

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

Before Commissioners:

Ruth Y. Goldway, Chairman;
Mark Acton, Vice Chairman;
Dan G. Blair;
Tony L. Hammond; and
Nanci E. Langley

Market Test of Experimental Product—
Marketing Mail Made Easy

Docket No. MT2011-3

ORDER APPROVING MARKET TEST OF
EXPERIMENTAL PRODUCT—MARKETING MAIL MADE EASY

(Issued March 1, 2011)

I. INTRODUCTION

On January 12, 2011, the Postal Service filed a notice, pursuant to 39 U.S.C. § 3641, announcing its intent to initiate a market test of an experimental market dominant product, Marketing Mail Made Easy (MMME).¹ MMME is a Standard Mail Flat experimental product that, among other things, includes local entry and payment, a maximum number of pieces per delivery unit, and a waiver of all permit and mailing fees. Notice at 3. The Commission finds that MMME comports with the requirements of 39 U.S.C. § 3641 and thus approves the market test.

¹ Notice of the United States Postal Service of Market Test of Experimental Product – Marketing Mail Made Easy, January 12, 2011 (Notice). See also United States Postal Service Notice of Errata to Notice of Market Test of Experimental Product – Marketing Mail Made Easy, January 27, 2011 (Errata).

II. PROPOSAL

The test is scheduled to begin February 27, 2011 or shortly after. *Id.* at 1. MMME is a Standard Mail product that targets small- and medium-size businesses that would use the mail to advertize but for the barriers to entry. *Id.* at 2. Specifically, the Postal Service states that the MMME product:

- May not exceed a daily quantity of 5,000 pieces per delivery unit;
- May be entered for city, rural, and highway contract route delivery;
- Must meet the preparation requirements of the Simplified Address option for Standard Mail Saturation Mail;
- Must comprise a minimum of one full carrier route;
- Must be entered and paid locally at the delivery unit;
- Must be flat-shaped and weigh less than 3.3 ounces;
- Must bear approved indicia;
- Must include Postal Service approved documentation at the time of presentation with the total number of active deliveries by route in conformance with the Postal Service Delivery Statistics File;
- Must include a sample mailpiece at the time of presentation; and
- Has no permit or annual mailing fee requirement.

Id. at 3. The Postal Service states that the product will be priced at the rate of Standard Mail Commercial Saturation Flats weighing less than 3.3 ounces and entered at a destination delivery unit, which is currently 14.2 cents per piece. *Id.* at 4.

The Postal Service anticipates collecting data on MMME for the number of customers, total volume sent, volume at each entry point, average mailing size, and proportion of mail entered on each day of the week as part of its efforts to better understand the characteristics of MMME. *Id.* at 7.

In the future, should the Postal Service propose to make MMME a permanent new product, the Postal Service indicates that it will follow the Commission's rules for establishing a new product. *Id.* at 8.

The Commission issued Order No. 649 on January 13, 2011, establishing this docket, summarizing the Postal Service's proposal, appointing a Public Representative, and requesting public comment.²

Fifteen parties commented on the Postal Service's market test proposal.³ Three parties submitted reply comments. Two parties requested that the Commission issue an information request,⁴ each of which the Postal Service opposed.⁵ Subsequently, in response to the comments and requests for a Commission information request, the Postal Service specified how MMME complies with each of the legal requirements for market tests in section 3641. See Postal Service Reply Comments.

III. LEGAL REQUIREMENTS AND COMMENTS

The Postal Service notes that 39 U.S.C. § 3641 grants it authority to conduct market tests of experimental products. Three conditions, however, constrain the Postal Service's authority to create a market test for a product. The product must (a) be significantly different from all products offered by the Postal Service within the 2-year period preceding the start of the test; (b) will not result in undue market disruption, especially for small business concerns; and (c) be correctly characterized as market dominant or competitive. *Id.* at (b)(1)-(3). A market test may not exceed 24 months or \$10 million in revenue per year without application for an extension (for an additional 12

² Notice and Order Concerning the Market Test of an Experimental Product—Marketing Mail Made Easy, January 13, 2011 (Order No. 649).

