

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Mark Acton, Vice Chairman;
Dan G. Blair;
Tony L. Hammond; and
Nanci E. Langley

Market Test of Experimental Product—
Gift Cards

Docket No. MT2011-2

ORDER AUTHORIZING GIFT CARD MARKET TEST

(Issued April 28, 2011)

I. INTRODUCTION

On January 5, 2011, the Postal Service filed a notice pursuant to 39 U.S.C. 3641 announcing its intent to initiate a market test beginning on or about May 1, 2011 for a new experimental competitive product, Gift Cards.¹ The market test will provide customers the ability to purchase a gift card loaded with a specified sum of money which may be, but is not required to be, sent through the mail.

Section 3641 authorizes the Postal Service to “conduct market tests of experimental products in accordance with this section.” 39 U.S.C. 3641(a)(1). A product is defined by 39 U.S.C. 102(6) as a “postal service.” The Postal Service

¹ Notice of the United States Postal Service of Market Test of Experimental Product – Gift Cards, January 5, 2011 (Notice). See *also* Notice of Minor Revision to the Notice of the United States Postal Service of Market Test of Experimental Product – Gift Cards [Errata], January 28, 2011.

asserts the sale of gift cards is a postal service. Notice at 6. For the reasons set forth below, the Commission authorizes the market test to proceed pursuant to 39 U.S.C. 3641 subject to the condition that the sale of gift cards be limited to Postal Service retail facilities, including its website.

II. PROPOSAL

Description and nature of market test. Initially, the Postal Service proposes to test the sale of “open loop” Gift Cards,² to be sold either as standard cards by the supplier(s) or customized, co-branded cards with Postal Service imagery. Open loop cards will be tested with fixed and variable amounts with minimum, incremental, and maximum amounts. To protect against fraud and money laundering, there will be limits on the value of gift cards purchased within certain timeframes. Gift cards are planned in fixed amounts of \$25 and \$50 and in variable amounts with a minimum value of \$25, a maximum value of \$100, and any amount within that range. Planned activation fees will be \$3.95 for a fixed \$25 card; \$4.95 for a fixed \$50 card; and \$5.95 for a variable card. Limits of a \$500 daily maximum purchase per customer and a \$3,000 weekly maximum purchase per customer are planned. *Id.* at 3-4.³

At first, gift cards will only be available at Postal Service retail windows, but will not be available at Automated Postal Centers or on the Postal Service’s website at www.usps.com. Gift cards will be activated upon purchase from a Postal Service retail

² Open loop cards are cards branded by a Retail Electronic Payments Network (e.g., American Express, Discover, MasterCard, or Visa) and can be used by the gift card recipient at any merchant that accepts cards administered by that network. Closed loop cards are specific to a particular merchant. The Postal Service intends to enter into an agreement with one or more issuing banks, Retail Electronic Payments Networks, or service providers. *Id.* at 2.

³ The Postal Service asserts its sale of gift cards will comply with the Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. 111-24, 123 Stat. 1734, (Credit CARD Act of 2009). *Id.* at 9. It further states that any fees that may be charged to gift card recipients, or to merchants who accept the gift cards, would be set by the card supplier(s) in compliance with applicable laws, including the Credit CARD Act of 2009. The Postal Service will not receive any revenue from such fees. *Id.* at 4 n.3.

associate and will be immediately available once activated. The Postal Service will operate only as a sales agent. The card supplier will provide all customer support.

The market test is scheduled to commence in May 2011 in 2,000 Postal Service retail locations that currently sell greeting cards. The Postal Service intends to expand the test up to 3,000 additional Postal Service locations (including locations without greeting cards) in October 2011. *Id.* at 3-4. The duration of the market test will be 24 months unless the Postal Service requests an extension from the Commission, terminates the program, or establishes the gift card as a permanent product. *Id.* at 10-11; *see also* 39 U.S.C. 3641(d)(1).

