

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

MARKET TEST OF EXPERIMENTAL PRODUCT—  
MARKETING MAIL MADE EASY

Docket No. MT2011-3

**OPPOSITION OF THE  
THE NEWSPAPER ASSOCIATION OF AMERICA**  
(February 4, 2011)

The Newspaper Association of America (“NAA”)<sup>1</sup> hereby opposes the Postal Service’s proposed market test of an experimental product called “Marketing Mail Made Easy” (“MMME”).<sup>2</sup> NAA believes the proposal is a bad idea and contrary to law.

The Commission has ample power to stop this idea because the Postal Service has not shown that the proposed “MMME” satisfies the criteria of Section 3641 of the Postal Accountability and Enhancements Act. 39 U.S.C. §3641. In addition, the Postal Service has violated Section 404a of the PAEA in introducing MMME by changing postal mailing regulations to favor its own offering. 39 U.S.C. §404a. The Commission should reject the proposed MMME.

---

<sup>1</sup> NAA represents the interests of nearly 2,000 newspapers in the United States and Canada. Its members account for nearly 90 percent of the daily newspaper circulation in the United States and a wide range of non-daily U.S. newspapers.

<sup>2</sup> 76 *Fed Reg.* 3679 (Jan. 20, 2011) (Order No. 649), *noticing* Notice of the United States Postal Service of Market Test of Experimental Product – Marketing Mail Made Easy, Docket No. MT2011-3 (filed Jan. 12, 2011) (“USPS Notice”).

## I. BACKGROUND

As the Commission knows, a vigorous market exists for the distribution of local print advertising. Many entities, including newspapers, shoppers, shared mailers, and solo mailers, compete to distribute print advertising on behalf of local retailers, professionals, restaurants, and other businesses on a geographic basis.<sup>3</sup> A common advertising strategy is to “saturate” a local area, such as a ZIP Code or merely certain carrier delivery routes, with print advertising.

Today, newspapers compete with saturation mailers and others in this market. Newspapers do so by delivering local ads through a combination of in-paper delivery to subscribers and by “Total Market Coverage” (“TMC”) advertising products to households that do not subscribe to the newspaper. TMC products pay either High-Density or Saturation flats rates, depending upon the density of newspaper subscribers on a particular route. While TMC programs typically mail shared packages, many newspapers also offer solo saturation mailing products.

Saturation mailers and shoppers compete to deliver the same advertisements at Saturation mail rates. A number of such firms have already submitted comments in this proceeding, explaining how they work with the Postal Service to generate Saturation advertising mail, including the important tasks of managing address lists and mail preparation for local small businesses in communities around the nation.

---

<sup>3</sup> Indeed, a list of the types of businesses that typically use TMC or saturation programs is presented on the Postal Service’s Simplified Addressing website, including “retailers, auto dealerships” and others. <http://www.usps.com/promotions/simplifiedaddressing.html> (visited Feb. 2, 2011).

This market is vigorously competitive and mature. Many entities, including shared and solo mailers, shoppers compete to serve small- and medium-sized businesses, functioning in effect as a sales arm for the Postal Service as a distribution channel.<sup>4</sup> This market is also profitable to the Postal Service, generating some \$1.022 billion in contribution in Fiscal Year 2010. *United States Postal Service FY2010 Annual Compliance Report* at Table 2 (Dec. 29, 2010). It is these revenues that the Postal Service would put at risk with MMME

**A. The Postal Service Has Tried This Before**

MMME is the latest in a history of failed Postal Service proposals to displace its shared and solo mail customers that already serve this competitive market.<sup>5</sup> In recent years, there was Neighborhood Mail, an abortive effort by the USPS to sell local ads directly, which looked much like the current proposal. There was Auto Day, in which the Postal Service planned to spend up to \$10 million to divert automobile ads carried in the *Milwaukee Journal* into the mail.<sup>6</sup> Neither of these came to pass.

The Postal Service describes MMME as intended to solicit business from small- to medium-sized companies such as dry cleaners, local restaurants and

---

<sup>4</sup> See Comment of Wanda Senne, *World Marketing* at 2 (Jan. 31, 2011). Globe Direct's comment points out (at 1) that MMME "effectively takes customers away from mailers that have partnered with the USPS."

