

Before the  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Market Test of Experimental Product – )  
Mail Works Guarantee )

Docket No. MT2011-4

PUBLIC REPRESENTATIVE COMMENTS  
IN RESPONSE TO UNITED STATES POSTAL SERVICE NOTICE OF  
MARKET TEST OF EXPERIMENTAL PRODUCT—MAIL WORKS GUARANTEE

(April 29, 2011)

The Public Representative hereby comments on the Postal Service's notice of market test of experimental product-Mail Works Guarantee filed pursuant to 39 U.S.C. 3641.<sup>1</sup> By notice and order, the Commission established the above styled docket and provided for comments by interested persons on the Postal Service's Notice no later than April 29, 2011 and reply comments no later than May 6, 2011.<sup>2</sup>

I. INTRODUCTION

The Postal Service has outlined its proposed market test, but necessary details about the Postal Service's methodology for selecting participants and calculating postage credits have not been provided. The experimental product will be offered to a group of 16 companies who spend a minimum of \$250 million annually on advertising but are not currently spending for postage more than 0.36 percent of the company's total spending on advertising. The companies will be offered a money back guarantee

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<sup>1</sup> Notice of the United States Postal Service of Market Test of Experimental Product – Mail Works Guarantee, April 15, 2011.

<sup>2</sup> Notice and Order Concerning the Market Test of an Experimental Product – Mail Works Guarantee, Order No. 717, April 19, 2011.

for their test direct mail advertisements through First-Class Mail and Standard Mail. The test will begin on or shortly after May 16, 2011. Notice at 1. The Postal Service will negotiate with each potential mailer a set of unique metrics to evaluate the performance of a test direct mail campaign. The minimum is 500,000 pieces and the maximum is 1 million pieces of test direct mail First-Class and Standard Mail. If the threshold percentage increase in the uniquely established metrics is not met, a postage credit up to \$250,000 will be issued. *Id.* at 2. By greatly reducing the financial risk of an unsuccessful direct mail advertising campaign, the test offers a large incentive for new direct mail advertising.

Several significant details for determining eligibility to participate and to obtain refunds have not been presented by the Postal Service. Section 3641 of title 39 requires that the test product will not create an unfair or otherwise inappropriate competitive advantage for any mailer. Without a better understanding of the methodology applied to select the participants, the Commission will be unable to determine whether the proposed test meets the statutory criteria for market tests of experimental products. Also, a better understanding of the Postal Service's expertise and method for creating and negotiating metrics is needed. If the negotiated agreements provide for percentage increases in metrics that are overly optimistic and fail to achieve any success, the Postal Service could be required to refund up to \$4,000,000 (16 x \$250,000) in postage credits.

## II. SECTION 3641 CONDITIONS

A product may not be tested under 39 U.S.C. 3641 unless it satisfies each of the three conditions in subsections (1) through (3) of section 3641(b). It appears the market

test meets conditions 1 and 3 of section 3641(b). The market test offers a product significantly different from all other products offered by the Postal Service within the 2-year period preceding the start of the test as required by 3641(b)(1). In addition, the Postal Service correctly categorizes the product as market-dominant pursuant to section 3641(b)(3). However, compliance with the condition in section 3641(b)(2) is problematic. Section 3641(b)(2) requires as a condition for testing a product that:

The introduction or continued offering of the product will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or *any mailer*, particularly in regard to small business concerns (as defined under subsection (h)). (Emphasis supplied)

The information provided by the Postal Service does not appear sufficient to determine whether the product will create an unfair or inappropriate competitive advantage for “any mailer.”

#### A. Selection of Participants May Not Be Preferential

The opportunity for a company to participate in the market test which could return all postage if the results of the direct mail advertising are unsatisfactory is, itself, an opportunity to obtain a preference over other current mailers. Also, once the test is initiated with several new mailers, the test could offer the opportunity to obtain preferences *vis a vis* other new participants who negotiate different direct mail advertising arrangements.

The limited number of participants in the market test reduces the probability of competitive advantages, but a permanent product without transparency about the negotiated metrics would likely result in preferential metrics for some advertisers. The Postal Service has not provided sufficient information about the method for selecting the

specific participants in the test to demonstrate that preferences will not occur.

Preferences could occur, for instance, if favored current mailers are selected who may not spend advertising dollars for direct mail but may currently use the Postal Service for delivering products or services or for other purposes. This is not to suggest bad faith on the part of the Postal Service. Rather, where the possibility of preferential treatment exists, the burden is on the Postal Service to demonstrate the “offering of the product will not create an unfair or otherwise inappropriate competitive advantage for ...any mailer.” 39 U.S.C. 3641(b)(2).

The Postal Service states that it will select only 16 initial companies from a cross-section of various advertisers for postage back guarantees. The Commission should explore further the basis for selecting 16 companies. For instance, why are 16 companies to be selected? The Postal Service states the new product will be offered to “a group of companies who spend a minimum of \$250 Million annually on advertising... (postage is less than 0.36 percent of the company’s total spending on advertising).” *Id.* at 1. How is the Postal Service able to determine at this time such a specific percentage of advertising spent on postage without knowing the companies that will participate? Has the Postal Service already determined the companies to be selected? If so, what criteria were used or will be used to make the final selections of the potential mailers who may benefit from this market test. How will the 16 participants be recruited? Will the Postal Service initially provide any potential advertiser who meets the mailing requirements an opportunity to participate in the market test?

