

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

ANNUAL COMPLIANCE REPORT, 2010

Docket No. ACR2010

**REPLY COMMENTS OF THE
NATIONAL POSTAL POLICY COUNCIL
ON ANNUAL COMPLIANCE REVIEW
(February 17, 2011)**

The National Postal Policy Council¹ hereby respectfully submits its reply comments on the Postal Service's Annual Compliance Review for Fiscal Year 2010 ("ACR"). NPPC does so in response to the initial comments of the American Postal Workers Union.

In its comments, the APWU once again trots out its discredited contention that "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)." *APWU Comments* at 1. APWU's contention is meritless. There is no basis upon which the Commission can make the finding urged by the APWU.

In Order No. 536, the Commission ruled:

¹ The National Postal Policy Council is an association of large business users of letter mail, primarily Bulk First-Class Mail using the Automation rate category, with member companies from the telecommunications, banking and financial services, utilities, insurance, and mail services industries. Composed of approximately 30 of the largest customers of the Postal Service with aggregated mailings of more than 30 billion pieces, NPPC supports a robust postal system as a key to its members' business success and to the health of the economy generally.

The established Bulk Metered Mail (BMM) benchmark for First-Class Bulk Letters is no longer valid, and further adjustment of First-Class Bulk Mail rates to comply with section 3622(e) is not required while Docket No. RM2010-123 is pending.

Order No. 536 at 2. The Commission could hardly have been more clear: the former BMM benchmark is “no longer valid” and, in the absence of any valid new benchmark, there is nothing against which “discount” rates can be compared. Therefore, and as the Postal Service correctly stated in its ACR (at 51), First-Class Bulk Mail rates need not be adjusted, if at all, until a new benchmark is identified that may replace the obsolete BMM that “should no longer be used.” See *Order No. 536* at 3-4 & 63.²

In an effort to rewrite *Order No. 536*, the APWU states: “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.” *APWU Comments* at 2. APWU is simply wrong. It is *Order No. 536*, not Docket No. RM2010-13, that eliminated any benchmark for FY2010. A benchmark that “is no longer valid” can provide no legitimate basis for evaluating a purported discount pass-through.

The APWU’s next argument is that First-Class Bulk rates in effect in Fiscal Year 2010 should be compared to the Annual Compliance Determination for 2009. *APWU Comments* at 3. This contention is flawed for at least two reasons. First, the benchmark applied in the 2009 ACD was BMM, which the Commission,

² NPPC’s position is that the Commission’s ruling that a worksharing relationship exists between Single-Piece mail and Automation and Presorted mail is incorrect. That issue is currently under review in the U.S. Court of Appeals for the District of Columbia Circuit. *United States Postal Service v. Postal Regulatory Commission*, Docket No. 10-1324).

as just discussed, determined during 2010 is not valid. A failed benchmark cannot be revived by pointing to its previous usage. Second, in any event, the APWU would have the Commission compare rates in effect in 2010 to a stale cost benchmark derived from the previous year's cost data, an applies-to-oranges comparison that Section 3652 does not authorize.

Finally, the APWU cites the Postal Service's OIG's Audit Report-Workshare Discounts Exceeding Avoided Costs (Report Number MS-AR-11-001 at 7 [Dec. 23, 2010]) as saying that there is "underutilized capacity" in the postal network *APWU Comments* at 4. The APWU neglects to mention that the OIG itself recognized that the Commission has already invalidated the former BMM benchmark upon which the APWU relies for all of its assertions about pass-throughs. *OIG Report* at 7 & 9. Indeed, the OIG goes on to note that the Postal Service's "cost avoidance estimates may not accurately reflect avoided costs." *Id.* at 6.

It is surprising that the APWU would go on to say that "there is no reason to believe that the use of any other valid benchmarks would affect costs avoided in such a way as to make the current discount rates compliant with the law." *APWU Comments* at 3. On the contrary, there are ample reasons to believe that an accurate measure of costs avoided would greatly exceed the artificial BMM construct. In particular, it is worth remembering that the Postal Service's ACR reports substantial cost differences between Single-Piece and Bulk letters for which the BMM benchmark cannot account.

The average piece of First-Class commercial bulk letter mail pays 22.9 cents in contribution alone, while imposing only 11.7 costs in attributable costs. The average Single-Piece letter/card has a unit attributable cost of 27.2 cents. *ACR* at 18 Table 1. That means that Bulk letters cost the Postal Service about 15.5 cents *less* than Single-Piece letters, perhaps because they avoid many of the operations performed by APWU members. That difference far exceeds the BMM measure of avoided costs.

First-Class Bulk letters also pay, on average, 5.5 cents *more* in contribution than Single-Piece letters. *Id.* In other words, the 0.5 cents between the obsolete BMM measure of costs avoided and the discount about which the APWU complains (*APWU Comments* at 2) pales in comparison to the excessively greater contribution paid by First-Class Bulk letters compared to the Single-Piece product. *ACR* at 18.

APWU continues to fantasize that First-Class automation-rated mail would happily continue to pay these higher rates and excessive contribution, or pay even higher Single-Piece rates, if the workshare discounts were reduced or eliminated. There is not even a remote chance that would occur. Automation-rated mail is already migrating to electronic alternatives, and every increase in Automation rates simply provides further incentive to leave the mail. Indeed, if it turns out that “excess capacity” exists because high rates are driving the Postal Service’s most profitable mail out of the system, the only responses are either: (1) to reduce those rates to a more affordable level; or (2) right-size the organization to reflect the continued loss of mail.

The only cost avoidance pass-throughs relevant to First-Class commercial bulk letters in this Annual Compliance Determination are those between Mixed AADC and AADC letters, AADC letters and 3-digit letters, and 3-digit letters and 5-digit letters. None of these discounts exceed 100 percent. *USPS-LR10.3 Workshare Discounts Table FY2010 FCM Bulk Letters/Cards.*

Therefore, for the foregoing reasons, the Commission should find that First-Class Automation and Presort workshare discounts fully complied with Section 3622(e).

Respectfully submitted,

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