Revenue to the Postal Service. Revenue will be generated through the activation fee paid by customers at the time of purchase. The Postal Service will retain a negotiated percentage of the activation fee for open loop cards, with the remainder of the fee remitted to the issuer of the card. The Postal Service states that different fee levels may be tested to determine the optimal fees. Since activation fees are not generally levied on closed loop cards, the Postal Service indicates that if closed loop cards are tested, it may enter into a revenue sharing arrangement with the closed loop card supplier. Notice at 3-4.

Based on expected sales, the Postal Service projects that revenues it receives from the market test will not exceed \$10 million annually. *Id.* at 11-13.

Gift Cards as a postal service. The Postal Service asserts that the sale of gift cards is consistent with the statutory definition of a “postal service.” A “postal service” is defined by 39 U.S.C. 102(5) as “the delivery of letters, printed matter, or mailable packages, including acceptance, collection, sorting, transportation, or other functions ancillary thereto.” The Postal Service notes the Commission has recognized that this definition includes the sale of products “that bear a close nexus to the mails, including products that allow mailers to connect with others on a personal level (greeting cards), and products that allow mailers to send cash equivalents (money orders).” *Id.* at 6.

The Postal Service claims that the sale of gift cards would support customers’ mailing needs by providing convenient access to a product that is commonly used for

sending gifts through the mail and that gift cards are commonly sent with greeting cards. *Id.* It further states that gift cards are also very similar to money orders which are likely to be mailed. *Id.* at 7. The Postal Service concludes gift cards purchased from the Postal Service are likely to be mailed upon purchase. *Id.* at 8.

The Postal Service further contends that a nexus between Gift Cards and the mail exists regardless of whether the card is open loop, closed loop, or co-branded with Postal Service imagery and need not contain Postal Service intellectual property to be consistent with the statutory definition of “product.” *Id.* Thus, the Postal Service concludes Gift Cards are consistent with the definition of a postal service.⁴

III. COMMENTS

Three commenters, the Public Representative,⁵ American Express Travel Related Services Company, Inc. (American Express TRS),⁶ and Hallmark Cards, Incorporated (Hallmark),⁷ endorse the proposed market test, in whole or in part.⁸ In general, these commenters are in agreement that the proposed experimental product, Gift Cards, is a postal service and that it satisfies the criteria of 39 U.S.C. 3641. They urge the Commission to allow the market test to proceed. *See, e.g.*, Hallmark Reply Comments at 3-4. The Public Representative proposes, among other things, to limit the

⁴ The Postal Service notes that in Docket No. MC2008-1, the Commission found the Postal Service’s generic stored value card not to be a postal service. However, it distinguishes that proceeding from the current docket and the stored value card from its current proposal. Notice at 6 n.6; *see also* Reply Comments of the United States Postal Service, February 15, 2011, at 2-3 (Postal Service Reply Comments). Further, it quotes the Commission, indicating that its finding “[d]id not foreclose the possibility of the Postal Service offering a card that may, if properly supported, be classified as a postal service.” Notice at 6 n.6, citing Docket No. MC2008-1, Review of Nonpostal Services Under the Postal Accountability and Enhancement Act, December 19, 2008, at 48 n.90 (Order No. 154).

⁵ Comments of the Public Representative, February 4, 2011 (PR Comments).

⁶ Reply Comments of American Express Travel Related Services Company, Inc., February 15, 2011 (American Express TRS Reply Comments).

⁷ Reply Comments of Hallmark Cards, Incorporated, February 15, 2011 (Hallmark Reply Comments).

⁸ Issues raised by commenters are discussed in detail in section IV, *infra*.

market test to sales of gift cards at Postal Service retail facilities, including its website. PR Comments at 4-5.

