

BEFORE THE
 POSTAL REGULATORY COMMISSION
 WASHINGTON DC 20268-0001

NOTICE OF MARKET-DOMINANT)
 PRICE ADJUSTMENT) Docket No. R2013-1

REPLY OF
 ALLIANCE OF NONPROFIT MAILERS
 TO USPS RESPONSES TO
 CHAIRMAN’S INFORMATION REQUEST NO. 5, QUESTIONS 8-13
 (November 13, 2012)

The Alliance of Nonprofit Mailers (“ANM”) respectfully submits this reply to the November 6 responses of the Postal Service to Questions 8-13 of Chairman’s Information Request No. 5. The questions concern the worksharing discounts proposed by the Postal Service for the nonprofit subclasses of Standard Mail. In a number of rate categories, the proposed discounts are shallower for the nonprofit subclasses than for their commercial counterparts:

Workshare Rate Category	Benchmark Rate Category	Discount		Percent Difference
		Commercial	Nonprofit	
Auto 5D Flats	Auto 3D Flats	\$0.087	\$0.080	-8.0%
Nonauto 3D Flats	Nonauto ADC Flats	\$0.052	\$0.045	-13.5%
High Density Letters	Carrier Route Letters	\$0.077	\$0.074	-3.9%
High Density Plus Letters	Carrier Route Letters	\$0.080	\$0.077	-3.8%
High Density Flats	Carrier Route Flats	\$0.051	\$0.049	-3.9%
High Density Plus Flats	Carrier Route Flats	\$0.055	\$0.053	-3.6%

Disparities of this kind, unless supported by a rational justification, violate 39 U.S.C. § 403(c). Section 403(c) states that the Postal Service, in “providing services and in establishing classifications, rates, and fees . . . shall not, except as specifically

authorized in this title, make any undue or unreasonable discrimination among users of the mails, nor shall it grant any undue or unreasonable preferences to any such user.” In *National Easter Seal Society v. USPS*, 656 F.2d 754, 760-762 (D.C. Cir. 1981), the Court of Appeals held that disparities between the presort discounts offered to commercial vs. nonprofit users of Standard Mail (then called third-class mail) violate Section 403(c) unless the record demonstrates a rational basis for the discrimination.¹

Discrimination between nonprofit and commercial mailers in worksharing discounts again became an issue under Section 403(c) in Docket No. MC95-1, *Mail Classification Schedule, 1995—Classification Reform I*. In that case, the Postal Service proposed, and the Commission recommended, worksharing discounts and other classification reforms for Periodicals and Standard Mail that were limited to the commercial subclasses. See MC95-1 Op. & Rec. Decis. (Jan. 26, 1996) at ¶¶ 5627-5636. ANM’s petition for judicial review of this decision in the D.C. Circuit was resolved by a settlement agreement that culminated in the adoption of nonprofit classification changes that “mirrored” the Commission’s recommendations for the Commercial subclasses. Docket No. MC96-2, *Mail Classification Schedule—Classification Reform II (Nonprofit Mail)*, Op. & Rec. Decis. (June 19, 1996).

Worksharing discounts for nonprofit and commercial Standard Mail have begun to diverge again in the most recent post-PAEA general rate adjustments. The Postal Service’s responses to Questions 8-13 of the Chairman’s Information Request indicate that this divergence has occurred without consideration of the requirements of Section

¹ The *National Easter Seal Society* litigation was the event that led to the founding of ANM.

403(c) and *National Easter Seals Society*.² The Postal Service offers no cost justification for the disparity between the proposed nonprofit and commercial discounts. Indeed, the Postal Service concedes that it cannot offer a cost justification, because the Postal Service now estimates worksharing cost avoidances for nonprofit and commercial mail combined, not separately.

The only explanation offered by the Postal Service for the discrimination—that making nonprofit discounts shallower than the corresponding discounts for the commercial subclasses “protects against over 100 percent passthroughs for both Commercial and Nonprofit”—is incoherent. The Postal Service uses the same cost avoidance data as benchmarks for both commercial and nonprofit worksharing discounts. Those data are based on both commercial and nonprofit mail. Hence, the data provide no basis for treating nonprofit cost avoidances as smaller.

Nor is there any intuitive reason to suspect that that worksharing cost avoidances might be smaller for nonprofit mail. The mail category pairs between which worksharing avoidances are calculated—e.g., auto 5D flats vs. auto 3D flats, nonautomation 3D flats vs. nonautomation ADC flats, high density letters vs. carrier route letters, high density plus letters vs. carrier route letters, high density flats vs. carrier route flats, high density plus flats vs. carrier route flats—are narrow and quite homogeneous.

If the Postal Service nonetheless believes that worksharing cost avoidances differ materially between commercial and nonprofit mail, the appropriate response is not to discriminate against nonprofit mailers, but to measure commercial and nonprofit cost

² The relevant provisions of Section 403(c) have not changed since *National Easter Seal Society* was decided.

avoidances separately. This is certainly the approach recommended by the Commission. See Annual Compliance Determination Report for FY 2011 at 122 (declining to consider whether certain worksharing discounts for Standard Mail letters that reportedly exceed estimated cost avoidances should be limited until the Postal Service updates its methodology for determining cost avoidances).

Respectfully submitted,

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