

Before the  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Market Test of Experimental Product --  
Collaborative Logistics

Docket No. MT2009-1

PUBLIC REPRESENTATIVE COMMENTS  
IN RESPONSE TO COMMISSION ORDER NO. 199  
(April 20, 2009)

1. INTRODUCTION

The Public Representative hereby submits comments in response to Order No. 199.<sup>1</sup> In Order No. 199, the Commission gives interested persons an opportunity to submit comments on whether the Postal Service's notice<sup>2</sup> to conduct a Market Test of an Experimental Product is consistent with the policies of 39 U.S.C. § 3641. On April 20, 2009, the Postal Service submitted supplemental materials in response to questions posed within the Order.<sup>3</sup>

The Public Representative hereby withdraws questions submitted on April 14, 2009 because the answers are largely contained in the aforementioned Response provided by the Postal Service.

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<sup>1</sup> Notice and Order Concerning Market Test of Experimental Product, April 7, 2009 (Order).

<sup>2</sup> Notice of the United States Postal Service of Market Test of Experimental Product – Collaborative Logistics, April 1, 2009 (Notice).

<sup>3</sup> Response of the United States Postal Service to Order No. 199 Request for Supplemental Information, April 20, 2009 (Response).

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The Public Representative recommends the approval of this market test because it satisfies the statutory requirements<sup>4</sup>, but also because the product offering being evaluated will serve several key public interests. Those interests include:

- Providing additional revenue to the Postal Service to aid in maintaining its Universal Service Obligations;
- Providing increased economic efficiency benefits;
- Providing environmental benefits; and
- Providing additional shipping options to customers.

However, the Public Representative herein urges the Commission to pay particular attention to several areas warranting caution:

- Possibility of disproportionate harm from market tests in a limited geographic area;
- Provision of adequate information to the public and the Commission;
- Potential for legal challenges;
- Challenges in costing and cost attribution; and
- Administrative complexities that may pose deployment risks.

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<sup>4</sup> The Public Representative does not choose to address at this time the issue of whether or not Collaborative Logistics might constitute a prohibited nonpostal service. Nevertheless, the Postal Service's discussion in the Response at 8-9 (responding to a Commission question as to whether it is a postal service) seems to have merit.

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## 2. DISCUSSION

### **The Collaborative Logistics product would make use of an underutilized portion of the postal network and could provide additional revenue to the Postal Service to aid in maintaining its Universal Service Obligations.**

It is in the public interest to have a strong, vibrant Postal Service capable of meeting its Universal Service Obligations. The Postal Service is facing severe financial difficulties due to a combination of long-term and short-term downturns in the mail volumes that serve as its primary revenue source. Any additional sources of meaningful financial contribution would help ameliorate those difficulties, provided that the revenue stems from products and services within the statutory authority granted the Service.

The Postal Service utilizes a large number of trucks to haul mail. The Service uses its own drivers to accomplish local transportation (Vehicle Service Drivers). Contract trucking performs long distance and intercity transportation (Purchased Transportation). In both cases, many trucks are carrying only a partial load, the natural result of factors such as service standards for diverse postal products, work-sharing and drop-shipping, and imbalances in mail volume.

Replacing some of the empty space on those partial loads with fare-paying merchandise and deliveries could add much-needed revenue to the Postal Service. The Postal Service is essentially subleasing the trucking space it already owns. Selling the trucking space resulting from geographic imbalances in mail volume and service standards seems to be an outgrowth of the Universal Service Obligation.

Said one observer: "The Postal Service has plenty of excess capacity on the roads at the moment with a network that is already delivering mail on a daily basis. If viewed as an LTL player, the USPS has a bigger LTL footprint – or

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network – due to its existing mail routes. There is no place the USPS does not go.”<sup>5</sup>

**The products covered by this market test offer the potential to benefit three additional public interests: increased competition in the marketplace, increased economic efficiency and environmental benefits.**

The entry of the Postal Service into the LTL sector would increase competition within that sector. It would offer more service and provider options to shippers. Because Postal Service offerings would be space-available, they would presumably provide lower cost options for those shippers who do not require as rapid a delivery.<sup>6</sup>

Analyst David Ross of Stifel Nicolaus & Co., Inc., who monitors the trucking industry, said that the Postal Service wouldn't become a large player in the LTL market, but it could compete with LTL carriers because the industry continues to grapple with significant overcapacity.<sup>7</sup> Jon Langenfield, a transportation analyst with RW Baird wrote: “Given the scale and operational excellence required to compete in the LTL sector, we do not consider the USPS a viable near-term threat to the industry.”<sup>8</sup>

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<sup>5</sup> Berman, Jeff. USPS Market Test Could Add a New Player for LTL-like services. Logistics Management, April 2, 2009 (quoting unnamed industry source). [http://www.logisticsmgmt.com/index.asp?layout=articlePrint&articleID=CA6648907&article\\_prefix+CA&articleid=6648907](http://www.logisticsmgmt.com/index.asp?layout=articlePrint&articleID=CA6648907&article_prefix+CA&articleid=6648907)

<sup>6</sup> *Id.*

<sup>7</sup> Hanford, Desiree J. U.S. Postal Service to launch two-year LTL test. Progressive Railroading, April 14, 2009. <http://www.progressiverailroading.com/news/article.asp?id=20174> (According to Ross, “One extra competitor should be good for shippers but not for the margins and yields of other carriers.”)