Four commenters, Pitney Bowes Inc. (Pitney Bowes),⁹ the American Bankers Association (ABA),¹⁰ Associated Mail & Parcel Centers (AMPC),¹¹ and the Food Marketing Institute (FMI),¹² oppose the market test, albeit on different grounds. Pitney Bowes contends that the proposed product, Gift Cards, is not a postal service and may not lawfully be offered by the Postal Service. Pitney Bowes Comments at 2-5. The ABA does not object to the Postal Service selling gift cards, provided the sale is not justified on the grounds that gift cards are analogous to money orders and greeting cards. It urges the Postal Service to refile its proposal on some other grounds. ABA Comments at 3.

AMPC and FMI object to the proposed market test on the grounds that the Postal Service is seeking to offer a new nonpostal service. On that basis, they argue that the private sector is meeting the public need for gift cards. AMPC Comments at 1; FMI Comments at 2.

Postal Service Reply Comments address claims that gift cards are not a postal service. See Postal Service Reply Comments, *supra*. Among other things, the Postal Service argues that: the Commission has not previously addressed whether gift cards, standing alone, constitute a postal service; *id.* at 2-3; there is longstanding precedent for classifying a product as postal based on the likelihood it may be mailed; *id.* at 4-8; and

⁹ Comments of Pitney Bowes Inc., February 4, 2011 (Pitney Bowes Comments); see also Reply Comments of Pitney Bowes Inc., February 15, 2011 (Pitney Bowes Reply Comments).

¹⁰ Comments of the American Bankers Association, February 7, 2011 (ABA Comments). The ABA also submitted a motion for acceptance out of time. American Bankers Association's Motion for Late Acceptance, February 7, 2011. The motion is granted. See also Reply Comments of the American Bankers Association, February 15, 2011 (ABA Reply Comments).

¹¹ Associated Mail & Parcel Centers (AMPC) Comments, March 14, 2011 (AMPC Comments). AMPC did not file a motion for leave to file comments out of time.

¹² FMI's comments are in the form of a letter addressed to the Honorable Ruth Goldway, Chairman of the United States Postal Regulatory Commission, dated March 10, 2011. FMI did not seek leave to file comments out of time.

approval of the market test would not serve as precedent for the Postal Service to engage in various financial services. *Id.* at 11-12.

IV. COMMISSION ANALYSIS

A. The Experimental Product, Gift Cards, is a Postal Service

The Postal Service may conduct market tests of “experimental products” upon compliance with the conditions and other requirements of 39 U.S.C. 3641. It is precluded from offering new nonpostal services. 39 U.S.C. 404(e). Thus, any experimental product proposed under section 3641 must be a postal service, defined as “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). Two commenters, Pitney Bowes and ABA, argue that gift cards are not a postal service and thus, may not be offered by the Postal Service.¹³ Accordingly, the threshold issue presented by the Postal Service’s proposal is whether the Gift Cards product is a postal service.

Proponents’ position. In support of its proposal, the Postal Service contends that Gift Cards are analogous to two postal products, greeting cards and money orders. Notice at 6-8. It asserts that the sale of gift cards at retail postal facilities provides convenient access to a product often sent as a gift through the mail; that such sales foster the use of the mail, that gift cards are often included in greeting cards; *id.* at 6-7; and that gift cards can be viewed as a form of correspondence. Postal Service Reply Comments at 6-7.

Further, the Postal Service notes that gift cards sold at retail postal facilities “are very similar to money orders, . . . on the basis that they are likely to be mailed when purchased.” Notice at 7 (citation omitted). It argues, based on Commission precedent, that the sale (at postal retail facilities) of products that bear a close nexus to the mails

¹³ AMPC and FMI also oppose the proposal, but on the grounds that the Postal Service is seeking to offer a new nonpostal service. AMPC Comments at 1; FMI Comments at 2.

are properly characterized as postal services. *Id.* at 6; see also Postal Service Reply Comments at 4-6.

Three commenters endorse the proposal, in whole or in part. While expressing some concerns regarding the scope of the proposal, the Public Representative recommends that the market test be permitted to proceed, but limited to sales of open loop gift cards at postal retail facilities. PR Comments at 2-6. Citing the ubiquity of open loop gift cards, the Public Representative characterizes them as equivalent to cash. *Id.* at 2-3. He reasons that gift cards represent “the logical outgrowth of money orders” and like the latter should be “considered a ‘postal service’ within the meaning of 39 U.S.C. 102(5).” *Id.* at 3. (footnote omitted.)

