

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

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

Market Test of Experimental Product – )  
Metro Post )

Docket No. MT2013-1

PUBLIC REPRESENTATIVE COMMENTS  
IN RESPONSE TO NOTICE OF MARKET TEST OF  
EXPERIMENTAL PRODUCT—METRO POST

(October 31, 2012)

The Public Representative hereby comments on the Postal Service's Notice of market test of experimental product - Metro Post™ filed pursuant to Section 3641 of Title 39, United States Code.<sup>1</sup> By notice and order, the Commission established the above-styled docket and provided for comments by interested persons on the Postal Service's Notice no later than October 29, 2012.<sup>2</sup>

After close review of Postal Service's proposed Metro Post™, the Public Representative (PR) concludes the Postal Service's proposed Metro Post™ market test is not yet ripe for implementation. Additional market research, pricing information, and compliance with Section 3641, are required before the proposed delivery service can be

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<sup>1</sup> Notice of the United States Postal Service of Market Test of Experimental Product – Metro Post – and Notice of Filing Material under Seal (Notice), October 12, 2012.

<sup>2</sup> Notice and Order Concerning Market Test of Experimental Product – Metro Post, Order No. 1502, October 16, 2012.

thoroughly tested, deemed statutorily legitimate, and at all beneficial to the general public.

## I. BACKGROUND

The Postal Service proposes to initiate a market test beginning shortly after November 12, 2012 of an experimental product, Metro Post™. The market test will provide customers with same-day delivery from participating locations within a defined metropolitan area. Notice at 1.

The Postal Service proposes the market test Metro Post™ as the opportunity to test “the operational feasibility of same-day delivery of packages to/from multiple locations” and also “assist the Postal Service in determining the optimal pricing structure for this type of service”. *Id.* at 1-2.

Metro Post™ is specifically designed for online e-commerce companies and their associated retailers to deliver products to the buyers living within the specified metropolitan area in the vicinity of the participating locations. *Id.* at 1. To be eligible to participate in Metro Post™, an online e-commerce company must have at least ten (10) physical locations nationally, one or more of which must be within the defined metropolitan area of the market test. For the duration of the Metro Post™ test, the Postal Service intends to enter into relationship with up to ten (10) online e-commerce companies. *Id.* at 2.

During the initial period of the market test (that would last until January 2013) each test participant may only receive same-day delivery for up to ten of its participating locations within the defined metropolitan area of Metro Post™. Only 200 packages per

day may receive same-day delivery from the Postal Service during this initial period. *Id.* at 2-3. The daily cut off times for making purchases of items delivered via Metro Post™ are between 2:00pm and 3:00pm. As defined by the Postal Service, package pick-up will then be scheduled to take place after 3:00 pm and same-day delivery will occur between approximately 4:00 pm and 8:00 pm. *Id.* at 3. The Postal Service does not intend the test to exceed two years (24 months), unless it decides to request an extension for an additional year, establish Metro Post™ as a permanent product on a quicker timeline, or terminate the test early. *Id.* at 5-6.

The Postal Service projects the total revenue from Metro Post™ market test to likely exceed the \$10,000,000 threshold within the fiscal year as adjusted for inflation pursuant to Section 3641(g). As a result, the postal Service applies for an exception of this stationary requirement pursuant to Section 3641(e)(2). The Postal Service also states that it is going to provide some qualifying criteria and limitations for prospective test participants in order to ensure that anticipated revenues will not exceed \$50,000,000 in any given fiscal year (Section 3641(e)(2)). *Id.* at 7.

The Postal Service emphasizes that the Metro Post™ market test is likely to contribute to both public needs and the financial stability of the Postal Service *Id.* However, the Postal Service does not provide any detail supporting these conclusions.

