

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

Notice of Market Dominant Price
Adjustment for Alternate Postage
Payment Method

Docket No. R2014-1

PUBLIC REPRESENTATIVE COMMENTS
ON THE POSTAL SERVICE NOTICE
CONCERNING ALTERNATE POSTAGE

(November 22, 2013)

I. BACKGROUND

A. The Market Test

On November 8, 2010, the Postal Service filed notice of its intent to conduct a market test of an experimental product that it designated “Alternate Postage Payment Method for Greeting Cards.”¹ The Alternate Postage experimental product provides a means whereby individuals can mail greeting cards without the need to affix postage.² Participating companies pay the postage through a two-step process. First, at least 50 percent of the postage is due in advance, based on the number of mailpieces sold or distributed. Second, the balance of the postage is due based on Intelligent Mail barcode (IMb) scans of the cards that are mailed. Order No. 617 at 2. The price for cards and envelopes of a combined weight not more than one ounce is 48 cents, four

¹ Docket No. MT2011-1, Notice of the United States Postal Service of Market Test of Experimental Product – Alternate Postage Payment Method for Greeting Cards, November 8, 2010 (Market Test Notice) at 1.

² See Docket No. MT2011-1, Order Approving Market Test of Alternate Postage Payment Method for Greeting Cards, December 21, 2010 (Order No. 617) at 2.

cents higher than the prevailing First Class single-piece rate that was in place when the market test was initiated. Market Test Notice at 6. The price for cards and envelopes with a combined weight between one and two ounces is 48 cents plus the second-ounce rate. *Id.* In the Market Test Notice, the Postal Service asserted that Alternate Postage offers the benefits of reduced stamp-selling costs for the Postal Service, greater convenience for consumers, and the ability to offer products that make hard copy mail more viable for greeting card companies. *Id.* at 7.

On December 21, 2010, the Commission issued Order No. 617. In it, the Commission concluded that the proposed market test meets the requirements of the relevant statutory provision, 39 U.S.C. § 3641. Order No. 617 at 5. It found that Alternate Postage may benefit consumers by providing a new method for sending greeting cards, that it promotes the use of greeting cards by making it easier for individuals to mail them, and that use of the product should generate more single-piece First-Class mail volume, thereby contributing to the financial stability of the Postal Service. *Id.* at 7.

The market test began on January 1, 2011. Market Test Notice at 11. On November 21, 2012, the Postal Service filed a motion seeking to extend the duration of the market test beyond the 24-month statutory limit.³ In its motion, the Postal Service declared the market test to be a success. Motion to Extend at 1. Between January 2011 and October 2012, the market test generated over \$6 million in revenue and elicited significant interest from more greeting card companies. *Id.* at 2. The Postal Service concluded that Alternate Postage “should be made a permanent Market-Dominant product.” *Id.* The Postal Service explained that certain factors – including the need to research whether to expand the product so as to include postcards – required it to delay filing a request to add Alternate Postage to the product list until “early 2013,” beyond the 24-month statutory limit for market tests. *Id.* The Postal Service expressed

³ Docket No. MT2011-1, Motion of the United States Postal Service for Temporary Extension of Alternate Postage for Greeting Cards Market Test, November 12, 2012 (Motion to Extend) at 1; See 39 U.S.C. § 3641(d)(1) (“A market test of a product under this section may be conducted over a period of not to exceed 24 months.”)

concern that the market test might expire prior to the Commission approving a request to add Alternate Postage to the market dominant product list. *Id.* at 3, n. 7. Accordingly, the Postal Service asked the Commission to extend the duration of the market test “until such time as the Commission acts upon the forthcoming request of the Postal Service to permanently add this product to the market-dominant product list. . .” *Id.* at 4. On December 13, 2012, the Commission granted the Motion to Extend.⁴ The request to permanently add Alternate Postage to the market dominant product list, which was expected in early 2013, never arrived.