American Express TRS, which has entered into a contract with the Postal Service to be the first card issuer to participate in the experimental test, argues that gift cards, like money orders, are likely to be mailed and as such are a form of correspondence directly related to the “Postal Service’s core competency of delivering physical mail.” American Express TRS Reply Comments at 4, 6. Among other things, it distinguishes the proposed gift cards from the stored value card offered by the Postal Service previously, noting that the proposed gift card is not reloadable (and thus similar to money orders) and is redeemable at vendors accepting American Express cards. *Id.* at 7. American Express TRS also argues that concerns raised by opponents of the proposal are either misplaced or premature. *Id.* at 8-9.

Hallmark supports the proposal, agreeing that gift cards are properly characterized as a postal service. Hallmark Reply Comments at 1-2. It also notes that the Commission has recognized that a stored value card, if properly supported, could “pass muster” as a postal service. *Id.* at 3.

Opponents’ position. Pitney Bowes argues that gift cards are not a postal service, contending that they “are even farther removed from the statutory definition of postal services than the stored value cards the Commission previously considered and rejected.” Pitney Bowes Comments at 3; see also Pitney Bowes Reply Comments at 3. It also takes issue with the Postal Service’s claim that gift cards are likely to be mailed,

arguing that rationale could apply to “a limitless range of other products,” such as DVD movies, clothing, and specialty foods. Pitney Bowes Comments at 3-4.

While stating that it does not object to the Postal Service’s sale of gift cards, the ABA opposes the basis for the Postal Service’s proposal that gift cards are similar to greeting cards and money orders. ABA Comments at 3. It argues that rationale would expand the meaning of the term postal service and lead “to the potential of products that compete with financial services.” *Id.*

Commission analysis. Based on its review of the record in this proceeding, the Commission concludes that the Postal Service has satisfactorily demonstrated, at least preliminarily, that the experimental product is a postal service. Thus, the market test may proceed. An important consideration in this decision is the requirement that the Postal Service collect data to support its supposition that the gift cards will be mailed.

Gift cards may reasonably be compared with two existing postal services, money orders and greeting cards. Like money orders, gift cards provide a means to convey cash either as a payment or gift. Money orders may be redeemed at a variety of locations other than postal facilities. Open loop gift cards may be used to purchase goods or services wherever the card is accepted; some open loop cards, although not the one offered through American Express, may be used at ATMs to obtain cash.¹⁴ Both money orders and gift cards are bearer instruments. Like money orders, the proposed gift cards would not be reloadable.

Gift cards are often transmitted in greeting cards. In fact, the greeting card industry has a product line designed to hold such cards. Notice at 7; Hallmark Comments at 1.

¹⁴ Closed loop cards may be used to purchase merchandise only from the issuer of the card.

The *ATCMU* court's finding that money orders were a postal service was tied to the likelihood that they would be mailed.¹⁵ The availability of gift cards in retail postal facilities will increase customer convenience, complement two existing postal products, stimulate demand for postal services, and, if the market test is successful, enhance Postal Service revenue by encouraging the use of the mail.

Pitney Bowes makes two arguments that gift cards are not a postal service. Neither persuades the Commission that the market test should not be permitted to proceed. First, Pitney Bowes contends that the Commission previously considered and rejected the notion that a stored value card, including a gift card, was a postal service. Pitney Bowes Comments at 2-3. In support of its contention, Pitney Bowes cites Order No. 154 in which, pursuant to 39 U.S.C. 404(e), the Commission reviewed each nonpostal service offered by the Postal Service on the date of enactment of the PAEA (December 20, 2006) to determine whether that nonpostal service should continue. Order No. 154 at 1.

