

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

Before Commissioners:

Michael Kubayanda, Chairman;
Ann C. Fisher, Vice Chairman;
Mark Acton;
Ashley E. Poling; and
Robert G. Taub

Permanent Addition of USPS Connect Local Mail
Price Category to the Market Dominant Product List

Docket No. MC2023-12

ORDER DISMISSING WITHOUT PREJUDICE POSTAL SERVICE'S REQUEST
TO CONVERT USPS CONNECT LOCAL MAIL MARKET TEST
TO A PERMANENT OFFERING

(Issued October 17, 2022)

I. INTRODUCTION AND OVERVIEW

On October 11, 2022, the Postal Service filed a request with the Commission pursuant to 39 U.S.C. 3642 and 39 CFR 3045.18 to add USPS Connect Local Mail, currently an experimental product, as a new, permanent product offering under the Mail Classification Schedule (MCS) section 1115 (Market Dominant Products: First-Class Mail: First-Class Mail Flats).¹ The USPS Connect Local Mail market test was initially

¹ United States Postal Service Request to Convert USPS Connect Local Mail to a Permanent Offering, October 11, 2022, at 1-2 (Request).

authorized by the Commission on January 4, 2022.² It is currently set to expire on January 8, 2024. Order No. 6080 at 20. USPS Connect Local Mail is a derivative of First-Class Mail that functions as an alternative to long-distance, end-to-end mailing for use by business mailers who wish to send mail locally with regular frequency. Order No. 6080 at 2.

In order for the Commission to convert an experimental product offering into a permanent product offering, the Postal Service must first file a request that complies with, among other rules, 39 U.S.C. 3642, 39 CFR 3040.131, 39 CFR 3040.132, and 39 CFR 3045.18. Because the Request does not contain the information required by these statutes and regulations, the Commission dismisses the Request. This dismissal is without prejudice to allow the Postal Service to refile a compliant request to convert USPS Connect Local Mail into a permanent product offering, should it see fit.

II. COMMISSION ANALYSIS

As the Postal Service correctly identifies, a request to add a non-experimental product to the Market Dominant product list based on an experimental product is governed by 39 U.S.C. 3642 and 39 CFR 3045.18. Request at 1. The regulation sets out numerous requirements, including that the request be filed “pursuant to 39 U.S.C. 3642 and part 3040, subpart B of this chapter.” 39 CFR 3045.18(a). Part 3040, subpart B, in turn, contains the requirements that the Postal Service must follow to modify the product lists generally. Among these requirements is the mandate that the Postal Service “[p]rovide all supporting justification” upon which it proposes to rely on making the request. 39 CFR 3040.131(e).

The supporting justification is the crux of the request to modify the product list. 39 CFR 3040.132 sets out in detail the contents of the supporting justification. Specifically, it states:

² Docket No. MT2022-1, Order Authorizing Market Test of Experimental Product - USPS Connect Local Mail, January 4, 2022 (Order No. 6080).

Supporting justification shall be in the form of a statement from one or more knowledgeable Postal Service official(s) who sponsors the request and attests to the accuracy of the information contained within the statement. The justification shall:

(a) Explain the reason for initiating the docket and explain why the change is not inconsistent with the applicable requirements of this part and any applicable Commission directives and orders;

(b) Explain why, as to market dominant products, the change is not inconsistent with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code;

(c) Explain why, as to competitive products, the addition, deletion, or transfer will not result in the violation of any of the standards of 39 U.S.C. 3633;

(d) Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can, without risk of losing a significant level of business to other firms offering similar products:

(1) Set the price of such product substantially above costs;

(2) Raise prices significantly;

(3) Decrease quality; or

(4) Decrease output.

(e) Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 18 U.S.C. 1696 subject to the exceptions set forth in 39 U.S.C. 601;

(f) Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product;

(g) Provide any information available on the views of those who use the product on the appropriateness of the proposed modification;

(h) Provide a description of the likely impact of the proposed modification on small business concerns; and

(i) Include such information and data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.