B. The Current Proceedings

On November 5, 2013, the Postal Service initiated the instant proceedings, pursuant to 39 U.S.C. § 3622 and 39 C.F.R. part 3010, by filing notice that the Governors authorized it to adjust the prices and classification language in the Mail Classification Schedule for the market dominant Single-Piece Letters/Postcards product within First-Class Mail.⁵ The Postal Service proposes to add, as an additional price category for Single-Piece Letter/Postcards, “Alternate Postage Letters and Postcards” (Alternate Postage). Notice, Attachment A. The proposed changes are scheduled to take effect on January 1, 2014. *Id.* at 1.

The Postal Service indicates that Alternate Postage will enable producers of Single-Piece First Class letters and cards to prepay mailers’ postage. *Id.* at 2. Like the experimental product, the proposal provides a means whereby individuals can avoid the need to affix postage to mailpieces. The Postal Service expects that this will make customers more likely to mail greeting cards and other correspondence. *Id.* at 3. In addition, the businesses that participate in Alternate Postage will have the opportunity to enhance the value of their product by applying a customized picture permit at no additional charge. *Id.*

⁴ Docket No. MT2011-1, Order Granting Motion Concerning Market Test, December 13, 2012 (Order No. 1577).

⁵ United States Postal Service Notice of Market Dominant Classification and Price Changes for the Alternate Postage Payment Method, November 5, 2013 (Notice), at 1, Attachment A.

The proposed changes in this docket differ from the experimental product offered during the market test in two principal ways. *First*, as proposed, Alternate Postage applies to single-piece letters and postcards rather than just greeting cards. The scope of items eligible for Alternate Postage is limited to companies that sign a marketing agreement of limited duration with the Postal Service, setting forth mailpiece requirements, payment terms, prefunding stipulations, and fraud-protection mechanisms. *Id.* at 3, n.3. The Postal Service explains that during the market test, it was approached by companies that produce gift baskets, which expressed a wish to use Alternate Postage to include prepaid thank-you cards in the gift baskets. The Postal Service was also approached by a company that wishes to use Alternate Postage to distribute prepaid coupons to franchisees, who could then mail the coupons to selected customers. *Id.* at 4.

Second, the Postal Service proposes to introduce a three-tiered pricing system, with the price of the postage higher for Alternate Postage with low advanced payments and lower for Alternate Postage with high advanced payment. The first tier includes Alternate Postage with advanced payments up to 20 percent, the second tier includes Alternate Postage with advanced payments between 21 and 50 percent, and the third tier includes Alternate Postage with advanced payments between 51 and 100 percent. For letters, the proposed rates are between five and seven cents above the “approved rate”; for postcards, the proposed rates are between three and five cents above the “approved rate.” *Id.* at 6. The lower per-piece rates apply to companies that pay higher advanced payments and the higher pre-piece rates apply to companies that pay lower advanced payments. *Id.* at 5.

The Postal Service attempts to demonstrate that the proposed changes comply with the Commission’s rules governing rate adjustments for rates of general applicability for market dominant products, 39 C.F.R. part 3010, subpart B. It contends that because the proposed changes “do not change the prices for any existing First-Class Mail price categories, but simply add new options . . . the proposed adjustments have no impact on the CPI-U price cap.” *Id.* at 6. It therefore has not provided the calculations

described in Commission Rule 3010.14(b)(1) through (4). *Id.* The Postal Service's analysis focuses exclusively on the objectives and factors that Congress laid out in 39 U.S.C. § 3622. It indicates that the proposed changes are an example of the increased flexibility permitted by the Postal Accountability and Enhancement Act, are expected to enhance the financial position of the Postal Service, will increase the value of the mail to senders and recipients, will encourage increased mail volume, will provide a more convenient option for sending letters and cards, will help First-Class Mail cover its attributable costs, and will promote the use of Intelligent Mail. *Id.* at 10-11; See 39 U.S.C. § 3622(b)(4-5),(c)(1-2,7,13).

