

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

Before Commissioners:

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

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

Docket No. MT2016-1

ORDER MODIFYING THE PARAMETERS OF THE
GLOBAL ECOMMERCE MARKETPLACE (GEM) MERCHANT MARKET TEST

(Issued June 21, 2018)

The Postal Service requests that the Commission modify the parameters of the Global eCommerce Marketplace (GeM) Merchant market test to enable the execution and full performance of 1-year customer agreements negotiated during the previously-authorized 12-month extension period.¹ As discussed below, the Commission modifies the parameters of the GeM Merchant market test to reflect the delayed activation of the test.

¹ United States Postal Service Motion for Modification of Order No. 4158, June 7, 2018, at 1 (Motion).

I. BACKGROUND

GeM Merchant is an end-to-end international shipping service that allows participating domestic online merchants to offer their international customers the ability, at the time of purchase, to estimate and prepay duties and taxes that the foreign country's customs agency will assess when the item arrives in the foreign destination.² On May 25, 2016, the Commission authorized the Postal Service to proceed with a 2-year market test of the GeM Merchant experimental product. See Order No. 3319. On June 8, 2016, the Postal Service notified the Commission that the GeM Merchant market test would take effect on June 27, 2016.³

On August 22, 2017, the Postal Service sought a limited extension of the GeM Merchant market test, seeking to satisfy 1-year customer agreements executed in the second year of the 2-year market test.⁴ The Commission authorized a 12-month extension that would permit the Postal Service to satisfy 1-year customer agreements executed in the second year of the 2-year GeM Merchant market test.⁵ Accordingly, the Commission extended the expiration date for the market test to June 26, 2019. Order No. 4158 at 7.

II. MOTION

The Postal Service asks the Commission to modify the scope of the extension authorized by Order No. 4158 to permit the Postal Service to execute customer agreements during the extension period authorized by Order No. 4158 and satisfy such customer agreements for 1-year terms. Motion at 1. The Postal Service asserts that

² Order Authorizing Market Test of Global eCommerce Marketplace (GeM) Merchant, May 25, 2016, at 2 (Order No. 3319).

³ United States Postal Service Response to Order No. 3319 Concerning Effective Date of GeM Merchant Solution Market Test, June 8, 2016.

⁴ 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 for Extension).

⁵ Order Authorizing Limited Extension of Global eCommerce Marketplace (GeM) Merchant Market Test, October 12, 2017 (Order No. 4158).

this modification should be granted due to delayed activation of the test: the first customer agreement was not executed until more than 1 year after the effective date identified on the record. *Id.* at 2. The Postal Service asserts that unique and unforeseeable issues caused this delay: a change in supplier and challenges faced by the current supplier in addressing data protection compliance. *Id.* The Postal Service further explains that these issues needed to be resolved before activating the test. *Id.* at 2-3.

The Postal Service asserts that allowing it the opportunity to satisfy 1-year customer agreements executed during the extension period authorized by Order No. 4158 is essential to collecting sufficient data to determine the feasibility and desirability of GeM Merchant. *Id.* at 2. Specifically, the Postal Service states that the highest demand for the GeM Merchant experimental product has been among smaller volume shippers and that the test needs more merchant participants to obtain sufficient data. *Id.* at 3. In the alternative, the Postal Service asks the Commission to authorize the execution of customer agreements during the extension period authorized by Order No. 4158 with terms that would expire by June 26, 2019.

No response to the Motion has been filed.

III. COMMISSION ANALYSIS

The Commission has reviewed the record, including the materials filed under seal. Based on this review, the Commission finds that the modification to reflect the period of inactivity is consistent with the applicable statutory and regulatory requirements.

A. Duration of a Market Test

Generally, a market test of an experimental product may not exceed 24 months in duration. 39 U.S.C. § 3641(d)(1); 39 C.F.R. § 3035.10. However, the Commission may extend the market test by up to 12 more months, upon the Postal Service's

request, “[i]f necessary in order to determine the feasibility or desirability of a product being tested under [section 3641].” 39 U.S.C. § 3641(d)(2).

The Postal Service asserts that the GeM Merchant market test has been inactive for more than 1 year. Motion at 2-3. The public filing of the first customer agreement in this proceeding displays an effective date of November 7, 2017.⁶ The Commission confirms that nothing on the record contradicts a finding that the GeM Merchant market test was inactive from June 27, 2016, through November 6, 2017. To reflect this delay in activating the test, the effective date of the GeM Merchant market test is modified from June 27, 2016, to November 7, 2017.

Previously, the Commission found that extending the duration of this test by 12 more months was “‘necessary in order to determine the feasibility or desirability’ of GeM Merchant.” Order No. 4158 at 4 (quoting 39 U.S.C. § 3641(d)(2)). This finding is reinforced by the Postal Service’s representations that more participating merchants are needed to collect sufficient data to effectively assess GeM Merchant. See Motion at 2-3. The duration of the GeM Merchant market test shall not exceed 36 months. 39 U.S.C. § 3641(d). Accordingly, the GeM Merchant market test shall expire by November 6, 2020. The modified test parameters allow the Postal Service to continue to enter into customer agreements after June 27, 2018, so long as all customer agreements offering the GeM Merchant experimental product terminate by November 6, 2020.

