

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

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Mark Acton, Vice Chairman;  
Dan G. Blair;  
Tony L. Hammond; and  
Nanci E. Langley

Market Test of Experimental Product  
Gift Cards

Docket No. MT2011-2

NOTICE AND ORDER CONCERNING MARKET TEST OF  
EXPERIMENTAL PRODUCT

(Issued January 12, 2011)

I. INTRODUCTION

On January 5, 2011, the Postal Service filed a notice, pursuant to 39 U.S.C. 3641, announcing its intent to initiate a market test beginning on or about May 1, 2011, of an experimental competitive product, Gift Cards.<sup>1</sup> The market research test will provide customers the ability to purchase a card loaded with a specified sum of money which can be sent as a gift through the mail. *Id.* at 1.

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<sup>1</sup> Notice of the United States Postal Service of Market Test of Experimental Product – Gift Cards, January 5, 2011 (Notice).

## II. BACKGROUND

The Postal Service states that gift cards have become highly popular gifts in recent years. A recent survey found that gift cards are the most requested holiday gift. *Id.* at 2. Citing a nexus between the use of gift cards for gifting and the use of the mails for sending gift cards, the Postal Service asserts that selling gift cards at Postal Service retail locations will increase customer convenience and enhance Postal Service revenue by encouraging the use of the mail. *Id.*

*Description and nature of market test.* Pursuant to section 3641(c)(1)(B), the Postal Service provides a description of the nature and scope of the market test. Under the proposed market test, the Postal Service will test the sale of “open loop cards.” These are cards branded by a Retail Electronic Payments Network (REPN) (e.g., American Express, Discover, MasterCard, or Visa) and can be used by the gift card recipient at any merchant that accepts cards administered by that network. *Id.* The Postal Service will enter into an agreement with one or more issuing banks, REPNS or service providers. Cards will be sold either as standard cards by the supplier(s) or customized, co-branded cards with Postal Service imagery. *Id.* at 2. Open loop cards will be tested with fixed and variable amounts with minimum, incremental, and maximum amounts. To protect against fraud and money laundering, there will be limits on the value of cards purchased within certain timeframes. *Id.* at 3.

The Postal Service will operate only as a sales agent. *Id.* The card supplier will provide all customer support. *Id.* at 2.

The Postal Service may test closed loop cards (*i.e.*, cards specific to a particular merchant), but those plans have not yet been established. *Id.* at 3.

At first, cards will only be available at Postal Service retail windows. Cards will neither be available at Automated Postal Centers nor on the Internet at USPS.com. Cards will be activated upon purchase by a Postal Service retail associate and will be immediately available once activated. *Id.*

The test is planned for 2 years. *Id.* The product will be launched in May 2011 in 2,000 retail locations that currently sell greeting cards to take advantage of cross-selling

opportunities with greeting cards. The test will expand to up to 3,000 additional locations (including locations without greeting cards) in October 2011, to capture holiday sales. *Id.* at 4.

*Product.* Initially, the Postal Service plans to sell gift cards in fixed amounts of \$25 and \$50 and cards in variable amounts with a minimum value of \$26, a maximum value of \$100, and any amount within that range. *Id.* at 3. Planned activation fees will be \$3.95 for a fixed \$25 card; \$4.95 for a fixed \$50 card; and \$5.95 for a variable card. *Id.* at 4. A \$500 daily maximum purchase per customer and a \$3,000 weekly maximum purchase per customer are planned. *Id.* at 3.

*Revenue to Postal Service.* Revenue will be generated through an activation fee paid by customers at the time of purchase in addition to the value of the card. *Id.* The Postal Service will retain a negotiated percentage of the activation fee for open loop cards. The supplier would retain the remainder of the fee. *Id.* Different fee levels may be tested to determine the optimal fees. *Id.* Activation fees are not generally levied on closed loop cards. If closed loop cards are tested, the Postal Service may enter into a revenue sharing arrangement with the closed loop card supplier. *Id.* n.4.

The Postal Service indicates that the gift cards will comply with the Credit Card Accountability, Responsibility, and Disclosure Act of 2009 (Public Law No. 111-24). *Id.* at 9. It further states that any fees that may be charged to card recipients, or to merchants who accept the gift cards, would be set by the card supplier(s) in compliance with applicable laws, including Public Law No. 111-24. The Postal Service will not receive any revenue from such fees. *Id.* at 4 n.3.

The annual revenues received by the Postal Service from the market test will not exceed \$10 million (as adjusted for inflation) in any fiscal year. *Id.* at 5; *see also* 39 U.S.C. 3641(e). In FY 2010, the gross revenue from activation fees is expected to slightly exceed the inflation adjusted threshold in that fiscal year. *Id.* at 11. Although the Postal Service may have that revenue in its possession during the period, its share of revenue retained will be less than \$10 million. The Postal Service argues this complies with the statute. Alternatively, the Postal Service requests an exemption from

the statutory threshold of \$10 million for FY 2012 because the three criteria for a section 3641(e)(2) exemption are met. *Id.* at 12.