Beginning in 1996, the Postal Service offered a reloadable stored value card usable for the purchase of Postal Service products and services. The Postal Service suspended the product at the end of FY 2003. *Id.* at 46. In Docket No. MC2008-1, the Postal Service discussed the possibility that it might package stored value cards with envelopes or other mailpieces. However, in that proceeding, it never articulated how the stored value card would be used. *Id.* at 47.

More critically, however, the Commission never addressed the merits of the Postal Service's proposed stored value card because it was not offered by the Postal

¹⁵ See *Associated Third Class Mail Users v. U.S. Postal Service*, 405 F. Supp. 1109, 1115 (D.D.C. 1975), (*ATCMU*), *aff'd* *NAGCP v. U.S. Postal Service*, 569 F.2d 570, 596 (D.C. Cir. 1976), *vacated in part on other grounds*, 434 U.S. 884 (1977). Both the Postal Service and American Express TRS take issue with Pitney Bowes's claim that *ATCMU* has been vacated. See Pitney Bowes Comments at 4. In *ATCMU*, the court's finding that money orders were a postal service (on the basis that they were likely to be mailed) was, as American Express TRS notes, the predicate for the holding that fees for special services (including money orders) were subject to the Commission's jurisdiction under former 39 U.S.C. 3622 *et seq.* American Express TRS Reply Comments at 6; see also Postal Service Reply Comments at 4 n.3. Congress reaffirmed this holding with passage of the Postal Accountability and Enhancement Act (PAEA) codifying special services including money orders in 39 U.S.C. 3621.

Service as of January 1, 2006 and thus was ineligible to be grandfathered. *Id.* at 47-48; see also 39 U.S.C. 404(d)(2). Consequently, Pitney Bowes's claim that the Commission previously considered and rejected the stored value card is misplaced. The Commission had no definitive proposal before it and, in any event, never made a determination on the merits. Moreover, the Commission specifically noted that its finding that a stored value card was ineligible for grandfathering did not "foreclose the possibility of the Postal Service offering a card that may, if properly supported, be classified as a postal service." *Id.* at 48-49 n.90.

Second, Pitney Bowes argues that the nexus between gift cards and the mails is too tenuous and, in theory, could apply to "a limitless range of other products," such as DVD movies, clothing, and specialty foods. Pitney Bowes Comments at 3-4. Pitney Bowes's concerns are premature. In Order No. 154, the Commission commented that the Postal Service appeared to be selling music CDs unrelated to any commemorative stamp. It held that "[s]ales of CDs do not appear likely to be a postal service, and are not authorized as 'greeting cards.'" Order No. 154 at 35.

The experimental product at issue in this proceeding has features similar to two existing postal services. Given that link, the fact that it is not on all fours with those products is not disqualifying since the market test will provide, among other things, evidence of the nexus. Moreover, the merits of any future proposed experimental product can be addressed based on the facts presented.

Likewise, the ABA's fears that gift cards will become the gateway for other "products that compete with financial services" are premature. ABA Comments at 3. As the Postal Service notes, it is acting as the sales agent for the cards' issuers. It would not be engaged in activities, such as maintaining customer accounts, that could be considered banking services. Postal Service Reply Comments at 12; see also Hallmark Reply Comments at 1-2.

The Commission has before it a limited proposal which, preliminarily, the Postal Service has shown is lawful. No commenter contends that the Postal Service has authority to offer new financial services products. See American Express TRS Reply

Comments at 9 (“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.”) Should the Postal Service propose an experimental product that the ABA believes to be an unauthorized financial services product, it will have an opportunity to contest the proposal.

The PAEA affords the Postal Service considerable flexibility to conduct market tests. Such tests, however, are limited to postal services. The Postal Service and commenters have made a sufficient showing, based on comparison to two existing postal services, to justify permitting the market test to proceed on the theory that gift cards sold in retail postal facilities are likely to be mailed. The Commission cautions that this ruling is limited to the market test itself. It is imperative that the Postal Service collect data on the sale of gift cards to demonstrate the portion of gift cards mailed (or likely to be mailed).¹⁶ The Postal Service cannot be expected to have this information absent the market test. Thus, the market test provides a means to obtain corroborating information, to support gift cards’ favorable comparison to money orders and greeting cards.

