

ORDER NO. 1539

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

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Tony Hammond; and
Robert G. Taub

Market Test of Experimental Product–
Metro Post

Docket No. MT2013-1

ORDER APPROVING METRO POST MARKET TEST

(Issued November 14, 2012)

I. INTRODUCTION

On October 12, 2012, the Postal Service filed a notice, pursuant to 39 U.S.C. § 3641, announcing its intent to conduct a market test of an experimental product called Metro Post.¹ Metro Post is a package delivery service that will provide customers with same-day delivery from participating locations within a defined metropolitan area. *Id.* at 1. The Commission finds that the market test meets the requirements of section 3641, and therefore approves the market test.

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

II. PROPOSAL

A. Market Test Description

To support the proposed market test, the Postal Service observes that online e-commerce companies and retailers have realized the power of online shipping platforms, which has created an opportunity for the Postal Service to explore the feasibility of providing same-day local delivery within a defined metropolitan area. *Id.* at 2. The Postal Service states that the defined metropolitan area for the Metro Post market test is the city of San Francisco.² It notes that it may expand the market test to other metropolitan areas, but will notify the Commission before doing so. *Id.*

The Postal Service asserts that the market test is specifically designed for online e-commerce companies and their associated retailers to deliver products in a unique and timely manner to buyers living within San Francisco. Notice at 1; Response to CHIR No. 1, question 1. The Postal Service proposes a market test, lasting for 1 calendar year, to test the operational feasibility of same-day package delivery and determine the optimal pricing structure for this type of service. Notice at 1-2, 6.

As part of the market test, the Postal Service will enter into relationships with up to 10 qualifying online e-commerce companies to offer same-day local delivery. *Id.* at 2. Each participating online e-commerce company must have at least 10 physical locations nationally and one or more locations within San Francisco.³

During the initial period of the market test, which lasts until January 2013, each participant may only receive same-day delivery for up to 10 participating locations within San Francisco. Notice at 2; Response to CHIR No. 1, question 1. For each test participant, only 200 packages per day may receive same-day delivery from the Postal

² Responses of the United States Postal Service to Chairman's Information Request No. 1, October 25, 2012, question 1 (Response to CHIR No. 1). Specifically, the defined metropolitan area is comprised of the following ZIP Codes: 94102, 94103, 94104, 94105, 94107, 94108, 94109, 94110, 94111, 94112, 94114, 94115, 94116, 94117, 94118, 94121, 94122, 94123, 94124, 94127, 94129, 94131, 94132, 94133, 94134, and 94158.

³ *Id.* Physical locations are not limited to retail stores and may include non-retail locations, such as fulfillment centers and company headquarters. Response to CHIR No. 1, question 2.

Service during the initial period. Notice at 2-3; Response to CHIR No. 1, question 4. The Postal Service states that it will track the daily number of orders placed with each test participant and will send an automated response if the 200 package limit has been reached. Response to CHIR No. 1, question 4.

The Postal Service states that buyers can request same-day delivery in one of three ways: (1) use a qualifying online e-commerce platform to purchase items online; (2) purchase items at retail stores that have partnered with test participants; or (3) visit a test participant's website to purchase items.⁴ Eligible buyers must live in a specified area within San Francisco. Notice at 3; Response to CHIR No. 1, question 1. The daily cut-off times for making purchases delivered via Metro Post will occur between 2:00 p.m. and 3:00 p.m. Package pick-up will be scheduled to take place after 3:00 p.m., and same-day delivery will occur between approximately 4:00 p.m. and 8:00 p.m., as determined by the Postal Service. Notice at 3.