<sup>8</sup> Hannon, Dave. U.S. Postal Service Plans to Test the LTL Market: New Service will Use of (sic) Empty Miles on USPS Trucks. Purchasing. April 14, 2009. <http://www.purchasing.com/article/CA6651543.html?industryid=48372>

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All else held equal, it is more economically efficient and environmentally sound to transport full trucks rather than to transport trucks that are only partially full. Federal, state and local governments are promoting carbon footprint reduction, pollution reduction and reducing unnecessary traffic, particularly in urban areas. There is only so much space available for trucks in urban centers. In general, increased load factors reduce the overall environmental footprint of transportation services.

In a previous matter before the Commission, the Public Representative pointed out the fact that in a transportation network it is efficient to utilize back haul (the hauling capacity in vacant space available on a return trip).<sup>9</sup> “Keeping trucks full on the return leg of this journey makes good economic sense.”<sup>10</sup>

**The market test involves a product likely to provide a useful business service to sectors of the economy that might otherwise not be served in a timely manner at a price affordable to those customers, or to public sector customers (i.e. federal, state and local governments) that are able to issue preferential procurements.**

The Postal Service network can be regarded as a public good that can be utilized more widely. It is instructive to look at the analogy of school buses. School buses are used to bring students to school early in the day and to return them home in the afternoon. At other times, they may be unoccupied. And school buses represent a significant investment to be sitting unutilized. As a result, school districts make the buses and drivers available for transportation of special education students, vocational students and senior citizens as well as school field trips. As a result, this public good is better utilized for various civic functions.

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<sup>9</sup> See Public Representative Comments in Response to Commission Order No. 164 at 4-6, January 13, 2009, PRC Docket No. MC2009-14.

<sup>10</sup> *Id.* at 6.

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In 1913, Congress acted to establish Parcel Post delivery service. This was a significant expansion of the role of the Post Office Department. Previously, it the Post Office had delivered letters and magazines and some smaller parcels, but the introduction of Parcel Post service, along with rural free delivery several years earlier, permitted the large scale growth of the mail order industry. Private express companies existed as a means of sending packages, but their rates were prohibitive to most potential customers.

Rural free delivery had increased the demand for a variety of products not ordinarily available to the 54% of Americans that lived in rural areas. As a result of strong lobbying by the National Grange and other farm advocacy organizations, and overcoming strong counter-advocacy by the private express companies and retail merchants, Parcel post service began on January 1, 1913 and was an instant success. During the first five days of service, 1,594 post offices reported handling over 4 million parcel post packages. The effect on the national economy was electric. Marketing through parcel post gave rise to great mail-order businesses. In addition, parcel post created an immediate demand for special packaging suitable for mailing the wide array of commodities considered deliverable under the system.<sup>11</sup>

The Postal Service has offered examples of the types of customers that it might serve with a Collaborative Logistics product. There are customers who do not require a just in time delivery option and who require a less costly option. These might include hospitals, schools, nursing homes and other civic or nonprofit entities.

Public sector customers such as agencies of the federal, state and local governments who face severe financial constraints and/or who may award

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<sup>11</sup> Quoted from Parcel Post: Delivery of Dreams. Online exhibit of the Smithsonian National Postal Museum (2004) <http://www.sil.si.edu/ondisplay/parcelpost/intro.htm>

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procurement to the Postal Service on a preferential basis may also be among the potential clients of such services.

New markets for these services may thus arise as a result from lower cost options or from preferential procurement from the Postal Service.

**If the market test for Collaborative Logistics is focused on too limited a geographic area or areas, it could cause disproportionate and even fatal harm to certain small trucking firms.**

It is reasonable that the Postal Service might wish to perform a market test for Collaborative Logistics in a designated geographic area so as to best evaluate its potential benefits.

However, the Commission should ensure that such a test is not undertaken in such a confined geographic region, and if it is, to take precautions so as not to cause disproportionate and potentially fatal harm to competitors in the local Less-Than-Truckload (LTL) marketplace.<sup>12</sup>

**Whenever the Postal Service undertakes a market test, the public interest dictates that the Service provide not only the Commission with pertinent test results, but that adequate and detailed information about the results is made public.**

The purpose of a market test is to allow the Postal Service to collect sufficient data to determine whether to proceed with new products and services, or changes to existing products and services. As stated earlier, the statutory

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<sup>12</sup> Section 3641(b)(2) prohibits a market test if the introduction of 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. The phrase "continued offering" as well as 3641(f) specifies a continuing oversight role for the Commission to ensure that the Postal Service does not create undue harm. It should be noted that Sections 3641(b)(2) and (h) reference the effect on small business concerns. The Public Representative suggests that the Commission promulgate rules for market tests and for defining small business concerns in the near future so as to be able to evaluate such concerns should they arise, as well as to aid in the regulation of market testing.

