

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

AMENDMENTS TO MARKET TEST RULES

Docket No. RM2018-12

COMMENTS OF THE UNITED STATES POSTAL SERVICE
(October 18, 2018)

The United States Postal Service hereby comments on the Postal Regulatory Commission's proposal to amend its market test regulations, as set forth in Order No. 4822.¹ The Postal Service supports the amendments to rules 3035.15 and 3035.16, and suggests changes to the rule 3035.18 amendments.

The amendments to rules 3035.15 and 3035.16 would harmonize the Commission's calculation of the market test revenue limitation with its calculation of the market-dominant price cap, by using three decimal places instead of one. The resulting consistency would improve upon the current rules; the Postal Service supports the changes.

With respect to rule 3035.18, the Postal Service shares the Commission's goal of resolving the ambiguity surrounding the applicability of the existing rule. At the same time, the Postal Service is concerned that the current proposal could unnecessarily restrict its ability to enter into negotiated service agreements (NSAs) following market tests, and could therefore have the effect of discouraging the use of market tests to experiment and innovate.

¹ Order No. 4822, Notice of Proposed Rulemaking to Amend Market Test Regulations, Docket No. RM2018-12 (Sept. 13, 2018).

The key issue the Postal Service sees is that, as proposed, new rule 3035.18 would apply to any NSA that is related to a market test, even if the market test has long since concluded. For example, the Postal Service's Metro Post market test, which experimented with same-day delivery, terminated at the end of 2015.² Since then, the Postal Service has implemented several Priority Mail NSAs that feature same-day delivery service, and plans to continue entering into new ones as the market shifts in that direction. If today, nearly three years after Metro Post ended, the Postal Service were to seek Commission approval of a new Priority Mail same-day delivery NSA by a date certain,³ it would be subject to a 60-day filing requirement, because the NSA would "offer the same (or similar) service as a former or current experimental product" within the meaning of proposed rule 3035.18(b)(1). NSAs incorporating features from market tests would thus perpetually be subject to more onerous filing requirements than other NSAs.⁴ Over time, the Postal Service could be motivated to forgo market tests altogether and instead innovate through NSAs from the outset.

The Postal Service acknowledges the Commission's need to ensure that it has adequate time to review novel contract features. The Postal Service has identified two revisions to the proposal that would preserve the Commission's ability to do so without unnecessarily constraining innovative NSAs. First, the extended filing requirement should apply only to those NSAs that seek to continue the services provided under a

² See PRC Docket No. MT2014-1.

³ Many customers prefer to have their NSAs take effect on a specified date, for business continuity, planning, or programming reasons. Successor contracts fall into this category as well.

⁴ This would be a particularly odd result for a successor contract meant to replace an existing, Commission-approved contract that grew out of a market test.

market test immediately upon the expiration of the market test.⁵ Once a reasonable period of time has elapsed after the conclusion of a market test – the Postal Service proposes a month – an NSA that includes features from the market test should be treated just like any other complex NSA.

Second, the rule's advance notice period should differ for permanent products and NSAs. While the Postal Service agrees that sixty days may be an appropriate timeframe for approving a permanent product that is replacing a market test, for non-permanent NSAs that follow a market test a shorter timeframe should be appropriate. The Commission routinely reviews complex NSAs within fifteen days of the Postal Service's filing, often with multiple NSAs pending before the Commission at any given time. Given the highly competitive space in which the Postal Service operates, and given the fast-moving nature of customer negotiations, sixty days is simply not practical – the Postal Service would inevitably lose out on some business.⁶ Thirty days would strike a more reasonable balance between the Commission's duty to properly review NSAs and the business needs of the Postal Service and its customers.

The Commission also proposes certain content requirements for filings of products and NSAs related to market tests, at subsections (c) and (e) of new rule 3035.18. The Postal Service believes that these requirements should expire at some reasonable point in time after the conclusion of a market test, for the same reasons

⁵ In other words, it should apply only where the Postal Service is seeking to transition a customer from a market test to an NSA with no interruption in service.

⁶ To be clear, the Postal Service's concern here is with competitive NSAs. The Postal Service would not oppose assigning the rule's timeframe for permanent products to market-dominant NSAs.

discussed above.⁷ No clear regulatory purpose would be served, for example, by the Postal Service having to forever file notices of new NSAs in a market test docket long after the market test has ended.⁸

Market tests have proved a valuable tool for the Postal Service to experiment and innovate, particularly in emerging package delivery niches, leading to new revenue through competitive NSAs. The Postal Service submits that its suggestions above would ensure that the Commission meets the goals it has set forth for its proposal while also avoiding unnecessary restrictions on the Postal Service's ability to effectively compete for business.

Respectfully submitted,

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⁷ The requirement in subsection (c)(4) could reasonably persist, however.

⁸ Consider the notices that would accompany an NSA that combines elements of two market tests.