II. ANALYSIS

The Postal Service seeks to add Alternate Postage to the Market Dominant Product list in the Mail Classification Schedule by way of a rate case. Although this is contrary to its previously-expressed intention to file a mail classification case, the Postal Service offers no explanation as to why its change of course to this new approach. As explained below, the Commission should treat the present request as a proposal to add a new product to the Mail Classification Schedule. It should, accordingly, analyze this proposal within the rubric that Congress provided for changes to the product lists. After reviewing the record in this docket and the market test docket, the Public Representative believes that Alternate Postage complies with the statutory and regulatory provisions governing changes to the product lists. Part A of this section explains why the Commission should treat the proposal as a mail classification change. Part B addresses the expiration of the market test. Part C calls attention to ambiguities and errors in the proposal.

A. This Proposal is a Mail Classification Change

1. The Postal Service has Treated Alternate Postage as a Mail Classification Change

During the Market Test, the Postal Service consistently treated Alternate Postage as a product. In its notice of the market test, the Postal Service indicated that “[t]he experimental product is an ‘Alternate Postage Payment Method for Greeting Cards.’” Market Test Notice at 1. It indicated that Alternate Postage “will be a premium product offering,” priced higher than First-Class single piece postage. *Id.* at 2, 6. It noted the benefits of the product: “Greeting card companies will be able to use the product to sell more greeting cards. . . .” *Id.* at 6. It distinguished Alternate Postage from other products: “The product is significantly different from all products offered by the Postal Service within the two-year period preceding the start of the test. . . .” *Id.* at 8. It also contended that the product would not create unfair competitive advantages and that the product should be characterized as “market dominant.” *Id.* None of this should come as a surprise, for Congress has delimited the Postal Service’s market tests to “experimental *products*.” 39 U.S.C. § 3641(a)(1) (emphasis added). If there is no product, there can be no test.

As it prepared to transition Alternate Postage from an experimental product to a permanent product, it is clear that the Postal Service intended to do so by way of 39 U.S. C. § 3642, the means that Congress provided to add new products to the product lists. In its Motion to Extend, the Postal Service indicated that it “intends to request that the experimental product be made permanent.” Motion to Extend at 1. It indicated that it had concluded “that the Alternate Postage offering should be made a permanent Market-Dominant product.” *Id.* at 2. And it specifically informed the Commission that it would file a “request to add Alternate Postage to the market-dominant product list. . . . under 39 U.S.C. § 3642. . . .” *Id.* at 3, n.2.

It was not until it filed its Notice in the present docket that the Postal Service signaled its intention to characterize the addition of Alternate Postage as a rate change. See Notice at 1. The Notice demonstrates why a rate case is an inadequate vehicle for

evaluating whether Alternate Postage should be made a permanent product. In its analysis, the Postal Service contends that because the proposed rate changes “do not change the prices for any *existing* First Class Mail price categories” the adjustments have no price cap impact. *Id.* at 6 (emphasis added). It accordingly limits its entire analysis to a discussion, half a page in length, explaining how its proposal advances the objectives and takes account of the factors listed in section 3622(b) and (c). *See id.* at 10-11. For its claim that the present proposal has no price cap implication, the Postal Service relies upon a Commission order approving the addition of Every Door Direct Mail – Retail (EDDM-R) to the market dominant product list pursuant to 39 U.S.C. § 3642.⁶ Like EDDM-R, Alternate Postage should be analyzed under section 3642 and the Commission rules pursuant thereto.

2. The Statutory and Regulatory Framework

Title 39 contains separate provisions respecting changes to market dominant rates and the addition of products to the product lists. Market Dominant rate regulation is governed by 39 U.S.C. § 3622. Section 3622 provides the Commission with authority to establish (and from time to time revise) a “modern system for regulating rates and classes for market dominant products.” 39 U.S.C. § 3622(a). Section 3622 requires, *inter alia*, that the system be designed to achieve certain enumerated objectives, that it take into account certain enumerated factors, and that it include an annual limitation. 39 U.S.C. § 3622(b-d). The Commission regulations establishing that system for regulating rates are codified at 39 C.F.R. part 3010. Those regulations require that the Postal Service, when it makes a rate adjustment, provide the Commission with information concerning, *inter alia*, the impact of the proposed rates on the price cap, the impact of workshare discounts, and an explanation as to how the proposed rates help achieve the objectives and consider the factors that Congress provided. 39 C.F.R. § 3010.14(b).

