

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Market Test of Experimental Product-
Global eCommerce Marketplace (GeM)
Non-Published Rates

Docket No. MT2016-1

PUBLIC REPRESENTATIVE COMMENTS

(September 25, 2016)

On August 22, 2017, the Postal Service filed a motion which requests that the Commission either: (1) clarify Order No. 3319 to acknowledge that customer agreements executed in the second year of the market test may have one-year terms that may be completed, and therefore extend after the end of the second year of the market test, or (2) extend the market test for twelve additional months.¹

Order No. 3319 is not in need of clarification.² The Commission stated:

The GeM Merchant market test will expire 2 years from the effective date, unless the market test is extended or cancelled in accordance with 39 U.S.C. §§ 3641(d) and (f) and 39 C.F.R. §§ 3035.11-.12. The Postal Service's application for a limited extension to satisfy 1-year GeM Merchant NSAs executed during the second year of the market test is premature at this time. The Postal Service may apply for an extension when the request becomes timely.

¹ United States Postal Service Motion for Clarification of Order No. 3319, or, in the Alternative, for Extension of Market Test Time Period, August 22, 2017 (Motion).

² Order Authorizing Market Test of Global Ecommerce Marketplace (GEM) Merchant, May 25, 2016 (Order No. 3319).

Order No. 3319 at 21. The Commission clearly directs the market test to end 2 years from its effective date. It also addresses the Postal Services concern for 1-year contracts extending beyond the termination date of the market test.

The Commission recognizes the above in the instant notice allowing for comments.³ Thus, the Commission treats the Motion as a request for a limited extension pursuant to 39 U.S.C. § 3641(d).

The requirements of 39 U.S.C. § 3641(d) follow:

§ 3641(d) Duration.—

(1) In general.—A market test of a product under this section may be conducted over a period of not to exceed 24 months.

(2) Extension authority.—If necessary in order to determine the feasibility or desirability of a product being tested under this section, the Postal Regulatory Commission may, upon written application of the Postal Service (filed not later than 60 days before the date as of which the testing of such product would otherwise be scheduled to terminate under paragraph (1)), extend the testing of such product for not to exceed an additional 12 months.

At the time the market test was originally considered, the Public Representative opposed, as premature, the extension of the market test beyond 2 years.⁴ The Public Representative was concerned with the potential for the Postal Service to make changes to a longer duration market test without fully informing the Commission of those changes. *Id.* He was also concerned with the potential for misuse of the market test rules. *Id.* at 7. The concern for potential misuse of the market test rules stemmed from the Postal Service's filing of most pertinent descriptive information under seal, and possible discrimination if customized services were only offered to select customers. *Id.* at 9.

In Order No. 3319, the Commission set forth the standard for review of any future Postal Service request for extension. The Commission stated:

³ Notice and Order Concerning Request for Limited Extension of Global Ecommerce Marketplace (GEM) Merchant Market Test, August, 24, 2017.

⁴ Public Representative Comments, April 19, 2016, (Public Representative Comments) at 6.

The Commission finds it will have the information necessary to evaluate such a request [a request for extension] after the Postal Service files its third quarterly data collection report, due May 10, 2017. See *supra* part IV.A.2b. If the Postal Service intends to execute any new GeM Merchant NSAs with merchants after the 2-year period of the market test, the Postal Service shall request an extension of the market test or permanent product status. See 39 U.S.C. § 3641(d); 39 C.F.R. §§ 3035.11 and .18.

Order No. 3319 at 21.

The Postal Service provides no persuasive support in its Motion to justify its request for extension. Thus, the Commission is left with relying on the most recent data collection reports to develop a justification on its own. The Public Representative would not oppose an extension of the market test if the Commission determines that the information provided by the quarterly data collection report(s) support an extension. It is suggested that the Commission consider the level of participation, such as the number and variety of participants, the usage (volumes) of the services offered, the benefit to the Postal Service of collecting additional data, and the potential for economic benefit to the Postal Service. If the data collection reports demonstrate active participation, show potential to improve the economic position of the Postal Service, and establish some benefit to gathering additional data, then an extension should be granted. Otherwise, the request for extension should be denied.

Respectfully submitted,

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