

ORDER NO. 1413

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

Before Commissioners:

George Omas, Chairman;
Tony Hammond, Vice Chairman;
Dana B. Covington, Sr.; and
Ruth Y. Goldway

Repositionable Notes Market Test

Docket No. MC2004-5

NOTICE AND ORDER CONCERNING POSTAL SERVICE
REQUEST FOR A MARKET TEST OF
REPOSITIONAL NOTES SERVICE FEATURE

(Issued July 21, 2004)

Notice is hereby given that on July 16, 2004, the Postal Service filed a request with the Postal Rate Commission pursuant to section 3623 of the Postal Reorganization Act, 39 U.S.C. § 101 et seq., for a recommended decision on a proposed market test of a supplemental service feature for bulk First-Class Mail, Standard Mail, and Periodicals that would allow “repositional notes” to be attached to such mail. The Postal Service proposes to implement the market test through additions to the Domestic Mail Classification Schedule (DMCS) and associated new surcharges. The request includes attachments and is supported by the testimony of two witnesses and a library reference. It is on file in the Commission’s docket room for inspection during regular business hours and is available on the Commission’s home page at www.prc.gov.

Description of the request. For a period of one year, the Postal Service proposes to charge mailers for attaching a “Repositional Note” (RPN) to mailpieces of certain subclasses. According to the Postal Service, an RPN is a Post-it-type self-adhesive note that mailers can affix to the outside of a mailpiece. Because eligible RPNs are

mechanically applied using air pressure, and have an adhesive strip that is wider than on notes used in typical office settings, they are unlikely to become detached from the mailpiece during handling. They are typically used to display advertising messages that encourage recipients to open, read, and respond to the internal contents of the mailpiece. They can be removed by the recipient and re-attached to computers, refrigerators, or similar objects as reminders that extend the life of the commercial message. They can also be used as a simple way to correct minor errors in catalogues. USPS-T-1 (Direct Testimony of USPS witness Holland) at 1.

The Postal Service states that RPNs have been available nationally for bulk letter mail for approximately a year, and that there have been no operational problems or costs to the Postal Service associated with their use over that time. It states that Domestic Mail Manual provisions authorizing RPNs for bulk letter mail are currently in place. Its proposed market test, therefore, is not expected to alter the status quo, except to allow bulk flat mail to carry RPNs, and to charge fees for their use. *Id.* at 2-3.

Motion for a stand-alone market test. The Postal Service proposes that portions of rules 54, 64, and 161 be waived in this case. To the extent that rules 161(a) and 162 require the filing of a contemporaneous request for a permanent classification change as a prerequisite for a market test, the Postal Service asks for a waiver of that requirement. The Commission has determined that the Postal Service's RPN proposal is not appropriately filed under its market test rules. It is, however, treating this proposal as if filed pursuant to its provisional service change rules. See 39 CFR § 3001, subpart J. Accordingly, the motion for waiver of the requirement that a proposed market test be filed concurrently with a proposed permanent classification change will be dismissed as moot.

In its motion, the Postal Service argues that a formal request for a permanent classification change is unnecessary in light of the purpose of the test and the simplicity of the proposal. It asserts that the purpose of the market test is to explore demand levels at the surcharges chosen. It asserts that a permanent request formulated at this

stage would essentially duplicate the market test that it requests, but could not reflect any modifications that market experience might prompt. Therefore, it argues, it would be more productive to formulate a permanent proposal after market experience was gathered. It asserts that the simplicity of the proposal obviates the need for the extensive documentation that would ordinarily accompany a request for permanent changes to classification and rate schedules. It argues that Docket No. MC98-1 (Mailing Online) provides a precedent for allowing a market test to proceed even though it is not part of a proposal for a permanent classification change. United States Postal Service Motion for Waiver of Request for Permanent Change as a Condition for Market Test Procedures, July 16, 2004 at 1, 4.

The Postal Service's position that the market test rules can be appropriately invoked when the market test is not undertaken concurrently with, and in support of, a proposed permanent change in the mail classification schedule is based on a strained interpretation of that rule, and of precedents that have implemented it.

The market test rules are intended to give the Postal Service a way of gaining operational experience and gathering the raw material with which to make an evidentiary record that will support a new, permanent mail classification. They contemplate minimal evidentiary support for a test that is limited in service area, duration, and potential impact on mailers and competitors. The rationale for allowing the Postal Service to proceed with a market test despite a sparse evidentiary record is that a procedure is needed to allow the Postal Service to "fill in the holes" and to make a substantial record for the associated proposed classification change where a probative record would otherwise be difficult to compile.

Associating a market test with a proposed classification change ensures that stakeholders will soon be able to evaluate a closely-related permanent change based on a substantial record. This purpose is reflected in 39 CFR § 3001.162(i), which requires that the market test include "a plan for gathering the data needed to support a permanent change in mail classification and for reporting the test data to the Commission." For this reason, rules 161(a) and 162 state that a market test is to be

preliminary to, and in support of, a proposed permanent classification change. See 39 CFR § 3001.161(a) and the preamble to 39 CFR § 3001.162.

