

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

REPOSITIONABLE NOTES MARKET TEST

Docket No. MC2004-5

UNITED STATES POSTAL SERVICE MOTION
FOR WAIVER OF REQUEST FOR PERMANENT CHANGE AS A CONDITION FOR
MARKET TEST PROCEDURES
(July 16, 2004)

The United States Postal Service hereby requests that the Commission waive the provision in its rules governing consideration of proposals to conduct market tests in support of mail classification changes (39 C.F.R. Subpart I) that a request for a recommended decision on a market test accompany a request for a permanent classification change. For the reasons expressed below, the Postal Service believes that a formal request for a permanent change is unnecessary, in light of the purpose of the market test requested, its prior history, the simplicity of the proposal, and the fact that any permanent request filed at this time would be congruent with the market test request.

The particular circumstances surrounding the instant request for a market test of a rate differential for mail affixed with Repositionable Notes would support consideration of the Postal Service's proposal without the potential duplication of effort and possible confusion of a pending parallel proceeding seeking a permanent or experimental change. Both economy of administrative effort and a logical decision-making context would militate in favor of consideration of a market test for the Repositionable Notes

proposal as a stand-alone request. In the alternative, the Postal Service would respectfully request that the Commission proceed with consideration of its market test proposal and allow the Postal Service to file a companion request at a reasonable later date.

Rule 161 of the Commission's rules states:

(a) This section and §§ 3001.162 through 3001.166 apply in cases in which the Postal Service requests a recommended decision pursuant to section 3623 preceded by testing in the market in order to develop information necessary to support a permanent change....In administering this subpart, it shall be the policy of the Commission to recommend market tests that are reasonably calculated to produce information needed to support a permanent change in mail classification, and that are reasonably limited in scope, scale, duration, and potential adverse impact....

39 C.F.R. § 3001.161(a).

Rule 162 states:

Whenever the Postal Service determines to request that the Commission submit a recommended decision on a change in mail classification preceded by testing in the market, the Postal Service shall file with the Commission, *in addition to its request for a permanent change in mail classification pursuant to section 3623*, a request for a recommended decision in favor of its proposed market test of the requested change in mail classification.

39 C.F.R. § 3001.162 (emphasis added).

Both the language of these rules and the historical background of their adoption¹ establish that the general purpose of these procedures is to create the legal basis for

¹ See *generally*, Notice and Order Concerning Proposed Rules of Practice, Order No. 1084, Docket No. RM95-4 (Oct. 13, 1995). Docket No. RM95-4 was initiated to follow-up recommendations of the Joint Task Force on Postal Ratemaking, which proposed the development of specialized procedures to consider market tests and experiments. See *Postal Ratemaking in a Time of Change*, at 47-50 (June 1, 1992).

temporary changes in rates and classifications in the form of a market test to provide information that would enable both the Postal Service and the Commission to evaluate better a proposal to adopt a permanent classification change. The specialized procedures are constructed to make clear that the market test considerations and the decision to proceed to a permanent change should be viewed in the general context of, and in support of, proposals for permanent change. The rules explicitly provide for both the suspension of the “parent” permanent mail classification proceeding, to enable the results of the market test to be used in the permanent case, and the opportunity for the Postal Service to revise or withdraw its request for permanent change, if the results of the market test influence it to change or retract its proposal. 39 C.F.R. §§ 3001.166(a), (b). This structure reinforces the view that a normal progression of events could involve obtaining the results of the market test as a preliminary step in the decision making process, for both the Postal Service and the Commission, leading to advocacy, recommendation, and adoption of a particular permanent classification change.²

² In its Order adopting the market test procedures as final rules, the Commission clarified that a logical progression from test to permanent proposal was clearly contemplated. Regarding the function of suspension, and by implication the function of having a pending permanent request, the Commission stated:

It is not designed to compel the Postal Service to litigate its proposal while the market test is being conducted. Rather, it is designed to preserve the *opportunity* to move forward in the consideration of the requested permanent change in mail classification if meaningful progress can be made, for the sake of expedition. Automatic suspension of the proceeding would foreclose this option. If no progress appears likely until information produced in the market test is available, the Commission will order a suspension.

