

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

MODIFICATION OF SPECIAL SERVICES
PRODUCT LIST

Docket No. MC2022-60

COMMENTS OF THE UNITED STATES POSTAL SERVICE
(July 7, 2022)

For more than a decade, the Postal Service has been authorized to sell Gift Cards as a competitive postal service, similarly to its sale of greeting cards and stationery that are often mailed along with gift cards. See Docket No. MT2011-2, Order Authorizing Gift Card Market Test, Apr. 28, 2011 (Order No. 721); see *also* Docket No. MC2014-26, Order Granting Request to Add Gift Cards to the Competitive Product List, Aug. 8, 2014 (Order No. 2145). The Postal Service generally accepts cash, debit cards, Postal Money Orders, and traveler's checks as payment for Gift Cards. Docket No. ACR2021, Responses of the United States Postal Service to Questions 1-2 of Commission Information Request No. 1, Jan. 14, 2022, Question 1(f). On September 13, 2021, the Postal Service launched a limited pilot program at four Post Office retail locations to test acceptance of payroll and business checks as additional payment options for open-loop Gift Cards. *Id.*, Question 1(a).

For the reasons discussed below, this Pilot Program does not change the fundamental nature of the Greeting Cards, Gift Cards, and Stationery product or any segment thereof. Whether they pay with cash, debit cards, payroll checks, or some other form of payment, customers are purchasing the same open-loop Gift Cards with the same functionality, which they otherwise could have purchased from another source, such as a grocery store, pharmacy, or online vendor. A new payment method

does not change the nature of the product that the customer is purchasing. This point is reinforced by the extremely low usage of the new payment methods relative to the preexisting ones: the empirical data demonstrates that the offering of new payment methods is simply an ancillary extension of the same product to a small margin of additional customers who would prefer to pay for the product with a payroll or business check. There is therefore no need for the Commission to conduct further proceedings on this matter.

I. THE PILOT PROGRAM DOES NOT AFFECT THE “POSTAL SERVICE” STATUS OF THE GREETING CARDS, GIFT CARDS, AND STATIONERY PRODUCT

In announcing this exploratory proceeding, the Commission posited that the “payment change coupled with changes in the marketing and planned usage of the product have the potential to change the nature of the product.” Notice and Order Concerning Potential Modification of Special Services on the Competitive Product List, May 16, 2022, at 4–5 (Order No. 6174). To support this statement, the Commission selectively cited market research and promotional materials previously filed by the Postal Service. But the nature of a product is not determined by marketing language or notional discussions during the course of internal deliberations. Rather, what matters is how a given service relates to others in the market from the perspective of the consumer. Here, a customer does not receive cash in exchange for a payroll or business check; the customer receives the same open-loop Gift Card that another customer might purchase with cash or a traveler’s check. And the customer is no less free to mail the Gift Card to, say, a child at college. From the customer’s perspective, the “product” being purchased is a transferrable plastic card associated with stored value; its use is unaffected by the purchaser’s payment method.

Treating Gift Cards purchased with payroll or business checks as a new product would be an illogical result, placing the Postal Service at a competitive disadvantage in the market for stored value Gift Cards. The retail locations participating in the pilot program are in close proximity to grocery stores, drug stores, and other retail outlets likely to sell gift cards.¹ Other vendors selling similar open-loop gift cards accept a variety of payment methods for these cards without distinguishing between payroll and other preprinted checks as compared with other payment methods (e.g., cash).² And with some exceptions, the Postal Service offers a variety of payment options at retail offices, including cash, business and personal checks, and debit and credit cards. See U.S. Postal Serv., FAQ No. 000002824, What Forms of Payment Are Accepted?, Nov. 30, 2021, <https://faq.usps.com/s/article/What-Forms-of-Payment-are-Accepted>.³ Each of these payment options appeals to different segments of customers. For instance, unbanked customers may use cash instead of a debit or credit card. The method of payment and its propensity to be used by a given customer segment may be of interest to Postal Service personnel responsible for stimulating demand for postal services, but it does not bear on the regulatory question of whether a given service is “postal” either

¹ An internet map search shows that the Bronx Baychester Station is one mile from a Stop & Shop grocery store (a Giant affiliate), and several other grocery stores and drug stores, including a Walgreens, are closer. Similarly, the Bailey’s Crossroads Post Office is near a Walgreens, CVS, 7-Eleven, Staples, and Dick’s Sporting Goods, all of which sell various gift cards, and is within three miles of four Harris Teeter (Kroger-owned) locations. The Baltimore Main Post Office is in a tourist area and near several convenience stores, such as 7-Eleven, and drug stores. It, too, is three miles or less from two Harris Teeter locations. The Dorothy Height Station is next to the Union Station shopping area, in a tourist area, near a Walgreens and CVS and other drugstores, as well as convenience stores and the H Street Corridor with several retail stores.

