

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

MARKET TEST OF EXPERIMENTAL PRODUCT
ALTERNATE POSTAGE PAYMENT METHOD
FOR GREETING CARDS

Docket No. MT2011-1

PUBLIC REPRESENTATIVE COMMENTS IN RESPONSE TO ORDER NO. 584
CONCERNING MARKET TEST OF EXPERIMENTAL PRODUCT

(December 8, 2010)

The Public Representative submits these comments responding to the Commission's notice and order concerning a market test of an experimental product.¹ The Postal Service intends to conduct a test of an experimental market dominant product called Alternate Postage Payment Method for Greeting Cards (Stamped Greeting Cards).²

The market test does not meet the requirements of 39 U.S.C. § 3641. From the viewpoint of the mail users, Stamped Greeting Cards are not "significantly different" from other products users can mail without affixing postage. The Commission should deny the Postal Service's request to exempt the market test from the \$10 million annual revenue limitation because Stamped Greeting Cards will likely *not* benefit the public. Any benefit is outweighed by the potential harm to consumers from paying for unused services and excessive premiums.

Also, the Postal Service has not yet determined basic details about the market test, such as which greeting companies will participate and how much they will charge for the cards and included postage. The Public Representative suggests that the Postal Service revise the Notice and refile once it has clarified these details.

¹ Notice and Order Concerning Market Test of Experimental Product, Nov. 10, 2010 (Order No. 584).

² Notice of the United States Postal Service of Market Test of Experimental Product – Alternate Postage Payment Method for Greeting Cards, Nov. 8, 2010 (Notice).

I. BACKGROUND

On November 8, 2010, the Postal Service filed the Notice, stating its intent to test a new postage payment method enabling individuals to mail greeting cards without affixing postage. Notice at 1. On November 10, 2010, the Commission issued Order No. 584 to establish this docket and consider matters raised by the market test. Order No. 584 at 5.

On November 24, 2010, the Public Representative filed a Motion for Issuance of Information Request, asking the Commission to seek further information about the proposed market test from the Postal Service.³ The Public Representative stated that the Notice lacked sufficient detail and raised concerns about potential harm to the interests of the general public. Motion at 1, 2, 5. The Public Representative included a list of questions to help determine whether the market test meets all applicable requirements. Motion, Attachment A.

The Postal Service opposed the Motion on December 1, 2010, asserting that the Notice provided the information needed to meet the statutory requirements for a market test.⁴ However, the Postal Service provided further information to expedite the proceeding. Opposition at 1. The Public Representative appreciates the Postal Service supplementing the Notice with further details about the market test. The Public Representative nonetheless concludes that based on the information provided, the market test does not meet the statutory requirements of 39 U.S.C. § 3641.

³ Public Representative Motion for Issuance of Information Request, Nov. 24, 2010 (Motion). The Public Representative incorporates the Motion by reference into these comments.

⁴ Opposition of the United States Postal Service to Public Representative Motion for Issuance of Information Request, Dec. 1, 2010 (Opposition).

II. DISCUSSION

A. Stamped Greeting Cards are not “significantly different” from the viewpoint of the mail users.

An experimental product may not be tested unless “[t]he product is, *from the viewpoint of the mail users*, significantly different from all products offered by the Postal Service within the 2-year period preceding the start of the test.” 39 U.S.C. § 3641(b)(1) (emphasis added). The Postal Service argues that Stamped Greeting Cards are significantly different because it has never offered a postage payment method in which postage is paid based on the number of greeting cards sold and mailed. Notice at 8-9.

The Postal Service asserts that Stamped Greeting Cards are unlike Stamped Envelopes, Stamped Cards, Premium Stamped Stationery, and Premium Stamped Cards (“Stamped Products”) because those products are sold by the Postal Service rather than private companies. Opposition at 1-2. It states that postage on Stamped Products is fully prepaid, while postage for Stamped Greeting Cards relies on sales data and scanning during mail processing. *Id.* at 2.

The Public Representative recognizes the distinction in the postage payment method between Stamped Greeting Cards and Stamped Products. This distinction, however, is not meaningful or significant from the viewpoint of the mail users. To them, purchasing a Stamped Greeting Card is the same as purchasing any other Stamped Product. In either case, the mail user pays money in exchange for a postal product that the mail user can address and mail without purchasing or affixing postage. It is irrelevant to mail users how the Postal Service is ultimately paid.

The Postal Service also claims that the products are significantly different because Stamped Greeting Cards would be sold by private companies rather than the Postal Service. *Id.* at 1-3. This difference, however, is also not significant from the viewpoint of the mail users, who are ultimately concerned about the product received rather than who is selling it.

B. Stamped Greeting Cards are not likely to benefit the public.

The Commission should also deny the Postal Service's request to exempt the market test from the \$10 million annual revenue limit. Based on the information in the record, the Commission cannot determine that Stamped Greeting Cards are likely to benefit the public.

