

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—  
Mail Works Guarantee

Docket No. MT2011-4

ORDER APPROVING MAIL WORKS GUARANTEE MARKET TEST

(Issued May 16, 2011)

I. INTRODUCTION AND SUMMARY

On April 15, 2011, the Postal Service filed notice with the Commission of its interest in conducting a proposed market test of an experimental market dominant product, "Mail Works Guarantee," under 39 U.S.C. 3641.<sup>1</sup>

The Commission noticed the market test filing in Order No. 717 and gave interested persons an opportunity to comment on whether the Postal Service's filing is consistent with the requirements of 39 U.S.C. 3641, which is the statutory provision

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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 (Notice).

authorizing market tests.<sup>2</sup> The requirements of this section include three conditions and two related criteria. The three conditions are:

- (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 create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, 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)).

Related criteria include a 24-month time limit and a \$10 million annual limit on the revenue to be generated by the market test (adjusted for inflation). See 39 U.S.C. 3641(d)(1) and (e)(1).

The Commission finds that the market test meets the requirements of section 3641. It therefore approves the proposed test with an expanded data collection report.

## II. THE PROPOSAL

### A. Market Test Description

In support of conducting the proposed test, the Postal Service observes that the top advertisers in America represent \$90 billion in total expenditures for media advertising. It identifies its current share of this market as 3.1 percent or about \$3 billion annually, and therefore sees “a huge revenue potential” in these advertisers. Notice at 1.

The Postal Service proposes a market test, lasting up to 2 years involving 16 companies drawn from a broad cross-section of industry, to assess the effectiveness

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

of using First-Class Mail and Standard Mail for direct mail advertising campaigns. Participants must spend at least \$250 million annually on advertising (based on *Advertising Age* data), but allocate less than 0.36 percent of their total advertising budget to direct mail. *Id.*

The Postal Service will jointly develop with each participant a unique set of metrics to measure the effectiveness of the direct mail campaign. It explains:

[A] retail company's Direct Mail offer could be designed to drive...Web traffic, or a product goods company's offer could be designed to promote increasing sales of a specific product. The threshold for determining success will be an agreed-upon percentage of increase in the uniquely established metric.

*Id.* at 2.

The Postal Service will also provide assistance in developing direct mail and in benchmarking and measuring the test metric. *Id.*

Participants will be expected to mail 500,000 to 1 million pieces of First-Class Mail or Standard Mail during a direct mail campaign. *Id.* They will be required to pay "list price" at the time of mailing. *Id.* at 4. The Postal Service expects the campaigns to be successful and therefore generate additional volume and revenue through future campaigns; however, it will offer participants a postage back guarantee (in the form of a credit to their account with the Postal Service) if a campaign fails to achieve the pre-established metric, as verified by a Postal Service representative. *Id.* at 2-3. The credit is limited to \$250,000 per participant. *Id.* at 2.

#### B. Consistency with Section 3641 Requirements

*Significantly different product.* Section 3641(b)(1) requires that the product offered in a market test be significantly different from all products offered by the Postal Service within the 2-year period preceding the start of the test. The Postal Service asserts that Mail Works Guarantee is differentiated from existing Postal Service products by both its characteristics and the market segment it is intended to serve. With respect to characteristics, it notes that a guarantee based on market performance

(rather than operational performance) makes the experimental product unlike any other Postal Service product. With respect to market segment, it indicates the Mail Works Guarantee market test is geared toward—and its eligibility is restricted to—companies that currently do not use mail as more than a small part of their advertising mix. *Id.* at 3-4.

*Market disruption.* Section 3641(b)(2) requires that the product not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns. The Postal Service asserts that Mail Works Guarantee is intended to generate additional volume from potential customers who currently do not generally use the mail. It contends that the new product will not affect current marketing mail customers, and states non-mail options for advertising will remain competitive. *Id.* at 4. It asserts that because users of Mail Works Guarantee with successful campaigns will pay list prices, the new product is unlikely to cause disruption within the advertising mail market because the new advertisers will be facing the same terms as existing advertisers. *Id.* Additionally, as refunds will be offered only if a campaign is unsuccessful, the Postal Service states that current users of the mail will not be harmed. *Id.*

The Postal Service further asserts that Mail Works Guarantee complies with 39 U.S.C. 403(c), which provides that the Postal Service cannot unduly discriminate against (or provide an undue preference to) any mailer. It acknowledges that the market test is limited to companies whose postage is less than 0.36 percent of their total advertising spending, but states it believes that any discrimination that could arise between mailers is reasonably justified and not “undue” within the meaning of section 403(c). *Id.* It contends that (1) limiting the market test to a small cross-section of different companies not currently utilizing the Postal Service, and (2) offering a refund only if the advertising campaign is not successful “legitimately ensures that any discrimination that could arise between mailers is justifiable to induce new mail volume and not an undue preference.” *Id.* at 5.

