

ORDER NO. 1781

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

Before Commissioners:

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

Market Test of Experimental Product—
Gift Cards

Docket No. MT2011-2

ORDER GRANTING EXTENSION OF
GIFT CARD MARKET TEST

(Issued July 19, 2013)

I. INTRODUCTION

On June 18, 2013, the United States Postal Service filed a motion, pursuant to 39 U.S.C. § 3641(d)(2), to extend the duration of the Gift Card market test for an additional year.¹ The market test was set to expire June 27, 2013.² The request to extend the Gift Card market test by 1 year is granted. The new termination date is June 27, 2014.

The Postal Service makes two additional requests in its Motion. First, it asks to immediately extend the market test for 1 month to allow time to develop a record on

¹ Motion of the United States Postal Service for Temporary Extension of Gift Cards Market Test, June 18, 2013; Notice of Errata to Motion of the United States Postal Service for Temporary Extension of Gift Cards Market Test, June 27, 2013 (Motion).

² Motion at 2. See *also* Order Authorizing Gift Card Market Test, April 28, 2011 (Order No. 721).

which to evaluate the request for a 1-year extension. Motion at 2. This request was granted on June 21, 2013.³ In addition, the Postal Service requests a waiver of 39 U.S.C. § 3641(d)(2), which requires that requests to extend market tests be submitted not later than 60 days before the date on which the market test would otherwise expire. Motion at 2. This request is also granted.

II. SUFFICIENCY OF NOTICE

The Public Representative was the only interested person to file comments in this docket.⁴ The Public Representative's comments focus on the timing of the Postal Service's Motion.

The Public Representative notes the statutory provision specifying that applications for extensions of market tests shall be filed with the Commission "not later than 60 days before the date as of which the testing of such product would otherwise be scheduled to terminate...." See 39 U.S.C. § 3641(d)(2). He reviews previous Postal Service requests for extensions of market tests, none of which was filed in timely fashion. PR Comments at 3. His concern is with treating the 60-day statutory provision as discretionary. *Id.* He urges the Commission to take appropriate action to ensure compliance with the plain meaning of the statute, and only grant waiver requests under exceptional circumstances. *Id.*

The Commission previously addressed the 60-day notice provision in an order concerning the Collaborative Logistics market test.⁵ In that order, the Commission stated:

³ Order No. 1755, Notice and Order Granting Temporary Extension of Gift Card Market Test, June 21, 2013.

⁴ Response of the Public Representative to Motion of the United States Postal Service for Temporary Extension of Gift Card Market Test, July 1, 2013 (PR Comments).

⁵ See Docket No. MT2009-1, Order No. 742, Order Granting in Part Temporary Extension of Collaborative Logistics Market Test, June 3, 2011, at 2-5.

The 60-day notice period is procedural in nature. It is intended to afford interested persons and the Commission adequate opportunity to consider a Postal Service application to extend a market test beyond 24 months. While the Postal Service's late filing in this instance precluded that opportunity, its failure to timely file for an extension has not compromised any potential party's substantive rights.

Id. at 4-5.

No comments from users or competitors were filed addressing the instant request. The Public Representative does not oppose the extension. *See id.* at 5. Similar to the Collaborative Logistics market test request, construing the instant Motion as legally insufficient appears, under the circumstances, to be counterproductive and unnecessary. *See id.* Finally, if the Postal Service requests that Gift Cards become a permanent product, interested persons again will have an opportunity to address the provision of Gift Cards at that time. *See id.* Under these limited circumstances, the Commission finds it appropriate to waive the 60-day notice provision in the instant docket.

As noted by the Public Representative, the Postal Service has consistently not met the statutory 60-day notice provision. Going forward, the Postal Service should not assume that a waiver will be granted absent exceptional circumstances. To avoid the possibility that a market test will be terminated at the end of 24 months, the Postal Service should file any future requests for an extension in a timely fashion to comply with 39 U.S.C. § 3641(d)(2).

III. REQUEST TO EXTEND MARKET TEST BY ONE YEAR

The Gift Card market test enables customers "to purchase a gift card loaded with a specific sum of money which may be, but is not required to be, sent through the mail." Order No. 721 at 1. The market test allows for the testing of open loop and closed loop gift cards. *Id.* at 14-15. Open loop gift cards may be redeemed wherever the card is honored. Closed loop gift cards are redeemable only at the merchant issuing the card. The initial market test has focused on providing open loop gift cards.

The Postal Service asserts it “recently decided on a plan to improve sales, including for the first time offering some of the top selling closed loop cards (redeemable only at particular retailers).” Motion at 1. It contends it “needs additional time for the market test in order to implement and evaluate its new sales efforts.” *Id.* Accordingly, the Postal Service seeks an extension of the Gift Card market test, until June 27, 2014, to determine the impact of the efforts to improve sales and evaluate the demand for closed loop cards. *Id.* at 2.

As noted, the Public Representative is not opposed to granting a 1-year extension to the Gift Cards market test. PR Comments at 2.

The Commission may grant an extension of a market test “[I]f necessary in order to determine the feasibility or desirability of a product being tested....” 39 U.S.C. § 3641(d)(2). The Postal Service provides a reasonable justification of evaluating the demand for closed loop gift cards, which warrants extending the Gift Card market test for an additional year. No opposition has been presented through comments to the Postal Service’s request for an extension. Therefore, the Commission will allow the Gift Card market test to continue until June 27, 2014.

It is ordered:

The Commission grants the Postal Service motion to extend the duration of the Gift Cards market test until June 27, 2014.

By the Commission.

Shoshana M. Grove
Secretary

Commissioner Langley, dissenting.

DISSENTING OPINION OF COMMISSIONER LANGLEY

While I support the Postal Service seeking new revenue streams, as I indicated previously in Order No. 721, section 404(e)(2) prohibits the Postal Service from offering any new nonpostal services and this prohibition applies to experimental offerings. See Order No. 721, Order Authorizing Gift Card Market Test, Dissenting Opinion of Commissioner Blair and Commissioner Langley, April 28, 2011. Therefore, I am dissenting on the Postal Service's motion to extend its Gift Card market test.

Commissioner Nanci E. Langley