39 CFR 3040.132.

Such information is not only required by law but necessary in practice. As the Commission has previously explained in the analogous context of changes to the MCS, a full and complete request is important to ensure that the Commission has “sufficient information to make the necessary determination as to whether a [] MCS change is appropriate” and to avoiding the issuance of large numbers of Chairman’s Information Requests during proceedings, which leads “to the expenditure of additional resources by the Commission, the Postal Service, and other interested persons” and “complicate[s] the Commission’s review.”³ An insufficient initial “explanation of and justification for proposed classification changes also undermines the Commission’s objective that changes [] are made in an accurate and transparent manner, such that it is clear to participants in Commission proceedings, users of the mail, and the Commission the precise changes the Postal Service is proposing, the likely effects, and the Postal Service’s rationale for proposing such changes.”⁴

The previous proceedings related to USPS Connect Local Mail provide a good example of the importance of the required information. In approving the market test, the Commission emphasized that safeguards in the market test process—specifically, limited duration and revenue and the reevaluation of the product should the Postal Service wish to extend the test or offer the product permanently—weighed in favor of allowing the market test to proceed. Order No. 6080 at 15. The Commission explained that, going forward:

³ Docket No. RM2015-6, Notice of Proposed Rulemaking on Changes and Corrections to the Mail Classification Schedule, November 14, 2014, at 2 (Order No. 2250).

⁴ Docket Nos. CP2022-22 and CP2022-62, Order Granting in Part the United States Postal Service’s Motions for Clarification of Order Nos. 6071 and 6195, August 15, 2022, at 9-10 (Order No. 6249).

[I]f the Postal Service submits a request to convert USPS Connect Local Mail into a non-experimental offering (such as a permanent product, permanent price category, or a negotiated service agreement), the Postal Service must comply with 39 C.F.R. § 3045.18 and 39 C.F.R. part 3040, subpart B. See 39 C.F.R. § 3045.18(a). The Commission expects that such a request would include, among other things, the information and supporting justification that would enable correct categorization of the proposed offering. See 39 C.F.R. §§ 3040.131, 3040.132.

Order No. 6080 at 15-16.

However, the Request fails to include the information required by 39 U.S.C. 3642, 39 CFR 3040.131, 39 CFR 3040.132, 39 CFR 3045.18, and contemplated by the Commission in Order No. 6080. Among other deficiencies, the Request does not include a supporting justification that provides information sufficient to perform a market power analysis, explain why USPS Connect Local Mail is or is not covered by the postal monopoly, provide a description of the private businesses engaged in the delivery of the product or of the likely impact on small businesses, or give the views of users of the product. See 39 CFR 3040.132. In short, the Request fails to “include such information and data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.” *Id.*, (i).

Further, by rule the Postal Service is required to file its request at least 60 days before it wishes for the Commission to make its determination. See 39 CFR 3045.18(d)(2)(ii). This date is predicated on the Postal Service providing complete information to facilitate comment by interested parties and a fulsome review by the Commission itself. In the absence of such information, a complete analysis and decision within 60 days is not possible.⁵

Because the Request does not contain the information required by law and necessary for the Commission to determine the appropriateness of converting USPS

⁵ It should also be noted that the current market test’s expiration date of January 8, 2024, appears to allow the Postal Service the opportunity to both provide services without interruption to customers and time to collect more complete volume, revenue, and cost test data.

Connect Local Mail to a permanent product offering, the Commission shall dismiss the Request without prejudice to the Postal Service to file a compliant request.

III. ORDERING PARAGRAPHS

It is ordered:

1. The United States Postal Service Request to Convert USPS Connect Local Mail to a Permanent Offering, filed October 11, 2022, does not meet the statutory and regulatory requirements of a request to convert the experimental product to a permanent product offering.
2. The Commission cannot approve the USPS Connect Local Mail product as a permanent product offering based upon the record before it.
3. The Commission hereby dismisses, without prejudice, the United States Postal Service Request to Convert USPS Connect Local Mail to a Permanent Offering, filed October 11, 2022.
4. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Erica A. Barker
Secretary