B. Continued Compliance with 39 U.S.C. § 3641(b)

The continued offering of an experimental product must continue to comply with the three requirements appearing in 39 U.S.C. § 3641(b)(1)-(3). Order No. 4158 at 4. When it authorized the market test to begin, the Commission found that the introduction of GeM Merchant met these requirements. Order No. 3319 at 11. And, when it

⁶ United States Postal Service Notice of Filing GEM Merchant Contract, November 17, 2017, Attachment 1 at 2, 15.

authorized the 12-month extension, the Commission concluded that the extension would be consistent with 39 U.S.C. § 3641. Order No. 4158 at 4-6. The Postal Service represents that this analysis remains unaffected by the requested modification. Motion at 4. No information in the record controverts this representation. Based on the record, the Commission concludes that the modification is consistent with 39 U.S.C. § 3641. If the Commission determines that the test no longer complies with the statute and rules, the Commission may cancel the test or take other action that it deems appropriate. 39 U.S.C. § 3641(f); 39 C.F.R. § 3035.12.

C. Timing and Transparency

Generally, the Commission requires that the Postal Service provide 10 days' advance notice before implementing a material change to the market test. 39 C.F.R. § 3035.6(a). "Material changes are changes that may affect compliance with 39 U.S.C. § 3641 and include, without limitation, adjustments to prices, geographic scope, eligibility for service, and termination date." *Id.* "Suspending a market test qualifies as a material change because it affects geographic scope and eligibility for service."⁷

Similarly, the request to modify the test parameters in order to reflect the delay in activating the GeM Merchant market test qualifies as a material change. The Commission acknowledges that nothing on the record controverts the Postal Service's assertion that the issues responsible for the delay were unique and unforeseeable. See Motion at 2. The Commission also recognizes that it may not have been foreseeable to the Postal Service at the outset how long the resolution of these issues would delay the activation of the test. Because this market test was inactive until the effective date of the first customer agreement, no person's substantive rights have been prejudiced. Further, the Postal Service did provide more than 10 days' advance notice of its request to execute and satisfy 1-year agreements during the extension period authorized by

⁷ Docket No. MT2013-1, Order Approving Request for Extension and Expansion of Metro Post Market Test, November 7, 2014, at 12 (Order No. 2243). The suspension of the Metro Post market test was limited to one geographic area (San Francisco); that test remained active in New York. *Id.* at 3.

Order No. 4158 (*i.e.*, sign and fulfill agreements after June 27, 2018), due to the earlier period of inactivity. *Id.* at 3.

While the Commission takes notice of the Postal Service's representations about the delays in implementing the GeM Merchant market test, it also recognizes this as a unique circumstance. Should a similar circumstance arise in the future, the Commission expects the Postal Service to be diligent in informing the Commission and public of such issues and the solutions it is pursuing. In the future, if the Postal Service intends to seek relief due to experiencing a delay in activating a market test, the notice of the suspension or delayed effective date should be filed as soon as the issues arise, to keep the public informed of material changes. When the exact duration of the inactivity is known, a motion should specify the relief sought (*e.g.*, the requested modified effective and/or termination date(s)) and the reasons therefore (*e.g.*, the dates and causes of the inactivity).

The Postal Service has acknowledged that the timeframe for filing a request to add a product consisting of a customer agreement modeled on a market test is set forth in the statute and the Commission's rules.⁸ The Commission has expressed concern that the failure to file such a request at least 60 days before the market test expires, at a minimum, frustrates the purpose of 39 C.F.R. § 3035.18.⁹ To avoid the possibility of experiencing a disruption in offering continuous GeM Merchant service after this market test expires, the Postal Service should file any request to add a product consisting of a customer agreement modeled on this market test by September 7, 2020.

⁸ Docket Nos. MC2018-13 and CP2018-26, USPS Request to Add Parcel Select Contract 24 to Competitive Product List and Notice of Filing Materials Under Seal, October 18, 2017, at 1, n.1.

⁹ Docket Nos. MC2018-13 and CP2018-26, Order Conditionally Adding Parcel Select Contract 24 to the Competitive Product List, October 31, 2017, at 7.

IV. ORDERING PARAGRAPHS

It is ordered:

1. Based on the record, the Commission finds that modifying the parameters of the GeM Merchant market test is consistent with 39 U.S.C. § 3641. To reflect the delay in activating the test, the effective date of the GeM Merchant market test is modified from June 27, 2016, to November 7, 2017.
2. The duration of the GeM Merchant market test shall not exceed 36 months. The GeM Merchant market test shall expire by (and all customer agreements offering the GeM Merchant experimental product shall terminate by) November 6, 2020, unless the market test is cancelled under 39 C.F.R. § 3035.12(a).
3. Revisions to the Mail Classification Schedule appear below the signature of this Order and are effective immediately.

By the Commission.

Stacy L. Ruble
Secretary

CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

Part B—Competitive Products **2000 Competitive Product List**

2800 Market Tests

2804 Global eCommerce Marketplace (GeM)

Reference

Docket No. MT2016-1

PRC Order No. 3319, May 25, 2016

Expires

~~June 26, 2019~~ November 6, 2020