*Correct categorization.* Section 3641(b)(3) requires that the product offered in the market test be correctly categorized. The Postal Service assesses Mail Works Guarantee in terms of the definition of a “product” in 39 U.S.C. 102(5) and the definition of a “postal service” in 39 U.S.C. 102(6), and concludes that it is a postal product because it is designed to promote delivering physical advertising messages. It further concludes, based on criteria in section 3642(b), that Mail Works Guarantee qualifies as a market dominant product. It notes that this market test is subject to the postal monopoly in the Private Express Statutes because it involves First-Class Mail and Standard Mail. *Id.* at 5.

*Related criteria: limited duration and limited revenue impact.* The Postal Service plans to begin the test on or shortly after May 16, 2011, and to continue the test for up to 2 years, consistent with the requirement in section 3641(d)(1) that a market test not exceed 24 months, absent an extension. *Id.* at 6. It states that the test as currently structured can generate no more than 16 million new pieces. It therefore does not expect revenue to exceed the \$10 million annual limit in section 3641(e)(1). *Id.*

*Data collection plan.* The Postal Service plans to collect the following data: the number of participating customers; total volume sent, by class of mail and price category, for each participating mailer; total postage paid by each participating customer; and the refund, if any, paid to each customer. *Id.*

### III. COMMENTS

The Public Representative filed comments on April 29, 2011.<sup>3</sup> The Newspaper Association of America (NAA) and the Postal Service filed reply comments on May 6, 2011.<sup>4</sup>

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<sup>3</sup> Public Representative Comments in Response to United States Postal Service Notice of Market Test of Experimental Product—Mail Works Guarantee, April 29, 2010 (PR Comments).

<sup>4</sup> Reply Comments of the Newspaper Association of America, May 6, 2011 (NAA Reply Comments); Reply Comments of the United States Postal Service in Response to Order No. 717, May 6, 2011 (Postal Service Reply Comments).

#### A. Public Representative's Position

*Main concerns.* The Public Representative agrees that the market test meets two of the three statutory conditions because it qualifies as a “significantly different” product and is correctly categorized as a market dominant product. However, he considers compliance with the statutory condition prohibiting an unfair or otherwise competitive advantage “problematic” because he believes the Notice should have included more information about the impact of the proposal on “any mailer” and about the certain aspects of the market test process, such as selection practices, methodology for determining the postage ceiling, and establishment of the metrics. PR Comments at 2.

The Public Representative also expresses concerns about the test's potential for undue preference and undue discrimination, and suggests that offering the guarantee to the selected participants constitutes, in itself, a preference. *Id.* at 3. He suggests other possibilities for preference may arise in the selection process and while the test is underway. *Id.* The Public Representative also points to ambiguity in the Postal Service's use of the word “campaign,” the timing of postage credits, and adequacy of the data collection plan. *Id.* at 1-2, 8. He does not express clear opposition to the market test, but believes the Postal Service has not met its burden of proof on the questions of unfair competitive advantage. He therefore claims that more information is needed to support a Commission finding on consistency with 39 U.S.C. 3641(b)(2). *Id.* at 3-4.

In particular, the Public Representative believes information is needed about why 16 companies are being selected; how the 0.36 percent postage ceiling was determined; whether a determination already has been made about the companies to be selected; and the selection and recruitment criteria. *Id.* at 4. At the same time, the Public Representative acknowledges that the limited number of participants in the market test reduces the probability of competitive advantages, but states a permanent

product without transparency about the negotiated metrics would likely result in preferential metrics for some advertisers. *Id.*

*Potential discrimination against current mailers.* The Public Representative takes issue with the Postal Service's contention that current users of the mail will not be harmed by postage refunds for unsuccessful campaigns because users of Mail Works Guarantee will pay list prices. He claims that although list prices may be the same, the potential for a full postage credit places the advertisers with that guarantee at a competitive advantage over those with whom they compete, but who do not participate in the market test. *Id.* at 5. He also states the mail service may be identical, but the price of postage can vary as a result of the market performance of the advertising campaign. *Id.*

*Subject matter expertise, market test time periods, and postage credits.* The Public Representative questions the Postal Service's expertise in measuring the success of direct mail campaigns. He contends it is unclear how the Postal Service would be in a position to negotiate satisfactorily with a potential mailer about the appropriate metrics without inadvertently negotiating a campaign with such optimistic forecasts that the likely results would yield a postage credit. *Id.* at 6-8. He also asserts that the Notice presents some ambiguity about the time periods for direct mail campaigns conducted under the market test and the timing of the issuance of postage credits. *Id.* at 7-8.