B. Consistency with Section 3641 Requirements

Significantly different product. Section 3641(b)(1) requires that the experimental product offered in a market test be "from the viewpoint of the mail users, significantly different from all products offered by the Postal Service within the 2-year period preceding the start of the test." 39 U.S.C. § 3641(b)(1). The Postal Service asserts that Metro Post is significantly different from all products offered within the past 2 years because it has not offered a same-day local delivery product during that time. Notice at 5. It notes that the Metro Post delivery service will feature a unique relationship with qualifying online e-commerce companies and their associated retailers, which is unlike any other service offering it provides. *Id.*

⁴ Notice at 3. The Postal Service defines an online e-commerce platform as "a website that may offer items for purchase from different retailers, not just items from one company." Response to CHIR No. 1, question 6. It states that a test participant's website would typically only offer items for purchase from the test participant itself. *Id.*

Market disruption. Section 3641(b)(2) requires that “[t]he 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.” 39 U.S.C. § 3641(b)(2). The Postal Service explains that several prominent companies are currently offering some form of same-day delivery, such as eBay, Amazon.com, Wal-Mart, and United Parcel Service. Notice at 5; Response to CHIR No. 1, question 3. The Postal Service asserts that prices offered by competitors for same-day delivery typically fall within the price range that the Postal Service intends to test. Notice at 6. The Postal Service filed its pricing plans for the Metro Post market test under seal. *Id.* at 4.

In response to CHIR No. 1, the Postal Service explains the impact of the market test on small business concerns, which include couriers and express delivery service companies that meet certain criteria. Response to CHIR No. 1, question 5. The Postal Service expects that couriers and express delivery service companies will continue to operate within the market for same-day delivery. *Id.* It observes that larger companies in the same-day delivery market currently use local couriers that specialize in delivering time-sensitive documents and medical items, as well as perishable goods. *Id.* It states that these items fall outside the intended scope of the Metro Post market test, which will focus on the delivery of parcels purchased by consumers. *Id.* The Postal Service notes that it will deliver many parcels under the Metro Post market test after business hours, rather than time-sensitive items delivered by courier and express delivery companies within an hour. *Id.* The Postal Service submits that “Metro Post will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns.” *Id.*

Correct categorization. Section 3641(b)(3) requires that the experimental product be correctly classified as market dominant or competitive. 39 U.S.C. § 3641(b)(3). The Postal Service classifies Metro Post as a competitive product because it is designed for packages that do not fall under the Private Express statutes. Notice at 6. It states that the Metro Post service will charge a price greater than six

times the basic tariff rate of \$0.45. *Id.* It submits that same-day delivery of packages is another component of the package services market. *Id.*

Duration. Section 3641(d)(1) prohibits market tests from exceeding 24 months, absent an extension. 39 U.S.C. § 3641(d)(1). The Postal Service plans to begin the market test on or shortly after November 12, 2012, and to continue the test for up to 1 calendar year. Notice at 6. It states that it may request an extension for an additional year, establish Metro Post as a permanent product, or terminate the market test early. *Id.*

Exemption from revenue limitation. Section 3641(e)(1) limits total revenues anticipated or received by the Postal Service from the market test to \$10 million per year. 39 U.S.C. § 3641(e)(1). The Postal Service expects that the total revenue received from the market test may exceed this \$10 million revenue limitation. Notice at 7. It applies for an exemption of this statutory requirement pursuant to section 3641(e)(2). *Id.*

Section 3641(e)(2) enables the Commission to exempt the market test from the \$10 million limitation if total revenues anticipated or received by the Postal Service from the market test do not exceed \$50 million in any year. 39 U.S.C. § 3641(e)(2). The Commission must also determine that the Metro Post product is (1) likely to benefit the public and meet an expected demand; (2) likely to contribute to the financial stability of the Postal Service; and (3) not likely to result in unfair or otherwise inappropriate competition. Notice at 7.

The Postal Service states that it has taken steps to ensure that anticipated revenues will not exceed \$50 million in any year. It asserts that the market test is likely to benefit the public and meet an expected demand. *Id.* It submits that Metro Post is likely to contribute to the financial stability of the Postal Service by generating more package deliveries that do not currently move within the postal system. *Id.* The Postal Service does not anticipate that setting prices under the market test would give it overwhelming market power in the same-day delivery market. Response to CHIR

No. 1, question 3. Thus, it concludes that Metro Post will be unlikely to result in unfair or otherwise inappropriate competition. *Id.*

Data collection. The Postal Service asserts that it will monitor market demand for Metro Post and will track the costs of providing same-day local delivery. Notice at 8. It has prepared a data collection plan and is prepared to report on the results of its research to the Commission. The Postal Service plans to collect the following data: volume of packages delivered via same-day service, total revenue generated, and cost data, including workhours and travel times. *Id.*

III. PROCEDURAL HISTORY AND COMMENTS

The Commission noticed the filing and gave interested persons the opportunity to submit comments on whether the Postal Service's filing is consistent with the policies of 39 U.S.C. § 3641.⁵ Chairman's Information Request No. 1 sought clarification on the proposed market test. The Postal Service responded on October 25, 2012.