The Postal Service's assertions that its RPN proposal is simple, straightforward, and will have little impact on existing rate and classification schedules does not obviate the ultimate need for a substantial record with which to evaluate the proposal. Docket No. MC98-1 was allowed to proceed as a market test because there was a substantial need to "fill in the holes" to support a permanent change, and there was a concurrent request to process the proposal as an experiment under rule 67 [39 CFR § 3001.67] of the Commission's rules. This increased the prospect that a more substantial record would soon be available with which to evaluate the Mailing Online proposal.

The Postal Service's RPN proposal is not associated with a proposed change in the Domestic Mail Classification Schedule. It appears to be already well developed operationally and conceptually, and to have been nationally available for a considerable period of time. As the Postal Service appears to acknowledge, its RPN proposal could be cast as a proposed permanent change with little alteration. Its purpose is less to fill in unknowns that are needed to fashion a proposed permanent change, than to make a service enhancement quickly available, where the enhancement poses little risk of upsetting the status quo. Consequently, it is not appropriate to consider the Postal Service's RPN proposal under the Commission's market test rules.

It is, however, appropriate for consideration under the Commission's rules governing provisional service changes. These rules are available to process requests to establish provisional services that "will supplement, but will not alter, existing mail classifications and rates for a limited and fixed duration." See 39 CFR § 3001.171 and 173. They are meant to facilitate "introduction of provisional services that enhance the range of postal services available to the public, without producing a material adverse effect overall on postal revenues or costs, and without causing unnecessary or unreasonable harm to competitors of the Postal Service." The Commission's provisional service change rules are designed to allow provisional service

enhancements with little potential to adversely impact stakeholders to be implemented quickly without the making of an unnecessarily elaborate factual record.

The Postal Service's RPN proposal would add to the rate and service options under the DMCS rather than alter or reconfigure existing rate and classification schedules. It is a simple change, limited to one year, that is expected not to adversely effect any stakeholder. Therefore, it appears well suited for processing under the streamlined and accelerated procedures of the Commission's provisional service change rules. See 39 CFR § 3001, subpart J. Accordingly, the Commission will provisionally allow the Postal Service's filing to be processed under those rules.

Conditional motion for waiver of certain documentation requirements. The Postal Service asserts that there is precedent for construing rules 54, 64 and 162 not to require the full panoply of documentation called for by those rules if the proposed classification change is experimental or minor in nature. Rather than require the Postal Service to submit much of that documentation in a form that specifically addresses the minor classification change being proposed, the Postal Service argues that the Commission has been willing to consider material incorporated by reference from the most recent general rate case and from periodically reported material to largely satisfy these documentation requirements. The Postal Service states that its Repositional Notes proposal is a minor classification change that would not materially affect the rates, fees, and classifications established in Docket No. R2001-1, the most recent general rate case. It asserts that it would have no impact on Postal Service costs, and limited impact on revenues and volumes. Accordingly, the Postal Service argues, it should be sufficient that its request incorporates by reference generalized documentation from Docket No. R2001-1, and from periodic reports from past years such as Cost and Revenue Analysis reports. It asks that if the Commission construes its documentation rules strictly, and does not consider incorporation of such generalized historical documentation by reference to be sufficient, that the Commission waive certain of those rules. It lists the following rules that would need to be waived under a strict construction

of their applicability: 54(b)(3), 54(c), 54(e), 54(f)(2)-(3), 54(h)(1)-(12), 54(i), 54(j)(1)-(7), 64(b)(1)-(4), 64(c)(1)-(3), 64(d), and 64(h). Statement of the United States Postal Service Concerning Compliance with Filing Requirements and Conditional Motion for Waiver, July 16, 2004 at 1-5.

The Postal Service is proposing that RPNs be allowed on bulk letters and flats in the First-Class Mail, Standard Mail, or Periodicals subclasses. The proposed surcharge is 0.5 cent per piece for First-Class Mail, and 1.5 cents per piece for Standard and Periodical mail. USPS-T-1 at 1-5; USPS-T-2 (Direct Testimony of USPS witness Kaneer) at 3.¹

Proposed settlement procedures. The Postal Service requests that the Commission establish settlement procedures in this proceeding. It argues that settlement of issues surrounding its request is appropriate because the proposed test is simple and straightforward, is to last for only one year, merely increases the options for mailers of certain classes of bulk mail, and involves only the testing of demand at the two prices proposed. The Postal Service notes that the Commission's market test rule contemplates that a recommend decision on the proposal be issued within 90 days. See rule 164. It asks the Commission to establish a date for a settlement conference in advance of the prehearing conference, and to be granted permission in advance to conduct the conference in the Commission's hearing room. It observes that expediting the processing of its proposal in this manner would help make RPNs available during the peak mailing season. See United States Postal Service Motion for Establishment of Settlement Procedures, July 16, 2004, accompanying its request. It adds that if a

¹ At page 1 of the Notice of the United States Postal Service Concerning the Filing of a Request for a Recommended Decision on a Market Test, dated July 16, 2004, accompanying the Postal Service's request, the Postal Service states that the proposed surcharges are "1-1/2 cents for RPNs on First-Class Mail and 1/2 cent for RPNs on Standard Mail and Periodicals." On July 20, 2004, the Postal Service filed errata to this notice, confirming that the proposed rate is 1/2 cent for applying an RPN to a First-Class mailpiece, and 1-1/2 cent for applying an RPN to a piece of Standard or Periodical mail. On the same date, it filed errata to Attachment E to its request correcting the relevant proposed DMCS and rate schedule sections.

settlement conference were held before the intervention period expires, and a participant were to subsequently intervene, that the Postal Service could brief any such intervenor on the substance of the settlement conference.