Market tests of experimental products are generally limited to \$10 million in annual revenue unless the Postal Service applies for an exemption, as it has in this case. Notice at 8; see 39 U.S.C. § 3641(e)(2). The Commission would approve the exemption if it determines, among other things, that the experimental product is likely to benefit the public and meet an expected demand. 39 U.S.C. § 3641(e)(2)(A).

While the proposed market test will likely benefit both the Postal Service and participating greeting card companies, it would do so at the expense of the public. Stamped Greeting Cards offer convenience as a benefit, but that benefit is outweighed by the harm to consumers from paying for unused services and excessive premiums. Therefore, this product is not likely to benefit the public, and the Commission should deny the Postal Service's requested exemption.

1. Stamped Greeting Cards would harm consumers who never mail the product.

Stamped Greeting Cards would adversely affect consumers who purchase cards without mailing them. For example, consumers who buy a package of Stamped Greeting Cards may end up mailing only some of them. The Postal Service anticipates that some cards will be sold but not mailed. Otherwise, the Postal Service would not require participating greeting card companies to pay half of the postage up front when the card is sold.

If a Stamped Greeting Card is sold but not mailed, everyone wins except for consumers, who pay for a service they never use. Consumers would pay for the cost of the card, which would include postage plus a premium charged by the greeting card company. See Section B.2, below. The company would pay half of the postage to the

Postal Service, who would earn revenue without ever having to perform the service of mailing the card. The company would keep the premium plus the other half of the postage. The Postal Service and the greeting card company would thus receive a windfall and be unjustly enriched at the expense of the consumer.

2. Stamped Greeting Cards will likely impose excessive costs borne by the consumer.

The Postal Service does not clearly state who is responsible for the cost of postage. However, based on information provided, the consumer will ultimately bear this cost. The Notice states that participating greeting card companies will pay postage directly to the Postal Service and “charge an extra amount for the card should it wish.” Notice at 9. The Notice implies that companies would add the cost of the postage to the price of the card, and some news sources have speculated as much.⁵

In its Motion, the Public Representative sought clarification in this area to determine how greeting card companies would recover the costs of the postage and whether the “extra amount” charged would exceed that cost. Motion, Attachment A, Question 11. These questions were designed to address concerns that the “extra amount” would include hidden fees borne by the consumer. The Postal Service responded that it “does not determine pricing for these cards, does not know how the greeting card companies will charge for these cards or the included postage, and is not in a position to collect data on pricing by participating greeting card companies.” Opposition at 3.

The Public Representative appreciates the Postal Service providing this information. However, this response does not adequately address concerns about potential harm to the interests of the general public. The Commission cannot determine that Stamped Greeting Cards are likely to benefit the public without information and

⁵ See Randolph E. Schmid, *Test Sought of Greeting Cards Including Postage*, WASHINGTON POST Nov. 11, 2010.

data on prices charged by participating greeting card companies. Consumers are vulnerable to greeting card companies charging an “extra amount,” a premium paid on top of the cost of postage. This premium may force consumers to spend more on postage than they would have if they just purchased a regular greeting card. The Commission needs to know what these premiums are to determine whether they are excessive or harmful to the consumer.

It is possible, but unlikely, that greeting card companies would not charge a premium in addition to the postage, or would even charge less than the cost of the postage to boost sales. In that case, the Public Representative would be less concerned about the potential harm to the public. However, the Postal Service would need to provide data and information to support this claim. Thus far, it has stated that it does not have this data and cannot collect them. The Postal Service must collect this data and provide them to the Commission (under seal, if necessary) to dispel concerns about the danger these premiums pose to the consumer. Otherwise, the Commission cannot determine whether Stamped Greeting Cards are likely to benefit the public.

C. Basic details about the market test have not been determined.

Details of the market test have not been sufficiently clarified for the Commission to evaluate it for statutory compliance with other requirements. The Postal Service does not even know which greeting card companies will participate in the market test or how much they will charge for the cards and included postage. Opposition at 2, 3. While some details about the market test would still be in flux at this stage, the Postal Service should at least know who the participants are. Otherwise, the Commission cannot determine compliance with 39 U.S.C. § 3641, particularly in regard to small business concerns. This information is part of the due diligence the Postal Service must conduct to present a *prima facie* case of statutory compliance.⁶

⁶ Docket No. MT2009-1, Order Concerning Collaborative Logistics Market Test, May 7, 2009, at 6 (Order No. 211).

III. CONCLUSION

For the reasons described above, the market test does not meet the statutory requirements of 39 U.S.C. § 3641. Basic details about the market test have also not yet been determined. The Public Representative recommends that the Postal Service revise and refile the Notice after finalizing some of the basic details about the market test to enable the Commission to properly evaluate it. The revised notice should also address the concerns raised in these comments.

The Public Representative respectfully submits the preceding comments for the Commission's consideration.

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