Postal Regulatory Commission
Submitted 1/15/2013 8:18:40 PM
Filing ID: 86222
Accepted 1/16/2013

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

Periodic Reporting **Docket No. RM2012-6**

REPLY COMMENTS OF PITNEY BOWES INC.

(January 16, 2013)

Pitney Bowes Inc. (Pitney Bowes) respectfully submits these reply comments in response to the comments filed by the Greeting Card Association (GCA) in opposition to the proposal to adopt a blended AADC / 3-Digit benchmark for purposes of better estimating workshare-related costs avoided within the presort tree for First-Class Mail Automation Letters.[1] GCA contends that a blended AADC / 3-Digit benchmark would violate section 3622(e)(2) of the PAEA, offend rate policy considerations, and result in revenue losses to the Postal Service. For the reasons discussed below, the legal and rate policy considerations and the contention that the Postal Service would lose revenue are without merit.

GCA asserts that the adoption of a blended AADC / 3-Digit benchmark is "legally infeasible" because it could "potentially imply rates violating 39 U.S.C. sec. 3622(e)(2)." GCA Comments at 1. The alleged violations of law are speculative and unfounded. Throughout its comments GCA asserts that section 3622(e)(2) requires that "avoided costs must be estimated, and discounts set, on a piece basis." GCA Comments at 21. GCA cites no authority for this position because there is none.

The PAEA does not require compliance with section 3622(e)(2) at the piece level. To the contrary, section 3622(e) provides that the limitation on workshare discounts may apply, variously,

[1] Comments of the Greeting Card Association, January 7, 2013 (GCA Comments).

to "mail," a "postal service," a "category," or a "subclass," as appropriate." 39 U.S.C. § 3622(e); s*ee* Docket No. RM2009-3, Order No. 536 (Sept. 14, 2010), at 32.

Commission precedent does not support GCA's position. The Commission has never purported to assess compliance with section 3622(e)(2) at the piece level, nor would it be feasible to do so without a radical and prohibitively expensive overhaul of the postal costing system. To the contrary, the Commission has made clear that compliance determinations under section 3622(e)(2) are made at a level above a piece-level analysis:

> Section 3622(e)(2) states that the Commission "shall ensure that [workshare] discounts do not exceed the cost that the Postal Service avoids as a result of the workshare activity…." To apply this standard, it is necessary to measure the "cost...avoided" by the worksharing. To measure the "cost…avoided" by worksharing, it is necessary to identify two reference points—a workshared group of mail and a base group with which it is compared. Use of the term "discount" in section 3622(e) implies that the workshared group's rate is defined with reference to the base group's rate. In other words, the two rates are linked. Use of the phrase "cost avoided" in section 3622(e) implies that the base group and the workshared group have similar cost characteristics and that the costs of the workshared group are a subset of the costs of the base group.

See id, at 19.

Cost avoidance estimates are expressed as a relationship between a piece of mail within one particular group relative to a piece of mail in another group, but these relate to a representative (average) piece within the group. *See id*., at 19, n.11. Cost heterogeneity within any group of mail is unavoidable. As a result, the cost and cost avoidance estimates for the group of mail will necessarily entail some averaging. For this same reason, GCA's contention that section 3622(e)(2) requires that "avoided costs must be estimated, and discounts set, on a piece basis," GCA Comments at 21, is on its face unworkable because it would disqualify virtually every workshare discount offered by the Postal Service: all involve cost averaging (as a quick review of any USPS cost avoidance model makes clear). Accordingly, GCA's opposition to the blended AADC / 3-Digit benchmark on the grounds that it would contravene section 3622(e) are without merit.

GCA also contends that a "necessary precondition" of a blended AADC / 3-Digit benchmark is the elimination of the 3-Digit rate category, "both as an element of the classification schedule and as an active Presort tier." GCA Comments at 3, 7. This is not correct.

The Commission has already rejected the notion that a classification change is a predicate to a change in the workshare benchmark. In Order No. 1510, the Commission was explicit that "*any* change that results in benchmark mail no longer being the mail most likely to convert to the next level of worksharing, would require reexamination of that benchmark." Order No. 1510 at 10, n.8 (emphasis added). The selection of an appropriate benchmark is essential for compliance purposes under the PAEA. *See id.*, at 9-11; *see also,* PB Comments at 3 (citing PRC Dkt. No. RM2010-3, Order No. 1320 (Apr. 20, 2012) at 3). The Commission's authority under section 3652 to establish an appropriate benchmark is not contingent on classification artifacts within a given presort tree.[2]

GCA also contends that it is inappropriate to merge two distinct rate categories for purposes of establishing a benchmark – "[a]s long as [3-Digit] exists, and continues to exhibit a cost difference in relation to AADC, the established structure of the presort tree entails retention of 3-Digit as the benchmark for 5-Digit." GCA Comments at 7. But this formulation assumes that 3-

[2] Section 3652 provides in pertinent part:

> Information Relating to Workshare Discounts.—
> The Postal Service shall include, in each report under subsection (a), the following information with respect to each market-dominant product for which a workshare discount was in effect during the period covered by such report:
> (1) The per-item cost avoided by the Postal Service by virtue of such discount.
> (2) The percentage of such per-item cost avoided that the per-item workshare discount represents.
> (3) The per-item contribution made to institutional costs.
> ***
> The Postal Regulatory Commission shall, by regulation, prescribe the content and form of the public reports (and any nonpublic annex and supporting matter relating to the report) to be provided by the Postal Service under this section.