<sup>5</sup> For a discussion of the Postal Service's dismal past failure with unaddressed mail on city routes in the 1950's, see Comment of Harry Turner (Jan. 31, 2011),

<sup>6</sup> Each of these was fully consistent with a Postal Service goal, which was stated with rare candor in the United States Postal Service 1998 Marketing Plans: "Ultimately to . . . create the platform for moving substantial revenues from pre-printed inserts into the mail. United States Postal Service 1998 Marketing Plans, October 1997 at AD page 40.

franchisees, and small retailers that define their markets “in geographic” terms and are “potential mailers.” *USPS Notice* at 2. The Postal Service says that these businesses advertise in local radio and television, “newspaper ads, various kinds of display advertising, and internet banners and email” for their advertising. *USPS Notice* at 2.

Has it somehow escaped the Postal Service’s “institutional knowledge” (*USPS Notice* at 7) that the types of businesses that it is targeting *already* participate extensively in mailings currently entered by newspapers and others in Standard Enhanced Carrier Route mail? Indeed, the most common form of advertising used by such small and medium-sized dry cleaners, restaurants, and retailers is print advertising delivered to a local area – whether through a newspaper TMC program, a shopper publication, or a solo or shared mailing -- by mailers that manage the list, mail preparation, and entry tasks. The businesses may not themselves be the mailers, but in the mail they are nonetheless. Does the Postal Service really believe that the only businesses that use the mail for advertising are those that have mailing permits?<sup>7</sup>

The Postal Service further says that “MMME is intended to generate additional volume from potential customers who do not currently use the mail.” *USPS Notice* at 5. However, nothing about the MMME proposal limits the universe of its possible users to advertisers not currently using mail. On the contrary, as was the case with Neighborhood Mail, the Postal Service seems eager to target businesses that “already use . . . the services of mail services

---

<sup>7</sup> Apparently not. Only a few pages later the Postal Service acknowledges, in a backhanded way, that mailing services providers and shared mail providers might have competitive concerns. *USPS Notice* at 6.

providers (MSPs), or that use shared mail.” *Id.* Nor is MMME limited to small and medium-sized businesses. As proposed, any business, including current large shared mailers, would be eligible.

**B. The Postal Service Has Changed Mailing Regulations To Benefit Its MMME Proposal**

The Postal Service has used its authority over rates and mail entry to take several steps that confer its MMME proposal with certain advantages over mailers currently serving the market, which it presumably hopes will redound to its competitive benefit. These include:

- A waiver of the mailing permit fee (which must be paid by existing solo and shared mailers);
- The use of a “Simplified Address” option which has been made available for city carrier routes by a conveniently timed mailing regulation change announced in December. This change devalues mailing lists that mailers have spent years and substantial sums to create, and which are important assets to their businesses; and
- Using Docket No. R2011-2 to raise the rates that newspaper TMC programs would pay for High Density flats, while not raising the Saturation flats DDU entry rate that MMME would use.

In addition, some of the comments previously filed in this docket have identified other operational issues raised by MMME. These issues, not reflected in published mailing regulations or addressed by the Postal Service’s *Notice*, may further benefit the Postal Service’s own MMME operation over the competing services of existing mailers. These include, *inter alia*:

- whether MMME mailings will be cased or carried as third-bundles;
- how city carriers subject to the third-bundle limitation are to choose which mailing to deliver on days in which multiple third-bundle mailings are presented (*i.e.* will MMME mail get priority in delivery);

- the increased in-office costs incurred by postal employees handling MMME mail improperly entered by inexperienced mailers;
- the responsibility for managing do not mail requests and the likely burden on city carriers; and
- the impact on the Mailbox Rule stemming from the appearance of unaddressed mail.

**C. Proposals Such As MMME Will Simply Drive Existing Business Away From The Postal Service**

During the 2000's, the newspaper industry experienced substantial growth in mailed TMC programs. At the time, NAA estimated that newspaper TMC programs reached a peak of more than \$800 million in Standard Mail postage annually during that decade. This growth occurred notwithstanding that the Postal Service charged higher prices to the High-Density flats mailed by newspapers than it did to Saturation mail. Over time, however, that price gap has widened and High-Density flats mail has not received better service despite its higher price.