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provisions for Market Tests suggests that Congress intended to grant the Postal Service substantial leeway in that area. However, in return for this experimentation leeway, the Postal Service is obliged to report to the public adequate and detailed information about the results.

**The product being tested may face legal challenges due to statutory constraints on the offering of products and services, but Congress granted substantial flexibility to Market Tests of Experimental Products.**

Should the Postal Service be permitted to conduct a market test of a product of ambiguous statutory authority, if that product arises naturally from its mail transportation responsibilities?

The Public Representative recognizes that non-traditional products arising out of postal operations, such as Collaborative Logistics, may incur challenges with regard to its categorization as a postal product. Some may argue that Collaborative Logistics does not fit within the definition of a postal product, and more generally, that this is not a business area that the Postal Service is authorized to undertake. This weighty legal and policy issue is not addressed in these Comments.

However, the Public Representative suggests that Congress enacted 39 U.S.C. Section 3641 (Market tests of experimental products) of PAEA to permit the Postal Service the flexibility to evaluate new products in order to gather sufficient data to permit periodic reevaluation of the efficacy of the postal reform law.

Furthermore, because the Postal Service contracts for the bulk of its non-local transportation, the product being evaluated would offer the excess capacity on trucks it was already procuring for those routes, and thus it is closely allied with the services it already performs.

The Commission should be cognizant of Congress's intentions to spur Postal Service innovation through Market Testing, recognizing the possibility of

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and not without good reason foreclosing opportunities for other statutorily ambiguous products.<sup>13</sup>

**If it ultimately becomes a regular Postal Service product, Collaborative Logistics may pose challenges in accurately identifying the true costs of providing the service.**

Cost analysis of back haul transportation is complex and difficult. Economist Leonard Merewitz pointed out some of the challenges in his testimony before the Commission.<sup>14</sup> A prerequisite to the evolution of Collaborative Logistics from a Market Test to a full-fledged product offering should be a clear methodology of how this product would be costed accurately yet without undue administrative burden. The Commission will be obligated to consider the utility of the assumptions made in costing methodology so as to be able to confirm both that revenues sufficiently cover attributable costs and that the product contributes a sufficient measure to institutional overhead.

To ensure both fair competition and a positive benefit for the Postal Service, it is critical that the revenue exceeds the incremental cost of the experimental service. An accurate estimate of incremental costs should include

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<sup>13</sup> What if, hypothetically, the Postal Service applied to conduct a market test for a product offering where delivery vehicles bore advertising messages? Or vehicles took air samples along their routes for scientific research or homeland security purposes? Or equipped vehicles to autonomously collect digital images along their routes for purposes such as route mapping, traffic reporting, research, disaster recovery or marketing purposes? Or passively served as a platform to collect image-recognition scans of license plate numbers for recovery of stolen vehicles? (The Public Representative is not advocating these services.) All of these could arguably be considered nonpostal products, but could also be regarded as arising naturally from the Service's mail transportation responsibilities because the vehicles are already travelling daily along their routes.

<sup>14</sup> See generally, Testimony of Leonard Merewitz in Behalf of the Florida Fruit Shippers Association, Docket No. R97-1, December 30, 1997. <http://www.prc.gov/Docs/6/6559/fgfsa-t1-test.pdf> (corrected by errata filed January 26, 1998) <http://www.prc.gov/Docs/6/6772/fgfsa-t1-test.pdf>

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the cost of time and vehicle miles in deviating from standard transportation routes and constraints on the sequence of deliver order, costs associated with the loading and unloading of the pallets, additional weight related costs such as fuel consumption and any factors associated with perishables. It should also include secondary costs such as liability and insurance for both the LTL pallets and other items in the trucks which could be damaged by the pallets in an accident.

The Public Representative believes that the costs of negotiating and administering the agreements with shippers are nontrivial and should be taken into consideration in costing.

**Less Than Truckload transportation is generally considered administratively complex to operate. It is also an industry currently undergoing consolidation. The difficulties faced in offering such a product in a profitable manner should not be underestimated.**

LTL shipping is a thin-margin business that depends heavily on careful and nimble use of trucking resources, and the participants have acquired a significant experience base. Only some of the skills required for LTL overlap with the traditional activities performed by the Postal Service. The Postal Service would face a steep learning curve to acquire the required skills.

According to an industry observer, "The variable nature of LTL shipments has left carriers with smaller volumes, despite making the same number of pickups and deliveries. So revenues are decreasing while costs are holding steady – not a good place to be right now."<sup>15</sup>

Another important consideration in this discussion is that the Postal Service does not have an asset-based transportation network because it contracts out its over-the-road trucking business.

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<sup>15</sup> Chris Ferrell, Associate Director of the Supply Chain Consortium, quoted in Supply Chain Consortium Sees Imbalance, Expects Consolidation. Press release dated March 26, 2009. [http://www.tompkinsinc.com/news/PR\\_2009/pr\\_032609.asp](http://www.tompkinsinc.com/news/PR_2009/pr_032609.asp)

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3. CONCLUSION

The Public Representative respectfully submits the foregoing Comments for the Commission's consideration.

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