The period for issuing a recommended decision under the Commission's provisional service change rules is 90 days, and the rationale for seeking an early settlement of this case applies equally under those rules. See 39 CFR § 3001.174. Accordingly, the Commission authorizes settlement negotiations in this proceeding. It appoints Postal Service counsel as settlement coordinator. In this capacity, counsel for the Service shall report on the status of settlement discussions at the prehearing conference. The Commission authorizes the settlement coordinator, at his discretion, to schedule settlement conferences on August 9, 10, or 11, 2004, prior to the prehearing conference in the Commission's hearing room. Authorization of settlement discussions does not constitute a finding on the proposal's procedural status or on the need for a hearing.

Further procedures. Rule 173(b) provides that interested persons may intervene within 28 days of the Postal Service's filing of a request for permission to conduct a provisional service change. In view of the Postal Service's objective of implementing its proposal in time for the peak mailing season, the normal period for intervention under subpart J will be shortened from 28 days to 21 days. Notices of intervention will be due on August 6, 2004. Late motions for intervention will nevertheless be entertained for good cause shown. The notice of intervention shall be filed using the Filing Online system at the Commission's website (www.prc.gov), unless a waiver is obtained for hardcopy filing. See rules 9(a) and 10(a) [39 CFR §§ 3001.9a and 10a]. Notices should indicate whether participation will be on a full or limited basis. See rules 20 and 20a [39 CFR §§ 3001.20 and 20a].

Section 173(e) of the rules of practice [39 CFR § 3001.173(e)] states that the Commission will hold hearings on a Postal Service request for a provisional service change

when it determines that there is a genuine issue of material fact to be resolved in the consideration of the Postal Service's request, that party shall file with the Commission a request for a hearing within the time allowed in the notice of proceeding. The request for a hearing shall state with specificity the fact or facts set forth in the Postal Service's filing that the party disputes, and when possible, what the party believes to be the true fact or facts and the evidence it intends to provide in support of its position.

Any participant who wishes to dispute a genuine issue of material fact to be resolved with regard to the Postal Service's RPN proposal shall file a request for a hearing by August 11, 2004. In order to assist the Commission's determination of whether a hearing is necessary, should any written discovery be directed to the Postal Service by a participant before August 11, 2004, the Postal Service shall respond within 10 days.

Prehearing conference. A prehearing conference will be held on August 11, 2004 at 11:00 a.m. in the Commission's hearing room. Participants shall be prepared to address whether there is an issue of material fact requiring a hearing as provided by rule 173(e) [39 CFR § 173(e)]. It would greatly assist the Commission if participants file supporting written argument in advance of the prehearing conference in regard to the identification of issues that would indicate the need to schedule a hearing.

Public participation. In conformance with section 3624(a) of title 39, the Commission designates Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate (OCA), to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, upon request, will supply their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

It is ordered:

1. The Commission establishes Docket No. MC2004-5 to consider the Postal Service Request referred to in the body of this Order.
2. The Commission will act en banc in this proceeding.
3. Notices of intervention shall be filed no later than August 6, 2004.
4. Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public.
5. The Postal Service's RPN proposal will be processed under subpart J of the Commission's rules of practice [39 CFR § 3001, subpart J].
6. The Postal Service's Motion for Waiver of Request for Permanent Change as a Condition for Market Test Procedures is dismissed as moot.
7. Answers to the Postal Service's Motion for Filing Requirements and Conditional Motion for Waiver of the portions of rule 54 and 64 cited in that motion are due on August 6, 2004.
8. Postal Service counsel is appointed to serve as settlement coordinator in this proceeding. The Commission will make its hearing room available for settlement conferences on August 9, 10, or 11, 2004, and at such times deemed necessary by the settlement coordinator.
9. A prehearing conference will be held on August 11, 2004, at 11:00 a.m., in the Commission's hearing room.

10. Participants who wish to request a hearing on the Postal Service's Request in this docket to conduct a market test shall submit such a request, together with statements in conformance with 39 CFR § 3001.173(e), no later than August 11, 2004.
11. The Postal Service shall provide responses to any written discovery requests submitted before August 11, 2004 within 10 days.
12. The Secretary shall cause this Notice and Order to be published in the Federal Register.

By the Commission
(SEAL)

Garry J. Sikora
Acting Secretary