The Public Representative filed comments on October 31, 2012.⁶ No comments were submitted by other interested parties. The Public Representative concludes that the Metro Post market test is not ripe for implementation. PR Comments at 1. She contends that additional market research, pricing information, and compliance with section 3641 are required before the market test can be approved. *Id.* at 1-2.

The Public Representative comments that Metro Post meets certain requirements of section 3641(b). She agrees that Metro Post is significantly different from all other products offered within the past 2 years and is correctly classified as competitive. *Id.* at 4; see 39 U.S.C. § 3641(b)(1) and (3). However, she states that she cannot determine whether Metro Post will create an unfair or inappropriate competitive

⁵ Notice and Order Concerning Market Test of Experimental Product—Metro Post, October 16, 2012 (Order No. 1502).

⁶ Public Representative Comments in Response to Notice of Market Test of Experimental Product—Metro Post, October 31, 2012 (PR Comments). Comments were due on October 29, 2012. Order No. 1502 at 4. However, the Commission was closed from October 29 through October 30, 2012 because of the weather. Thus, the PR Comments were timely filed.

advantage for any mailer, particularly in regard to small business concerns. PR Comments at 4-8. She contends the Postal Service should provide pre-market research for selecting the 200 package per day limit. *Id.* at 8-11. She argues that the Postal Service should report on the costs incurred in conducting the market test, including administrative costs. *Id.* at 11.

IV. COMMISSION ANALYSIS

Based on a review of the record, including the Postal Service's filing and the Public Representative's comments, the Commission concludes that the proposed market test meets the requirements of 39 U.S.C. § 3641. Accordingly, the market test may proceed as scheduled.

A. Section 3641(b) Conditions

Significantly different product. The Postal Service distinguishes Metro Post from other products based on its unique relationship with qualifying online e-commerce companies and their associated retailers. Notice at 5. The Public Representative agrees that the product meets this condition. PR Comments at 4. The Commission finds that Metro Post is significantly different from any product offered by the Postal Service within the past 2 years. The Postal Service has not offered a same-day local delivery product in the past 2 years. Metro Post therefore satisfies 39 U.S.C. § 3641(b)(1).

Market disruption. The Postal Service contends that the Metro Post market test raises no concerns about unfair or otherwise inappropriate competition in part because of the number of other companies offering same-day delivery. Notice at 5-6; Response to CHIR No. 1, question 5. The Public Representative expresses concerns about the adequacy of the information in the Notice regarding market disruption and contends that unfair competition may result from the Metro Post market test. PR Comments at 5. First, she asserts that the prices proposed by the Postal Service are generally lower than those offered by its direct competitors. *Id.* at 5-6. Second, she argues that the

Postal Service must share its criteria for selecting the participating online e-commerce companies. *Id.* at 6-7.

Third, she contends that the market test will place participating e-commerce retailers in a favored position over non-participating e-commerce retailers, particularly those companies that are not eligible to participate. *Id.* at 7-8. She argues that the Postal Service's categorization of small business concerns is too narrow, does not include a number of small e-commerce and online businesses, and fails to evaluate the impact Metro Post may have on these enterprises. *Id.* at 8.

The Commission finds that the information provided in Response to CHIR No. 1 addresses the issues raised regarding market disruption under section 3641(b)(2). Metro Post is not likely to create an unfair or otherwise inappropriate competitive advantage (either for the Postal Service or any mailer) because the market test is restricted to the San Francisco area and limited in the number of participants and number of packages receiving same-day delivery. The Postal Service must notify the Commission prior to expanding the market test to other metropolitan areas or otherwise changing the market test, *e.g.*, number of customers and number of packages.