B. Other Statutory Requirements

Compliance with 39 U.S.C. 3641. Section 3641 authorizes the Postal Service to “conduct market tests of experimental products in accordance with this section.” The experimental product may not be tested unless it satisfies each of the following conditions:

¹⁶ The Commission will not prescribe any particular method for the collection of such data. The Postal Service efforts, however, should provide reasonably reliable estimates. The Postal Service indicates it intends “to utilize the natural synergies between gift cards and greeting cards in the market test.” Notice at 7. Data on sales of the combined products may be instructive as well. To be clear, if the market test proves to be a success and the Postal Service requests to add gift cards to the competitive product list, it must submit information demonstrating that gift cards are (or are likely to be) mailed.

1. The product is significantly different from all products offered by the Postal Service within the 2-year period preceding the start of the test (section 3641(b)(1));
2. The product will not result in undue market disruption, especially for small business concerns (section 3641(b)(2)); and
3. The product is correctly characterized as either market dominant or competitive (section 3641(b)(3)).

The Postal Service's proposed gift card product meets each of these conditions.

Significantly different product. The Postal Service has not sold gift cards or any equivalent product in the 2-year period preceding the start of this test. Notice at 8. Accordingly, the Commission finds the experimental product satisfies 39 U.S.C. 3641(b)(1).

Market disruption. Gift cards are available in a wide variety of retail locations, e.g., convenience stores, drugstores, grocery stores, retail chains, and banks. See Notice at 8; American Express TRS Reply Comments at 3. In recent years, the demand for gift cards has increased rapidly. American Express TRS Reply Comments at 3 (an estimated 310.7 million gift cards, worth \$13.4 billion issued in 2010).

The Postal Service contends that the market test will have a very small impact on the gift card market and will not create an unfair or inappropriate advantage over other retailers including small business concerns. Notice at 9. It estimates that purchases of the new product will not, in either year of the market test, exceed 0.5 percent of the open loop gift card market. *Id.* Further, the Postal Service asserts that generally it would be in competition with larger retail chains, not small businesses, which it states represent a small part of the overall gift card market. *Id.* at 9 n.8.

AMPC and FMI express concern that its members may lose market share to the Postal Service. AMPC Comments at 1; FMI Comments at 2. Based on information in the record, the gift card market appears to be growing. See Notice at 2; American Express TRS at 3. The market is clearly competitive. AMPC's and FMI's concerns about additional competition, while understandable, are not sufficient to demonstrate market disruption in this competitive market.

As noted above, both AMPC and FMI oppose the proposal on the grounds that the Postal Service is seeking to sell a new nonpostal service. To that end, it argues that the private sector is meeting the public need for gift cards. AMPC Comments at 1; FMI Comments at 2. The Commission appreciates these commenters' concerns. However, the Commission finds that this experiment is the best way to determine whether or not gift cards purchased at postal facilities will be sent through the mail and are thus postal services.

On this record, there is no credible indication that the market test will cause disruption in the growing gift card market.

Competitive classification. The Postal Service classifies the product as competitive. Notice at 5, 10. Gift cards may be purchased at a large variety of retail locations thus precluding the Postal Service from exercising any market power to charge excessive fees or to provide an inferior product. *Id.* at 10; *see also* American Express TRS Reply Comments at 2-3. Given the expanding market for the sale of gift cards in retail outlets throughout the nation with varying characteristics and provisions, the new experimental product is properly characterized as competitive.

Notice. In compliance with 39 U.S.C. 3641(c)(1), the Postal Service has provided at least 30 days' notice before initiating this market test, describing the nature and scope of the market test and the basis for its determination that the market test is covered under that section.