## II. SECTION 3641 CONDITIONS

A product may not be tested under 39 U.S.C. 3641 unless it satisfies each of the three conditions in subsections (1) through (3) of section 3641(b). Upon review of the Postal Service's Notice, the PR concludes that Metro Post™ market test meets

conditions 1 and 3 of 39 U.S.C. 3641(b). The PR agrees that the Metro Post™ market test offers a same-day, local delivery - a product that is significantly different from all other products offered by the Postal Service within the 2-year period preceding the start of the test as required by 3641(b)(1). In addition, the Postal Service correctly categorizes the product as competitive as pursuant to section 3641(b)(3). However, compliance of the Metro Post™ market test with the condition in section 3641(b)(2) is problematic. Section 3641(b)(2) requires as a condition for testing a product that:

The introduction or continued offering of the product will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or *any mailer*, particularly in regard to small business concerns (as defined under subsection (h)). (Emphasis supplied).

The information provided by the Postal Service does not appear sufficient to determine whether the product (Metro Post™) will create an unfair or inappropriate competitive advantage for “any mailer” and “particularly in regard to small business concerns”.

A. No Inappropriate Market Disruption – Additional Information is Required

The PR agrees with the Postal Service that “several prominent companies are currently offering some form of same-day delivery, or are actively exploring this service in the near future” *Id.* at 5-6. In response to the Chairman Information Request No.1<sup>3</sup>, the Postal Service provides some examples of same day delivery offered or proposed by a few e-commerce companies (Wal-Mart, Amazon and eBay) as well as by UPS. CHIR Response at 3. The PR is also aware of similar services being provided by FedEx

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<sup>3</sup> Responses of the United States Postal Service to Chairman’s Information Request No. 1, (CHIR Response), October 25, 2012.

(FedEx SameDay®), National Parcel Delivery (NAPAREX), 1AExpress delivery service, USPack Logistics, and other mailers and courier services.

Since the Metro Post™ market test “is specifically designed for online e-commerce companies and their associated retailers,” the PR particularly checked current and prospective availability of local same-day delivery option on the e-commerce market. Notice. at 1. The PR has found that a number of big retailers or e-commerce giants (such as Wal-Mart, Amazon, eBay, Nordstrom, Barnes & Noble) have implemented or have been exploring same-day delivery options for online purchases<sup>4</sup>.

The results described above illustrate services offered by Postal Service competitors that are similar to that offered by Metro Post™ itself. However, there are still risks of several instances of unfair competition in Metro Post™ market test.

First, the Postal Service argues that “the prices offered by competitors for same-day delivery typically fall within the price range that the Postal service intends to test” and therefore Metro Post™ “would not create inappropriate market disruption” *Id.* at 6. The Postal Service provides a few examples of the prices for the local same-day delivery services currently offered or proposed by a several e-commerce companies. CHIR Response. at 3. The PR agrees that these prices fall in the range of prices proposed by the Postal Service. However, there is no information provided on the prices offered by direct competitors of the Postal Service, such as carrier and delivery services. The PR was unable to verify the price of \$10 mentioned by the Postal Service

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<sup>4</sup> See i.e.: Clifford S. Same-Day Delivery Test at Wal-Mart. The New York Times. October 9, 2012, <http://www.nytimes.com/2012/10/10/business/wal-mart-tests-same-day-delivery.html>; Stone B. Amazon.com Introduces Same-Day Delivery. The New York Times. October 15, 2009, <http://bits.blogs.nytimes.com/2009/10/15/amazoncom-introduces-same-day-delivery/>; Barr A. eBay Tests Same-Day Delivery with Big Retailers. Reuters, August 6, 2012, <http://www.reuters.com/article/2012/08/06/net-us-ebay-delivery-idUSBRE87516Y20120806>.

as the price advertised by UPS. *Id.* Neither the general public nor the PR have access to the databases of multiple mailers, yet the PR was able to obtain some information from online sources and make the comparison between prices proposed by the Postal Service for the Metro Post™ market test and the prices for the local same-day delivery services offered by current competitors of the Postal Service<sup>5</sup>. The comparison showed the prices proposed by the Postal Service are generally lower than the competitors' prices and do not "fall within the price range that the Postal Service intends to test." Notice at 6. The Postal Service should share with the Commission the basis for determining the prices to be tested under the proposed market test.