The Public Representative has not shown that the introduction or continued offering of Metro Post may create market disruption under section 3641(b)(2). The Commission has evaluated the Postal Service's pricing plans for this market test and finds that the prices offered by competitors typically fall within the price range the Postal Service intends to test.⁷ Metro Post is an experimental product. As the Postal Service notes, the market test will help it determine the optimal pricing structure for Metro Post. Notice at 2. It is premature to conclude that the Postal Service's prices will disrupt the

⁷ The Commission reviewed announcements concerning other companies that have recently decided to test the same-day delivery market. See, *e.g.*, Victoria Stilwell, "UPS, FedEx Mull Same-Day Delivery," (October 22, 2012), available at <http://www.mb.com.ph/articles/378193/ups-fedex-mull-sameday-delivery>; Stephanie Clifford, "Same-Day Delivery Test at Wal-Mart," *The New York Times* (October 9, 2012), available at http://www.nytimes.com/2012/10/10/business/wal-mart-tests-same-day-delivery.html?_r=0; and Josh Constine, "eBay Is Launching A Same Day Shipping Service Called eBay Now (August 5, 2012), available at <http://techcrunch.com/2012/08/05/ebay-is-launching-a-same-day-shipping-service-called-ebay-now/>.

market when the market is fairly new, and the Postal Service's prices are similar to its competitors. Concerns about the pricing of Metro Post may be more appropriately addressed if and when the Postal Service requests to offer Metro Post as a permanent product.

The Public Representative argues that the Postal Service must share its criteria for selecting the participating online e-commerce companies. PR Comments at 6-7. The Commission finds that these criteria fall outside the scope of the Commission's review of market tests. To conduct a market test, the Postal Service needs to satisfy section 3641, which does not require specific information.

The Commission finds no evidence that the market test will place participating e-commerce retailers in a favored position over non-participating e-commerce retailers. The Postal Service is offering a competitive delivery service on an experimental basis. Retailers that are not participating in the market test have other same-day shipping and delivery services available, including UPS. Response to CHIR No. 1, question 3.

The Public Representative raises issues regarding the impact of the market test on small business concerns. The Commission finds that the Postal Service adequately evaluates the impact of the market test on small business concerns such as courier and express delivery companies. See Response to CHIR No. 1, question 5. As the Postal Service notes, these companies specialize in delivering time-sensitive materials that fall outside the intended scope of the Metro Post market test. *Id.* The Public Representative does not provide specific examples of small e-commerce and online businesses that would be at a competitive disadvantage under the market test. Furthermore, while not dispositive, no small business concern (or representative of the industry) opposes the market test.

The Commission finds that the record contains no indication that the experimental product Metro Post will "create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns." 39 U.S.C. § 3641(b)(2).

Correct characterization. The Postal Service classifies Metro Post as a competitive product. Notice at 6. The Public Representative agrees with this classification. PR Comments at 4. The Commission finds that the Postal Service has properly categorized Metro Post as a competitive product and therefore satisfies 39 U.S.C. § 3641(b)(3). Metro Post is designed for packages that do not fall under the Private Express statutes. Notice at 6.

B. Other Statutory Requirements

Duration. The Postal Service states that the Metro Post market test will not last longer than 1 calendar year unless it later requests an extension of an additional year, proposes adding Metro Post to the competitive product list, or terminates the test early. *Id.* The Commission finds that the market test is consistent with section 3641(d)(1), which prohibits the market test from exceeding 24 months unless an extension is requested.

Exemption from revenue limitation. The Postal Service requests an exemption from the \$10 million revenue limitation in section 3641(e)(1). To grant this request, the Commission must determine that the Metro Post product is (1) likely to benefit the public and meet an expected demand; (2) likely to contribute to the financial stability of the Postal Service; and (3) not likely to result in unfair or otherwise inappropriate competition. *Id.*

The Commission grants the request. The Postal Service asserts that it has imposed qualifying criteria and limitations on prospective test participants to ensure that anticipated revenues will not exceed \$50 million.⁸ Metro Post is likely to benefit the public by providing consumers with another option for same-day delivery service. The number of companies offering or planning to offer same-day delivery service demonstrates the expected demand for Metro Post.