Not surprisingly, newspapers have responded to the ever-increasing rate disadvantage by moving their Standard Mail out of the mailstream. Newspapers paid an estimated \$820 million in Standard Mail postage in 2008, but that amount declined by about \$40 million in 2008. The decline accelerated still more, by \$80 million, in 2009. These declines solely reflect reduced mailing attributable to increased postage costs, and do not include additional declines that occurred as a result of changes in circulation and in the economy generally. In total, the Postal Service has lost some \$120 million in Standard Mail postage over the past

two years from newspapers due to postage rates alone – the cost of not recognizing the needs of existing customers.

NAA does not believe that the Postal Service's accelerating losses of Standard Mail from newspapers are necessarily permanent. The pendulum could swing back to the Postal Service, but it needs to make a genuine effort to recognize the needs of the newspapers that are its top local customers in many markets across the nation. These needs include better pricing, user-friendly entry rules,<sup>8</sup> and being treated as a valued customer. MMME is precisely the opposite of what is needed.

Has the Postal Service already abandoned the idea of “protecting the base volume” of mail that remains in the system? The thrust of MMME will be to cannibalize its current Standard mail volume by competing against its own customers in the advertising market, including newspaper TMC programs that pay the higher High-Density rates. Thus, it is no surprise that the Commission has already received a number of comments from mailers around the nation in opposition to the MMME proposal.<sup>9</sup>

However, as discussed below, the MMME is more than a bad idea, it also is contrary to law.

---

<sup>8</sup> In particular, the Postal Service has indicated that, where the Flats Sequencing System is implemented, newspapers may be required to enter their High-Density TMC mailings at SCFs, rather than DDUs. One consequence of that would be that TMC mail would have an inferior service standard (by one day) compared to DDU-entered mail. Allowing MMME mail to be entered at a DDU as a third-bundle, while requiring newspaper TMC mailings to enter at SCFs, is another example of a mailing regulation that would give MMME a unfairly advantageous service standard compared to TMC mail.

<sup>9</sup> See Comment of Experian (Jan. 19, 2011); Comment of National Association of Advertising Distributors, Inc. (Jan 26, 2011); Comment of World Marketing (Jan. 26, 2011); Comment of Globe Direct (Jan. 27, 2011).

## I. THE POSTAL SERVICE'S OFFERING OF MMME VIOLATES SECTION 404a OF THE PAEA

Section 404a of the PAEA prohibits the Postal Service from “establish[ing] any rule or regulation (including any standard) the effect of which is to preclude competition or establish the terms of competition unless the Postal Service demonstrates that the regulation does not create an unfair competitive advantage for itself.” 30 U.S.C. §404a.

Mailing/addressing regulations indisputably constitute postal rules or regulations. The Postal Service has made a number of changes to its mailing regulations and entry requirements that, when viewed in light of the MMME proposal, clearly “establish the terms of competition” in its favor.

One of these changes is its abrupt decision in December 2010 to allow the use of Simplified Address on city routes. See USPS Intelligent Mail Services Latest News, “Simplified Mailing Process,” <http://ribbs.usps.gov/simplifiedmail> [Page updated Jan. 3, 2011](#) and USPS, *DMM Revision: Extension of the Simplified Address Format* (Dec. 16, 2010). This change occurred with no prior notice or opportunity for public comment.

The removal of an addressing requirement for MMME mail, which would be sold by the Postal Service directly to advertisers, would give MMME a competitive advantage over the services sold by private mailing firms, including newspapers and direct mail firms, which must maintain accurate mailing lists – and update them regularly at substantial cost and subject to penalties enforced by none other than the Postal Service.

Another change is the elimination of permit fees for MMME mailers, while retaining such fees for High-Density and Saturation mailers. This eliminates for MMME mailers a cost of doing business borne by TMC programs and direct mailers large and small, thus increasing their operating costs relative to the MMME service.

These changes, singularly and collectively, have and will continue to “establish the terms of competition.”

Having established the terms of competition, the Postal Service is required by Section 404a to demonstrate that those changes do not create an unfair competitive advantage for its MMME offering *vis a vis* other mailers that must maintain mailing lists for Saturation or High-Density flats mail. The Postal Service has made no attempt to do so. Its *Notice* makes no mention of Section 404a, much less attempts to meet the substantive test.