² For example, Walmart allows customers to load and reload debit and prepaid cards using eligible payroll and government checks (see <https://www.walmart.com/cp/rapid-reload/1101512>; <https://www.walmart.com/cp/check-cashing/632047>). Kroger also allows its customers to use checks to reload prepaid cards (see <https://moneyservices.kroger.com/prepaid-cards>).

³ Notably, customers cannot use a check that exceeds the exact amount of purchase. *Id.* This rule is not unique to business and payroll checks used to purchase Gift Cards at the pilot locations.

per se or in an “ancillary” manner, according to 39 U.S.C. § 102(5). A greeting card is no more or less likely to be “ancillary” to mailing if it is purchased by an unbanked customer using cash or by debit card. There is no indication that the same is not true of a gift card.

In fact, early data confirms that the new payment methods represent a minor expansion of the customer base for the existing Gift Card offering. The Postal Service accepted a total of six business and payroll checks in exchange for Gift Cards in the first quarter of FY 2022 and one in the second quarter. Docket No. ACR2021, Response to CIR No. 1, Question 1(n); Docket No. ACR2021, Second Response of the United States Postal Service to Commission Requests for Additional Information in the FY 2021 Annual Compliance Determination, May 10, 2022, Question 7. It seems self-evident that these represent a very small fraction of the total Gift Card transactions at the pilot locations, a supposition borne out by the first-quarter data filed under seal in USPS-FY21-NP32. With such small transaction numbers, it is impossible to determine whether customers using the new payment methods are any more or less likely to mail their Gift Cards than those using other payment methods; it is difficult to conceive of a survey that would yield meaningful results at such a scale. This is true overall for the Greeting Cards, Gift Cards, and Stationery product, but it applies with special force to the miniscule number of Gift Card purchases using the pilot payment methods. See Docket No. ACR2021, Response to CIR No. 1, Question 2(b); Docket No. ACR2021, Responses of the United States Postal Service to Questions 1–7 of Commission Information Request No. 2, Feb. 2, 2022, Question 3(b).

Perhaps most importantly, Gift Cards paid via business and payroll checks

maintain the fundamental Gift Card characteristics that are currently listed in the Mail Classification Schedule. The pricing and description for Gift Cards listed in the latest Mail Classification Schedule continue to apply to Gift Cards that are purchased using a business or payroll check. Furthermore, the limitations placed upon the sale of Gift Cards using other payment methods (e.g., cash), such as the \$500 daily limit for Gift Card purchases, continue to apply. It would be nonsensical to create a new price category within the broader Greeting Cards, Gift Cards, and Stationery solely to reflect a new payment method for open-loop Gift Cards that otherwise are offered on exactly the same terms as before. The Commission should decline to do so.

Finally, Gift Cards continue to be appropriately grouped within a single product classification along with Greeting Cards and Stationery. As the Commission explained when it approved the Postal Service's sale of Gift Cards in Order No. 2145, "Gift Cards could reasonably be compared to two postal services, the sale of money orders and greeting cards" because they convey money (like money orders) and may often be transmitted in greeting cards. Order No. 2145 at 4. In addition, the Postal Service's sale of Gift Cards was judged to foster use of the mails and meets customer needs by offering an opportunity to send cash through the mail. *Id.* at 12. Despite some initial controversy surrounding the original market test three years earlier, *see generally* Order No. 721, this reasoning was uncontroversial by the time of Docket No. MC2014-26, and no commentators at the time argued the sale of Gift Cards in postal facilities would not amount to a postal service. Order No. 2145 at 13. The Postal Service has operated its Gift Card sales program under this reasoning since the Commission's decision in Order No. 2145, to the benefit of postal customers nationwide.

The addition of new payment methods should not upset this reasoning. Again, the addition of a new payment method does not fundamentally change the product offering, and Gift Cards that are paid for using payroll and business checks serve a similar function to money orders. As detailed in response to a previous inquiry from the Commission on this pilot program, the Postal Service does not have a basis to conclude whether Gift Cards purchased as part of this pilot program are more or less likely to be mailed than other Gift Cards. Docket No. ACR2021, Response to CIR No. 1, Question 2(b); Docket No. ACR2021, Response to CIR No. 2, Question 3(b). Regardless, this pilot program, as an extension of the Gift Cards offering generally, is intended to bring more customers into postal retail locations, where they may use other postal services. For these reasons, Gift Cards should remain part of the Greeting Cards, Gift Cards, and Stationery product.