39 U.S.C. § 3652.

Digit is a distinct rate category because there is still 3-Digit mail and its costs are different than AADC mail.

The question is not whether there is still 3-Digit mail – the billing determinants conclusively establish there is (even if much less than before). The question is whether AADC and 3-Digit are distinct from a rate design perspective such that 3-Digit mail is still an appropriate benchmark for purposes of assessing workshare conversion. The elimination of any distinguishing price incentives or preparation requirements between AADC and 3-Digit makes these two categories indistinct from a rate design perspective. From the mailers perspective these two rate categories have been effectively combined. Nor is it sufficient to argue that 3-Digit must be distinct because it exhibits different costs than AADC. Virtually every rate category includes mail with different costs characteristics.

Additionally, the Commission established that the benchmark represents the mail most likely to convert or revert to the next highest or lowest category given sufficient price incentives. *See* Order 536 at 21; Docket No. R2006-1, ¶ 5102; Docket No. R2000-1, ¶ 5089.
Because the Postal Service has effectively combined the AADC and 3-Digit rate categories by eliminating any price advantage or preparation requirement for 3-Digit mail, 3-Digit mail is no longer the unique rate category that AADC mail will convert to, nor the unique category that 5-Digit mail will revert to.

The survey results summarized in the comments of the National Association of Presort Mailers (NAPM) indicate that 3-Digit is no longer the most likely type of mail to convert to 5-Digit mail or to which 5-Digit mail would revert:

> The survey results confirm that in response to the elimination of the price incentive for 3-Digit First-Class Mail Letters, the volume of 3-Digit mail prepared by NAPM members dropped substantially. Mail that used to be prepared in 3-Digit trays migrated to AADC trays. *For the respondents that no*

> *longer prepare 3-Digit trays, this presort level is no longer a consideration. For them, the mail preparation choice is now between AADC and 5-Digit. This is confirmed by the survey responses of respondents representing a substantial majority of mail volumes that indicated that 5D volumes would revert to either AADC or a combination of AADC and 3-Digit, not to only 3-Digit.* Survey results also show that some NAPM members continue to make up 3-Digit trays; for them, the 3-Digit presort level is still an option. These results confirm that a blended AADC / 3-Digit benchmark makes sense.

NAPM Comments at 3 (emphasis added).[3] The comments of the National Postal Policy Council present a consistent view on the basis of anecdotal reports from its members.[4] *See* NPPC Comments at 3 ("members are either switching their 3-Digit letters to AADC entry or giving the mail to mailing services providers which may enter it as 5-Digit mail. The only letters entered at the 3-Digit tier are those which the mailing software can prepare to that level at no marginal cost.").

The theory, the survey results, and the shift in volumes all support the conclusion that under the Commission's standard, 3-Digit can no longer serve as the exclusive benchmark. Because a substantial volume of 3-Digit mail remains, however, an AADC benchmark cannot alone serve as the benchmark. Accordingly, blended AADC / 3-Digit benchmark is appropriate.

GCA also raised certain "rate policy" considerations. Specifically, GCA admonishes the Commission that its actions can have real-world consequences and asserts that the adoption of the blended AADC / 3-Digit benchmark would result in a loss of approximately $75 million annually. *See* GCA Comments at 14. This objection is specious. The selection of an appropriate benchmark for First-Class Mail Automation Letters is exclusively a costing exercise. It is not a pricing exercise. Moreover, GCA's conjecture regarding speculative revenue losses completely ignores the fact that the amount of revenue the Postal Service is allowed under the price cap is unaffected by the magnitude of any discount.

---

[3] Comments of the National Association of Presort Mailers (Jan. 7, 2013)(NAPM Comments).
[4] Comments of the National Postal Policy Council (Jan. 7, 2013)(NPPC Comments).

For the reasons discussed above and in its initial comments and Petition, Pitney Bowes respectfully requests that the Commission adopt a blended AADC / 3-Digit benchmark for purposes of estimating workshare-related costs avoided within the presort tree for First-Class Mail Automation Letters.

Respectfully submitted:

________/s/________________

James Pierce Myers
Attorney at Law
320 South West Street
Suite 110
Alexandria, Virginia 22314
Telephone: (703) 627-5112
E-Mail: jpm@piercemyers.com

Michael F. Scanlon
K&L GATES LLP
1601 K Street, NW
Washington, DC 20006
Telephone: (202) 778-9000
Facsimile: (202) 778-9100
E-Mail: michael.scanlon@klgates.com

Counsel to PITNEY BOWES INC.