*Data collection plan.* The Public Representative asserts that the most significant part of the market test process is the metrics for the individual mailer that determine a successful direct mail campaign, but states these are not a part of the proposed data collection plan. *Id.* at 8. He contends that without standardized metrics, a potential exists for preferential treatment for Mail Works Guarantee customers. He suggests that the Commission obtain the negotiated agreements entered into under the market test, the calculations measuring successful campaigns, and any postage credits. He believes this type of data will be helpful if the Postal Service proposes this program as a permanent product. *Id.*

In a more general observation, the Public Representative notes that offering special one-time discounts and money back guarantees to attract customers are common marketing incentives. *Id.* at 6. However, he views this market test as one in which the Postal Service is proposing a money back guarantee and permitting effective retention of the product (via the credit) where the postal services are satisfactory, but the targeted result of the direct mail campaign is not achieved. He likens this to returning postage on a birthday gift delivered on time when the recipient does not like the gift. *Id.*

#### B. NAA's Position

NAA urges the Commission to consider the “serious questions” the Public Representative raises about the sufficiency of the information the Postal Service has provided on discrimination and competition. It shares the Public Representative’s concerns about the transparency of the selection process, methodologies, and the Postal Service’s expertise in negotiating with experienced marketers. NAA Comments at 1-3.

NAA also raises several independent concerns. One is the appropriateness of the Federal government seeking to participate so directly in the advertising marketplace, especially if the net result is simply to shift advertising from one mailer to another “new” mailer. *Id.* at 1-2. Another is the soundness of the 0.36 percent ceiling on postage expense. NAA claims that businesses may use the mail in various ways, such as through shared mail programs, without it being charged as a “postage” line item in their advertising budgets. *Id.* at 3. The third is a concern that, to the extent the market test provides selected participants with a risk free mailing option, these participants may remove at least some of their advertisements from shared mail programs. Based on this concern, NAA proposes an addition to the data collection plan in the form of a new element which would capture a shift (or “cannibalization”) of existing advertising from a non-postal medium to the Postal Service’s direct mail channel. *Id.* at 3-4.

### C. Postal Service Reply

In reply comments, the Postal Service clarifies that a direct mail “campaign” may include multiple mailings. It also takes issue with the Public Representative’s claims about unfair competitive advantage, undue preference, and undue discrimination; defends its expertise; and discusses why it opposes disclosure of the metrics and other aspects of the test. See *generally* Postal Service Reply Comments at 2-10.

The Postal Service asserts that the Public Representative applies an overly narrow view of the market test’s rationale by suggesting that dissatisfaction with delivery service is the only factor that would justify a monetary inducement to try the service. *Id.* at 4. It contends that the business the Postal Service is trying to stimulate is the use of mail as an advertising medium, as opposed to the use of some other method or competitor to deliver a physical object. *Id.* at 5. It asserts that in this broader context, providing refund inducements to businesses that currently do not use mail to advertise is perfectly logical and could be an effective means to increase mail usage. It also characterizes the “birthday gift” analogy as inapt. *Id.*

The Postal Service also contests the assertion that it is not qualified, or would be unhelpful, as a consultant on the effectiveness of using mail. It explains that it commonly sells mail usage, particularly Standard Mail, by providing advice to potential mailers on the effectiveness of mail as an advertising medium and on the most effective mailing patterns in particular markets. Thus, it asserts the rationale behind the guarantee is especially enhanced by the design of the program which attempts to exploit specific objectives sought by particular mailers. *Id.*

The Postal Service states Mail Works Guarantee, as an experiment, targets a few new large business mailers that generally do not use the mail to advertise. It notes that the Public Representative acknowledges that the small number of participants in the market test will limit the probability of competitive advantage between test participants and other companies. It also contends that any new business acquired

through this test would benefit all mailers by providing additional contribution to offset costs. *Id.* at 6.