³ The members of the mailing community that have filed comments are identified in the Attachment to this Order.

⁴ Public Representative Motion for Issuance of Information Request, January 26, 2011; Valpak Direct Marketing Services, Inc. and Valpak Dealers Association, Inc. Motion for Issuance of Information Request, February 4, 2011.

⁵ Response of the United States Postal Service in Opposition to Motion of the Public Representative for Issuance of Information Request, February 2, 2011; Response of the United States Postal Service in Opposition to Motion of Valpak Direct Marketing Services, Inc. and Valpak Dealers Association, Inc. for Issuance of Information Request, February 11, 2011.

months) or exemption (of up to \$50 million in revenue per year) and waiver granted by the Commission. *Id.* at (d) and (e).

A. Significantly Different Product

The Postal Service asserts that MMME is a significantly different product because of its product characteristics and the market segment that it is designed to serve. Notice at 5. The Postal Service notes that the product is “restricted in terms of weight, entry, and payment options, compared to current postal products” because of the local entry and payment requirements, as well as the low volume limit. *Id.* The Postal Service states that “MMME is intended to serve small and medium-sized businesses that do not use current Postal Service products.” *Id.*

The Public Representative contends that MMME is not a “uniquely different” product from other Postal Service offerings because a high percentage of Saturation Flats are already entered at the delivery unit. PR Comments at 3-4. Valpak contends that MMME is essentially a Saturation Flats product with reduced “barriers to entry”, which do not create a significantly different product. Valpak Comments at 4-5. Similarly, Valpak contends that entry limitations, volume limitations, and simplified addressing do not create a new product. *Id.* at 5.

The Postal Service contends that MMME represents a significantly different product, from the perspective of mail users, based on feedback from mailers over time. Postal Service Reply Comments at 3-4. It asserts that MMME is distinguishable from existing products by the absence of barriers to entry, the single price for such mailings, and the entry of mailings at retail units. *Id.* at 3.

B. Market Disruption

The Postal Service states that because MMME is intended to serve customers that do not currently use Postal Service products, it is unlikely to create a market disruption. Notice at 5. The Postal Service contends that MMME “will not eliminate or increase the cost to small or medium-sized businesses that already use, or have the

option to use” mail service providers (MSPs) or other shared mail operations. *Id.* However, the Postal Service also states that the total cost of using MMME will not be significantly less expensive than currently available options. *Id.* The Postal Service contends that mail service providers and shared mail providers would not be significantly negatively impacted, and the impact on small businesses generally is expected to be favorable. *Id.* at 6.

Many of the commenters state that MMME targets and disrupts a market that is already served by total market coverage programs, shared mail programs, and local newspapers. See Compact Info Systems Comments, Consolidated Graphics Comments at 1, Faris Mailing Comments at 1, Globe Direct Comments at 1, NAA Comments at 2-4, NAAD Comments at 1, NNA Comments at 2, PR Comments at 4-5, Publishers’ Diversified Comments at 1-2, Valpak Comments at 6-7, 10, World Marketing Senne Comments at 2, World Marketing Thompson Comments at 1. Several question the Postal Service’s charging of permit and mailing fees to current mailers, while waiving those fees for new smaller mailers. NAA Comments at 5, 8-9, NNA Comments at 2, Publishers’ Diversified Comments at 2, Valpak Comments at 7-8.

NAA comments that MMME violates section 404a of title 39, which prohibits the Postal Service from establishing a rule, regulation, or mailing standard that precludes competition or establishes the terms of competition unless it does not create a competitive advantage for the Postal Service. NAA Comments at 8. NAA contends that the cumulative effect of simplified addressing and the waiver of permit and mailing fees establish the terms of competition. *Id.* Valpak compares NAA’s contention to the requirements of section 3641, and notes that compliance with section 404a would, in principle, be through the complaint mechanism. Valpak Reply Comments at 2.

Valpak and the Public Representative contend that many of the mail service providers, Valpak franchises, and other advertisers that may be harmed by MMME are small businesses. *Id.* at 3-4, PR Comments at 6.