⁸ Section 3641's revenue limits are subject to increase to reflect inflation. 39 U.S.C. § 3641(g)

Metro Post is likely to contribute to the financial stability of the Postal Service by generating package deliveries that would not have otherwise been delivered by the Postal Service. The Commission has evaluated the pricing plan for Metro Post and concludes that Metro Post is unlikely to “result in unfair or otherwise inappropriate competition.” The prices charged by the Postal Service for Metro Post will be effective for a finite period of time in a limited geographic area, and the prices are similar to other companies that have recently announced same-day delivery offerings.

The Public Representative seeks further information about how the Postal Service will monitor the impact of the 200 package per day restriction. PR Comments at 9. She asserts that the Postal Service should have performed pre-market research evaluating the impact of the 200 package per day restriction on the overall demand for Metro Post. *Id.* at 9-10. She describes a hypothetical situation in which the 200 package per day restriction is insufficient to meet high customer demand for Metro Post. *Id.* at 10.

The Commission finds that pre-market research on the 200 package per day restriction is unnecessary in this instance. Much of the pre-market research the Public Representative seeks will be conducted during the course of the market test. In addition, the market test is designed to answer the types of questions posed by the Public Representative. As the Commission previously stated, the purpose of any market test is to determine whether an experimental product should be offered on a permanent basis.⁹ In this case, the purpose of the market test is to evaluate the success of Metro Post in the marketplace. Many of the concerns raised by the Public Representative can be addressed during the course of the market test. For example, if the 200 package per day restriction proves insufficient to meet demand, the Postal Service can adjust this restriction after the initial period of the market test. See Notice at 2-3.

⁹ See Docket No. MT2011-4, Order, No. 730, Order Approving Mail Works Guarantee Market Test, May 16, 2011 at 14.

If the Postal Service decides that Metro Post should be a permanent product, it should file its request to change the competitive product list sufficiently in advance of any possibility of exceeding the \$50 million revenue limit for market tests. Doing so will provide both the Commission and interested persons an adequate opportunity to consider the request before the revenue limit is reached.

C. Data Collection Plan

The Postal Service proposes to collect data on the volume of packages delivered via same-day service, total revenue generated, and cost data, including work hours and travel times. Notice at 8. It states that it is prepared to report on the results of its research to the Commission. *Id.*

The Public Representative notes that in Docket No. MT2011-4, the Commission required the Postal Service to report on the costs of the market test incurred in conducting the market test, including administrative costs. PR Comments at 11. She asserts that similar reporting requirements should be imposed for this market test, including volume and revenue data collected. *Id.*

Consistent with past market tests, the Postal Service must file data collection reports on the Metro Post market test within 40 days after the close of each fiscal quarter. To better evaluate the merits of the market test, the data collection plan shall also include: (1) the total revenue received to date by the Postal Service from the market test; (2) attributable and total costs incurred in conducting the market test, including administrative and ancillary costs; (3) the volume of Metro Post packages delivered via same-day service; (4) the number of test participants; and (5) work hours, travel times, and other cost data, as proposed in the Notice. Notice at 8.

The Postal Service should provide notice of the completion of the market test. Data or information the Postal Service believes is commercially sensitive may be filed under protective conditions to prevent disclosure of commercially sensitive material.

V. ORDERING PARAGRAPHS

It is ordered:

1. Based on the record before it, the Commission finds that the proposed Metro Post market test is consistent with 39 U.S.C. § 3641.
2. The Postal Service's request for an exemption from the \$10 million annual revenue limitation on the Metro Post market test is granted.
3. The Postal Service must notify the Commission prior to expanding the market test to other metropolitan areas or otherwise changing the market test, *e.g.*, number of customers and number of packages.
4. 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.

By the Commission.

Shoshana M. Grove
Secretary