Dollar amount limitation. The annual revenues received by the Postal Service from any market test may not exceed \$10 million (as adjusted for inflation) in any fiscal year. *See* 39 U.S.C. 3641(e). Revenues from the market test are generated through an activation fee consumers pay at the time of purchase. The Postal Service will retain a negotiated percentage of the fee, with the balance transferred to the issuer of the gift card. Notice at 4. The Postal Service projects that the revenues it receives from its portion of the activation fee will not exceed \$10 million annually. *Id.* at 11.

The Postal Service notes that the market test is likely to generate gross revenues, *i.e.*, before division of the activation fee between the Postal Service and

issuer, slightly in excess of \$10 million. It contends that the relevant figure is the net revenue the Postal Service receives. As a precaution, however, it requests a waiver if the Commission interprets section 3641(e)(1) as applying to total revenues generated by the market test. *Id.* at 11-12.

A waiver is not necessary in this instance. The Postal Service is merely acting as the sales agent for the issuer. It is entitled only to a negotiated portion of the activation fee. The remainder is due the issuer. Thus, for purposes of section 3641(e)(1), it is reasonable to conclude that “the total revenues that are anticipated, or in fact received, by the Postal Service” from the market test are limited to the amount the Postal Service may lawfully retain, *i.e.*, its negotiated percentage of the activation fee.

C. Conditions

The Public Representative proposes two limitations on the sale of gift cards by the Postal Service. First, consistent with the notion that gift cards are likely to be mailed, the Public Representative suggests limiting sales to Postal Service retail facilities, including its website, *www.usps.com*. PR Comments at 4-5.¹⁷ The Postal Service does not oppose this condition. Postal Service Reply Comments at 12. The Commission concurs. The market test is limited to the sale of gift cards at the Postal Service’s retail facilities, including its website.

Second, the Public Representative recommends limiting the market test to open loop cards as proposed by the Postal Service for the initial start-up period. The Public Representative contends that closed loop gift cards are distinguishable from open loop cards because they are redeemable only at the merchant issuing the card, whereas open loop cards may be redeemed wherever the card is honored. PR Comments at 5-6. The Postal Service opposes this limitation, arguing that the distinction is without

¹⁷ Such a limitation is consistent with the treatment afforded Greeting Cards. See Docket No. MC2009-19, Order No. 391, Order Approving Addition of Postal Services to the Mail Classification Schedule Product Lists, January 13, 2010, at 24; PR Comments at 4-5.

difference, and that the relevant consideration is the likelihood of the gift card being mailed regardless if it is open or closed loop. Postal Service Reply Comments at 12-13.

The Commission is not persuaded that differences between open and closed loop gift cards warrant limiting the market test to open loop cards. While there may be differences between open loop and closed loop gift cards, including regulatory oversight and perhaps customer expectations,¹⁸ for purposes of this proceeding, the issue is whether they are distinguishable as a postal service. In that regard, where the gift cards are redeemable is not dispositive. Instead, it is the likelihood of their being mailed. On that issue, there is no distinction based on whether the card is open loop or closed loop.

D. Data Reporting

The Notice describes the Postal Service's plan to collect data to understand the retail costs of selling the product; the value of different types of cards, card packaging, and card locations to postal consumers; and different price points. The Postal Service indicates that these data will be reported to the Commission upon request. Notice at 13.

For the purposes of this market test, the Postal Service shall, report, by type of gift card sold (open or closed loop), the following information within 30 days of the end of the fourth quarter of FY 2011 and semi-annually (by FY quarters) thereafter for the duration of the market test:

- total and net revenues;
- volumes, including, separately, volumes sold with greeting cards;
- attributable costs; and
- an estimate of the percentage of gift cards mailed (or likely to be mailed).

The Postal Service shall explain the methodology used to develop the data provided.

¹⁸ See Title IV of the Credit CARD Act of 2009; codified at 15 U.S.C. 915; 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/).

V. ORDERING PARAGRAPHS

It is ordered:

1. Based on the record before it, the Commission finds that the proposed Gift Cards product is a postal service and that the market test is consistent with 39 U.S.C. 3641.
2. The Postal Service shall file results of market test data collection with the Commission as described in the body of this Order.