SMC/Valassis state that they have concerns with MMME’s impact, but are willing to reserve judgment until the results of the market test are in. SMC/Valassis Reply

Comments at 2. SMC/Valassis emphasizes the need for the Postal Service to explore new ways to generate volume and revenue. *Id.*

The Postal Service acknowledges the concerns of mailers, but contends that the focus in this docket is on whether MMME satisfies the conditions in place for testing of an experimental product. Postal Service Reply Comments at 1-2. The Postal Service notes that MMME may be used by any mailer that abides by the product specifications. *Id.* at 4-5. The Postal Service also notes that while MMME mailers would not need a permit, those mailers would not receive the added flexibility that accompanies owning a permit, e.g., entering mail at places other than the delivery unit, mailing a variety of shapes of mail, or mailing different densities. *Id.* at 5-6. The Postal Service states that volume shifts from other postal products to MMME are unlikely because MMME is most useful to those not currently using the mail. *Id.* at 8.

The Public Representative recommends that the Commission require the Postal Service to collect additional data, should it approve the MMME test, concerning the potential market disruption caused by the MMME product. PR Comments at 8. Similarly, Valpak contends that the plans for evaluation of the MMME market test should include some measure of success and a measure of the impact of the program on the market. Valpak Comments at 12, 15-19.

While the Postal Service “cannot determine if a mailing ‘would have been mailed’ using an MSP in the absence of MMME”, it does plan to track all MMME volumes and revenues, including those coming from existing mailers. Postal Service Reply Comments at 8-9.

C. Correct Categorization

The Postal Service identifies MMME as a market dominant postal product within the meaning of 39 U.S.C. §§ 102(5), (6) and 3642(b). Notice at 6. The Postal Service contends that because Standard Mail is currently a market dominant class (as defined by the market power the Postal Service exerts over the product), and MMME would be contained within Standard Mail, that MMME is market dominant. *Id.* The Postal Service

also notes that the Private Express Statutes cover this type of mail. *Id.* The Public Representative agrees that the market for entry of Saturation Mail at the delivery unit is not competitive. PR Comments at 6-7.

D. Revenue and Duration Limitations

The Postal Service projects that MMME may generate 10 to 20 million pieces of new volume. Notice at 7. Due to the price per piece (14.2 cents), the Postal Service does not anticipate that revenues would exceed the \$10 million annual limitation. *Id.* NAA contends that the Postal Service has not shown that it will comply with the revenue limitation of \$10 million annually. NAA Comments at 11.

E. Ancillary Issues

Simplified addressing. Many of the comments focus on the simplified addressing requirement that MMME may utilize. Commenters express concern about the manner in which the Postal Service implemented simplified addressing and state that it should have entailed more public input and review. See Calmark Comments at 2, Experian Comments at 1, NAAD Comments at 2, Turner Comments at 1-2, World Marketing Senne Comments at 2-4. Similarly, several comments state that simplified addressing negatively impacts the providers of mailing lists and lettershops that previously partnered with the Postal Service. PrimeNet Comments, World Marketing Thompson Comments at 3.

NNA, however, approves of the extension of simplified addressing from rural routes to city routes. NNA Comments at 1. SMC/Valassis, likewise, approve of the expansion of simplified addressing from rural routes to city routes, and state that the idea has been considered and debated for years. SMC/Valassis Reply Comments at 2.

Bundle issue. Commenters note that the Postal Service's unions are contracted to carry up to three bundles of mail to the street. Experian Comments at 2, NAAD Comments at 2, PR Comments at 6, Valpak Comments at 13. Commenters also state that if extra bundles are entered at the delivery unit, the Postal Service will have to

prioritize delivery of these extra bundles, possibly leading to decisions about which bundles should be deferred. Experian Comments at 2, PR Comments at 6, World Marketing Senne Comments at 1. Valpak notes that an additional bundle, if it must be collated with another bundle, would incur additional cost. Valpak Comments at 14. Similarly, Valpak notes that different sizes or shapes of flat-shaped mail could have significant impact on carrier costs. *Id.* at 15.