⁶ See Docket No. MC2012-31, Order Approving Addition of Postal Services to the Mail Classification Schedule Product Lists, September 7, 2012, at 11 (Order No. 1460).

Section 3642 permits the Commission to make changes to the list of market-dominant products. 39 U.S.C. § 3642(a). When it makes changes to the product lists, Congress has identified specific considerations for the Commission to take account of, including “the availability and nature of enterprises in the private sector engaged in the delivery of the product involved . . . the views of those who use the product involved on the appropriateness of the proposed action [and] the likely impact of the proposed action on small business concerns.” 39 U.S.C. § 3642(b)(3). The Commission’s implementing regulations require the Postal Service to provide relevant information so that the Commission can take account of these considerations. See e.g. 39 C.F.R. § 3020.32.

In principle, the regime that Congress devised is simple. When the Postal Service proposes changes to the market dominant rates, it is to demonstrate compliance with section 3622 and the Commission’s implementing regulations. When the Postal Service proposes changes to the product lists, it is to demonstrate compliance with section 3642 and the Commission’s implementing regulations.

In practice, the Postal Service often proposes changes to both rates and product offerings. In such instances, it makes a choice between filing pursuant to section 3622 or section 3642. The Commission has often permitted the Postal Service to propose changes to product offerings at the same time that it proposes changes to rates.⁷ In some cases – particularly where the changes to the product offerings are minor or technical in nature – this practice is sensible. It is also likely that this practice is not inconsistent with section 3622, which permits the Commission to devise a modern system for “regulating rates *and classes* of market-dominant products.” 39 U.S.C. § 3622(a) (emphasis added).

Because Congress enacted separate provisions governing changes to product offerings and changes to rates, the authority to propose changes to product offerings in rate proceedings should be limited to cases where the change to the product offering is

⁷ See e.g. Docket No. R2013-1, United States Postal Service Notice of Market-Dominant Price Adjustment, October 11, 2012, at 54-55.

minor, technical, and incidental to the change to the rate. In “mixed cases” – those involving changes to both rates and product offerings – the Commission could require that the Postal Service initiate separate dockets for the proposed change to rates and for the proposed change to the product description. Alternatively, the Commission could require that the Postal Service initiate a single filing under two dockets that shows that the rates comply with the Commission’s rate rules (39 C.F.R. part 3010) and that the changes to the product descriptions comply with the Commission’s rules regarding product classifications (39 C.F.R. part 3020). The present case provides the Commission with an opportunity to offer guidance on this issue.

3. Alternate Postage Likely Satisfies Sections 3622 and 3642

The Postal Service has shown that Alternate Postage satisfies the Commission’s rate rules. When it offers new products, the Postal Service has the flexibility to establish whatever rates it deems appropriate. Order No. 1640 at 11. The Commission has previously indicated that when the Postal Service proposes to introduce a new product following a market test, the proposed increased rates do not constitute a price increase otherwise subject to section 3622(d). There are no workshare discounts. The Public Representative believes that the Postal Service does not need to demonstrate compliance with section 3622. The only rate analysis relevant to this proceeding is whether the proposal helps achieve the objectives and takes into account the factors that Congress enumerated in Section 3622. In its Notice, the Postal Service adequately demonstrates that the addition of Alternate Postage is likely to advance the objectives of section 3622(b), and takes into account the factors of section 3622(c).

The Postal Service has not shown whether the addition of Alternate Postage complies with Commission’s regulations governing Mail Classification changes. See 39 C.F.R. § 3020.30 *et seq.* However, the Public Representative believes that there is sufficient information on the record to conclude that Alternate Postage is likely to comply with those rules. The Commission has authority to issue questions to obtain a more complete showing from the Postal Service on this point. The product that is the subject

