

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

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Market Test of Experimental Product - )  
Collaborative Logistics )  
Docket No. MT2009-1

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**COMMENTS OF THE PUBLIC REPRESENTATIVE  
ON MOTION FOR TEMPORARY EXTENSION**

(May 16, 2011)

In Order No. 720, the Commission established May 16, 2011, as the deadline for commenting on the Postal Service's motion to extend temporarily its Collaborative Logistics market test under 39 USC 3641(d).<sup>1</sup>

**The Postal Service's Request**

In its motion, the Postal Service states that it "intends to make this experimental product a permanent offering on the competitive products list."<sup>2</sup> The Postal Service alleges that "[a]ny lag time between the conclusion of the market test and the establishment of Collaborative Logistics as a permanent product would create a significant hardship to the Postal Service and its business partners." *Id.* The Postal Service states further that an ongoing reorganization at Postal Service Headquarters has delayed the filing of its request to make the experimental service permanent and that it expects to be able to file its request in September following completion of the Headquarters reorganization. *Id.* at 1-2. Based upon the foregoing, the Postal Service requests an extension of the market test experiment until such time as Collaborative Logistics service as a competitive product is approved. *Id.* at 2. Given the indefinite period needed for Commission action on its anticipated filing, the Postal Service defers to the Commission's judgment on the appropriate length of the extension. *Id.* n. 1.

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<sup>1</sup> Order No. 720, Notice and Order Granting Temporary Extension of Collaborative Logistics Market Test, April 28, 2011 at 3 (Order No. 720).

<sup>2</sup> Motion of the United States Postal Service for Temporary Extension of Collaborative Logistics Market Test, April 26, 2011 at 1 (Motion).

The Commission's April 28, 2011 Order requested the Postal Service "to submit additional information to explain more fully why it does not plan to file for permanent authority for 4 more months, and to provide a specific description of the justification for coordinating the test during that period." Order No. 720 at 2. In its May 5 response to Order No. 720, the Postal Service elaborates further on the reasons for delaying the filing of its request for permanent product authorization until September 2011, and presents its justification for coordinating the test during that period.<sup>3</sup>

To support the 4 month delay of its filing, the Postal Service includes an attachment that provides detail regarding the Headquarters reorganization process. Response at 2 (referencing "2011 Organizational Change Process Timeline"). As justification for the extension, the Postal Service asserts that a filing for permanent product authorization prior to September 2011, would risk the reassignment or departure of personnel who currently support the Collaborative Logistics experiment before proceedings on the permanent product authorization could be completed. *Id.* at 3. The Postal Service states that the loss of such personnel during the pendency of Commission proceedings would be disruptive and would delay and unnecessarily burden the Commission and participants in the proceeding. *Id.* Finally, the Postal Service states that by September 2011, the Headquarters reorganization should either be completed, or close to completion, and that the continuity of personnel assigned to Collaborative Logistics should be reasonably certain.

### **The Public Representative's Comments**

The market test for Collaborative Logistics authorized in this docket is the first market test to be proposed by the Postal Service under 39 USC 3641. The Collaborative Logistics market test is also the first market test to exhaust the initial 24-month term authorized by section 3641(d)(1) ("A market test of a product under this section may be conducted over a period of not to exceed 24 months").<sup>4</sup>

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<sup>3</sup> Response of the United States Postal Service to Commission Order No. 720, May 5, 2011 (Response).

<sup>4</sup> To date, the Commission has approved four other market tests. Order No. 452, Order Approving Samples Co-Op Box Market Test, May 5, 2010; Order No. 617, Order Approving Market Test of Alternative Postage Payment for Greeting Cards, December 21, 2010; Order No. 721, Order Authorizing Gift Card Market Test, April 28, 2011; and Order No. 687, Order Approving Market Test of Experimental

While section 3641(d)(2) permits the 24-month test period to be extended, such extensions are limited to specifically enumerated situations:

*“If necessary in order to determine the feasibility or desirability of a product being tested under this section, the Postal Regulatory Commission may, upon written application of the Postal Service (filed not later than 60 days before the date as of which the testing of such product should otherwise be scheduled to terminate under paragraph (1)), extend the testing of such product for not to exceed an additional 12 months.” [Emphasis added.]*

In this case, the Postal Service has already stated its intent to make Collaborative Logistics a permanent offering on the competitive products list and appears to have no need for further testing in order to determine the feasibility or desirability of Collaborative Logistics. Motion at 1. Without the need for further testing in order to establish feasibility or desirability of the product, a request for extension of a test period is not properly based upon section 3642(d)(2). The Postal Service appears to recognize this fact when it states that “[i]n a sense, the Postal Service is requesting a waiver of the requirements of section 3641(d)(1), which specifies that a market test shall not exceed 24 months.” *Id.* at 2.

Accordingly, the threshold issue before the Commission is whether the Commission has the authority to waive the statutory limitation on the initial test period for reasons not expressly enumerated in section 3641(d)(2).<sup>5</sup> Unless the legal authority for such a waiver can be established, the Commission may have no alternative but to deny the requested extension.<sup>6</sup>

Assuming the Commission concludes that it has the authority to grant the requested extension for the reasons presented and that those reasons justify an extension, the Commission must also determine the duration of the extension.<sup>7</sup> The length of that extension could, in turn, depend upon the comments of other parties. In that regard, the Public Representative notes that subsequent to the Commission’s

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Product—Marketing Mail Made Easy, March 1, 2011. In none of these cases has the limitation on the initial period of the marketing test been reached.

<sup>5</sup> The Postal Service’s observation that section 3641(d)(2) “envisions cases where market tests could be extended” is true, but is inapposite to this proceeding, since the feasibility and desirability of the product in this case does not, as required by section 3641(d)(2), require further testing.

<sup>6</sup> Aside from questions regarding the Commission’s legal authority to grant an extension for the reasons given, the Public Representative does not oppose an extension of the test period.

<sup>7</sup> The Postal Service, itself, recognizes the need for such a determination when it states that it defers to the Commission’s judgment as to the appropriate length of the extension. *Id.*,n.1.

approval of the initial test period, the American Trucking Associations (ATA) filed a statement in this docket expressing its concerns regarding Collaborative Logistics service.<sup>8</sup> Should ATA or other parties file comments in response to Order No. 720, those comments will, of course, have to be considered in determining the length of any extension authorized by the Commission.

Respectfully submitted,

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<sup>8</sup> Comments by the American Trucking Associations on Collaborative Logistics Market Test, June 16, 2009.