As explained in the Postal Service's testimony in the instant filing, the Postal Service is seeking a recommendation to conduct a market test of the classification and pricing of a particular service feature, namely, allowing the attachment of Repositionable Notes to mail, before a decision is made to propose or adopt a permanent change. USPS-T-1, at 5-6. Operationally, the service basis for the proposed classification has been explored and evaluated with respect to automation letters, and the Postal Service has conducted some market research informing its decision to propose a rate treatment for the service. *Id.* at 2, 4-5. The Postal Service believes at this point that exploring the feasibility and appropriate levels of a rate differential can best be accomplished by allowing it to attach distinct rates to real mail having Repositionable Notes affixed. The Postal Service also proposes to extend the availability of Repositionable Notes to all letter- and flat-sized mail. *Id.* at 3.

If it were to be filed concurrently, a proposal for a permanent change would conform almost exactly to the instant request for a market test. However, depending on the actual market results, the Postal Service might conclude that it should propose rates at different levels, or otherwise modify its proposal. Such a duplication of effort seems unnecessary and potentially confusing. A better course seems to be to wait until the results of the market test can be evaluated and a request for a permanent change formulated, if appropriate. Whatever rates and classifications are then proposed would still have to undergo review and approval as the result of a subsequent proceeding to consider a permanent proposal.

The Postal Service's testimony and materials in support of its limited market test proposal already address the substantive criteria for adoption of rate and classification

changes generally. See USPS-T-2. The testimony, furthermore, explains that there is very low risk of adverse revenue or cost consequences, as a result of conducting the experiment. *Id.* at 4-5. The proposal involves expanding, classifying, and pricing an existing service feature, and the possibility of substantial change in operations if the test were converted to a permanent change would be remote. The change proposed as a market test, moreover, is relatively simplistic, and would not benefit from any greater factual detail that might be explained in a request for a permanent change.

In Docket No. MC98-1, the Postal Service asked the Commission to waive strict applicability of the market test rules in connection with its request for Mailing Online Service as an experimental classification. In that instance, the Postal Service proposed waiver of the requirement that a request for a market test be attached to a request for permanent change, so that it might support a request for an experimental change instead. The Postal Service also requested that the proceedings to consider the market test and the experiment run in parallel, to save time. The Commission considered and rejected opposition to this proposal which was expressed on grounds that there existed some formalistic impediment in the logic of the rules to interchanging consideration of an experiment with a permanent change along with the market test proposal. Rather, the Commission took a functional, realistic approach and concluded that the Postal Service need not attach its request for a market test to a request for a permanent change. Regarding the relationship between the market test procedures and the experimental procedures, the Commission stated:

While it is explicitly stated only in the Commission's market test rules, it is the ultimate purpose of both sets of rules to facilitate the gathering of operating and market experience that will help the Commission evaluate a new, permanent service classification if the test or experiment indicates

that the new service is likely to promote the objectives of § 403(2) and other policies of the Act.

Order Granting in Part Postal Service Motion to Waive Certain Provisions of Rule 64(h) and 161, Order No. 1217, Docket No. MC98-1, at 6 (Aug. 21, 1998). The Commission thus envisioned market tests and experiments as stages in a continuum of progressing toward a permanent change proposal. Neither, however, was required to be attached to a request for a permanent change.

Similarly here, the market test should be regarded as the first step in progressing toward a permanent change, the exact contours of which will be and ought to be dependent on the results of the market test. This meets the Commission’s concern that “a market test be designed to help the Commission evaluate a broader follow-on proposal to provide a new service.” *Id.* at 7. If the Commission finds the market test not to be so designed, then it is unlikely to recommend the market test, regardless of whether it is appended to a permanent request or not. *See id.* at 8. Thus, requiring the permanent change to be filed concurrently serves no real purpose.

Another reason to separate consideration the market test from consideration of a permanent change is that is unlikely that there would be sufficient results from the market test to allow the Commission to issue a recommended decision on the request for a permanent change within the ten-month period allowed by statute.

Accordingly, the Postal Service requests that the proposed market test for Repositionable Notes be considered as a stand-alone request. In the alternative, the Postal Service would request that the Commission proceed with consideration of the

test and allow the Postal Service to file a companion permanent request at a reasonable later date.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.

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