By the Commission.

Shoshana M. Grove
Secretary

Concurring Opinion of Commissioner Hammond

I concur with the decision to permit the market test to proceed, but write separately to underscore two points. First, in this proceeding, the Postal Service has only requested a market test for a new experimental offering. For purposes of the market test, it has made a sufficient showing that the experimental product is a postal service. Under the PAEA, Congress encouraged the Postal Service to explore potential new products through market tests. I am pleased to see the Postal Service exercising its flexibility under the law.

It is easier to lend support for the test of a revenue-raising measure under established guidelines than it would be if the Postal Service was seeking permanent approval of a new product. From this experiment the Postal Service, interested stakeholders, and the Commission will learn whether this new offering has the potential for long-term success. It will also give us an understanding of whether those who have raised the issue of market disruption have a valid point.

Second, in comments, a concern was expressed that approval of the market test could become a gateway toward the Postal Service offering financial services. If I thought that was the case, I would not have voted for its issuance. Fortunately, the Postal Service's on-the-record reply comments provide the written assurances necessary that it recognizes that it should not pursue "becoming a bank."¹

¹ Postal Service Reply Comments at 11 ("To address ABA's concerns, it is simply not true that approval of gift cards as a market test would constitute a precedent for the Postal Service's expansion into widespread 'banking' activities.").

I am also reassured by the recent testimony before the Congress by Board of Governors Member (and former Chairman) Jim Miller, who stated, “there have been people that suggest that we get into the banking industry, the banking business. I think...that would be a disaster.”² Governor Miller is correct.

Commissioner Tony L. Hammond

² See http://oversight.house.gov/index.php?option=com_content&view=article&id=1232%3A4-5-2011-qare-postal-workforce-costs-sustainableq&catid=12&Itemid=20; statement begins 1 hour and 5 minutes into the recording.

**Dissenting Opinion of Commissioner Blair
and Commissioner Langley**

We disagree with the Commission's approval of the market test of gift cards.

The Postal Service is authorized by 39 U.S.C. 3641 to conduct market tests of experimental products, provided such tests meet certain conditions. However, 39 U.S.C. section 404(e)(2) prohibits the Postal Service from offering any new nonpostal services and this prohibition applies to experimental offerings.

In the instant case, the Postal Service sought authority to offer gift cards as an experimental product on a test basis. Gift cards are not currently offered by the Postal Service. It proposes to offer gift cards on a two year test basis and identifies the proposed new product as competitive.

We understand the Postal Service's motivation for offering new products. However, Congress imposed a strict limitation on the Postal Service's authority to offer nonpostal products. This ban extends to experimental product offerings of new nonpostal services.

The instant order allows the Postal Service to proceed with offering gift cards. It finds gift cards are akin to the offering of money orders which the Commission previously found to be a market dominant postal product.

We do not agree with the Commission's findings. Money orders are a specific type of financial instrument used as a payment order for a pre-specified amount and differ from gift cards in significant aspects. Gift cards are subject to the Credit Card Accountability Responsibility and Disclosure Act of 2009 and subject to regulatory oversight by the Federal Reserve. See 12 CFR part 205, Electronic Funds Transfer (Regulation E), and 12 CFR 205.20. Section 205.20 sets forth protections for consumers who purchase or use gift cards. These provisions do not cover money orders. For example, fees, expiration, replacement, and penalties for forgery are treated differently for gift cards than they are for money orders. Gift cards are a

relatively recent financial instrument; money orders have been offered by the Postal Service since 1864.¹

A plain reading of section 404(e)(2) eliminates the Postal Service's ability to offer new nonpostal services. In our opinion, this ban applies to gift cards as contemplated by the Postal Service's proposal.

Commissioner Dan G. Blair

Commissioner Nanci E. Langley

¹ United States Post Office Department, *The United States Postal Money-Order System*, Washington, D.C. (1915).