

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON DC 20268-0001

MARKET TEST OF EXPERIMENTAL)
PRODUCT—GIFT CARDS) Docket No. MT2011-2

**REPLY COMMENTS OF AMERICAN EXPRESS
TRAVEL RELATED SERVICES COMPANY, INC.
(February 15, 2011)**

The American Express Travel Related Services Company, Inc. (“American Express TRS”) respectfully submits these reply comments in support of the proposed market test. American Express TRS is the principal operating subsidiary of American Express Company, a diversified financial services company that trades publicly on the New York Stock Exchange. American Express TRS has entered into a contract with the United States Postal Service to be the first supplier of gift cards to the Postal Service in the experimental product test proposed in this docket.¹

In Section I of these comments, we describe the role of American Express in the experimental market test proposed by the Postal Service. In Section II, we respond to the comments of Pitney Bowes Inc. and the American Bankers Association on whether the proposed service is a “postal service” within the meaning of 39 U.S.C. § 102(5).

¹ In these comments, we refer to American Express TRS and American Express Company together as “American Express.”

I. THE INTEREST OF AMERICAN EXPRESS IN THIS CASE

A. Gift Cards

Gift cards are the latest product to emerge from the continuing search of the financial industry for new methods of payment that are convenient, portable, widely accepted, difficult to counterfeit, and designed to be purchased by one person for the use of another. Until the 1970s, non-cash payment instruments of this kind were paper-based: gift certificates, paper tickets and tokens, and check-based rebates.² The first prepaid cards—e.g., subway and bus fare cards and college campus cards—appeared in the early 1970s. These were stored-value cards (i.e., the information about the unspent balance was stored on a magnetic strip embedded into the card), and typically were closed-system (or “closed loop”) cards—i.e., they could be used for purchasing goods or services only from the issuer of the card (the DC Metro system or a retail chain), or a limited number of vendors approved by the issuer (e.g., on-campus retailers).³ Prepaid phone cards appeared in the late 1980s, and closed-system gift cards in the mid-1990s.⁴ (A gift card is a card bought by a purchaser to be given as a gift to the person who will be the owner and bearer of the card.) Open-system (or “open loop”) first appeared in the mid-1990s.⁵

² Federal Reserve Board, *A Summary of the Roundtable Discussion on Stored-Value Cards and Other Prepaid Products* (2005) (available online at www.federalreserve.gov/paymentsystems/storedvalue/).

³ Federal Reserve Board, *supra*.

⁴ Federal Reserve Board, *supra*.

⁵ Federal Reserve Board, *supra*.

Most prepaid cards are not stored value cards (i.e., do not have the account balances and other information stored on a magnetic strip in the card itself), but rather are linked by an identifying number to a centralized database where this information is stored. The database is accessed when the card is purchased, and when the card is depleted to make purchases.⁶ These cards are not reloadable.

Consumer use of gift cards has grown rapidly in the past few years, as the following table indicates:

Year over year	Cards issued	Value % change	Load funded	Average value per card
2007	152,418,461	N/A	\$6.04 billion	\$39.59
2008	209,964,351	6.5%	\$7.77 billion	\$37.00
2009	255,000,000	8.1%	\$10.20 billion	\$40.00
2010 (est.)	310,744,186	7.5%	\$13.36 billion	\$43.00

Source: Mercator Advisory Group, Prepaid Market Forecasts 2010 to 2013 (August 2010).

A wide variety of businesses now issue gift cards. Issuers include major retail chains, entertainment companies, food service companies, shopping centers, banks and other financial institutions.⁷ The sales of gift cards is highly competitive.

⁶ Federal Reserve Board, *supra*.

⁷ Comptroller of the Currency Administrator of National Banks, *Answers About Gift Cards* (www.helpwithmybank.gov/faqs/other_gift_cards.html) (downloaded Feb. 12, 2011).

B. The Role Of American Express As An Issuer of Gift Cards

American Express is an issuer of gift cards, and operates a network for processing the sales, activation and use of gift cards. The gift cards issued by American Express are “open loop” cards. These cards are redeemable for goods or services (but not for cash) wherever American Express cards are accepted.

