

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

**Market Test of Experimental Product
Gift Cards**

Docket No. MT2011-2

REPLY COMMENTS OF PITNEY BOWES INC.

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I. INTRODUCTION

Pursuant to Order No. 647, Pitney Bowes Inc. (Pitney Bowes) respectfully submits these reply comments regarding the January 5, 2011 Notice of the Postal Service to conduct a market test of an experimental product: gift cards.¹ These comments respond to the initial comments filed by the Public Representative.²

II. DISCUSSION

The Public Representative frames the larger issues raised in this proceeding as follows:

On the one hand, the Public Representative is sympathetic to the Postal Service's severe fiscal problems and its attempts to find new sources of revenue through broadening the definition of "postal service" under 39 U.S.C. 102(5). On the other hand, the Public Representative has serious concerns with interpreting the term "postal service" under 39 U.S.C. 102(5) too broadly. If the definition of "postal service" is stretched too far, it could create a slippery slope and render 39 U.S.C. 404(e)'s ban on offering new, nonpostal services virtually meaningless.

For various reasons, Congress decided, in passing the Postal Accountability and Enhancement Act, to ban the Postal Service from offering new, nonpostal services and focus on its core business. It is a decision to be left up to Congress – not the Commission – to determine whether the current ban on offering new postal services should be altered in light of the Postal Service's dire financial condition and need for new sources of revenue.

PR Comments at 6. Notwithstanding these observations, the Public Representative offers its qualified support of the proposed market test. For the reasons discussed below, the position advocated by the Public Representative finds no support in the law and disregards congressional intent.

First, the need "to find new sources of revenue" has nothing to do with whether the Postal Service is authorized to offer an experimental new product under section 3641 of the Postal

¹ See Notice of the United States Postal Service of Market Test of Experimental Product – Gift Cards, Jan. 5, 2011 (Notice).

² See Comments of the Public Representative (PR Comments)(Feb. 4, 2011).

Accountability and Enhancement Act (PAEA).³ Section 3641 requires that an experimental product qualify as a “postal service” as defined in section 102(5). *See* 39 U.S.C. §§ 102(5), 3641. A decision to relax the statutory prohibition on nonpostal services is, as the Public Representative correctly notes, “a decision to be left up to Congress – not the Commission.” PR Comments at 6.

Moreover, there is little reason to expect the sale of gift cards will do much to address the financial problems facing the Postal Service. The Postal Service has a long history of pursuing business ventures far a field of its core function - the delivery of physical mail. In the late-1990s and early-2000s the Government Accountability Office issued a series of reports chronicling the Postal Service’s forays into nonpostal services and concluded that the majority of these ventures had not been profitable, had resulted in the distortion of private markets, and had diverted Postal Service resources from its core responsibilities and competence.⁴ The 2003 report of the President’s Commission on the Future of the Postal Service reached the same conclusions.⁵

Congress responded in 2006 by enacting the PAEA. The PAEA repealed the Postal Service’s authority to offer new “nonpostal services” and mandated that the Postal Service could only continue to offer nonpostal services that it had offered as of January 1, 2006 and that the Commission found met a “public need” that the private sector could not satisfy.⁶

In 2008 the Commission undertook a comprehensive review of all nonpostal services identified by the Postal Service, including stored value cards which the Postal Service itself

³ *See* 39 U.S.C. § 3641; Pub. L. No. 109-435, 120 Stat. 3198 (Dec. 20, 2006). The PAEA amends various sections of title 39 of the United States Code. Unless otherwise note, section references in these comments are to sections of title 39.

⁴ *See U.S. Postal Service: Development and Inventory of New Products*, GAO/GGD-99-15 (Washington, D.C.: Nov. 24, 1998); *U.S. Postal Service: Update on E-Commerce Activities and Privacy Protections*, GAO-02-79 (Washington, D.C.: Dec. 21, 2001); *U.S. Postal Service: Postal Activities and Laws Related to Electronic Commerce*, GAO/GGD-00-188 (Washington, D.C.: Sep. 7, 2000).