*Additional detail on selection process.* The Postal Service explains that it used data from *Advertising Age's* Top 100 Leading National Advertiser listings and other data to narrow the body of companies eligible to participate in the test to those who spend \$250 million in annual advertising, but less than 0.36 percent on postage. *Id.* It believes “a modest subset” of 16 companies would provide a manageable initial population of companies across a diverse selection of industries, while minimizing the Postal Service’s financial risk. *Id.* It acknowledges that it has identified 16 companies, in different industries, that would like to participate in the market test. However, it states selection depends on negotiations with individual companies. If the original companies are not interested, the Postal Service anticipates selecting additional companies to participate, including those that meet the requirements and might have contacted the Postal Service about participating. *Id.* However, it indicates it will maintain its goal of getting a representative body of participants from different industry segments. *Id.*

Upon finalizing a list of 16 companies, the Postal Service says a team led by a Postal Service officer, including relevant Postal Service experts and sales personnel, would begin working with each participant to design a campaign focused on driving direct mail volume. *Id.* The Postal Service contends that contrary to the Public Representative’s assertion, no one participant would have a significant opportunity to obtain a preference over others, as they would represent different industries or business types, and a unique metric would be jointly developed. *Id.* at 6-7. It also asserts individualized metrics would not be constrained by a generalized formula (as the Public Representative apparently seeks through standardized metrics), but would be assessed for each particular participant according to whether they were reasonable, qualifiable, and based on some historical measurement previously used in the company’s advertising campaigns. *Id.*

The Postal Service states nothing prevents non-participating customers from working with the Postal Service to develop direct mail campaigns. However, the market

test targets customers who currently do not use the mail to advertise, with the objective of exploring the potential advantages of using mail as an advertising medium. It contends the argument that avoiding this limited experimental approach because competitors of current mail users might benefit from the effectiveness of mail advertising undermines the general goal of using market test and experimental procedures under the Postal Accountability and Enhancement Act of 2006 to promote the Postal Service's finances generally. *Id.*

*List price issue.* The Postal Service emphasizes that users of Mail Works Guarantee with successful campaigns will pay list prices for current products. *Id.* It reiterates assertions (raised in its Notice) that the test is unlikely to cause disruption within the advertising mail market as the participants will face the same terms and prices as existing advertisers. *Id.* It notes that refunds will be paid only if a campaign is unsuccessful, in which case, current users of the mail still will not have been harmed since their competitors who participated in the test will not have benefited according to their original objectives. *Id.* at 8.

Moreover, the Postal Service indicates the objective of the campaign is to prove to multi-million dollar advertisers that the mail can improve a marketing return on investment. It asserts the benefit of an overly optimistic forecast, solely for the purpose of gaining a postage credit, would likely be negligible. If the company chooses to participate, it is then likely to be interested in discovering the benefits of direct mail. It believes that it is unlikely that such a company would purposefully set a metric that is overly optimistic to get free postage. *Id.* Moreover, based on its long experience, the Postal Service is confident of its abilities to assess the motivations of potential participants. *Id.* at 8-9. Alternatively, it argues that even if the metric were designed to be overly optimistic to receive the refund, but the direct mail campaign was otherwise successful, the participant might be likely to use the Postal Service again for its advertising needs, resulting in a new mailer, new volume, and new revenue. *Id.* at 9. It states the narrow goal of securing lower postage expenses to advertise itself might

suggest that the company could be inclined to believe it could benefit from direct mail, beyond the temporary and limited benefits from participating in the experiment. *Id.*

*Data collection plan.* The Postal Service contends that the Public Representative views public disclosure of the negotiated agreements in the market test, the calculations that measure successful campaigns, and any ensuing postage credits as the only way to maintain sufficient oversight. *Id.* It disagrees, and states it intended to work under non-disclosure agreements due to the commercially sensitive nature of advertising campaigns. It asserts that a company's direct mail campaign strategy consists of information of a commercial nature that, under good business practice, would not be disclosed. It contends disclosure would provide a competitive advantage to a participant's competitors and might deter good candidates from participating. It considers it highly probable that if this information were made public, competitors of participants would take advantage, and participants would face a substantial risk of losing business as a result. *Id.*

#### IV. COMMISSION ANALYSIS

Based on a review of the record, the Commission concludes that the proposed market test meets the requirements of section 3641 and does not violate section 403(c). Accordingly, the market test may proceed as scheduled.

##### A. Satisfaction of Statutory Conditions

*Significantly different product.* The Postal Service distinguishes Mail Works Guarantee from other products on the basis of its focus on market performance, in terms of the effectiveness of direct mail campaigns, and the intended customer segment. Notice at 2. The Public Representative agrees that the product meets this condition. PR Comments at 2-3. NAA does not specifically address it. The Commission finds that the proposed product is significantly different from any product offered by the Postal Service within the 2-year period preceding the anticipated start of the test. It therefore satisfies 39 U.S.C. 3641(b)(1).