II. THE PILOT PROGRAM DOES NOT IMPLICATE THE STATUTES AND RULES CITED IN ORDER NO. 6174

The Commission also “invites comments on whether the Postal Service’s Pilot Program comports with 39 CFR 3035, 39 CFR 3040, 39 CFR 3045, 39 U.S.C. 404, 39 U.S.C. 3632, 39 U.S.C. 3633, and 39 U.S.C. 3641.” Order No. 6174 at 6. None of these authorities are pertinent here.

Historically, postal regulatory practice has developed around an understanding that certain product features define the contours of a product, and various other features, terms, and conditions do not rise to that level. The Postal Service has authority to determine and manage product features, terms, and conditions—including,

expressly, payment methods. 39 U.S.C. §§ 401(2), (10), 403(a), 404(a)(2), (b), 3632. This authority is intended to be particularly broad as to competitive products.⁴

A change in payment methods does not rise to the level of the establishment or change in a product class of competitive products triggering 39 U.S.C. § 3632, 39 C.F.R. § 3035.104, or 39 C.F.R. Part 3040, Subpart B. For similar reasons, it is not the creation of an experimental product subject to 39 U.S.C. § 3641 and 39 C.F.R. Part 3045. Payment methods are among the many transactional details beyond the scope of those deemed fundamental to the nature of products, as reflected in the illustrative descriptions in the Mail Classification Schedule (MCS). Consequently, the pilot program would not warrant a change to any MCS language pursuant to 39 C.F.R. Part 3040, Subpart E. The vanishingly small proportion of volume represented by the six pilot-program transactions underscores that this is not an instance on par with past ones treated as the creation of or change in a product or a change in significant product elements. The Commission has never seen fit to treat mere changes in payment methods for other products as implicating these authorities, even where such changes might affect a larger amount of volume. *See, e.g., Automated Clearing House (ACH) Debit Added as New Method of Payment for Express Mail Corporate Account Customers*, 73 Fed. Reg. 48,299 (2008).

⁴ The framers of the current structure explained this division of responsibility in terms of “permitt[ing] Postal Service leadership] to more directly manage and price the Postal Service’s competitive products; [sic] subject to minimal Regulatory Commission oversight to ensure that the Postal Service competes fairly with the private sector delivery services.” S. REP. NO. 108-318, at 7 (2004). *See also* H.R. REP. NO. 109-66, pt. 1, at 46 (2005) (“Once the Commission has issued its regulations [implementing the pricing floors in 39 U.S.C. § 3633], the Postal Service is given pricing flexibility somewhat comparable to that exercised by private competitors.”).

The price for Gift Cards is the same regardless of payment method; the pilot program does not involve any change in that price, such as might implicate 39 U.S.C. § 3632 and 39 C.F.R. Part 3035. And there is no reason to think that the cost of transactions using new payment methods will be materially different from the cost of transactions using preexisting payment methods—still less that any greater cost for the six transactions using the new payment methods would cause the cost coverage for the entire Greeting Cards, Gift Cards, and Stationery product to risk noncompliance with the standards in 39 U.S.C. § 3633. Here, too, the Commission has never deemed such minor changes in transaction terms to require affirmative proceedings to demonstrate sustained compliance with pricing standards.

As for 39 U.S.C. § 404(e), that provision also has no bearing here. By its terms, Section 404(e) relates entirely to the one-time Commission review of nonpostal services offered as of the date of enactment of the Postal Accountability and Enhancement Act of 2006 and the continued offering of so-called grandfathered nonpostal services after that review. Section 404(e) contains no language concerning whether the Commission might deem some later product innovation to present a new nonpostal service and what, if anything, the Commission could do about it. Rather, the principle that the Postal Service cannot introduce new nonpostal services is embodied in Congress's restriction of the key term "product"—the term used to qualify the Postal Service's delegated authority to establish commercial offerings—to "postal services," which are mutually exclusive with "nonpostal services." See 39 U.S.C. §§ 102(5)–(9), 404(b), (e)(1), 3632(a). The point of intersection between this principle and the Commission's authority lies not in Section 404(e)'s one-time review, but in Section 3642, which

delegates ongoing authority to the Commission to determine the placement of “products”—hence, exclusively, “postal services”—on the product lists and bars the Postal Service from offering any unlisted products. *Id.* § 3642(a), (e). As discussed in the preceding section, however, the pilot program does not occasion further consideration under Section 3642, either.

III. CONCLUSION

In sum, a pilot program testing two new payment methods does not fundamentally change what customers receive when they purchase a Gift Card or how they can use that Gift Card in conjunction with mailing. The empirical results of the pilot program—six transactions in six months, in comparison with a much greater number of Gift Card transactions using preexisting payment methods—are inconsistent with the notion of substantive product innovation or market encroachment. This matter does not merit further Commission proceedings.

Respectfully submitted,

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July 7, 2022