American Express gift cards are sold directly and indirectly through several sales channels, including the Internet, shopping malls (generally at the customer service counter), and through individual retailers (such as pharmacies and grocery stores). Approximately half of the gift cards issued by American Express are sold through the retail channel.

C. The Role of American Express In The Gift Card Service Proposed By The USPS

The nature of the gift card experiment proposed by the Postal Service is described on pages 2-4 of the Notice of Market Test of Experimental Product—Gift Cards, filed by the Postal Service in this docket on January 5, 2011, and revised on January 28, 2011. The Postal Service solicited proposals from American Express and other issuers of gift cards to participate in this experiment last year. American Express responded with a competitive proposal. The Postal Service notified American Express that its proposal had won, and that American Express would be the first card issuer to participate in the experiment.

The proposed service is attractive to American Express in several respects. First, although the company has multiple channels for sale of its gift cards, the company continually seeks attractive additional retail channels. Second, as a major

customer of the Postal Service, we are aware of its current financial difficulties. Based on our experience with selling gift cards at other retail channels, we believe that gift cards, like greeting cards, are likely to be an attractive complement to First-Class Mail in the eyes of consumers, and that the availability of gift cards for sale in retail postal facilities is likely to stimulate additional mail volume, and additional postage revenue and contribution, at the point of sale. The proposed experiment should provide a low risk, low cost way to test this belief.

II. GIFT CARDS ARE A “POSTAL SERVICE” UNDER 39 U.S.C. § 102(5).

Pitney Bowes argues in its February 4 comments that the Commission should disapprove the proposed market test under 39 U.S.C. § 3641 because the sale of gift cards at retail postal facilities is not a legitimate “postal service” under 39 U.S.C. § 102(5). This claim is unfounded. Gift cards sold at a retail postal facility qualify as a “postal service” under 39 U.S.C. § 102(5) because the cards are likely to be mailed when purchased, and thus are likely to stimulate the demand for mail service. For these reason, gift cards are “ancillary” to mail service under 39 U.S.C. § 102(5).

In Docket No. MC2008-1, *Review of Nonpostal Services*, the PRC held that money orders and greeting cards qualified as “postal services” under 39 U.S.C. § 102(5) largely on these grounds. See Order No. 154 at 31 (citing *Associated Third Class Mail Users v. USPS*, 405 F.Supp. 1109, 1115 (D.D.C. 1975)) (money orders); Order No. 154 at 38 (money orders); *id.* at 34-35 (greeting cards). Gift cards purchased at retail post offices are also likely to be mailed, given the nature of the cards being offered and places at which they will be sold.

Pitney Bowes tries to distinguish the PRC's classification of greeting cards as a postal service in Order No. 154 on the theory that greeting cards are a "form of correspondence which directly relate to the Postal Service's core competency of delivering physical mail." Pitney Bowes at 4. But the same is true of gift cards: when mailed in an envelope, they are also a "form of correspondence which directly relate to the Postal Service's core competency of delivering physical mail." Gift cards, like money orders, are likely to be mailed.

Equally misplaced is Pitney Bowes' attempt to brush off the PRC's classification of money orders as a postal service in Order No. 154 as a two-sentence discussion relying on "dictum" in *Associated Third Class Mail Users v. USPS*, 405 F. Supp. 1109, 1115 (D.D.C. 1975) ("*ACTU*"), which was "vacated 29 years before the PAEA." Pitney Bowes at 4. The District Court's holding that money orders were a postal service was not mere dictum, however; it was the predicate of the court's holding that changes in fees for money orders (and other special postal services) required PRC review under former 39 U.S.C. § 3622 et seq. 405 F. Supp. at 1115-1118. And the subsequent review of the case by the Court of Appeals and the Supreme Court involved other issues; no party sought review of the holding of the District Court concerning the jurisdictional nature of money orders. *Nat'l Ass'n of Greeting Card Publishers v. USPS*, 569 F.2d 570 (D.C. Cir. 1976), vacated on other grounds, *USPS v. Associated Third Class Mail Users*, 434 U.S. 884 (1977); *Associated Third Class Mail Users v. USPS*, 662 F.2d 767, 768 n. 4 (D.C. Cir. 1980).