⁵ *See Embracing the Future: Making the Tough Choices to Preserve Universal Mail Service*, Report of the President’s Commission on the United States Postal Service, (Jul. 31, 2003), at 27-28.

⁶ *See* 39 U.S.C. § 404(e).

categorized as “nonpostal.” The Commission considered and disapproved the Postal Service’s sale of stored value cards, including gift cards, as a “nonpostal service” that could not be continued because it was not being offered as of January 2006. *See* Order No. 154 (Dec. 19, 2008) at 47-48.

The Public Representative acknowledges the Commission’s prior decision but believes that the gift cards at issue in the market test are “different enough from the former stored value cards to be classified as a postal service under 39 U.S.C. 102(5).” PR Comments at 2. The Public Representative does not state how or why the current gift cards are different, or what distinguishing characteristics the current gift cards have that make them more like a postal service.⁷ For the reasons cited in our initial comments, to the extent the gift cards proposed here are “different,” it is that they are less like a postal service than the stored value cards that were previously deemed nonpostal and rejected by the Commission.

In 2008 the Postal Service contemplated offering stored value cards that could be used for the purchase of postal goods and services and could be sold with a pre-paid envelope as a single mailable item.⁸ The Postal Service now proposes to sell stand alone, “open loop” gift cards that can be used for purchases from any participating merchant. The gift cards now proposed are better described as a financial product than as a “postal service.” The gift cards the Postal Service now proposes to sell are no different from the cards offered today in virtually every neighborhood drug store or supermarket – cards that can be used as currency to purchase a limitless range of consumer goods and services. These cards are clearly not a “postal service.”

⁷ As discussed in Pitney Bowes’ initial comments, the Postal Service’s Notice is of no help on this score. The Postal Service does not even attempt to explain how the current offering is distinguishable from the stored value cards or present any evidence to support the contention that many or most gift cards would be sent through the mail. *See* Comments of Pitney Bowes, Inc. (PB Comments) (Feb. 4, 2011) at 2-4.

⁸ *See* Dkt. No. MC2008-1, Statement of Tina M. Lance on Behalf of the United States Postal Service (Mar. 19, 2008) at 8, 10.

The Public Representative also seeks to justify the market test on the grounds that gift cards are a “logical outgrowth of money orders” and therefore gift cards “should also be considered a ‘postal service’ within the meaning of 39 U.S.C. 102(5).” PR Comments at 3. To qualify as an experimental product under section 3641, the product must be consistent with the statutory definition of a postal service. Section 102(5) states that the term “postal service” “refers to the delivery of letters, printed matter, or mailable packages, including acceptance, collection, sorting, transportation or other functions ancillary thereto.” 39 U.S.C. § 102(5). Like the Postal Service, the Public Representative does not make an argument that the sale of gift cards directly relates to any of the basic functions of the carriage of mail or a function ancillary thereto. Rather, the Public Representative coins a new “logical outgrowth” test. But the “logical outgrowth” test is based on a logical fallacy: (1) A (money orders) has historically been deemed a postal service; (2) B (gift cards) is sort of like A (money orders); (3) therefore, B (gift cards) is a postal service. This is a non-sequitur.

Moreover, the daisy-chain nature of the “logical outgrowth” test applied by the Public Representative invites the very concerns it cites in the passage quoted above. By definition, successive iterations of the “logical outgrowth” test would result in the approval of products farther and farther removed from the statutory definition of postal services; thus, diluting and rendering meaningless the statutory prohibition on nonpostal services.

Either gift cards are a postal service within the statutory definition of section 102(5) or they are not.⁹ In Order No. 154 the Commission correctly held they are not; there is no basis to reverse that determination here.

⁹ See Comments of American Bankers Association (Feb. 7, 2011) at 3 (opposition to expanding product definitions beyond statutory definitions).

