest in its future, such excessive discounts must be avoided. Requiring a 100 percent passthrough rate would necessarily mean that each year the Postal

¹ ACR2011 Comments of John C. Panzar on Behalf of Pitney Bowes Inc., February 3, 2012 at 14 (“Panzar Comments”).

Service would provide discounts that exceed the ever decreasing costs avoided. This would violate the clear prohibition against excessive discounts in Section 3622(e)(2).

Furthermore, the Commission expressly rejected the sort of rigid application of ECP advocated by Mr. Panzar and Pitney Bowes during the rulemaking in Docket No. RM2007-1. The Commission recognized that ECP, while important and adopted by Congress in 3622(e) to protect the Postal Service, is one of many objectives and factors to be considered in setting rates. Specifically, the Commission stated:

The Commission strongly believes that efficient component pricing should be used as a guiding principle in establishing and maintaining workshare discounts. In both sections 3622(b) and 3622(c) the statute stresses the need for efficient rates and efficient component pricing is an established method of measuring efficient ratemaking. **Nonetheless, the Commission recognizes that other factors must also be considered, and that the PAEA grants the Postal Service substantial flexibility in setting rates.**

RM2007-1 Order No. 26 at ¶ 2043 (August 15, 2007) [emphasis added here.]. A mechanical application of ECP that requires discounts equal costs avoided furthers no statutory requirement, is unsupported by Commission precedent and should be rejected.

THE COMMISSION SHOULD DISREGARD ARGUMENTS THAT PRESORT MAILERS MAKE UNFAIRLY LARGE CONTRIBUTIONS TO OVERHEAD

The comments made by Pitney Bowes and others to the effect that First-Class Mail Presort Letters/Cards make a larger contribution to overhead than individual First Class Letters/Cards, although true, make a point long understood by Congress and the Commission. The effort by large mailers to persuade the Commission that workshare mailers are being required to support the postal network to an unfair degree is perennial, and should once again be rejected.

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.

As the Commission observed in MC95-1, ¶ 2048, "...the first and most enduring objective of postal policy has been to bind the nation together." Central to this purpose

is the requirement of uniform First Class rates to serve every area of the country. “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 ¶ 3005²

Of course Congress did not provide taxpayer subsidies for First Class Mail service to rural and distant areas. Instead, Congress chose to support universal service at uniform rates by requiring that rates be kept uniform within each class of letter mail sealed against inspection. This provision has been described by one Court as follows:

[T]he only policy concern clearly implicated in the quest for the proper scope of the monopoly [is] the need to shield operations from competition so the Postal Service can adopt nonmarket solutions in its effort to further various national goals (fn 9 For example, the cross subsidization inherent in establishment of uniform rates regardless of distance for each class of mail sealed against inspection pursuant to 39 USC [404(c)] is inconsistent with a fully competitive market, as is the decision to locate post offices in some out-of-the-way places)....

Associated Third Class Mailers v. U.S. Postal Service, 600 F.2d 824, 826 n. 9 (D.C. Cir. 1979).³ [footnote original.] Thus, Section 404(c) mandates the type of cross-subsidization within rate categories that the advocates of larger presort discounts are seeking so assiduously to avoid.

WORKSHARE DISCOUNTS SHOULD NOT BE EXPANDED TO INCLUDE NON-WORKSHARE RELATED ACTIVITIES

Pitney Bowes and the National Postal Policy Counsel (NPPC) both assert that discounts for workshare discounts should be expanded to included costs saved that are unrelated to workshare discounts. The Commission has repeatedly rejected such arguments and should do so once again in this docket. Specifically, in its Docket No. R2006-1 Opinion and Recommended Decision the Commission reasoned:

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.

² The Commission was discussing the identical requirement then found in 39 U.S.C. 3623(d).

³ The Court was discussing the identical requirement then found in 39 U.S.C. 3623(d).

¶ 4025. Nothing has occurred warranting a change in this policy. In addition, the Act only permits workshare discounts based on the costs avoided from the “presorting, prebarcoding, handling and transportation of mail.” 39 U.S.C. §3622(e)(1). The arguments advanced by Pitney Bowes and NPPC ignore this requirement and would essentially require the Postal Service to set rates for workshared First Class mail equal to the costs of this mail. Such deaveraging would violate the requirement of a uniform rate and it would unfairly shift costs to single piece First Class mail. This is inconsistent with Commission precedent. As the Commission stated in its R2006-1 Decision,

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 minimizes costs to society.

The Commission recently rejected such arguments in its consideration of workshare discounts in its Order Adopting Analytical Principles Regarding Workshare Discount Methodology, Docket No. RM2010-13 (Sept. 14, 2010) (Order No. 536). In its Order the Commission expressly found that single piece First Class Mail and presort First Class Mail have a worksharing relationship. Since these pieces have a worksharing relationship a methodology of calculating workshare discounts that would completely deaverage costs, would violate the Act, contravene Commission precedent and must be rejected.

Respectfully submitted,

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