*Statutory authority.* The Postal Service indicates that its market test to sell gift cards satisfies the criteria of 39 U.S.C. 3641, which impose certain conditions on experimental products. For example, gift cards satisfy the statutory definition of a “product.” The Postal Service asserts that the product is significantly different from all products offered by the Postal Service within the meaning of section 3641(b)(1). *Id.* at 5. It has not sold gift cards or any equivalent product in the 2-year period preceding the start of this test. *Id.* at 8.

In addition, the Postal Service contends that the market test will not create an unfair or inappropriate competitive advantage for the Postal Service or any mailer, particularly small business concerns. *Id.* at 9; *see also* 39 U.S.C. 3641(b)(2). Gift cards are available from a variety of retail locations. *Id.* at 8. The Postal Service will market the gift cards in a manner similar to the way that other retail channels market gift cards. *Id.* at 9. The product introduction will have a very small impact on the market, not to exceed 0.5 percent of the open loop gift card market. *Id.* Also, the Postal Service would compete with larger retail chains whereas small businesses have a small part of the overall gift card market, thus resulting in minimal competition with small businesses. *Id.* at 9 n.8.

The Postal Service classifies the product as competitive. *Id.* at 5, 10; *see also* 39 U.S.C. 3641(b)(3). The gift card market is highly competitive. They may be purchased at a large variety of retail locations thus precluding the Postal Service from exercising any market power to charge excessive fees or to provide an inferior product. *Id.* at 10.

The Postal Service states that the duration of the market test will not exceed 24 months unless the Postal Service requests an extension from the Commission, terminates the program, or establishes the Gift Card as a permanent product. *Id.* at 10-11; *see also* section 3641(d)(1).

*Definition of product.* The Postal Service may conduct market tests of experimental products. A “product” is defined by 39 U.S.C. 102(6) as a “postal service with a distinct cost or market characteristic for which a rate or rates are, or may reasonably be, applied.” An experimental product must therefore be consistent with the statutory definition of a “postal service.”

The Postal Service asserts that the sale of gift cards is consistent with the statutory definition of a “postal service.” A “postal service” is defined by 39 U.S.C. 102(5) as “the delivery of letters, printed matter, or mailable packages, including acceptance, collection, sorting, transportation, or other functions ancillary thereto.” The Postal Service notes the Commission has recognized that this definition includes the sale of products “that bear a close nexus to the mails, including products that allow mailers to connect with others on a personal level (greeting cards), and products that allow mailers to send cash equivalents (money orders).” *Id.* at 6.

The Postal Service claims that gift cards would support customers’ mailing needs by providing convenient access to a product that is commonly used for sending gifts through the mail. *Id.*

The Postal Service states that gift cards are commonly sent with greeting cards. It further states that gift cards are very similar to money orders. *Id.* at 7. The Postal Service asserts that gift cards purchased from the Postal Service are likely to be mailed. *Id.* at 8. The Postal Service contends that the nexus between gift cards and mail exists regardless of whether the card is open loop, closed loop, or co-branded with Postal Service imagery and need not contain Postal Service intellectual property to be consistent with the statutory definition of “product.” *Id.* Thus, the Postal Service concludes that gift cards that it may test are consistent with the definition of a postal service. *Id.* at 6.<sup>2</sup>

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<sup>2</sup> The Postal Service notes that the Commission previously determined the Postal Service’s sale of stored value cards is a nonpostal service, but points out that the ruling was based on the record in that proceeding and other factors. Order No. 154, Docket No. MC2008-1, Review of Nonpostal Services Under the Postal Accountability and Enhancement Act, December 19, 2008, at 47-48.

*Data collection plan.* The Notice also addresses the Postal Service's plan to collect data to understand the retail costs of selling the product, the value of types of cards, card packaging and card locations to postal consumers, and different price points. The Postal Service indicates that these data may be reported to the Commission upon request. *Id.* at 13.

### III. NOTICE OF FILING

The Commission establishes Docket No. MT2011-2 for consideration of matters raised by the Notice. Interested persons may submit comments on whether the Postal Service's filing in the captioned docket is consistent with the policies of 39 U.S.C. 3641. Comments are due no later than February 4, 2011. Reply comments are due not later than February 15, 2011. The filing can be accessed via the Commission's website (<http://www.prc.gov>).

The Commission appoints Robert Sidman to serve as Public Representative in this docket.

### IV. ORDERING PARAGRAPHS

*It is ordered:*

1. The Commission establishes Docket No. MT2011-2 for consideration of the matters raised by the Notice.
2. Pursuant to 39 U.S.C. 505, Robert Sidman is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.
3. Comments by interested persons are due no later than February 4, 2011.
4. Reply comments are due no later than February 15, 2011.

5. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Shoshana M. Grove  
Secretary