*Market disruption.* The Postal Service contends that the market test raises no concerns about unfair or otherwise inappropriate competition, attributing this in part to the limited number of participants. Notice at 4-5. It also claims that any discrimination (under section 403) is unlikely, but that to the extent it occurs, it is not undue because the objective is to incent additional volume. *Id.* Both the Public Representative and NAA express concerns about the adequacy of the information in the Notice on these matters and suggest potential situations where an unfair competitive advantage, preference, or discrimination might occur in some phase of the market test, such as planning, selection, or choice of the 0.36 percent postage ceiling. PR Comments at 3-7; NAA Reply Comments at 1-3.

The Commission finds the information provided in the Postal Service Reply Comments addresses and resolves some of these concerns, especially regarding the selection process and metrics. With respect to other concerns raised on this record about unfair competitive advantage (either for the Postal Service or any mailer), the Commission finds that the market test is unlikely to cause any market disruption due to the limited number of participants, the volume limits imposed on participants, and that each participant is limited to one direct mail campaign during the market test. These limitations mitigate the possibility that “cannibalization” may occur to any measurable extent.

With respect to assertions about preferences and discrimination, the inquiry is not whether a preference or discriminatory effect exists, but whether it is “undue” in the context under consideration. Measured by this standard, the preference to mailers the Public Representative sees in the key element of the test—the guarantee—is not undue, given the test’s objective.<sup>5</sup>

Section 3461 affords the Postal Service an opportunity to test experimental products on a limited basis. As a general matter, these limitations, *e.g.*, the annual revenue limit, may preclude offering an experimental product to all interested mailers.

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<sup>5</sup> “The objective of [the market test] is to prove to multi-million dollar advertisers that mail can improve a marketing return on investment.” Postal Service Reply Comments at 8.

In those instances, recognizing that the purpose of any market test is to determine whether the experimental product should be offered on a permanent basis, selecting a limited number of participants does not run afoul of section 403(c), provided the selection process is reasonable. The Postal Service proposes to select participants from a cross-section of 16 companies in different industries. That process has not been shown to be unreasonable or unduly preferential.

Having reviewed the record, including both the Notice and comments received, and taking into account the limited nature of the market test and its objective, the Commission finds that the proposed market test will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer. The test therefore satisfies 39 U.S.C. 3641(b)(2) and does not pose any inconsistency with 39 U.S.C. 403(c).

*Correct characterization.* The Postal Service characterizes Mail Works Guarantee as a market dominant postal product, asserting that classification is consistent with section 3642(b). Notice at 5. The Public Representative agrees that the product has been correctly categorized. PR Comments at 4. NAA does not address this point. The Commission finds that the Postal Service has properly categorized Mail Works Guarantee as a market dominant postal product and therefore satisfies 39 U.S.C. 3641(b)(3).

#### B. Other Statutory Requirements

The Commission further finds that the description provided in the Notice shows that the proposed market test is consistent with section 3641(d)(1) and (d)(2) criteria, which require that the test not exceed 24 months and not generate more than \$10,000,000 million annually. Neither the Public Representative nor NAA addressed consistency of the market test with these criteria.

### C. Data Collection Plan

The Postal Service proposes to collect data on the number of customers participating; total volume sent by class and price category by each participant; total postage paid by each participant; and the refund, if any, paid to each customer. Notice at 6.

To better evaluate the merits of the market test, the data collection plan shall also include:

- the established metrics for each participant and the outcome of each campaign; and
- additional costs the Postal Service incurs in conducting the market test. (For example, this element would include an estimate of administrative costs incurred in the process of conducting the market test).<sup>6</sup>

Data collection reports on the Mail Works Guarantee market test are due 30 days after each 6-month period the market test is in effect. Notice of the completion of the test should be provided if not clear from the periodic reports.

Data or information the Postal Service believes is commercially sensitive may be filed under protective conditions to prevent disclosure of commercially sensitive material.

*It is ordered:*

1. Based on the record before it, the Commission finds that the proposed Mail Works Guarantee market test is consistent with 39 U.S.C. 3641.

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<sup>6</sup> If the Postal Service is contemplating the possibility of offering Mail Works Guarantee as a permanent product, it is strongly encouraged to collect information on each participant's total volume postage paid for the 12 months prior to participation in the market test. Such data need not be reported as part of the market test.

2. As discussed in the body of this Order, the Postal Service is to prepare and file a data collection report tracking the Mail Works Guarantee market test and, if appropriate, a notice of completion of the test.

By the Commission.

Shoshana M. Grove  
Secretary