Second, over the course of the Metro Post™ market test the Postal Service "anticipates entering into relationship" with a very limited number (namely – not more than ten) e-commerce companies. *Id.* at 2. It is not clear from the Notice how the Postal Service is going to select these e-commerce companies. What are the criteria and procedure for selecting the participating e-commerce companies? Will there be competition between the eligible companies? Is the list of up to ten participating e-commerce companies to remain the same over the course of the entire market test or could it change over the course of the market test? To fully evaluate the Metro Post™ market test, the Postal Service must share its selection criteria and participant selection process with the Commission. The Postal Service identifies the City of San Francisco as the sole defined metropolitan for the Metro Post market test. CHIR Response. at 1.

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<sup>5</sup> Since in the Notice the Postal Service has not provided any information about the metropolitan areas to be designated for Metro Post™ market test, the PR made the comparison in a few different metropolitan areas. The PR compared prices for the same-day delivery to the neighboring 5-digit ZIP codes of the light-weight (less than 2 pound) packages currently offered by FedEx, NAPAREX, USPack and 1AExpress with the prices proposed by the Postal Service for testing during Metro Post™ market test. (The prices proposed by the Postal Service are obtained from Materials filed under Seal in Docket No. MT2013-1).

To fully evaluate the success and demand for such a service, it would behoove the Postal Service to identify more than one city. The test may have more commercial meaning and provide a better reflection of metropolitan consumer demand if the Postal Service tested a few areas located in different regions of the United States. The Postal Service has not provided any indication that it plans changing or selecting other metropolitan areas during the testing phase.

Third, based on the information provided by the Postal Service, the PR concludes the Metro Post™ market test is specifically designed for *large commercial mailers* represented by e-commerce companies “that have at least ten (10) physical locations nationally.” Notice at 2. This raises another concern with regards to potential market discretion and non-compliance of the Metro Post™ market test with 39 U.S.C. 3641(b)(2). According to the Postal Service, its prices will not undercut those of the large companies offering a similar same-day delivery service, such as eBay, Amazon, Wal-Mart, and UPS. CHIR Response at 3. A review of the sealed files shows the Postal Service’s Metro Post™ prices are among the three lowest for simple mailings and light weight materials but are the lowest, by far, for heavier mailings. The Postal Service also fails to qualify that some of the low price delivery services offered by its competitors are offered to a select group of mailers, i.e., those willing to pay an annual fee for lower delivery charges and those who order a minimum number of items a given number of times per year.<sup>6</sup> As far the PR can judge, based on the information provided,

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<sup>6</sup> From the list of e-commerce companies listed by the Postal Service, only Amazon currently offers local same-day delivery, and does it for the limited number of qualified items. E-bay and Wall-Mart are only testing the service in San Francisco Area. E-Bay offers service called “E-bay now”, see: <http://mashable.com/2012/08/05/ebay-now/>. While Wal-Mart is planning to use UPS, it is not clear what delivery services will be used by E-bay.

the Metro Post™ does not have any such price requirements or buy-ins, and is thus more appealing to mailers, resulting in placing those e-commerce retailers participating in the Metro Post™ market test in a favored position over non-participating e-commerce companies (and particular the smaller companies that are not eligible to participate in the test). Without the information about this procedural matter or a reliable and well formulated pricing basis, there is insufficient evidence to conclude that Metro Post™ is in compliance with Section 3641(e)(2) and would not inappropriately disrupt the market.

In its CHIR Response, the Postal Service restricts the category of small businesses to be considered to those engaged in specialized same-day mailings that are to be delivered within just hours of their pick-up time. *Id.* at 5. The Postal Service's categorization is too narrow, does not include a great deal of small e-commerce and online businesses, and neglects the possibility to realistically evaluate the impact Metro Post™ may have on these enterprises.

**B. Total Revenues from Metro Post™ Test - Justification is Needed.**

The exact volumes and revenues from the Metro Post™ are hard to project, and the Postal Service does not provide any supporting revenue or cost calculations. The Postal Service anticipates that the annual revenues from the Metro Post™ market test might exceed \$10,000,000 as adjusted for inflation in any fiscal year, pursuant to 39 U.S.C. 3641(g) (and therefore applies for an exemption of this stationary requirement pursuant to section 36419(e)(2)), but should not exceed \$50,000,000 in any year. Notice at 7. According to the statement provided, the Postal Service ensures the upper limit of the anticipated revenue by "providing some qualifying criteria and limitations for prospective test participants." *Id.* However, the Postal Service does not clarify what