Do not mail. Several commenters raise the specter of do not mail as a possible issue compounded by the use of simplified addressed Saturation Mail. Calmark Comments at 2, Consolidated Graphics Comments at 2, Experian Comments at 3, Faris Mailing Comments at 1, NAAD Comments at 1, PrimeNet Comments, World Marketing Senne Comments at 2, World Marketing Thompson Comments at 2.

IV. COMMISSION ANALYSIS

A. Significantly Different Product

MMME is designed with product characteristics that target a different market than other postal products. Among other things, the local entry and pay requirements, as well as limitations on daily volumes, shape, and weight, indicate a different type of saturation product. See Errata. The characteristics of the MMME product support the conclusion that MMME is a significantly different product.

The Public Representative's contention that a large percentage of Saturation Flats are entered at the delivery unit is not persuasive. Local entry is but one requirement of MMME, whereas local payment and a maximum volume of 5,000 pieces per delivery unit further differentiate the product.

While the market for MMME has some common traits with the Saturation Flats product, it represents a distinct segment of the market, one that may be underserved. The Postal Service indicates that, by offering a simplified new product, it may attract new mail customers or increase volumes and revenues from existing, infrequent small-volume mailers. Postal Service Reply Comments at 2-4. The market test represents an

attempt “to respond to commercial entities who might consider direct mailing....” *Id.* at 2.

MMME is clearly a postal service. Thus, notwithstanding the characteristics that distinguish MMME from other products, the Postal Service could, in theory, have proposed MMME as a rate category within the Saturation Flats product. If such a proposal had been filed, the Commission would have to consider various legal issues, albeit not including whether MMME was substantially different from an existing product. The Postal Accountability and Enhancement Act (PAEA) permits market tests. The Postal Service’s intent to employ a market test pursuant to section 3641, however, will enable it to evaluate demand in a limited, more controlled manner than may have been possible had MMME be proposed as a rate category.

Based on the record in this proceeding, the Commission finds that the Postal Service has adequately demonstrated that MMME constitutes a significantly different product from any other product offered by the Postal Service in the last 2 years.

B. Market Disruption

Several commenters contend that MMME constitutes the Postal Service cannibalize mail volume from a saturated market. Further, they argue that there is inequity in charging current mailers permit fees and mailing fees, while allowing new mailers that deal directly with the Postal Service to mail without those barriers.

The Postal Service states that MMME will not cause market disruption because it is open to all mailers. Additionally, it serves a different market than the market for those mailing through permits. Postal Service Reply Comments at 4-6. The restrictive conditions on MMME are designed to minimize disruption to existing markets by limiting use to a market segment seen as not fully served.

Any time a new product is introduced into a market, the market will react. Change, however, does not necessarily equate to disruption. The market in which MMME will be tested offers alternative mail and other advertising options. The introduction of MMME will create change. The claims of market disruption made by

several commenters have been carefully considered by the Commission. On this record, however, the Commission is not persuaded that those claims warrant rejection of the proposal at the outset. Several factors influence the Commission's determination.

First, as the Postal Service notes, no mailer is excluded from using MMME, and any limitation on its use is based on the product, not the mailer. *Id.* at 4-5. Based on its discussions with existing and potential customers, the Postal Service believes that MMME will appeal to commercial entities currently not using the mail and to those who use it sparingly. *Id.* at 6.

Mailers engaged in co-mailing through lettershops or shared mailings through organizations like Valpak, however, are using a different product than MMME, which further limits the market disruption MMME may cause. As an example, other transaction and production costs in addition to the cost of postage, further distinguish MMME from products currently offered by competitors.

Second, MMME's potential disruption in the marketplace is minimized by its limited duration and cap on revenues. By comparison, in FY 2010, Standard Saturation Flats revenues were approximately \$1.5 billion on volumes of 9.5 billion.

Third, if experience shows otherwise, the market test can be terminated. Pursuant to 39 U.S.C. § 3641(f), the Commission retains the power to "order the cancellation of the test...or take such other action as it considers appropriate" if any of the conditions described in 39 U.S.C. § 3641(b) are not met. This authority represents an important remedial mechanism.⁶ The relevant data collected will be publicly available.⁷ Thus, those potentially affected will be able to review the information. In addition, the Commission will carefully monitor the data collected to evaluate the impact of the market test on an ongoing basis.