of this proposal is covered by the postal monopoly. 39 C.F.R. § 3020.32(e). The postal service has described three types of users of this product. These include greeting card companies, gift basket companies, and an unidentified franchisor. In addition, an advertising agency with a print and mail facility has filed comments supporting the proposal.⁸ Taken together, these show that there is user demand for Alternate Postage. 39 C.F.R. § 3020.32(g). Because Alternate Postage is associated exclusively with First-Class Mail, it appears that there are no private sector enterprises engaged in the delivery of the product. 39 C.F.R. § 3020.32(f). It is not clear what impact the proposal will have on small business concerns. See 39 C.F.R. § 3020.32(h). During the market test proceedings, the Postal Service indicated that only a small portion of greeting cards are produced by small businesses. No small business owners filed comments in those proceedings. The Postal Service stated that small businesses “could be impacted favorably, as the Alternate Postage Payment method may provide an economical way for small businesses to mail greeting cards to their customers.” *Id.* Whether small businesses choose to mail Alternate Postage products does not, of course, address the impact that Alternate Postage will have on their business. The record does not provide much evidence that small businesses will be favorably impacted by Alternate Postage, but it provides no evidence that small businesses will be adversely impacted by Alternate Postage.

The Public Representative believes that the Postal Service has shown that the addition of Alternate Postage satisfies section 3622 and the record shows that the proposal likely satisfies section 3642 as well.

B. Expiration of the Market Test

In its Motion to Extend the market test, the Postal Service indicated that it intended to delay its request to make Alternate Postage a permanent product “until early 2013.” Motion to Extend at 2. It asked the Commission to extend the market test “until such time as the Commission acts upon the forthcoming request. . . to permanently add

⁸ Comments of Tom Glassman, November 15, 2013.

this product to the market-dominant product list. . .” Motion to Extend at 4. The Commission granted the motion to extend. In doing so, it appears the Commission has endorsed, *sub silentio*, the Postal Service’s request to extend the market test until the Commission acts upon the request to add Alternate Postage to the market dominant list.

The statute permits the Commission to extend the duration of the market test “for [a period] not to exceed an additional 12 months.” 39 U.S.C. § 3641(d)(2).⁹ The Postal Service now claims that the “market test is currently scheduled to expire on January 1, 2014.” Notice at 4. This is not a fair reading of what the Postal Service requested in its Motion to Extend, nor what the Commission granted. The Postal Service requested an extension that would expire when the Commission acted upon its request to add Alternate Postage to the market dominant product list.

The status of the Market Test is problematic for two reasons. *First*, the Postal Service never filed a request to add Alternate Postage to the market dominant product list. *Second*, were the Commission to construe the current docket as such a request, the market test would expire upon issuance of the Commission’s order, creating a gap between the market test and the permanent offering.

No party will be prejudiced if the Commission extends the expiration date of the market test so that it expires on January 1, 2014. The Public Representative supports such an extension.

C. Minor Problems with the Pricing Structure and MCS Language

There are a few minor technical problems with the proposal. These are discussed briefly. The three proposed price tiers that the Postal Service lists in Table 1 of its Notice fail to cover all possible advanced payment levels. Notice at 6. The first tier ends at 20 percent and the second tier starts at 21 percent. Likewise the second tier ends at 50 percent and the third tier begins at 51 percent. This leaves small gaps,

⁹ The statute omits the words “a period” contained within brackets above. This appears to be a scrivener’s error.

easily closed with alternative language, between 20 and 21 percent and between 50 and 51 percent.

In the same table, the Postal Service defines Alternate Postage rates as three to seven cents above an “approved rate.” It indicates that it does so due to “the pendency of the pricing cases in Docket Nos. R2013-10 and R2013-11, and the corresponding uncertainty surrounding what the prevailing Single-Piece First-Class Mail letter and card rates will be in 2014. . .” *Id.* Uncertainty concerning rates provides no excuse for the Postal Service to make Alternate Postage rates contingent on an unidentified “approved rate.” The Postal Service should identify the specific rate it intends to use as a base in its pricing of Alternate Postage rates. Lastly, the proposed changes to the MCS have rates designated as “X.XX,” presumably in light of the uncertainty concerning rates. These rates should be altered so as to specify the base rate that the Postal Service is using as well as the additional charge for each rate cell, as specified in Table 1 of the Notice.

Respectfully submitted,

/s/

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