“qualifying criteria and limitations” are meant here. Since the Postal Service “anticipates entering into relationships with... no more than ten online e-commerce companies over the course of this market test,” the average annual revenue that the Postal Service anticipates from the relationship with each Metro Post™ participating e-commerce company ranges from \$1 million or below to \$5 million. *Id.* at 2

The Postal Service does not provide data on the expected volume of packages to be sent by participating e-commerce companies using same-day local delivery option in the course of Metro Post™ market test. However, the Postal Service sets the upper limit of 200 packages per company per day that “may receive the same day delivery from the Postal Service,” but for the initial period of the market test only. *Id.* at 2-3; CHIR Response at 4. . The Postal Service states that after this initial period (from November 2012 until January 2013, approximately two months) the above described restriction might be lifted but does not provide any other data that would enable estimates of either the maximum allowed or the expected volume of packages under Metro Post™. Notice at 3.

It is important to know a bit more about how the Postal Service is going to monitor the impact of the 200 package limit. The Postal Service states, “if the 200 package limit has been reached, the Postal Service will send an automated response to the test participant alerting them that additional packages may not receive same-day delivery on that day”. CHIR Response at 4. This raises several pertinent questions: what type of software is the Postal Service going to use to calculate the packages and send the notification; how does this software work (what are the algorithms used); and how might the 200 package cut-off effect the overall demand for the Metro Post™

delivery service? All are important unanswered questions, but the last is especially relevant to members of the general public. Imagine that consumer demand for Metro Post delivery is high and the package limit of 200 per e-commerce participant is reached within the first 30, 40 or 50 minutes of the day (i.e., 2:00 p.m. – 2:50 p.m.) Additional orders will be followed by an email notification informing the consumer that his/her order must be scheduled for an alternative delivery (e.g., next day or standard delivery) thus eliminating the benefit of the service. Customers will quickly learn that in order to take advantage of the Metro Post™ service, they will have to place their orders early, thus creating a potentially crushing front-load of orders, perhaps causing the 200 package limit to be reached in 20 minutes or less as time progresses (2:00 p.m. – 2:20 p.m.) for some e-commerce participants. The ultimate result of this order bottleneck is highly frustrated consumers. To better understand the Postal Service's 200 package cut-off and thoroughly analyze the efficiency and functional reliability of the Metro Post™ to serve the many thousands of customers in metropolitan areas, it is expected that the Postal Service would have performed certain pre-market research that provided a logical basis for selecting the upper limit of 200 packages as well as cut-off times, yet the Postal Service has provided no evidence of such research. Should the Postal Service provide the Commission with a well-crafted pre-market research (filled under seal if necessary) it may alleviate some of the concerns regarding the potential non-reliability of the Metro Post™.

The Postal Service does not provide a list of the potential expenses related to Metro Post™. Although the start date of the market test is proposed to be in a month after the Notice is filed, the Postal Service readily admits “the logistics have not been

finalized.” . Notice at 3. A logical conclusion to be drawn from the Postal Service’s lack of financial information and self-admitted lack of knowledge on how the Metro Post™ delivery service will actually function, is that no proper market research has taken place and that Metro Post™ may be less beneficial to the public than the Postal Service proposes.

### III. DATA COLLECTION PLAN

The Postal Service proposes to collect revenue and volume data through existing retail reporting system. *Id.* at 8. The Postal Service states that it is “prepared to report on the results of the research to the Commission,” and presents a plan to do so. In a Commission order approving the market test filed in the Docket No. MT2011-4, the Commission imposed the requirement to report on the costs incurred in conducting the market test including the administrative costs in the process of conducting the market test. It also required a data collection report on the test due 30 days after each 6-month period the market test is in effect.<sup>7</sup> Similar reporting requirements are appropriate for this market test to include the volume and revenue data collected.

### IV. CONCLUSION

The Postal Service’s proposed Metro Post™ market test is not ready for implementation.

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<sup>7</sup> Docket No. MT2011-4, Order Approving Mail Works Guarantee Market Test, Order No. 730, May 16, 2011 at 15.

Respectfully submitted,

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