⁶ As Valpak suggests, it also distinguishes market tests from regulations that may otherwise be subject to 39 U.S.C. § 404a.

⁷ Pursuant to the Commission's rules, any confidential materials submitted, however, may be filed under seal.

Lastly, the Postal Service hopes to increase overall revenues by introducing a new product. The experiment, as contemplated by the PAEA, will enable the Postal Service to test its theory that the target market represents a growth opportunity.

C. Correct Categorization

The Postal Service and the Public Representative both contend that MMME is properly categorized as market dominant. While no participant challenged this assertion, many commented on the competitive and mature nature of MMME's target market.

The Commission notes that some features, such as simplified addressing, may increase the competitive attributes of this type of mailpiece. However, because it is categorized within the category of Saturation Mail, which is market dominant, the Commission finds it appropriate to retain a market dominant categorization for MMME.

D. Revenue and Duration Limitations

The Postal Service states that MMME will not last longer than 2 years, unless it comes to the Commission after that time to make it a permanent product. The Postal Service does not anticipate that revenues for MMME will approach the \$10 million annual limitation. NAA challenges the Postal Service to provide a foundation for that belief. The Commission accepts the Postal Service's general estimate of the potential market. During the test, the Commission will monitor the revenue of the experimental product MMME to ensure that the annual revenue limitation is observed.

E. Ancillary Issues

Many participants commented on the simplified addressing requirements that MMME may use. While not at issue or under review in this docket, the Commission understands mailers' frustration with rule changes that are not transparently debated. The Commission recognizes the Postal Service provides many opportunities for mailers to give feedback on proposed rules, but encourages it to maintain transparency and

provide an opportunity for mailers to formally comment on significant proposed rule changes.

Some participants also noted the possible effects MMME may have on carrier in-office and street time, and the costs associated with those effects. Other participants contend that the simplified addressing feature diminishes the value of the mailstream and may spur do not mail legislation. While these consequences may be possible, they are not reasons to reject the market test. The intent of this market test is to gather information on demand, costs, and ancillary effects caused by the new product in a limited and controlled study. This Order requires the Postal Service, in implementing the market test, to collect data necessary to evaluate the implications of MMME.

V. DATA COLLECTION PLAN AND REPORTING

The Postal Service recognizes that data collection is integral to the market test and proposes a data collection plan “to better understand the characteristics of” MMME. Notice at 7. As noted in its reply comments, this includes plans “to track all volumes and revenues for MMME, including those coming from existing mailers. Postal Service Reply Comments at 8.

For the Commission to adequately monitor the MMME market test for compliance with market disruption and other effects, it deems the following data collection plan as a necessary condition of the Postal Service’s implementation of the MMME market test. The Postal Service shall, within 40 days after the close of each fiscal quarter, provide the Commission with the following data for that quarter:

- The total number of customers that used MMME;
- The total number of customers that used a different postal product or postal service for marketing in the 90 days prior to mailing MMME;⁸
- The total volume of MMME sent, in aggregate and by delivery unit;
- The average size of the mailing; and
- The proportion of total MMME mail entered by day.

If the Postal Service proposes to offer MMME as a permanent product, it must, in support of its filing, present data showing the impact of MMME on carrier operations, *e.g.*, showing the frequency and number of routes requiring deferral of delivery of one or more bundles of Standard Mail when more than three bundles are available for delivery on that route.

The Commission finds the data listed above to be necessary to allow MMME to move forward as a market test. If the Postal Service is unable to provide the data in a timely fashion (40 days after the close of each quarter), the Commission may require the cancellation of the market test pursuant to section 3641(f).

VI. ORDERING PARAGRAPHS

It is Ordered:

1. Based on review of the preliminary information before it, the Commission finds that the proposed Marketing Mail Made Easy market test is consistent with 39 U.S.C. § 3641.