## B. Potential Discrimination Against Current Mailers

The Postal Service claims that current users of the mail will not be harmed if postage refunds are made for unsuccessful advertising campaigns because users of the Mail Works Guarantee will pay list prices for current products, the same terms as existing products. *Id.* at 4. However, that conclusion does not necessarily follow. Although the list prices for postage products may be the same, direct mail advertisers enjoying the potential for a full credit of postage are placed at a competitive advantage compared to other direct mail advertisers with whom they may compete but who are not eligible for the test. The metrics selected will be critical for determining the success of a direct mail advertising campaign. The success of the direct mail campaign for which the Postal Service may be accountable in terms of postage credits is not within the control of the Postal Service nor is it within the Postal Service's expertise. If the direct mail campaign is "unsuccessful" and eligible for a postage credit it may, nevertheless, increase sales and profits. Mailers in the test with favorable metrics and thereby benefitting from reduced financial risk for the cost of postage compared to their competitors could mail more direct mail advertising than their competitors with the knowledge that incremental advertising would likely result in postage refunds. Thus, the mail service provided by the Postal Service to mailers whether or not they are participating in the test may be identical, but the price of postage can vary as a result of the market performance of the direct advertising campaign prepared by, or at the direction of, the mailer.

Offering special one-time discounts to attract new customers is a common marketing incentive. Money back guarantees where the customer keeps the product if

the customer is not satisfied with the product is also not uncommon. However, in this case the Postal Service is proposing a money back guarantee and permitting the effective retention of purchased product (a credit for postage) where the postal services provided by the Postal Service are wholly satisfactory but the targeted result of the direct mail campaign (outside the control of the Postal Service) is not achieved. This would be similar to returning postage on a birthday gift where the gift was delivered on time but the recipient did not like the gift. Input from the Postal Service by providing assistance in choosing the gift would not enhance the soundness of the Postal Service's product.

#### C. Potential Preference to New Mailers *Vis a Vis* Other New Mailers

The Postal Service states that for each selected mailer it plans to negotiate a unique set of metrics to evaluate the performance of a direct mail campaign such as increasing store traffic, or driving Web traffic or to increase sales of a specific product. If the metric target is not met, a credit for the cost of postage up to \$250,000 would be issued. The Postal Service "will provide assistance in developing the Direct Mail campaigns during the market test, as well as in the benchmarking and measuring the test metric." *Id.* at 2.

It should be noted that although the Postal Service has expertise in the delivery of direct mail that meets its standards of mailability, the Postal Service does not, insofar as the Public Representative is aware, provide a service for measuring the success of direct mail advertising campaigns. The Postal Service's normal operations do not provide it an expertise in evaluating the performance of direct mail campaigns. As such, it is unclear how the Postal Service would be in a position to negotiate satisfactorily with

a potential mailer about the appropriate metrics of a successful advertising campaign without inadvertently negotiating a direct mail campaign with such optimistic forecasts that the likely result would yield a credit for the postage.

Some new customers may benefit from the Postal Service's lack of expertise in estimating the success of direct mail advertising campaigns and negotiate metrics likely to be missed and result in postage credits. Other mailers not as familiar with the likely outcome of direct mail campaigns may not obtain the same advantageous terms. The Commission should ascertain whether the Postal Service will make the terms of the unique set of metrics for each customer available to the public and, if not, why not.

Moreover, the Postal Service has not indicated whether it intends the Mail Works Guarantee to be, as a permanent product, a special classification subject to the provisions of section 3622(c)(10).<sup>3</sup> If direct mail campaigns in the future fail to be successful and postage credits are obligated, the provisions of section 3622(c)(10) might not be met.

#### D. Time Period of Market Tests and Postage Credits

The Postal Service is ambiguous about the time periods to be covered by the direct mail campaign tests. Presumably, for instance, once a two month direct mail campaign is completed for a new customer, that customer no longer would be eligible for the market test. Does the Postal Service intend to allow more than one direct mail campaign test for any of the 16 companies? If so, could postage credits be issued after

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<sup>3</sup> As relevant here, that provision requires special classifications, when available on public and reasonable terms to similarly situated mailers, to improve the net financial position of the Postal Service by increasing the overall contribution to its institutional costs.

each of a single participant's advertising campaign? Also, will some postage credits be granted to a participant if one metric is not met but other metrics are met?

The Postal Service suggests that after the tests it will determine how to proceed and whether to expand the market test or cancel it. *Id.* at 6. The Postal Service does not, however, suggest an option or a plan to propose this product as a permanent product. The Commission should determine whether the Postal Service is using section 3641 as a means of offering the test for a few direct mail campaigns for selected customers or seeking to develop a new permanent product.

#### E. Data Collection Plan

The most significant part of the process for the Mail Works Guarantee will be the metrics for the individual mailer that determine a successful direct mail campaign. The Postal Service does not propose to provide the Commission any information about that part of the process in its data collection plan. Without standardized metrics, there will be a potential for one time preferential treatment for Mail Work Guarantee customers. To maintain sufficient oversight of the negotiated contracts, the Commission should obtain the negotiated agreements from the market test as well as the calculations that measure successful campaigns and any postage credits.

The wisdom and potential losses by offering postage credits for advertising campaigns determined to be unsuccessful based on negotiations by the Postal Service (which does not have demonstrated expertise for measuring the success of direct mail campaigns) must be considered carefully if the Postal Service proposes this program as a permanent product.

## II. CONCLUSION

The Public Representative submits for the Commission's consideration the foregoing Comments and suggestions for additional information needed to meet the condition in section 3641(b)(2)..

Respectfully submitted,

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