## **II. THE POSTAL SERVICE HAS NOT DEMONSTRATED THAT MMME MEETS THE CRITERIA OF SECTION 3641**

Among the conditions that the Postal Service has the burden of showing that a proposed market test satisfies is that the “introduction or continued offering of the product will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service . . . , particularly in regard to small business concerns.” 39 U.S.C. §3641(b)(2). In addition, Section 3641(e)(1) sets a dollar limitation for a market test, providing:

A product may only be tested under this section if the total revenues that are anticipated, or in fact received, by the Postal Service from such product do not exceed \$10,000,000 in any year.

The Postal Service has failed to show that the proposed MMME would satisfy either of these conditions.

**A. The Postal Service Has Not Shown That MME Will Not Create An Unfair Or Otherwise Inappropriate Competitive Advantage For Itself Or Any Mailer**

That the Postal Service believes that the MMME, and the various changes it is making to mailing requirements to enable MMME, will give itself a competitive advantage is clear. The Postal Service itself says its changes “will enable those businesses to communicate by mail *more cost-effectively* within their target marketing areas, while *eliminating two of the current major barriers to mail entry* (complexity and cost).” *USPS Notice* at 3 (emphasis added).

Changes that make MMME appear “more cost-effective” and remove “barriers” would benefit the Postal Service over existing mail customers – the competitors of MMME -- that currently carry ads that the Postal Service covets for MMME. Complexity and cost remain, of course, for the newspapers and other mailers that serve those same small and medium-sized businesses.

The Postal Service’s assertion that MMME will not increase the cost to advertisers that use shared mail misses the point of the statutory test. *USPS Notice* at 5. The issue is that the Postal Service is introducing MMME in a way that eliminates several important costs (maintaining and updating a list, paying a permit fee) for any advertiser that uses the direct Postal Service MMME service, while retaining those costs for the TMC and saturation mailers with which MMME would compete.

**B. The Postal Service Has Not Shown That MMME Will Comply With The Revenue Limitation Safeguard**

The Postal Service provides no support (other than a completely unsubstantiated reference to “institutional knowledge”) for its estimate that MMME will generate 10 to 20 million pieces per year in “new volume.” *USPS Notice* at 7. Such sheer speculation is insufficient to enable the Postal Service to meet its burden of proof as required by the statute.<sup>10</sup>

Indeed, the Postal Service is not planning to collect the data that would be necessary to know whether it meets this statutory market test. Its proposed data collection plan appears naively to assume that every piece of MMME mail will be “new.” The Postal Service gives no indication that it has even considered the possibility – actually, the likelihood -- that any purportedly “new” volume would be offset by declines in other volumes due to advertising currently in solo or shared mailings shifting to MMME, much less devised a plan to determine how often this migration would occur.<sup>11</sup> In fact, nothing in the data collection plan indicates that it is even interested in learning this information, or has any idea of how to measure net “new” volume.

The burden is on the Postal Service, as the proponent, to show that its proposal would comply with the requirements of Section 3641(e)(1). It has made no effort to do so beyond a completely unsupported reference to its “institutional

---

<sup>10</sup> The Postal Service does not claim to have conducted market research regarding its proposal or to rely on any such research now.

<sup>11</sup> Although the Postal Service claims in its opposition to the Public Representative’s motion for issuance of an information request that a purpose of the market test is to obtain data regarding “any unanticipated effect on the marketplace” (Postal Service Opposition at 2 [filed Feb. 2, 2011]), nothing in its data collection plan would enable it to detect losses of pieces, volume, or revenue from existing shared or solo mail caused by ads migrating to MMME.

knowledge.” The Postal Service has not demonstrated that it will, or will ever be able to, satisfy the statutory revenue limitation, and its proposal should be rejected.

### **III. CONCLUSION**

For the foregoing reasons, the Commission should not approve the Postal Service’s proposed Marketing Mail Made Easy market test.

Respectfully submitted,

Newspaper Association of America

Paul J. Boyle  
Senior Vice President/Public Policy  
NEWSPAPER ASSOCIATION OF  
AMERICA  
4401 Wilson Boulevard  
Suite 900  
Arlington, Virginia 22203  
(571) 366-1150

By: /s/ William B. Baker  
William B. Baker  
WILEY REIN LLP  
1776 K Street, N.W.  
Washington, DC 20006-2304  
(202) 719-7255