⁸ Such data could be garnered from mailers by requiring a statement on the mailing form such as “My business has/has not used a different direct mail product, or the services of a shared mail or mail consolidation business, in the 90 days preceding this mailing.” The intent is to collect volume information—in the Postal Service’s words—“including those from existing mailers.” *Id.*

2. The Postal Service shall file the results of the market test data collection in this docket, as described in the body of this Order, within 40 days of the end of each fiscal quarter.
3. Except to the extent granted or otherwise disposed of herein, all outstanding requests in Docket No. MT2011-3 are denied.

By the Commission.

Shoshana M. Grove
Secretary

Concurring Opinion of Commissioner Dan G. Blair

I concur with the Commission's approval of a market test of the experimental product, Marketing Mail Made Easy. However, I am concerned that the mailbox monopoly might confer an unfair competitive advantage on the Postal Service when competing for local print advertising. These concerns are somewhat mitigated by the fact that this is a time-limited market test with reporting requirements. Further, Commission rules would allow interested parties a public forum to explore this and other issues should the Postal Service seek to make this a permanent new product.

**COMMENTERS TO MARKET TEST OF EXPERIMENTAL PRODUCT—
MARKETING MAIL MADE EASY**

PARTICIPANT	TITLE	FILING DATE
Calmark Inc. (Calmark Comments)	Comments Received from Calmark, Inc. Regarding Docket No. MT2011-3	February 4, 2011
Compact Information Systems (Compact Information Systems Comments)	Comments Received from Compact Information Systems Regarding Docket No. MT2011-3	February 4, 2011
Consolidated Graphics Group (Consolidated Graphics Group Comments)	Comments Received from Consolidated Graphics Group Regarding Docket No. MT2011-3	February 2, 2011
Experian (Experian Comments)	Comments Received from Experian Regarding Docket No. MT2011-3	January 29, 2011
Faris Mailing, Inc. (Faris Comments)	Comments Received from Faris Mailing, Inc. Regarding Docket No. MT2011-3	February 4, 2011
Globedirect (Globedirect Comments)	Comments Received from Globedirect Regarding Docket No. MT2011-3	January 27, 2011
National Association of Advertising Distributors, Inc. (NAAD Comments)	Comments Received from National Association of Advertising Distributors, Inc. Regarding Docket No. MT2011-3	January 20, 2011
National Newspaper Association (NNA Comments)	Comments Received from National Newspaper Association Regarding Docket No. MT2011-3	February 4, 2011
Newspaper Association of America (NAA Comments)	Opposition of the Newspaper Association of America	February 4, 2011
PrimeNet Direct Marketing Solutions (PrimeNet Comments)	Comments Received from PrimeNet Direct Marketing Solutions Regarding Docket No. MT2011-3	January 31, 2011
Public Representative (PR Comments)	Comments of the Public Representative	February 4, 2011

PARTICIPANT	TITLE	FILING DATE
Publisher's Diversified Mail Service, Inc. (Publisher's Diversified Comments)	Comments Received from Publisher's Diversified Mail Service, Inc. Regarding Docket No. MT2011-3	February 1, 2011
Saturation Mailers Coalition and Valassis Direct Mail, Inc. (SMC/Valassis Reply Comments)	Reply Comments of the Saturation Mailers Coalition and Valassis Direct Mail, Inc.	February 15, 2011
Harry Turner (Turner Comments)	Comments Received from Harry Turner Regarding Docket No. MT2011-3	February 1, 2011
World Marketing (World Marketing Senne Comments)	Comments Received from Wanda Senne, National Director Postal Development, World Marketing Regarding Docket No. MT2011-3	January 31, 2011
World Marketing (World Marketing Thompson Comments)	Comments Received from Charles Thompson, EVP of Production, World Marketing, Inc. Regarding Docket No. MT2011-3	January 26, 2011
United States Postal Service (Postal Service Reply Comments)	Reply Comments of the United States Postal Service in Response to Order No. 649	February 15, 2011
Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. (Valpak Comments)	Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Initial Comments Regarding Market Test of Experimental Product—Marketing Mail Made Easy	February 4, 2011
Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. (Valpak Reply Comments)	Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Reply Comments	February 15, 2011