

Before the
POSTAL REGULATORY COMMISSION
Washington, DC 20268-0001

Market Test of Experimental :
Product – Gift Cards : Docket No. MT2011-2

REPLY COMMENTS OF HALLMARK CARDS, INCORPORATED

Hallmark Cards, Incorporated (Hallmark) submits these Reply Comments pursuant to Order No. 647 (January 12, 2011). The question on which Order No. 647 invites public comment is whether the proposed market test, involving sale by the Postal Service of gift cards, is "consistent with the policies of 39 U.S.C. 3641."¹ Hallmark believes that it is, and that it should be allowed to proceed.

The Postal Service's proposed experiment. The Postal Service presents the proposed sale of gift cards in post office retail lobbies as a competitive postal service. Hallmark agrees with this characterization. Section 102(5) defines "postal service" as "delivery of letters, printed matter, or mailable packages, including acceptance, collection, sorting, transportation, *or other functions ancillary thereto*" (italics added). The Commission found, in Docket No. MC2008-1, that the sale of greeting cards in Postal Service retail lobbies constituted a postal service.² The Postal Service correctly points out that the greeting card industry has integrated the gift card into its own product lines, by offering greeting cards specifically designed to hold such cards.³ That the function of a gift card can be characterized as ultimately "financial" is no more an objection to the sale of such

¹ Order No. 647, p. 6.

² Order No. 154, pp. 34-35, 89.

³ Notice of the United States Postal Service of Market Test of Experimental Product – Gift Cards, p. 7.

cards than it would be to the sale of traditional Postal Service money orders.⁴ The important fact is that in both cases the customer can assemble, from components conveniently available in the post office lobby, a complete mailing piece which accomplishes all that he or she wishes to accomplish.

Arguments against the market test. Pitney Bowes has argued⁵ (i) that the Commission has already found that gift cards could not be offered as a *nonpostal* service, and (ii) that by their nature they cannot qualify as a postal service. The first of these propositions is literally true, in that the Service's proposal to offer stored value cards as a nonpostal service was rejected. The reason for the rejection, however, was that the Service's previous offering of such cards had terminated before January 1, 2006, making them ineligible for "grandfathering" under 39 U.S.C. § 404(e)(3).⁶ The Commission took care to point out the possibility that the Service could support introduction of a stored value card as a *postal* service – to which the analysis required by Docket MC2008-1 would, of course, be inapplicable. Pitney Bowes also notes that the Service acknowledges that in that same docket the Commission held that stored value cards, including gift cards, were a nonpostal service. That it did so is not surprising, since the Postal Service did not present stored value cards as ancillary to core postal functions. As the Commission put it:

. . . [Postal Service witness] Lance's Statement suggests, but does not clearly explain, how the proposed stored value card would be used. In its Notice of Proposed MCS Language, *the Postal Service clarified that it intends the card to be generic*: "Stored Value Cards provide customers with payment alternatives that support their mailing, shipping, and purchase needs. They may include phone cards, gift cards, and prepaid debit

⁴ Hallmark agrees with the Public Representative's argument (Comments of the Public Representative, pp. 2-3) that the cards at issue here are the logical successor to the postal money order.

⁵ Comments of Pitney Bowes, Inc., pp. 2 et seq.

⁶ The Postal Service's telephone card offering, which was in existence on January 1, 2006, had been discontinued before enactment of the Postal Accountability and Enhancement Act of 2006 and thus was not before the Commission. See Order No. 154, pp. 47-48.

cards." Therefore, as proposed, the stored value card is not a postal service.^[7]

The Commission specifically recognized that a stored value card, appropriately presented as a *postal* service, could well pass muster.⁸ In this case, unlike Docket MC2008-1, the Service has shown that the gift cards it will offer will be ancillary to core postal functions. Pitney Bowes is thus incorrect in arguing that the findings in Order No. 154 foreclose the present project.⁹

The American Bankers Association (ABA) opposes the market test, for much the same reasons advanced by Pitney Bowes, *unless* it is amended to characterize the proposed gift cards as a nonpostal service. This, however, amounts to opposing it outright, since for statutory reasons it would be futile to offer the card now, as a new nonpostal service. Section 404(e)(2) forecloses the offering of new (non-grandfathered) nonpostal services, and Order No. 154 concluded that no stored value card product under review in Docket MC2008-1 qualified under the grandfather clause. ABA's position, therefore, is in practice indistinguishable from that of Pitney Bowes.

Conclusion. The Service has made a sufficient preliminary showing that its gift card project is a lawful and appropriate experimental postal service. That should be sufficient to persuade the Commission to allow the test to go forward. In addition, however, it is clear that if the Postal Service is to regain its financial

⁷ Order No. 154, p. 47 (*italics added*).

⁸ *Id.*, pp. 48-49, fn. 90.

⁹ The passage quoted above from Order No. 154 shows that the central question was "how the proposed stored value card would be used." The Commission found that witness Lance's statement did not answer this question, and thus made its own finding – supported by the proposed MCS language – that the card as it was expected to be used had no particular postal nexus. Pitney Bowes fails to distinguish two issues: (i) what the product is, generically (in both Docket MC2008-1 and here, a stored value card) and (ii) how it will be used. In this case, the Postal Service has shown what it did not show in Docket MC2008-1: that there is an adequate and relevant nexus between the card and core mailing functions.

footing it must launch "innovative, new market-responsive postal products."¹⁰
The present proposal is such an initiative, and should be endorsed by the Commission.

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Respectfully submitted,

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¹⁰ Pitney Bowes Comments, p. 2.