Moreover, the Commission in Order No. 154 did not rely solely on *ACTMU*. The Commission carefully analyzed under 39 U.S.C. § 102(5) the concept of a

service that is “ancillary” to basic postal services (Order No. 154 at 29-31), as well as the functional relationship between international and domestic money orders and other mail services (*id.* at 36-38). Significantly, neither Pitney Bowes nor any other participant in Docket No. MC2008-1 challenged the Commission’s classification of money orders as a postal service under 39 U.S.C. § 102(5).

Pitney Bowes’ main counterargument is that gift cards are akin to stored value cards, which the Commission declined in Order No. 154 to grandfather as a *nonpostal* service under 39 U.S.C. § 404(e). Pitney Bowes at 2-3 (discussing Order No. 154 at 46-48). Reliance on this aspect of Order No. 154 is misplaced on several grounds.

First, the gift cards that the Postal Service proposes in this market test differ from the stored value cards that the Postal Service sought to grandfather as a nonpostal service in Docket No. MC2008-1. American Express gift cards, unlike the stored value cards at issue in MC2008-1, are not reloadable and thus resemble money orders in that respect. Moreover, the gift cards are open-ended, and will be redeemable at any vendor that accepts American Express cards; the card of a few years ago was a closed-loop card, and could be used only at a single merchant. Finally, and most important, the recent growth in the sales of gift cards provides a compelling reason to believe that the sale of gift cards at Postal Service retail facilities, like the sale of greeting cards and money orders, will stimulate the sale of First-Class postage. The complementary nature of the demand for gift cards and postage was not nearly so apparent a few years ago.

For similar reasons, the Commission should refrain from giving precedential value to its disposition of stored value cards in Order No. 154 by analogy. In Docket No. MC2008-1, the Postal Service did not attempt to justify stored value cards as postal services; it *assumed* that they were nonpostal services and tried to justify them as such under 39 U.S.C. § 404(e). Today, three years later, the enormous potential of gift cards to stimulate demand for mail services has become obvious (*see* p. 3, *supra*), and the Postal Service has properly proposed to classify gift cards as postal rather than non-postal. Nothing in Title 39 requires the Commission to ignore the additional evidence available on this point in this docket. *See FCC v. Fox Television Stations, Inc.*, 129 S.Ct. 1800, 1810-1812 (2009) (Administrative Procedure Act allows agency to depart from prior rule or policy in light of changed circumstances or new evidence).

Pitney Bowes' final argument is that treating gift cards as postal services would require similar treatment of "DVD movies, mail-order clothing or pharmaceuticals, specialty foods, and a limitless range of other products." Pitney Bowes at 4. This parade of horrors need not detain the Commission, however. None of the specified items share the appeal of a gift card that can be purchased as a counter item at the point of sale and mailed easily (principally in conjunction with greeting cards being sold at the same Postal Service outlets), with little packing or packaging required, at a relatively low rate of postage. Should the Postal Service seek in a future case to expand the range of merchandise to be classified as postal services, the Commission can evaluate the proposal at that time.

The comments of the American Bankers Association reflect a similar attempt to prejudge the merits of a classification that the Postal Service has not proposed in this docket. While ABA “does not object to the USPS selling gift cards,” ABA objects to approval of gift cards as a postal service on the specific ground that gift cards are “cash equivalents or like greeting cards.” ABA at 3. Such a rationale, ABA claims, “could build the first steps that later lead to direct competition [by the Postal Service] with the financial sector.” *Id.* The short answer is that gift cards *are* like money orders and greeting cards in the specific (and relevant) sense that the sale of these items at postal retail facilities stimulates the demand for mail. Whether the Postal Service should provide banking services (e.g. Depository Accounts, Certificates of Deposits) generally is not before the Commission and would require Congressional action. *See* 39 U.S.C. § 404(e); *Association of American Publishers v. Governors of the USPS*, 485 F.2d 768, 775-776 (D.C. Cir. 1973).

Respectfully submitted,

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